

STATE OF MARYLAND,  
DEPARTMENT OF THE  
ENVIRONMENT  
1800 Washington Blvd.  
Baltimore, Maryland 21230

\* IN THE CIRCUIT COURT  
\* FOR WICOMICO  
\* COUNTY, MARYLAND

*Plaintiff,*

v.

PERDUE AGRIBUSINESS, LLC  
31149 Old Ocean City Road  
Salisbury, Maryland 21804

\* CIVIL CASE NO.: C-22-CV-24-000274  
\*

**SERVE ON:**  
THE CORPORATION  
TRUST, INCORPORATED  
Resident Agent  
2405 York Road  
Suite 201  
Lutherville Timonium,  
Maryland, 21093-2264

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\*

*Defendant.*

\* \* \* \* \*

**COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES**

The State of Maryland, Department of the Environment (“MDE” or the “Department”), by and through its attorneys, Anthony G. Brown, Attorney General, and Michael F. Strande, Assistant Attorney General, files this Complaint for Injunctive Relief and Civil Penalties against Perdue AgriBuisness, LLC (“PAB” or “Defendant”) and alleges as follows:

## INTRODUCTION

1. Defendant PAB owns and operates a commercial poultry products and soybean processing facility located at 6906 Zion Church Road in Salisbury, Wicomico County, Maryland 21804 (the “Facility”).

2. The Facility is a “major source” of the emission of volatile organic compounds (“VOCs”) and toxic air pollutants and operates under a permit issued by the Department pursuant to Title 2, Subtitle 4, of the Environment Article and the Part 70 permitting program delegated to Maryland under the federal Clean Air Act. 42 U.S.C. § 7661.

3. VOCs are a pollutant regulated under the Clean Air Act, 42 U.S.C. § 7401 through § 7671q, and the State of Maryland (the “State”) has adopted permitting obligations, emission limits, and other operational requirements to reduce the amount of VOCs released into the atmosphere.

4. VOCs mix with oxides of nitrogen in heat and sunlight through photochemical reactions to form ground-level ozone, one of six criteria pollutants subject to National Ambient Air Quality Standards (“NAAQS”). 42 U.S.C. § 7408, § 7409; 40 CFR § 50.19.

5. Ground-level ozone has long been recognized by scientists as harmful to human health and the environment. Ozone can inflame and potentially cause permanent damage to human lungs, trigger respiratory problems, and decrease lung capacity. It can also weaken a person’s immune system, causing increased susceptibility to pulmonary and

other forms of infections. While children and asthmatics are most sensitive, individuals suffering from bronchitis, emphysema, and other chronic pulmonary diseases also have heightened sensitivity to ozone exposure. In addition, ozone can damage vegetation and reduce crop production.

6. Maryland is in the Ozone Transport Region (“OTR”), a group of north-east states established by the Clean Air Act. 42 U.S.C. § 7511c(a). States within the OTR must meet specific emissions requirements regarding the attainment and maintenance of the ozone NAAQS. 42 U.S.C. § 7511c(b).

7. The Department brings this civil action to address the unpermitted discharge of VOCs and toxic air pollutants from the Facility which have damaged, or been detrimental to, the air quality of the State. Accordingly, this Complaint seeks injunctive relief and civil penalties of up to \$25,000 per day for each day of the violations alleged herein pursuant to § 2-609 and § 2-610 of the Environment Article respectively.

### **JURISDICTION AND VENUE**

8. The State brings this action for penalties and injunctive relief under § 2-609 and § 2-610 of the Environment Article, and Maryland Rules 15-501 through 15-505.

9. This Court has jurisdiction over Purdue under § 6-102 and § 6-103 of the Courts and Judicial Proceedings Article because the Defendant is organized under the laws of the State, maintains its principal place of business in the State, and regularly conducts business in the State.

10. Venue is proper in this Court pursuant to § 6-201 of the Courts and Judicial Proceedings Article because the Facility is located in Wicomico County, Maryland, and PAB carries on a regular business in Wicomico County.

### **PARTIES**

11. The Department is the agency within the Executive Branch of the State that is charged with the responsibility of protecting the health, general welfare, property, and the people of the State, and enforcing both the State's air pollution control laws in accordance with Title 2 of the Environment Article and Title 26, Subtitle 11 of the Code of Maryland Regulations ("COMAR").

