

IN THE DISTRICT COURT OF WASHINGTON COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.)
 MICHAEL J. LINDER, Director,)
 NEBRASKA DEPARTMENT OF)
 ENVIRONMENTAL QUALITY,)
)
 Plaintiff,)
)
 v.)
)
 NATUREWORKS LLC, a limited liability)
 company authorized to do business in)
 Nebraska,)
)
 Defendant.)

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CONSENT DECREE

2006 NOV 20 PM 12:03
 WASHINGTON COUNTY, NE
 SHERIFF PAUL SEIF
 CLERK OF DISTRICT COURT

FILED

Plaintiff, the Nebraska Department of Environmental Quality ("NDEQ"), proceeding on its Complaint filed herein and appearing through its counsel, Jon Bruning, Attorney General, and the Defendant, NatureWorks LLC ("NatureWorks"), formerly known as Cargill Dow LLC, through its counsel, Kelly R. Dahl, 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 AND DECREED as follows:

1. This Court has jurisdiction of the parties and the subject matter of this action. The complaint filed herein constitutes a justiciable cause of action against NatureWorks under the Environmental Protection Act, Neb. Rev. Stat. §81-1501 *et seq.* (Reissue 1999, Cum. Supp. 2004 and Supp. 2005).
2. Plaintiff alleges that on or around December 16, 2003, NatureWorks emitted volatile organic compounds (VOCs) from its vacuum pumps in excess of the

VOC emission limits established in its permit in violation of Neb. Rev. Stat. §81-1506(4)(b).

3. Plaintiff further alleges that on or around December 16, 2003 and continuing daily thereafter until December 15, 2005, NatureWorks constructed a major stationary source in an area designated as attainment without obtaining a Prevention of Significant Deterioration (PSD) of Air Quality Permit or installing necessary air pollution control equipment in violation of Title 129, Chapter 19 of the Nebraska Administrative Code, which incorporates 40 C.F.R. §52.21 by reference. Violation of any provision or failure to perform any duty imposed by the Environmental Protection Act or the rules and regulations adopted thereunder is a violation of Neb. Rev. Stat. §81-1508.02(1)(e).

4. Finally, Plaintiff alleges on or around December 16, 2003 and continuing daily thereafter until December 15, 2005, NatureWorks constructed a source which had the potential to emit any hazardous air pollutant ("HAP") in an amount equal to or in excess of two and one-half (2.5) tons/year and an aggregate of all HAPs in excess of 10.0 tons/year without implementing best available control technology in violation of Title 129, Chapter 27, Section 002. Violation of any provision or failure to perform any duty imposed by the Environmental Protection Act or the rules and regulations adopted thereunder is a violation of Neb. Rev. Stat. §81-1508.02(1)(e).

5. 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

NatureWorks of any allegation in the complaint, or of any violation of law. Therefore, and for only the purposes of this Consent Decree, the parties agree to the entry of this Order by the Court.

6. This Consent Decree shall be in full satisfaction of all claims between the parties alleged in the Complaint and the parties further release any and all claims or actions arising out of the same transaction or occurrences referenced above and in the complaint herein, and such claims that were known or should have been 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. This satisfaction and release shall specifically include, but not be limited to all violations of NatureWorks' air permit during the construction period detailed in Paragraph 8 of the Consent Decree, provided NatureWorks is in compliance with all other terms of the Consent Decree.

7. IT IS ORDERED that NatureWorks shall pay into the District Court of Washington County a penalty of \$60,000.00 (Sixty thousand dollars), and the costs of the action in the amount of \$79.00 (Seventy-Nine dollars). Said penalty is to be handled pursuant to Article VII, Section V, of the Nebraska Constitution and, along with the costs of the action, are to be paid within seven (7) days of the approval of this Consent Decree by the District Court.

8. The parties have agreed to the following timeline for NatureWorks' completion of the requirements detailed in its air quality permit:

- i. Within four (4) months of entry of this Consent Decree, NatureWorks shall complete the plans for the design detailed in its air quality permit and for its air flow modifications;
- ii. Within five (5) months of entry of this Consent Decree, NatureWorks shall order all equipment and materials necessary to complete the design detailed in its air quality permit and for its air flow modifications;
- iii. Within seven (7) months of entry of this Consent Decree, NatureWorks shall commence construction of the design detailed in its air quality permit and its air flow modifications;
- iv. Within fourteen (14) months of entry of this Consent Decree, NatureWorks shall complete construction and commence operation of the design detailed in its air quality permit and its air flow modifications;
- v. NatureWorks shall commence performance testing pursuant to the requirements and schedule detailed in NatureWorks' air quality permit and shall submit the same in writing to NDEQ after completion of construction as set forth in paragraph (iv) above.

