

IN THE DISTRICT COURT OF PIERCE COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
MICHAEL J. LINDER, Director)
DEPARTMENT OF ENVIRONMENTAL)
QUALITY,)
Plaintiff,)
v.)
HUSKER AG, LLC, a limited liability)
company authorized to do business in)
Nebraska,)
Defendant.)

Case No. CI 11-54

COMPLAIN OFFICE OF THE CLERK OF DISTRICT COURT
FILED

AUG 5 2011

10:40 AM
VICKIE PRINCE
Clerk of District Court, Pierce County, NE

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

I. FIRST CAUSE OF ACTION

1. The plaintiff, the Nebraska Department of Environmental Quality, 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 *et seq.* (Reissue 2008), and all rules, regulations, orders, and permits created thereunder. The NDEQ is also charged with the duty, pursuant to Neb. Rev. Stat. §81-1504 (1) and (4) (Reissue 2008), to act as the state air pollution control agency for all purposes of the Clean Air Act, 42 U.S.C. §7401 *et seq.*, as amended.

2. The defendant, Husker Ag, LLC, is a limited liability company authorized to do business in Nebraska. The defendant owns and operates an ethanol production plant in Pierce, Nebraska. Regular operations of the defendant's air pollutant emissions are hazardous air pollutants (HAPs) and volatile organic compounds (VOCs).

20110051903



000003292D40

3. Neb. Rev. Stat. §81-1506 (4) (Reissue 2008), provides:

"(4) It shall be unlawful to: Construct or operate an air pollution source without first obtaining a permit required under the Environmental Protection Act and the rules and regulations adopted and promulgated by the council pursuant to subsection (12) of section 81-1505; (b) Violate any term or condition of an air pollution permit or any emission limit set in the permit; or (c) Violate any emission limit or air quality standard established by the council. [the Nebraska Environmental Quality Council]..."

4. At all times material herein, operation of the defendant's facility has been subject to the terms of an air quality construction permit issued by the plaintiff to the defendant pursuant to §81-1504 (11) (Reissue 1999, Cum Supp. 2006) on May 8, 2008, and amended on May 16, 2008 to correct typographical errors. The permit provides in part as follows: III. (A) Specific Conditions for Fermentation... (3) Operational and Monitoring Requirements and Limitations:...(a) The emissions from the fermentation process shall be controlled through the use of a wet scrubber with chemical addition. ..."

5. On May 20, 2009, air pollutant emissions from the defendant's fermentation process were not controlled by use of a wet scrubber and the defendant's fermentation processes were allowed to vent emissions directly to the atmosphere, contrary to the defendant's permit.

6. Pursuant to Neb. Rev. Stat. §81-1504 (11) (Reissue 2008) a civil penalty is provided in instances of violation of permits issued by the Nebraska Department of Environmental Quality in an amount not to exceed ten thousand dollars (\$10,000), with each continuing day constituting a separate offense.

II. SECOND CAUSE OF ACTION

7. The plaintiff incorporates by reference the allegations of paragraphs 1, 2, 3, 4 and 6 of the plaintiff's first cause of action.


8. The defendant's May 8, 2008, construction permit provides in part as follows: "III. (A) Specific Conditions for Fermentation ... (5). ..(ii) The scrubber shall be equipped with devices capable of continuously monitoring operating parameters including, at a minimum, the scrubbing liquid temperature, scrubbing liquid flow rate, chemical addition flow rate, and pressure differential. Except for the scrubbing liquid and chemical addition flow rates, operating parameters readings shall be recorded at least once each day the scrubber is in operation. The scrubbing liquid flow rate shall be recorded continuously. When chemical is added to the scrubbing liquid, the flow rate of the chemical being added shall be recorded continuously."

9. Intermittently from July 10, 2008, through August 28, 2009, the defendant operated its ethanol plant without having equipped its scrubber with equipment for continuously recording flow rate of the chemical added, contrary to the defendant's permit.

10. WHEREFORE the plaintiff prays that the Court enter judgment herein against the defendant in the form of 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

By JON C. BRUNING, #20351
Attorney General

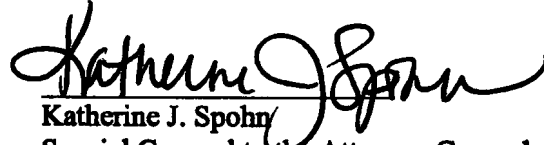
By 
Katherine J. Spohn
Special Counsel to the Attorney General
2115 State Capitol Building
P.O. Box 98920
Lincoln, Nebraska 68509-8920
(402) 471-2682
katie.spohn@nebraska.gov
Attorneys for Plaintiff.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the ^{2nd} day of July, 2011, a true and correct copy of the foregoing Complaint was mailed by regular United States mail; postage prepaid, to the Defendant and Defendant's attorney as follows:

Seth Harder
General Manager
Husker Ag, LLC
54048 Highway 20
Plainview, NE 68769

Douglas D. Murray
BAIRD HOLM LLP
1500 Woodmen Tower
1700 Farnam Street
Omaha, NE 68102-2068


Katherine J. Spohn
Special Counsel to the Attorney General