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NJ Towns, Counties Breached \$9M Salt Contract, Suit Says

By Jeannie O'Sullivan

Law360, New York (June 14, 2017, 3:16 PM EDT) -- Dozens of New Jersey public entities were slapped with a federal lawsuit Monday alleging they breached a \$9.3 million purchase agreement to buy minimum amounts of rock salt from an Indiana-based supplier.

Mid-American Salt LLC had a \$9.3 million contract with the Morris County Cooperative Pricing Council to provide 115,000 tons of rock salt, but 48 of MCCPC's members, including towns, counties and school boards, either bought less than they estimated they'd buy or didn't buy any, according to the suit filed in New Jersey federal court.

Collectively, the purchases the contracting defendants ended up making — along with non-defendant Union Township, which exceeded its planned purchase — amounted to 3,686.64 tons of salt, less than 5 percent of the estimated tonnage awarded to Mid-American, for a total of \$250,000.

"Implicit in the MCCPC members' submission of estimates was a promise to purchase amounts approximately equal to those estimates. However, the contracting defendants, without exception, either failed entirely to purchase from Mid-American, or purchased quantities vastly lower than their estimates," the complaint said.

The defendants include MCCPC as well as member towns and school districts located in eight counties. Five of those counties — Hunterdon, Passaic, Somerset, Sussex and Union — are also defendants.

The complaint asserts claims of breach of contract and breach of the covenant of good faith and fair dealing, and seeks compensatory and consequential damages, along with attorneys' fees and costs.

The contract at the heart of the lawsuit was awarded to Mid-American in August following a competitive bidding process.

In preparation to fulfill the contract, Mid-American imported salt from its Moroccan salt mine and arranged a terminal contract with DuraPort Marine and Rail Terminal in Bayonne, New Jersey, to store the salt until it was to be delivered. In October, Mid-American returned the signed contract and a \$93,016 performance bond to MCCPC.

Each of the contracting defendants was directed to provide a customer profile form, including the estimated rock salt to be purchased, to Mid-American, the complaint said. Requested quantities ranged from 75 tons to 12,000 tons.

However, most of the contracting MCCPC members didn't follow through, according to the complaint.

For example, the combined requested amount from Hunterdon County was for 12,920 tons of rock salt, yet none of the county defendants other than the township of Lebanon ordered any salt from Mid-American, the complaint said. Lebanon had requested an estimated 2,000 tons, but actually only purchased 50.14 tons, amounting to a mere 2.5 percent of its estimate, Mid-American said.

Further, a number of the defendants ended up buying rock salt from Mid-American competitors who

undercut Mid-American's prices, the complaint said.

In addition to the performance bond, Mid-American's investments have included \$4.8 million for the import of three shiploads of salt, a \$31,250 monthly storage fee and \$58,962.26 to cover the salt with tarps, the complaint said. Mid-American has also incurred about \$220,000 in financing costs as well as additional costs to rent barges, arrange for tugs and contract for truck delivery of the salt.

Representatives for the named defendants didn't immediately respond to requests for comment.

Counsel information for the defendants wasn't available.

Mid-American is represented by Peter L. Skolnik of Clark Guldin Attorneys at Law.

The case is Mid-American Salt LLC v. Morris County Cooperative Pricing Council et. al., case number 2:17-cv-04262, in U.S. District Court for the District of New Jersey.

--Editing by Emily Kokoll.

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