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 IRIS Y. MARTINEZ
 CIRCUIT CLERK
 COOK COUNTY, IL
 2023CH05147
 Calendar, 14
 24264689

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
 COUNTY DEPARTMENT – CHANCERY DIVISION

PRESTIGE FEED PRODUCTS, LLC, an	)	
Illinois limited liability company,	)	
	)	
Plaintiff,	)	
v.	)	Case No. 2023-CH-05147
	)	Calendar 14
VILLAGE OF MOUNT PROSPECT, an	)	
Illinois municipal corporation,	)	
	)	
Defendants.	)	

PLAINTIFF’S MOTION TO DISMISS DEFENDANTS’
VERIFIED COUNTERCLAIM FOR INJUNCTIVE RELIEF

NOW COMES the Plaintiff, Prestige Feed Products, LLC, an Illinois limited liability corporation (Prestige), by its attorneys, Robbins DiMonte, Ltd., pursuant to Section 2-619(a)(9) of the Civil Practice Act, respectfully states the following in support of its Motion to Dismiss the Defendant, the Village of Mount Prospect, an Illinois municipal corporation (the Village)’s, Verified Counterclaim for Injunctive Relief (Motion) as it relates to temporary injunctive relief:

INTRODUCTION

The Village’s Counterclaim should be dismissed pursuant to §2-619(a)(9) because the parties’ entered into an agreement, which was memorialized in an agreed order entered by this Court, that expressly permits Prestige to operate its feed manufacturing business until such time the Village’s underlying alleged zoning violations have been fully adjudicated at a trial on the merits. (See **Ex. A**, at Preamble) (stating that “the Parties agree to the entry of an agreed order to maintain the status quo during the pendency of the litigation. …”). (A true and correct copy of the Agreed Order is incorporated herein and attached hereto as **Exhibit A**).

Specifically, on June 7, 2023, the parties submitted, and this Court entered, an Agreed

Order wherein the Village expressly agreed that Prestige “may continue to operate its feed production equipment at its Facility located at 431 Lakeview Court ... on a limited basis beginning at 9 PM and ending at 5 AM on days of operation ...” (See **Ex. A**, at ¶ 2), and “to maintain the status quo during the pendency of the litigation.” (See **Ex. A**, at Preamble). In exchange, Prestige agreed to withdraw its Motion for Temporary Restraining Order and Preliminary Injunction in this case. (See **Ex. A**, at ¶ 3). In withdrawing its Motion for Temporary Restraining Order and Preliminary Injunction, Prestige relinquished its ability to litigate Prestige’s right to operate its production equipment during normal daytime business hours, as was its practice prior to negotiating the terms of the Agreed Order, in addition to waiving Prestige’s right to obtain a declaratory judgment and temporary restraining order against the Village.

Notwithstanding the parties’ express agreement to maintain the status quo during the pendency of litigation, on August 8, 2023, the Village filed a Counterclaim seeking injunctive relief in the form of “an order enjoining Prestige from operating the Facility located at 431 Lakeview Court ... until such time as the odors emitted by the Facility have been eliminated. ...” (A true and correct copy of the Village’s Counterclaim is incorporated herein and attached hereto as **Exhibit B**). (See **Ex. B**, at Prayer for Relief, ¶ A).

However, because the terms of the Agreed Order are binding upon the parties and act as a bar to the relief sought by the Village in its subsequently filed Counterclaim, the Village, as a matter of law, cannot obtain an injunction against Prestige enjoining it from operating its business “during the pendency of litigation.” For this reason, and the reasons set forth more fully below, the Village’s Counterclaim seeking a preliminary injunction should be dismissed.

LEGAL STANDARD

The purpose of a motion to dismiss under §2-619 is to provide an opportunity for the parties

to dispose of issues of law and easily proved issues of fact at the outset of the case, leaving only disputed questions of fact for trial. *Zedella v. Gibson*, 165 Ill. 2d 181, 185 (1995). §2-619 allows for dismissal when “the claim asserted ... is barred by other affirmative matter avoiding the legal effect of or defeating the claim.” 735 ILCS 5/2-619(a)(9). “An ‘affirmative matter’ under section 2-619(a)(9) is something in the nature of a defense that negates the cause of action completely or refutes crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint.” *Betts v. City of Chicago*, 2013 IL App (1st) 123653, ¶ 14 (1st Dist. 2012). (See also, *Slay v. Allstate Corp.*, 2018 IL App (1st) 180133, ¶ 44 (1st Dist. 2018) (describing an “affirmative matter” for purposes of a § 2-619 motion as something in the nature of a defense that negates the cause of action completely or refutes critical conclusions of material fact contained in or inferred from the complaint).

A court may consider pleadings, depositions, and affidavits in ruling on a motion to dismiss under §2-619. *Zedella*, 165 Ill.2d at 185 (1995). When a party moving for dismissal under § 2-619 supplies facts that, if not contradicted, would entitle the party to a judgment as a matter of law, the opposing party cannot rely on bare allegations alone to raise issues of material fact. *Atkinson v. Affronti*, 369 Ill.App.3d 828, 835 (1st Dist. 2006); *Barber-Colman Co. v. A & K Midwest Insulation Co.*, 236 Ill.App.3d 1065, 1070-71 (5th Dist. 1992).

ARGUMENT

The terms set forth in parties’ Agreed Order are binding upon the Village as a matter of law and completely defeat the Village’s request for preliminary injunctive relief. In other words, no set of facts can be alleged that would entitle the Village to relief in the form of an injunction prohibiting Prestige from operating its business until the conclusion of this litigation. Accordingly, and for the reasons set forth more fully herein below, the Village’s cause of action has been

completely defeated. Prestige requests that its § 2-619 Motion be granted and the Village's Counterclaim seeking temporary injunctive relief be dismissed.

I. The Court's June 7, 2023 Agreed Order is Conclusive and Binding On the Parties.

The Court's June 7, 2023 Agreed Order is binding upon the parties as a recitation of their bargained for agreement, it is conclusive upon the Village, and it should be enforced in the same manner as one of this Court's orders. Specifically, "... [T]he trial court has no inherent authority to force parties to enter into an agreed order. ..." *Olsen v. Staniak*, 260 Ill. App. 3d 856, 862 (1st Dist. 1994). However, "If a court issues such an order, it is the court, and not the parties, that has so ruled." *In re D.M.*, 395 Ill. App. 3d 972, 977 (3d Dist. 2009).

An "agreed order" is not a judicial determination of the parties' rights, but, rather, it is recitation of an agreement between the parties and is subject to the rules of contract interpretation. *City of Elgin v. Elgin Memory Care, LLC*, 2020 IL App (2d) 200070-U, ¶ 2. (See also *Staniak*, 260 Ill. App. 3d, at 861) (stating that an agreed order is a "recording of the agreement between the parties. ...")). As such, it is well settled that an agreed order is conclusive on the parties. *People ex rel. Devine v. Murphy*, 181 Ill. 2d 522, 538 (1998). (See also e.g., *Cooper v. Bi-State Dev. Agency*, 158 Ill.App.3d 19, 22-23 (5th Dist. 1987) (Stating that agreed orders are "conclusive on the parties and can be set aside by one party only under certain circumstances.")). "For this reason, an agreed order generally is not subject to appellate review." *Matter of Haber*, 99 Ill.App.3d 306, 309 (1st Dist. 1981) (also stating that agreed orders are conclusive upon the parties and "can only be amended or set aside by one of the parties only upon a showing that the order resulted from fraudulent misrepresentation, coercion, incompetence of one of the parties, gross disparity in the position or capacity of the parties, or newly discovered evidence.")).

In the instant matter, the Village does not argue that grounds exist to set aside the Agreed Order, and indeed it cannot. Specifically, both parties were represented by counsel of equal position and capacity in negotiating the terms of the Agreed Order. Indeed the Agreed Order is clearly designated as being a recitation of the parties' agreement, it bears both parties' authorized agent's signatures, and it clearly denotes that the document was "prepared and agreed to by" both parties. (See **Ex. A.** at p. 3 of 3). Further, there are no facts present that give rise to claims of fraud or concealment on the part of Prestige. In fact, the Agreed Order was accepted by this Court and bears the Court's stamp. (**Id.**). Finally, there is no new evidence that would support the vacatur of the Agreed Order. While the Village's Counterclaim alleges that there was an "increase" in complaints during July 2023 (See. **Ex. B.**, at ¶ 15), the facts show that the Village received, and was aware of, various complaints about Prestige's operations prior to the entry of the Agreed Order. Accordingly, any alleged complaints concerning any odor produced by Prestige following entry of the Agreed Order cannot be considered new evidence.

As such, there is no question that the parties expressly agreed to be bound by the terms set forth in the Agreed Order and that the same is conclusive upon both the Village and Prestige alike. (See **Ex. A.**). (See also, *In re Marriage of Kelly*, 2023 IL App (3d) 220333-U, ¶ 26 (3d Dist. 2023) (stating that "Once an agreed order has been entered, it is generally binding on the parties and cannot be amended or changed without the consent of both parties." (citing, *In re M.M.D.*, 213 Ill.2d 105, 115 (2004))).

