

IN THE DISTRICT COURT FOR HARLAN COUNTY, NEBRASKA

FILED

Case No. 09-50

MAY 15 2012

CLERK DISTRICT COURT
HARLAN COUNTY, NE

STATE OF NEBRASKA, ex rel.,)
 MICHAEL J. LINDER, Director)
 DEPARTMENT OF ENVIRONMENTAL)
 QUALITY,)
 Plaintiff,)
 v.)
 JAMES DRAKE,)
 Defendants.)

CONSENT DECREE

The Nebraska Department of Environmental Quality, through its counsel, Jon C. Bruning, Attorney General, and James Drake, through his counsel, Richard Calkins, jointly file this Consent Decree and agree to this Court's entry of the following terms and orders:

1. The Court has jurisdiction of the parties and the subject matter of this action. The Complaint filed in this case is a justiciable cause of action against James Drake under the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et seq.* (Reissue 2008), and all rules, regulations, and orders promulgated thereunder.
2. In its Complaint, the State alleged that during February or March 2007, Mr. Drake released, caused to be released, or allowed the release of oil or hazardous substance or residuary products thereof, into, or upon the waters or land of the state, and failed to immediately notify the Department of such discharge in violation of Neb. Rev. Stat. § 81-1508.02(1)(e).
3. The State further alleges that Mr. Drake is therefore subject to a civil penalty as provided in Neb. Rev. Stat. §81-1508.02(1)(b).
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. Mr.



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Drake, 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 between the parties 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 the Consent Decree.

6. IT IS THEREFORE ORDERED that Mr. Drake shall pay to the Clerk of the District Court of Harlan County a civil penalty in the sum of five thousand dollars (\$5,000.00) pursuant to Neb. Rev. Stat. §81-1508.02, together with the costs of this action. Said penalty is to be handled pursuant to Article VII, Section V, of the Nebraska Constitution.

A. \$2,500.00 of the civil penalty, as well as the \$82.00 in court costs, shall due upon the entry of this consent decree.

B. \$2,500.00 of the civil penalty shall be paid to this Court no more than 180 days from the entry of this consent decree by the Court. However, if Defendant maintains compliance with both the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et seq.*, and Title 126 of the Nebraska Administrative Code, "Releases of Oil or Hazardous Substances," during the 180 days following the entry of this consent decree, then payment of this \$2,500.00 of civil penalties will be waived.

C. To qualify for the waiver of \$2,500.00 of civil penalties as described in paragraph 6(B), Mr. Drake shall file a showing with the Court within 15 days following the due date of the civil penalties establishing that they have maintained compliance with the statutes and regulatory provisions listed in paragraph 6(B). If Mr. Drake does not receive a Notice of Violation from NDEQ and is not a party to a legal action initiated by the State or NDEQ

disputing compliance with the statutes and regulatory provisions in paragraph 6(B) during the relevant time period, the State shall file a satisfaction of judgment in the case within 10 days of receiving Mr. Drake's showing. If Mr. Drake receives a Notice of Violation from NDEQ or is a party to legal action initiated by the State or NDEQ disputing compliance with the statutes and regulatory provisions in paragraph 6(B) during the relevant time period, the State shall file an objection to Mr. Drake's showing, and the determination of this waiver provision shall be stayed pending ongoing enforcement proceedings.

7. This Consent Decree will have no effect on any enforcement action brought by the State against Mr. Drake for future violations of any statutes or regulations or Mr. Drake's ability to pursue other parties for liability related to the circumstances giving rise to this action.

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

DATED THIS ^{May} 14th day of April, 2012, in Harlan County, Nebraska.

BY THE COURT:

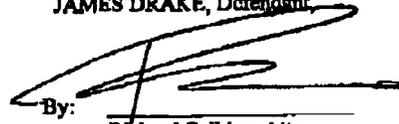

District Judge

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

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