

1 **TERRY GODDARD**
Attorney General
2 Firm State Bar No. 14000

3 **Barbara U. Pashkowski**
State Bar No. 006958
4 Assistant Attorney General
1275 W. Washington
5 Phoenix, Arizona 85007-2997
(602) 542-8533
6 Environmental@azag.gov
Attorneys for Plaintiffs
7

8 **SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **MARICOPA COUNTY**

10 **STATE OF ARIZONA, ex rel.**
11 **STEPHEN A. OWENS, Director,**
12 **Arizona Department of**
Environmental Quality,

13 Plaintiffs,

14 vs.

15 **FIESTA CANNING CO., INC., an**
Arizona Corporation,

16 Defendant.

Civil Action No. _____

COMPLAINT

(Non-classified Civil)

17 Plaintiff, State of Arizona (“State”) *ex rel.*, Arizona Department of Environmental
18 Quality, Stephen A. Owens, Director of the Arizona Department of Environmental Quality
19 (“ADEQ”) alleges as follows:
20

21 **I. NATURE OF ACTION**

22 1. This is a civil action brought pursuant to Arizona Revised Statutes
23
24

1 (“A.R.S.”) §§ 49-113(B), 49-203(A)(6), 49-241, 49-262(B), 49-262(C), 49-262(D), 49-354(G),
2 49-426, 49-462, 49-463 and Title 18, Chapters 2, 4, 5, and 9 of the Arizona Administrative Code
3 (“A.A.C.”). The State seeks civil penalties, fees, interest and injunctive relief from Defendant
4 Fiesta Canning Co., Inc. (“Defendant”) for violations of Air Quality and Water Quality
5 regulations.
6

7
8 The violations involve both air quality and water quality matters. The air quality
9 violations result from Defendant’s failure to obtain a new permit or a permit revision prior to
10 constructing or installing and/or operating fuel burning equipment that emits air contaminants;
11 failure to submit notices of the start of construction and start of operation for three New Source
12 Performance Standards (“NSPS”) affected boilers installed, and initially operated one in 1992,
13 another in 1999, and the third in 2005; failure to record amounts of natural gas used by the three
14 NSPS affected boilers; failure to submit a Class II air quality permit application for all fuel
15 burning sources within 180 days of an ADEQ June 12, 2003 “call in”¹ letter; and failure to
16 obtain an open burning permit for conducting an open outdoor fire.
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19
20 The water quality violations result from Defendant’s failure to obtain a Reclaimed Water
21 Individual Permit for direct reuse of industrial wastewater to grow crops; failure to obtain an
22 Aquifer Protection Permit (“APP”) for discharges of industrial wastewater containing pollutants
23 from a leaking pipeline infrastructure, an unlined industrial wastewater sump, an industrial
24

25 ¹ Prior to September 1, 1993, a facility requiring an air quality permit was required to secure separate
26 permits for construction and operation. Post September 1, 1993, the regulations were amended and a
unitary permitting program was created and phase in timelines were created. However, if a facility
received written notice (call-in letter) from ADEQ, the facility had 180 days to submit the requested
permit application.

1 wastewater surface impoundment, and a 12” diameter outfall pipe which discharges industrial
2 wastewater to the land surface; and failure to employ a certified public water distribution system
3 operator.
4

5 The violations also result from Defendant’s failure to pay in full its air emission and
6 administrative fees and accrued interest for an air quality permit for the years 1996, 1997, 2002,
7 and 2003 at its facility located at 7978 North Central Highway, McNeal, Cochise County,
8 Arizona and its contiguous property of Fiesta Farms.
9

10 **II. JURISDICTION, AUTHORITY AND VENUE**

11
12 2. This Court has jurisdiction over this matter, pursuant to A.R.S. §§ 49-113(B), 49-
13 203(A)(6), 49-241, 49-262, 49-351, 49-426, and 49-463. This Court has personal jurisdiction
14 over the Defendant because at all times alleged it conducted business in Arizona.
15

16 3. This State has the authority to bring this civil action under A.R.S. §§ 49-113(B),
17 49-203(A)(6), 49-241, 49-262, 49-354(G), 49-426, 49-462, and 49-463.
18

19 4. Venue for this civil action is proper in this Court, under A.R.S. §§ 12-401 (17) and
20 49-265.
21

22 **III. THE PARTIES**

23 5. Stephen A. Owens is the Director of the Arizona Department of Environmental
24 Quality. This action was brought through Mr. Owens on behalf of the State, pursuant to A.R.S.
25 § 49-103 (B).
26

6. Defendant is a person as defined in A.R.S. §§ 49-201 (26) and 49-421 (3).
Defendant is authorized to conduct business in Arizona.

