

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

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

Plaintiff,)

v.)

KOCH EXCAVATING, CO.,)
JONATHAN KOCH, RAYMOND KOCH,)
and STEVEN KOCH)

Defendants.)

Case No. 011-710

CONSENT DECREE

LANCASTER COUNTY
2011 FEB 24 PM 3:57
CLERK OF THE
DISTRICT COURT

COMES NOW the parties, 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 Defendants, Koch Excavating, Co., Jonathan Koch, Raymond Koch, and Steven Koch appearing through their counsel Dave Jarecke 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. (Reissue 2008), and all rules and regulations and orders promulgated thereunder.

2. Prior to February 23, 2007, and again prior to August 26, 2009, defendants dumped and deposited solid waste on the property without a permit, contrary to Neb. Rev. Stat. §§ 13-2033 and 81-1506 (3); between February 23 and March 17, 2007, and again between August 26 and October 14, 2009, defendants

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caused or allowed an open fire on the same property, contrary to §81-1506 (4) and Title 129, Chapter 30, 001.

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, without this consent decree constituting an admission by Defendants with respect to such issues.

4. This consent decree shall be in full satisfaction of all claims between the parties alleged in NDEQ'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 NDEQ's complaint, provided that such claims were known to NDEQ, or were reasonably ascertainable from information in NDEQ's possession, as of the date of the filing of the consent decree.

5. IT IS THEREFORE ORDERED that Defendants shall pay a civil penalty, under Neb. Rev. Stat. § 81-1508.02 (Reissue 2008), in the amount of \$15,000.00 as well as court costs in the amount of \$82.00, to the Lancaster County District Court. This civil penalty shall be handled as provided in Article VII, Section V, of the Nebraska Constitution and shall be paid to this Court no more than six months from the entry of this consent decree by the Court. However, if Defendants maintains compliance with and does not violate Title 129 of the Nebraska Administrative Code, "Nebraska Air Quality Regulations", Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et. seq.*, Title 130 of the Nebraska Administrative Code, "Integrated Solid Waste Management Regulations"; or any rules and regulations promulgated under during the

six months following the entry of this consent decree, then payment of the \$15,000.00 of civil penalties will be waived.

A. To qualify for the \$15,000.00 waiver of civil penalties as stated in paragraph 5, Defendants will file with the Court, and serve on NDEQ, a showing within fifteen (15) days following the due date of the civil penalties. The showing will certify that Defendants have maintained compliance with all requirements listed in paragraph 5. The State will file a satisfaction of judgment within ten (10) days of receiving Defendant's showing. If Defendant violates the requirements in paragraph 5 during the six months following the entry of this Consent Decree, NDEQ, in its sole discretion, may file an objection to Defendant's showing. If NDEQ files an objection to Defendants showing, the determination of this waiver provision will be stayed pending ongoing enforcement proceedings

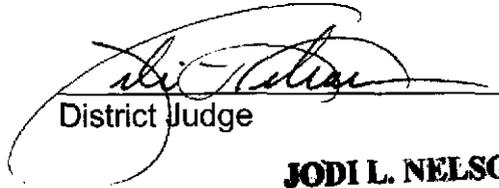
6. IT IS FURTHER ORDERED that the Defendants shall pay, as a voluntary supplemental environmental project, the sum of \$15,000.00 into the Attorney General's Environmental Protection Fund to be used for environmental safety, training, public awareness, or other related uses as permitted by state law, at the sole discretion of the Nebraska Attorney General. This payment shall be paid as a lump-sum payment within ten (10) days of the entry of the consent decree by this Court.

7. This consent decree will have no effect on any enforcement action brought by NDEQ against Defendants 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 24 day of February, 2011, in Lancaster County, Nebraska.

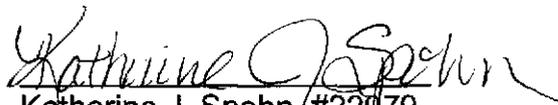
BY THE COURT:


District Judge

JODI L. NELSON

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

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