



Plan (“SIP”) adopted by the State of Illinois pursuant to Section 110 of the CAA, 42 U.S.C. § 7410.

3. East Balt, an Illinois corporation, owns and operates a baked goods manufacturing facility located at 1801 West 31st Place in Chicago, Illinois (the “Facility”). The Facility includes three bakery lines (Bakery Line #1, Bakery Line #2 and the Griddle Line), each utilizing an oven and proof box.

4. East Balt is a “person” within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

5. The Facility emits air pollutants known as Volatile Organic Compounds (“VOCs”). The Facility is a “major source,” for purposes of Title V of the CAA, and a “major stationary source,” as defined under Part D of Title I of the CAA, Section 501(2) of the CAA, 42 U.S.C. § 7661(2).

6. There are no pollution control devices to control the VOCs emitted from the bakery lines. At the Facility, East Balt emitted and continues to emit VOCs into the atmosphere in excess of quantities allowed by the CAA and the Illinois Act.

### **Jurisdiction and Venue**

7. This court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and pursuant to 28 U.S.C. §§ 1331, 1345, 1355 and 1367.

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

### **Notice**

9. On March 13, 2012, EPA issued a Notice of Violation and Finding of Violation (“NOV/FOV”) to 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).

### **Authority**

10. Authority to bring this action for the United States is vested in the United States Department of Justice pursuant to 28 U.S.C. §§ 516 and 519 and Section 305 of the CAA, 42 U.S.C. § 7605.

11. Authority to bring this action for the State of Illinois is vested in the Illinois Attorney General. The Illinois Attorney General is the chief legal officer of the State of Illinois having the powers and duties prescribed by law, Ill. Const. art. V, § 15. Illinois EPA is an administrative agency of the State of Illinois, created by Section 4 of the Illinois Act, 415 ILCS 5/4 (2014), and charged, *inter alia*, with the duty of enforcing the Illinois Act.

### **Statutory and Regulatory Background**

12. The CAA is designed to protect and enhance the nation’s air quality, so as to promote the public health and welfare and the productive capacity of its population. CAA Section 101(b)(1), 42 U.S.C. § 7401(b)(1).

### **The National Ambient Air Quality Standards**

13. Section 109 of the CAA, 42 U.S.C. § 7409, requires EPA to promulgate regulations establishing primary and secondary national ambient air quality standards (“NAAQS”) for certain criteria air pollutants. The primary NAAQS must adequately protect the public health, and the secondary NAAQS must safeguard the public welfare from any known or anticipated adverse effects associated with the presence of air pollutants in the ambient air.

14. Section 107(d) of the CAA, 42 U.S.C. § 7407(d), requires each state to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is an “attainment” area. An area that does not meet the NAAQS is a “nonattainment” area.

15. For each area designated nonattainment with the NAAQS for the criteria air pollutant ozone, Section 181(a) of the CAA, 42 U.S.C. § 7511(a), further requires each area to be classified based on the extent of its nonattainment with the NAAQS for ozone, ranging from “Moderate” to “Extreme.”

#### **State Implementation Plans**

16. Section 110 of the CAA, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA a SIP containing provisions for the attainment and maintenance of the NAAQS for all areas within its boundaries, including those areas designated nonattainment and those areas designated attainment with the NAAQS.

17. SIP provisions are federally enforceable under Sections 113(a) and (b) of the CAA, 42 U.S.C. §§ 7413(a) and (b). The Illinois SIP is codified at 40 C.F.R. § 52.722.

#### **Nonattainment New Source Review**

18. Title I, Part D, Sections 171-193 of the CAA, 42 U.S.C. §§ 7501-7515, set forth the general requirements for areas designated nonattainment with the NAAQS. The purpose of these requirements is to protect human health and the environment by reducing emissions of air pollutants in those areas and to bring them into attainment with the NAAQS.

19. Sections 172(c)(5) and 173 of the CAA, 42 U.S.C. §§ 7502(c)(5) and 7503, set forth the general requirements for the construction and operation of new and modified major

stationary sources of air pollutants located in areas designated as nonattainment with the NAAQS. The purpose of these requirements is to ensure that the construction and operation of such sources results in a decrease of air pollutants in such areas. These provisions, including the implementing provisions adopted by the State of Illinois, are referred to as the “Nonattainment NSR program.”

