

IN THE DISTRICT COURT FOR ADAMS COUNTY, NEBRASKA

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

Plaintiff,

v.

AG PROCESSING INC a cooperative,  
a/k/a AGP SOY PROCESSING,

Defendant.

Case No. CI 13-605

COMPLAINT

CLERK OF DISTRICT COURT  
ADAMS COUNTY, NEBRASKA  
13 DEC 31 01:26

FILED

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

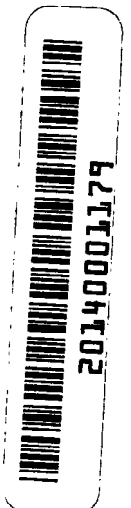
I. FIRST CAUSE OF ACTION

1. Plaintiff, the Nebraska Department of Environmental Quality, 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 2008) to administer and enforce the Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et seq.* (Reissue 2008) and all rules and regulations, orders, and permits created thereunder.

2. Defendant, Ag Processing Inc a cooperative, also known as AGP Soy Processing is a corporation authorized to do business in Nebraska. Defendant owns and operates a soy bean processing plant in Adams County, Nebraska. The soy bean processing plant has the potential to emit significant quantities of the regulated air pollutants particulate matter PM/PM 10 and sulfuric acid, H2SO4.



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3. On September 11, 2006, Defendant was issued an air quality construction permit. The permit was in effect at all times material herein and provided that the coal fire boiler had a maximum limit for emission of the air pollutant sulfuric acid, H<sub>2</sub>SO<sub>4</sub>, of 0.0039 lbs./MMBtu. The term "MMBtu" is a measure of heat energy and stands for million British thermal units.

4. From January 10, 2009, through July 20, 2010, Defendant emitted H<sub>2</sub>SO<sub>4</sub> from its coal fired boiler at a rate that exceeds 0.0039 lbs MMBtu/hour in violation of its air quality permit of September 11, 2006.

5. Neb. Rev. Stat. § 81-1506 (4) provides:

"(4) 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 council pursuant to subsection (12) of section 81-1505; (b) Violate any term or condition of an air pollution permit or any emission limit set in the permit; or (c) Violate any emission limit or air quality standard established by [the Nebraska Environmental Quality Council]..."

6. Pursuant to Neb. Rev. Stat. § 81-1508.02 a civil penalty is provided in instances of violation of permits issued by the Department of Environmental Quality is an amount not to exceed ten thousand dollars (\$10,000), with each continuing day constituting a separate offense.

## II. SECOND CAUSE OF ACTION

7. Plaintiff hereby incorporates by reference all preceding paragraphs as though set forth fully herein.

8. The permit of September 11, 2006, provided further that the coal fired boiler had a maximum limit emission of the air pollutant PM/PM<sub>10</sub> of 0.041 lbs./MMBtu. The term PM/PM<sub>10</sub> means particulate matter and precisely the combination of airborne finely divided solid or liquid material with aerodynamic diameter smaller than 100 micrometers and such material with aerodynamic diameter less than or equal to 10 micrometers.

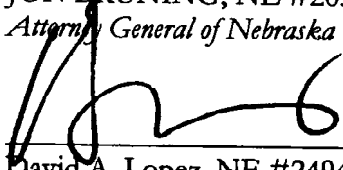
9. From January 10, 2009, through July 20, 2010, Defendant emitted PM/PM10 at a rate that exceeded 0.041 lbs./MMBtu/hour in violation of its air quality permit of September 11, 2006.

WHEREFORE, Plaintiff prays that the court enter judgment herein against the defendant in the form of a civil penalty as provided under Neb. Rev. Stat. § 81-1508.02 (Reissue 2008). Plaintiff further prays that all court costs herein be taxed to Defendant.

Dated December 27, 2013.

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

By: JON BRUNING, NE #20351  
*Attorney General of Nebraska*

By:   
David A. Lopez, NE #24947  
*Assistant Attorney General*

Katherine J. Spohn, NE #22979  
*Deputy Attorney General*

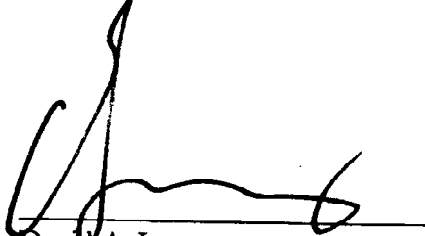
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Attorneys for Plaintiff.

**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 December 27, 2013, addressed to Defendant's attorney of record as follows.

David G. Wilwerding  
Senior Corporate Counsel  
Ag Processing, Inc.  
12700 West Dodge Road  
Omaha, NE 68154



David A. Lopez