

St. Paul takes Gopher State Ethanol to court again

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In one corner is Gopher State Ethanol, a three-year-old business on W. 7th Street in St. Paul that employs 34 people and is the only thing standing between the city and another abandoned brewery complex.

In the opposite corner is the city itself, hoping to rescue residents near the plant from a fourth consecutive summer of nose-curling, sometimes stomach-turning plant fumes.

Round 3 begins today in the legal match between St. Paul and Gopher State as the city goes to court seeking to have the plant shut down until it can operate without forcing neighbors to stay inside.

The case is the city's latest effort to brand Gopher State as a public nuisance, an important step toward winning an injunction to halt plant operations. Two previous suits by the city were settled or dismissed, with mixed results.

For St. Paul, the case has added urgency because of the approach of summer, a time of year when residents have registered the most complaints about the smells emanating from the plant. After three years, city officials have little patience for further delay.

"Gopher State Ethanol and the city agree on what they should do, but it doesn't help because it doesn't take care of the odor problem now," said Eric Larson, the assistant city attorney who will try the case.

But Gopher State CEO Jim Freeman said city officials are less interested in eliminating the odor than they are in closing the plant and scoring political points with the public.

Freeman said Gopher State offered to submit to binding arbitration and let Ramsey County District Judge Dale Lindman decide on odor control standards. But the city refused.

"This isn't about solving a problem," Freeman said. "This is about closing a facility, and that's all they want to do. The city will spend a lot of money on the trial."

But Michael Unger, a Minneapolis attorney who represents the Citizens Alliance for a Safe Environment (CASE) -- an ad hoc neighborhood group opposing the plant -- said that arbitration didn't work for his clients when they entered into it with Gopher



Dori Ullman, a plaintiff in the suit against Gopher State

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State.

Plant officials "never ever delivered on their promises. They most recently promised to do odor testing no later than April 10, and they didn't do it," Unger said.

Freeman said two recent attempts to test odor were derailed because of unrelated problems; for instance, the plant lost its power on one occasion. He said the city and neighbors consistently misrepresent Gopher State's good-faith efforts to solve the problems.

"Every single thing they've asked for, we've agreed to do," Freeman said. But city officials say, the problem is that it takes them forever to do it.

Previous suits

The city charged Gopher State nearly two years ago with 25 misdemeanor counts of violating noise standards but later dismissed the criminal complaint in exchange for \$39,000 in restitution and promises to control noise.

Five months later the City Council settled St. Paul's first civil suit against Gopher State, aimed at reducing plant noise to legal limits. Decibels have come down, although the ethanol business has paid \$7,500 since last fall for four violations detected by monitors.

In the trial beginning today, Larson plans to call several residents to testify on their daily experiences with the plant's odor. Many of them belong to CASE, which settled its own suit against Gopher State a year ago after agreeing on odor-reduction measures.

But smells persisted last summer. And after Gopher State's major odor-eater -- a \$1.2 million thermal oxidizer -- broke down in August, the City Council directed City Attorney Manuel Cervantes to again sue the plant.

The thermal oxidizer was rebuilt and resumed operation in January. "It's running better than before," said Freeman, the Gopher State CEO.

Gopher State is getting new scrubbers to cleanse so-called fugitive emissions and has installed a special filter to reduce the likelihood that the oxidizer will break down again, he said.

The trial will have a couple of unusual features. Much to the city's displeasure, Lindman, the judge, has decided to have separate trials to determine whether the plant is operating as a public nuisance and, if so, what penalty it will pay.

Larson, the assistant city attorney, maintains that if Gopher State is found to be a public nuisance, it should be closed as a matter of law until the nuisance is corrected.

But Larson said he is happy with Lindman's decision to have an advisory jury listen to testimony and render a verdict. Although the final decision will be the judge's, Larson said the jury should provide a perspective on the problems faced by real people who live near the plant.

In previous cases when Lindman has rejected requests to shut down the plant, he has shown a sensitivity to Gopher State's shaky financial condition. In the end, the plant might be most vulnerable to attack not over its noise or odor but its balance sheet.

A bill was introduced in the Legislature this session to cut off state subsidies for Gopher State. Mayor Randy Kelly vetoed a City Council resolution backing the bill, then a few weeks later flew to a Minnesota Wild playoff game courtesy of a Gopher State owner. The perception of a conflict of interest led the council last week to adopt a strict gift ban policy that mirrors state statutes. The bill itself is still in committee.

Unger, the lawyer for the neighborhood group, said that neighbors are cautiously optimistic that the city will prevail.

"There's a lot of hope," he said, "but some apprehension because they've been down this road before."

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