

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA
STATE OF NEBRASKA, ex rel.,
MICHAEL J. LINDER, Director
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiff,

v.

RADIO ENGINEERING INDUSTRIES,
INC.,

Defendant.

Case No. 1062 341

CONSENT DECREE

COPY

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 Radio Engineering Industries, Inc., appearing through its counsel James P. Waldron, 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 Neb. Rev. Stat. § 81-1501 *et seq.* (Reissue 1999, Cum. Supp, 2004, Supp. 2005), the Nebraska Environmental Protection Act, and all rules and regulations and orders promulgated thereunder.
2. The Complaint filed herein constitutes a justiciable cause of action against the Defendant.
3. In its Complaint, Plaintiff alleges that the Defendant stored hazardous waste at the Facility without a permit, in violation of Title 128, Chapter 12, Section 001, Neb. Rev. Stat. §81-1508.02(1)(b), and Neb. Rev. Stat. § 81-1508.02(1)(e); accumulated hazardous

waste at the Facility, in violation of Title 128, Chapter 10, Section 004.01, Neb. Rev. Stat. §81-1508.02(1)(b), and Neb. Rev. Stat. § 81-1508.02(1)(e); generated hazardous waste without conducting a hazardous waste determination, in violation of Title 128, Chapter 4, Section 002, Neb. Rev. Stat. §81-1508.02(1)(b), and Neb. Rev. Stat. § 81-1508.02(1)(e); failed to label or mark the tanks in which it was accumulating hazardous waste with the date on which accumulation began, in violation of Title 128, Chapter 10, Section 004.01F, Neb. Rev. Stat. §81-1508.02(1)(b), and Neb. Rev. Stat. § 81-1508.02(1)(e); failed to label or mark the tanks in which it was accumulating hazardous waste with the words "Hazardous Waste," in violation of Title 128, Chapter 10, Section 004.01G, Neb. Rev. Stat. §81-1508.02(1)(b), and Neb. Rev. Stat. § 81-1508.02(1)(e); and failed to submit a Biennial Report to the NDEQ by March 1, 2003, in violation of Title 128, Chapter 4, Section 005.01A, Neb. Rev. Stat. §81-1508.02(1)(b), and Neb. Rev. Stat. § 81-1508.02(1)(e).

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 Consent Decree by the Court.

5. This Consent Decree shall be in full satisfaction of all claims alleged in the complaint filed herein and any claims arising out of the same transaction or occurrences asserted therein, 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. This Consent Decree will have no effect on any enforcement action brought by Plaintiff against Defendant for future violations of any statutes or regulations.

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

8. IT IS THEREFORE ORDERED that the Defendant shall pay to the Clerk of the District Court a civil penalty in the amount of eight thousand five hundred dollars (\$8,500.00), 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. \$4,250.00 (four thousand two hundred fifty dollars) will be due and owing thirty (30) days from the entry of this Consent Decree by the Court.
- B. \$4,250.00 (four thousand two hundred fifty 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 \$4,250.00 (four thousand two hundred fifty 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 128 of the Nebraska Administrative Code, “Nebraska Hazardous Waste Regulations.”

C. To qualify for the \$4,250.00 waiver of civil penalties as stated in paragraph 6(B), 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) 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) 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.

9. IT IS FURTHER ORDERED that the Defendant shall pay, as a voluntary supplemental environmental project, the sum of nine thousand dollars (\$9,000) 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 sixty (60) days after the approval of this Consent Decree by the Court.

DATED THIS 20th day of June, 2006, in Douglas County, Nebraska.

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: Natalee J. Hart, #22716
Assistant Attorney General
2115 State Capitol Building
Lincoln, NE 68509
Tel. (402) 471-2682
natalee.hart@ago.ne.gov
Attorneys for Plaintiff.

RADIO ENGINEERING INDUSTRIES, INC., Defendant,

By:  _____

James P. Waldron, #16073
Gross & Welch, PC
1500 Omaha Tower
2120 So. 72nd Street
Omaha, NE 68124-2342
Tel. 402-392-1500
Fax 402-392-8101
jwaldron@grosswelch.com
Attorney for Defendant.