

IN THE DISTRICT COURT OF DAWSON COUNTY, NEBRASKA

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

Case No. 11-139

Plaintiff,

AMENDED CONSENT DECREE

v.

PIERCE ENTERPRISES, INC. D/B/A
EXIT 231 TRUCK WASH

Defendant.

COMES NOW the parties, Plaintiff, the Nebraska Department of Environmental Quality ("NDEQ"), proceeding on its Complaint filed herein and appearing through its Counsel, Jon C. Bruning, Attorney General, and the Defendant, Shirley Pierce, d/b/a Exit 231 Truck Wash, appearing through their counsel Kelly Sudbeck, and each party having consented to the making and entering of this Amended Consent Decree without trial, the Court finds that the Amended Consent Decree should be and hereby is entered.

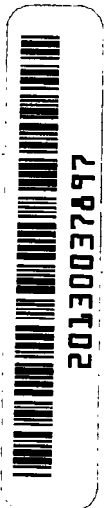
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

1. The Court has jurisdiction of the parties and the subject matter of this action pursuant to the Nebraska Environmental Protection Act, NEB.REV.STAT. § 81-1501 *et seq.* (Reissue 2008), and all rules, regulations, and orders promulgated thereunder.
2. On May 3, 2011, this Court entered a Consent Decree between NDEQ and Defendant assessing civil penalties of forty-one thousand five hundred dollars (\$41,500.00) for Defendant operating a wastewater disposal system without obtaining the necessary permit(s) from NDEQ and failing to comply with a final order issued by NDEQ requiring

STATE OF NEBRASKA
DAWSON COUNTY

AUG 29 2013

FILED BY SHERRY WARNEK
CLERK OF DISTRICT COURT



Defendant to bring their system into compliance under the Nebraska Environmental Protection Act.

3. Pursuant to Paragraph 7(B) of the Consent Decree, forty thousand dollars (\$40,000.00) of Defendant's civil penalties were to be waived if Defendant permanently ceased to operate their lagoon system by July 3, 2011 and completed closure of the wastewater facilities pursuant to Title 123 by May 3, 2012.
4. The parties agree that Defendant did not complete closure of the wastewater facilities pursuant to Title 123 in accordance with the Consent Decree deadlines.
5. The parties agree that settlement of this matter is in the public interest and that entry of this Amended 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 Amended Consent Decree constituting an admission by Defendant with respect to such issues.
6. This Amended Consent Decree shall be in full satisfaction of all claims between the parties alleged in NDEQ's complaint. The parties also agree to release any and all claims or actions arising out of the same transaction or occurrence referenced above and in NDEQ's complaint, provided that such claims were known to NDEQ, or were reasonably ascertainable from information in NDEQ's possession, as of the date of the filing of this Amended Consent Decree.
7. IT IS THEREFORE ORDERED that Defendant shall pay a civil penalty, pursuant to NEB.REV.STAT. § 81-1508.02 (Reissue 2008), in the amount of forty thousand dollars (\$40,000.00) as well as court costs in the amount of eighty-two dollars (\$82.00) to the

District Court of Dawson County, Nebraska. The civil penalty shall be handled as provided in Article VII, Section V, of the Constitution of the State of Nebraska.

a. Forty thousand dollars (40,000.00) of the civil penalty shall be paid no more than one hundred eighty (180) days from the entry of this Amended Consent Decree by the Court, and is payable to the Clerk of this Court. However, payment of this \$40,000.00 civil penalty shall be waived if Defendant:

i. Comes into compliance with the Nebraska Environmental Protection Act, or any rule or regulation adopted and promulgated pursuant to such Act, including, but not limited to, Titles 123 and 124 of the Nebraska Administrative Code, through the timely completion of the following actions:

1. Remove the wastewater located within the concrete settling basin, the manure located at the east end of the concrete settling basin, and the manure located adjacent to the demolished screening building, and properly land-apply the manure pursuant to agronomic rates within one-hundred and eighty (180) days from the entry of this Amended Consent Decree;
2. Disconnect the residence located at the wastewater disposal site from the current wastewater system and install a septic system, or other approved on-site wastewater facility, in accordance with Title 124 of the Nebraska Administrative Code, within ninety (90) days from the entry of this Amended Consent Decree;

3. Remove the sludge from the five (5) lagoon cells, properly land-apply the sludge according to agronomic rates, and fill in the five lagoon cells with clean soil pursuant to Title 123 of the Nebraska Administrative Code, within one hundred eighty (180) days from the entry of this Amended Consent Decree;
 4. Remove the sludge from the two concrete pits near the truck wash building and the pump wet well and properly fill in the two pits, within one hundred eighty (180) days from the entry of this Amended Consent Decree; and
 5. Cap or plug all abandoned wastewater pipes pursuant to Title 123 of the Nebraska Administrative Code, within one hundred eighty (180) days from the entry of this Amended Consent Decree.
- b. To qualify for the \$40,000 waiver of civil penalties as referenced in Paragraph 7(a), Defendants shall file with the Court and serve upon the Plaintiff a showing within fifteen (15) days following the due date of the civil penalties, that certifies that Defendant has complied with all requirements listed in Paragraph 7(a)(i)(1)-(5). Plaintiff shall file a satisfaction of judgment within ten (10) days of receipt of Defendant's showing if Defendant has complied with the terms set forth in Paragraph 7(a)(i)(1)-(5). If Defendant violates the requirements in Paragraph 7(a)(i)(1)-(5) during the one hundred eighty (180) days following the entry of this Amended Consent Decree, Plaintiff, in its sole discretion, may file an objection to Defendant's showing. If Plaintiff files an objection to Defendant's showing, the

determination of this waiver provision shall be stayed pending ongoing enforcement proceedings.

