

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No.
)	
HIGHLAND BAKING COMPANY, INC., an)	(Enforcement-Air)
Illinois corporation,)	
)	
Respondent.)	

NOTICE OF ELECTRONIC FILING

TO: Joseph R. Podlewski, Jr.
Schwartz Cooper Chartered
180 N. LaSalle St., Suite 2700
Chicago, IL 60601

PLEASE TAKE NOTICE that today, March 12, 2008, I have filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Complaint a true and correct copy of which is attached and hereby served upon you.

Pursuant to 35 Ill. Adm. Code 103.204(f), I am required to state that failure to file an answer to this Complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the Complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.

NOTIFICATION

YOU ARE HEREBY NOTIFIED that financing may be available through the Illinois Environmental Facilities Financing Act (20 ILCS 3515/1 *et seq.*) to correct the alleged pollution.

THIS FILING IS SUBMITTED ON RECYCLED PAPER

PEOPLE OF THE STATE OF ILLINOIS,
by LISA MADIGAN, Attorney General
of the State of Illinois

BY:



NANCY J. TIKALSKY

Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
(312) 814-8567

Date: March 12, 2008

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
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COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, HIGHLAND BAKING COMPANY, INC., an Illinois corporation, as follows:

COUNT I

CONSTRUCTING EMISSION SOURCES WITHOUT A PERMIT

1. This count is brought by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA") pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2006).
2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2006), and charged, *inter alia*, with the duty of enforcing the Act.
3. At all times relevant to this complaint, Respondent, Highland Baking Company, Inc., ("HBC") has been and is an Illinois corporation, duly authorized to do business in the State of Illinois.

4. At all times relevant to this complaint, Respondent, HBC, owned and operated a bakery located at 3665 West Lunt Avenue, Lincolnwood, Cook County, Illinois ("Facility").

5. HBC operated 14 emission units at the Facility. The emission units included 11 rack ovens, 2 deck ovens, and 1 tunnel oven ("Emission Units").

6. From June 1992 through February, 2007, or a date or dates better known to the Respondent, HBC constructed and operated between 4 and 11 rack ovens at the Facility.

7. From 2003 through January, 2007, or a date or dates better known to the Respondent, HBC constructed and operated 2 deck ovens at the Facility.

8. In February 2004, or a date or dates better known to the Respondent, HBC constructed and operated a tunnel oven at the Facility.

9. The action of yeast in the bread making process at the Facility produces ethanol, which is a gaseous matter and a volatile organic material ("VOM").

10. VOM was emitted from each of the 14 Emission Units at the Facility into the environment.

11. HBC's operation of the Facility is subject to the Act and the rules and regulations promulgated by the Illinois Pollution Control Board ("Board"). The Board's regulations for air pollution are found in Title 35, Subtitle B, Chapter I of the Illinois Administrative Code ("Board Air Pollution Regulations").

12. Section 3.165 of the Act, 415 ILCS 5/3.165 (2006), provide as follows:

"CONTAMINANT" is any solid, liquid, gaseous matter, any odor, or any form of energy, from whatever source.

13. VOM is "contaminant" as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165(2006).

14. Section 201.102 of the Board Air Pollution Regulations, 35 Ill. Adm. Code

201.102, provides the following definitions:

"Construction": commencement of on-site fabrication, erection or installation of an emission source or of air pollution control equipment.

"Emission Source": any equipment or facility of a type capable of emitting specified air contaminants to the atmosphere.

"New Emission Source": any emission source, the construction or modification of which is commenced on or after April 14, 1972.

"Specified Air Contaminant": any air contaminant as to which this Subtitle contains emission standards or other specific limitations and any contaminant regulated in Illinois pursuant to Section 9.1 of the Act.

15. The Emission Units described herein emit, or are capable of emitting, VOM a specified air contaminant, to the atmosphere.

16. The Emission Units are "emission sources" and "new emission sources" as those terms are defined in Section 201.102 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.102.

