

IN THE IOWA DISTRICT COURT FOR MUSCATINE COUNTY

STATE OF IOWA, ex rel., IOWA )  
DEPARTMENT OF NATURAL )  
RESOURCES (99AG23542), )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
GRAIN PROCESSING CORPORATION, )  
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 Grain Processing Corporation (GPC) states as follows:

**INTRODUCTION**

1. The IDNR seeks the assessment of civil penalties and injunctive relief against GPC for air quality and water pollution control violations committed at or in relation to GPC's grain processing facility located in Muscatine, Iowa.
2. Count I seeks the assessment of civil penalties and injunctive relief against GPC for violations of Air Quality Construction Permit No. 91-A-067-S2 by operating the #4 Gluten Flash Dryer in excess of emission limits for particulate matter (PM), particulate matter with an aerodynamic diameter less than or equal to 10 micrometers (PM<sub>10</sub>), and sulfur dioxide (SO<sub>2</sub>); and continued failure to verify compliance with permit emission limits.
3. Count II seeks the assessment of civil penalties and injunctive relief against GPC for failure to maintain and operate the #4 Gluten Flash Dryer or control equipment to minimize

emissions, and failure to remedy the cause of excess emissions in an expeditious manner within a reasonable period of time or shutdown the process during corrective action.

4. Count III seeks the assessment of civil penalties and injunctive relief against GPC for failure to apply for and obtain a Prevention of Significant Deterioration (PSD) Permit for its #4 Gluten Flash Dryer, and comply with other PSD requirements, prior to modifying its method of operation which resulted in significant net increases in emissions of PM and PM<sub>10</sub>, and possibly SO<sub>2</sub>.

5. Count IV seeks the assessment of civil penalties and injunctive relief against GPC for failure to comply with the notification, reporting and emission reduction requirements associated with the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Miscellaneous Organic Chemical Manufacturing, 40 Code of Federal Register (CFR) Part 63, Subpart FFFF (MON), as incorporated by 567 Iowa Admin. Code 23.1(4)“cf”.

6. Count V seeks the assessment of civil penalties and injunctive relief against GPC for failure to obtain a wastewater construction permit prior to beginning construction of its Biosolids Gravity Settler #5, a 1.9 million gallon anaerobic settler for GPC’s wastewater treatment system.

#### **PARTIES**

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

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

9. Grain Processing Corporation is an Iowa corporation with its home office located at 1600 Oregon Street, Muscatine, Iowa 52761.

## JURISDICTION

10. The Court has jurisdiction of this matter pursuant to Iowa Code sections 455B.146, 455B.191(2) and 455B.191(5).

## DEFINITIONS

11. "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).

12. "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).

13. "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).

14. "Best available control technology" or "BACT" means "an emissions limitation, including a visible emissions standard, based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the reviewing authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combination techniques for control of such pollutant." 567 Iowa Admin. Code 33.3(1).

15. "Disposal system" means a "system for disposing of sewage, industrial waste, or other wastes" and includes "sewer systems, treatment works, point sources, dispersal systems

and any systems designed for the usage or disposal of sewage sludge.” Iowa Code § 455B.171(5); 567 Iowa Admin. Code 60.2.

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

17. “Emission limitation” and “emission standard” mean “a requirement established by a state, local government, or the [EPA] administrator which limits the quantity, rate or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications or prescribe operation or maintenance procedures for a source to ensure continuous emission reduction.” 567 Iowa Admin. Code 20.2.

18. “Equipment” means “each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, and instrumentation system in regulated material service; and any control devices or systems used to comply with” Subpart UU of 40 C.F.R. Part 63. 40 C.F.R. § 63.1020.

19. “Excess emission” means “any emission which exceeds either the applicable emission standard prescribed in . . . [567 Iowa Admin. Code 23 or 22.5], or any emission limit specified in a permit or order.” 567 Iowa Admin. Code 20.2.

20. “Floating roof” means a “roof that floats on the surface of the liquid in a storage vessel. A floating roof substantially covers the stored liquid surface (but is not necessarily in contact with the entire surface), and is comprised of a deck, a rim seal, and miscellaneous deck fittings.” 40 C.F.R. § 63.1061.

21. “Group 1 storage tank” means a “storage tank with a capacity greater than or equal to 10,000 gal storing material that has a maximum true vapor pressure of total HAP greater than

or equal to 6.9 kilopascals at an existing source or greater than or equal to 0.69 kilopascals at a new source.” 40 C.F.R. § 63.2550(i).

22. “Hazardous air pollutant,” for purposes of section 112 of the federal Clean Air Act [CAA], means “any air pollutant listed pursuant to subsection (b)” of section 112 of the CAA: 42 U.S.C. § 7412(a)(6).

23. “Industrial waste” means “any liquid, gaseous, radioactive, or solid waste substance resulting from any process of industry, manufacturing, trade, or business or from the development of any natural resource.” Iowa Code § 455B.171(9); 567 Iowa Admin. Code 60.2.

24. “In light liquid service” means that “a piece of equipment in regulated material service contains a liquid that meets the following conditions: (1) The vapor pressure of one or more of the organic compounds is greater than 0.3 kilopascals at 20 degrees C, (2) The total concentration of the pure organic compounds constituents having a vapor pressure greater than 0.3 kilopascals at 20 degrees C is equal to or greater than 20 percent by weight of the total process stream, and (3) The fluid is a liquid at operating conditions.” 40 C.F.R. § 63.1020.

25. “In organic HAP service” means “that piece of equipment either contains or contracts a fluid (liquid or gas) that is at least 5 percent by weight of total organic HAP’s as determined according to the provisions of § 63.180(d) of Subpart H.” 40 C.F.R. § 63.1020.

26. “In regulated material service” means “equipment which meets the definition of . . . ‘in organic hazardous air pollutant service’ . . . .” 40 C.F.R. § 63.1020.

27. “Major modification,” for purposes of the PSD program, means “any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant and a significant net emissions increase of that pollutant from the major stationary source.” 567 Iowa Admin. 33.3(1).

28. "Major source," for purposes of section 112 of the CAA, means "any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants." 42 U.S.C. § 7412(a)(1).

29. "Major stationary source," for purposes of the PSD program, means any of several designated "stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant" or "any stationary source which emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant." 567 Iowa Admin. Code 33.3(1).

30. "Miscellaneous organic chemical manufacturing process" means "all equipment which collectively function to produce a product or isolated intermediate that are materials described in" 40 C.F.R. section 63.2435(b). 40 C.F.R. § 63.2550(i).

31. "Net emissions increase" means "with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which . . . the increase in emissions from a particular physical change or change in the method of operation at a stationary source . . . and any other increases or decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable" exceeds zero. 567 Iowa Admin. Code 33.3(1).

32. "Point source" means "any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit . . . from which pollutants are or may be discharged." Iowa Code § 455B.171(17); 567 Iowa Admin. Code 60.2.

33. "Pollutant" means "sewage, industrial waste, or other waste." Iowa Code § 455B.171(18); 567 Iowa Admin. Code 60.2.

