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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SEP 12 2002

STATE OF ILLINOIS
Pollution Control Board

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

Complainant,)

v.)

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

Respondent.)

No. PCB 02-185

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on September 12, 2002 we filed with the Pollution Control Board the following **Stipulation and Proposal for Settlement**, a true and correct copy of which is attached and hereby served upon you.

Respectfully submitted,

JAMES E. RYAN
Attorney General
State of Illinois

BY:



JOEL J. STERNSTEIN
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
(312) 814-6986

SERVICE LIST

Myles Berman, Esq.
Alzheimer & Gray
Suite 3800
10 South Wacker Drive
Chicago, IL 60606

Maureen Wozniak, Esq.
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62702

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

No. PCB 02-185

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by JAMES E. RYAN, Attorney General of the State of Illinois, on his own motion, and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), and Respondent, FERRARA PAN CANDY COMPANY, INC., ("FERRARA"), an Illinois corporation, do hereby submit this Stipulation and Proposal for Settlement ("Stipulation") to the Illinois Pollution Control Board ("Board") for approval. The parties agree that the Complainant's statement of facts contained herein is agreed to only for the purposes of settlement. The parties further stipulate that this Stipulation and any Board Order accepting the same may be used in any future enforcement action as evidence of the calculated economic benefit from noncompliance identified in Section IX.2 below and in any subsequent enforcement action against FERRARA as evidence of a past adjudication of violations of the Act for purposes of Section 39(h) of the Act, 415 ILCS 5/39(h) (2000). This stipulation may also be used in any permitting action for the purposes of Section 39(i) of the Act, 415 ILCS 5/39(i) (2000). This Stipulation shall be null and void unless the Board approves and disposes of this matter on each and every one of the terms and conditions of the settlement set forth herein.

I.

JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Act, 415 ILCS 5/1 et seq. (2000).

II.

AUTHORIZATION

The undersigned representatives for each party 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.

III.

APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant and Respondent, and any agent, director, officer, employee or servant of Respondent, as well as the Respondent's successors and assigns. Respondent shall not raise as a defense to any enforcement action taken pursuant to this settlement the failure of his agents, directors, officers, servants or employees to take such action as shall be required to comply with the provisions of this settlement.

IV.

STATEMENT OF FACTS

A. PARTIES

1. The parties to this Stipulation are Complainant, PEOPLE OF THE STATE OF ILLINOIS, by JAMES E. RYAN, Attorney General of the State of Illinois, and Respondent, FERRARA.

2. The subject Complaint was brought by the Attorney General on his own motion and upon the request of the Illinois EPA pursuant to the terms and provisions of Section 31 of the Act, 415 ILCS 5/31 (2000).

3. Respondent is an Illinois corporation in good standing.

4. Respondent is located at 7301 West Harrison Street, Forest Park, Cook County, Illinois 60130 ("facility").

5. Respondent FERRARA manufactures confectionery.

6. Complainant filed its Complaint on April 23, 2002.

B. SOURCE DESCRIPTIONS

Respondent operates various pans, kettles, roasters, grinders, and polishers; packaging equipment; and five candy printing presses during the manufacturing of the confectionery products.

C. VIOLATIONS

This Stipulation is intended to resolve the allegations in the Complaint filed in this matter. The Complaint alleges violations of the Act and of the Board's Air Pollution Regulations, and the Code of Federal Regulations, outlined as follows:

- | | |
|-----------|---|
| COUNT I | Violation of FESOP condition 2a in violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2000), and FESOP 73010040: |
| COUNT II | Violation of FESOP condition 5 in violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2000), and FESOP 73010040.; |
| COUNT III | Violation of FESOP condition 10 in violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2000), and FESOP 73010040.; |

- COUNT IV Construction of Emissions Sources without a Permit in violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2000), and 35 Ill. Adm. Code 201.142;
- COUNT V Operation of Emissions Sources without a Permit in violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2000), and 35 Ill. Adm. Code 201.143 and 201.144;
- COUNT VI Failure to Submit Timely CAAPP Application in violation of Section 39.5(2) of the Act, 415 5/39.5(a) (2000), and 35 Ill. Adm. Code 270.301(b);
- COUNT VII Failure to Submit ERMS Application in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2000) and 35 Ill. Adm. Code 205.310;
- COUNT VIII New Source Review in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2000), and 35 Ill. Adm. Code 203.201; and
- COUNT IX Failure to reduce uncontrolled VOM emissions in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2000), and 35 Ill. Adm. Code 218.986.