17. The installation of 11 rack ovens, 2 deck ovens, and 1 tunnel oven from 1992 through 2004 is "construction" as that term is defined in Section 201.102 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.102.

18. Section 3.115 of the Act, 415 ILCS 5/3.115 (2006), provides as follows:

"AIR POLLUTION" is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

19. Because the Emission Units at the Facility emit, or are capable of emitting, VOM, a contaminant, to the atmosphere, they are capable of causing or contributing to air pollution.

20. Sections 3.315 of the Act, 415 ILCS 5/3.315 (2006), respectively, provide as follows:

"PERSON" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

21. HBC is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315(2006).

22. Section 9(b) of the Act, 415 ILCS 5/9(b) (2006), provides as follows:

"No person shall:

* * *

(b) Construct, install, or operate any equipment, Facility, vehicle, vessel, or aircraft capable of causing or contributing to air pollution or designed to prevent air pollution, of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit;"

23. Section 201.142 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.142, provides as follows:

Construction Permit Required

No person shall cause or allow the construction of any new emission source or any new air pollution control equipment, or cause or allow the modification of any existing emission source or air pollution control equipment, without first obtaining a construction permit from the Agency, except as provided in Sections 201.146 or Section 201.170(b) of this Part.

24. Beginning in June 1992 and continuing until February 2004, the exact dates best known to HBC, HBC constructed 11 rack ovens, 2 deck ovens and 1 tunnel oven at the Facility without first obtaining construction permits from the Illinois EPA.

25. By constructing a new emission sources at the Facility without first obtaining a construction permit from the Illinois EPA, Respondent, HBC, violated Section 9(b) of the Act, 415 ILCS 5/9(b)(2006), and Section 201.142 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.142.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an Order against the Respondent, HIGHLAND BANKING COMPANY, INC.:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that Respondent has violated Section 9(b) of the Act, 415 ILCS 5/9(b)(2006), and Section 201.142 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.142;
3. Ordering the Respondent to cease and desist from any further violations of Section 9(b) of the Act, 415 ILCS 5/9(b)(2006), and Section 201.142 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.142;
4. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000.00) for each and every violation of the Act and pertinent regulations, with an additional penalty of ten thousand dollars (\$10,000.00) for each day of violation;
5. Taxing all costs in this action, including, but not limited to, attorney, expert witness and consultant fees, against Respondent; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT II

OPERATING NEW EMISSION SOURCES WITHOUT A PERMIT

1-23. Complainant realleges and incorporates by reference herein paragraphs 1 through 23 of Count I as paragraphs 1 through 23 of this Count II.

24. Section 201.143 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.143, provides as follows:

Operating Permits for New Sources

No person shall cause or allow the operation of any new emission source or new air pollution control equipment of a type for which a construction permit is required by Section 201.142 without first obtaining an operating permit from the Agency, except for such testing operations as may be authorized by the construction permit. Applications for operating permits shall be made at such times and contain such information (in addition to the information required by Section 201.157 as shall be specified in the construction permit.

25. From June 1992 through February 2004, or on dates better known to HBC, HBC operated 11 rack ovens at the Facility without first obtaining an operating permit from the Illinois EPA.

26. From 2003 through February 2004, or on dates better known to HBC, HBC operated 2 deck ovens without first obtaining an operating permit from the Illinois EPA.

27. In February 2004 or a date better known to HBC, HBC commenced operation of one tunnel oven without first obtaining an operating permit from the Illinois EPA.

28. By operating new emission sources at the Facility without first obtaining an operating permit from the Illinois EPA, HBC violated Section 9(b) of the Act, 415 ILCS 5/9(b)(2006), and Section 201.143 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.143.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an Order against the Respondent, HIGHLAND BANKING COMPANY, INC.:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that Respondent has violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2006), and Section 201.143 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.143;
3. Ordering the Respondent to cease and desist from any further violations of Section 9(b) of the Act, 415 ILCS 5/9(b) (2006), and Section 201.143 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.143;
4. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000.00) for each and every violation of the Act and pertinent regulations, with an additional penalty of ten thousand dollars (\$10,000.00) for each day of violation;
5. Taxing all costs in this action, including, but not limited to, attorney, expert witness and consultant fees, against Respondent; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT III

OPERATING A MAJOR STATIONARY SOURCE
WITHOUT A CAAPP PERMIT

1-15. Complainant realleges and incorporates by reference herein paragraphs 1 through 13 and paragraphs 20 and 21 of Count I as paragraphs 1 through 15 of this Count III.

