

IN THE DISTRICT COURT OF DODGE COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
JIM MACY, Director,)
NEBRASKA DEPARTMENT OF)
ENVIRONMENTAL QUALITY,)
)
Plaintiff,)
)
v.)
)
PREFERRED PUMP & EQUIPMENT, L.P.)
d/b/a Pulstar Manufacturing,)
)
Defendant.)

Case No. C118-305

COMPLAINT

2018 JUN 4 PM 1:48
FILED
DODGE COUNTY CLERK
LINDA K. REILSON
DISTRICT COURT CLERK

COMES NOW Jim Macy, Director of the Nebraska Department of Environmental Quality, who institutes this action through Douglas J. Peterson, Nebraska Attorney General, on behalf of the State of Nebraska, as Plaintiff, and alleges as follows:

PARTIES AND INTERESTS

1. Plaintiff Nebraska Department of Environmental Quality (“NDEQ”) is the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504 (Cum. Supp. 2016), to administer and enforce the Nebraska Environmental Protection Act (“NEPA”), Neb. Rev. Stat. § 81-1501 *et seq.* (Reissue 2014), and all rules, regulations, orders, and permits issued pursuant to NEPA.

2. Under NEPA, NDEQ is further charged with the duty to act as the state solid and hazardous waste pollution control agency for all purposes of the Resource Conservation and Recovery Act (“RCRA”), as amended, 42 U.S.C. § 6901 *et seq.* Neb. Rev. Stat. § 81-1504(4).

3. Defendant Preferred Pump & Equipment, L.P. (“PP&E”) is registered as a foreign limited partnership in Nebraska and based in Fort Worth, Texas. PP&E purchased Pulstar



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Manufacturing in 2010 and is currently doing business as Pulstar Manufacturing (“Pulstar”) in Dodge, Nebraska.

4. Pulstar manufactures pumping equipment, such as truck-mounted cranes, rigs, and pump hoists. In its manufacturing process, Pulstar engages in various on-site operations, including cutting, welding, machining, grinding, burnishing, assembly, testing, washing, cleaning, painting, and coating.

5. Pulstar is considered a “person” for purposes of NEPA. Neb. Rev. Stat. § 81-1502(10).

JURISDICTION AND VENUE

6. The District Court has subject matter jurisdiction pursuant to Neb. Rev. Stat. § 24-302 (Reissue 2016).

7. Venue is proper in Dodge County pursuant to Neb. Rev. Stat. § 25-403.01 (Reissue 2016).

LEGAL BACKGROUND

8. NEPA was enacted in 1971 to protect the water, land, and air of this State by, *inter alia*, making it unlawful “[t]o cause pollution of any air, waters, or land of the state or to place any wastes in a location where they are likely to cause pollution of the air, waters, or land of the state” *Id.* §§ 81-1501, 1506(1).

9. NEPA provides NDEQ with the power to act as the state and hazardous waste pollution control agency for all purposes of RCRA. Neb. Rev. Stat. § 81-1504(4). The main purpose of RCRA is to ensure proper management of hazardous wastes from the point of generation until final disposal. *See* 42 U.S.C. § 6902.

10. Pursuant to its authority in Neb. Rev. Stat. § 81-1505(13), the Nebraska Environmental Quality Council promulgated Title 128, *Nebraska Hazardous Waste Regulations*, to regulate hazardous waste management and disposal for purposes of RCRA.

11. Under Title 128, generators of solid waste are required to make hazardous waste determinations. 128 Neb. Rev. Stat. § 4-002. These hazardous waste determinations allow NDEQ to regulate the generation and disposal of hazardous waste, as well as help generators maintain compliance with Title 128 and RCRA.

FACTUAL BACKGROUND

12. Upon information and belief, Pulstar has been manufacturing pumping equipment since 1995 or 1996.

13. In 2005, Pulstar added the phosphatizing process to their operations and began discharging the wastewater through a PVC pipe to the ground surface on the east side of the facility.

