

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD NOV 21 2003

PEOPLE OF THE STATE OF ILLINOIS, )  
BY LISA MADIGAN, ATTORNEY GENERAL )  
OF THE STATE OF ILLINOIS, )

STATE OF ILLINOIS  
Pollution Control Board

COMPLAINANT, )

PCB No. 02-186

VS. )

(ENFORCEMENT - AIR)

PERFETTI VAN MELLE U.S.A. INC., )  
A DELAWARE CORPORATION, )

RESPONDENT. )

**ANSWER AND AFFIRMATIVE DEFENSES TO  
COMPLAINT FOR CIVIL PENALTIES**

The Respondent, VAN MELLE U.S.A. INC., now known as PERFETTI VAN MELLE U.S.A., INC. ("Respondent"), by and through its attorneys, Howard & Howard Attorneys, P.C., Answer the Complaint for Civil Penalties as follows:

**COUNT I**

**OPERATION OF EMISSIONS SOURCES WITHOUT A PERMIT**

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).

**ANSWER:** The allegations of Paragraph 1 are conclusions of law to which no answer is required nor tendered.

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).

*ANSWER:* The allegations of Paragraph 2 are conclusions of law to which no answer is required nor tendered.

3. At all times relevant to this Complaint, VAN MELLE U.S.A., INC. ("Respondent") was and is a Kentucky corporation registered to do business in the State of Illinois and is in good standing.

*ANSWER:* The allegations of Paragraph 3 are admitted.

4. At all times relevant to this Complaint, the Respondent has operated a facility located at 151 North Hastings Lane, Buffalo Grove, Lake County, Illinois, 60604 ("facility").

*ANSWER:* Respondent admits only that it currently operates a candy manufacturing facility located at 151 North Hastings Lane, Buffalo Grove, Lake County, Illinois, 60604 ("facility"), and Respondent denies the remaining allegations contained within Paragraph 4.

5. Respondent manufactures candy at its facility.

*ANSWER:* The allegations of Paragraph 5 are admitted.

6. The manufacturing process involves cooking raw ingredients and placing them through an extruder that separates the candy. The strips are then passed through a dip tank containing capol to harden the candy. Then the product is cooled in a cooling tunnel. Sugar and flavoring is added to the candy in a steaming sander. The coloring and flavoring additives which are used contain varying amounts of VOM such as propylene and ethyl alcohol. VOM contained in the candy ingredients vaporizes and is not controlled or captured.

*ANSWER:* The allegations of Paragraph 6 are denied as untrue.

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7. Since at least November 1999 and May 2000, respectively, and continuing until June 29, 2001, Respondent has discharged or emitted VOM from the facility into the environment from the uncontrolled operation of two (2) capol coating lines and capol baths used during the cooking, flavoring, coloring and polishing of the confectionery product it produces.

**ANSWER:** The allegations of Paragraph 7 are denied as untrue.

8. Section 9(b) of the Act, 415 ILLS 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.

**ANSWER:** The provisions of the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq., speak for themselves and to the extent that allegations contained within Paragraph 8 are not consistent with those provisions, said allegations are denied as untrue.

9. 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.

**ANSWER:** The provisions of the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq., speak for themselves and to the extent that allegations contained within Paragraph 9 are not consistent with those provisions, said allegations are denied as untrue.

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

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**ANSWER:** Respondent lacks sufficient information with which to affirmatively admit or deny the allegations contained in Paragraph 10 for the reason that the term "VOM" included in Paragraph 10 has not been defined or described.

11. Section 3.26 of the Act, 415 ILCS 5/3.26 (2000), 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:** The provisions of the Illinois Environmental Protection Act, 415 ILCS 5/1, et seq. speak for themselves and to the extent that allegations contained within Paragraph 11 are not consistent with those provisions, said allegations are denied as untrue.

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

**ANSWER:** The allegations of Paragraph 12 are admitted.

13. Section 201.102 of the Air Pollution Regulations, 35 Ill. Adm. Code 201.102, contains the following definitions:

**Definitions**

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

"Existing Emission Source": any emission source, the construction or modification of which has commenced prior to April 14, 1972.

