

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 16-61
	)	(Enforcement – Air)
AMSTED RAIL COMPANY, INC.,	)	
	)	
Respondent.	)	

STATE OF ILLINOIS  
Pollution Control Board  
JAN 15 2016  
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CLERK'S OFFICE

**NOTICE OF FILING**

To: Carol Webb	Jamie D. Getz
Hearing Officer	Assistant Attorney General
Illinois Pollution Control Board	Environmental Bureau
1021 North Grand Avenue East	69 West Washington Street, 18 <sup>th</sup> Floor
P.O. Box 19274	Chicago, Illinois 60602
Springfield, Illinois 62794-9274	

PLEASE TAKE NOTICE that on this 15<sup>th</sup> day of January 2016, the following were filed with the Illinois Pollution Control Board, which are attached and herewith served upon you:

- **Respondent Amsted Rail Company, Inc.'s Answer and Affirmative Defenses to Plaintiff's Complaint**
- **Respondent Amsted Rail Company, Inc.'s Motion to Dismiss Counts I, II, III, IV, V, and VI**

AMSTED RAIL COMPANY, INC.

By:   
 \_\_\_\_\_  
 One of its attorneys

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**CERTIFICATE OF SERVICE**

I, the undersigned non-attorney, state that a copy of this notice and the above-described documents were served electronically upon all counsel of record on January 15, 2016.

  
 \_\_\_\_\_  
 Jeanette Podlin

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**MOTION TO DISMISS COUNTS I, II, III, IV, V, and VI**

Respondent AMSTED RAIL COMPANY, INC., by its attorneys Swanson, Martin & Bell, LLP, moves the Board to dismiss Counts I, II, III, IV, V, and VI of plaintiff's complaint. The violations alleged in those counts are barred by the Illinois statute of limitations.

**BACKGROUND AND INTRODUCTION**

Plaintiff filed a thirteen-count, sixty-seven page complaint on November 16, 2015. The complaint alleges violations of certain air regulations and of permit conditions at respondent's Granite City, Illinois facility ("Facility"). As established in the complaint, plaintiff is aware that all violations alleged in Counts I through VI were corrected more than five years ago – beyond the applicable statute of limitations for bringing an action. Additionally, the majority of remaining alleged violations are not substantive events.

As set forth in the pleadings, the violations alleged in plaintiff's complaint arise from two inspections by the Illinois Environmental Protection Agency ("Illinois EPA") in August 2008 and May 2012.

**Violations alleged in Counts I through VI**

The State's claims in Counts I through VI accrued prior to November 16, 2010, more than five years before the filing of this complaint.

Count I alleges respondent failed to maintain and inspect ductwork and that ductwork was emitting particulate matter during the August 2008 inspection. Count I does not allege violation(s) after December 28, 2008. (Complaint, Count I, pars. 17-21.) As set forth in the pleadings, Illinois EPA has been aware of the alleged, wholly-past violations in Count I since August 2008. Thus, claims in Count I accrued more than five years before the filing of plaintiff's complaint.

Count II alleges that in August 2008, respondent failed to keep records of monthly maintenance. (Complaint, Count II, pars. 20-21, 25-26.) Count II does not allege the purported violations continued. As set forth in the pleadings, Illinois EPA has been aware of the alleged, wholly-past violations in Count II since August 2008. Thus, claims in Count II accrued more than five years before the filing of plaintiff's complaint.

Count III alleges that respondent failed to possess records regarding road sweeping and did not possess up-to-date roadway maps during Illinois EPA's August 2008 inspection. (Complaint, Count III, pars. 31-35.) Count III does not allege the purported violations continued. As set forth in the pleadings, Illinois EPA has been aware of the alleged, wholly-past violations in Count III since August 2008. Thus, claims in Count III accrued more than five years before the filing of plaintiff's complaint.

Count IV asserts that respondent failed to maintain bag houses and did not update respondent's Fugitive Particulate Matter Operating Program regarding facility traffic patterns. The alleged violations were identified during Illinois EPA's August 2008 inspection. (Complaint, Count IV, pars. 25-27, 29-31.) Count IV does not contend those violations continued. As set forth in the pleadings, Illinois EPA has been aware of the

alleged, wholly-past violations in Count IV since August 2008. Thus, claims in Count IV accrued more than five years before the filing of plaintiff's complaint.

Count V alleges respondent constructed a sand screen without first obtaining a construction permit. However, the pleadings contain plaintiff's admission that Illinois EPA issued respondent the construction permit on September 8, 2009, "which addressed the prior construction of the sand screen at the Facility." (Complaint, Count V, pars. 15-16, 18, 23-24.) Count V does not contend the alleged violation continued and does not allege any such violation after September 2009. As set forth in the pleadings, Illinois EPA has been aware of the alleged, wholly-past violation since September 2009. Thus, claim in Count V accrued more than five years before the filing of plaintiff's complaint.

Count VI alleges respondent did not pay a fee – in 2009 – for the sand screen construction permit referenced in Count V. (Complaint, Count VI, pars. 29-30.) Count VI does not allege continuing violations. As set forth in the pleadings, Illinois EPA has been aware of the alleged past violation since at least September 2009. Thus, the claim in Count VI accrued more than five years before the filing of plaintiff's complaint.

#### STANDARD

In ruling on a motion to dismiss, the Board takes all well-pled allegations as true and draws all reasonable inferences in favor of the non-movant. The Board will dismiss a cause of action if it is clear there are no facts that could be proved that would entitle the plaintiff to relief. *People v. Professional Swine Management, LLC*, PCB 10-84 (February 2, 2012), *citing Beers v. Calhoun*, PCB 04-204 (July 22, 2004).

## ARGUMENT

All of the violations alleged in Counts I through VI occurred prior to November 16, 2010. As set forth in the pleadings, all of the violations alleged in Counts I through VI were known to plaintiff in 2008. As set forth in the pleadings, all of the violations alleged in Counts I through VI were corrected more than five years before the filing of plaintiff's complaint. Therefore, Counts I through VI are barred by a five-year statute of limitations and must be dismissed.

The statute of limitations for these alleged violations is five years.

Counts I through VI allege violations of the Act and of the Board's rules promulgated pursuant to authority conferred by the Act. The Act does not contain a statute of limitations for enforcement actions like the one presented here. Similarly, the Board's procedural rules do not contain a statute of limitations for enforcement actions like the one presented here. However, that does not mean there is no statute of limitations. The Illinois Code of Civil Procedure establishes a five-year statute of limitations for "all civil actions not otherwise provided for." 735 5/13-205. The Board's procedural rules specifically provide "the Board may look to the Code of Civil Procedure...where the Board's procedural rules are silent." 35 Ill. Adm. Code 101.100(b). In fact, the Board has previously accepted that the five-year statute of limitations can be applicable to enforcement cases. *Union Oil Company of California v. Barge-Way Oil Company, Inc.*, PCB 98-169 (January 7, 1999)(accepting that the five-year statute of limitations could be applied to an enforcement action).

Respondent recognizes the Board has held that the statute of limitations will not preclude an enforcement action brought by the State on behalf of a public interest. In this

case, however, Counts I through VI are not brought to protect a public interest. An interest is not a “public interest” merely because the plaintiff is Illinois EPA. The status of the plaintiff does not establish whether an interest is “public” or “private.” In this case, Counts I through VI represent private interests and are barred by the applicable five-year statute of limitations.

In determining whether a governmental entity is protecting a “public interest,” courts consider three factors: 1) the effect of the interest on the public; 2) the obligation of the governmental unit to act on behalf of the public; and 3) the extent to which public revenues are expended. *Champaign County Forest Preserve District v. King*, 281 Ill.App.3d 197, 200 (4<sup>th</sup> Dist. 1997), *citing Board of Education v. A, C, & S, Inc.*, 131 Ill.2d 428, 476 (1989). Here, all three factors demonstrate that plaintiff’s claims in Counts I through VI reflect private interests – not public interests.

1) Effect of the Interest on the Public: Plaintiff’s after-the-fact, stale suit (Counts I-VI) has no impact on public interests. Plaintiff knew of the circumstances alleged in Counts I through IV since 2008, and plaintiff knew of the circumstances alleged in Counts V and VI since at least 2009. By plaintiff’s own pleadings, all alleged violations are wholly-past and were corrected long ago. Further, the alleged violations are almost all “document-related” and do not involve actual harm to the environment.<sup>1</sup> The lack of a public interest is manifest by the failure to file suit – since 2008. The pleadings demonstrate the alleged violations did not continue. More is needed to establish a public interest than a stale desire to

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<sup>1</sup> Respondent recognizes that permit requirements and proper recordkeeping are essential parts of the regulatory scheme which existed at the time. Respondent makes the point about the nature of the alleged violations only to emphasize there is no public interest in enforcing wholly-past paperwork violations many years after they were corrected.

address musty violations that were corrected many years ago. There simply is no current effect on the public by plaintiff's enforcing actions that were corrected many years ago. Furthermore, plaintiff's pleadings are devoid of any assertion or allegation of a public interest concerning Counts I-VI.

