

IN THE DISTRICT COURT FOR MADISON COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
MICHAEL J. LINDER, Director)
DEPARTMENT OF)
ENVIRONMENTAL)
QUALITY,)
)
Plaintiff,)
)
v.)
)
ELKHORN VALLEY ETHANOL,)
L.L.C., a Nebraska limited liability)
company,)
)
Defendant.)

Case No. CI 10-658 K

CONSENT DECREE

FILED

12:07 P.M.

NOV 29 2010

IN DISTRICT COURT OF
MADISON COUNTY, NEBR.
MARJORIE SCHAFFER, CLERK

The State of Nebraska, on behalf of the Nebraska Department of Environmental Quality (NDEQ), and Elkhorn Valley Ethanol, a Nebraska limited liability company, jointly file this consent decree and agree to this Court's entry of the following terms and orders:

1. This Court has jurisdiction of the parties and the subject matter of this action. The complaint filed in this case is a justiciable cause of action against Elkhorn Valley Ethanol under the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 et seq. (Reissue 2008), and the rules and regulations promulgated under that Act.

2. In its complaint, the State generally alleges that Elkhorn Valley Ethanol operated its ethanol plant without properly functioning monitoring equipment and failed to properly control emissions from the plant's fermentation process, in violation of the terms of a construction permit issued to it.



3. The parties agree that settlement of this matter 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 Elkhorn Valley Ethanol with respect to such issues. Therefore, and for only the purpose of this consent decree, the parties agree to the entry of this order 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, if 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.

5. IT IS THEREFORE ORDERED that Elkhorn Valley Ethanol shall pay a civil penalty, under Neb. Rev. Stat. § 81-1508.02 (Reissue 1999), in the amount of \$12,500 and court costs in the amount of \$82 to the district court for Madison County. This civil penalty shall be handled as provided in Article VII, Section V, of the Nebraska Constitution.

A. \$6,250 of the civil penalty, as well as the \$82 in court costs, shall be paid to this Court no more than 30 days from the entry of this consent decree by the Court.

B. \$6,250 of the civil penalty shall be paid to this Court no more than six months from the entry of this consent decree by the Court. However, if Elkhorn Valley Ethanol does not violate any provision of the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 et. seq., or any rules and regulations promulgated under that Act during the six months following the entry of this consent decree, then payment of this \$6,250 of civil penalties will be waived.

C. To qualify for the waiver of \$6,250 of civil penalties as described in paragraph 5(B), Elkhorn Valley Ethanol will file a Request for Waiver with the Court within 15 days following the due date of the civil penalties establishing that it has maintained compliance with the statutes and regulatory provisions mentioned in paragraph 5(B). The State will file a satisfaction of judgment within 10 days of receiving Elkhorn Valley Ethanol's Request for Waiver if Elkhorn Valley Ethanol has complied with the statutes and regulations mentioned in paragraph 5(B) during the six months following the entry of this consent decree. If Elkhorn Valley Ethanol violates the statutes and regulatory provisions in paragraph 5(B) during the six months following the entry of this consent decree, the State may file an objection to Elkhorn Valley Ethanol's Request for Waiver and the determination of this waiver provision will be stayed pending ongoing enforcement proceedings.

6. IT IS FURTHER ORDERED that Elkhorn Valley Ethanol shall pay, as a supplemental environmental project, the sum of \$12,500 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, at the sole

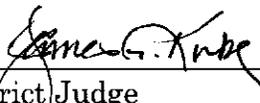
discretion of the Nebraska Attorney General. This payment shall be paid as a lump-sum payment within 30 days of the entry of this consent decree by this Court.

7. This consent decree will have no effect on any enforcement action brought by the State or NDEQ against Elkhorn Valley Ethanol for future violations of any statutes or regulations.

8. The undersigned consent without further notice to the form and entry of this consent decree.

DATED THIS 29th day of November, 2010, in Madison County, Nebraska.

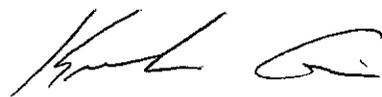
BY THE COURT:



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: 

Kevin L. Griess, #22182
Assistant Attorney General
2115 State Capitol Building
P.O. Box 98920
Lincoln, Nebraska 68509-8920
(402) 471-2682
kevin.griess@nebraska.gov
Attorneys for Plaintiff

ELKHORN VALLEY ETHANOL, a
Nebraska Limited Liability Company and
wholly owned subsidiary of Louis Dreyfus
Commodities,
Defendant

By: 

Bruce R. Chapin
Vice-President
c/o Louis Dreyfus Commodities
4800 Main Street, Suite 600
Kansas City, MO 64112
(816) 756-3560