"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.

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*ANSWER:* The provisions of the administrative regulations set forth in the Illinois Administrative Code speak for themselves and to the extent that allegations contained within Paragraph 13 are not consistent with those provisions, said allegations are denied as untrue.

14. Section 211.7150 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 211.7150, provides the following definitions:

"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, which participates in atmospheric photochemical reactivity.

*ANSWER:* The provisions of the administrative regulations set forth in the Illinois Administrative Code speak for themselves and to the extent that allegations contained within Paragraph 14 are not consistent with those provisions, said allegations are denied.

15. VOM is a "specified air contaminant" as that term is defined in Section 201.102 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.102.

*ANSWER:* The allegations of Paragraph 15 are conclusions of law to which no answer is required nor tendered.

16. Because the two (2) capol coating lines and two capol baths emitted, or were capable of emitting VOM, a specified air contaminant, they are emission sources as that term is defined in Section 201.102 of the Board Air Pollution Regulations 35 Ill. Adm. Code 201.102.

*ANSWER:* Respondent admits only that a compound known by the commercial name "capol" was used in the manufacture of candy at the Buffalo Grove, Illinois facility at certain times, and the remaining allegations and conclusions of law contained within Paragraph 16 are denied as untrue.

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17. The emission sources and control equipment located at the Respondent's facility were installed and/or constructed on or after April 14, 1972 and are all "new air pollution control equipment" or a "new emission source" as those terms are defined in Section 201.102 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.102.

**ANSWER:** Respondent lacks sufficient information with which to affirmatively admit or deny the allegations contained in Paragraph 17 for the reason that the "emissions sources and control equipment" included in Paragraph 17 have not been identified, defined or described.

18. 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.

**ANSWER:** The provisions of the administrative regulations set forth in the Illinois Administrative Code speak for themselves and to the extent that allegations contained within Paragraph 18 are not consistent with those provisions, said allegations are denied.

19. Respondents operated two (2) capol coating lines and two (2) capol baths, new emission sources, at the facility in Buffalo Grove, Illinois, or on dates better known to Respondent, without the proper operating permits.

**ANSWER:** Respondent admits only that a compound known by the commercial name "capol" was used in the manufacture of candy at the Buffalo Grove, Illinois facility at certain times, and the remaining allegations and conclusions of law contained within Paragraph 19 are denied as untrue.

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20. Since 1999, the exact dates better known to the Respondent, and until June 29, 2001, the Respondent operated two (2) capol coating lines and baths, new emission sources, without having obtained an Illinois EPA operating permit.

*ANSWER:* Respondent admits only that a compound known by the commercial name "capol" was used in the manufacture of candy at the Buffalo Grove, Illinois facility at certain times, and the remaining allegations and conclusions of law contained within Paragraph 20 are denied as untrue.

21. 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 thereby, also violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2000).

*ANSWER:* The allegations of Paragraph 21 are denied as untrue.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter a judgment in favor of Complainant and against the Respondent, VAN MELLE, 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 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 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;

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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**

### **FAILURE TO TIMELY SUBMIT CAAPP APPLICATION**

1-12. Complainant realleges and incorporates by reference herein paragraphs 1 through 8, 9 through 12, and 14 of Count I as paragraphs 1 through 12 of this Count II.

**ANSWER:** The answers to Paragraphs 1 8, 9 through 12 and 14 of Count I of the Complaint for Civil Penalties are incorporated herein by reference.

13. 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.

**ANSWER:** The provisions of the Illinois Environmental protection Act, 415 ILCS 5/1 et seq., speak for themselves and to the extent that allegations contained within Paragraph 13 are not consistent with those provisions, said allegations are denied.

14. 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.

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"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 . . . .

*ANSWER:* The provisions of the Illinois Environmental protection Act, 415 ILCS 5/1 et seq., speak for themselves and to the extent that allegations contained within Paragraph 14 are not consistent with those provisions, said allegations are denied.