II. *The Agreed Order Bars the Village from Seeking to Prohibit Prestige from Operating its Business During the Pendency of the Litigation.* The plain language of the Agreed Order, as read in whole, demonstrates that Prestige agreed to withdraw its Motion for Temporary Restraining Order and Preliminary Injunction and Memorandum in Support Thereof in exchange

for the Village's agreement to allow Prestige to continue to operate its business "during the pendency of the litigation." (See **Ex. A**, at ¶¶2-3, and Preamble). As stated above, agreed orders are effectively the parties' contractual agreement and cannot be amended or varied without the consent of each party. See e.g., *Draper & Kramer, Inc. v. King*, 2014 IL App (1st) 132073, ¶ 28 (1st Dist. 2014). As a written agreement between the parties, an agreed order "is to be interpreted as any other contract." *Vill. of Lakemoor v. First Bank of Oak Park*, 136 Ill. App. 3d 35, 41 (2d Dist. 1985). Agreed orders therefore "... must be construed to give effect to the parties' intent, which is determined from the language of the order when there is no ambiguity in its terms." *In re Marriage of Watkins*, 2017 IL App (3d) 160645, ¶ 28 (3d Dist. 2017). "[T]he order must be interpreted in its entirety, considering all facts and circumstances surrounding its execution, as well as all pleadings and motions from which it emanates." *Draper & Kramer, Inc. v. King*, 2014 IL App (1st) 132073, ¶ 27 (5th Dist. 2014). In Illinois, as a general rule, any issue concerning the construction, interpretation, or legal effect of a contract is a matter to be determined by the court as a question of law. *Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill.2d 100, 129 (2005). (See also *Feis Equities, LLC v. Sompo Int'l Holdings, Ltd.*, 2020 IL App (1st) 191072, ¶ 50 (1st Dist. 2020)) (stating that "when an exhibit is a contract or other instrument, the proper construction of that instrument is a matter of law").

In this case, on May 25, 2023, Prestige filed its Complaint for Injunction, for Declaratory Judgment, and for Damages naming the Village as Defendant (Complaint). (A true and correct copy of the Complaint is incorporated herein and attached hereto as **Exhibit C**). In pertinent part, Prestige alleged that the Village, without possessing any measurable or scientific data, threatened to revoke Prestige's occupancy permit and business license, which would have the effect of preventing Prestige from operating its business. (See **Ex. C**, at "Summary of the Dispute," p. 2 of

15). Further, Prestige alleged that the Village notified Prestige that the Village intended to revoke its business license and occupancy permit and demanded that Prestige cease and desist its business operations. Significantly, such notices charged Prestige with alleged violations of Section 11.3401: Nuisances; Section 14.604: Land Use Tables; and Section 14.2104: Bulk Regulations, of the Village Code of Ordinances. (See Ex. C, at ¶¶ 19-28).

Following Prestige filing its Complaint, its agents worked with the Village on the terms of an agreement whereby Prestige would be able to operate its business pending the outcome of a trial on the merits. In order to preserve its right to continue to operate its business, to invest capital into equipment intended to address allegations of odor emissions, and to work with the Village to amicably resolve their concerns without fear of constantly being pulled into Court or enjoined from operations, Prestige agreed to withdraw its Complaint in exchange for the Village agreeing that Prestige would continue to operate its business during the pendency of the litigation. (See Ex. A). Prestige gave further consideration and agreed to only operate its feed production equipment overnight, between the hours of 9:00 p.m. and 5:00 a.m. As made clear by the Preamble, the parties sought to maintain this status quo during the pendency of this litigation. In agreeing to maintain the status quo, both the Village and Prestige mitigated the uncertainty and cost associated with either party seeking temporary relief through the end of a trial on the merits. By way of example, Prestige anticipates that it will necessarily need to depose no less than ten material witnesses and other third parties on an expedited basis in order to adequately prepare for a two-day hearing on any motion seeking a preliminary injunction or cease and desist order in this case.

Unbelievably, a mere 62 days after the Agreed Order was entered by this Court, the Village filed a Counterclaim seeking a preliminary injunction “enjoining Prestige from operating” its business “until such time as the odors emitted by the Facility have been eliminated based on the

evaluation of an independent expert. ...” (See **Ex. B**, Prayer for Relief, at ¶¶ A and C). A mere eight days after filing its Counterclaim, the Village proceeded to file a Motion for Preliminary Injunction seeking nearly identical relief.¹ In pertinent part, the Village states that the basis for its request for injunctive relief is Prestige’s alleged violations of Section 14.604; Section 14.2104; and Section 11.3401, of the Village Code of Ordinances. (See **Ex. B**, at ¶¶ 83-84). The Village added additional alleged violations of the Illinois Environmental Protection Act in its Counterclaim, however, the crux of the Counterclaim involves substantially the same sections of the Village Code of Ordinances that were set forth in Prestige’s Complaint and that Prestige sought to prevent being used as a basis to request that it cease operations.

In sum, the Village promised to allow Prestige the ability to operate its business in accordance with the status quo for the pendency of this litigation in exchange for having Prestige withdraw its Motion for Temporary Restraining Order and Preliminary Injunction. Once the Agreed Order withdrawing Prestige’s Motion for Temporary Restraining Order and Preliminary Injunction was entered, the Village waited 62 days and then filed a Counterclaim seeking relief in the form of prohibiting Prestige from operating its business.

As a matter of law, the plain language of the Agreed Order, and considering all facts and circumstances surrounding its execution, as well as all pleadings and motions from which it emanates, operates to prevent the Village from obtaining the type of relief sought in its Counterclaim. Specifically, Prestige agreed to withdraw its Motion for Temporary Restraining Order and Preliminary Injunction in exchange for the Village agreeing to allow Prestige to “continue to operate its feed production equipment,” and to “maintain the status quo during the pendency of the litigation.” (See **Ex. A**, at ¶ 2 and Preamble). Prestige upheld its end of the

¹ Prestige has filed a motion to stay litigation on the motion for preliminary injunction pending the outcome of this motion, as the Court’s ruling on this issue will have a determinative outcome on the motion for preliminary injunction.

agreement. The Village, on the other hand, now comes before the Court demanding that the provisions of the Agreed Order that no longer align with the Village's interests be ignored and not given effect. However, the Agreed Order must be given effect and its terms made conclusive upon both parties. The conclusive nature of the Agreed Order serves to bar the Village from obtaining any injunctive relief against Prestige that modifies the status quo or prevents Prestige from operating its business during the pendency of this litigation. Accordingly, the Agreed Order is an affirmative matter that completely defeats the Village's Counterclaim for a temporary injunction.

CONCLUSION

Here, the request for a temporary injunction in the Village's Counterclaim is barred by the terms of the Court's June 7, 2023 Agreed Order. The Agreed Order remains in full force and affect. The plain language of the Agreed Order states that Prestige, "... may continue to operate its feed production equipment at its Facility located at 431 Lakeview Court ... until this Court adjudicates all Parties' respective rights and obligations, or the parties otherwise agree, or the Court orders otherwise. ..." (See, **Ex. A**, at ¶ 2). The Agreed Order makes clear that the parties' intended for Prestige to operate its business at the status quo, "during the pendency of the litigation." (**Id.** at Preamble). Further, Prestige's Complaint makes clear that Prestige sought to prevent the Village from terminating Prestige's ability to operate its business based upon certain enumerated sections of the Village Code. (See e.g., **Ex C**).

The Village's Counterclaim seeking preliminary injunctive relief is nothing more than an obvious collateral attack on the terms of the Agreed Order when it seeks to obtain the very relief barred by the Agreed Order. However, as set forth above, the terms of the Agreed Order are conclusive upon the Village and said terms act as a complete bar to the Village being able to establish any entitlement to the temporary injunctive relief sought in its Counterclaim. (See, *Ex.*

B, p. 13 of 14). Because the relief sought by the Village is not permitted under the terms of the June 7, 2023 Agreed Order, and for the reasons set forth more fully herein, the Village's Counterclaim for temporary injunctive relief should be dismissed.

WHEREFORE, the Plaintiff, Prestige Feed Products, LLC, respectfully requests the entry of an order dismissing, the Defendant, the Village of Mount Prospect's, Verified Counterclaim for Injunctive Relief, and for any further relief the Court deems just.

Respectfully submitted,
Prestige Feed Products, LLC

By: /s/ Riccardo A. DiMonte
One of her attorneys

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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

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

Plaintiff,

v.

VILLAGE OF MOUNT PROSPECT, an Illinois
municipal corporation, et al.

Defendants.

Case No. 2023 CH 05147

**JURY DEMANDED ON LAW
COUNTS**

Judge Clare J. Quish
Cal. 14
Courtroom 2301

AGREED ORDER

This matter coming before the Court on June 7, 2023, upon the Parties' agreement, and the Court being fully advised that the Parties agree to the entry of an agreed order to maintain the status quo during the pendency of the litigation, and the Court being fully advised:

IT IS HEREBY ORDERED:

1. Defendant, the Village of Mount Prospect agrees that it will not issue a "cease and desist order" against Prestige Feed Products, LLC, revoke its business license and/or its occupancy permit, and refuse to renew its business license and/or its occupancy permit, until this Court adjudicates all Parties' respective rights and obligations or this Court orders otherwise;
2. Prestige Feed Products, LLC may continue to operate its feed production equipment at its Facility located at 431 Lakeview Court, Suite A, in the Village of Mount Prospect, Cook County, Illinois on a limited basis beginning at 9 PM and ending at 5 AM on days of operation, not including the warm-up and cool-down time for the business's machinery and subject to ongoing monitoring and scheduling adjustments as needed. The above-stated limitations shall not apply to the normal administrative operations of the business, including, but not limited to, the delivery and pick-up of materials. These conditions shall remain in effect until this Court adjudicates all Parties' respective rights and obligations, or the parties otherwise agree, or the Court orders otherwise;

3. Plaintiff withdraws its Motion for Temporary Restraining Order and Preliminary Injunction and Memorandum in Support Thereof.
4. Defendant, the Village of Mount Prospect shall have until July 5, 2023, to answer the *Complaint for Injunction, for Declaratory Judgment, and for Damages* or otherwise plead;
5. Plaintiff's claims against Defendants MICHAEL J. CASSADY in his capacity as Village Manager, WILLIAM COONEY in his capacity as Village Director of Community Development, WILLIAM SCHROEDER in his capacity as Village Director of Building & Inspection Services, and PAUL HOEFERT in his capacity as the Village Mayor, are voluntarily dismissed without prejudice;
6. Bond requirement is waived; and
7. The case is set for status on **July 17, 2023 at 9:30 a.m.** before Judge Quish and shall be conducted via Zoom Court Appearance, ZOOM ID: 953-7174-9534 Password: 253498, Tel: 312-626-6799.

