

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SWEETWATER COUNTY, STATE OF WYOMING

FILED

JAN 14 1987

Terri A. Lorenzon, Adm. Aide
Environmental Quality Council

THE PEOPLE OF THE)
STATE OF WYOMING,)
)
Plaintiffs,)
)
vs.)
)
ALLSTATE PAVING, INC.,)
)
Defendant.)

Docket No. C-87-14

FILED

JAN 12 1987

DONALD A. BROWN CLERK OF COURT

DEPUTY CLERK

COMPLAINT

COME NOW the Plaintiffs, by the Office of the Attorney General of the State of Wyoming, through Mike Barrash, Assistant Attorney General, pursuant to W.S. 35-11-901, and hereby state and allege as follows:

1. Defendant Allstate Paving, Inc. (Allstate) is a Minnesota corporation qualified to do business in the State of Wyoming and is the owner and operator of a concrete batch plant which, at least as early as July 18, 1986, has been constructed and located approximately two (2) miles west of the East Flaming Gorge interchange on Interstate 80, between Rock Springs and Green River in Sweetwater County, Wyoming. Venue is properly in Sweetwater County pursuant to W.S. 35-11-901(q). This is a civil action.

2. W.S. 35-11-801(c) states that "A permit to construct is required before construction or modification of any industrial facility capable of causing or increasing air . . . pollution in excess of standards established by the department is commenced."

3. Section 21(a)(i) of the Wyoming Air Quality Standards and Regulations (1985) states that "Any person who plans to construct any new facility or source, modify an existing facility or source, or to engage in the use of which may cause the issuance of . . . air contaminants into the air

of this state shall obtain a construction permit from the State of Wyoming Department of Environmental Quality before any actual work is begun on the facility."

4. On July 18, 1986, Mr. Lee Gribovicz, District Air Quality Engineer, stopped at the concrete batch plant described in paragraph 1 and learned that Allstate had constructed it without applying for or obtaining an air quality permit.

5. Allstate's construction of this concrete batch plant, which is capable of causing the emission of air contaminants, before obtaining an air quality permit is a violation of W.S. 35-11-801(c) and Section 21(a)(i) of the Wyoming Air Quality Standards and Regulations (1985), and is actionable under W.S. 35-11-901(a).

6. On August 12, 1986, the DEQ/Air Quality Division (AQD), pursuant to W.S. 35-11-701(c), issued to Allstate a Notice of Violation (NOV) for construction of the concrete batch plant before obtaining a permit, and an Order that Allstate cease and desist operation of the concrete batch plant until having obtained an air quality permit for its operation and resulting particulate emissions.

7. Allstate did not appeal the DEQ Order, and, on September 22, 1986, in accordance with W.S. 35-11-112(c)(iii), the Environmental Quality Council (Council) affirmed the issuance of that Order.

8. After DEQ's issuance of the August 12, 1986 NOV and Order, Allstate did submit an application for an air quality permit for the concrete batch plant.

9. On September 22, 1986, after DEQ's issuance of the August 12, 1986 NOV and Order, and on the same day that the Council affirmed that Order, the District Air Quality

Engineer, Mr. Gribovicz, observed Allstate operating the concrete batch plant, without having obtained a permit, in a manner so as to allow excessive fugitive dust (particulate) emissions to escape from several points of the equipment because the control system was not functioning as described in Allstate's permit application. Mr. Gribovicz, a qualified opacity observer, noted a dust plume of near 100% opacity being emitted from the top of the vertical batch plant mixer bin.

10. Section 14(a) of the Wyoming Air Quality Standards and Regulations (1985) states that "Visible emissions of any contaminant discharged into the atmosphere from any single new source of emission whatsoever as determined by a qualified observer shall be limited to 20 percent opacity."

11. W.S. 35-11-201 states that "No person shall cause, threaten or allow the discharge or emission of any air contaminant in any form so as to cause pollution which violates rules, regulations and standards adopted by the administrator after consultation with the advisory board."

12. Allstate's operation of this concrete batch plant, without having obtained an air quality permit, in a manner resulting in the excessive emission of fugitive dust and opacity greater than 20% as determined by a qualified observer is a violation of W.S. 35-11-801(c), W.S. 35-11-201, Sections 21(a)(i) and 14(a) of the Wyoming Air Quality Standards and Regulations (1985), and the Order issued by DEQ on August 12, 1986 and affirmed by the Council on September 22, 1986, and is actionable under W.S. 35-11-901(a).

13. W.S. 35-11-901 provides that any person who violates any provision of the Wyoming Environmental Quality Act (W.S. 35-11-101 through 35-11-1207), or any rule, regulation or standard adopted thereunder, or any determination or order of

the Council is liable to a penalty of up to ten thousand dollars (\$10,000.00) for each day during which violation continues, which may be recovered in a civil action brought by the Attorney General in the name of the People of Wyoming.

14. W.S. 35-11-901(a) also provides for injunctive relief to prevent said violations from continuing.

15. W.S. 35-11-112(c)(iii) states that the Council may apply to the district court in the county in which an act or practice is taking place for a court order to comply with a cease and desist order affirmed by the Council, and violation of the court order may be punished as a contempt.

WHEREFORE, the Plaintiffs pray that:

A. A judgment in this matter be awarded in favor of the Plaintiffs and against the Defendant.

B. The Court assess the Defendant a penalty of ten thousand dollars (\$10,000.00) for each day of each violation cited in this Complaint.

C. The Court order the Defendant to comply with the cease and desist order issued by DEQ on August 12, 1986 and affirmed by the Council on September 22, 1986.

D. The Plaintiffs be awarded all costs in prosecution of this action.

E. The Court grant such further and other relief as it deems proper.

Dated this 9 day of January, 1987.

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