15. 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:

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- A. For ozone non-attainment 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 . . . .

**ANSWER:** The provisions of the Illinois Environmental protection Act, 415 ILCS 5/1 et seq., speak for themselves and to the extent that allegations contained within Paragraph 15 are not consistent with those provisions, said allegations are denied.

16. 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.

**ANSWER:** The provisions of the administrative regulations set forth in the Illinois Administrative Code speak for themselves and to the extent that allegations contained within Paragraph 16 are not consistent with those provisions, said allegations are denied.

17. 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.

**ANSWER:** The provisions of the administrative regulations set forth in the Illinois Administrative Code speak for themselves and to the extent that allegations contained within Paragraph 17 are not consistent with those provisions, said allegations are denied.

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18. Section 270.105 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 270.105, provides as follows:

**New CAAPP Source**

"New CAAPP source" means a CAAPP source that is not an existing CAAPP source.

**ANSWER:** The provisions of the administrative regulations set forth in the Illinois Administrative Code speak for themselves and to the extent that allegations contained within Paragraph 18 are not consistent with those provisions, said allegations are denied.

19. 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.

**ANSWER:** The provisions of the Illinois Environmental protection Act, 415 ILCS 5/1 et seq., speak for themselves and to the extent that allegations contained within Paragraph 13 are not consistent with those provisions, said allegations are denied.

20. 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)

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

*ANSWER:* The provisions of the administrative regulations set forth in the Illinois Administrative Code speak for themselves and to the extent that allegations contained within Paragraph 20 are not consistent with those provisions, said allegations are denied.

21. Each piece of equipment described herein 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).

*ANSWER:* Respondent lacks sufficient information with which to affirmatively admit or deny the allegations contained in Paragraph 21 for the reason that the allegations do not identify or define "each piece of equipment described herein" that is the subject of the allegations contained in Paragraph 21.

22. The Respondent operates a facility that emits or may emit a regulated pollutant. Therefore, Respondents' 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).

*ANSWER:* Respondent admits only that certain operations at its Buffalo Grove, Illinois facility may result in the release of a contaminant to the ambient air, as the term "contaminant" is defined by the Illinois Environmental Protection Act, 415 ILCS 5/1, et seq., and the remaining allegations and conclusions of law contained within Paragraph 22 are denied as untrue.

23. 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).

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*ANSWER:* Respondent admits only that it currently operates a candy manufacturing facility located at 151 North Hastings Lane, Buffalo Grove, Lake County, Illinois, and the remaining allegations and conclusions of law contained within Paragraph 23 are denied as untrue.

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

*ANSWER:* The allegations of Paragraph 24 are admitted upon information and belief.

25. 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), 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.

*ANSWER:* The allegations of Paragraph 25 are denied as untrue.

26. The Respondent's facility is of a "new CAAPP source" as that term is defined in Section 270.105 the Illinois EPA Rules, 35 Ill. Adm. Code 270.105.

*ANSWER:* The allegations of Paragraph 26 are denied as untrue.

27. The Respondent was required to submit a CAAPP Application by November, 2000. To date, Respondent has not submitted a CAAPP Application.

*ANSWER:* The allegations of Paragraph 27 are denied as untrue.

28. From 1999 and 2000, the exact dates better known to Respondent, until June 29, 2001, the Respondent operated two (2) capol coating lines and two (2) capol baths without having submitted a CAAPP Application and receiving a CAAPP permit.

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*ANSWER:* The allegations of Paragraph 28 are admitted in part and denied in part. Respondent admits only that a compound known by the commercial name "capol" was used in the manufacture of candy at the Buffalo Grove, Illinois facility at certain times. The remaining allegations and conclusions of law contained within Paragraph 28 are denied as untrue.

29. From November 1999 and May 2000 until June 29, 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).

*ANSWER:* The allegations of Paragraph 29 are admitted in part and denied in part. Respondent admits only that it currently operates and has operated since December 1999, a candy manufacturing facility located at 151 North Hastings Lane, Buffalo Grove, Lake County, Illinois. The remaining allegations and conclusions of law contained within Paragraph 29 are denied as untrue.