Judge Clare J. Quish
(312) 603-3733
ccc.chancerycalendar14@cookcountyil.gov
Zoom Meeting ID: 953 7174 9534
Zoom Password: 253498
Zoom Dial-In: (312) 626-6799

ENTERED:



Judge Clare J. Quish
DATE: June 7, 2023

[[ATTORNEY SIGNATURE PAGE FOLLOWS]]

Judge Clare J. Quish
JUN 07 2023
Circuit Court = 2160

PREPARED AND AGREED TO BY:

Prestige Feed Products, LLC

/s/ Riccardo A. DiMonte
By: _____
One of its Attorneys

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Village of Mount Prospect

/s/ Lance C. Malina (with permission)
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One of its Attorneys

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IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CHANCERY 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
COONEY, in his capacity as Village Director of
Community Development; WILLIAM
SCHROEDER, in his capacity as Village Director
of Building & Inspection Services; and PAUL
HOEFERT, in his capacity as the Village Mayor,

Defendants.

Case No. 2023 CH 5147

Judge Quish

Calendar 14

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

Defendants/Counter-Plaintiffs,

v.

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

Plaintiff/Counter-Defendant.

VILLAGE DEFENDANTS/COUNTER-PLAINTIFFS' VERIFIED COUNTERCLAIM
FOR INJUNCTIVE RELIEF

Defendants/Counter-Plaintiffs, Village of Mount Prospect, Michael J. Cassady, William Cooney, William Schroeder and Paul Wm. Hoefert (collectively, the “Defendants/Counter-Plaintiffs”), by and through their attorneys, Klein, Thorpe and Jenkins, Ltd., file this Verified Counterclaim for Injunctive Relief against Prestige Feed Products, L.L.C. (the “Plaintiff/Counter-Defendant”) and allege as follows:

BACKGROUND

1. The Defendants/Counter-Plaintiffs’ counterclaim for injunctive relief against the Plaintiff/Counter-Defendant arises from a problem with noxious odors emitting from the Prestige Feed Products facility located 431 Lakeview Court, Suite A, in Mount Prospect, Illinois (the “Facility”).
2. The Plaintiff/Counter-Defendant began operations at the Facility on March 19, 2019 and manufactures soy and cheese-based livestock feed products. Specifically, the Plaintiff/Counter-Defendant dehydrates raw materials to produce an animal feed ingredient.
3. From the beginning of Plaintiff/Counter-Defendant’s operations at the Facility up to the present, businesses and residents located near the Facility have complained to the Village of Mount Prospect (the “Village”) about noxious odors emitted during and after Facility operation.
4. The Plaintiff/Counter-Defendant has attempted to remedy the problem, but the Village continues to receive complaints about noxious odors during and after Facility operations.
5. The inability of the Plaintiff/Counter-Defendant to resolve the ongoing odor problem forces the Defendants/Counter-Plaintiffs to seek judicial relief by filing this action for injunctive relief.

The Parties

6. The Village of Mount Prospect is an Illinois home rule municipality located in Cook County, Illinois.
7. Michael J. Cassady (“Cassady”) is the Mount Prospect Village Manager.

8. William Cooney ("Cooney") is the Mount Prospect Director of Community Development.

9. William Schroeder ("Schroeder") is the Mount Prospect Director of Building & Inspection Services.

10. Paul Wm. Hoefert ("Hoefert") is the Mayor of the Village of Mount Prospect.

11. Prestige Feed Products, LLC, ("Prestige") is an Illinois limited liability company operating a manufacturing facility at 431 Lakeview Court, Suite A, Mount Prospect, Cook County, Illinois.

12. Prestige is located in the Kensington Business Park area of Mount Prospect.

13. Prestige is located in an I-1 zoning district which is a "Limited Industrial District."

14. According to the Village Zoning Code, a Limited Industrial District allows for "Manufacturing, Light" as a permitted use.

15. The areas surrounding the Prestige operating facility are zoned as I-1 (west), I-1 (north), I-1 (east) and R-1 Single Family Residential (south).

The Facts Supporting The Village Defendants' Counterclaim For Preliminary Injunction

A. Prestige Begins Operations In The Village

16. On March 19, 2019, Mr. Joe Pesoli ("Pesoli") submitted to the Mount Prospect Community Development Department a business license application for Prestige Feed Products, LLC. See **Business License/Certificate Application**, attached and referred to as **Exhibit A**.

17. The application requested a license for a new business located at 431 Lakeview Court in the Village (the "Location").

18. The application included a detailed description of the business uses/services provided by Prestige that stated:

We will be processing cheese for animal feed in the facility. The cheese will be dried into powder form and then sold as a raw ingredient into swine feeds. This product will be solely for animal feed use.

19. Prestige began its operations at the Location as a claimed "Manufacturing, Light" permitted use.

B. The Village Receives Complaints About Odor Emitted By The Facility Shortly After Prestige Begins Operations At The Location

20. On May 23, 2019, the Village received a call from a resident living in a residential neighborhood in close proximity to the Location. The resident complained of a strong burning smell coming from the Facility.

21. On May 24, 2019, Brandon Allen ("Allen") of the Environmental Health Division of the Mount Prospect Community Development Department sent a written code violation notice to Prestige Feed Products, LLC at 431 Lakeview Court, Suite A, Mount Prospect, Illinois (the "May 24, 2019 Notice"). See Letter to Prestige Feed Products, LLC dated May 24, 2019, attached and referred to as **Exhibit B**.

22. The May 24, 2019 Notice indicated Allen inspected the Location and found a violation of section 14.2104 (G-6) of the Village Zoning Ordinance that states:

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.

Id.

22. Allen also indicated in the May 24, 2019 Notice that Village staff and Prestige representatives met on April 19, 2019 in response to multiple concerns to discuss smells emitting from the Facility. *Id.*

23. Allen requested that Prestige provide written plans to remedy the smells emitting from the Facility within fourteen (14) days of the receipt of the May 24, 2019 Notice. *Id.*

24. The May 24, 2019 Notice requested that Prestige complete all repairs within thirty (30) days of receipt of the notice. *Id.*

25. On June 12, 2019, Cassady, sent a Notice of Violation and Imminent Legal Action (“June 12, 2019 Notice”) to Prestige Feed Products, LLC to the attention of Pesoli. See **Notice of Violation and Imminent Legal Action, dated June 12, 2019, attached and referred to as Exhibit C.**

26. In the June 12, 2019 Notice, Cassady indicated Prestige was operating in violation of the Mount Prospect Village Code (the “Code”) and that Prestige continued to violate Mount Prospect Village Code provisions despite having been previously informed of code violations. *Id.*

27. In the June 12, 2019 Notice, Cassady indicated Prestige is located in the Kensington Business Park that is designated as being within an I-1 District (“Limited Industrial District”) by Chapter 14, Zoning, of the Code. *Id.*

28. Section 14.604 of the Code sets forth the permitted or conditional uses for each zoning district in the Village. An I-1 Limited Industrial District allows for “Manufacturing, Light” as a permitted use. *Id.*

29. An I-1 Limited Industrial District allows for “Manufacturing, Heavy” only as a conditional use. *Id.*

30. The Code defines “Manufacturing, Light” as follows:

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.

Id.

31. The Code defines "Manufacturing, Heavy" as follows:

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.

Id.

32. The Code, at 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.

Id.

33. The Code, at Chapter 11 Merchants, Businesses, Occupations and Amusements, Article XXXIV, 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." *Id.*

34. The June 12, 2019 Notice indicated the Village had received numerous complaints from nearby residential and commercial property owners expressing concerns about odors and fumes emitted from the Facility. *Id.*

35. The June 12, 2019 Notice represented that Village staff had corroborated the complaints from nearby residential and commercial property owners about odor levels that would be "disruptive to the normal enjoyment of the adjacent neighborhoods." *Id.*

36. The June 12, 2019 Notice indicated the odors emitting from the Facility bring its use within the definition of “Manufacturing, Heavy.” *Id.*

37. The June 12, 2019 Notice indicated Prestige had not been issued a conditional use permit for “Manufacturing, Heavy” operations. As a result, Prestige was limited to “Manufacturing, Light” uses. *Id.*

38. Since Prestige had not been issued a conditional use for “Manufacturing, Heavy” operations at the Facility, it was operating in violation of the Code. *Id.*

39. The June 12, 2019 Notice indicated complaints from nearby residential and business areas, along with Village staff inspections, provided evidence that Prestige’s business operations violated the above-stated Code provisions. *Id.*

40. The June 12, 2019 Notice requested that Prestige cease its processing operations immediately until the odor problem at the Facility was resolved. *Id.*

41. The Village closed down Prestige because its operations at the Facility violated Code provisions.

C. Prestige Acknowledges The Odor Problem And Takes Remedial Steps

42. Prestige acknowledged that odors were being emitted from the Facility during processing operations after the Village issued the June 12, 2019 Notice.

43. In August 2019, Prestige informed the Village that it would install an odor reduction system that “will sufficiently reduce odors to comply with Village Code Requirements.” See Letter from Joe Pesoli to Michael Cassady, dated August 28, 2019, attached and referred to as Exhibit

D.

44. In January 2020, Pesoli provided the Village with a status update regarding the efforts by Prestige to remedy the odor problem during processing operations.

45. Pesoli indicated that Prestige would run its processing operations at night until its odor reduction system was fully implemented and “we have this odor issue 100% behind us.” See **Email From Joe Pesoli to Michael Cassady, Bill Cooney, William Schroeder M., Nellie Beckner, Brandon Allen, Nick Papanicholas, Jr., Joe Ignoffo, dated January 21, 2020, attached and referred to as Exhibit E.**

46. After the installation of the odor reduction system, Prestige reopened its processing operations at the Facility.

47. Despite Prestige installing its odor reduction system, the Village continued receiving complaints about odor emitted from the Facility from residents in the nearby residential neighborhood and from neighboring businesses.

48. Due to the ongoing odor problems at the Facility, the Village revoked the Prestige permitted use permit in March 2020.

49. Prestige took further steps to address the odor problem about which its residential and business neighbors complained to the Village.

