

IN THE DISTRICT COURT OF PLATTE COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,	)	Case No. _____
MICHAEL J. LINDER, Director	)	
DEPARTMENT OF ENVIRONMENTAL	)	
QUALITY,	)	
	)	
Plaintiff,	)	<b>COMPLAINT</b>
v.	)	
	)	
BECTON, DICKINSON AND COMPANY,	)	
A Nebraska Authorized Corporation,	)	
a/k/a BD Medical Systems,	)	
	)	
Defendant.	)	

COMES NOW the Nebraska Department of Environmental Quality (hereinafter the "NDEQ" or "Plaintiff"), who institutes this action through Jon C. Bruning, Attorney General, and alleges and states as follows:

**I. FIRST CLAIM**

1. The Plaintiff is, at all times material herein, the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504 (Reissue 1999, Cum. Supp. 2006), to administer and enforce the Environmental Protection Act, Neb. Rev. Stat. §81-1501 *et seq.* (Reissue 1999, Cum. Supp. 2006) and all rules, regulations, permits, and orders promulgated thereunder.

2. Title 129 of the Nebraska Administrative Code, "Nebraska Air Quality Regulations" (hereinafter "Title 129") was promulgated pursuant to such acts, and at all times material herein, such regulations were in full force and effect.

3. The Defendant, Becton, Dickinson and Company a/k/a BD Medical Systems (hereinafter "Defendant" or "Becton Dickinson") is incorporated in the State of New Jersey.

4. Becton Dickinson is a Nebraska authorized corporation.

5. The Defendant owns and operates a pharmaceutical supply manufacturing facility in Columbus, Platte County, Nebraska (hereinafter "the facility").

6. As part of its operations, Becton Dickinson emits compounds which are hazardous air pollutants (hereinafter "HAPs.")

7. Beginning in 2005, Becton Dickinson began using the chemical isooctane at the facility.

8. Isooctane is also known as 2,2,4-trimethylpentane.

9. Isooctane, or 2,2,4-trimethylpentane, is defined by Title 129, Chapter 1, Section 062 and Title 129, Appendix II as a hazardous air pollutant.

10. Title 129, Chapter 5, provides:

001 Applicability and Scope. The following sources are required to obtain operating permits unless exempted under 002:

001.01 Class I (major source) permits shall be required to operate any of the following \* \* \*

001.02 Unless a Class I permit is required, Class II (minor source) permits shall be required to operate any of the following, unless covered under the provisions of Chapter 42:

001.02A Any source or emissions unit with actual emissions above the following \* \* \*

001.02A8. Five (5) tons/year or more of any hazardous air pollutant or an aggregate of twelve and one-half (12.5) tons/year or more of any hazardous air pollutants.

001.03 Any source or emissions unit required to obtain a Class I permit based on potential emissions may request that potential to emit be limited to below the major source threshold, as provided in Chapter 42 or in section 001.03A and 001.03B below \* \* \*

001.03B Any source or emissions unit with actual emissions below the levels specified in section 001.02A above shall be exempt from the duty to obtain an operating permit under the following conditions, known as the Low Emitter Rule, unless required to do so in sections 001.02B \* \* \*

001.03B2 The source has submitted a demonstration and maintains records on site, updated at least monthly, for at least five years that actual emissions for each regulated pollutant do not exceed the levels specified in section 001.02A above; \* \* \*

001.03B4 Additional information, such as an annual emissions inventory or information necessary to determine applicability or to determine that emissions from the source in conjunction with all other emissions will not prevent attainment or maintenance of the ambient air quality standards specified in Chapter 4, must be provided upon Department request.

11. Title 129, Chapter 2 provides:

001 Hazardous Air Pollutants. A major source of hazardous air pollutants is defined as:

001.01 \* \* \* any stationary source \* \* \* that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant listed in Appendix II, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator of EPA may establish by rule. \* \* \*

12. On or about August 14, 2003, the NDEQ determined, and informed Becton Dickinson, that Becton Dickinson qualified for "Low Emitter Status" under Title 129, Chapter 5, 001.03.

