

IN THE DISTRICT COURT OF DAWSON COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
MICHAEL J. LINDER, Director)
DEPARTMENT OF ENVIRONMENTAL)
QUALITY,)
Plaintiff,)
v.)
CORNHUSKER ENERGY)
LEXINGTON, LLC,)
a corporation authorized to do business in)
Nebraska,)
Defendant.)

Case No. GI-460

COMPLAINT

COMES NOW Michael J. Linder, Director of the State of Nebraska Department of Environmental Quality, who institutes this action through Jon C. Bruning, Attorney General, and alleges and states as follows:

1. The Plaintiff, the Nebraska Department of Environmental Quality (hereinafter "Department" or "NDEQ"), is at all times material herein the agency of the State of Nebraska charged with the duty pursuant to Neb. Rev. Stat. §81-1504 (Reissue 2008) to administer and enforce the Environmental Protection Act, Neb. Rev. Stat. §81-1501 to -1532 (Reissue 2008), to act as a state air pollution control agency for all purposes of the Clear Air Act, 42 U.S.C. §74001-7671, as amended.

2. The Defendant, Cornhusker Energy Lexington, LLC, is a corporation authorized to do business in Nebraska. The Defendant owns and operates an ethanol plant (hereinafter "facility") in Dawson County, Nebraska.

3. At all times material herein, operation of the defendant's facility has been subject to the terms of a construction permit #CP07-0030 (hereinafter "construction permit"), originally



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STATE OF NEBRASKA
DAWSON COUNTY

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CLERK OF DISTRICT COURT



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issued pursuant to Neb. Rev. Stat. §81-1504 (11) (Reissue 2008) on January 31, 2003 and amended on May 15, 2008.

4. The construction permit requires the defendant to comply with the requirements found in 40 C.F.R. Part 60 Subpart A, *Standards of Performance for New Stationary Sources, General Provisions* and Subpart Db, *Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units*. The construction permit, Section (XIII)(F) states that “[t]he following conditions apply to: STEAM GENERATING BOILERS (6) The requirements of the NSPS in 40 C.F.R. 60, Subpart A and Db (Title 129, Chapter 18, Sections 001.01 and 001.22) apply to the Boilers #5003 and 5004.”

5. Neb. Rev. Stat. §81-1506 (4) (Reissue 2008) declares that it is unlawful to “(b) Violate any term or condition of an air pollution permit or any emission limit set in the permit....”

6. Pursuant to Neb. Rev. Stat. §81-1508.02 (Reissue 2008), violations of permits issued by the Department, or of the rules or regulations adopted and promulgated pursuant to the Environmental Protection Act, are subject to a civil penalty not to exceed ten thousand dollars per day, per violation.

I. FIRST CAUSE OF ACTION

7. Defendant’s construction permit Section XIII (F)(4) required Defendant to conduct a performance test within 180 days of starting operations for boiler Unit #5003.

8. Initial startup of Defendant’s boiler Unit #5003 was May 12, 2009.

9. The initial performance test for the boiler was conducted on May 5, 2010.

II. SECOND CAUSE OF ACTION

10. The plaintiff incorporates all allegations in paragraphs 1 through 9 above.

11. Pursuant to 40 C.F.R. Part 60 Appendix F, “[t]he first CEMS accuracy assessment shall be a relative accuracy test audit (RATA) ... and shall be completed by ... the date of the initial performance test required by the applicable regulation ...”

40 C.F.R. §60 App. F. 1.1.

12. Defendant failed to perform a RATA by the date of the required initial performance test, no more than 180 days following initial startup of the affected facility.

III. THIRD CAUSE OF ACTION

13. The plaintiff incorporates all allegations in paragraphs 1 through 12 above.

14. Pursuant to 40 C.F.R. Part 60 Subpart Db:

Following the date on which the initial performance test is completed or is required to be completed ... the owner or operator of an affected facility ... shall determine compliance with the NO_x standards under [Subpart Db] §60.44b on a continuous basis through the use of a 30-day rolling average emission rate. A new 30-day rolling average emission rate is calculated each steam generating unit operating day as the average of all of the hourly NO_x emission data for the preceding 30 steam generating unit operating days.

40 C.F.R. §60.46 (e) (3).

15. Defendant failed to determine compliance with the applicable NO_x standards using a 30-day rolling average beginning after the initial performance test and RATA were required to be completed, 180 days after the initial start-up of the boiler (Unit #5003).

IV. FOURTH CAUSE OF ACTION

16. The plaintiff incorporates all allegations in paragraphs 1 through 15 above.

17. Pursuant to 40 C.F.R. Part 60 Subpart A, the defendant shall submit reports of the continuous emission monitoring at least every six months.

18. Defendant failed to submit an excess emissions and monitoring systems report and-or summary report form to the Department for the six-month period following the date upon which the initial performance test and RATA should have been performed, at which time the defendant should have begun determining compliance with NO_x standards through 30-day rolling averages.

V. FIFTH CAUSE OF ACTION

19. The plaintiff incorporates all allegations in paragraphs 1 through 18 above.

20. Pursuant to Neb. Admin. Code Title 129 Chapter 7 002.04, "Sources that are required to obtain a Class II operating permit shall file application by December 15, 1994, or within twelve months of the date on which the source first becomes operational or otherwise subject to the requirements to obtain a permit."

25. Pursuant to Neb. Admin. Code Title 129 Chapter 5 001.02A, a Class II operating permit is required for "[a]ny source or emission units with actual emission above ... (001.02A5) Fifty (50) tons/year or more of volatile organic compounds (VOC)."

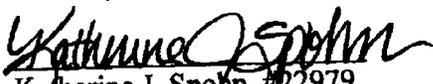
26. Defendant became subject to the requirements to obtain a Class II permit on January 1, 2007, based on its 2006 emission inventory listing VOC emissions as 53 tons, and was required to submit an application for an operating permit by January 1, 2008.

27. Defendant submitted a Class II operating permit application on December 11, 2009.

WHEREFORE the plaintiff prays that the court enter judgment herein against the defendant in the form on a civil penalty as provided under Neb. Rev. Stat. §81-1508.02 (Reissue 2008). The plaintiff further prays that all court costs herein be taxed to the defendant.

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

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Complaint has been served upon Defendant by regular United States mail, first class postage prepaid on this 21st day of November, 2018, addressed to the Defendant's attorney of record as follows:


Katherine J. Spohn
Deputy Attorney General