20. Sections 181-185 of the CAA, 42 U.S.C. §§ 7511-7511d, set forth specific requirements for areas designated nonattainment with the NAAQS for ozone, including specific Nonattainment NSR provisions for the construction and operation of new and modified major stationary sources of VOCs located in areas designated as in severe nonattainment with the NAAQS for ozone (“Severe Areas”).

21. Under requirements of the Nonattainment NSR program, no person shall, *inter alia*, cause or allow the operation of a major modification: (a) except in compliance with the Lowest Achievable Emission Rate (“LAER”); (b) without obtaining the required emissions offsets; and (c) except in compliance with a permit issued in accordance with requirements of the Nonattainment NSR program. Sections 172(c)(5) and 173 of the CAA, 42 U.S.C. §§ 7502(c)(5) and 7503; 415 ILCS 5/9.1(d) (2014); and 35 Ill. Adm. Code 203.203, 203.601, and 203.602.

22. Similarly, pursuant to 415 ILCS 5/9(a) (2014), no person shall cause, threaten or allow the discharge or emission of any contaminant into the environment so as to cause or tend to cause air pollution in Illinois or so as to violate regulations or standards adopted by the Board under the Illinois Act.

23. For Severe Areas, the required offsets include an emissions reduction of VOCs offsetting the total increased emissions of VOCs to ensure reasonable further progress toward

attainment of the NAAQS. Section 182(d)(2) of the CAA, 42 U.S.C. § 7511a(d)(2); 35 Ill. Adm. Code 203.302.

24. For Severe Areas, the term “major stationary source” includes any stationary source that emits, or has the potential to emit, at least 25 tons per year of VOCs. Section 182(d) of the CAA, 42 U.S.C. § 7511a(d); 35 Ill. Adm. Code 203.206.

25. For Severe Areas, the terms “modified” and “major modification” include any physical change in, or change in the method of operation of, a major stationary source that would result in a significant net emissions increase of VOCs. Section 171(4) of the CAA, 42 U.S.C. § 7501(4); 35 Ill. Adm. Code 203.207.

26. For Severe Areas, a “net emissions increase” is “significant” if it is not less than 25 tons per year, when aggregated with all other net increases in emissions from the source over any period of five consecutive calendar years that includes the year in which such increase occurred. Sections 182(c)(6) and (d) of the CAA, 42 U.S.C. §§ 7511(c)(6) and (d); 35 Ill. Adm. Code 203.207 and 203.209.

### **Title V Operating Permit Program**

27. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for certain sources, including “major sources.” The purpose of the Title V permit program is to ensure, *inter alia*, that all “applicable requirements” for compliance with the CAA – including applicable Nonattainment NSR requirements – are collected in one permit.

28. A “major source,” for purposes of the Title V permit program, includes a “major stationary source” as defined under Part D of Title I of the CAA. Section 501(2) of the CAA, 42 U.S.C. § 7661(2).

29. In accordance with Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), EPA promulgated provisions implementing the Title V permit program. Those provisions are codified at 40 C.F.R. Part 70.

30. In accordance with Section 502(d) of the CAA, 42 U.S.C. § 7661a(d), the State of Illinois enacted provisions implementing the Title V permit program. Those provisions are codified at 415 ILCS 5/39.5 (2014).

31. EPA granted interim approval of the provisions of the Illinois Title V permit program on March 7, 1995 (60 Fed. Reg. 12478) and final approval on November 30, 2001 (66 Fed. Reg. 62946). The provisions of the Illinois Title V permit program are federally enforceable under Sections 113(a)(3) and (b) of the CAA, 42 U.S.C. §§ 7413(a)(3) and (b).

32. The owner or operator of a source subject to the Title V permit program shall submit a timely and complete application that includes, among other things, a citation to and description of all applicable requirements, all other information necessary to determine all applicable requirements, and a compliance plan describing how the source will comply with all applicable requirements. Section 503 of the CAA, 42 U.S.C. § 7661b; 415 ILCS 5/39.5(5) (2014).