34. "Potential to emit" means the "maximum capacity of a stationary source to emit a pollutant under its physical and operational design as defined in rules adopted by the department [IDNR]." Iowa Code § 455B.131(11); *see* 567 Iowa Admin. Code 20.2.

35. "Process" means "any action, operation or treatment, and all methods and forms of manufacturing or processing, that may emit smoke, particulate matter, gaseous matter or other air contaminant." 567 Iowa Admin. Code 20.2.

36. "Regulated NSR pollutant" means "1. Any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the Administrator . . . ; 2. Any pollutant that is subject to any standard promulgated under Section 111 [New Source Performance Standards] of the Act [federal Clean Air Act]; 3. Any Class I or Class II substance subject to a standard promulgated under or established by Title VI [Stratospheric Ozone Protection] of the Act; or 4. Any pollutant that otherwise is subject to regulation under the Act as defined in 33.3(1), definition of "subject to regulation." 567 Iowa Admin. Code 33.3(1).

37. "Shutdown" means the "cessation of operation of any control equipment or process equipment or process for any purpose." 567 Iowa Admin. Code 20.2.

38. "Significant" means "[i]n reference to a net emissions increase or the potential of a source to emit" emissions that would equal or exceed *inter alia* 25 tons per year (tpy) of particulate matter (PM), 15 tpy of particulate matter with an aerodynamic diameter less than or equal to 10 micrometers (PM<sub>10</sub>), or 40 tpy of sulfur dioxide (SO<sub>2</sub>). 567 Iowa Admin. Code 33.3(1).

39. "Significant emissions increase" means "for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant." 567 Iowa Admin. Code 33.3(1).

40. "Stationary source" means "any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant." 567 Iowa Admin. 33.3(1); *see also* 567 Iowa Admin. Code 20.2.

41. "Storage vessel" or "Tank" means a "stationary unit that is constructed primarily of non-earthen materials (such as wood, concrete, steel, fiberglass; or plastic) which provide structural support and is designed to hold an accumulation of liquids or other materials." 40 C.F.R. § 63.1061.

42. "Treatment works" means "any plant, disposal field, lagoon, holding or flow-regulating basin, pumping station, or other works installed for the purpose of treating, stabilizing, or disposing of sewage, industrial waste, or other wastes." Iowa Code § 455B.171(35).

43. "Water of the state" means "any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof." Iowa Code § 455B.171(37); 567 Iowa Admin. Code 60.2.

44. "Water pollution" means the "contamination or alteration of the physical, chemical, biological, or radiological integrity of any water of the state by a source resulting in whole or in part from the activities of humans, which is harmful, detrimental, or injurious to public health, safety, or welfare, to domestic, commercial, industrial, agricultural, or recreational use or to livestock, wild animals, birds, fish, or other aquatic life." Iowa Code § 455B.171(38).



## AIR POLLUTION CONTROL REQUIREMENTS

45. The IDNR 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 IDNR Director relating to air pollution control are contained, in part, in Iowa Code sections 455B.134(1)-(14).

46. 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).

47. 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, 31, and 33-35.

48. 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).

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

50. 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).

51. 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”.

52. 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”.

53. 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”.

54. 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.

#### **Prevention of Significant Deterioration (PSD) Requirements**

55. 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 sulfur oxides (sulfur dioxide) (SO<sub>2</sub>), particulate matter with an aerodynamic diameter less than or equal to 10 micrometers (PM<sub>10</sub>), and particulate

matter with an aerodynamic diameter less than or equal to 2.5 micrometers (PM<sub>2.5</sub>). 40 C.F.R. §§ 50.4-50.7, 50.13, and 50.17. All areas of the State of Iowa are currently designated as being in attainment or unclassifiable for each primary and secondary NAAQS for PM<sub>10</sub> and SO<sub>2</sub>. 40 C.F.R. § 81.316.

56. For areas which are designated in attainment with NAAQS or unclassifiable, the federal Clean Air Act includes a program to prevent significant deterioration (PSD) of air quality. 42 U.S.C. §§ 7470-7479. Preconstruction requirements are imposed on any major emitting facility to prevent significant deterioration of the air quality. 42 U.S.C. § 7475.

57. EPA rules implementing the PSD program are contained, in part, in 40 C.F.R. section 52.21. The EPA has approved the State of Iowa's program to implement PSD permit requirements. 52 Fed.Reg. 23981 (1987).

58. 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).

59. For major stationary sources located in areas designated attainment or unclassified, as applicable, the owner or operator of a stationary source shall comply with the rules for prevention of significant deterioration (PSD) as set forth in 567 Iowa Admin. Code 33. 567 Iowa Admin. Code 22.4.

60. The requirements of 567 Iowa Admin. Code 33.3(10) through 33.3(18) apply to the construction of any new major stationary source or the "major modification of any existing major stationary source," except as the PSD rules otherwise provide. 567 Iowa Admin. Code 33.3(2)"a".

61. No new major stationary source or major modification shall begin construction without a permit that states that the major stationary source or major modification will meet the requirements of 567 Iowa Admin. Code 33.3(10) through 33.3(18)“e”. 567 Iowa Admin. Code 33.3(2)“b”.

62. A major modification shall apply best available control technology for each regulated NSR pollutant for which it would result in a significant net emissions increase at the source, as a result of a physical change or change in the method of operation of the emissions unit. 40 C.F.R. § 52.21(j)(3), as incorporated by 567 Iowa Admin. Code 33.3(10).

63. The owner or operator of a proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions, would not cause or contribute to air pollution in violation of any NAAQS or any maximum allowable increase over the baseline concentration in any area. 40 C.F.R. §§ 52.21(k)(1)(i) and (ii), as incorporated by 567 Iowa Admin. Code 33.3(11).

64. Any PSD application shall contain an analysis of ambient air quality in the area that the major modification would affect for each pollutant for which it would result in a significant net emissions increase. 40 C.F.R. § 52.21(m)(1)(i)(b), as incorporated by 567 Iowa Admin. Code 33.3(13).

65. The owner or operator of a modification shall submit a detailed description of what system of continuous emission reduction is planned for the modification, emission estimates, and any other information necessary to determine that best available control technology would be applied. 40 C.F.R. § 52.21(n)(1)(iii), as incorporated by 567 Iowa Admin. Code 33.3(14).

66. The owner or operator shall provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the modification and general commercial, residential, industrial and other growth associated with the modification. 40 C.F.R. § 52.21(o)(1), as incorporated by 567 Iowa Admin. Code 33.3(15).

67. The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of the general commercial, residential, industrial and other growth associated with the modification. 40 C.F.R. § 52.21(o)(2), as incorporated by 567 Iowa Admin. Code 33.3(15).

68. Any owner or operator who constructs or operates a source or modification not in accordance with the application pursuant to the provisions in rule 567 Iowa Admin. Code 33.3 or with the terms or any approval to construct, or any owner or operator of a source or modification subject to the provisions in rule 567 Iowa Admin. Code 33.3 who commences construction after April 15, 1987 (the effective date of Iowa's PSD program), without applying for and receiving department approval, shall be subject to appropriate enforcement action. 567 Iowa Admin. Code 33.3(18)(c).

