

## Odors/Animal Rendering Facility: Federal Court Addresses Motion to Dismiss Nuisance/Negligence Claims



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A United States District Court (D. Colorado) (“Court”) addressed in a March 29th Order procedural motions arising out of litigation relating to the release of odors from an animal rendering and used grease processing facility. See *Robert and Nicole Diaz, et al. v. Darling Ingredients, Inc.*, 2021 WL 1172620.

Area residents brought a class action alleging causes of action of nuisance and negligence.

Darling Ingredients, Inc. (“Darling”) operates an animal rendering and used grease processing facility (“Facility”) in Denver, Colorado. The Facility is in an industrial/agricultural sector and zoned industrial. An oil refinery, wastewater treatment plant and Purina plant are stated to be adjacent to the Facility.

Plaintiff Robert Diaz and other residents living within three miles south of the Facility filed a class action. They alleged that Darling’s industrial processes involve:

. . . substantial pollutants, including highly noxious dead animal and “death” odor.

The odors are alleged to be unreasonable and cause substantial discomfort to the residents (i.e., class).

Darling is further alleged to have failed to take reasonable steps to capture and control the odor. Causes of action alleged include negligence and nuisance.

Darling filed a motion pursuant to Federal Rules of Civil Procedure 12(b)(6) seeking to dismiss the nuisance and negligence claims.

The Court in addressing the nuisance claim noted that under Colorado law that it must involve a substantial invasion of another’s interest and the use and enjoyment of their property and the invasion is either:

1. Intentional and unreasonable;
2. Unintentional but actionable under the rules for negligent or reckless conduct; or
3. So abnormal or out of place in its surroundings as to fall within the principle of strict liability.

The Plaintiffs alleged both a public and private nuisance.

Liability for private nuisance requires that the Plaintiff prove the Defendant engaged in an intentional, negligent, or unreasonably dangerous activity resulting in the unreasonable and substantial interference with the Plaintiff’s use and enjoyment of the property. “Substantial and unreasonable” requires that the interference generally be significant enough that a normal person in the community would find it offensive, annoying, or inconvenient.

The Court determines in addressing the Motion to Dismiss that the Plaintiffs' complaint plausibly alleges interference with their property. Further, such interference is plausibly alleged to be substantial and unreasonable.

As to whether the Complaint plausibly alleges a nuisance premised upon an unreasonably dangerous activity, the Court holds it does not. However, it does find that the Complaint plausibly alleges an intentional nuisance.

The Court states that the Complaint alleges Darling knew its operation at the Facility was emitting noxious odors onto neighboring properties. Plaintiffs had alleged that the Facility was the:

. . . subject of frequent complaints from residents, numerous media reports documented community concerns regarding the smell; 50 households contacted Plaintiffs' counsel documenting the odors. . .

Complaints were stated to have been made to Darling.

Such allegations are deemed sufficient to plausibly allege an intentional nuisance.

The Court also finds that the Plaintiffs plausibly pleaded a negligence nuisance claim at this preliminary point in the litigation. They are stated to have plausibly alleged that Darling unreasonably and substantially interfered with their use and enjoyment of the property. Further, there is a finding that a duty could have plausibly been breached and caused Plaintiffs' damages.

Cited in regards to these elements are the allegations that:

- Darling stores, handles, and processes substantial quantities of dead animal carcasses and old grease which are highly noxious
- Darling failed to implement adequate odor mitigation and control technologies
- Odors attributed to Darling's facilities allegedly caused area residents nausea, forced residents to stay in their home and be unable to use their yards, etc.

The Court also rejects Darling's argument that a private nuisance may be maintained only by adjoining landowners.

In addressing the public nuisance claim, the Court noted that this requires a failure to do something that injuriously affects the safety, health, or morals of the public or works some substantial annoyance, inconvenience, or injury to the public. Such injury must be common to the public such that it interferes with a public right. In order to bring a private claim for public nuisance, a Plaintiff must establish special injury. A special injury is one that is different in kind, not simply degree, from that suffered by members of the public generally.

The Court holds that the Plaintiffs' plausibly alleges the elements of a private claim for public nuisance. This is based on the Court's view that the elements of an intentional and negligence nuisance are sufficiently pleaded and noting their allegation that noxious odors have allegedly reduced their property values, also referencing issues such as Plaintiffs alleged inability to enjoy their yards and hold home gatherings. These are deemed to plausibly allege a special injury because they are harms that are different in kind from those experienced by the public at large.

Consequently, the Court denies the Motion to Dismiss with respect to:

. . . private nuisance, to the extent such claim is premised on theories of intentional nuisance and negligent nuisance; public nuisance; and negligence.

The Court grants the Motion to Dismiss as to:

. . . any nuisance claim premised on a theory of unreasonably dangerous activity.

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