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SUPERIOR COURT OF NEW JERSEY, ESSEX COUNTY
CHANCERY DIVISION

Docket No. * _____-19

STATE OF NEW JERSEY,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

Plaintiff,

v.

DARLING INGREDIENTS INC.,

Defendant.

Civil Action

VERIFIED COMPLAINT

For a Preliminary Injunction
and In Support of Summary
Action Pursuant to R. 4:67-1
for Permanent Injunctive
Relief and Statutory Penalties

Plaintiff, State of New Jersey, Department of Environmental
Protection ("DEP" or "Department"), by way of Verified Complaint
against Darling Ingredients Inc. ("Darling") says:

NATURE OF THE ACTION

1. The Defendant, Darling, operates a plant that recycles
animal by-products and grease into materials like feed and
fuel ingredients. Newark residents have filed numerous odor

complaints regarding the facility, including "putrid" odors and "animal carcass odors," and DEP concluded that the odors result from Darling's operations. DEP also found these odors to interfere with affected residents' enjoyment of life and property. At the same time, Darling has not been in compliance with its operating permits since 2017, and the permits require the company to maintain emission control equipment.

2. Over the past year and a half, DEP and Essex Regional Health Commission officials on five separate occasions verified odor complaints by affected citizens. Complainants described a range of impacts on their daily life, including headaches, migraines, and nausea. Complainants described not being able to go outside or to open their window. Beyond those incidents, DEP received numerous other complaints on its Hotline. But despite the assessment of penalties for these complaints, Darling has also not ceased emitting air pollution.
3. Relatedly, recent inspections conducted by DEP in September show Darling failed to comply with the air permits for this rendering plant throughout the latter part of 2018 and much of 2019. Proper operation of the plant's emissions control, including "scrubbers" - air pollution control devices used to neutralize or remove gases and/or particulates from

industrial exhaust - is critical to effectively eliminate odors. But DEP found the scrubbers were not being properly operated and even found that leakage occurred. In total, DEP discovered 320 permit violations from September 1, 2018 to June 8, 2019, and found additional violations in inspections conducted since June.

4. The complaint seeks immediate and permanent relief. Among other things, the lawsuit seeks an order prohibiting Darling from emitting odors that unreasonably interfere with individuals' enjoyment of life and property, and an order requiring Darling to immediately take all actions necessary to eliminate odors from its operations. The complaint also seeks an order requiring Darling to retain an outside environmental consultant to prepare a report on how to eliminate the odors, and to provide DEP with monitoring reports on Darling's process in doing so. The lawsuit also seeks to require Darling to comply with the conditions of its permits, and to pay civil penalties under the Air Pollution Control Act ("APCA") for its past violations.

PARTIES

5. The Department is a principal department of the State of New Jersey. The Department administers programs to

conserve the natural resources of the State, to promote environmental protection, and to prevent pollution to the environment of the State. N.J.S.A. 13:1D-9. Pursuant to the APCA, the Department is authorized to develop and enforce rules and regulations to implement mandated air pollution control measures as required in the federal Clean Air Act. N.J.S.A. 26:2C-8.11. The Department brings this Action pursuant to its authority under the APCA and its implementing regulations, specifically N.J.S.A. 26:2C-19, N.J.A.C. 7:27-8.13, N.J.A.C. 7:27-8.3 and N.J.A.C. 7:27-5.2(a).

6. Darling is the owner and operator of an animal rendering and grease recycling facility located at 825 Wilson Ave., Block 5070, Lot 49, Newark, Essex County, New Jersey ("Facility").

JURISDICTION AND VENUE

7. The Superior Court has jurisdiction over suits by the Department for injunctive relief, penalties, and for other relief arising from violations of the APCA, N.J.S.A. 26:2C-19(a).
8. The court may proceed by summary action under Rule 4:52-1 (applications for preliminary injunctive relief), the Penalty Enforcement Law of 1999, N.J.S.A. 2A:58-11 (actions

to recover statutory penalties) and the APCA, N.J.S.A.

26:2C-19(a) (actions to enforce air pollution violations).

9. Venue is appropriate in Essex County because this action arises out of permit violations that occurred at the Facility located in Newark, New Jersey and verified odor complaints involving the Facility.

FACTUAL BACKGROUND

10. Darling operates an animal rendering processing plant in the Ironbound neighborhood of Newark, New Jersey.

Darling renders animal byproducts to produce fats and protein that are sold for use in animal feed, biodiesel production, and the chemical industry.

11. One venturi and three packed bed wet scrubber systems control the release of emissions and odors from the rendering process. The rendering process operates according to the operational parameters set forth in Air Pollution Control Permit PCP120003. See Michael Adhanom Cert. Ex. D.

12. Darling also recycles grease. For the grease house, emissions and odors are controlled by way of a venturi and a packed bed wet scrubber. The grease house operates under Air Pollution Control Permit PCP120002. See Adhanom Cert. Ex. B.

13. Darling uses two types of scrubbers to eliminate odors from its industrial operations - packed bed tower scrubbers and venturi scrubbers. Id. at ¶ 3.
14. A packed bed tower scrubber is a chamber that uses packing materials, such as spiral rings, to provide a large surface area for waste gas to be absorbed by a scrubbing liquid. Id. at ¶ 4.
15. The packed bed tower scrubbers for the rendering process are located outside on the east side of the rendering processing building. Each scrubber has a scrubber sniffer, which is a pipe that runs from the top of the scrubber down to the bottom that allows an inspector to smell the inside of the scrubber. See Theodore Pilas Cert. ¶¶ 15, 16. The packed bed scrubber for the grease house is located inside the grease house building and each venturi scrubber for the grease house and rendering process is located within the processing building. Id. at ¶ 15.
16. A venturi scrubber is a chamber in which the diameter increases and decreases to create turbulence in the throat of the chamber to improve waste gas contact with the scrubbing liquid to remove particulates and gases. See Adhanom Cert. at ¶ 5.
17. The Department incorporated operational parameter controls into both Permits (PCP120002 and PCP120003) that

Darling provided in its permit application. The Department relies on the applicant to set forth the operational control parameters for emissions equipment to be included in the APCA permit. See Adhanom Cert. Ex. A, C.