2) Obligation of the Government to Act on Behalf of the Public: There is no obligation for plaintiff and Illinois EPA to pursue seven-year-old document violations, that were long since corrected. In cases where courts have found government enforcement to be "public," the allegations involved substantive pollution and harm to the environment. See, e.g., *City of Chicago v. Latronica Asphalt & Grading, Inc.*, 346 Ill. App. 3d 264 (1st Dist. 2004) (city acted in public capacity when it pursued cleanup costs arising from illegal dumping because cleanup of dumping affects the interests of the general public, illegal dumping of waste can create a danger to the public health, and the city expended significant public revenues during cleanup); *Pielet Bros. Trading, Inc. v. Pollution Control Bd.*, 110 Ill. App. 3d 752, (5th Dist. 1982) (Illinois EPA acted in public capacity in seeking to protect the right to a clean environment by enforcing laws against open burning, waste compaction, and spreading requirements); *Illinois v. American Waste Processing Ltd.* (March 19, 1998), PCB No. 98-37, slip op. at 1 (State acted in public capacity when pursuing defendant for ongoing waste disposal violations). By the State's own pleadings in this case, almost all alleged violations involve document issues which were corrected and do not involve pollution or a threat to health and the environment. Only one count (Count I) contains anything close to a substantive violation (allegation of inside dust), and the pleadings demonstrate that circumstance was corrected more than seven years ago. There is no

current public interest affected by an activity which the pleadings establish was corrected more than seven years ago.

3) The Extent to Which Public Revenues are Expended: The allegations make clear this case does not involve the recovery or preventing of the expenditure of public funds. In *Shelbyville v. Shelbyville Resortium, Inc.*, 96 Ill.2d 457 (1983), the City of Shelbyville sought an order compelling a home builder to construct streets in a subdivision. The court declined to apply a statute of limitations because the City would be forced to expend public money to build those streets if Shelbyville could not force the builder to construct the streets according to the existing plan. (*Id.* at 466.) That is not the case here. The alleged violations of Counts I through VI will not prevent – and did not prevent – the government from expending public funds. Those alleged violations involve past document issues which have no impact on public funds. The government will not have to expend public funds if it cannot pursue the violations alleged in Counts I through VI.<sup>2</sup>

It is noteworthy that none of the applicable cases holds that a “public interest” is created merely because the plaintiff is a governmental entity. The legal status of plaintiff is not determinative. What determines whether an interest is “public” versus “private” is the specific interest being pursued. This case does not meet any of the three criteria specifically identified by Illinois courts for determining whether the plaintiff is pursuing a public right. Firstly, the plaintiff’s stale attempt to enforce corrected violations has no impact on current public interests. Secondly, there is no obligation for plaintiff to pursue enforcement of musty document violations that were long-since corrected. Thirdly, this case does not involve recovering or preventing the expenditure of public funds.

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<sup>2</sup> Here the plaintiff seeks to expend public funds to enforce a private right.

Counts I through VI are barred by the five-year statute of limitations.

Illinois law provides a statute of limitations for claims, including a catch-all, five-year statute of limitations in the few instances where there is not a specific, applicable statute of limitations. Unless the interest being pursued is a “public” interest, the five-year statute of limitations applies. There must be a statute of limitations to IPCB claims. In fact, the Board previously acknowledged that the catch-all, five-year statute of limitations can be applicable to enforcement cases. *Union Oil Company of California v. Barge-Way Oil Company, Inc.*, PCB 98-169 (January 7, 1999)(accepting that the five-year statute of limitations could be applied – but declining to do so in that case). This complaint was filed on November 16, 2015. Therefore, actionable claims must have accrued on or after November 16, 2010. The pleadings make clear that Counts I through VI accrued before November 16, 2010.

All of the claims in Counts I through VI accrued long before November 16, 2010. By its own pleadings, Illinois EPA knew of the violations alleged in Counts I through IV no later than August 2008. By its own pleadings, Illinois EPA knew of the violations alleged in Counts V and VI no later than September 2009. Taking all well-pled allegations as true, as the Board must, it is clear the violations alleged in Counts I through VI accrued before – and were corrected before – November 16, 2010. Therefore, Counts I through VI are barred by the statute of limitations. The Board should grant the motion to dismiss.

CONCLUSION

The plaintiff seeks to enforce a private interest in Counts I through VI. Therefore, a five-year statute of limitations applies to those six counts. The complaint was filed on November 16, 2015. Thus, any cause of action which accrued prior to November 10, 2010 is time-barred. Counts I through IV accrued in August 2008, and the causes of action in Counts V and VI accrued no later than September 2009. Alleged violations were corrected many years ago. Counts I through VI should be dismissed as barred by the statute of limitations.

WHEREFORE, respondent Amsted Rail Company, Inc. moves the Board to dismiss Counts I through VI with prejudice, and for such other relief as the Board deems appropriate.

Respectfully submitted,

AMSTED RAIL COMPANY, INC.

By:   
\_\_\_\_\_  
One of its attorneys

Dated: January 15, 2016

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by LISA MADIGAN, Attorney General	)	
of the State of Illinois,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 16-61
	)	(Enforcement – Air)
	)	
AMSTED RAIL COMPANY, INC.,	)	
a Delaware corporation,	)	
	)	
Respondent.	)	

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**ANSWER AND AFFIRMATIVE DEFENSES**

Respondent AMSTED RAIL COMPANY, INC., through its attorneys Swanson, Martin & Bell, LLP, answers Plaintiff's complaint, and pleads affirmative defenses.

**PARTIES AND BACKGROUND**

1. This Complaint is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA" or "Agency"), against Respondent AMSTED RAIL COMPANY, INC. ("Respondent"), pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2014).

**ANSWER: Respondent has insufficient information to form a belief as to the plaintiff's purpose in bringing this complaint. To the extent an answer is required, respondent denies the allegations of this paragraph.**

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 (2014), and charged, *inter alia*, with the duty of enforcing the Act.

**ANSWER: Respondent admits the allegations of paragraph 2.**

3. At all times relevant to this Complaint, Respondent was and is a Delaware corporation duly authorized to do business in Illinois.

**ANSWER: Respondent admits the allegations of paragraph 3.**

4. At all times relevant to this Complaint, Respondent was and is the owner of the property located at 1700 Walnut Street, Granite City, Madison County, Illinois ("Facility"). The property consists of a steel manufacturing foundry and roadways.

**ANSWER: Respondent admits the allegations of paragraph 4.**

**A. Respondent's Operations at the Facility.**

5. Respondent operates a steel foundry at the Facility wherein scrap steel is melted and poured into molds to create castings.

**ANSWER: Respondent admits the allegations of paragraph 5.**

6. Respondent's operations at the Facility utilize emission units that emit, or have the potential to emit, particulate matter ("PM").

**ANSWER: Respondent admits the allegations of paragraph 6.**

7. Respondent operates a core sand system at the Facility that uses either new sand or recycled sand generated from within the Facility to make cores for the molds ("Core Sand System"). The Core Sand System emits, or has the potential to emit, PM. Baghouses and scrubbers are utilized at the Facility to control PM emissions from the Core Sand System.

**ANSWER: Respondent denies that scrubbers control PM from the Core Sand System.**

**Respondent admits the remaining allegations of paragraph 7.**

8. The Facility uses metal processing equipment at the Facility to melt and refine scrap metal ("Metal Processing Equipment"). The Metal Processing Equipment includes two electric arc furnaces. Each electric arc furnace emits, or has the potential to emit, PM. Baghouses

are utilized at the Facility to control PM emissions from the Metal Processing Equipment. Specifically, baghouses control PM emissions from each of the two electric arc furnaces.

**ANSWER: Respondent admits the allegations of paragraph 8.**

9. Molten steel generated by the Metal Processing Equipment is poured from an overhead crane into finished molds in three separate molding floors at the Facility to create castings ("Molding Sand System"). One of the three molding floors operated by Respondent at the Facility is known as molding sand system #6 ("MSS-6"). The Molding Sand System, including the MSS-6, emits or has the potential to emit, PM. Baghouses are utilized at the Facility to control PM emissions from the Molding Sand System. Specifically, a baghouse controls PM emissions from the MSS-6.

**ANSWER: Respondent admits the allegations of paragraph 9.**

10. After the castings are poured and allowed to cool and harden, they are separated from the molds on the molding floors. The castings are placed on skids and taken to a skid shakeout/railcar sand handling system ("Shakeout") where mechanical shakeout removes molding sands from the castings. The individual castings are manually placed onto a conveyor and taken to casting knockout ("Knockout") where more aggressive mechanical shaking of the castings removes any further sands.

**ANSWER: Respondent admits the allegations of paragraph 10.**

11. Steel castings created in the Molding Sand System at the Facility are then transported for cleaning and finishing ("Casting/Finishing Operations"). In the Casting/Finishing Operations, Respondent uses three shot blast machines at the Facility to clean the surface of castings, including shot blast machine #5 ("SB-5") and shot blast machine #7 ("SB-7"). The Casting/Finishing Operations also include two tumble blast machines to clean the surface of smaller-sized castings. The Casting/Finishing Operations, including each of the SB-5, SB-7, and the tumble blast machines, emit, or have the potential to emit, PM. Baghouses are

utilized at the Facility to control PM emissions from the Casting/Finishing Operations. Specifically, baghouses control PM emissions from each of the SB-5, SB-7 and the tumble blast machines at the Facility.

**ANSWER: Respondent denies it uses three shot blast machines. Respondent admits the remaining allegations of paragraph 11.**

12. Steel castings designated for painting are transported on skids to a paint booth at the Facility ("Castings Paint Booth"). The Castings Paint Booth emits volatile organic material ("VOM") from the evaporation of the organic material in the coatings during the coating and drying phase processes.

