

IN THE DISTRICT COURT FOR PERKINS COUNTY, NEBRASKA

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

Plaintiff,

v.

AGRI AFFILIATES, INC.

Defendants.

Case No. <sup>CI</sup> 08-43

CONSENT DECREE

Plaintiff, the Department of Environmental Quality ("NDEQ"), proceeding on its Complaint filed herein and appearing through its counsel, Jon C. Bruning, Attorney General, and the Defendant, Agri Affiliates, Inc. ("Defendant"), 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 in this case is a justiciable cause of action against Defendant.

2. NDEQ, in its Complaint, alleges that on or about July, 2005, Defendant released, caused to be released, or allowed the release of oil or hazardous substances or residuary products thereof, into, or upon the waters or land of the state, without the Department's approval in violation of Neb. Admin. Code Title 126, Chapter 18, Section 001.01. Furthermore, NDEQ alleges that Defendant failed to immediately notify the

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PERKINS COUNTY

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RITA LONG  
CLERK OF DISTRICT COURT



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Department of the July 2005 release of an oil or hazardous substance in violation of Title 126, Chapter 18, Section 002.

3. NDEQ further alleges that Defendant is therefore subject to a civil penalty as provided in Neb. Rev. Stat. §81-1508.02 (1) (b) (Reissue 1999).

4. 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. Defendant, without admitting any allegations of the Complaint, agrees to the form and entry of this Consent Decree for purposes of settlement only.

5. The parties agree that this Consent Decree shall be in full satisfaction of all claims between the parties alleged in the Complaint and arising out of the same transaction or occurrence asserted therein, provided that such claims were known to the State of Nebraska as of the date of the filing of the Consent Decree.

6. IT IS ORDERED that Defendant shall pay to the Clerk of the District Court of Perkins County a civil penalty in the sum of six thousand dollars (\$6,000) pursuant to Neb. Rev. Stat. §81-1508.02, together with court costs 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. \$3,000 of the civil penalty, as well as the \$79 in court costs, shall be due upon the entry of this consent decree.

B. \$3,000 of the civil penalty shall be paid to this Court no more than 365 days from the entry of this consent decree by the Court. However, if Defendant maintains compliance with both the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 et. seq., and Title 126 of the Nebraska Administrative Code, "Releases

of Oil or Hazardous Substances," during the 365 days following the entry of this consent decree, then payment of this \$3,000 of civil penalties will be waived.

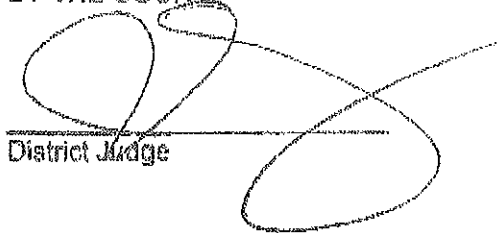
C. To qualify for the waiver of \$3,000 of civil penalties as described in paragraph 6(B), Defendant shall file a showing with the Court within 15 days following the due date of the civil penalties establishing that they have maintained compliance with the statutes and regulatory provisions listed in paragraph 6(B). If Defendant 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 6(B) during the relevant time period, the State shall file a satisfaction of judgment in the case within 10 days of receiving Defendant's showing. If Defendant receives a Notice of Violation from NDEQ or is a party to legal action initiated by the State or NDEQ disputing compliance with the statutes and regulatory provisions in paragraph 6(B) during the relevant time period, the State shall file an objection to Defendant's showing, and the determination of this waiver provision shall be stayed pending ongoing enforcement proceedings.

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 or Defendant's ability to pursue other parties for liability related to the circumstances giving rise to this action.

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

DATED THIS 2 day of Dec, 2008, in Perkins County, Nebraska.

BY THE COURT:

  
District Judge

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

By: JON C. BRUNING, #20351  
Attorney General

By: Michelle Weber  
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Attorneys for Plaintiff.

AGRI AFFILIATES, INC., Defendant,

By: John M. Childears, President  
John M. Childears  
President, Agri Affiliates, Inc.  
P.O. Box 1166  
North Platte, NE 69103-1166  
(308) 534-9240

CERTIFICATE  
STATE OF NEBRASKA } ss.  
COUNTY OF PERKINS }

I hereby certify that this is a true and  
correct copy of the Original Record in this Office  
Dated this 2 day of December 2008  
Rita A. Long  
Clerk of District Court)  
Perkins County