

IN THE IOWA DISTRICT COURT FOR CLAYTON COUNTY

STATE OF IOWA ex rel. IOWA)	
DEPARTMENT OF NATURAL)	
RESOURCES,)	NO. _____
)	
Plaintiff,)	
)	
vs.)	PETITION IN EQUITY
)	
PRAIRIE FARMS DAIRY, INC. f/d/b/a)	
SWISS VALLEY FARMS)	
COOPERATIVE,)	
)	
Defendant.)	

COMES NOW Plaintiff State of Iowa ex rel. Iowa Department of Natural Resources (“DNR”) and for its claims against Defendant states as follows:

INTRODUCTION

1. Particulate matter (“PM”), also known as particle pollution, is a mixture of extremely small particles and liquid droplets that get into the air. Once inhaled, these particles can get deep into the lungs and cause serious health problems. People with heart or lung diseases, children, and older adults are the most likely to be affected by particle pollution exposure.

2. The State of Iowa seeks the assessment of civil penalties and the issuance of a permanent injunction against Prairie Farms Dairy, Inc. (“Prairie Farms”) for violations of Air Quality Construction Permit Nos. 80-A-123-S1 and 80-A-123-S2 by the removal of a baghouse¹ designed to control the emission of PM from its whey dryer without submitting a permit

¹ A baghouse is an air pollution control device that removes PM from the exhaust gas stream of industrial or electrical production processes by forcing air through large filter bags and collecting the PM on the surface of the bags – it functions much like a vacuum cleaner.

modification application to the DNR, and for operating the whey dryer in excess of general emission limits for PM.

PARTIES

3. The State of Iowa is a sovereign state of the United States of America and brings this action on behalf of the DNR, a duly constituted agency of the State of Iowa pursuant to Iowa Code section 455A.2.

4. Swiss Valley Farms Cooperative was an Iowa Cooperative Association with a Swiss cheese production plant in Luana, Clayton County, Iowa. On April 1, 2017, Swiss Valley merged with Defendant Prairie Farms and the combined company currently operates under the name of Prairie Farms Dairy, Inc.

JURISDICTION

5. The Court has jurisdiction of this matter pursuant to Iowa Code sections 455B.146.

AIR POLLUTION CONTROL REQUIRMENTS

6. The DNR is a state agency with the duty to prevent, abate, or control air pollution. Iowa Code § 455B.132. The specific administrative and enforcement duties of the DNR Director relating to air pollution control are contained, in part, in Iowa Code sections 455B.134(1)-(14).

7. The DNR 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).

8. 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). Air pollution control rules are contained in 567 Iowa Admin. Code chapters 20-29, 31, and 33-35.

9. No person shall construct, install, reconstruct, or alter any equipment or control equipment without first obtaining a construction permit or permits required pursuant to 567 Iowa Admin. Code 22.4. 567 Iowa Admin. Code 22.1(1).

10. A permit may be issued subject to conditions which shall be specified in writing 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).

11. The federal Clean Air Act requires the EPA to establish National Ambient Air Quality Standards (NAAQS). 42 U.S.C. § 7409(a)(1). Primary and secondary NAAQS are prescribed to protect the public health and welfare, respectively. 42 U.S.C. §§ 7409(b)(1) and (2); 40 C.F.R. § 50.2(b). Primary and secondary NAAQS have been adopted for several pollutants, including but not limited to particulate matter with an aerodynamic diameter less than or equal to 10 micrometers (PM₁₀), and particulate matter with an aerodynamic diameter less than or equal to 2.5 micrometers (PM_{2.5}). 40 C.F.R. §§ 50.4-50.7, 50.13, and 50.17.

12. For sources constructed, modified, or reconstructed prior to July 21, 1999, the emission of particulate matter from any process shall not exceed the amount determined from Table I (Allowable Rate of Emission Based on Process Weight Rate), or amount specified in a permit if based on an emission standard of 0.1 grain per standard cubic foot of exhaust gas, or established from standards provided in 567 Iowa Admin Code 23.1 and 23.4. 567 Iowa Admin. Code 23.3(2)"a"(2).