18. Paragraph one (1) in Section C of both PCP120002 and PCP120003 states that "notwithstanding compliance with other provisions of N.J.A.C. 7:27-1 et seq., no person shall cause, suffer, allow or permit to be emitted into the outdoor atmosphere substances in quantities which shall result in air pollution as defined at N.J.A.C. 7:27-5.1." See Adhanom Cert. Ex. B, D. Air pollution is "the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as are, or tend to be, injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or property throughout the State and in those areas of the State as shall be affected thereby, and excludes all aspects of an employer-employee relationship as to health and safety hazards." N.J.S.A. 26:2C-2. Air contaminant means "any substance, other than water of air, present in the atmosphere as solid particles, liquid particles, vapors, or gases." N.J.S.A. 26:2C-2.

19. Paragraph six (6) in Section C of both Permits states that "the permittee shall not use or cause to be used the

equipment or control apparatus unless all components connected or attached to, or serving, the equipment or control apparatus, are functioning properly and are in compliance with the preconstruction permit and certification and all conditions are provisions thereto." N.J.A.C. 7:27-8.3(e). Id.

20. Paragraph ten (10) of Section C of both Permits provides that "No person holding any preconstruction permit or certificate shall suffer, allow, or permit any air contaminant, including an air contaminant detectable by the sense of smell, to be present in the outdoor atmosphere in such quantity and duration which is, or tends to be, injurious to human health or welfare, animal or plant life or property, or would unreasonably interfere with the enjoyment of life or property. This shall not include an air contaminant which occurs only in areas over which the owner or operator has exclusive use or occupancy. In determining whether an odor unreasonably interferes with the enjoyment of life or property, the Department shall consider all of the relevant facts and circumstances, including, but not limited to, the character, severity, frequency, and duration of the odor, and the number of persons affected thereby. In considering these and other relevant facts and circumstances, no one factor shall be

dispositive, but each shall be considered relevant in determining whether an odor interferes with the enjoyment of life or property, and, if so, whether such interference is unreasonable considering all of the circumstances."

N.J.A.C. 7:27-8.3(j). Id.

21. Paragraph thirty (30) under Section C in both Permits indicates that "in accordance with the Air Pollution Control Act at N.J.S.A. 26:2C-19(e), any operation of the equipment which may cause off-property effect, including odors, shall be immediately reported by calling the NJDEP Environmental Action Hotline . . . " Id.

22. As stated in both Permits, effective odor control requires three steps: (1) process the raw material as fast as possible; (2) keep the facility under negative pressure; and (3) capture the odors at the source and effectively deliver them to the control equipment. Id.

Darling's Noncompliance with its APCA Permits

23. On July 20, 2017, August 31, 2017, October 23, 2017 and November 8, 2017 the Department conducted compliance inspections at the Facility as the result of odor complaints received by the Department. During these inspections, a Department inspector conducted an equipment and control systems check and reviewed operational reports

to determine compliance with Permit PCP120002 and Permit PCP120003. During each inspection, the Department discovered permit violations. See Todd Boyer Cert. Ex. B-E.

24. The violations consisted of Darling's failure to operate rendering processing scrubber three (3) within the flowrate range of ≥ 700 /gal/min as outlined in Permit PCP 120003. Flowrate is the rate of introduction of scrubbing liquid, such as sodium hypochlorite into the scrubber in gallons per minute (gal/min). See Adhanom Cert. ¶ 20.

25. Darling also allowed the pressure drop to measure outside the range of ≥ 2 and ≤ 4 inches of water column ("w.c.") as required in Permit PCP120003. Pressure drop is the reduction of pressure due to the resistance in the scrubber. Id. at ¶ 22.

26. Darling also exceeded the oxidation reduction potential ("ORP") limit of ≥ 200 and ≤ 500 millivolts ("mV") set out in Permit PCP120003 and PCP120002. All three rendering processing packed bed scrubbers exceeded the ORP range, along with the grease house packed bed scrubber. ORP indicates the degree to which a liquid is capable of oxidizing or reducing another substance. Id. at ¶ 21.

27. The Department issued Darling an Administrative Order and Notice of Civil Administrative Penalty Assessment ("AONOCAPA") for the violations cited in the July 20, 2017,

August 31, 2017, October 23, 2017 and November 8, 2017

inspections, which included a \$16,000 civil administrative penalty and required Darling to cease operation or comply with all conditions and operational parameters in both Permit PCP120002 and Permit PCP120003. See Todd Boyer Cert. Ex. F.

28. Darling submitted a hearing request to the Department pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 26:2C-14.1. That hearing request has not been granted or denied to date.

29. Following the AONOCAPA, the New Jersey Department of Environmental Protection Hotline ("NJDEP Hotline") continued to receive odor complaints that referenced fat rendering or "animal carcass odors" near the Facility. See Boyer Cert. ¶¶ 13, 16.

