

COPY

IN THE DISTRICT COURT OF PHELPS COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
MICHAEL J. LINDER, Director,)
NEBRASKA DEPARTMENT OF)
ENVIRONMENTAL QUALITY,)
)
Plaintiff,)
)
v.)
)
CLYDE McCLYMONT & SONS, INC.)
Defendant.)

Case CI 04-178

CONSENT DECREE

Filed in Court Journal on
3-10-06

COME NOW the parties, Plaintiff, the Nebraska Department of Environmental Quality, ("NDEQ") proceeding on its Amended Complaint filed herein and appearing through its counsel, Jon Bruning, Attorney General, and the Defendant, Clyde McClymont & Sons, Inc., through its counsel, Stephen D. Mossman, 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 as follows:

1. This Court has jurisdiction of the parties and the subject matter of this action. The Complaint filed herein constitutes a justiciable cause of action against the Defendant under the Environmental Protection Act, Neb. Rev. Stat. §81-1501 *et seq.* (Reissue 1999, Cum. Supp. 2004).

2. Plaintiff alleges that on or about January 31, 2003, and continuing daily thereafter until March 12, 2003, Defendant, knowing facilities were required by NDEQ, failed to apply for a construction permit in violation of Title 130, Chapter 2, Section 005 and Neb. Rev. Stat. §81-1508.02 (1) (e).

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CLERK OF DISTRICT COURT

3. Plaintiff further alleges that beginning on or about September 5, 2002, and continuing daily thereafter until June 2, 2003, Defendant initiated the building and/or modification of a livestock waste control facility without obtaining the necessary permits from NDEQ in violation of Neb. Rev. Stat. §81-1506 (2)(b).

4. Finally, Plaintiff alleges that on or about September 15, 2003, Defendant failed to notify NDEQ of a change in ownership of its facility in violation of Neb. Rev. Stat. §54-2407(3) and Neb. Rev. Stat. §81-1506(5)(b).

5. 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. Therefore, and for only the purposes of this Consent Decree, the parties agree to the entry of this Order by the Court.

6. This Consent Decree shall be in full satisfaction of all claims between the parties alleged in the Complaint and the parties further agree to release any and all claims or actions arising out of the same transaction or occurrences referenced above, and in the complaint herein or any other claims, provided that such claims were known to the State of Nebraska, as of the date of the filing of the consent decree.

7. IT IS ORDERED that Defendant shall pay into the District Court of Phelps County a penalty of \$3,500.00 (Thirty-five hundred dollars), and the costs of the action in the amount of \$76.50 (Seventy Six dollars and fifty cents). Said penalty is to be handled pursuant to Article VII, Section V, of the Nebraska Constitution. Said penalty

and costs of the action are to be paid within thirty (30) days following approval of this Consent Decree by the District 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 10 day of MARCH, 2006 in Phelps County,
Nebraska.

BY THE COURT:



Honorable Terri S. Harder
District Court Judge

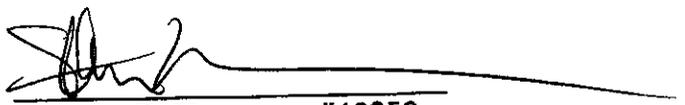
STATE OF NEBRASKA, ex rel.,
MICHAEL J. LINDER, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY, Plaintiff

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