13. An incident of excess emission, other than startup, shutdown or cleaning of control equipment, is a violation. 567 Iowa Admin. Code 24.1(4).

14. If excess emissions are occurring, either the control equipment causing the excess emission shall be repaired in an expeditious manner or the process generating the emissions shall be shutdown within a reasonable period of time. An expeditious manner is the time necessary to

determine the cause of the excess emissions and to correct it within a reasonable period of time. A reasonable period of time is eight hours plus the period of time required to shut down the process without damaging the process equipment or control equipment. 567 Iowa Admin. Code 24.1(4).

15. The owner or operator of any equipment or control equipment shall maintain and operate the equipment or control equipment at all times in a manner consistent with good practice for minimizing emissions. 567 Iowa Admin. Code 24.2(1)“a”.

16. The owner or operator of any equipment or control equipment shall remedy any cause of excess emissions in an expeditious manner. 567 Iowa Admin. Code 24.2(1)“b”.

17. The owner or operator of any equipment or control equipment shall minimize the amount and duration of any excess emission to the maximum extent possible during periods of such emissions. 567 Iowa Code 24.2(1)“c”.

18. If any order, permit or rule of the IDNR is being violated, the Attorney General shall, at the request of the DNR 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

19. In 1967, Prairie Farms, operating under the name Mississippi Valley Milk Producers Association, acquired the Luana, Iowa Swiss cheese plant.

20. The plant included a whey dryer manufactured in 1962.

21. On May 2, 1980, the Luana, Iowa plant was inspected by the Iowa Department of Environmental Quality (the predecessor agency to the Iowa Department of Natural Resources),

and the DNR discovered the whey dryer and its associated control equipment had been modified without first obtaining the required air quality construction permit.

22. On July 30, 1980, the DNR issued an as-built construction permit (Permit No. 80-A-123) for the whey dryer that approved the already-installed cyclone separator air pollution control equipment for the whey dryer.

23. On September 18, 1980, the DNR received results from a June 10, 1980 stack test of the whey dryer showing the particulate emissions from the whey dryer were 23 pounds per hour, which was almost three times the allowable emission rate of 8.14 pounds per hour.

24. On March 16, 1981, as a result of the failed stack test, the DNR issued a supplemental construction permit (Permit No. 80-A-123-S1) for the addition of a baghouse to the whey dryer.

25. A stack test of the whey dryer with the newly-installed baghouse occurred on July 7, 1981, and the tested emission rate was 8.4 pounds per hour of particulate, which was below the allowable permitted rate of 8.6 pounds per hour of particulate.

26. In 1981, Mississippi Valley Milk Producers Association officially changed its name to Swiss Valley Farms.

27. On April 24, 2013, DNR Field Office 1 completed an inspection of the Luna plant and discovered that the baghouse on the whey dryer was removed without first seeking a construction permit from the DNR.

28. Based on information obtained during an investigation of the baghouse removal, it is believed the baghouse was removed sometime prior to 2004, and the whey dryer had been operated since then without pollution control equipment for particulate matter emissions.

29. A stack test of the whey dryer that was not observed by DNR personnel was conducted in May 2013, resulting in particulate emissions from the whey dryer of 19.22 pounds per hour.

30. On March 14, 2014, the DNR Air Quality Bureau issued a Letter of Non-Compliance for failure to modify the whey dryer construction permit prior to removing the baghouse and exceeding the permitted particulate matter general emission rate.

31. On November 30, 2015, DNR issued Air Quality Construction Permit No. 80-A-123-S2 for the whey dryer requiring the whey dryer stack fan be replaced with a larger fan, and that construction be completed by March 15, 2016.

32. Permit No. 80-A-123-S2 required stack testing of the whey dryer by May 25, 2016, in order to demonstrate compliance with PM, PM10, and PM2.5 emission limits.