14. On or about November 10, 2015, a consultant hired by Pulstar contacted NDEQ and requested technical assistance with a process wastewater disposal issue. The request involved discussion of disposal options for process wastewater generated from the cleaning and phosphatizing of metal parts prior to painting.

15. Pulstar was generating approximately 35 gallons per day of wastewater as part of its cleaning and phosphatizing of metal parts prior to painting. The amount of wastewater, however, would increase to approximately 50 gallons per day as a result of a planned expansion.

16. At the time the consultant contacted NDEQ, Pulstar was disposing of this wastewater onto the ground surface outside of the facility through an outfall pipe connected to

the floor drain in its parts wash bay. Laboratory analysis showed the wastewater had a pH of 1.49.

17. On or about November 23, 2015, NDEQ conducted an inspection of the facility.

18. During the inspection, Pulstar explained wastewater is generated during the cleaning and phosphatizing process where parts are rinsed with water, then sprayed with Alum-A-Bright, and then rinsed again. Alum-A-Bright is an acid mixture used for cleaning parts by removing oxidation and corrosion on aluminum surfaces. This wastewater was then discharged, untreated, from a PVC pipe that exits the floor drain inside the wash bay located in the manufacturing building to the ground on the east side of the facility.

19. The wastewater generated was hazardous due to the wastewater's low pH level.

20. NDEQ instructed Pulstar to immediately cease discharging the wastewater to the ground surface and make proper arrangements for disposal.

21. NDEQ also requested information on Pulstar's waste streams. NDEQ observed Pulstar also generates solid waste, including, but not limited to empty aerosol cans, blasting media, floor sweepings, paint booth filters, paint waste, sludge from the solvent recovery system, rags/wipes, used oil, and waste lamps.

22. Pulstar had not made hazardous waste determinations for these waste streams, as required by Title 128.

23. As a result of the inspection, on or about December 21, 2015, NDEQ issued a Notice of Violation ("NOV") to Pulstar, identifying two violations:

- A. Placing or causing to be placed any wastes in a location where they are likely to cause pollution of any air, waters, or land of the State.
- B. Failure to make a hazardous waste determination.

24. In the NOV, NDEQ demanded that Pulstar:
- A. Immediately cease discharging wastewater from the manufacturing building onto the ground.
 - B. Submit a plan for the area where wastewater was previously discharged, which includes soil samples and an evaluation of the impact of the disposed wastewater on the soil and groundwater.
 - C. Provide waste determinations and/or accurate estimates for all waste generated at the facility in order to determine the facility's generator status.

25. On or about November 23, 2015, the day of NDEQ's inspection, Pulstar ceased disposing of wastewater onto the ground and, instead, arranged for disposal offsite.

26. Pulstar also provided NDEQ with waste determinations for its waste streams at the facility, as well as made changes to its waste streams and discontinued some processes. As a result, Pulstar currently qualifies as a conditionally exempt small quantity generator.

27. Further, Pulstar took sampling of the soil and groundwater at the disposal site. The test results showed the contents of the soil exceeded the reporting limits for heavy metals, such as lead. Test results also showed the contents in the groundwater exceeded the maximum contaminant level ("MCL") for heavy metals, such as lead. As a result, Pulstar submitted a closure plan for remediation of these contaminants at the disposal site.

28. On or about November 22, 2017, NDEQ approved the closure plan and, thereby, allowed Pulstar to proceed with implementing the closure activities outlined in the approved closure plan.

29. Since November 22, 2017, Pulstar has been implementing the approved closure plan.

FIRST CAUSE OF ACTION

**POLLUTION OF WATERS AND LAND OF THE STATE PURSUANT TO
NEB. REV. STAT. § 81-1506(1)(a).**

30. Plaintiff hereby realleges and incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

31. Under NEPA, it is “unlawful for any person ... [t]o cause pollution of any air, waters, or land of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any air, waters, or land of the state” Neb. Rev. Stat. § 81-1506(1)(a).

32. “Wastes” are defined as “sewage, industrial waste, and all other liquid, gaseous, solid, radioactive, or other substances which may pollute or tend to pollute any air, land, or waters of the state” Neb. Rev. Stat. § 81-1502(14).