16. Section 39.5(1) of the Act, 415 ILCS 5/39.5(1) (2006), provides the following definition:

"POTENTIAL TO EMIT" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by USEPA. This definition does not alter or affect the use of this term for any other purposes under the Clean Air Act, or the term "capacity factor" as used in Title IV of the Clean Air Act or the regulations promulgated thereunder.

17. From June 1992 through February 2004, the Facility had the potential to emit ("PTE") less than 25 tons per year ("TPY") of VOM.

18. When HBC installed the tunnel oven in February 2004, the Facility's PTE for VOM increased to greater than 25 TPY.

19. On or about November and December 2006, or dates better known to the Respondent, HBC submitted calculations of the Facility's potential and actual emissions of VOM for the years 1992 through 2006 to the Illinois EPA. The calculations indicated that from 2004 through 2006, the Facility's PTE for VOM was greater than 25 TPY. Further, the calculations indicated that in calendar year 2006, the Facility's actual emissions of VOM were at least 37 TPY.

20. In February 2007, the Facility ceased all operations and shut down.

21. Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b) (2006), provides as follows:

Prohibition

After the applicable CAAPP permit or renewal application submittal date, as specified in subsection 5 of this Section, no person shall operate a CAAPP source without a CAAPP permit unless the complete CAAPP permit or renewal application for such a source has been timely submitted to the Agency.

22. Section 39.5(1) of the Act, 415 ILCS 5/39.5(1) (2006), provides the following

definitions:

"CAAPP" means the Clean Air Act Permit Program developed pursuant to Title V of the Clean Air Act.

"CAAPP PERMIT"... means any permit issued, renewed, amended, modified, or revised pursuant to Title V of the Clean Air Act.

"SOURCE" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person or persons under common control) and that belongs to a single major industrial grouping....

"STATIONARY SOURCE" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant

"REGULATED AIR POLLUTANT" means the following:

1. . . . any volatile organic compound.

* * *

23. The Emission Units described in paragraphs 6 through 8 of Count I emitted VOM, a regulated air pollutant, as defined by Section 39.5(1) of the Act, 415 ILCS 5/39.5(1)(2006).

24. The Facility was therefore a stationary source, as that term is defined in Section 39.5(1) of the Act, 415 ILCS 5/39.5(1)(2006).

25. Section 39.5(2) of the Act, 415 ILCS 5/39.5(2) (2006), provides, in pertinent part, as follows:

Applicability

a. Sources subject to this Section shall include:

i. Any major source as defined in paragraph (c) of this subsection.

* * *

c. For purposes of this Section the term "major source" means any source that is:

* * *

iii. A major stationary source as defined in part D of Title I of the Clean Air Act including:

A. For ozone nonattainment areas, sources with the potential to emit 100 tons or more per year of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate", 50 tons or more per year in areas classified as "serious", 25 tons or more per year in areas classified as "severe", and 10 tons or more per year in areas classified as "extreme";

* * *

26. The Facility became a "major stationary source", as that term is defined in Section 39.5(2) of the Act, 415 ILCS 5/39.5(2)(2006), in February 2004 when it installed the tunnel oven, thereby increasing its PTE for VOM to greater than 25 TPY.

27. Section 39.5(5)(x) of the Act, 415 ILCS 5/39.5(5)(x), provides as follows:

The owner or operator of a new CAAPP source shall submit its complete CAAPP application consistent with this subsection within 12 months after commencing operation of such source. The owner or operator of an existing source that has been excluded from the provisions of this Section under subsection 1.1 or subsection 3(c) of this Section and that becomes subject to the CAAPP solely due to a change in operation at the source

shall submit its complete CAAPP application consistent with this subsection at least 180 days before commencing operation in accordance with the change in operation.

