

DEPARTMENT OF JUSTICE
NOV 05 2007

STATE OF NEBRASKA

IN THE DISTRICT COURT OF NEMAHA COUNTY, NEBRASKA
STATE OF NEBRASKA, ex rel.,)
MICHAEL J. LINDER, Director)
DEPARTMENT OF ENVIRONMENTAL)
QUALITY,)
Plaintiff,)
v.)
ARMSTRONG WOOD PRODUCTS,)
INC., a Delaware Corporation, d/b/a)
ARMSTRONG CABINET PRODUCTS,)
Defendant.)

Case No. CI 07 90

CONSENT DECREE

DISTRICT COURT OF
NEMAHA COUNTY, NE
FILED

SEP - 5 2007

Amy Hector
DISTRICT CLERK

8.50-71

COME NOW the parties, Plaintiff, the Department of Environmental Quality (hereinafter "NDEQ"), proceeding on its Complaint filed herein and appearing through its counsel, Jon C. Bruning, Attorney General, and the Defendant Armstrong Wood Products, Inc. d/b/a Armstrong Cabinet Products (hereinafter "Armstrong,") appearing through its counsel Steven P. Case and Douglas S. Brossman, 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 Neb. Rev. Stat. § 81-1501 *et seq.* (Reissue 1999, Cum. Supp. 2006), the Nebraska Environmental Protection Act, and all rules and regulations and orders promulgated thereunder.
2. The Complaint filed herein constitutes a justiciable cause of action against the Defendant.
3. In its Complaint, Plaintiff alleges that the Defendant: (a) failed to annually train all existing personnel as required by the Operating Permit issued by the NDEQ to

FILED HEREBY CERTIFIES THAT A TRUE AND
CORRECT COPY OF THE FOREGOING PLEADINGS WAS SENT
BY FIRST CLASS MAIL OR UNREPRESENTED PARTIES OF
BY UNITED STATES
MAIL POSTAGE PREPAID, THIS 5th
DAY OF Sept 2007
Amy Hector
CLERK OF DISTRICT COURT

59

Armstrong pursuant to Title 129 (hereinafter "the Operating Permit"); (b) failed to keep a list of all current personnel by name and job description who are required to be trained, in violation of the Operating Permit; (c) failed to keep an outline of the subjects to be covered in the initial and refresher training for each position or group of personnel, in violation of the Operating Permit; (d) failed to have a description of the methods to be used at the completion of initial or refresher training to demonstrate and document successful completion, in violation of the Operating Permit; (e) failed to use normally closed containers for storing, finishing, gluing, cleaning, and wash-off materials, in violation of the Operating Permit; (f) failed to collect all organic hazardous air pollutant (HAP) solvent used to clean spray guns into a normally closed container, in violation of the Operating Permit; (g) failed to perform a minimum visual inspection of at least once per month for all equipment used to transfer or apply coatings, adhesives, or organic hazardous air pollutant (HAP) solvents, in violation of the Operating Permit; (h) failed to document the date and results of each inspection performed and any repairs that were made, in violation of the Operating Permit; (i) failed to identify the timeframe between the discovery of a leak and the repair of the leak, in violation of the Operating Permit; (k) failed to supply data demonstrating that viscosity is an appropriate parameter for demonstrating compliance, in violation of the Operating Permit; (l) failed to perform the record keeping requirements found in Sections XXX(B)(9)(a), (B)(9)(b), (B)(9)(g), (B)(9)(h), and (B)(9)(o) of the Operating Permit, in violation of the Operating Permit; (m) failed to maintain a viscosity of the coating in the reservoir that is no less than the viscosity of the initial coating and failure to maintain records of solvent additions, in violation of the Operating Permit; (n) failed identify the provisions of the plan that had

