

IN THE DISTRICT COURT OF NANCE COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
MICHAEL J. LINDER, Director,)
NEBRASKA DEPARTMENT OF)
ENVIRONMENTAL QUALITY,)

Case No. _____

Plaintiff,)

COMPLAINT

v.)

PREFERRED SANDS OF GENOA, LLC,)
a company authorized to conduct business)
in Nebraska,)

Defendant.)

COMES NOW Michael J. Linder, Director of the Department of Environmental Quality, who institutes this action through, Jon C. Bruning, Attorney General, on behalf of the State of Nebraska as Plaintiff and alleges as follows:

I. FIRST CAUSE OF ACTION

1. Plaintiff, the Nebraska Department of Environmental Quality (hereinafter "NDEQ"), is at all times material herein the agency of the State of Nebraska charged with the duty, pursuant to the Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et seq.* (Reissue 2008, Cum. Supp. 2010) and all rules, regulations, orders, and permits issued thereunder.

2. Defendant, Preferred Sands of Genoa, LLC, is a company authorized to do business in Nebraska. Defendant has constructed and owns a sand production and sand coating facility, in Nance County, Nebraska.

3. On March 24, 2011, Plaintiff issued a Class II air quality permit to Defendant which at all times material provided in part as follows:

"III. Specific Conditions

(B) Specific Conditions for Dryers (Emission Points EP1 and EP2)...

(4) Operations and Monitoring Requirements and Limitations: ...



(c) Operation of each wet scrubber shall be in accordance with the following requirements: ...

(ii) The wet scrubbers shall be properly designed, installed, operated, and maintained. The manufacturer's operation and maintenance manual, or its equivalent, detailing proper operation, inspection and maintenance of the scrubbers shall be kept on site and readily available to NDEQ representatives [Construction Permit CP08-035, Condition III. (B)(3)(c)].

(iii) The operating parameters of each wet scrubber shall be maintained at the levels recorded during the most recent valid test (Title 129, Chapter 8, Section 015). ...

(iv) The scrubbers shall be equipped with indicators of scrubbing liquid flowrate and other operating parameters, such as pressure differential, as appropriate. Operating parameters shall be recorded at least once each day that the scrubbers are in operation. The indicators shall be properly installed, operated, calibrated, and maintained. ...”

(5) Recordkeeping and Reporting Requirements...

(d) Notification and recordkeeping as required by §60.375 except that the permittee shall keep all records on-site for five years rather than two years. [Construction Permit CP08-035, Condition III.(B)(5)(d)]....

(f) Records of maintenance, calibration, and manufacturer's documentation (or equivalent) for all indicators of operating parameters, such as flow meters, pressure differential gauges, etc. (Title 129, Chapter 8, Section 015). ...”

4. On 57 days of 2011 subsequent to March 24th, Defendant failed to maintain the operating parameter of flow to the scrubber at the levels recorded during the most recent valid performance test of the scrubbers on October 28, 2009, in violation of paragraph III., (B), (4), (c), (iii) of the permit.

5. Pursuant to Neb. Rev. Stat. § 81-1508.02 (Reissue 2008) a civil penalty, not to exceed ten thousand dollars (\$10,000) per day is provided in cases of violation of regulations and permits.

II. SECOND CAUSE OF ACTION

6. Plaintiff hereby incorporates by reference each and every one of the foregoing paragraphs of this Complaint as though fully restated herein.

7. At all times material herein there has been in effect a regulation adopted by the Nebraska Environmental Quality Council namely Title 129, Chapter 18, New Source Performance Standards and Emission Limits for Existing Sources, providing in part as follows:

“001 Standards of Performance for New Stationary Sources. Notwithstanding any other provisions of these regulations, the following ‘Standards of Performance for New Stationary Sources’ published at 40 CFR Part 60, effective July 1, 2009, unless otherwise indicated are hereby adopted by references and incorporated herein:

8. At all times material herein 40 CFR Part 60, effective July 1, 2009, has provided as follows:

“Subpart UUU-Standards of Performance for Calciners and Dryers in Mineral Industries:

... 60.732 Standards for particulate matter.

... No emissions shall be discharged into the atmosphere from any affected facility that:

(a) Contains particulate matter in excess of 0.092 gram per dry standard cubic meters (g/dscm) [0.040 grain per dry standard cubic foot (gr/dscf) for calciners and dryers installed in series and in excess of 0.057 g/dscm (0.025 gr/dscf) for dryers; ...