28. HBC was required to submit a CAAPP permit application to the Illinois EPA no later than one year prior to the increase in its PTE for VOM to more than 25 TPY, or by February 2003.

29. HBC submitted a CAAPP permit application to the Illinois EPA on September 1, 2006. HBC operated without the requisite CAAPP permit from February 2004 until the Facility shut down in February 2007.

30. By operating a major stationary source without timely applying for and obtaining a CAAPP permit, Respondent, HBC, violated Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b)(2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an Order against the Respondent, HIGHLAND BAKING COMPANY, INC.:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

2. Finding that Respondent has violated Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b)(2006);

3. Ordering the Respondent to cease and desist from any further violations of Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b)(2006);

4. Assessing against Respondent a civil penalty of ten thousand dollars (\$10,000.00) for each day of violation;

5. Taxing all costs in this action, including, but not limited to, attorney, expert witness and consultant fees, against Respondent; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT IV

FAILURE TO COMPLY WITH NEW SOURCE REVIEW REQUIREMENTS

1-27. Complainant realleges and incorporates by reference herein paragraphs 1 through 13, and paragraphs 18 through 21 of Count I, and paragraphs 16 through 20, and paragraphs 22 through 26 of Count III as paragraphs 1 through 27 of this Count IV.

28. Section 9(a) of the Act, 415 ILCS 5/9(a)(2006), provides as follows:

No person shall:

(a) Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act;

29. Section 203.201 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 203.201, provides, in pertinent part, as follows:

Prohibition

In any nonattainment area, no person shall cause or allow the construction of a new major stationary source or major modification that is major for the pollutant for which the area is designated a nonattainment area, except as in compliance with this Part for that pollutant. In areas designated nonattainment for ozone, this prohibition shall apply to new major stationary sources or major modifications of sources that emit volatile organic materials [VOM] or nitrogen oxides. ...

30. Section 203.127 of the Board Air Pollution Regulations, 35 Ill. Adm. Code

203.127, provides the following definition:

Nonattainment Area

An area designated by USEPA as nonattainment for a given pollutant pursuant to Section 107 of the Clean Air Act

31. From 1992 through June 2005, Cook County was designated by the USEPA as a severe nonattainment area for ozone, as that term is defined in Section 203.127 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 203.127.

32. Sections 201.102, 203.116, 203.104, 203.122 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.102, 203.116, 203.104, and 203.122 provide the following definitions, respectively:

"Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this State, any other State or political subdivision or agency thereof or any legal successor, representative, agent or agency of the foregoing.

"Construction" means any physical change or change in the method of operation, including but not limited to fabrication, erection, installation, demolition, or modification of an emissions source unit, which would result in a change in actual emissions.

"Actual Emissions" means the actual rate of annual emissions of a pollutant from an emissions unit as of a particular date. Actual emissions are equal to the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during the two-year period which immediately precedes the particular date or such other period which is determined by the Illinois Environmental Protection Agency (Agency) to be representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored or combusted during the selected time period;

"Emissions unit" means any part of a stationary source which emits or has the potential to emit any air pollutant subject to regulation under the Act

or this Chapter or by the United States Environmental Protection Agency under the Clean Air Act.

33. HBC is a "person" as that term is defined in Section 201.102 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.102.

34. The installation of the tunnel oven at the Facility and the resultant increase in actual emissions in February 2004 is "construction" as that term is defined in Section 203.116 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 203.116.

35. The Emission Units at the Facility are "emission units" as that term is defined in Section 203.122 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 203.122.

36. Sections 203.206, 203.112, 203.136, 203.128, and 211.7150 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 203.206, 203.112, 203.136, 203.128, and 211.7150, provide the following definitions:

"Major Stationary Source"

(a) For purposes of this Part, the term "major stationary source" shall exclusively mean "building, structure and facility," as those terms are defined in Section 203.113 of this Part.

