

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION

SEP 11 P 2 20

U.S. DISTRICT COURT  
NORFOLK, VIRGINIA

NEFCO, Inc. )  
8895 North Military Trail )  
Building C, Suite 100 )  
Palm Beach Gardens, FL 33410 )  
 )  
Plaintiff, )  
v. )  
Midwestern Fabricators )  
1235 South Pioneer Road )  
Salt Lake City, Utah 84104 )  
 )  
Defendant. )  
\_\_\_\_\_ )

Civil Action No. 3:13-cv-697  
(HEH)

**JURY TRIAL DEMANDED**

**COMPLAINT FOR PATENT INFRINGEMENT**

This is an action for patent infringement by NEFCO, Inc. (“NEFCO”) against Midwestern Fabricators (“Midwestern”) for infringement of United States Patent No. 5,597,483 (the “483 patent”), under 35 U.S.C. § 271. NEFCO seeks a judgment that Midwestern has infringed its patent, compensatory damages, injunctive relief preventing Midwestern from using the patented item, or a compulsory license fee if the Court determines that injunctive relief is not appropriate. By and through its undersigned counsel, NEFCO alleges as follows:

**THE PARTIES**

1. Plaintiff NEFCO is a Delaware corporation with its place of business at 8895 North Military Trail, Building C, Suite 100, Palm Beach Gardens, FL 33410.

2. Upon Information and belief, Defendant Midwestern Fabricators is a Utah corporation with its principal place of business at 1235 South Pioneer Road Salt Lake City, Utah 84104.

### **JURISDICTION AND VENUE**

3. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) as this action relates to a patent.

4. Venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b) as The Defendant has transacted and does transact business in Norfolk, Virginia within the Eastern District of Virginia, and has committed, contributed to, and/or induced acts of patent infringement in the Eastern District of Virginia.

5. The Court has personal jurisdiction over Defendant pursuant to VA Code §§ 8.01-328.1(A)(1) and 8.01-328(A)(2) due to its conducting substantial business in this forum, including: (i) at least a portion of the infringement alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in the Eastern District of Virginia.

### **BACKGROUND**

6. NEFCO, and its founder Earle Schaller, are developers, manufacturers and installers of fiberglass and related products in the sewage waste treatment industry. Such products and services include the development, manufacture and installation of sewage treatment tank enhancements, including launder channels, launder channel covers, and density current baffles that are installed in sewage treatment tanks.

7. Among such products is a vented density current baffle, the subject matter of which is included in U.S. Patent No. 5,597,483, issued on January 28, 1997, owned by NEFCO. A copy of the '483 patent is attached as Exhibit 1.

8. At the time of the invention, prior art arrangements for installing density baffles in clarifier tanks employed vent-less baffles that resulted in build-up of collected waste and gases behind the baffles, requiring periodic cleaning. Alternatively, density baffles in clarifier tanks employed complicated vent structures that were expensive to manufacture and maintain.

9. NEFCO's novel design covered in the '483 patent provided an efficient and inexpensive vented baffle, where the vents were integrally molded into the mounting flanges of baffle segments providing a stable and well vented baffle arrangement.

10. On January 28, 1997, United States Patent No. 5,597,483 entitled "Vented Baffle System" was duly and legally issued to Earle Schaller after full and fair examination. NEFCO is the owner of all right, title, and interest in and to the '483 patent, with the assignment recorded on R/F 007442/0913.

11. In October 2009, the Hampton Roads Sanitary District, Hampton Roads, VA issued a Request for Proposal for an upgrade for the Army Base Wastewater Treatment Plant, located at 401 Lagoon Road, Norfolk, VA 23505. The upgrade was to consist of, among other elements, the replacement of the four secondary clarifier mechanisms; replacement of the effluent launders with new fiberglass launders and the installation of density current baffles in the four secondary clarifiers. The attached Exhibit 2 is page 11125-13 from the October 2009 RFP which includes the specifications for the density current baffles, including as point 12 that the baffles need to, "provide

ability to vent gases which may form beneath the baffle through 2” radius half round openings molded into the panel at its highest point.”

12. NEFCO and one other competitor firm were invited to provide preliminary designs and budgets for all of the fiberglass products on the program, including the effluent launder troughs, the weirs and scum baffles and the density current baffles. Based on the preliminary designs NEFCO and the other invited firm each submitted bids for the fiberglass material. No other firms were invited to bid.

13. On the bid date, January 20, 2010, NEFCO and the other invited firm submitted their bids substantially in the range of \$500,000 to \$600,000 to the competing general contractors. At least one additional unsolicited proposal from Midwest Fabricators was also provided in response to the RFP which included a bid of approximately \$350,000. One of the general contractors, Archer Western Contracting used the bid of Midwest Fabricators in the formation of its bid. At least partly as a result, the general contractor Archer Western was the low bidder and was selected as the General Contractor and, in turn, selected Midwest Fabricators to supply the fiberglass components including the fiberglass components for the density baffles. Work on the project began soon thereafter in 2010.

