

ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)	
ILLINOIS,)	
)	
Complainant,)	
)	PCB 23-34
v.)	(Enforcement – Air)
)	
PPC FLEXIBLE PACKAGING, LLC,)	
)	
Respondent.)	

RESPONDENT PPC FLEXIBLE PACKAGING, LLC’S ANSWER TO PEOPLE OF THE STATE OF ILLINOIS’S COMPLAINT AND AFFIRMATIVE DEFENSES

Respondent, PPC Flexible Packaging, LLC (“PPC”), by its attorneys, Honigman LLP, for its answer to Complainant People of the State of Illinois’s (“Complainant”) Complaint and affirmative defenses, states as follows:

COUNT I

FAILURE TO TIMELY SUBMIT COMPLETE AND ACCURATE ANNUAL EMISSIONS REPORT

1. This Complaint is brought on behalf of the People of the State of Illinois by Kwame Raoul, Attorney of the State of Illinois, on his own motion and at the request of the Illinois Environmental Protection Agency (“Illinois EPA”), against Respondent, pursuant to Section 31 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31 (2020).

ANSWER: PPC admits only that Paragraph 1 references the Complaint, which is a document that speaks for itself. PPC denies that it violated any laws, including as alleged in the Complaint.

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 (2020), and is charged, *inter alia*, with the duty of enforcing the Act.

ANSWER: PPC lacks information sufficient to form a belief regarding the allegations contained in Paragraph 2 and therefore denies the same. PPC denies that it violated the Act.

3. At all times relevant to this Complaint, Respondent has been and is a Delaware limited liability company authorized to transact business in the State of Illinois.

ANSWER: Admitted.

4. From 2005, or on a date better known to Respondent, through the date of filing of this Complaint, Respondent has owned and operated a flexographic printing facility located at 1111 Busch Parkway, Buffalo Grove, Lake County, Illinois ("Facility").

ANSWER: PPC admits that it has operated a printing facility located at 1111 Busch Parkway, Buffalo Grove, Lake County, Illinois. PPC denies the remaining allegations in Paragraph 4 as alleged.

5. At all times relevant to this Complaint, Respondent operated and continues to operate three (3) flexographic printing lines with dryers controlled by a natural gas-fired regenerative thermal oxidizer ("RTO") at the Facility. The three flexographic printing lines and the RTO are each capable of emitting carbon monoxide, nitrogen oxides, particulate matter, sulfur dioxide, and volatile organic materials into the environment.

ANSWER: PPC admits that it currently operates three flexographic printing lines at the Facility. PPC lacks information sufficient to form a belief regarding the remaining allegations contained in Paragraph 5 and therefore denies the same.

6. Section 9(a) of the Act, 415 ILCS 5/9(a) (2020), 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.

ANSWER: PPC admits only that Paragraph 6 reference the Act and refers to the Act for its provisions. PPC denies that it has violated any provision of the Act.

7. Section 3.315 of the Act, 415 ILCS 5/3.315 (2020), provides 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.

ANSWER: PPC admits only that Paragraph 7 reference the Act and refers to the Act for its provisions. PPC denies that it has violated any provision of the Act.

8. Respondent, a Delaware limited liability company, is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2020).

ANSWER: Paragraph 8 calls for a legal conclusion and therefore no answer is required. To the extent an answer is required, PPC denies that Paragraph 8 contains a complete legal analysis and therefore denies the same.

9. Section 3.165 of the Act, 415 ILCS 5/3.165 (2020), provides the following definition:

“Contaminant” is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

ANSWER: PPC admits only that Paragraph 9 reference the Act and refers to the Act for its provisions. PPC denies that it has violated any provision of the Act.

10. Carbon monoxide, nitrogen oxides, particulate matter, sulfur dioxide, and volatile organic material are each a “contaminant” as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2020).

ANSWER: PPC admits only that Paragraph 10 reference the Act and refers to the Act for its provisions. PPC denies that it has violated any provision of the Act.

11. Section 201.302(a) of the Illinois Pollution Control Board (“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 meeting the applicability criteria contained in 35 Ill. Adm. Code 254.102 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 when necessary to accomplish the purposes of the Act and this Chapter.

ANSWER: PPC admits only that Paragraph 11 reference the Board Air Pollution Regulations and refers to the Regulations for its provisions. PPC denies that it has violated any Regulations.

12. Section 254.102(a)(2) of the Illinois EPA Air Pollution Regulations, 35 Ill. Adm. Code 254.102(a)(2), provides as follows:

a) Subpart B of this Part applies to:

* * *

2) Owners or operators of any source required to have an operating permit in accordance with Section 39.5 of the Environmental Protection Act [415 ILCS 5/39.5].

ANSWER: PPC admits only that Paragraph 12 reference the Board Air Pollution Regulations and refers to the Regulations for its provisions. PPC denies that it has violated any Regulations.

13. At all times relevant to this Complaint, the Facility has had the potential to emit more than 50 tons per year of volatile organic material. Accordingly, the Facility is a source required to have an operating permit in accordance with Section 39.5 of the Environmental Protection Act, and therefore meets the applicability criteria contained in Section 254.102(a)(2) of the Illinois EPA Air Pollution Regulations, 35 Ill. Adm. Code 254.102(a)(2).

ANSWER: PPC lacks information sufficient to form a belief regarding the allegations contained in 13 and therefore denies the same. PPC denies that it has violated any provision of the Act or Regulations.

14. On June 16, 2022, the Illinois EPA issued to Respondent Federally Enforceable State Operating Permit No. 12070038.

ANSWER: Admitted.

15. 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 35 Ill. Adm. Code 201.302(a).

