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2 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
3 FOURTH JUDICIAL DISTRICT AT FAIRBANKS

4 State of Alaska, Department)
Of Environmental Conservation)
5)
6 Plaintiff,)
vs.)
7)
8 Andrew and Gloria Straughn)
9)
Defendants.)
10 _____)

FILED in the Trial Courts
State of Alaska, Fourth District

JAN 03 2013

By _____ Deputy

Case No. 4FA-13- 01205CI

11 **COMPLAINT**

12 The plaintiff State of Alaska, Department of Environmental Conservation,
13 alleges as follows:

14 **JURISDICTION AND VENUE**

- 15
- 16 1. Because this complaint alleges that the defendants have
17 created a public nuisance, and seeks both injunctive and monetary relief,
18 this Court has jurisdiction under AS 46.03.760, AS 46.03.765, and AS
19 46.03.810.
- 20 2. This Court has subject matter jurisdiction under AS
21 22.10.020 and AS 09.05.015.
- 22 3. Venue is proper in the Fourth Judicial District under AS
23 22.10.030 and Alaska Civil Rule 3(c) because the claims asserted in this
24 complaint arose in that district.
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26

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CAUSES OF ACTION

4. Based on the facts set out below, the plaintiff alleges that the defendants are in violation of AS 46.03.810.

5. Based on the facts set out below, the state alleges that the defendants are in violation of 18 AAC 50.110, a regulation enforceable in this Court under AS 46.03.760(e) and AS 46.03.765.

6. Based on the facts set out below, the State alleges that the defendants' actions constitute a public nuisance under common law.

FACTS

[5055 Palo Verde Avenue Property]

7. The defendants own residential property located at 5055 Palo Verde Avenue, in Fairbanks, Alaska.

8. The defendants rent the property out, but live nearby, at 5035 Palo Verde Avenue.

9. Sometime prior to October 2008, the defendants installed a new source of heat for their 5055 Palo Verde Avenue property: an Outdoor Wood Boiler ("OWB" below).

10. Defendants began to operate the OWB at 5055 Palo Verde Avenue sometime during the fall of 2008.

11. Since the fall of 2008, the OWB has been the primary source of heat at the defendants' 5055 Palo Verde Avenue property.

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12. Even though it is a rental property, one or both of the defendants has/have operated the OWB at 5055 Palo Verde Avenue since its installation.

[58 Trinidad Drive Property]

13. The defendants also own residential property located at 58 Trinidad Drive, in Fairbanks, Alaska. This property is in close proximity to the 5055 Palo Verde Ave. property, and to the defendants' residence.

14. The defendants rent the Trinidad Drive property out.

15. Sometime prior to October 2008, the defendants installed a new source of heat for their Trinidad Drive property: an Outdoor Wood Boiler (OWB).

16. Defendants began to operate the OWB at 58 Trinidad Drive sometime during the fall of 2008.

17. Since the fall of 2008, the OWB has been the primary source of heat at the defendants' Trinidad Drive property.

18. Even though it is a rental property, one or both of the defendants has/have operated the OWB at 58 Trinidad Drive since its installation.

[Facts Common to Both Properties]

19. The two properties owned by defendants and described above are located in the same neighborhood, and are situated approximately one block apart. There are 10 houses located between the

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defendants' 5055 Palo Verde Avenue property and their 58 Trinidad Dr. property.

20. The OWBs at both of the properties owned by the defendants have, at times, emitted smoke that has impacted the health of some of the neighbors, and has unreasonably interfered with the neighbors' enjoyment of life and property.

21. Several residents of the neighborhood surrounding the defendants' two properties have filed complaints about smoke coming from one or both of the defendants' two OWBs during the approximately four years since they were installed and began operations. Those complaints have been filed with the State and/or with the Fairbanks North Star Borough Air Program.

22. The Woodriver Elementary School is located on Palo Verde Avenue directly across from the defendants' property.

23. Many people who work at Woodriver School have also complained to the State and/or the Borough about smoke emitting from the defendants' two OWBs.

24. Many parents of students attending Woodriver School have also complained to the State and/or the Borough about smoke emitting from the defendants' two OWBs

25. The State's records show that there have been approximately 186 complaints, received from approximately 50 different

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individuals, about wood smoke in the Woodriver School area since the fall of 2008.

26. The Borough's records show that there have been approximately 180 complaints, received from approximately 40 different individuals, about wood smoke in the Woodriver School area since the fall of 2008.

27. The emissions from OWBs such as the two owned and operated by the defendants near the Woodriver School contains fine particulate matter.

28. Federal and State laws classify airborne particulate matter by reference to particle diameter, and fine particulate matter has a diameter of less than 2.5 microns. Thus, the common acronym for fine particulate matter is "PM-2.5."

29. Exposure to PM-2.5 is associated with respiratory problems and asthma.

30. Several people who have been exposed to emissions from the defendants' two OWBs, including neighbors as well as staff and students at the Woodriver School, have begun to experience respiratory problems and asthma since the fall of 2008.

31. Emissions from defendants' two OWBs near the Woodriver School have harmed the health of some of the residents in the neighborhoods, as well as the health of staff and students at the school.

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32. Emissions from defendants' two OWBs have unreasonably interfered with their neighbors' enjoyment of life and with their enjoyment of their own homes and yards.

33. Emissions from defendants' two OWBs have created a public nuisance at the Woodriver School, and in the surrounding neighborhood.

34. On March 10, 2011, the State served the defendants with a Nuisance Abatement Order, which ordered them to avoid operating the two OWBs in such a manner that their emissions cause a nuisance.

35. Based on complaints received from the public by both the State and the Borough since the date of the Nuisance Abatement Order, the defendants have not abated the nuisance as required by that order.

PRAYER FOR RELIEF

Accordingly, the State prays that this court grant the following relief:

1. Immediately enjoin and prohibit defendants' operation of the OWBs located at 5055 Palo Verde Avenue and 58 Trinidad Drive.
2. Order that defendants reimburse the State for its costs incurred in abating the public nuisance created by defendants' operation of the two OWBs.
3. Award the State its costs and fees incurred in bringing this action.

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4. For such further relief as the Court determines to be appropriate.

Dated this 3rd day of January, 2013.

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By: 
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