1 **IV. REGULATORY AUTHORITY**

2 7. Arizona adopted a coordinated state-wide program “to control present and future
3 sources of emission of air contaminants to the end that air polluting activities of every type shall
4 be regulated in a manner that insures the health, safety and general welfare of all the citizens of
5 the state; protects property values and protects plant and animal life.” A.R.S. § 49-401 (A).
6 Additionally, ADEQ was “designated as the agency for this state for all purposes of the clean
7 water act . . . the department may take all actions necessary to administer and enforce these acts .
8 . . .” A.R.S. § 49-202 (A).
9
10

11 **V. AIR QUALITY VIOLATIONS**

12 **COUNT ONE**

13
14 8. The allegations in Paragraphs 1 through 7 are adopted herein and incorporated by
15 reference.
16

17 9. In 1974, Defendant installed Roaster 1, ID. 49, Roaster 2, ID. 50, and Roaster 3,
18 ID. 51. Each of these roasters are fuel burning equipment that emit air contaminants.
19

20 10. Defendant, in violation of A.R.S. § 49-426 (A), A.A.C. R18-2-302(A) and A.A.C.
21 R18-2-306(A)², operated from September 25, 1990 and continues to operate, these three
22 Roasters, each of which is rated at or greater than 1 million British Thermal Units (“BTUs”) per
23 hour, without an air quality permit.
24

25
26 ² A.A.C. R18-2-306(A), prior to its November 15, 1993 amendment, provided: “A. Except as provided
in this Section or A.R.S. § 49-402.B., no person shall operate any major or minor source without first
obtaining an operating permit from the Director. . .”

1 11. Defendant operated these fuel burning roasters at a sustained rate of more than 1
2 million BTUs per hour for more than an eight-hour period.

3
4 **COUNT TWO**

5 12. The allegations in Paragraphs 1 through 11 are adopted herein and incorporated by
6 reference.

7
8 13. On July 2, 1991, Defendant was issued Air Quality Permit No. 24135-94 for four
9 (4) natural gas fired boilers. Each boiler is rated at more than 1 million BTUs per hour.

10 14. The four (4) boilers covered by the 1991 Air Quality Permit No. 24135-94 are: a
11 Clayton Boiler, Model EOG, National Board Number 26461, a Clayton Boiler, Model EOG,
12 National Board Number 20282, a Ray Boiler, Model Number Series E, National Board Number
13 5243, and a Dixon Boiler, Model Number WWS, National Board Number 1459.

14
15 15. In violation of A.R.S. § 49-426, A.A.C. R18-2-302(A), and/or A.A.C. R18-2-
16 306(A)³, Defendant, in April 1992, installed, operated, and continues to operate additional fuel
17 burning equipment that emit air contaminants without a permit. Defendant installed and
18 operated a Ray Boiler, Model B-6900, National Board Number 6329 which is rated at greater
19 than 1 million BTUs per hour, and a Superior Boiler, Serial Number 6276-6483, National Board
20 Number 3896 which is rated at greater than 10 million BTUs per hour.

21
22
23 16. Defendant operated and continues to operate these fuel burning boilers at a
24 sustained rate of more than 1 million BTUs per hour for more than an eight-hour period.

25
26 ³ In November of 1993, both A.A.C. R18-2-302 (A) and 306 (A) were amended to create a unitary
installation and operation permitting system under amended A.A.C. R18-2-302 (A).

COUNT THREE

1
2 17. The allegations in Paragraphs 1 through 16 are adopted herein and incorporated by
3 reference.
4

5 18. In 1993, regulatory amendments occurred that provided for the submittal of an
6 application to revise an existing air quality permit for the construction and operation of
7 additional fuel burning equipment.
8

9 19. In September 1999, Defendant failed to obtain a permit revision to Air Quality
10 Permit No. 24135-94, prior to the construction and operation of Clayton Boiler #1, National
11 Board Number 22010. Clayton Boiler #1, National Board Number 22010 is fuel burning
12 equipment rated at greater than 10 million BTUs per hour that emits air contaminants.
13

14 20. In August 2005, Defendant failed to obtain a permit revision to Air Quality Permit
15 No. 24135-94, prior to the construction and operation of Cyclotherm Boiler, Serial Number
16 25242, National Board Number 16182. Cyclotherm Boiler, Serial Number 25242, National
17 Board Number 16182 is fuel burning equipment rated at greater than 10 million BTUs per hour
18 that emits air contaminants.
19
20

