

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION

PRESTIGE FEED PRODUCTS, LLC, an Illinois
limited liability company,

Plaintiff,

v.

VILLAGE OF MOUNT PROSPECT, an Illinois
municipal corporation; MICHAEL J. CASSADY
in his capacity as Village Manager; WILLIAM
SCHROEDER in his capacity as Village Director of
Building & Inspection Services; and PAUL Wm.
HOEFERT in his capacity as the Village Mayor,

Defendants,

VILLAGE OF MOUNT PROSPECT, an Illinois
municipal corporation,

Defendant/Counter-Plaintiff,

v.

PRESTIGE FEED PRODUCTS, LLC, an Illinois
limited liability company,

Plaintiff/Counter-Defendant,

CITY OF DES PLAINES, an Illinois municipal
corporation,

Intervening Petitioner.

Case No. 2023 CH 05147

Judge Thomas M. Donnelly (Law)
Cal. W, Courtroom 1912

PLAINTIFF’S MOTION FOR
LEAVE TO FILE AN AMENDED COMPLAINT

The Plaintiff, Prestige Feed Products, LLC (“Prestige”), by its attorneys, Robbins
DiMonte, Ltd., pursuant to §2-616 of the Civil Practice Law, moves for leave to file an amended
complaint, and states as follows:

1. The Plaintiff moves for leave to file an amended complaint *instanter*, a copy of which
is attached hereto as **Exhibit 1**. The original complaint involving preliminary
injunction issues was litigated extensively before Judge Quish in the Chancery Division
between May 2023 until the preliminary injunction issues were resolved on October
28, 2024.

2. On October 28, 2024, the case was transferred from Chancery to Law Division and assigned to Judge Donnelly on November 8, 2024.
3. The status of the case is as follows:
 - a. The parties are working diligently to complete written discovery. To date, Prestige has complied with the written discovery propounded by the Village and the City; the City has complied with the written discovery propounded by Prestige; and the Village remains to comply with Prestige's Second Supplemental Written Discovery served upon the Village on January 31, 2025.
 - b. The parties have not started party or third-party witness depositions yet but intend to do so during April 2025.
 - c. The Plaintiff and Defendant, Village of Mount Prospect, have informed each other that they intend to amend the complaint and counterclaim into discreet counts so each claim and defense may be separately considered by the jury at trial. The original Chancery complaint and counterclaim were pleaded as a single, equitable cause of action pursuant to SCR 135(a). However, now that the case has been scheduled for a jury trial, the Plaintiff's claims and the Village counterclaims should be pleaded as separate discreet claims and defenses for the jury to consider. This will also facilitate jury instructions.
4. The new facts contained in Plaintiff's amended complaint have occurred since the original complaint was filed in May 2023.
5. Nothing in the Plaintiff's amended complaint or the Defendant's amended counterclaim will be a surprise to the opposite party. All facts alleged are known by the parties.

6. No party will be prejudiced because all claims alleged in the amended pleadings can be explored through discovery depositions which are scheduled to begin during April of 2025.
7. §2-616 of the Civil Practice Law provides that pleadings may be amended on just and reasonable terms at any time before final judgment introducing any party that should have been joined, dismissing any party, changing the cause of action or defense or adding new causes of action or defenses which may enable the Plaintiff to sustain the claim which was intended to be brought or the Defendant to make a defense or assert a crossclaim.
8. In the often cited case of *Loyola Academy v. S&S Roof Maintenance, Inc.*, 166 Ill.Dec. 882, 146 Ill.2d 263, 586 N.E.2d 1211 (1992), the Illinois Supreme Court reversed the appellate court and the trial judge for denying *Loyola's* motion for leave to amend its complaint citing an abuse of discretion standard. The commonly known *Loyola* factors are: (a) whether the proposed amendment will cure the defective pleading; (b) whether other parties would sustain prejudice or surprise by virtue of the proposed amendment; (c) whether the proposed amendment is timely; and (d) whether previous opportunities to amend the pleadings could be identified. 166 Ill.Dec.886-887, 146 Ill.2d 273, 586 N.E.2d 1216-1217, citing *Kupianen v. Graham*, 107 Ill.App.3d 373, 63 Ill.Dec. 125, 437 N.E.2d 774 (1982).
9. In this case, allowing the Plaintiff and the Village Defendant to amend the complaint and counterclaim into discreet and separate counts would facilitate the jury trial and jury instructions. Neither party will sustain prejudice or surprise. The proposed

amendments are timely and there have been no previous opportunities to amend the Plaintiff's complaint.

In this case, it would be an abuse of discretion to deny the Plaintiff an opportunity to divide the Chancery complaint into separate counts for the jury's consideration. In the January 28, 2025 court hearing, the Court recommended that the Village counterclaim be similarly divided into discreet counts for the jury's consideration. In this case, it would be an abuse of discretion to deny Plaintiff's motion for leave to amend the complaint. Therefore, this motion should be granted.

WHEREFORE, the Plaintiff, Prestige Feed Products, LLC, prays for an order allowing it to file the amended complaint *instanter*.

Robbins DiMonte, Ltd.

/s/ Riccardo A. DiMonte

By:

Counsel for Prestige Feed Products, LLC

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EXHIBIT 1

Amended Complaint

**IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION**

PRESTIGE FEED PRODUCTS, LLC, an Illinois
limited liability company,

Plaintiff,

v.

VILLAGE OF MOUNT PROSPECT, an Illinois
municipal corporation; MICHAEL J. CASSADY
in his capacity as Village Manager; WILLIAM
SCHROEDER in his capacity as Village Director of
Building & Inspection Services; and PAUL Wm.
HOEFERT in his capacity as the Village Mayor,

Defendants.

Case No. 2023 CH 5147
(transferred to Law Division)

Hon. Thomas More Donnelly
Calendar W

JURY DEMANDED ON LAW
COUNTS

AMENDED COMPLAINT

The Plaintiff, Prestige Feed Products, LLC (“Prestige”), by its attorneys Robbins DiMonte, Ltd., complains of the Defendants, the Village of Mount Prospect (“Village”), the Village Manager Michael J. Cassady (“Cassady”), the Village Director of Building & Inspection Services William Schroeder (“Schroeder”), and the Village Mayor Wm. Paul Hoefert (“Hoefert”), and alleges as follows:

SUMMARY OF THE DISPUTE

Prestige is a light manufacturing business which manufactures and sells soy and cheese-based feed for livestock. The Village threatened to revoke Prestige’s business license and occupancy permit on June 9, 2023, claiming that Prestige’s business constitutes a nuisance. The Village claims that Prestige’s business is a nuisance based on subjective inconsistent complaints about odors emanating from its Facility. However, Prestige has commissioned four scientific odor studies during 2021, 2022, and 2024, which objectively measure the air discharged from the Facility. Prestige, the Village, and the City of Des Plaines have tested air samples at 15 locations between November 2024 and March 2025. These facts and data conclusively establish that the

level of odor discharge from Prestige's Facility is either immeasurable or well below the factual and legal definition of nuisance.

Prestige has shared all expert reports with the Village and the City. Neither the Village nor the City has collected objective, measurable, or scientific data. However, if the Village revokes Prestige's occupancy permit and business license, then the Plaintiff will suffer the following additional immediate and irreparable harms:

- A. Prestige will immediately default on its contract orders for delivery of product in the pipeline with serious financial consequences for Prestige and its customers;
- B. All of Prestige's plant workers will immediately lose their jobs;
- C. Prestige will default on payment of its monthly rent obligations to its Landlord;
- D. Prestige will lose all its \$2,944,151 investment in the Facility;
- E. The Village's continued harassment, false accusations and unjustified legal action have cause Prestige to incur over \$1,450,000 in expert's reports, expert consulting, and odor mitigation equipment along with \$580,000 in attorney's fees;
- F. Prestige will continue to incur losses due to lost profits for restricted operating hours, downtime, lost production, wages, and possibly, moving expenses.

Due to the fact that the Village and City of Des Plaines have no objective facts or data that establish that Prestige's business is a nuisance as defined by law, Prestige has a high likelihood of prevailing on the merits.

FACTS COMMON TO ALL COUNTS

A. The Parties and the Tolling Agreement

1. The Plaintiff, Prestige, is an Illinois limited liability company, operating a light manufacturing facility at 431 Lakeview Court, Suite A, in the Village of Mount Prospect, Cook County, Illinois (the "Facility").

2. The Defendant, Village of Mount Prospect, is an Illinois home rule municipal corporation, located in Cook County, Illinois.

3. Defendant Michael J. Cassady is the Village Manager.

4. Defendant William Schroeder is the Village Director of Building & Inspection Services.

5. Defendant Paul Wm. Hoefert is the Village Mayor.

6. On March 30, 2021, Prestige and the Village entered into a Tolling Agreement, to postpone the filing of a lawsuit and the costs of litigation, and to toll all limitations deadlines that may expire while the parties attempted to amicably resolve their dispute (the “Tolling Agreement”). A copy of the Tolling Agreement is attached hereto as **Exhibit A**.

7. The Tolling Period under the original Tolling Agreement would have expired on June 4, 2021. The Parties amended and renewed the Tolling Agreement several times, with the last renewal dated March 30, 2023, and with an updated Tolling Period of December 31, 2023.

8. On April 10, 2023, the Village delivered to Prestige a Notice of Termination of Tolling Agreement between Prestige Feed Products, LLC, and the Village of Mount Prospect, Illinois (March 31, 2023-December 31, 2023). A true and correct copy of the April 10, 2023, termination letter is attached hereto and identified as **Exhibit B**.

9. The Termination of the Tolling Agreement results in the Village’s ability to revoke Prestige’s occupancy permit and business license at the Facility. June 9, 2023, was the deadline for Prestige to file suit to enjoin the Village from revoking its occupancy permit and business license.

B. Prestige Operations and Installation of Odor Mitigation Equipment.

10. Prestige is a light manufacturing business which manufactures and sells soy and cheese-based feed products for livestock. The Facility equipment and machinery dehydrates raw material to produce an animal feed ingredient.

11. The Facility is located in the Village's I-1 zoning district. The Village Zoning Code in Section 14.2101 states:

"14.2101: Purpose: The I-1 limited industrial district is intended to provide an area suitable for industrial, manufacturing, warehousing and research facilities that do not create appreciable nuisance or hazards, or an area for such uses that require a pleasant, hazard and nuisance free environment." (Ord. 4590, 9-21-1993). (Emphasis added.)

12. The Facility is part of a multi-tenant building zoned I-1 in an industrial park. The properties to the North, East, South, and West of the Facility are also zoned I-1. There are four other businesses located in the same building as Prestige. These businesses, such as the Illinois Bone and Joint Institute and MPI Sports Development Center, have a large daily public clientele. Neither the businesses nor their customers have complained about any odor or noise to Prestige or to the Village.

13. During February 2018, the Village approved Prestige's use of the site for light manufacturing in the Village's I-1 Zoning District. The Village approved all permits and inspections and licenses to renovate the Facility and approved all construction permits. Final inspections took place on February 6 and 7, 2019. The Village granted Prestige an occupancy permit on February 7, 2019, and Prestige began operations onsite March 19, 2019.

C. The Village has falsely Claimed that Prestige Misrepresented Facts on its Business License and Occupancy Permit Applications.

14. The Village's application for a Certificate of Occupancy and Business License did not seek any categorization or distinction between the type or classification of manufacturing that would occur at the Facility, nor did the Village seek further information from Prestige prior to

approving the application. Prestige provided an accurate description of the nature of their business in the relevant section of the application

15. Nicholas & Associates, Inc., ("Nicholas") on behalf of Prestige, submitted to the Village all necessary building and construction permit applications and supporting materials for the improvements made to the Facility prior to its opening.

16. The electrical plans that Nicholas submitted to the Village on October 30, 2018, before the Facility opened, clearly show the existence and location of the cyclones on the outside and to the east of the Facility.

17. The Village has been in possession of such applications and plans since 2018. Also, Prestige's exterior elevation plans on the east elevation depict the proximate locations of Prestige's two 30" round duct supplier openings for the cyclones.

18. Prestige fully and completely disclosed the existence of two cyclones to the Village. Prestige had no reason to believe whether the depiction of the industrial cyclones in the building and the construction permit applications and supporting materials would affect in any way the Village's analysis or approval of said permits. Prestige did not intentionally conceal or accidentally omit from the Village that Prestige would erect two industrial cyclones outside its building.

19. Prestige installed the cyclones long before the Village conducted the final inspection prior to granting the certificate of occupancy. The cyclones are located on top of two concrete pads at ground level. The concrete pads for the cyclones were poured prior to October 23, 2018. The Village building inspection report for north dock slab prepour is dated October 15, 2018.

20. The Village also inspected the Facility in Fall 2018 and Winter 2018-2019 and Spring 2019 leading up to the opening of the Facility. The cyclones were at the Facility the entire time and the Village did not object to their installation. Also, the Village issued the certificate of

occupancy with the cyclones already in place. The cyclones' presence is open and obvious, not hidden.

D. Prestige Additional Odor Mitigation Efforts.

21. After March of 2019, neighbors surrounding the Facility complained to the Village about odors emanating from the Facility. To address the complaints and the Village's concerns, Prestige closed down operations between June and October of 2019 and informed the Village that it would purchase and install a Byers Scientific Vapor System to reduce or eliminate released odors. The Village reviewed and approved the construction permit for the Byers odor remediation system which was installed in September 2019 and further calibrated through October 2019. Prestige resumed operations in October 2019.

22. Prestige did not conceal or omit from the Village the fact that Prestige would install odor mitigation on its building between 2019 and 2022. Prestige installed the mitigation equipment with permits and Village's full knowledge and consent.

23. Between November of 2019 and April of 2020, the Village communicated additional complaints from neighbors, some of which complaints were on days when Prestige was not even operating its equipment at the Facility. During this time, Prestige further improved the existing odor mitigation system by installing additional vaporization nozzles to disperse more vapor to the airstream.

24. On April 22, 2020, Prestige advised the Village that, in good faith, it would further improve the odor mitigation system by reconstructing the duct work from the exterior cyclones to be all closed duct work and have their air dispersed into a carbon filtration system on the roof of the Facility. The Village approved this plan and Prestige completed the re-construction of the odor control system in July 2020.

25. Nicholas submitted all necessary building and construction permit applications and supporting materials to the Village for the installation of the mitigation systems to the Facility after its opening through year 2020.

26. On October 1, 2020, representatives of Prestige and of the Village met at the Facility during operation and agreed that Prestige could resume general operations with no restrictions due to lack of released odors. Prestige operated during regular hours from October 1, 2020, to February 28, 2021.

E. The Village's Notices of Imminent Legal Action and to Cease and Desist.

27. On March 1, 2021, the Village sent Prestige a Notice of Imminent Legal Action alleging that Prestige's operations constituted a nuisance. Attached hereto and identified as **Exhibit C** is the Village's letter of March 1, 2021.

28. The Notice of Imminent Legal Action alleged that ongoing odors created by Prestige brought the use within the definition of "Manufacturing, Heavy," that Prestige has not been issued a conditional use permit for this use and therefore is limited to "Manufacturing, Light" uses, and that the business remains in violation of the Village Code.

