

IN THE DISTRICT COURT FOR SCOTTS BLUFF COUNTY, NEBRASKA

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

CASE NO. CI-08-657 L

**CONSENT DECREE**



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The State of Nebraska, on the relation of the Nebraska Department of Environmental Quality (NDEQ) and through its counsel, Attorney General Jon C. Bruning, and Simon Contractors, Inc., 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 case is a justiciable cause of action against Simon under the Nebraska Environmental Protection Act, Neb. Rev. Stat. §81-1501 *et seq.* (Reissue 1999, Cum. Supp. 2006, and Supp. 2007).

2. In its complaint, the State alleges that on October 25, 2007, Simon caused and allowed emissions from its asphalt production plant, the opacity of which exceeded the emissions limits and standards established in 129 Neb. Admin. Code, ch. 20, § 004.

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 Simon with respect to such issues. Therefore, and for only the

FILED Aug 18 2008  
*Ann Rosenberry*  
 CLERK OF THE DIST COURT

purposes of this consent decree, the parties agree to the entry of this order by the Court.

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 State's possession, as of the date of the filing of the consent decree.

5. IT IS THEREFORE ORDERED that Simon shall pay a civil penalty, under Neb. Rev. Stat. § 81-1508.02 (Reissue 1999), in the amount of \$2,500 and court costs in the amount of \$79 to the District Court for Scotts Bluff County. This civil penalty shall be handled as provided by Article VII, Section V, of the Nebraska Constitution.

A. \$1,250 of the civil penalty, as well as the \$79 in court costs, shall be paid to this Court no more than 30 days from the entry of this consent decree by the Court.

B. \$1,250 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 Simon maintains compliance with and does not violate the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 et seq., or Title 129 of the Nebraska Administrative Code, "Nebraska Air Quality Regulation," during the

180 days following the entry of this consent decree, then payment of this \$1,250 of civil penalties will be waived.

C. To qualify for the waiver of \$1,250 of civil penalties as described in paragraph 5(B), Simon shall file a showing 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). If Simon 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 5(B) during the relevant time period, the State shall file a satisfaction of judgment in the case within 10 days of receiving Simon's showing. If Simon receives a Notice of Violation from NDEQ or is a party to legal action initiated by NDEQ disputing compliance with the statutes and regulatory provisions in paragraph 5(B) during the relevant time period, the State shall file an objection to Simon's showing and determination of this waiver provision shall be stayed pending ongoing enforcement proceedings.

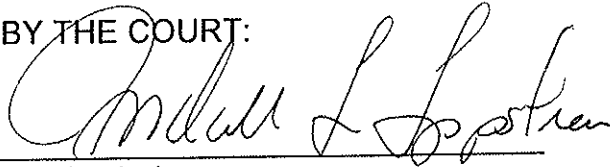
6. IT IS FURTHER ORDERED that Simon shall pay, as a supplemental environmental project, the sum of \$2,500 to the Attorney General's Environmental Protection Fund to be used for environmental safety, training, public awareness, or other related uses as permitted by state law, at the sole discretion of the Nebraska Attorney General. This payment shall be paid as a lump-sum payment within 30 days of the entry of this consent decree by this Court.

7. This consent decree will have no effect on any enforcement action brought by the State or NDEQ against Simon 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 18 <sup>Aus</sup> day of July, 2008, in Scotts Bluff County, Nebraska.

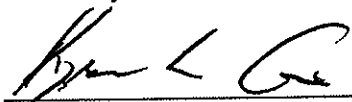
BY THE COURT:



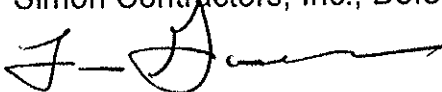
District Judge

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

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