

**IN THE CIRCUIT COURT OF THE TWENTY-FIRST JUDICIAL CIRCUIT
KANKAKEE COUNTY, ILLINOIS
CHANCERY DIVISION**

FILED

JUL 28 2023

Sandra M. Cooney
CIRCUIT COURT CLERK

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. KWAME RAOUL, Attorney)
 General of the State of Illinois,)
)
 Plaintiff,)

v.)

No. 2023CH19)

BASF CORPORATION,)
 a Delaware corporation, and)
 KENSING, LLC, a Delaware)
 limited liability company,)
)
 Defendants.)

CONSENT ORDER WITH KENSING, LLC ONLY

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* KWAME RAOUL, Attorney General of the State of Illinois, the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), and Defendant, KENSING, LLC, a Delaware limited liability company (collectively “Parties to the Consent Order”), have agreed to the making of this Consent Order and submit it to this Court for approval.

I. INTRODUCTION

This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Court’s entry of the Consent Order and issuance of any injunctive relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/1 *et seq.* (2020), and the Illinois Pollution Control Board (“Board”) regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the Parties to this Consent Order that it be a final judgment on the merits of this matter.

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A. Parties

1. On July 27, 2023, a Complaint was filed on behalf of the People of the State of Illinois by Kwame Raoul, Attorney General of the State of Illinois, on his own motion and upon the request of the Illinois EPA, pursuant to Section 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e) (2020), against Kensing, LLC.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2020).

3. At all times relevant to the Complaint, Defendant Kensing, LLC was and is a Delaware limited liability company.

4. From June 1, 2021, Kensing, LLC has been the owner and operator of a chemical manufacturing facility located at 2525 South Kensington Road, Kankakee, Kankakee County, Illinois (the "Facility").

5. As of the date of filing of this Complaint, the Facility is located in an area of Environmental Justice ("EJ") concern as identified using Illinois EPA EJ Start.

B. Allegations of Non-Compliance

Plaintiff contends that Kensing, LLC has violated the following provisions of the Act and Illinois Pollution Control Board Regulations:

Count I: Violation of National Emission Standards for Hazardous Air Pollutants (NESHAP) for Pharmaceutical Manufacturing, in violation of Section 63.1254(A)(3) of NESHAP Subpart GGG, 40 C.F.R. § 63.1254(A)(3), and Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2020); and

Count II: Violation of Clean Air Act Program (CAAPP) Permit Conditions, in violation of Section 39.5(6)(a) of the Act, 415 ILCS 5/39.5(6)(a) (2020), and Conditions 7.1.3(f)(i) and 7.1.5(a) of CAAPP Permit No. 96030030.

C. Non-Admission of Violations

Kensing, LLC represents that it has entered into this Consent Order for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Consent Order and complying with its terms, Kensing, LLC does not affirmatively admit the allegations of violation within the Complaint and referenced above, and this Consent Order shall not be interpreted as including such admission.

D. Compliance Activities to Date

1. On June 10, 2022, Kensing, LLC submitted an application to Illinois EPA for a revised construction permit.
2. On October 3, 2022, Illinois EPA issued a revised construction permit to Kensing, LLC authorizing the construction of a new pollution control system at its area 21 sterol separation process, including a combination of a regenerative thermal oxidizer (“RTO”) followed by a scrubber.

II. APPLICABILITY

1. This Consent Order shall apply to and be binding upon the Parties to the Consent Order. Kensing, LLC waives as a defense to any enforcement action taken pursuant to this Consent Order the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Consent Order. This Consent Order may be used against Kensing, LLC in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2020).

III. JUDGMENT ORDER

This Court has jurisdiction of the subject matter herein and of the Parties to the Consent Order and, having considered the stipulated facts and being advised in the premises, finds the following relief appropriate:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

A. Civil Penalty

1. Kensing, LLC shall pay a civil penalty of Seventy Thousand Dollars (\$70,000.00). Payment shall be tendered at time of entry of the Consent Order.
2. The civil penalty payment shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF").
3. The case name and case number shall appear on the face of the certified check or money order.

B. Future Compliance

1. Kensing, LLC shall comply with the terms and conditions of the construction permit no. 210004 issued by Illinois EPA on October 3, 2022.
2. The Illinois EPA, its employees and representatives, and the Attorney General, his employees and representatives, shall have the right of entry into and upon Kensing, LLC's Facility which is the subject of this Consent Order, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, his employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

3. This Consent Order in no way affects the responsibilities of Kensing, LLC to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.

4. Kensing, LLC shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

C. Enforcement of Consent Order

1. This Consent Order is a binding and enforceable order of this Court. This Court shall retain jurisdiction of this matter and shall consider any motion by any party for the purposes of interpreting and enforcing the terms and conditions of this Consent Order. Kensing, LLC agrees that notice of any subsequent proceeding to enforce this Consent Order may be made by mail and waives any requirement of service of process.

D. Release from Liability

In consideration of Kensing, LLC's payment of a \$70,000.00 penalty, its commitment to cease and desist as contained in Section III.B.4 above, and completion of all activities required hereunder, the Plaintiff releases, waives and discharges Kensing, LLC from any further liability or penalties for the violations of the Act and Board Regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Plaintiff's Complaint filed on July 27, 2023. The Plaintiff reserves, and this Consent Order is without prejudice to, all rights of the State of Illinois against Kensing, LLC with respect to all other matters, including but not limited to the following:

- a. criminal liability;
- b. liability for future violations;
- c. liability for natural resources damage arising out of the alleged violations; and

d. Kensing, LLC's failure to satisfy the requirements of this Consent Order.

Nothing in this Consent Order is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, other than the Defendant.

E. Execution and Entry of Consent Order

This Order shall become effective only when executed by all Parties to the Consent Order and the Court. This Order may be executed by the parties in one or more counterparts, all of which taken together shall constitute one and the same instrument. The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Consent Order and to legally bind them to it.

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WHEREFORE, the parties, by their representatives, enter into this Consent Order and submit it to this Court that it may be approved and entered.

AGREED:


FOR THE PLAINTIFF:

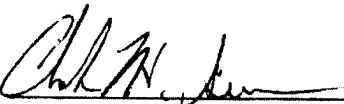
PEOPLE OF THE STATE OF ILLINOIS
ex rel. KWAME RAOUL, Attorney General
of the State of Illinois

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

JOHN J. KIM, Director
Illinois Environmental Protection Agency

BY: 
STEPHEN J. SYLVESTER, Chief
Environmental Bureau
Assistant Attorney General

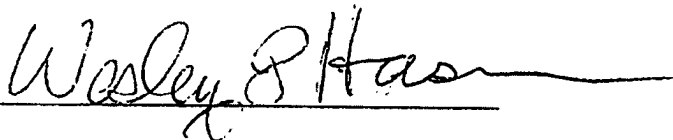
BY: 
CHARLES W. GUNNARSON
Chief Legal Counsel

DATE: 5/30/23

DATE: 5/30/23

FOR THE DEFENDANT:

KENSING, LLC

BY: 

Its: SVP Site Operations

DATE: 3/20/2023

ENTERED:


JUDGE

DATE: 7.28.23