...(d) The owner or operator of an affected facility subject to the provisions of this subpart who uses a wet scrubber to comply with the mass emission standard for any affected facility shall install, calibrate, maintain, and operate monitoring devices that continuously measure and record the pressure loss from the gas stream through the scrubber and the scrubbing liquid flowrate to the scrubber. The pressure loss monitoring device must be certified by the manufacturer to be accurate within 5 percent of water column gauge pressure at the level of operation. The liquid flowrate monitoring device must be certified by the manufacturer to be accurate within 5 percent of design scrubbing liquid flowrate...

§60.735 Recordkeeping and reporting requirements.

...(b) Each owner or operator who uses a wet scrubber to comply with §60.732 shall determine and record once each day, from the recordings of the monitoring devices in §60.734 (d), an arithmetic average over a 2-hour period of both the change in pressure of the gas stream across the scrubber and the flow rate of the scrubbing liquid.

(c) Each owner or operator shall submit written reports semiannually of exceedances of control device operating parameters required to be monitored by §60.374 of this subpart.

...For purposes of these reports, exceedances are defined as follows:

... (3) Each daily wet scrubber liquid flowrate recorded as described in §60.735(b) that is less than 80 percent or greater than 120 percent of the average value recorded according to §60.736(c) during the most recent performance test that demonstrated compliance with particulate matter standard. ...”

9. On 544 days in 2010 and 2011 Defendant used a wet scrubber to comply with §60.732 yet failed to determine and record the arithmetic average of the change in pressure of the gas stream across the scrubber and the flowrate of the scrubbing liquid as required by §60.735(b) and in violation Title 129, Chapter 18, which incorporates it by reference.

III. THIRD CAUSE OF ACTION

10. Plaintiff hereby incorporates by reference each and every one of the foregoing paragraphs of this Complaint as though fully restated herein.

11. On 57 days in 2011 Defendant had deviants from the control device operating parameter of scrubber liquid flowrate at less than 80% and more than 120% of the flowrate recorded in the most recent compliance test and required to be monitored by §60.734 of Subpart UUU, yet failed to make any semiannual report to NDEQ of such deviations as required by §60.375 (c) and in violation of Title 129, Chapter 18, which incorporates it by reference.

IV. FOURTH CAUSE OF ACTION

12. Plaintiff hereby incorporates by reference each and every one of the foregoing paragraphs of this Complaint as though fully restated herein.

13. On June 23, 2011, Defendant used a wet scrubber yet failed to have available for Plaintiff's inspector a manufacturer's operation and maintenance manual for the scrubber, and maintenance manuals and records of maintenance for the indicators of scrubber liquid flow and differential pressure in violation of the permit. On June 23, 2011, Defendant failed to have available

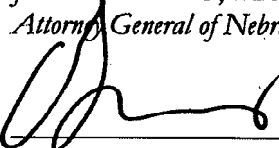
for Plaintiff's inspector in response to his request calibration records and maintenance records for the wet scrubber flow meter and pressure differential gauges in violation of the permit.

14. WHEREFORE Plaintiff prays that judgment on its claim be entered herein against Defendant in the form of a civil penalty as provided under § 81-1508.02 together with the costs of the action.

Respectfully submitted this 18th day of March, 2013.

STATE OF NEBRASKA, ex rel.,
MICHAEL J. LINDER, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY, Plaintiff

By: JON BRUNING, #20351
Attorney General of Nebraska

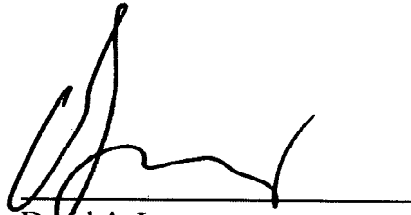
By: 
David A. Lopez, #24947
Assistant Attorney General
2115 State Capitol
Lincoln, Nebraska 68509-8920
(402) 471-3882
dave.lopez@nebraska.gov

Attorneys for Plaintiff.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Complaint has been served on Defendant by regular United States mail, first class postage prepaid on this 18th day of March, 2013, addressed to Defendant's attorney of record as follows.

Kelly R. Dahl, Esq.
Baird Holm LLP
1500 Woodmen Tower
1700 Farnam Street
Omaha, NE 68102-2068

A handwritten signature in black ink, appearing to read 'David A. Lopez', is written over a horizontal line.

David A. Lopez
Assistant Attorney General