30. 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 Sections 270.301(b) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 270.301(b).

*ANSWER:* The allegations of Paragraph 30 are denied as untrue.

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

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

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2. Finding that the Respondent has violated Section 39.5(6)(b) of the Act 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 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 III**

#### **FAILURE TO TIMELY SUBMIT ERMS APPLICATION**

1-11. Complainant realleges and incorporates by reference herein paragraphs 1 through 7 and 9 through 12 of Count II as paragraphs 1 through 11 of this Count III.

**ANSWER:** The answers to Paragraphs 1 through 7 and 9 through 12 of Count II of the Complaint for Civil Penalties are incorporated herein by reference.

12. 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.

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**ANSWER:** The provisions of the Illinois Environmental Protection Act, 415 ILCS 5/1, et seq., speak for themselves and to the extent that allegations contained within Paragraph 12 are not consistent with those provisions, said allegations are denied.

13. 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 new participating source or for a major modification of any source existing prior to May 1, 1999, that is 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.

**ANSWER:** The provisions of the administrative regulations set forth in the Illinois Administrative Code speak for themselves and to the extent that allegations contained within Paragraph 13 are not consistent with those provisions, said allegations are denied.

14. 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.

**ANSWER:** The provisions of the Illinois Environmental Protection Act, 415 ILCS 5/1, et seq., speak for themselves and to the extent that allegations contained within Paragraph 14 are not consistent with those provisions, said allegations are denied.

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15. Section 205.210 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 205.210, provides as follows:

**New Participating Source**

The requirements of this Part shall apply to any new participating source, a source not operating prior to May 1, 1999, located in the Chicago ozone non-attainment area, that is required to obtain a CAAPP permit and has or will have seasonal emissions of at least 10 tons of VOM. Each new participating source shall hold ATUs, as specified in Section 205.150(d) of this Part, upon commencing operation.

*ANSWER:* The provisions of the administrative regulations set forth in the Illinois Administrative Code speak for themselves and to the extent that allegations contained within Paragraph 15 are not consistent with those provisions, said allegations are denied.

16. The Respondent has operated a new participating source, as that term is defined by 35 Ill. Adm Code 205.210, since May 2000, in an ozone non-attainment area and its seasonal emissions exceeded 10 tons of VOM. Therefore, Respondent has a source subject to the requirement of Section 205.310, 35 Ill. Adm. Code 205.310.

*ANSWER:* The allegations of Paragraph 16 are denied as untrue.

17. The Respondent was required to submit its ERMS baseline application by the time construction of the facility commenced. However, Respondent did not submit its ERMS baseline application.

*ANSWER:* The allegations of Paragraph 17 are denied as untrue.

18. From May 2000 until June 29, 2001, the Respondent operated a new participating source without having submitted an ERMS Application.

*ANSWER:* The allegations of Paragraph 18 are admitted in part and denied in part. Respondent admits only that it currently operates and has operated since December 1999, a

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candy manufacturing facility located at 151 North Hastings Lane, Buffalo Grove, Lake County, Illinois. The remaining allegations and conclusions of law contained within Paragraph 18 are denied as untrue.

19. Section 205.300 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 205.300, provides in pertinent part as follows:

**Section 205.300**

- a) For each year in which the source is operational, the owner or operator of each participating source and new participating source shall submit, as a component of its Annual Emissions Report, seasonal emissions information of the Agency for each seasonal allotment period after the effective date of this Part in accordance with the following schedule:
  - 1) For each participating source or new participating source that generates VOM emissions from less than 10 emissions units, by October 31, of each year;  
and
  - 2) For each participating source or new participating source that generates VOM emissions from 10 or more emission units, by November 30 of each year.

**ANSWER:** The provisions of the administrative regulations set forth in the Illinois Administrative Code speak for themselves and to the extent that allegations contained within Paragraph 19 are not consistent with those provisions, said allegations are denied.

