

IN THE DISTRICT COURT FOR HOLT COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
MICHAEL J. LINDER, Director)
DEPARTMENT OF ENVIRONMENTAL)
QUALITY,)
)
Plaintiff,)
v.)
)
NEDAK ETHANOL, LLC,)
A Nebraska limited liability company,)
)
Defendant.)

Case No. _____

COMPLAINT

The State of Nebraska, on the relation 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 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 Supp. 2007), and all rules and regulations promulgated that Act.
2. NEDAK Ethanol, LLC, is a Nebraska limited liability company. NEDAK owns and operates an ethanol plant in Holt County, Nebraska. NEDAK's operations are divided between two sites in Holt County: fermentation and distillation of ethanol occurs at a site near the city of Atkinson, while storage and load out occurs at a site near the city of O'Neill.
3. Title 129 of the Nebraska Administrative Code, entitled "Nebraska Air Quality Regulations," was promulgated under the Environmental Protection Act. Chapter 17, § 001 of Title 129 prohibits any person from constructing a stationary source or

emissions unit until a construction permit is issued by NDEQ authorizing the project, if the stationary source or emissions unit results in an increase in potential emissions over certain limits for certain parameters, as listed in §§ 001.01A – 001.01G.


4. Beginning in May 2007, NEDAK constructed a stationary source or emissions unit subject to 129 Neb. Admin. Code, ch. 17, § 001.01 at its O'Neill site without first obtaining a construction permit from NDEQ.

5. Under Neb. Rev. Stat. § 81-1508.02, it is unlawful to violate any provision of the Environmental Protection Act or the rules and regulations promulgated under it. Any such violation 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 NEDAK 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 NEDAK.

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

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