12. PAB is a limited liability company formed and organized under the laws of the State, and with a principal place of business at 31149 Old Ocean City Road, Salisbury Maryland, 21804. PAB owns and operates the Facility.

### **STATUTORY AND REGULATORY AUTHORITY**

13. Section 2-301 of the Environment Article authorizes the Department to adopt regulations for the control of air pollution. Pursuant to its statutory authority, the Department has promulgated implementing regulations set forth in Title 26, Subtitle 11 of COMAR which establish permitting, emissions limitations, monitoring, recordkeeping, and other regulatory requirements.

14. The Department may bring an action to enjoin any conduct that violates any provision of Title 2 or any rule, regulation, or order adopted or issued under Title 2. Md. Code Ann., Envir. § 2-609(a).

15. A person who violates any provision of Title 2 or any rule, regulation, or order adopted or issued under that title is liable for a civil penalty not exceeding \$25,000, to be collected in a civil action in the circuit court for any county. Md. Code Ann., Envir. § 2-610(a). Each day a violation continues is a separate violation under this section. *Id.*

16. A person may not construct or modify or cause to be constructed or modified any source, including installations and air pollution equipment, without first obtaining and having in effect the specified permits and approvals, except for those sources excluded by COMAR 26.11.02.10. COMAR 26.11.02.09(A)(6); *see also* COMAR 26.11.02.09(A)(1) (prohibiting a person from constructing or modifying or causing to be constructed or modified a New Source Review Source without first obtaining and having in effect the specified permits to construct and approvals).

17. For purposes of the State's air quality control regulations, a "source" means any property, real or personal, or person contributing to air pollution. Md. Code Ann., Envir. § 2-101(i); COMAR 26.11.01.01(B)(43).

18. A "major source" means a stationary source or group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person, belonging to a single major industrial grouping, and that, in relevant part, emits or has the potential to emit 50 tons or more per year of VOC in Wicomico County. COMAR 26.11.02.01(C)(1); COMAR 26.11.17.01(B)(17)(a)(ii).

19. "Major sources" of air pollution must obtain a Part 70 operating permit. COMAR 26.11.02.02(D); COMAR 26.11.03.01(A)(1); *see also* 42 U.S.C. §§ 7661 through

7661f. A person is prohibited from operating a major source unless it has obtained and is operating in compliance with a Part 70 operating permit. COMAR 26.11.03.01(C).

20. A person may not violate or cause to be violated any term or condition of a Part 70 operating permit. COMAR 26.11.02.05(A).

21. A “New Source Review source (NSR source)” means any major source or major modification subject to the requirements of COMAR 26.11.17. COMAR 26.11.01.01(B)(24). The requirements of COMAR 26.11.17, commonly referred to as the New Source Review or NSR Program, apply to, among other things, any major stationary source or major modification that is major for VOCs and is located in the OTR. COMAR 26.11.17.02(A)(4).

22. A “major modification” means any physical change in, or change in the method of operation of, a major stationary source that would result in a significant emissions increase and a significant net emissions increase of any regulated NSR pollutant, including VOCs. COMAR 26.11.17.01(B)(16); COMAR 26.11.17.01(B)(24); COMAR 26.11.17.02(F)(1).

23. In Wicomico County, a significant increase of a regulated NSR pollutant, including VOCs, is one that would equal or exceed 40 tons per year. COMAR 26.11.17.01(B)(26)(b). A significant net emissions increase is one that takes into account an increase from any physical change or operational change at the source and any other increase or decrease in actual emissions of the particular pollutant in question that are contemporaneous with the change and are otherwise creditable. *See* COMAR 26.11.17.01(B)(19).

24. If an emission increase triggers federal and state requirements for a regulated pollutant, a project is subject to the New Source Review (“NSR”) Program. COMAR 26.11.17.03(F); *see also* 42 U.S.C. §§ 7501 through 7509a; 40 CFR § 52.21(a)(2)(iv)(b).

25. A person may not commence construction of a major modification to a major stationary source without first obtaining a permit and approval from the Department pursuant to COMAR 26.11.17. COMAR 26.11.17.03(A).

