

IN THE DISTRICT COURT FOR KEITH COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
MICHAEL J. LINDER, Director)
DEPARTMENT OF ENVIRONMENTAL)
QUALITY,)
Plaintiff,)
v.)
William A. McMillan, d/b/a)
McMillan Plumbing)
Defendant.)

Case No. CI 09-12

CONSENT DECREE

FILED TIME 11:15am
KEITH COUNTY

FEB 25 2011

SUSAN THOMAS
CLERK OF DISTRICT COURT

The State of Nebraska, on the relation of the Nebraska Department of Environmental Quality ("NDEQ") and through its counsel, Attorney General Jon C. Bruning, and William A. McMillan, d/b/a McMillan Plumbing ("McMillan"), through his counsel, Randy Fair, jointly file this consent decree and agree to this Court's entry of the following terms and orders:

1. This Court has jurisdiction of the parties and the subject matter of this action pursuant to Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et seq.* (Reissue 2008, Supp. 2009) and all rules and regulations promulgated under that act.

2. In its complaint, the State alleges that McMillan, on four separate occasions engaged in the siting, layout, construction, reconstruction, alteration, modification, or repair of a private onsite wastewater treatment system, without being certified to do so and without certifying and registering the system within forty-five days of completion of construction, reconstruction, alteration, or modification in violation of Neb. Rev. Stat. § 81-15,248(2) and 124 NAC 22.001.



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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 and without this consent decree constituting an admission by McMillan with respect to such issues. 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 McMillan shall pay a civil penalty, under Neb. Rev. Stat. § 81-1508.02 (Reissue 1999), in the amount of \$10,000.00 and court costs in the amount of \$82.00 to the District Court for Keith County. This civil penalty shall be handled as provided in Article VII, Section V, of the Nebraska Constitution.

A. All of the civil penalty shall be paid to this Court no more than 60 days from the entry of this consent decree by the Court. However, if McMillan properly certifies and registers the septic system at the Clinton Schmidt residence, in Grant, Nebraska, at the Elton Tophoj residence, in Oshkosh, Nebraska, the Robert Welsh residence, in Ogallala, Nebraska, and the Tim Holzfaster (Prairie Ridge) residence, in Paxton, Nebraska, and maintains compliance with both the Nebraska Environmental

Protection Act, Neb. Rev. Stat. §§ 81-15, 253 and 81-1501 *et. seq.* and Title 124 of the Nebraska Administrative Code, "Rules and Regulations for the Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems," during the 60 days following the entry of this consent decree, then payment of this \$10,000.00 of civil penalties will be waived.

B. To qualify for the waiver of \$10,000.00 of civil penalties as described in paragraph 5(A), McMillan shall file a showing with the Court within 15 days following the due date of the civil penalties establishing that he has properly certified and registered the (4) systems and maintained compliance with the statutes and regulatory provisions listed in paragraph 5(A). If McMillan does not receive a Notice of Violation from NDEQ and is not a party to a legal action initiated by the State or NDEQ disputing compliance with the statutes and regulatory provisions in paragraph 5(A) during the relevant time period, the State shall file a satisfaction of judgment in the case within 10 days of receiving McMillan's showing. If McMillan fails to properly certify and register the above-referenced systems, receives a Notice of Violation from NDEQ, or is a party to legal action initiated by the State or NDEQ disputing compliance with the statutes and regulatory provisions in paragraph 5(A) during the relevant time period, the State shall file an objection to McMillan's showing, and the determination of this waiver provision shall be stayed pending ongoing enforcement proceedings.

6. This consent decree will have no effect on any enforcement action brought by the State or NDEQ against McMillan for future violations of any statutes or regulations.

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

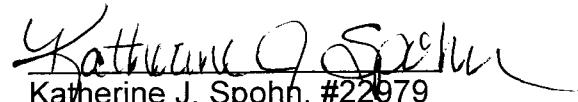
DATED THIS 25th day of February, 2010, in Keith County, Nebraska.

BY THE COURT:

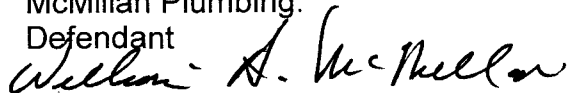

District Judge

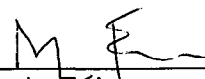
STATE OF NEBRASKA, ex rel.,
MICHAEL J. LINDER, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY, Plaintiff

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Defendant



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