20. To date, Respondent has not submitted seasonal emissions information to the Illinois EPA.

**ANSWER:** The allegations of Paragraph 20 are denied as untrue.

21. Section 205.150 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 205.150, provides, in pertinent part, as follows:

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## Section 205.150

- c) At the end of each reconciliation period, on and after the dates specified in Section 205.200 of this Part, each participating source shall:
  - 1) Hold ATUs in an amount not less than its VOM emissions during the preceding seasonal allotment period, except as provided in Sections 205.220, 205.225, 205.315, 205.320(e)(3) or (f) and 205.750 of this Part; or
  - 2) Holds ATUs in an amount not less than 1.3 times its seasonal emissions attributable to a major modification during the preceding seasonal allotment period, if a participating source commences operation of major modification pursuant to 35 Ill. Adm. Code 203 on or after May 1, 1999. Additionally, such source must hold ATUs in accordance with subsection (c)(1) of this section for VOM emissions not attributable to this major modification during the preceding seasonal allotment period.
- d) At the end of each reconciliation period, on and after the date on which the source commences operation, as specified in Section 205.210 of this Part, each new participating source shall:
  - 1) If the new participating source is a new major source pursuant to 35 Ill. Adm. Code 203, hold ATUs in an amount not less than 1.3 times its VOM emissions during the preceding seasonal allotment period; or
  - 2) If the new participating source is not a new major source pursuant to 35 Ill. Adm. Code 203, hold ATUs in an amount not less than its VOM emissions during the preceding seasonal allotment period, except as provided in Sections 205.220, 205.225 and 205.750 of this Part.
- e) Any participating source that commences operation of a major modification on or after May 1, 1999, or any new participating source that is a new major source, which, at the end of each reconciliation period, holds ATUs in an amount not less than 1.3 times the VOM emissions during

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the preceding seasonal allotment period, in accordance with subsection (c) (2) or (d) (1) of this Section, as applicable, shall be deemed to have satisfied the offset requirements of 35 Ill. Adm. Code 203.302(a), 203.602 and 203.701.

*ANSWER:* The provisions of the administrative regulations set forth in the Illinois Administrative Code speak for themselves and to the extent that allegations contained within Paragraph 21 are not consistent with those provisions, said allegations are denied.

22. Respondent, VAN MELLE, has been subject to ERMS requirements since calendar year 2000. Respondent has failed to timely submit an ERMS baseline application to the Illinois EPA. Van Melle has also failed to submit seasonal emission information. Van Melle did not hold the required Allotment Trading Units (ATUs) during the reconciliation period in 2000.

*ANSWER:* The allegations contained within Paragraph 22 are admitted in part and denied in part. It is admitted that Respondent did not submit "an ERMS baseline application" to the Illinois EPA. It is denied that Respondent is subject to ERMS requirements, was required to submit "an ERMS baseline application," did not submit emissions information and that Allotment Trading Units were "required" to be held by Respondent.

23. Respondent, by its conduct as alleged herein, violated Section 9.8(b) of the Act and Sections 205.310(a), 205.300(a) and 205.150(c), (d) and (e) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 205.310(a), 205.300 (a) and 205.150(c), (d) and (e).

*ANSWER:* The allegations of Paragraph 23 are denied as untrue.

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

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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 and Sections 205.310(a), 205.300(a) and 205.150(c), (d) and (e) of 35 Ill. Adm. Code;
3. Ordering the Respondent to cease and desist from further violations of Section 9.8(b) of the Act and Sections 205.310(a), 205.300(a) and 205.150(c), (d) and (e) 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 IV**

##### **NEW SOURCE REVIEW**

1-11. Complainant realleges and incorporates by reference herein paragraphs 1 through 7 and 9 through 12 of Count I as paragraphs 1 through 11 of this Count IV.

**ANSWER:** The answers to Paragraphs 1 through 7 and 9 through 12 of Count I of the Complaint for Civil Penalties are incorporated herein by reference.

12. 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

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violate regulations or standards adopted by the Board under this Act.

