

IN THE DISTRICT COURT OF WHEELER COUNTY, NEBRASKA

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

Plaintiff,

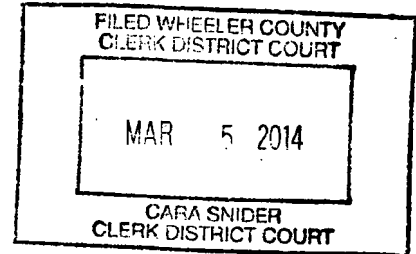
v.

DAVID HOERLE, d/b/a Royal Flush
Truck Wash,

Defendant.

Case No. CI12-6

JUDGMENT

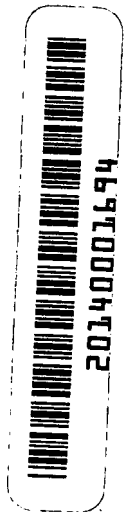


Pursuant to the Stipulation and Agreed Order Regarding Plaintiff's claims filed

November 11, 2013 the court enters the following findings:

1. On or about November 18, 2010, the Defendant operated a disposal system at Royal Flush Truck Wash in Wheeler County, Nebraska; and
2. The Defendant did not obtain the necessary permits from the Department of Environmental Quality (the Department) prior to operating the Royal Flush Truck Wash; and
3. The Defendant received a Notice of Violation from the Department on December 10, 2010; and
4. The Defendant has yet to obtain the necessary permits to operate a disposal system; and
5. The Defendant ceased all operations of the disposal system on June 18, 2012.

The court further finds the Defendant violated Neb.Rev.Stat.Sec. 81-1508.02 and that the violation continued for a total of 573 days.



Neb.Rev.Stat.Sec. 81-1508 says that any person who violates any provision of the Environmental Protection Act is subject to civil penalties. Section 81-1508.02 states that each violation shall subject a person to a civil penalty of no more than \$10,000 per day and in the case of a continuing violation, each day shall constitute a separate offense. This section requires the court to consider the degree and extent of the violation, the size of the operation, and any economic benefit derived from noncompliance.

The extent of the violation. The Truck Wash has been in operation for at least 22 years and continued after the Defendant received notice of the violation.

The size of the operation. The defendant testified that up to 18 trucks a day used the Truck Wash. The defendant is the only person responsible for the operation.

The economic benefit derived from noncompliance. The Defendant benefitted financially by not complying with the Environmental Protection Act. There was no documentary evidence presented regarding the income derived from the business. However, the Defendant did testify that he charged \$10, \$15 or \$20 per wash. If only 10 trucks per day used the truck wash and they paid \$10 per wash, the Defendant would have received \$100 in gross receipts per day (\$36,500 per year). The Defendant stated that he recently reported annual truck wash income of \$16,000 on his personal taxes. He testified that this did not include expenses and that the expenses would amount to about half of his truck wash income. This suggests profits between \$8,000 (half of his reported income) and \$18,250 (estimate of half of his income from daily receipts) per year.

The Court enters the following orders:

1. The Defendant is enjoined from operating the Royal Flush Car Wash until he has received the permits required by the Environmental Protection Act (Neb.Rev.Stat.Sections 81-

1501 through 81-1533).

2. The Defendant shall pay a civil penalty in the amount of \$30.00 per day for a total of \$17,190 to the District Court of Wheeler County, Nebraska. This civil penalty shall be handled as provided by Article VII, Section V of the Constitution of the State of Nebraska.

3. The Defendant shall pay the costs of this action.

IT IS SO ORDERED.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Karin Noakes".

KARIN NOAKES
DISTRICT COURT JUDGE