

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
 MICHAEL J. LINDER, Director)
 DEPARTMENT OF ENVIRONMENTAL)
 QUALITY,)
 Plaintiff,)
 v.)
 KAWASAKI MOTORS)
 MANUFACTURING CORP., U.S.A.)
 Defendant.)

Case No. CI10-85

CONSENT DECREE

LANCASTER COUNTY
 2010 MAR 4 PM 5 01
 CLERK OF THE
 DISTRICT COURT

COMES NOW the parties, Plaintiff, the Nebraska Department of Environmental Quality ("NDEQ"), proceeding on its Complaint filed herein and appearing through its Counsel, Jon Bruning, Attorney General, and the Defendant Kawasaki Motors Manufacturing Corp., U.S.A., appearing through its counsel Stephen 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 Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et seq.* (Reissue 1999, Cum. Supp. 2004 and Supp. 2005), and all rules and regulations and orders promulgated thereunder.

2. In its Complaint, Plaintiff alleges violations of Nebraska's hazardous waste regulations, Title 128 of the Nebraska Administrative Code. These allegations include that Defendant failed to make waste determinations as to certain spent aerosol spray cans; that Defendant improperly disposed of spent filter pads from a parts washer; that



000828073D02

Defendant failed to store certain wastes in a closed and properly labeled container; and that Defendant did not complete annual training for six employees involved in hazardous waste management. Defendant generally denies these allegations but agrees to enter into this Consent Decree without any admission of liability.

3. 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, and without this Consent Decree constituting an admission by the Defendant with respect to such issues. The Defendant makes no admission and 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.

4. This Consent Decree shall be in full satisfaction of all claims between the parties alleged in the State's complaint. The parties also agree to release any and all claims or actions arising out of the same transaction or occurrences referenced above and in the State's complaint, provided that such claims were known to the State, or were reasonably ascertainable from information in the State's possession, as of the date of the filing of the consent decree. This release includes all claims or actions arising from the Plaintiff Department's inspection of Defendant's Lincoln, Nebraska facility from December 19-21, 2007, and all Notices of Violation issued by the Department to Defendant following such inspection. This Consent Decree will have no effect on any enforcement action brought by Plaintiff against Defendant for future violations of any

statute or regulations, if any, and Defendant reserves all legal rights and defenses with respect to same.

5. For purposes of settlement only, as provided herein, the parties agree that the complaint filed herein constitutes a justiciable cause of action against the Defendant and consent without further notice to the form and entry of this Consent Decree.

6. IT IS THEREFORE FURTHER ORDERED that Defendant, without any admission of liability, shall pay to the Clerk of District Court a civil penalty in the amount of twenty-five thousand dollars (\$25,000.00) pursuant to Neb. Rev. Stat. § 81-1501 et seq., together with court costs herein in the amount of eighty-two dollars (\$82.00). Said civil penalty is to be handled by the Court pursuant to Article VII, Section V, of the Nebraska Constitution and shall be paid as follows:

- A. \$15,000.00 (fifteen thousand dollars) of said civil penalty amount will be paid within ten days of entry of this Consent Decree by the Court, and is payable to the Clerk of this Court.
- B. \$10,000.00 (ten thousand dollars) of said civil penalty will be conditionally due and owing 180 (one hundred and eighty) days following the entry of this Consent Decree by the Court. In the event that Defendant is not found in violation of the Environmental Protection Act, Neb. Rev. Stat. §81-1501 *et seq.* or Title 128 Hazardous Waste Regulations during the time period between the approval of this Consent Decree by the District Court and 180 days following the entry of this Consent Decree, the \$10,000 (ten thousand dollars) of civil penalties will be waived by the Plaintiff and Defendant forever shall be released and discharged from payment thereof.

C. To qualify for the \$10,000.00 (ten thousand dollars) waiver of civil penalties as stated in paragraph 6(B), Defendant will file with the Court, and serve on the State, a showing within 15 days following the due date of the conditional civil penalty amount. The showing will certify that Defendant has maintained compliance in accordance with paragraph 6(B). The State will file a satisfaction of judgment within 10 days of receiving Defendant's showing if Defendant has maintained compliance as provided in paragraph 6(B) during the 180 days following the entry of this Consent Decree. If Defendant has not maintained compliance as provided in paragraph 6(B) during the 180 days following the entry of this Consent Decree, the State, in its sole discretion may file an objection to Defendant's showing. If the State files an objection to Defendant's showing, the determination of this waiver provision and any payment by Defendant will be stayed pending ongoing enforcement proceedings.

7. IT IS FURTHER ORDERED that Defendant shall provide, as a voluntary supplemental environmental project and without any admission of liability, two (2) 617cc/4WD Kawasaki Mule utility vehicles, one of which will be donated to the Omaha Henry Doorly Zoo and the other of which will be donated to YMCA Camp Kitacki. The total value of the two donated utility vehicles is nineteen thousand five hundred dollars (\$19,500).

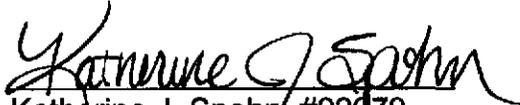
Dated this 4 day of March, 2010, in Lancaster County, Nebraska.

BY THE COURT:

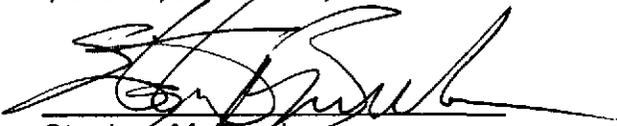

Lancaster County District Judge
4 Jeffrey Chaurroni

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

By: Jon C. Bruning, #20351
Attorney General

By: 
Katherine J. Spohn, #22979
Special Counsel to the Attorney General
2115 State Capitol Building
P.O. Box 98920
Lincoln, Nebraska 68509-8920
(402) 471-2682
Attorney for Plaintiff.

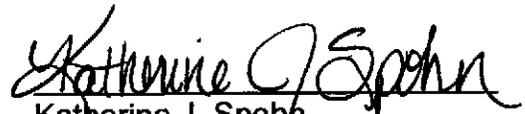
KAWASAKI MOTORS MANUFACTURING
CORP., U.S.A., Defendant,

By: 
Stephen M. Bruckner
Fraser Stryker P.C., L.L.O.
500 Energy Plaza
409 S. 17th Street
Omaha, NE 68102-2663
Attorney for Defendant.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Consent Decree has been served upon Defendant by regular United States mail, first class postage prepaid on this 3rd day of March, 2010, addressed to the Defendant's attorney of record as follows:

Stephen M. Bruckner
Fraser Stryker P.C., L.L.O.
500 Energy Plaza
409 S. 17th Street
Omaha, NE 68102-2663


Katherine J. Spohn
Special Counsel to
The Attorney General

W533380.2