**ANSWER:** The provisions of the Illinois Environmental Protection Act, 415 ILCS 5/1, et seq., speak for themselves and to the extent that allegations contained within Paragraph 12 are not consistent with those provisions, said allegations are denied.

13. 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.

**ANSWER:** The provisions of the administrative regulations set forth in the Illinois Administrative Code speak for themselves and to the extent that allegations contained within Paragraph 13 are not consistent with those provisions, said allegations are denied.

14. 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.

**ANSWER:** The provisions of the Illinois Environmental Protection Act, 415 ILCS 5/1, et seq., speak for themselves and to the extent that allegations contained within Paragraph 14 are not consistent with those provisions, said allegations are denied.

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15. Section 203.201 of the Board Air Pollution Regulations, 35 Ill. Adm. Code

203.201, provides as follows:

In any non-attainment 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 non-attainment area, except as in compliance with this Part for that pollutant. In areas designated non-attainment 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 SO<sub>2</sub>, or by November 15, 1992, for nitrogen oxides and volatile organic emissions for sources located in all ozone non-attainment areas.

**ANSWER:** The provisions of the administrative regulations set forth in the Illinois Administrative Code speak for themselves and to the extent that allegations contained within Paragraph 15 are not consistent with those provisions, said allegations are denied.

16. By releasing VOM emissions into the atmosphere without demonstrating compliance with Section 203.201 of the Board Air Pollution Regulations, Respondent caused, threatened or allowed air pollution in violation of Section 9(a) of the Act, 415 ILCS 5/9(a)(2000), and Section 201.141 of 35 Ill. Adm. Code 201.141.

**ANSWER:** The allegations of Paragraph 16 are denied as untrue.

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

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

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2. Finding that the Respondent has violated Section 9(a) of the Act and Sections 201.141 and 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 and Sections 201.141 and 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 V**

##### **FAILURE TO REDUCE UNCONTROLLED VOM EMISSIONS**

1-14. Complainant realleges and incorporates by reference herein paragraphs 1 through 14 of Count IV as paragraphs 1 through 14 of this Count V.

**ANSWER:** The answers to paragraphs 1 through 14 of Count IV of the Complaint for Civil Penalties are incorporated herein by reference.

15. 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

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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.

*ANSWER:* The provisions of the administrative regulations set forth in the Illinois Administrative Code speak for themselves and to the extent that allegations contained within Paragraph 15 are not consistent with those provisions, said allegations are denied.

16. 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.

*ANSWER:* The provisions of the administrative regulations set forth in the Illinois Administrative Code speak for themselves and to the extent that allegations contained within Paragraph 16 are not consistent with those provisions, said allegations are denied.

17. 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.

*ANSWER:* The provisions of the administrative regulations set forth in the Illinois Administrative Code speak for themselves and to the extent that allegations contained within Paragraph 17 are not consistent with those provisions, said allegations are denied.

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18. Respondent's facility is a stationary source that emits air pollutants as that term is defined in Section 211.6370 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 211.6370.

**ANSWER:** The allegations of Paragraph 18 are admitted in part and denied in part. Respondent admits only that certain operations at its Buffalo Grove, Illinois facility may result in the release of a contaminant to the ambient air, as the term "contaminant" is defined by the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq. The remaining allegations and conclusions of law contained within Paragraph 18 are denied as untrue.

19. Respondent's coating lines are emission units as that term is defined by Section 211.1950 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 211.1950.

**ANSWER:** The allegations of Paragraph 19 are denied as untrue.

20. 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

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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

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

*ANSWER:* The provisions of the administrative regulations set forth in the Illinois Administrative Code speak for themselves and to the extent that allegations contained within Paragraph 20 are not consistent with those provisions, said allegations are denied.

21. Since at least 1999 and 2000, the exact dates being better known to Respondent, and continuing until June 29, 2001, Respondents operated two (2) coating lines that emitted uncontrolled VOM emissions. Respondents' emission capture and control equipment did not achieve an overall reduction in uncontrolled VOM emissions of at least 81 percent from each emission unit.

*ANSWER:* The allegations of Paragraph 21 are denied as untrue.

