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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD APR 23 2002

PEOPLE OF THE STATE OF ILLINOIS,)
by JAMES E. RYAN, Attorney)
General of the State of Illinois)

STATE OF ILLINOIS,
Pollution Control Board

Complainant,)

v.)

No. PCB 02- 185

FERRARA PAN CANDY COMPANY, INC.)
an Illinois corporation,)

Respondent.)

NOTICE OF FILING


TO: See Attached Service List

PLEASE TAKE NOTICE that on April 23, 2002 we filed with the Pollution Control Board the following **Complaint**, a true and correct copy of which is attached and hereby served upon you.

Respectfully submitted,

JAMES E. RYAN
Attorney General
State of Illinois

BY:


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STATE OF ILLINOIS
Pollution Control Board

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FERRARA PAN CANDY COMPANY, INC.)
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Respondent.)

No. PCB 02-185

COMPLAINT FOR CIVIL PENALTIES

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by JAMES E. RYAN, Attorney General of the State of Illinois, complains of Respondent, FERRARA PAN CANDY COMPANY, INC., as follows:

COUNT I

VIOLATION OF FESOP CONDITION 2A

1. This Complaint is brought on behalf of the People ("Complainant") by the Attorney General on his own motion and upon the request of the Illinois Environmental Protection Agency ("Illinois EPA") pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(2000).

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2000), and charged, *inter alia*, with the duty of enforcing the Act. This Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31(2000).

3. At all times relevant to this Complaint, FERRARA PAN CANDY COMPANY, INC. ("Respondent") was and is an Illinois corporation duly organized and existing under the laws of the State of Illinois and is in good standing.

4. At all times relevant to this Complaint, the Respondent has operated a facility located at 7301 West Harrison Street, Forest Park, Cook County, Illinois, 60130 ("facility").

5. Respondent manufactures candy at its facility. The manufacturing process utilizes five (5) candy printing presses and other equipment.

6. Since at least 1996, and continuing until September 2001, Respondent has discharged or emitted VOM from the facility into the environment by the uncontrolled operation of its equipment.

7. Section 9(b) of the Act, 415 ILCS 5/9(b) (2000), provides as follows:

No person shall:

* * *

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.

8. Section 3.06 of the Act, 415 ILCS 5/3.06 (2000),

contains the following definition:

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

9. VOM is a contaminant, as that term is defined in Section 3.06 of the Act, 415 ILCS 5/3.06 (2000).

10. Section 3.26 of the Act, 415 ILCS 5/3.26 (2000), provide the following definition:

"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.

11. Respondent is a "person" as the term is defined in Section 3.26 of the Act, 415 ILCS 5/3.26 (2000).

12. On September 4, 1996, Respondent was granted a Federally Enforceable State Operating Permit ("FESOP") to operate its emissions sources, the equipment listed in Attachment B to the permit. (See, Attachment A.)

13. Respondent's FESOP, No. 73010040, provides, in pertinent part, the following condition:

* * *

2a. Operations and emissions from the Thinner, Glaze, and Flavoring processes shall not exceed the following limits:

Material Used	Maximum Material Usage (gal/month)	Maximum VOM Content (lb/gal)	Volatile Organic Material Emissions	
			(lb/month)	(Ton/year)

Thinner	334	6.14	2050	12.3
Glaze	335	4.77	1600	9.6
Flavor	5000	0.07	350	2.1

These limits are based upon maximum material usage and maximum VOM content. Emissions are determined by multiplying the monthly material usage (gal/month) by the VOM content (lb/gal) of each material to arrive at the monthly VOM emissions (lb/month).

14. Respondent exceeded the FESOP VOM emission limitations of 24 tons/year in the years 1996, 1997, 1998, 1999 and 2000.

1. By its actions alleged herein, Respondent violated Condition 2a of its FESOP, No. 73010040 and Section 9(b) of the Act, 415 ILCS 5/9(b) (2000).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter a judgment in favor of Complainant and against the Respondent, FERRARA, on Count I:

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

2. Finding that the Respondent has violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2000), and Condition 2a of FESOP No. 73010040;

3. Ordering the Respondent to cease and desist from further violations of Section 9(b) of the Act, 415 ILCS 5/9(b) (2000), and Condition 2a of FESOP No. 73010040;

4. Assessing against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act

and pertinent Board Air Pollution Regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Taxing all costs in this action pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees, against the Respondent; and

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

COUNT II

VIOLATION OF FESOP CONDITION 5

1-12. Complainant realleges and incorporates by reference herein paragraphs 1 through 12 of Count I as paragraphs 1 through 12 of this Count II.

