

IN THE DISTRICT COURT OF YORK COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
MICHAEL J. LINDER, Director)
DEPARTMENT OF ENVIRONMENTAL)
QUALITY,)
Plaintiff,)
v.)
ABENGOA BIOENERGY)
CORPORATION)
A company authorized to do business in)
Nebraska,)
Defendant.)

Case No. CI 10 53

COMPLAINT

FILED IN THE DISTRICT COURT
YORK COUNTY, NEBRASKA

MAR 9 2010

SHARILYN RAMSEY
CLERK

COMES NOW Michael J. Linder, Director of the Department of Environmental Quality, who institutes this action through Jon Bruning, Attorney General, on behalf of the State of Nebraska as plaintiff and alleges as follows:

I. FIRST CAUSE OF ACTION

1. The plaintiff, the Nebraska Department of Environmental Quality, is at all times material herein the agency of the State of Nebraska charged with the duty pursuant to Neb. Rev. Stat. §81-1504 (Reissue 1999) to administer and enforce the Environmental Protection Act, Neb. Rev. Stat. §81-1501 et seq. (Reissue 2008) and all rules, regulations, orders, and permits created thereunder.

2. Defendant, Abengoa Bioenergy Corporation, is a corporation authorized to do business in Nebraska. Defendant owns and operates an ethanol production plant in York County, Nebraska.

3. Neb. Rev. Stat. §81-1506 (4) (Reissue 2008) provides:

“(4) It shall be unlawful to ... (b) Violate any term or conditions of an air pollution permit or any emission limit set in the permit; or (c) Violate any emission limit or air quality standard established by the council. [the Nebraska Environmental Quality Council]...”



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4. At all times material herein, operation of Defendant's facility has been subject to the terms of an air quality operating permit issued by NDEQ to Defendant on July 24, 2008 (hereinafter referred to as the operating permit). Defendant has also been subject, at all times material herein, to a construction permit issued on June 4, 2008 (hereinafter referred to as the construction permit). The permits were issued, pursuant to Neb. Rev. Stat. §81-1504 (11) (2008).

5. The operating permit required Defendant limit NO_x emissions from its thermal oxidizer stack. In such respect the permit provides in pertinent part:

III. (C) Specific Conditions for Thermal Oxidizer Stack (S5)...

(2) Emissions Limitations and Testing Requirements. The emissions from the below identified emission points shall each conform to the emissions limits listed. All initial performance testing conducted will be in accordance with specific Condition II. (D). Emission Point ID# ...S5...Pollutant...Nox...Permitted Limit...0.04 lb/MMBtu...Averaging Period...30-day rolling average...

6. On each day from July 22, 2008, through August 10, 2008, and from August 13 through August 17, 2008, Defendant's emissions of NO_x exceeded a 30-day average of 0.04 lb/MMBTu contrary to the requirements of Defendant's operating permit.

7. Pursuant to Neb. Rev. Stat. §81-1508.02 (Reissue 2008) a civil penalty is provided in instances of violation of rules adopted by the Environmental Quality Council and permits issued by the Department of Environmental Quality in an amount not to exceed ten thousand dollars (\$10,000), with each continuing day constituting a separate offense.

II. SECOND CAUSE OF ACTION

8. The plaintiff incorporates allegations of paragraphs 1 through 7 above.

9. The operating permit requires Defendant at all times to control dryer emissions from the emission point designated "S5" through the operation of a thermal oxidizer.

10. From July 2, 2008, through August 5, 2008, Defendant operated its dryers and produced emissions while allowing air pollutant emissions to escape through fire damaged ductwork thereby failing to adequately control such emissions by the thermal oxidizer contrary to the requirements of the permit.

III. THIRD CAUSE OF ACTION

11. The plaintiff incorporates the allegations of paragraphs 1 through 10 above.

12. At all times material herein Defendant has been subject to a regulation adopted by the Environmental Quality Council, Nebraska Department of Environmental Quality, Nebraska Air Quality Regulations, Title 129, Chapter 35, which provides in part as follows:

005 Malfunction and Unplanned Shutdown Reporting.

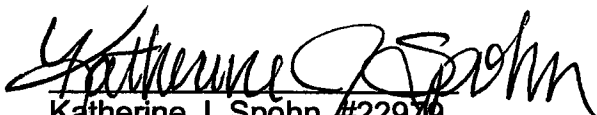
The owner or operator of an installation subject to this chapter shall notify the director, in writing, whenever emissions due to malfunctions, unplanned shutdowns or ensuing start-ups are, or may be, in excess of applicable emission control regulations. Such notifications shall be mailed within 48 hours of the beginning of each period of excess emissions, ...

13. On July 2, 2008, a malfunction occurred at Defendant's plant due to a fire in the ductwork leading from the dryers to the thermal oxidizer, which caused emissions to escape to the atmosphere without being controlled by the thermal oxidizer as required by the operating permit. Defendant failed to report the malfunction within 48 hours contrary to the regulation.

WHEREFORE NDEQ prays that the Court enter judgment herein against Defendant in the form of a civil penalty as provided under Neb. Rev. Stat. §81-1508.02 (Reissue 2008). Plaintiff further prays that all court costs herein be taxed to Defendant.

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

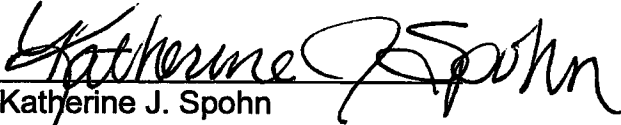
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Attorneys for Plaintiff.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Complaint has been served upon Defendant by regular United States mail, first class postage prepaid on this 8th day of ~~February~~ ^{March}, 2009, addressed to the Defendant's attorney of record as follows:

Christopher Standlee
Abengoa Bioenergy
16150 Main Circle Drive, Suite 300
Chesterfield, MO 63017-4689


Katherine J. Spohn
Assistant Attorney General