#### **Miscellaneous Organic Chemical Manufacturing (MON) Requirements**

69. 40 C.F.R. Part 63, Subpart FFFF, for Miscellaneous Organic Chemical Manufacturing (MON) regulates hazardous air pollutants emitted from miscellaneous organic chemical manufacturing process units at major sources of hazardous air pollutants.

70. The EPC has adopted 40 C.F.R. Part 63, Subpart FFFF, by reference in 567 Iowa Admin. Code 23.1(4)“cf”.

71. A source is subject to MON if the source owns or operates miscellaneous organic chemical manufacturing process units (MCPU) that are located at, or are part of, a major source

of hazardous air pollutants (HAP) emissions as defined in section 112(a) of the CAA. 40 C.F.R. § 63.2435(a).

72. An "MCPU" refers to a miscellaneous organic chemical manufacturing process unit and includes equipment necessary to operate a process that satisfies all of the conditions specified in 40 C.F.R. sections 63.2435(b)(1)-(3). 40 C.F.R. § 63.2435(b).

73. 40 C.F.R. section 63.2435(b)(1) requires that an MCPU produce material or a family of materials described in one of subsections 63.2435(b)(1)(i)-(v).

74. 40 C.F.R. section 63.2435(b)(1)(ii) includes an organic chemical(s) classified using the 1997 version of NAICS [North American Industry Classification System] code 325.

75. 40 C.F.R. section 63.2435(b)(2) requires that an MCPU process, use, or generate any of the organic HAPs listed in section 112(b) of the CAA.

76. 40 C.F.R. section 63.2435(b)(3) provides that in order for a process to be an MCPU it must not be an affected source or part of an affected source under another subpart of part 63, except for certain process vents from batch operations within a chemical manufacturing process unit (CMPU).

77. A source existing on November 10, 2003, must comply with the MON requirements for existing sources no later than May 10, 2008. 40 C.F.R. § 63.2445(b).

78. A source subject to MON must comply with the emission limits and work practice standards in Tables 1 through 7 of Subpart FFFF of Part 63 at all times, except during periods of startup, shutdown, or malfunction. 40 C.F.R. § 63.2450(a).

79. A source subject to MON must submit its initial notification 120 calendar days after November 10, 2003 [by March 9, 2004]. 40 CFR §§ 63.2445(c) and 63.2515(b)(1). The

initial notification must provide the information specified in 40 C.F.R. sections 63.9(b)(2)(i)-(v).

*Id.*

80. A source subject to MON must comply with the reporting requirements contained in Table 11 of 40 C.F.R. Part 63, Subpart FFFF. 40 C.F.R. § 63.2520(a).

81. A source subject to MON must submit a notification of compliance status report no later than 150 days after the applicable compliance date specified in 40 C.F.R. section 63.2445 [by October 7, 2008]. 40 CFR § 63.2520(d)(1) and Table 11 of Subpart FFFF. The notification of compliance status report must provide the information specified in 40 C.F.R. sections 63.2520(d)(2)(i)-(ix). 40 C.F.R. § 63.2520(d)(2) and Table 11 of Subpart FFFF.

82. The notification of compliance status report must include any applicability determinations, emission calculations, or analyses used to identify and quantify HAP usage or HAP emissions from the affected source. 40 C.F.R. § 63.2520(d)(2)(i) and Table 11 of Subpart FFFF.

83. A source subject to MON must submit a compliance report covering the period from the compliance date specified in 40 C.F.R. section 63.2445 [May 10, 2008] and ending on June 30 or December 31, whichever date is the first date following the end of the first 6 months after the compliance date [December 31, 2008]. 40 C.F.R. § 63.2520(b)(1) and Table 11 of Subpart FFFF.

84. Subsequent semi-annual compliance reports must be submitted for the period January 1 through June 30, or for the period July 1 through December 31. 40 C.F.R. § 63.2520(b)(3) and Table 11 of Subpart FFFF.

85. The first compliance report and the subsequent semi-annual compliance reports must be submitted no later than the deadlines established by the permitting authority for

submitting semi-annual reports pursuant to 40 C.F.R. section 70.6(a)(3)(iii)(A) [State Title V Operating Permit reporting requirements]. 40 C.F.R. § 63.2520(b)(5) and Table 11 of Subpart FFFF. GPC's Title V Operating Permit No. 03-TV-029, General Condition G5, requires submission of semi-annual reports on or before March 31 and September 30 of each year.

86. The compliance reports must provide the information specified in 40 C.F.R. sections 63.2520(e)(1)-(10). 40 C.F.R. § 63.2520(e) and Table 11 of Subpart FFFF.

87. A source subject to MON with Group 1 storage tanks must comply with the emission limits contained in Table 4 of Subpart FFFF. 40 C.F.R. § 63.2470(a). Table 4 provides that a Group 1 storage tank with a maximum true vapor pressure of total HAP at storage temperature less than 76.6 kilopascals may comply by meeting the requirements of Subpart WW of Part 63 [floating roof requirements] or reducing total HAP emissions through a closed vent system or a fuel gas system as specified in Table 4.

88. Subpart WW of Part 63 includes 40 C.F.R. sections 63.1060 through 63.1067.

89. The owner or operator of a storage vessel subject to Subpart WW of Part 63 must operate and maintain an internal floating roof, external floating roof, or comply with an equivalent requirement. 40 C.F.R. § 63.1062(a)(1)-(3).

90. Floating roof design and inspection requirements for a Group 1 storage tank are contained in 40 C.F.R. section 63.1063.

91. A source subject to MON must comply with the requirements in Table 6 of 40 C.F.R. Part 63. 40 C.F.R. § 63.2480(a). Table 6 of Subpart FFFF requires that equipment that is in organic HAP service must comply with the requirements of Subpart UU or Subpart H of Part 63, or with Subpart F of Part 65.

92. Subpart UU of Part 63 includes 40 C.F.R. sections 63.1019 through 63.1039.



93. Equipment subject to Subpart UU of Part 63 shall be identified. 40 C.F.R. § 63.1022(a). General identification may be on a plant site map plan, in log entries, by designation of process unit or affected facility boundaries by some form of weatherproof identification, or by other appropriate means. *Id.*

94. The owner or operator of a regulated source subject to Subpart UU shall monitor regulated equipment as specified in 40 C.F.R. sections 63.1023(a)(1)-(2). 40 C.F.R. § 63.1023(a).

95. The owner or operator shall repair each leak detected as soon as practical, but not later than 15 calendar days after it is detected, except as provided in 40 C.F.R. sections 63.1024(d) and (e). 40 C.F.R. § 63.1024(a).

96. The owner or operator shall comply with the leak detection and repair (LDAR) requirements for valves in light liquid service contained in 40 C.F.R. section 63.1025 no later than the compliance dates specified in the referencing subpart [May 10, 2008, pursuant to 40 C.F.R. § 63.2445(b)]. 40 C.F.R. § 63.1025(a)(1).

