

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 authorized company)
)
Defendant.)

Case No. CI08-147

CONSENT DECREE

HOLT COUNTY,
NEBRASKA SS
FILED

NOV -3 2008

JUNIOR YOUNG 2:05 P.M.
CLERK OF THE DISTRICT COURT
KAREN SPERLING - DEPUTY

The State of Nebraska, on the relation of the Nebraska Department of Environmental Quality (NDEQ), and NEDAK Ethanol, LLC, a Nebraska limited liability company, jointly file this consent decree and agree to this Court's entry of the following terms and orders:

1. This Court has jurisdiction of the parties and the subject matter of this action. The complaint filed in this case is a justiciable cause of action against NEDAK under the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 et seq. (Reissue 1999, Cum. Supp. 2006, and Supp. 2007), and the rules and regulations promulgated under that Act.

2. In its complaint, the State alleges that beginning in May 2007, NEDAK constructed a stationary source or emissions unit at its ethanol storage and load out site near the city of O'Neill without first obtaining a construction permit from NDEQ, and that this action violated Title 129 of the Nebraska Administrative Code, "Nebraska Air Quality Regulations," chapter 17, § 001.

DEPARTMENT OF JUSTICE

NOV 04 2008

STATE OF NEBRASKA

3. The parties agree that settlement of this matter 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 NEDAK with respect to such issues. Therefore, and for only the purpose of this consent decree, the parties agree to the entry of this order by the Court.

4. This consent decree shall be in full satisfaction of all claims between the parties alleged in the State's complaint. The parties also agree to release any and all claims or actions arising out of the same transaction or occurrences referenced above and in the State's complaint, if such claims were known to the State, or were reasonably ascertainable from information in the State's possession, as of the date of the filing of the consent decree.

5. IT IS THEREFORE ORDERED that NEDAK shall pay a civil penalty, under Neb. Rev. Stat. § 81-1508.02 (Reissue 1999), in the amount of \$15,000 and court costs in the amount of \$79 to the district court for Holt County. This civil penalty shall be handled as provided in Article VII, Section V, of the Nebraska Constitution.

A. \$5,000 of the civil penalty, as well as the \$79 in court costs, shall be paid to this Court no more than 30 days from the entry of this consent decree by the Court.

B. \$10,000 of the civil penalty shall be paid to this Court no more than one year from the entry of this consent decree by the Court. However, if NEDAK does not violate any provision of the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 et. seq., or any rules and regulations promulgated under that Act during the

year following the entry of this consent decree, then payment of this \$10,000 of civil penalties will be waived.

C. To qualify for the waiver of \$10,000 of civil penalties as described in paragraph 5(B), NEDAK will file a showing with the Court within 15 days following the due date of the civil penalties establishing that it has maintained compliance with the statutes and regulatory provisions mentioned in paragraph 5(B). The State will file a satisfaction of judgment within 10 days of receiving NEDAK's showing if NEDAK has complied with the statutes and regulations mentioned in paragraph 5(B) during the year following the entry of this consent decree. If NEDAK violates the statutes and regulatory provisions in paragraph 5(B) during the year following the entry of this consent decree, the State may file an objection to NEDAK's showing and the determination of this waiver provision will be stayed pending ongoing enforcement proceedings.

6. This consent decree will have no effect on any enforcement action brought by the State or NDEQ against NEDAK for future violations of any statutes or regulations.

7. The undersigned consent without further notice to the form and entry of this consent decree.

DATED THIS 31st day of October, 2008, in Holt County, Nebraska.

The Clerk of the Court is ordered to perform those acts checked below and to initial and date the spaces provided when completed

- 1. Mail a copy of this order to all parties of record and/or to the attorney at record of each party.
Done on Nov. 3, 2008 by KS
- 2. Enter the judgement on the judgement record of the Court.
Done on _____ by _____
- 3. Mail a postcard or notice to each party or attorney of record within 3 days.
Done on _____ by _____
- 4. Note the decision on the trial docket of the Court by copying therein Consent Decree entered
Done on Nov. 3, 2008 by KS

BY THE COURT:



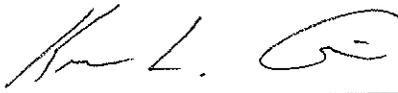
District Judge

copy to:
Kevin Gries
Asst Atty General
PO Box 98920
Lincoln, Ne 68509-8920

KS
DISTRICT JUDGE
Donald Blankenau
Atty at Law
206 So 13th St, Ste 1400

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.

NEDAK ETHANOL, LLC,
A Nebraska limited liability company,
Defendant

By: 
Donald G. Blankenau, #18528
Husch Blackwell Sanders LLP
206 S. 13th St., Suite 1400
Lincoln, NE 68508
(402) 458-1501
Attorney for Defendant