

FRANK D. REMINGTON
CIRCUIT COURT, BR. 8

COPY

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH ____

DANE COUNTY

STATE OF WISCONSIN,
17 West Main Street
Post Office Box 7857
Madison, Wisconsin 53707-7857

FILED

AUG - 3 2015

DANE COUNTY CIRCUIT COURT

Plaintiff,

v.

Case No. 15CX50

RECEIVED

AUG 12 15

Complex Forfeiture: 30109

Wisconsin
Dept. Of Justice

CLEAR HORIZONS DANE,
LLC,
6321 Cuba Valley Road
Dane, Wisconsin 53629

Defendant.

THE AMOUNT CLAIMED IS
GREATER THAN THE
AMOUNT CLAIMED UNDER
WIS. STAT. § 799.01(1)(d).

SUMMONS

THE STATE OF WISCONSIN,

To each person named above as a defendant:

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.


Within 20 days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the

complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is Dane County Courthouse, Room 1000, 215 South Hamilton Street, Madison, WI 53703, and to Cynthia R. Hirsch, plaintiff's attorney, whose address is Wisconsin Department of Justice, Environmental Protection Unit, 17 West Main Street, Post Office Box 7857, Madison, WI 53707-7857. You may have an attorney help or represent you.

If you do not provide a proper answer within 20 days, the Court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 30 day of July, 2015.

BRAD D. SCHIMEL
Attorney General


CYNTHIA R. HIRSCH
Assistant Attorney General
State Bar #1012870

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COMPLAINT

The State of Wisconsin, by its attorneys, Attorney General Brad D. Schimel and Assistant Attorney General Cynthia R. Hirsch, brings this action against Clear horizons Dane, LLC at the request of the Wisconsin Department of Natural Resources (WDNR) and alleges as follows:

1. The plaintiff, State of Wisconsin, is a sovereign state of the United States of America, with its principal offices at the State Capitol in Madison, Wisconsin. The State, through the Wisconsin Legislature, enacted Wis. Stat. ch. 283

and ch. 285, and, through the WDNR, administers regulations designed to monitor and limit discharges of pollutants into waters of the state and emissions of pollutants into the air.

2. The defendant, Clear Horizons Dane, LLC, (Clear Horizons) is a Wisconsin limited liability corporation whose parent company is PPC Partners, Inc.

3. Clear Horizons operates a manure digester at 6321 Cuba Valley Road in the Town of Vienna, Dane County, Wisconsin.

FACTS

4. Clear Horizons began operating a cooperative agricultural manure digester in early 2011. The digester accepts cow manure from three local farms, creates methane gas, separates and dries the fiber and ultimately returns the remaining digested manure to the farms for use as fertilizer.

5. Cow manure from the three area farms is pipelined to Clear Horizons where it is digested anaerobically in three tanks. Each tank has a capacity of more than one million gallons.

6. On August 1, 2010, pursuant to Wis. Stat. § 283.37, WDNR issued Clear Horizons its Wisconsin Pollutant Discharge Elimination System (WPDES) permit No. WI-0064530-01-0.

7. WDNR issued Clear Horizons Air Pollution Control Construction Permit 10-SML-028, on July 13, 2010.

8. WDNR issued Clear Horizons one Notice of Noncompliance letter in 2011 and three Notices of Violation and discussed violations with Clear Horizons at three enforcement conferences in 2014.

VIOLATION ONE

9. Clear Horizons' WPDES permit sections 2.2 and 2.2.5 requires it to remove 60% of the phosphorus from the incoming manure and convert it to a solid form. A weekly average of 40% of the phosphorus is to remain in digestate.

10. This requirement insures that algae and weed producing phosphorus is not discharged into local waterways, specifically the Yahara watershed system.

11. Reports submitted by Clear Horizons indicate that since mid 2012, Clear Horizons has failed to meet this 60% removal requirement on numerous weeks during 2012, 2013, and 2014. The average annual removal rate, as reported, has been approximately as follows:

2011	62.6%
2012	55.9%
2013	44.1%
2014	40.53%

12. Clear Horizons has failed to comply with the phosphorus elimination requirements of its permit in violation of section 2.2 and 2.2.5 of its WPDES permit and is subject to forfeitures under Wis. Stat. § 283.91(2).

VIOLATION TWO

13. Wisconsin Stat. § 283.31(1) states that the discharge of any pollutant into any waters of the state or the disposal of sludge from a treatment work is unlawful unless permitted by WDNR.

14. On November 24, 2013, a pipe at Clear Horizons' manure digester site ruptured. Employees of Clear Horizon discovered the rupture on November 25 and were able to stop the discharge.

15. As a result of the broken pipe, approximately 300,000 gallons of manure were released and flowed off the site and into an unnamed tributary to Six Mile Creek.