97. The owner or operator shall perform leak detection monitoring on all valves, with the frequency dependent on the number or percent of valves with leaks as specified in 40 C.F.R. sections 63.1025(b)(3) and (b)(4). 40 C.F.R. § 63.1025(b).

98. If a leak from a valve is determined, the leak shall be repaired pursuant to 40 C.F.R. section 63.1024. 40 C.F.R. § 63.1025(d)(1).

99. After a leaking valve is repaired, the valve shall be monitored as provided in 40 C.F.R. sections 63.1025(d)(2)(i)-(iii). 40 C.F.R. § 63.1025(d)(2).

100. The owner or operator shall comply with the leak detection and repair (LDAR) requirements for pumps in light liquid service contained in 40 C.F.R. section 63.1026 no later

than the compliance dates specified in the referencing subpart [May 10, 2008, pursuant to 40 C.F.R. § 63.2445(b)]. 40 C.F.R. § 63.1026(a).

101. The owner or operator shall perform monthly leak detection monitoring on pumps as provided in 40 C.F.R. section 63.1023. 40 C.F.R. § 63.1026(b)(1).

102. Each pump shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal. 40 C.F.R. § 63.1026(b)(4).

103. If a leak from a pump is determined, the leak shall be repaired pursuant to 40 C.F.R. section 63.1024. 40 C.F.R. § 63.1026(d).

### **WATER POLLUTION CONTROL REQUIREMENTS**

104. The IDNR is the agency of the state responsible for the prevention, abatement, or control of water pollution. Iowa Code § 455B.172(1). The IDNR maintains jurisdiction over and regulates the direct discharge of pollutants to a water of the state. Iowa Code § 455B.172(5).

105. The IDNR director is authorized to issue permits for the discharge of any pollutant including conditions and schedules of compliance necessary to meet the requirements of *inter alia* the federal Water Pollution Control Act and all applicable state and federal water quality standards and effluent standards. Iowa Code §§ 455B.174(4)(a)(1) and (b); 567 Iowa Admin. Code 64.7. Permits may be issued for any period of time not to exceed five (5) years. 567 Iowa Admin. Code 64.3(7).

106. The Environmental Protection Commission (EPC) has rulemaking authority relating to water quality, pretreatment and effluent standards; location, construction, operation, and maintenance of disposal systems; permits for the operation, installation, construction, addition to, or modification of disposal systems, or for the discharge of any pollutant; and inspection, monitoring, record keeping, and reporting requirements for owners and operators of

disposal systems. Iowa Code §§ 455B.173(2), (3) and (6). Implementing rules are contained in 567 Iowa Admin. Code 60-69.

107. No person shall construct, install or modify any wastewater disposal system or part thereof or extension or addition thereto without or contrary to any condition of, a construction permit issued by the director. 567 Iowa Admin. Code 64.2(1).

108. 567 Iowa Admin. Code 64.3(1) prohibits operation of any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the IDNR.

109. Iowa Code section 455B.183(1)(a) prohibits *inter alia* the “construction, installation, or modification of any disposal system” without first securing a written permit from the IDNR Director.

110. Iowa Code section 455B.186(1) prohibits the dumping, depositing, or discharging of pollutants into any water of the state, except adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the IDNR.

111. Iowa Code section 455B.191(2) provides that a person who violates any provision of Iowa Code chapter 455B, Division III, Part 1 or any permit, rule, standard or order issued thereunder shall be subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation.

112. The Attorney General is authorized, at the request of the IDNR director with approval of the EPC, to institute any legal proceedings, including an action for an injunction or temporary injunction, necessary to enforce the penalty provisions of Iowa Code chapter 455B, Division III, Part 1 or to obtain compliance with the provisions of said statutes or any rules promulgated or any provision of any permit issued thereunder. Iowa Code § 455B.191(5).

## FACTS

### GPC's Grain Processing Facility

113. GPC owns and operates a grain processing facility located at 1600 Oregon Street, adjacent to a residential area within the city limits of Muscatine, Iowa, a city with a population of nearly 23,000 citizens.

114. At its facility, GPC processes grain into ethanol and various feed, industrial and food products. The facility includes over 300 emission units, i.e., pieces of equipment which emit or have the potential to emit various air pollutants.

115. On July 17, 2006, a Consent Order, Judgment and Decree was entered in *State of Iowa, ex rel., Iowa Department of Natural Resources v. Grain Processing Corporation*, Muscatine County Law No. CVCV016788, assessing a \$538,000.00 civil penalty for GPC's failure to comply with construction permits for the Maltrin #5 Spray Dryer; requiring GPC to submit modeling protocols to conduct National Ambient Air Quality Standards compliance analysis and increment analysis for PM<sub>10</sub>; and enjoining GPC from violating 567 Iowa Admin. Code 22.4; 40 C.F.R. section 52.21; and Air Quality Construction Permit Nos. 90-A-309 and 90-A-310.

### #4 Gluten Flash Dryer

116. On April 5, 1991, IDNR issued Air Quality Construction Permit No. 91-A-067, to GPC for the installation of the #4 Gluten Flash Dryer. The construction permit included PM and PM<sub>10</sub> emission limits, creating synthetic minor limits, to allow GPC to avoid PSD review.

117. On December 5, 2006, IDNR issued a construction permit modification, Air Quality Construction Permit No. 91-A-067-S1, for the #4 Gluten Flash Dryer, increasing the PM

and PM<sub>10</sub> emission limits to 5.31 lbs/hr. These limits were intended to continue to allow GPC to avoid PSD review.

118. On February 28, 2007, GPC conducted a stack test on the #4 Gluten Flash Dryer. The stack test results showed PM and PM<sub>10</sub> emissions of 4.37 lbs/hr, indicating compliance with the emission limits of Air Quality Construction Permit No. 91-A-067-S1.

119. On March 12 2009, IDNR issued a second construction permit modification, Air Quality Construction Permit No. 91-A-067-S2, for the #4 Gluten Flash Dryer. This modification allowed the use of biogas as a fuel. Condition 10 of Permit No. 91-A-067-S2 maintained the limit of 5.31 lbs/hr of PM and PM<sub>10</sub> to avoid PSD applicability, and further established an emission limit for sulfur dioxide (SO<sub>2</sub>) of 4.5 lbs/hr, allowing GPC to avoid both PSD applicability and conducting a facility-wide analysis of the impact on the SO<sub>2</sub>-NAAQS.

120. Condition 12 of Permit No. 91-A-067-S2 required GPC to perform another stack test while burning biogas, within sixty (60) days after achieving maximum production rate and no later than one hundred eighty (180) days after the initial startup date of the proposed equipment to allow the combustion of biogas in the dryer.

121. On March 25, 2010, GPC submitted to the IDNR a Start-up Notice indicating that the start-up of the #4 Gluten Flash Dryer using biogas as a fuel would occur on March 26, 2010.

