

IN THE DISTRICT COURT OF YORK COUNTY, NEBRASKA

MAR 11 2010

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

SHARILYN RAMSEY
CLERK

CONSENT DECREE

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, Abengoa Bioenergy Corporation, appearing through its Executive Vice President, Christopher Standlee, 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 1999, Cum. Supp. 2004 and Supp. 2005), and all rules and regulations and orders promulgated thereunder.

2. In its Complaint, Plaintiff alleges that on or about July 22, 2008 through August 17, 2008, and from August 13 through August 17, 2008, Defendant exceeded various air emission limits set forth in its July 24, 2008, operating permit. In addition, on



July 2, 2008, a malfunction occurred at Defendant's plant due to fire in the ductwork that allowed some emissions to escape into 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, Nebraska Air Quality Regulations, Title 129, Chapter 35.

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 Defendant with respect to such issues. 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 eighty-two dollars (\$82.00). 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 paid within ten days of entry of this Consent Decree by the Court, and is payable to the Clerk of this Court.

B. \$10,000 (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 (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 Operating permit issued pursuant to Title 129.
- C. To qualify for the \$10,000.00 (ten thousand dollars) 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 certify that Defendant has maintained compliance with all requirements listed in paragraph 6(B), except under circumstances beyond Defendant's control and despite Defendant's best efforts to satisfy the requirements of paragraph 6(B). The State will file a satisfaction of judgment within 10 days of receiving Defendant's showing unless the State elects to file an objection to Defendant's showing as provided hereinafter. If Defendant violates any of the requirements in paragraph 6(b) during the 180 days following the entry of this Consent Decree, except under circumstances beyond the control of Defendant and despite Defendant's best efforts to satisfy the requirements of paragraph 6(B), 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 twenty thousand dollars (\$20,000.00) to be used for the construction of a solar power collector at York Public Schools. Defendant agrees to pay or provide in kind all installation and maintenance costs associated with the proposed solar power project at the school for a period of five years as a partial credit towards this supplemental environmental project amount, provided that such credit shall not exceed the sum of \$10,000 in total.

Dated this 11th day of March, 2010, in York County, Nebraska.

BY THE COURT:



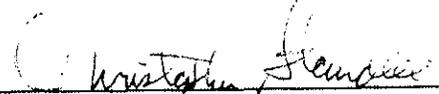
York County District Judge

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.

ABENGOA BIOENERGY CORPORATION
A company authorized to do business in
Nebraska, Defendant,

By: 
Christopher Standlee
Executive Vice President
Abengoa Bioenergy Corporation
16150 Main Circle Drive, Suite 300
Chesterfield, MO 63107-4689

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 7 day of March, 2010, addressed to the Defendant as follows:

Christopher Standlee
Executive Vice President
Abengoa Bioenergy Corporation
16150 Main Circle Drive, Suite 300
Chesterfield, MO 63107-4689

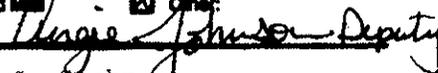

NE Bar # 209027

Katherine J. Spohn
Special Counsel to
The Attorney General

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on March 11, 2010.

By: U.S. Mail FAX
 Hand Delivered Overnight Courier
 Certified Mail Other:

Signature 

-Katherine J. Spohn
-Christopher Standlee