

SERVICE LIST

Counsel for Ferrara Candy Company

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CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served on the date of 30th day of November, 2023, the attached Notice of Filing, Complaint, Stipulation and Proposal for Settlement, and Motion for Relief from Hearing Requirement upon the persons listed on the foregoing Service List via electronic mail.

/s/ Molly Kordas

Molly Kordas

Assistant Attorney General

Environmental Bureau

Illinois Attorney General's Office

69 W. Washington Street, Suite 1800

Chicago, Illinois 60602

(773) 590-7047

Primary e-mail: Molly.Kordas@ilag.gov

3. At all times relevant to this Complaint, Respondent has been and is an Illinois corporation in good standing with the Illinois Secretary of State.

4. At all times relevant to this Complaint, Respondent has owned and operated a candy production plant located at 2945 West 31st Street, Chicago, Cook County, Illinois (“the Facility”).

5. As of the date of filing of this Complaint, the Facility is located in an area of Environmental Justice (“EJ”) concern as identified using EJ Start, a mapping tool utilized by the Illinois EPA.

6. Respondent’s emission units at the Facility include: two (2) stretched fruit lines, a sugar pneumatic conveying system, equipment and working areas cleaning operations, equipment and working areas sanitizing operations, a sugar bin controlled by a baghouse, a sugar bag dump controlled by a baghouse, a Makat Mogul controlled by a baghouse, a Makat dryer controlled by a baghouse, a Makat cooler controlled by a filter, a NID1 Mogul controlled by a filter, a NID1 dryer with cooler controlled by a baghouse, a NID2 Mogul and dryer with cooler controlled by a baghouse, a sugar storage silo controlled by a dust collector, a delivery hopper controlled by a dust collector, and two (2) natural gas-fired boilers (“Emission Units”).

7. The Facility’s operations are capable of emitting volatile organic material (“VOM”), carbon monoxide (“CO”), nitrogen oxides (“NO_x”), particulate matter (“PM”), and sulfur dioxide (“SO₂”) into the environment.

8. On July 2, 2020, Illinois EPA issued Federally Enforceable State Operating Permit (“FESOP”) 07080078 to Respondent. The FESOP contained an express expiration date of June 14, 2022.

9. Respondent did not timely seek a renewal of FESOP 07080078 prior to its expiration date on June 14, 2022, and Respondent did not apply for and obtain a Clean Air Act Permit Program (CAAPP) permit.

10. On July 20, 2022, Respondent submitted to the Illinois EPA a FESOP renewal application for the Facility, approximately 36 days after the permit expired.

11. On January 18, 2023, the Illinois EPA issued the renewal of FESOP 07080078.

12. Respondent continuously operated the Emission Units at the Facility without a valid operating permit from the expiration of FESOP 07080078 on June 14, 2022 until the renewal of FESOP 07080078 on January 18, 2023.

13. Section 39.5(1) of the Act, 415 ILCS 5/39.5(1) (2022), 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.

“CAAPP source” means any source for which the owner or operator is required to obtain a CAAPP permit pursuant to subsection 2 of this Section.

“Federally enforceable” means enforceable by USEPA.

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

“Renewal” means the process by which a permit is reissued at the end of its term.

“Regulated air pollutant” means the following:

- (1) Nitrogen oxides (NO_x) or any volatile organic compound.
- (2) Any pollutant for which a national ambient air quality standard has been promulgated.

- (3) Any pollutant that is subject to any standard promulgated under Section 111 of the Clean Air Act.
- (4) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Clean Air Act.
- (5) Any pollutant subject to a standard promulgated under Section 112 or other requirements established under Section 112 of the Clean Air Act, including Sections 112(g), (j) and (r).
 - (i) Any pollutant subject to requirements under Section 112(j) of the Clean Air Act. Any pollutant listed under Section 112(b) for which the subject source would be major shall be considered to be regulated 18 months after the date on which USEPA was required to promulgate an applicable standard pursuant to Section 112(e) of the Clean Air Act, if USEPA fails to promulgate such standard.
 - (ii) Any pollutant for which the requirements of Section 112(g)(2) of the Clean Air Act have been met, but only with respect to the individual source subject to Section 112(g)(2) requirement.
- (6) Greenhouse gases.

“Stationary source” means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under Section 112(b) of the Clean Air Act, except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in Section 216 of the Clean Air Act.

