

IN THE DISTRICT COURT FOR DAKOTA COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
JIM MACY, Director)
NEBRASKA DEPARTMENT OF)
ENVIRONMENTAL QUALITY,)
)
Plaintiff,)
v.)
)
TYSON FRESH MEATS, INC.)
)
Defendant.)

Case No. CL 16-108

COMPLAINT

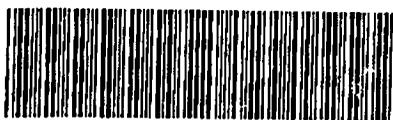
STATE OF NEBRASKA
DAKOTA COUNTY (SS)
FILED
APR 26 2016
CLERK OF DISTRICT COURT
DEPUTY
BY 

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

1. The Plaintiff, the Nebraska Department of Environmental Quality ("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 (1) (Reissue 2014) to administer and enforce the Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et seq.* (Reissue 2014), and all rules, regulations, orders, and permits issued pursuant to the Act.

2. The Defendant, Tyson Fresh Meats, Inc., is a foreign corporation, organized and existing under the laws of the State of Delaware and conducting business in Dakota County, Nebraska. At all times material herein, Defendant owned and operated a beef and hide processing facility and a wastewater treatment facility (collectively referred to as "Facility") in Dakota City, Dakota County, Nebraska.

a. The Facility's boilers are located at 1131 Dakota Avenue, Dakota City, NE 68731.



000047328D70



20160005748

b. The Facility's biogas system is located at 1674 "C" Avenue, Dakota City, NE 68731.

3. On or about September 24, 2010, the Defendant received Operating Permit Number OP08R1-023 ("Operating Permit") for its Facility. Condition II (I)(1) of the Operating Permit limits both SO₂ and NO_x emissions from the combustion of biogas to 40.0 tons per rolling twelve consecutive calendar month period. Such permit condition applies to the Facility's Boilers #1 through #5 and its biogas flare.

4. On or about May 6, 2015, the Defendant notified NDEQ that it had exceeded the emission limits for both SO₂ and NO_x. For the twelve month calculation period, SO₂ emissions totaled 40.21 tons, and NO_x emissions totaled 41.62 tons. On June 24, 2015 the Defendant notified NDEQ that it had exceeded the NO_x emissions limit. For the twelve month calculation period, NO_x emissions totaled 40.42 tons.

5. Neb. Rev. Stat. § 81-1506 (4)(b) (Reissue 2014) is in effect at all times material herein and states that it is unlawful for any person to "...violate any term or condition of an air pollution permit or any emission limit set in the permit."

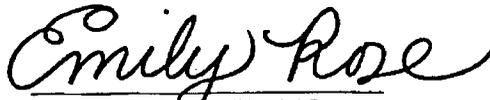
6. Pursuant to Neb. Rev. Stat. § 81-1508.02 (2) (Reissue 2014), a civil penalty not to exceed ten thousand dollars (\$10,000.00) per day per violation is provided in cases of violation of the Environmental Protection Act and any rules or regulations adopted and promulgated pursuant to such an Act.

WHEREFORE, the Plaintiff prays that judgment on its claim be entered herein against the Defendant in the form of a civil penalty as provided under Neb. Rev. Stat. § 81-1508.02 (2) (Reissue 2014) together with the costs of this action.

DATED this 22nd day of April, 2016

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

By DOUGLAS J. PETERSON, #18146
Attorney General

By: 

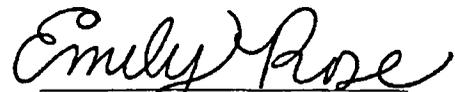
Emily K. Rose, #25145
Assistant Attorney General
2115 State Capitol Building
P.O. Box 98920
Lincoln, Nebraska 68509-8920
(402) 471-2683
emily.rose@nebraska.gov

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 United States mail, first class postage prepaid on this 22nd day of April, 2016, addressed to the Defendant's attorney of record as follows:

Timothy Jones
Tyson Fresh Meats, Inc.
2200 Don Tyson Parkway
Springdale, Arkansas 72762


Emily K. Rose
Assistant Attorney General