

IN THE DISTRICT COURT OF FILLMORE COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
MICHAEL J. LINDER, Director)
DEPARTMENT OF ENVIRONMENTAL)
QUALITY,)
Plaintiff,)
v.)
ADVANCED BIOENERGY, L.L.C., a)
limited liability company authorized to do)
business in Nebraska,)
Defendant.)

Case No. CI 12-102

COMPLAINT

Fillmore County, NE
FILED Time 9:00 am

OCT 02 2012

PEGGY BRKY
Clerk of District Court

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:

1. Plaintiff, 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 2010) to administer and enforce the ENVIRONMENTAL PROTECTION ACT, *Neb. Rev. Stat. § 81-1501 et seq.* (Reissue 2010, Supp. 2011) and all rules, regulations, orders, and permits created thereunder. NDEQ is also charged with the duty, pursuant to *Neb. Rev. Stat. §1504 (1) and (4)* (Reissue 2010), to act as the state air pollution control agency for all purposes of the CLEAN AIR ACT, 42 U.S.C. § 7401 *et seq.*, as amended.

2. Defendant, Advanced Bioenergy, LLC, is a limited liability company authorized to do business in Nebraska. Defendant owns and operates an ethanol production plant in Fillmore County, Nebraska. Regular operations of Defendant's facility emit pollutions to the air of the state, including hazardous air pollutants (HAPs) and volatile organic compounds (VOCs).



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3. Pursuant to *Neb. Rev. Stat. § 81-1506(4)* (Reissue 2010), “[i]t shall be unlawful to: . . . (b) Violate any term or condition 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 [the Nebraska Environmental Quality Council]”

4. At all times material herein, operation of Defendant has been subject to the terms of an air quality construction permit issued by NDEQ under *Neb. Rev. Stat. § 81-1504(11)* (Reissue 2010), which required control of all VOC and HAP emissions.

5. Pursuant to *Neb. Rev. Stat. § 81-1508.02* (Reissue 2010), a civil penalty is provided for any violation of § 81-1506(4), and/or any permits issued by the Nebraska Department of Environmental Quality, in an amount not to exceed ten thousand dollars (\$10,000), with each continuing day constituting a separate offense.

FIRST CAUSE OF ACTION

6. The plaintiff incorporates by reference all preceding allegations.

7. On or around November 18, 2009, air pollutant emissions from dryers at the Advanced Bioenergy facility were allowed to vent directly to the atmosphere through a leak(s) in the system, in violation of the permit and *Neb. Rev. Stat. § 81-1506(4)*.

SECOND CAUSE OF ACTION

8. The plaintiff incorporates by reference all preceding allegations.

9. On or around May 18, 2010, air pollutant emissions from the fermentation tanks at the Advanced Bioenergy facility were allowed to vent directly to the atmosphere through a leak(s) in the system, in violation of the permit and *Neb. Rev. Stat. § 81-1506(4)*.

THIRD CAUSE OF ACTION

10. The plaintiff incorporates by reference all preceding allegations.

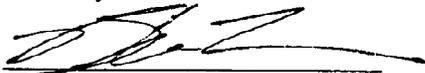
11. On or around May 18, 2010, Advanced Bioenergy's air emissions which were directed through the scrubber(s) exceeded the VOC permit limits, in violation of the permit and *Neb. Rev. Stat. § 81-1506(4)*.

WHEREFORE the plaintiff prays that the court enter judgment on each cause of action against the defendant in the form of a civil penalty as provided under *Neb. Rev. Stat. § 81-1508.02* and further prays that all court costs herein be taxed to the defendant.

Dated this 15th day of October, 2012.

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

By: Jon C. Bruning, #20351
Attorney General

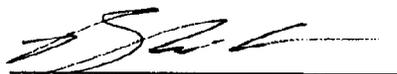
By: 
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Attorney for Plaintiff

CERTIFICATE OF SERVICE

I, Blake E. Johnson, hereby certify that a copy of the foregoing Complaint has been served upon Defendant by regular United States mail, first class postage prepaid on this 1st day of October, 2012, addressed to the Defendant as follows:

Advanced Bioenergy, L.L.C.
Grant Johanson, General Manager
1214 Road G
Fairmont, Nebraska 68354-3054



Blake E. Johnson
Assistant Attorney General