

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

THE UNITED STATES OF AMERICA and	)	
THE STATE OF ILLINOIS,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 16 C 8301
	)	
EAST BALT. COMMISARY LLC,	)	Judge Gettleman
	)	
Defendant.	)	

**CONSENT DECREE**

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WHEREAS, Plaintiff, the United States of America (the “United States”), on behalf of the United States Environmental Protection Agency (“EPA”), and Plaintiff, the State of Illinois, by and through Lisa Madigan, Attorney General of the State of Illinois, and at the request of the Illinois Environmental Protection Agency (“Illinois EPA”), are concurrently filing a Complaint alleging that Defendant East Balt. Commissary LLC (“East Balt”) violated the Clean Air Act (as defined herein) and the Illinois Act (as defined herein) at the Line #1 Oven (as defined herein) at East Balt’s Chicago, Illinois bakery;

WHEREAS, the Complaint alleges that East Balt:

(a) is in violation of the Nonattainment NSR (as defined herein) provisions of the CAA, 42 U.S.C. §§ 7501-7515; the Title V provisions of the CAA, 42 U.S.C. §§ 7661-7661f; and the Illinois Act and its implementing regulations, which include the Illinois SIP (as defined herein);

(b) failed to comply with the CAAPP (as defined herein) emission limitations pursuant to Section 502(a) of the CAA, 42 U.S.C. § 7661b(a), and Section 39.5 of the Illinois Act, 415 ILCS 5/39.5 (2014);

(c) failed to submit a complete permit application pursuant to Sections 502 and 503 of the CAA, 42 U.S.C. §§ 7661(a) and 7661(b), and Sections 39.5(5) and (6) of the Illinois Act, 415 ILCS 5/39.5(5) and (6) (2014);

(d) failed to comply with the 2004 CAAPP Permit (as defined herein) deviation reporting requirements pursuant to Section 39.5(6)(a) of the Illinois Act, 415 ILCS 5/39.5(6)(a) (2014), and Condition 7.1.10(a)(i) of the 2004 CAAPP Permit;

(e) failed to comply with the 2004 CAAPP Permit seasonal emissions reporting requirements pursuant to Sections 9.8(b) and 39.5(6)(a) of the Illinois Act, 415 ILCS 5/9.8(b)

and 39.5(6)(a) (2014), 35 Ill. Admin. Code 205.300, 35 Ill. Admin. Code 254.132(b) and Condition 6.7(a) of the 2004 CAAPP Permit;

(f) failed to comply with the 2004 CAAPP Permit annual compliance certification requirements pursuant to Section 39.5(6)(a) of the Illinois Act, 415 ILCS 5/39.5(6)(a) (2014), and Condition 9.8 of the 2004 CAAPP Permit; and

(g) failed to timely submit annual emission reports pursuant to Sections 9(a) and 39.5(6)(a) (2014), 35 Ill. Admin. Code 201.302(a), 35 Ill. Admin. Code 254.132(a) and Condition 9.7 of the 2004 CAAPP Permit;

WHEREAS, on March 13, 2012, EPA issued a Notice of Violation and Finding of Violation (“NOV/FOV”) to East Balt Commissary, Inc., which has since merged with and into East Balt. Commissary LLC (“East Balt”), in accordance with Sections 113(a)(1) and (b)(1) of the CAA, 42 U.S.C. § 7413(a)(1) and (b)(1);

WHEREAS, the United States provided East Balt and the State of Illinois with actual notice pertaining to alleged CAA violations, in accordance with Sections 113(a)(1) and (b)(1) of the CAA, 42 U.S.C. § 7413(a)(1) and (b)(1);

WHEREAS, in the Complaint, the Plaintiffs allege, *inter alia*, that East Balt emitted and continues to emit Volatile Organic Compounds (as defined herein) into the atmosphere in excess of quantities allowed by and in violation of the CAA and the Illinois Act, from the major stationary source of air pollutants that it owns and operates in Chicago, Illinois;

WHEREAS, in the Complaint, the Plaintiffs allege claims upon which relief can be granted against East Balt under Section 113 of the CAA, 42 U.S.C. § 7413, and Sections 42(d) and (e) of the Illinois Act, 415 ILCS 5/42(d) and (e) (2014);

WHEREAS, East Balt does not admit any liability to the United States or the State of Illinois arising out of the transactions or occurrences alleged in the Complaint;

WHEREAS, East Balt denies any obligation, legal or otherwise, to submit revised Annual Emission Reports, Annual Compliance Certifications and Seasonal Emission Reports to the Illinois EPA that utilize emission factors other than those contained in the 2004 CAAPP Permit;

WHEREAS, the Parties anticipate that, *inter alia*, the installation and operation of air pollution control equipment in accordance with this Consent Decree will achieve significant reductions of Volatile Organic Compound emissions and improve air quality;

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation among the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I and with the consent of the Parties, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action, the subject matter herein, and the Parties consenting hereto, pursuant to Section 113 of the CAA, 42 U.S.C. § 7413, and pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367.

2. Venue is proper under Section 113 of the CAA, 42 U.S.C. § 7413, and under 28 U.S.C. § 1391(b) and (c).

3. Solely for the purposes of this Consent Decree, East Balt waives all objections and defenses that it may have to the Court's jurisdiction over this action, to the Court's jurisdiction over East Balt, and to venue in this district.

## **II. APPLICABILITY**

4. Upon entry, the provisions of this Consent Decree shall apply to and be binding upon the Parties and upon East Balt's directors, officers, employees, agents, contractors, successors, and assigns.

5. No transfer of ownership or operation of the Facility (as defined below), whether in compliance with the procedures of this Paragraph or otherwise, shall relieve East Balt of its obligation to ensure that the terms of the Consent Decree are implemented. At least thirty (30) Days prior to such transfer, East Balt shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to the United States and the State of Illinois in accordance with Section XIV (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Consent Decree.