**ANSWER: Respondent admits the allegations of paragraph 12.**

13. Respondent also operates an Isocure core making line to make sand cores that are used in the production of steel castings at the Facility ("Isocure Process"). The Isocure Process emits, or has the potential to emit, PM. PM emissions from the Isocure Process at the Facility are controlled with a packed wet scrubber ("Scrubber AS-2"), which uses a sulfuric acid solution for the scrubbant.

**ANSWER: Respondent denies that PM emissions are controlled with Scrubber AS-2. Respondent admits the remaining allegations of paragraph 13.**

**B. Permits Issued by the Illinois EPA to Respondent for Operations at the Facility.**

14. On June 19, 2006, the Illinois EPA issued to Respondent Clean Air Act Permit Program ("CAAPP") permit 96030102 for the Facility ("CAAPP Permit"). On January 28, 2009, the Illinois EPA issues to Respondent a revised CAAPP Permit. On September 10, 2010, Respondent submitted to the Illinois EPA an application for a renewed CAAPP Permit.

**ANSWER: Respondent admits the allegations of paragraph 14.**

15. On August 7, 2008, the Illinois EPA issued to Respondent permit number 08060024 authorizing the construction of the Casting/Finishing Operations at the Facility, including the tumble blast machines and associated PM control systems ("Construction Permit 08060024").

**ANSWER: Respondent denies that Construction Permit 08060024 authorized the construction of the Casting/Finishing Operations at the Facility, and denies Construction Permit 08060024 relates to multiple tumble blast machines. Respondent admits the remaining allegations of paragraph 15.**

16. On October 20, 2006, the Illinois EPA issued to Respondent permit number 06060046 authorizing the construction of modifications to the Isocure Process and associated PM control systems at the Facility ("Construction Permit 06060046").

**ANSWER: Respondent admits the allegations of paragraph 16.**

17. On September 8, 2009, the Illinois EPA issued to Respondent permit number 09060002 authorizing the construction of used sand screening/recycling operations and associated PM control systems at the Facility ("Construction Permit 09060002").

**ANSWER: Respondent admits the Illinois EPA issued permit number 09060002 to respondent on September 8, 2009. Respondent denies the remaining allegations of paragraph 17.**

**C. Illinois EPA Inspections of the Facility.**

18. On August 26 and 27, 2008, the Illinois EPA inspected the Facility ("August 2008 Inspection").

**ANSWER: Respondent admits the allegations of paragraph 18.**

19. At the time of the Illinois EPA's August 2008 Inspection, the Agency observed the physical condition of the Facility and reviewed Respondent's inspection and maintenance records

for the Facility. The Agency also reviewed the emission records for emission sources constructed and operated at the Facility.

**ANSWER:** Respondent admits the allegations of paragraph 19.

20. On May 30 and 31, 2012, the Illinois EPA inspected the Facility (“May 2012 Inspection”).

**ANSWER:** Respondent admits the allegations of paragraph 20.

21. At the time of the Illinois EPA’s May 2012 Inspection, the Agency observed the physical condition of the Facility and reviewed Respondent’s inspection and maintenance records for the Facility. The Agency also reviewed the emission records for emission sources constructed and operated at the Facility.

**ANSWER:** Respondent admits the allegations of paragraph 21.

#### **COUNT I**

##### **FAILURE TO INSPECT AND MAINTAIN PROCESS EMISSION UNITS**

Respondent has contemporaneously moved to dismiss Count I, and therefore does not answer Count I. If an answer is deemed necessary at this time, respondent denies all allegations of Count I, paragraphs 1-21.

#### **COUNT II**

##### **FAILURE TO MAINTAIN AIR POLLUTION EMISSION CONTROL RECORDS**

Respondent has contemporaneously moved to dismiss Count II, and therefore does not answer Count II. If an answer is deemed necessary at this time, respondent denies all allegations of Count II, paragraphs 1-26.

**COUNT III**

**FAILURE TO MAINTAIN EMISSION UNIT RECORDS**

Respondent has contemporaneously moved to dismiss Count III, and therefore does not answer Count III. If an answer is deemed necessary at this time, respondent denies all allegations of Count III, paragraphs 1-35.

**COUNT IV**

**VIOLATION OF FUGITIVE PARTICULATE MATTER OPERATING PROGRAM**

Respondent has contemporaneously moved to dismiss Count IV, and therefore does not answer Count IV. If an answer is deemed necessary at this time, respondent denies all allegations of Count IV, paragraphs 1-31.

**COUNT V**

**CONSTRUCTING AN EMISSION SOURCE WITHOUT A PERMIT**

Respondent has contemporaneously moved to dismiss Count V, and therefore does not answer Count V. If an answer is deemed necessary at this time, respondent denies all allegations of Count V, paragraphs 1-24.

**COUNT VI**

**FAILURE TO SUBMIT CONSTRUCTION PERMIT FEE**

Respondent has contemporaneously moved to dismiss Count VI, and therefore does not answer Count VI. If an answer is deemed necessary at this time, respondent denies all allegations of Count VI, paragraphs 1-30.

**COUNT VII**

**VIOLATION OF CONDITIONS IN CONSTRUCTION PERMIT 06060046**

1-28. Complainant realleges and incorporates by reference paragraphs 1 through 11, 13, 16, and 18 through 21 of the foregoing section of this Complaint titled "The Parties and

Background,” paragraphs 11 through 14 of Count I, paragraphs 20, 21, 23, and 24 of Count II, and paragraphs 17, 18, and 23 of Count VI, as paragraphs 1 through 28 of this Count VII.

**ANSWER:** Respondent realleges and incorporates by reference paragraphs 1 through 11, 13, 16, and 18 through 21 of the section of the complaint titled “The Parties and Background,” paragraphs 11 through 14 of Count I, paragraphs 20, 21, 23, and 24 of Count II, and paragraphs 17, 18, and 23 of Count VI as its answers to paragraphs 1 through 28 of this Count VII.

29. At the time of the Illinois EPA May 2012 Inspection of the Facility, Respondent had failed to maintain written records of repairs for all baghouses and scrubbers used in the Isocure Process, the operation of the tumble blast machines, the Core Sand System, the Molding Sand System, and the Metal Processing Equipment at the Facility.

**ANSWER:** Respondent denies the allegations of paragraph 29.

30. The Isocure Process at the Facility emits, or has the potential to emit, PM into the environment.

**ANSWER:** The allegations of paragraph 30 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

**A. August 2008 Inspection**

31. Permit condition 1.9(d) of construction Permit 06060046 provides as follows:

**Recordkeeping Requirements**

The Permittee shall maintain records of the following items for the affected unit:

\*\*\*

d. Records of inspection, maintenance, and repair activities that include as a minimum:

- i. Date of inspection, maintenance, and repair activities.
- ii. Description of maintenance or repair activity if not routine preventative maintenance.
- iii. Reason for maintenance or repair activity if not routine or preventative.

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

32. By not maintaining records of all maintenance events conducted on the baghouses and scrubbers for the Core Sand system, Molding Sand System, Metal Processing Equipment, and the Casting/Finishing Operations, Respondent violated permit condition 1.9(d) of Construction Permit 06060046.

**ANSWER:** The allegations of paragraph 32 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

33. At the time of the Illinois EPA's August 2008 Inspection of the Facility, Respondent was operating Scrubber AS-2 to control emissions from the Isocure Process at the Facility.

**ANSWER:** Respondent admits the allegations of paragraph 33.

34. Permit condition 1.8 of Construction Permit 06060046 provides as follows:

Monitoring Requirements

The Permittee shall monitor the scrubbant flow rate of the scrubber (AS-2).

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

35. At the time of the Illinois EPA's August 2008 Inspection, Respondent had failed to install a scrubbant flow measurement device in order to monitor the scrubbant flow rate for Scrubber AS-2.

**ANSWER: Respondent admits the factual allegations of paragraph 35, but denies any legal inference about respondent or its operations.**

36. On November 28, 2008, Respondent installed a scrubbant flow measurement device in order to monitor the scrubbant flow rate for Scrubber AS-2 at the Facility.

**ANSWER: Respondent admits the factual allegations of paragraph 36, but denies any legal inference about respondent or its operations.**

37. From October 20, 2006, the date that the Illinois EPA issued Construction Permit 06060046, through November 28, 2008, Respondent failed to monitor the scrubbant flow rate of Scrubber AS-2.

**ANSWER: Respondent admits the factual allegations of paragraph 37, but denies any legal inference about respondent or its operations.**

38. By failing to monitor the scrubbant flow rate of Scrubber AS-2, Respondent violated permit condition 1.8 of Construction Permit 06060046.

**ANSWER: The allegations of paragraph 38 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.**

39. Permit condition 1.9(e)(i) and (ii) of Construction Permit 06060046 provides as follows:

Recordkeeping Requirements:

The Permittee shall maintain records of the following items for the affected unit:

\*\*\*

- e. Records for the scrubber (AS-2) that include at a minimum:
  - i. Manufacture/vendor or Permittee developed operating and maintenance procedures for the scrubber.
  - ii. An operating log, including system settings and additional/changes to the scrubbant.

**ANSWER: The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.**

40. At the time of the Illinois EPA's August 2008 Inspection of the Facility, Respondent's records did not include written operating and maintenance procedures for Scrubber AS-2.