122. On June 9, 2010, GPC conducted a stack test on the #4 Gluten Flash Dryer for PM, PM<sub>10</sub> and SO<sub>2</sub>. GPC stopped after the first run and did not complete all three runs of required testing. The one run completed indicated that the emission limits were not being met and that emissions for PM, PM<sub>10</sub> and SO<sub>2</sub> were being exceeded:

<b>Emission Point</b>	<b>Pollutant</b>	<b>Permitted Emission Limit (lbs/hr)</b>	<b>Stack Test Result (lbs/hr)</b>	<b>% of Limit</b>
#4 Gluten Flash Dryer	PM	5.31	16.07	302%
	PM <sub>10</sub>	5.31	16.07	302%
	SO <sub>2</sub>	4.5	30.65	681%

123. On August 27, 2010, IDNR issued a Notice of Violation letter to GPC for failing to comply with Air Quality Construction Permit No. 91-A-067-S2 by exceeding the emission limits for PM, PM<sub>10</sub> and SO<sub>2</sub>.

124. After communications between IDNR and GPC, GPC was allowed to adjust the control equipment to improve its control efficiency and retest in August, 2010. On August 31, 2010, GPC conducted a stack test of the #4 Gluten Flash Dryer. The results of the stack test indicated that the PM, PM<sub>10</sub> and SO<sub>2</sub> emission limits continued to be exceeded:

<b>Emission Point</b>	<b>Pollutant</b>	<b>Permitted Emission Limit (lbs/hr)</b>	<b>Stack Test Result (lbs/hr)</b>	<b>% of Limit</b>
#4 Gluten Flash Dryer	PM	5.31	17.77	335%
	PM <sub>10</sub>	5.31	17.77	335%
	SO <sub>2</sub>	4.5	9.73	216%

125. On November 15, 2010, IDNR issued a Notice of Violation letter to GPC for failing to comply with Air Quality Construction Permit No. 91-A-067-S2 by exceeding the emission limits for PM, PM<sub>10</sub> and SO<sub>2</sub> and for failing to apply for a PSD permit.

126. On December 2, 2010, GPC submitted a letter to the IDNR indicating GPC intended to retest the #4 Gluten Flash Dryer in January, 2011 to show compliance with Air Quality Construction Permit No. 91-A-067-S2, however, an official second compliance test was

not set at the time. GPC indicated it would contact the IDNR when the exact date of the compliance test was scheduled. No compliance test was conducted in January, 2011.

127. On March 3, 2011, GPC submitted a letter to the IDNR stating that GPC was attempting to resolve issues with the PM, PM<sub>10</sub> and SO<sub>2</sub> emissions. GPC stated that the SO<sub>2</sub> issue could not be resolved with current "economic and operating issues" and that GPC had ceased using biogas. GPC stated that it would test for compliance late in 2011, after the biogas scrubber was operating. GPC stated that it had scheduled an engineering test and following successful testing, GPC would schedule a compliance test to demonstrate PM, PM<sub>10</sub> and SO<sub>2</sub> compliance.

128. On March 21, 2011, IDNR sent a letter to GPC stating that it had received the compliance plan, dated February 28, 2011, from GPC and reminded the facility that it remained out of compliance with Air Quality Construction Permit No. 91-A-067-S2 for emission limits for PM, PM<sub>10</sub>, and SO<sub>2</sub> until the facility retested and demonstrated compliance with the existing permit limits.

129. GPC continued to operate the #4 Gluten Flash Dryer but did not retest emissions from the #4 Gluten Flash Dryer to demonstrate compliance with emission limits contained in Air Quality Construction Permit No. 91-A-067-S2.

130. On May 9, 2011, GPC submitted to IDNR a construction permit application for a biogas scrubber but the application was incomplete. The IDNR requested additional information in order to process the application.

131. On May 23, 2011, GPC submitted a letter to IDNR advising that engineering tests indicated that the excess sulfur dioxide emissions from the #4 Gluten Flash Dryer was resolved by eliminating use of the biogas fuel and maintaining an appropriate pH level in the scrubber

water. GPC stated that it would perform a compliance test after it had resolved the excess particulate matter emissions. As for the excess particulate matter emissions, GPC stated that it would install new mist eliminator pads and chevrons, but the manufacturer would need 15 weeks to provide the equipment.

132. On August 31, 2011, GPC submitted a letter to IDNR indicating that new equipment for the scrubber, mist eliminator pads and chevrons, would be shipped in the middle of September, 2011, at which time the #4 Gluten Flash Dryer would be shutdown for installation of the new equipment, followed by an engineering test, and then a compliance test anticipated for October, 2011.

133. On October 20, 2011, GPC sent an email to IDNR advising that compliance testing on the #4 Gluten Flash Dryer was scheduled for November 3, 2011.

134. On October 27, 2011, GPC submitted to IDNR the remainder of the information necessary to process its construction permit application for a biogas scrubber. The IDNR then issued Air Quality Construction Permit Nos. 11-A-661 and 11-A-662 for a biogas scrubber system to remove hydrogen sulfide from the biogas prior to combustion in the #4 Gluten Flash Dryer, thereby reducing SO<sub>2</sub> emissions. The biogas scrubber has yet to be constructed by GPC.

135. On November 1, 2011, GPC sent an email to IDNR advising that "due to production difficulties" the compliance testing on the #4 Gluten Flash Dryer scheduled for November 3, 2011, was cancelled.

136. On November 2, 2011, GPC sent an email to IDNR advising that the compliance testing for #4 Gluten Flash Dryer was rescheduled for November 30 or December 1, 2011.



137. GPC continues to operate the #4 Gluten Flash Dryer but has not retested emissions to demonstrate compliance with emission limits contained in Air Quality Construction Permit No. 91-A-067-S2.

**Prevention of Significant Deterioration (PSD)**

138. The GPC facility at Muscatine, Iowa, is located within an area designated as either in attainment with primary and secondary NAAQS or unclassified. 40 C.F.R. § 81.316.

139. The GPC facility is a “major stationary source” as defined in 567 Iowa Admin. Code 33.3(1).

140. GPC’s emission units emit a variety of air pollutants including but not limited to particulate matter (PM), particulate matter with an aerodynamic diameter less than or equal to 10 micrometers (PM<sub>10</sub>), and sulfur dioxide (SO<sub>2</sub>), each of which is a “regulated NSR pollutant” as defined in 567 Iowa Admin. Code 33.3(1).

141. On or before March 26, 2010, GPC modified its method of operation for the #4 Gluten Flash Dryer.

142. Based on the June 9, 2010 stack test on the #4 Gluten Flash Dryer, emissions of PM and PM<sub>10</sub> exceeded the PSD synthetic minor emission limits contained in Air Quality Construction Permit No. 91-A-067-S2 by 10.76 pounds per hour (lb/hr). Assuming continuous operation of the dryer, the increase in PM and PM<sub>10</sub> emissions exceeded the PSD permitting threshold by 47.1 tons per year (tpy).

143. Based on the August 31, 2010 stack test on the #4 Gluten Flash Dryer, emissions of PM and PM<sub>10</sub> exceeded the PSD synthetic minor emission limits contained in Air Quality Construction Permit No. 91-A-067-S2 by 12.46 lb/hr. Assuming continuous operation of the

dryer, the increase in PM and PM<sub>10</sub> emissions exceeded the PSD permitting threshold by 54.5 tpy.