6. East Balt shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Consent Decree, as well as to all vendors, suppliers, consultants, contractors, agents, and any other company or other organization retained to perform work required by this Consent Decree. Notwithstanding any retention of contractors, subcontractors, or agents to perform work required under this Consent Decree, East Balt shall be responsible for ensuring that all work is performed in accordance with the requirements of this Consent Decree. In any action to enforce this Consent Decree, East Balt shall not raise as a defense the failure by any of its officers, directors,

employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

### **III. DEFINITIONS**

7. Every term expressly defined by this Section shall have the meaning given that term herein. Every other term used in this Consent Decree that is also a term used under the CAA or in a regulation implementing the CAA, shall mean in this Consent Decree what such term means under the CAA or implementing regulation.

a. “2004 CAAPP Permit” shall mean the CAAPP permit numbered 96030148 that Illinois EPA issued to East Balt on August 30, 2004.

b. “CAAPP” shall mean Clean Air Act Permit Program established pursuant to Title V of the CAA, 42 U.S.C. §§ 7661-7661f.

c. “Capture Efficiency” shall mean the efficiency with which the emissions from an emission source are collected and ducted to a Catalytic Oxidizer, expressed as a percentage, calculated as the weight per unit time of VOCs from the emission source delivered to a Catalytic Oxidizer divided by the weight per unit time of total VOCs generated by a source of VOC.

d. “Capture System” shall mean a hood, enclosed room, or other means of collecting volatile organic material emissions, and directing those emissions into a Catalytic Oxidizer.

e. “Catalytic Oxidizer” shall mean a control device that combusts or oxidizes, in the presence of a catalyst, the VOC in the exhaust gas from an emission source.



f. “Clean Air Act” or “CAA” shall mean the federal Clean Air Act, 42 U.S.C. §§ 7401-7671q, and its implementing regulations.

g. “Consent Decree” shall mean this Consent Decree and the Appendices hereto, which are incorporated into the Consent Decree.

h. “Continuously Operate” or “Continuous Operation” means that the equipment utilized to reduce and limit the VOC emissions generated by a source shall function at all times (consistent with the technological limitations, manufacturer’s specifications, and good engineering and maintenance practices) when the source generates emissions.

i. “Control Efficiency” shall mean the efficiency, expressed as a percentage, calculated as the weight per unit time of VOCs removed by a Catalytic Oxidizer divided by the weight per unit time of VOCs generated by the source. The Control Efficiency is the product of the Capture Efficiency and the Destruction Efficiency.

j. “Date of Lodging” shall mean the date this Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the Northern District of Illinois.

k. “Day” shall mean calendar day unless otherwise specified in this Consent Decree.

l. “Destruction Efficiency” shall mean the efficiency with which a Catalytic Oxidizer oxidizes emissions, expressed as a percentage, calculated as one minus the ratio of the weight per unit time of VOCs emitted from a Catalytic Oxidizer, to the weight per unit time of VOCs entering the Catalytic Oxidizer.

m. “Effective Date” shall have the definition provided in Section XVII.

- n. “EPA” shall mean the United States Environmental Protection Agency.
- o. “Facility” shall mean the baked goods manufacturing facility, owned and operated by East Balt and located at 1801 West 31st Place in Chicago, Illinois.
- p. “Illinois EPA” shall mean the Illinois Environmental Protection Agency.
- q. “Illinois Act” shall mean the Illinois Environmental Protection Act, codified at 415 ILCS 5/1 *et seq.*
- r. “Illinois SIP” shall mean the provisions of the Illinois State Implementation Plan, as set forth in the Illinois Act and the Illinois Administrative Code, and as approved by EPA pursuant to Section 110 of the CAA, 42 U.S.C. § 7410.
- s. “Line #1” shall mean the emissions sources identified in and described by paragraphs 7.1.1 and 7.1.2 of East Balt’s 2004 CAAPP Permit.
- t. “Line #1 Oven” shall mean the oven installed on “Line #1,” and shall not include any other emissions sources.
- u. “Line #2” shall mean the emissions sources identified in and described by paragraphs 7.2.1 and 7.2.2 of East Balt’s 2004 CAAPP Permit.
- v. “Line #2 Oven” shall mean the oven installed on “Line #2,” and shall not include any other emissions sources.
- w. “Low Load Operating Conditions” shall mean a condition where the production of baked goods by Line #1 is at or below 132 pounds per hour.
- x. “Netting” shall mean the process of determining whether a particular physical change or change in the method of operation of a major stationary source results in a “net emissions increase,” as that term is defined at 40 C.F.R. § 51.165; 40 C.F.R. Part 51, Appendix S; and 35 Ill. Admin. Code 203.208.

y. “Nonattainment NSR” shall mean the new source review program within the meaning of Part D of Subchapter I of the CAA, 42 U.S.C. §§ 7501-7515, and the implementing regulations codified at 40 C.F.R. § 51.165; 40 C.F.R. Part 51, Appendix S; and 35 Ill. Admin. Code Part 203.

z. “Offsets” shall mean the requisite emissions reductions as specified by and calculated in accordance with Sections 173 and 182 of the CAA, 42 U.S.C. §§ 7503 and 7511; 40 C.F.R. § 51.165; 40 C.F.R. Part 51, Appendix S; and 35 Ill. Admin. Code Part 203.

aa. “Operating Parameter Limit” or “OPL” shall mean a value that is set (*e.g.*, via performance testing or equipment manufacturer and/or designer specifications) and used to demonstrate compliance with emissions standards.

bb. “Title V Permit” shall mean a permit issued under Title V of the CAA, 42 U.S.C. §§ 7661-7661f.

cc. “Volatile Organic Compound,” “VOC,” “Volatile Organic Material,” and “VOM” shall mean any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions, as codified under Section 302(s) of the CAA, 42 U.S.C. § 4206(s); 40 C.F.R. § 51.100(s); and 35 Ill. Admin. Code 211.7150.

#### **IV. VOC EMISSIONS CONTROL AND LIMITS**

##### **A. Catalytic Oxidizer Performance Requirements and Emissions Limits**

8. By no later than one hundred and eighty (180) Days from the date the construction permit is issued by Illinois EPA for the Catalytic Oxidizer, East Balt shall install and thereafter maintain and Continuously Operate a Catalytic Oxidizer for control of VOC emissions generated from the Line #1 Oven and the Line #2 Oven.

9. All emissions from the Line #1 Oven and the Line #2 Oven shall be ducted to a Catalytic Oxidizer for control of VOC emissions.

