

IN THE IOWA DISTRICT COURT FOR STORY COUNTY

STATE OF IOWA, ex rel., IOWA)
DEPARTMENT OF NATURAL)
RESOURCES (99AG23542),)
)
Plaintiff,)
)
vs.)
)
LINCOLNWAY ENERGY, LLC, an)
Iowa Limited Liability Company,)
)
Defendant.)

LAW NO. CV045951

PETITION AT LAW

FILED
STORY CO. IOWA
2019 APR 12 AM 8:53
CLERK OF COURT
NEVADA, IOWA

COMES NOW Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources (IDNR) and for its claims against Defendant Lincolnway Energy, LLC (Lincolnway), states as follows:

Introduction

1. The IDNR seeks the assessment of civil penalties and injunctive relief against Lincolnway for air and water pollution control violations committed at or in relation to Lincolnway's ethanol production facility located in Nevada, Story County, Iowa.
2. Lincolnway emitted air pollutants, including particulate matter (PM), particulate matter with an aerodynamic diameter less than or equal to 10 micrometers (PM₁₀), and nitrogen oxides (NO_x), in excess of permitted limits; failed to conduct annual stack testing to determine compliance with construction permit emission limits; and failed to comply with continuous emission monitoring requirements.
3. Lincolnway discharged wastewater in excess of effluent limitations for iron (FE), total suspended solids (TSS), and total residual chlorine (TRC).

Parties

4. The State of Iowa is a sovereign state of the United States of America.
5. The IDNR is a duly constituted agency of the State of Iowa pursuant to Iowa Code section 455A.2.
6. Lincolnway Energy, LLC is an Iowa limited liability company.

Jurisdiction

Air Pollution Control Definitions

7. "Air contaminant" means "dust, fume, mist, smoke, other particulate matter, gas, vapor (except water vapor), odorous substance, radioactive substance, or any combination thereof." Iowa Code § 455B.131(1).
8. "Air contaminant source" means "any and all sources of emission of air contaminants whether privately or publicly owned or operated." Iowa Code § 455B.131(2).
9. "Air pollution" means "presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is or may reasonably tend to be injurious to human, plant, or animal life, or to property, or which unreasonably interferes with the enjoyment of life and property." Iowa Code § 455B.131(3).
10. "Emission" means "release of one or more air contaminants into the outside atmosphere." Iowa Code § 455B.131(6).

Air Pollution Control Regulations

11. The IDNR is the state agency with the duty to prevent, abate, or control air pollution. Iowa Code § 455B.132. The specific administrative and enforcement duties of the IDNR

Director relating to air pollution control are contained, in part, in Iowa Code sections 455B.134(1)-(13).

12. The IDNR director is authorized to grant construction or operation permits for new, modified, or existing air contaminant sources and for related control equipment. Iowa Code § 455B.134(3).

13. No air contaminant source shall be installed, altered so that it significantly affects emissions, or placed in use unless a construction or conditional permit has been issued for the source. Iowa Code § 455B.134(3)(a); 567 Iowa Admin. Code 22.1(1).

14. The Iowa Environmental Protection Commission (EPC) is authorized to adopt rules for the abatement, control, and prevention of air pollution. Iowa Code § 455B.133(2). The rules may include those that are necessary to obtain approval of the state implementation plan (SIP) under section 110 [42 U.S.C. § 7410] of the federal Clean Air Act. Id. Air pollution control rules are contained in 567 Iowa Admin. Code chapters 20 - 29, and 31 - 35.

15. A permit may be issued subject to conditions which shall be specified in writing including but not limited to emission limits, operating conditions, fuel specifications, compliance testing, continuous monitoring, and excess emission reporting. 567 Iowa Admin. Code 22.3(3).

16. If any order, permit or rule of the IDNR is being violated, the Attorney General shall, at the request of the IDNR director, institute a civil action in any district court for injunctive relief to prevent any further violation of the order, permit, or rule, or for the assessment of a civil penalty as determined by the court, not to exceed Ten Thousand Dollars (\$10,000.00) per day for each day such violation continues, or both such injunctive relief and civil penalty. Iowa Code § 455B.146.

Water Pollution Control Definitions

17. "Disposal system" means a "system for disposing of sewage, industrial waste, or other wastes" and includes "sewer systems, treatment works, point sources, dispersal systems, and any systems for the usage or disposal of sewer sludge." Iowa Code § 455B.171(5).

