

AUG 2 2006

STATE OF NEBRASKA

IN THE DISTRICT COURT OF SAUNDERS COUNTY, NEBRASKA

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

Plaintiff,)

v.)

GEORGE MULLER)

Defendants.)

CASE NO. CI 00-242

CONSENT DECREE

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 George Muller, 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), 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 May 30, 2004, the Defendant was the owner of the property located in Saunders County, that generated wastewater and that was not connected to a wastewater works and had a soil absorption system that did not meet the requirements of the Nebraska Administrative Code Title 124. Said system was installed 6-10

feet from the Village of Morse Bluff's pressure-main water line, which is in violation of Title 124, *Rules and Regulations for the Design, Operation And Maintenance of On-Site Wastewater Treatment Systems*, Chapter 5, Section 001, which requires that absorption systems be set back 25 feet from pressure-main water lines and less than 50 feet from surface water.

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 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. IT IS THEREFORE ORDERED that the Defendant shall pay to the Clerk of the District Court of Saunders County a civil penalty in the amount of \$2,000.00 (two thousand dollars), and the costs of the action in the amount of seventy-nine dollars (\$79.00);

- A. \$1,000.00 (one thousand dollars) of said penalty is to be paid within thirty (30) days of approval of this Consent Decree by the District Court;
- B. The remaining \$1,000 (one thousand dollars) of said penalty will be due and owing on October 1, 2006. In the event that Defendant complies with

the following obligations and provisions from the date of approval of this Consent Decree by the Court through September 30, 2006, this remaining \$1,000.00 (one thousand dollars) of civil penalties will be waived:

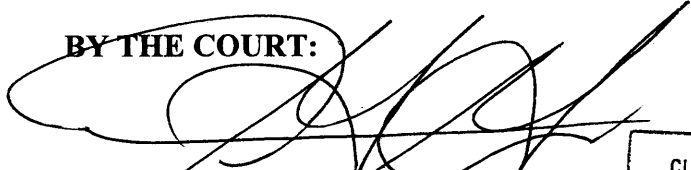
- i. Defendant will comply with the Environmental Protection Act, Neb. Rev. Stat. §81-1501 *et seq.*
- ii. Defendant will authorize and complete installation of an onsite wastewater treatment system that complies with Title 124 and State law.
- iii. Defendant will either remove the soil absorption system located in the road ditch near the community water main or remove the riser and pipe from the riser to the soil absorption system, and also properly abandon any old septic tank, holding tank, or cistern. A Nebraska Certified Professional must do all work;
- iv. Defendant will provide in writing to NDEQ Onsite Wastewater Unit, at least ten (10) days prior to beginning of any work, the name of the Nebraska certified professional, hired to perform the work and when the work will begin.
- v. Defendant will take steps to ensure that the person doing the work registers the new system with the Department within 45 days of installation.
- vi. Defendant will allow NDEQ or its agents access to the property to verify compliance.

C. To qualify for the waivers of civil penalties provided for in paragraph 6(B) above, Defendant shall notify the Nebraska Attorney General's Office on or before the due date of the civil penalties, establishing that he has maintained compliance as required. If Plaintiff does not dispute compliance with the waiver requirements set forth in paragraphs 6(B) above, then Plaintiff shall file a Satisfaction of Judgment in this case within ten days of Defendant's notification. If Defendant receives a Notice of Violation from Plaintiff related to the requirements in paragraphs 6(B), or is a party to legal action disputing compliance with the regulatory requirements in paragraph (6)(B) during the relevant time period, Plaintiff may file an objection to Defendant's notification with the Court and request that no waiver of civil penalties be granted to Defendant.

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

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

DATED THIS 22nd day of August, 2006, in Saunders County,
Nebraska.

BY THE COURT:


District Judge

8-23-06
c: Justin Lavene
George Muller
Maureen Freeman-Caddy

FILED BY
CLERK OF THE DISTRICT COURT
AUG 23 2006
SAUNDERS COUNTY
NEBRASKA

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

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GEORGE MULLER, Defendant.

By: 

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Defendant.