10. East Balt shall notify EPA and Illinois EPA within thirty (30) Days of when the Catalytic Oxidizer commences Continuous Operation.

11. For the Line #1 Oven and the Line #2 Oven, East Balt shall comply with the below requirements for the Catalytic Oxidizer when these ovens are in operation, *i.e.*, when dough or baked goods are in the oven.

12. The Catalytic Oxidizer shall have no less than ninety-eight (98) percent Control Efficiency, as demonstrated by compliance with the Operating Parameter Limits set forth in the approved Operating Parameter Limit Report described in Paragraphs 25-29.

13. The VOC Destruction Efficiency of the Catalytic Oxidizer shall be no less than ninety-eight (98) percent, except that, during Low Load Operating Conditions, the Catalytic Oxidizer shall have an outlet VOC (ethanol) concentration equivalent to no more than 10 ppmv (parts per million by volume).

14. East Balt shall continuously monitor hydrocarbon concentrations at the outlet of the Catalytic Oxidizer.

15. Capture Efficiency at the Line #1 Oven and the Line #2 Oven shall be assumed to be one hundred (100) percent based on the below requirements that reflect a unit-specific determination by EPA of requirements that are appropriate to assume achievement of one hundred (100) percent capture of VOC emissions from the Line #1 Oven and the Line #2 Oven, as relied upon by the Consent Decree.

a. Line #1 Oven and Line #2 Oven must maintain an inward flow of air through all natural draft openings. For this purpose, a “natural draft opening” (“NDO”) means any permanent opening in the enclosure that remains open during operation of the oven and is not connected to a duct in which a fan is installed.

b. Line #1 Oven and Line #2 Oven shall be operated under negative pressure.

c. The pressure differential of Line #1 Oven and Line #2 Oven shall be continuously monitored, and a negative pressure differential value of at least 0.007 inches water, on a 15-minute block average, shall be maintained between the interior of each oven and the space in which the oven is located.

d. In each oven, the total area of all NDOs shall not exceed five (5) percent of the surface area of the oven’s four walls, floor, and ceiling.

e. All non-NDOs shall be closed during routine operation of Line #1 Oven and Line #2 Oven.

16. East Balt shall Continuously Operate the Catalytic Oxidizer in accordance with the requirements of the Operating Parameter Limit Report, specified in Paragraphs 25-29.

**B. Proof Boxes**

17. By no later than ninety (90) Days from the Effective Date of this Consent Decree, in order to ensure proper operation and to minimize potential emissions, East Balt shall perform

work practices for the proof box on Line #1 on a tiered cleaning schedule and perform at a minimum, the following operations, or an equivalent operation approved by the EPA, in consultation with the Illinois EPA:

- a. Weekly Work Practices:
  - i. Remove all raw ingredients and/or product containers from seeder area;
  - ii. Remove all bun pans;
  - iii. Scrape dough from conveyor, grids, and supports after any event that causes dough spillage, such as a pan jam;
  - iv. Crawl the proof box floor after any event that causes dough spillage, such as a pan jam, and scrape and remove all dough from the proof box floor;
  - v. Scrape dough from bun pans;
  - vi. Put bun pans on proper pan car; and
  - vii. Return ingredients to proper location.
- b. Twelve (12) Week Work Practices:
  - i. Vacuum sides and top of proof box.
- c. Twenty-four (24) Week Work Practices:
  - i. Wet entire proof box floor with cleaning solvent mixture, high-pressure wash proof box floor, and rinse;
  - ii. Rinse exterior of proof box with water; and
  - iii. Foam with cleaning solvent, let stand fifteen (15) minutes and rinse with water.

18. By no later than ninety (90) Days from the Effective Date of this Consent Decree, in order to ensure proper operation and to minimize potential emissions, East Balt shall perform work practices for the proof box on Line #2 on a tiered cleaning schedule and perform at a minimum, the following operations, or an equivalent operation approved by the EPA, in consultation with the Illinois EPA:

a. Weekly Work Practices:

- i. Remove all raw ingredients and/or product containers from seeder area;
- ii. Remove all bun pans;
- iii. Scrape dough from conveyor, grids, and supports after any event that causes dough spillage, such as a pan jam;
- iv. Crawl the proof box floor after any event that causes dough spillage, such as a pan jam, and scrape and remove all dough from the proof box floor;
- v. Scrape dough from bun pans;
- vi. Put bun pans on proper pan car; and
- vii. Return ingredients to proper location.

b. Four (4) Week Cleaning Procedure:

- i. Wet entire proof box floor with cleaning solvent mixture, high-pressure wash proof box floor, and rinse;
- ii. Rinse exterior of proof box with water; and
- iii. Foam with cleaning solvent, let stand fifteen (15) minutes and rinse with water.

- c. Twelve (12) Week Cleaning Procedure:
  - i. Vacuum sides and top of proof box.

**C. Initial Performance and Emission Limit Testing**

19. By no later than thirty (30) Days from the date of initial operation of the Catalytic Oxidizer, or within such other time frame as specified in a construction permit issued by Illinois EPA to East Balt for the Catalytic Oxidizer, East Balt shall submit to EPA and to Illinois EPA a proposed performance testing protocol that completely describes the methods and procedures that East Balt will perform in order to complete the performance testing required by Paragraph 22 of this Section (the “Proposed Performance Testing Protocol”). The Proposed Performance Testing Protocol shall also include at a minimum:

- a. The person(s) who will be performing the sampling and analysis, their titles, and their experience with similar tests.
- b. The specific conditions, *e.g.*, operating rate and control device operating conditions, under which testing shall be performed, including a discussion of why these conditions will be representative and the means by which the operating parameters will be determined.
- c. The specific determinations of emissions that are intended to be made, including sampling and monitoring locations.
- d. The test method(s) that will be used, with the specific analysis method if the method can be used with different analysis methods.
- e. A schedule stating when the performance testing will occur.

20. The Proposed Performance Testing Protocol is subject to Illinois EPA approval, after consultation with EPA.



21. By no later than thirty (30) Days prior to the planned performance testing, East Balt shall submit to EPA and Illinois EPA a notification of the intent to conduct the performance testing required by Paragraph 22 of this Section.