14. Section 39.5(2) of the Act, 415 ILCS 5/39.5(2) (2022), provides, in pertinent part, as follows:

- (2) Applicability.
 - (a) Sources subject to this Section shall include:
 - * * *
 - (ii) Any source subject to a standard or other requirements promulgated under Section 111 (New Source Performance Standards) or Section 112 (Hazardous Air Pollutants) of the Clean Air Act...

15. At all times relevant to this Complaint, Respondent's Facility has been, and continues to be, a building, structure, facility, or installation which emits VOM, NO_x, CO, PM, and SO₂, which are each a "regulated air pollutant", thereby constituting a "stationary source" as those terms are defined in Section 39.5(1) of the Act, 415 ILCS 5/39.5(1) (2022).

16. At all times relevant to this Complaint, Respondent has been, and continues to be, an owner and operator of the Facility, which is a stationary source, thereby constituting an "owner or operator", as that term is defined in Section 39.5(1) of the Act, 415 ILCS 5/39.5(1) (2022).

17. The two (2) natural gas-fired boilers are subject to a New Source Performance Standard ("NSPS") for Small, Industrial, Commercial, and Industrial Steam Generating Units pursuant to Section 111 of the Clean Air Act.

18. At all times relevant to this Complaint, Respondent's Facility has been, and continues to be, a source for which the owner or operator is required to obtain a "CAAPP Permit", thereby constituting a "CAAPP source", as those terms are defined in Section 39.5(1) of the Act, 415 ILCS 5/39.5(1) (2022).

19. Section 39.5(3)(c) of the Act, 415 ILCS 39.5(3)(c) (2022), provides, in pertinent part, as follows:

- (3) Agency Authority to Issue CAAPP Permits and Federally Enforceable State Operating Permits.

* * *

- (c) The Agency shall have the authority to issue a State operating permit for a source under subsection (a) of Section 39 of this Act, as amended, and regulations promulgated thereunder, which includes federally enforceable conditions limiting the "potential to emit" of the source to a level below the major source threshold for that source as described in paragraph (c) of subsection 2 of this Section, thereby excluding the source from the CAAPP, when requested by the

applicant pursuant to paragraph (u) of subsection 5 of this Section....

20. Section 39.5(5)(u) of the Act, 415 ILCS 39.5(5)(u) (2022), provides, in pertinent part, as follows:

An owner or operator of a CAAPP source which seeks exclusion from the CAAPP through the imposition of federally enforceable conditions, pursuant to paragraph (c) of subsection 3 of this Section, must request such exclusion within a CAAPP application submitted consistent with this subsection on or after the date that the CAAPP application for the source is due....

21. Section 39.5(5)(l) of the Act, 415 ILCS 39.5(5)(l) (2022), provides as follows:

Unless a timely and complete renewal application has been submitted consistent with this subsection, a CAAPP source operating upon the expiration of its CAAPP permit shall be deemed to be operating without a CAAPP permit. Such operation is prohibited under this Act.

22. Section 39.5(6)(b) of the Act, 415 ILCS 39.5(6)(b) (2022), provides, in pertinent part, as follows:

(6) Prohibitions.

* * *

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.

23. Section 201.162 of the Illinois Pollution Control Board (“Board”) Regulations, 35 Ill. Adm. Code 201.162, provides, in pertinent part, as follows:

(b) Applications for renewal of an operating permit shall be submitted to the Agency at least 90 days prior to the expiration of the prior permit....

24. Respondent’s FESOP 07080078 had an expiration date of June 14, 2022. Pursuant to 35 Ill. Adm. Code 201.162, an application for renewal of the FESOP was required to be submitted to Illinois EPA 90 days prior to the expiration date, or no later than March 16, 2022.

25. Respondent did not timely submit a renewal application for FESOP 07080078 prior to its expiration date on June 14, 2022. Accordingly, as of that date, Respondent was no longer excluded from the requirement to obtain a CAAPP permit under Section 39.5(1.1) of the Act, 415 ILCS 39.5(1.1) (2022).

