

IN THE DISTRICT COURT OF CLAY COUNTY, NEBRASKA

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

Case No. CE 12 100

Plaintiff,)

CONSENT DECREE

v.)

Van Kirk Sand and Gravel, Inc.,)

Defendants.)

FILED
IN THE DISTRICT COURT OF
CLAY COUNTY, NEBRASKA
OCT 18 2012
9:00 AM
JONI SKALKA
CLERK OF THE 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, Attorney General Jon C. Bruning and Assistant Attorney General Ryan S. Post, and the Defendant, Van Kirk Sand and Gravel, Inc., through its Counsel, Jeffery T. Peetz, 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, the State alleges that on or about March 5, 2012, Defendant caused pollution of waters of the state or placed or caused wastes to be placed in a location where they are likely to cause pollution to any waters of the state in violation of § 81-1506(1).

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 shall be in full satisfaction of all claims between the named parties alleged in NDEQ's complaint. The named parties also agree to release any and all claims or actions between the named parties 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 Van Kirk Sand and Gravel, Inc. shall pay a civil penalty, under Neb. Rev. Stat. § 81-1508.02 (Reissue 2010), in the amount of \$1,000.00 as well as court costs in the amount of \$82.00, to the Clay County District Court. The civil penalty shall be handled as provided in Article VII, Section V, of the Nebraska Constitution. The civil penalty amount will be paid within ten days of entry of this Consent Decree by the Court, and is payable to the Clerk of this Court.

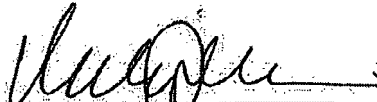
6. IT IS FURTHER ORDERED that Van Kirk Sand and Gravel, Inc. shall pay, as a voluntary supplemental environmental project, \$1,000.00 to the Sutton Fire Department to be used for environmental safety, training, public awareness, equipment or other related uses as permitted by state law, at the sole discretion of the Sutton Fire Department. This payment shall be paid as a lump-sum payment within ten 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 Van Kirk Sand and Gravel, 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.

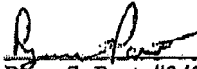
DATED THIS 15th day of October, 2012, in Saline Clay County, Nebraska.

BY THE COURT:

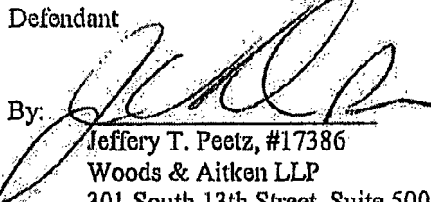

District Judge

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

By JON C. BRUNING, #20351
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Van Kirk Sand and Gravel, Inc.,
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Attorney for Defendant.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on October 18, 2012, on the Attorney for Defendant.

- By: U.S. Mail FAX
 Hand Delivered E-Mail
 Certified Mail Other

Signature 