

COPY

IN THE DISTRICT COURT FOR HALL COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel., )  
MICHAEL J. LINDER, Director )  
DEPARTMENT OF ENVIRONMENTAL )  
QUALITY, )  
Plaintiff, )  
v. )  
NICK WINFREY, D/B/A WINFREY )  
PLUMBING & HEATING CO. )  
Defendant. )

Case No. 0109-142

CONSENT DECREE

**FILED**

FEB 10 2009

VALORIE BENDIXEN  
CLERK OF DISTRICT COURT

The State of Nebraska, on the relation of the Nebraska Department of Environmental Quality ("NDEQ") and through its counsel, Attorney General Jon C. Bruning, and Nick Winfrey, d/b/a Nick Winfrey Plumbing and Heating Co. ("Winfrey"), through his counsel, David T. Schroeder, jointly file this consent decree and agree to this Court's entry of the following terms and orders:

8 10 2 54

1. This Court has jurisdiction over the parties and the subject matter of this action. The complaint filed in this case is a justiciable cause of action against Winfrey under the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act, pursuant to Neb. Rev. Stat. §§ 81-15,236-81-15,253 (Cum. Supp. 2006, Supp. 2007, Reissue 2008) and all rules and regulations promulgated under the Act.

2. In its complaint, the State alleges that Winfrey (i) in July 2007, engaged in the siting, layout, construction, reconstruction, alteration, modification, or repair of a private onsite wastewater treatment system at 537 Ivy Hall Ct., Grand Island, Hall County, Nebraska, (a) without being certified to do so and (b) without certifying and

registering the system within forty-five days of completion of construction, reconstruction, alteration, or modification and (ii) in November 2007, engaged in the siting, layout, construction, reconstruction, alteration, modification, or repair of a private onsite wastewater treatment system at 929 Gunbarrel Rd., Grand Island, Hall County, Nebraska, (a) without being certified to do so and (b) without certifying and registering the system within forty-five days of completion of construction, reconstruction, alteration, or modification.

3. The parties agree that settlement of this matter 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 Winfrey with respect to such issues. Therefore, and for only the purpose of this consent decree, the parties agree to the entry of this order 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.

5. IT IS THEREFORE ORDERED that Winfrey shall pay a civil penalty, under Neb. Rev. Stat. § 81-15,253 (Reissue 2008), in the amount of \$5,000 and court costs in the amount of \$79 to the District Court for Hall County. This civil penalty shall be handled as provided in Article VII, Section V, of the Nebraska Constitution.

A. \$5,000 of the civil penalty, as well as the \$79 in court costs, shall be paid to this Court according to the following schedule:

i. \$79 in court costs is due upon the entry of this consent decree.

ii. \$450 is due on April 1, 2010. \$350 is then due on the first of the month for the following 13 months, with the last \$350 payment due on May 1, 2011.

6. IT IS FURTHER ORDERED that Winfrey shall pay, as a supplemental environmental project, the sum of \$5,000 to 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 payment shall be paid according to the following schedule:

i. \$450 is due upon the entry of this consent decree.

ii. \$350 is due March 1, 2009. \$350 is then due on the first of the month for the following 12 months, with the final supplemental environmental project payment due on March 1, 2010.

7. This consent decree will have no effect on any enforcement action brought by the State or NDEQ against Winfrey for future violations of any statutes or regulations.

8. The undersigned consent without further notice to the form and entry of this consent decree.

DATED THIS 10 day of February, 2009, in Hall County, Nebraska.

BY THE COURT:

  
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:   
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NICK WINFREY D/B/A NICK WINFREY  
PLUMBING & HEATING CO.,  
Defendant

By:   
Nick Winfrey

By:   
David Schroeder, #13717  
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HALL DISTRICT COURT  
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Grand Island, NE 68801  
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Date Received 02 09 2009  
Case ID CI 09 142  
Caption State of Nebraska, Michael J v. Winfrey

Receipt No. 194954

Received From Winfrey Plumbing ck# 44280  
Party DEF001 Winfrey, Nick,  
D/B/A Winfrey Plumbing & Heating Co  
Grand Island NE

Judge Teresa K Luther

Payment Type Check

Amount Received 79.00

<u>Description</u>	<u>Amount Applied</u>
Petition	35.00
Filing Fee - State	5.00
Automation Fee	6.00
NSC Education Fee	1.00
Dispute Resolution Fee	.75
Indigent Defense Fee	3.00
Uniform Data Analysis Fee	1.00
J.R.F.	5.00
Filing Fee-JRF	2.00
Legal Aid/Services Fund	5.25
Complete Record	15.00

DEPARTMENT OF JUSTICE

FEB 11 2009

STATE OF NEBRASKA