

IN THE DISTRICT COURT OF BUFFALO COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel., )  
MICHAEL J. LINDER, Director )  
DEPARTMENT OF ENVIRONMENTAL )  
QUALITY, )  
Plaintiff, )  
v. )  
CHS INC., doing business as )  
AGRI CO-OP ELM CREEK, )  
Defendant. )

Case No. CI 1131

CONSENT DECREE

FILED  
SHARON K. MAULEY  
2011 JAN 20 PM 4 29  
CLERK OF DISTRICT COURT  
BUFFALO COUNTY, NEB.

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, CHS Inc., doing business as Agri Co-op Elm Creek, appearing through its representative, Peter Mutschler, 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 Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et seq.*, and all rules and regulations and orders promulgated thereunder.
2. In its Complaint, Plaintiff alleges on March 6, 2009, the Defendant caused and permitted the handling and storage of material so that particulate matter originating on its premises remained visible in the air beyond the premises of the Defendant in violation of Chapter 32 of the Nebraska Air Quality Regulations.

3. 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. Defendant makes no admission and 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.

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

5. The parties agree that the complaint filed herein constitutes a justiciable cause of action against the Defendant and consent without further notice to the form and entry of this Consent Decree.

6. IT IS THEREFORE FURTHER ORDERED that Defendant shall pay to the Clerk of Buffalo County District Court a civil penalty in the amount of four thousand five hundred dollars (\$4,500.00) pursuant to Neb. Rev. Stat. § 81-1508.02, together with court costs herein in the amount of eighty-two dollars (\$82.00). Said penalty is to be

handled pursuant to Article VII, Section V, of the Nebraska Constitution and shall be paid as follows:

- A. \$2,250.00 (two thousand two hundred fifty dollars) of said penalty will be paid within thirty (30) days of entry of this Consent Decree by the Court, and is payable to the Clerk of this Court.
- B. \$2,250.00 (two thousand two hundred fifty dollars) of said penalty will be due and owing 180 (one hundred and eighty) days following the entry of this Consent Decree by the Court. In the event that Defendant achieves and maintains compliance with the following provisions, during the time period between the approval of this Consent Decree by the District Court and 180 (one hundred and eighty) days following the entry of this Consent Decree, the \$2,250.00 (two thousand two hundred fifty 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. Complete Implementation of Defendant's Plan to Address Fugitive Emissions, attached hereto as Exhibit 1.

C. To qualify for the \$2,250.00 (two thousand two hundred fifty dollars) waiver of civil penalties as stated in paragraph 6(B), Defendant will file with the Court, and serve on the State, a showing within fifteen (15) days following the due date of the civil penalties. The showing will certify that Defendant has maintained compliance with all requirements listed in paragraph 6(B), except under circumstances beyond Defendant's control and despite Defendant's best efforts to satisfy the requirements of paragraph 6(B). The State will file a satisfaction of judgment within ten (10) days of receiving Defendant's showing if Defendant has complied with the statutes and regulations listed in paragraph 6(B) during the 180 (one hundred and eighty) days following the entry of this Consent Decree. If Defendant violates any of the requirements in paragraph 6(B) during the 180 (one hundred and eighty) days following the entry of this Consent Decree, except under circumstances beyond the control of Defendant and despite Defendant's best efforts to satisfy the requirements of paragraph 6(B), the State, in its sole discretion, may file an objection to Defendant's showing. If the State files an objection to Defendant's showing, the determination of this waiver provision will be stayed pending ongoing enforcement proceedings.

7. IT IS FURTHER ORDERED that Defendant shall pay, as a voluntary supplemental environmental project, the sum of \$4,500.00 (four thousand five hundred

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. This payment shall be paid as a lump-sum payment and shall be due upon the entry of this consent decree.

Dated this 20 day of January, 2010, in Buffalo County, Nebraska.

BY THE COURT:

  
Buffalo 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, #22079  
Special Counsel to the Attorney General  
2115 State Capitol Building  
P.O. Box 98920  
Lincoln, Nebraska 68509-8920  
(402) 471-2682

Attorney for Plaintiff.

**Notice of Judgement**

Mailed to Katherine Spohn  
and Peter Mutschler  
on 1-20-11

Sharon K. Mauler  
Clerk of the District Court  
By KAT