

RECEIVED DEC 06 2007

IN THE DISTRICT COURT OF MADISON COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
MICHAEL J. LINDER, Director)
DEPARTMENT OF ENVIRONMENTAL)
QUALITY,)
Plaintiff,)
v.)
RANDY SUNDERMAN,)
Defendant.)

Case No. CI-08-148

FILED
A.M. 2:18 P.M.

CONSENT DECREE

MAR 27 2008

IN DISTRICT COURT OF
MADISON COUNTY, NEBR.
MARJORIE SCHAFFER, CLERK

COME NOW the parties, Plaintiff, the Department of Environmental Quality (hereinafter "NDEQ"), proceeding on its Complaint filed herein and appearing through its counsel, Jon C. Bruning, Attorney General, and the Defendant Randy Sunderman, appearing through its counsel, James Egley, 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.

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

3. In its Complaint, Plaintiff alleges that on or about March 27, 2007, the NDEQ discovered through an inspection of the property that Defendant had caused or allowed an open fire without the written permission of the Director of the NDEQ, and had burned material for which Title 129, Chapter 30 provides no exception, in violation of Title 129.

DEPARTMENT OF JUSTICE

MAR 28 2008

STATE OF NEBRASKA

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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 the Defendant shall pay to the Clerk of the District Court a civil penalty in the amount of five thousand dollars (\$5,000.00), 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.

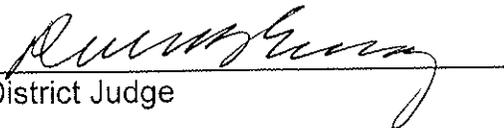
- A. \$2,500.00 (two thousand five hundred dollars) of said penalty will be imposed immediately upon the entry of this Consent Decree by the Court, and is due no later than 30 days after the entry of this Consent Decree by the Court.
- B. \$2,500.00 (two thousand five hundred dollars) of said penalty will be due and owing twelve months 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 twelve months following that approval, the \$2,500.00 (two thousand five hundred dollars) of civil penalties will be waived:
- i. Comply with the Environmental Protection Act, Neb. Rev. Stat. §81-1501 *et seq*;
 - ii. Comply with Title 129 of the Nebraska Administrative Code, "Nebraska Air Quality Regulations."
- C. To qualify for the \$2,500.00 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 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 the Defendant shall pay, as a voluntary supplemental environmental project, the sum of five thousand dollars (\$5,000.00) 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. This sum shall be paid as a lump-sum payment due no later than 60 days after the entry of this Consent Decree by the Court.

DATED THIS 27 day of March, 2008, in Madison County, Nebraska.

BY THE COURT:


District Judge

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

By: JON C. BRUNING #20351,
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By: 

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RANDY SUNDERMAN, Defendant,

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