

[Lawsuit filed Friday, March 28, 2008,
Grundy County District Court,
Court no. CVCV 058267]

IN THE IOWA DISTRICT COURT FOR GRUNDY COUNTY

STATE OF IOWA, ex rel., IOWA)
DEPARTMENT OF NATURAL)
RESOURCES (99AG23542),)

Plaintiff,)

vs.)

GARRETT CORPORATION, d/b/a)
DELTA INDUSTRIES, LTD., a/k/a)
DELTA SPORTS, an Iowa Corporation,)

Defendant.)

LAW NO. _____

PETITION AT LAW

COMES NOW Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources (IDNR) and for its claims against Defendant Garrett Corporation, d/b/a Delta Industries, Ltd., a/k/a Delta Sports (Garrett Corporation), states as follows:

Introduction

1. The IDNR seeks the assessment of civil penalties and injunctive relief against Garrett Corporation for air pollution control violations committed at or in relation to Garrett Corporation's manufacturing facility in Reinbeck, Grundy County, Iowa.

2. Garrett Corporation has failed to comply with operating limits on the use of paint, volatile organic compounds (VOCs), and hazardous air pollutants (HAPs); constructed and operated two paint booths without first obtaining construction permits; constructed another emission point contrary to the approved plans and specifications submitted in its construction permit application; and has failed to comply with recordkeeping requirements to document compliance with operating limits.

Parties

3. The State of Iowa is a sovereign state of the United States of America.

4. The IDNR is a duly constituted agency of the State of Iowa pursuant to Iowa Code section 455A.2.

5. Garrett Corporation, d/b/a Delta Industries, Ltd., a/k/a Delta Sports, is an Iowa corporation authorized to do business in the State of Iowa.

Jurisdiction

General Definitions

6. "Air contaminant" means "dust, fume, mist, smoke, other particulate matter, gas, vapor (except water vapor), odorous substance, radioactive substance, or any combination thereof." Iowa Code § 455B.131(1).

7. "Air contaminant source" means "any and all sources of emission of air contaminants whether privately or publicly owned or operated." Iowa Code § 455B.131(2).

8. "Air pollution" means "presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is or may reasonably tend to be injurious to human, plant, or animal life, or to property, or which unreasonably interferes with the enjoyment of life and property." Iowa Code § 455B.131(3).

9. "Emission" means "release of one or more air contaminants into the outside atmosphere." Iowa Code § 455B.131(6).

Air Pollution Control

10. The IDNR is the state agency with the duty to prevent, abate, or control air pollution. Iowa Code § 455B.132. The specific administrative and enforcement duties of the IDNR

director relating to air pollution control are contained, in part, in Iowa Code sections 455B.134(1)-(13).

11. The IDNR director is authorized to grant construction or operation permits for new, modified, or existing air contaminant sources and for related control equipment. Iowa Code § 455B.134(3).

12. No air contaminant source shall be installed, altered so that it significantly affects emissions, or placed in use unless a construction or conditional permit has been issued for the source. Iowa Code § 455B.134(3)(a); 567 Iowa Admin. Code 22.1(1).

13. The Iowa Environmental Protection Commission (EPC) is authorized to adopt rules for the abatement, control, and prevention of air pollution. Iowa Code § 455B.133(2). The rules may include those that are necessary to obtain approval of the state implementation plan (SIP) under section 110 [42 U.S.C. § 7410] of the federal Clean Air Act. Id. Air pollution control rules are contained in 567 Iowa Admin. Code chapters 20 - 29, and 31 - 34.

14. Construction permits may be issued subject to conditions including but not limited to emission limits, operating conditions, fuel specifications, compliance testing, continuous monitoring, and excess emission reporting. 567 Iowa Admin. Code 22.3(3).

15. If changes in the final plans and specifications are proposed by the permittee after a construction permit has been issued, a supplemental permit shall be obtained. 567 Iowa Admin. Code 22.3(3)"e".

16. If any order, permit or rule of the IDNR is being violated, the Attorney General shall, at the request of the IDNR director, institute a civil action in any district court for injunctive relief to prevent any further violation of the order, permit, or rule, or for the assessment of a civil

penalty as determined by the court, not to exceed Ten Thousand Dollars (\$10,000.00) per day for each day such violation continues, or both such injunctive relief and civil penalty. Iowa Code § 455B.146.