50. It presented an odor control plan to the Village in April 2020 that the Village approved.

51. Prestige completed the enhanced odor reduction system in July 2020.

52. In October 2020 representatives of the Village and Prestige met at the Facility during processing operations and determined Prestige could resume regular processing operations with no restrictions.

53. In order to test the claim that the odors had been eliminated, bringing the use back to “Light Industrial” as defined by Village Code, Cooney allowed Prestige to resume operations under a temporary use permit that ran through mid-April 2021.

54. Although the efforts of odor mitigation improved the situation, odors were still emitted off-site and complaints continued.

D. The Village Determines Prestige Operations Continued To Violate The Mount Prospect Village Code

54. On March 1, 2021, Cassady issued a Notice of Imminent Legal Action to Prestige (“March 1, 2021 Notice”). See **Notice of Imminent Legal Action, dated March 1, 2021, attached and referred to as Exhibit F.**

55. The March 1, 2021 Notice indicated that Prestige continued to operate in violation of the Code despite the Village having previously informed Prestige of the violations. *Id.*

56. The March 1, 2021 Notice reminded Prestige that it is in an I-1 zoning district (“Limited Industrial District”) that allows for “Manufacturing, Light” as a permitted use. *Id.*

57. The March 1, 2021 Notice indicated that a Limited Industrial District allows for “Manufacturing, Heavy” only as a conditional use. *Id.*

58. The “Manufacturing, Heavy” definition includes processing of goods that affect the use and enjoyment of adjacent property due to odors and fumes. *Id.*

59. The March 1, 2021 Notice indicated that since Prestige had reopened for business the Village continued to receive “numerous and regular complaints from nearby residential and commercial areas of odors and fumes emitted from your business.” *Id.*

60. The March 1, 2021 Notice indicated Village staff monitoring the situation at the Facility corroborated a level of odor that would disrupt the enjoyment of property in adjacent neighborhoods as well as the operation of adjacent commercial uses. *Id.*

61. The March 1, 2021 Notice informed Prestige that the ongoing odors emitted from the Facility bring its use within the “Manufacturing, Heavy” definition that requires a conditional use permit. *Id.*

62. The March 1, 2021 Notice further informed Prestige that it had not been issued a conditional use permit and was limited to “Manufacturing, Light” uses. *Id.*

63. Because Prestige operated its business without a conditional use permit, it violated the Code. *Id.*

64. The March 1, 2021 Notice also informed Prestige that it was conducting its business in a manner that constituted a nuisance in violation of the Code. *Id.*

65. The March 1, 2021 Notice indicated that Prestige's temporary use permit issued by Cooney was revoked and it had to cease operations until the odor problem was actually and effectively resolved or until Prestige was issued a conditional use permit by the Village Board. *Id.*

66. The March 1, 2021 Notice alerted Prestige that if it continued to operate in violation of the Code, "the Village will be forced to take immediate legal action to achieve compliance with the Village Code and protect neighboring property owners." *Id.*

E. Further Attempts By Prestige To Remedy The Odor Problem

67. On April 1, 2021, Prestige retained Mostardi Platt, an engineering and environmental compliance firm, to design and perform an odor investigation at the Facility.

68. Prestige agreed to operate the Facility for limited late night and early morning hours between 8:00 p.m. and 5:00 a.m.

69. On April 29, 2021, due to complaints the Village received from residents living in a neighborhood near the Facility about a strong unpleasant odor coming from the Facility, the Village required Prestige to cease and desist its operations until further notice. See Letter from Lance C. Malina to Anastas Shkurti, dated April 29, 2021, attached and referred to as Exhibit G.

70. Prestige again operated the Facility during limited late night and early morning hours with the Village's consent starting May 11, 2021.

F. The Tolling Agreements

71. After the March 1, 2021 Notice, the Village and Prestige negotiated a Tolling Agreement that ran from March 1, 2021 through June 4, 2021 ("Tolling Period"). **Tolling Agreement, attached and referred to as Exhibit H.**

72. The Village and Prestige agreed that during the Tolling Period Prestige would not file a lawsuit against the Village regarding any claims for violations of legal, contractual and constitutional rights it believed had against the Village Defendants. *Id.*

73. The Village and Prestige agreed that during the Tolling Period all applicable statute of limitations would be tolled as to any and all claims Prestige might have against the Village Defendants. *Id.*

74. The intent of the Tolling Agreement was to provide the Village and Prestige an opportunity to resolve their disputes using informal means and without litigation. *Id.*

75. The Village and Prestige amended and restated the Tolling Agreement on numerous occasions so that the Tolling Agreement ran from March 1, 2021 until the Village terminated the Tolling Agreement effective May 11, 2023. **See Letter from Lance C. Malina to Riccardo DiMonte, dated April 10, 2023, attached and referred to as Exhibit I.**

G. The Village Receives Numerous Recent Complaints About Odor Emitting From The Facility

76. Since March 2023, the Village has received more than three dozen complaints or notices about noxious odors being released by the Facility.

77. The complaints have come from residents in nearby neighborhoods and from business owners located near the Facility.

78. The notices of noxious odors have come from Mount Prospect Police Department officers patrolling the area in the near vicinity of the Prestige during late night and early morning hours.

79. The number of complaints and notices to the Village of noxious odors released by the Facility has increased during July 2023.

COUNT I INJUNCTIVE RELIEF

80. The Village Defendants/Counter-Plaintiffs adopt and reallege the allegations set forth in Paragraphs 1-79.

81. The Village has a duty and obligation to preserve and protect the rights of owners of property located within the Village to the enjoyment of their property.

82. The Village has a clear interest in the enforcement of the Code provisions that preserve and protect the rights of owners of property located within the Village to the enjoyment of their property.

83. The conduct of Prestige in allowing noxious odors to be emitted from the Facility violates Chapter 14, Article VI, section 14.604 of the Code by engaging in "Heavy manufacturing" activity without a conditional use permit. This violation endangers the rights of property owners within the Village to the enjoyment of their property.

84. The conduct of Prestige in allowing noxious odors to be emitted from the Facility violates Chapter 14, Article VI, section 14.2104(G) of the Code and Chapter 11, Article XXXIV, section 11.3401 and creates a nuisance that endangers the rights of property owners within the Village to the enjoyment of their property.

85. The Illinois Environmental Protection Act (the "Act") at 415 ILCS 5/9(a) directs that no person shall "[c]ause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act."

86. The Act, at 415 ILCS 5/3.115 defines "air pollution" as "the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property."

87. The conduct of Prestige in allowing noxious odors to be emitted from the Facility violates the Act prohibition on causing air pollution that unreasonably interferes with and endangers the rights of property owners within the Village to the enjoyment of their property.

88. The Village has a duty and obligation to protect its residents from the conduct of Prestige that subjects them to air pollution which unreasonably interferes with the enjoyment of their property.

89. The Village will suffer irreparable harm if it cannot enforce its Code provisions and protect its citizens from the harm caused to them by Prestige's actions in operating the Facility in such fashion that they are denied the use and enjoyment of their property.

90. Due to the irreparable harm to the Village and its citizens caused by Prestige in its operation of the Facility that emits noxious odors which denies persons and businesses in the immediate vicinity the use and enjoyment of their property, the Village has no adequate remedy at law.

WHEREFORE, the Village Defendants/Counter-Plaintiffs pray this Court enter judgment in their favor and against the Plaintiff/Counter-Defendant and enter an Order that grants the following relief:

- A. An order enjoining Prestige from operating the Facility located at 431 Lakeview Court, Mount Prospect, Illinois until such time as the odors emitted by the Facility have been eliminated based on the evaluation of an independent expert selected by both the Village and Prestige to make such assessment; and

- B. Direct that Prestige shall pay the costs for the independent expert evaluation of the Facility operations; or
- C. An order enjoining Prestige from operating the Facility located at 431 Lakeview Court, Mount Prospect, Illinois until such time as Prestige receives a conditional use permit to operate the Facility at its current location.

Respectfully submitted,

Village of Mount Prospect, Michael J.
Cassady, William Cooney, William
Schroeder and Paul Wm. Hoefert

By: /s/ Lance C. Malina
One of their attorneys

Lance C. Malina
Allen Wall
Klein, Thorpe and Jenkins, Ltd.
120 South LaSalle Street, Suite 1710
Chicago, Illinois 60603
(312) 984-6400
Atty. No. 90446
lcmalina@ktjlaw.com
jawall@ktjlaw.com

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

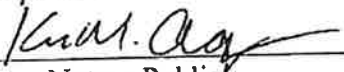
VERIFICATION

The undersigned, William Cooney, being first duly sworn on oath deposes and says that he is the Director of Community Development for the Village of Mount Prospect and he has read the above and foregoing Village of Mount Prospect's Verified Counterclaim For Injunctive Relief, and has knowledge of the contents thereof, and that the matters set out therein are true in substance and in fact to the best of his knowledge and belief.



William Cooney

SUBSCRIBED and SWORN to
before me this 7 day of
August, 2023



Notary Public



IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CHANCERY 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
COONEY, in his capacity as Village Director of
Community Development; WILLIAM
SCHROEDER, in his capacity as Village Director
of Building & Inspection Services; and PAUL
HOEFERT, in his capacity as the Village Mayor,

Defendants.

Case No. 2023 CH 5147

Judge Quish

Calendar 14

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

Defendants/Counter-Plaintiffs,

v.

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

Plaintiff/Counter-Defendant.

