

IN THE DISTRICT COURT FOR PIERCE COUNTY, NEBRASKA

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

Case No. CI 11-54

CONSENT DECREE

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 Husker Ag, LLC, 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 2010), and all rules and regulations and orders promulgated thereunder.

2. In its complaint, NDEQ alleges that during inspections on May 20, 2009 and October 9, 2009, leaks were observed from pressure release valves, couplings and scrubber boots, in violation of the requirements of the Defendants permit to control all emission from the fermentation process. In addition, the NDEQ's complaint alleges that Defendant failed to install equipment from continuously monitoring the flow rate of chemical additions to the scrubber as required in its Construction Permit.

OFFICE OF THE CLERK OF DISTRICT COURT
FILED

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VICKIE PRINCE
Clerk of District Court, Pierce County, NE



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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 Husker Ag. LLC, with respect to such issues. The Defendant 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 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 Husker Ag. LLC, shall pay a civil penalty, under Neb. Rev. Stat. § 81-1508.02 (Reissue 2010), in the amount of \$10,000.00 as well as court costs in the amount of \$82.00, to the Pierce County District Court. This civil penalty shall be handled as provided in Article VII, Section V, of the Nebraska Constitution.

A. \$5,000.00 of said civil penalty amount will be paid within thirty (30) 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. In the event that said Defendant maintains compliance with the following obligations and provisions, during the time period between the approval of this Consent Decree by the District Court and 180 days

following that approval, the \$5,000.00 (five thousand dollars) of civil penalties will be waived:

- i. The Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et seq*;
- ii. Title 129 of the Nebraska Administrative Code, "Nebraska Air Quality Regulations"; and
- iii. Defendant's Nebraska Air Quality Construction Permit issued pursuant to Title 129.

C. To qualify for the \$5,000.00 waiver of civil penalties as stated in paragraph 5(B), Defendant will file with the Court, and serve on NDEQ, a showing within thirty (30) days following the due date of the civil penalties. The showing will certify that Defendant has maintained compliance with all requirements listed in paragraph 5(B). NDEQ will file a satisfaction of judgment within ten (10) days of receiving Defendant's showing. If Defendant violates the requirements in paragraph 5(B) during the 180 days 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 Defendant's showing, the determination of this waiver provision will be stayed pending ongoing enforcement proceedings.

6. IT IS FURTHER ORDERED that the Defendant shall pay, as a voluntary supplemental environmental project, \$1,000.00 to Northeast Nebraska Resource Conservation and Development to be used to host a Community Collection Program that will collect and recycle old televisions, computers, and other electronic waste. This payment shall be paid as a lump-sum payment within thirty (30) days of the entry of the consent decree.

7. This Consent Decree will have no effect on any enforcement action brought by NDEQ against Husker Ag. LLC, 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 1st day of September, 2011, in Pierce 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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HUSKER AG, LLC, a limited liability company
authorized to do business in Nebraska, Defendant

By: 
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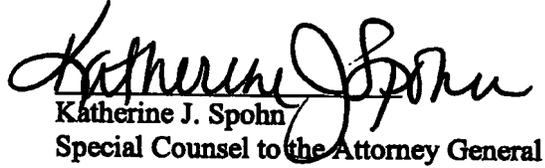
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Attorneys for the Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 2nd day of July, 2011, a true and correct copy of the foregoing Consent Decree was mailed by regular United States mail; postage prepaid, to the Defendant and Defendant's attorney as follows:

Seth Harder
General Manager
Husker Ag, LLC
54048 Highway 20
Plainview, NE 68769

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