30. As a result of the continued odor complaints of fat rendering odors near the Facility, Department Inspector Todd Boyer conducted a site inspection to determine compliance with Permit PCP120002 and Permit PCP120003 on August 1, 2018. During the inspection, Mr. Boyer requested chart record data of the three rendering packed bed scrubbers and records for the grease house packed bed scrubber. The operational records for the rendering scrubbers showed that Darling failed to operate the

scrubbers in compliance with Permit PCP120003 by allowing the ORP to measure higher than the permitted allowable range between July 23, 2018 and August 4, 2018. Id. at ¶¶ 13, 14.

31. In April 2019, the public continued to submit odor complaints to the Department alleging Darling as the source of the odor. As a result, the Department requested operational records from Darling for the period from March 2019 through the beginning of May 2019. Id. at ¶¶ 16, 17.

32. Darling provided operational records from January 2019 to the beginning of May 2019. The Department reviewed the operational records and determined that Darling failed to operate the grease house in compliance with Permit PCP120002 and the rendering operation in compliance with Permit PCP120003. The Department identified 138 individual violations across the four packed bed scrubbers from the operating period of December 31, 2018 through June 8, 2019. Id. at ¶ 18.

33. As a result of the 138 violations, the Department later requested operational records from September 2018 through December 2018. Darling provided those records to the Department. The Department reviewed the records and identified 170 permit violations from August 26, 2018 through December 29, 2018. Id. at ¶ 19.

34. In total, the Department discovered 320 violations from September 1, 2018 to June 8, 2019. During this time, the ORP for the rendering process packed tower scrubber one (1) measured outside the permitted range ninety-three (93) times. The ORP for the rendering process packed tower scrubber two (2) measured outside the permitted range fifty-one (51) times. The ORP for the rendering process packed tower scrubber three (3) measured outside the permitted range one-hundred (100) times and the ORP for the grease house scrubber measured outside the permitted range sixty-four (64) times. During this time, there were no recordings of the ORP for rendering process packed tower scrubber two (2) and no recording for four (4) days for rendering process packed tower scrubber one (1) for ORP. Id. at Ex. I.

35. During the August 23, 2019 general inspection, the Department discovered additional permit violations for both the rendering process and the grease house. Darling failed to record the pressure drop for packed bed tower scrubber three (3) for the rendering process and the access panel for scrubber three (3) was also leaking liquid, which are both permit violations. The pressure drop for the venturi scrubber for the rendering process was outside the permitted range, which is an additional permit violation.

The access panel for the packed tower scrubber for the grease house was also leaking considerably, which is a permit violation. The pressure drop value for the venturi scrubber for the grease house was unreadable, which is a permit violation. Id. at ¶¶ 24-29.

36. The Department conducted an inspection on September 10, 2019 in which additional permit violations for the rendering process and grease house were observed. The venturi scrubber for the rendering process was operating outside the permitted range for pressure drop, along with the packed tower scrubber three (3) for the rendering process, which are both permit violations. A pump in the grease house was also not operating appropriately as water and grease were leaking from the pump in violation of Permit PCP120002, which is a permit violation. See Robin Jones Cert. ¶¶ 5-7.

Verified Odor Complaints Confirming Darling as the Source

A. July 24, 2018 Verified Odor Complaint

37. On July 24, 2018, the Department received a call from a citizen reporting an odor that made her nauseous in the area of 29 Cortland Street, Newark, with the source indicated as Darling. The Department referred the odor complaint to the Essex Regional Health Commission. See Anthony D'Agosto Cert. ¶ 17.

38. Essex Regional Health Commission Inspector Anthony D'Agosto received and responded to the odor complaint. Inspector D'Agosto arrived at 29 Cortland Street, Newark, and immediately detected the fat rendering odor at an intensity of two (2) in his car with the windows closed and the air conditioner on. 29 Cortland Street is approximately a mile north-west from Darling. The complainant indicated to Mr. D'Agosto that she felt nausea and had a headache from the fat rendering smell and was outside gardening when she had to go inside to escape the smell. The complainant indicated that she smells the fat rendering odor four times a week. The complainant and Mr. D'Agosto agreed that the odors they smelled were fat rendering odors at an odor intensity of two (2), which is a light odor that is distinguishable and definite. Inspector D'Agosto independently concurred that the fat rendering odor caused air pollution as defined by N.J.A.C. 7:27-5.1 and the odor caused an unreasonable interference with the complainant's life and enjoyment of property in violation of N.J.A.C. 7:27-5.2(a). The complainant completed a Statement of Complaint. Inspector D'Agosto then completed his survey of the traversing points upwind and downwind of the Facility detecting the same odor at several locations. Id. at ¶ 17, ¶¶ 19-22.

39. Inspector D'Agosto went to the Facility to investigate the fat rendering odor. At the time of his investigation, the scrubbers at the Facility were operating. Mr. D'Agosto informed the General Manager of Darling that he verified an odor complaint that consisted of a fat rendering odor that he traced to the Facility. Inspector D'Agosto identified the same fat rendering odor inside the Facility and issued Darling a Notice of Violation for emitting the fat rendering odor at intensity two (2) that resulted in air pollution and one (1) citizen complaint. Id. at ¶¶ 23-26.

40. Pursuant to the authority delegated by the Commissioner of DEP under the County Environmental Health Act, N.J.S.A. 26:3A2-21 et seq., to enforce provisions of the APCA, Essex Regional Health Commission later issued Darling a Notice of Penalty Assessment with a \$15,000 civil penalty and required Darling to immediately cease emitting air pollution. Darling has not paid the \$15,000 civil penalty. Id. at ¶¶ 27-28. Darling has also not ceased emitting air pollution.

B. March 13, 2019 Verified Odor Complaint

41. On March 13, 2019, the Department received an odor complaint from a complainant reporting a dead animal carcass odor in the air at 29 Cortland Street, Newark. The

Department referred the odor complaint to the Essex Regional Health Commission. Id. at ¶ 30.