29. Village Code § 14.2401 defines "Manufacturing, Light as follows:

"The assembly, fabrication or processing of goods and materials using processes that do not create noise, smoke, fumes, odors, glare or health or safety hazards outside of the building or lot where such assembly, fabrication, or processing takes place, where such processes are housed entirely within a building."

30. The Notice of Imminent Legal Action also alleged that Prestige's Use violated these sections from the Village Code of Ordinances: Section 11.3401: Nuisances; Section 14.604: Land Use Tables; and Section 14.2104: Bulk Regulations.

31. In its pertinent part, Village Code § 11.205 (formerly § 11.3401): Nuisances, states:

“11.205: Nuisances: No business, occupation or activity, licensed under this code or not, shall be conducted or operated so as to constitute a nuisance or so as to amount to a nuisance in fact.”
§ 11.205.

32. The Village Code § 23.1403 (F) defines an odor related nuisance as follows:

“In addition to those actions which are elsewhere in this code declared to be and constitute a nuisance, it is a nuisance for any person within the territorial jurisdiction of the village and within one-half ($\frac{1}{2}$) mile of the corporate limits:

[...]

F. To use any premises to create an offensive smell which taints the air and renders it unwholesome or unreasonably disagreeable to other persons.” § 23.1403 (F).

33. Village Code § 14.2104: Bulk Regulations, states:

“Section 14.2104: Bulk Regulations

...

G. Performance Standards: No use established in an I-1 limited industrial district shall be operated so as to exceed the performance standards listed below. Any use already established shall be permitted to be altered, enlarged, expanded or modified provided that all performance standards of the district are met.

...

6. Odorous Matter Limitations: The release of odorous matter from any industrial district across residence or business district boundary lines shall be so controlled that, at ground level or at habitable elevations, the concentration shall not exceed the odor threshold level. Further, the release of odorous matter across lot lines shall not become a nuisance or source of discomfort to neighboring uses. (Ord. 4590, 9-21-1993; amd. Ord. 5173, 3-6-2001; Ord. 5751, 8-4-2009)” [Emphasis added].

34. The Village Code does not define ‘odor threshold level’ and defers to Illinois law with respect to the odor threshold level applicable to Section 14.2104: Bulk Regulations.

35. The odor threshold level is found in the Illinois Joint Committee on Administrative Rules, Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter L: Air Quality Standards and Episodes, Part 245 Odors, Section 245.121 Objectionable Odor Nuisance Determination, which in pertinent part states,

“Section 245.121 Objectionable Odor Nuisance Determination

An objectionable odor nuisance exists:

...

b) On or adjacent to industrial premises when odor is detectable in the ambient air after it is diluted with twenty-four volumes of odor-free air as measured by the Scentometer;...” [Emphasis added].

36. 35 IAC §245.121 sets forth an objective, scientific, and measurable definition of odor threshold levels that require objective, scientific, and measurable Scentometer readings.

37. The Village agrees that the proper Scentometer reading when a property is bordered by industrial premises is 24 dilutions.

38. Prestige gave the Village empirical, objective, and scientific odor measurements and readings that show that any odors that Prestige allegedly generates are either nondetectable at the boundary line or far below legal threshold level of 24 dilutions.

39. This objective evidence includes four scientific reports that Prestige conducted over a period of three years (2021, 2022, ad 2024) and that Prestige shared with the immediately upon completion and again in May 2024.

40. Prestige’s objective, measurable, and scientific evidence collected in this case shows that Prestige is emitting odors at levels well below the odor threshold level of 24 dilutions adjacent to industrial premises.

41. The definitions of ‘Manufacturing, Light’ in Village Code §14.2401 requires the Village to apply an objective standard to determine whether Prestige’s operations create odors or safety hazards outside of the building or lot where such assembly, fabrication, or processing takes place, where such processes are housed entirely within a building.

42. Between 2019 and the present, the Village has applied the definition of ‘Manufacturing, Light’ to Prestige in an arbitrary, vague, subjective, and unclear way for Prestige or other citizens or property owners in the Village to know how it will operate to affect their rights when it is utilized.

43. The language in Village Code §§14.2104(G)(6) requires the Village to apply an objective standard to claim that Prestige's operations exceed the legal odor threshold level.

44. Prestige's operations at the Facility fall within 'Manufacturing, Light.'

45. Prestige's alleged odors at the Facility do not exceed the legal threshold levels.

46. Prestige's alleged odors at the Facility do not create a nuisance or become a source of discomfort to neighboring uses.

47. Prestige's alleged odors at the Facility do not taint the air or render it unwholesome or unreasonably disagreeable to other persons.

F. Prestige Commissioned Scientific Studies that Show it is Not a Nuisance.

48. During March 2021, to address the Village's claims, Prestige engaged Mostardi Platt, an expert engineering and environmental compliance firm, to perform an onsite and offsite odor investigation. Additionally, Prestige agreed to run its Facility for limited late night and early morning hours between 8:00 pm and 5:00 am. The parties also executed the March 30, 2021 Tolling Agreement in **Exhibit A**.

49. Notwithstanding Prestige's cooperation with the Village, on April 29, 2021, the Village attorney sent Prestige a written demand to cease and desist its operation until further notice. Attached hereto and identified as **Exhibit D** is the Village attorney's April 29, 2021, letter.

50. Prestige proposed to adjust the starting time of its machinery at the Facility to 11 PM. The Village agreed beginning May 11, 2021, the Village allowed Prestige to run its production equipment and machinery at the Facility during weeknights.

G. Prestige's Expert Reports.

51. On June 2, 2021, Mostardi Platt issued its Odor Investigation report which was immediately shared with the Village. A true and correct copy of this report without the appendices is attached hereto and identified as **Exhibit E**.

52. In order to objectively measure the odors emanating from Prestige's Facility, on April 1, 2021, Mostardi Platt collected Olfactometer readings at 8 locations and conducted an ambient odor survey using a Scentometer at 21 locations, 15 of them offsite and 6 onsite.

53. The Olfactometer results of all four Tedlar Bag samples collected at the boundaries at the neighboring real properties adjacent to the Facility had detection readings of 3 or less. The Scentometer results on all 21 tested locations had detection readings of less than 2. Therefore, as of April 2021, no objectively measured odor nuisance from the Facility existed on the properties surrounding the Facility. Additionally, Mostardi Platt determined that the normal operation of the Facility does not have a significant impact on the use and enjoyment of neighboring real properties and therefore, the Village's claims of a legal odor nuisance were without merit.

54. Based on this report, the Village allowed Prestige to continue operating during nighttime hours between June 2021 and October 2022.

55. During Spring 2022, Prestige implemented additional significant upgrades to its odor control system. First, Prestige upgraded the carbon filters with the Anue-Geo filter unit. To fit the newer and thicker filters, Prestige built a new custom aluminum filter cage to provide additional support against the elements. Secondly, Prestige upgraded the vapor deodorizer solution with one specifically engineered for solid waste odor applications and is a stronger and more potent mix of essential oils. To handle this new vapor, Prestige sent back its Vapor-Phase Odor Control Machine to Byers Scientific to replace all PVC piping with stainless steel piping to prevent degradation from the stronger odor-controlling vapor. The cost of purchasing and installing Prestige's odor control system and its various upgrades at the Facility was \$432,594.

56. Prestige informed the Village of the upgrades and the Village approved installation of the equipment.

57. During September and October of 2022, the Village reported receiving additional complaints about odors emanating from the Prestige Facility, some of which were received on days when Prestige was not operating.

58. In response to these allegations, Prestige commissioned a second report from Mostardi Platt which collected data on June 10, 2022, and issued an updated report on October 31, 2022. A true and correct copy of the October 31, 2022, report without the appendices is attached hereto and identified as **Exhibit F**. This report was also immediately shared with the Village. The results of the updated report are as follows:

- a) The Scentometer readings were zero (zero at 7 of the 8 tested fence line locations and less than 2 at the 8th location); and
- b) The test results demonstrate that Prestige's operation at the Facility does not reach or surpass the Scentometer dilution threshold reading under applicable law, which is 24 for properties zoned I-1.

59. The October 31, 2022, Report also concludes that (i) no objectionable odor nuisance from the Facility exists on the real property boundary line, and that (ii) the normal operation of the Facility does not constitute a nuisance, and that (iii) Prestige's use does not impact the use and enjoyment of the neighboring real properties.

60. Prestige spent \$432,594 on odor remediation equipment between 2019 and 2022 in order to achieve near zero measurable odors, comply with Village Code, be a good neighbor, and operate in good faith. As of April 10, 2023, Prestige informed the Village that it was willing to invest an additional \$171,899 to install a Tri-Stack Strobic Air Fan ("Strobic Fan") to further reduce or completely eliminate the alleged odors at the site.

61. Prestige's original investment to build the Facility was \$2,375,482. Prestige originally employed five (5) workers on the Facility floor during overnight hours and required a second daytime shift in order to meet demand for its product. It now employs 13 workers.

62. On April 10, 2023, notwithstanding objective test results from June 2, 2021, and October 31, 2022, the Village served Prestige with notice that it intended to terminate the Parties' Tolling Agreement as of June 9, 2023. A true and correct copy of the April 10, 2023, termination letter is attached hereto and identified as **Exhibit B**. Termination of the Tolling Agreement results in the Village's ability to revoke Prestige's occupancy permit/business license as of June 9, 2023.

63. In October 2023, Prestige installed an Atmosphere Global misting system using Atmosphere Odor Control solution as an odor neutralizer.

H. The Village Officials' False Public Statements.

64. Although the Village had no objective measurable or scientific data that established that Prestige's business is a nuisance as defined by law, various Village officials falsely stated in the press and to the public that Prestige is in violation of the Village Code.

65. On April 4, 2023, the *Journal & Topics* publication quoted Village Manager Cassidy as saying: "Prestige needs to either fix the matter again in a given period of time, get zoning relief to operate at their location, or relocate where they can operate without any complaints." (A 'Stink' Is Back: Village Working With Industrial Company Following Return Of Complaints, *By Richard Mayer on April 04, 2023*).

66. On April 19, 2023, the *Journal & Topics* publication quoted Village Mayor Hoefert as saying: "They [Prestige] can stay if they can completely eliminate the stench. Unless they can completely eliminate the stench, this business needs to go. [and] If I were them (Prestige), I would go." (Mount Prospect Rescinds Agreement, Wants Company To Fix Odor For Good, *By Richard Mayer on April 19, 2023*).

67. In an article by Daily Herald entitled “*After legal fight over odors, Prestige Feed Products plans to move out of Mount Prospect within 6 months*” published on December 2, 2024, 12:03 pm by Steve Zalusky, Mayor Hoefert is quoted to have said “This is a win-win....They [Prestige] will cease operations here, and the stench that has been produced by their facility will cease and people that are affected in Mount Prospect and in Des Plaines will find relief in the near future.”

68. Also Cassidy stated, as reported in the Daily Herald, on March 3, 2025 that the Village seeks an “airborne chemical assessment” not to determine whether Prestige is in compliance with the Village Code, but to “assist the village to prevail in litigation” against Prestige.

69. At a Village Board meeting on March 4, 2025, Hoefert stated that the Village is doing what it needs to shut down Prestige.

I. The Village Agreed to Prestige’s Installation of the Strobic Fan.

70. During the first week of December 2023, Prestige completed the installation of a Strobic Fan system on the roof of the Facility as a replacement for the Byers Scientific System with EcoSorb and Anue Filter Housing – Carbon Filtering. The Strobic Fan system disperses the Facility’s exhaust higher into the atmosphere therefore dispersing any odors and minimizing odor concentrations.

71. The Atmosphere Global misting system remains functional along the Strobic Fan system and it injects the odor neutralizer inside the roof exhaust ducts before the air reaches the Strobic Fan. After installation, the Strobic Fan and the Atmosphere Global misting system were working as intended.

72. Prestige modified mitigation equipment with Village’s full knowledge and consent. The Village did not object to and consented to Prestige’s installation of the Strobic Fan at the Facility in December 2023.

73. On December 13, 2023, at 8 AM, Prestige tested the Strobic Fan with all production equipment running at full capacity in the presence Prestige's representatives and attorney, and in the presence of several Village officials including William Schroeder and Michael J. Cassady, and their attorney, Allen Wall. The Village officials and Mr. Wall were satisfied with the operation of the Strobic Fan and the lack of odors at the Facility.

74. As a result, at the status hearing on the Village's Emergency Motion for TRO on the same day (December 13, 2023, at 11:30 AM), the Village withdrew its Emergency TRO Motion against Prestige, lifted the prior operational restrictions, and agreed that Prestige could operate 24 hours without restriction.

75. Starting on January 2024, Prestige hired more workers and signed more contracts and operated two shifts per day for five or six days a week.

J. The 2024 Odor Assessment Report.

76. Following the installation of the Strobic Air Fan at the Facility, V3 collected air and odor samples during the month of January 2024. On April 1, 2024, V3 issued an Odor Assessment Report ("OAR") and an Emission Inventory Report ("EIR") based on air sample measures during January 2024. Prestige shared these two reports with the Village upon their completion.

77. The two 2024 V3 reports, just like the previous Mostardi Platt reports from 2021 and 2022, conclude that Prestige's release of odorous matter from the Facility (i) does not constitute a nuisance to the surrounding neighbors; (ii) does not have a significant impact on the use and enjoyment of neighboring properties; and (iii) does not amount to a source of discomfort to neighboring uses.

78. The results of the ambient odor survey and of the odor panel analysis from the air samples collected on January 30, 2024, at the boundary lines of the real property where the Facility is located indicate that:

- a. At the boundary line on the East of the property, the Scentometer reading was “Non-Detectable,”
- b. At the boundary line on the Northeast corner of property, the Scentometer reading was “Non-Detectable,”
- c. At the boundary line on the Northwest corner of property, the Scentometer reading was “Non-Detectable,”
- d. At the boundary line on the Southeast corner of property, the Scentometer reading was 2-4,
- e. At the intersection of Longford Dr. and N. Wolf Rd. to the East of the Facility (and East of Wolf Rd and near residential properties in Des Plaines), the Scentometer reading was “Non-Detectable,”
- f. At the intersection of Dursey Ln. and N. Wolf Rd. to the Northeast of the Facility (and East of Wolf Rd and near residential properties in Des Plaines), the Scentometer reading was “Non-Detectable.”

79. The EIR dated April 1, 2024, also provided an Air Dispersion Modeling. The results of V3’s Air Dispersion Modeling analysis clearly show that the concentrations of specific compounds at receptors at the real property boundary line and throughout the neighboring area are below the regulatory odor thresholds levels. The results of V3’s Air Dispersion Modeling analysis also clearly show that the exhaust air from the cyclones will disperse at least several times before reaching the neighboring properties.

80. Prestige relied upon the Village’s approval of the Strobic fan and lack of odors. Between the second week of January 2024 and end of September 2024, Prestige operated almost two shifts per day and five or six days a week. On certain days, Prestige operated fewer hours due to lack of raw material or due to equipment maintenance and repair. Prestige has regularly updated the Village regarding its operating hours.

81. To operate its Facility between January 2024 and September 2024, Prestige hired 13 employees for manufacturing and deliveries. By operating two shifts a day for five days a week

during the first nine months of year 2024, Prestige managed to generate approximately \$172,000 in monthly gross profit.