22. By no later than sixty (60) Days from the date of initial operation of the Catalytic Oxidizer, or within such other time frame as specified in a construction permit issued by Illinois EPA to East Balt for the Catalytic Oxidizer, East Balt shall conduct the following performance testing in accordance with the testing protocol approved pursuant to Paragraph 19. At a minimum, three one-hour tests shall occur for each of the three operating scenarios for Line #1 Oven and Line #2 Oven, including the scenario with the highest uncontrolled VOC emissions based on emission factors for different baked products calculated in accordance with AP-42.

a. VOC mass emission rate and concentration testing on the Catalytic Oxidizer using EPA Reference Methods 1 through 4, 18, 25 or 25A (in accordance with EPA Guideline Document 33, "EPA's VOC Test Methods 25 and 25A," to determine if EPA Method 25A can be used), in order to determine destruction efficiency and to establish OPLs, and

b. Capture efficiency testing via Negative Pressure Enclosure Qualitative Test Method for Bakery Ovens in order to confirm Capture Efficiency.

23. From the Effective Date of this Consent Decree to the performance test date, East Balt shall document all adjustments made to Line #1 Oven and Line #2 Oven, such as periodic maintenance work.

24. By no later than thirty (30) Days of East Balt's completion of the required performance testing, East Balt shall submit a complete test report to EPA and Illinois EPA including the following, at a minimum:

a. Summary of Results

- i. Results of the above specified performance testing;
- ii. Process and control equipment data related to determining compliance;
- iii. Discussion of testing errors;
- iv. Discussion of any deviations from the reference test methods;
- v. Discussion of any adjustments made to the Line #1 Oven and Line #2 Oven from the Effective Date of this Consent Decree; and
- vi. Production data (tons per hour of baked goods sent to vendors and baked goods waste generated during baking process) and natural gas usage (million British Thermal Units per hour).

b. Facility Operations

- i. Description of the process and control equipment in operation;
- ii. Operating parameters of the ovens and related equipment at the time of the testing; and
- iii. Facility operating parameters that demonstrate that the Facility was being operated at maximum production rates (wet and dry production rates must be specified).

c. Sampling and Analytical Procedures

- i. Sampling port location(s) and dimensions of cross-section;
- ii. Sampling point description, including labeling system;
- iii. Brief description of sampling procedures, including equipment and diagram;

- iv. Description of sampling procedures (planned and accidental) that deviated from any standard method;
  - v. Brief description of analytical procedures, including calibration;
  - vi. Description of analytical procedures (planned or accidental) that deviated from any standard method; and
  - vii. Quality control/quality assurance procedures, tests and results.
- d. Appendix
- i. Complete results with example calculations;
  - ii. Raw field data (original, not computer printouts);
  - iii. Laboratory report, with signed chain-of-custody forms;
  - iv. Calibration procedures and results;
  - v. Raw process and control equipment data, signed by plant representative;
  - vi. Test log;
  - vii. Project participants and titles; and
  - viii. Related correspondence.

**D. Operating Parameter Limits**

25. By no later than sixty (60) Days from the completion of the required performance testing, East Balt shall submit to EPA and Illinois EPA a report specifying and establishing all OPLs, OPL monitoring requirements, and OPL recordkeeping requirements that are necessary to ensure and demonstrate compliance with the performance requirements and emission limits specified in Paragraphs 12 through 15. The report shall include a justification for the identified and established OPLs, OPL monitoring requirements, and OPL recordkeeping requirements.

26. The Operating Parameter Limit Report described in Paragraph 25 shall specify and establish: (a) the maximum value of the OPL, as necessary; (b) the maximum averaging period of the OPL, if any; (c) the method and device used to monitor the OPL; (d) all protocols necessary to ensure the accuracy and reliability of the method or device used to monitor the OPL; (e) the minimum frequency at which the monitor measures the OPL; (f) the monitoring measurements recorded for the OPL, including data reduction (*e.g.*, averaging); and (g) the minimum length of time for maintaining records (*e.g.*, previous five years).

27. The Operating Parameter Limit Report shall justify the specified and established OPLs, OPL monitoring requirements, and OPL recordkeeping requirements by, *inter alia*, taking into account and evaluating: (a) the values of parameters monitored during the initial performance testing, conducted pursuant to Paragraph 22 of this Section; (b) the relationship of the measured parameter's value to the performance requirements and emissions limits (*e.g.*, linearity, margin of error); (c) the manufacture's specifications for equipment (*e.g.*, calibration of thermocouple, VOC Catalytic Oxidizer capacity); and (d) any other relevant and material information considered by East Balt.

28. The Operating Parameter Limit Report shall be subject to EPA approval, after consultation with Illinois EPA.

29. East Balt shall operate in compliance with the OPLs that are established in the approved Operating Parameter Limit Report.

#### **V. PROHIBITION ON NETTING CREDITS OR OFFSETS**

30. The emissions reductions that result from actions to be taken by East Balt after the Effective Date of this Consent Decree to comply with the requirements of this Consent Decree shall not be considered as a creditable contemporaneous emission decrease for the purpose of

obtaining Netting credits or Offsets under the CAA, the Illinois Act, or their implementing regulations.

31. Nothing in this Consent Decree is intended to preclude emissions reductions generated under this Consent Decree from being considered by the applicable state regulatory agency or EPA for the purpose of attainment demonstrations submitted pursuant to Section 110 of the CAA, 42 U.S.C. § 7410, or in determining impacts on National Ambient Air Quality Standards, increments, or air quality related values such as visibility.

## **VI. PERMITS**

32. Unless expressly stated otherwise in this Consent Decree, in any instance where otherwise applicable law or this Consent Decree requires East Balt to obtain a permit or approval from a federal, state, or local governmental entity that is necessary for East Balt to comply with an obligation imposed by this Consent Decree, East Balt shall submit a timely and complete application and take all other actions reasonably necessary to obtain such permit or approval.

33. Within three (3) years of the Effective Date of this Consent Decree, East Balt shall either apply for a federally enforceable permit or request a site-specific revision of the Illinois SIP such that the requirements and limitations established by and under Section IV (VOC Emissions Control and Limits) of this Consent Decree constitute “applicable requirements” as that term is defined and used under Title V of the Act, 42 U.S.C. §§ 7661-7661f; Section 39.5 of the Illinois Act, 415 ILCS 5/39.5 (2014); and 40 C.F.R. Part 70.