26. Since the expiration of FESOP 07080078 on June 14, 2022 and until the issuance of a renewal of the FESOP on January 18, 2023, Respondent continuously operated a CAAPP source without timely applying for and obtaining a renewal of FESOP 07080078 or a CAAPP Permit. By operating a CAAPP source without a valid operating permit, Respondent violated Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b) (2022).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an Order against Respondent, FERRARA CANDY COMPANY, an Illinois corporation, with respect to Count I:

1. Authorizing a hearing in this matter at which time 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) (2022);

3. Ordering Respondent to cease and desist from any future violations of Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b) (2022);

4. Assessing against Respondent pursuant to Section 42(b)(5) of the Act, 415 ILCS 5/42(b)(5) (2022), a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation of Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b) (2022);

5. Ordering Respondent to pay all costs, including expert witness, consultant and attorney fees, expended by the State in its pursuit of this action; and

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

PEOPLE OF THE STATE OF ILLINOIS
ex rel. KWAME RAOUL, Attorney General
of the State of Illinois

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

BY: /s/ Stephen J. Sylvester
STEPHEN J. SYLVESTER, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel:

Molly Kordas
Assistant Attorney General
Environmental Bureau
69 West Washington Street, 18th Floor
Chicago, Illinois 60602
(773) 590-7047
Primary: molly.kordas@ilag.gov
Secondary: maria.cacaccio@ilag.gov

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2022).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
KWAME RAOUL
Attorney General of the State of Illinois

BY: /s/ Molly Kordas
Molly Kordas
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
(773) 590-7047
Primary: Molly.Kordas@ilag.gov
Secondary: Maria.Cacaccio@ilag.gov

DATE: December 1, 2023

motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2022), against Respondent.

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 (2022).

3. At all times relevant to the Complaint, Respondent was and is an Illinois corporation in good standing with the Illinois Secretary of State.

4. At all times relevant to the Complaint, Respondent has owned and operated a candy production plant located at 2945 West 31st Street, Chicago, Cook County, Illinois (the "Facility").

5. As of the date of filing of the Complaint, the Facility is located in an area of Environmental Justice ("EJ") concern as identified using Illinois EPA EJ Start.

6. Respondent's emission units at the Facility include: two (2) stretched fruit lines, a sugar pneumatic conveying system, equipment and working areas cleaning operations, equipment and working areas sanitizing operations, a sugar bin controlled by a baghouse, a sugar bag dump controlled by a baghouse, a Makat Mogul controlled by a baghouse, a Makat dryer controlled by a baghouse, a Makat cooler controlled by a filter, a NID1 Mogul controlled by a filter, a NID1 dryer with cooler controlled by a baghouse, a NID2 Mogul and dryer with cooler controlled by a baghouse, a sugar storage silo controlled by a dust collector, a delivery hopper controlled by a dust collector, and two (2) natural gas-fired boilers ("Emission Units").

7. The Facility's operations are capable of emitting volatile organic material ("VOM"), carbon monoxide ("CO"), nitrogen oxides ("NO_x"), particulate matter ("PM"), and sulfur dioxide ("SO₂") into the environment.

8. On July 2, 2020, the Illinois EPA issued Federally Enforceable State Operating

Permit (“FESOP”) 07080078 to Respondent. The FESOP contained an express expiration date of June 14, 2022.

9. Respondent did not timely seek a renewal of FESOP 07080078 prior to its expiration date on June 14, 2022, and Respondent did not apply for and obtain a Clean Air Act Permit Program (“CAAPP”) permit.

10. Respondent continuously operated the Emission Units at the Facility without a valid operating permit from the expiration of FESOP 07080078 on June 14, 2022, until the renewal of FESOP 07080078 was issued on January 18, 2023.

B. Allegations of Non-Compliance

Complainant contends that Respondent has violated the following provision of the Act:

Count I: Failure to Timely Obtain a Clean Air Act Permit Program Permit or Federally Enforceable State Operating Permit, in violation of Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6) (2022).

C. Non-Admission of Violations

Respondent represents that it has entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, Respondent does not affirmatively admit the allegations of violation within the Complaint and referenced within Section I.B herein, and this Stipulation shall not be interpreted as including such admission.

D. Compliance Activities to Date

1. On July 20, 2022, Respondent submitted to the Illinois EPA a FESOP renewal application for the Facility.
2. On January 18, 2023, the Illinois EPA issued the renewal of FESOP 07080078.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation.

Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against Respondent in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2022).

III. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2022), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the Parties to the Stipulation state the following:

1. Human health and the environment were threatened and the Illinois EPA's

information gathering responsibilities were hindered by Respondent's alleged violation.