not been implemented and each day the provisions were not implemented, in violation of the Operating Permit; (o) failed to perform regular observations of at least once each shift of operation to determine whether there were excessive visible emissions from the stack, excessive leaks or noise, or other indications of poor performance requiring corrective action, in violation of the Operating Permit; (p) had failed to maintain records on-site for a minimum period of five years unless otherwise specified, and had failed to have records available and clear to the NDEQ during an inspection, in violation of the Operating Permit; (q) failed to keep copies of all reports required by the Operating Permit, in violation of the Operating Permit; (r) failed to keep records as required in Operating Permit Condition XXX, in violation of the Operating Permit; (s) failed to keep inspection and maintenance records for the facility's fabric dust collector number seven, in violation of the Operating Permit; (t) had failed to comply with the facility's Operating Permit, in violation of the Construction Permit; (u) failed to keep the quantity and a description of all volatile organic compound containing materials used during each calendar month, and during the preceding period of 12 consecutive calendar months, including, but no limited to, paints, coatings, cleaners, solvents, thinners, and adhesives, in violation of the Construction Permit; (v) failed to calculate all volatile organic compound emissions for each calendar month, and for the preceding period of twelve consecutive calendar months, in violation of the Construction Permit; (w) failed to determine if solid waste in the form of paint booth filters was hazardous in violation of Title 128, Chapter 4, Section 002; (x) failed to include with hazardous waste shipments the proper land disposal restriction notifications identifying all applicable hazardous waste cords and treatment standards, in violation of Title 128, Chapter 20; (y) failed to

properly label drums of hazardous waste containing chromium-toxic paint booth filters, in violation of Title 128, Chapter 10, Section 004.01G; and (z) failed to include in its biennial hazardous waste reports the quantity of hazardous paint booth filters generated at the facility and shipped for disposal, in violation of Title 128, Chapter 4, Sections 005.01A3 through A5.

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. 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 the Defendant 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.

5. This Consent Decree shall be in full satisfaction of all claims alleged in the Complaint filed herein and any claims arising out of the same transaction or occurrences asserted therein, 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.

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

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

8. IT IS THEREFORE ORDERED that the Defendant shall pay to the Clerk of the District Court a civil penalty in the amount of seventy-five thousand dollars (\$75,000.00), 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. \$37,500 (thirty seven thousand five hundred dollars) of said penalty will be due no later than thirty (30) days after the entry of this Consent Decree by the Court.
- B. \$37,500 (thirty seven thousand five hundred dollars) of said penalty will be due and owing six months 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 six months following that approval, the \$37,500 (thirty seven thousand five hundred dollars) of civil penalties will be waived:
 - i. Comply with the Environmental Protection Act, Neb. Rev. Stat. §81-1501 *et seq.*;
 - ii. Comply with Title 128 of the Nebraska Administrative Code, "Nebraska Hazardous Waste Regulations;"
 - iii. Comply with Title 129 of the Nebraska Administrative Code, "Nebraska Air Quality Regulations;"

- iv. Comply with its Nebraska Air Quality Operating permit issued pursuant to Title 129; and
 - v. Comply with its Nebraska Air Quality Construction permit issued pursuant to Title 129.
- C. To qualify for the \$37,500.00 waiver of civil penalties as stated in paragraph 8(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 8(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 8(B) 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.
- D. The Defendant may, but is not required to, voluntarily submit to a Compliance Assistance visit with the NDEQ RCRA program. If the Defendant chooses to submit to this Compliance Assistance visit during the six month time period under paragraph 8(B), above, any

violations discovered during the Compliance Assistance visit, and only during the Compliance Assistance visit performed by the compliance assistance personnel (and not a routine NDEQ inspection), will not invoke the provisions of paragraph 8(B) above, or cause the imposition of the \$37,500.00 waiveable penalty under paragraph 8(B), above.

9. IT IS ALSO ORDERED that the Defendant shall pay, as a voluntary supplemental environmental project, the sum of \$75,000.00 (seventy five thousand dollars) to the City of Auburn, Nebraska, to be used for the construction of a nature trail for the public use of the citizens of the City of Auburn. This sum shall be paid as a lump-sum payment due no later than six months after the approval of this Consent Decree by the Court.

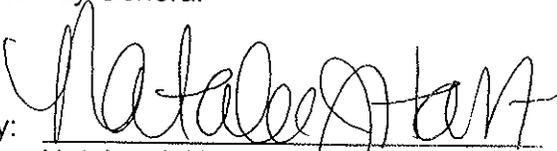
DATED THIS 5 day of Sept, 2007, in Nemaha County, Nebraska.

BY THE COURT:


District Judge

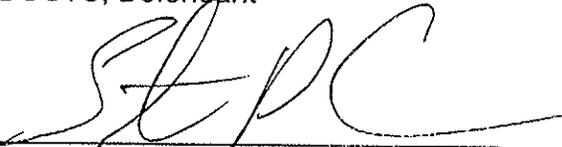
STATE OF NEBRASKA ex rel.,
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