

IN THE DISTRICT COURT FOR VALLEY COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
MICHAEL J. LINDER, Director)
DEPARTMENT OF ENVIRONMENTAL)
QUALITY,)
)
Plaintiff,)
v.)
)
VERASUN ENERGY CORPORATION,)
)
Defendant.)

Case No. _____

COMPLAINT

The State of Nebraska, on the relation of the Nebraska Department of Environmental Quality (NDEQ), alleges the following:

1. NDEQ is the agency of the State of Nebraska charged with the duty, under Neb. Rev. Stat. § 81-1504(1) (Reissue 1999), of exercising exclusive supervision, administration and enforcement of the Environmental Protection Act, Neb. Rev. Stat. § 81-1501 et seq. (Reissue 1999, Cum. Supp. 2006, and Supp. 2007), and all rules and regulations promulgated that Act.

2. VeraSun Energy Corporation is a South Dakota corporation authorized to do business in Nebraska. VeraSun owns and operates an ethanol plant near the city of Ord in Valley County, Nebraska. In the course of its operations, VeraSun's ethanol plant produces wastewater that is released to an unnamed tributary of the North Loup River.

3. Title 123 of the Nebraska Administrative Code, entitled "Rules and Regulations for the Design, Operation and Maintenance of Wastewater Works," was promulgated under the Environmental Protection Act. Chapter 3, § 001 of Title 123 prohibits any person from constructing a wastewater works until a construction permit is issued by NDEQ authorizing the project.

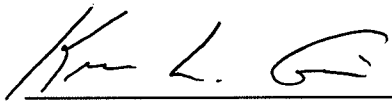
4. Prior to a corporate merger in April 2008, the ethanol plant was owned and operated by US Bio Ord LLC. From March 15, 2006 to May 2, 2007, US Bio Ord constructed a wastewater works at its ethanol plant without first obtaining a construction permit from NDEQ. As a result of the merger of VeraSun and US Bio Ord, VeraSun succeeded US Bio Ord as the owner and operator of the ethanol plant and assumed responsibility for any potential claims against US Bio Ord arising out of the construction of its wastewater works.

5. Under Neb. Rev. Stat. § 81-1508.02, it is unlawful to violate any provision of the Environmental Protection Act or the rules and regulations promulgated under it. Any such violation subjects a person to a civil penalty of no more than \$10,000 per day. In the case of a continuing violation, each day is a separate offense.

WHEREFORE, the State prays that judgment be entered in its favor and against VeraSun in the form of civil penalties as provided in Neb. Rev. Stat. § 81-1508.02 and that all costs of this action be taxed to VeraSun.

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

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