**ANSWER: Respondent denies the allegations of paragraph 40.**

41. At the time of the Illinois EPA's May 2012 Inspection of the Facility, Respondent's records did include written operating and maintenance procedures for Scrubber AS-2.

**ANSWER: Respondent admits the factual allegation of paragraph 41.**

42. From October 20, 2006, through a date better known to Respondent, Respondent failed to develop and maintain written operating and maintenance procedures for Scrubber AS-2, and thereby Respondent violated permit condition 1.9(e)(i) of Construction Permit 06060046.

**ANSWER: The allegations of paragraph 42 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.**

43. At the time of the Illinois EPA's August 2008 Inspection of the Facility, Respondent's records did not include an operating log for Scrubber AS-2.

**ANSWER: Respondent denies the allegations of paragraph 43.**

44. At the time of the Illinois EPA's May 2012 Inspection of the Facility, Respondent's records included an operating log Scrubber AS-2.

**ANSWER: Respondent admits the allegations of paragraph 44.**

45. From October 20, 2006, through a date better known to Respondent, Respondent failed to maintain an operating log for Scrubber AS-2, and thereby Respondent violated permit condition 1.9(e)(ii) of the Construction Permit 06060046.

**ANSWER: The allegations of paragraph 45 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.**

**B. May 2012 Inspection**

46. Permit condition 1.1.9(d) of Construction Permit 06060046 provides as follows:

Recordkeeping Requirements

The Permittee shall maintain records of the following items for the affected unit:

\*\*\*

- d. Records of inspection, maintenance, and repair activities that include as a minimum:
  - i. Date of inspection, maintenance, and repair activities.
  - ii. Description of maintenance of repair activity if not routine preventative maintenance.
  - iii. Reason for maintenance or repair if not routine or preventative.

**ANSWER: The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.**

47. By failing to maintain written records of all repairs for the scrubber equipment used in the Isocure Process at the Facility, Respondent violated permit condition 1.1.9(d) of Construction Permit 06060046.

**ANSWER:** The allegations of paragraph 47 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

48. PM discharged during the operation of the Isocure Process is an “air contaminant” and a “specified air contaminant” as those terms are defined in Section 201.102 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.102.

**ANSWER:** The allegations of paragraph 48 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

49. The scrubber equipment at the Facility is designed to control the emission of PM from the Isocure Process at the Facility.

**ANSWER:** Respondent denies the allegations of paragraph 49.

50. The scrubber equipment is “air pollution control equipment,” as that term is defined in Section 201.102 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.102 (2014).

**ANSWER:** The allegations of paragraph 50 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

51. On dates better known to Respondent, Respondent violated permit conditions 1.8, 1.9(d), 1.1.9(d), 1.9(e)(i), and 1.9(e)(ii) of the Construction Permit 06060046.

**ANSWER:** The allegations of paragraph 51 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

52. By constructing or operating equipment designed to prevent air pollution in violation of the permit conditions set forth in paragraph 51, above, Respondent has thereby also violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2014).

**ANSWER:** The allegations of paragraph 52 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

### COUNT VIII

#### **VIOLATION OF CONDITIONS IN CONSTRUCTION PERMIT 08060024**

1-28. Complainant realleges and incorporates by reference paragraphs 1 through 11, 15, and 18 through 21 of the foregoing section of this Complaint titled “The Parties and background,” paragraphs 11 through 14 of Count I, paragraphs 20, 21, 23, and 24 of Count II, paragraphs 17, 18, and 23 of Count V, and paragraph 29 of Count VII as paragraphs 1 through 28 of this Count VIII.

**ANSWER:** Respondent realleges and incorporates by reference paragraphs 1 through 11, 15, and 18 through 21 of the section of the complaint titled “The Parties and Background,” paragraphs 11 through 14 of Count I, paragraphs 20, 21, 23, and 24 of Count II, paragraphs 17, 18, and 23 of Count V, and paragraph 29 of Count VII as its answers to paragraphs 1 through 28 of this Count VIII.

29. The rumble blast machines at the Facility each emits, or has the potential to emit, PM into the environment.

**ANSWER:** The allegations of paragraph 29 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

30. The baghouses servicing the tumble blast machines at the Facility are “air pollution control equipment” as that term is defined in Section 3.120 of the Act.

**ANSWER:** The allegations of paragraph 30 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

31. Permit condition 9(b)(i) of Construction Permit 08060024 provides as follows:

Recordkeeping Requirements

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- b. Pursuant to 35 IAC 212.324(f), the Permittee shall maintain records of the following items for the affected tumble blast related to operation and written maintenance and repair of this unit.
  - i. Records of inventory and documentation of inspections, maintenance, and repairs of all air pollution control equipment shall be kept in accordance with Condition 8.

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

32. By failing to maintain written records of all repairs for all the baghouses servicing the tumble blast machines at the Facility, Respondent violated permit condition 9(b)(i) of Construction Permit 08060024.

**ANSWER:** The allegations of paragraph 32 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

33. On dates better known to Respondent, Respondent violated permit condition 9(b)(i) of Construction Permit 08060024.

**ANSWER:** The allegations of paragraph 33 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

34. By constructing or operating equipment designed to prevent air pollution in violation of permit condition 9(b)(i) in Respondent's Construction Permit 08060024, Respondent has thereby also violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2014).

**ANSWER:** The allegations of paragraph 34 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

## COUNT IX

### **VIOLATION OF CONDITIONS IN CONSTRUCTION PERMIT 09060002**

1-28. Complainant realleges and incorporates by reference paragraphs 1 through 7 and 17 through 21 of the foregoing section of this Complaint titled "The Parties and Background," paragraphs 11 through 14 of Count I, paragraphs 21, 22, 28, and 29 of Count IV, and paragraphs 16 through 20 and 23 through 25 of Count V, as paragraphs 1 through 28 of this Count IX.

**ANSWER:** Respondent realleges and incorporates by reference paragraphs 1 through 7 and 17 through 21 of the section of the complaint titled "The Parties and Background," paragraphs 11 through 14 of Count I, paragraphs 21, 22, 28, and 29 of Count IV, and paragraphs 16 through 20 and 23 through 25 of Count V, as its answers to paragraphs 1 through 28 of this Count IX.

29. Permit condition 1.3(a) and (c) of Construction permit 09060002 provides in pertinent part as follows:

Applicability Provisions and Applicable Regulations

- a. For the purpose of this permit, the affected units are the screening equipment and associated activities for used sand screening/recycling, as generally described above.

\*\*\*

- c. Fugitive emissions of PM from the affected units are also subject to the following requirements pursuant to 35 IAC 212.316:

\*\*\*

- ii. The affected units shall be operated under the provisions of an operating program prepared by the Permittee and submitted to the Illinois EPA for its review. Such operating program shall be designed to significantly reduce fugitive particulate matter emissions and facilitate compliance with 35 IAC 212.304 through 212.308 and 212.310. [35 IAC 212.309(a)].

**ANSWER: The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.**

30. At the time of the Illinois EPA's May 2012 Inspection of the Facility, Respondent was operating the used sand screening/recycling operation at the Facility.

**ANSWER: Respondent denies that its employees were operating the used sand screening/recycling operation. Respondent admits the allegations of paragraph 30.**

31. The used sand screening/recycling operation at the Facility emits, or has the potential to emit, PM.

**ANSWER: Respondent admits the allegations of paragraph 31.**

32. At the time of the Illinois EPA's May 2012 Inspection of the Facility, Respondent's Fugitive Particulate Matter Operating Program for the Facility had not been revised to include the used sand screening/recycling operations.

**ANSWER: Respondent admits the factual allegations of paragraph 32, but denies any legal implication arising from the factual allegations.**

33. By failing to revise its Fugitive Particulate Matter Operating Program for the Facility to include the used sand screening/recycling operations, Respondent violated permit condition 1.3(c)(ii) of the construction Permit 09060002.

**ANSWER: The allegations of paragraph 33 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.**

34. Permit condition 1.7(a) of construction Permit 09060002 provides as follows:

Recordkeeping Requirements

- a. The Permittee shall maintain records of the following items for the affected units:
  - i. Amount of used sand processed by each screening system (tons/month and tons/year).

**ANSWER: The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.**

35. At the time of the May 2012 Inspection of the Facility, Respondent failed to maintain records documenting the amount of sand processed monthly by each screening system in the used sand screen/recycling operations.

**ANSWER: Respondent admits the factual allegations of paragraph 35, but denies any legal implication arising from the factual allegations.**

36. By failing to maintain records documenting the amount of said processed monthly by each screening system in the used sand screen/recycling operations, Respondent violated permit condition 1.7(a) of Construction Permit 09060002.

**ANSWER: The allegations of paragraph 36 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.**

37. Permit condition 1.7(b)(ii) of Construction Permit 09060002 provides as follows:  
Recordkeeping Requirements

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- b. The Permittee shall maintain the following records related to emissions for the affected units and associated activities:

\*\*\*

- ii. The PM emissions of the mold sand screening operation, the core sand screening operation, and the associated activities (tons/month and tons/year), with supporting calculations.

**ANSWER: The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.**

38. Permit condition 1.7(c) of Construction Permit 09060002 provides as follows:  
Recordkeeping Requirements

\*\*\*

- c. These records shall be retained at a readily accessible location at the source for at least three years and shall be available for inspection and copying by the Illinois EPA upon request.