42. Inspector D'Agosto responded to the March 13, 2019 odor referral. Mr. D'Agosto arrived at 8 Hawkins Street, Newark and detected the odor at intensity three (3). 8 Hawkins Street is approximately a mile north-west of Darling. Inspector D'Agosto then walked to 29 Cortland Street, Newark where the complainant was located and detected the same odor. The complainant indicated that she had to stop working outside because the odor was giving her a migraine headache that caused her to go inside. The complainant told Inspector D'Agosto that she smells the odor twice a week. Inspector D'Agosto and the complainant smelled the same dead animal carcass odor at the same time at an intensity of three (3), which is a moderate odor that is distinct and clearly distinguishable. Mr. D'Agosto indicated that the odor caused air pollution and that the dead animal carcass odor caused an unreasonable interference with complainant's life and enjoyment of property. The complainant completed a Statement of Complaint. Id. at ¶¶ 31-34.

43. Inspector D'Agosto completed a 360 degree survey of surrounding areas to identify the source of the odor, which he confirmed was the Darling Facility. Id. at ¶ 35.

44. Mr. D'Agosto conducted an inspection of the Facility and detected the same odor at an intensity of four (4) at Darling. Inspector D'Agosto immediately issued Darling a Notice of Violation for the confirmed odor violation. Essex Regional Health Commission later issued Darling a Notice of Penalty Assessment that included a \$15,000 civil penalty and required Darling to stop emitting air pollution. Id. at ¶¶ 36-40.

45. Darling has not paid the \$15,000 penalty from the March 13, 2019 Notice of Penalty Assessment. Id. at ¶ 40. Darling continues to emit air pollution.

C. July 11, 2019 Verified Odor Complaint

46. On July 11, 2019, DEP Inspector Hiram Oser verified an odor complaint from a citizen reporting an animal bone meal type odor that was negatively impacting the complainant's enjoyment of her property. Inspector Oser was conducting night time odor surveillance in Newark on July 11, 2019 when the odor complaint was called into the NJDEP Hotline from 35 Cortland Street, of a bone meal type odor. Upon arrival at the complainant's location, Inspector Oser detected the bone meal type odor at an intensity of three (3). The complainant indicated that she had to close her window and that she was nauseous because of the odor. Inspector Oser confirmed that the odor was unreasonably

interfering with the complainant's enjoyment of her property. Hiram Oser Cert. at ¶¶ 6-9.

47. The complainant completed a Statement of Complaint, which indicates that she has to keep the windows closed to reduce the odor and that she cannot breath the odor because it makes her sick. The complainant indicated that she smells this odor on a daily basis. Id. at ¶ 10.

48. Inspector Oser completed his upwind and downwind 360 degree trace around Darling, the suspected source of the odor. Inspector Oser identified the bone meal type odor at an intensity of three (3) and four (4) at several locations during his 360 degree trace. Id. at ¶ 11.

49. Inspector Oser conducted an investigation at Darling where he detected the same bone meal type odor at an intensity of four (4). The odor was particularly strong in the production building and near open doors. Inspector Oser checked the scrubber equipment and all scrubbers were operating within permit limits. Inspector Oser told Darling that he had confirmed that Darling was the source of the bone meal type odor that impacted complainant's enjoyment of her property. Id. at ¶ 13.

50. On August 13, 2019, Inspector Oser issued Darling a Notice of Violation for the July 11, 2019 verified odor complaint in which Darling permitted bone meal type odors

from the rendering process to be emitted from the Facility that resulted in air pollution. Id. at ¶ 17.

D. August 6, 2019 Verified Odor Complaint

51. Essex Regional Health Commission Inspector, Anthony D'Agosto verified an odor complaint from Darling on August 6, 2019. At approximately 5:15 PM, Inspector D'Agosto responded to an odor complaint called in to the NJDEP Hotline from 35 Cortland Street, Newark. D'Agosto Cert. at ¶¶ 42-43.

52. Inspector D'Agosto arrived at 35 Cortland Street, where he detected a fat rendering type odor at an intensity of two (2). He interviewed the complainant, who indicated she was taking out her garbage when she smelled the same odor, which made her sick to her stomach. During the interview, the complainant, covered her nose and mouth with her hand. She told Inspector D'Agosto that she cannot go for a walk at the nearby park or go shopping because of this odor. Inspector D'Agosto independently confirmed that the fat-rendering odor interfered with the complainant's enjoyment of her property. Id. at ¶¶ 43-45.

53. The complainant completed a Statement of Complaint and Inspector D'Agosto then conducted his upwind and downwind 360 degree trace around the suspected source, Darling. At several locations during the trace, Mr. D'Agosto identified

the same odor at an intensity of two (2) and three (3). Id.
at ¶ 46.

54. At approximately 6:00PM, Mr. D'Agosto arrived at Darling and detected the fat rendering odor at an intensity of three (3) at the guard house. He conducted an inspection of the Facility and discovered the odor at an intensity of three (3) in front of open doors downwind of the processing building and also detected the odor at an intensity of four (4) inside the processing building. Inspector D'Agosto heard the scrubbers operating and checked the scrubber sniffers, which allows Mr. D'Agosto to smell the inside of the scrubbers. The northern most scrubber smelled like bleach and the middle scrubber smelled like the fat rendering odor he detected at complainant's location. Id. at ¶¶ 47-48.

55. Inspector D'Agosto determined that Darling was the source of the odor that interfered with complainant's enjoyment of her property in violation of the New Jersey Air Pollution Code and issued a Notice of Violation. Id. at ¶ 49.