Facts

17. Garrett Corporation owns and operates a manufacturing facility located at 117 East Kenwood, Reinbeck, Grundy County, Iowa. Hunting and law enforcement targets are manufactured by injecting urethane resin into molds, and then painting the targets. The facility includes several sources of air pollutants including but not limited to paint booths.

18. On December 1, 1991, Garrett Corporation commenced construction of paint booth emission unit EU-3, with EP-3, without first obtaining air quality construction permits. Construction was completed on December 20, 1991, and the paint spray booth has been operated ever since.

19. On January 2, 1991, Garrett Corporation commenced construction of paint booth emission unit EU-2, with EP-2, without first obtaining air quality construction permits. Construction was completed on January 15, 1991, and the paint spray booth has been operated ever since.

20. On May 1, 1993, Garrett Corporation commenced construction of paint booth emission unit EU-1, with EP-1, without first obtaining air quality construction permits. Construction was completed on June 1, 1993, and the paint spray booth has been operated ever since.

21. On June 17, 1997, Garrett Corporation submitted after-the-fact construction permit applications for the three paint booths constructed in 1991 and 1993.

22. On November 16, 1999, the IDNR issued Air Quality Construction Permit Nos. 99-A-952, 99-A-953, and 99-A-954 to Garrett Construction for the construction of paint spray booths, emission units EU-1, EU-2 and EU-3, with emission points EP-1, EP-2, and EP-3, respectively.

23. On December 2, 1999, the IDNR issued a Notice of Violation to Garrett Corporation for its failure to obtain construction permits prior to installation of the three paint booths.

24. On June 27, 2000, the United States Environmental Protection Agency (EPA) conducted an inspection of the facility. Although records were subsequently provided, the EPA noted that Garrett Corporation had failed to maintain and make available records as required by Air Quality Construction Permit Nos. 99-A-952, 99-A-953, and 99-A-954, Condition 15. The EPA advised that failure to keep required records could result in enforcement including penalties.

25. On July 27, 2000, the IDNR conducted an inspection of the facility and observed that emission point stack extensions required by Air Quality Construction Permit Nos. 99-A-952, 99-A-953, and 99-A-954 had not been installed. Garrett Corporation responded that it intended to switch to water-based paints by September 1, 2000, which would cause the VOC and HAP emissions to drop significantly, which may impact these permit requirements. The IDNR advised Garrett Corporation that it should contact the Iowa Waste Reduction Center at the University of Northern Iowa concerning its current permits and their requirements.

26. On August 24, 2000, the IDNR sent a letter to Garrett Corporation concerning the recent inspection. The IDNR reminded Garrett Corporation of the need to obtain a construction

permit prior to installation, alteration or modification of equipment or control equipment which may emit air contaminants.

27. On August 31, 2004, the IDNR conducted an inspection of the facility and observed that Garrett Corporation had failed to keep written records of filter changes and maintenance. The IDNR also noted that the stack heights, noted in the July, 27, 2000 inspection, still did not comply with the heights required by the construction permits for the three paint spray booths. Garrett Corporation responded by advising that it did switch to water-based paints approximately one and half years before but that, due to problems with the paint, it switched back to VOC-based paints.

28. On September 2, 2004, the IDNR issued a Notice of Violation to Garrett Corporation because of its failure to keep required records of filter changes and maintenance on the three paint spray booths and its failure to construct the emission point stacks in accordance with the permits. The Notice also reminded Garrett Corporation of the need to obtain construction permits prior to installing, altering or modifying equipment or control equipment which may emit air contaminants.

29. On September 15, 2004, the IDNR granted Garrett Corporation's request for an extension of the deadline to comply with the stack height requirements for the three paint spray booths until December 15, 2004.

30. On December 9, 2004, and April 7, 2005, Garrett Corporation contacted the IDNR by telephone and requested further extensions on the deadline to comply with the stack height requirements of the three paint spray booths so as to allow time for submittal and processing of

permit amendments. The extensions were granted until April 15, and October 1, 2005, respectively.

31. On September 8, 2005, the IDNR issued Air Quality Construction Permit Nos. 99-A-952-S1, 99-A-953-S1, and 99-A-954-S1 to Garrett Corporation. The permits amended the original construction permits for the three paint spray booths, designated as emission units EU-1, EU-2, and EU-3, with emission points EP-1, EP-2, and EP-3, respectively. The amended permits modified certain operating limits and stack characteristics.

