

IN THE DISTRICT COURT OF PLATTE COUNTY, NEBRASKA

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

Plaintiff,

v.

BECTON, DICKINSON AND COMPANY,
A Nebraska Authorized Corporation,
a/k/a BD Medical Systems,

Defendant.

Case No. CI 09-51

CONSENT DECREE

FILED
MARLENE M VETICK, CLERK

JAN 30 2009

DISTRICT COURT
PLATTE COUNTY, NEBR.

COPY

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, Becton Dickinson and Company, A Nebraska Authorized Corporation, a/k/a BD Medical Systems, appearing through its counsel, Stacia Palser, 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.



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2. The Complaint filed herein constitutes a justiciable cause of action against the Defendant.

3. In its Complaint, Plaintiff alleges violations of various provisions of Title 129 of the Nebraska Administrative Code.

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 Defendant shall pay to the Clerk of District Court a civil penalty in the amount of thirty thousand dollars (\$30,000.00) 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. \$15,000.00 (fifteen thousand dollars) of said penalty will be imposed immediately upon the entry of this Consent Decree by the Court, and is due no later than ten (10) days after entry of this Consent Decree by the Court.

- B. \$15,000.00 (fifteen thousand dollars) of said penalty will be due and owing 180 (one hundred and eighty) days 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 180 days following that approval, the \$15,000.00 (fifteen thousand dollars) of civil penalties will be waived:
 - i. The Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et seq*;

 - ii. Title 129 of the Nebraska Administrative Code, "Nebraska Air Quality Regulations";

- iii. Defendant's Nebraska Air Quality Construction permit issued pursuant to Title 129.

C. To qualify for the \$15,000.00 waiver of civil penalties as stated in paragraph 8(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 8(B) during the relevant time period, Plaintiff shall file a Satisfaction of Judgment in the case within 10 (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 8(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 Defendant shall pay, as a voluntary supplemental environmental project, the sum of thirty thousand dollars (\$30,000.00) to Keep Columbus Beautiful, Inc. to be used for environmental safety, training, public awareness, or other related uses, as permitted by state law. This sum shall be paid as a lump-sum payment due no later than 10 (ten) days after the entry of this Consent Decree by the Court.

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 20th day of January, 2009, addressed to the Defendant's attorney of record as follows:

Stacia L. Palser
Koley Jessen PC
One Pacific Place, #800
1125 South 103rd St
Omaha, NE 68124


Katherine J. Spohn
Assistant Attorney General

xc: Katherine J. Spohn
Asst. Attorney General

Stacia L. Palser
Koley Jessen PC

Dated this 30th day of January, 2009, in Platte County, Nebraska.

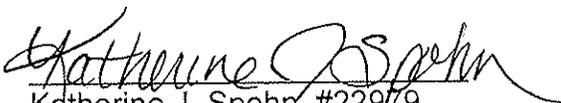
BY THE COURT:



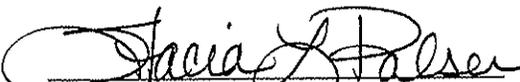
Platte County District Judge

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
Assistant Attorney General
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(402) 471-2682
Attorney for Plaintiff.

BECTON, DICKINSON AND
COMPANY, A Nebraska Authorized
Corporation, a/k/a BD Medical Systems,
Defendant,

By: 
Stacia L. Palsler, #22459
Koley Jessen PC
One Pacific Place, #800
1125 South 103rd St
Omaha, NE 68124-1079
Attorney for Defendant.