14. In 2012, the original general contractor, Archer Western, contacted NEFCO through NEFCO’s local representative to review the existing project at the Army Base Wastewater Treatment Plant in Norfolk, VA. NEFCO and other companies were asked to review the existing work of Midwestern Fabricators to asses certain defects in Midwestern Fabricator’s installation so as to provide possible corrective action that could

be taken to solve the immediate problems and recommend design improvements for the remaining equipment.

15. Two NEFCO representatives visited the Norfolk, VA Army Base Wastewater Treatment Plant one week after being contacted by Archer, and inspected the work that had been done and briefed the general contractor Archer Western on their finding. In the course of their inspection NEFCO's representatives went into the clarifier where Midwestern Fabricator installed equipment and noted that the density current baffles supplied by Midwest Fabricators contained "integrally molded vents" in the horizontal mounting flange. Exhibits 3 and 4 are photographs of Midwestern Fabricator's baffles with vents.

16. Midwestern Fabricator's density current baffles infringe on NEFCO's '483 patented Vented Baffle System.

17. On December 11, 2013 NEFCO sent a letter to Defendant Midwestern Fabricators indicating that their Norfolk, VA Army Base Wastewater Treatment Plant installation infringed NEFCO's '483 patent and requested additional information about this and other installations that may have also employed NEFCO's patented design, but Midwestern did not provide a reply. A copy of the December 11, 2103 letter is attached as Exhibit 5.

#### **CLAIM FOR PATENT INFRINGEMENT**

18. NEFCO incorporates by reference paragraphs 1 - 17 as if fully set forth herein.

19. Midwestern Fabricators has infringed the '483 patent under 35 U.S.C. § 271, either literally and/or under the doctrine of equivalents, directly and/or indirectly.

20.       Midwestern Fabricators has infringed the '483 patent by performing, without authority, one or more of the following acts: making, using, offering to sell, selling within, and importing into, the United States products and services that practice the claimed inventions of the '483 patent, including but not limited to Midwestern Fabricators' offer to sell, and sale of their baffle components at the installation at Norfolk, VA Army Base Wastewater Treatment Plant, and possibly other locations.

21.       Midwestern Fabricators has contributed and is contributing to the infringement of the '483 patent because Midwestern Fabricators knows that the infringing aspects of its infringing products and services, including but not limited to density current baffles, are made for use in an infringement, and are not staple articles of commerce suitable for substantial non-infringing uses.

22.       Midwestern Fabricators has induced and is inducing the infringement of the '483 patent, with knowledge of the '483 patent and that its acts, including without limitation using, offering to sell, selling within, and importing into the United States, its density current baffles, would induce infringement by end users of the foregoing.

23.       Midwestern Fabricators' acts of infringement have caused damage to NEFCO, and NEFCO is entitled to recover damages from Midwestern Fabricators in an amount subject to proof at trial.

24.       Midwestern Fabricators' infringement of NEFCO's rights under the '483 patent will continue to damage NEFCO's business, causing irreparable harm, for which there is no adequate remedy at law, unless enjoined by this Court.

#### **DEMAND FOR JURY TRIAL**

25.       NEFCO hereby demands a jury.

## **PRAYER FOR RELIEF**

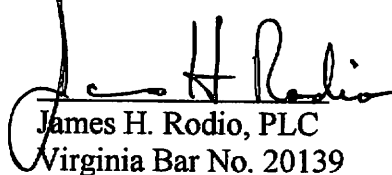
WHEREFORE, NEFCO prays for the following relief:

1. A judgment that Midwestern Fabricators has directly infringed the '483 patent, contributorily infringed the '483 patent, and/or induced the infringement of the '483 patent;
2. A preliminary and permanent injunction preventing Midwestern Fabricators and its officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them, from directly infringing, contributorily infringing, and/or inducing the infringement of the '483 patent;
3. A judgment and order requiring Midwestern Fabricators to pay NEFCO damages under 35 U.S.C. § 284, including supplemental damages for any continuing post-verdict infringement up until entry of the final judgment, with an accounting, as needed, and treble damages for willful infringement as provided by 35 U.S.C. § 284;
4. A judgment and order requiring Midwestern Fabricators to pay NEFCO pre-judgment and post-judgment interest on the damages awarded;
5. A judgment and order requiring that in the event a permanent injunction preventing future acts of infringement is not granted, that NEFCO be awarded a compulsory ongoing licensing fee; and

6. Such other and further relief as the Court may deem just and proper.

Dated: October 11, 2013

Respectfully submitted,



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