82. Prestige is entitled to unfettered operation of its business because it is not a nuisance by any objective standard defined by law. Without permanent injunctive relief, 13 Prestige employees will lose their jobs, Prestige will default on its lease, Prestige will lose its investment of at the Facility, and Prestige will suffer financial losses and irreparable harm by failing to fill its customers' orders currently in the pipeline.

83. Prestige acted in reliance upon the Village's cooperation and approval to Prestige's detriment by making significant investment of over a \$1,450,000 into Odor Mitigation, Equipment, Expert Reports, and Expert Support that conclude and prove Prestige is not a nuisance in fact or in law.

84. The Village intended or reasonably expected that Prestige would rely upon the Village's actions, conduct, and statements.

85. The Village's actions, conduct, and statements encouraged Prestige to incur substantial costs in commissioning expert reports, in investing in odor mitigation equipment, and not securing an alternative Facility.

86. Prestige, in good faith and to its detriment justifiably relied upon the Village's actions, conduct, and statements.

87. Through July 31, 2024, the Village had presented no objective measurable or scientific data that establish that Prestige's releases odorous matter above and beyond the odor threshold level found in the Village Code and 35 IAC, Section 245.121, or that Prestige's business is a nuisance as defined by law.

88. Prestige is prejudiced by Prestige's reliance on the Village's actions, conduct, and statements, and by the Village's attempts to modify its position several times over the years.

89. As a result of stable and predictable operating hours between October 2024 to the present, Prestige has calculated that its profit margin before salaries and utilities is approximately equal to 37% of gross revenue and that its net hourly profit from the production operations after paying salaries and utilities is approximately equal to \$173.38 per hour.

90. Prestige is entitled to unfettered operation of its business because it is not violating the Village's ordinances by any objective standard defined by law.

91. Instead of being limited to the 84 hours a week that Prestige currently operates (7 days a week for 12 hours a day); Prestige has sufficient demand for its products to operate 144 hours a week (6 days a week for 24 hours a day). If Prestige operated 144 hours a week instead of 84 hours a week, its net profit would increase to approximately \$25,000 per week (instead of approximately \$14,500 for an 84 hour per week schedule).

92. However, if Prestige shuts down its operations, Prestige will lose all its investment in the Facility, and Prestige will be forced to relocate at another facility outside the Village.

93. Further, if Prestige shuts down its operations, all of its employees and plant workers will immediately lose their jobs, and Prestige will immediately lose the ability to generate revenue and profit which it desperately needs after years of constant losses. Prestige has produced to the Village confidential financial records for years 2019 through 2023 that evidence the actual level of production for those years and the losses that Prestige has suffered every year during that period from reduced operating hours.

94. Further, if Prestige shuts down its operations, Prestige will immediately default on its outstanding contract orders for delivery of product with serious financial consequences for Prestige and its customers. Prestige will also not be able to enter into any additional contracts and suffer irreparable damage to its business reputation.

95. Further, Prestige shuts down its operations, Prestige will default on payment of its Lease obligations to its Landlord, which for year 2024 alone were nearly \$300,000, and over \$300,000 per year until the end of the term on January 31, 2029.

96. A summary of the potential monetary damages that Prestige has suffered and will continue to suffer from Defendants' actions, conduct, and statements is shown below:

Prestige Feed Products, LLC		Damages Through	March 1, 2025
1	Odor Measurements and Mitigation (Equipment, Expert Reports, and Expert Support)		\$1,450,000.00
2	Legal Costs and Expenses		\$580,000.00
3	Increased Occupancy Costs		* To be determined at Trial
4	Equipment Relocation	(12 weeks)	\$1,600,000.00
5	Lost Profit During Moveout	(12 weeks)	\$174,764.02
6	Employee Wages During Moveout	(12 weeks)	\$186,701.76
7	Lost Profit between 2019 – 25 if unhindered operation * <i>June of 2021 through the current date (144 hours / week and 307 days / year)</i>		* To be determined at Trial
8	Sunk Costs for Buildout of Existing Facility		\$518,698.14
	Estimated Damages * (Without Accounting for Lost Profit between 2019 – 2025)		* To be determined at Trial

97. Despite the constant campaign of complaints from a small number of neighbors, the actual number of people complaining is a very small fraction of all residential and commercial neighbors within (1) mile of the Facility. There are close to 6,000 separate real estate parcels within 1.25 miles of the Facility, but only a very small number of individuals (less than 30) complain all day and every day and even on days when Prestige does not operate

98. Since October 2023, the number of individual addresses that have filed complaints with the Village or with the other various governmental entities is between 20 and 30, and most of them are residential households from the Subdivision in the City of Des Plaines which is located East of N. Wolf Rd.

99. All businesses located in the same the I-1 zoning district as the Prestige's Facility are subject to all the above provisions of the Village Code and Illinois law.

100. Big Fish's Icehouse is a restaurant, tavern, and pizzeria business located at 1501 Feehanville Dr., Mt. Prospect, IL 60056 (in the same industrial park as Prestige's Facility) and emits odors beyond the boundary lines of its building. The Village has not prosecuted Big Fish's Icehouse, for odors emitted by its business beyond its boundary lines.

101. Parenti & Raffaelli Ltd. is a cabinet maker business located at 1401 Feehanville Dr., Mt. Prospect, IL 60056 (in the same industrial park as Prestige's Facility) and emits odors beyond the boundary lines of its building. The Village has not prosecuted Parenti & Raffaelli Ltd. for odors emitted by its business beyond its boundary lines.

102. OnTrac is a trucking company located at 350 Wolf Rd., Mt. Prospect, IL 60056, (in the same industrial district as Prestige's Facility) and emits odors and noise beyond the boundary lines of its building. The Village has not prosecuted OnTrac for odors and noise emitted by its business beyond its boundary lines.

103. Over the past several weeks, the Village has also pressured Prestige's landlord at the Facility to terminate Prestige's leasehold tenancy.

104. In further harassment of Prestige, although the Village consented to Prestige's installation of the Strobic Fan at the Facility in December 2023, on January 17, 2025 the Village issued a ticket claiming that Prestige failed to complete and submit a building permit application for the Strobic Fan. Prestige relied on the Village's representations that the application was a

formality. Prestige completed and submitted the building permit application to the Village for the Strobic Fan. In March of 2025, the Village officials, including Defendant Schroeder, stated that the application for the Strobic Fan would not be approved and further indicated that the Village is reconsidering all previously issued and approved building permits for Prestige's equipment at the Facility.

**COUNT I
DECLARATORY JUDGMENT
(Against all Defendants)**

1 – 104. Prestige adopts and realleges the allegations asserted in Paragraphs 1 through 104 above as if fully set forth herein as Paragraphs 1 through 104 of Count I.

105. Prestige has a protectable interest in operating its business at the Facility.

106. There exists an actual controversy between Prestige and the Village as to whether Prestige's use and activity at the Facility constitutes a nuisance as defined by Illinois law.

107. Prestige has provided the Village with four scientific odor studies during 2021, 2022, and 2024 which objectively measure the air discharged from the Facility. These facts and data conclusively establish that the level of odor discharge from Prestige's Facility is either immeasurable or well below the legal definition of nuisance.

108. The Village's revocation of Prestige's occupancy permit and business license will irreparably damage Prestige's business operations.

109. If the Village revokes Prestige's occupancy permit and business license, then the Plaintiff will suffer the following immediate and irreparable harm:

- i. Prestige will immediately default on its contract orders for delivery of product in the pipeline with serious financial consequences for Prestige and its customers;
- ii. All of Prestige's plant workers will immediately lose their jobs;

- iii. Prestige will default on payment of its monthly rent obligations to its Landlord;
- iv. Prestige will lose its \$2,944,151 investment in the Facility;
- v. The Village's continued harassment, false accusations and unjustified legal action have cause Prestige to incur over \$1,450,000 in expert's reports, expert consulting, and odor mitigation equipment along with \$580,000 in attorney's fees;
- vi. Prestige will continue to incur losses due to lost profits for restricted operating hours, downtime, lost production, wages, and possibly, moving expenses

110. The Village has presented no objective measurable or scientific data to substantiate or support the claim that Prestige's use constitutes a nuisance. Due to the fact that the Village has no objective facts or data that establish that Prestige's business is a nuisance as defined by law, Prestige has a high likelihood of prevailing on the merits.

111. Prestige's Use of the Facility does not violate Village Code Section 11.205 (formerly Section 11.3401: Nuisances; Section 14.604: Land Use Tables; and Section 14.2104: Bulk Regulations.

112. Prestige's Use at the Facility falls under the definition of 'Manufacturing, Light' of Section 14.2104: Bulk Regulations as stated by the Village Manager in February 2018, instead of 'Manufacturing, Heavy' the Village claimed on March 1, 2021, and thereafter.

113. Prestige's Use is a permitted use at the Facility and Prestige does not need to apply for zoning relief or for a conditional use permit for 'Manufacturing, Heavy' use to operate at the Facility. Prestige is not required to request further zoning relief.

114. Prestige is entitled to operate its production equipment and machinery during daytime hours and not only during nighttime hours and there should be no limitations or restrictions on Prestige's operation during daytime business hours.

115. The damages that Prestige has suffered from the Village actions are without adequate remedy at law.

WHEREFORE, Plaintiff, Prestige Feed Products, LLC, requests the following relief:

- A. A declaratory judgment that Prestige's use of the Facility does not constitute a nuisance;
- B. A declaratory judgment that Prestige's use of the Facility does not emanate odors in excess of the odor threshold level determined by Illinois law;
- C. A declaratory judgment that Prestige's use of the Facility does not violate Village Code Section 11.3401, Section 11.205 (formerly Section: Nuisances; Section 14.604: Land Use Tables; and Section 14.2104: Bulk Regulations and in Section 14.2401: 'Manufacturing, Light';
- D. A declaratory judgment that Prestige's use of the Facility is a permitted use at the Village's I-1 zoning district;
- E. An award of damages against the Village of Mount Prospect for any and all financial losses suffered as a result of its non-meritorious claims that the Prestige business is a nuisance and that Prestige is emitting odors above and beyond the standards established by law; and
- F. All further relief in favor of Prestige that the Court deems just.

COUNT II
INJUNCTIVE RELIEF
(Against all Defendants)

1 – 115. Prestige adopts and realleges the allegations asserted in Paragraphs 1 through 115 above as if fully set forth herein as Paragraphs 1 through 115 of this Count II.

116. The actions of the Village and its officials towards Prestige are intentional, substantial, unjustifiable, and unreasonable.

117. The damages that Prestige has suffered from the actions of the Village and its officials are without adequate remedy at law.

WHEREFORE, Plaintiff, Prestige Feed Products, LLC, requests the following relief:

- A. A temporary restraining order against the Village of Mount Prospect and all its officials from issuing a “cease and desist order,” from revoking its business license and from revoking its occupancy permit;
- B. A preliminary injunction enjoining the Village of Mount Prospect and all its officials from issuing a “cease and desist order,” from revoking its business license and from revoking its occupancy permit;
- C. A permanent injunction against the Village of Mount Prospect and all its officials from issuing a “cease and desist order,” from revoking its business license and from revoking its occupancy permit;
- D. An award of damages against the Village of Mount Prospect for any and all financial losses suffered as a result of its non-meritorious claims that the Prestige business is a nuisance and that Prestige is emitting odors above and beyond lawful standards established by law; and
- E. All further relief in favor of Prestige that the Court deems just.

COUNT III
42 U.S.C. § 1983 – VIOLATION OF DUE PROCESS UNDER THE FOURTEENTH
AMENDMENT AND ARTICLE ONE SECTION TWO
OF THE ILLINOIS CONSTITUTION
(Against Hoefert, Cassidy, Schroeder)

1 –117.Prestige adopts and realleges the allegations asserted in Paragraphs 1 through 117 above as if fully set forth herein as Paragraphs 1 through 117 of this Count III.

118. Prestige has a property interest in its business license and in the peaceful operation of its business, including the ability to operate without being the target arbitrary enforcement of

overly broad and vague regulations, subjective standards of measurement, and lack of consistency in standards that fail to provide notice of what conduct is permitted under the Village Code.

119. Section 14.2104(G)(6) of the Village Code lacks any objective standard setting a “odor threshold level.”

120. The definition of odor related “nuisance” in Village Code § 23.1403 (F) is arbitrary, vague, subjective, and not clear enough for Prestige or other citizens or property owners in the Village to know how it will operate to affect their rights when it is utilized.

121. As alleged in Paragraphs 1 through 108 and 118, and 120, between 2019 and the present, Defendants have used the vagueness, overly broad definitions, and lack of objective standards in Sections 14.2104(G)(6) and 23.1403(F) to arbitrarily harass and prosecute Prestige with violations of the Village Code for more than five years. Defendants have used the Village Code to repeatedly threaten Prestige’s business license and occupancy permit.

122. Defendants have demonstrated through words and conduct that they are not interested in Prestige’s compliance with the Village Code. Hoefert and Cassady have stated numerous times that they want Prestige shut down or driven from the Village of Mount Prospect. Defendants have made their intentions clear as evidenced by but not limited to the following statements:

- a. At a Village Board meeting on March 5, 2025, Hoefert stated that the village is doing what it needs to shut down Prestige;
- b. Cassady stated, as reported in the Daily Herald, on March 3, 2025 that the Village seeks an “airborne chemical assessment” not to determine whether Prestige is in compliance with the Village Code, but to “assist the village to prevail in litigation” against Prestige;

- c. Hoefert stated, as reported in Journal & Topics on April 19, 2023, “If I were them (Prestige), I would go”;
- d. Regarding the potential of Prestige to move out of the Village of Mount Prospect, as reported in the Daily Herald on December 2, 2024, Hoefert said, “This is a win-win. . . They will cease operations here, and the stench that has been produced by their facility will cease”

123. Between March 2019 and July 2024, Defendants failed to perform a single objective study of the odor levels around Prestige’s facilities, forcing Prestige to seek remedies to satisfy nebulous, ever-changing, and subjective standards of the numerous officials or members of the public¹ happens to be at or near Prestige’s facility at any given time. The arbitrary nature of enforcement is demonstrated by Schroeder’s self-created 1-10 scale of odor detection using his own nose for measurement that forms the basis of Village code enforcement against Prestige.

124. Defendants’ repeated approval of Prestige’s odor mitigation measures and the results thereof before reversing course based only on statements from neighbors (including complaints made when Prestige was not operating and some Complaints which Village officials acknowledged were unfounded), and Defendants’ own arguments in filings with this court that the enforcement of Sections 14.2104(G)(6) and 23.1403(F) against Prestige is based upon an entirely subjective standard and is arbitrary in nature.

125. Because of the vague and overbroad language of Section 14.2104(G)(6) and 23.1403(F), including their lack of any objective standard as to the “odor threshold,” Prestige is

¹ Defendants have utilized comments from the public as evidence of Prestige exceeding the “odor threshold.” Measuring the numbers of complaints and refusing to measure odors.

denied warning or fair notice of what is permitted by the Village Code. Prestige's confusion is furthered by the arbitrary enforcement and ever-changing standards of Defendants.