32. Condition 11 of Air Quality Construction Permit Nos. 99-A-952-S1 and 99-A-953-S1 required EP-1 and EP-2, respectively, to be constructed with a vertical unobstructed discharge style, i.e., with no cap over the emission point stack.

33. Condition 14(A) of Air Quality Construction Permit Nos. 99-A-952-S1 and 99-A-953-S1 provided that the maximum amount of paint material used shall be 3,500 gallons per twelve-month rolling period for emission units EU-1 and EU-2, combined.

34. Condition 15 of Air Quality Construction Permit Nos. 99-A-952-S1 and 99-A-953-S1 required EP-1 and EP-2, respectively, to comply with the following operating condition monitoring requirements:

- A. The owner or operator shall maintain a record of paint and solvent usage in emission units EU-1 and EU-2, and update the rolling twelve-month totals on a monthly basis.
- B. The owner or operator shall keep Material Safety Data Sheets (MSDS) of all materials used at the plant, which demonstrate the VOC and HAP content.
- C. The owner or operator shall keep records of filter inspection and maintenance.

35. Condition 14(B) of Air Quality Construction Permit No. 99-A-954-S1 required that the maximum VOC content of all paint materials used in emission unit EU-3 shall be 2.5 lb VOC/gallon.

36. Condition 14(C) of Air Quality Construction Permit No. 99-A-954-S1 required that the paint materials used in emission unit EU-3 shall not contain HAPs.

37. Condition 15 of Air Quality Construction Permit No. 99-A-954-S1 required that EP-3 comply with the following operating condition monitoring requirements:

- A. The owner or operator shall maintain a record of paint usage in emission unit EU-3, and update the rolling twelve-month totals on a monthly basis.
- B. The owner or operator shall keep Material Safety Data Sheets (MSDS) of all materials used at the plant, which demonstrate the VOC and HAP content.
- C. The owner or operator shall keep records of filter inspection and maintenance.

38. On November 6, 2006, the IDNR conducted an inspection of the Garrett Corporation facility. The IDNR determined that: 1) Garrett Corporation was not properly recording and maintaining records of paint and solvent usage in EU-1, EU-2, and EU-3, updating the rolling 12 month totals on a monthly basis, thereby preventing the IDNR from determining at that time whether the limits were being complied with; 2) EP-1 did not have a vertical unobstructed discharge, i.e., the emission point had rain cap, thereby reducing the dispersion of pollutants when emitted from the emission point; and 3) Garrett Corporation had constructed two new paint spray booths without first obtaining construction permits.

39. On November 14, 2006, the IDNR sent a Notice of Violation (NOV) to Garrett Corporation requiring a written response within seven days. The NOV directed Garrett Corporation to include in the response corrected records on paint and/or solvent usage, and documentation of VOC and HAP contents of paint and/or solvent used. The NOV also required Garrett Corporation to immediately proceed with obtaining construction permits for the paint spray booths, EP-4 and EP-5, or immediately discontinue use of the spray booths. Finally, the IDNR directed Garrett Corporation to bring EP-1 paint spray booth stack into compliance by providing a vertical unobstructed discharge.

40. On November 27, 2006, Garrett Corporation responded to the NOV by submitting to the IDNR corrected records on paint and/or solvent usage in EP-1, EP-2, and EP-3; and advising the IDNR that the rain cap on EP-1 would be removed by November 30, 2006, and that after-the-fact construction permit applications for paint spray booths EP-4 and EP-5 were being sent to the IDNR Air Quality Bureau.

41. Review by IDNR of the additional documents submitted by Garrett Corporation revealed additional violations. On December 5, 2006, the IDNR sent a Notice of Violation to Garrett Corporation advising Garrett Corporation that it had exceeded the operating limit of 3,500 gallons of paint material per twelve-month rolling period for EU-1 and EU-2; exceeded the operating limit imposing a maximum VOC content of 2.5 lbs/gallon for all paint materials at EU-3; and failed to comply with the operating limit that no paint materials used in EU-3 contain HAPs.