34. East Balt shall not request termination of this Consent Decree under Section XX (Termination), unless and until East Balt has applied for and obtained a Title V Permit incorporating the requirements and limitations established by and under Section IV (VOC Emissions Control and Limits) as “applicable requirements,” as that term is defined and used

under Title V of the Act, 42 U.S.C. §§ 7661-7661f; Section 39.5 of the Illinois Act, 415 ILCS 5/39.5 (2014); and 40 C.F.R. Part 70.

35. East Balt shall provide EPA with a copy of each application for a federally enforceable permit, each request for a site-specific revision of the Illinois SIP, and each application for a Title V Permit.

36. All requirements and limits established by or under this Consent Decree shall remain enforceable under this Consent Decree until this Consent Decree is terminated pursuant to Section XX (Termination).

## **VII. CIVIL PENALTY**

37. Within thirty (30) Days after the Effective Date of this Consent Decree, East Balt shall pay to the United States a civil penalty in the amount of \$172,500.00, plus interest accruing from the Date of Lodging, at the rate specified in 28 U.S.C. § 1961 as of the Date of Lodging.

38. The civil penalty shall be paid by Electronic Funds Transfer (“EFT”) to the United States Department of Justice, in accordance with current EFT procedures, referencing USAO File Number 2013V01330 and DOJ Case Number 90-5-2-1-10668 and the civil action case name and case number assigned to the United States’ enforcement action in this case. The costs of such EFT shall be East Balt’s responsibility. Payment shall be made in accordance with instructions provided to East Balt by the Financial Litigation Unit of the U.S. Attorney’s Office for the Northern District of Illinois. Any funds received after 2:00 p.m. EDT shall be credited on the next business day. At the time of payment, East Balt shall provide notice of payment, referencing the USAO File Number, the DOJ Case Number, and the civil action case name and case number, to the Department of Justice and to EPA in accordance with Section XIV (Notices) of this Consent Decree.

39. Failure to timely pay the civil penalty shall subject East Balt to interest accruing from the date payment is due until the date payment is made at the rate prescribed by 28 U.S.C. § 1961, and shall render East Balt liable for all charges, costs, fees, and penalties established by law for the benefit of a creditor or of the United States in securing payment.

40. Payments made pursuant to this Section are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and are not tax-deductible expenditures for purposes of federal law.

41. Within thirty (30) Days of the Effective Date of this Consent Decree, East Balt shall pay to the State of Illinois a civil penalty in the amount of \$172,500.00. 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

The civil penalty payment shall be made by certified check or money order made payable to the “Illinois Environmental Protection Agency” for deposit into the Environmental Protection Trust Fund. The case name and case number shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Kathryn A. Pamerter  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General’s Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602

If East Balt fails to pay the civil penalty to the State of Illinois required by this Consent Decree on or before the date upon which the payment is due, East Balt 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, the State of Illinois shall be entitled to reasonable costs of collection, including reasonable attorney's fees. Pursuant to Section 42(g) of the Illinois Act, interest shall accrue on any penalty amount owed by East Balt 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.

### **VIII. PERIODIC REPORTING**

42. Commencing upon the Effective Date of this Consent Decree until termination of this Consent Decree pursuant to Section XX (Termination), East Balt shall submit the reports as specified in this Section VIII (Periodic Reporting) to EPA and Illinois EPA.

43. Quarterly Reports: Within thirty (30) Days of the end of each calendar year quarter (*i.e.*, by April 30, July 30, October 30, and January 30), East Balt shall submit a written quarterly report for the preceding quarter. Each quarterly report shall include:

a. The status of and schedule for meeting the requirements of Section IV (VOC Emissions Control and Limits) of this Consent Decree (*e.g.*, status of and schedule for planning, installing, testing, operating, and other actions), including the nature and cause of any actual or anticipated delays, and any steps taken by East Balt to mitigate such delay; and

b. The status of and schedule for meeting the requirements of Section VI (Permits) of this Consent Decree (*e.g.*, status of permit or approval application(s), copies of applications and permits, and other actions).



44. Deviation Reports: If East Balt violates or deviates from any provision of this Consent Decree, East Balt shall submit a report on the violation or deviation within thirty (30) Days after East Balt knew or should have known of the event. In the report, East Balt shall explain the cause or causes of the violation or deviation and any measures taken or to be taken by East Balt to cure the reported violation or deviation or to prevent such violations or deviations in the future. Nothing in this Paragraph or this Consent Decree shall be construed as relieving East Balt of its obligation to provide the notice required by Section XI of this Consent Decree (Force Majeure).

45. None of the reporting requirements specified under this Section shall relieve East Balt from any reporting obligations required by the CAA, the Illinois Act, the implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

46. Each report required to be submitted by this Consent Decree shall be signed by a responsible corporate official, as appropriate, and shall contain the following certification:

*This information was prepared either by me or under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my evaluation, or the direction and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for gathering the information, I hereby certify under penalty of law that, to the best of my knowledge and belief, this information is true, accurate, and complete. I understand that there are significant penalties for submitting false, inaccurate, or incomplete information to the United States.*

47. Illinois EPA Reports. Within sixty (60) Days after the Date of Entry of this Consent Decree, East Balt shall submit to Illinois EPA (a) Annual Emissions Reports for calendar years 2003 through 2010, (b) Annual Compliance Certifications for calendar years 2003 through 2012, and (c) Seasonal Emission Reports for calendar years 2003 through 2010, for Line #1 (including the Line #1 proof box and the captured and uncaptured emissions from the Line #1 oven, which utilize estimated emission factors of: (i) 12.4 pounds VOC per ton of baked goods

for the captured emissions from the Line #1 oven, (ii) 5.21 pounds VOC per ton of baked goods from the Line #1 proof box, and (iii) 0.65 pounds VOC per ton of baked goods for the uncaptured emissions from the Line #1 oven. For purposes of this Paragraph 47, East Balt shall employ its best efforts to utilize historical data contained in East Balt's files, and the requirements of Paragraph 46 above notwithstanding, East Balt may qualify or limit the reports required under this Paragraph 47 by stating that it has employed its best efforts to utilize historical data contained in East Balt's files. East Balt shall purchase allotment trading units from the Alternative Compliance Market Account as requested by Illinois EPA and consistent with applicable law.