13. Respondent's FESOP No. 73010040, provides, in pertinent part, the following condition:

* * *

5. If there is an exceedance of the requirements of this permit as determined by the records required by this permit, the Permittee shall submit a report to the Agency's Compliance Unit in Springfield, Illinois within 30 days after the exceedance. The report shall include the emissions released in accordance with the recordkeeping requirements, a copy of the relevant records, a description of the exceedances or violation, and efforts to reduce emissions and future occurrences.

14. Respondent failed to submit a report of its exceedances for the years 1996, 1997, 1998, 1999 and 2000 within thirty (30)

days following the exceedances in accordance with its FESOP.

1. By its actions alleged herein, Respondent violated Condition 5 of its FESOP No. 73010040 and Section 9(b) of the Act, 415 ILCS 5/9(b) (2000).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter a judgment in favor of Complainant and against the Respondent, FERRARA, on Count II:

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

2. Finding that the Respondent has violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2000) and Condition 5 of FESOP No. 73010040;

3. Ordering the Respondent to cease and desist from further violations of Section 9(b) of the Act, 415 ILCS 5/9(b) (2000), and Condition 5 of FESOP No. 73010040;

4. Assessing against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent Board Air Pollution Regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Taxing all costs in this action pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees, against the Respondent; and

6. Granting such other relief as the Board deems

appropriate and just.

COUNT III

VIOLATION OF FESOP CONDITION 10

1-12. Complainant realleges and incorporates by reference herein paragraphs 1 through 12 of Count II as paragraphs 1 through 12 of this Count III.

13. Respondent's FESOP No. 73010040, provides, in pertinent part, the following condition:

* * *

10. The Permittee shall submit the following additional information with the Annual Emissions Report, due May 1, of each year:

- a. Material usage (ton/month and ton/year)
- b. VOM content of each type of material (wt% VOM)
- c. Total natural gas usage (Therms/month and Therms/year)

If there have been no exceedances during the prior calendar year, the Annual Emissions Report shall include that effect.

14. Respondent failed to submit the relevant information on material usage, VOM content and natural gas usage with the Annual Emissions Reports (AERs) for the years 1996, 1997, 1998, and 1999.

1. By its actions alleged herein, Respondent violated Condition 10 of its FESOP No. 73010040 and Section 9(b) of the Act, 415 ILCS 5/9(b) (2000).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS,

respectfully requests that the Board enter a judgment in favor of Complainant and against the Respondent, FERRARA, on Count III:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that the Respondent has violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2000), and Condition 10 of FESOP No. 73010040;
3. Ordering the Respondent to cease and desist from further violations of Section 9(b) of the Act, 415 ILCS 5/9(b) (2000), and Condition 10 of FESOP No. 73010040;
4. Assessing against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent Board Air Pollution Regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Taxing all costs in this action pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees, against the Respondent; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT IV

CONSTRUCTION OF EMISSIONS SOURCES WITHOUT A PERMIT

1-11. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 11 of Count I as paragraphs 1 through

11 of this Count IV.

12. Section 201.102 of the Illinois Pollution Control Board ("Board") Air Pollution Regulations, 35 Ill. Adm. Code 201.102, provides, in pertinent part, the following definitions:

"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.

"Person": 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.

"Specified Air Contaminant": any air contaminant as to which this Subtitle contains emission standards or other specific limitations and any contaminant regulated Illinois pursuant to Section 91.1 of the Act.

13. VOM is a specified air contaminants as defined by Section 201.102 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.102.

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

Section 201.142 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 Section 201.146.

15. On a date better known to Respondent, Respondent constructed five (5) candy printing presses at its facility without having obtained a permit from the Illinois EPA.

16. Each aforementioned piece of equipment is a "new emission source" as that term is defined by the Board Air Pollution Regulations, 35 Ill Adm. Code 201.102, because they emit or are capable of emitting volatile organic material ("VOM").

