

IN THE IOWA DISTRICT COURT FOR MUSCATINE COUNTY

LAURIE FREEMAN, JOSEPH PRESTON, :
SHARON MOCKMOORE, EUGENE W. :
MOCKMORE, BECCY BOYSEL, GARY :
D. BOYSEL, DARYLE SNYDER, LINDA :
L. GOREHAM, GARY R. GOREHAM, :
KELCEY BRACKETT & BOBBIE LYNN :
WEATHERMAN :

Plaintiffs,

v.

GRAIN PROCESSING CORPORATION :

Defendant.

CASE NO.: _____

FILED
12 NOV 23 10:41
CLERK OF DISTRICT COURT
MUSCATINE CO. IOWA

PLAINTIFFS' ORIGINAL CLASS ACTION PETITION

Come now Plaintiffs, Laurie Freeman, Joseph Preston, Sharon Mockmore, Eugene W. Mockmore, Beccy Boysel, Gary D. Boysel, Daryle Snyder, Linda L. Goreham, Gary R. Goreham, Kelcey Brackett and Bobbie Lynn Weatherman and bring this Class Action Petition against Defendant GRAIN PROCESSING CORPORATION on behalf of themselves and all others similarly situated, and for their Petition at Law, hereby request that the instant action be certified as a class action pursuant to Iowa Rules of Civil Procedure §§ 1.261 et seq, with Laurie Freeman, Joseph Preston, Sharon Mockmore, Eugene W. Mockmore, Beccy Boysel, Gary D. Boysel, Daryle Snyder, Linda L. Goreham, Gary R. Goreham, Kelcey Brackett and Bobbie Lynn Weatherman as Class Representatives, and allege upon personal knowledge as to themselves, and upon information and belief as to all other matters, as follows:

SUMMARY OF ALLEGATIONS

1. This is a class action on behalf of those individuals whose real and personal properties have been directly impacted by the continuous and increasing pollution by industrial methods and processes used by Defendant at their facility at 1600 Oregon St., Muscatine, Muscatine County, Iowa. Plaintiffs seek damages to remediate their properties, and seek compensation for the loss of the use and enjoyment of their properties, among other damages. Due to the intentional, willful, and wanton nature of Defendant's conduct, Plaintiffs also seek punitive damages. Plaintiffs may ultimately seek injunctive relief from the Court to force Defendant to cease further damage to Plaintiffs.

2. Defendant is the owner of a corn processing facility that engages in what is sometimes known as "Corn Wet Milling," an industrial production method and process under which corn kernels are transformed into products for various commercial and industrial uses, including industrial and beverage alcohol, ethanol, and other food products. This transformation involves the inputs of various acids and chemicals and results in the creation and residues of hazardous by-products and harmful chemicals, many of which are released directly into the atmosphere. Defendant's industrial methods and processes include, but are not limited to:

- a. The burning of coal in their distillation process, causing a release of particulate matter;
- b. The subsequent venting of gases known as Volatile Organic Compounds, including Acetaldehyde and Acetic Acid; and
- c. The utilization of Hydrochloric Acid and Sulfur Dioxide, causing the emissions of Sulfur Dioxide and the creation of Sulfuric Acid in the atmosphere.

3. Defendant refuses to limit or restrict these releases, although technology is available that would eliminate or drastically reduce the adverse effects of Defendant's activities. Defendant has used, and continues to use, worn machineries, outdated manufacturing technologies and outdated pollution-abating technologies while at the same time increasing production. As a result, the frequency and volume of these toxic releases have increased significantly in recent years and continue to grow.

4. Once in the air, the polluting chemicals and particles are blown from the facility onto nearby homes, schools, and churches. Particulate matter, in the form of soot or smoke, is visibly left on, and in, these structures, personal properties, yards and grounds located in and around these structures. Also present, but unseen, are the various chemicals intentionally released by Defendant. Due to the topography and meteorological conditions in Muscatine, human exposure and damage to property due to the pollutants released from Defendant's facility are likely compounded.