**ANSWER: The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.**

39. By failing to maintain records documenting the amount of sand processed monthly by each screening system in the used sand screening/recycling operations at the Facility, Respondent did not maintain accurate records of the PM emissions for the used sand screening/recycling operations in the calendar year 2011.

**ANSWER:** The allegations of paragraph 39 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

40. By failing to maintain accurate records of its PM emissions in the calendar year 2011 for the used sand screening/recycling operations, Respondent violated permit condition 1.7(b)(ii) of Construction Permit 09060002.

**ANSWER:** The allegations of paragraph 40 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

41. By failing to ensure that accurate records of its PM emissions in the calendar year 2011 for the used sand screening/recycling operations were available for inspection for three years, Respondent violated permit condition 1.7(c) of Construction Permit 09060002.

**ANSWER:** The allegations of paragraph 41 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

42. By constructing or operating equipment capable of causing or contributing to air pollution in violation of permit conditions 1.7(a), 1.7(b)(ii), and 1.7(c) in Construction Permit 09060002, Respondent has thereby also violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2014).

**ANSWER:** The allegations of paragraph 42 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

**COUNT X**

**CAAP PERMIT EMISSION LIMITATION VIOLATIONS**

1-16. Complainant realleges and incorporates by reference paragraphs 1 through 11, 14, 18, and 19 of the foregoing section of this Complaint titled “The Parties and Background” and paragraphs 13 and 14 of Count I as paragraphs 1 through 16 of this Count X.

**ANSWER:** Respondent realleges and incorporates its answers to paragraphs 1 through 11, 14, 18, and 19 of the section of the complaint titled “The Parties and Background” and paragraphs 13 and 14 of Count I as paragraphs 1 through 16 of this Count X.

17. Section 39.5(6)(a) of the Act, 415 ILCS 5/39.5(6)(a) (2014), provides as follows:  
Prohibitions.

- a. It shall be unlawful for any person to violate any terms or conditions of a permit issued under this Section, to operate any CAAP source except in compliance with a permit issued by the Agency under this Section or to violate any other applicable requirements. All terms and conditions of a permit issued under this Section are enforceable by USEPA and citizens under the Clean Air Act, except those, if any, that are specifically designated as not being federally enforceable in the permit pursuant to paragraph (m) of subsection 7 of this Section.

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

18. Section 39.5(1) of the Act, 415 ILCS 5/39.5(1) (2014), provides in pertinent part the following definitions:

“CAAPP” means the Clean Air Act Permit Program, developed pursuant to Title V of the Clean Air Act.

“CAAPP Permit” or “permit” (unless the context suggests otherwise) means any permit issued, renewed, amended, modified, or revised pursuant to Title V of the Clean Air Act.

“CAAPP source” means any source for which the owner or operator is required to obtain a CAAPP permit pursuant to subsection 2 of this Section.

“Major Source” means a source for which emissions of one or more air pollutants meet the criteria for major status pursuant to paragraph 2(c) of this Section.

“Owner or operator” means any person who owns, leases, operates, controls, or supervises a stationary source.

“Potential to emit” means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by USEPA. This definition does not alter or affect the use of this term for any other purposes under the Clean Air Act, or the term “capacity factor” as used in Title IV of the clean Air Act or the regulations promulgated thereunder.

“Regulated Air Pollutant” means the following:

\*\*\*

2. Any pollutant for which a national air quality standard has been promulgated.

“Source” means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person or persons under common control) belonging to a single major industrial grouping.

“Stationary source” means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under Section 112(b) of the Clean Air Act.

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

19. Section 39.5(2) of the Act, 415 ILCS 5/39.5(2) (2014), provides in pertinent part as follows:

2. Applicability.
  - a. Sources subject to this Section shall include:

- i. Any major source as defined in paragraph (c) of this subsection.

\*\*\*

- c. For purposes of this Section, the term “major source” means any source that is:

\*\*\*

- ii. A major stationary source of air pollutants as defined in Section 302 of the Clean Air Act, that directly emits or has the potential to emit 100 tpy or more of any air pollutant (including any major source of fugitive emissions of any such pollutant, as determined by rule by USEPA). ...

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

20. The MSS-6 and the SB-7 at the Facility emit, or have the potential to emit, PM, a “regulated air pollutant,” as that term is defined in Section 39.5(1) of the Act, 415 ILCS 5/39.5(1) (2014).

**ANSWER:** The allegations of paragraph 20 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

21. The Facility emits “regulated air pollutants.” Therefore, the Facility is a “stationary source” as that term is defined in Section 39.5(1) of the Act, 415 ILCS 5/39.5(1) (2014).

**ANSWER:** The allegations of paragraph 21 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

22. From at least 1996 through the date of filing of this Complaint, the Facility has had a potential to emit PM greater than 100 tons per year.

**ANSWER:** Respondent admits the allegations of paragraph 22.

23. From at least 1996 through the date of filing of this Complaint, the Facility has been and is a major source under Section 39.5(2)(c)(ii) of the Act, 415 ILCS 5/39(c)(ii) (2014).

**ANSWER:** The allegations of paragraph 23 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

24. Respondent operates a major source and is an “owner and operator,” as that term is defined in Section 39.5(1) of the Act, 415 ILCS 5/39.5(1) (2014).

**ANSWER:** The allegations of paragraph 24 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

25. At the time of the Illinois EPA’s August 2008 Inspection, the Illinois EPA reviewed the records of PM emissions for the MSS-6 at the Facility.

**ANSWER:** Respondent admits the allegations of paragraph 25.

26. From August 2007 to July 2008, the PM emissions for the MSS-6 were 1.32 tons.

**ANSWER:** Respondent admits the allegations of paragraph 26.

27. During the August 2008 Inspection, the Illinois EPA reviewed the records of PM emissions for the SB-7 at the Facility.

**ANSWER:** Respondent admits the allegations of paragraph 27.

28. From August 2007 to July 2008, the PM emissions for the SB-7 were 13.6 tons.

**ANSWER:** Respondent denies the allegations of paragraph 28.

29. Permit condition 7.2.6(a) of the CAAPP Permit provides in pertinent part as follows:

Emission Limitations

In addition to Condition 5.2.2 and the source-wide emission limitations in Condition 5.5, the affected molding sand system equipment is subject to the following:

- a. Emissions from the molding floors and mold spraying shall not exceed the following limits:

<u>Equipment</u>	<u>Pollutant</u>	<u>Emissions</u>	
		<u>(Ton/Month)</u>	<u>(Ton/Year)</u>
MSS-6	PM	0.5	0.5

\*\*\*

These limits are based on the maximum controlled emission rates and maximum hours of operation.

Compliance with annual limits shall be determined on a monthly basis from the sum of the data for the current month plus the preceding 11 months (running 12 month total) [T1].

\*\*\*

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

- 30. Permit condition 7.4.6(a) of the CAAPP Permit provides in pertinent part as follows:

Emission Limitations

In addition to Condition 5.2.2 and the source wide emission limitations in Condition 5.5, the affected blasting operations are subject to the following:

- b. Emissions from the No. 7 Shot Blast Machine and No. 1 Tumble Blast Machine shall not exceed the following limits:

<u>Equipment</u>	<u>Pollutant</u>	<u>Emissions</u>	
		<u>(Ton/Month)</u>	<u>(Ton/Year)</u>
SB-7	PM	1.86	2.5

\*\*\*

These limits are based on the maximum controlled emission rates and maximum hours of operation from No. 7 Shot Blast Machine and negligible emission rates from No. 1 Tumble Blast Machine.

Compliance with annual limits shall be determined on a monthly basis from the sum of data for the current month plus the preceding 11 months (running 12 month total). [T1].

\*\*\*

**ANSWER: The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.**

31. From at least the 12-month period ending in December 2007 through the date of filing of this Complaint, the operation of the MSS-6 at the Facility caused the emission of PM in excess of 0.5 tons per year on a running 12-month total.

**ANSWER: Respondent denies the allegations of paragraph 31.**

32. By operating the MSS-6 and causing the emission of PM in excess of 0.5 tons per year on a running 12-month total, Respondent violated permit condition 7.2.6(a) in the CAAPP Permit.

**ANSWER: The allegations of paragraph 32 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.**

33. From at least 12-month period ending in December 2007 through the date of filing of this Complaint, the operation of SB-7 caused the emission of PM in excess of 2.5 tons per year on a running 12-month total.

**ANSWER: Respondent admits the factual allegations of paragraph 33, but denies any legal implication arising from the factual allegations.**

34. By operating the SB-7 and causing the emission of PM in excess of 2.5 tons per year on a running 12-month total, Respondent violated permit condition 7.4.6(a) in the CAAPP Permit.

**ANSWER:** The allegations of paragraph 34 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

35. By causing or allowing the emission of PM into the environment in violation of permit conditions 7.2.6(a) and 7.4.6(a) in the CAAPP Permit, respondent thereby also violated Section 39.5(6)(a) of the Act, 415 ILCS 39.5(6)(a) (2014).

