

IN THE DISTRICT COURT OF HALL COUNTY, NEBRASKA

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

Case No. CI11-527

J

CONSENT DECREE

Plaintiff,

FILED

v.

MAY 20 2011

VONTZ PAVING, INC.

COPY

Defendant.

**VALORIE BENDIXEN
CLERK OF DISTRICT COURT**

COMES NOW the parties, 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 Vontz Paving, Inc., 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 Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et seq.* (Reissue 2010), and all rules and regulations and orders promulgated thereunder.

2. In its Complaint, Plaintiff alleges that on October 27, 2008, Defendant caused and allowed emissions from its scrubber stack that were in excess of twenty percent (20%) opacity, in violation of Neb. Rev. Stat. § 81-1508.02 (Reissue 2008) and Neb. Rev. Stat. §81-1508.02(1)(e); On July 11, 2007, October 25, 2008, and July 20, 2009, Defendant failed to maintain and make available to a Department representative upon request all records required under Defendant’s permit, in violation of Neb. Rev. Stat. §81-1508.02(1)(b); and on or before June 30, 2008, Defendant relocated its plant to Hall County, Nebraska. Defendant failed to give



000222018D08

NDEQ notice of the relocation to Hall County as required by its permit, and NDEQ had no such notice until the plant was discovered in Hall County on October 27, 2008. Defendant's June 5, 2003 permit required Defendant to "notify the Director at least 20 days in advance of any proposed change in source location."

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 Vontz Paving, Inc., with respect to such issues.

4. This consent decree shall be in full satisfaction of all claims between the parties alleged in NDEQ'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 NDEQ'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 Vontz Paving, Inc., shall pay a civil penalty, under Neb. Rev. Stat. § 81-1508.02 (Reissue 2010), in the amount of \$4,000.00 as well as court costs in the amount of \$82.00, to the Hall County District Court. This civil penalty shall be handled as provided in Article VII, Section V, of the Nebraska Constitution.

A. \$2,000.00 (two thousand dollars) of said civil penalty amount 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. \$2,000.00 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 Vontz Paving, Inc., maintains compliance with and does not violate Title 129 of the Nebraska Administrative Code, "Nebraska

Air Quality Regulations” and the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et. seq.*, or any rules and regulations promulgated under during the 180 days following the entry of this consent decree, then payment of this \$2,000.00 of civil penalties will be waived.

C. To qualify for the \$2,000.00 waiver of civil penalties as stated in paragraph 5(B), Defendant will file with the Court, and serve on NDEQ, a showing within fifteen (15) days following the due date of the civil penalties. The showing will certify that Defendant has maintained compliance with all requirements listed in paragraph 5(B). NDEQ will file a satisfaction of judgment within ten (10) days of receiving Defendant’s showing. If Defendant violates the requirements in paragraph 5(B) during the 180 days following the entry of this Consent Decree, NDEQ, in its sole discretion, may file an objection to Defendant’s showing. If NDEQ files an objection to Defendant’s showing, the determination of this waiver provision will be stayed pending ongoing enforcement proceedings.

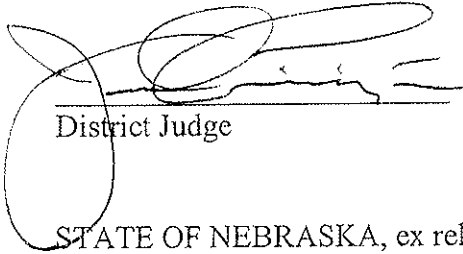
6. IT IS FURTHER ORDERED that the Defendant shall pay, as a voluntary supplemental environmental project, the sum of four thousand dollars (\$4,000.00) into the Attorney General’s Environmental Protection Fund to be used for environmental safety, training, public awareness, or other related uses as permitted by state law, at the sole discretion of the Nebraska Attorney General. This payment shall be paid as a lump-sum payment within ten (10) days of the entry of the consent decree by this Court.

7. This consent decree will have no effect on any enforcement action brought by NDEQ against Vontz Paving, Inc., for future violations of any statutes or regulations.

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

DATED THIS 30 day of May, 2011, in Hall County, Nebraska.

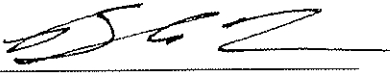
BY THE COURT:



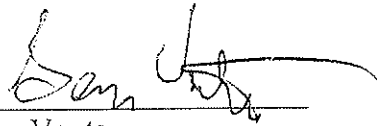
District Judge

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

By JON C. BRUNING, #20351
Attorney General

By: 
Blake E. Johnson, #24158
Assistant Attorney General
2115 State Capitol Building
P.O. Box 98920
Lincoln, Nebraska 68509-8920
Telephone: (402) 471-1912
blake.johnson@nebraska.gov
Attorneys for Plaintiff.

Vontz Paving, Inc.
Defendant

By: 
Sean Vontz
Vontz Paving, Inc.
2355 W. Hwy 6
Hastings, Nebraska 68901
Defendant.