Defendants/Counter-Plaintiffs'

EXHIBIT A

Business License/Certificate Application

EXHIBIT B

PMTD1



Business License/Certificate Application

Community Development Department
Village of Mount Prospect
50 S. Emerson Street
Mount Prospect, IL 60056 (847) 818-5328

RECEIVED

(OFFICIAL USE ONLY)

MAR 1

Village of Mount Prospect
Community Development

LICENSE FEE

DATE ISSUED

\$ 225.00

CONTACT FOR BUSINESS LICENSE APPLICATION:

Name: Joe Pesoli

Phone: 847-650-8164

Email: JCP@cercogroup.com

THIS APPLICATION IS FOR (CHECK ONE):

☒ New business ☐ Existing business - new location ☐ New ownership of existing business OTHER: _____

EXPECTED DATE OF OCCUPANCY: 3/1/2019

The applicant has had a business license revoked in another city or state. ☐ Yes ☒ No If yes, explain: _____

I. BUSINESS INFORMATION:

Is your business licensed/certified by the State of Illinois? ☐ Yes ☒ No. If Yes, State License # _____ (attach copy). 

Example: Professionals required to be licensed by the state (i.e. Lawyers, Doctors, Real Estate Agents, Architects, etc...)

Business Legal Name: Prestige Feed Products, LLC

Business Website Address:
www.prestigefeed.com

Doing Business As (Common Name):

Detailed Description of All Business Uses/Services provided:

We will be processing cheese for animal feed in the facility. The cheese will be dried into powder form and then sold as a raw ingredient into swine feeds. This product will be solely for animal feed use.

Business Location Address: 431 Lakeview Court Suite #: A City: Mount Prospect State: IL ZIP: 60056

Illinois Business Authorization Number (Sales/Use Tax II or Exempt #):

Federal Employee Identification Number (FEIN): 83-0945843

Square Footage of Space: 32,527

of employees: 8

of Commercial Vehicles: 0

Business Phone: 847-818-1550

Business Contact Name/Title: Joe Pesoli- CEO

Business Email: JCP@cercogroup.com

II. BILLING INFORMATION - IF DIFFERENT THAN SECTION I:

Contact Person: _____ Address: _____ City: _____ State: _____ ZIP: _____

Phone Number: _____ Email Address: _____

III. BUSINESS OWNERSHIP STRUCTURE - THIS BUSINESS IS A:

☐ Sole Proprietorship ☐ Partnership ☐ Corporation ☒ Limited Liability Company ☐ Other: _____

IV. BUSINESS OWNER INFORMATION - RESIDENCE ADDRESS AND DATE OF BIRTH MUST BE COMPLETED:

First: Cereal Byproducts Co M.I. Last: _____ Date of Birth: _____

Home Address: 601 E. Kensington road City: Mount Prospect State: IL ZIP: 60056

Home/Cell Phone (circle): _____ Email: _____

First: _____ M.I. Last: _____ Date of Birth: _____

Home Address: _____ City: _____ State: _____ ZIP: _____

Home/Cell Phone (circle): _____ Email: _____

V. LANDLORD INFORMATION (IF THE SPACE IS RENTED):

Company: Pima 4 LLC Contact Person: Gina Bertolini

Address: 1001 Feehanville Drive City: Mount Prospect State: IL ZIP: 60056

Phone Number: 847-394-6200 E-mail Address: gina@nicholasquality.com



Business License Application

EXHIBIT

tabbies

A

EXHIBIT B

(ATTACH)

VI. BUSINESS DETAILS - ANSWER ALL QUESTIONS BELOW:		☒ Yes ☐ No
1. Is the business <u>a new use in this location</u> when compared to the previous occupant? If YES, note previous use: <u>Call Center</u> Example: Opening a restaurant in a location that was previously an office is a new use.		☐ Unsure
2. Does this business offer <u>massage therapy</u> to the general public? If Yes, <u>Massage Therapy Addendum</u> is required.	☒ B	☐ Yes ☒ No
3. Does this business have coin-in-slot or vending machine devices on the premises? If Yes, <u>Vending Machine Addendum</u> is required.	☒ C	☐ Yes ☒ No
4. Will hazardous materials be stored at this location? If Yes, <u>attach MSDS Addendum and note materials for each type.</u>	☒ D	☐ Yes ☒ No
5. Does your business use tow trucks in the operation of your business? If Yes, how many? _____ and attach <u>proof of current Liability Insurance.</u>	☒ E	☐ Yes ☒ No
6. Does this business sell <u>tobacco/e-cigarette</u> products over the counter?		☐ Yes ☒ No
7. Please check the box if your business is any of the following: ☐ Day Care ☐ Solid Waste Transfer Station ☐ Health Club/ Gym ☐ Hotel/Motel ☐ Trailer Coach Park		
8. Will you or have you applied for a <u>building permit</u> ? Work that adds, moves, or exposes water lines, gas, electricity or walls needs a building permit.		☐ Yes ☒ No
9. Does this business location have or will have a <u>security alarm</u> ? Note: A Building Permit is required to install a security alarm.		☐ Yes ☒ No
10. Will you be making modifications/additions to <u>signage</u> ? Note: A Sign Permit may be required.		☐ Yes ☒ No
11. If you answer YES to any of the questions below, request a <u>Food & Beverage Packet</u> & submit the <u>ACKNOWLEDGEMENT FORM</u> WITH THIS APPLICATION. ☒ F		
a) Is <u>more than 10% of the business floor area</u> devoted to the sale and/or storage of food/beverages?		☐ Yes ☒ No
b) Does this business <u>sell/serve prepared food or beverages</u> directly to the general public?		☐ Yes ☒ No
c) Does this business <u>use a vehicle to sell</u> prepared food or beverages directly to the general public?		☐ Yes ☒ No
d) Have you applied or will you apply for a <u>liquor license</u> (Village Manager's office)?		☐ Yes ☒ No
e) Restaurants with a <u>bar area</u> , indicate number of seats/barstools _____		
f) Does this business have a <u>certified food handler</u> ?		☐ Yes ☒ No
If Yes, provide name of employee/s: _____ Date of certification: _____		

VII. EMERGENCY CONTACT INFORMATION - OTHER THAN OWNER, CONTACTS SHOULD BE LOCAL & HAVE ACCESS TO THE BUILDING			
First: Joe	Last: Pesoli	Role (i.e. Manager): CEO	
Home Address: 601 E. Kensington Road		City: Mount Prospect	State: IL ZIP: 60056
Home/Cell Phone (circle): 847-650-8164		Email: JCP@cercogroup.com	
First: Joe	Last: Ignoffo	Role (i.e. Manager): Manager	
Home Address: 601 E. Kensington road		City: Mount Prospect	State: IL ZIP: 60056
Home/Cell Phone (circle): 773-617-6912		Email: JSI@prestigefeed.com	

ATTACHMENT CHECKLIST ☒ Please note your attachments below before submitting this application. (Note: Omitting attachments required with your application can delay issuance of the license. INCOMPLETE applications will NOT be accepted.)		
☐ A State License	☐ B Massage Therapy Addendum	☐ C Slot/Vending Addendum
☐ D MSDS Hazardous Materials	☐ E Proof of Liability Insurance	☐ F Food & Beverage Acknowledgement Form
Next step: Call the Fire Department at 847-818-5253 to schedule your Fire Inspection!		

Note: If license has not been issued or picked up within six (6) months of the application date, this application will be considered VOID and a new application shall be submitted.

☒ I DO HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS APPLICATION AND ADDENDUMS (IF APPLICABLE) HAS BEEN FURNISHED BY ME AND TO THE BEST OF MY KNOWLEDGE IS CORRECT. I UNDERSTAND THAT ANY UNTRUE, INCONSISTENT OR MISLEADING INFORMATION SHALL BE CAUSE FOR THE REFUSAL TO GRANT OR THE REVOCATION OF ANY LICENSE GRANTED PURSUANT TO THIS APPLICATION. I FURTHER CERTIFY THAT BY APPLYING IN WRITING FOR A LICENSE TO OPERATE IN THE VILLAGE OF MOUNT PROSPECT I HAVE READ AND UNDERSTAND MY OBLIGATIONS UNDER APPROPRIATE VILLAGE ORDINANCES RESPECTIVE TO THE LICENSE (S) FOR WHICH I AM APPLYING. I FURTHER CERTIFY THAT IF ANY OF THE FOREGOING INFORMATION CHANGES DURING THE COURSE OF THE LICENSE YEAR I WILL NOTIFY THE VILLAGE, IN WRITING, WITHIN SEVEN (7) DAYS OF SUCH CHANGE.

☐ I WILL CALL THE FIRE DEPARTMENT AT 847-818-5253 TO SCHEDULE THE FIRE INSPECTION NEEDED FOR THIS BUSINESS LICENSE. (Please schedule your inspection within 5 days of submitting this application.)

Signature: _____ Printed Name: Joseph C. Pesoli Date: 3/19/2019



Business License Application

Page 2 of 2

EXHIBIT B
MPTD

VILLAGE OF MOUNT PROSPECT
50 SOUTH EMERSON STREET
MOUNT PROSPECT, IL 60056
847-392-6000

Date: 04/05/2019

License Type: Operating
License

License Number: BL19-000022

Receipt: 8942

Cashier: Tracey Mahoney

Received From: - Joe Pesoli

Description	Total Cost
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Class I Establishment	225.00
-----------------------	--------

Annual License Fee	
--------------------	--

Receipt Total:	225.00
----------------	--------

Payment Type:	Credit
---------------	--------

Reference: M-26062Z

Total Remitted:	225.00
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Total Received:	225.00
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Balance Due:	0.00
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**IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CHANCERY 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
COONEY, in his capacity as Village Director of
Community Development; WILLIAM
SCHROEDER, in his capacity as Village Director
of Building & Inspection Services; and PAUL
HOEFERT, in his capacity as the Village Mayor,

Defendants.

Case No. 2023 CH 5147

Judge Quish

Calendar 14

VILLAGE OF MOUNT PROSPECT, an Illinois
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Of Building & Inspection Services; and PAUL
HOEFERT, in his capacity as Village Mayor,

Defendants/Counter-Plaintiffs,

v.

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

Plaintiff/Counter-Defendant.