18. "Effluent standard" means "any restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, radiological, and other constituents which are discharged from point sources into any water of the state including an effluent limitation, a water quality related effluent limitation, a standard of performance for a new source, a toxic effluent standard, or other limitation." Iowa Code § 455B.171(6).

19. "Industrial waste" means "any liquid, gaseous, radioactive, or solid waste substance resulting from any process of industry, manufacturing, trade, or business or from the development of any natural resource." Iowa Code § 455B.171(9).

20. "Point source" means "any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit . . . from which pollutants are or may be discharged." Iowa Code § 455B.171(17).

21. "Pollutant" means "sewage, industrial waste, or other waste." Iowa Code § 455B.171(18).

22. "Treatment works" means "any plant, disposal field, lagoon, holding or flow-regulating basin, pumping station, or other works installed for the purpose of treating, stabilizing, or disposing of sewage, industrial waste, or other wastes." Iowa Code § 455B.171(35).

23. "Water of the state" means "any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof." Iowa Code § 455B.171(37).

24. "Water pollution" means the "contamination or alteration of the physical, chemical, biological, or radiological integrity of any water of the state by a source resulting in whole or in part from the activities of humans, which is harmful, detrimental, or injurious to public health, safety, or welfare, to domestic, commercial, industrial, agricultural, or recreational use or to livestock, wild animals, birds, fish, or other aquatic life." Iowa Code § 455B.171(38).

Water Pollution Control Regulations

25. The IDNR is the agency of the state responsible for the prevention, abatement, or control of water pollution. Iowa Code § 455B.172(1). The IDNR maintains jurisdiction over and regulates the direct discharge of pollutants to a water of the state. Iowa Code § 455B.172(5).

26. The IDNR director is authorized to issue permits for the discharge of any pollutant including conditions and schedules of compliance necessary to meet the requirements of *inter alia* the federal Water Pollution Control Act and all applicable state and federal water quality standards and effluent standards. Iowa Code §§ 455B.174(4)(a) and (b). Permits may be issued for any period of time not to exceed five (5) years. 567 Iowa Admin. Code 64.3(7).

27. The Iowa Environmental Protection Commission (EPC) has rulemaking authority relating to water quality, pretreatment and effluent standards; location, construction, operation, and maintenance of disposal systems; permits for the operation, installation, construction,

addition to, or modification of disposal systems, or for the discharge of any pollutant; and inspection, monitoring, record keeping, and reporting requirements for owners and operators of disposal systems. Iowa Code §§ 455B.173(2), (3) and (6). Implementing rules are contained in 567 IAC 60-69.

28. 567 IAC 64.3(1) prohibits operation of any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the IDNR.

29. Iowa Code section 455B.186(1) prohibits the dumping, depositing, or discharging of pollutants into any water of the state, except adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the IDNR.

30. Iowa Code section 455B.191(2) provides that a person who violates any provision of Iowa Code chapter 455B, Division III, Part 1 or any permit, rule, standard, or order issued thereunder shall be subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation.

31. The Attorney General is authorized, at the request of the IDNR director with approval of the EPC, to institute any legal proceedings, including an action for an injunction or temporary injunction, necessary to enforce the penalty provisions of Iowa Code chapter 455B, Division III, Part 1, or to obtain compliance with the provisions of said statutes or any rules promulgated or any provision of any permit issued thereunder. Iowa Code § 455B.191(5).

Facts

Lincolnway Energy's Ethanol Facility

32. Lincolnway owns and operates an ethanol production facility located at 59511 West Lincoln Highway, Nevada, Story County, Iowa.

33. Lincolnway's ethanol facility has a production capacity of 55 million gallons of denatured ethanol and 178,440 tons of distillers dried grains per year.

34. The ethanol facility includes numerous pieces of equipment which emit or have the potential to emit air pollutants. There are at least 45 permitted emission units with 24 emission points at the facility. The emission units emit a variety of air pollutants including but not limited to PM, PM₁₀, NO_x, sulfur dioxide (SO₂), volatile organic compounds (VOCs) and carbon monoxide (CO).

35. The ethanol facility also includes a wastewater treatment facility to treat industrial wastewater generated at the facility.

Emission Point S10 - Coal Fired Bubbling Fluid Bed Combustor

36. On February 4, 2005, the IIDNR issued Air Quality Construction Permit No. 05-A-097 to Lincolnway for the construction and installation of an emission unit known as the Coal Fired Bubbling Fluid Bed Combustor or Boiler. The unit was designated Emission Point S10. The permit was modified on March 10, 2006, in Air Quality Construction Permit No. 05-A-097-S1, which remains in effect.