16. Samples collected from the creek on November 27 show severe impacts by pollutants to the waters of the state.

17. Clear Horizons violated Wis. Stat. § 283.31(1) in that on November 24, 2013, it discharged pollutants into the waters of the state without a permit.

VIOLATION THREE

18. Clear Horizons' WPDES permit Section 4.1.1 requires that discharge monitoring reports (DMRs) be submitted no later than January 31, for the previous year.

19. Clear Horizons failed to submit DMRs by January 31 for the following years: 2011, 2012, and 2013, in violation of their WPDES permit and is subject to forfeitures under Wis. Stat. § 283.91(2).

VIOLATION FOUR

20. Wisconsin Stat. § 285.65 states that "[WDNR] may prescribe conditions for an air pollution control permit to ensure compliance with this chapter." Wisconsin Admin. Code § NR 406.10, states that "any owner or operator who fails . . . to operate a stationary source in accordance with

conditions imposed by the department under s. 285.65 STATS . . . shall be considered in violation of s. 285.60 STATS."

21. Clear Horizons' air permit #10-SML-028, Section 1.B.3.a.(1) mandates that the hydrogen sulfide content of the biogas fuel may not exceed 300 parts per million by volume for generators P01 and P02.

22. Since March of 2014, Clear Horizons' annual air monitoring reports show that they began exceeding the 300 ppm limit for hydrogen sulfide emissions in March 2013, in violation of their permit.

VIOLATION FIVE

23. Wisconsin Admin. Code § NR 439.03(4) and permit #10-SML-028 Section 11D.1.c. requires notification by next business day identifying the deviation, cause, duration, and steps taken to prevent recurrence.

24. Clear Horizons' air permit #10-SML-028, Section 11.D.1.c. mandates Clear Horizon notify WDNR of deviations from permit requirements necessary to determine compliance with hydrogen sulfide content.

25. The 2013 Air Monitoring Report shows that Clear Horizons had deviations from March 2013 through October 2014, and DNR was not notified of deviations in violation of their permit.

VIOLATION SIX

26. Wisconsin Admin. Code § NR 407.04 states that "[t]he owner or operator of an air contaminant source which is not exempt under s. 285.60(5) STATS or s. NR 407.03, shall submit an operation permit application or renewal

application, in accordance with s. NR 407.05, by the dates specified in this section."

27. Wisconsin Admin. Code § NR 406.03(1) states that "no person may commence construction, reconstruction, replacement, relocation or modification of a stationary source unless the person has a construction permit for the source"

28. DNR inspected Clear Horizons on June 27, 2012 and informed them of the need to submit permit applications for a rotary fiber dryer.

29. Clear Horizons has not submitted said applications.

30. Clear Horizons operated the rotary fiber dryer and ammonia condensing equipment from March of 2011 to the present in violation of Wis. Admin. Code § NR 406.03.

VIOLATION SEVEN

31. Wisconsin Admin. Code ch. NR 438.03(1)(a) states that any person owning or operating a facility that emits an air contaminant in quantities above applicable reporting levels, except indirect sources of air pollution, shall annually submit to the department an emission inventory report of annual, actual emissions.

32. At the June 27, 2012 compliance inspection, WDNR staff informed Clear Horizons of the requirement to submit these reports.

33. Clear Horizons failed to submit annual emission inventory reports for 2011, 2012, and 2013 in violation of Wis. Admin. Code § NR 438.03.

PENALTY PROVISIONS

34. Wisconsin Stat. § 283.91(2) states that "[a]ny person who violates . . . any term or condition of a permit issued under this chapter . . . shall forfeit not less than \$10 nor more than \$10,000 for each day of violation."

35. Wisconsin Stat. § 285.87(1) states, "except as provided in s. 285.57(5) or 285.59(8), any person who violates this chapter or any rule promulgated, any permit issued or any special order issued under this chapter shall forfeit not less than \$10 or more than \$25,000 for each violation. Each day of continued violation is a separate offense."

RELIEF REQUESTED


WHEREFORE, Plaintiff asks the Court to:

1. For forfeitures from the defendant as provided in Wis. Stat. § 283.91(2) and 285.87(1).
2. The 26% penalty surcharge provided for in Wis. Stat. § 14.75(18), and the 20% environmental surcharge provided for in Wis. Stat. § 814.75(12);
3. The \$25 court costs pursuant to Wis. Stat. § 814.63(1), the \$8 crime laboratories and drug law enforcement surcharge pursuant to Wis. Stat. § 814.75(2), the 1% jail surcharge pursuant to Wis. Stat. § 814.75(14), and the \$12 justice information surcharge under Wis. Stat. § 814.75(15); and
4. Such other relief as the Court deems appropriate.

Dated this 30 day of July 2015

Respectfully submitted,

BRAD D. SCHIMEL
Attorney General


CYNTHIA R. HIRSCH
Assistant Attorney General
State Bar #1012870

Attorneys for Plaintiff

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