56. Essex Regional Health Commission later issued a Notice of Penalty Assessment for \$15,000 to Darling for the verified odor complaint on August 6, 2019. Darling has not paid the \$15,000 civil penalty. Id. at ¶ 51.

E. August 15, 2019 Verified Odor Complaint

57. On August 15, 2019, Essex Regional Health Commission Inspector, Theodore Pilas verified an odor complaint of an animal rendering odor with the source confirmed as Darling. At around 3:00 P.M., a complainant called in to the NJDEP Hotline reporting an animal rendering odor and identifying Darling as the source of the odor. Theodore Pilas Cert. at ¶ 5.

58. At approximately, 4:10 P.M., Inspector Pilas arrived at the complainant's address of 35 Cortland Street to interview the complainant. It was sunny, 80 degrees and a light breeze from the south/south-east. When Inspector Pilas arrived at 35 Cortland Street, which is approximately a mile from Darling, he immediately detected the animal rendering odor at intensity two (2). Id. at ¶¶ 6-7.

59. Inspector Pilas interviewed the complainant, who covered her mouth and nose while talking indicating that it is hard for her to breathe the odor. The complainant's husband came outside to also talk to Inspector Pilas and he smelled the odor as well. Both the complainant and her husband completed and signed Statements of Complaint, which Inspector Pilas also signed. Id. at ¶ 7. See also Pilas Ex. C & D.

60. Another odor complaint was also referred to Inspector Pilas on the same street regarding the same animal rendering odor. This location was further west of 35 Cortland and Inspector Pilas could not verify the animal rendering odor at this specific location. Id. at ¶ 10.
61. Inspector Pilas then completed his upwind and downwind trace of the suspected source, Darling. At various points during his 360 degree trace, Inspector Pilas detected the animal rendering odor at intensity one (1) and two (2). Id. at ¶ 11.
62. At around 5:20 P.M., Inspector Pilas arrived at Darling to conduct an inspection. While inside the processing building, Inspector Pilas detected the animal rendering odor between intensity four (4) and five (5). Inspector Pilas walked to the control room and wrote down the numbers from the monitors for each scrubber for the rendering process as follows: oxidation reduction potential ("ORP") for scrubber one (1) 340; ORP for scrubber two (2) 351; and ORP for scrubber three (3) 329. Id. at ¶¶ 12, 14.
63. Inspector Pilas walked to the three packed bed scrubbers outside on the east side of the processing building where he detected the animal rendering odor from complainant's property at intensity two (2). He walked to check the scrubber sniffer for scrubber one (1) and

detected faint odors. Around all three of the scrubbers was an intermittent animal rendering odor. Id. at ¶¶ 15, 16.

64. When Mr. Pilas walked upwind of the scrubbers, he would not detect any odors. Inspector Pilas determined that the packed bed scrubbers for the rendering process were the source of the odor at complainant's location and Mr. Pilas confirmed the verified odor complaint. Id. at ¶ 17.

65. Inspector Pilas issued Darling a Notice of Violation on the spot for emitting odors resulting in air pollution in violation of N.J.A.C. 7:27-5.2(a). Mr. Matthew Appleby of Darling signed the Notice of Violation. Id. at ¶ 19.

66. Following the inspection and NOV, Inspector Pilas sent Darling a Notice of Penalty Assessment that includes a \$15,000 civil penalty, which has not been paid. Id. at ¶ 20.

67. On September 12, 2019, Darling requested a settlement conference with the Essex Regional Health Commission regarding the four notice of penalty assessments sent by the Essex Regional Health Commission for the verified odor complaints. To date, Darling and the Essex Regional Health Commission have not held a settlement conference. D'Agosto Cert. at ¶ 52.

COUNT ONE
TO ENFORCE VIOLATIONS OF THE APCA FOR RELEASING
ODORS THAT UNREASONABLY INTERFERE WITH THE ENJOYMENT
OF LIFE OR PROPERTY

68. Plaintiff incorporates the foregoing paragraphs as if restated here in full.

69. Pursuant to N.J.A.C. 7:27-5.1, air pollution is defined as the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as are, or tend to be, injurious to human health or welfare, animal or plant life or property, or would unreasonably interfere with the enjoyment of life or property throughout the State and in such territories of the State as shall be affected thereby and excludes all aspects of employer-employee relationship as to health and safety hazards. Pursuant to N.J.S.A. 26:2C-2, air contaminant is defined as any substance, other than water or distillates of air, present in the atmosphere as solid particles, liquid particles, vapors, or gases.

70. Pursuant to N.J.A.C. 7:27-5.2(a), no person shall cause, suffer, allow or permit to be emitted into the outdoor atmosphere substances in such quantities which shall result in air pollution. Air pollution is the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as are, or

tend to be, injurious to human health or welfare, animal or plant life or property, or would unreasonably interfere with the enjoyment of life and property throughout the State, and in such territories of the State as shall be affected thereby and excludes all aspects of employer-employee relationship as to health and safety standards.

71. Pursuant to N.J.A.C. 7:27-8.3(j), a permittee shall not permit any air contaminant detectable by smell that is injurious to human health or welfare and unreasonably interferes with the enjoyment of life or property. The Department shall determine if an odor unreasonably interferes with the enjoyment of life or property by analyzing the facts and circumstances of each situation that shall include character, severity, frequency, and duration of the odor.

72. N.J.A.C. 26:2C-19(e) requires a person who releases air contaminants that may threaten public health, welfare, or the environment or that may lead to citizen complaints to immediately notify the Department.

73. Pursuant to the County Environmental Health Act ("CEHA"), N.J.S.A. 26:3A2-21 et seq., and as authorized by the Department, the Essex Regional Health Commission may verify odor complaints and issue notice of violations and

notice of penalty assessments for violations of the APCA and its rules.