13. After August 14, 2003, Becton Dickinson was required to maintain HAP emissions below five (5) tons/year of any single HAP or an aggregate of twelve and one-half (12.5) tons/year of any HAP.

14. Becton Dickinson emitted 5.37 tons per year of isooctane for the calendar year 2005.

15. Becton Dickinson emitted 15.22 tons per year of isooctane for the calendar year 2006.

16. Under Title 129, Chapter 5, 001, emitting 5.37 tons per year of isooctane in 2005 placed Becton Dickinson in the category of sources required to obtain a Class II facility permit under Title 129, Chapter 5, 001.

17. Emitting 15.22 tons per year of isooctane in 2006 placed Becton Dickinson in the category of sources required to obtain a Class I facility permit under Title 129, Chapter 5, 001 and Title 129, Chapter 2, 001.

18. Neb. Rev. Stat. §81-1508.02(1)(b) provides that it is unlawful for any person "to violate . . . any permit or license condition or limitation, any order of the director, or any monitoring, reporting, or record-keeping requirements contained in or issued or entered into pursuant to the Environmental Protection Act. . . or the rules or regulations adopted and promulgated pursuant to such acts."

19. Neb. Rev. Stat. §81-1508.02(2) provides that any person who violates §81-15-1508.02(1) shall be subject to a civil penalty of no more than \$10,000 per day. In a case of a continuing violation, each day shall constitute a separate offense.

## II. SECOND CLAIM

20. The plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 19, as if fully set forth herein.

21. Title 129, Chapter 17, 001 provides:

001 Except as provided under section 014 of this chapter or Chapter 42 of the Title, no person shall cause the construction, reconstruction, or modification at any of the following without first having obtained a construction permit from the Department in the manner prescribed by this Chapter:

001.01 Any stationary source or emission unit, such that there is a net increase in potential emissions at the stationary source equal to or exceeding the following levels: \* \* \*

001.01G Two and one-half (2.5) tons/year of any hazardous air pollutant or an aggregate of ten (10) tons/year of any hazardous air pollutants, including all associated fugitive emissions (see Chapter 27, section 003).

22. During the calendar year 2005, Becton Dickinson emitted 5.37 tons of isooctane.

23. During the calendar year 2006, Becton Dickinson emitted 15.22 tons of isooctane.

24. The increase in isooctane emissions in 2006 over 2005 was more than 2.5 tons per year and triggered the requirement of Title 129, Chapter 17, 001 for Becton Dickinson to obtain a construction permit prior to the increase in emissions occurring.

25. Becton Dickinson did not apply for the construction permit until on or about March 12, 2007.

26. The construction permit was obtained on or about June 4, 2007.

### III. THIRD CLAIM

27. The plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 26, as if fully set forth herein.

28. Title 129, Chapter 7 provides

001 Duty to Apply. The owner or operator of any source required to obtain a Class I or Class II operating permit shall submit a timely and complete application in accordance with this chapter.

002 Timely Application.

\* \* \*

002.02 A source that becomes subject to the Class I operating permit program at any time following the effective date of these regulations shall file an application within 12 months of the date on which the source first becomes operational or otherwise subject to the Title V program.

29. The emissions of 15.22 tons per year of isooctane in 2006 triggered the requirement for Becton Dickinson to obtain a Class I operating permit.


30. Becton Dickinson had 12 (twelve) months to apply for its operating permit from January 1, 2006.

31. Becton Dickinson did not apply for its operating permit until after January 1, 2007.

WHEREFORE, Plaintiff prays that judgment be entered in favor of Plaintiff and against Defendant in the form of civil penalties as provided in Neb. Rev. Stat. §81-1508.02(2), that all costs of this action be taxed to Defendant and any other relief as the court deems just and proper.

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

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Complaint has been served upon Defendant by regular United States mail, first class postage prepaid on this \_\_\_ day of January, 2009, addressed to the Defendant's attorney of record as follows:

Stacia L. Palser  
Koley Jessen PC  
One Pacific Place, #800  
1125 South 103<sup>rd</sup> St  
Omaha, NE 68124

  
Katherine J. Spohn  
Assistant Attorney General