

IN THE DISTRICT COURT OF BOONE COUNTY, NEBRASKA

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

Plaintiff,

v.

NIEWOHNER GRANDCHILDRENS'
LIMITED PARTNERSHIP,

Defendant.

Case No. ^{CT} 12-15

CONSENT DECREE

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

JUL 15 2013

CLERK OF THE DISTRICT COURT
ELLEN L. HIRSCH, BY SHELLEY TOWEY, DEPUTY
Shelley Towey

COME NOW the parties, Plaintiff, Michael J. Linder, Director of the Nebraska Department of Environmental Quality (hereinafter "NDEQ"), proceeding on his Complaint filed herein and appearing through his Counsel, Jon Bruning, Attorney General, and Defendant, Niewohner Grandchildrens' Limited Partnership, appearing through its Counsel, Stephen D. Mossman, 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 the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et seq.* (Reissue 2008, Supp. 2009), and all rules and regulations and orders promulgated thereunder.
2. In its Complaint, the Plaintiff alleges that Defendant operated a waste control facility without written approval from the Department, in violation of the Nebraska Environmental Protection Act.
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
CERTIFICATE OF SERVICE

I, Ellen L. Hirsch, Clerk of the District Court, Boone County, Nebraska do hereby certify that a copy of the above was sent to Counsel and/or parties in the above entitled case.

7-17-13 *Shelley Towey*
Date Deputy District Court Clerk

*cc - Ryan Post
Stephen Mossman*



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conclude this case without trial or adjudication of any issues of fact or law, without this Consent Decree constituting an admission by Defendant with respect to such issues.

4. This Consent Decree shall be in full satisfaction of all claims between the parties alleged in Plaintiff'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 Plaintiff'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 the Consent Decree.

5. IT IS THEREFORE ORDERED that Defendant shall pay a civil penalty, under Neb. Rev. Stat. § 81-1508.02(2), in the amount of \$4,000.00 to the District Court of Boone County, Nebraska. The civil penalty shall be handled as provided in Article VII, Section V, of the Constitution of the State of Nebraska.

- a. \$2,500.00 of said civil penalty shall be paid within thirty days of entry of this Consent Decree by the Court, and is payable to the Clerk of this Court.
- b. \$1,500.00 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 Defendant maintains compliance with and does not violate any provisions of the Nebraska Environmental Protection Act, the Nebraska Livestock Waste Management Act, or any rules and regulations adopted and promulgated pursuant to such Acts at the "Nirwohner Farms," "Matilee," and "West" facilities during the 180 days following the entry of this Consent Decree, then payment of this \$1,500.00 of civil penalties will be waived.
- c. To qualify for the \$1,500.00 waiver of civil penalties as stated in paragraph 5(b), Defendant will file with the Court and serve upon Plaintiff a showing within fifteen (15) days prior to the due date of the civil penalties. The showing will certify that Defendant has maintained compliance with all requirements listed in paragraph 5(b)

at this facility. Plaintiff shall file a satisfaction of judgment within ten (10) days of receipt of Defendant's showing. If Defendant violates the requirements in paragraph 5(b) during the 180 days following the entry of this 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 will be stayed pending ongoing enforcement proceedings.

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

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

DATED THIS 15th day of July, 2013, in Boone County, Nebraska.


BY THE COURT:



Michael J. Owens
District Court Judge

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

By: JON BRUNING, #20351
Attorney General of Nebraska

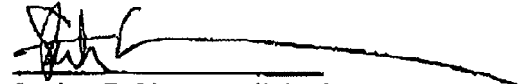
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**NEUWOHNER GRANDCHILDRENS'
LIMITED PARTNERSHIP, Defendant**

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