

IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA
 STATE OF NEBRASKA, ex rel.,)
 MICHAEL J. LINDER, Director)
 DEPARTMENT OF ENVIRONMENTAL)
 QUALITY,)
 Plaintiff,)
 v.)
 CONAGRA INTERNATIONAL)
 FERTILIZER COMPANY,)
 Defendant.)

Case No. CI 07-770

CONSENT DECREE

ADAMS COUNTY
 CLERK OF DIST. COURT
 NOV 27 10:19 AM
 07

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 ConAgra International Fertilizer Company, appearing through its counsel, Steven P. Case, 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, 2004, Supp. 2005), 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 on or about 2002, and continuing daily thereafter through at least March 2006, the Defendant owned and operated a bulk fertilizer loading and unloading facility in Adams County, Nebraska, which did not have unload facilities as required by Title 198. In addition, on or about January 12, 2006,

Defendant caused pollution of any air, waters, or land of the state or place or cause to be placed any wastes in a location where they are likely to cause pollution of any air, waters or lands of the state by accidentally releasing approximately 3,800 gallons of nitrogen fertilizer at its plant in Adams County, Nebraska.

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 forty thousand dollars (\$40,000.00),

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. \$20,000.00 (twenty thousand dollars) of said penalty will be imposed immediately upon the entry of this Consent Decree by the Court, and is due no later than 10 days after the entry of this Consent Decree by the Court.
- B. \$20,000.00 (twenty thousand 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, at Defendant's fertilizer facility in Adams County, Nebraska, during the time period between the approval of this Consent Decree by the District Court and six months following that approval, the \$20,000.00 (twenty thousand dollars) of civil penalties will be waived:
 - i. Environmental Protection Act, Neb. Rev. Stat. §81-1501 *et seq*;
 - ii. Title 119 of the Nebraska Administrative Code, "Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System (NPDES).

iii. Title 198 of the Nebraska Administrative Code, Rules and Regulations Pertaining to Agricultural Chemical Containment;

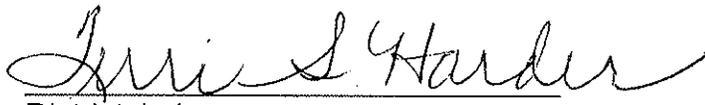
C. To qualify for the \$20,000.00 waiver of civil penalties as stated in paragraph 8(B), Defendant shall file a showing with the Court within 30 (thirty) days following the due date of the civil penalties establishing that it has maintained compliance as required. If the Defendant does not receive a 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, with respect to Defendant's fertilizer facility in Adams County, Nebraska, 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, with respect to Defendant's fertilizer facility in Adams County, Nebraska, Plaintiff shall file an objection to Defendant's showing and determination of this waiver provision will be stayed pending ongoing enforcement proceedings.

9. IT IS FURTHER ORDERED that the Defendant shall pay, as a voluntary supplemental environmental project, the sum of forty thousand dollars (\$40,000.00) into

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 sum shall be paid as a lump-sum payment due no later than 60 days after the entry of this Consent Decree by the Court.

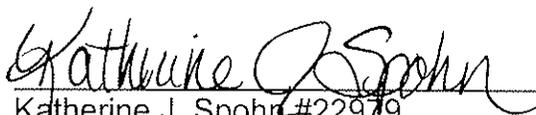
DATED THIS 27 day of Nov., 2007, in Adams County, Nebraska.

BY THE COURT:


District Judge

STATE OF NEBRASKA ex rel.,
MICHAEL J. LINDER, Director
Department of Environmental
Quality, Plaintiff,

By: JON C. BRUNING #20351,
Attorney General

By: 
Katherine J. Spohn #22979
Assistant Attorney General
2115 State Capitol Building
Lincoln, NE 68509
Tel. (402) 471-2956
katie.spohn@ago.ne.gov
Attorneys for Plaintiff.

CONAGRA INTERNATIONAL FERTILIZER
COMPANY, Defendant,

By: _____



Steven P. Case
McGrath North Mullin & Kratz, PC LLO
1601 Dodge Street, Suite 3700
Omaha, NE 68102
Phone- (402) 341-3070

IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA

FILED

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

'07 NOV 27 19:27

PLAINTIFF

ADAMS COUNTY
CLERK OF DIST. COURT

VS

NOTICE OF JUDGMENT
CI 07-770

CONAGRA INTERNATIONAL
FERTILIZER COMPANY ,
DEFENDANT

You are hereby notified that a judgment was rendered in the above-entitled case on November 27, 2007.



BY

CLERK OF THE DISTRICT COURT

Leona L. Barget
DEPUTY

STATE OF NEBRASKA)

COUNTY OF ADAMS)

I hereby certify that on November 27, 2007, I sent a copy of the foregoing notice via U.S. MAIL, postage prepaid, to each of the following:

KATHERINE J SPOHN
2115 STATE CAPITOL BUILDING
LINCOLN NE 68509

STEVEN P CASE
1601 DODGE STREET SUITE 3700
OMAHA NE 68102



BY

CLERK OF THE DISTRICT COURT

Leona L. Barget
DEPUTY

DEPARTMENT OF JUSTICE

NOV 28 2007

STATE OF NEBRASKA

Adams District Court
P.O. Box 9
Hastings, NE 68902 0009
(402) 461-7265

Date Received 11 26 2007 Receipt No. 110598
Case ID CI 07 770
Caption NE Dept Environment v Conagra Internatio

Received From Conagra
Party PLF001 Nebraska Department Environment

DEPARTMENT OF

NOV 27 2007

STATE OF NEBRASKA

Judge Terri Harder

Payment Type Check

Amount Received 20079.00

<u>Description</u>	<u>Amount Applied</u>
Petition	35.00
Filing Fee - State	5.00
Automation Fee	6.00
NSC Education Fee	1.00
Dispute Resolution Fee	.75
Indigent Defense Fee	3.00
Uniform Data Analysis Fee	1.00
J.R.F.	5.00
Filing Fee-JRF	2.00
Legal Aid/Services Fund	5.25
Complete Record	15.00
Holding Acct	20000.00
	UNA

Thank you.