74. Pursuant to N.J.S.A. 26:2C-19(g), the Department and Essex Regional Health Commission may conduct investigations to determine whether an odor complaint interferes with the enjoyment of life or property. The Department and County Inspectors shall use the Department's Air Pollution Investigation Guidelines as codified at 28 N.J.R. 198(a) for investigating odor violations.

75. Investigator Anthony D'Agosto of the Essex Regional Health Commission issued Defendant a Notice of Violation and later a Notice of Penalty Assessment for the July 24, 2018 verified odor complaint, finding that Defendant allowed or caused to be emitted putrid type odors resulting in air pollution as defined in N.J.A.C. 7:27-5.1. The Notice of Penalty Violation included a \$15,000 civil penalty and required Defendant to immediately cease emitting substances in quantities that result in air pollution.

76. Investigator Anthony D'Agosto issued Defendant a Notice of Violation and later a Notice of Penalty Assessment for the March 13, 2019 verified odor complaint, finding that Defendant allowed or caused to be emitted putrid type odors resulting in air pollution as defined in

N.J.A.C. 7:27-5.1. The Notice of Penalty Assessment included a \$15,000 civil penalty and required Defendant to immediately cease emitting substances in quantities that result in air pollution.

77. On July 11, 2019, Department Inspector Hiram Oser verified a citizen odor complaint affidavit at Darling of a bone meal type odor that resulted in air pollution as defined in N.J.A.C. 7:27-5.1. On August 13, 2019, Inspector Oser issued Darling a Notice of Violation for this verified odor complaint.

78. Investigator Anthony D'Agosto issued Defendant a Notice of Violation and later a Notice of Penalty Assessment for the August 6, 2019 verified odor complaint, finding that Defendant allowed or caused to be emitted putrid type odors resulting in air pollution as defined in N.J.A.C. 7:27-5.1. The Notice of Penalty Assessment included a \$15,000 civil penalty and required Defendant to immediately cease emitting substances in quantities that result in air pollution.

79. On August 15, 2019, Inspector Pilas verified an odor complaint of an animal rendering odor and confirmed Darling as the source of the odor. Inspector Pilas issued Darling a Notice of Violation for emitting odor resulting in air

pollution and later a Notice of Penalty Assessment for the August 15, 2019 verified odor complaint.

80. Under N.J.S.A. 26:2C-19(a) and N.J.S.A. 26:2C-19(d), Plaintiff is entitled to injunctive and non-injunctive relief for violations of the APCA.

WHEREFORE, the Department seeks an order:

a. For a preliminary injunction prohibiting Darling from emitting air pollution in the form of odors that unreasonably interfere with the enjoyment of life and property;

b. Requiring Darling to:

i. Immediately take actions necessary to eliminate odors from facility operations, including, at a minimum, implementing the following best management practices:

- All storage of dead animals or renderable raw material shall be inside the rendering facility and maintained under negative air pressure at all times during storage. Finished product shall be stored inside the rendering facility;
- The dead animal or renderable raw material receiving area shall be totally enclosed and maintained under negative air pressure and all

exterior doors must be closed except as necessary to enter or exit the receiving area;

- The rendering process must be totally enclosed and maintained under negative air pressure at all times, as required by PCP 120003, Ref. #11, U33, rendering process area. The air evacuation rate shall be such that there are a minimum of thirty (30) exchanges of building air per hour for all buildings required to be under negative air pressure while the rendering process is in operation, and for two (2) hours after the rendering process has ceased to operate;
- The rendering facility shall not operate unless the odor control system is operating and in full use and good working order;
- The odor control system shall operate in such a manner that unreasonably offensive or noxious odors are not detectable beyond the property line of the rendering facility;
- Openings and all doors to the rendering facility shall remain closed at all times, except during actual entry or exit of trucks and/or personnel, and air curtains will be used and the needed make-up air will be obtained from louvers/door

openings/air curtains designed to maintain a constant negative pressure in the building. All doors shall be equipped with closers that will ensure positive door closure;

- All delivery trucks, trailers, and any attendant containers used to carry renderable raw materials or dead animals shall be covered or carried within a covered truck or trailer and all dump doors, covers and valves shall be maintained to prevent any water, blood or other material from leaking or escaping in any manner during the transport and/or delivery of raw material;

- ii. Immediately hire an outside environmental consultant with expertise in the rendering business to evaluate facility operations and odor controls and prepare a report and "Odor Control Plan" for the Facility that shall be submitted to the Department for approval within thirty (30) days, which addresses how Darling will cease emitting odors from the Facility. Darling shall provide the name of the consultant to the court and the Department within seven (7) days and the report and Odor Control Plan shall be submitted to the court and the Department within thirty (30) days;

- c. Requiring Darling to submit monitoring reports on the first day of each month indicating how Darling is complying with its Department approved Odor Control Plan until all phases of the Odor Control Plan are implemented; and
- d. Granting such other relief as the Court deems just and proper.

COUNT TWO

**TO ENFORCE VIOLATIONS OF THE APCA CITED IN THE
DECEMBER 21, 2017 AONOCAPA FOR FAILURE TO COMPLY
WITH THE REQUIREMENTS IN THE FACILITY'S AIR
POLLUTION CONTROL PERMITS**

- 81. Plaintiff incorporates the foregoing paragraphs as if restated here in full.
- 82. Pursuant to N.J.A.C. 7:27-8.3(e), no person shall use or cause to be used any equipment or control apparatus unless all components connected or attached to, or serving the equipment or control apparatus, are functioning and are in use in accordance with the preconstruction permit and certification and all conditions and provisions thereto.
- 83. Pursuant to N.J.A.C. 7:27-8.13(a), the Department may establish conditions of approval for any preconstruction permit or certificate application.
- 84. Pursuant to N.J.A.C. 7:27-8.13(d)(2)(ii), the permittee shall install, operate, and maintain instruments

and sensing devices to measure operating parameters relevant to determination of potential for air contaminant emissions, such as flow rate and pressure drop.