126. The actions described above show a pattern of conduct by Defendants under the color of law to destroy the livelihood of Prestige and its employees – Defendants have no rational basis for their conduct and use the vague and overly broad language of the Village Code to further their agenda of harassment and arbitrary prosecution against Prestige.

WHEREFORE, Plaintiff, Prestige Feed Products, LLC, requests the following relief:

- A. An order of judgment entered in Prestige's favor;
- B. An award of compensatory damages from each named defendant in an amount to be determined at trial for matters alleged in this Count;
- C. An award of punitive damages from each named Defendant to the extent provided for by law, and in an amount to be determined at trial;
- D. An award of damages against the Village of Mount Prospect for any and all financial losses suffered as a result of its non-meritorious claim that the Prestige business is a nuisance or that Prestige is emitting odors above and beyond lawful standards established by law;
- E. An award of costs of suit incurred by Prestige;
- F. An award of reasonable attorney's fees; and
- G. All further relief in favor of Prestige that the Court deems just.

COUNT IV
42 U.S.C. § 1983 – DENIAL OF EQUAL PROTECTION UNDER THE
FOURTEENTH AMENDMENT ARTICLE ONE SECTION
TWO OF THE ILLINOIS CONSTITUTION
– “CLASS OF ONE”
(Against Hoefert, Cassady, Schroeder)

1-126. Prestige adopts and realleges the allegations asserted in Paragraphs 1 through 126 as if fully set forth herein as Paragraphs 1 through 126 of this Count IV.

127. The Village, through its agents Cassady, Hoefert and Schroeder intentionally singled-out Prestige for unequal treatment including the arbitrary and unequal enforcement of Sections 14.604 and 14.2104(G)(6) of the Village Code in order to shut down Prestige or drive it from the Village of Mount Prospect.

128. Defendants have treated Prestige differently than the following similarly-situated businesses. For example:

- a. The Village has not prosecuted Parenti & Raffaelli Ltd., for odors caused by their cabinet-manufacturing business that emits odors beyond the boundary lines at their location at 1401 Feehanville Dr., Mt. Prospect, Illinois 60056 – the same industrial park as Prestige’s Facility.
- b. The Village has not prosecuted Big Fish’s Icehouse, LLC, for odors caused by their kitchen and restaurant that emits odors beyond the boundary lines at their location at 1501 Feehanville, Mount Prospect, Illinois 60056 – the same industrial park as Prestige’s facility.
- c. The Village has not prosecuted the OnTrac, a trucking service company, for odors caused by their transportation business that emits odors and noise beyond the boundary lines at their location at 350 Wolf Rd., Mt. Prospect, IL 60056, in the same I-1 district as Prestige’s Facility.

129. Defendants have no rational basis for their unequal treatment of Prestige. Despite Prestige’s numerous costly attempts to satisfy the Village, Defendants continue to target Prestige for harassment, including more intense monitoring than other businesses and harassing inspections by the Building, Police, and Fire Departments.

130. Defendants have also encouraged Prestige to engage in costly improvements and after Prestige implements these improvements, “moves the goalposts” to demand further improvements from Prestige under the threat of being shut down or run out of Mount Prospect.

131. Despite lacking contrary scientific evidence, Defendants have ignored three separate scientific studies (conducted in 2021, 2022, and 2024) of the odorous material levels – all of these studies reflected that Prestige was not a nuisance to the surrounding neighborhood and that the odors were far below the State of Illinois thresholds – the only objective thresholds available.

132. The tactics Defendants used against Prestige are not used against any other businesses in the Village of Mount Prospect – They were used selectively and maliciously against Prestige in an attempt to shut Prestige down or force it out of the Village of Mount Prospect.

133. Defendant’s statements to the public and the press, as alleged in Paragraphs 64(a-d), demonstrate that their different treatment of Prestige is intentional and, because they refuse to accept any objective standard or scientific evidence, is without rational basis.

WHEREFORE, Plaintiff, Prestige Feed Products, LLC, requests the following relief:

- A. An order of judgment entered in Prestige’s favor
- B. An award of compensatory damages from each named defendant in an amount to be determined at trial for matters alleged in this Count
- C. An award of punitive damages from each named Defendant to the extent provided for by law, and in an amount to be determined at trial
- D. An award of damages against the Village of Mount Prospect for any and all financial losses suffered as a result of its non-meritorious claim that the Prestige business is a nuisance or that Prestige is emitting odors above and beyond lawful standards established by law;
- E. An award of costs of suit incurred by Prestige;
- F. An award of reasonable attorney’s fees; and
- G. All further relief in favor of Prestige that the Court deems just.

COUNT V
42 U.S.C. § 1983 – *MONELL*
(Against Village of Mount Prospect)

1-133. Prestige adopts and realleges the allegations asserted in paragraphs 1 through 133 as if fully set forth herein as Paragraphs 1 through 133 of this Count VI.

134. At all times relevant to the Complaint, Hoefert, Cassady, and Schroeder, were persons with final policymaking authority within the Village of Mount Prospect and were acting under the color of law.

135. At all times relevant to the Complaint, Hoefert has been the Mayor² of the Village of Mount Prospect and pursuant to Village Code Section 1.103 “shall be the chief executive officer of the village” and exercises “supervision over all the executive officers of the village and over all of the employees of the village” and “shall function as the chairman of the board of local improvements.”

136. At all times relevant to the Complaint, Cassady has been the Village Manager of Mount Prospect and pursuant to Village Code Section 4.103 “shall be the administrative head of the village government and shall be responsible for the efficient administration of all departments,” including exercising “oversight of the enforcement of the village’s laws and regulations,” and “control of all departments and divisions of the village.” Pursuant to Section 11.304(A), “any license . . . may be suspended or revoked by the village manager.”

137. At all times relevant, to the Complaint, Schroeder has been Director of Building & Inspection Services for the Village of Mount Prospect.

² Pursuant to Mount Prospect Village Code Section 1.103(C)(1), “The term “village president” as used in any ordinance, resolution, motion or other action of the corporate authorities shall be construed as meaning the mayor; and the term “mayor” wherever so used shall be construed to mean the village president.”

138. At all times relevant to the Complaint, Cassady, Schroeder, and Hoefert have acted under the color of law when they engaged in a policy and practice threatening Prestige with arbitrary and targeted enforcement of provisions of the Municipal Code of Mount Prospect.

139. By singling-out Prestige for arbitrary and vexatious enforcement and threats of revocation of its business license, Cassady, Schroeder and Hoefert, agents of the Village of Mount Prospect, violated Prestige's Fourteenth Amendment rights to substantive due process and equal protection under the law.

140. As a direct and proximate result of the decisions and actions of Cassady, Schroeder and Hoefert, agents of the Village of Mount Prospect acting under the color of law, Prestige has suffered and continues to suffer, damages, including those set forth in ¶96.

WHEREFORE, Plaintiff, Prestige Feed Products, LLC, requests the following relief:

- A. An order of judgment entered in Prestige's favor
- B. An award of compensatory damages from each named defendant in an amount to be determined at trial for matters alleged in this Count
- C. An award of punitive damages from each named Defendant to the extent provided for by law, and in an amount to be determined at trial
- D. An award of damages against the Village of Mount Prospect for any and all financial losses suffered as a result of its non-meritorious claim that the Prestige business is a nuisance or that Prestige is emitting odors above and beyond lawful standards established by law; and
- E. An award of costs of suit incurred by Prestige;
- F. An award of reasonable attorney's fees; and
- G. All further relief in favor of Prestige that the Court deems just.

CONCLUSION

Plaintiff, Prestige Feed Products, LLC, demands judgment in its favor and against the Defendants, the Village of Mount Prospect, the Village Manager Michael J. Cassady, the, the Village Director of Building & Inspection Services, William Schroeder, and the Village Mayor, Paul Hoefert, in the amount in excess of \$50,000 plus attorney's fees and costs.

Respectfully submitted,

PRESTIGE FEED PRODUCTS, LLC,

/s/ Riccardo A. DiMonte

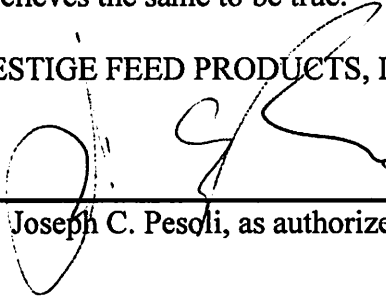
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VERIFICATION

Under penalties as provided by law pursuant to §1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated upon information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

PRESTIGE FEED PRODUCTS, LLC


By: Joseph C. Pesoli, as authorized agent

Dated: 3-14-25

**IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION**

PRESTIGE FEED PRODUCTS, LLC, an Illinois
limited liability company,

Plaintiff,

v.

VILLAGE OF MOUNT PROSPECT, an Illinois
municipal corporation; MICHAEL J. CASSADY
in his capacity as Village Manager; WILLIAM
SCHROEDER in his capacity as Village Director of
Building & Inspection Services; and PAUL Wm.
HOEFERT in his capacity as the Village Mayor,
Defendants,

Case No. 2023 CH 05147

Judge Thomas M. Donnelly (Law)
Cal. W, Courtroom 1912

VILLAGE OF MOUNT PROSPECT, an Illinois
municipal corporation,

Defendant/Counter-Plaintiff,

v.

PRESTIGE FEED PRODUCTS, LLC, an Illinois
limited liability company,

Plaintiff/Counter-Defendant,

CITY OF DES PLAINES, an Illinois municipal
corporation,

Intervening Petitioner.

**EXHIBIT LIST TO
AMENDED COMPLAINT**

Exhibit A Tolling Agreement dated March 30, 2021

Exhibit B Notice of Termination Letter dated April 10, 2023

Exhibit C Village of Mount Prospect Notice of Imminent Legal Action letter dated March 1, 2021

Exhibit D Village of Mount Prospect Cease and Desist letter dated April 29, 2021

Exhibit E Mostardi Platt Odor Investigation Report dated June 2, 2021 (without appendices)

Exhibit F Mostardi Platt Odor Investigation Report dated October 31, 2022 (without appendices)

TOLLING AGREEMENT

jeff
This Tolling Agreement (the "Agreement") is made this 30th day of March, 2021, by and between: 1.) Prestige ^{Feed} ~~Food~~ Products, LLC ("Prestige"), 2.) Joseph Pesoli ("Pesoli") and collectively with Prestige, the "Prestige Parties", and 3.) the Village of Mount Prospect (the "Village"), 4.) Michael J. Cassady, and 5.) William Cooney (collectively with the Village, the "Village Parties") (all parties referred to collectively as the "Parties").

RECITALS

A. The Village has enacted its Zoning Ordinance (Ord. 4590, 9-21-1993) (the "Ordinance") as Chapter 14 of Village Code of Mount Prospect, Illinois.

B. Prestige manufactures at 431 Lakeview Court, Suite A, Mount Prospect, Illinois 60056 (the "Property") a soy and cheese-based feed products for livestock ("Prestige's Use").

C. The Village Parties authorized Prestige's Use at the Property on February 2018.

D. On March 1, 2021, the Village Parties sent to Prestige a Notice of Imminent Legal Action (the "Village's Notice") alleging that Prestige's Use violates (i) the Ordinance and (ii) a Temporary Permitted Use Certificate that the Village states that it has issued to Prestige and that permits Prestige's Use only through August 2021 (the "Certificate").

E. As a result of the Village's Notice, a dispute has arisen between the Prestige Parties and the Village Parties, which the Prestige Parties believe have caused violations of their legal, contractual, and constitutional rights, and other claims against the Village Parties.

F. The Parties wish to attempt to resolve this dispute amicably prior to proceeding to litigation over these issues.

G. The Village's Notice may constitute an administrative act by the Village Manager which may be reviewed judicially by filing an action in the Circuit Court within 35 days pursuant

to 735 ILCS 5/3-103. The Village's Notice may also constitute zoning act which may be reviewed judicially by filing an action in the Circuit Court within 90 days pursuant to 5 ILCS 5/11-13-25.

H. Accordingly, in an effort to delay the filing of a lawsuit and the costs of litigation, the Parties desire to enter into this Agreement to toll any potential statute of limitations deadlines that may expire while the Parties attempt to resolve their dispute.

TERMS

THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, including the mutual covenants and promises expressed herein, incorporating the above recitals herein by reference, the Parties covenant and agree as follows:

1. Incorporation of Recitals. The above Recitals are restated and incorporated in full herein.
2. Time Period. For the period of **March 1, 2021**, through **June 4, 2021**, ("Tolling Period"), the Prestige Parties and the Village Parties agree that all applicable statute of limitations, including those under 735 ILCS 5/3-103 and 5 ILCS 5/11-13-25, will be tolled as to any and all claims that the Prestige Parties may have against the Village Parties, whether such claim is identified to the Village Parties contemporaneously with this Agreement or not. During the Tolling Period, the Prestige Parties shall not file a lawsuit against the Village Parties regarding the matters contained in the recitals or any other related matters. The intent of the Tolling Period is for the Parties to attempt to resolve the pending dispute using informal means and without litigation.
3. Termination prior to expiration of Tolling Period. During the Tolling Period, if any Party determines that another Party is not attempting to resolve the dispute in good faith, any Party may terminate the Agreement upon **30 days** written notice to counsel for all Parties. Notices to the Prestige Parties shall be sent to the attention of: **DiMonte & Lizak, LLC, Attn: Riccardo A. DiMonte, 216 W. Higgins Rd., Park Ridge, IL 60068**. Notices to the Village Parties shall be

sent to the attention of: **The Village of Mount Prospect, Attn: Lance Malina, Village Attorney, Klein, Thorpe & Jenkins, 20 N. Wacker Drive, Suite 1660, Chicago, IL 60606.**

4. Timing for Filing of Lawsuit. In the event that any Party terminates the Agreement or the Tolling Period expires without a settlement agreement being reached by the Parties, the Prestige Parties shall have **30 days** from the date of notice of the termination or from the expiration of the Tolling Period. In other words, any statute(s) of limitation that may apply to the claims asserted by the Prestige Parties against the Village Parties shall be tolled from the date of this Agreement plus an additional **30 days** after the Agreement is terminated by notice or the expiration of the Tolling Period.

5. Entire Agreement. This Agreement sets forth the entire agreement and understanding of the Parties relating to the subject matter contained herein and merges all prior discussions, agreements, contracts or other instruments between them and no party shall be bound by any subsequent instrument, agreement or representation pertaining to the subject matter contained herein unless expressed in writing and signed by the party to be bound thereby.

6. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall have the same force and effect as the other, as one and the same instrument. Signatures may be delivered by facsimile transmission or via email in PDF format.

7. Governing Law and Venue. This Agreement shall be governed by laws of the State of Illinois. The Circuit Court of Cook County, Illinois shall be the proper venue for any action regarding the Agreement.

8. Binding Agreement. Each signatory hereto warrants that he/she/it has read and understands this Agreement, that he/she/it intends to be legally bound by the same, that they have entered into this Agreement freely and voluntarily, and has the full right, power, authority and capacity to enter into and execute the same. The Parties hereto further warrant that this Agreement is entered into with no party relying upon any statement or representation made by any other party not embodied in this Agreement.

9. Representation. Each party to this Agreement is being represented by his/her/its own attorney and this Agreement represents the collaborative drafting of all Parties.

