

IN THE DISTRICT COURT OF PIERCE COUNTY, NEBRASKA

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

Plaintiff,

v.

DON HUWALDT, an individual,

Defendant.

Case No. CI 13-20

CONSENT DECREE

OFFICE OF THE CLERK OF DISTRICT COURT
FILED

MAR 28 2013

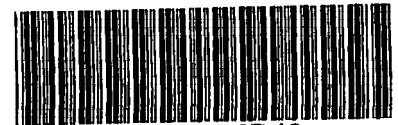

VICKIE PRINCE
Clerk of District Court, Pierce County, NE

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, Don Huwaldt, an individual, 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 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 from on or about February 2010 continuing to the present time, Defendant operated a truck wash wastewater disposal system without a permit issued by NDEQ and that Defendant failed to comply with a final order of the NDEQ director to bring Defendant's system into compliance or cease operation, in violation of the Nebraska Environmental Protection Act.



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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 twenty thousand dollars (\$20,000.00), to the District Court of Pierce County, Nebraska. Additionally, Defendant will pay court costs in the amount of eighty-two dollars (\$82.00) to the State of Nebraska. The civil penalty will be handled as provided in Article VII, Section V, of the Constitution of the State of Nebraska.

- a. Five thousand dollars (\$5,000.00) of said civil penalty will be paid within ten (10) days of entry of this Consent Decree by the Court, and is payable to the Clerk of this Court.
- b. Fifteen thousand dollars (\$15,000.00) of said civil penalty will be paid to this Court no more than one hundred eighty (180) days from the entry of this Consent Decree by the Court. However, if Defendant maintains compliance with and does not violate any provision of the Nebraska Environmental Protection Act or any rule or regulation adopted and promulgated pursuant thereto during the one hundred eighty (180) days following the entry of this Consent Decree, then payment of this \$15,000.00 of civil penalties will be waived.

c. To qualify for the \$15,000.00 waiver of civil penalties as stated in paragraph 5(b), Defendant will file with the Court and serve upon Plaintiff a showing within fifteen (15) days prior to the due date of the civil penalties. The showing will certify that Defendant has maintained compliance with all requirements listed in paragraph 5(b). Plaintiff will file a satisfaction of judgment within ten (10) days of receipt of Defendant's showing. If Defendant violates the requirements in paragraph 5(b) during the one hundred eighty (180) days following the entry of this Consent Decree, Plaintiff, in its sole discretion, may file an objection to Defendant's showing. If Plaintiff files an objection to Defendant's showing, the determination of this waiver provision will be stayed pending ongoing enforcement proceedings.

6. IT IS FURTHER ORDERED that Defendant will undertake the following:

- a. Defendant will immediately take appropriate measures to prevent runoff from the facility and to properly land apply all waste in such a manner that it will not reach any water of the state.
- b. Defendant will file an application with NDEQ for the construction of a truck wash and for land application of waste within thirty (30) days of the entry of this Consent Decree.
- c. In the event NDEQ approves Defendant's application and issues a permit by the sixtieth (60th) day following the entry of this Consent Decree, Defendant will complete construction by the one hundred fiftieth (150th) day following the entry of this Consent Decree.
- d. In the event NDEQ approved Defendant's application and issues a permit after the sixtieth (60th) day following the entry of this Consent Decree, Defendant will

complete construction within one hundred twenty (120) days of the date upon which the permit is issued by NDEQ.

- e. If Defendant has not completed construction of an approved wastewater facility by the one hundred eightieth (180th) day following the entry of this Consent Decree, Defendant will immediately close and not operate the truck wash until construction is completed.

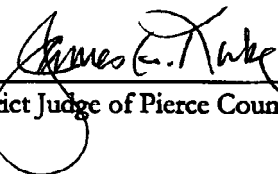
7. In the event Defendant fails to comply with any deadline set forth in paragraph 6 of this Consent Decree by the time required, Defendant will pay stipulated civil penalties of fifty dollars (\$50.00) per day for the first to fifteenth day of delay and two hundred dollars (\$200.00) per day for each day of delay thereafter.

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

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

DATED THIS 28th day of March, 2013, in Pierce County, Nebraska.

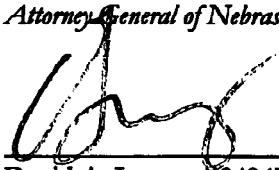
BY THE COURT:



District Judge of Pierce County, Nebraska

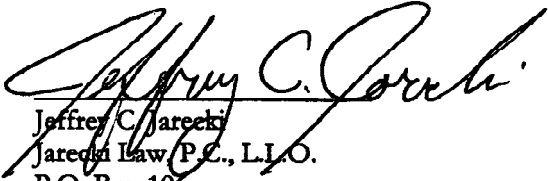
STATE OF NEBRASKA, ex rel,
MICHAEL J. LINDER, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY, Plaintiff

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