

IN THE DISTRICT COURT OF DIXON COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
JIM MACY, Director,)
NEBRASKA DEPARTMENT OF)
ENVIRONMENTAL QUALITY,)
)
Plaintiff,)
)
v.)
)
NATURALLY RECYCLED PROTEINS,)
LLC)
)
Defendant.)

Case No. C1-17-03

COMPLAINT

STATE OF NEBRASKA
DIXON COUNTY
FILED
JAN 13 2017
Jackie King-Coughlin
CLERK OF DISTRICT COURT
K

COMES NOW Jim Macy, Director of the 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, the 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 (Reissue 2014), to administer and enforce the Nebraska 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. Defendant, Naturally Recycled Proteins, LLC (“NRP”) is a limited liability corporation authorized to do business in Nebraska. At all times material herein, NRP owned and operated a manufacturing facility located at 58555 Highway 35 East in Wakefield, Nebraska.

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 Dixon County pursuant to Neb. Rev. Stat. § 25-403.01 (Reissue 2016).

FACTUAL ALLEGATIONS

5. At all material times herein, NRP owned and operated a high protein pet food flavoring and manufacturing facility located at 58555 Highway 35 East in Wakefield, Nebraska (“the facility”).

6. When the facility was constructed, it had one dryer unit and one cooler unit.

7. On or about March 18, 2006, NRP installed a second dryer and cooler unit without first obtaining approval from NDEQ as required by Nebraska law.

8. On or about December 3, 2009, NRP installed a third dryer and cooler unit without first obtaining approval from NDEQ as required by Nebraska law.

9. On January 15, 2013, NRP submitted an application for a historical Construction Permit for the second and third dryer and cooler units. Prior to January 15, 2013, NDEQ had no knowledge of the existence of the second or third dryer and cooler units.

10. On September 11, 2013, NDEQ issued a Construction Permit for the March 18, 2006 and December 3, 2009 historical construction.

11. Regular operations of the facility emit pollution into the air of the State. The facility’s air pollution emissions include emissions of Particulate Matter (“PM”) consisting of PM smaller than or equal to 10 microns (“PM₁₀”) and PM smaller than or equal to 2.5 microns (“PM_{2.5}”).

12. The facility has the potential to emit PM₁₀ and PM_{2.5} in excess of 100 tons per year (“tpy”).

13. The facility became a major stationary source of air pollutants (“major source”) no later than December 3, 2009, with the installation of the third dryer and cooler unit, and thus was required to apply for an air quality operating permit (“Class I Operating Permit”).

14. On July 23, 2013, NDEQ issued a Notice of Violation to Defendant for failure to obtain a Construction Permit prior to constructing an air pollution source and for failure to submit a timely Class I Operating Permit application.

15. On July 26, 2013, NRP applied for a Class I Operating Permit for the facility.

FIRST CAUSE OF ACTION – FAILURE TO TIMELY OBTAIN

CONSTRUCTION PERMIT UNDER NEB. REV. STAT. § 81-1506(4)(a)

16. Plaintiff hereby incorporates by reference paragraphs 1 through 15.

17. Neb. Rev. Stat. § 81-1506(4)(a) (Reissue 2014) is in effect at all times material herein and states that “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 Nebraska Environmental Quality Council (“NEQC”).

18. 129 Neb. Admin. Code § 17-001 requires an entity to obtain an Air Quality Construction Permit (“Construction Permit”) prior to construction of certain air emission sources. Specifically, “ ... no person shall cause the construction, reconstruction or modification” of “[a]ny stationary source or emissions unit, such that there is a net increase in potential emissions at the stationary source equal to the following levels: Fifteen (15) tons/year of PM₁₀ emissions ... Ten (10) tons/year of PM_{2.5} emissions” without first having obtained a Construction Permit from NDEQ. 129 Neb. Admin. Code § 17-001.01.

19. On or about March 18, 2006, NRP constructed a second dryer and cooler unit at the facility. The construction of the second dryer and cooler unit increased potential emissions of PM₁₀ by at least fifteen 15 tpy and increased potential emissions of PM_{2.5} by at least ten 10 tpy. NRP did not have a Construction Permit from NDEQ from the time of this construction until September 11, 2013.

20. On or about December 3, 2009, NRP constructed a third dryer and cooler unit at the facility. The construction third dryer and cooler unit on or about December 3, 2009 increased potential emissions of PM₁₀ by at least 15 tpy and increased potential emissions of PM_{2.5} by at least 10 tpy. NRP did not have a Construction Permit from NDEQ from the time of this construction until September 11, 2013.

21. On January 15, 2013, NRP submitted a Construction Permit application to NDEQ for construction and operation of the two additional dryer and cooler units. On September 11, 2013, NDEQ issued the Construction Permit for the two additional dryer and cooler units.

22. The construction of the second dryer and cooler unit was in violation of Neb. Rev. Stat. § 81-1506(4)(a) and 129 Neb. Admin. Code § 17-001.01.

23. The construction of the third dryer and cooler unit was in violation of Neb. Rev. Stat. § 81-1506(4)(a) and 129 Neb. Admin. Code § 17-001.01.

24. 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 Nebraska Environmental Protection Act and any rules or regulations adopted and promulgated pursuant to such Acts.

SECOND CAUSE OF ACTION – FAILURE TO TIMELY OBTAIN

CLASS I OPERATING PERMIT UNDER 129 NEB. ADMIN. CODE § 5-001.01

25. Plaintiff hereby incorporates by reference paragraphs 1 through 24.

26. The facility is classified as a major stationary source of air pollutants (“major source”) based on its potential to emit 100 tpy or more of any air pollutant, including PM₁₀ and PM_{2.5}. 129 Neb. Admin. Code § 2-002.

27. Major sources are required to obtain a Class I Operating Permit. 129 Neb. Admin. Code § 5-001.01. *See also* 129 Neb. Admin. Code § 7-001.

28. “A source that becomes subject to the Class I operating permit program at any time ... shall file an application within 12 months of the date on which the source first becomes operational or otherwise subject to” Class I Operating Permit regulations. 129 Neb. Admin. Code § 7-002.02.

29. The facility became a Class I major source no later than December 3, 2009, when it installed the third dryer and cooler unit.

30. On July 26, 2013, NRP filed an application for Class I Operating Permit with NDEQ. The facility was in violation of 129 Neb. Admin. Code. § 5-001.01 from December 3, 2009 until July 26, 2013.

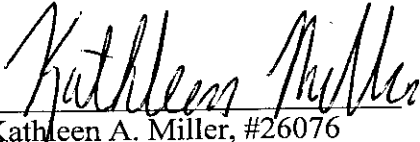
31. Pursuant to Neb. Rev. Stat. § 81-1508.02(2) (Reissue 2014), a civil penalty not to exceed ten thousand dollars (\$10,000.00) per day per violation is provided in cases of violation of the Environmental Protection Act and any rules or regulations adopted and promulgated pursuant to such Acts.

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

DATED this 12th day of January, 2017.

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

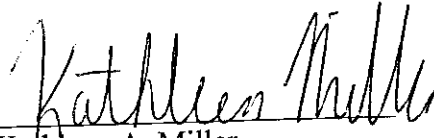
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I, Kathleen A. Miller, hereby certify that a copy of the foregoing Complaint has been served upon the Defendant, by regular United States mail, first class postage prepaid on this 12th day of January, 2017, addressed to the Defendant's attorney of record as follows:

Peter W. Katt
BAYLOR, EVNEN, CURTISS, GRIMIT & WITT, LLP
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Lincoln, Nebraska 68508


Kathleen A. Miller
Assistant Attorney General