

IN THE DISTRICT COURT OF CUSTER COUNTY, NEBRASKA

COPY

STATE OF NEBRASKA, ex rel. )  
MICHAEL J. LINDER, DIRECTOR, )  
NEBRASKA DEPARTMENT OF )  
ENVIRONMENTAL QUALITY )

Case Number C-707/05 DEPARTMENT OF JUSTICE

Plaintiff, )

CONSENT DECREE JUL - 2 2007

v. )

HENRY NUXOLL, JR. and 2<sup>ND</sup> WIND )  
RANCH, INC., )

Defendants. )



Plaintiff, the Nebraska Department of Environmental Quality ("NDEQ"), proceeding on its Complaint filed herein and appearing through its counsel, Jon C. Bruning, Attorney General, and the defendant, Henry Nuxoll, Jr. and 2<sup>nd</sup> Wind Ranch, Inc., (hereinafter "Defendants"), through their counsel, Gregory G. Jensen, and each party having consented to the making and entering of this Consent Decree without trial, the Court finds that the Consent Decree should be and hereby is entered.

IT IS THEREFORE ORDERED AND DECREED:

1. The Court has jurisdiction of the parties and the subject matter of this action. The Complaint herein sets forth justiciable causes of action against Defendants.

2. NDEQ in its complaint alleges that Defendants, beginning on September 26, 2005 and continuing daily thereafter failed to comply with paragraphs six (6) and seven (7) of the Administrative Order issued by NDEQ on August 25, 2005 in violation of Neb. Rev. Stat. §81-1508.02(1)(b) (Reissue

1999).

3. NDEQ further alleges that Defendants are therefore subject to a civil penalty as provided in Neb. Rev. Stat. §81-1508.02(2) (Reissue 1999).

4. The parties agree that settlement of these matters is in the public interest and that entry of this consent decree is the most appropriate means of resolving their dispute. Defendants, without admitting any allegations of the complaint, agree to the form and entry of this consent decree for purposes of settlement only.

5. The parties agree that this consent decree shall be in full satisfaction of all claims alleged in the complaint and arising out of the same transaction or occurrence asserted therein, provided that such claims were known to the State of Nebraska as of the date of the filing of this consent decree.

6. IT IS THEREFORE ORDERED that Defendant shall pay to the Clerk of the District Court of Custer County a civil penalty in the sum of twelve thousand, five hundred dollars (\$12,500.00) pursuant to Neb. Rev. Stat. § 81-1508.02, together with court costs in the amount of seventy-nine dollars (\$79.00). Said penalty is to be handled pursuant to Article VII, Section V, of the Nebraska Constitution.

a. \$6,250 (Six thousand two-hundred fifty dollars) of said penalty and the costs of the action are to be paid by December 15, 2007.

b. The remaining civil penalty of \$6,250 (Six thousand two-hundred fifty dollars) will be due and owing on June 1, 2008. In the event that Defendants enter into an administrative consent order with NDEQ by

July 15, 2007, which addresses the issues of all waste generated on the facility and enables Defendants to come into compliance with the August 25, 2005 Administrative Order, and Defendants also maintain compliance with all applicable statutes and regulations, the remaining \$6,250 (Six thousand two-hundred fifty dollars) of civil penalties will be waived.

c. To qualify for the \$6,250 waiver of civil penalties as stated in paragraph (6)(b), Defendants shall file a showing with the Court by July 30, 2007 establishing that it has obtained compliance as required.

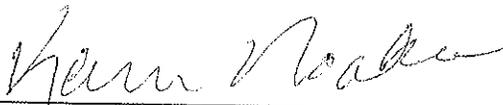
7. IT IS FURTHER ORDERED that the Defendant shall pay, as a Supplemental Environmental Project, the sum of \$12,500 (twelve thousand five hundred dollars) into the Attorney General's Environmental Protection Fund to be used for environmental safety, training, public awareness, or other related uses as permitted by state law, at the sole discretion of the Nebraska Attorney General. Said payment is to be made by December 15, 2007.

8. This Consent Decree will have no effect on any enforcement action brought by Plaintiff against Defendants for future violations of any statutes or regulations of which NDEQ was not aware at the time of filing the Complaint and Consent Decree.

9. The undersigned consent without further notice to the form and entry of the foregoing Consent Decree.

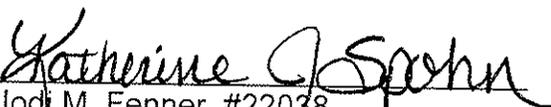
Dated this 18<sup>th</sup> day of June, 2007.

BY THE COURT:

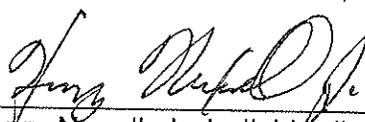
  
\_\_\_\_\_  
DISTRICT JUDGE

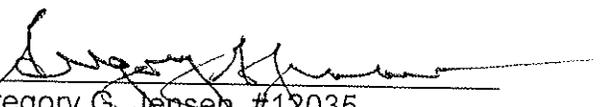
STATE OF NEBRASKA ex rel.,  
MICHAEL J. LINDER, DIRECTOR,  
Department of Environmental  
Quality, Plaintiff,

By: JON C. BRUNING #20351  
Attorney General

By:   
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HENRY NUXOLL, JR. and 2<sup>ND</sup> WIND  
RANCH, INC., Defendants,

By:   
\_\_\_\_\_  
Henry Nuxoll, Jr. Individually and as  
President of Second Wind Ranch, Inc.

By:   
\_\_\_\_\_  
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