#### **IX. REVIEW AND APPROVAL OF SUBMITTALS**

48. East Balt shall submit each report (or other such document) required by this Consent Decree to EPA and Illinois EPA whenever such report is required to be submitted for review or approval pursuant to this Consent Decree.

49. After review of any plan, report, or other item that is required to be submitted pursuant to this Consent Decree, EPA, after consultation with Illinois EPA, shall in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.

50. If the submission is approved pursuant to Paragraph 49, East Balt shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part pursuant to Paragraph 49(b) or (c), East Balt shall, upon written direction from EPA, after consultation with Illinois EPA, take all actions required by the approved plan, report, or other item that EPA, after consultation with Illinois

EPA, determines are technically severable from any disapproved portions, subject to East Balt's right to dispute only the specified conditions or the disapproved portions under Section XII (Dispute Resolution).

51. If the submission is disapproved in whole or in part pursuant to Paragraph 49(c) or (d), East Balt shall, within thirty (30) Days or such other time as the Parties agree in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, East Balt shall proceed in accordance with the preceding Paragraph.

52. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA, after consultation with Illinois EPA, may again require East Balt to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself/themselves correct any deficiencies, subject to East Balt's right to invoke Dispute Resolution and the right of EPA and Illinois EPA to seek stipulated penalties.

53. Any stipulated penalties applicable to the original submission, as provided in Section X (Stipulated Penalties), shall accrue during the thirty (30) Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of East Balt's obligations under this Consent Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

#### **X. STIPULATED PENALTIES**

54. East Balt shall be liable for stipulated penalties to the United States and the State of Illinois for violations of this Consent Decree as specified below, unless excused under Section

XI (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Consent Decree, including any work plan or schedule approved under this Consent Decree, according to all applicable requirements of this Consent Decree and within the specified time schedules established by or approved under this Consent Decree.

55. Late Payment of Civil Penalty. If East Balt fails to pay the civil penalty required to be paid under Section VII (Civil Penalty) of this Consent Decree when due, East Balt shall pay a stipulated penalty of \$1,500 per Day for each Day that the penalty is late.

56. Compliance Milestones. The following stipulated penalties shall accrue per violation per Day for each violation of the requirements identified under Paragraphs 8, 10, 17, 18, 19, 21, 22, 24, 25 and 33:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14 <sup>th</sup> Day
\$1,000	15th through 30 <sup>th</sup> Day
\$1,500	31st Day and beyond

57. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements under Section VIII (Periodic Reporting) of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	1st through 14th Day
\$300	15th through 30th Day
\$500	31st Day and beyond

58. Compliance With Emission Controls. The following stipulated penalties shall accrue per violation per Day for each violation of the compliance requirements of Paragraphs 9, 14 and 16 of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th Day
\$2,000	15th through 30th Day
\$3,000	31st Day and beyond

59. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

60. East Balt shall pay stipulated penalties to the United States and the State of Illinois within thirty (30) Days of a written demand by either Plaintiff. East Balt shall pay fifty (50) percent of the total stipulated penalty amount due to the United States and fifty (50) percent to the State of Illinois. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff. Either Plaintiff may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

61. Stipulated penalties shall continue to accrue as provided in Paragraph 59, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed, East Balt shall pay accrued penalties determined to be owing, together with interest, to the United States and/or the State of Illinois within thirty (30) Days of the effective date of the agreement or the receipt of EPA's or the State's decision or order.

b. If the dispute is appealed and the United States and/or the State of Illinois prevails in whole or in part, East Balt shall pay all accrued penalties determined by the Court to be owing, together with interest, within sixty (60) Days of receiving the District Court's decision or order, except as provided in subparagraph c., below.

c. If any Party appeals the District Court's decision, East Balt shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) Days of receiving the final appellate court decision.

62. East Balt shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 38, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

63. If East Balt fails to pay stipulated penalties according to the terms of this Consent Decree, East Balt shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States or the State of Illinois from seeking any remedy otherwise provided by law for East Balt's failure to pay any stipulated penalties.

64. East Balt shall pay stipulated penalties to the State of Illinois in accordance with Paragraph 41 herein.

65. Subject to the provisions of Section XV (Effect of Settlement/Reservation of Rights) of this Consent Decree, the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States and the State of Illinois for East Balt's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the CAA, East Balt shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

## **XI. FORCE MAJEURE**

66. “Force majeure,” for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of East Balt, of any entity controlled by East Balt, or of East Balt’s contractors, that delays or prevents the performance of any obligation under this Consent Decree despite East Balt’s best efforts to fulfill the obligation. The requirement that East Balt exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized. “Force Majeure” does not include East Balt’s financial inability to perform any obligation under this Consent Decree.

67. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, East Balt shall provide notice orally or by electronic or facsimile transmission to EPA and Illinois EPA, within 72 hours of when East Balt first knew that the event might cause a delay. Within fourteen (14) Days thereafter, East Balt shall provide in writing to EPA and Illinois EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; East Balt’s rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of East Balt, such event may cause or contribute to an endangerment to public health, welfare or the environment. East Balt shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude East Balt from asserting

any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. East Balt shall be deemed to know of any circumstance of which East Balt, any entity controlled by East Balt, or East Balt's contractors knew or should have known.

68. If EPA, after a reasonable opportunity for review and comment by the State of Illinois, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA, after a reasonable opportunity for review and comment by the State of Illinois, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify East Balt in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

69. If EPA, after a reasonable opportunity for review and comment by the State of Illinois, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify East Balt in writing of its decision.

70. If East Balt elects to invoke the dispute resolution procedures set forth in Section XII (Dispute Resolution), it shall do so no later than fourteen (14) Days after receipt of EPA's notice. In any such proceeding, East Balt shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that East Balt complied with the requirements of Paragraphs 66 and 67,



above. If East Balt carries this burden, the delay at issue shall be deemed not to be a violation by East Balt of the affected obligation of this Consent Decree identified to EPA and the Court.

## **XII. DISPUTE RESOLUTION**

71. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree.

72. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when East Balt sends the United States and the State of Illinois a written Notice of Dispute. Such Notice of Dispute shall clearly state the matter in dispute. The period of informal negotiations shall not exceed twenty (20) Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States, after consultation with the State of Illinois, or the State of Illinois, if the United States is not a party to the dispute, shall be considered binding unless, within twenty (20) Days after the conclusion of the informal negotiation period, East Balt invokes formal dispute resolution procedures as set forth below.

73. Formal Dispute Resolution. East Balt shall invoke formal dispute resolution procedures within the time period provided in the preceding Paragraph, by serving on the United States and the State of Illinois a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting East Balt's position and any supporting documentation relied upon by East Balt.

74. The United States, or the State of Illinois, if the United States is not a party, shall serve its Statement of Position within forty five (45) Days of receipt of East Balt's Statement of Position. The United States' or State of Illinois' Statement of Position, as applicable, shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States or the State of Illinois. The United States' or the State of Illinois' Statement of Position, as applicable, shall be binding on East Balt, unless East Balt files a motion for judicial review of the dispute in accordance with the following Paragraph.

75. East Balt may seek judicial review of the dispute by filing with this Court and serving on the United States and the State of Illinois, in accordance with Section XIV of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within thirty (30) Days of receipt of the Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of East Balt's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

76. The United States and/or the State of Illinois shall respond to East Balt's motion within the time period allowed by the Local Rules of this Court. East Balt may file a reply memorandum, to the extent permitted by the Local Rules.

77. Standard of Review.

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any formal dispute brought under this Section pertaining to (i) the adequacy or appropriateness of plans, procedures to

implement plans, schedules, or any other items requiring approval by EPA and/or Illinois EPA under this Consent Decree, (ii) the adequacy of the performance of work undertaken pursuant to this Consent Decree, and (iii) all other disputes that are accorded review on the administrative record under applicable principles of administrative law, East Balt shall have the burden of demonstrating, based on the administrative record, that the position of the United States and the State of Illinois, as applicable, is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other formal dispute brought under this Section, East Balt shall bear the burden of demonstrating that its position complies with this Consent Decree and furthers the purposes of this Consent Decree.

78. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of East Balt under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute. If East Balt does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (Stipulated Penalties) of this Consent Decree.

### **XIII. ACCESS AND INFORMATION COLLECTION AND RETENTION**

79. Any authorized representative of the United States or the State of Illinois, including their attorneys, contractors, and consultants, upon presentation of credentials, shall have a right of entry upon the premises of the Facility covered by this Consent Decree at any reasonable time for the purpose of:

- a. Monitoring the progress of activities required under this Consent Decree;
- b. Verifying any data or information submitted to the United States or the State of Illinois in accordance with the terms of this Consent Decree;
- c. Obtaining samples and, upon request, splits of any samples taken by East Balt or its representatives, contractors, or consultants;
- d. Obtaining documentary evidence, including photographs and similar data; and
- e. Assessing East Balt's compliance with this Consent Decree.

80. Until five (5) years after the termination of this Consent Decree, East Balt shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to East Balt's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or the State of Illinois, East Balt shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

81. East Balt may assert that any information submitted pursuant to this Consent Decree constitutes Confidential Business Information ("CBI") under 40 C.F.R. Part 2; Section 7 of the Illinois Act, 415 ILCS 5/7 (2014); 2 Ill. Admin. Code Part 1828; or 35 Ill. Admin. Code Part 130. To assert a claim that submitted information constitutes CBI, East Balt shall follow the procedures set forth in 40 C.F.R. Part 2 for information submitted to the United States, and the

procedures set forth at 35 Ill. Admin. Code Part 130 or 2 Ill. Admin. Code Part 1828 for information submitted to the State of Illinois.

82. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the State of Illinois pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of East Balt to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

#### **XIV. NOTICES**

83. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as stated below. Documents to be sent to the United States shall be sent to DOJ and EPA, while documents to be sent to EPA need not be sent to DOJ.

To the United States:

##### DOJ

(if by mail service)  
Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, DC 20044-7611  
DJ# 90-5-2-1-1230/1

(if by commercial delivery service)  
Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
ENRD Mailroom, Room 2121  
601 D Street, NW  
Washington, DC 20004  
DJ# 90-5-2-1-1230/1

EPA

Air and Radiation Division  
U.S. EPA Region 5  
77 West Jackson Blvd. (AE-17J)  
Chicago, IL 60604  
Attn: Compliance Tracker

and

Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Blvd. (C-14J)  
Chicago, IL 60604

To the State of Illinois and the Illinois EPA:

Kathryn A. Pamenter  
Illinois Attorney General's Office  
69 West Washington Street, Suite 1800  
Chicago, IL 60602

and

Maureen Wozniak  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, IL 62702

and

Manager, Compliance Section  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, Illinois 62702

To East Balt:

Dave Watkins  
East Balt. Commissary LLC  
1801 West 31st Place  
Chicago, IL 60608

and

Michael H. Elam  
Barnes & Thornburg LLP  
One North Wacker Drive  
Suite 4400  
Chicago, IL 60606-2833

84. All notifications, communications, or submissions made pursuant to this Section shall be sent either by: (a) overnight mail or overnight delivery service with signature required for delivery, or (b) certified or registered mail, return receipt requested. All notifications, communications, and transmissions (a) sent by overnight, certified, or registered mail shall be deemed submitted on the date they are postmarked, or (b) sent by overnight delivery service shall be deemed submitted on the date they are delivered to the delivery service.

85. Any Party may change either the notice recipient or the address for providing notices to it by serving the other Parties with a notice setting forth such new notice recipient or address.

#### **XV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

86. This Consent Decree resolves the civil claims of the United States and the State of Illinois for the violations alleged in the Complaint through the Date of Lodging.

87. The United States and the State of Illinois reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 86 of this Section. This Consent Decree shall not be construed to limit the rights of the United States or the State of Illinois to obtain penalties or injunctive relief under the CAA or implementing regulations, under the Illinois Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 86 of this Section. The United States and the State of Illinois further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or

welfare or the environment arising at, or posed by, the Facility, whether related to the violations addressed in this Consent Decree or otherwise.