26. The Department shall deny an NSR permit or approval to a person who proposes to construct a major modification to a major stationary source unless the proposed modification will meet an emission limitation which specifies the lowest achievable emission rate. COMAR 26.11.17.03(B)(2).

27. The Department shall deny an NSR permit or approval to a person who proposes to construct a major modification to a major stationary source located in Wicomico County unless more than equivalent emission offsets from existing sources in the area impacted by the proposed modification are obtained at an offset ratio of 1.15 to 1. COMAR 26.11.17.03(B)(3)(b).

28. A “Class II toxic air pollutant (Class II TAP)” means any substance that is not a Class I toxic air pollutant, for which there is no ambient air quality standard under COMAR 26.11.15, that is not a simple asphyxiant or nuisance particulate, and that is a health hazard as that term is defined in 29 CFR § 1915.1200 (July 1, 1994). COMAR 26.11.15.01(B)(5)(a). A health hazard classification evaluates the intrinsic properties of a chemical by (i) identification of the relevant data regarding hazards of a chemical, (ii) subsequent review of those data to ascertain the hazards associated with the chemical, and

(iii) determination of whether the chemical will be classified as hazardous and the degree of the hazard in accordance with criteria in 29 CFR § 1910.1200, Appendix A.

29. A person may not construct, reconstruct, operate, or cause to be constructed, reconstructed, or operated, any new installation or source that will discharge a toxic air pollutant to the atmosphere without installing and operating the Best Available Control Technology for Toxics (“T-BACT”). COMAR 26.11.15.05.

30. A person may not construct, reconstruct, or operate any new installation or source without demonstrating that the total allowable emissions of each toxic air pollutant discharged by the new installation or source will not unreasonably endanger human health. COMAR 26.11.15.06.

31. For purposes of COMAR 26.11.15, a “new installation” or “new source” means an installation or source constructed or reconstructed on or after July 1, 1988. COMAR 26.11.15.01(B)(10).

32. A person may not construct, reconstruct, or operate or cause to be constructed, reconstructed or operated a “maximum achievable control technology” or “MACT” source which results in any violation of 40 CFR Part 63. COMAR 26.11.15.02(C). A MACT source is a source of hazardous air pollutants subject to the requirements of 40 CFR Part 63. *See* COMAR 26.11.15.01(B)(9-1); COMAR 26.11.01.01(B)(21)(b).

33. An existing source subject to 40 CFR Part 63, Subpart GGGG (NESHAP for Solvent Extraction for Vegetable Oil Production) must submit an initial notification to the Department thirty (30) days prior to start up of a significant modification to existing



sources, and notification of actual start up of the significant modification. 40 CFR § 63.2860(c).

### **FACTUAL ALLEGATIONS**

34. PAB owns and operates the Facility, which is located at 6906 Zion Church Road in Salisbury, Wicomico County, Maryland.

35. Among other things, the Facility utilizes equipment to extract soybean oil from soybeans, otherwise referred to as the refining process. The refining process releases VOCs into the ambient atmosphere.

36. VOCs are a precursor pollutant to the formation of ground-level ozone.

37. The State and the federal Clean Air Act regulate the emission of VOCs to limit the formation of ground-level ozone, and to ensure attainment with the 8-hour ozone NAAQS.

38. The VOCs released by the refining process are in the form of hexane, which is a Class II toxic air pollutant.

39. On March 9, 2010, PAB submitted a toxic air pollutant compliance demonstration in accordance with COMAR 26.11.15 and COMAR 26.11.16 to the Department demonstrating that the Facility's toxic air pollutant emissions would not unreasonably endanger human health.

40. The Facility's refining process is subject to 40 CFR Part 63, Subpart GGGG (NESHAP for Solvent Extraction for Vegetable Oil Production).

41. The Facility is a "major source" because it emits more than 50 tons of VOC per year.

42. In addition, the Facility emits more than 10 tons per year of hexane, making it a “major source” of hazardous air pollutants. 40 CFR § 63.2.

43. As a “major source” the Facility is required to obtain a Part 70 operating permit. The Department issued Part 70 Operating Permit No. 24-045-0042 to PAB on July 1, 2015 (“Operating Permit”). At all times relevant to this Complaint, the Operating Permit governed PAB’s operation of the Facility.

