

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. CI 11-106

CONSENT DECREE

FILED ✓
11 FEB 17 A9 45
ADAMS COUNTY
CLERK OF DIST. COURT

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, Michael S. Mostek, 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 2008, Supp. 2009) the Nebraska Environmental Protection Act, and all rules and regulations and orders promulgated thereunder.

2. In its Complaint, Plaintiff alleges that during the month of February, 2010, the Respondent operated the natural gas-fired boiler, Unit 15-1, at its ethanol production plant in Adams County for 14 hours with heat input at a rate that exceeded 250 MMBtu per hour on a 24-hour average basis (average exceedance of 0.62 MMBtu/hr, maximum exceedance of 0.93



MMBtu/hr) in violation of the terms of the construction permit. However, no emission limit was exceeded and there is no evidence of environmental harm.

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 ORDERED that Chief Ethanol Fuels, shall pay a civil penalty, under Neb. Rev. Stat. § 81-1508.02 (Reissue 2008), in the amount of \$5,000 to the Adams County District Court. This civil penalty shall be handled as provided in Article VII,

Section V, of the Nebraska Constitution and shall be paid to this Court no more than six months from the entry of this consent decree by the Court. In the event that said 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 that approval, the \$5,000.00 (five thousand dollars) of civil penalties will be waived:

- i. Title 129 of the Nebraska Administrative Code, "Nebraska Air Quality Regulations";
- ii. Defendant's Nebraska Air Quality Construction permit issued pursuant to Title 129.

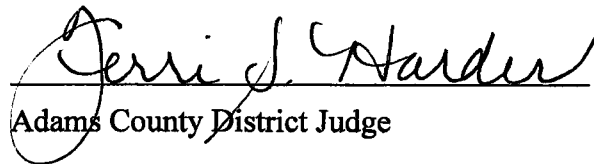
A. To qualify for the \$5,000.00 waiver of civil penalties as stated in paragraph 6, Defendant will file with the Court, and serve on the State, a showing within 15 days following the due date of the civil penalties. The showing will certify that Defendant has maintained compliance with the statutes and regulatory provisions listed in paragraph 6. 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 during the 180 days following the entry of this Consent Decree. If Defendant violates any of the statutes or regulatory provisions in paragraph 6 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 five thousand dollars (\$5,000.00) to the Attorney General's

Environmental Protection Fund to be used for environmental, safety, training, public awareness, or other related uses, as permitted by state law. This sum shall be paid as a lump-sum payment due no later than 10 (ten) days after the entry of this Consent Decree by the Court.

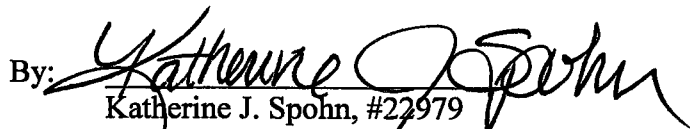
Dated this 17 day of February, 2011, in Adams County, Nebraska.

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
Special Counsel to the Attorney General
2115 State Capitol Building
P.O. Box 98920
Lincoln, Nebraska 68509-8920
(402) 471-2682
Attorney for Plaintiff.

CHIEF ETHANOL FUELS, INC.,
Defendant,

By: _____
Michael S. Mostek, #18134
Koley Jessen P.C., L.L.O.
One Pacific Place
1125 South 103rd Street, Suite 800
Omaha, Nebraska 68124
Attorney for Defendant.

Environmental Protection Fund to be used for environmental, safety, training, public awareness, or other related uses, as permitted by state law. This sum shall be paid as a lump-sum payment due no later than 10 (ten) days after the entry of this Consent Decree by the Court.

Dated this ____ day of _____, 2011, in Adams County, Nebraska.

BY THE COURT:

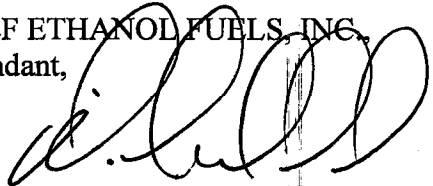
Adams County District Judge

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
2115 State Capitol Building
P.O. Box 98920
Lincoln, Nebraska 68509-8920
(402) 471-2682
Attorney for Plaintiff.

CHIEF ETHANOL FUELS, INC.
Defendant,

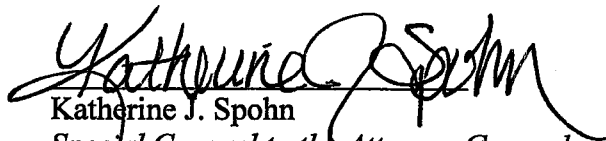
By: 

Michael S. Mostek, #18134
Koley Jessen P.C., L.L.O.
One Pacific Place
1125 South 103rd Street, Suite 800
Omaha, Nebraska 68124

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 5 day of ~~February~~, 2011, addressed to the Defendant's attorney of record as follows:

Michael S. Mostek
Koley Jessen P.C., L.L.O.
One Pacific Place
1125 South 103rd Street, Suite 800
Omaha, Nebraska 68124


Katherine J. Spohn
Special Counsel to the Attorney General