

IN THE DISTRICT COURT FOR PIERCE COUNTY, NEBRASKA

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

Case No. CI 15-54

Plaintiff, )

**COMPLAINT**

v. )

OFFICE OF THE CLERK OF DISTRICT COURT  
**FILED**

CITY OF PLAINVIEW d/b/a )  
CITY OF PLAINVIEW POWER PLANT, )  
a Nebraska municipality, )

SEP 24 2015

Defendant. )

9:20A.M.  
VICKIE PRINCE  
Clerk of District Court, Pierce County, NE

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:

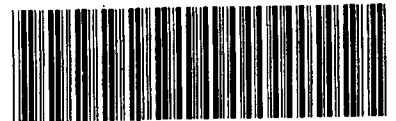
**FIRST CLAIM**

1. 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 is the City of Plainview, located in Pierce County, Nebraska and is a City of the second class governed by the statutory provisions found in Neb. Rev. Stat. §§ 17-101 to 17-153 (Reissue 2012).

3. The Defendant, at all times material herein, owned and operated the Plainview Municipal Power Plant ("Power Plant") in Pierce County, Nebraska, which at

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all times material herein, was subject to the terms of its Air Quality Class I Operating Permit # OP09R1-015 (“Permit”) that was issued to the Defendant on January 11, 2010 and expired on January 11, 2013.

4. Condition I. (E) of the Defendant’s Permit, which is in effect at all times material herein, states that “[a] renewal application shall be submitted to the NDEQ a minimum of six (6) months and a maximum of eighteen (18) months before permit expiration.”

5. Neb. Rev. Stat. § 81-1506 (4)(b) (Reissue 2014) is in effect at all times material herein, and provides that it shall be unlawful to “[v]iolate any term or condition of an air pollution permit...”

6. Neb. Rev. Stat. § 81-1506 (4)(a) (Reissue 2014) is in effect at all times material herein, and provides that it shall be unlawful to “[c]onstruct 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 council pursuant to subsection (12) of section 81-1505.”

7. The Defendant filed its renewal application on April 8, 2013 and NDEQ issued to the Defendant its current Air Quality Class I Operating Permit # OP13R1-019 on March 10, 2014.

8. The Defendant failed to file a renewal application for the Power Plant during the requisite time frame in violation of its Permit and Neb. Rev. Stat. §§ 81-1506 (4)(b) (Reissue 2014).

9. The Defendant operated its Power Plant without a current Class I

Operating Permit from January 12, 2013 to March 10, 2014 in violation of Neb. Rev. Stat. § (4)(a) (Reissue 2014).

10. 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.

### SECOND CLAIM

11. The Plaintiff hereby incorporates by reference the allegations contained in its First Claim.

12. Condition II. (B)(1) of Defendant's Permit is in effect at all times material herein, and states that "[t]he permittee shall submit a report of applicable monitoring and all instances of deviations from permit requirements for every six (6) calendar months to the NDEQ. The report for the first six (6) months (January through June) is due September 30 of each year. The report for the second six (6) months (July through December) is due March 31 of the following year."

13. Neb. Rev. Stat. § 81-1506 (4)(b) (Reissue 2014) is in effect at all times material herein, and provides that it shall be unlawful to "[v]iolate any term or condition of an air pollution permit..."

14. The Defendant did not timely submit to NDEQ its Semi-Annual Report of Monitoring and Deviations associated with the Power Plant for years 2011 through 2013 in violation of its Permit and Neb. Rev. Stat. § 81-1506 (4)(b) (Reissue 2014).

15. 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.

### **THIRD CLAIM**

16. The Plaintiff hereby incorporates by reference the allegations contained in its First and Second Claims.

17. Condition II. (B)(3) of Defendant's Permit is in effect at all times material herein, and states that "[t]he permittee shall submit completed emission inventory forms for the preceding calendar year to the NDEQ by March 31 of each year."

18. Neb. Rev. Stat. § 81-1506 (4)(b) (Reissue 2014) is in effect at all times material herein, and provides that it shall be unlawful to "[v]iolate any term or condition of an air pollution permit..."

19. The Defendant failed to timely submit its Air Emissions Inventory Forms associated with the Power Plant for years 2011 and 2012 in violation of its Permit and Neb. Rev. Stat. § 81-1506 (4)(b) (Reissue 2014).

20. 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.

### **FOURTH CLAIM**

21. The Plaintiff hereby incorporates by reference the allegations contained in its First through Third Claims.

22. Condition II. (B)(5) of the Defendant's Permit is in effect at all times material herein, and states that "[c]ertification of compliance with the terms and conditions of this permit, including emission limitations, standards, or work practices,

for the preceding calendar year, shall be submitted to the NDEQ and to USEPA Region VII's Air Compliance Coordinator by March 31 of each year.”

23. Neb. Rev. Stat. § 81-1506 (4)(b) (Reissue 2014) is in effect at all times material herein, and provides that it shall be unlawful to “[v]iolate any term or condition of an air pollution permit...”

24. The Defendant did not timely submit its Annual Certification of Compliance associated with the Power Plant for years 2011 through 2012 in violation of its Permit and Neb. Rev. Stat. § 81-1506 (4)(b) (Reissue 2014).

25. 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.