37. Condition 10 of Air Quality Construction Permit No. 05-A-097-S1 established emission limitations for PM, PM₁₀, Opacity, SO₂, NO_x, VOCs, CO, lead (Pb), plus single hazardous air pollutant (HAP) and total HAP limitations.

38. Condition 12 of Air Quality Construction Permit No. 05-A-097-S1 established initial performance testing requirements and required Lincolnway to verify compliance with emission limitations no later than one hundred eighty (180) days after the initial startup date of the

emission unit. The startup date for EP S10 was May 24, 2006. Accordingly, Lincolnway was required to verify compliance by November 20, 2006. Lincolnway failed to do so.

39. The emission limitations for PM and for PM₁₀ are for both 9.82 lb/hr. Stack testing reported to IDNR by Lincolnway showed exceedance of these emission limitations as follows:

PM and PM ₁₀ Emissions EP S10			
Test Date	Pollutant	Permit Limit (lb/hr)	Test Result (lb/hr)
12/12/06	PM	9.82	108.47
12/12/06	PM ₁₀	9.82	108.47
6/13/07	PM	9.82	32.38
6/13/07	PM ₁₀	9.82	32.38
6/13/07	PM	9.82	49.12
6/13/07	PM ₁₀	9.82	49.12
12/19/07	PM	9.82	56.84
12/19/07	PM ₁₀	9.82	56.84
3/17/08	PM	9.82	47.98
3/17/08	PM ₁₀	9.82	47.98
3/17/08 ¹	PM	9.82	77.2
3/17/08 ¹	PM ₁₀	9.82	77.2
3/17/08 ²	PM	9.82	11.1
3/17/08 ²	PM ₁₀	9.82	11.1
3/17/08 ³	PM	9.82	15.46
3/17/08 ³	PM ₁₀	9.82	15.46
3/17/08 ⁴	PM	9.82	17.14
3/17/08 ⁴	PM ₁₀	9.82	17.14

3/20/08 ⁵	PM	9.82	16.01
3/20/08 ⁵	PM ₁₀	9.82	16.01
12/4/08 ⁶	PM	9.82	33.72
12/4/08 ⁶	PM ₁₀	9.82	33.72
12/6/08 ⁷	PM	9.82	17.26
12/6/08 ⁷	PM ₁₀	9.82	17.26

¹ Additive: coarse limestone

² Additive: coarse limestone and sodium bicarbonate

³ Additive: coarse limestone and calcium oxide

⁴ Additive: coarse limestone and calcium oxide

⁵ No additive but dryers not tested.

⁶ Additive: sodium bicarbonate

⁷ Additive: trona

40. The emission limitation for NO_x was 21.77 lb/hr. Stack testing by Lincolnway on December 12, 2006, showed NO_x emissions of 25.68 lb/hr. Lincolnway failed to verify compliance with the NO_x emission limitation until additional stack testing was performed on December 4, 2008.

41. Condition 12 of Air Quality Construction Permit No. 05-A-097-S1 required, in addition to initial performance testing, annual testing for at least five years for several pollutant parameters, including NO_x. Lincolnway failed to conduct annual testing for NO_x for calendar year 2007.

42. Condition 16 of Air Quality Construction Permit No. 05-A-097-S1 established continuous emission monitoring requirements for opacity, NO_x, SO₂, and CO. When downtime of the continuous emission monitor system (CEMS) exceeded 10%, Lincolnway was required to obtain actual emission data by an alternate testing or monitoring method approved by IDNR. Lincolnway failed to provide continuous emission monitoring and failed to provide actual

emission data by an approved alternate method for NO_x, SO₂, CO and/or opacity during the 4th quarter of 2006, 1st quarter of 2007, 2nd quarter of 2008, and 1st quarter of 2009.

43. On August 28, 2008, Lincolnway submitted to IDNR an application for modification of Air Quality Construction Permit No. 05-A-097-S1 to *inter alia* increase emission limitations for PM, PM₁₀ and NO_x. The application and subsequent requested information submitted by Lincolnway are under review.

Annual Stack Testing

44. Several of Lincolnway's air quality construction permits required, in addition to initial performance testing, annual stack testing. Lincolnway failed to conduct twenty-two (22) annual stack tests during calendar year 2007.