144. GPC's change in the method of operation for the #4 Gluten Flash Dryer constituted a "major modification" resulting in a "significant emissions increase" of a "regulated NSR pollutant" and a "significant net emissions increase" of that pollutant from the major stationary source, each as defined in 567 Iowa Admin. Code 33.3(1).

145. GPC failed to apply for and obtain a PSD permit for the #4 Gluten Flash Dryer, prior to its change in its method of operation.

146. GPC failed to apply best available control technology to control PM and PM<sub>10</sub> emissions from the #4 Gluten Flash Dryer.

147. GPC failed to demonstrate that its change in the method of operation for the #4 Gluten Flash Dryer would not cause or contribute to air pollution in violation of any NAAQS or any maximum allowable increase over the baseline concentration in the area.

148. GPC failed to submit an analysis of ambient air quality in the area that would be affected for PM and PM<sub>10</sub> from the #4 Gluten Flash Dryer.

149. GPC failed to submit a detailed description of what system of continuous emission reduction is planned for the modification, emission estimates, and other information necessary to determine that the best available control technology would be applied for PM and PM<sub>10</sub> emissions from the #4 Gluten Flash Dryer.

150. GPC failed to provide analysis of the impairment to visibility, soils and vegetation that would occur as a result of the modification and general commercial, residential, industrial and other growth associated with its modification of the method of operation for the #4 Gluten Flash Dryer.

151. GPC failed to provide an analysis of the air quality impact projected for the area as a result of the general commercial, residential, industrial and other growth associated with the modification of the method of operation for the #4 Gluten Flash Dryer.

**Miscellaneous Organic Chemical Manufacturing (MON)**

152. GPC's facility generates and emits numerous and large quantities of "hazardous air pollutants" as defined in 42 U.S.C. section 7412(a)(6) and listed in section 7412(b)(1). Those hazardous air pollutants (HAPs) include but are not limited to acetaldehyde, formaldehyde, hydrochloric acid, hydrogen fluoride, and methanol.

153. GPC's emission inventories report *inter alia* emissions of acetaldehyde, formaldehyde, hydrochloric acid, hydrogen fluoride, and methanol as follows:

<b>GPC's Emissions of Certain Hazardous Air Pollutants in tons/year 2004-2010</b>						
<b>Year</b>	<b>Acetaldehyde</b>	<b>Formaldehyde</b>	<b>Hydrochloric Acid</b>	<b>Hydrogen Fluoride</b>	<b>Methanol</b>	<b>Total</b>
2004	194.53	0.58	155.08	19.38	121.05	490.62
2005	231.63	0.58	151.70	18.98	170.09	572.98
2006	224.78	1.04	157.40	19.68	157.47	560.37
2007	176.96	1.02	155.48	19.44	99.40	452.30
2008	212.08	0.12	210.52	20.52	131.53	574.77
2009	109.00	-	388.92	18.40	26.59	542.91
2010	61.93	-	388.92	19.24	18.84	488.93

154. GPC's facility produces, in part, non-potable ethanol which is an organic chemical classified using the 1997 version of NAICS code 325.

155. GPC's ethanol denaturant MCPU processes, uses or generates many pollutants that are listed as an organic HAP in section 112(b) of the CAA, including but not limited to benzene, hexane, methanol, and toluene.

156. GPC is a "major source" of hazardous air pollutants as defined in 42 U.S.C. section 7412(a)(1).

157. GPC operates through its fuel and industrial ethanol production process “miscellaneous organic chemical manufacturing process units” (MCPUs), as defined in 40 C.F.R. section 63.2435(b), which are subject to the MON requirements pursuant to 40 C.F.R. sections 63.2435(a), as incorporated by 567 Iowa Admin. Code 23.1(4)“cf.”

158. GPC’s facility was an existing source on November 10, 2003, and was required to comply with MON requirements for existing sources no later than May 10, 2008. GPC failed to comply.

159. On February 2, 2010, GPC contacted IDNR to discuss whether GPC was subject to MON requirements contained in Subpart FFFF of Part 63.

160. After reviewing the MON applicability criteria, on February 3, 2010, the IDNR determined that GPC was subject to the MON, notified GPC, and requested that GPC submit its initial notification and a compliance plan.

161. On March 17, 2010, IDNR issued a Notice of Violation letter to GPC for failing to submit the initial MON notification, the notification of compliance status, the first compliance report, and a semi-annual report.

162. GPC was required to submit an initial notification regarding the applicability of MON requirements no later than March 9, 2004. GPC did not submit an initial notification until April 1, 2010.

163. GPC was required to submit a notification of compliance status report no later than October 7, 2008. GPC did not submit a notification of compliance status report until August 16, 2010.

164. GPC's notification of compliance status report included a determination of MON applicability but did not identify certain equipment subject to MON including but not limited to pre-fermenters and fermenters.

165. GPC was required to submit an initial compliance report no later than March 31, 2009. GPC has failed to comply.

166. GPC was required to submit a 6-month semi-annual report no later than September 30, 2009. GPC has failed to comply.

167. GPC was required to submit a 6-month semi-annual report no later than March 31, 2010. GPC has failed to comply.

168. GPC's facility has included a Group 1 storage tank, designated in its 2003 Title V Operating Permit as Emission Point ID # 302.0, Methanol Denaturant Tank, with a capacity of 12,225 gallons.

169. GPC's Group 1 storage tank was required to have a floating roof or vent to a closed system no later than May 10, 2008. GPC failed to comply until on or about January 19, 2011, when it replaced the Group 1 storage tank with Group 2 storage tank, with a capacity of 9,868 gallons.

170. GPC was required to implement a leak detection and repair (LDAR) program for its valves in light liquid service by no later than May 10, 2008. GPC failed to commence implementation of a leak detection and repair program for any of its valves until on or about June 1, 2010.

171. GPC was required to implement a leak detection and repair (LDAR) program for its pumps in light liquid service by no later than May 10, 2008. GPC failed to implement a leak detection and repair (LDAR) program for any of its pumps until on or about June 1, 2010.

172. On September 2, 2010, GPC submitted to IDNR a Subpart UU Semi-Annual Report for the period of January 1 through June 30, 2010, which indicated GPC conducted an LDAR program only during June 2010, at which time GPC inspected 106 valves, 3 of which were leaking and were repaired, and inspected 4 pumps.

173. On March 30, 2011, GPC submitted to IDNR a Semi-Annual Monitoring Report for the period July 1 through December 31, 2010, which indicated that GPC performed an LDAR program during each month for its pumps and valves, except September for its valves, and that during this 6-month period, GPC reported 2 leaking pumps and 3 leaking valves which were repaired.

#### **Construction of Biosolids Gravity Settler #5 without a Permit**

174. Wastewater is generated at GPC's facility from corn sweetener and feed recovery units; ethyl alcohol production, feed recovery units, and power house; corn steeping and starch refining units; starch plant, softener backwash water; anaerobic/activated sludge wastewater treatment plant, non-contact cooling water; and surface runoff from the entire plant.