33. Any applicant who fails to submit any relevant facts or who has submitted incorrect information shall, upon becoming aware of such failure or incorrect submittal, submit supplementary facts or correct information. Section 503 of the CAA, 42 U.S.C. § 7661b; 415 ILCS 5/39.5(5) (2014).

34. No person shall (a) violate the terms or conditions of a Title V permit or (b) operate a source subject to the Title V permit program unless a complete permit application has been submitted. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a); 415 ILCS 5/39.5(6) (2014).

### **Enforcement Provisions**

35. Sections 113(a)(1) and (3) of the CAA, 42 U.S.C. §§ 7413(a)(1) and (3), authorize the United States to commence a civil action whenever a person has violated, or is in violation of, any requirement or prohibition of Titles I or V of the CAA, or any rule, plan, or permit promulgated, issued, or approved under those Titles.

36. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes the United States to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to \$25,000 per day for each violation, as upwardly adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

37. Section 42(e) of the Illinois Act authorizes the State of Illinois to commence a civil action for injunctive relief to restrain violations of the Illinois Act or regulations promulgated thereunder, any applicable permit or term or condition of a permit, or any Board Order. 415 ILCS 5/42(e) (2014).

38. Pursuant to Section 42(a) of the Illinois Act, 415 ILCS 5/42(a), the State of Illinois may seek a civil penalty of up to \$50,000 for the violation and an additional civil penalty of up to \$10,000 per day for each day during which the violation continued; provided, however, that any person who violates subsection 6 of Section 39.5 of the Illinois Act, or any permit or term thereof, shall be liable for a civil penalty not to exceed \$10,000 per day of violation pursuant to Section 42(b)(5) of the Illinois Act, 415 ILCS 5/42(b)(5) (2014). Section 42(d) of the Illinois Act, 415 ILCS 5/42(d) (2014), provides that the penalties may be recovered in a civil action.

**FIRST CLAIM FOR RELIEF**

**(Nonattainment New Source Violations)**

39. Paragraphs 1 through 38 are realleged and incorporated by reference herein.

40. In 1990, Cook County was designated as a severe nonattainment area for the 1-hour ozone standard. 40 C.F.R. § 81.314. In 1995, Cook County remained designated as a severe nonattainment area for the 1-hour ozone standard. 40 C.F.R. § 81.314.

41. In 1995, East Balt undertook a project to increase the production rate at the Facility by making physical and operational changes to Bakery Line #1, including the replacement of the tray oven on Bakery Line #1 with a continuous oven.

42. The project caused or allowed a “significant net emissions increase” of VOCs, within the meaning of Sections 182(c)(6) and (d) of the CAA, 42 U.S.C. §§ 7511(c)(6) and (d); 35 Ill. Adm. Code 203.207 and 203.209.

43. The project constituted a “major modification” within the meaning of Section 171(4) of the CAA, 42 U.S.C. § 7501(4); 35 Ill. Adm. Code 203.207, resulting in a “modified” major stationary source.

44. East Balt violated the requirements of the Nonattainment NSR program by undertaking the project and continues to violate the requirements by operating the Facility without: (a) applying LAER to control emissions of VOCs; (b) obtaining the required emissions offsets of VOCs; and (c) obtaining and complying with a permit issued under the Nonattainment NSR program. Sections 172(c)(5) and 173 of the CAA, 42 U.S.C. §§ 7502(c)(5) and 7503; 415 ILCS 5/9.1(d) (2014); 35 Ill. Adm. Code 203.203, 203.601, and 203.602.

45. Unless restrained by an order of the court, East Balt will continue to violate the requirements of the Nonattainment NSR program.

46. As provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and Sections 42(d) and (e) of the Illinois Act, 415 ILCS 5/42(d) and (e) (2014), East Balt is subject to injunctive relief and civil penalties for each day of each violation.

**SECOND CLAIM FOR RELIEF**

**(Title V Permit Emissions Limit Violations)**

47. Paragraphs 1 through 46 are realleged and incorporated by reference herein.

48. Illinois EPA issued East Balt a Title V permit on August 30, 2004 (the “2004 CAAPP Permit”).

49. Condition 7.1.6 of the 2004 CAAPP Permit requires East Balt to limit VOC emissions from Bakery Line #1 to no more than 64.53 tons per year.