44. Section I, Condition 2 of the Operating Permit lists the specific emissions units authorized to be operated at the Facility.

45. State Only Enforceable Requirement 4(B) of the Operating Permit requires PAB to submit to the Department by April 1 of each year a revised toxic air pollutant compliance demonstration, developed in accordance with COMAR 26.11.15 and COMAR 26.11.16 that accounts for changes in operations, analytical methods, emissions determination, or other factors where the conditions in the previous demonstration have been invalidated.

46. Table IV-6, Condition 6.1B.3(1) of the Operating Permit requires PAB to submit all required notifications in accordance with 40 CFR § 63.2860.

47. In 2017, PAB applied for an air quality permit to construct for an upgrade to its refining process, including the installation of new equipment which would allow an increase to the number of soybeans processed by the Facility (the “Project”).

48. The Project application included an analysis of emissions purporting to show that the modification would not trigger federal or state requirements under the NSR Program.

49. MDE informed PAB that the emissions methodology utilized in its permit application was inconsistent with the actual emissions reported by PAB, and that an NSR permit and approval would be required.

50. PAB subsequently withdrew the Project application, indicating it would revise its proposal and submit a new application at a later date. PAB never submitted another permit to construct or NSR approval application for the equipment identified in the original application or for any other upgrade to the refining process.

51. PAB installed the equipment identified in the original application without informing MDE or obtaining the required permits and approvals (the “Unauthorized Equipment”).

52. On information and belief, the Unauthorized Equipment consisted of the following sixteen (16) pieces of equipment:

- (a) one (1) 50 hp replacement Twin City Blower Flaking Roll Fan, installed between September 6, 2017 and September 26, 2017;
- (b) two (2) new 125 hp Roskamp Flaking Roll Flakers, installed between April 24, 2019 and May 22, 2019;
- (c) two (2) 0.5 hp Roskamp Flaking Roll Feeders, installed between April 24, 2019 and May 22, 2019;
- (d) one (1) new 3.5 tph fluidized bed separator, installed between September 6, 2017 and September 26, 2017;

- (e) one (1) new 1.5 hp Sutton-Steel Secondary Table, installed between September 6, 2017 and September 26, 2017;
- (f) one (1) new 10 hp Chicago Blower Secondary Table Fan Blower, installed between September 6, 2017 and September 26, 2017;
- (g) two (2) new 150 hp Roskamp Cracking Roll Feeders, installed between September 6, 2017 and September 26, 2017;
- (h) two (2) replacement 1 hp Roskamp Cracking Rolls, installed between September 6, 2017 and September 26, 2017;
- (i) one (1) replacement 123 hp Louisville Dryer Bean Conditioner, installed on or before May 22, 2019;
- (j) one (1) new 100 hp Twin City Blower Secondary Fan, installed on or before May 22, 2019;
- (k) one (1) replacement 5 hp Goulds Bean Conditioner Condensate Pump, installed on or before May 22, 2019; and
- (l) one (1) replacement 5 hp Scott Equipment Water Addition to Hulls Mixer, installed on or before May 22, 2019.

53. On information and belief, PAB began to operate and otherwise use the Unauthorized Equipment following installation.

54. The Unauthorized Equipment resulted in a net actual emissions increase to the atmosphere in excess of 40 tons of VOC (in the form of hexane) per year.

55. The Unauthorized Equipment did not include an emission limitation approved as the lowest achievable emission rate.

56. The Unauthorized Equipment did not include the Best Available Control Technology for Toxics.

57. PAB did not obtain emission offsets from existing sources in the area at an offset ratio of 1.15 to 1 to account for the VOC emissions increase from the Unauthorized Equipment.

58. On July 1, 2019, PAB submitted an application to the Department for renewal of its expiring Operating Permit. The application did not include any of the Unauthorized Equipment.

59. While the application was under review, the Department and PAB met at various times to discuss the cause of VOC emissions increases reported between 2017 and 2019.

60. In response to various requests regarding the cause of the emissions increases, PAB submitted information which failed to disclose the installation of the Unauthorized Equipment.

61. In a correspondence dated April 11, 2022, PAB finally admitted that all equipment from the 2017 withdrawn application had been installed.

