

IN THE DISTRICT COURT OF NANCE COUNTY, NEBRASKA

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

Plaintiff,

v.

PREFERRED SANDS OF GENOA, LLC,  
a company authorized to conduct business  
in Nebraska,

Defendants.

Case No. UIB-11

CONSENT DECREE

FILED IN THE OFFICE OF THE CLERK  
OF THE DISTRICT COURT  
NANCE COUNTY NEBRASKA

MAR 20 2013

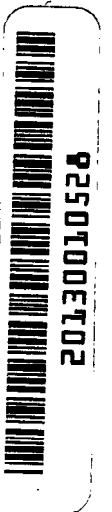
*Janette Zurek*  
CLERK OF THE DISTRICT COURT

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, Preferred Sands of Genoa, LLC, 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 over 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 and regulations and orders promulgated thereunder.

2. In the Complaint, Plaintiff alleged, in pertinent part, that Defendant, owner of a sand production and sand coating facility (hereinafter the "facility") in Nance County, Nebraska, caused or allowed the following violations of the Nebraska Environmental Protection Act or certain rules and regulations adopted and promulgated pursuant thereto:



- a. Beginning on or about March 24, 2011, and continuing for 57 days, Defendant failed to maintain the operating parameter of flow to the facility's scrubbers at the levels recorded during the most recent valid performance test of the scrubbers.
- b. On 544 days throughout 2010 and 2011, Defendant used a wet scrubber to comply with applicable air quality regulations at the facility yet failed to determine and record the arithmetic average of the change in pressure of the gas stream across the scrubber and the flowrate of the scrubbing liquid.
- c. On 57 days throughout 2011, Defendant's facility encountered deviations from the control device operating parameter of scrubber liquid flowrate at less than 80% and more than 120% of the flowrate recorded in the most recent compliance test and required to be monitored by applicable air quality regulations, yet failed to make a timely semiannual report of the same to NDEQ.
- d. On or about June 23, 2011, Defendant utilized a wet scrubber at the facility yet failed to have available for NDEQ's inspector a manufacturer's operation and maintenance manual for the scrubber, records of scrubber liquid flow and differential pressure, or calibration records and maintenance records for the wet scrubber flow meter and pressure differential gauges.

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 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 will 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 will pay a civil penalty, under NEB.REV.STAT. § 81-1508.02 (Reissue 2008), in the amount of fifteen thousand dollars (\$15,000.00) as well as court costs in the amount of eighty-two dollars (\$82.00), to the District Court of Nance County, Nebraska. The civil penalty will be paid within ten (10) days of the entry of this Consent Decree and will be handled as provided in Article VII, Section V, of the Constitution of the State of Nebraska.

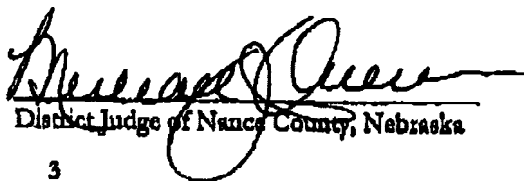
6. IT IS FURTHER ORDERED that Defendant will pay, as a voluntary supplemental environmental project, fifteen thousand dollars (\$15,000.00) to the City of Fullerton, Nance County, Nebraska, to be used for the rehabilitation of the City of Fullerton's "Powerhouse Park Recreation Area." The funds will be used for the items set forth in the Letter from James F. Kramer, Administrator, City of Fullerton, Nebraska, to Preferred Sands of Genoa (Feb. 2013) (attached hereto as Exhibit "A"). This payment will be paid as a lump-sum payment and mailed within ten (10) days of the entry of this Consent Decree to Plaintiffs' attorney of record.

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

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

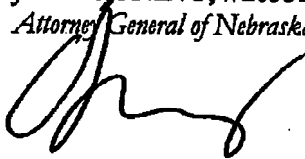
DATED THIS 20<sup>th</sup> day of March, 2013, in Nance County, Nebraska.

BY THE COURT:

  
District Judge of Nance County, Nebraska

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

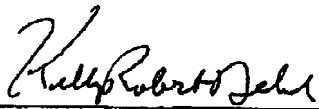
By: JON BRUNING, #20351  
*Attorney General of Nebraska*



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PREFERRED SANDS OF GENOA, LLC, Defendant

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Attorney for Defendant.

# CITY OF FULLERTON, NEBRASKA



Mayor  
Dan Willets

City Clerk  
Patty Noble

City Administrator  
James Kramer



Council  
Harold Harris  
Rachel Schweitz  
Wylene Novicki  
Rick Collins  
Mark Monroe  
Doug Russell

February, 2013

Preferred Sands of Genoa  
34495 Highway 22  
Genoa, NE 68640

Dear Sir or Ma'am,

The following is a list of items and their associated cost for the rehabilitation of the Powerhouse Park Recreational Area:

- Repair of the pedestrian bridge across the Cedar River to 5 Acre Island: \$9500.00
- Safety fencing around dam area: \$2500.00
- Low maintenance recreational trails on island: \$7500.00
- Remove junk cars used for erosion control: \$1000.00
- Remove river pilings: \$2500.00
- Camping sites on 5 Acre Island: \$2000.00
- Recreational boat ramp: \$1500.00
- Clear island of noxious weeds and vegetation and plant trees and native grass: \$2000.00
- Rehabilitate the Old Powerhouse for use as a public shelter area: \$45,000.00

The items listed above are in no particular order. The bridge is the primary project item. It must be completed before any other part can be accomplished. With the donation and other revenues, the City plans to complete the bridge, safety fencing, boat ramp, clearing the island, camping sites and recreational trails.

Thank you for your time and letting the City of Fullerton present this project. If you have any questions, please feel free to contact me at any time.

Respectfully,

James F. Kramer  
Administrator

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cityadmin@cablene.com

