

IN THE DISTRICT COURT OF MADISON COUNTY, NEBRASKA

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

Plaintiff,

v.

LONNIE MOORE AND
DULCIE DAWN MOORE,
Husband and Wife

Defendants.

Case No. CI 12-428

AMENDED
CONSENT DECREE **FILED**
A.M. 12:20 P.M.

SEP 14 2012

IN DISTRICT COURT OF
MADISON COUNTY NEBR.
MARJORIE SCHAFFER, CLERK

COMES NOW the parties, Plaintiff, the Nebraska Department of Environmental Quality ("NDEQ"), proceeding on its Complaint filed herein and appearing through its Counsel, Jon C. Bruning, Attorney General, and the Defendants, Lonnie Moore and Dulcie Dawn Moore, husband and wife, 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 2008, Supp. 2009), and all rules and regulations and orders promulgated thereunder.

2. On or about May 21, 2009, NDEQ issued a Compliant, Compliance Order and Notice of Opportunity for Hearing. A hearing on the Order was not requested and the Order became a final order. Defendant violated the Order by failing to comply with the deadlines set forth therein.

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

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desire to conclude this case without trial or adjudication of any issues of fact or law, without this consent decree constituting an admission by Defendants 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 Defendants shall pay to the Clerk of the District Court of Madison County a civil penalty in the amount of \$5,000.00 pursuant to Neb. Rev. Stat. §81-1508.02, together with court costs in the amount of \$82.00. Said penalty is to be handled pursuant to Article VII, Section V, of the Nebraska Constitution, and shall be deemed due and owing as follows:

A. \$5,000.00 of the said penalty shall be paid to this Court no more than 6 months from the entry of this Consent Decree by the Court. However, if Defendants comply with all applicable environmental statutes and regulations as well as the timeline set below for compliance with the terms of the Administrative Order entered May 21, 2009, payment of the \$5,000.00 in civil penalties will be waived:

- i. By October 1, 2012, immediately cease the discharge of wastewater to the land surface and take steps, as needed, to clean up any waste on the land surface.
- ii. By October 1, 2012, submit a written response to the Department outlining what steps have been taken to prevent further discharges. Any alternative wastewater disposal must be approved by the department in advance.

- iii. By February 1, 2013, file a complete permit application with the Department that complies with Title 124 and complete the repairs or replacement of the onsite wastewater system.
- iv. Ensure that any work on the wastewater treatment system is done by a certified professional as set out in Title 124.

B. To qualify for the \$5,000.00 waiver of civil penalties as stated in paragraph 5(A), Defendants will file with the Court, and serve on NDEQ, a showing within fifteen (15) days prior to the due date of the civil penalties. The showing will certify that Defendants have maintained compliance with all requirements listed in paragraph 5(A). The State will file a satisfaction of judgment within ten (10) days of receiving Defendant's showing. If Defendant violates the requirements in paragraph 5(A) during the 6 months 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 Defendants showing, the determination of this waiver provision will be stayed pending ongoing enforcement proceedings.

6. Force majeure for the purposes of this Consent Decree means any event arising from causes beyond the reasonable control of Defendants and any entity controlled by Defendants, including contractors and subcontractors, which delays or prevents the timely completion of the tasks outlined above under this Consent Decree or the performance of any obligation under this Consent Decree. Defendants shall exercise their best efforts to anticipate any potential force majeure and address the potential effects as the event is occurring, and following the event, to ensure that any delay is minimized to the greatest extent practicable. Unless excused by the NDEQ under paragraph 10, Defendants shall bear the burden to prove that

a failure to comply with the Consent Decree was the result of a force majeure event pursuant to this paragraph.

7. Economic circumstances shall not be considered circumstances beyond the control of Defendants, nor shall the failure of a contractor, subcontractor, or material man or agent (collectively referred to as "Contractors") to whom responsibility for performance is delegated to meet contractually imposed deadlines be a force beyond the control of Defendants, unless the cause of the Contractors' late performance was also beyond the Contractors' control.

8. If any event occurs that is likely to delay the completion of the tasks outlined above, whether or not caused by force majeure, Defendants shall notify NDEQ in writing within seven calendar days of learning of the delay of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay and the timetable by which Defendants intend to implement these measures.

9. If NDEQ agrees that the delay is attributable to a force majeure, the time for performance of the work shall be extended for a period of time not to exceed the actual duration of the delay. Such request for extension shall not be unreasonably withheld, conditioned or delayed by NDEQ.

10. NDEQ, in its discretion, may agree to an extension caused by any other event.

11. Failure of Defendants to comply with the notice requirements of this Consent Decree shall constitute a waiver of Defendants' right to request an extension of time for compliance with the requirements of the Consent Decree. Notice to NDEQ for purposes of this Consent Decree shall be directed to Ryan S. Post, Assistant Attorney General, 2115 State Capitol Building, P.O. Box 98920, Lincoln, Nebraska 68509-8920, Telephone # (402) 471-1814 and

Steven J. Moeller, Attorney, Nebraska Department of Environmental Quality, 1200 "N" Street, Suite 400, P.O. Box 98922, Lincoln, Nebraska 68509-8922, Telephone # (402) 471-0276.

12. This consent decree will have no effect on any enforcement action brought by NDEQ against Defendants for future violations of any statutes or regulations.

13. The undersigned consent without further notice to the form and entry of this Consent Decree.

DATED THIS 14th day of September, 2012, in Madison 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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