



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

FEB 28 2017

REPLY TO THE ATTENTION OF:

**VIA E-MAIL**  
**RETURN RECEIPT REQUESTED**

Anthony Janik  
Ferrara Candy Company  
7301 W. Harrison St.  
Forest Park, Illinois, 60130  
Email: [Anthony.Janik@ferrarausa.com](mailto:Anthony.Janik@ferrarausa.com)

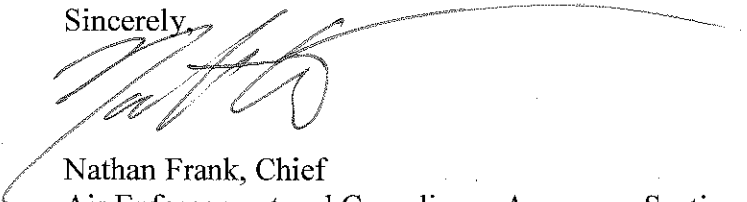
Dear Mr. Janik:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Ferrara Candy Company, docket no. CAA-05-2017-0013. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on February 28, 2017.

Pursuant to paragraph 27 of the CAFO, Ferrara Candy Company must pay the civil penalty within 30 days of the filing date. Your check must display the case name and case docket number.

Please direct any questions regarding this case to Deborah Carlson, Associate Regional Counsel, (312) 353-6121.

Sincerely,



Nathan Frank, Chief  
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J  
Regional Hearing Clerk/E-19J  
Deborah Carlson/C-14J  
[Yasmine Keppner-Bauman/Yasmine.Keppner-Bauman@Illinois.gov](mailto:Yasmine.Keppner-Bauman@Illinois.gov)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:

Ferrara Candy Company  
Forest Park, Illinois,

Respondent.



Docket No. CAA-05-2017-0013

Proceeding to Assess a Civil Penalty  
Under Section 113(d) of the Clean Air Act,  
42 U.S.C. § 7413(d)

**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Ferrara Candy Company, a corporation doing business in Illinois.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

### **Statutory and Regulatory Background**

9. On December 4, 2001, EPA approved the Illinois Clean Air Act Permit Program as part of the federally enforceable state implementation plan (SIP) for Illinois. 66 Fed. Reg. 62946 (December 4, 2001).

10. The Illinois Environmental Protection Agency (IEPA) issued a Federally Enforceable State Operating Permit (FESOP), No. 73010040 to Ferrara Candy Company (Ferrara) on April 27, 2012 (2012 FESOP).

11. Condition 5(g) of the 2012 FESOP states that the catalytic oxidizer's combustion chamber shall be preheated to at least the manufacturer's recommended temperature but no less than the temperature at which compliance was demonstrated in the most recent compliance test and that this temperature shall be maintained during operation.

12. Condition 13(a) of the 2012 FESOP states that any owner or operator subject to 40 C.F.R. Part 60 shall maintain records of the occurrence and duration of any startup, shutdown and malfunction in the operation of the affected facility, any malfunction of the air pollution control system and any periods during which a continuous monitoring system is inoperative.

13. Condition 15(a) of the 2012 FESOP states that an owner or operator of a catalytic afterburner shall use continuous monitoring equipment that is installed calibrated, maintained, and operated according to vendor specifications at all times the afterburner is in use. The

continuous monitoring equipment must monitor the temperature rise across the afterburner bed or the volatile organic material (VOM) concentration of the exhaust.

14. Condition 19(d)(ii) of the 2012 FESOP states that the owner or operator of a VOM emission unit shall collect, record and maintain a log of operating time for the capture system, control device, monitoring equipment and the associated emission sources.

15. Pursuant to 40 C.F.R. § 52.23, failure to comply with any permit limitation or condition contained within an operating permit issued under an EPA-approved program that is incorporated into the state implementation plan is a violation of a requirement of an applicable implementation plan and subject to enforcement under Section 113 of the CAA, 43 U.S.C. § 7413.

16. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$320,000 for CAA violations that occurred after December 6, 2013 through November 2, 2015 and may assess a civil penalty of up to \$44,539 per day of violation up to a total of \$356,312 for CAA violations that occurred after November 2, 2015 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19 and Civil Monetary Penalty Inflation Adjustment Rule, 81 Fed. Reg. 43091 (July 1, 2016) (to be codified at 40 C.F.R. Part 19).

17. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

18. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

**Factual Allegations and Alleged Violations**

19. Ferrara owns and operates a candy manufacturing facility at 7301 West Harrison Street, Forest Park, Illinois.

20. Ferrara operates a catalytic oxidizer to control volatile organic compound emissions from glazes used in polishing and panning operations. Ferrara is subject to the Illinois SIP for Organic Material Emission Standards at 35 Ill. Adm. Code 218 Subpart TT.

21. Oxidizer temperature circular chart readings indicated that Ferrara failed to operate or maintain in proper working condition the continuous monitor on the catalytic oxidizer 24 times for approximately 1,201 hours, in violation of Condition 15(a) of the 2012 FESOP.

22. Oxidizer temperature circular chart readings showed that Ferrara operated the catalytic oxidizer below the required temperature 28 times for approximately 1,420 hours, in violation of Condition 5(g) of the 2012 FESOP.

23. Ferrara violated Condition 13(a) of the 2012 FESOP by failing to maintain records of the occurrence and duration of any startup, shut down, or malfunction in the operation of the affected facility during the periods outlined in paragraphs 21 and 22 above.

24. Ferrara violated Condition 19(d)(ii) of the 2012 FESOP by failing to maintain adequate and complete records of operating time for its candy polishing VOM emission sources.

25. Ferrara violated the above referenced conditions of its 2012 FESOP and 35 Ill. Adm. Code 218, Subpart TT incorporated by reference in 40 C.F.R. § 52.720 during the periods outlined in paragraphs 21 and 22 above.

**Civil Penalty**

26. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and Respondent's cooperation in this matter, Complainant has determined that an appropriate civil penalty to settle this action is \$158,500.

27. Within 30 days after the effective date of this CAFO, Respondent must pay a \$158,500 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

The check must note Respondent's name and the docket number of this CAFO.

28. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-18J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

Deborah Carlson (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

29. This civil penalty is not deductible for federal tax purposes.

30. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

31. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

#### **General Provisions**

32. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: carlson.deboraha@epa.gov (for Complainant), and Anthony.Janik@ferrarausa.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

33. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

34. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

35. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 33, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

36. Respondent certifies that it is complying fully with its 2012 FESOP.

37. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

38. The terms of this CAFO bind Respondent, its successors and assigns.

39. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

40. Each party agrees to bear its own costs and attorneys' fees in this action.

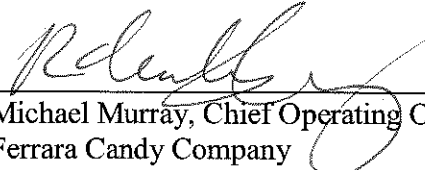
41. This CAFO constitutes the entire agreement between the parties.



**Consent Agreement and Final Order**  
**In the Matter of: Ferrara Candy Company**  
**Docket No. CAA-05-2017-0013**


**Ferrara Candy Company, Respondent**

2/10/17  
Date

  
Michael Murray, Chief Operating Officer  
Ferrara Candy Company

**United States Environmental Protection Agency, Complainant**

2/24/17  
Date

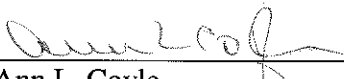
*for*   
Edward Nam  
Director  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order**  
**In the Matter of: Ferrara Candy Company**  
**Docket No. CAA-05-2017-0013**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

February 28, 2017  
Date

  
\_\_\_\_\_  
Ann L. Coyle  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 5

Consent Agreement and Final Order  
In the matter of: Ferrara Candy Company  
Docket Number: CAA-05-2017-0013

**CERTIFICATE OF SERVICE**

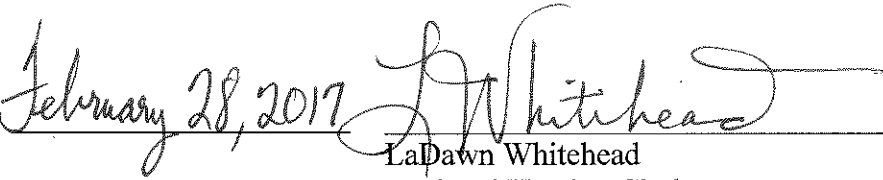
I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number [CAA-05-2017-0013 ], which was filed on [date], in the following manner to the following addressees: 2/28/2017

Copy by E-mail to Respondent: Anthony Janik  
Anthony.Janik@ferrarausa.com

Copy by E-mail to Attorney for Complainant: Deborah Carlson]  
carlson.deboraha@epa.gov

Copy by E-mail to Regional Judicial Officer: Ann Coyle  
coyle.ann@epa.gov

Dated: February 28, 2017

  
\_\_\_\_\_  
LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5