10. Compliance. For purposes of any deadline contained herein, compliance shall be measured by using the date of the postmark using United States mail, first class, or any courier service.

11. Integration Clause. This Agreement supersedes and controls over all prior agreements, understandings and discussions whatsoever. There are no other documents that supplement this Agreement or in any way constitute a part of this Agreement.

IN WITNESS WHEREOF, this Agreement has been read and signed by each of the Parties below.

The Prestige Parties

JP
Feed
Prestige Feed Products, LLC
By: Cereal Byproducts Company,
as Manager

By: Joseph C. Pesoli
Its: Vice President

Joseph Pesoli

The Village Parties

Village of Mount Prospect

By: _____
Name: _____
Its: Authorized Agent

34 Michael J. Cassady
Michael J. Cassady,
Village Manager

William J. Cooney
William Cooney,
Director of Community Development

KTJ

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April 10, 2023

Via FedEx

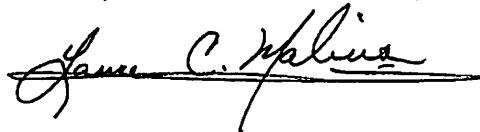
Robbins DiMonte, Ltd.
Attn: Riccardo DiMonte
216 W. Higgins Rd.
Park Ridge, IL 60068

RE: Notice of Termination of Tolling Agreement Between Prestige Feed Products, LLC, and the Village of Mount Prospect, Illinois (March 31, 2023-December 31, 2023)

Dear Mr. DiMonte:

Please be advised that the Village of Mount Prospect HEREBY exercises its right, under Section 3, to terminate the above referenced tolling agreement.

Very truly yours,
KLEIN, THORPE & JENKINS, LTD.



Lance C. Malina, Village Attorney

Cc: Anastas Shkurti AShkurti@robbinsdimonte.com
Michael Cassady mcassady@mountprospect.org
Bill Cooney bcooney@mountprospect.org
William Schroeder wschroeder@mountprospect.org

Michael J. Cassady
Village Manager



Phone: 847/818-5300
Fax: 847/392-6022
mcassady@mountprospect.org

Village of Mount Prospect

OFFICE OF THE VILLAGE MANAGER
50 South Emerson Mount Prospect, Illinois 60056
www.mountprospect.org

March 1, 2021

Prestige Feed Products, LLC
Attn: Mr. Joe Pesoli
431 Lakeview Court, Suite # A
Mount Prospect, IL 60056

RE: Notice of Imminent Legal Action

Dear Mr. Pesoli,

This letter shall constitute notice that your business, Prestige Feed Products, LLC ("Prestige"), continues to operate in violation of the Village of Mount Prospect Village Code. Prestige has been previously informed of the violations, yet continues to violate Village Code provisions. While we understand that Prestige has previously ceased operations and invested funds in equipment to operate legally in the Village, those efforts, unfortunately have not succeeded.

As you know, your business is located in the Kensington Business Center. Under Chapter 14 Zoning, Article VI Zoning Districts, Section 14.602 Zoning Map, this area is designated as being within an L-1 District ("Limited Industrial District)." In section 14.604, the Land Use Tables set out the permitted or conditional uses for each zoning district. According to the Village's Land Use Tables, an L-1 "Limited Industrial District" allows for "Manufacturing, Light" as a permitted use. However, an I-1 "Limited Industrial District" allows for "Manufacturing, Heavy" only as a conditional use. The definitions of "Manufacturing, Light" and "Manufacturing, Heavy" are set out in Article XXIV: Definitions.

MANUFACTURING, LIGHT: The assembly, fabrication or processing of goods and materials using processes that do not create noise, smoke, fumes, odors, glare or health or safety hazards outside of the building or lot where such assembly, fabrication, or processing takes place, where such processes are housed entirely within a building. Light manufacturing generally includes processing and fabrication of finished products predominantly from previously prepared materials and includes processes that do not require extensive floor areas or land areas. "Light manufacturing" shall not include any use that is otherwise listed specifically in a zoning district as a permitted or conditional use.

MANUFACTURING, HEAVY: The assembly, fabrication or processing of goods and materials using processes that ordinarily have greater than minimal impacts on the environment, or that ordinarily have significant impacts on the use and enjoyment of adjacent property in terms of noise, smoke, fumes, visual impact, odors, glare, or health and safety hazards, or that otherwise do not constitute "light manufacturing". Heavy manufacturing generally includes processing and fabrication of large or bulky products made from extracted or raw materials and processes that require extensive floor areas or land area for the fabrication and/or incidental storage of the products. "Heavy manufacturing" shall not include any use that is otherwise listed specifically in a zoning district as a permitted or conditional use.

As you also know, the "Manufacturing, Heavy" definition includes processing of goods that have significant impacts on the use and enjoyment of adjacent property in terms of fumes and odors. Since reopening, first for testing and then under a temporary permitted use certificate, the Village has continued to receive numerous and regular complaints from nearby residential and commercial areas of odors and fumes emitted from your business. Staff has monitored the situation and has corroborated a level of odor that would be disruptive to the normal enjoyment of the adjacent neighborhoods as well as to the operation of adjacent commercial uses.

The ongoing odors created by Prestige continue to bring the use within the definition of "Manufacturing, Heavy." Prestige has not been issued a conditional use permit for this use and, therefore, is limited to "Manufacturing, Light" uses. Thus, the business remains in violation of the Village Code.

Additionally, Mount Prospect Village Code, Chapter 14 Zoning, I-1 Limited Industrial District, Section 2104 Bulk Regulations, Subsection (G) provides that:

The release of odorous matter from any industrial district across residence or business district boundary lines shall be so controlled that, at ground level or at habitable elevations, the concentration shall not exceed the odor threshold level. Further, the release of odorous matter across lot lines shall not become a nuisance or source of discomfort to neighboring uses.

Section 11.3401 Nuisances states "No business, occupation or activity, licensed under this code or not, shall be conducted or operated so as to constitute a nuisance or so as to amount to a nuisance in fact."

Once again, complaints from nearby residential areas and adjacent commercial properties, along with the Village staff's inspections, evidence violation of these Village ordinances by Prestige. The continued operation of your business is an ongoing violation of the Village Codes provisions cited above.

While the Village, through William Cooney, its Director of Community Development, allowed Prestige to resume general operations under a temporary permitted use certificate that would last to mid-August 2021, in light of the performance since reopening, that permit is being revoked, effective upon receipt of this letter/notice. Prestige must cease operation until the odor concern is actually and effectively resolved, or until it is issued a conditional use permit by the Village Board. You are also notified that without further improvements mitigating the odor issues, Village staff would oppose the issuance of a conditional use permit. If Prestige continues to operate without regard to its violation of Village Code provisions, the Village will be forced to take immediate legal action to achieve compliance with the Village Code and protect neighboring property owners.

Sincerely,



Michael J. Cassidy
Village Manager
Village of Mount Prospect

KTJ

KLEIN, THORPE & JENKINS, LTD.
Attorneys at Law

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www.ktjlaw.com

April 29, 2021

Via Email Transmission

Mr. Anastas Shkurti, Esq.
DiMonte & Lizak, L.L.C.
216 West Higgins Road
Park Ridge, Illinois 60068
AShkurti@dimontelaw.com

Re: *Prestige Feed Products, L.L.C.*

Dear Mr. Shkurti:

The Village of Mount Prospect ("Village") very recently has received complaints about noxious odors emitted by Prestige Feed Products, L.L.C. ("Prestige") at its 431 Lakeview Court facility (the "Facility"). Over the last two evenings, persons living in the Fairview Gardens neighborhood have complained to the Village about a strong unpleasant odor coming from the Facility. One neighborhood resident contacted both Cook County and the newly elected Village President to voice complaints.

On March 30, 2021, Prestige and the Village executed a Tolling Agreement (the "Agreement") to give the parties time to resolve the odor problem caused by Facility operations. Since entering the Agreement, Prestige has engaged in limited overnight operations for business purposes and to complete needed testing so it can determine how to successfully abate the odor problem and comply with applicable Village Code provisions.

Due to the recent complaints regarding the noxious odors emitting from the Facility, the Village must require that Prestige cease and desist its operations entirely until further notice. Please contact me at your earliest convenience so we can discuss this matter further.

Very truly yours,

KLEIN, THOPRE AND JENKINS, LTD.

Lance C. Malina (by JAW)
Lance C. Malina

cc: Michael J. Cassady, Village Manager
William Cooney, Director of Community Development
William Schroeder, Director of Building & Inspection Services

Odor Investigation for Prestige Feed Products 431 Lakeview Court Mount Prospect, Illinois

Prepared For:

Prestige Feed Products, LLC
431 Lakeview Court,
Mount Prospect, Illinois 60056

Project No. M211119

June 2, 2021





Prepared at Direction of Legal Counsel – Attorney Client Privileged

Odor Investigation for Prestige
Feed Products, LLC
431 Lakeview Court
Mount Prospect, Illinois

Prepared For:
Prestige Feed Products, LLC

June 2, 2021

Prepared By:
Mostardi Platt

Project No. M211119

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APPENDIX GROUP 4: Byers Scientific & Manufacturing Waterless Vapor-Phase Systems for Odor Control

APPENDIX A: Manufacturer's Informative Handout

APPENDIX B: Screening Health Assessment of Byers' Waterless Vapor-Phase Odor Control Technology

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1. EXECUTIVE SUMMARY

Prestige Feed Products, LLC (“Prestige”) engaged Mostardi Platt (“MP”) to design and perform an Odor Investigation at its production facility operating at Suite A (the “Facility”) property located at 431 Lakeview Court, in Mount Prospect, Illinois (“Real Property”). The objective was to determine whether an odor nuisance from the Facility was present on the surrounding properties. MP devised a sampling plan to measure odor levels at the Facility before and after filtration through its odor control system and at several areas of high impact downwind of the Facility. A summary of the weather conditions in 5-minute increments and time of the testing (April 1, 2021, 12:00 PM to 4:00 PM) is shown in Appendix 1. During that time, Prestige operated the Facility as usual and MP and RK & Associates, Inc. (“RK”) or the “Lab”) collected Tedlar Bag samples for Olfactometer readings at 8 locations and conducted an ambient odor survey using a Scentometer at 21 locations: 15 of them were off-site and 6 on-site. The full Lab results are presented in Appendix Group 2. The Odor Investigation Report consists of analyzing and interpreting the Lab results and concludes that no objectionable odor nuisance from the Facility exists at the boundaries of the properties immediately adjacent to the Real Property.

The most common odor parameter determined by odor testing is odor concentration. Odor concentration is determined using instruments such as an Olfactometer or a Scentometer, and is expressed as a dilution factor. An objectionable odor nuisance exists on or adjacent to industrial premises when odor is detectable in the ambient air after it is diluted with 24 volumes of odor-free air as measured by the Scentometer. A detection reading of 24 or higher constitutes a nuisance on or adjacent to industrial premises. An objectionable odor nuisance exists on or adjacent to residential, recreational, institutional, retail sales, hotel, or educational premises when odor is detectable in the ambient air after it is diluted with 8 volumes of odor-free air as measured by the Scentometer. A detection reading of 8 or higher constitutes a nuisance on or adjacent to residential, recreational, institutional, retail sales, hotel, or educational premises. See, Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter L: Air Quality Standards and Episodes, Part 245 Odors, Section 245.121 Objectionable Odor Nuisance Determination.

The Olfactometer results of all four Tedlar Bag samples collected at the boundaries of the neighboring real properties adjacent to the Facility had detection readings of 3 or lower. The Scentometer results at all 21 tested locations had detection readings of less than 2. Therefore, no objectionable odor nuisance from the Facility exists on the properties surrounding the Facility. As a result, the normal operation of the Facility does not have a significant impact on the use and enjoyment of neighboring real properties.

2. PROJECT SCOPE

The scope for the Odor Investigation Report (the “Report”) included the following steps:

1. Review areas of odor concern.
2. Obtain Tedlar bag samples from (i) four emissions points (two at the inlet duct to odor control device and two others at the exit of one of the filters of the odor control device); and (ii) four other neighborhood locations, including the commercial buildings to the North, East, and West of the Facility, and at the Facility’s southern property line.
3. Conduct an ambient odor survey using a Scentometer at 21 locations near the Facility at various distances on all four directions concentrating downwind.
4. Analyze and evaluate the Lab results.
5. Reach Conclusions and Recommendations.

3. DEFINITIONS

This is an alphabetical glossary of the terminology used in the Report related to odor determination.

- Dilution Factor – The ratio of the volume of the initial odor sample to the volume of the sample diluted with odor free air.
- Dilution Rate - The most common odor parameter determined by odor testing is odor concentration. Odor concentration is determined using an instrument called an olfactometer and is expressed as a dilution factor (dilution ratio). Odor concentration is reported as the Detection Threshold (DT) and Recognition Threshold (RT).
- ED50 – Effective dilutions at which 50% of the panelists can no longer detect the presence of an odor (odor threshold).
- NR – Not recognizable
- Odor Detection Threshold – The lowest concentration of a substance in a medium relating to the lowest physical intensity at which a stimulus is detected as determined by the best estimate criterion. The number of dilutions required before the odor is no longer detected.
- Odor Panel – individuals whose odor thresholds are being evaluated, or who are utilized to determine the odor threshold of the substance of interest.
- Odor Recognition Threshold – The lowest concentration of a substance in a medium relating to the lowest physical intensity at which a stimulus is recognized as determined by the best estimate criterion. The number of dilutions at which the odor is recognizable.

- Odor Units – One odor unit is a number where a panel is presented odors in decreasing dilution until detection. This is also referred to as the detection threshold.
- Olfactometer – An instrument for measuring the intensity of an odor or the sensitivity of someone to an odor. They are used in conjunction with human subjects in laboratory settings to measure different dilutions of odor.
- Olfactometer Port – An exit point where air is vented to allow for sniffing observations. The Olfactometer will randomly place the diluted odor in different ports to allow for fast switching of odors.
- Peristaltic Pump - A peristaltic pump, also commonly known as a roller pump, is a type of positive displacement pump used for pumping a variety of fluids such as air.
- Scentometer - The device is used to determine the order of magnitude concentration of an odorant in the air. It is essentially a rectangular, clear plastic box containing two chambers of activated carbon, two nasal ports for sniffing two 1/2" diameter air inlets (one for each activated carbon bed), and six odorous-air inlets (1/32", 1/16", 1/8", 3/16", 1/4" and 1/2" in diameter). The odorous inlets are directly connected with a mixing chamber and the nasal outlets. Air is drawn through the two beds of activated carbon (to make it odor free) and then mixed with the contaminated air so as to produce a threshold concentration of the offending odor. The odorous-air inlet hole used to produce the dilution indicates the approximate concentration of the field odor.
- Tedlar Bags – Gas sampling bags are whole air sampling devices useful for sampling part-per-billion (ppb) to part-per million (ppm) levels of volatile organic compounds (VOCs) and permanent gases. Sampling bags can be a cost-effective alternative to canisters and solvent/thermal desorption tubes and are appropriate for many applications, including industrial hygiene, landfill/biogas, ambient air, indoor air, and stationary source testing.
- Wind Direction – The direction (N, E, S, W, etc.) from which the wind originates. For example, a north wind blows from north to south.
- Wind Speed – The rate at which air is moving in a particular area.

