

IN THE DISTRICT COURT OF HITCHCOCK COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
MICHAEL J. LINDER, Director)
DEPARTMENT OF ENVIRONMENTAL)
QUALITY,)
Plaintiff,)
v.)
TRENTON AGRI PRODUCTS, LLC,)
a limited liability company authorized to do)
business in Nebraska,)
Defendant.)

Case No. 03 11-32

CONSENT DECREE

COPY

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, Trenton Agri Products, LLC, a limited liability company authorized to do business in Nebraska, appearing through its counsel, Michael S. Mostek, 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 2010) the Nebraska Environmental Protection Act, and all rules and regulations and orders promulgated thereunder.
2. In its Complaint, Plaintiff alleges that on or about June 9, 2010 the defendant allowed uncontrolled emissions to leak from a safety pressure relief valve associated with Fermentation Tanks #1-4 and a manway gasket on Fermentation Tank #3 in violation of defendant's construction permit. Additionally, on or about June 11, 2010, the defendant allowed



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M. Hallman
Clerk of the District Court
Hitchcock County, NE



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uncontrolled emissions to leak from a manway gasket on Fermentation Tank #3 in violation of defendant's construction permit.

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. The 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 ORDERED that Trenton Agri Products, LLC, shall pay a civil penalty, under Neb. Rev. Stat. § 81-1508.02 (Reissue 2010), in the amount of \$6,100.00 and

court costs in the amount of \$82.00 to the district court for Hitchcock County. This civil penalty shall be handled as provided in Article VII, Section V, of the Nebraska Constitution.

A. \$3,000.00 of the civil penalty, as well as the \$82.00 in court costs, shall be paid to this Court upon entry of this consent decree by the Court.

B. \$3,100.00 of the civil penalty shall be paid to this Court no more than six months from the entry of this consent decree by the Court. However, if Trenton Agri Products, LLC, does not violate any provision of the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et seq.* pertaining to air quality, or any rules and regulations promulgated under that Act pertaining to air quality during the six months following the entry of this consent decree, then payment of this \$3,100.00 of civil penalties will be waived.

C. To qualify for the waiver of \$3,100.00 of civil penalties as described in paragraph 6(B), Trenton Agri Products, LLC, will file a Request for Waiver with the Court within 10 days following the due date of the civil penalties establishing that it has maintained compliance with the statutes and regulatory provisions mentioned in paragraph 6(B). The State will file a satisfaction of judgment within 10 days of receiving Trenton Agri Products Request for Waiver, if Trenton Agri Products, LLC, has complied with the statutes and regulations mentioned in paragraph 6(B) during the six months following the entry of this consent decree. If Trenton Agri Products, LLC, violates the statutes and regulatory provisions in paragraph 6(B) during the six months following the entry of this consent decree, the State may file an objection to Trenton Agri Products Request for Waiver and the determination of this waiver provision will be stayed pending ongoing enforcement proceedings.

7. IT IS FURTHER ORDERED that Trenton Agri Products, LLC, shall pay, as a supplemental environmental project, the sum of \$3,200.00 to the Trenton Volunteer Fire

Department for replacement of equipment lost during the fighting of a recent grass fire. This payment shall be paid as a lump-sum payment within 30 days of the entry of this consent decree by this Court.

8. This consent decree will have no effect on any enforcement action brought by the State or NDEQ against Trenton Agri Products, LLC, for future violations of any statutes or regulations.

9. The undersigned consent without further notice to the form and entry of this consent decree.

Dated this 1 day of September, 2011, in Hitchcock County, Nebraska.

BY THE COURT:



Hitchcock County District Judge

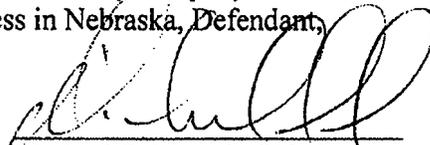
STATE OF NEBRASKA, ex rel.,
MICHAEL J. LINDER, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY, Plaintiff,

By: Jon C. Bruning, #20351
Attorney General

By: 
Katherine J. Spohn, #22979
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Attorney for Plaintiff.

TRENTON AGRI PRODUCTS, LLC,
a limited liability company authorized to do
business in Nebraska, Defendant,

By:



Michael S. Mostek, #18134
Koley Jessen P.C., L.L.O.
One Pacific Place
1125 South 103rd Street, Suite 800
Omaha, Nebraska 68124
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 24~~th~~ day of August, 2011, addressed to the Defendant's attorney of record as follows:

Michael S. Mostek
Koley Jessen P.C., L.L.O.
One Pacific Place
1125 South 103rd Street, Suite 800
Omaha, Nebraska 68124



Katherine J. Spohn
Special Counsel to the Attorney General