42. Garrett Corporation exceeded the operating limit of 3,500 gallons of paint material per twelve-month rolling period for EU-1 and EU-2 combined as follows:

Month	Limit	Total Paint Material Used in 12 Month Rolling Period (gallons) in EU-1 and EU-2
April 2006	3500	3640.60
May 2006	3500	3849.03
June 2006	3500	3990.36
July 2006	3500	4122.64
August 2006	3500	4145.49
September 2006	3500	3931.17
October 2006	3500	4167.72

43. Garrett Corporation exceeded the operating limit imposing a maximum VOC content of 2.5 lbs/gallon for all paint materials at EU-3. The following paint materials were used in excess of the maximum VOC content:

Paint Material	Limit (lbs/gal)	VOC Content (lbs/gal)
Yellow Beak Enamel	2.5	6.885
Turkey Purple Enamel	2.5	6.286
Cabela's Yellow Beak	2.5	5.607
MEK (methyl ethyl ketone)	2.5	6.64

44. Garrett Corporation failed to comply with the operating limit that no paint materials used in EU-3 contain HAPs. All of the paint materials used in EU-3 contained some amount of HAPs including xylene, ethylbenzene, toluene, and ethylene glycol.

45. On April 16, 2007, the IDNR issued Air Quality Construction Permit No. 06-A-1306 for paint spray booth emission unit EU-4 and emission point EP-4, and Air Quality Construction Permit No. 06-A-1307 for paint spray booth emission unit EU-5 and emission point EP-5 to Garrett Corporation.

46. On September 19, 2007, the IDNR issued amended permits, Air Quality Construction Permit No. 06-A-1306-S1 for emission unit EU-4 and emission point EP-4, and Air Quality Construction Permit No. 06-A-1307-S1 for emission unit EU-5 and emission point EP-5. These amended permits modified certain operating limits for EU-4 and EU-5 and remain in effect.

47. On April 16, 2007, the IDNR also issued Air Quality Construction Permit Nos. 99-A-952-S2, 99-A-953-S2, and 99-A-954-S2, for emission units EU-1, EU-2, and EU-3, with emission points EP-1, EP-2, and EP-3, respectively. These amended permits modified certain operating limits for EU-1, EU-2, and EU-3 and remain in effect.

48. On November 7, 2007, the IDNR conducted another inspection of the Garrett Corporation facility and determined that the facility was in compliance with its construction permit operating and monitoring requirements.

VIOLATIONS

Failure to Comply with Operating Limits

49. Garrett Corporation exceeded the operating limit on volume of paint materials used in EU-1 for the twelve-month rolling period ending on April 30, 2006, in violation of Air Quality Construction Permit No. 99-A-952-S1, Condition 14(A).

50. Garrett Corporation exceeded the operating limit on volume of paint materials used in EU-1 for the twelve-month rolling period ending on May 31, 2006, in violation of Air Quality Construction Permit No. 99-A-952-S1, Condition 14(A).

51. Garrett Corporation exceeded the operating limit on volume of paint materials used in EU-1 for the twelve-month rolling period ending on June 30, 2006, in violation of Air Quality Construction Permit No. 99-A-952-S1, Condition 14(A).

52. Garrett Corporation exceeded the operating limit on volume of paint materials used in EU-1 for the twelve-month rolling period ending on July 31, 2006, in violation of Air Quality Construction Permit No. 99-A-952-S1, Condition 14(A).

53. Garrett Corporation exceeded the operating limit on volume of paint materials used in EU-1 for the twelve-month rolling period ending on August 31, 2006, in violation of Air Quality Construction Permit No. 99-A-952-S1, Condition 14(A).

54. Garrett Corporation exceeded the operating limit on volume of paint materials used in EU-1 for the twelve-month rolling period ending on September 30, 2006, in violation of Air Quality Construction Permit No. 99-A-952-S1, Condition 14(A).

55. Garrett Corporation exceeded the operating limit on volume of paint materials used in EU-1 for the twelve-month rolling period ending on October 31, 2006, in violation of Air Quality Construction Permit No. 99-A-952-S1, Condition 14(A).

56. Garrett Corporation exceeded the operating limit on volume of paint materials used in EU-2 for the twelve-month rolling period ending on April 30, 2006, in violation of Air Quality Construction Permit No. 99-A-953-S1, Condition 14(A).

57. Garrett Corporation exceeded the operating limit on volume of paint materials used in EU-2 for the twelve-month rolling period ending on May 31, 2006, in violation of Air Quality Construction Permit No. 99-A-953-S1, Condition 14(A).

58. Garrett Corporation exceeded the operating limit on volume of paint materials used in EU-2 for the twelve-month rolling period ending on June 30, 2006, in violation of Air Quality Construction Permit No. 99-A-953-S1, Condition 14(A).