(b) The following constitute a major stationary source:

(1) For an area designated as nonattainment for ozone, a major stationary source is a stationary source which emits or has the potential to emit volatile organic material in an amount equal to or greater than the following:

* * *

(C) 25 tons per year in an area classified as severe nonattainment for ozone;

* * *

“Building, Structure and Facility”: The terms “building”, “structure”, and “facility” include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same “Major Group” (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively) incorporated by reference in 35 Ill. Adm. Code 720.111.

“Stationary Source” means any building, structure, facility or installation which emits or may emit any air pollutant subject to regulation under the Act or this Chapter or by USEPA under the Clean Air Act (42 U.S.C. 7401 *et seq.*).

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Volatile organic material (VOM)" or "volatile organic compound (VOC)" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, that participates in atmospheric photochemical reactions.

37. From February 2004 through February 2007, the Facility emitted over 25 TPY of VOM and was a “major stationary source” as that term is defined in Section 203.206 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 203.206.

38. By constructing a new major stationary source in a severe nonattainment area without a construction permit issued by the Illinois EPA, Respondent, HBC, violated Section 203.201 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 203.201.

39. Section 203.203(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 203.203(a), provides as follows:

Construction Permit Requirement and Application

- a) A construction permit is required prior to actual construction of a major new source or major modification.

40. By failing to obtain a construction permit from the Illinois EPA prior to the construction of a major new source, Respondent, HBC, violated Section 203.203(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 203.203(a).

41. By violating Sections 203.201 and 203.203(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 203.201 and 203.203(a), HBC violated Section 9(a) of the Act, 415 ILCS 5/9(a)(2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an Order against the Respondent, HIGHLAND BANKING COMPANY, INC.:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

2. Finding that Respondent has violated Section 9(a) of the Act, 415 ILCS 5/9(a)(2006), and Sections 203.201 and 203.203(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 203.201 and 203.203(a);

3. Ordering the Respondent to cease and desist from any further violations of Section 9(a) of the Act, 415 ILCS 5/9(a)(2006), and Sections 203.201 and 203.203(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 203.201 and 203.203(a);

4. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000.00) for each and every violation of the Act and pertinent regulations, with an additional penalty of ten thousand dollars (\$10,000.00) for each day of violation;

5. Taxing all costs in this action, including, but not limited to, attorney, expert witness and consultant fees, against Respondent; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT V

**FAILURE TO COMPLY WITH EMISSION REDUCTION
MARKET SYSTEM REQUIREMENTS**

1-33. Complainant realleges and incorporates by reference herein paragraphs 1 through 11 of Count I, paragraphs 17 through 29 of Count III, and paragraphs 29 through 36 and paragraph 39 of Count IV as paragraphs 1 through 33 of this Count V.

34. Section 9.8(b) of the Act, 415 ILCS 5/9.8(b)(2006), provides as follows:

The Agency shall design an emissions market system that will assist the State in meeting applicable post-1996 provisions under the CAAA of 1990, provide maximum flexibility for designated sources that reduce emissions, and that takes into account the findings of the national ozone transport assessment, existing air quality conditions, and resultant emission levels necessary to achieve or maintain attainment.

35. Section 205.310(a)(3)(ERMS Applications) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 205.310(a)(3), provides as follows:

a) The owner or operator of each participating source or new participating source shall submit to the Agency an ERMS application in accordance with the following schedule:

3) For any source existing prior to May 1, 1999, that first becomes a participating source or new participating source due to a major modification subject to 35 Ill. Adm. Code 203 based on VOM emissions, at the time a construction permit application is

submitted or due for the source or modification, whichever occurs first.

36. Section 205.130 of the Board Air Pollution Regulations, 35 Ill. Adm. Code

201.130, provides the following definitions:

"CAAPP" means the Clean Air Act Permit Program, pursuant to Section 39.5 of the Act [415 ILCS 5/39.5].