85. On July 20, 2017, August 31, 2017, October 23, 2017 and November 8, 2017, the Department conducted inspections at the Facility and determined that Darling failed to comply with Permit PCP120002 and Permit PCP120003. On December 21, 2017, the Department issued Darling an AONOCAPA for the permit violations, which assesses a \$16,000 civil administrative penalty against Darling and requires Darling to implement compliance measures.

86. Under N.J.S.A. 26:2C-19(a) and N.J.S.A. 26:2C-19(d), the Department is entitled to injunctive and non-injunctive relief for violations of the APCA.

WHEREFORE, the Department seeks enforcement of its permits, including an order requiring defendant:

- a. To operate all equipment and conduct all operations in accordance with Permit PCP120002 and Permit PCP120003;
- b. To submit weekly monitoring reports to the Department for all scrubbers to determine compliance with Permit PCP120002 and Permit PCP120003 until Darling's Odor Control Plan has been approved by the Department and fully implemented;

c. Imposing civil penalties in accordance with N.J.S.A.

26:2C-19(d) for each day of violation, as determined

by the court; and

d. Granting such other relief as the Court deems just and proper.

COUNT THREE

TO ENFORCE ADDITIONAL VIOLATIONS OF THE APCA FOR OPERATING IN VIOLATION OF THE FACILITY'S AIR POLLUTION CONTROL PERMITS

87. Plaintiff incorporates the foregoing paragraphs as if restated here in full.

88. Pursuant to N.J.A.C. 7:27-8.3(e), no person shall use or cause to be used any equipment or control apparatus unless all components connected or attached to, or serving the equipment or control apparatus, are functioning and are in use in accordance with the preconstruction permit and certification and all conditions and provisions thereto.

89. Pursuant to N.J.A.C. 7:27-8.13(a), the Department may establish conditions of approval for any preconstruction permit or certificate application.

90. Pursuant to N.J.A.C. 7:27-8.13(d)(2)(ii), the permittee shall install, operate, and maintain instruments and sensing devices to measure operating parameters relevant to determination of potential for air contaminant emissions, such as flow rate and pressure drop.

91. During an inspection on August 1, 2018 Department Inspector Todd Boyer reviewed operational records for the Rendering Process scrubbers and determined that Defendant was out of compliance with Permit PCP120003 by allowing the oxidation reduction potential for the scrubbers to measure higher than the permit limit.
92. As a result of ongoing odor complaints to the NJDEP Hotline that referenced animal rendering and "animal carcass odors", Department Inspector, Todd Boyer requested additional operational records from Darling to determine compliance with Permit PCP120002 and Permit PCP120003.
93. Defendant provided the Department operational records from September 2018 to June 2019.
94. Department Inspector Todd Boyer reviewed the additional operational records provided by Darling and identified 320 permit violations from September 1, 2018 to June 8, 2019. The majority of the permit violations were for Darling's failure to operate all four packed bed scrubbers within the permit limit for ORP.
95. During the August 23, 2019 inspection of the Facility, the Department discovered additional permit violations for both PCP120003 and PCP120002. These violations include Darling's failure to record the pressure drop for rendering packed tower scrubber three (3); the access panel for

rendering packed tower scrubber three (3) was leaking liquid; the pressure drop for the venturi scrubber for the rendering process was outside the permit range; the access panel for the packed tower scrubber for the grease house was leaking liquid; and the pressure drop value for the venturi scrubber for the grease house was unreadable.

96. An additional inspection by the Department occurred on September 10, 2019, which resulted in additional permit violations for both PCP120003 and PCP120002. The pressure drop reading for both the venturi and packed tower scrubber three (3) for the rendering process were outside the permitted ranges. A pump in the grease house was failing, which resulted in the release of water and grease.

97. Under N.J.S.A. 26:2C-19(a) and N.J.S.A. 26:2C-19(d), the Department is entitled to injunctive and non-injunctive relief for violations of the APCA.

WHEREFORE, the Department seeks enforcement of its permits, including an order requiring defendant:

- a. To operate all equipment and conduct all operations in accordance with Permit PCP120002 and Permit PCP120003;
- b. To submit weekly monitoring reports to the Department for all scrubbers to determine compliance with Permit PCP120002 and Permit PCP120003 until Darling's Odor

Control Plan has been approved by the Department and fully implemented;

c. Imposing civil penalties in accordance with N.J.S.A. 26:2C-19(d) for each day of violation, as determined by the court; and

c. Granting such other relief as the Court deems just and proper.

COUNT FOUR
CIVIL PENALTIES FOR APCA PERMIT VIOLATIONS AND
VERIFIED ODOR COMPLAINTS

98. Plaintiff incorporates the foregoing paragraphs as if restated here in full.

99. The Department is authorized to seek civil penalties of up to \$10,000 for the first offense, up to \$25,000 for the second offense, and up to \$50,000.00 for the third and each subsequent offense for violations of the APCA. Each day the violation continues shall constitute an additional, separate, and distinct offense. N.J.S.A. 26:2C-19.

100. Defendant has violated the APCA by causing, suffering, allowing, or permitting to be emitted into the outdoor atmosphere substances, namely odors, in quantities resulting in air pollution under the Act, in violation of N.J.S.A. 26:2C-19(g) and N.J.A.C. 7:27-5.2(a).