17. The Respondent, by its conduct as alleged herein, violated Section 201.142 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.142, and Section 9(b) of the Act, 415 ILCS 5/9(b) (2000).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter a judgment in favor of Complainant and against the Respondent, FERRARA, on Count IV:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that the Respondent has violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2000), and 35 Ill. Adm. Code 201.142;
3. Ordering the Respondent to cease and desist from further violations of Section 9(b) of the Act, 415 ILCS 5/9(b) (2000), and 35 Ill. Adm. Code 201.142;
4. Assessing against the Respondent a civil penalty of

Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent Board Air Pollution Regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Taxing all costs in this action pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees, against the Respondent; and

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

COUNT V

OPERATION OF EMISSIONS SOURCES WITHOUT A PERMIT

1-15. Complainant realleges and incorporates by reference herein paragraphs 1 through 13, 15 and 16 of Count IV as paragraphs 1 through 15 of this Count V.

16. Section 201.143 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.143, provides in pertinent part as follows:

Operating Permit 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.

17. Since a date better known to Respondent, Respondent operated five (5) candy printing presses without obtaining a

permit from the Illinois EPA.

18. The Respondent, by its conduct as alleged herein, violated Section 201.143 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.143, and Section 9(b) of the Act, 415 ILCS 5/9(b) (2000).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter a judgment in favor of Complainant and against the Respondent, FERRARA, on Count V:

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

2. Finding that the Respondent has violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2000), and 35 Ill. Adm. Code 201.143;

3. Ordering the Respondent to cease and desist from further violations of Section 9(b) of the Act, 415 ILCS 5/9(b) (2000), and 35 Ill. Adm. Code 201.143;

4. Assessing against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent Board Air Pollution Regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Taxing all costs in this action pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees, against the Respondent; and

6. Granting such other relief as the Board deems

appropriate and just.

COUNT VI

FAILURE TO TIMELY SUBMIT CAAPP APPLICATION

1-10. Complainant realleges and incorporates by reference herein paragraphs 1 through 7 and 8 through 10 of Count I as paragraphs 1 through 10 of this Count VI.

11. Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b) (2000), provides as follows:

6. Prohibition

- b. 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 source has been timely submitted to the Agency.

12. Section 39.5(1) of the Act, 415 ILCS 5/39.5(1) (2000), 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) belonging to a single major industrial grouping.

"Owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source.

"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. Nitrogen oxides (NOx) or any volatile organic compound. . . .

13. Section 39.5(2) of the Act, 415 ILCS 5/39.5(2) (2000), provides in pertinent part, as follows:

2. Applicability

- a. Sources subject to this Section shall include:

1. 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 to emit 25 tons or more per year in areas classified as "severe". . . .

14. Section 270.107 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 270.107, provides as follows:

Applicability

This Part applies to the owner or operator of any source required to have an operating permit pursuant to

Section 39.5 of the Act.

15. Section 270.301(b) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 270.301(b), provides as follows:

Application Submittal

b. The owner or operator of a new CAAPP source shall submit its complete CAAPP application consistent with Section 39.5(5) of the Act.

16. Section 270.103 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 270.103, provides in pertinent part as follows:

Existing CAAPP Source

"Existing CAAPP source" means a CAAPP source that commenced operation prior to the effective date of the CAAPP.

17. Section 4(g) of the Act, 415 ILCS 5/4(g) (2000), provides as follows:

g. The Agency shall have the duty to administer, in accord with Title X of this Act, such permit and certification systems as may be established by this Act or by regulations adopted thereunder. The Agency may enter into written delegation agreements with any department, agency, or unit of State or local government under which all or portions of this duty may be delegated for public water supply storage and transport systems, sewage collection and transport systems, air pollution control sources with uncontrolled emissions of 100 tons per year or less and application of algicides to waters of the State. Such delegation agreements will require that the work to be performed thereunder will be in accordance with Agency criteria, subject to Agency review, and shall include such financial and program auditing by the agency as may be required.

18. Section 211.7150 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 211.7150, provides in pertinent

part, the following definition as follows:

 Volatile Organic Material (VOM) or Volatile Organic Compound (VOC)

 "Volatile organic material (VOM)" or "volatile organic compound (VOC)" mean any compounds of carbon. . . which participates in atmospheric photochemical reactions.