62. Based on the actual emissions from the Facility in the years when the Unauthorized Equipment was installed and operated, the Unauthorized Equipment constituted a major modification requiring permitting and approval under the NSR program. *See* COMAR 26.11.17.03(F); 40 CFR § 52.21(a)(2)(iv)(b).

63. The Unauthorized Equipment required permits to construct, NSR approval, and an operating permit.

64. PAB failed to submit a revised toxic air pollutant compliance demonstration following the installation of the Unauthorized Equipment.

65. On information and belief, the increase in toxic air pollutant emissions of hexane from the Unauthorized Equipment could result in an unreasonable endangerment to human health depending on the configuration of the equipment and its emission location.

66. The Unauthorized Equipment caused an actual VOC emissions increase equivalent to the addition of a new major source. On information and belief, the emissions from the Unauthorized Equipment increased local air emissions, contributed to regional ozone transport struggles, and negatively impacted the State's ability to meet its federal Clean Air Act obligation to reduce pollution impacts across state borders.

### **COUNT I**

#### **Modification Without Permits to Construct (Violation of COMAR 26.11.02.09(A)(1) and COMAR 26.11.02.09(A)(6))**

67. The allegations set forth in paragraphs 1 through 66 are realleged and incorporated herein by reference.

68. A permit to construct issued by the Department is required before any person constructs, modifies, or causes to be constructed or modified, any source, including installations and air pollution equipment, except for those as listed in COMAR 26.11.02.10. COMAR 26.11.02.09A(6).

69. In addition, a permit to construct issued by the Department is required before any person constructs, modifies, or causes to be constructed or modified, any NSR Source

other than an electric generating station which receives a Certificate of Public Convenience and Necessity. COMAR 26.11.02.09A(1). PAB installed the Unauthorized Equipment, consisting of the following sixteen (16) pieces of equipment:

- (a) one (1) 50 hp replacement Twin City Blower Flaking Roll Fan, installed no later than September 26, 2017;
- (b) two (2) new 125 HP Roskamp Flaking Roll Flakers, installed no later than May 22, 2019;
- (c) two (2) 0.5 HP Roskamp Flaking Roll Feeders, installed no later than May 22, 2019;
- (d) one (1) new 3.5 tph fluidized bed separator, installed no later than September 26, 2017;
- (e) one (1) new 1.5 HP Sutton-Steel Secondary Table, installed no later than September 26, 2017;
- (f) one (1) new 10 HP Chicago Blower Secondary Table Fan Blower, installed no later than September 26, 2017;
- (g) two (2) new 150 HP Roskamp Cracking Roll Feeders, installed no later than September 26, 2017;
- (h) two (2) replacement 1 HP Roskamp Cracking Rolls, installed no later than September 26, 2017;
- (i) one (1) replacement 123 HP Louisville Dryer Bean Conditioner, installed no later than May, 22, 2019;

(j) one new 100 hp Twin City Blower Secondary Fan, installed no later than May 22, 2019;

(k) one (1) replacement 5 hp Goulds Bean Conditioner Condensate Pump, installed no later than May 22, 2019; and

(l) one (1) replacement 5 hp Scott Equipment Water Addition to Hulls Mixer, installed no later than May 22, 2019.

70. None of the Unauthorized Equipment is exempt from the requirement to obtain a permit to construct pursuant to COMAR 26.11.02.10.

71. The Facility is an NSR Source.

72. PAB installed each of the sixteen (16) sources which comprise the Unauthorized Equipment without obtaining the required permits to construct.

73. PAB's failure to obtain the required permits to construct remain ongoing.

74. Any person who violates any rule or regulation issued pursuant to Title 2 of the Environment Article is liable for a civil penalty up to \$25,000 per violation. Md. Code Ann., Envir. § 2-610(a). Each day a violation continues is a separate violation. *Id.*

75. PAB's modification of the Facility by installing each of the sixteen (16) sources without a permit to construct for each source constitutes at least 26,096 days of violation from at least May 22, 2019 through the present.

**COUNT II**  
**Commencing Modification Without NSR Permits and Approvals**  
**(Violation of COMAR 26.11.17.03(A))**

76. The allegations set forth in paragraphs 1 through 66 are realleged and incorporated herein by reference.



77. A person may not commence construction of an emission unit at an NSR Source without first obtaining all NSR permits and approvals required under COMAR 26.11.17. COMAR 26.11.17.03(A).