4. FACILITY LOCATION AND DESCRIPTION

The Real Property is within I-1 zoning district. The real properties to the South are zoned R-1, the real property to the East is zoned B-1, and the real properties to the North and to the West are zoned I-1. The Facility produces feed ingredients. The Facility's equipment dehydrates raw material (mainly feed grade cheese) to produce an animal feed ingredient. The resulting air from the dehydration process flows through exhaust pipes onto the Facility's roof and through an odor filtration and reduction system (the "Odor Control System"). The air that comes out of the dryer and cooler cyclones located outside the Facility's building also goes through the Odor Control System.

5. CURRENT ODOR CONTROL SYSTEM

Note: The information in this Section 5 has been specifically provided by Prestige. MP has not been and is not involved in the design, installation, and operation of the Odor Control System that Prestige has currently installed at the Facility.

The Odor Control System that Prestige has currently installed at the Facility is a two-step process. 100% of the air from the Facility's equipment is put through (1) an ANUE flexible re-inforced geomembrane carbon filter housing, and (2) a BYERS scientific vapor system to absorb the odor molecules. The system is designed to reduce odors by exhausting into the geomembrane the material that encloses the odors, deodorizing fugitive airborne odors, and before the exhaust filters through.

The ANUE's Engineered Odor Control System with the geomembrane carbon filter housing unit is installed on the Facility's roof. It has an elongated trapezoid shape to avoid any snow or ice buildup in the winter months. There are 12 filters on each side (2 rows of 6 filters each) and 6 more filters on the top panel, for a total of 30 filters. One vertical end is where duct work carrying the Facility's production air enters the filter housing box. The other end is enclosed by a solid stainless-steel plate. Appendix Group 3 contains further technical details regarding the ANUE geomembrane carbon filter housing unit. Sub-Appendix 3.A contains two handouts on the ANUE's Engineered Odor Control System, Sub-Appendix 3.B contains the schematics of the filter frame, and Sub-Appendix 3.C contains several pictures of the filter on the roof of the Facility.

After the air goes through the ANUE carbon filter housing unit, a PVC pipe system introduces vapor to the air to absorb the odor molecules. The shape of the vapor piping enclosure matches the design of the filter housing unit. The waterless vapor is generated using a Vapor-Phase Odor Control Machine with a Deodorizer solution (Ecosorb 607P) installed at ground level in the rear of the Facility. Appendix Group 4 contains further technical details regarding the Byers Scientific & Manufacturing Waterless Vapor-Phase Systems for Odor Control unit. Sub-Appendix 4.A contains Byer's July 2019 quote to Prestige and an informative handout; Sub-Appendix 4.B contains the Screening Health Assessment of Byers' Waterless Vapor Phase Odor Control Technology dated October 4, 2016 by CPF Associates, Inc.; and Sub-Appendix 4.C contains Safety Data Sheet for Ecosorb 607, dated September 1, 2016, by OMI Industries.

6. ODOR TESTING

The most common odor parameter determined by odor testing is odor concentration. Odor concentration is determined using instruments such as an Olfactometer or a Scentometer, and is expressed as a dilution factor.

The Illinois Administrative Code provides that an objectionable odor nuisance exists on or adjacent to industrial premises when odor is detectable in the ambient air after it is diluted with 24 volumes of odor-free air as measured by the Scentometer. The Code also provides that an objectionable odor nuisance exists on or adjacent to residential, recreational, institutional, retail sales, hotel, or educational premises when odor is detectable in the ambient air after it is diluted with 8 volumes of odor-free air as measured by the Scentometer.

6.1 Sampling Methods

Tedlar Bags. MP used Tedlar Bags to collect sample gas at 8 locations. The Tedlar Bags are filled using a peristaltic pump connected to a clear piece of tygon tubing that collects ambient air and pumps into the Tedlar Bag. The Tedlar Bags are designed to allow air flow in, but restrict air flow out, allowing gas to be stored for testing.

Scentometer. RKA used a Scentometer device at 21 locations to determine the order of magnitude concentration of an odorant in air. The sampling was conducted by Dr. Zhice Hu, Ph.D., an expert on the use and function of the Scentometer device.

6.2 Testing Locations

6.2.1 Tedlar Bag sampling

The Tedlar bag sampling was conducted at the ANUE carbon filter housing unit on the roof of the Facility and at four other locations immediately adjacent to the Real Property. Two inlet samples were collected through a hole in the metal piping prior to Facility air entering the ANUE carbon filter housing (“PF Inlet 1” and “PF Inlet 2”). Two outlet samples were collected by inserting the tygon tubing into the geomembrane and collecting air through one of the filters of the ANUE carbon filter housing before the interaction with the vapor piping (“PF Outlet 1” and “PF Outlet 2”).

The other four (4) locations in addition to the inlet and outlet samples are shown in Figure 1. (“PF 1”, “PF 2”, “PF 3”, and “PF 7”). These locations were determined based on voiced areas of concern and wind direction on the day of testing. The locations are the commercial buildings immediately to the North (1661 Feehanville Drive), immediately to the East (430 Lakeview), and immediately to West (1501 Feehanville Drive) of the Facility, and at the Facility’s southern property line.



Figure 1. Tedlar Bag Sampling Locations.

Figure 3 shows Scentometer reading location numbers 9 through 11 and 15: (9) 431 Lakeview Court (Near suite A); (10) 1661 Feehanville Drive. Mizkan America, Inc. (South); (10-1) Downwind from Location 10 (100ft); (10-2) Downwind from Location 10 (200ft); (10-3) Downwind from Location 10 (300ft); (10-4) Downwind from Location 10 (400ft); (10-5) Downwind from Location 10 (500ft); (10-6) Downwind from Location 10 (600ft); (11) 430 Lakeview (East Xfinity Parking lot); and (15) N Wolf & E Lowden.

Figure 4 shows Scentometer reading location numbers 12, 13, and 14: (12) 55 E. Euclid; (13) 1205 E. Central Road; and (14) E Kensington & N Wolf.

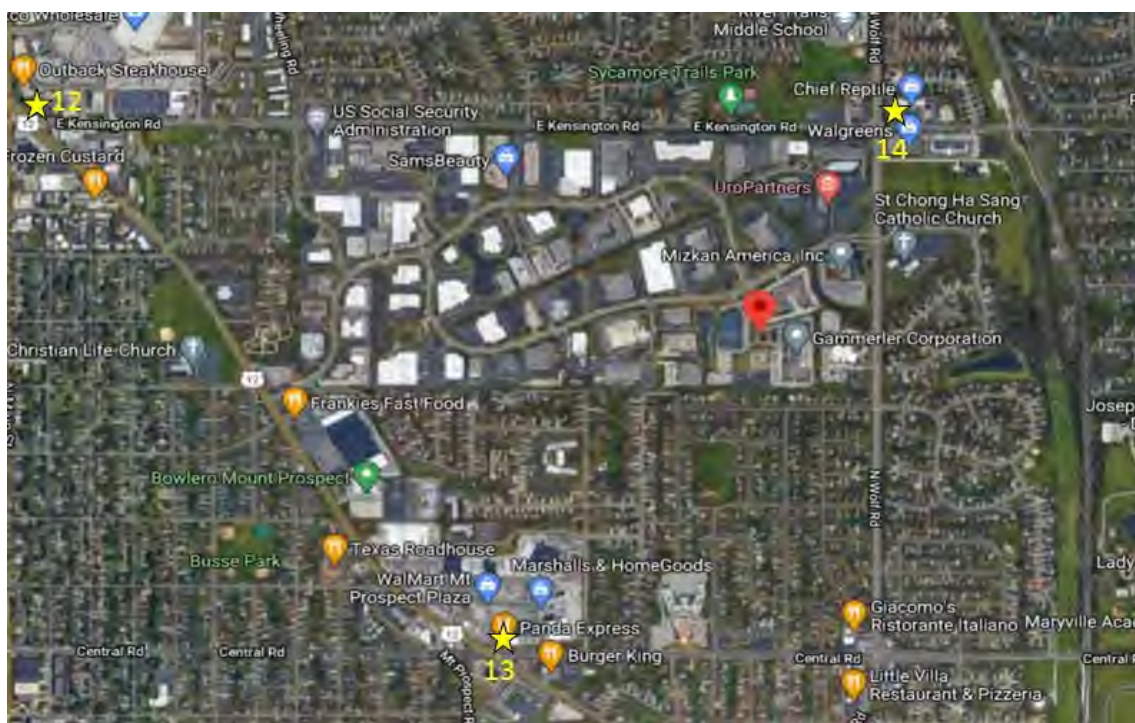


Figure 4. Scentometer Monitoring Locations (12, 13, 14).

6.3 Weather Data

Below is a summary of the weather conditions during the period of testing, 12:00 PM to 4:00 PM, on April 1, 2021. Actual 5-minute increment data is shown in [Appendix 1](#). This Weather Data was collected from weather underground. Wind was mainly originating from the north, so testing locations were adjusted to be south of the emission source to allow for the highest concentrations of odor. Wind altered from Northwest to Northeast, so sampling was done at locations southeast and southwest of the Facility.

Table 1. Weather Data During Testing.

	Temp (F)	Humidity (%)	Wind Speed (mph)	Wind Direction	Wind Gust (mph)
Average	37.2	38.7	9.4	N	-
Maximum	39.2	44.19	15	NE	17
Minimum	35.6	30	6	NW	-

7. OBSERVATIONS AND ANALYSIS

7.1 Laboratory Method Description

The laboratory methodology is described in the RKA's cover letter in [Appendix Group 2](#).

Tedlar Bag samples. RKA analyzed the collected Tedlar Bag samples using an Olfactometer to measure odor thresholds of odorous samples in accordance with ASTM Method E-679-04 (See [Sub-Appendix 2.C](#)). This method is performed using an odor panel to smell various concentrations of an odorous sample diluted in odor free air to determine the number of dilutions required before the odor is no longer detected and the number of dilutions at which odor is recognizable. Each Odor Panel consisted of 4 panelists. Their individual responses were recorded and statistically evaluated to determine the effective dilutions (ED50) at which 50% of the panelists can no longer detect the odor. The standard deviation was also calculated to represent the variance in responses for the entire group.

The Tedlar Bag odor samples were placed in a sequence from the lowest to highest odor level to prevent a stronger odor from affecting a subsequent analysis of a weaker odor. Each Tedlar Bag was connected to the Olfactometer using a clean piece of food grade Tygon tubing and a peristaltic pump was used to transfer the gaseous sample to the Olfactometer for analysis. Tedlar Bag odor samples were diluted with odor free air at various concentrations and transferred into six (6) different Olfactometer ports at which each member of the odor panel assessed. [Sub-Appendix 2.A](#) contains all laboratory data for the Tedlar Bags' Odor Thresholds ED50, Recognition Threshold, Odor Intensity, Odor Persistency, and Odor Panel Results.

Scentometer readings. RKA also conducted an ambient odor survey using a Scentometer conducted by Dr. Zhice Hu, Ph.D., an expert on the use and function of the Scentometer device. MP selected the monitoring locations for the odor survey. The Scentometer readings and the map of monitoring locations are included in Sub-Appendix 2.B

7.2 Observations

Table 2. Tedlar Bags Sample Results.

Sample No.	Sample Identification	Detection Threshold (ED ₅₀)(1)	Detection Threshold Std. Deviation	Recognition Threshold	Recognition Threshold Std. Deviation
1	PF1	3	±0	3	±0
2	PF3	3	±0	3	±0
3	PF7	3	±0	3	±0
4	PF2	3	±0	3	±0
5	PF Inlet 1	50	±7	50	±7
6	PF Outlet 1	64	±7	64	±7
7	PF Outlet 2	63	±13	50	±7
Detection Level		3	NA	3	NA

Table 3. Scentometer Readings by Location Number.

Location		Wind Direction	Wind Speed (mp)	Scentometer Reading	Time	Odor Description
1501 Feehanville Dr	1	N	0-5	0	13:27	
431 Lakeview (South)	2	N	0-5	< 2	12:57	Burnt Cheese
1504 E Lowden Ln	3	N	0-5	0	14:25	
630 Kylemore Dr	4	N	0-5	0	14:31	
1130 Wexford Ct	5	N	0-5	0	14:30	
630 Castlerea Ln	6	N	0-5	0	14:33	
650 Castlerea Ln	7	N	0-5	0	14:35	
630 Dursey Ln	8	N	0-5	0	14:37	
431 Lakeview Ct (Near suite A)	9	N	0-5	0	14:41	
1661 Feehanville Dr. Mizkan America, Inc (South)	10	N	0-5	< 2	12:46	Burnt Wood
Downwind from Location 10 (100ft)	10-1	N	0-5	0	12:48	
Downwind from Location 10 (200ft)	10-2	N	0-5	< 2	12:50	Burnt Cheese
Downwind from Location 10 (300ft)	10-3	N	0-5	< 2	12:51	Burnt Cheese
Downwind from Location 10 (400ft)	10-4	N	5-10	< 2	13:02	Burnt Cheese
Downwind from Location 10 (500ft)	10-5	N	5-10	< 2	13:01	Burnt Cheese
Downwind from Location 10 (600ft)	10-6	N	5-10	< 2	12:57	Burnt Cheese
430 Lakeview (East Xfinity Parking lot)	11	N	0-5	0	13:59	
55 E Euclid	12	N	5-10	0	14:53	
1205 E Central Rd	13	N	0-5	0	15:01	
E Kensington & N Wolf	14	N	0-5	< 2	14:45	Cooking
N Wolf & E Lowden	15	N	0-5	0	14:27	

7.3 Analysis

An objectionable odor nuisance exists on or adjacent to industrial premises when the detection reading is 24 or higher. An objectionable odor nuisance exists on or adjacent to residential, recreational, institutional, retail sales, hotel, or educational premises when the detection reading is 8 or higher.

The Olfactometer results and Tedlar Bag samples collected at the boundaries of the neighboring real properties adjacent to the Facility (PF1, PF2, PF3 and PF7) all had detection readings of 3 or lower (See Table 2). Moreover, the Scentometer results at all tested locations beyond the borders of the Real Property had detection readings of less than 2. (See Table 3).

Properties North of the Real Property. The real property immediately to the North of the Facility (1661 Feehanville Dr., or Mizkan America Inc., south building) is zoned I-1. The Olfactometer detection reading of 3 at the northern border of the Real Property is one-eighth of the Code's objectionable odor nuisance reading for industrial premises. At that same testing location, the Scentometer detection reading was less than 2. (See Table 3, Location 10). That is less than one-twelfth of the Code's objectionable odor nuisance for industrial premises.

Properties West of the Real Property. The real property immediately to the West of the Facility (1501 Feehanville Dr., or Mount Prospect Ice Arena) is also zoned I-1. The Olfactometer detection reading of 3 at the western border of the Real Property is one-eighth of the Code's objectionable odor nuisance reading for industrial premises. At that same testing location, the Scentometer detection reading was 0. (See Table 3, Location 1).

