

IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel. **FILED**)
MICHAEL J. LINDER, Director)
NEBRASKA DEPARTMENT OF)
ENVIRONMENTAL QUALITY,)
06, OCT 10 PM 12:57)

Case No. 06-648

Plaintiff,)

v.)

ADAMS COUNTY)
CLERK OF DISTRICT)

CONSENT DECREE

RICHARD RATHJE)

Defendant.)

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, Richard Rathje 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 AND DECREED:

1. This Court has jurisdiction of the parties and the subject matter of this action. The complaint filed herein constitutes a justiciable cause of action against Richard Rathje under the Environmental Protection Act, Neb. Rev. Stat. §81-1501 *et seq.* (Reissue 1999, Cum. Supp. 2004 and Supp. 2005).

2. The Plaintiff alleges that on or around March 20, 2006, and continuing daily thereafter through March 27, 2006, Defendant caused to be burned or allowed the burning of tires, appliances, car parts, chair frames and other unidentifiable material

near Ayr, Adams County, Nebraska. The plaintiff further alleges that the defendant is therefore subject to a civil penalty as provided in Neb. Rev. Stat. §81-1508.02 (Reissue 1999).

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 defendant, without admitting any allegations of the complaint, agrees to the form and entry of this consent decree for purposes of settlement only.

4. This Consent Decree shall be in full satisfaction of all claims between the parties alleged in the Complaint and the parties further agree to release any and all claims or actions arising out of the same transaction or occurrences referenced above and in the complaint herein, provided that such claims were known to the State of Nebraska, or were reasonably ascertainable from information in the State's possession, as of the date of the filing of the consent decree.

5. IT IS THEREFORE ORDERED that the Defendant shall pay to the Clerk of the District Court a civil penalty in the amount of four thousand five hundred dollars (\$4,500.00), pursuant to Neb. Rev. Stat. § 81-1508.02, together with court costs herein in the amount of seventy-nine dollars (\$79.00). Said penalty is to be handled pursuant to Article VII, Section V, of the Nebraska Constitution.

- A. One thousand five hundred dollars (\$1,500.00) of said penalty will be due and owing by or before December 31, 2006.
- B. Three thousand dollars (\$3,000.00) of said penalty will be due and owing within one hundred eighty (180) days following the approval

of this Consent Decree by the Court. In the event that said Defendant achieves and maintains compliance with the following obligations and provisions, during the time period between the approval of this Consent Decree by the District Court and one hundred eighty (180) days, the three thousand hundred dollars (\$3,000.00) of civil penalties will be waived:

- i. Comply with the Environmental Protection Act, Neb. Rev. Stat. §81-1501 *et seq.*;
 - ii. Comply with Title 129 of the Nebraska Administrative Code, pertaining to Air Quality Regulations.
- C. To qualify for the \$3,000.00 waiver of civil penalties as stated in paragraph 5(B), Defendant shall file a showing with the Court within 30 (thirty) days following the due date of the civil penalties establishing that it has maintained compliance as required. If the Defendant does not receive a Notice of Violation from Plaintiff and is not a party to a legal action initiated by the Plaintiff disputing compliance with the statutes and regulatory provisions in paragraph 5(B) during the relevant time period, Plaintiff shall file a Satisfaction of Judgment in the case within ten days of receipt of Defendant's showing. If Defendant receives a Notice of Violation from Plaintiff, or is a party to legal action initiated by the Plaintiff disputing compliance with the statutes and regulatory provisions in paragraph 6(A) during the relevant time period, Plaintiff shall file an objection

to Defendant's showing and 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, the sum of one thousand five hundred dollars (\$1,500.00) into the Roseland Rural Fire Protection District to be used for environmental safety, training, public awareness, equipment or other related uses as permitted by state law, at the sole discretion of the Roseland Rural Fire Protection Division. This sum shall be paid as a lump-sum payment due by or before December 31, 2006.

7. This Consent Decree will have no effect on any enforcement action brought by Plaintiff against Defendant for future violations of any statutes or regulations.

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

DATED THIS 10 day of Oct., 2006, in Adams County, Nebraska.

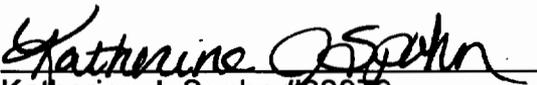
BY THE COURT:



DISTRICT JUDGE

STATE OF NEBRASKA ex rel.,
MICHAEL J. LINDER, DIRECTOR,
Department of Environmental
Quality, Plaintiff,

By: JON C. BRUNING #20351
Attorney General

By: 
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RICHARD RATHJE, Defendant