78. A project is considered a "major modification" regulated by the NSR Program if it causes a significant emissions increase and a significant net emissions increase of VOCs. COMAR 26.11.17.01(B)(16)(a); COMAR 26.11.17.01(B)(24); COMAR 27.11.17.02(F)(1).

79. In Wicomico County, a significant emissions increase of a regulated NSR pollutant is one that equals or exceeds 40 tons per year. COMAR 26.11.17.01B(26)(b)

80. Prior to PAB's installation and operation of the Unauthorized Equipment, the Facility was a major source because it emitted more than 50 tons of VOC per year to the ambient atmosphere in Wicomico County.

81. PAB's installation and operation of the Unauthorized Equipment caused a significant net emissions increase subject to the NSR Program because it resulted in an actual emissions increase of more than 40 tons of VOC per year to the ambient atmosphere in Wicomico County.

82. The Department shall deny a NSR permit or approval to a person who proposes to construct a major modification to a major stationary source unless the proposed major modification will meet an emission limitation which specifies the lowest achievable emission rate. COMAR 26.11.17.03(B)(2).

83. The Unauthorized Equipment did not include an emission limitation approved as the lowest achievable emission rate. COMAR 26.11.17.03(B)(2).

84. The Department shall deny a NSR permit or approval to a person who proposes to construct a major modification to a major stationary source in Wicomico County unless emission offsets from existing sources in the area impacted by the proposed major modification are obtained at an offset ratio of 1.15 to 1. COMAR 26.11.17.03(B)(3)(b).

85. PAB commenced a major modification by installing and operating the Unauthorized Equipment as follows:

(a) one (1) 50 hp replacement Twin City Blower Flaking Roll Fan, installed no later than September 26, 2017;

(b) two (2) new 125 hp Roskamp Flaking Roll Flakers, installed no later than May 22, 2019;

(c) two (2) 0.5 hp Roskamp Flaking Roll Feeders, installed no later than May 22, 2019;

(d) one (1) new 3.5 tph fluidized bed separator, installed no later than September 26, 2017;

(e) one (1) new 1.5 hp Sutton-Steel Secondary Table, installed no later than September 26, 2017;

(f) one (1) new 10 hp Chicago Blower Secondary Table Fan Blower, installed no later than September 26, 2017;

(g) two (2) new 150 hp Roskamp Cracking Roll Feeders, installed no later than September 26, 2017;

(h) two (2) replacement 1 hp Roskamp Cracking Rolls, installed no later than September 26, 2017;

(i) one (1) replacement 123 HP Louisville Dryer Bean Conditioner, installed no later than May 22, 2019;

(j) one (1) new 100 HP Twin City Blower Secondary Fan, installed no later than May 22, 2019;

(j) one (1) replacement 5 HP Goulds Bean Conditioner Condensate Pump, installed no later than May 22, 2019; and

(k) one (1) replacement 5 HP Scott Equipment Water Addition to Hulls Mixer, installed no later than May 22, 2019.

86. Any person who violates any rule or regulation issued pursuant to Title 2 of the Environment Article is liable for a civil penalty up to \$25,000 per violation. Md. Code Ann., Envir. § 2-610(a). Each day a violation continues is a separate violation. *Id.*

87. PAB's modification of the Facility without a NSR permit or approval constitutes for at least 1,631 days of violation from at least May 22, 2019 through the present.

**COUNT III**  
**Operation of Equipment Without Obtaining a Part 70 Operating Permit**  
**(Violation of COMAR 26.11.02.05(A))**

88. The allegations set forth in paragraphs 1 through 66 are realleged and incorporated herein by reference.

89. A person may not violate or cause to be violated any term or condition of a Part 70 operating permit. COMAR 26.11.02.05(A).

90. Prior to July 1, 2015, the Facility was considered a “major stationary source” because it emitted more than 50 tons of VOC per year to the ambient atmosphere in Wicomico County. COMAR 26.11.17.01(17)(a)(ii).

91. On July 1, 2015, the Department issued to PAB Part 70 Operating Permit No. 24-045-0042 (“Operating Permit”).

92. Section I, Condition 2 of the Operating Permit lists the specific emissions units authorized to be operated at the Facility.