8. IT IS FURTHER ORDERED that upon NDEQ's request, Defendant shall submit reports on the progress of the closure of the wastewater disposal system referred to in Paragraph 7(a)(i)(1)-(5) of this Amended Consent Decree, in a manner to be specified by NDEQ.
9. IT IS FURTHER ORDERED that in the event Defendant fails to comply with the requirements set forth in Paragraph 7(a)(i)(1)-(5) of this Amended Consent Decree, by the time specified, Defendant shall pay stipulated penalties of one hundred dollars (\$100.00) per day for the first to thirtieth day of delay and two hundred dollars (\$200.00) per day for each day of delay thereafter.
10. The requirements of this Amended Consent Decree are subject to force majeure.
 - a. Force majeure for the purposes of this Amended Consent Decree means any event arising from circumstances beyond the reasonable control of Defendant or any entity controlled by Defendant, including contractors and subcontractors, which delay or prevent the timely completion of the requirements set forth in Paragraph 7(a)(i)(1)-(5) in this Amended Consent Decree or the performance of any obligation under this Amended Consent Decree. Defendant shall exercise their best efforts to anticipate any potential force majeure event and mitigate its resulting delay to the greatest extent possible. Defendant shall bear the burden to prove that any failure to comply with this Amended Consent Decree was attributable to a force majeure event under this paragraph.
 - b. Economic circumstances shall not be considered a force majeure event, nor shall the failure of a contractor, subcontractor, material man, or agent (collectively

referred to as "Contractors") to whom responsibility for performance is delegated to meet contractually imposed deadlines, be a force beyond the control of Defendant, unless the cause of the Contractors' late performance was also beyond the Contractors' control.

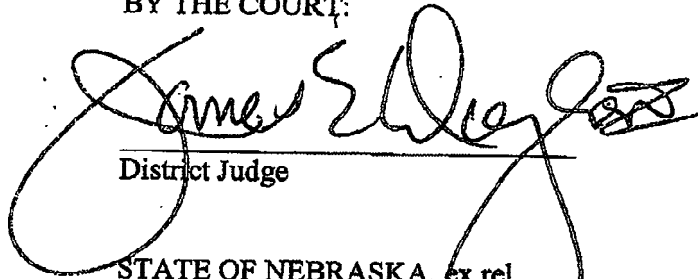
11. If any event occurs that is likely to delay the completion of the tasks outlined in Paragraph 7(a)(i)(1)-(5) of this Amended Consent Decree, whether or not caused by force majeure, Defendant shall notify NDEQ in writing within seven (7) calendar days of learning of the delay of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which the Defendant intends to implement these measures.
12. If NDEQ agrees that the delay is attributable to a force majeure event, the time for performance of the work shall be extended for a period of time not to exceed the actual duration of the delay. Such request for extension shall not be unreasonably withheld, conditioned or delayed by NDEQ.
13. Failure of Defendant to comply with the notice requirements of this Amended Consent Decree shall constitute a waiver of Defendant's right to request an extension of time for compliance with the requirements of this Amended Consent Decree.
14. Notice to NDEQ under Paragraph 11 and any progress reports requested by NDEQ under Paragraph 8 of this Amended Consent Decree shall be directed to Emily K. Rose, Assistant Attorney General, 2115 State Capitol Building, P.O. Box 98920, Lincoln, Nebraska 68509-8920, Telephone # (402) 471-1813 and Steven J. Moeller, Attorney, Nebraska Department of Environmental Quality, 1200 "N" Street, Suite 400, P.O. Box 98922, Lincoln, Nebraska 68509-8922, Telephone # (402) 471-0276.

15. This Amended Consent Decree shall have no effect on any enforcement action brought by NDEQ against Defendant for future violations of any statutes or regulations.

16. The undersigned consent without further notice to the form and entry of this Amended Consent Decree.

DATED THIS 29 day of Aug, 2013, in Dawson County, Nebraska.

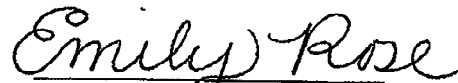
BY THE COURT:



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: 
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Lincoln, Nebraska 68509-8920
(402) 471-1813
emily.rose@nebraska.gov

Attorneys for Plaintiff

CERTIFICATE

PIERCE ENTERPRISES, INC., Defendant

The undersigned certifies that the foregoing document was served upon all parties to the above cause and to each of the attorneys of record herein at their respective addresses as shown on the pleadings on Aug 27, 2013.

By:


Shirley Pierce

U.S. Mail FAX Hand Delivered Certified Mail

Signature 

President
Pierce Enterprises, Inc.
42778 Road 755
Lexington, NE 68850
(308) 324-5456

Defendant