19. The equipment located at the Respondent's facility emits or may emit VOM, a "regulated air pollutant," as defined by Section 39.5(1) of the Act, 415 ILCS 5/39.5(1)(2000).

20. The Respondent operates a facility that emits or may emit a regulated pollutant. Therefore, Respondent's facility is a "stationary source" as that term is defined in Section 39.5(1) of the Act, 415 ILCS 5/39.5(1)(2000).

21. The Respondent operates a stationary source and is an "owner or operator" as that term is defined in Section 39.5(1) of the Act, 415 ILCS 5/39.5(1)(2000).

22. The Respondent's facility is located in a non-attainment area for ozone.

23. The Respondent's facility is a "major stationary source" as that term is defined in Section 39.5(2)(c)(iii)(A) of the Act, 415 ILCS 5/39.5(2)(c)(iii)(A)(2000). Therefore, the Clean Air Act Permit Program, set forth in Section 39.5 of the Act, 415 ILCS 5/39.5 *et seq.* (2000), and the corresponding Part 270 Illinois EPA Rules, 35 Ill. Adm. Code 270 *et seq.*, pursuant to the Section 270.107 of the Illinois EPA Rules, 35 Ill. Adm. Code 270.107, are applicable to the Respondent's facility.

24. The Respondent's facility is a "existing CAAPP source" as that term is defined in Section 270.103 of the Illinois EPA Rules, 35 Ill. Adm. Code 270.103.

25. The Respondent was required to submit a CAAPP Application in 1996. To date, Respondent has not submitted a CAAPP Application.

26. From 1996, the exact date better known to Respondent, until September 2001, the Respondent operated its facility without having submitted a CAAPP Application and receiving a CAAPP permit.

27. From 1996 until September 2001, the Respondent operated a CAAPP source without submitting a complete CAAPP permit application and obtaining a CAAPP permit, pursuant to Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b)(2000), and Section 270.301(a), 35 Ill. Adm. Code 270.301(a).

28. The Respondent, by its conduct as alleged herein, violated Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b)(2000), and Section 270.301(b) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 270.301(b).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter a judgment in favor of Complainant and against the Respondent, FERRARA, on Count VI:

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

2. Finding that the Respondent has violated Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b) (2000), and 35 Ill. Adm. Code 270.301(b);

3. Ordering the Respondent to cease and desist from further violations of Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b) (2000), and 35 Ill. Adm. Code 270.301(b);

4. Assessing against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent Board Air Pollution Regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Taxing all costs in this action pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees, against the Respondent; and

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

COUNT VII

FAILURE TO TIMELY SUBMIT ERMS APPLICATION

1-10. Complainant realleges and incorporates by reference herein paragraphs 1 through 10 of Count VI as paragraphs 1 through 10 of this Count VII.

11. Section 9.8(b) of the Act, 415 ILCS 5/9.8(b) (2000), provides as follows:

The Agency shall design an emissions market system that will assist the State in meeting applicable post-1996

provisions under the CAA of 1990, provide maximum flexibility for designated sources that reduce emissions, and that take into account the findings of the national ozone transport assessment, existing air quality conditions, and resultant emissions levels necessary to achieve or maintain attainment.

12. Section 205.310 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 205.310, provides in pertinent part as follows:

Section 205.310

ERMS Applications

- a) The owner or operator of each participating source or new participating source shall submit to the Agency and ERMS application in accordance with the following schedule:
 - 1) For a participating source with baseline emissions of at least 10 tons of VOM, as determined in accordance with Section 205.320(a) of this Subpart, by March 1, 1998;

13. Section 39.5 of the Act, 415 ILCS 5/39.5 (2000), provides the following definitions:

"Owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source.