Properties South of the Real Property. The real properties immediately the South of the Facility are zoned R-1. The Olfactometer detection readings of 3 at the southern borderline of the Real Property is less than half of the Code's objectionable odor nuisance for residential premises. At that same testing location, the Scentometer detection readings was less than 2, and that is less than one-quarter of the Code's objectionable odor nuisance reading for residential premises. (See Table 3, Location 2). Another Scentometer detection reading further south-east of the Real Property was 0 (See Table 3, Location 3).

Properties East of the Real Property. The real property immediately to the East of the Facility is zoned B-1. The Olfactometer detection readings of 3 at the eastern borderline of the Real Property is less than half of the Code's objectionable odor nuisance for general business premises. At that same testing location, the Scentometer detection readings was 0 (See Table 3, Location 11).

Other. All Scentometer detection readings within the boundaries of the Real Estate were less than 2 or less than one-twelfth of the Code's objectionable odor nuisance for Industrial premises (See Table 3, Locations 10-1 through 10-6). Most other Scentometer detection readings farther out and away from the Real Property were 0 (See Table 3, Locations 3 through 9, 12, 13, and 15). Location 14 showed a Scentometer detection reading of less than 2. Some odors are still being emitted from the Facility even with the Odor Control System. The odors are mainly felt within the boundaries

of the Real Property, so they do not pose a concern for neighboring real properties. Prestige should also inquire whether the effectiveness of the Odor Control System can be further improved.

8. CONCLUSION

It is the professional opinion of this Report that no objectionable odor nuisance from the Facility exists on any of the neighboring real properties adjacent the Facility, and that the ~~operation~~ of the Facility does not have a significant impact on the use and enjoyment of neighboring real properties. This opinion is supported by the laboratory results which showed that (i) the Olfactometer results of all four Tedlar Bag samples collected at the boundaries of the neighboring real properties adjacent to the Facility had detection readings of 3 or lower, and that (ii) the Scentometer results at all tested locations had detection readings lower than 2.

9. APPENDICES

Odor Investigation for Prestige Feed Products 431 Lakeview Court Mount Prospect, Illinois

Prepared For:

Prestige Feed Products, LLC
431 Lakeview Court,
Mount Prospect, Illinois 60056

Project No. M226134

October 31, 2022





Prepared at Direction of Legal Counsel – Attorney Client Privileged

Odor Investigation for Prestige
Feed Products, LLC
431 Lakeview Court
Mount Prospect, Illinois

Prepared For:
Prestige Feed Products, LLC

October 31, 2022

Prepared By:
Mostardi Platt

Project No. M226134

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1. EXECUTIVE SUMMARY

Prestige Feed Products, LLC (“Prestige”) engaged Mostardi Platt (“MP” or “we”) to design and perform an Odor Investigation at its production facility operating at Suite A (the “Facility”) of the property located at 431 Lakeview Court, in Mount Prospect, Illinois (“Real Property”). This is the Second Report that we have prepared for Prestige and it is based on data collected on June 10, 2022. Our original First Report dated June 2, 2021, presented findings based on data from April 2, 2021.

Based on our analysis of the data collected at the Facility during our investigation and in preparation of both these reports, we conclude that Prestige’s operation of the feed producing machinery does not emanate objectionable odor nuisances anywhere near to the applicable threshold levels. As a result, this operation does not impact the use and the enjoyment of neighboring properties, and it does not constitute a nuisance.

Since our first report of June 14, 2021, Prestige has installed at the Facility additional odor control measures including newer air filtration and vapor units. As a result, key readings at the Real Property boundaries improved significantly. The Scentometer readings were **zero (0)** at 7 of the 8 tested fence-line locations. The only one noticeable Scentometer reading of **less than two (2)** was at the location directly by the Facility’s discharge bay in the North-East corner of the Real Property. These results demonstrate that the Facility’s operation does not reach or surpass the nuisance threshold Scentometer readings under applicable law (8 along the Real Property’s southern border and 24 everywhere else).

2. PROJECT SCOPE

The objective of this report is to determine whether an odor nuisance from the Facility is present at the source and the Real Property fence-line. We used the same sampling plan as with the First Report to measure odor levels at the Facility before and after filtration through its odor control system, and at various locations at the fenceline of the Facility. The scope for the Second Report included the following steps:

1. Review areas of odor concern,
2. Conduct an ambient odor survey using a Scentometer at eight (8) locations (M1 through M6) along the fence-line of the Real Property on all four directions as shown in Figure 1 in Section 7.2.1 below,
3. Obtain Tedlar bag samples and subject them to Olfactometer readings from (i) 4 emissions points (2 at the inlet duct to the odor control unit and 2 others at the exit filters of that unit), and from (ii) the same 8 fence-line locations as in item 2 above,
4. Analyze and evaluate the Lab results, and
5. Reach Conclusions and Recommendations.

On June 10, 2022, Prestige operated the Facility as usual and MP and RK & Associates, Inc., (“RKA” or the “Lab”) collected Tedlar Bag samples for Olfactometer readings at 12 locations and

conducted an ambient odor survey using a Scentometer at the same 8 fence-line locations. A summary of the weather conditions in 5-minute increments on the day and time of the testing (5:30 AM to 7:30 AM) is shown in Appendix 1. The full Lab results are presented in Appendix Group 2.

3. FACILITY LOCATION AND DESCRIPTION

The Real Property is within the Village's I-1 zoning district. The real properties to the South are zoned R-1, the real property to the East is zoned B-1, and the real properties to the North and to the West are zoned I-1. The Facility produces feed ingredients. The Facility's equipment dehydrates raw material (mainly feed grade cheese) to produce an animal feed ingredient. The resulting air from the dehydration process flows through exhaust pipes onto the Facility's roof and through an odor filtration and reduction system (the "Odor Control System"). The air that comes out of the dryer and cooler cyclones located outside the Facility's building also goes through the Odor Control System.

4. CURRENT ODOR CONTROL SYSTEM ¹

Prestige has currently installed on the Facility's roof an upgraded Anue Engineered Odor Control System with the geomembrane carbon filter housing unit. This system is a two-step process. One hundred percent (100%) of the air from the Facility's equipment is put through (1) an Anue flexible re-inforced geomembrane carbon filter housing, and then through (2) a Byers Scientific vapor system to absorb the odor molecules. The system is designed to reduce odors by exhausting into the geomembrane the material that encloses the odors and by deodorizing fugitive airborne odors before the exhaust filters through. After the air goes through the Anue carbon filter housing unit, a piping system introduces vapor to the air to absorb the odor molecules. The shape of the vapor piping enclosure matches the design of the filter housing unit.

In Spring 2022, Prestige implemented significant upgrades to both parts of this Odor Control System. First, Prestige upgraded the carbon filters used with the Anue-Geo filter unit. Initially, the system was using pouches of three (3) filters each 20mm thick, and it now uses new single 60mm thick filters. One thicker filter has proven to be sturdier than 3 smaller filters and allows for less sagging. To fit the newer and thicker 60mm filters, Prestige built a new custom aluminum filter cage to provide additional support to help combat rain, snow, wind, heat, etc. Also, while the original filters were placed directly into the filter pocket on the membrane housing, Prestige also installed Velcro to close the filter housing pockets, along with stainless steel clips and bars to the pocket housings inside and outside of the filter housing to further protect the filters from the elements and prevent sagging. Appendix Group 3 contains further technical details regarding the Anue geomembrane carbon filter housing unit replacements. Sub-Appendix 3.A contains two proposals for the metal support bracket enclosure (aluminum filter cage) and the replacement carbon filters. Sub-Appendix 3.B contains a photo of the filter on the roof of the Facility.

Secondly, Prestige upgraded the vapor deodorizer solution that it uses from Ecosorb 607P to Ecosorb 106. This new vapor solution was specifically engineered for solid waste odor applications and is a stronger and more potent mix of essential oils. To handle this new vapor, Prestige sent back its Vapor-Phase Odor Control Machine to Byers Scientific to replace all PVC

¹ The information in this Section 4 has been specifically provided by Prestige. MP was not involved in the design, installation, and operation of the Odor Control System.

FILED DATE: 3/14/2025 4:04 PM 2023CH05147

pipings with stainless steel piping to prevent degradation from the stronger vapor. Appendix Group 4 contains further technical details regarding the Byers Scientific & Manufacturing Waterless Vapor-Phase Systems for Odor Control unit. Also, Sub-Appendix 4.A contains Byer’s informative handout on the unit; and Sub-Appendix 4.B contains Safety Data Sheet for Ecosorb 607, dated 5/11/2022, by Ecosorb. The cost of purchasing and installing the Odor Control System at the Facility exceeds \$433,000.00.

5. ODOR TESTING

The most common odor parameter determined by odor testing is odor concentration. Odor concentration is determined using instruments such as a Scentometer or an Olfactometer and is expressed either as a dilution factor or as a detection threshold level. The applicable Scentometer dilution factors to determine whether the normal operation of the Facility constitutes a nuisance are found in Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter L: Air Quality Standards and Episodes, Part 245 Odors, Section 245.121 Objectionable Odor Nuisance Determination (“Section 245.121”).

Under Section 245.121(b), an objectionable odor nuisance exists on or adjacent to industrial premises when odor is detectable in the ambient air after it is diluted with 24 volumes of odor-free air as measured by the Scentometer. So, a Scentometer detection reading of 24 or higher constitutes a nuisance on or adjacent to industrial premises. An objectionable odor nuisance exists on or adjacent to residential, recreational, institutional, retail sales, hotel, or educational premises when odor is detectable in the ambient air after it is diluted with 8 volumes of odor-free air as measured by the Scentometer. So, a Scentometer detection reading of 8 or higher constitutes a nuisance on or adjacent to residential, recreational, institutional, retail sales, hotel, or educational premises.

6. DEFINITIONS

This is an alphabetical glossary of the terminology used in the Report related to odor determination.

- i. Dilution Factor – The ratio of the volume of the initial odor sample to the volume of the sample diluted with odor free air.
- ii. Dilution Rate - The most common odor parameter determined by odor testing is odor concentration. Odor concentration is determined using an instrument called an olfactometer and is expressed as a dilution factor (dilution ratio). Odor concentration is reported as the Detection Threshold (DT) and Recognition Threshold (RT).
- iii. ED50 – Effective dilutions at which 50% of the panelists can no longer detect the presence of an odor (odor threshold).
- iv. NR – Not recognizable
- v. Odor Detection Threshold – The lowest concentration of a substance in a medium relating to the lowest physical intensity at which a stimulus is detected as determined by the best estimate criterion. The number of dilutions required before the odor is no longer detected.
- vi. Odor Panel – individuals whose odor thresholds are being evaluated, or who are utilized to

determine the odor threshold of the substance of interest.

- vii. Odor Recognition Threshold – The lowest concentration of a substance in a medium relating to the lowest physical intensity at which a stimulus is recognized as determined by the best estimate criterion. The number of dilutions at which the odor is recognizable.
- viii. Odor Units – One odor unit is a number where a panel is presented odors in decreasing dilution until detection. This is also referred to as the detection threshold.
- ix. Olfactometer – An instrument for measuring the intensity of an odor or the sensitivity of someone to an odor. They are used in conjunction with human subjects in laboratory settings to measure different dilutions of odor.
- x. Olfactometer Port – An exit point where air is vented to allow for sniffing observations. The Olfactometer will randomly place the diluted odor in different ports to allow for fast switching of odors.
- xi. Peristaltic Pump - A peristaltic pump, also commonly known as a roller pump, is a type of positive displacement pump used for pumping a variety of fluids such as air.
- xii. Scentometer - The device is used to determine the order of magnitude concentration of an odorant in the air. It is essentially a rectangular, clear plastic box containing two chambers of activated carbon, two nasal ports for sniffing two 1/2" diameter air inlets (one for each activated carbon bed), and six odorous-air inlets (1/32", 1/16", 1/8", 3/16", 1/4" and 1/2" in diameter). The odorous inlets are directly connected with a mixing chamber and the nasal outlets. Air is drawn through the two beds of activated carbon (to make it odor free) and then mixed with the contaminated air so as to produce a threshold concentration of the offending odor. The odorous-air inlet hole used to produce the dilution indicates the approximate concentration of the field odor.
- xiii. Tedlar Bags – Gas sampling bags are whole air sampling devices useful for sampling part-per-billion (ppb) to part-per million (ppm) levels of volatile organic compounds (VOCs) and permanent gases. Sampling bags can be a cost-effective alternative to canisters and solvent/thermal desorption tubes and are appropriate for many applications, including industrial hygiene, landfill/biogas, ambient air, indoor air, and stationary source testing.
- xiv. Wind Direction – The direction (N, E, S, W, etc.) from which the wind originates. For example, a north wind blows from north to south.
- xv. Wind Speed – The rate at which air is moving in a particular area.

7. DATA COLLECTION

7.1 Sampling Methods

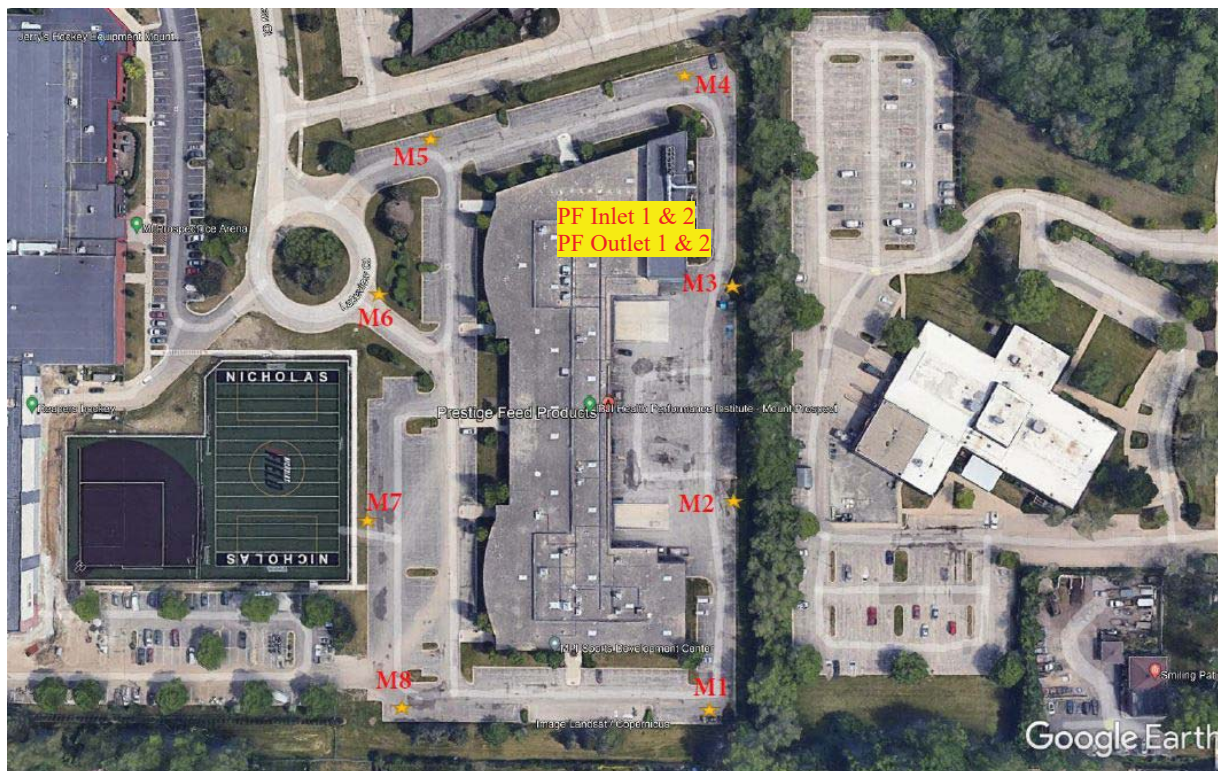
Scentometer. RKA used a Scentometer device at 8 locations to determine the order of magnitude concentration of an odorant in air. The sampling was conducted by Dr. Zhice Hu, Ph.D., an expert on the use and function of the Scentometer device.