5. Defendant's facility is reportedly the most significant contributor of Volatile Organic Compounds in the area—*over 70% of the Volatile Organic Compound emissions in Muscatine come from Defendant's facility.*

6. In 2010, Defendant was responsible for the release of roughly 140,000 pounds of Acetaldehyde into the Muscatine air. Defendant's facility is the only reported emitter of Acetaldehyde in the Muscatine area. Between the years 2004 and 2010, according to governmental databases, Defendant released from its facility 1.6 million pounds of Acetaldehyde.

7. Acetaldehyde causes adverse effects to the respiratory system, according to multiple authoritative bodies. The United States Environmental Protection Agency ("EPA")

specifically has found that inhalation exposure to Acetaldehyde causes irritation of the respiratory tract in humans. At higher exposure levels, erythema, coughing, pulmonary edema, and necrosis can occur. Laboratory studies have shown that Acetaldehyde can severely damage the respiratory tract and cause cancer in animals exposed repeatedly by inhalation; as a result the EPA has classified acetaldehyde as a *probable human carcinogen*. The physical effects of exposure to Acetaldehyde are most pronounced in the elderly, and in children.

8. Defendant's facility is also a major producer of Hydrochloric Acid, reportedly emitting 3.2 million pounds into the atmosphere between 2001 and 2010. Between 2008 and 2010 (the most recent three years of governmental data available), Defendant's facility was the largest reported emitter of Hydrochloric Acid in the Muscatine zip code, releasing approximately one million pounds into the ambient air.

9. Hydrochloric Acid is corrosive, and chronic exposure has been associated with gastritis, chronic bronchitis, and dermatitis among other maladies. The physical effects of exposure to Hydrochloric Acid are most pronounced in the elderly, and in children.

10. According to the 2008 National Emissions Inventory, Defendant's facility is also the largest emitter of particulate matter of any facility in the Muscatine area. This particulate matter, once released into the air, is carried by winds and ultimately collects on real and personal property in the area. This pollutant matter is routinely present on homes and cars miles away from Defendant's facility. Muscatine residents not only have to frequently clean their personal and real property to remove this particulate matter, but also breathe these pollutants into their lungs on a daily basis.

11. Particulate matter has been associated with increased respiratory symptoms, decreased lung function, aggravated asthma, development of chronic bronchitis, irregular heartbeat, non-fatal heart attacks and premature death in people with heart or lung disease. Children and the elderly are most at risk.

12. Defendant's facility is also reported to be the most significant contributor of Sulfur Dioxide in the area—over 50% of the Sulfur Dioxide emissions come from Defendant's facility.

13. Sulfur Dioxide is associated with an array of adverse respiratory effects, including but not limited to, bronchioconstriction, increased asthma symptoms, and hospital admissions for respiratory illnesses. Children and the elderly are most at risk.

14. According to the EPA Toxic Release Inventory, the schools in Muscatine were the 8th worst in the nation in regards to pollution, mostly due to those pollutants released by Defendant's facility.

15. The total environmental impact resulting from Defendant's emissions are likely underreported, as Defendant has regularly failed to meet its federal emission reporting requirements.

16. Even when its own reported emission numbers are taken at face value as being correct, Defendant has violated the Federal Clean Air Act in all twelve of the last twelve quarters. In the past five quarters, the EPA has designated Defendant as a “High Priority Violator” under the Federal Clean Air Act. Further, in the past two years, Defendant has failed stack tests for total particulates on multiple occasions.

17. Scientific testing recently conducted at nearby homes and public parks confirms that Defendant's activities are having a negative impact on the area. As stated, Defendant's facility is the only one in the area that releases Acetaldehyde. Testing of multiple air samples revealed a dangerously high level of Acetaldehyde in the ambient air in Muscatine. In some cases, such levels exceeded regional residential screening levels by almost ten times. Further, testing of steel building materials demonstrated extremely high levels of corrosion caused by Sulfuric Acid. Testing confirms that the residents of Muscatine are not only breathing dangerous levels of pollution specifically caused by the Defendant, but also have their real and personal property damaged, necessitating remediation, causing a reduction in the ability of Plaintiffs to use and enjoy their real and personal properties, and also causing a diminution in their property values.