Wastewater Treatment

45. Lincolnway's wastewater treatment facility discharges its treated industrial wastewater into West Indian Creek pursuant to National Pollutant Discharge Elimination System (NPDES) Permit No. 85-62-1-00, issued on April 17, 2006.

46. West Indian Creek, tributary to Indian Creek, tributary to South Skunk River, are each a "water of the state" as defined in Iowa Code section 455B.171(37).

47. NPDES Permit No. 85-62-1-00 establishes monthly average and daily maximum concentration and mass effluent limitations for TSS, pH, TRC, and FE.

48. Lincolnway discharged industrial wastewater into West Indian Creek in excess of its effluent limitations for FE, TSS, and/or TRC during May, June, July, August, September, October, November, and December 2006; and January, February, March, April May, June, July and October of 2007.

49. Lincolnway has taken measures to correct its effluent discharge violations. On November 25, 2008, the IDNR again inspected the wastewater facility and monitoring reports and determined that Lincolnway was in compliance with wastewater requirements.

COUNT I

Air Pollution Violations

50. Lincolnway has failed to verify compliance with its emission limitations for PM and PM₁₀ in violation of Air Quality Construction Permit No. 05-A-097-S1 since November 20, 2006.

51. Lincolnway has failed to verify compliance with its emission limitations for NO_x in violation of Air Quality Construction Permit No. 05-A-097-S1 from November 20, 2006, until December 4, 2008.

52. Lincolnway emitted PM and PM₁₀ in excess of emission limitations in violation of Air Quality Construction Permit No. 05-A-097-S1.

53. Lincolnway emitted NO_x in excess of emission limitations in violation of Air Quality Construction Permit No. 05-A-097-S1.

54. Lincolnway failed to conduct annual stack tests during calendar year 2007, in violation of Air Quality Construction Permit Nos. 05-A-081-S1, 05-A-087-S1, 05-A-088-S1, and 05-A-097-S1.

55. Lincolnway failed to provide continuous emission monitoring and failed to provide actual emission data by an alternate method for NO_x, SO₂, CO, and opacity in violation of Air Quality Construction Permit No. 05-A-097-S1.

WHEREFORE, Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources requests that the Court:

a. assess a civil penalty against Defendant Lincolnway Energy, LLC, pursuant to Iowa Code section 455B.146 for each day of violation of Air Quality Construction Permit Nos. 05-A-081-S1, 05-A-087-S1, 05-A-088-S1, and 05-A-097-S1, not to exceed Ten Thousand Dollars (\$10,000.00) for each day of each such violation; and

b. permanently enjoin Defendant Lincolnway Energy, LLC, from further violations of Air Quality Construction Permit Nos. 05-A-081-S1, 05-A-087-S1, 05-A-088-S1, and 05-A-097-S1.

Plaintiff further requests that the Court tax the costs of this action to the defendant and provide such other relief as the Court may deem just and proper.

COUNT II

Water Pollution Violations

56. Lincolnway Energy, LLC, discharged industrial wastewater into West Indian Creek in excess of its effluent limitations for FE in violation of NPDES Permit No. 85-62-1-00.

57. Lincolnway Energy, LLC, discharged industrial wastewater into West Indian Creek in excess of its effluent limitations for TSS in violation of NPDES Permit No. 85-62-1-00.

58. Lincolnway Energy, LLC, discharged industrial wastewater into West Indian Creek in excess of its effluent limitations for TRC in violation of NPDES Permit No. 85-62-1-00.

WHEREFORE, Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources requests that the Court:

a. assess a civil penalty against Defendant Lincolnway Energy, LLC, pursuant to Iowa Code section 455B.191 for each day of violation of 567 Iowa Admin. Code 64.3(1) and NPDES Permit No. 85-62-1-00, not to exceed Five Thousand Dollars (\$5,000.00) for each day of each such violation; and

b. permanently enjoin Defendant Lincolnway Energy, LLC, from further violations of 567 Iowa Admin. Code 64.3(1) and NPDES Permit No. 85-62-1-00.

Plaintiff further requests that the Court tax the costs of this action to the defendant and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa



DAVID R. SHERIDAN, AT0007176
Assistant Attorney General
Environmental Law Division
Lucas Building, Ground Floor
321 E. 12th Street, Room 018
Des Moines, IA 50319
Phone: (515) 281-5351
Fax: (515) 242-6072
E-mail: dsherid@ag.state.ia.us
ATTORNEYS FOR PLAINTIFF