

IN THE DISTRICT COURT FOR MADISON COUNTY, NEBRASKA

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

Plaintiff,

v.

ELKHORN VALLEY ETHANOL,
L.L.C., a Nebraska limited liability
company,

Defendant.

Case No. _____

COMPLAINT

The State of Nebraska, on behalf of the Nebraska Department of Environmental Quality (NDEQ), alleges the following:

1. NDEQ is the agency of the State of Nebraska charged with the duty, under Neb. Rev. Stat. § 81-1504(1) (Reissue 2008), 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 Supp. 2007), and all rules and regulations promulgated that Act.

2. Elkhorn Valley Ethanol, LLC, is a Nebraska limited liability company and is a wholly owned subsidiary of Louis Dreyfus Commodities, a commodity merchant and processor of agricultural products headquartered in Switzerland and with multiple offices in the United States. Elkhorn Valley Ethanol owns and operates an ethanol plant in Madison County, Nebraska. In the normal course of operations, Elkhorn Valley Ethanol's plant emits air pollutants, including nitrogen

oxide (NO_x), volatile organic compounds (VOC), and hazardous air pollutants (HAP).

3. At all relevant times, Elkhorn Valley Ethanol operated its ethanol plant subject to a construction permit issued on September 29, 2005. The construction permit generally imposes limitations on the volumes and rates of air pollutant emissions from the plant. More specifically, Condition XIII(D)(6)(c) of the construction permit required Elkhorn Valley Ethanol to “install, calibrate, maintain, and operate a continuous emission monitoring system (CEMS) or approved alternative in accordance with [federal regulations] for the [thermal oxidizer/heat recovery system] measuring the NO_x emissions.”

5. From September 3, 2008 through November 3, 2008, Elkhorn Valley Ethanol operated its thermal oxidizer/heat recovery system and emitted NO_x without a properly functioning continuous emission monitoring system, in violation of Condition XIII(D)(6)(c) of its construction permit.

6. Elkhorn Valley Ethanol’s construction permit, Condition XIII(C)(1), also specifically required that “VOC and HAP emissions from the fermentation units shall be controlled by a wet scrubber.”

7. During an inspection of Elkhorn Valley Ethanol’s plant on February 10, 2010, NDEQ inspectors observed uncontrolled emissions venting from pressure relief vents on several fermentation units and from several other points in the fermentation process, in violation of Condition XIII(C)(1) of its construction permit.

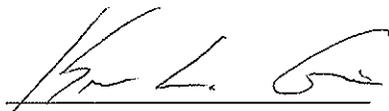
8. Under Neb. Rev. Stat. § 81-1506(4)(b) (Reissue 2008), it is unlawful to violate any term or condition of an air pollution permit or any emission limit set in the permit.

5. Under Neb. Rev. Stat. § 81-1508.02 (Reissue 2008), each violation of § 81-1506 subjects a person to a civil penalty of no more than \$10,000 per day. In the case of a continuing violation, each day is a separate offense.

WHEREFORE, the State prays that judgment be entered in its favor and against Elkhorn Valley Ethanol in the form of civil penalties as provided in Neb. Rev. Stat. § 81-1508.02 and that all costs of this action be taxed to Elkhorn Valley Ethanol.

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

By JON C. BRUNING, #20351
Attorney General

By 
Kevin L. Griess, #22182
Assistant Attorney General
2115 State Capitol Building
P.O. Box 98920
Lincoln, Nebraska 68509-8920
(402) 471-2682
kevin.griess@nebraska.gov
Attorneys for Plaintiff.