18. Plaintiffs reside and work in a combined residential/commercial area of Muscatine, within a three-mile radius of Defendant's facility. Their real and personal property has been harmed by Defendant's activities. They have been continuously exposed to dangerous toxins due to Defendant's wrongful conduct.

PARTIES

19. Plaintiffs, Laurie Freeman, Joseph Preston, Sharon Mockmore, Eugene W. Mockmore, Beccy Boysel, Gary D. Boysel, Daryle Snyder, Linda L. Goreham, Gary R. Goreham, Kelcey Brackett and Bobbie Lynn Weatherman, are individuals who own or rent real property and who own personal property in Muscatine, Muscatine County, Iowa, as follows:

- a. Plaintiff Laurie Freeman is a resident of the City of Muscatine and owns real and personal property within three miles of Defendant's facility;
- b. Plaintiff Joseph Preston is a resident of the City of Muscatine and owns real and personal property within three miles of Defendant's facility;

- c. Plaintiff Sharon Mockmore is a resident of the City of Muscatine owns real and personal property within three miles of Defendant's facility;
- d. Plaintiff Eugene W. Mockmore is a resident of the City of Muscatine and owns real and personal property within three miles of Defendant's facility;
- e. Plaintiff Beccy Boysel is a resident of the City of Muscatine and owns real and personal property within three miles of Defendant's facility
- f. Plaintiff Gary D. Boysel is a resident of the City of Muscatine and owns real and personal property within three miles of Defendant's facility;
- g. Plaintiff Daryle Snyder is a resident of the City of Muscatine and owns real and personal property within three miles of Defendant's facility;
- h. Plaintiff Linda L. Goreham is a resident of the City of Muscatine and owns real and personal property within three miles of Defendant's facility;
- i. Plaintiff Gary R. Goreham is a resident of the City of Muscatine and owns real and personal property within three miles of Defendant's facility;
- j. Plaintiff Kelcey Brackett is a resident of the City of Muscatine and owns real and personal property within three miles of Defendant's facility; and
- k. Plaintiff Bobbie Lynn Weatherman is a resident of the City of Muscatine and owns real and personal property within three miles of Defendant's facility.

All of these properties have been damaged by toxic air pollution created by Defendant.

20. Defendant, GRAIN PROCESSING CORPORATION, is an Iowa corporation doing business in Muscatine, Muscatine County, Iowa. This Defendant's registered agent is Eric J. Thomsen, 1600 Oregon St., Muscatine, Iowa, 52761.

JURISDICTION AND VENUE

21. This Court has jurisdiction over Plaintiffs and Defendant in this dispute, and Plaintiffs seek damages within the jurisdictional limits of this Court.

22. Venue is proper in this County, in that the actions complained of occurred in this County and the damaged properties are located here.

CLASS ACTION ALLEGATIONS

23. Plaintiffs bring this case as a class action under Iowa Rule of Civil Procedure §1.261, on behalf of the following putative class:

All persons or entities (other than Defendant and its employees, affiliates, parents, or subsidiaries) who own real property within three miles of Defendant's facility located at 1600 Oregon St., Muscatine, Muscatine County, Iowa, or who live and keep personal property within three miles of Defendant's facility.

24. If the facts and positions taken by Defendant warrant, appropriate subclasses may be created or this Class may be narrowed or expanded. Plaintiffs seek declaratory and injunctive relief, because Defendant has acted on grounds generally applicable to the entire putative class.

25. The Class is so numerous that individual joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time, Plaintiffs are informed and believe that there are approximately 6,500 households located within a three-mile radius of the facility, with approximately 17,000 individuals living within this radius who have suffered, and who continue to suffer, damages to their real and personal properties caused by Defendant's industrial methods and processes at their facility.

