

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

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

Plaintiff,

v.

GAVILON, L.L.C.,

Defendant.

Case No. 02-11368

CONSENT DECREE

COME NOW the parties, Plaintiff, Michael J. Linder, Director of the Nebraska Department of Environmental Quality (hereinafter "NDEQ"), proceeding on his Complaint filed herein and appearing through his Counsel, Jon Bruning, Attorney General, and Defendant, Gavilon, L.L.C., a company authorized to do business in Nebraska (hereinafter "Gavilon"), 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 the Nebraska Environmental Protection Act, NEB.REV.STAT. § 81-1501 *et seq.* (Reissue 2008), and all rules and regulations and orders promulgated thereunder.

2. In the Complaint, the Plaintiff alleged, in pertinent part, that on or about November 21, 2011, Defendant caused or allowed a discharge or release of inedible corn oil, a pollutant, to flow into the West Papio Creek, a water of the state, and failed to timely notify NDEQ of the same, in violation of the Nebraska Environmental Protection Act and certain rules and regulations adopted and promulgated pursuant thereto.



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 Defendant with respect to such issues, and Defendant specifically denies the alleged violations in the Complaint.

4. This Consent Decree shall be in full satisfaction of all claims between the parties alleged in Plaintiff'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 Plaintiff'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 Defendant shall pay a civil penalty, under NEB.REV.STAT. § 81-1508.02 (Reissue 2008), in the amount of \$10,000.00 as well as court costs in the amount of \$82.00, to the District Court of Douglas County, Nebraska. The civil penalty shall be handled as provided in Article VII, Section V, of the Constitution of the State of Nebraska.

- a. \$5,000.00 of said civil penalty shall be paid within ten days of entry of this Consent Decree by the Court, and is payable to the Clerk of this Court.
- b. \$5,000.00 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 and does not violate any provision of the Nebraska Environmental Protection Act or any rules and regulations adopted and promulgated pursuant thereto at the Millard Lumber Transload Site located at 12900 "I" Street, Omaha, Douglas County, Nebraska during the 180 days following the entry of this Consent Decree, then payment of this \$5,000.00 of civil penalties shall be waived.

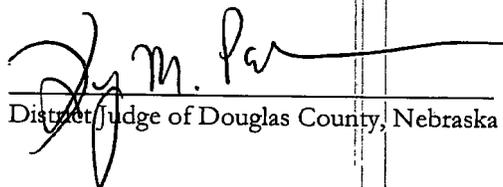
c. To qualify for the \$5,000.00 waiver of civil penalties as stated in paragraph 5(b), Defendant shall file with the Court and serve upon Plaintiff a showing within fifteen (15) days prior to the due date of the civil penalties. The showing will certify that Defendant has maintained compliance with all requirements listed in paragraph 5(b). Plaintiff shall file a satisfaction of judgment within ten (10) days of receipt of Defendant's showing. If Defendant violates the requirements in paragraph 5(b) during the 180 days following the entry of this Consent Decree, Plaintiff, in its sole discretion, may file an objection to Defendant's showing. If Plaintiff files an objection to Defendant's showing, the determination of this waiver provision shall be stayed pending ongoing enforcement proceedings.

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

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

DATED THIS 20<sup>th</sup> day of December, 2012, in Douglas County, Nebraska.

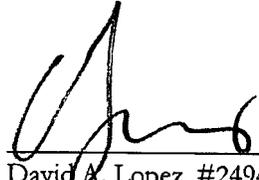
BY THE COURT:

  
District Judge of Douglas County, Nebraska

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

By: JON BRUNING, #20351  
*Attorney General of Nebraska*

By:

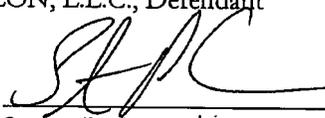


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