

IN THE DISTRICT COURT OF KEARNEY COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.)
MICHAEL J. LINDER, Director,)
NEBRASKA DEPARTMENT OF)
ENVIRONMENTAL QUALITY,)
)
Plaintiff,)
)
v.)
)
KAAPA ETHANOL, L.L.C.,)
)
Defendant.)

Case No. CI 08-111

FILED
JILL L. FRITSON

CONSENT DECREE OCT 21 2008

CLERK DISTRICT COURT
KEARNEY COUNTY

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, KAAPA Ethanol, L.L.C. ("KAAPA"), appearing through its counsel, Kelly R. Dahl, 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 AND DECREED as follows:

1. The Court has jurisdiction of the parties and the subject matter of this action. The Complaint herein sets forth justiciable causes of action against the defendant.

2. In its Complaint, Plaintiff alleges that beginning on or around December 1, 2006, and continuing on a daily basis, until May 31, 2007, KAAPA emitted a hazardous air pollutant ("HAP"), acetaldehyde, in excess of the HAP emission limits established in its permit in violation of Neb. Rev. Stat. § 81-1506(4)(b).

3. After KAAPA discovered and reported to the Department that it had exceeded its permitted limit for the emission of acetaldehyde, it adopted a routine



SCANNED

comprehensive voluntary self-audit process and began an internal assessment of its compliance status. The Department was apprised of the ongoing self-audit. The audit was part of an effort by KAAPA to engage in a cooperative effort with the Department to assure compliance with Department rules and regulations.

4. The Department inspected the KAAPA's facility during the Defendant's routine self-audit of environmental compliance. KAAPA began the routine, voluntary environmental compliance audit prior to the Department's inspection.

5. On June 26, 2008, the Department issued a Notice of Violation ("NOV") to Defendant.

6. KAAPA denies the allegations in the NOV and/or alleges that any deficiencies would have been discovered during the routine voluntary self-audit.

7. 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 the issues identified herein. The Defendant agrees to the form and entry of this Consent Decree for the purposes of settlement only and to avoid the expense and disruption of litigation. Therefore, and for only the purposes of this Consent Decree, the parties agree to the entry of this Consent Decree by the Court.

8. This Consent Decree shall be in full satisfaction of all claims between the parties alleged in the Complaint and the parties further release any and all claims or actions arising out of the same transaction or occurrences referenced above and in the Complaint herein, and such claims that were known or should have been known to the

State of Nebraska, or were reasonably ascertainable from information in the State's possession, as of the date of the filing of the Consent Decree.

9. This Consent Decree will have no effect on any enforcement action brought by Plaintiff against KAAPA for future violations of any statutes or regulations.

10. IT IS THEREFORE ORDERED that KAAPA shall pay to the Clerk of District Court of Kearney County a civil penalty in the sum of Thirty Thousand Dollars (\$30,000.00) pursuant to Neb. Rev. Stat. § 81-15008.02, together with court costs in the amount of Seventy-Nine Dollars (\$79.00). Said penalty is to be handled pursuant to Article VII, Section V, of the Nebraska Constitution. and shall be deemed due and owing as follows:

A. \$15,000.00 (fifteen thousand dollars) of said penalty will be imposed immediately upon the entry of this Consent Decree by the Court, and is due no later than 10 days after the entry of this Consent Decree by the Court.

B. \$15,000.00 (fifteen thousand dollars) of said penalty will be due and owing 30 days after the six month anniversary of the approval of this Consent Decree by the Court or the resolution of any dispute over the waiver of this portion of the penalty, whichever is later. In the event that said Defendant achieves and maintains compliance with all obligations and provisions included in applicable statutes, regulations, and its air permit, other than matters of which the Department has notice as of the date of this Order, during the time period between the approval of this Consent Decree by the District Court and six months following the approval of this Consent Decree, the \$15,000.00 (fifteen thousand dollars) of civil penalties described in this paragraph will be waived:

C. To qualify for the \$15,000.00 waiver of civil penalties as stated in paragraph 10(B), Defendant shall file a showing with the Court within 30 (thirty) days following the six month anniversary of the approval of this Consent Decree establishing that it has maintained compliance as required. If the Defendant does not receive a Notice of Violation from Plaintiff and is not a party to a legal action initiated by the Plaintiff disputing compliance with the statutes and regulatory provisions in paragraph 8(B) during the relevant time period, Plaintiff shall file a Satisfaction of Judgment in the case within ten days of receipt of Defendant's showing. If Defendant receives a Notice of Violation from Plaintiff, and is a party to legal action initiated by the Plaintiff disputing compliance with the statutes and regulatory provisions in paragraph 10(B) during the relevant time period, Plaintiff shall file an objection to Defendant's showing and determination of this waiver provision will be stayed pending ongoing enforcement proceedings.

11. IT IS FURTHER ORDERED that KAAPA shall pay, as a Supplemental Environmental Project ("SEP"), the sum of Thirty Thousand Dollars (\$30,000.00) to the Supplemental Environmental Program fund maintained by the Nebraska Attorney General. KAAPA shall make said payment within seven (7) days of the approval of the Consent Decree by the District Court.

12. The undersigned consent without further notice to the form and entry of the foregoing Consent Decree.

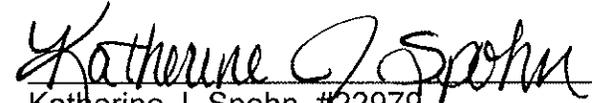
Dated this 20 day of OCTOBER, 2008, in Kearney County, Nebraska.

BY THE COURT:

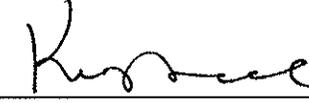

Kearney County District Judge

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

By: Jon C. Bruning, #20351
Attorney General

By: 
Katherine J. Spohn, #22979
Assistant Attorney General
2115 State Capitol Building
P.O. Box 98920
Lincoln, Nebraska 68509-8920
(402) 471-2682
Attorney for Plaintiff.

KAAPA ETHANOL, L.L.C., Defendant

By: 
Kelly R. Dahl, #19273
Baird, Holm LLP
1500 Woodmen Tower
Omaha, NE 68102
(402) 344-0500
Attorney for Defendant.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Consent Decree has been served upon 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
Baird Holm Law Firm
1500 Woodman Tower
1700 Farnam Street
Omaha, NE 68102


Katherine J. Spohn
Assistant Attorney General

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10/7/08