9. NatureWorks shall notify NDEQ in writing when each of the tasks detailed in paragraph 8 are complete.

10. Paragraph 8 of the Consent Decree shall be a compliance schedule. During the compliance schedule in paragraph 8, the terms of this Consent Decree shall

supercede Section XIII, Sections H and I of NatureWorks' air permit. Failure of NatureWorks to comply with the timelines detailed in paragraph 8, subsections (i-iii) of this Consent Decree shall have no effect upon NatureWorks' ability to continue production. NatureWorks shall continue to comply with the remaining provisions of the air permit during the compliance schedule.

11. An unexcused failure of NatureWorks to comply with paragraph 8, subsection (iv-v) of this Consent Decree shall result in assessment of an additional civil penalty in the following amounts until compliance with paragraph 8, subsection (iv-v) of this Consent Decree is obtained:

- i. 1-30 days of violation - \$1,000.00 per day;
- ii. 31-60 days of violation - \$1500.00 per day; and
- iii. 61 or more days of violation - \$2000.00 per day.

12. Force majeure for the purposes of this Consent Agreement means any event arising from causes beyond the reasonable control of NatureWorks and any entity controlled by NatureWorks, which delays or prevents the timely completion of the tasks outlined above under this Consent Decree or the performance of any obligation under this Consent Decree. NatureWorks shall exercise its best efforts to anticipate any potential force majeure and address the potential effects as the event is occurring, and following the event, to ensure that any delay is minimized to the greatest extent practicable. Unless excused by the NDEQ under paragraph 16, NatureWorks shall bear the burden to prove that a failure to comply with the Consent Decree was the result of a force majeure event pursuant to this paragraph.

13. Economic circumstances shall not be considered circumstances beyond the control of NatureWorks.

14. If any event occurs that is likely to delay the completion of the tasks outlined above, whether or not caused by force majeure, NatureWorks shall notify NDEQ in writing, within seven business days of learning of the delay of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay and the timetable by which NatureWorks intends to implement these measures.

15. If NDEQ agrees that the delay is attributable to a force majeure, the time for performance of the work shall be extended for a period of time not to exceed the actual duration of the delay. Such request for extension shall not be unreasonably withheld, conditioned, or delayed by NDEQ.

16. NDEQ, in its discretion, may agree to an extension caused by any other event.

17. Failure of NatureWorks to comply with the notice requirements of this consent decree shall constitute a waiver of NatureWorks' right to request an extension of time for compliance with the requirements of this Consent Decree. Notice to NDEQ, for purposes of this consent decree shall be directed to Katherine J. Spohn, Assistant Attorney General, 2115 State Capitol Building, P.O. Box 98920. Lincoln, Nebraska 68509-8920, and Shelley Kaderly, Air Division Administrator, Nebraska Department of Environmental Quality, 1200 "N" Street, Suite 400, P.O. Box 98922, Lincoln, NE 68509-8922.

18. IT IS FURTHER ORDERED that the NatureWorks shall pay, as a Supplemental Environmental Project, the sum of \$60,000.00 (Sixty thousand dollars) to the Blair High School Greenhouse Project to be used as outlined in Exhibit "A", which is attached hereto. NatureWorks shall make said payment and deliver the same to the Attorney General's Office within seven (7) days of the approval of the Consent Decree by the District Court.

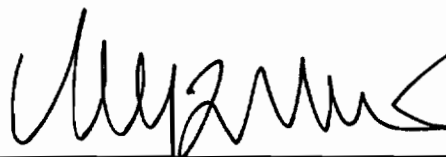
19. Except as provided in paragraphs 6 and 10 herein, this Consent Decree will have no effect on any enforcement action brought by Plaintiff against NatureWorks for future violations of any statutes or regulations.

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

21. Upon satisfactory performance of compliance testing required by 8(v), the payment of the civil penalty of \$60,000.00 and performance of the SEP pursuant to paragraph 18, the State shall file a satisfaction of judgment with the Court.

Dated this 20 day of Nov, 2006, in Washington County, Nebraska.


BY THE COURT:



Washington County District Judge

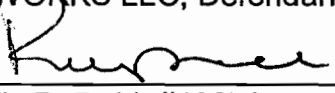
STATE OF NEBRASKA, ex rel.,
MICHAEL J. LINDER, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY, Plaintiff

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NATUREWORKS LLC, Defendant

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Attorney for Defendant

EXHIBIT "A"

Blair High School Greenhouse Project

The Blair High School Greenhouse Project was initiated by students in the 2004-2005 Agribusiness class with the intention of building a 1,800 square foot commercial style greenhouse at the cost of \$53,100.00. The greenhouse will be used in agricultural and science courses to give students experiences in growing and raising poinsettia and hanging basket crops, experimenting with biological and environmental variables in plants, and provide an entrepreneurial experience by marketing crops that are raised. Volunteer students continue to present to community and business leaders and write letters asking for support. Donations to the greenhouse fund now total \$28,061.50 from 32 individuals and organizations, leaving \$25,038.50 to be raised.

Estimated Cost for Completion of Greenhouse: \$25,038.50. Total cost is no less than \$60,000.00 after donations to stock the Greenhouse Project, proof of payment to be provided to NDEQ.