93. PAB installed and operated the Unauthorized Equipment, consisting of sixteen (16) pieces of equipment.

94. None of the sixteen (16) emissions units included in the Unauthorized Equipment is authorized under the Operating Permit.

95. The Operating Permit did not include an emission limitation on the Unauthorized Equipment establishing the lowest achievable emission rate. COMAR 26.11.17.03(B)(2).

96. Each of the sixteen (16) emissions units included in the Unauthorized Equipment has been in operation since at least May 22, 2019.

97. Any person who violates any rule or regulation issued pursuant to Title 2 of the Environment Article is liable for a civil penalty up to \$25,000 per violation. Md. Code Ann., Envir. § 2-610(a). Each day a violation continues is a separate violation. *Id.*

98. PAB's operation of each of the sixteen (16) sources without a permit to operate since at least May 22, 2019 through the present constitutes at least 26,096 days of violation.

**COUNT IV**  
**Installation of Equipment Without Installing and Operating T-BACT**  
**(Violation of COMAR 26.11.15.05)**

99. The allegations set forth in paragraphs 1 through 66 are realleged and incorporated herein by reference.

100. A person may not construct, reconstruct, or operate any new installation or source that will discharge a toxic air pollutant to the atmosphere without installing and operating the Best Available Control Technology for Toxics ("T-BACT"). COMAR 26.11.15.05.

101. PAB installed the Unauthorized Equipment, which allowed an increase in the number of soybeans processed by the Facility and caused an increase in emissions of the Class II toxic air pollutant hexane.

102. The Facility, which includes the Unauthorized Equipment, is a new installation for purposes of COMAR 26.11.15.

103. The Unauthorized Equipment did not include T-BACT.

104. PAB operated the Unauthorized Equipment since at least May 22, 2019.

105. Any person who violates any rule or regulation issued pursuant to Title 2 of the Environment Article is liable for a civil penalty up to \$25,000 per violation. Md. Code Ann., Envir. § 2-610(a). Each day a violation continues is a separate violation. *Id.*

106. PAB's operation of the Unauthorized Equipment since at least May 22, 2019 constitutes at least 1,631 days of violation.

#### **COUNT V**

#### **Failure to Demonstrate Total Allowable Emissions from Premises of Toxic Air Pollutants Will Not Unreasonably Endanger Human Health (Violation of COMAR 26.11.15.06)**

107. The allegations set forth in paragraphs 1 through 66 are realleged and incorporated herein by reference.

108. A person may not construct, modify, or operate, or cause to be constructed, modified, or operated, any new installation or source without demonstrating, in accordance with COMAR 26.11.15, that the total allowable emissions of each toxic air pollutant discharged by the new installation or source will not unreasonably endanger human health. COMAR 26.11.15.06(A)(1).

109. PAB installed the Unauthorized Equipment, which allowed an increase in the number of soybeans processed by the Facility and caused an increase in hexane emissions, a Class II toxic air pollutant.

110. The Facility, including the Unauthorized Equipment, is a new installation for purposes of COMAR 26.11.15.

111. PAB operated the Unauthorized Equipment since at least May 22, 2019.

112. Any person who violates any rule or regulation issued pursuant to Title 2 of the Environment Article is liable for a civil penalty up to \$25,000 per violation. Md. Code Ann., Envir. § 2-610(a). Each day a violation continues is a separate violation. *Id.*

113. PAB's operation of the Unauthorized Equipment since at least May 22, 2019 without demonstrating that the total allowable emissions of each toxic air pollutant discharged by the refining process will not unreasonably endanger human health constitutes at least 1,631 days of violation.

**COUNT VI**  
**Failure to Submit Updated Toxic Air Pollutant Demonstration**  
**(Violation of COMAR 26.11.02.05(A))**

114. The allegations set forth in paragraphs 1 through 66 are realleged and incorporated herein by reference.

115. A person may not violate or cause to be violated any term or condition of a Part 70 operating permit. COMAR 26.11.02.05(A).

116. State Only Enforceable Requirement 4(B) of the Operating Permit requires PAB to submit to the Department by April 1 of each year a revised toxic air pollutant compliance demonstration, developed in accordance with COMAR 26.11.15 and COMAR 26.11.16, that accounts for changes in operations, analytical methods, emissions determination or other factors where the conditions in the previous demonstration has been invalidated.