Defendants/Counter-Plaintiffs'

EXHIBIT B

Letter to Prestige Feed Products, LLC dated May 24, 2019

EXHIBIT B

PMTD1

MAYOR
Arlene A. Juracek

TRUSTEES
William A. Grossi
Eleni Hatzis
Paul Wm. Hoefert
Richard F. Rogers
Colleen E. Saccotelli
Michael A. Zadel



VILLAGE MANAGER
Michael J. Cassidy

VILLAGE CLERK
Karen Agoranos

Phone: 847/392-6000
Fax: 847/392-6022
www.mountprospect.org

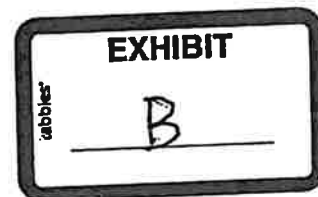
Village of Mount Prospect

50 South Emerson Street, Mount Prospect, Illinois 60056

May 24, 2019

File #: 19-001005

Prestige Feed Products, LLC
431 Lakeview Court suite A
Mount Prospect, IL 60056



RE: 431 Lakeview Ct # A

To Whom It May Concern:

I inspected the above referenced property and found the code violation that is listed below along with the applicable Village of Mount Prospect Zoning Ordinance code section.

Zoning Violation Code: 14.2104 (G-6) - Odorous Matter Limitations

Full Description: 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

Comments: On April 30, 2019 in response to multiple concerns received, Village of Mount Prospect staff and representatives of your company met to discuss smells being emitted from the property. At that time you were to respond with written plans from an architect/engineer to remedy this issue. As of the date of this letter no plans have been received. Please provide written plans to remedy this issue within fourteen (14) days of this notice and please complete all repairs within thirty (30) days of this notice.

I will return to the property on **June 10, 2019** to verify written plans have been received. Also, I will return on **June 24,**

EXHIBIT B
MPTD

2019 to verify that the repairs have been completed.

If you should have any questions or wish to discuss any extensions, please contact me at the Environmental Health Division at (847) 818-5271.

Sincerely,

A handwritten signature in black ink, appearing to read "Brandon Allen". The signature is fluid and cursive, with the first name "Brandon" and last name "Allen" clearly distinguishable.

Brandon Allen, LEHP
Village of Mount Prospect
Environmental Health Leader

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

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

Plaintiff,

v.

VILLAGE OF MOUNT PROSPECT, an Illinois
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in his capacity as Village Manager; WILLIAM
COONEY, in his capacity as Village Director of
Community Development; WILLIAM
SCHROEDER, in his capacity as Village Director
of Building & Inspection Services; and PAUL
HOEFERT, in his capacity as the Village Mayor,

Defendants.

Case No. 2023 CH 5147

Judge Quish

Calendar 14

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

Defendants/Counter-Plaintiffs,

v.

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

Plaintiff/Counter-Defendant.

Defendants/Counter-Plaintiffs'

EXHIBIT C

Notice of Violation and Imminent Legal Action, dated June 12, 2019

EXHIBIT B

EXHIBIT

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

June 12, 2019

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

RE: Notice of Violation and Imminent Legal Action

Dear Mr. Pesoli,

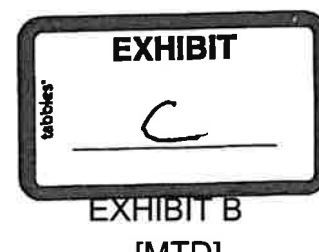
This letter shall constitute notice that your business, Prestige Feed Products, LLC, is operating in violation of the Village of Mount Prospect Village Code. Prestige Feed Products, LLC, has been previously informed of the violations, yet continues to violate Village Code provisions.

Your business is located in the Kensington Business Park. 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 L-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.

419211_1



We draw your attention to the "Manufacturing, Heavy" definition, which includes processing of goods that have significant impacts on the use and enjoyment of adjacent property in terms of fumes and odors. The Village is in receipt of numerous complaints from nearby residential and commercial property owners expressing concerns about odors and fumes emitted from your business. Staff has corroborated a level of odor that would be disruptive to the normal enjoyment of the adjacent neighborhoods.

The odors created by Prestige Products, LLC bring the use within the definition of "Manufacturing, Heavy." Prestige Products, LLC has not been issued a conditional use permit for this use and, therefore, is limited to "Manufacturing, Light" uses. Thus, the business operates 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:

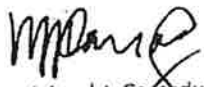
The release of odorous matter from any industrial district across residence or business district boundary lines shall be so controlled that, at ground level or at habitable elevations, the concentration shall not exceed the odor threshold level. Further, the release of odorous matter across lot lines 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 and business areas, along with the Village staff's inspections, evidence violation of these Village ordinances by Prestige Products, LLC.

The continued operation of your business is an ongoing violation of the Village Codes provisions cited above. We are aware that you are in the process of designing an environmental scrubbing solution to eliminate the current discharge of odors resulting from the dehydration process. We request that processing operations cease immediately until the odor concern is resolved. If the business continues to operate without regard to its violation of Village Code provisions, we will be forced to take further legal action. I can meet with you and your team on Thursday, June 13 or Friday, June 14 to discuss this violation and our request to cease operations. Your assistance in this matter is appreciated.

Sincerely,



Michael J. Cassidy
Village Manager
Village of Mount Prospect

**IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CHANCERY 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
COONEY, in his capacity as Village Director of
Community Development; WILLIAM
SCHROEDER, in his capacity as Village Director
of Building & Inspection Services; and PAUL
HOEFERT, in his capacity as the Village Mayor,

Defendants.

Case No. 2023 CH 5147

Judge Quish

Calendar 14

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

Defendants/Counter-Plaintiffs,

v.

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

Plaintiff/Counter-Defendant.

Defendants/Counter-Plaintiffs'

EXHIBIT D

Letter from Joe Pesoli to Michael Cassady, dated August 28, 2019



PRESTIGE FEED PRODUCTS

431 N. Lakeview Court • Suite A • Mount Prospect, IL 60056
Phone: 847-818-1563 • www.prestigefeed.com

Joe Pesoli
Prestige Feed Products, LLC
431 Lakeview Court, Suite A
Mount Prospect, IL 60056
JCP@prestigefeed.com

August 28, 2019

Mr. Michael Cassady
Village of Mount Prospect
50 S. Emerson Street
Mount Prospect, IL 60056

Dear Mr. Cassady,

Per the request at our meeting at the Village Hall on Thursday August 15, 2019, I am providing you below a bullet point update of our plans in regards to our odor reduction system for Prestige Feed Products at 431 Lakeview Court, Mount Prospect, IL 60056. We at Prestige appreciate the open communication and willingness to resolve the issue collectively between Prestige and the Village of Mount Prospect. We look forward to having our odor reduction system installed and operational to comply with Village Code Requirements.

- We have moved forward with the purchase and installation of our odor reduction system. The system is manufactured by Byers Scientific & Manufacturing and will be installed jointly by Byers and Phoenix Engineering. All drawings for this system have been provided to the VoMP. We have provided to the VoMP the MSDS sheets on the vapor as well as 3rd party independent studies in regards to the Byers System. Information on how the system and vapor works has also been provided.
- We have applied for permits for the electrical work as well as the concrete pad that needs to be poured so that we can place our odor reduction system outside our building. When those permits are approved, we will begin that portion of work. We hope to have that completed no later than 9/6/2019, but hopefully sooner.
- Phoenix Engineering will be onsite over the next two weeks building the piping for the odor reduction system and getting it placed prior to the arrival of our distribution unit. The majority of this work will take place in our warehouse. Once it is built it will be secured to both the dryer and cooler cyclones as well as roof top runs on the East and North portions of building per the drawings provided to and approved by the VoMP.

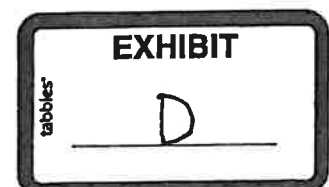


EXHIBIT B

EMTD1



PRESTIGE FEED PRODUCTS

431 N. Lakeview Court • Suite A • Mount Prospect, IL 60056
Phone: 847-818-1563 • www.prestigefeed.com

We at Prestige are committed to being part of the Kensington Business Center and we look forward to being fully operational again with our odor reduction system in place to solidify that our operation complies with Village Code Requirements.

Respectfully,

Joe Pesoli
CEO- Prestige Feed Products, LLC

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CHANCERY 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
COONEY, in his capacity as Village Director of
Community Development; WILLIAM
SCHROEDER, in his capacity as Village Director
of Building & Inspection Services; and PAUL
HOEFERT, in his capacity as the Village Mayor,

Defendants.

Case No. 2023 CH 5147

Judge Quish

Calendar 14

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

Defendants/Counter-Plaintiffs,

v.

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

Plaintiff/Counter-Defendant.

Defendants/Counter-Plaintiffs'

EXHIBIT E

Email From Joe Pesoli to Michael Cassady, Bill Cooney, William M. Schroeder, Nellie
Beckner, Brandon Allen, Nick Papanicholas, Jr., Joe Ignoffo, dated January 21, 2020

EXHIBIT B

EXHIBIT B

Jarosz, Doreen

Subject:

FW: Prestige Update

From: Joe Pesoli

Sent: Tuesday, January 21, 2020 1:39 PM

To: Cassady, Michael ; Cooney, Bill ; Schroeder, William M. ; Beckner, Nellie ; Allen, Brandon ; Nick Papanicholas, Jr. ; Joe Ignoffo

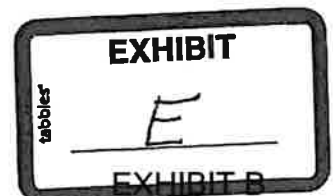
Subject: Prestige Update

Good Afternoon,

Thank you all for your patience. I know that I was to send this update early last week, but I had to be out of town unexpectedly on business and did not return until yesterday, so I apologize for the delay.

After our meeting on 1/2/20 Bill Schroeder requested a status update about the work that has been done since our last meeting in Mid-October. Some of this we covered verbally in our meeting on 1/2/20, but here it is again in writing so that the VoMP can disseminate this information accordingly.