50. East Balt violated, and continues to violate, the 2004 CAAPP Permit by causing or allowing VOC emissions from Bakery Line #1 to exceed 64.53 tons per year.

51. Unless restrained by an order of the court, East Balt will continue to violate the 2004 CAAPP Permit.

52. As provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and Sections 42(d) and (e) of the Illinois Act, 415 ILCS 5/42(d) and (e) (2014), East Balt is subject to injunctive relief and civil penalties for each day of each violation.

**THIRD CLAIM FOR RELIEF**

**(Failure to Comply with the Clean Air Act Permit Program (CAAPP) Permit Deviation Reporting Requirements (State Only Claim))**

53. Paragraphs 1 through 52 are realleged and incorporated by reference herein.

54. Condition 7.1.10(a)(1) of the 2004 CAAPP Permit, entitled “Reporting Requirements,” requires East Balt to report to Illinois EPA any deviation from the applicable permit requirements of Condition 7.1.6 and 35 Ill. Adm. Code Part 203, the probable cause of

such deviations, and any corrective measures or preventive measures taken to address such deviation(s), within 30 days of such occurrence.

55. Since at least 2011, East Balt used the incorrect emission factor of 5.5 lbs. of VOC per 1 ton of baked product. Accordingly, East Balt has inaccurately reported its actual and potential emissions to Illinois EPA. By failing to report deviations from the permit conditions imposed by Condition 7.1.6 of the 2004 CAAPP Permit, East Balt violated Condition 7.1.10(a)(i) of the 2004 CAAPP Permit.

56. By violating Condition 7.1.10(a)(i) of the 2004 CAAPP Permit, East Balt also violated Section 39.5(6)(a) of the Illinois Act, 415 ILCS 5/39.5(6)(a).

57. As provided in Sections 42(d) and (e) of the Illinois Act, 415 ILCS 5/42(d) and (e), East Balt is subject to injunctive relief and civil penalties for each day of each violation.

#### **FOURTH CLAIM FOR RELIEF**

##### **(Failure to Comply with the Clean Air Act Permit Program (CAAPP) Seasonal Emissions Reporting Requirements (State Only Claim))**

58. Paragraphs 1 through 57 are realleged and incorporated by reference herein.

59. Condition 6.7(a) of the 2004 CAAPP Permit requires East Balt to report to Illinois EPA “actual seasonal emissions of VOM from the source.”

60. As of the date of the filing of this Complaint, the Illinois EPA has not received timely, accurate and complete seasonal emissions reports for calendar years 2003 through 2010, thereby violating Condition 6.7(a) of the 2004 CAAPP Permit.

61. By violating Condition 6.7(a) of the 2004 CAAPP Permit, East Balt also violated 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. Adm. Code 205.300 and 35 Ill. Adm. Code 254.132(b).

62. As provided in Sections 42(d) and (e) of the Illinois Act, 415 ILCS 5/42(d) and (e) (2014), East Balt is subject to injunctive relief and civil penalties for each day of each violation.

**FIFTH CLAIM FOR RELIEF**

**(Failure to Comply with the Clean Air Act Permit Program (CAAPP) Permit Annual Compliance Certification Requirements (State Only Claim))**

63. Paragraphs 1 through 62 are realleged and incorporated by reference herein.

64. Condition 9.8 of the 2004 CAAPP Permit, entitled “Requirements for Compliance Certification,” requires East Balt to submit to Illinois EPA a timely, accurate and complete CAAPP compliance certification, including the identification of each term or condition of the permit that is the basis of the certification, by May 1 of each calendar year during the pendency of the 2004 CAAPP Permit.

65. As of the date of the filing of this Complaint, the Illinois EPA has not received timely, accurate and complete CAAPP compliance certifications for calendar years 2003 through 2012.

66. By failing to submit to Illinois EPA timely, accurate and complete CAAPP compliance certifications for the calendar years 2003 through 2012, East Balt violated Condition 9.8 of the 2004 CAAPP Permit.

