

IN THE DISTRICT COURT FOR PLATTE COUNTY, NEBRASKA

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

Case No. C109-374

v.

CONSENT DECREE

FILED
MARLENE M VETICK, CLERK

KATANA SUMMIT LLC,)
A Nebraska authorized company,)
Defendant.)

JUL 16 2009

DISTRICT COURT
PLATTE COUNTY, NEBR.



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 Katana Summit LLC, through its counsel, Jeffrey T. Peetz, 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 Katana Summit under the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 et seq. (Reissue 2008), and all rules and regulations promulgated under the Act.

2. In its complaint, the State alleges that Katana Summit violated 129 Neb. Admin. Code, ch. 17, § 001, "Nebraska Air Quality Regulations," by constructing its manufacturing facility without first obtaining a construction permit from NDEQ.

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 a trial or adjudication of any issues of fact or law. The parties agree that the entry of this consent decree is not an admission by Katana Summit of any of the issues or violations alleged in the State's



complaint. Therefore, and for only the purpose 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 Katana Summit shall pay a civil penalty, under Neb. Rev. Stat. § 81-1508.02 (Reissue 2008), in the amount of \$15,000 and court costs in the amount of ~~\$79~~^{\$80 RLS} to the district court for Platte County. This civil penalty shall be handled by the Court as provided in Article VII, Section V, of the Nebraska Constitution.

A. \$7,500 of the civil penalty, as well as the ~~\$79~~^{\$80} 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. \$7,500 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 Katana Summit maintains compliance with and does not violate either the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 et. seq., or Title 129 of the Nebraska Administrative Code, "Nebraska Air Quality Regulations", during the 180 days following the entry of this consent decree, then payment of this \$7,500 of civil penalties will be waived.

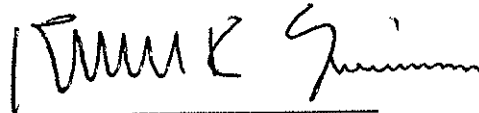
C. To qualify for the waiver of \$7,500 of civil penalties as described in paragraph 5(B), Katana Summit will file with the Court, and serve on the State, a Request for Waiver within 30 days following the six month anniversary of the approval of this consent decree. The Request for Waiver will show that Katana Summit has maintained compliance with the statutes and regulatory provisions listed in paragraph 5(B). The State will file a satisfaction of judgment within 10 days of receiving Katana Summit's Request for Waiver if Katana Summit has complied with the statutes and regulations listed in paragraph 5(B) during the 180 days following the entry of this consent decree. If Katana Summit violates any of the statutes or regulatory provisions in paragraph 5(B) during the 180 days following the entry of this consent decree, the State, in its sole discretion, may file an objection to Katana Summit's Request for Waiver. If the State files an objection to Katana Summit's Request for Waiver, the determination of this waiver provision will be stayed pending ongoing enforcement proceedings.

6. IT IS FURTHER ORDERED that Katana Summit shall pay, as a supplemental environmental project, the sum of \$15,000 to WasteCap of Nebraska for the benefit of the WasteCap of Nebraska Finishing Technologies Certification Program (also known as "Virtual Paint"). Katana Summit agrees that payment of this \$15,000 is not a sponsorship of the Finishing Technologies Certification Program and that it will not obtain any of the benefits of sponsorship of the Finishing Technologies Certification Program as a result of this \$15,000 payment. This payment shall be paid as a lump-sum payment within 30 days of the entry of this consent decree by this Court.

7. The undersigned consent without further notice to the form and entry of this consent decree.

DATED: ^{July 16} ~~16~~ _____, 2009, in Platte County, Nebraska.

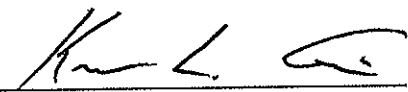
BY THE COURT:



District Judge


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

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KATANA SUMMIT LLC,
Defendant

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