

IN THE DISTRICT COURT OF HALL COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel., )  
JIM MACY, Director, NEBRASKA ) Case No. \_\_\_\_\_  
DEPARTMENT OF ENVIRONMENT AND )  
ENERGY, )  
)  
Plaintiff, ) COMPLAINT  
)  
v. )  
)  
VONTZ PAVING, INC., )  
)  
Defendant. )  
)  
)

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

**PARTIES**

1. Plaintiff, the Nebraska Department of Environment and Energy (“NDEE”) is the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504 (1), to administer and enforce the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501-1532 (Reissue 2014; Cum. Supp. 2016), and all rules, regulations, orders, and permits created thereunder.

2. Defendant Vontz Paving, Inc. (“Vontz Paving”) is a Nebraska corporation with a principle place of business in Hastings, Nebraska. At all times material herein, Vontz Paving was operating a mobile asphalt plant near Alda, Nebraska, in Hall County.

**JURISDICTION AND VENUE**

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

4. Venue is proper in Hall County pursuant to Neb. Rev. Stat. § 25-403.01 (Reissue 2016) as the actions leading to the cause of action arose in Hall County.

### **FACTUAL ALLEGATIONS**

5. Vontz Paving operates a mobile asphalt plant under an NDEE permit, issued in 2003. Under this permit, the plant is allowed to move locations with prior notice to NDEE and was, in May and June 2016, located near Alda, Nebraska.

6. At that time, the plant was equipped with a 600 Kw turbocharged diesel engine, an asphalt cement storage tank, a fuel oil storage tank, a diesel fuel storage tank, and a diesel-fired hot oil heater, as well as a baghouse for emission control.

7. On May 21, 2016, an NDEE employee drove by the mobile asphalt plant and noticed a thick cloud being discharged from the stack. The employee was not able to see through the cloud and noted that it caused the valley to appear hazy.

8. On May 26, 2016, June 1, 2016, and June 2, 2016, another NDEE employee noted similar haze coming from the mobile asphalt plant. Although the employee did not stop to do a formal test, he was confident that all readings would have been well over the 20% opacity standard applicable to the mobile asphalt plant.

9. On June 2, 2016, an NDEE inspector conducted a complaint investigation at the mobile asphalt plant. He noted, “significant opacity coming from the stack” and “general haziness in the Platte valley created by the emissions.” He conducted an EPA Method 9 observation from approximately 2000 feet away. The average opacity during the first six minutes was 86.5% opacity, well above the 20% standard applicable to the mobile asphalt plant.

10. Under Nebraska Administrative Code Chapter 129, Section 20-004, “No person shall cause or allow emissions, from any source, which are of an opacity equal to or greater than twenty percent (20%), as evaluated by an EPA-approved method, or recorded by a continuous opacity monitoring system operated and maintained pursuant to 40 CFR Part 60 Appendix B except as provided for in section 005 of this chapter.

11. Pursuant to Neb. Rev. Stat. § 81-1508.02, a civil penalty is provided for violation of the Environmental Protection Act and rules and regulations adopted and promulgated pursuant to the Environmental Protection Act. Any person found liable shall be subject to a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) per day, with each continuing day of violation constituting a separate offense.

### **CAUSES OF ACTION**

#### **FIRST CAUSE OF ACTION – ALLOWING EMISSIONS IN EXCESS OF 20% OPACITY**

12. Paragraphs 1 through 11, above, are hereby incorporated by reference.

13. A permitted operator of a mobile asphalt plant is required to comply with all applicable statutes and regulations governing emissions from the facility.

14. Under 129 Neb. Admin. Code 20-004, the mobile asphalt plant was prohibited from allowing emissions with an opacity equal to or greater than 20%, as determined by an EPA-approved method or continuous opacity monitoring system.

15. On at least May 21, 2016, May 26, 2016, June 1, 2016, and June 2, 2016, Vontz Paving appeared to be allowing emissions with well over 20% opacity.

16. On June 2, 2016, an NDEE inspector verified, using an EPA Method 9 test, that emissions from the mobile asphalt plant were 86.5%, well over the 20% opacity limit and in violation of 129 Neb. Admin. Code 20-004.

**PRAYER FOR RELIEF**

A. Declare that Defendant Vontz Paving allowed emissions in excess of 20% opacity in violation of 129 Neb. Admin. Code 20-004.

B. Enter the statutory maximum civil penalty against Defendant, as provided in Neb. Rev. Stat. § 81-1508.02;

C. Tax all court costs herein to Defendant; and

D. Grant Plaintiff such additional and further relief as this Court deems just and proper.

DATED this 21st day of May, 2020.

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

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