Tedlar Bags. MP used Tedlar Bags to collect sample air at 12 locations. The Tedlar Bags are filled using a peristaltic pump connected to a clear piece of tygon tubing that collects ambient air and pumps into the Tedlar Bag. The Tedlar Bags are designed to allow air flow in, but restrict air flow out, allowing gas to be stored for testing. RKA then subjected the Tedlar Bags to Olfactometer readings.

7.2 Testing Locations

7.2.1 Scentometer readings. The Scentometer evaluations were conducted at 8 locations along the boundary line of the Real Property listed as M1 through M8 in Figure 1 below.

Figure 1. Measurement Locations.



7.2.2 Tedlar Bag sampling. The Tedlar bag sampling was conducted at those same 8 locations (M1 – M8) and at four (4) locations at the Anue carbon filter housing unit on the roof of the Facility. Two inlet samples were collected through a hole in the metal piping prior to Facility air entering the Anue carbon filter housing (“PF Inlet 1” and “PF Inlet 2”). Two outlet samples were collected by inserting the tygon tubing into the geomembrane and collecting air through one of the filters of the Anue carbon filter housing before the interaction with the vapor piping (“PF Outlet 1” and “PF Outlet 2”).

7.3 Weather Data.

Below is a summary of the weather conditions during the period of testing, 5:30 AM to 7:30 AM, on

June 10, 2022. Actual 5-minute increment data is shown in Appendix 1. This Weather Data was collected from weather underground. Wind was mainly originating from the south and alternated between southwest and directly south. The wind was mainly calm on site with slight gusts at low speeds.

Table 1. Weather Data During Testing.

Time	Temperature	Dew Point	Humidity	Wind	Wind Speed	Wind Gust	Pressure	Precip.	Condition
5:51 AM	60 °F	49 °F	67 %	SW	5 mph	0 mph	29.19 in	0.0 in	Mostly Cloudy
6:51 AM	62 °F	50 °F	65 %	SSW	5 mph	0 mph	29.19 in	0.0 in	Mostly Cloudy
7:51 AM	68 °F	50 °F	52 %	SSW	7 mph	0 mph	29.18 in	0.0 in	Mostly Cloudy

8. OBSERVATIONS AND ANALYSIS

The laboratory methodology is described in the RKA's cover letter in Appendix Group 2.

8.1 Laboratory Method Description

Scentometer readings. The Scentometer readings are the primary method under Section 245.121(b) to detect whether an objectionable odor nuisance exists. RKA conducted an ambient odor survey using a Scentometer conducted by Dr. Zhice Hu, Ph.D., an expert on the use and function of the Scentometer device. MP selected the monitoring locations for the odor survey (M1 through M8). The full details of the Scentometer readings and the map of monitoring locations are included in Sub-Appendix 2.B.

Tedlar Bag samples. RKA also analyzed the collected Tedlar Bag samples using an Olfactometer to measure odor thresholds of odorous samples in accordance with ASTM Method E-679-04 (See Sub-Appendix 2.C). This is a more sophisticated method of measuring odor concentration and is more valuable to measure odor concentration at or near the source. This method is performed using an odor panel to smell various concentrations of an odorous sample diluted in odor free air to determine the number of dilutions required before the odor is no longer detected and the number of dilutions at which odor is recognizable. Each Odor Panel consisted of 4 panelists. Their individual responses were recorded and statistically evaluated to determine the effective dilutions (ED50) at which 50% of the panelists can no longer detect the odor. The standard deviation was also calculated to represent the variance in responses for the entire group.

For this purpose, RKA placed the Tedlar Bag odor samples in a sequence from the lowest to highest odor level to prevent a stronger odor from affecting a subsequent analysis of a weaker odor. Each Tedlar Bag was connected to the Olfactometer using a clean piece of food grade Tygon tubing and a peristaltic pump was used to transfer the gaseous sample to the Olfactometer for analysis. Tedlar Bag odor samples were diluted with odor free air at various concentrations and transferred into six (6) different Olfactometer ports at which each member of the odor panel assessed. Sub-Appendix 2.A contains all laboratory data for the Tedlar Bags' Odor Thresholds ED50, Recognition Threshold, Odor Intensity, Odor Persistency, and Odor Panel Results.

8.2 Observations.

Below are the results of the Scentometer readings and of the Olfactometer Readings of Tedlar Bags samples by location.

Table 2. Scentometer Readings by Location.

Locations	Wind Direction	Wind Speed (mph)	Scentometer Reading	Time	Odor Description
M1 - SE Corner of Facility	Calm	0	0	5:49	
M2 - East of Facility	Calm	0	0	5:47	
M3 - Output of Baghouse	S	0-5	< 2	6:53	Burnt Cheese (Every 2-min)
M4 - NE corner of Facility	S	0-5	0	6:52	
M5 - NW corner of Facility	Calm	0	0	5:57	
M6 - West of Facility on Lakeview Ct	Calm	0	0	5:54	
M7 - West of Facility Parking lot	Calm	0	0	5:52	
M8 - SW Corner of Facility	Calm	0	0	5:50	

Table 3. Results of the Olfactometer Readings of Tedlar Bags by Location.

Sample No.	Sample Identification	Detection Threshold (ED ₅₀) ⁽¹⁾	Detection Threshold Std. Deviation
1	M1	5	±2
2	M2	5	±2
3	M3	5	±2
4	M4	4	±2
5	M5	5	±2
6	M6	4	±2
7	M7	3	±0
8	M8	3	±0
9	PF Inlet 1	12	±4
10	PF Inlet 2	13	±6
11	PF Outlet 1	14	±5
12	PF Outlet 2	14	±6
Detection Level		3	NA

8.3 Analysis.

The Scentometer readings in Table 2 above confirm that any odor that Prestige creates from operating the machinery at the Facility does not reach the applicable thresholds for objectionable odor or nuisance that the Village must follow, and which are defined in Section 245.121(b) of the Illinois Administrative Code. The Olfactometer readings at Table 3 above also confirm that Prestige's operation does not constitute a nuisance.

8.3.1 Scentometer Readings The June 2022 Scentometer readings were performed at eight (8) locations marked M1 through M8 which were selected along all four (4) sides of the Real Property's boundary. The Scentometer readings were **zero (0)** at 7 of the 8 tested locations. The only noticeable Scentometer reading was that at the Real Property boundary location directly by the Facility's discharge bay (M3, at the NE Corner of Facility). Even that reading was **less than two (2)**. These results clearly demonstrate that the Facility's operation does not reach or surpass the nuisance threshold Scentometer readings under applicable law in Section 245.121(b). Those thresholds are 8 beyond the Real Property's southern border (zoned R-1) and 24 beyond everywhere else (zoned B-1 and I-1). The June 2022 Scentometer readings show a noticeable and consistent improvement from the April 2021 Scentometer readings at similar locations at the perimeter of the Real Property (10, 10-1, 10-2, 10-3, 10-4, 10-5, 10-6, and 11). Comparative Tables 4 and 5 below show the locations and results of the Scentometer readings for these two tests.

Comparative Table 4. Scentometer reading perimeter locations: June 2022, and April 2021.

June 10, 2022

April 2, 2021



Comparative Table 5. Scentometer results at perimeter locations, June 2022 and April 2021.

2022 Locations	Wind Direction	Wind Speed (mph)	Scentometer Reading	Time	Odor Description
M1 - SE Corner of Facility	Calm	0	0	5:49	
M2 - East of Facility	Calm	0	0	5:47	
M3 - Output of Baghouse	S	0-5	< 2	6:53	Burnt Cheese (Every 2-min)
M4 - NE corner of Facility	S	0-5	0	6:52	
M5 - NW corner of Facility	Calm	0	0	5:57	
M6 - West of Facility on Lakeview Ct	Calm	0	0	5:54	
M7 - West of Facility Parking lot	Calm	0	0	5:52	
M8 - SW Corner of Facility	Calm	0	0	5:50	

2021 Locations	Wind Direction	Wind Speed (mph)	Scentometer Reading	Time	Odor Description
10 -- 1661 Feehanville Dr. Mizkan America, Inc (South)	N	0-5	< 2	12:46	Burnt Wood
10-1 -- Downwind from Location 10 (100ft)	N	0-5	0	12:48	
10-2 -- Downwind from Location 10 (200ft)	N	0-5	< 2	12:50	Burnt Cheese
10-3 -- Downwind from Location 10 (300ft)	N	0-5	< 2	12:51	Burnt Cheese
10-4 -- Downwind from Location 10 (400ft)	N	5-10	< 2	13:02	Burnt Cheese
10-5 -- Downwind from Location 10 (500ft)	N	5-10	< 2	13:01	Burnt Cheese
10-6 -- Downwind from Location 10 (600ft)	N	5-10	< 2	12:57	Burnt Cheese
11 -- 430 Lakeview (East Xfinity Parking lot)	N	0-5	0	13:59	

The April 2, 2021, test also measured Scentometer readings at 15 other locations in the neighborhood beyond the boundaries of the Real Property. Of these 15 locations, 13 of them had Scentometer readings of 0 and only two locations had noticeable readings of less than two. As result, the June 10, 2022, did not measure Scentometer readings at those 15 other locations beyond the Real Property boundaries as the results are expected to be 0.

8.3.2 Olfactometer Readings

MP collected the Tedlar bag samples from the same 8 fence-line locations M1 through M8 where RKA also performed Scentometer readings. MP also collected Tedlar bag samples at 4 emissions points at the Odor Control System: two (2) at the inlet duct to the odor control unit and 2 others at the exit filters of that unit. All Olfactometer readings at Table 3 above from the June 2022 test are well below the applicable thresholds for objectionable odor or nuisance, as defined in Section 245.121(b). The Olfactometer readings at locations M1 through M8 varied between 3 (M7 and M8), 4 (M4 and M6) and 5 (M1, M2, M3, and M5). The applicable nuisance thresholds are 8 beyond the Real Property's southern border (zoned R-1) and 24 beyond everywhere else (zoned B-1 and I-1). The 2022 Olfactometer readings clearly confirm and demonstrate that Prestige's operation does not impact the use and the enjoyment of neighboring properties, and it does not constitute a nuisance.

Further, the Olfactometer readings at the 2 inlet ducts to the odor control unit were 12 and 13, and at the 2 exit filters were both 14. These Olfactometer readings correspond to the areas where the odor is expected to be at its highest. The Facility's Odor Control System is located at the Northeast corner of the Real Property, and all neighboring lots in the immediate vicinity of that system are zoned I-1 and B-1. So, adjacent to Odor Control System, the odor detection dilution threshold is about one-half of the nuisance threshold defined in Section 245.121(b) for neighboring properties which are zoned B-1 and I-1. In other words, any odor created by Prestige's machinery right at its epicenter is still half of

the permitted threshold at the boundary of the Real Property in its closest vicinity.

In addition, the twelve (12) June 2022 Olfactometer readings show a noticeable improvement from the April 2021 Olfactometer readings at seven (7) similar locations. Comparative Tables 6 and 7 below show the locations and results of the Olfactometer readings for these two tests.

Comparative Table 7. Olfactometer reading locations, June 2022 and April 2021.

June 10, 2022



April 1, 2021



Comparative Table 7. Olfactometer readings, June 10, 2022, and April 2, 2021.

2022 Sample No.	Sample Identification	Detection Threshold (ED50)(1)	Detection Threshold Std. Deviation
1	M1	5	±2
2	M2	5	±2
3	M3	5	±2
4	M4	4	±2
5	M5	5	±2
6	M6	4	±2
7	M7	3	±0
8	M8	3	±0
9	PF Inlet 1	12	±4
10	PF Inlet 2	13	±6
11	PF Outlet 1	14	±5
12	PF Outlet 2	14	±6
Detection Level		3	NA

2021 Sample No.	Sample Identification	Detection Threshold (ED50)(1)	Detection Threshold Std. Deviation
1	PF1	3	±0
2	PF3	3	±0
3	PF7	3	±0
4	PF2	3	±0
5	PF Inlet 1	50	±7
	PF Inlet 2 ²		
6	PF Outlet 1	64	±7
7	PF Outlet 2	63	±13
Detection Level		3	NA

The Olfactometer Readings from April 2, 2021, at locations PF1, PF2, PF3, and PF7 were all 3. The Olfactometer Readings from June 10, 2022, at locations M1 through M8 were all between 3 and 5. These results can also be explained in part because locations M1 through M8 are closer to the Facility than locations PF1, PF2, PF3, and PF7.

² The Tedlar Bag air sample for PF Inlet 2 collected on April 2, 2021, was defective and was not analyzed.

Both Inlet and Outlet Tedlar Bag samples collected in 2022 had detection readings much lower than the original 2021 test prior to Odor Control System updates. The 2021 samples had inlet and outlet detection readings of 50 and 64, whereas the updated system reduced the detection readings to a maximum of 14. PF Outlet 1 and PF Outlet 2 scored 14 compared to 64 and 63 in 2021, respectively. This is a 78% decrease in odor detection. Also, PF Inlet 1 scored 12 in 2022 compared to 50 in 2021. This is a 76% decrease in odor detection. These olfactometer readings only occur on the roof of the Facility, directly next to the odor source. All locations surrounding the Property had readings below the objectionable odor nuisance value. Any odors that are still being emitted beyond the Odor Control System remain within the boundaries of the Real Property.

8.3.3 Improvements and Weather Factors

It appears, that the upgrades to the Odor Control System that Prestige has installed at the Facility are the main reason for the significant difference in the lab results between the samples collected on June 10, 2022 and April 2, 2021. The effect of these improvements is most obvious at the Olfactometer readings at the main Odor Control System unit. These results are also more impressive due to the different weather conditions. Comparatively speaking, the June 2022 test data was collected under weather conditions more prone to odor saturation. The 2022 samples were collected in June with an average temperature of 60°F and humidity of 52 to 67%. The 2021 samples were collected in April with an average temperature of 37.2°F and humidity of 38.7%. In other words, under identical operating conditions, the weather on June 10, 2022, would be expected to lead to higher theoretical Scentometer and Olfactometer readings to those taken on April 2, 2021.

9. CONCLUSION

It is our professional opinion that no objectionable odor nuisance from the Facility exists on the Real Property line. It is also our professional opinion that the normal operation of the Facility does not have a significant impact on the use and enjoyment of neighboring real properties, and it does not constitute a nuisance. These opinions are supported by the laboratory results from samples collected on June 10, 2022, and April 2, 2021, and presented in our two written expert reports dated October 17, 2022, and June 2, 2021.

10. APPENDICES

Attached.