

COPY

IN THE DISTRICT COURT OF WAYNE COUNTY, NEBRASKA

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

Case No. CI 06-37

Plaintiff,)

CONSENT DECREE

v.)

9:30 A.M.

GREAT DANE LIMITED PARTNERSHIP)
d/b/a GREAT DANE TRAILERS,)

FILED
WAYNE COUNTY DISTRICT COURT

APR 21 2006

Defendant.)

DEBRA ALLEMANN-DANNELLY
CLERK OF THE DISTRICT COURT

COME NOW the parties, Plaintiff, the Department of Environmental Quality (hereinafter "NDEQ"), proceeding on its Complaint filed herein and appearing through its counsel, Jon C. Bruning, Attorney General, and the Defendant, Great Dane Limited Partnership d/b/a Great Dane Trailers, by and through its attorneys Richard R. Elledge and Stephen M. Bruckner, 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, ADJUDGED, AND DECREED as follows:

1. The Court has jurisdiction of the parties and the subject matter of this action pursuant to the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et seq.* (Reissue 1999, Cum. Supp. 2004, Supp. 2005) and all rules, regulations, and permits created thereunder.
2. The Complaint filed herein constitutes a justiciable cause of action against the Defendant.

3. In its Complaint, Plaintiff alleges that in violation of Neb. Rev. Stat. §§81-1508.02(1)(b) and 81-1506(1)(a), the Defendant has violated its NPDES Pretreatment Permit No. NE0114481, by exceeding the allowable average discharge limits for zinc released to the City of Wayne water pollution control plant. Such violations occurred on December 14, 2004; December 21, 2004; January 11, 2005; January 25, 2005; February 8, 2005; February 22, 2005; and February 7, 2006.

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. The parties desire to conclude this case without trial or adjudication of any issues of fact or law, without this Consent Decree constituting an admission by the Defendant with respect to such issues. The Defendant agrees to the form and entry of this Consent Decree for the purposes of settlement only. Therefore, and for only the purposes of this Consent Decree, the parties agree to the entry of this Order by the Court.

5. This Consent Decree shall be in full satisfaction of all claims alleged in the Complaint filed herein and any claims or actions arising out of the same transaction or occurrences asserted therein, or relating to non-compliance with the zinc limits of the Defendant's NPDES Pretreatment Permit No. NE0114481 prior to the filing of the Complaint herein, provided that such claims were known to the State of Nebraska, or were reasonably ascertainable from

information in the State's possession, as of the date of the filing of the consent decree.

6. IT IS THEREFORE ORDERED that the Defendant shall pay to the Clerk of the District Court a civil penalty in the amount of twenty two thousand five hundred dollars (\$22,500.00), pursuant to Neb. Rev. Stat. § 81-1508.02, together with court costs herein 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. \$10,000.00 (ten thousand dollars) of said penalty will be due and owing 15 (fifteen) days from the entry of this Consent Decree by the Court.

B. \$12,500.00 (twelve thousand five dollars) of said penalty will be due and owing twelve months following the approval of this Consent Decree by the Court. In the event that said Defendant achieves and maintains compliance with the following obligations and provisions, during the time period between the approval of this Consent Decree by the District Court and twelve months following that approval, the \$12,500.00 (twelve thousand five dollars) of civil penalties will be waived:

i. Comply with the Environmental Protection Act, Neb. Rev. Stat. §81-1501 *et seq.*,

- ii. Comply with Title 119 of the Nebraska Administrative Code, "Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System (NPDES).
- iii. Comply with Defendant's NPDES Pretreatment Permit NE0114481, or any successive permits granted to the facility during the twelve months following the approval of this Consent Decree by the Court.

B. To qualify for the \$12,500.00 waiver of civil penalties as stated in paragraph 6(^{B all}~~A~~), Defendant shall file a showing with the Court within 30 (thirty) days following the due date of the civil penalties establishing that it has maintained compliance as required. If the Defendant does not receive a Notice of Violation from Plaintiff and is not a party to a legal action initiated by the Plaintiff disputing compliance with the statutes and regulatory provisions in paragraph 6(^{B all}~~A~~) during the relevant time period, Plaintiff shall file a Satisfaction of Judgment in the case within ten days of receipt of Defendant's showing. If Defendant receives a Notice of Violation from Plaintiff, or is a party to legal action initiated by the Plaintiff disputing compliance with the statutes and regulatory provisions in paragraph 6(^{B all}~~A~~) during the relevant time

period, Plaintiff shall file an objection to Defendant's showing and determination of this waiver provision will be stayed pending ongoing enforcement proceedings.

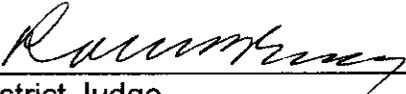
7. IT IS FURTHER ORDERED that the Defendant shall pay, as a voluntary supplemental environmental project, the sum of twenty two thousand five hundred dollars (\$22,500.00) into the Attorney General's Environmental Protection Fund to be used for environmental safety, training, public awareness, or other related uses as permitted by state law, at the sole discretion of the Nebraska Attorney General. This sum shall be paid as a lump-sum payment due no later than thirty days after the entry of this Consent Decree by the Court.

8. This Consent Decree will have no effect on any enforcement action brought by Plaintiff against Defendant for future violations of any statutes or regulations.

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

DATED THIS 19 day of April, 2006, in Wayne County, Nebraska.

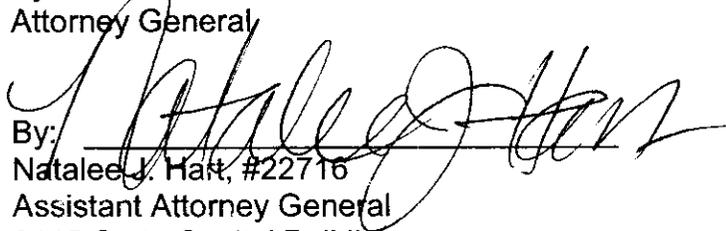
BY THE COURT:



District Judge

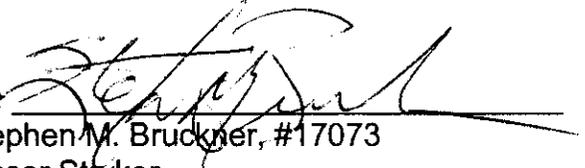
STATE OF NEBRASKA ex rel.,
MICHAEL J. LINDER, Director
Department of Environmental
Quality, Plaintiff,

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