

IN THE DISTRICT COURT FOR THAYER COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel., )  
MICHAEL J. LINDER, Director )  
DEPARTMENT OF ENVIRONMENTAL )  
QUALITY, )  
 )  
Plaintiff, )  
v. )  
 )  
NORDER SUPPLY, INC., )  
 )  
Defendant. )

CASE NO.  
CI12-10

CONSENT DECREE

The State of Nebraska, on behalf of the Nebraska Department of Environmental Quality (NDEQ) and through its counsel, Attorney General Jon C. Bruning and Assistant Attorney General Kevin L. Griess, and Norder Supply, Inc., through its counsel, Steven P. Case, jointly file this consent decree and agree to this Court's entry of the following terms and orders:

1. This Court has jurisdiction of the parties and the subject matter of this action. The complaint filed in this matter is a justiciable cause of action against Norder Supply under the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 et seq. (Reissue 2008, Supp. 2009) and all rules and regulations promulgated under the act.

2. In its complaint, the State alleged that on July 25, 2009, Norder Supply: (a) discharged a chemical fertilizer into waters of the state without a permit, in violation of 119 Neb. Admin. Code ch. 2, §001; (b) discharged a toxic substance into the Little Blue River in a concentration that resulted in acute toxicity to aquatic life and caused the death of fish, in violation of 117 Neb. Admin. Code, ch. 4, §003.01C and Neb. Rev. Stat. § 81-



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THAYER COUNTY HEBRON, NE



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1508(1) (Reissue 2008); and (c) failed to report the discharge to NDEQ, in violation of 198 Neb. Admin. Code, ch. 8, §§ 002 and 006.

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 Norder Supply with respect to such issues. In entering this consent decree, Norder Supply does not admit any violations of the Environmental Protection Act or the rules and regulations promulgated under that act, as alleged by the State in its Complaint. Norder Supply specifically denies the State's allegations that it violated the Environmental Protection Act and caused the death of fish in the Little Blue River in Thayer County, Nebraska.

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 States' possession, as of the date of the filing of the consent decree.

5. IT IS THEREFORE ORDERED that Norder Supply shall pay a civil penalty, under Neb. Rev. Stat. § 81-1508.02 (Reissue 2008), in the amount of \$8,000, was well as court costs in the amount of \$82, to the Thayer County District Court. This civil penalty shall be handled as provided in Article VII, Section V, to the Nebraska Constitution.

A. \$4,000 of the civil penalty shall be paid to this Court no more than 30 days from the entry of this consent decree by the Court.

B. \$4,000 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 Norder Supply maintains compliance with and does not violate the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 et. seq., or any rules and regulations promulgated under that act during the six months following the entry of this consent decree, then payment of this \$4,000 of civil penalties will be waived.

C. To qualify for the waiver of \$4,000 of civil penalties as described in paragraph 5(B), Norder Supply shall file a Request for Waiver with the Court within 15 days following the due date of the civil penalties establishing that it has maintained compliance with the statutes and regulatory provisions listed in paragraph 5(B). The State will file a satisfaction of judgment within 10 days of receiving Norder Supply's Request for Waiver if Norder supply has complied with the statutes and regulations listed in paragraph 5(B) during the six months following the entry of this consent decree. If Norder Supply violates the statutes or regulatory provisions in paragraph 5(B) during the six months following the entry of this consent decree, the State may file an objection to Norder Supply's Request for Waiver and the determination of this waiver provision will be stayed pending ongoing enforcement proceedings.

6. IT IS FURTHER ORDERED that Norder Supply shall pay, as supplemental environmental projects, the sum of \$8,300, to be divided as follows: (a) \$1,300 to the Hebron Fire Department for the purchase of spill containment equipment;

(b) \$3,200 to Thayer Central Public Schools for trees and landscaping on school grounds; and (c) \$3,800 to Thayer Central Public Schools for the purchase of motion sensory lighting controls in the school. These payments shall be paid as lump-sum payments to the respective recipients within 30 days of the entry of this consent decree by this Court.

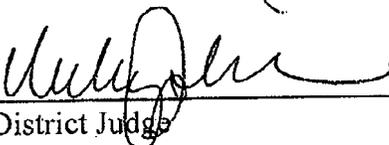
7. IT IS FURTHER OREDRED that Norder Supply shall pay \$13,816.94 to the Nebraska Game and Parks Commission to stock waters of the state with fish, as determined by the director of NDEQ after consultation with the Nebraska Game and Parks Commission.

8. This consent decree will have no effect on any enforcement action brought by the State or NDEQ against Norder Supply for future violations of any statutes or regulations.

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

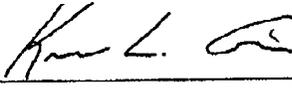
DATED THIS 15<sup>th</sup> day of February 2012, in Thayer County, Nebraska.

BY THE COURT:

  
\_\_\_\_\_  
District Judge

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

By: JON C. BRUNING, #20351

BY:   
Kevin L. Griess, #22182  
Assistant Attorney General  
2115 State Capitol Building  
P.O. Box 98920  
Lincoln, Nebraska 68509-8920  
(402) 471-2682  
kevin.griess@nebraska.gov  
Attorneys for Plaintiff

NORDER SUPPLY, INC.  
Defendant

By:   
Steven P. Case, #16532  
McGrath North Mullin & Kratz PC LLO  
First National Tower, Ste. 3700  
1601 Dodge Street  
Omaha, Nebraska 68102  
(402) 341-3070  
scase@mcgrathnorth.com  
Attorney for Defendant

CERTIFICATE OF SERVICE

On this 16<sup>th</sup> day of February, 2012  
a copy of the above instrument was mailed to the parties by U.S. mail. Griess Case

Sharon McLaughlin  
Clerk of District Court