14. Section 205.200 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 205.200, provides in pertinent part as follows:

Participating Source

The requirements of this Part shall apply to any source operating prior to May 1, 1999, located in the Chicago ozone nonattainment area, that 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 emission of at least 10 tons in any seasonal allotment period beginning in 1999. Each participating source shall hold ATUs, as specified in Section 205.150(c) of this Part, in accordance with the following schedule:

- a) For any participating source that has baseline emissions of at least 10 tons of VOM, as determined in accordance with Section 205.320(a) of the Part, beginning with the 1999 seasonal allotment period;
- b) For any source that first becomes a participating source because its VOM emissions increase to 10 tons or greater during any seasonal allotment period beginning with 1999, on or before December 1 of the year of the first seasonal allotment period in which its VOM emissions are at least 10 tons, provided that this emissions increase is not a major modification pursuant to 35 Ill. Adm. Code 203;

15. Respondent operates a stationary source and is an "owner or operator" as that term is defined in Section 39.5(1) of the Act, 415 ILCS 5/39.5(1) (2000).

16. Respondent's facility is located in Cook County, Illinois, a "severe" non-attainment area for ozone.

17. The Respondent has operated a participating source, as that term is defined by 35 Ill. Adm Code 205.200, since at least 1999, in an ozone nonattainment area and its baseline emissions exceeded 10 tons of VOM. Therefore, Respondent has a source subject to the requirement of Section 205.310 of 35 Ill. Adm. Code 205.310.

18. The Respondent was required to submit its ERMS baseline application by March 1, 1998. However, Respondent did not submit their ERMS baseline application.

19. From at least 1998 until September 2001, the Respondent operated a participating source without having submitted an ERMS Application.

20. Respondent, by its conduct as alleged herein, violated Section 9.8(b) of the Act and Section 205.310(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 205.310(a).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter a judgment in favor of Complainant and against the Respondent, FERRARA, on Count VII:

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

2. Finding that the Respondent has violated Section 9.8(b) of the Act, 415 ILCS 5/9.8(b) (2000), and Section 205.310(a) of 35 Ill. Adm. Code;

3. Ordering the Respondent to cease and desist from further violations of Section 9.8(b) of the Act, 415 ILCS 5/9.8(b) (2000), and Section 205.310(a) of 35 Ill. Adm. Code;

4. Assessing against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent Board Air Pollution Regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Taxing all costs in this action pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees, against the Respondent; and

6. Granting such other relief as the Board deems

appropriate and just.

COUNT VIII

NEW SOURCE REVIEW

1-10. Complainant realleges and incorporates by reference herein paragraphs 1 through 10 of Count VII as paragraphs 1 through 10 of this Count VIII.

11. Section 9(a) of the Act, 415 ILCS 5/9(a) (2000), provides as follows:

No person shall:

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.

12. Section 201.141 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.141, provides as follows:

Prohibition of Air Pollution

No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution in Illinois, or so as to violate the provisions of this Chapter, or so as to prevent the attainment or maintenance of any applicable ambient air quality standard.

13. Section 3.02 of the Act, 415 ILCS 5/3.02 (2000), provides the following definition:

"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.

14. Section 203.201 of the Board Air Pollution

Regulations, 35 Ill. Adm. Code 203.201, provides as follows:

In any nonattainment area, no person shall cause or allow the construction of a new major 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 or nitrogen oxides. Revisions to this Part which were adopted to implement the Clean Air Act Amendments of 1990 shall not apply to any new major stationary source or major modifications for which a permit application was submitted by June 30, 1992, for PM-10, may 15, 1992 for SO₂, or by November 15, 1992, for nitrogen oxides and volatile organic emissions for sources located in all ozone nonattainment areas.

15. Since 1996, Respondent has operated source with the potential to emit more than 100 tons of VOM per year. The Respondent commenced construction of all its equipment except the printing presses prior to the existence of the New Source Review ("NSR") program. Upon the promulgation of NSR, Respondent was grandfathered into the 100 tons per year VOM threshold. Notwithstanding, the Board's Part 218 regulations, 35 Ill. Adm. Code 218, and CAAPP, 415 ILCS 5/39.5, have a threshold of 25 tons per year. The Respondent obtained its FESOP No. 73010040 to avoid the applicability of CAAPP. The

FESOP limited the Respondent's actual and potential emissions to less than 25 tons per year. Respondent, however, failed to comply with the emission limits of its FESOP; potential emissions of VOM exceeded 100 tons per year absent compliance with federally enforceable limits, triggering NSR.