21 21. Defendant's construction and continued operation of the Clayton Boiler #1,
22 National Board Number 22010 and the Cyclotherm Boiler, Serial Number 25242, National
23 Board Number 16182 without a revision to Defendant's air quality permit are violations of
24 A.A.C. R18-2-302(A).
25
26

1 **COUNT FOUR**

2 22. The allegations in Paragraphs 1 through 21 are adopted herein and incorporated by
3 reference.
4

5 23. Defendant, after June 9, 1989, constructed and operated a Superior Boiler, Serial
6 Number 6276-6483, a Clayton Boiler #1, National Board Number 22010, and a Cyclotherm
7 Boiler, Serial Number 25242, National Board Number 16182. Each of these boilers have a
8 maximum rated heat input capacity greater than or equal to 10 million BTUs per hour subjecting
9 each to the NSPS regulations⁴.
10

11 24. Defendant, in violation of A.A.C. R18-2-901.1, 901.5 and Title 40 Code of
12 Federal Regulations §§ 60.7(a) and 60.48c(a), failed to submit notices of start of construction
13 and start of operation for the NSPS affected Superior Boiler, Serial Number 6276-6483, Clayton
14 Boiler #1, National Board Number 22010, and Cyclotherm Boiler, Serial Number 25242,
15 National Board Number 16182.
16
17

18 25. Defendant, in violation of A.A.C. R18-2-901.5 and 40 CFR 60.48c(g), failed to
19 record the amount of natural gas combusted in each of these three NSPS affected boilers for
20 each day operation.
21

22 **COUNT FIVE**

23 26. The allegations in Paragraphs 1 through 25 are adopted herein and incorporated by
24 reference.

25 27. On June 12, 2003, ADEQ sent Defendant a "call in" letter requesting that

26 ⁴ On September 26, 1990, Arizona adopted the NSPS regulations that were incorporated in A.A.C. R18-2-901.1 and 901.5.

1 Defendant submit a Class II Air Quality Unitary permit application to supersede Air Quality
2 Operating Permit No. 24135-94, for all fuel burning equipment, including all boilers and
3 roasters.
4

5 28. ADEQ's June 12, 2003 "call in" letter requested that the permit application be
6 submitted within 180 days (December 10, 2003) after receipt of the letter.
7

8 29. Defendant, in violation of A.A.C. R18-2-303 (C), failed to submit the requested
9 permit application until November 10, 2004.

10 COUNT SIX

11 30. The allegations in Paragraphs 1 through 29 are adopted herein and incorporated by
12 reference.
13

14 31. On October 21, 2005, Defendant ignited, caused to be ignited, permitted to be
15 ignited, or suffered, allowed, or maintained an open outdoor fire of weeds on agricultural land in
16 Cochise County.
17

18 32. Defendant, in violation of A.R.S. § 49-426 (A) (2) and A.A.C. R18-2-602 (B) and
19 (D), conducted this open outdoor fire without an open burning permit.
20

21 VI. WATER QUALITY VIOLATIONS

22 COUNT SEVEN

23 33. The allegations in Paragraphs 1 through 32 are adopted herein and incorporated by
24 reference.
25

26 34. Defendant reused reclaimed industrial wastewater for production or processing of
a crop that may be used as human or animal food.

1 35. Defendant, in violation of A.A.C. R18-9-707(A)(2), reused reclaimed industrial
2 wastewater on crops without an industrial Reclaimed Water Individual Permit.

3
4 COUNT EIGHT

5 36. The allegations in Paragraphs 1 through 35 are adopted herein and incorporated by
6 reference.

7
8 37. Defendant failed to maintain in good working order its above and below ground
9 piping, screens, valves, and its pumping infrastructure for the reclaimed industrial wastewater
10 sump.

11
12 38. The failure to maintain in good working order the piping, screens, valves, and
13 pumping infrastructure resulted in discharges of industrial wastewater, a pollutant, to and below
14 the surface of the ground.

15 39. Defendant, in violation of A.R.S. § 49-241 (A), allowed a discharge of a pollutant
16 to the aquifer or to the vadose zone from pipeline infrastructure leaks and from the unlined
17 reclaimed industrial wastewater sump without obtaining an APP.
18

19
20 COUNT NINE

21 40. The allegations in Paragraphs 1 through 39 are adopted herein and
22 incorporated by reference.

23 41. Defendant discharged industrial wastewater, a pollutant, into a surface
24 impoundment that is not designed, constructed and operated so that there is no migration of
25 pollutants directly to the aquifer or to the vadose zone.