"Participating source" means a source operating prior to May 1, 1999, located in the Chicago area, that emits or has the potential to emit 25 tons per year or more of VOM or is required to obtain a CAAPP permit; and has baseline emissions of at least 10 tons, as specified in Section 205.320(a) of this Part, or seasonal emissions of at least 10 tons in any seasonal allotment period beginning in 1999.

"Seasonal allotment period" means the period from May 1 through September 30 of each year.

"Seasonal emissions" means actual VOM emissions at a source that occur during a seasonal allotment period.

37. In December 2006, or dates better known to the Respondent, HBC submitted calculations of the Facility's seasonal emissions of VOM for the 2006 seasonal allotment period to the Illinois EPA . The calculations indicated that during the 2006 seasonal allotment period, the Facility's seasonal emissions were at least 15 TPY.

38. HBC is a "participating source" as that term is defined in Section 205.130 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.130.

39. Section 203.207 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 203.207, provides, in pertinent part, as follows:

Major Modification of a Source

a) Except as provided in subsection (c), (d), (e) or (f) below, a physical change, or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant for

which the area is designated a nonattainment area, shall constitute a major modification of a source.

b) Any net emissions increase that is significant for volatile organic material or nitrogen oxides shall be considered significant for ozone.

* * *

40. Section 203.209(b) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 203.209(b), provides as follows:

Significant Emissions Determination

b) For areas classified as serious or severe nonattainment for ozone, an increase in emissions of volatile organic material or nitrogen oxides shall be considered significant if the net emissions increase of such air pollutant from a stationary source located within such area exceeds 25 tons when aggregated with all other net increases in emissions from the source over any period of 5 consecutive calendar years which includes the calendar year in which such increase occurred. This provision shall become effective beginning November 15, 1992, or such later date that an area is classified as a serious or severe nonattainment area for ozone.

41. From February 2004 through 2006, an aggregate net increase of VOM emissions which exceeded 25 TPY from the Facility, a stationary source, is a "significant net emission" as that term is defined in Section 203.209(b) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 203.209(b).

42. The installation of the tunnel oven in February 2004 which resulted in a significant net emissions increase of VOM is a "major modification" as that term is defined in Section 203.207 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 203.207.

43. HBC was required to submit an application in February 2004 when it installed the tunnel ovens, a major modification to the Facility which existed before May 1, 1999, pursuant to Section 205.310(a)(3) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 205.310(a)(3).

44. HBC did not submit an emissions market system ("ERMS") application for the Facility at anytime from February 2004 through February 2007, when it shut down the Facility, at which time it emitted more than 25 TPY of VOM from the Facility during the calendar year 2006.

45. By failing to timely submit an ERMS application as required of a participating source, the Respondent, HBC, violated Section 205.310(a)(3) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 205.310(a)(3), and thereby violated Section 9(a) of the Act, 415 ILCS 5/9(a)(2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an Order against the Respondent, HIGHLAND BANKING COMPANY, INC.:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that Respondent has violated Section 9(a) of the Act, 415 ILCS 5/9(a)(2006), and Section 205.310(a)(3) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 205.310(a)(3);
3. Ordering the Respondent to cease and desist from any further violations of Section 9(a) of the Act, 415 ILCS 5/9(a)(2006), and Section 205.310(a)(3) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 205.310(a)(3);
4. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000.00) for each and every violation of the Act and pertinent regulations, with an additional penalty of ten thousand dollars (\$10,000.00) for each day of violation;

5. Taxing all costs in this action, including, but not limited to, attorney, expert witness and consultant fees, against Respondent; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT VI

**FAILURE TO SUBMIT COMPLETE AND ACCURATE
ANNUAL EMISSIONS REPORTS**

1-18. Complainant realleges and incorporates by reference herein paragraphs 1 through 15 and paragraphs 20 and 21 of Count I, and paragraph 28 of Count IV as paragraphs 1 through 18 of this Count VI.