101. Defendant has violated the APCA by failing to operate its pollution control equipment pursuant to the operating parameters set forth in applicable air permits, in violation of N.J.S.A. 26:2C-9.2(a) and N.J.A.C. 7:27-8.3(e).

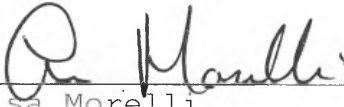
WHEREFORE, the Department seeks an order of the court:

- a. Imposing civil penalties in accordance with N.J.S.A. 26:2C-19(d) for each day of violation, as determined by the court; and
- b. Granting such other relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED,

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

BY:



Lisa Morelli
Dianna Shinn
Deputy Attorneys General

Date: Sept 19, 2019

RULE 4:5-1 CERTIFICATION

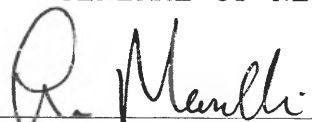
I am designated as Trial Counsel for Plaintiff DEP.

I certify, to the best of my information and belief, that the violations set forth in the December 21, 2017 AONOCAPA alleged above are subject to a pending action in the Office of Administrative Law. Darling has requested a settlement conference with the Essex Regional Health Commission regarding the four notice of penalty assessments for the verified odor complaints confirmed by the Essex Regional Health Commission. All other violations alleged above are not the subject of any other action pending in any court or of a pending arbitration proceeding, and that no other action or arbitration proceeding is contemplated. I further certify that there is no other party who should be joined in this action at this time.

I certify that confidential personal identifiers have been redacted from the document now submitted to the court, and will be redacted from all document submitted in the future, in accordance with Rule 1:38-7(b).

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

BY:



Lisa Morelli
Deputy Attorney General

Date:

Sept 19, 2019

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Deputy Attorney General Lisa M. Morelli is designated as trial counsel for Plaintiff in this action.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

BY:



Lisa Morelli
Deputy Attorneys General

Date:

Sept 19, 2019

VERIFICATION

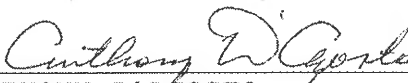
ANTHONY D'AGOSTO, by way of verification, states that:

1. I am a Senior Environmental Specialist employed by the Essex Regional Health Commission.

2. I have personal knowledge of the factual allegations contained in Paragraphs 37-45, 51-56, 67 of the Verified Complaint, and I certify that these paragraphs are true and correct.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements by me are willfully false I am subject to punishment.

Dated: 9/18/2019



ANTHONY D'AGOSTO
Senior Environmental
Specialist
Essex Regional Health
Commission

VERIFICATION

TODD BOYER, by way of verification, states that:

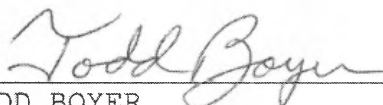
1. I am an Environmental Specialist III employed by the New Jersey Department of Environmental Protection, Bureau of Air Compliance and Enforcement.

2. I have personal knowledge of the factual allegations contained in Paragraphs 23, 27, 29-35 of the Verified Complaint, and I certify that these paragraphs are true and correct.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements by me are willfully false I am subject to punishment.

Dated: _____

9-18-19



TODD BOYER
Environmental Specialist III
NJDEP Bureau of Air Compliance
& Enforcement

VERIFICATION

HIRAM OSER, by way of verification, states that:

1. I am an Environmental Specialist IV employed by the New Jersey Department of Environmental Protection, Bureau of Air Compliance & Enforcement.

2. I have personal knowledge of the factual allegations contained in Paragraphs 46-50 of the Verified Complaint, and I certify that these paragraphs are true and correct.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements by me are willfully false I am subject to punishment.

Dated: _____

9/19/19



HIRAM OSER
Environmental Specialist IV
NJDEP Bureau of Air Compliance
& Enforcement

VERIFICATION

THEODORE PILAS, by way of verification, states that:

1. I am a Program Coordinator with the Essex Regional Health Commission.
2. I have personal knowledge of the factual allegations contained in Paragraphs 15, 57-66 of the Verified Complaint, and I certify that these paragraphs are true and correct.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements by me are willfully false I am subject to punishment.

Dated: _____

9/18/2019

Theodore Pilas

THEODORE PILAS
Essex Regional Health
Commission, Program
Coordinator

VERIFICATION

MICHAEL ADHANOM, by way of verification, states that:

1. I am an engineer employed by the New Jersey Department of Environmental Protection, Air Quality Permitting and Planning, Bureau of Stationary Sources.

2. I have personal knowledge of the factual allegations contained in Paragraphs 11-22, 24-26 of the Verified Complaint, and I certify that these paragraphs are true and correct.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements by me are willfully false I am subject to punishment.

Dated:

9/19/2019



MICHAEL ADHANOM

Engineer

NJDEP Bureau of Stationary
Sources

VERIFICATION

ROBIN JONES, by way of verification, states that:

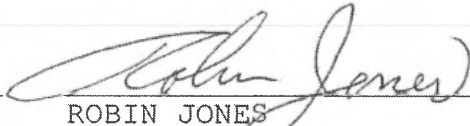
1. I am an Environmental Specialist III employed by the New Jersey Department of Environmental Protection, Bureau of Air Compliance & Enforcement.

2. I have personal knowledge of the factual allegations contained in Paragraph 36 of the Verified Complaint, and I certify that these paragraphs are true and correct.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements by me are willfully false I am subject to punishment.

Dated: _____

9/19/19



ROBIN JONES
Environmental Specialist III
NJDEP Bureau of Air Compliance
& Enforcement