26. The Plaintiffs' cases share common questions of law and fact as required by Iowa Rule of Civil Procedure § 1.261(2). This inquiry can also be reformulated as to whether Plaintiffs

have common complaints. Plaintiffs share common factual allegations: the pollution by Defendant interfering with Plaintiffs' reasonable use and enjoyment of their real estate and personal property is the common complaint among Plaintiffs. Plaintiffs also allege a common question of law: whether Defendant's facility constitutes a nuisance pursuant to Iowa Code § 657.1 and Iowa common law. Plaintiffs also seek common remedies, monetary damages and injunctive relief from the nuisance created by Defendant, Defendant's negligent actions and Defendant's trespasses. Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs and all members of the Class sustained damages arising out of Defendant's common course of conduct in violation of law. In each and every instance, the injuries and damages of each member of the Class were directly and proximately caused by Defendant's wrongful conduct, and the common questions predominate over individual issues, if any.

27. The named Plaintiffs will fairly and adequately protect the interests of all members of the Class. Plaintiffs are adequate representatives of the Class and have no interests that are adverse to the interests of absent Class members. Plaintiffs have retained counsel who has substantial experience and success in the prosecution of complex class action litigation. Plaintiffs have the resources to pursue this claim, or can obtain them.

28. A class action is superior to other methods for the fair and efficient adjudication of this controversy. A denial of a class action would cause prejudice to the class members. Treatment as a class action will permit a large number of similarly situated persons to adjudicate their common claims in a single forum simultaneously, efficiently and without the duplication of effort and expense that numerous individual actions would engender. Class treatment will also permit the adjudication of claims by many class members who could not afford individually to litigate claims such as those asserted in this Petition. The cost to the court system of adjudication

of such individualized litigation would be substantial. Moreover, the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for Defendant.

29. Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

CAUSES OF ACTION

COUNT I: NUISANCE

30. Plaintiffs incorporate the preceding paragraphs of this Petition as if set forth fully below.

31. Pursuant to Iowa Code § 657.1-657.2 (2011) and Iowa common law, Defendant's conduct at their facility constitutes a nuisance, to wit:

- a. Defendant has used its property and structures in such a manner as to unreasonably interfere with Plaintiffs' reasonable use and enjoyment of their own property and in such a manner as to injure Plaintiffs' property;
- b. Defendant's conduct has substantially increased over the past several years. Defendant's indecent use of its property and structures is injurious to Plaintiffs' property and health; and
- c. The aforementioned use is unreasonably offensive to the senses, and constitutes an obstruction to the free use of Plaintiffs' property, thereby interfering with the comfortable use and enjoyment of life or property.

32. Plaintiffs seek those damages proximately caused by Defendant's conduct, including damages for the loss of the use and enjoyment of their properties, and damages to remediate the harm caused by Defendant's wrongful conduct. Due to the nature of Defendant's

conduct, that is, due to the intentional, or willful and wanton, nature of Defendant's conduct, Plaintiffs seek punitive damages.

COUNT II: NEGLIGENCE

33. Plaintiffs incorporate the preceding paragraphs of this Petition as if set forth fully below.

34. Plaintiffs aver that numerous releases of toxic chemicals and pollutants have occurred in the past two years at Defendant's facility, and the injuries suffered by Plaintiffs and that the members of the Class have been proximately caused by the negligence and fault of the Defendant in the following non-exclusive particulars:

- a. Defendant has caused or has permitted to be caused a release of numerous toxic substances, at the facility since April 23, 2010--such conduct is ongoing;
- b. Defendant has failed to have a reliable system at its facility to prevent the releases--such conduct is ongoing;
- c. Defendant has failed to perform work in a safe and prudent manner--such conduct is ongoing;
- d. Defendant has failed to exercise reasonable and prudent care in its operations--such conduct is ongoing;
- e. Defendant has failed to implement, follow, and enforce proper operations procedures--such conduct is ongoing;
- f. Defendant has failed to implement, follow, and enforce proper safety procedures--such conduct is ongoing; and

g. Defendant has failed to implement, follow, and enforce proper hazard analyses--such conduct is ongoing.