ANSWER: PPC admits only that Paragraph 15 reference the Board Air Pollution Regulations and refers to the Regulations for its provisions. PPC denies that it has violated any Regulations.

16. 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.

ANSWER: PPC admits only that Paragraph 16 reference the Board Air Pollution Regulations and refers to the Regulations for its provisions. PPC denies that it has violated any Regulations.

17. Section 211.4370 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 211.4370, provides the following definition:

“Owner or operator” means any person who owns, operates, leases, controls, or supervises a source, an emission unit or air pollution control equipment.”

ANSWER: PPC admits only that Paragraph 17 reference the Board Air Pollution Regulations and refers to the Regulations for its provisions. PPC denies that it has violated any Regulations.

18. Respondent is an “owner or operator” as that term is defined by Section 211.4370 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 211.4370.

ANSWER: Paragraph 18 calls for a legal conclusion and therefore no answer is required. To the extent an answer is required, PPC denies that Paragraph 18 contains a complete legal analysis and therefore denies the same.

19. Section 211.1950 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 211.1950, provides the following definition:

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

ANSWER: PPC admits only that Paragraph 19 reference the Board Air Pollution Regulations and refers to the Regulations for its provisions. PPC denies that it has violated any Regulations.

20. Section 211.6370 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 211.6370, provides the following definition:

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

ANSWER: PPC admits only that Paragraph 20 reference the Board Air Pollution Regulations and refers to the Regulations for its provisions. PPC denies that it has violated any Regulations.

21. Section 211.370 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 211.370, provides the following definition:

“Air pollutant” means an air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the atmosphere. Such term includes any precursors to the formation of any air pollutant, to the extent that the relevant statute or rule has identified such precursor or precursors for particular purpose for which the term “air pollutant” is used.

ANSWER: PPC admits only that Paragraph 21 reference the Board Air Pollution Regulations and refers to the Regulations for its provisions. PPC denies that it has violated any Regulations.

22. The Facility is a “stationary source” which operates three (3) flexographic printing lines controlled by a catalytic oxidizer, that are each an “emission unit” capable of emitting nitrogen oxides, volatile organic material, particulate matter, and carbon monoxide, each of which is an “air pollutant” as those terms are defined in Sections 211.6370, 211.1950, and 211.370, respectively, of the Board Air Pollution Regulations, 35 Ill. Adm. Code 211.6370, 211.1950, and 211.370.

ANSWER: Paragraph 22 calls for a legal conclusion and therefore no answer is required. To the extent an answer is required, PPC denies that Paragraph 22 contains a complete legal analysis and therefore denies the same.

23. From 2005, or on a date better known to Respondent, and continuing to the date of the filing of this Complaint, Respondent, as the owner or operator of the emission units, was required pursuant to Section 201.302(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a), and Sections 254.132(a) and 254.137(a) of the Illinois EPA Air Pollution Regulations, 35 Ill. Adm. Code 254.132(a) and 254.137(a), to submit Annual Emissions Reports (AERs”) to the Illinois EPA each year by May 1 for the preceding calendar year.

ANSWER: Paragraph 23 calls for a legal conclusion and therefore no answer is required. To the extent an answer is required, PPC denies that Paragraph 23 contains a complete legal analysis and therefore denies the same.

24. Respondent has not submitted to the Illinois EPA its AER for calendar year 2020.

ANSWER: Denied. Further answering, Respondent submitted an AER for calendar year 2020 on or about September 7, 2022.

25. By failing to timely submit a complete and accurate AER for calendar year 2020, Respondent violated Section 201.302(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a). Respondent thereby violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2020).

ANSWER: Denied.

WHEREFORE PPC denies that Complainant is entitled to any of the relief sought in Count I of the Complaint.

AFFIRMATIVE DEFENSES

A. Complainant has failed, in whole or in part, to state a claim upon which relief may be granted.

B. PPC either fully or substantially complied with all applicable provisions of the Act and/or Regulations.

C. Complainant's claims are barred, in whole or in part, for failing to comply with statutory, administrative, notice, service, and/or procedural preconditions prior to bringing suit against PPC.

D. Complainant's claims are barred, in whole or in part, because allowing the claims to proceed in these circumstances would violate substantive and/or procedural due process.

E. Complainant's claims are barred, in whole or in part, under the doctrines of laches, waiver, and/or estoppel.

PPC reserves the right to assert such additional affirmative defenses as become known through discovery or otherwise.

Dated: November 7, 2022

Respectfully submitted,

By: /s/ Jad Sheikali

*Attorneys for Respondent PPC Flexible
Packaging, LLC*

Jad Sheikali (ARDC # 6324641)

jsheikali@honigman.com

Honigman LLP

155 North Wacker Drive, Suite 3100

Chicago, Illinois 60606

Tel: (312) 701-9300

Fax: (312) 701-9335

Firm ID No. 64346

S. Lee Johnson (ARDC # 6341890)

sljohnson@honigman.com

Honigman LLP

2290 First National Building

660 Woodward Avenue

Detroit, MI 48226-3506

Tel: (313) 465-7000

Fax: (313) 465-8000

CERTIFICATE OF SERVICE

This is to certify that on November 7, 2022, a copy of the foregoing was electronically filed with the Clerk of the Court using the ICPB e-filing system which will send notification of such filing to the attorneys of record.

Dated: November 7, 2022

Respectfully submitted,

HONIGMAN LLP

/s/ Jad Sheikali

Jad Sheikali (ARDC # 6324641)

Honigman LLP

155 North Wacker Drive, Suite 3100

Chicago, Illinois 60606

Tel: (312) 701-9300

Fax: (312) 701-9335

Firm ID No. 64346