

Odors/Common Law Torts: Federal District Court Addresses Animal Waste Rendering Facility's Motion to Dismiss



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A United States District Court (D. New Jersey) ("Court") addressed in an August 25th Opinion issues arising out of a class action that had been filed against Darling Ingredients, Inc. ("DII") alleging that its Newark, New Jersey, Facility ("Darling Facility"):

... grinds and heats animal waste to render tallow, protein and meal byproducts and heats and refines used cooking oil to produce yellow grease and feed-grade animal fat.

See Sines, et al., v. Darling Ingredients, Inc., 2020 WL 5015488.

A class action was filed against DII for alleged emission of "noxious odors" onto Plaintiffs' and putative class members' (collectively "Plaintiffs") properties. The Plaintiffs are stated to live within 1.75 miles of the Darling Facility.

The Plaintiffs alleged that they have experienced (and continue to experience) physical discomfort and damage to their properties' rights as a result of the Darling Facility's emission of noxious odors onto their properties.

Plaintiffs alleged that odors caused:

- Physical discomfort (including nausea, eye and nasal irritation and headaches)
- Inability to open windows, go for walks or use outdoor spaces
- Decreased property values

Plaintiffs filed a lawsuit alleging the following causes of action:

1. Public Nuisance
2. Private Nuisance
3. Negligence
4. Gross Negligence
5. Trespass

DII filed a Motion to Dismiss.

The Court rejected the Motion to Dismiss, addressing each of the causes of action:

1. **Public Nuisance** – Defendants argued that the Plaintiffs represent thousands of property owners (making up the entire community) surrounding the Darling Facility. As a result, DII argued that

because Plaintiffs did not represent the general public, there was no standing to bring a private action for public nuisance.

The Court disagreed stating the fact that the Plaintiffs represent a large portion of the community surrounding the Darling Facility does not render them unable to bring a public nuisance claim. It stated that simply because there are property areas in the Class Area that suffer injury to their property interest (and that are distinct from the injury to the general public) does not preclude them from a right to unpolluted air.

The Court finds that Plaintiffs adequately pleaded a special harm and have standing to bring a public action claim. Further, it rejects DII's argument that the public nuisance claim is barred because the Darling Facility is already heavily regulated by the state. In addition, the Court rejects the argument that the public nuisance claim must be dismissed as duplicative of a negligence claim.

2. Private Nuisance – DII argues that the alleged harm to Plaintiffs was too widespread to constitute as type actionable as private nuisance. In other words, private nuisance actions are argued to be only available to limited numbers of people where they claim that:

. . . the defendant's conduct has interfered with their interests on a neighboring or adjoining land.

The Court disagrees stating such a claim can be brought even where it is extensive enough to also constitute a public nuisance. In addition, the properties do not have to be directly adjoining the Darling Facility.

The Court further rejects DII's claim that private nuisance was not adequately plead. It states that DII was alleged to be aware of the emission of noxious odors along with public complaints and permit violations. Since DII allegedly failed to act reasonably (i.e., taking odor mitigation measures) this was sufficient to raise the claim above a speculative level.

3. Negligence – DII argued that Plaintiffs failed to adequately plead the existence of a duty. This was deemed to be because the class members were too physically distant from the Darling Facility.

The Court rejects this claim noting that the distance between the Plaintiffs' property and the Darling Facility is not dispositive on the issue of duty of care. The Court states that the risk posed by the alleged noxious odors are alleged to be great and extensive and may negatively impact the health and safety of Plaintiffs. It further states that DII is alleged to have had an opportunity to manage and limit the emission of noxious odors and failed to take action.

The Court found the Plaintiff's allegations raised the negligence claim above a speculative level.

4. Gross Negligence – The Court notes that gross negligence and negligence claims consist of the same elements, which include:

- Duty
- Breach
- Causation
- Injury

The difference is instead in terms of degree rather than quality requiring proof of wanton or reckless disregard for the safety of others.

DII argues that the gross negligence claim lacks factual support. The Court dismisses this argument, stating that DII's alleged knowledge of the harm caused by odor emissions and permit violation in addition to alleged apparent inaction raised the claim above a speculative level.

5. Trespass – The Court notes that trespass constitutes the unauthorized entry onto property of another and includes two elements:

- Entry onto another’s property
- Entry is unauthorized

DII argues that this cause of action is not viable because trespass claims in the District have been rejected in the context of environmental pollution.

The Court distinguishes the cited cases noting that they involved common law trespass claims in pollution cases where the Plaintiff pled an alternative claim under a strict liability statute regulating pollution.

Plaintiffs are stated to have not done so in this instance and, therefore, the Court rejects this argument. It also rejects the argument that the unauthorized entry was not of tangible matter onto the Plaintiffs’ property (arguing odors are not tangible). Odors are deemed encompassed to fit within a scope of tangible matter and this argument is also rejected.

A copy of the Opinion can be downloaded [here](#).