

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

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

Case No. CI08-1

Plaintiff,)

CONSENT DECREE

v.)

LONNIE BREINER d/b/a BREINER)
RANCH,)

HOLT COUNTY,)
NEBRASKA)
FILED)
SS

Defendant.)

JAN 14 2008

JUNIOR YOUNG 3:10 PM)
CLERK OF THE DISTRICT COURT)
KAREN SPERLING - DEPUTY)

Plaintiff, the Nebraska Department of Environmental Quality ("NDEQ"), proceeding on its Complaint filed herein and appearing through its counsel, Jon C. Bruning, Attorney General, and the Defendant, Lonnie Breiner, d/b/a Breiner Ranch ("Defendant"), appearing through its counsel, Donald G. Blankenau, 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:

1. The Court has jurisdiction of the parties and the subject matter of this action. The Complaint herein sets forth justiciable causes of action against Defendant.

2 NDEQ, in its Complaint, alleges that on or about February 3, March 1, and December 13, 2006, January 10, 2007, and March 21, 2007, representatives of NDEQ observed cattle in Defendant's pens in violation of a September 14, 2005 Administrative Consent Order entered into between the parties. In addition, Defendant did not submit monthly progress reports to NDEQ until September 2007, in violation of the Administrative Consent Order. Pursuant to

DEPARTMENT OF JUSTICE

JAN 15 2008

STATE OF NEBRASKA

auth.

NEB. REV. STAT. § 81-1508.02(1)(b) (Reissue 1999), it is unlawful to “violate ... any order of the director.”

3. NDEQ also alleges that Defendant violated the terms of a September 28, 2006 Construction Permit issued by NDEQ in failing to timely submit a Groundwater Monitoring Plan and complete construction of a Livestock Waste Control Facility. Pursuant to NEB. REV. STAT. § 81-1508.02(10)(b) makes it unlawful for any person to violate any permit or license condition or limitation.

4. NDEQ further alleges that Defendant is therefore subject to a civil penalty as provided in NEB. REV. STAT. § 81-1508.02(2) (Reissue 1999).

5. The Defendant contends that he acted on the advice of his legal counsel by allowing a small number of cattle to be placed in the pens. The Defendant contends that legal counsel advised him that placing cattle in the pens during the periods alleged by the NDEQ, could be accomplished without violating the September 14, 2005 Administrative Consent Order.

6. The Defendant further contends that legal counsel had agreed to prepare and submit the monthly progress reports. The Defendant acted in reliance of his legal counsel to submit the monthly progress reports.

7. The Defendant contends that he relied on the expertise of his hired consultants to complete the facility design and complete construction of the facility in a timely manner.

8. Notwithstanding the reliance the Defendant placed on the expertise and professionalism of his legal counsel and consultants, 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. Defendant, without admitting any allegations of the Complaint, agrees to the form and entry of this Consent Decree for purposes of settlement only.

9. The parties agree that this Consent Decree shall be in full satisfaction of all claims between the parties alleged in the Complaint and arising out of the same transaction or occurrence asserted therein, provided that such claims were known to the State of Nebraska as of the date of the filing of this Consent Decree.

10. IT IS THEREFORE ORDERED that Defendant shall pay to the Clerk of the District Court of Holt County a civil penalty in the sum of twenty thousand dollars (\$20,000.00) pursuant to NEB. REV. STAT. § 81-1508.02, together with court costs 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. \$10,000 (Ten thousand dollars) of said penalty and the costs of the action shall be due and owing within thirty (30) days of the signing of this consent decree.

b. The remaining civil penalty of \$10,000 (ten thousand dollars) will be due and owing on February 29, 2008.

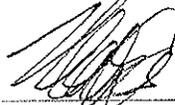
11. IT IS FURTHER ORDERED that the Defendant shall pay, as a Supplemental Environmental Project, the sum of \$20,000 (Twenty thousand dollars) into the Attorney General's Environmental Protection Fund to be used for environmental safety, training, public awareness, or other related uses as permitted by state law, at the sole discretion of the Nebraska Attorney General. The first payment of \$10,000 (ten thousand dollars) of said payment shall be due and owing on May 30, 2008. The second and final payment of \$10,000 (ten thousand dollars) shall be due and owing on August 29, 2008.

12. This Consent Decree will have no effect on any enforcement action brought by Plaintiff against Defendant for future violations of any statutes or regulations or Defendant's ability to pursue other parties for liability related to the circumstances giving rise to this action.

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

Dated this 7th day of January, 2008.

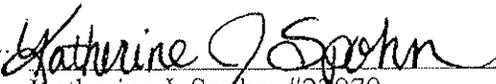
BY THE COURT:



DISTRICT JUDGE

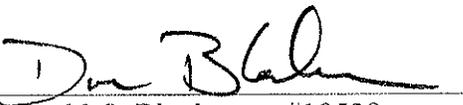
STATE OF NEBRASKA ex rel.,
MICHAEL J. LINDER, DIRECTOR,
Department of Environmental
Quality, Plaintiff,

By: JON C. BRUNING #20351
Attorney General

By: 

Katherine J. Spohn, #22979
Assistant Attorney General
2115 State Capitol Building
Lincoln, NE 68509
Tel. (402) 471-2682
Attorneys for Plaintiff

LONNIE BREINER d/b/a BREINER RANCH,
Defendant,

By: 

Donald G. Blankenau, #18528
Blackwell Sanders LLP
206 S. 13th Street, Suite 1400
Lincoln, NE 68508
Tel. (402) 458-1500
Attorney for Defendant

The Clerk of the Court is ordered to perform those acts checked below by initial and date the spaces provided when completed

- Mail a copy of this order to all parties of record and/or to the attorney at record of each party.
Done on Jan 14, 2008 by rs
- Enter the judgement on the judgement record of the Court.
Done on _____ by _____
- Mail a postcard or notice to each party or attorney of record within 3 days.
Done on _____ by _____
- Note the decision on the trial docket of the Court by copying therein Consent Decree entered
Done on Jan 14, 2008 by rs

Copy to:
Katherine Spohn
Asst Atty General
2115 State Capitol Bldg
Lincoln, Ne 68509


DISTRICT JUDGE
Donald Blankenau
206 So 13th Str, Ste 4 1400
Lincoln, Ne 68508

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Consent Decree has been served upon the Defendant by regular United States mail, first class postage prepaid on this 7th day of January, 2008 addressed to the Defendant's attorney of record as follows:

Donald G. Blankenau, #18528
Blackwell Sanders LLP
206 S. 13th Street, Suite 1400
Lincoln, NE 68508


Katherine J. Spohn
Assistant Attorney General