67. By violating Condition 9.8 of the 2004 CAAPP Permit, East Balt also violated Section 39.5(6)(a) of the Illinois Act, 415 ILCS 5/39.5(6)(a) (2014).

68. As provided in Sections 42(d) and (e) of the Illinois Act, 415 ILCS 5/42(d) and (e) (2014), East Balt is subject to injunctive relief and civil penalties for each day of each violation.

**SIXTH CLAIM FOR RELIEF**

**(Failure to Timely Submit Annual Emission Reports (State Only Claim))**

69. Paragraphs 1 through 68 are realleged and incorporated by reference herein.

70. Condition 9.7 of the 2004 CAAPP Permit, entitled “Annual Emission Reports,” requires East Balt to submit to Illinois EPA a timely, accurate and complete “an annual emissions report to the Illinois EPA, Compliance Section no later than May 1 of the following year, as required by 35 IAC Part 254.”

71. As of the date of the filing of this Complaint, the Illinois EPA has not received timely, accurate and complete annual emissions reports for calendar years 2003 through 2010.

72. By failing to submit to Illinois EPA timely, accurate and complete annual emissions reports for calendar years 2003 through 2010, East Balt violated Condition 9.7 of the 2004 CAAPP Permit.

73. By violating Condition 9.7 of the 2004 CAAPP Permit, East Balt also violated Sections 9(a) and 39.5(6)(a) of the Illinois Act, 415 ILCS 5/9(a) and 39.5(6)(a) (2014), 35 Ill. Adm. Code 201.302(a) and 35 Ill. Adm. Code 254.132(a).

74. As provided in Sections 42(d) and (e) of the Illinois Act, 415 ILCS 5/42(d) and (e) (2014), East Balt is subject to injunctive relief and civil penalties for each day of each violation.

**PRAYER FOR RELIEF**

WHEREFORE, based upon all the allegations set forth above, the United States and the State of Illinois respectfully request that this court:

1. Permanently enjoin East Balt from operating the Facility except in compliance with the CAA and the applicable federal and state provisions cited herein;

2. Order East Balt to remedy its past violations by, *inter alia*, requiring East Balt to apply LAER to control VOC emissions as required by the Nonattainment NSR program;
3. Order East Balt to amend or apply for a permit that conforms with the requirements of the Title V permit program;
4. Order East Balt to achieve, maintain and demonstrate compliance with the CAA, including the applicable requirements of the Nonattainment NSR program and the Title V permit program;
5. Order East Balt to take other appropriate actions to remedy, mitigate, and offset the harm to public health and the environment caused by the CAA violations;
6. Order East Balt to timely submit to Illinois EPA accurate and complete seasonal emissions reports;
7. Order East Balt to timely submit to Illinois EPA accurate and complete annual compliance certifications;
8. Order East Balt to timely submit to Illinois EPA accurate and complete annual emissions reports;
9. Assess a civil penalty against East Balt for each day of each violation up to the amount allowed by law;
10. Award Plaintiffs their costs of this action; and

11. Grant such other relief as the court deems just and proper.

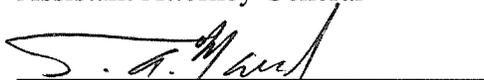
FOR THE UNITED STATES OF AMERICA

Respectfully submitted,

ZACHARY T. FARDON  
United States Attorney

By: s/ Jonathan C. Haile  
JONATHAN C. HAILE  
Assistant United States Attorney  
219 South Dearborn Street  
Chicago, Illinois 60604  
(312) 886-2055  
jonathan.haile@usdoj.gov

JOHN C. CRUDEN  
Assistant Attorney General

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

OF COUNSEL:

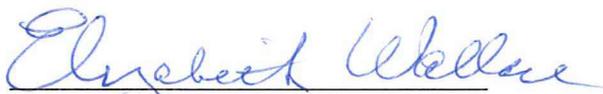
EATON R. WEILER  
Associate Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604  
(312) 886-4273

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: 6/21/16

  
ELIZABETH WALLACE, Chief  
Assistant Attorney General  
Environmental Bureau

Of Counsel:  
KATHRYN A. PAMENTER  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington Street, Suite 1800  
Chicago, IL 60602  
(312) 814-0608  
KPamenter@atg.state.il.us