**ANSWER:** The allegations of paragraph 35 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

## COUNT XI

### VIOLATION OF CONDITIONS OF THE CAAPP PERMIT

1-53. Complainant realleges and incorporates by reference paragraphs 1 through 14, and 18 through 21 of the foregoing section of this Complaint titled “The Parties and Background,” paragraphs 13 and 14 of Count I, paragraphs 20, 21, 23, 24, 30 through 37, and 39 of Count II, paragraphs 21, 22, 28, and 29 of Count IV, paragraphs 19 through 21 of Count V, paragraphs 29, 30, and 48 of count VII, paragraphs 29 of Count VIII, paragraph 31 of Count IX, and paragraphs 17 through 19 and 21 through 24 of Count X as paragraphs 1 through 53 of this Count XI.

**ANSWER:** Respondent realleges and incorporates by reference paragraphs 1 through 14, and 18 through 21 of the section of the complaint titled “The Parties and Background,” paragraphs 13 and 14 of Count I, paragraphs 20, 21, 23, 24, 30 through 37, and 39 of Count II, paragraphs 21, 22, 28, and 29 of Count IV,

paragraphs 19 through 21 of Count V, paragraphs 29, 30, and 48 of Count VII, paragraph 29 of Count VIII, paragraph 31 of Count IX, and paragraphs 17 through 19 and 21 through 24 of Count X, as respondent's answer to paragraphs 1 through 53 of this Count XI.

**A. August 2008 Inspection.**

54. The electric arc furnaces at the Facility emit, or have the potential to emit, PM, a "regulated air pollutant," as that term is defined in Section 39.5(1) of the Act, 415 ILCS 5/39.5(1) (2014).

**ANSWER: The allegations of paragraph 54 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.**

55. Permit condition 5.4.1 (a-c) of the CAAPP Permit provides as follows:

For any process emission unit subject to Condition 5.2.2(c), the owner or operator shall maintain and repair all air pollution control equipment in a manner that assures that the emission limits and standards in 35 IAC 212.324 and 212.548 shall be met at all times. Proper maintenance shall include the following minimum requirements [35 IAC 212.324(f)]:

- a. Visual inspection of air pollution control equipment;
- b. Maintenance of an adequate inventory of spare parts; and
- c. Expeditious repairs, unless the emission unit is shut down.

**ANSWER: The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.**

56. Permit Condition 5.2.2(c) of the CAAPP Permit provides in pertinent part as follows:

In addition, emission units at this source are subject to the following regulations of general applicability:

\*\*\*

- c. PM emission limits for process emission units located in Granite City.

\*\*\*

**ANSWER: The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.**

57. The electric arc furnaces at the Facility are process emission units located in Granite City, Illinois, and therefore are subject to permit condition 5.2.2(c) of the CAAPP permit.

**ANSWER: The allegations of paragraph 57 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.**

58. From at least August 26, 2008, through December 28, 2008, on dates better known to Respondent, Respondent failed to properly maintain the air pollution control equipment for the electric arc furnaces at the Facility in violation of permit condition 5.4.1(a-c) of the CAAPP Permit.

**ANSWER: The allegations of paragraph 58 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.**

59. Permit condition 5.6.2(a) of the CAAPP Permit provides as follows:

General Records for Fugitive Control, Maintenance, and Repair

The Permittee shall maintain records of the following items for the source to demonstrate compliance with Condition 5.2.2(c):

- a. Written records of inventory and documentation of inspections, maintenance, and repairs of all air pollution control equipment shall be kept in accordance with Condition 5.4.1 [35 IAC 212.324(g)(1)].

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

60. By not recording all maintenance events conducted pursuant to monthly inspections of baghouses and scrubbers for the Core Sand System, Molding Sand System, Metal Processing Equipment, and Casting/Finishing Operations at the Facility, Respondent violated permit condition 5.6.2(a) of the CAAPP Permit.

**ANSWER:** The allegations of paragraph 60 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

61. Permit condition 7.1.9(d) of the CAAPP Permit provides as follows:

Recordkeeping Requirements

In addition to the records required by Condition 5.6, the Permittee shall maintain records of the following items for the affected core sand system equipment to demonstrate compliance with Conditions 5.5.1, 7.1.3, 7.1.5, and 7.1.6, pursuant to Section 39.5(7)(b) of the Act:

\*\*\*

- d. Records of inspection, maintenance, and repair activities for all equipment shall be kept on site and shall include as a minimum:
  - i. Date of inspection, maintenance, and repair activities.
  - ii. Description of maintenance or repair activity if not routine preventative maintenance.
  - iii. Reason for maintenance or repair if not routine or preventative.

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

62. By not recording all maintenance events conducted pursuant to monthly inspections of baghouses and scrubbers for the Core Sand System at the Facility, Respondent violated permit condition 7.1.9(d) of the CAAPP Permit.

**ANSWER: The allegations of paragraph 62 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.**

63. Permit condition 7.2.9(d) of the CAAPP Permit provides as follows:

Recordkeeping Requirements

In addition to the records required by Condition 5.6, the Permittee shall maintain records of the following items for the affected molding sand system equipment to demonstrate compliance with Conditions 5.5.1, 7.1.3, 7.1.5, and 7.1.6, pursuant to Section 39.5(7)(b) of the Act:

\*\*\*

- d. Records of inspection, maintenance, and repair activities for all equipment shall be kept on site and shall include as a minimum:
  - i. Date of inspection, maintenance, and repair activities.
  - ii. Description of maintenance or repair activity if not routine preventative maintenance.
  - iii. Reason for maintenance or repair if not routine or preventative.

**ANSWER: The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.**

64. By not recording all maintenance events conducted pursuant to monthly inspections of baghouses for the Molding Sand System at the Facility, Respondent violated permit condition 7.2.9(d) of the CAAPP Permit.

**ANSWER:** The allegations of paragraph 64 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

65. Permit condition 7.3.9(c) of the CAAPP Permit provides as follows:

Recordkeeping Requirements

In addition to the records required by Condition 5.6, the Permittee shall maintain records of the following items for the affected metal processing equipment to demonstrate compliance with Conditions 5.5.1, 7.1.3, 7.1.5, and 7.1.6, pursuant to Section 39.5(7)(b) of the act:

\*\*\*

- c. Records of inspection, maintenance, and repair activities for all equipment shall be kept on site and shall include as a minimum:
  - i. Date of inspection, maintenance, and repair activities.
  - ii. Description of maintenance or repair activity if not routine preventative maintenance.
  - iii. Reason for maintenance or repair if not routine or preventative.

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

66. By not recording all maintenance events conducted pursuant to monthly inspections of baghouses for the Metal Processing Equipment at the Facility, Respondent violated permit condition 7.3.9(c) of the CAAPP Permit.

**ANSWER:** The allegations of paragraph 66 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

67. Permit condition 7.4.9(c) of the CAAPP Permit provides as follows:

Recordkeeping Requirements

In addition to the records required by Condition 5.6, the Permittee shall maintain records of the following items for the affected blasting operations to demonstrate compliance with Conditions 5.5.1, 7.1.3, 7.1.5, and 7.1.6, pursuant to Section 39.5(7)(b) of the Act:

\*\*\*

- c. Records of inspection, maintenance, and repair activities for all equipment shall be kept on site and shall include as a minimum:
  - i. Date of inspection, maintenance, and repair activities.
  - iii. Description of maintenance or repair activity if not routine preventative maintenance.
  - iv. Reason for maintenance or repair if not routine or preventative.

**ANSWER: The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.**

68. The Casting/Finishing Operations at the Facility include blasting operations to clean and finish the castings.

**ANSWER: Respondent admits the allegations of paragraph 68.**

69. At the time of the Illinois EPA's August 2008 Inspection of the Facility, Respondent had failed to record all maintenance events conducted pursuant to monthly inspections of baghouses for the blasting operations at the Facility.

**ANSWER: Respondent denies the allegations of paragraph 69.**

70. By not recording all maintenance events conducted pursuant to monthly inspections of baghouses for the blasting operations at the Facility, Respondent violated permit condition 7.4.9(c) of the CAAPP Permit.

**ANSWER: The allegations of paragraph 70 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.**

71. Permit condition 5.2.3(a) of the CAAPP Permit provides as follows:

Fugitive Particulate Matter Operating Program

- a. This source shall be operated under the provisions of an operating program prepared by the Permittee and submitted to the Illinois EPA for its review. Such operating program shall be designated to significantly reduce fugitive particulate matter emissions [35 IAC 212.309(a)].

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

72. By not maintaining the baghouses in a manner consistent with Respondent's Fugitive Particulate Matter Operating Program, Respondent violated permit condition 5.2.3(a) of the CAAPP Permit.

**ANSWER:** The allegations of paragraph 72 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

73. Permit condition 5.2.3(c) of the CAAPP Permit provides as follows:

Fugitive Particulate Matter Operating Program

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- c. All normal traffic pattern roads and parking facilities located at this source shall be paved or treated with water, oils, chemical dust suppressants. All paved areas shall be cleaned on a regular basis. All areas treated with water, oils, or chemical dust suppressants shall have the treatment applied on a regular basis, as needed, in accordance with the operating program [35 IAC 212.306].

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

74. By not amending the Fugitive Particulate Matter Operating Program for the Facility to contain up-to-date information on the normal traffic patterns associated with the Sand Screen

and ball drop operation at the Facility, Respondent violated permit condition 5.2.3(c) of the CAAPP Permit.