#### **FIFTH CLAIM**

26. The Plaintiff hereby incorporates by reference the allegations contained in its First through Fourth Claims.

27. Condition II. (A)(1) of Defendant’s Permit is in effect at all times material herein, and states that “[a]ll records required by this permit shall be kept on-site for a minimum of five (5) years and shall be clear and readily accessible to NDEQ representatives, unless otherwise specified in this permit.”

28. Neb. Rev. Stat. § 81-1506 (4)(b) (Reissue 2014) is in effect at all times material herein, and provides that it shall be unlawful to “[v]iolate any term or condition of an air pollution permit...”

29. An NDEQ Air Compliance Inspection was conducted on or about September 27, 2013. During such inspection, it was found that the Defendant had failed

to keep records on-site for a minimum of five (5) years in violation of its Permit and Neb. Rev. Stat. § 81-1506 (4)(b) (Reissue 2014).

30. 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.

#### **SIXTH CLAIM**

31. The Plaintiff hereby incorporates by reference the allegations contained in its First through Fifth Claims.

32. Condition II. (A)(2) of Defendant's Permit is in effect at all times material herein, and states that "[r]ecords documenting monthly calculations required by this permit shall be completed no later than the fifteenth (15th) day of each calendar month and shall include all information through the previous calendar month, unless otherwise specified in this permit."

33. Neb. Rev. Stat. § 81-1506 (4)(b) (Reissue 2014) is in effect at all times material herein, and provides that it shall be unlawful to "[v]iolate any term or condition of an air pollution permit..."

34. An NDEQ Air Compliance Inspection was conducted on or about September 27, 2013. During such inspection, it was found that the Defendant had failed to timely complete records documenting its monthly calculations in violation of its Permit and Neb. Rev. Stat. § 81-1506 (4)(b) (Reissue 2014).

35. 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.

### **SEVENTH CLAIM**

36. The Plaintiff hereby incorporates by reference the allegations contained in its First through Sixth Claims.

37. Condition III. (A)(4)(d)(ii) of Defendant's Permit is in effect at all times material herein, and states that each engine's fuel supply line shall be equipped with a flow meter for diesel fuel, and the "meters shall be calibrated at a minimum every twelve (12) consecutive calendar months."

38. Neb. Rev. Stat. § 81-1506 (4)(b) (Reissue 2014) is in effect at all times material herein, and provides that it shall be unlawful to "[v]iolate any term or condition of an air pollution permit..."

39. An NDEQ Air Compliance Inspection was conducted on or about September 27, 2013. During such inspection, it was found that the Defendant had failed to calibrate the Power Plant's fuel meters in 2012 in violation of its Permit and Neb. Rev. Stat. § 81-1506 (4)(b) (Reissue 2014).

40. 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.

### **EIGHTH CLAIM**

41. The Plaintiff hereby incorporates by reference the allegations contained in its First through Seventh Claims.

42. Records must be kept by the Defendant to demonstrate compliance with

Condition III. (A)(4)(a) of its Permit, which is in effect at all times material herein, and states that the operation of EU-1, EU-3, and EU-4 shall conform to the following: “(i) [d]uring any twelve (12) consecutive calendar months of operation, the maximum number of gallons of diesel fuel consumed by EU-1, EU-3, and EU-4 combined shall be less than 722,000 gallons. (ii) [d]uring any calendar month of operation, the maximum number of gallons of diesel fuel consumed by EU-1, EU-3, and EU-4 combined shall be less than 213,603 gallons.”

43. Neb. Rev. Stat. § 81-1506 (4)(b) (Reissue 2014) is in effect at all times material herein, and provides that it shall be unlawful to “[v]iolate any term or condition of an air pollution permit...”

44. An NDEQ Air Compliance Inspection was conducted on or about September 27, 2013. During such inspection, it was found that the Defendant had failed to keep fuel consumption records for each unit (and all units combined) including calendar month totals and a running total for the preceding twelve (12) consecutive months in violation of its Permit and Neb. Rev. Stat. § 81-1506 (4)(b) (Reissue 2014).

45. 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.

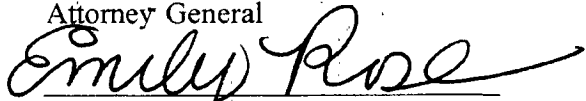
WHEREFORE, the Plaintiff prays that judgment on its claims be entered herein against the Defendant in the form of a civil penalty as provided under Neb. Rev. Stat. § 81-1508.02 (2) (Reissue 2014) together with the costs of this action.



Respectfully submitted this 22<sup>nd</sup> day of September, 2015

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

By: DOUGLAS J. PETERSON, #18146  
Attorney General

By: 

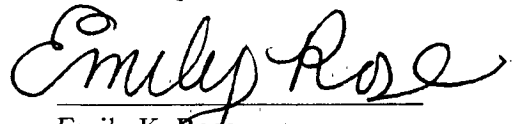
Emily K. Rose, # 25145  
Assistant Attorney General  
2115 State Capitol Building  
P.O. Box 98920  
Lincoln, Nebraska 68509-8920  
(402) 471-2683  
emily.rose@nebraska.gov

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 <sup>22<sup>nd</sup></sup> day of September, 2015, addressed to the Defendant's attorney as follows:

Bruce D. Curtiss  
Curtiss Law Office, P.C.  
317 W. Locust  
P.O. Box 697  
Plainview, NE 68769



Emily K. Rose  
*Assistant Attorney General*