19. Section 201.302(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a), provides as follows:

The owner or operator of any emission unit or air pollution control equipment, unless specifically exempted in this Section, shall submit to the Agency as a minimum, annual reports detailing the nature, specific emission units and total annual quantities of all specified air contaminant emissions; provided, however, that the Agency may require more frequent reports where necessary to accomplish the purposes of the Act and this Chapter.

20. Section 254.132(a) of the Illinois EPA Air Pollution Regulations, 35 Ill. Adm. Code 254.132(a), provides as follows:

Failure to file a complete Annual Emissions Report by the applicable deadlines prescribed in Section 254.137(a) of this Subpart shall be a violation of this Part and 35 Ill. Adm. Code 201.302(a).

21. Section 254.137(a) of the Illinois EPA Air Pollution Regulations, 35 Ill. Adm. Code 254.137(a), provides as follows:

All Annual Emissions Reports are due by May 1 of the year following the calendar year in which the emissions took place.

22. Section 201.102 of the Board Air Pollution Regulations, 35 Ill. Adm. Code

201.102, provides the following definition:

"OWNER OR OPERATOR": any person who owns, leases, controls or supervises an emission source or air pollution control equipment.

23. Section 211.1950 of the Board Air Pollution Regulations, 35 Ill. Adm. Code

211.1950, provides the following definition:

"EMISSION UNIT" means any part or activity at a stationary source that emits or has the potential to emit any air pollutant.

24. The sources described in paragraphs 6 through 8 of Count I of this Complaint are "emission units," as that term is defined in Section 211.1950 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 211.1950.

25. HBC was an "owner or operator" of emission units and emission source required to timely submit a complete Annual Emissions Reports ("AER") for each of the calendar years 1992 through and including 2005 by May 1 of the subsequent year.

26. HBC failed to submit AERs for calendar years 1992 through 2005 to the Illinois EPA until November 6, 2006.

27. By failing to timely submit an AER for each of the calendar years from 1992 through and including 2005, HBC violated Section 201.132(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.132(a), and Section 254.137(a) of the Illinois EPA Air Pollution Regulations, 35 Ill. Adm. Code 254.137(a).

28. By violating Section 201.132(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.132(a), and Section 254.137(a) of the Illinois EPA Air Pollution Regulations, 35

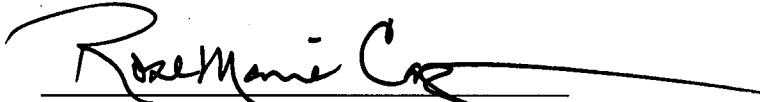
Ill. Adm. Code 254.137(a), HBC thereby also violated Section 9(a) of the Act, 415 ILCS 5/9(a)(2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an Order against the Respondent, HIGHLAND BAKING COMPANY, INC.:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that Respondent has violated Section 9(a) of the Act, 415 ILCS 5/9(a)(2006), Section 201.132(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.132(a), and Section 254.137(a) of the Illinois EPA Air Pollution Regulations, 35 Ill. Adm. Code 254.137(a);
3. Ordering the Respondent to cease and desist from any further violations of Section 9(a) of the Act, 415 ILCS 5/9(a)(2006), Section 201.132(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.132(a), and Section 254.137(a) of the Illinois EPA Air Pollution Regulations, 35 Ill. Adm. Code 254.137(a);
4. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000.00) for each and every violation of the Act and its promulgated regulations, with an additional penalty of ten thousand dollars (\$10,000.00) for each day of violation;
5. Taxing all costs in this action, including, but not limited to, attorney, expert witness and consultant fees, against Respondent; and
6. Granting such other relief as the Board deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS,
LISA MADIGAN,
Attorney General of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division



ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel:

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CERTIFICATE OF SERVICE

I, Nancy J. Tikalsky, an Assistant Attorney General, do certify that a true and correct copy of the Complaint and Notice of Filing were sent by certified mail with return receipt requested to the persons listed on the Notice of Filing on March 12, 2008.

BY:



NANCY J. TIKALSKY