22. Since at least 1999 and 2000, the exact dates being better known to Respondent, and continuing until June 29, 2001, Respondent failed to achieve an overall reduction of uncontrolled VOM emissions of at least 81% from its two (2) capol baths 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.

*ANSWER:* The allegations of Paragraph 22 are admitted in part and denied in part. Respondent admits only that a compound known by the commercial name "capol" was used in the manufacture of candy at the Buffalo Grove, Illinois facility at certain times. The remaining allegations and conclusions of law contained within Paragraph 22 are denied as untrue.

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23. Since at least 1999 and 2000, the exact dates being better known to Respondent, and continuing through June 29, 2001, the Respondent failed to utilize compliant coatings in each of its lines, and therefore violated Section 201.141 and 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.

*ANSWER:* The allegations of Paragraph 23 are denied as untrue.

### **AFFIRMATIVE DEFENSES**

The following defense constitutes a complete defense to the Complaint for Civil Penalties.

1. Respondent alleges that Complainants' claims are barred by the equitable doctrine of laches.

### **PARTIAL AFFIRMATIVE DEFENSES**

One or the other of the following partial defenses constitute a partial defense to the claims and causes of action asserted in the Complaint for Civil Penalties.

1. For a first defense, Respondent alleges that one or more of Complainants' claims or causes of action are barred by the equitable doctrine of laches.

2. For a second defense, Respondent alleges if there were actions or conditions giving rise to one or more of the Complainant's claims or causes of action, those actions were taken or conditions created by the negligence or intentional conduct of some third person, firm or corporation, their agents, servants or employees over whom Respondent had no control and for whose negligence or intentional conduct Respondent is not and was not responsible.

3. For a third defense, Respondent alleges that the Illinois Environmental Protection Agency, acting as an administrative agency of the State of Illinois, failed to comply with the

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requirements of the Illinois Environmental Protection Act, 415 ILCS 5/1, et seq., in that on three separate occasions, specifically May 7, 2002, October 13, 2000 and June 30, 2000, the Illinois Environmental Protection Agency improperly and unlawfully denied permit applications submitted by Respondent for its Buffalo Grove, Illinois facility. The Agency's failure to contact Respondent prior to denying the permit applications effected a violation of the Petitioner's due process rights. Board and Illinois Court decisions on this issue are clear that the Agency is obligated to issue a "Wells Letter" under the circumstances that existed. [See Wells Manufacturing vs. IEPA, 195 Ill. App.3d 593, 552 N.E.2d 1074 (1<sup>st</sup> Dist. 1990); West Suburban Recycling and Energy Center, LP, (October 17, 1996) PCB 95-119 and 95-125.] The permit application denials were made in violation of the obligation imposed by Section 39(a) of the Act to identify each section of the Act or regulations that would be violated if the permit were to issue with sufficient information for the Petitioner to determine the bases for the Agency's determination. [See Grigoleit vs. IEPA, (November 29, 1990) PCB 89-184.] The permit applications contained all of the information required by 35 Ill. Adm. Code §201.152, §201.157 and the applicable provisions of the Act and therefore it was a violation of the Act and the implementing regulations for the agency to deny the Respondent's permit applications. It was a violation of the Act and the implementing regulations for the agency to consider "historical application data" or some other unidentified facts in its decisions to deny the permit applications submitted by Respondent particularly when the agency failed to ask for any additional information or questions concerning the facts which were outside the scope of the permit application under review.

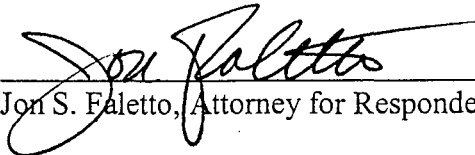
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WHEREFORE, the Respondent prays that this Court dismiss the claims of the Complainant or find in favor of the Respondent as against the Complainant and that Respondent recover from Complainant its costs and fees incurred in defense of same.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS, P.C.

By:

  
Jon S. Faletto, Attorney for Respondent

Dated: November 20, 2003

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