- Since we installed our Atomization units inside the cyclones on 10/28/19 we have run 12 times.
- Six (6) of those 12 dates we received no complaints of any kind.
- Two (2) of the 12 dates we received complaints at hours we were not in operation.
- One (1) of the dates we received a complaint, we notified the village that we had some frozen tubing outside. We shut down, cleaned/thawed the nozzles, started back up and did not receive any other complaints that day.
- Nine (9) of the 12 dates we ran we feel we achieved full efficacy.
- We do agree that at certain times our system has not worked 100% and some of the complaints received are most likely valid at those specific times. We did advise the Village that Byers Scientific said this could take up to 60 days of running to fully dial in the system. We have only run 12 so far. We are confident that this is not a consistent odor and although some claims from neighboring businesses are said to be so severe that they cannot work in their facilities, we do find this very hard to believe. There is a hockey arena across the street and our building has multiple tenants in it subject to the same potential odors as neighboring buildings. Our building owner is not receiving complaints from his tenants. We are taking all claims and complaints seriously, but we along with Byers Scientific question the extent/validity of some of the claims.
- We have identified that almost all of our complaints occur within two hours of our starting time. We are working with Byers Scientific to try and pinpoint why we are not getting the efficacy at start up that we achieve later in the day.
- As discussed in our meeting we believe we are combating 100% of the potential odor 80-85% of our running time. We would have liked to have seen higher efficacy numbers at this point and Byers Scientific has promised us better results.
- Per my email on 1/8/20 we have been vetting some air scrubbing companies and signed a letter of intent as well as sent a preliminary payment to have full scale engineered drawings completed for the potential purchase and installation of an air scrubbing system. The company we signed with is Tech Environmental. They are highly regarded in the industry throughout the U.S.A. and do extensive private contracting for the US government. A link to their website is attached. <https://www.techenv.com/>
- We expect to have preliminary drawings back sometime the week of 1/27/20 in regards to the air scrubber. When I have more information I will share it accordingly. We are looking at a capital investment of \$1,400,000-\$1,900,000 for this air scrubbing system.



- As discussed in our meeting on 1/2/20 our current plan is to run at night until we have the system completely dialed in or we install an air scrubbing unit to avoid any potential disruption to our business park neighbors. We are also running only to make orders that we have to fulfill, so our schedule will be sporadic until we have this odor issue 100% behind us.

Prestige is committed to this project and we look forward to getting this issue resolved.

Respectfully,

All offers are subject to confirmation and availability.

Thanks,



Joe Pesoli
431 N. Lakeview Court
Suite A
Mount Prospect, IL 60056

847-650-8164

JCP@prestigefeed.com

The information in this e-mail and in any attachments is confidential and intended solely for the attention and use of the named addressee(s). This information may be subject to legal, professional or other privilege or may otherwise be protected by work product immunity or other legal rules. It must not be disclosed to any person without our authority. If you are not the intended recipient, or a person responsible for delivering it to the intended recipient, you are not authorized to and must not disclose, copy, distribute, or retain this message or any part of it.

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**IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CHANCERY 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
COONEY, in his capacity as Village Director of
Community Development; WILLIAM
SCHROEDER, in his capacity as Village Director
of Building & Inspection Services; and PAUL
HOEFERT, in his capacity as the Village Mayor,

Defendants.

Case No. 2023 CH 5147

Judge Quish

Calendar 14

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

Defendants/Counter-Plaintiffs,

v.

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

Plaintiff/Counter-Defendant.

Defendants/Counter-Plaintiffs'

EXHIBIT F

Notice of Imminent Legal Action, dated March 1, 2021

EXHIBIT B

RM TD1

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 L-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.

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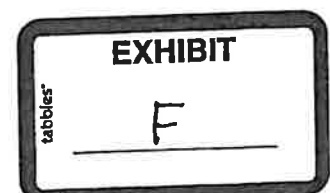


EXHIBIT B

IMTD1

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

**IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CHANCERY 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
COONEY, in his capacity as Village Director of
Community Development; WILLIAM
SCHROEDER, in his capacity as Village Director
of Building & Inspection Services; and PAUL
HOEFERT, in his capacity as the Village Mayor,

Defendants.

Case No. 2023 CH 5147

Judge Quish

Calendar 14

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

Defendants/Counter-Plaintiffs,

v.

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

Plaintiff/Counter-Defendant.

Defendants/Counter-Plaintiffs'

EXHIBIT G

Letter from Lance C. Malina To Anastas Shkurti, dated April 29, 2021



20 N. Wacker Drive, Ste 1660
Chicago, Illinois 60606-2903
T 312 984 6400 F 312 984 6444

15010 S Ravinia Avenue, Ste 10
Orland Park, Illinois 60462-5353
T 708 349 3888 F 708 349 1506

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

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EXHIBIT B
MAY 1 2021

**IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CHANCERY 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
COONEY, in his capacity as Village Director of
Community Development; WILLIAM
SCHROEDER, in his capacity as Village Director
of Building & Inspection Services; and PAUL
HOEFERT, in his capacity as the Village Mayor,

Defendants.

Case No. 2023 CH 5147

Judge Quish

Calendar 14

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

Defendants/Counter-Plaintiffs,

v.

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

Plaintiff/Counter-Defendant.

Defendants/Counter-Plaintiffs'

EXHIBIT H

Tolling Agreement

EXHIBIT B

(MTD)

TOLLING AGREEMENT

JP
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").

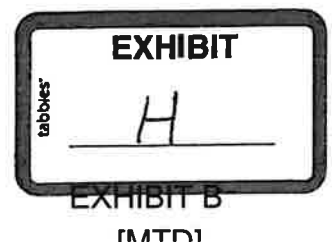
C. The Village Parties authorized Prestige's Use at the Property on February 2018.

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: [Signature]
Name: [Signature]
Its: Authorized Agent

34 [Signature]
Michael J. Cassady,
Village Manager

[Signature]
William Cooney,
Director of Community Development

**IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CHANCERY 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
COONEY, in his capacity as Village Director of
Community Development; WILLIAM
SCHROEDER, in his capacity as Village Director
of Building & Inspection Services; and PAUL
HOEFERT, in his capacity as the Village Mayor,

Defendants.

Case No. 2023 CH 5147

Judge Quish

Calendar 14

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

Defendants/Counter-Plaintiffs,

v.

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

Plaintiff/Counter-Defendant.

Defendants/Counter-Plaintiffs'

EXHIBIT I

Letter from Lance C. Malina to Riccardo DiMonte, dated April 10, 2023



20 N Wacker Drive, Ste 1660
Chicago, Illinois 60606-2903
T 312 984 6400 F 312 984 6444

DD 312 984 6469
lcmalina@ktjlaw.com

15010 S. Ravinia Avenue, Ste 10
Orland Park, Illinois 60462-5353
T 708 349 3888 F 708 349 1506

www.ktjlaw.com

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)

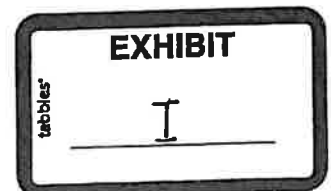
Dear Mr. DiMonte:

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 wshroeder@mountprospect.org



**IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CHANCERY 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
COONEY in his capacity as Village Director of
Community Development; WILLIAM
SCHROEDER in his capacity as Village Director
of Building & Inspection Services; and PAUL
HOEFERT in his capacity as the Village Mayor,

Defendants.

Case No. **2023CH05147**

JURY DEMANDED ON LAW COUNTS

**COMPLAINT FOR INJUNCTION,
FOR DECLARATORY JUDGMENT, AND FOR DAMAGES**

The Plaintiff, Prestige Feed Products, LLC (“Prestige”), by its attorneys Riccardo A. DiMonte, Anastas Shkurti, and Vlad Chirica of Robbins DiMonte, Ltd., complains of the Defendants, the Village of Mount Prospect (“VOMP” or “Village”), the Village Manager Michael J. Cassady (“Cassady”), the Village Director of Community Development William Cooney (“Cooney”), the Village Director of Building & Inspection Services William Schroeder (“Schroeder”), and the Village Mayor 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 VOMP is threatening to revoke Prestige’s business license and occupancy permit on June 9, 2023, claiming that Prestige’s business is 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 two scientific odor studies during 2021 and 2022 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.

While Prestige has shared its expert reports with the Defendants, and while the Village has no objective measurable or scientific data, the VOMP is currently threatening to revoke Prestige's occupancy permit and business license on June 9, 2023. If the Village revokes Prestige's occupancy permit and business license, then the Plaintiff will suffer the following immediate and irreparable harm:

- 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 its \$2,944,151 investment in the Facility.

Due to the fact that the VOMP has no objective facts or data that establish that PFP'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, VOMP, is an Illinois municipal corporation, located in Cook County, Illinois.

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

4. Defendant William Cooney is the VOMP Director of Community Development.

5. Defendant William Schroeder is the VOMP Director of Building & Inspection Services.

6. Defendant Paul Hoefert is the VOMP Mayor.

7. 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**.

8. 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.

9. 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**.

10. The Termination of the Tolling Agreement results in the VOMP’s ability to revoke Prestige’s occupancy permit and business license at the Facility. As of June 9, 2023, VOMP admits that June 9, 2023, is the deadline for Prestige to file suit against the Village regarding this dispute.

B. Prestige’s Operations and Installation of Odor Mitigation Systems

11. 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.

12. 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).

13. The properties to the South of the Facility are zoned R-1, the properties to the East, West and North are zoned I-1¹.

14. During February 2018, VOMP approved Prestige's use of the site for light manufacturing in the Village's I-1 Zoning District. VOMP 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.

15. 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.

16. 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

¹ On June 21, 2022, VOMP rezoned the property located at 3500 Wolf Road from B-1 to I-1.

existing odor mitigation system by installing additional vaporization nozzles to disperse more vapor to the airstream.

17. 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.

18. 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.

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

19. 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 VOMP's letter of March 1, 2021.

20. The Notice of Imminent Legal Action alleged that the 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.

21. 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.

