

**IN THE DISTRICT COURT FOR DAWSON COUNTY, NEBRASKA**

STATE OF NEBRASKA, ex rel., )  
JIM MACY, Director DEPARTMENT )  
OF ENVIRONMENTAL QUALITY, )  
)  
Plaintiff, )  
v. )  
)  
GOTHENBURG FEED PRODUCTS )  
COMPANY, )  
)  
Defendant. )

Case No. CI 17-223

**COMPLAINT**

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 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, Gothenburg Feed Products Company, at all times material herein, is a domestic corporation authorized to do business in Nebraska. At all times material herein, Gothenburg Feed Products Company owned and operated an alfalfa dehydration plant located in Gothenburg, Dawson County, Nebraska.

3. Defendant is considered a “person” for purposes of the Nebraska Environmental Protection Act. Neb. Rev. Stat. § 81-1502(10) (Reissue 2014).



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STATE OF NEBRASKA  
DAWSON COUNTY  
JUL 24 2017  
FILED BY BECKY BORYCA  
CLERK OF DISTRICT COURT



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**JURISDICTION AND VENUE**

4. The District Court has subject matter jurisdiction pursuant to Neb. Rev. Stat. § 24-302 (Reissue 2016).

5. Venue is proper in Dawson County pursuant to Neb. Rev. Stat. § 25-403.01 (Reissue 2016).

**FACTUAL ALLEGATIONS**

6. At all material times herein, Defendant owned and operated an alfalfa dehydration plant located in Gothenburg, Dawson County, Nebraska (“the facility”).

7. On or about January 26, 2015, NDEQ received a complaint that excessive dust was being emitted from Defendant’s facility.

8. On January 26, 2015, NDEQ sent an inspector to Defendant’s facility. The inspector conducted an EPA approved Method 9 visual opacity test on the plume being emitted from the facility’s stack to determine the opacity levels of the facility.

9. The Method 9 test revealed a maximum reading of 50% opacity and a minimum reading of 20% opacity. The average reading for the six minute test was 34.37% opacity.

10. The opacity limit on an alfalfa dehydration facility is 30% at any time. Neb. Rev. Stat. § 81-1505; 129 Neb. Admin. Code § 20-004; 129 Neb. Admin. Code § 20-005.

11. On February 17, 2015, NDEQ issued a Notice of Violation to Defendant for exceeding the allowable opacity limits for an alfalfa dehydration facility.

**FIRST CAUSE OF ACTION - EXCEEDING OPACITY LEVEL LIMITS  
UNDER NEB. REV. STAT. § 81-1505**

12. Plaintiff hereby incorporates by reference paragraphs 1 through 11.

13. Neb. Rev. Stat. § 81-1508.02(1)(b) (Reissue 2014) is in effect at all times material herein and states that it is unlawful to violate any regulations promulgated under the Environmental Protection Act.

14. Pursuant to Neb. Rev. Stat. § 81-1505 (Reissue 2014), the Nebraska Environmental Quality Council adopted the *Nebraska Air Quality Regulations*, promulgated at Title 129 of the Nebraska Administrative Code, in effect at all times material herein.

15. Title 129, *Nebraska Air Quality Regulations*, Ch. 20, § 004 states:

No person shall cause or allow emissions, from any source, which are of an opacity equal to or greater than twenty percent (20%), as evaluated by an EPA-approved method...except as provided for in section 005 of this chapter.

16. Title 129, *Nebraska Air Quality Regulations*, Ch. 20, § 005 provides exceptions to 129 Neb. Admin. Code § 20-004 and states, in relevant part:

No person shall cause or allow emissions from any existing alfalfa dehydration plant dryer which are of an opacity equal to or greater than thirty percent (30%).

17. On or about January 26, 2015, Defendant caused or allowed emissions from its alfalfa dehydration plant dryer to exceed the thirty percent (30%) opacity standard as evaluated by an EPA approved Method 9 test.


18. 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 for violations of the Environmental Protection Act and any rules or regulations adopted and promulgated pursuant to such Act.

WHEREFORE, Plaintiff requests this Court to enter judgment on this Complaint against Defendant in the form of a civil penalty as provided under Neb. Rev. Stat. § 81-1508.02 together with the costs of this action.

DATED this 21st day of July, 2017.

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

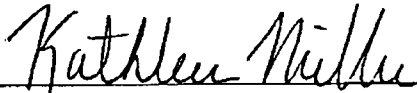
By: Douglas J. Peterson, #18146  
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*Attorneys for Plaintiff*

**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 21st day of July, 2017, addressed to the Defendant's attorney of record as follows:

Steve Windrum  
MALCOM, NELSEN & WINDRUM, LLC  
415 9<sup>th</sup> St., Box 327  
Gothenburg, NE 69138-0327

  
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Kathleen A. Miller  
*Assistant Attorney General*