88. In any subsequent administrative or judicial proceeding initiated by the United States or the State of Illinois for injunctive relief, civil penalties, or other appropriate relief relating to the Facility or East Balt's violations, East Balt shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State of Illinois in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 86 of this Section.

89. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. East Balt is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits; and East Balt's compliance with this Consent Decree shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and the State of Illinois do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that East Balt's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CAA, 42 U.S.C. § 7401 *et seq.*, or the Illinois Act, 415 ILCS 5/1 *et seq.*, or with any other provisions of federal, state, or local laws, regulations, or permits.

90. This Consent Decree does not limit or affect the rights of East Balt or of the United States or the State of Illinois against any third parties, not party to this Consent Decree,



nor does it limit the rights of third parties, not party to this Consent Decree, against East Balt, except as otherwise provided by law.

91. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

#### **XVI. COSTS**

92. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and the State of Illinois shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalties or any stipulated penalties due but not paid by East Balt.

#### **XVII. EFFECTIVE DATE**

93. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

#### **XVIII. RETENTION OF JURISDICTION**

94. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Consent Decree and entering orders modifying this Consent Decree, pursuant to Sections XII and XIX, and effecting and enforcing compliance with the terms and conditions of this Consent Decree.

#### **XIX. MODIFICATION**

95. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to any term of this Consent Decree, it shall be effective only upon approval by the Court.

96. Any disputes concerning modification of this Consent Decree shall be resolved pursuant to Section XII (Dispute Resolution); provided, however, that, instead of the burden of proof provided by Paragraph 77 the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

## **XX. TERMINATION**

97. After East Balt has complied with and fulfilled all of its obligations under this Consent Decree, and no less than five (5) years have passed since the Effective Date of this Consent Decree, East Balt may serve upon the United States and the State of Illinois a Request for Termination, stating that East Balt has complied with and fulfilled all of its obligations, together with any necessary supporting documentation.

98. Following receipt by the United States and the State of Illinois of East Balt's Request for Termination, the Parties shall confer informally concerning such Request and any disagreement that the Parties may have as to whether East Balt has satisfactorily complied with and fulfilled all of its obligations under this Consent Decree. If the United States, after consultation with the State of Illinois, agrees that the Consent Decree should be terminated, the Parties shall submit, for the Court's approval, a joint stipulation or motion terminating the Consent Decree.

99. If the United States, after consultation with the State of Illinois, does not agree that the Consent Decree should be terminated, East Balt may invoke Dispute Resolution under Section XII of this Consent Decree. However, East Balt shall not seek Dispute Resolution of any dispute regarding termination invoked under Paragraph 73 of Section XII (Dispute Resolution) until thirty (30) Days after service of its Request for Termination.

**XXI. PUBLIC PARTICIPATION**

100. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. East Balt consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Consent Decree, unless the United States has notified East Balt in writing that it no longer supports entry of this Consent Decree.

**XXII. SIGNATORIES AND SERVICE**

101. Each undersigned representative of East Balt, the State of Illinois, and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice or his designee certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

102. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. East Balt agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

**XXIII. INTEGRATION**

103. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree

and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than submittals for review and approval under Section IX (Review and Approval of Submittals) of this Consent Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor shall it be used in construing the terms of this Consent Decree.

**XXIV. FINAL JUDGMENT**

104. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the State of Illinois, and East Balt.

Signature Page for *United States and the State of Illinois v. East Balt. Commissary LLC* Consent Decree

Dated and entered this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

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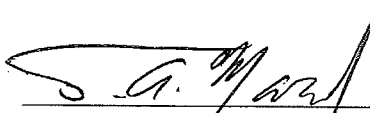
UNITED STATES DISTRICT JUDGE  
THE NORTHERN DISTRICT OF ILLINOIS

Signature Page for *United States and the State of Illinois v. East Balt. Commissary LLC* Consent Decree

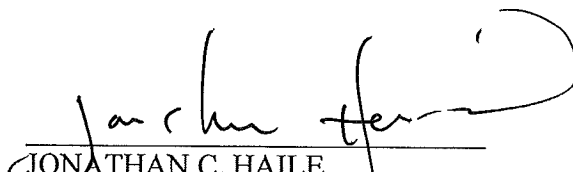
FOR THE UNITED STATES

JOHN C. CRUDEN  
Assistant Attorney General  
Environment and Natural Resources  
Division  
United States Department of Justice

Date: 07.20.2016

  
THOMAS A. MARIANI, Jr.  
Deputy Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
United States Department of Justice

Date: 8.16.16

  
JONATHAN C. HAILE  
Assistant United States Attorney  
Northern District of Illinois

Signature Page for *United States and the State of Illinois v. East Balt. Commissary LLC* Consent Decree

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

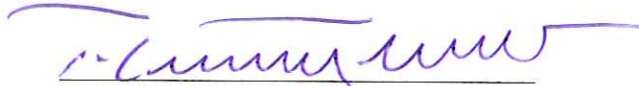
Respectfully submitted,

Date: 8/15/16



ROBERT A. KAPLAN  
Acting Regional Administrator, Region 5  
United States Environmental  
Protection Agency

Date: 7/29/2016



T. LEVERETT NELSON  
Regional Counsel  
United States Environmental  
Protection Agency, Region 5

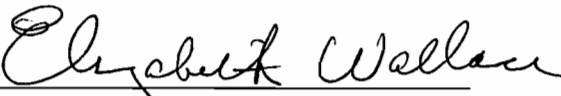
Signature Page for *United States and the State of Illinois v. East Balt. Commissary LLC* Consent Decree

FOR THE STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS  
*ex rel.* LISA MADIGAN,  
Attorney General of the  
State of Illinois

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


Date: 7/14/16

  
ELIZABETH WALLACE, Chief  
Assistant Attorney General  
Environmental Bureau

THE ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

ALEC MESSINA, Acting Director  
Illinois Environmental Protection Agency

Date: 7/14/16

  
John J. Kim  
Chief Legal Counsel  
Illinois Environmental Protection Agency



Signature Page for *United States and the State of Illinois v. East Balt. Commissary LLC* Consent Decree

FOR EAST BALT. COMMISSARY LLC:

Date: 6/26/16



\_\_\_\_\_  
Dave Watkins  
East Balt Bakeries  
Executive Vice President and Chief Financial Officer