V.

EXPLANATION OF PAST FAILURES TO COMPLY

Respondent claims that they were misguided as to which statutes and regulations they were obligated to comply with.

VI.

FUTURE PLANS OF COMPLIANCE

Respondent has diligently implemented control equipment which has effectively brought their emission levels into compliance with all applicable laws and regulations.

VII.

IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2000), 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 state as follows:

1. Complainant contends that the impact to the public as a result of the allegations against Respondent in the Complaint was that Respondent caused air pollution and emitted more VOM than the Illinois Pollution Control Board ("Board") Air Pollution Regulations allow major sources and confectionery manufacturing sources.

2. The parties agree that Respondent's operation is of social and economic value.

3. The parties agree that Respondent's facility is suitable to the area where it is located.

4. The parties agree that compliance with the requirements of the Act and Board regulations is both technically practicable and economically reasonable.

5. Respondent has diligently implemented control equipment which keeps its VOM emissions below that level allowed by regulation.

VIII.

CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2000), provides as follows:

In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2), (b)(3), or (b)(5) of 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 violator 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 violator because of delay in compliance with requirements;
4. the amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this act by the violator and other persons similarly subject to the Act; and
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator.

In response to these factors the parties state as follows:

1. The gravity of the alleged violations is significant in that the applicable Board Regulations were not complied with which resulted in air pollution. The duration is equally as significant, as the violations continued for over a period of four (4) years.

2. Respondent has complied with the Act by implementing

control equipment which reduces VOM emissions to the level allowed by Board Regulation, and by meeting all reporting deadlines.

3. Complainant alleges that Respondent derived economic benefit of three hundred seventy-one thousand six hundred eighty-eight dollars (\$371,688.00) by not implementing control equipment before the violations began in 1996.

4. Complainant contends that a civil penalty reflecting the economic benefit of the Respondent's noncompliance is adequate to deter Respondent from future violations.

5. Complainant is unaware of any previously adjudicated violations by Respondent.

IX.

TERMS OF SETTLEMENT

1. Respondent neither admits nor denies that the violations occurred as alleged in Counts I thru IX of the Complaint.

2. Respondent shall pay a civil penalty of three-hundred seventy-one thousand six hundred eighty-eight dollars (\$371,688.00) within one year of the date of entry of this Stipulation and Proposal for Settlement. The penalty reflects an economic benefit of approximately three-hundred seventy-one thousand six hundred eighty-eight dollars (\$371,688.00) which represents the calculated economic savings from noncompliance with Sections 9(a) and (b), 9.8(b), 39.5(6)(b) of the Act and 35 Ill. Adm. Code 201.142, 201.143, 203.201, 205.310(a), 218.296, and 270.301(a) that would have been sought by the Complainant in this litigation. Payments shall be made in twelve equal monthly

installments of thirty thousand nine hundred seventy-four dollars (\$30,974.00). Payments shall become due on the 1st day of the month, beginning with the month following entry of this Stipulation. Payments shall be made by certified check or money order payable to the "Illinois Environmental Protection Agency" and designated to the Environmental Protection Trust Fund. The certified check or money order shall include Respondent's federal identification number (36-3331581) on it and be sent by first class mail to:

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

A copy of the check shall be sent to:

Joel Sternstein
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, 20th Floor
Chicago, Illinois 60601

On the checks or money orders, Respondent shall include the case name and case number.