117. PAB installed the Unauthorized Equipment, which allowed an increase in the number of soybeans processed by the Facility and caused an increase in hexane emissions, a Class II toxic air pollutant.

118. Installation and operation of the Unauthorized Equipment resulted in changes in operations, analytical methods, emissions determination, or other factors which

invalidated the conditions in the Facility's previous toxic air pollution demonstration submitted on March 9, 2010.

119. PAB failed to submit a revised toxic air pollutant compliance demonstration by April 1, 2018, in accordance with State Only Enforceable Requirement 4(B) of the Operating Permit.

120. Any person who violates any rule or regulation issued pursuant to Title 2 of the Environment Article is liable for a civil penalty up to \$25,000 per violation. Md. Code Ann., Envir. § 2-610(a). Each day a violation continues is a separate violation. *Id.*

121. PAB's failure to update its toxic air pollutant compliance demonstration by April 1, 2020 constitutes at least 16 days of violation.

#### **COUNT VII**

##### **Failure to Submit a Significant Modification Notification (Violation of COMAR 26.11.02.05(A) and COMAR 26.11.15.02(C))**

122. The allegations set forth in paragraphs 1 through 66 are realleged and incorporated herein by reference.

123. A person may not construct, reconstruct, or operate or cause to be constructed, reconstructed or operated a "maximum achievable control technology" or "MACT" source which results in any violation of 40 CFR Part 63. COMAR 26.11.15.02(C).

124. The Facility is a source of hazardous air pollutants subject to the requirements of 40 CFR Part 63, and therefore, is a MACT source. *See* COMAR 26.11.15.01(B)(9-1); COMAR 26.11.01.01(B)(21)(b).



125. A person may not violate or cause to be violated any term or condition of a Part 70 operating permit. COMAR 26.11.02.05(A).

126. The Facility must submit an initial notification to the Department thirty (30) days prior to start up of a significant modification to existing sources, and notification of actual start up of the significant modification. 40 CFR § 63.2860(c); Table IV-6, Condition 6.1B.3(1) of the Operating Permit.

127. PAB's installation of the Unauthorized Equipment was a significant modification. *See* 40 CFR § 63.2872.

128. PAB failed to submit an initial notification to the Department thirty (30) days prior to start up of Unauthorized Equipment, and notification of actual start up of the Unauthorized Equipment. 40 CFR § 63.2860(c); Table IV-6, Condition 6.1B.3(1) of the Operating Permit.

129. Any person who violates any rule or regulation issued pursuant to Title 2 of the Environment Article is liable for a civil penalty up to \$25,000 per violation. Md. Code Ann., Envir. § 2-610(a). Each day a violation continues is a separate violation. *Id.*

130. PAB's failure to provide the required notification since at least May 22, 2019 constitutes at least 1,631 days of violation.

### **PRAYER FOR RELIEF**

WHEREFORE, based upon the foregoing allegations, the Department requests that this Honorable Court:

1. Issue an injunction ordering PAB to apply for and obtain permits to construct for the Unauthorized Equipment;

2. Issue an injunction ordering PAB to apply for and obtain NSR approval for the Unauthorized Equipment, which includes an emission limitation requiring compliance with the lowest achievable emission rate for the Unauthorized Equipment, and emission offsets from existing sources in the area impacted by the Unauthorized Equipment at a ratio of 1.15 to 1;
3. Issue an injunction ordering PAB to submit a revised application for renewal of the Operating Permit which includes a complete summary of all emission units;
4. Issue an injunction ordering PAB to install and operate the Best Available Control Technology for Toxics;
5. Issue an injunction ordering PAB to demonstrate to the Department that the total allowable emissions of each toxic air pollutant discharged by the new installation will not unreasonably endanger human health;
6. Assess a civil penalty of \$25,000 against PAB for each day of violation alleged in Count I through Count VII herein;
7. Award such other relief as the Court deems just and proper.

Respectfully submitted,

Anthony G. Brown  
Attorney General of Maryland



MICHAEL F. STRANDE  
Attorney Number 0112120351  
Assistant Attorney General  
Maryland Department of the  
Environment  
1800 Washington Boulevard, Suite 6048  
Baltimore, MD 21230-1719

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