**ANSWER: The allegations of paragraph 74 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.**

75. Permit condition 5.6.2(d) of the CAAPP Permit provides as follows:

General Records for Fugitive Control, Maintenance, and Repair

The Permittee shall maintain records of the following items for the source to demonstrate compliance with Condition 5.2.2(c):

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- d. The owner or operator of any fugitive particulate matter emission unit subject to Condition 5.2.2(c)(i) or (ii) shall keep written records of the application of control measures as may be needed for compliance with the opacity limitations of condition 5.2.2(c)(i) or (ii). These records shall include at least the following [35 IAC 212.316(g)(1) and (2)].
  - i. The name and address of the source;
  - ii. The name and address of the owner and/or operator of the source;
  - iii. A map or diagram showing the location of all emission units controlled, including the location, identification, length, and width of the roadways;
  - iv. For each application of water or chemical solution to roadways by truck: the name and location of the roadway controlled, application rate of each truck, frequency of each application, width of each application, identification of each truck used, total quantity of water or chemical used for each application and, for each application of chemical solution, the concentration and identity of the chemical;
  - v. For application of physical or chemical control agents: the name of the agent, application rate and frequency, and total quantity of agent, and, if diluted, percent of concentration, used each day; and
  - vi. A log recording incidents when control measures were not used and a statement of explanation.

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

76. By not maintaining records identifying the sweeping of paved roadways at the Facility, Respondent violated permit condition 5.6.2(d) of the CAAPP Permit.

**ANSWER:** The allegations of paragraph 76 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

77. By failing to maintain complete and up-to-date maps showing the location of all emissions units controlled, including the location, identification, length, and width of all roadways associated with Respondent's activities for the reclamation of used sand at the Facility, Respondent violated permit condition 5.6.2(d)(iii) of the CAAPP Permit.

**ANSWER:** The allegations of paragraph 77 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

78. Permit condition 5.6.3(b) of the CAAPP Permit provides as follows:

Records for VOM and HAP Emissions

The Permittee shall maintain records of the following items for the source to verify that the source is not a major source of HAP emissions and therefore not subject to 40 C.F.R. Part 63, Subpart, MMMM, and to quantify annual VOM emissions, so as to demonstrate compliance with the annual emission limits in Condition 5.5:

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- b. Aggregate monthly HAP emissions from emission units included in Sections 3 and 7 of this permit, calculated as a fraction of VOM emissions according to vapor weight percent. HAP emissions from insignificant emission units listed in Section 3 are only required if the emission unit is subject to a National Emission Standard for Hazardous air Pollutants (NESHAP) or maximum achievable control technology (MACT).

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

79. Permit condition 2.0 of the CAAPP Permit defines the terms “HAP” and “VOM” as:

HAP	Hazardous Air Pollutant
VOM	Volatile Organic Material

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

80. At the time of the Illinois EPA's August 2008 Inspection of the Facility, Respondent failed to maintain records of the aggregate monthly emissions of Hazardous Air Pollutants ("HAPs") from all the emission units in the Core Sand System, Molding Sand System, Metal Processing Equipment, Casting/Finishing Operations, Casting Paint Booth, and heat tracing [sic] furnaces at the Facility.

**ANSWER:** Respondent denies the allegations of paragraph 80.

81. By not maintaining records of the aggregate monthly emissions of HAPs from all the emission units in the Core Sand System, Molding Sand System, Metal Processing Equipment, Casting/Finishing Operations, Casting Paint Booth, and heat tracing furnaces at the Facility, Respondent violated permit condition 5.6.3(b) of the CAAPP Permit.

**ANSWER:** The allegations of paragraph 81 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

82. Permit condition 7.5.7(a) of the CAAPP Permit provides as follows:

Testing Requirements

Testing for VOM content of coatings and other materials shall be performed as follows [35 IAC 219.105(a), 219.211(a), and Section 39.5(7)(b) of the Act]:

- a. On an annual basis, the VOM content of specific coatings and cleaning solvents used in each affected paint booth shall be determined according to USEPA Reference Method 24 or 24A of 40 C.F.R. 60, Appendix A, and the procedures of 35 IAC 219.105(a) and 219.211(a).

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

83. At the time of the Illinois EPA's August 2008 Inspection of the Facility, Respondent had not performed annual VOM content testing of the coating(s) used in the Casting Paint booth since the end of calendar year 2006.

**ANSWER:** Respondent denies the allegations of paragraph 83.

84. By not performing annual VOM content testing of the coating(s) used in the Casting Paint Booth, Respondent violated permit condition 7.5.7(a) of the CAAPP Permit.

**ANSWER:** The allegations of paragraph 84 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

85. Permit condition 5.7.4 of the CAAPP permit provides as follows:

Annual Reporting for HAP Emissions

The Permittee shall submit an annual report to the Illinois EPA, Compliance Section, on HAP emissions from the source, including the information recorded Condition 5.6.3(b). This may be included in the annual report required pursuant to condition 9.7.

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

87. By not submitting to the Illinois EPA annual reports for HAP emissions from the Facility for the calendar years 2006, 2007, and 2008, Respondent violated permit condition 5.7.4 of the CAAPP Permit.

**ANSWER:** The allegations of paragraph 87 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

**B. May 2012 Inspection.**

88. At the time of the Illinois EPA May 2012 Inspection of the Facility, Respondent had failed to maintain written records of repairs for all baghouses and scrubbers used in the Isocure Process, the operation of the tumble blast machines, the Core Sand System, the Molding Sand System, and the Metal Processing Equipment at the Facility.

**ANSWER:** Respondent denies the allegations of paragraph 88.

89. The Isocure Process at the Facility emits, or has the potential to emit, PM into the environment.

**ANSWER:** Respondent denies the allegations of paragraph 89.

90. The scrubber servicing the Isocure Process at the Facility is “air pollution control equipment” as that term is defined in Section 3.120 of the Act, 415 ILCS 5/3.120 (2014).

**ANSWER:** The allegations of paragraph 90 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

91. The tumble blast machines at the Facility each emits, or has the potential to emit, PM into the environment.

**ANSWER:** Respondent admits the allegations of paragraph 91.

92. The baghouses servicing the tumble blast machines at the Facility are “air pollution control equipment” as that term is defined in Section 3.120 of the Act, 415 ILCS 5/3.120 (2014).

**ANSWER:** The allegations of paragraph 92 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

93. By failing to maintain written records of all repairs for all the air pollution control equipment at the Facility, Respondent violated permit condition 5.6.2(a) of the CAAPP Permit.

**ANSWER:** The allegations of paragraph 93 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

94. By failing to maintain written records of all repairs for all the air pollution control equipment used in the Core Sand System at the Facility, Respondent violated permit condition 7.1.9(d) of the CAAPP Permit.

**ANSWER:** The allegations of paragraph 94 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

95. By failing to maintain written records of all repairs for all the air pollution control equipment used in the Molding Sand System at the Facility, Respondent violated permit condition 7.2.9(d) of the CAAPP Permit.

**ANSWER:** The allegations of paragraph 95 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

96. By failing to maintain written records of all repairs for all the air pollution control equipment servicing the Metal Processing Equipment at the Facility, Respondent violated permit condition 7.3.9(c) of the CAAPP Permit.

**ANSWER:** The allegations of paragraph 96 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

97. By not maintaining written records of all repairs for all the air pollution control equipment servicing the tumble blast machines at the Facility, Respondent failed to maintain written records of all repairs for all the air pollution control equipment used in the Facility's blasting operations, and thereby Respondent also violated permit condition 7.4.9(c) of the CAAPP Permit.

**ANSWER:** The allegations of paragraph 97 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

98. During the Illinois EPA's May 2012 Inspection, the Agency reviewed Respondent's Fugitive Particulate Matter Operating Program and respondent's reports and records regarding the sweeping and watering of the roadways at the Facility to control fugitive PM emissions.

**ANSWER:** Respondent admits the allegations of paragraph 98.

99. Respondent's Fugitive Particulate Matter Operating Program for the Facility requires Respondent to accurately document all roadway sweeping and watering activity and the dates each roadway at the Facility is swept and watered.

**ANSWER:** Respondent denies any factual or legal implication of "accurately document all" and admits the remaining allegations of paragraph 99.

100. At the time of the Illinois EPA's May 2012 Inspection of the Facility, Respondent's Foundry Roadway Water Log failed to identify all roadway watering activity and failed to identify when each roadway was watered.

**ANSWER:** Respondent denies the allegations of paragraph 100.

101. At the time of the Illinois EPA's May 2012 Inspection of the Facility, Respondent's records mislabeled Road Section F at the Facility as the Plant-wide Water Distribution Log. Road Section F was also incomplete, illegible, and indicated that insufficient amounts of water had been applied.

**ANSWER: The allegations of paragraph 101 of "mislabeled," "incomplete," "illegible," and "insufficient" are legal conclusions to which no answer is required. To the extent an answer is required, respondent denies the allegations of the paragraph.**

102. At the time of the Illinois EPA's May 2012 Inspection of the Facility, Respondent's Contractor Sweeping Log failed to indicate the proper times at which sweeping for each of the areas identified as Roads A, B, and E had occurred and the required sweeping frequency for February 2012 had not been performed.

**ANSWER: The allegations of paragraph 102 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.**

103. By not accurately documenting all roadway sweeping and watering activity and dates each roadway was swept and watered, Respondent violated permit conditions 5.2.3(a) and (c) of the CAAPP Permit.

