

IN THE DISTRICT COURT OF BUFFALO COUNTY, NEBRASKA

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

Plaintiff,

v.

KIRSCHNER IMPLEMENT, INC.,
a corporation authorized to do
business in Nebraska,

Defendant.

Case No. CI 13 106

CONSENT DECREE

2013 MAR 4 PM 1 13
CLERK OF DISTRICT COURT
BUFFALO COUNTY, NE

FILED
SHARON K MAULER

COME NOW the parties, Plaintiff, Michael J. Linder, Director of the Nebraska Department of Environmental Quality (hereinafter "NDEQ" or "Plaintiff"), proceeding on his Complaint filed herein and appearing through his Counsel, Jon Bruning, Attorney General, and Defendant, Kirschner Implement, Inc. (hereinafter "Kirschner" or "Defendant"), 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 Defendant disposed of solid waste at a location other than a permitted solid waste management facility, that Defendant constructed or operated a solid waste management facility without obtaining a permit, and that Defendant caused or allowed an open fire, in violation of the Environmental Protection Act, the Integrated Solid



Waste Management Act, and certain rules or regulations adopted and promulgated pursuant to such Acts.

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 eight thousand dollars (\$8,000.00) as well as court costs in the amount of eighty-two dollars (\$82.00) to the District Court of Buffalo County, Nebraska. The civil penalty will be handled as provided in Article VII, Section V, of the Constitution of the State of Nebraska.

- a. Four thousand dollars (\$4,000.00) of said civil penalty will be paid within ten days of entry of this Consent Decree by the Court, and is payable to the Clerk of this Court.
- b. Four thousand dollars (\$4,000.00) of the 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, the Integrated Solid Waste Management Act, or any rule or regulation adopted and promulgated pursuant

to such Acts during the one hundred eighty (180) days following the entry of this Consent Decree, then payment of this \$4,000.00 of civil penalties will be waived.

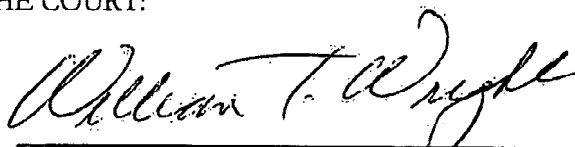
c. To qualify for the \$4,000.00 waiver of civil penalties as stated in paragraph 5(b), Defendant will file with the Court and serve upon Plaintiff a showing within fifteen (15) days prior to the due date of the civil penalties. The showing will certify that Defendant has maintained compliance with all 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 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. This Consent Decree will have no effect on any enforcement action brought by NDEQ against Defendant for future violations of any statutes or regulations.

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

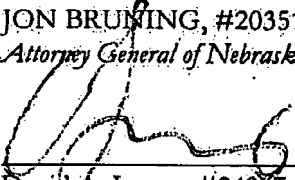
DATED THIS 4th day of March, 2013, in Buffalo County, Nebraska.

BY THE COURT:


District Judge of Buffalo County, Nebraska

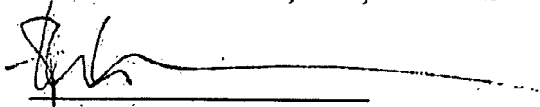
STATE OF NEBRASKA, ex rel.,
MICHAEL J. LINDER, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY, Plaintiff

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Attorney for Defendant.

Notice of Judgement
Mailed to David Lopez
and Stephen Mossman
on 3/4/13
Sharon K. Mauler
Clerk of the District Court
By KB