35. On the occasions in question, Defendant, by and through its officers, employees, agents and representatives, has committed acts of omission and commission, which, collectively and severally, constitute negligence. Said acts have caused the conditions discussed above, resulting in and proximately causing injuries to Plaintiffs and their properties. Due to the nature of Defendant's conduct, that is, due to the intentional, or willful and wanton, nature of Defendant's conduct, Plaintiffs seek punitive damages.

36. Plaintiffs and the Class members also specifically plead the doctrine of *res ipsa loquitor*, to wit: the character of the toxic releases have been such that they would not have ordinarily occurred in the absence of Defendant's negligence; and, the acts or omissions of the equipment and personnel that led to the toxic releases were under the control of Defendant at all relevant times.

COUNT III: TRESPASS

37. Plaintiffs incorporate the preceding paragraphs of this Petition as if set forth fully below.

38. Defendant's conduct was committed intentionally, purposefully, or was committed with substantial knowledge that harm would result to the Plaintiffs and the Class.

39. Defendant purposefully contacted Plaintiffs' real and personal property, or had substantial knowledge that its actions would cause such contact, and the resulting harm that occurred.

40. Such contact harmed the Plaintiffs and the Class.

41. Defendant conducts the operation of its facilities with full knowledge that the emissions from its facility has in the past and continue to intrude onto the property owned by Plaintiffs. As such, Defendant's conduct is intentional.

42. Defendant's conduct constitutes a physical intrusion upon Plaintiffs' property, which is an unlawful violation of Plaintiffs' property rights. Defendant has no right to intrude upon Plaintiffs' property and Plaintiffs have not given their consent to such intrusion.

43. Defendant's past and continuous trespass and unlawful intrusion upon Plaintiffs' property is the proximate cause of Plaintiffs' sustained injuries and damages. Due to the nature of Defendant's conduct, that is, due to the intentional, or willful and wanton, nature of Defendant's conduct, Plaintiffs seek punitive damages.

44. Plaintiffs have no adequate remedy at law for the injuries threatened by the trespass, in that Defendant will continue to operate its processing facility as it has done despite emission violations and therefore continue to release particulates and other pollutants that settle on Plaintiffs' properties, unless enjoined.

45. Plaintiffs seek all damages allowed by law for such trespass to property, on behalf of themselves, individually, and the Class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for all appropriate Orders and for Judgment:

- A. Certifying this lawsuit as a class action pursuant to Iowa Rules of Civil Procedure §§ 1.261 et seq. and designating the named Plaintiffs as Class representatives and Anthony G. Buzbee, of The Buzbee Law Firm, Class counsel;
- B. Against Defendant and in favor of Plaintiffs, finding and declaring the acts and practices of Defendant to be unlawful;

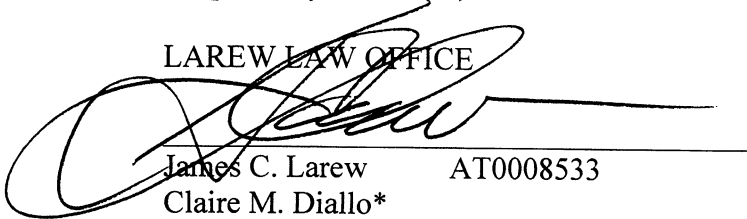
- C. Against Defendant and in favor of Plaintiffs and all members of the Class for damages, including special damages and punitive damages, according to proof, plus pre-judgment and post-judgment interest, for the improper and wrongful acts that are the subject of this action;
- D. Awarding all declaratory relief requested above;
- E. Awarding final injunctive relief from this Court for remediation and removal, as appropriate (subject to a separate motion and factual finding by this Honorable Court);
- F. Awarding Plaintiffs and the Class the costs and disbursements of the action, including reasonable attorneys' and experts' fees and expenses; and
- G. For such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs hereby respectfully demand a trial by jury for all matters triable to a jury in the State of Iowa.

Respectfully submitted,

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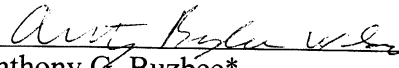
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*Application for Admission Pro Hac Vice Pending

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