3. For the purposes of collection, inquiries can be addressed to Respondent's attorney at:

Mr. Myles Berman
Alzheimer & Gray
10 South Wacker Drive
Chicago Illinois 60606-7482
(312) 715-4643

4. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2000), interest shall accrue on any amount not paid within the time prescribed herein at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a) (2000).

a. Interest on unpaid amounts shall begin to accrue from the respective date each penalty payment is due and continue to accrue to the date payment is received.

b. Where partial payment is made on any payment amount that is due, such partial payment shall be first applied to any interest on unpaid amounts then owing.

c. All interest on amounts owed the Complainant shall be paid by certified check payable to the "Illinois Environmental Protection Agency" for deposit in the Environmental Protection Trust Fund and delivered in the same manner as described in Section IX.2. herein.

d. In the event that Respondent fails to make all or part of the payment set forth in Section IX.2, Respondent shall be in default and the unpaid balance owed, plus any accrued interest, shall become due and owing to Complainant, immediately.

5. Respondent shall in the future operate in compliance with the Act and Board Regulations promulgated thereunder.

6. Respondent shall cease and desist from further violations of the Act and Board Regulations, including but not limited to, those Sections of the Act and Board regulations that were the subject matter of the Complaint as outlined in Section IV.C. of this Stipulation.

X.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation and Proposal for Settlement in no way affects Respondent's responsibility to comply with any federal, state or local laws and regulations, including but not limited to

the Act, 415 ILCS 5/1 *et seq.* (2000), and the Board Regulations, 35 Ill. Adm. Code Subtitle A through H.

XI.

RIGHT OF ENTRY

In addition to any other authority, the Illinois EPA, its employees and representatives, and the Attorney General, his agents and representatives, shall have the right of entry into and upon the Respondent's facility which is the subject of this Stipulation and Proposal for Settlement, at all reasonable times for the purposes of carrying out inspections. 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.

XII.

RELEASE FROM LIABILITY

In consideration of Respondent's full payment of the civil penalty of three-hundred seventy-one thousand six hundred eighty-eight dollars (\$371,688.00), commitment to continue compliance with the terms of this Stipulation and Proposal for Settlement entered herein, the requirements of the Act, and the regulations promulgated thereunder, the Complainant releases, waives and discharges Respondent and its employees, agents, directors, officers, successors and assigns from any further liability or penalties from the violations of the Act and Board regulations which were the subject matter of the Complaint, upon receipt by the Complainant of all payments required by Section IX. of this Stipulation. However, nothing in this Stipulation and Proposal

for Settlement shall be construed as a waiver by Complainant of the right to redress future or heretofore undiscovered violations or obtain penalties with respect thereto.

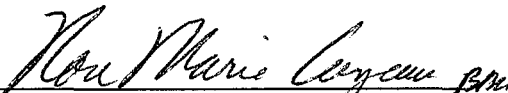
WHEREFORE, Complainant and Respondent's request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

AGREED:


FOR THE COMPLAINANT:

PEOPLE OF THE STATE OF ILLINOIS
JAMES E. RYAN
Attorney General
State of Illinois


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

By:  Date: 8/19/02
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By:  Date: 8-14-02
JOSEPH E. SVOBODA
Chief Legal Counsel

FOR THE RESPONDENT:

By:  Date: 9-3-02
MR. SALVATORE FERRARA II
FERRARA PAN CANDY COMPANY
President

CERTIFICATE OF SERVICE

I, JOEL J. STERNSTEIN, an Assistant Attorney General, certify that on the 12th day of September, 2002, I caused to be served by First Class Mail the foregoing Stipulation and Proposal for Settlement to the parties named on the attached service list, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.

Joel J. Sternstein

JOEL J. STERNSTEIN

3. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this Motion.

4. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2000).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby request 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) (2002).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
JAMES E. RYAN
ATTORNEY GENERAL

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

By: Joel J. Sternstein
JOEL J. STERNSTEIN
Assistant Attorney General
Environmental Bureau
188 West Randolph, 20th Floor
Chicago, Illinois 60601
(312) 814-6986