33. A stack test was conducted August 29, 2016, demonstrating compliance with the PM, PM2.5, & PM10 limits as follows:

Source	Test Date	Pollutant	Result	Limit
Whey Dryer EP 4	August 29, 2016	PM	0.075 gr/dscf	0.1 gr/dscf
Whey Dryer EP 4	August 29, 2016	PM10	8.33 lb/hr	19.0 lb/hr
		PM2.5	2.79 lb/hr	3.5 lb/hr

34. On April 1, 2017, Swiss Valley Farms Cooperative merged with Defendant Prairie Farms and the combined company currently operates under the name of Prairie Farms Dairy, Inc.

VIOLATIONS

35. Prairie Farms failed to obtain a construction permit before removing the baghouse on the whey dryer in violation of 567 Iowa Admin. Code 22.1(1).

36. Since before 2004 to August 29, 2016, Prairie Farms emitted PM in excess of emission limitations in violation of Air Quality Construction Permit Nos. 80-A-123-S1 and 80-A-123-S2 and 567 Iowa Admin. Code 23.3(2)“a”(2) and 24.1(4).

37. Since before 2004 to August 29, 2016, Prairie Farms failed to verify compliance with its emission limits for PM in violation of Air Quality Construction Permit Nos. 80-A-123-S1 and 80-A-123-S2.

38. Since before August 29, 2016, Prairie Farms failed to verify compliance with its emission limits for PM_{2.5} in violation of Air Quality Construction Permit No. 80-A-123-S2.

39. Since before August 29, 2016, Prairie Farms failed to verify compliance with its emission limits for PM₁₀ in violation of Air Quality Construction Permit No. 80-A-123-S2.

40. Since on or before August 29, 2016, Prairie Farms failed to maintain and operate the whey dryer and associated control equipment to minimize emissions in violation of 567 Iowa Admin. Code 24.2(1)“a”.

41. Since on or before August 29, 2016, Prairie Farms failed to remedy the cause of excess emissions from the whey dryer in an expeditious manner in violation of Air Quality Construction Permit Nos. 80-A-123-S1 and 80-A-123-S2 and 567 Iowa Admin. Code 24.2(1)“b”.

42. Since on or before August 29, 2016, Prairie Farms failed to minimize the amount and duration of the excess emissions from the whey dryer to the maximum extent possible in violation of 567 Iowa Admin. Code 24.2(1)“c”.

43. Since on or before August 29, 2016, Prairie Farms failed to repair the control equipment for the whey dryer in an expeditious manner or shutdown the process within a reasonable period of time in violation of Air Quality Construction Permit Nos. 80-A-123-S1 and 80-A-123-S2 and 567 Iowa Admin. Code 24.1(4).

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

- a. assess a civil penalty against Defendant Prairie Farms Dairy, Inc. pursuant to Iowa Code section 455B.146 for each day of violation of Air Quality Construction Permit Nos. 80-A-123-S1 and 80-A-123-S2, and 567 Iowa Admin. Code 22.1(1),

23.3(2)“a”(2), 24.1(4), 24.2(1)“a”, 24.2(1)“b”, and 24.2(1)“c” not to exceed Ten Thousand Dollars (\$10,000.00) for each day of each such violation; and

- b. permanently enjoin Defendant Prairie Farms Dairy, Inc. from further violations of Air Quality Construction Permit Nos. 80-A-123-S1 and 80-A-123-S2, and 567 Iowa Admin. Code 22.1(1), 23.3(2)“a”(2), 24.1(4), 24.2(1)“a”, 24.2(1)“b”, and 24.2(1)“c”.

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,

THOMAS J. MILLER
Attorney General of Iowa

/s/ David S. Steward
DAVID S. STEWARD
Assistant Attorney General

/s/ Jacob J. Larson
JACOB J. LARSON
Assistant Attorney General
Environmental Law Division
Hoover State Office Building
1305 E. Walnut St., 2nd Floor
Des Moines, Iowa 50319
Phone: (515) 281-5164
E-mail: david.steward@iowa.gov
jacob.larson@iowa.gov

ATTORNEYS FOR PLAINTIFF