

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)	Case No. _____
MICHAEL J. LINDER, Director)	
DEPARTMENT OF ENVIRONMENTAL)	
QUALITY,)	
Plaintiff,)	COMPLAINT
v.)	
)	
NEDAK ETHANOL, LLC, a limited)	
liability company authorized to do)	
business in Nebraska)	
Defendant.)	

COMES NOW Michael J. Linder, Director of the Department of Environmental Quality, who institutes this action through Jon C. Bruning, Attorney General, on behalf of the State of Nebraska, and alleges as follows:

1. The Plaintiff, the Nebraska Department of Environmental Quality, is at all times herein the agency of the State of Nebraska charged with the duty pursuant to the Environmental Protection Act, Neb. Rev. Stat. §81-1501 *et seq.* (Reissue 2008) and all rules, regulations, and permits created thereunder.

2. Defendant, NEDAK Ethanol LLC, at all times material herein is a company authorized to do business in Nebraska. The defendant owns and operates an ethanol production plant in Holt County, Nebraska. Regular operations of the Defendant's facility emit pollutants to the air of the state. Among the Defendant's air pollutant emissions are hazardous air pollutants (HAPs) and volatile organic compounds (VOCs).

3. Neb. Rev. Stat. §81-1506 (4)(b) makes (Reissue 2008) makes it unlawful to "[v]iolate any term or condition of an air pollution permit or any emission limit set in the permit..."



4. At all times material herein, operation of Defendant's facility has been subject to the terms of an air quality construction permit issued by the plaintiff to the defendant pursuant to §81-1504 (11) (Reissue 2008) on May 8, 2008, and amended on July 2, 2008. The May 8, 2008, permit requires "emissions from the fermentation process shall be controlled through the use of a wet scrubber with chemical addition. ..."

5. On June 23, 2009, air pollutant emissions from Defendant's fermentation process were not controlled by use of a wet scrubber and Defendant's emissions were allowed to vent directly into the atmosphere.

6. Pursuant to Neb. Rev. Stat. §81-1504 (11) (Reissue 2008) a civil penalty is provided in instances of violation of 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.

II. SECOND CAUSE OF ACTION

7. NDEQ incorporates by reference the allegations of paragraphs 1-6 of the complaint as if fully set forth herein.

8. Defendant's May 8, 2008, construction permit requires "[t]he scrubber shall be equipped with devices capable of continuously monitoring operating parameters including...chemical additions flow rate.... When chemical is added to the scrubbing liquid, the flow rate of the chemical being added shall be recorded continuously."

9. On June 23, 2009, Defendant operated its ethanol plant without having equipped its scrubber with equipment for continuously recording the flow rate of the chemical added, contrary to the defendant's permit.

III. THIRD CAUSE OF ACTION

10. NDEQ incorporates by reference the allegations of paragraphs 1-9 of the complaint as if fully set forth herein.

11. Defendants May 8, 2008 air quality construction permit also required “[t]he emissions from the fermentation process shall be controlled through the use of a wet scrubber with chemical addition. ...”

12. From December 27, 2008, through June 24, 2009, from July 1, 2009 through July 12, 2009, and from July 21, 2009, through July 23, 2009, Defendant failed to control emissions from its fermentation process through the use of chemical addition to its wet scrubber, contrary to the permit.

IV. FOURTH CAUSE OF ACTION

13. Plaintiff incorporates by reference the allegations of paragraphs 1-12 of the complaint as if fully set forth herein.

14. Defendants' April 20, 2010 air quality construction permit required “Routine observations (at least once each day during daylight hours of RTO system operation) shall be conducted to determine whether there are visible emissions from the stack, leaks, noise, atypical operating parameters (e.g. pressure differential, temperature), or other indications that may necessitate corrective action. Corrective action shall be taken immediately if necessary.”

15. On June 14, 2010, Defendant failed to make routine observations to determine the presence of visible emissions from the stack, leaks, noise, atypical operating parameters, and other indications that may necessitate corrective action.

V. FIFTH CAUSE OF ACTION

16. NDEQ incorporates by reference the allegations of paragraphs 1-15 of the complaint as if fully set forth herein.

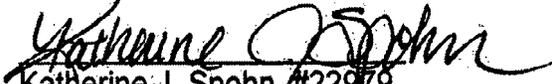
17. Pursuant to Neb. Rev. Stat. §81-1505 (1) (Reissue 2008) the Nebraska Environmental Quality Control adopted Title 129, Chapter 35, Section 005 of the Nebraska Administrative Code, which was in effect at all times material herein, requiring: "The owner or operator of an installation subject to this chapter shall notify the director, in writing, whenever emissions due to malfunctions, unplanned shutdowns or ensuing start-ups are, or may be, in excess of applicable emission control regulations. Such notification shall be mailed within 48 hours of the beginning of each period or excess emissions..."

18. On June 15, 2010, Defendant produced visual emissions from its RTO and failed to timely report such event within 48 hours to NDEQ.

19. WHEREFORE Plaintiff prays 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) and that all court costs herein be taxed to Defendant.

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

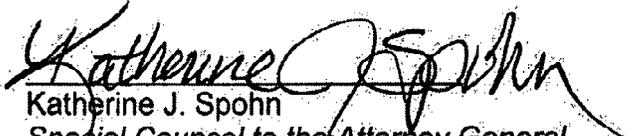
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CERTIFICATE OF SERVICE

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 6th day of March, 2012, addressed to Defendant's attorney of record as follows:

Don Blankenau, Esq.
Blankenau Wilmoth LLP
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Lincoln, NE 68508


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Special Counsel to the Attorney General