

IN THE DISTRICT COURT OF BURT COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel., )  
 MICHAEL J. LINDER, Director )  
 NEBRASKA DEPARTMENT OF )  
 ENVIRONMENTAL QUALITY, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 ROBERT SKLENAR ESTATE, )  
 )  
 Defendant. )

Case No. C108-58

**FILED**

JUL 24 2008  
10:20am

DISTRICT COURT  
BURT COUNTY, NEBRASKA

CONSENT DECREE

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, 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 AND DECREED as follows:

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 July 6, 2006, the Defendant released oil and/or hazardous substances upon the waters or land of the State of Nebraska and failed to properly notify the Department of the release. In addition, on or about January 10, 2006, NDEQ alleges that the Defendant failed to make a hazardous waste determination on hazardous substances such as waste lacquer thinner at the site as required by Title 128, Chapter 4, Section 002, and failed to notify the Department of hazardous waste activity as required by Title 128, Chapter 7, Section 003. Finally, NDEQ

*my*



alleges that on or about August 22, 2007, and continuing daily thereafter, the Defendant failed to comply with subparagraphs 6 b, c, d, e and f of the consent order that was entered into with NDEQ on or about June 22, 2007.

3. NDEQ further alleges that Defendant is therefore subject to a civil penalty as provided in Neb. Rev. Stat. § 81-1508.02 (2) (Reissue 1999).

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. Defendant, without admitting any allegations of the Complaint, agrees to the form and entry of this Consent Decree for purposes of settlement only.

5. The parties agree that this Consent Decree shall be in full satisfaction of all claims 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.

6. IT IS THEREFORE ORDERED that Defendant shall pay to the Clerk of the District Court of Burt County a civil penalty in the sum of nineteen thousand five hundred dollars (\$19,500.00) 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. Said civil penalty will be due and owing in one hundred twenty (120) days. In the event that the following conditions are met, the civil penalties will be waived:

1. Dispose of all remaining solid waste at the site.
2. Submit records documenting the proper disposal of the solid

waste at the Site to NDEQ.

3. Continue to provide to NDEQ Buyer's Affidavits for hazardous materials purchased during the June 29, 2006 estate auction, to the extent the same are received by Defendant in response to the letter of Buyer's attorney dated March 21, 2008.
4. Maintain compliance with the remaining provisions of the June 22, 2007 Consent Decree
5. Maintain compliance with all applicable environmental statutes and regulations, including, but not limited to Title 126 and Title 128 of the Nebraska Administrative Code.

b. To qualify for the waiver of civil penalties as stated in paragraph (6)(a), Defendant shall file a showing with the Court within (30) thirty days before the due date of the civil penalties establishing that it has maintained compliance as required. If Defendant does not receive a Notice of Violation from NDEQ and is not a party to a legal action disputing compliance with the statutes and regulatory provisions in paragraph (6)(a) 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 disputing compliance with the statutes and regulatory provisions in paragraph (6) during the relevant time period, Plaintiff shall file an objection to Defendant's showing and the Court may stay determination of this waiver provision pending ongoing enforcement proceedings.

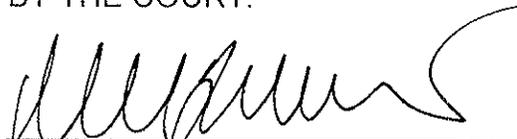
7. IT IS FURTHER ORDERED that the Defendant shall pay, as a voluntary supplemental environmental project, the sum of nineteen thousand five hundred dollars (\$19,500.00) into the Attorney General's Environmental Protection Fund to be used for environmental safety, training, public awareness, or other related uses as permitted by state law, at the sole discretion of the Nebraska Attorney General. Said payment shall be due and owing within thirty (30) days after entry of this consent decree.

8. This Consent Decree will have no effect on any enforcement action brought by Plaintiff against Defendant for future violations of any statutes or regulations.

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

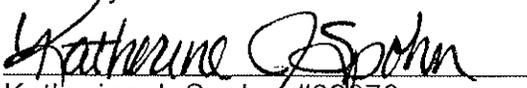
Dated this 23 day of July, 2008.

BY THE COURT:

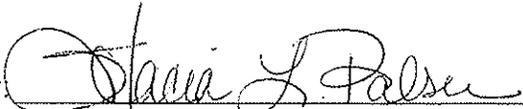
  
\_\_\_\_\_  
DISTRICT JUDGE

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, #22079  
Assistant Attorney General  
2115 State Capitol Building  
Lincoln, NE 68509  
Tel. (402) 471-2682  
Attorneys for Plaintiff.

ROBERT SKLENAR ESTATE, Defendant,

By 

Stacia Palser, #22459

Koley Jessen P.C. L.L.O.

One Pacific Place, Suite 800

1125 South 103<sup>rd</sup> Street

Omaha, NE 68124

Tel. (402) 390-9500

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 17<sup>th</sup> day of July, 2008, addressed to the Defendant's attorney of record as follows:

Stacia Palser  
Koley Jessen P.C. L.L.O.  
One Pacific Place, Suite 800  
1125 South 103<sup>rd</sup> Street  
Omaha, NE 68124  
Tel. (402) 390-9500

  
Katherine J. Spohn  
Assistant Attorney General