

IN THE DISTRICT COURT OF KEARNEY COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)	Case No. CI _____
MICHAEL J. LINDER, Director)	
DEPARTMENT OF ENVIRONMENTAL)	
QUALITY,)	COMPLAINT
Plaintiff,)	
v.)	
)	
KAAPA ETHANOL, L.L.C.,)	
)	
Defendant.)	

COMES NOW Michael J. Linder, Director of the Nebraska Department of Environmental Quality (hereinafter "NDEQ"), who institutes this action through its attorney, Jon C. Bruning, Attorney General, and alleges and states as follows:

FIRST CLAIM

1. NDEQ is the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504(1) (Reissue 1999), of exercising exclusive supervision, administration, and enforcement of the Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et seq.* (Reissue 1999, Cum. Supp. 2006), and all rules, regulations, and orders promulgated thereunder.

2. Defendant, KAAPA Ethanol, L.L.C., (hereinafter "KAAPA"), is a limited liability company authorized to do business in Nebraska. At all times material herein, KAAPA owned and operated an ethanol production facility in Minden, Kearney County, Nebraska. Regular operations for KAAPA's facility emit air pollutants into the air of the state, including Hazardous Air Pollutants (hereinafter "HAPs") such as acetaldehyde.

3. Title 129 of the Nebraska Administrative Code, "Nebraska Air Quality Regulations" (hereinafter "Title 129") was promulgated pursuant to the Environmental

Protection Act, and at all times material herein, such regulations were in full force and effect.

4. Pursuant to Neb. Rev. Stat. §81-1506(4)(b)(Cum. Supp. 2004), it shall be unlawful to “[v]iolate any term or condition of an air pollution permit or any emission limit set in the permit”.

5. At all times material herein, KAAPA's facility was subject to the terms of air quality construction permits issued by NDEQ pursuant to Title 129 and Neb. Rev. Stat. §81-1504(11). On or about October 22, 2002, KAAPA was issued its first Nebraska Air Construction permit. The facility was subsequently issued a revised Air Construction permit pursuant to Title 129 on or about February 10, 1005. The facility was also issued an Air Construction permit amendment on or about April 24, 2006. Each of these permits limited the amount of any individual HAP to be emitted from KAAPA's facility to 10 tons per year for any 12 month reporting period.

6. On or around December 1, 2006 and continuing daily thereafter until April 30, 2007, KAAPA emitted HAPs from its facility in excess of the HAP emission limits for acetaldehyde established in its permit in violation of Neb. Rev. Stat. §81-1506(4)(b).

7. Neb. Rev. Stat. §81-1508.02(2) provides for a civil penalty in the amount of not more than \$10,000 per day of violation of Neb. Rev. Stat. §81-1506. In the case of a continuing violation, each day shall constitute a separate offense.

WHEREFORE, the Plaintiff prays that judgment be entered in favor of the Plaintiff and against the Defendant in the form of civil penalties as provided in Neb. Rev. Stat. §81-1508.02(2), and that all costs of this action be taxed to the Defendant.

BY: STATE OF NEBRASKA ex rel.
MICHAEL J. LINDER, Director
Department of Environmental Quality,
Plaintiff,


BY: JON BRUNING # 20351
Attorney General

BY: 
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Complaint has been served upon the Defendant by regular United States mail, first class postage prepaid on this 9th day of October, 2008 addressed to the Defendant's attorney of record as follows:

Kelly R. Dahl, Attorney
Baird Holm, LLP
1500 Woodmen Tower
1700 Farnam Street
Omaha, NE 68102-2068


Katherine J. Spohn
Assistant Attorney General