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IN THE DISTRICT COURT OF BUFFALO COUNTY, NEBRASKA

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

Case No. CI10161

COMPLAINT

FILED
 SHARON K MAULER
 2010 MAR 9 AM 10 44
 CLERK OF DISTRICT COURT
 BUFFALO COUNTY, NE

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. Plaintiff, the Nebraska Department of Environmental Quality ("NDEQ"), 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 of Nebraska, LLC, is a limited liability company authorized to do business in Nebraska. The defendant owns and operates an ethanol production plant in Buffalo County, Nebraska.

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

It shall be unlawful to: (a) Construct or operate an air pollution source without first obtaining a permit required under the Environmental Protection Act and the rules and regulations adopted and promulgated by the council pursuant to subsection (12) of section 81-1505; (b) Violate any term or conditions of an air pollution



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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]...

4. At all times material herein, operation of Defendant's facility has been subject to the terms of an air quality construction permit (hereinafter referred to as the permit.) issued by NDEQ on April 9, 2008, pursuant to §81-1504 (11) (2008).

5. The permit required Defendant to install a baghouse to control emissions from its DDGS Cyclone system. In such respect the permit provides in pertinent part:

...III.(A)...(1)... Required Control Equipment ID# and Description ...LS-2201: DDGS Loadout Baghouse...Emission Unit ID# and Description ...LS-2201: DDGS Cyclone System...(3)...(b) Operation and maintenance of each baghouse shall be in accordance with the following requirements:...(i) The baghouse shall be operated and be controlling emissions at all times when the associated emissions units are in operation. ...

6. From the initiation of Defendant's operations on or about July 20, 2007, to July 10, 2008, the emission control system installed by Defendant failed to meet the permit requirements.

7. Pursuant to Neb. Rev. Stat. §81-1508.02 (Reissue 2008) a civil penalty is provided in instances of violation of 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. NDEQ incorporates the allegations of paragraph 1 through 7 above.

9. The permit provides that for those baghouses that Defendant did construct, at least five in number, it was required to operate those baghouses when causing emissions and to record pressure differential readings for each day of operation. In such respect the permit provides in pertinent part: "III. (A) ...(3) ...(b) ...(ii)

The baghouse shall be equipped with an operational pressure differential indicator. Pressure differential indicator readings shall be recorded at least once each day that the associated baghouse is operating.”

10. From July 20, 2007, to October 9, 2007, Defendant failed to make daily recordings of baghouse pressure differential readings on 79 occasions, contrary to the requirements of its construction permit.

III. THIRD CAUSE OF ACTION

11. NDEQ incorporates the allegations of paragraphs 1 through 10 above.

12. The permit requires Defendant to install scrubbers and operate them while recording scrubber water temperature and pressure differentials. In such respect the permit provides in pertinent part:

III. (B) Specific Conditions for Fermentation and Distillations Operations...(5) ...
Reporting and Recordkeeping Requirements:

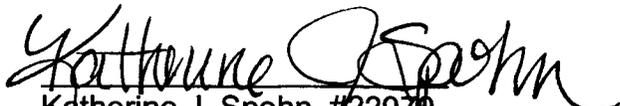
(a) Records documenting the date, time, temperature and flow rate of scrubbing liquid, and the pressure differential reading for each day the associated scrubber is in operation. ...

13. From July 20, 2007, through December 31, 2007, Defendant operated three scrubbers and throughout such time failed to record any scrubber water temperatures, and on 164 occasions failed to monitor and record daily pressure differentials contrary to the requirements of the permit. In addition, on various occasions, Defendant failed to operate one or more of the scrubbers while the associated emissions units were in operation contrary to the requirements of the permit.

WHEREFORE Plaintiff 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

By JON C. BRUNING, #20351
Attorney General

By 
Katherine J. Spohn, #22970
Assistant Attorney General
2115 State Capitol Building
P.O. Box 98920
Lincoln, Nebraska 68509-8920
(402) 471-2682
katie.spohn@nebraska.gov
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 March, 2010, addressed to the Defendant's attorney of record as follows:

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


Katherine J. Spohn
Assistant Attorney General