- 2. There is social and economic benefit to the facility.
- 3. Operation of the facility was and is suitable for the area in which it is located.
- 4. Obtaining a permit and compliance with its terms are both technically practicable

and economically reasonable.

- 5. Respondent has subsequently complied with the Act.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2022), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

- 1. the duration and gravity of the violation;
- 2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
- 3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
- 4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
- 5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
- 6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency;
- 7. whether the respondent has agreed to undertake a supplemental environmental project, which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform; and

8. whether the respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

In response to these factors, the Parties to the Stipulation state as follows:

1. Respondent failed to timely renew FESOP 07080078 prior to its expiration date on June 14, 2022, and Respondent did not timely apply for or obtain a CAAPP permit. The violation began on or around March 16, 2022 and was resolved on January 18, 2023. On July 20, 2022, Respondent submitted to Illinois EPA a FESOP renewal application for the Facility. On January 18, 2023, Illinois EPA issued the renewal of FESOP 07080078.
2. Respondent was diligent in attempting to come back into compliance with the Act and applicable federal regulations, once it became aware of its alleged noncompliance.
3. The civil penalty takes into account any economic benefit realized by Respondent as a result of avoided or delayed compliance.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Thirteen Thousand and Three Hundred Dollars (\$13,300.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board Regulations.
5. To Complainant's knowledge, Respondent has no previously adjudicated violations of the Act.
6. Self-disclosure is not at issue in this matter.
7. The settlement of this matter does not include a supplemental environmental project.
8. A Compliance Commitment Agreement was not at issue in this matter.

V. TERMS OF SETTLEMENT

A. Penalty Payment

Respondent shall pay a civil penalty in the sum of Thirteen Thousand and Three Hundred Dollars (\$13,300.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Stipulated Penalties, Interest, and Default

1. If Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, Respondent shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

2. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by Respondent not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

3. The stipulated penalties shall be enforceable by Complainant and shall be in addition to, and shall not preclude the use of, any other remedies or sanctions arising from the failure to comply with this Stipulation.

C. Payment Procedures

1. All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Payments shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

2. The case name and case number shall appear on the face of the certified check or money order.
3. A copy of the certified check or money order and any transmittal letter shall be sent to:

Molly Kordas
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

D. Future Compliance

1. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, his employees and representatives, shall have the right of entry into and upon Respondent's facility which is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, his employees and representatives, may take photographs, samples, and collect information, as they deem necessary.
2. This Stipulation in no way affects the responsibilities of Respondent to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.
3. Respondent shall cease and desist from future violations of the Act that were the

subject matter of the Complaint.

E. Release from Liability

In consideration of Respondent's payment of the \$13,300.00 penalty, its commitment to cease and desist as contained in Section V.D.3 above, completion of all activities required hereunder, and upon the Board's approval of this Stipulation, Complainant releases, waives and discharges Respondent from any further liability or penalties for the violations of the Act that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed concurrently with this Stipulation. Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against Respondent with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on Respondent's failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2022), or entity other than Respondent.

F. Enforcement of Stipulation

Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Board and may be enforced as such through any and all

available means.

G. Execution of Stipulation

The undersigned representatives for the Parties to the Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it. This Stipulation may be executed by the parties in one or more counterparts, all of which taken together shall constitute one and the same instrument.

[Remainder of page intentionally blank – Signature page follows]

Electronic Filing: Received, Clerk's Office 12/1/2023 **PCB 2024-039**


WHEREFORE, the Parties to the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.


PEOPLE OF THE STATE OF ILLINOIS
KWAME RAOUL
Attorney General
State of Illinois

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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

JOHN J. KIM, Director
Illinois Environmental Protection Agency

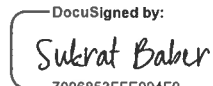
BY: 
STEPHEN J. SYLVESTER, Chief
Environmental Bureau
Assistant Attorney General


BY: 
CHARLES W. GUNNARSON
Chief Legal Counsel

DATE: 11/28/23

DATE: 11/28/23

RESPONDENT
FERRARA CANDY COMPANY

BY: 
Sukrat Baber

BY: 
Kevin Lall

ITS: Sr. Legal Counsel, Employment & Compliance

ITS: Assistant General Counsel

DATE: 10/25/2023

DATE: 10/25/2023