16. By its actions as alleged in paragraph 16 above, Respondent caused, threatened or allowed air pollution in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2000) and Section 203.201 of 35 Ill. Adm. Code.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against the Respondent, FERRARA, as to Count VIII:

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

2. Finding that the Respondent has violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2000), and Section 203.201 of 35 Ill. Adm. Code;

3. Ordering Respondent to cease and desist from any further violations of Section 9(a) of the Act, 415 ILCS 5/9(a) (2000), and Section 203.201 of 35 Ill. Adm. Code;

4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) for the violation of Section 9(a) of the Act and Regulations promulgated thereunder, with an additional civil

penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering Respondent to pay all costs pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

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

COUNT IX

FAILURE TO REDUCE UNCONTROLLED VOM EMISSIONS

1-13. Complainant realleges and incorporates by reference herein paragraphs 1 through 13 of Count VIII as paragraphs 1 through 13 of this Count IX.

14. Section 211.123 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 211.123, provides as follows:

Coating Line

"Coating line" means, for purposes of 35 Ill. Adm. Code 215, an operation where a surface coating is applied to a material and subsequently the coating is dried and/or cured. "Coating line" means, for purposes of 35 Ill. Adm. Code 218 and 219, an operation consisting of a series of one or more coating applicators and any associated flash-off areas, drying areas, and ovens wherein a coating is applied, dried, and/or cured. A coating line ends at the point where the coating is dried or cured, or prior to any subsequent application of a different coating. It is not necessary for an operation to have an oven or a flash-off area in order to be included in this

definition.

15. Section 211.1950 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 211.1950, provides as follows:

Emission Unit

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

16. Section 211.6370 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 211.6370, provides as follows:

Stationary Source

"Stationary source" means any building, structure, facility, or installation that emits or may emit any air pollutant.

17. Respondents facility is a stationary source that emits air pollutants as that terms is defined in Section 211.6370 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 211.6370.

18. Section 218.986 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.986, provides as follows:

Control Requirements

Every owner or operator of an emission unit subject to this Subpart shall comply with the requirements of subsection (a), (b), (c), (d), or (e) below.

(a) Emission capture and control equipment which achieves an overall reduction in uncontrolled VOM emissions of at least 81 percent from each emission unit, or (Board- Note: For the purpose of this provision, an emission unit is any part or activity at a source of a type that by itself is subject to control requirements in other Subparts of this Part or 40 CFR 60, incorporated

by reference in Section 218.112, e.g., a coating line, a printing line, a process unit, a wastewater system, or other equipment, or is otherwise any part or activity at a source.

(b) For coating lines, the daily-weighted average VOM content shall not exceed 0.42 kg VOM/l (3.5 lbs VOM/gal) of coating (minus water and any compounds which are specifically exempted from the definition of (VOM) as applied during any day. Owners and operators complying with this Section are not required to comply with Section 218.301 of this Part, or

(c) An equivalent alternative control plan which has been approved by the Agency and the USEPA in a federally enforceable permit or as a SIP revision.

19. Since at least 1996, the exact date being better known to Respondent, and continuing until September 2001, Respondent failed to achieve an overall reduction of uncontrolled VOM emissions of at least 81% from its five (5) candy printing presses and other equipment and therefore, violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2000), and Sections 201.141 and 218.986 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.141 and 218.986.

20. Since at least 1996, the exact date being better known to Respondent, and continuing until September 2001, the Respondent failed to utilize compliant coatings in each of its lines, and therefore violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2000), and Sections 201.141 and 218.986 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.141 and 218.986.

21. Respondent, by its conduct as alleged herein, violated

Section 9(a) of the Act, 415 ILCS 5/9(a) (2000), and Section 218.986 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 218.986.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter judgment in favor of Complainant and against the Respondents, FERRARA, on Count IX:

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

2. Finding that the Respondent has violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2000), and Sections 201.141 and 218.986 of 35 Ill. Adm. Code;

3. Ordering the Respondent to cease and desist from further violations of Section 9(a) of the Act, 415 ILCS 5/9(a) (2000), and Sections 201.141 and 218.986 of 35 Ill. Adm. Code;

4. Assessing against the 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) per day for each day of violation;

5. Taxing all costs in this action pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees, against the Respondent; and

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

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. JAMES E. RYAN, Attorney
General of the State of Illinois

MATTHEW J. DUNN, Chief
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