

IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
MICHAEL J. LINDER, Director)
DEPARTMENT OF ENVIRONMENTAL)
QUALITY,)
Plaintiff,)
v.)
WERNER CONSTRUCTION CO.,)
A Nebraska Corporation,)
Defendant.)

Case No. CI 06-472

CONSENT DECREE

ADAMS COUNTY
CLERK OF DISTRICT COURT

'06 JUL 28 P 1:45

FILED

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 Defendants, Werner Construction Co., a Nebraska Corporation, by and through its attorney Michael E. Sullivan, 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 herby 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 1999, Cum. Supp. 2004, Supp. 2005) and all rules and regulations created thereunder.
2. The Complaint filed herein constitutes a justiciable cause of action against the Defendant.

3. In its Complaint, Plaintiff alleges that the Defendant committed various violations related to releases from an aboveground storage tank in violation of Neb. Rev. Stat. §§81-1508.02(1)(b) and Title 126 of the Nebraska Administrative Code.

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 Order by the Court.

5. This Consent Decree shall be in full satisfaction of all claims alleged in the Complaint filed herein and any claims or actions arising out of the same transaction or occurrences asserted, 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. IT IS THEREFORE ORDERED that the Defendant shall pay to the Clerk of the District Court a civil penalty in the amount of fifteen thousand dollars (\$15,000.00), 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. \$7,500.00 (seven thousand five hundred dollars) of said penalty will be due and owing thirty (30) days from the entry of this Consent Decree by the Court.
- B. \$7,500.00 (seven thousand five hundred dollars) of said penalty will be due and owing on December 1, 2006. In the event that said Defendant achieves and maintains compliance with the following obligations and provisions, during the time period between the approval of this Consent Decree by the District Court and December 1, 2006, this \$7,500.00 (seven thousand five hundred dollars) of civil penalties will be waived:
 - i. Comply with the Environmental Protection Act, Neb. Rev. Stat. §81-1501 *et seq*; and
 - ii. Comply with Title 126 of the Nebraska Administrative Code, "Rules and Regulations Pertaining to the Management of Wastes."
- C. To qualify for the \$7,500.00 waiver of civil penalties as stated in paragraph 6(B), Defendant shall file a showing with the Court within 15 (fifteen) 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 6(A) during the relevant time period, 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 6(B) during the relevant time period, Plaintiff shall file an objection to Defendant's showing and determination of this waiver provision shall be stayed pending ongoing enforcement proceedings.


7. IT IS FURTHER ORDERED that the Defendant shall pay, as a voluntary supplemental environmental project, the sum of \$15,000.00 (fifteen thousand dollars) 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 thirty days after the entry of this Consent Decree by the Court.

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

9. The undersigned consent without further notice to the form and entry of the foregoing Consent Decree.

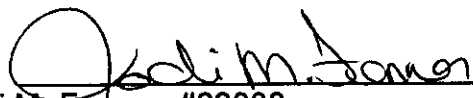
DATED THIS 28 day of July, 2006, in Adams County, Nebraska.

BY THE COURT:


District Judge

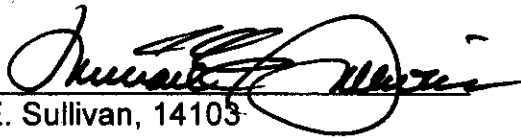
STATE OF NEBRASKA ex rel.,
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