175. GPC's wastewater is discharged to the Mississippi River from six outfalls pursuant to National Pollutant Discharge Elimination System (NPDES) Permit No. 7048101, issued on March 24, 1998, with an expiration date of March 23, 2003. The permit would have expired on March 23, 2003, except that on September 12, 2002, GPC filed a timely renewal application which is pending. Pursuant to Iowa Code section 17A.18(2), GPC's NPDES permit remains in effect until the application is finally determined by the IDNR.

176. NPDES Permit No. 7048101, Standard Condition 17(b) requires GPC to first obtain a written permit from the IDNR before "any modification of, addition to, or construction of a disposal system is made."

177. On August 20, 2010, GPC informed the IDNR by email that GPC was constructing a new anaerobic settler. The anaerobic settler would be a 1.9 million gallon gravity settler. GPC requested that an IDNR Project Manager be assigned to the project.

178. On August 23, 2010, IDNR replied to the email from GPC, stating that a project initiation meeting was the next step for procedures in wastewater construction permitting.

179. On September 21, 2010, IDNR and GPC participated in a project initiation meeting in Des Moines, Iowa, with the IDNR Field Office #6 joining the meeting via teleconference. During the meeting, GPC indicated that construction had already begun on a new anaerobic settler. GPC stated that no permit application had been submitted because of internal miscommunication within GPC. GPC reported that it had stopped construction as soon as it was discovered the construction permit had not been obtained.

180. On September 24, 2010, IDNR Field Office #6 staff visited GPC to document the extent of construction on the anaerobic settler. The IDNR observed construction workers proceeding with construction despite the fact that no construction permit application had been submitted or approved by IDNR. The GPC project engineer indicated that the anaerobic settler was approximately 75% complete.

181. On October 27, 2010, the IDNR issued a Notice of Violation letter to GPC for failing to obtain a wastewater construction permit prior to beginning construction of the anaerobic settler. The letter requested GPC to not connect the settler to the activated sludge treatment project until the project's construction permit application was reviewed and approved by the IDNR.

182. On November 1, 2010, GPC submitted an after-the-fact construction permit application to the IDNR for the anaerobic settler.

183. On March 30, 2011, after review of GPC's as-built plans dated January 31, 2011, specifications and design schedules, the IDNR advised GPC that no after-the-fact construction permit would be issued but that the project design was in conformance with applicable Iowa Wastewater Facilities Design Standards and met applicable separation distances.

## COUNT I

### EXCESS EMISSIONS VIOLATIONS

184. Since on or before June 9, 2010, GPC has emitted PM in excess of emission limitations in violation of Air Quality Construction Permit No. 91-A-067-S2 and 567 Iowa Admin. Code 24.1(4).

185. Since on or before June 9, 2010, GPC has emitted PM<sub>10</sub> in excess of emission limitations in violation of Air Quality Construction Permit No. 91-A-067-S2 and 567 Iowa Admin. Code 24.1(4).

186. Since on or before June 9, 2010, GPC has emitted SO<sub>2</sub> in excess of emission limitations in violation of Air Quality Construction Permit No. 91-A-067-S2 and 567 Iowa Admin. Code 24.1(4).

187. Since on or before September 23, 2010, GPC has failed to verify compliance with its emission limits for PM in violation of Air Quality Construction Permit No. 91-A-067-S2.

188. Since on or before September 23, 2010, GPC has failed to verify compliance with its emission limits for PM<sub>10</sub> in violation of Air Quality Construction Permit No. 91-A-067-S2.

189. Since on or before September 23, 2010, GPC has failed to verify compliance with its emission limits for SO<sub>2</sub> in violation of Air Quality Construction Permit No. 91-A-067-S2.

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



- a. assess a civil penalty against Defendant Grain Processing Corporation pursuant to Iowa Code section 455B.146 for each day of violation of Air Quality Construction Permit No. 91-A-067-S2 and 567 Iowa Admin. Code 24.1(4), not to exceed Ten Thousand Dollars (\$10,000.00) for each day of each such violation; and
- b. permanently enjoin Defendant Grain Processing Corporation from further violations of Air Quality Construction Permit No. 91-A-067-S2 and 567 Iowa Admin. Code 24.1(4).

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.

## COUNT II

### FAILURE TO MAINTAIN AND REPAIR

190. Since on or before June 9, 2010, GPC has failed to maintain and operate the #4 Gluten Flash Dryer and associated control equipment to minimize emissions in violation of 567 Iowa Admin. Code 24.2(1)“a”.

191. Since on or before June 9, 2010, GPC has failed to remedy the cause of excess emissions from the #4 Gluten Flash Dryer in an expeditious manner in violation of Air Quality Construction Permit No. 91-A-067-S2 and 567 Iowa Admin. Code 24.2(1)“b”.

192. Since on or before June 9, 2010, GPC has failed to minimize the amount and duration of the excess emissions from the #4 Gluten Flash Dryer to the maximum extent possible in violation of 567 Iowa Admin. Code 24.2(1)“c”.

193. Since on or before June 9, 2010, GPC has failed to repair the control equipment for the #4 Gluten Flash Dryer in an expeditious manner or shutdown the process within a reasonable period of time in violation of Air Quality Construction Permit No. 91-A-067-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 Grain Processing Corporation pursuant to Iowa Code section 455B.146 for each day of violation of Air Quality Construction Permit No. 91-A-067-S2 and 567 Iowa Admin. Code 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 Grain Processing Corporation from further violations of Air Quality Construction Permit No. 91-A-067-S2 and 567 Iowa Admin. Code 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.

### COUNT III

#### **PREVENTION OF SIGNIFICANT DETERIORATION (PSD) VIOLATIONS**

194. GPC changed its method of operation for the #4 Gluten Flash Dryer without applying for and obtaining a PSD permit, in violation of 567 Iowa Admin. Code 22.4, 33.3(2)“a”, and 33.3(2)“b”.

195. GPC failed to apply best available control technology to control emissions from the #4 Gluten Flash Dryer, in violation of 567 Iowa Admin. Code 22.4 and 33.3(10).

196. GPC failed to demonstrate that its change in the method of operation for the #4 Gluten Flash Dryer would not cause or contribute to air pollution in violation of any NAAQS or any maximum allowable increase over the baseline concentration in the area, in violation of 567 Iowa Admin. Code 22.4 and 33.3(11).

197. GPC failed to submit an analysis of ambient air quality in the area that would be affected for PM and PM<sub>10</sub> from the #4 Gluten Flash Dryer, in violation of 567 Iowa Admin. Code 22.4 and 33.3(13).

198. GPC failed to submit a detailed description of what system of continuous emission reduction is planned for the modification, emission estimates, and other information necessary to determine that the best available control technology would be applied for emissions from the #4 Gluten Flash Dryer, in violation of 567 Iowa Admin. Code 22.4 and 33.3(14).