22. In its pertinent part, Section 11.3401: Nuisances, states:

“Section 11.3401: 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.” (1981 Code; amd. Ord. 3617, 3-4-1986).

23. In its pertinent part, Section 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].

24. 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.

25. 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:

- a) 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 eight volumes of odor-free air as measured by the Scentometer;
- 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;

c) On or adjacent to premises other than those above when odor is detectable in the ambient air after it is diluted with sixteen volumes of odor-free air as measured by the Scentometer;

d) When concurrent determinations made by three trained inspectors as outlined above in any given one hour period and at intervals of not less than fifteen minutes result in two positive determinations in each series of three determinations; and

e) Provided that any quantitative odor level measurements taken to arrive at a determination that an objectionable odor nuisance exists shall be at or beyond the property line or at or near places where people live or work.”
[Emphasis added].

26. To address these concerns, 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. (Exhibit A).

27. 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.

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

D. Prestige’s Expert Reports

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

30. 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.

31. 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.

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

33. 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 vapor. The cost of purchasing and installing Prestige's odor control system and its various upgrades at the Facility was \$432,594.

34. 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.

35. 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 nuisance threshold Scentometer readings under applicable law, which are 8 along the Facility's southern border (zoned R-1), and 24 everywhere else (zoned I-1).

36. 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.

37. On April 10, 2023, notwithstanding objective test results from June 2, 2021, and October 31, 2022, the VOMP 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 VOMP's ability to revoke Prestige's occupancy permit/business license as of June 9, 2023.

38. Prestige's original investment to build the Facility was \$2,375,482.

39. Prestige employs five (5) workers on the Facility floor during overnight hours and requires a second daytime shift in order to meet demand for its product.

40. Prestige has 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.

41. Prestige is willing to invest an additional \$171,899 to install a Tri-Stack Strobic Air Fan to further reduce or completely eliminate the emissions at the site.

42. The Village has threatened to issue another “cease and desist order” after June 9, 2023.

43. Although to date the Village has no objective measurable or scientific data that establish that Prestige’s business is a nuisance as defined by law, various Village officials have stated in the press and to the public that Prestige is in violation of the Village Code.

44. On April 4, 2023, the *Journal & Topics* publication quoted Village Manager Cassady 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*).

45. 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.” (Mount Prospect Rescinds Agreement, Wants Company To Fix Odor For Good, *By Richard Mayer on April 19, 2023*).

46. The Village has also threatened to revoke the Prestige occupancy permit and business license.

47. Prestige is entitled to unfettered operation of its business because it is not a nuisance by any objective standard defined by law. Without injunctive relief, five Prestige employees will lose their jobs, Prestige will default on its lease for the sum of \$23,343 per month, Prestige will lose its investment of \$2,944,151 for the Facility, and Prestige will suffer financial losses and irreparable harm by failing to fill its customers' orders currently in the pipeline.

**COUNT I
DECLARATORY JUDGMENT**

1 - 47. Prestige adopts and realleges the allegations asserted in Paragraphs 1 through 47 above as if fully set forth herein as Paragraphs 1 through 47 of Count I.

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

49. 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.

50. Prestige has provided the Village with two scientific odor studies during 2021 and 2022 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.

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

52. 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.

53. 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 VOMP 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.

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

55. Prestige's Use at the Facility falls under the definition of 'Manufacturing, Light' as stated by the Village Manager in February 2018, instead of 'Manufacturing, Heavy' as the Village claimed on March 1, 2021.

56. 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.

57. 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.

58. The damages that Prestige has suffered from the VOMP 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: Nuisances; Section 14.604: Land Use Tables; and Section 14.2104: Bulk Regulations;
- 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 claim that the Prestige business is a nuisance or 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**

1 - 58. Prestige adopts and realleges the allegations asserted in Paragraphs 1 through 58 above as if fully set forth herein as Paragraphs 1 through 58 of this Count II.

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

60. 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 claim that the Prestige business is a nuisance or 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
DAMAGES – JURY DEMANDED ON LAW COUNTS**

1 – 60. Prestige adopts and realleges the allegations asserted in Paragraphs 1 through 60 above as if fully set forth herein as Paragraphs 1 through 60 of this Count III.

WHEREFORE, 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 Village Director of Community Development William Cooney, 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

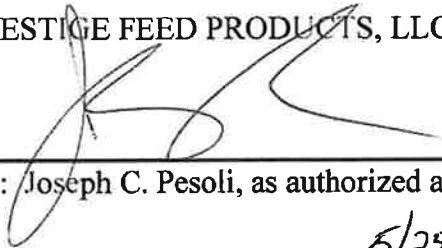
By: _____
Riccardo A. DiMonte, one of its attorneys

Riccardo A. DiMonte
rdimonte@robbinsdimonte.com
Anastas Shkurti
ashkurti@robbinsdimonte.com
Vlad V. Chirica
vchirica@robbinsdimonte.com
ROBBINS DIMONTE, LTD.
216 W. Higgins Rd.
Park Ridge, IL 60068
Tel.: (847) 698-9600
Firm No. 99688

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

5/25/23

**IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CHANCERY 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
COONEY in his capacity as Village Director of
Community Development; WILLIAM
SCHROEDER in his capacity as Village Director of
Building & Inspection Services; and PAUL
HOEFERT in his capacity as the Village Mayor,

Defendants.

Case No.

**JURY DEMANDED ON LAW
COUNTS**

**EXHIBIT LIST TO
COMPLAINT FOR INJUNCTION,
FOR DECLARATORY JUDGMENT, AND FOR DAMAGES**

- 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

JP 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: [Signature]
Name: [Signature]
Its: Authorized Agent

By: [Signature]
Michael J. Cassady,
Village Manager

[Signature]
William Cooney,
Director of Community Development

K T J

KLEIN, THORPE & JENKINS, LTD.
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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. Cassady
Village Manager
Village of Mount Prospect



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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 2: Laboratory Results

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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") 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. (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.

6.2.2 Scentometer readings

The Scentometer evaluations were conducted at 21 locations surrounding the Facility, shown in Figures 2, 3, and 4. 15 of these locations (1 through 10, and 11 through 15) were off-site and 6 of them (10-1 through 10-6) were on-site.

Figure 2 shows Scentometer reading location numbers 1 through 8: (1) 1501 Feehanville Drive; (2) 431 Lakeview (South); (3) 1504 E. Lowden Lane; (4) 630 Kylemore Drive; (5) 1130 Wexford Court; (6) 630 Castlereia Lane; (7) 650 Castlereia Lane; and (8) 630 Dursey Lane.



Figure 2. Scentometer Reading Locations 1-8.



Figure 3. Scentometer Reading Locations 9-11, and 15.

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 Castlereia Ln	6	N	0-5	0	14:33	
650 Castlereia 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 of the Teflar 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 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.

pipng 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

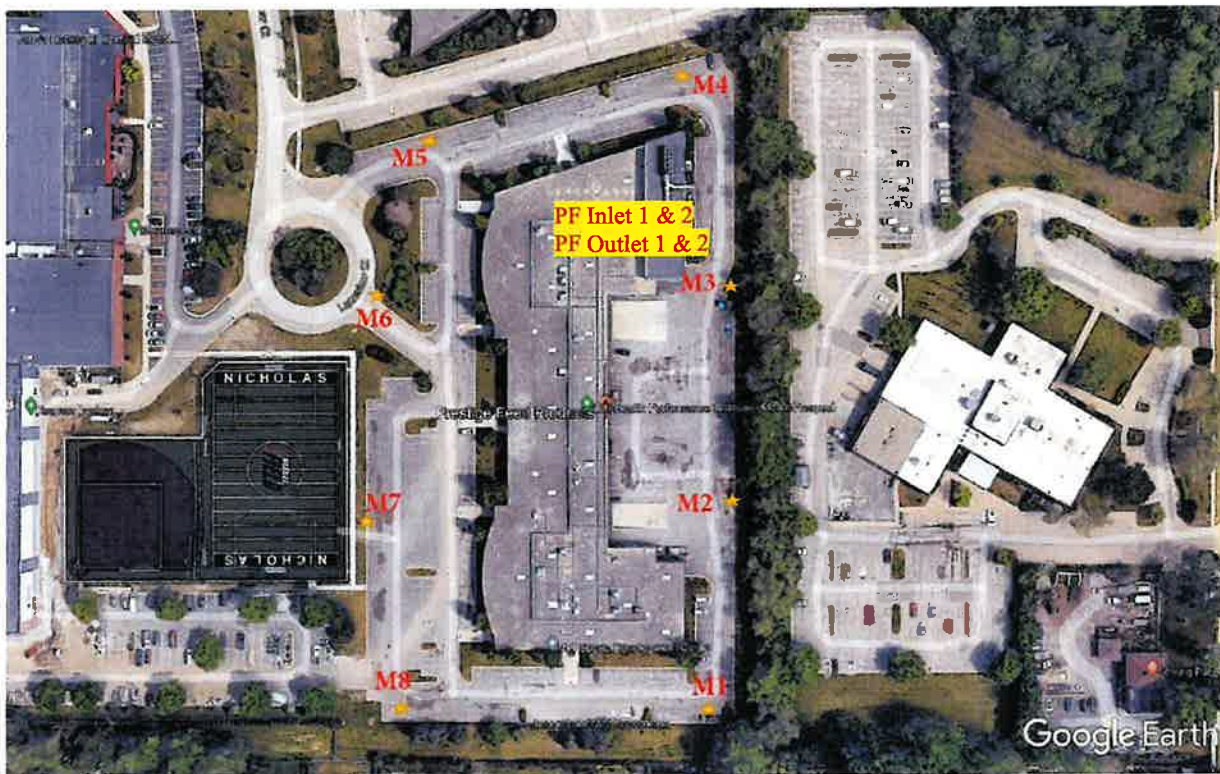
Scentometer. RKA used a Scentometer device at 8 locations to determine the order of magnitude concentration of an odorant in air. The sampling was conducted by Dr. Zhice Hu, Ph.D., an expert on the use and function of the Scentometer device.

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.