

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, LLC, a limited )  
liability company authorized to do business )  
in Nebraska, )  
Defendant. )

Case No. CF - 13-62

**CONSENT DECREE**

Fillmore County, NE  
FILED Time 10:00 am

**OCT 09 2012**

PEGGY BIRKY  
Clerk of District Court

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, Advanced Bioenergy, LLC, 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 *Neb. Rev. Stat. § 81-1501 et seq.* (Reissue 2010; Supp. 2011), the NEBRASKA ENVIRONMENTAL PROTECTION ACT, and all rules and regulations and orders promulgated thereunder.



RECORDED COURT JOURNAL

CD#1611E



2. In its Complaint, Plaintiff alleges three causes of action which generally assert that, on or around November 18, 2009 and May 18, 2010, Advanced Bioenergy failed to control air pollutant emissions and allowed such emissions to vent directly into the atmosphere through leaks in the system in violation of its permit and Nebraska law.

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 the Defendant with respect to such issues. The 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.

IT IS THEREFORE ORDERED that Advanced Bionenergy shall pay a civil penalty, under *Neb. Rev. Stat. § 81-1508.02* (Reissue 2010), in the amount of \$13,000.00 and court costs

in the amount of \$82.00 to the District Court for Fillmore County. This civil penalty shall be handled as provided in Article VII, Section V, of the Nebraska Constitution.

A. Of the total civil penalty, \$6,500.00 of the civil penalty shall be paid to this Court no more than ten (10) days from the entry of this consent decree by the Court.

B. The remaining \$6,500.00 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. In the event Defendant 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 that approval, the \$6,500.00 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"; and
- iii. Advanced Bioenergy's Nebraska Air Quality Construction permit issued pursuant to Title 129.

C. To qualify for the waiver of \$6,500.00 of civil penalties as described in paragraph 6(B), Advanced Bioenergy 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 6(B). The State will file a satisfaction of judgment within 10 days of receiving Advanced Bioenergy's Request for Waiver if Advanced Bioenergy has complied with the statutes and regulations mentioned in paragraph 6(B) during the six months following the entry of this consent decree. If Advanced Bioenergy violates the statutes and regulatory provisions in paragraph 6(B) during the six months following the entry of this consent decree, the State may file an objection to Advanced BioEnergy's

Request for Waiver and the determination of this waiver provision will be stayed pending ongoing enforcement proceedings.

7. IT IS FURTHER ORDERED that Advanced Bioenergy shall pay the Fillmore County Development Corporation, Fillmore County Extension, and Fillmore Central High School, as a Supplemental Environmental Project, the costs for the activities set forth in Exhibit A attached hereto <sup>in the total amount of \$13,000.00.</sup> These payments shall be made within ten (10) days of the entry of this consent decree by this Court.

Dated this 9<sup>th</sup> day of October, 2012.

BY THE COURT:

*Cheryl Mc*  
District Court Judge

*Magistrate*

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

By: Jon C. Bruning, #20351  
Attorney General

By: *[Signature]*  
Blake E. Johnson, #24158  
Assistant Attorney General  
2115 State Capitol Building  
P.O. Box 98920  
Lincoln, Nebraska 68509-8920  
(402) 471-2682  
[blake.johnson@nebraska.gov](mailto:blake.johnson@nebraska.gov)

*Attorney for Plaintiff*

ADVANCED BIOENERGY, LLC,  
Defendant,

By: *[Signature]*  
Advanced Bioenergy, L.L.C.  
Grant Johanson, Vice President of Operations  
1214 Road G  
Fairmont, Nebraska 68354-3054

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing instrument was served on all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on 09/19 2012.

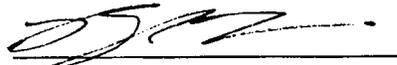
- By:  U.S. Mail
- Hand Delivered
- Certified Mail
- FAX
- Overnight Courier
- Other

Signature *Blake Johnson*  
A.G. Office - Blake Johnson  
Adv. Bioenergy

**CERTIFICATE OF SERVICE**

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

Advanced Bioenergy, L.L.C.  
Grant Johanson, Vice President of Operations  
1214 Road G  
Fairmont, Nebraska 68354-3054



Blake E. Johnson  
*Assistant Attorney General*

# EXHIBIT A

Project	Coordinating Entity	Objectives	Materials	Estimated Cost
Fillmore County Household Hazardous Waste Clean Up Day(s)	Fillmore County Development Corporation	Allow residents to safely dispose of household hazardous waste. Propose to have money set aside for two separate clean up days. This was identified as a pressing need in our community. Last household waste pickup was in 2005. Extension office, city offices and FCDC frequently get calls asking about this option. In the past this was done by area RC&D's, but these are no longer functioning.	(~\$0.32 per pound * 15,000 pounds per event) Based on 2005 estimates. Waiting for updated \$\$.	\$ 9,730.00
		Youth will demonstrate effective watering practices in the community garden through use of irrigation equipment.	Watermark sensors and gage Rain barrel with submersible pump	\$ 500.00 \$ 200.00
Community Garden/Learning Lab	Fillmore County Extension	Youth will understand plant growth process and essential nutrient requirements both for use in the community garden and in youth crop programming.	Garden and bedding plants Chlorophyll meter Soil test kit	\$ 50.00 \$ 1,100.00 \$ 85.00
		Youth will understand the value of turning waste into reusable forms such as composting	Compost tumbler compost testing kit	\$ 200.00 \$ 85.00
		High school classes will build and plant raised beds at the high school pond and nature area. These beds will be handicapped accessible to allow for use by the nursing home/assisted living residents at Heritage Crossings.	materials for raised beds concrete plant markers	\$ 500.00 \$ 500.00 \$ 50.00
<b>Raised Flower Beds</b>	Fillmore Central High School (Ag Science)		<b>TOTAL COSTS OF PROJECTS</b>	<b>\$ 13,000.00</b>