199. GPC failed to provide analysis of the impairment to visibility, soils and vegetation that would occur as a result of the modification and general commercial, residential, industrial and other growth associated with its modification of the method of operation for the #4 Gluten Flash Dryer, in violation of 567 Iowa Admin. Code 22.4 and 33.3(15).

200. GPC failed to provide an analysis of the air quality impact projected for the area as a result of the general commercial, residential, industrial and other growth associated with the modification of the method of operation for the #4 Gluten Flash Dryer, in violation of 567 Iowa Admin. Code 22.4 and 33.3(15).

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

- a. assess a civil penalty against Defendant Grain Processing Corporation pursuant to Iowa Code section 455B.146 for each day of violation of 567 Iowa Admin. Code 22.4, 33.3(2)“a”, 33.3(2)“b”, 33.3(10), 33.3(11), 33.3(13), 33.3(14), and 33.3(15), not to exceed Ten Thousand Dollars (\$10,000.00) for each day of each such violation; and
- b. permanently enjoin Defendant Grain Processing Corporation from further violations of 567 Iowa Admin. Code 22.4, 33.3(2)“a”, 33.3(2)“b”, 33.3(10), 33.3(11), 33.3(13), 33.3(14), and 33.3(15).

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.

## COUNT IV

### MISCELLANEOUS ORGANIC CHEMICAL MANUFACTURING (MON) VIOLATIONS

201. GPC failed to submit to the IDNR its initial notification of the applicability of MON requirements to its facility by March 9, 2004, in violation of 40 C.F.R. sections 63.2445(c) and 63.2515(b)(1), as incorporated by 567 Iowa Admin. Code 23.1(4)“cf.” GPC did not submit the initial notification until April 1, 2010.

202. GPC failed to submit to the IDNR its notification of compliance status by October 7, 2008, in violation of 40 C.F.R. sections 63.2520(a), 63.2520(d)(1), and Table 11 of Subpart FFFF, as incorporated by 567 Iowa Admin. Code 23.1(4)“cf.” GPC did not submit the notification of compliance status until August 16, 2010.

203. GPC failed to submit to the IDNR its initial compliance report by March 31, 2009, in violation of 40 C.F.R. sections 63.2520(a), 63.2520(b)(1) and (5), and Table 11 of Subpart FFFF, as incorporated by 567 Iowa Admin. Code 23.1(4)“cf.” GPC has failed to submit the report.

204. GPC failed to submit to the IDNR its semi-annual report by September 30, 2009, in violation of 40 C.F.R. sections 63.2520(a), 63.2520(b)(3) and (5), and Table 11 of Subpart FFFF, as incorporated by 567 Iowa Admin. Code 23.1(4)“cf.” GPC has failed to submit the report.

205. GPC failed to submit to the IDNR its semi-annual report by March 31, 2010, in violation of 40 C.F.R. sections 63.2520(a), 63.2520(b)(3) and (5), and Table 11 of Subpart FFFF, as incorporated by 567 Iowa Admin. Code 23.1(4)“cf.” GPC has failed to submit the report.

206. GPC failed to bring its Group 1 storage tank into compliance with MON requirements by May 10, 2008, in violation of 40 C.F.R. sections 63.2445(b), 63.2450(a) and 63.2470(a), and Table 4 of Subpart FFFF, as incorporated by 567 Iowa Admin. Code

23.1(4)“cf.” GPC did not comply until on or about January 19, 2011, when it replaced the Group 1 storage tank with a Group 2 storage tank.

207. GPC failed to implement a leak detection and repair program for its valves by May 10, 2008, in violation of 40 C.F.R. sections 63.2445(b), 63.2450(a), and 63.2480(a), and Table 6 of Subpart FFFF, as incorporated by 567 Iowa Admin. Code 23.1(4)“cf.” GPC did not begin to implement a leak detection and repair program for its valves until on or about June 1, 2010.

208. GPC failed to implement a leak detection and repair program for its pumps by May 10, 2008, in violation of 40 C.F.R. sections 63.2445(b), 63.2450(a), and 63.2480(a), and Table 6 of Subpart FFFF, as incorporated by 567 Iowa Admin. Code 23.1(4)“cf.” GPC did not begin to implement a leak detection and repair program for its pumps until on or about June 1, 2010.

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

- a. assess a civil penalty against Defendant Grain Processing Corporation pursuant to Iowa Code section 455B.146 for each day of violation of 40 C.F.R. sections 63.2445(b), 63.2445(c), 63.2450(a), 63.2470(a), 63.2480(a), 63.2515(b)(1), 63.2520(a), 63.2520(b)(1), 63.2520(b)(3), 63.2520(b)(5), 63.2520(d)(1), and Tables 4, 6, and 11 of Subpart FFFF of Part 63, as incorporated by 567 Iowa Admin. Code 23.1(4)“cf,” not to exceed Ten Thousand Dollars (\$10,000.00) for each day of each such violation; and
- b. permanently enjoin Defendant Grain Processing Corporation from further violations of 40 C.F.R. sections 63.2445(b), 63.2445(c), 63.2450(a), 63.2470(a), 63.2480(a), 63.2515(b)(1), 63.2520(a), 63.2520(b)(1), 63.2520(b)(3), 63.2520(b)(5), 63.2520(d)(1), and Tables 4, 6, and 11 of Subpart FFFF of Part 63, as incorporated by 567 Iowa Admin. Code 23.1(4)“cf.”

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.

COUNT V

WATER POLLUTION CONTROL VIOLATIONS

209. GPC's newly constructed 1.9 million gallon Biosolids Gravity Settler #5 constituted a modification of, addition to, or construction of a wastewater "disposal system" as defined in Iowa Code section 455B.171(5).


210. GPC began construction on its 1.9 million gallon Biosolids Gravity Settler #5 without first applying for and obtaining a construction permit in violation of Iowa Code section 455B.183(1)(a); 567 Iowa Admin. Code 64.2(1); and NPDES Permit No. 7048101, Standard Condition No. 17(b).

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

- a. assess a civil penalty against Defendant Grain Processing Corporation pursuant to Iowa Code section 455B.191(2) for each day of violation of Iowa Code section 455B.183(1)(a); 567 Iowa Admin. Code 64.2(1); and NPDES Permit No. 7048101, Standard Condition No. 17(b), not to exceed Five Thousand Dollars (\$5,000.00) for each day of each such violation; and
- b. permanently enjoin Defendant Grain Processing Corporation pursuant to Iowa Code section 455B.191(5) from further violations of Iowa Code section 455B.183(1)(a); 567 Iowa Admin. Code 64.2(1); and NPDES Permit No. 7048101, Standard Condition No. 17(b).

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.

THOMAS J. MILLER  
Attorney General of Iowa

  
DAVID R. SHERIDAN, AT0007176  
Assistant Attorney General  
Environmental Law Division

Lucas Building, Ground Floor  
321 E. 12th Street, Room 018  
Des Moines, IA 50319  
Phone: (515) 281-5351  
Fax: (515) 242-6072  
E-mail: [dsherid@ag.state.ia.us](mailto:dsherid@ag.state.ia.us)  
ATTORNEYS FOR PLAINTIFF