

IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
MICHAEL J. LINDER, Director)
DEPARTMENT OF ENVIRONMENTAL)
QUALITY,)
Plaintiff,)
v.)
CHIEF ETHANOL FUELS, INC.,)
Defendant.)

Case No. 0709-70

CONSENT DECREE

ADAMS COUNTY
CLERK OF DIST. COURT

09 JAN 28 P 2:11

FILED

COMES NOW the parties, Plaintiff, the Nebraska Department of Environmental Quality ("NDEQ"), proceeding on its Complaint filed herein and appearing through its counsel, Jon Bruning, Attorney General, and the Defendant, Chief Ethanol Fuels, Inc., appearing through its counsel, Donald L. Dunn, 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 Neb. Rev. Stat. § 81-1501 *et seq.* (Reissue 1999, Cum. Supp. 2004, Supp. 2005), the Nebraska Environmental Protection Act, and all rules and regulations and orders promulgated thereunder.

2. In its Complaint, Plaintiff alleges that on or about October 2, 2006 and June 19, 2007, Defendant exceeded various air emission limits set forth in its then issued and in force May 26, 2006 Operating Permit.

3. The parties agree that settlement of these matters 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 the Defendant with respect to such issues. The Defendant makes no admission and agrees to the form and entry of this Consent Decree for the purposes of settlement only. Therefore, and for only the purposes of this Consent Decree, the parties agree to the entry of this Consent Decree 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. This Consent Decree will have no effect on any enforcement action brought by Plaintiff against Defendant for future violations of any statutes or regulations.

5. The parties agree that the complaint filed herein constitutes a justiciable cause of action against the Defendant and consent without further notice to the form and entry of this Consent Decree.

6. IT IS THEREFORE FURTHER ORDERED that Defendant shall pay to the Clerk of District Court a civil penalty in the amount of twenty thousand dollars (\$20,000.00) pursuant to Neb. Rev. Stat. § 81-1508.02, together with court costs herein

in the amount of seventy-nine dollars (\$79.00). Said penalty is to be handled pursuant to Article VII, Section V, of the Nebraska Constitution and shall be paid as follows:

- A. \$10,000.00 (ten thousand dollars) of said penalty will be imposed immediately upon the entry of this Consent Decree by the Court, and is payable to the Clerk of this Court no later than ten (10) days after entry of this Consent Decree by the Court.

- B. \$10,000.00 (ten thousand dollars) of said penalty will be due and owing 180 (one hundred and eighty) days following the entry of this Consent Decree by the Court. In the event that Defendant achieves and maintains compliance with the following obligations and provisions, during the time period between the approval of this Consent Decree by the District Court and 180 days following the entry of this Consent Decree, the \$10,000.00 (ten thousand dollars) of civil penalties will be waived:
 - i. The Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et seq*;

 - ii. Title 129 of the Nebraska Administrative Code, "Nebraska Air Quality Regulations";

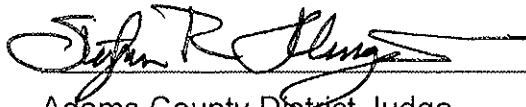
 - iii. Defendant's Nebraska Air Quality Construction permit issued February 19, 2008 pursuant to Title 129.

C. To qualify for the \$10,000.00 waiver of civil penalties as stated in paragraph 6(B), Defendant will file with the Court, and serve on the State, a showing within 15 days following the due date of the civil penalties. The showing will establish that Defendant has maintained compliance with the statutes and regulatory provisions listed in paragraph 6(B). The State will file a satisfaction of judgment within 10 days of receiving Defendant's showing if Defendant has complied with the statutes and regulations listed in paragraph 6(B) during the 180 days following the entry of this Consent Decree. If Defendant violates any of the statutes or regulatory provisions in paragraph 6(B) during the 180 days following the entry of this Consent Decree, the State, in its sole discretion, may file an objection to Defendant's showing. If the State files an objection to Defendant's showing, the determination of this waiver provision will be stayed pending ongoing enforcement proceedings.

7. IT IS FURTHER ORDERED that Defendant shall pay, as a voluntary supplemental environmental project, the sum of ten thousand dollars (\$10,000.00) into the Attorney General's Environmental Protection Fund to be used for environmental safety, training, public awareness, or other related used as permitted by state law, at the sole discretion of the Nebraska Attorney General. This sum shall be paid to the Attorney General's Environmental Protection Fund as a lump-sum payment due no later than 10 (ten) days after the entry of this Consent Decree by the Court.

Dated this 28 day of January, 2009, in Adams County, Nebraska.

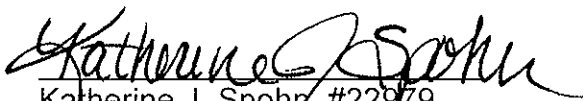
BY THE COURT:



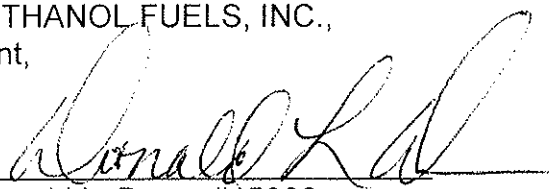
Adams County District Judge

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

By: Jon C. Bruning, #20351
Attorney General

By: 
Katherine J. Spohn, #22979
Assistant Attorney General
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P.O. Box 98920
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Attorney for Plaintiff.


CHIEF ETHANOL FUELS, INC.,
Defendant,

By: 
Donald L. Dunn, #15380
Rembolt Ludtke LLP
3280 Woodridge Blvd., Suite 160
Grand Island, Nebraska 68801
Office (308) 384-6888
Attorney for Defendant.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Consent Decree has been served upon Defendant by regular United States mail, first class postage prepaid on this 23rd day of January, 2009, addressed to the Defendant's attorney of record as follows:

Donald L. Dunn
Rembolt Ludtke LLP
3280 Woodridge Blvd., Suite 160
Grand Island, Nebraska 68801
Office (308) 384-6888


Katherine J. Spohn
Assistant Attorney General