

Schmidt has now fully complied with the February 2007 order of the director of NDEQ and has taken all actions encompassed within the State's request for injunctive relief.

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 a trial or adjudication of any issues of fact or law. The parties agree that the entry of this consent decree is not an admission by Schmidt of any of the issues or violations alleged in the State's complaint. Therefore, and for only the purpose of this consent decree, the parties agree to the entry of this order by the Court.

4. This consent decree shall be in full satisfaction of all claims between the parties alleged in the State'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 the State's complaint, provided that such claims were known to the State, or were reasonably ascertainable from information in the State's possession, as of the date of the filing of the consent decree.

5. IT IS THEREFORE ORDERED that Schmidt shall pay a civil penalty, under Neb. Rev. Stat. § 81-16,125 (Reissue 2008), in the amount of \$3,750 and court costs in the amount of \$79 to the district court for Jefferson County. This civil penalty shall be handled by the Court as provided in Article VII, Section V, of the Nebraska Constitution.

A. \$1,250 of the civil penalty, as well as the \$79 in court costs, shall be paid to this Court no more than 30 days from the entry of this consent decree by the Court.

B. \$2,500 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 Schmidt maintains compliance with and does not violate either the Petroleum Products and Hazardous Substances Storage and Handling Act, Neb. Rev. Stat. § 81-15,117 to 81-15,127 (Reissue 2008), or any rules, regulations, or orders adopted and promulgated under the Act, during the 180 days following the entry of this consent decree, then payment of this \$2,500 of civil penalties will be waived.

C. To qualify for the waiver of \$2,500 of civil penalties as described in paragraph 5(B), Schmidt will file with the Court, and serve on the State, a Request for Waiver within 30 days following the six month anniversary of the approval of this consent decree. The Request for Waiver will show that Schmidt has maintained compliance with the statutes and regulatory provisions listed in paragraph 5(B). The State will file a satisfaction of judgment within 10 days of receiving Schmidt's Request for Waiver if Schmidt has complied with the statutes and regulations listed in paragraph 5(B) during the 180 days following the entry of this consent decree. If Schmidt violates any of the statutes or regulatory provisions in paragraph 5(B) during the 180 days following the entry of this consent decree, the State, in its sole discretion, may file an objection to Schmidt's Request for Waiver. If the State files an objection to Schmidt's Request for Waiver, the determination of this waiver provision will be stayed pending ongoing enforcement proceedings.

6. IT IS FURTHER ORDERED that Schmidt shall pay, as a supplemental environmental project, the sum of \$1,250 to the Attorney General's Environmental

Protection Fund. This payment shall be paid as a lump-sum payment within 30 days of the entry of this consent decree by this Court.

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

DATED: June 8th, 2009, in Jefferson County, Nebraska.


BY THE COURT:


District Judge
Paul W. Korslund



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

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GARY SCHMIDT, D/B/A SCHMIDT SERVICE,
Defendant

By: 
Gary Schmidt