59. Garrett Corporation exceeded the operating limit on volume of paint materials used in EU-2 for the twelve-month rolling period ending on July 31, 2006, in violation of Air Quality Construction Permit No. 99-A-953-S1, Condition 14(A).

60. Garrett Corporation exceeded the operating limit on volume of paint materials used in EU-2 for the twelve-month rolling period ending on August 31, 2006, in violation of Air Quality Construction Permit No. 99-A-953-S1, Condition 14(A).

61. Garrett Corporation exceeded the operating limit on volume of paint materials used in EU-2 for the twelve-month rolling period ending on September 30, 2006, in violation of Air Quality Construction Permit No. 99-A-953-S1, Condition 14(A).

62. Garrett Corporation exceeded the operating limit on volume of paint materials used in EU-2 for the twelve-month rolling period ending on October 31, 2006, in violation of Air Quality Construction Permit No. 99-A-953-S1, Condition 14(A).

63. Garrett Corporation exceeded the operating limit on the maximum VOC content in paint materials used in EU-3 in violation of Air Quality Construction Permit No. 99-A-954-S1, Condition 14(B).

64. Garrett Corporation used paint materials containing HAPs in violation of Air Quality Construction Permit No. 99-A-954-S1, Condition 14(C).

Construction and Operation Without Permits

65. Garrett Corporation failed to obtain an air quality construction permit prior to construction of paint spray booths with EP-4 and operated such source without first obtaining a permit, in violation of Iowa Code section 455B.134(3)(a) and 567 Iowa Admin. Code 22.1(1).

66. Garrett Corporation failed to obtain an air quality construction permit prior to construction of paint spray booths with EP-5 and operated such source without first obtaining a permit, in violation of Iowa Code section 455B.134(3)(a) and 567 Iowa Admin. Code 22.1(1).

**Construction Contrary to Permits and
Operation without First Obtaining Permit Modifications**

67. Garrett Corporation failed to construct EP-1, according to the plans and specifications submitted to and approved by the IDNR, and operated such source without first obtaining a permit modification, in violation of Iowa Code section 455B.134(3)(a); 567 Iowa Admin. Code 22.1(1), and 22.3(3)"e"; and Air Quality Construction Permit No. 99-A-952-S1, Condition No. 11.

Failure to Keep and Maintain Records

68. Garrett Corporation failed to maintain a complete record of paint usage in emission unit EU-1, and update the rolling twelve-month totals on a monthly basis in violation of Air Quality Construction Permit No. 99-A-952-S1, Condition 15(A).

69. Garrett Corporation failed to maintain a complete record of paint usage in emission unit EU-2, and update the rolling twelve-month totals on a monthly basis in violation of Air Quality Construction Permit No. 99-A-953-S1, Condition 15(A).

70. Garrett Corporation failed to maintain a complete record of paint usage in emission unit EU-3, and update the rolling twelve-month totals on a monthly basis in violation of Air Quality Construction Permit No. 99-A-954-S1, Condition 15(A).

71. Garrett Corporation failed to maintain complete Material Safety Data Sheets (MSDS) of all materials used at the facility which demonstrate the VOC and HAP content in violation of Condition 15(B) of Air Quality Construction Permit Nos. 99-A-952-S1, 99-A-953-S1, and 99-A-954-S1.

Prayer for Relief

WHEREFORE Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources requests that the Court:

- a. assess a civil penalty against Defendant Garrett Corporation, d/b/a Delta Industries, Ltd, a/k/a Delta Sports, pursuant to Iowa Code section 455B.146 for each day of violation of Iowa Code section 455B.134(3)(a); 567 Iowa Admin. Code 22.1(1), 22.3(3)"e", and Air Quality Construction Permit Nos. 99-A-952-S1, 99-A-953-S1, and 99-A-954-S1, not to exceed Ten Thousand Dollars (\$10,000.00) for each day of each such violation; and
- b. permanently enjoin Defendant Garrett Corporation, d/b/a Delta Industries, Ltd, a/k/a Delta Sports, from further violations of Iowa Code section 455B.134(3)(a); 567 Iowa Admin. Code 22.1(1), 22.3(3)"e"; and Air Quality Construction Permit Nos. 99-A-952-S2, 99-A-953-S2, 99-A-954-S2, 06-A-1306-S1, and 06-A-1307-S1.

Plaintiff further requests that the Court tax the costs of this action to the defendant and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

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