33. Since 2005, Pulstar has disposed of wastewater by using a PVC pipe that exits the floor drain inside the parts wash bay located in the manufacturing building and, then, discharging to the ground on the east side of the facility.

34. Both the soil and groundwater samples taken at the disposal site showed the presence of a number of heavy metals in amounts that exceeded the reporting limits.

35. Pulstar violated NEPA by disposing of wastewater generated through their processes through the pipe and onto the ground surface outside of their facility and, thus, causing pollution to the land and water of the State or placing or causing to be placed wastes in a location likely to cause pollution to the land and water of the State.

36. Pursuant to Neb. Rev. Stat. § 81-1508.02(2) (Reissue 2014), a civil penalty not to exceed ten thousand dollars (\$10,000.00) per day per violation is provided for violations of

NEPA, any rules or regulations adopted and promulgated pursuant to such Act, or any provision of Neb. Rev. Stat. § 81-1506.

SECOND CAUSE OF ACTION

FAILURE TO MAKE HAZARDOUS WASTE DETERMINATIONS IN VIOLATION OF 128 NEB. ADMIN. CODE § 4-002.

37. Plaintiff hereby realleges and incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

38. NEPA provides NDEQ with the power to “act as the state ... solid waste pollution control agency for all purposes of ... the [RCRA], as amended, 42 U.S.C. [§] 6901 et seq.” and to “develop comprehensive programs for the prevention, control, and abatement of new or existing pollution of the air, waters, and land of the state[.]” *Id.* §§ 81-1504(1), (4); *see also* Neb. Rev. Stat. § 81-1505.

39. 128 Neb. Admin. Code § 4-002 requires generators of solid waste to make hazardous waste determinations.

40. 128 Neb. Admin. Code § 2-003.01 defines “solid waste” as “discarded material that is not excluded by Section 008 of this Chapter or that is not excluded by variance” “Discarded material” means “any material which is ... [a]bandoned, by being ... [d]isposed of; or ... [b]urned or incinerated; or ... [a]ccumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated” 128 Neb. Admin. Code § 2-003.02.

41. Pulstar was generating solid waste at the time of the inspection, including empty aerosol cans, blasting media, floor sweepings, paint booth filters, paint waste, sludge from the solvent recovery system, rags/wipes, used oil, and waste lamps.

42. Pulstar, however, has never made any hazardous waste determinations for their solid waste streams.

43. Pulstar violated 128 Neb. Admin. Code §4-002 by failing to make hazardous waste determinations for the solid waste generated at the facility.

44. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), a civil penalty not to exceed ten thousand dollars (\$10,000.00) per day per violation is provided for violations of NEPA, as well as any rules or regulations adopted and promulgated pursuant to such Act.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests this Court to enter judgment on this Complaint in its favor and grant the following relief:

- A. Declare Pulstar violated the Nebraska Environmental Protection Act by causing pollution of the State's land and water or placing or causing to be placed wastes in a location likely to cause pollution to the State's land and water;
- B. Declare Pulstar violated Title 128 of the Nebraska Administrative Code – *Hazardous Waste Regulations* by failing to make hazardous waste determinations;
- C. Enter a civil penalty against Pulstar, as provided under Neb. Rev. Stat. § 81-1508.02(2);
- D. Tax all court costs herein to Pulstar; and
- E. Grant Plaintiff such additional and further relief as this Court deems just and proper.

DATED this 31st day of May 2018.

STATE OF NEBRASKA, ex rel.,
JIM MACY, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY, Plaintiff

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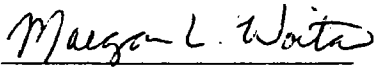
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Complaint has been served on the Defendant, by regular U.S. Mail, first class postage prepaid on this 31st day of May 2018, addressed to the Defendant as follows:

West Soward
Vice President
Preferred Pump & Equipment, L.P.
2201 Scott Avenue, Suite 100
Forth Worth, Texas 76103

Kevin Vering
Keith Vering
Pulstar Manufacturing
278 County Road 4
Dodge, Nebraska 68633


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