26 42. Defendant, in violation of A.R.S. §§ 49-241 (A) and/or 49-241 (B) (1), operated a

1 surface impoundment without an APP.

2 **COUNT TEN**

3
4 43. The allegations in Paragraphs 1 through 42 are adopted herein and
5 incorporated by reference.

6 44. Defendant discharged industrial wastewater, a pollutant, from a drain box, through
7 a 12" diameter outfall pipe, onto the land surface.

8
9 45. Defendant, in violation of A.R.S. §§49-241 (A) and/or (B), discharges industrial
10 wastewater without an APP and operates a discharging facility without an APP.

11 **COUNT ELEVEN**

12
13 46. The allegations in Paragraphs 1 through 45 are adopted herein and incorporated by
14 reference.

15 47. Defendant owns and operates a public water system (PWS ID # 02-399) that
16 provides water for human consumption and regularly serves an average of at least twenty-five
17 persons daily for at least sixty days a year.

18
19 48. Defendant, in violation of A.A.C. R18-4-114, operated the water distribution
20 system associated with the public water system without a certified operator of the proper type
21 and grade.

22
23 **VII. PERMIT FEES**

24 **COUNT TWELVE**

25 49. The allegations in Paragraphs 1 through 48 are adopted herein and incorporated by
26 reference.

1 50. Defendant is an operator of a source that is required to have an air quality permit.
2 As an operator requiring an air quality permit, Defendant is required to pay regulatory fees.

3
4 51. Defendant, in violation of A.R.S. § 49-426 (E) (2) and A.A.C. R18-2-326, failed
5 to pay in full its air emission and administrative fees for the Air Permit for the years 1996, 1997,
6 2002, and 2003.

7
8 52. Defendant, in violation of A.R.S. § 49-113, failed to pay the interest accrued on
9 the unpaid air emission and administrative fees for the Air Permit for the years 1996, 1997,
10 2002, and 2003.

11 WHEREFORE, the State's complaint prays for judgment as follows:

12
13 1. To assess a civil penalty against the Defendant Fiesta Canning Co., Inc. in an
14 amount not to exceed \$10,000 per day, per violation, pursuant to A.R.S. § 49-463;

15
16 2. Injunctive relief as deemed appropriate by this Court pursuant to A.R.S. §§ 49-
17 262(B) and 49-462;

18
19 3. To assess a civil penalty against the Defendant Fiesta Canning Co., Inc. in an
20 amount not to exceed \$25,000 per day, per violation, pursuant to A.R.S. § 49-262(C);

21 4. To assess a civil penalty against the Defendant Fiesta Canning Co., Inc. in an
22 amount not to exceed \$5,000 per day, per violation, pursuant to A.R.S. §§ 49-262(C);

23 5. To assess a civil penalty against the Defendant Fiesta Canning Co., Inc. in an
24 amount not to exceed \$500 per day, per violation, pursuant to A.R.S. §§ 49-354(G);

25 6. To award a judgment against the Defendant Fiesta Canning Co., Inc. in the amount
26 of \$5,970.00 plus interest, pursuant to A.R.S. §§ 49-426(E)(2), 49-113(B), and A.A.C. R18-2-

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326(E);

7. Award the State its taxable costs and costs of litigation;

8. Award the State its reasonable attorney's fees and expert witness costs pursuant to
A.R.S. § 49-262(D); and

9. Grant such other relief as the Court deems just and proper.

DATED this ___ day of _____, 2006.

TERRY GODDARD
Attorney General

Barbara U. Pashkowski
Assistant Attorney General
Attorney for Plaintiffs

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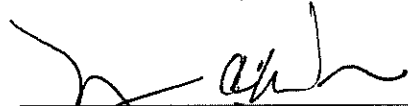
1 **VERIFICATION**

2 STATE OF ARIZONA)
3 County of Maricopa)ss.

4 Nancy Wrona, being first duly sworn upon her oath, deposes and says:

5 1. I am the Director of the Air Quality Division of the Arizona Department of
6 Environmental Quality, and have been delegated the authority to verify Complaints by the
7 Director of the Department.
8

9 2. I have read the foregoing Complaint, know the contents thereof, and that on my
10 own knowledge and belief, the matters alleged herein are true, except for those matters
11 alleged on information and belief, and as to those matters, I believe the Complaint to be true.
12

13 
14 _____
15 Nancy Wrona, Director
Air Quality Division
Arizona Department of Environmental Quality

16 SUBSCRIBED AND SWORN TO before me this 24 day of Feb., 2006.

17
18 
19 _____
Notary Public

20 My Commission Expires:
21 July 10, 2009