**ANSWER: The allegations of paragraph 103 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.**

104. During the Illinois EPA's May 2012 Inspection of the Facility, the Agency reviewed Respondent's records regarding sweeping and watering of roadways at the Facility to control PM emissions. At that time, Respondent's records did not record all the days when sweeping or watering control measures were not performed on the roadways.

**ANSWER:** Respondent admits the allegations of the first sentence of paragraph 104.  
Respondent denies the allegations of the second sentence of paragraph 104.

105. Respondent's roadway sweeping and watering records did not include statements of explanation as to why the records did not identify all the days when sweeping or watering control measures were not performed.

**ANSWER:** Respondent denies the allegations of paragraph 105.

106. By failing to record the days when sweeping and/or watering control measures were not performed and preparing a statement of explanation, Respondent violated permit condition 5.6.2(d)(vi) of the CAAPP Permit.

**ANSWER:** The allegations of paragraph 106 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

107. Permit condition 5.7.3(c) of the CAAPP Permit provides as follows:

General Reporting for Fugitive Control, Maintenance, and Repair

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c. The owner or operator of any fugitive particulate matter emission unit subject to Condition 5.2.2(c)(i) or (ii) shall submit to the Illinois EPA an annual report containing a summary of the information listed in Condition 5.6.2(d) [35 IAC 212.316(g)(1)].

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

108. By failing to submit annual reports containing the written records of the application of control measures as needed for compliance with opacity limitations at the Facility, Respondent violated permit condition 5.7.3(c) of the CAAPP Permit.

**ANSWER:** The allegations of paragraph 108 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

109. Section 5.2.6(a) of the CAAPP Permit provides as follows:

- a. Should this stationary source become subject to a regulation under 40 C.F.R. Parts 60, 61, or 63, or 35 IAC after the date issued of this permit, then the owner or operator shall, in accordance with the applicable regulation(s), comply with the applicable requirements by the date(s) specified and shall certify compliance with the applicable requirements of such regulation(s) as part of the annual compliance certification, as required by 40 C.F.R. Part 70 or 71.

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

110. Section 9.8(a) of the CAAPP Permit provides as follows:

Requirements for Compliance Certification

Pursuant to Section 39.5(7)(p)(v) of the Act, the Permittee shall submit annual compliance certifications. The compliance certification shall be submitted no later than May 1 or more frequently as specified in the applicable requirements or by permit condition. The compliance certifications shall be submitted to the Air Compliance Section, Air Regional Field Office, and USEPA Region 5 – Air Branch. The addresses for the submittal of the compliance certifications are provided in Condition 8.6.4 of this permit.

- a. The certification shall include the identification of each term or condition of this permit that is the basis for the certification; the compliance status; whether compliance was continuous or intermittent; the method(s) used for determining the compliance status of the source, both currently and over the reporting period consistent with the conditions of this permit.

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

111. Section 112(d)(1) of the Clean Air Act (“CAA”), 42 U.S.C. § 7312(d)(1), provides in pertinent part as follows:

1. The Administrator shall promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of hazardous air pollutants listed for regulation.

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

112. Pursuant to Section 112(d)(1) of the CAA, USEPA promulgated National Emission Standards for Hazardous Air Pollutants (“NESHAP”) for Source Categories, which are found in Chapter 40, Part 63 of the Code of Federal Regulation, 40 C.F.R. Part 63.

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

113. On January 2, 2008, the Administrator published national emission standards for iron and steel foundries area sources, 73 Fed. Reg. 226 (January 2, 2008).

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

114. The NESHAP for Iron and Steel Foundries, which are found in Chapter 40, Part 63, Subpart ZZZZZ of NESHAP for Source Categories, 40 C.F.R. § 63.10880 *et seq.* (“Subpart ZZZZZ”), codify the national emission standards for iron and steel foundries area sources that were published in 73 Fed. Reg. 226.

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

115. Section 63.10880 of Subpart ZZZZZ, 40 C.F.R. § 63.10880, provides in pertinent part as follows:

- (a) You are subject to this subpart if you own or operate an iron and steel foundry that is an area source of hazardous air pollutant (HAP) emissions.
- (b) This subpart applies to each new or existing affected source. The affected source is each iron and steel foundry.

- (1) An affected source is existing if you commenced construction or reconstruction of the affected source before September 17, 2007.

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

116. Section 63.10906 of Subpart ZZZZZ, 40 C.F.R. § 63.10906, contains the following definition:

*Iron and steel foundry* means a facility or portion of a facility that melts scrap, ingot, and/or other forms of iron and/or steel and pours the resulting molten metal into molds to produce final or near final shape products for introduction into commerce....

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

117. Respondent's Facility is an "iron and steel foundry," as that term is defined in Section 63.10906(a) of Subpart ZZZZZ, 40 C.F.R. § 63.10906(a).

**ANSWER:** The allegations of paragraph 117 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

118. Respondent commenced construction of the Facility before September 17, 2007.

**ANSWER:** Respondent admits the allegations of paragraph 118.

119. Respondent's Facility is a source of HAP emissions and is an "existing affected source" as that term is defined in Section 63.10880(b)(1) of Subpart ZZZZZ, 40 C.F.R. § 63.10880(b)(1).

**ANSWER:** The allegations of paragraph 119 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

120. Respondent was required to submit to the Illinois EPA its Annual Compliance Certification for the Facility for the calendar year 2011 by May 1, 2012.

**ANSWER:** The allegations of paragraph 120 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

121. Respondent failed to submit to the Illinois EPA a complete Annual Compliance Certification for the Facility for the calendar year 2011 by May 1, 2012.

**ANSWER:** Respondent denies the allegations of paragraph 121.

122. By failing to timely submit an Annual Compliance Certification for the Facility for the calendar year 2011, Respondent violated permit conditions 5.2.6(a) and 9.8(a) of the CAAPP Permit.

**ANSWER:** The allegations of paragraph 122 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

123. Permit condition 5.6.5(a) of the CAAPP Permit provides as follows:

Retention and Availability of Records

- a. All records and logs required by this permit shall be retained for at least five years from the date of entry (unless a longer retention period is specified by the particular recordkeeping provision herein), shall be kept at a location at the source that is readily accessible to the Illinois EPA or USEPA, and shall be made available for inspection and copying by the Illinois EPA or USEPA upon request.

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

124. Permit condition 9.6.3(b) of the CAAPP Permit provides as follows:

Retention of Records

- a. Records of all monitoring data and support information shall be retained for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records, original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by this permit [Section 39.5(7)(e)(ii) of the Act].
- b. Other records required by this permit shall be retained for a period of at least 5 years from the date of entry unless a longer period is specified by a particular permit provision.

**ANSWER: The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.**

125. At the time of the Illinois EPA's May 2012 Inspection of the Facility, Respondent failed to retain the required records and logs for at least five years following the date of each occurrence, measurement, maintenance, corrective action, report, or record at the Facility.

**ANSWER: The allegations of paragraph 125 are so broad and vague that respondent has insufficient information to answer. In the event an answer is required, respondent denies the allegations of paragraph 125.**

126. At the time of the Illinois EPA's May 2012 Inspection of the Facility, respondent failed to retain all records and logs required by the CAAPP Permit.

**ANSWER: The allegations of paragraph 126 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.**

127. By failing to retain all records and logs required by the CAAPP Permit, respondent violated permit conditions 5.6.5(a) and 9.6.3(b) of the CAAPP Permit.

**ANSWER: The allegations of paragraph 127 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.**

128. On dates better known to Respondent, Respondent violated permit conditions 5.2.3(a), 5.2.3(c), 5.2.6(a), 5.4.1(a-c), 5.6.2(a), 5.6.2(d), 5.6.3(b), 5.6.5(a), 5.7.3(c), 5.7.4, 7.1.9(d), 7.2.9(d), 7.3.9(c), 7.4.9(c), 7.5.7(a), 9.6.3(b), and 9.8(a) of Respondent's CAAPP Permit.

**ANSWER:** The allegations of paragraph 128 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

129. By violating the permit conditions listed in paragraph 128 above, Respondent has thereby also violated Section 39.5(6)(a) of the Act, 415 ILCS 5/39.5(6)(a) (2014).

**ANSWER:** The allegations of paragraph 129 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

## COUNT XII

### **OPERATING A MAJOR SOURCE WITHOUT A CLEAN AIR ACT PERMIT PROGRAM PERMIT**

1-17. Complainant realleges and incorporates by reference paragraphs 1 through 6, 14, and 17 of the foregoing section of this Complaint titled "The Parties and Background," paragraphs 13 and 14 of Count I, paragraph 29 of Count IV, and paragraphs 18, 19, and 21 through 24 of Count IX as paragraphs 1 through 17 of this Count XII.

**ANSWER:** Respondent realleges and incorporates by reference its answers to paragraphs 1 through 6, 14, and 17 of the section of this complaint titled "The Parties and Background," paragraphs 13 and 14 of Count I, paragraph 29 of Count IV, and paragraphs 18, 19, and 21 through 24 of Count IX, as its answers to paragraphs 1 through 17 of this Count XII

18. Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b) (2014), provides in pertinent part as follows:

6. Prohibition

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b. ... no person shall operate a CAAPP source without a CAAPP permit unless the complete CAAPP permit or renewal application for such source has been timely submitted to the Agency.

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

19. The Sand Screen emits, or has the potential to emit, PM, a “regulated pollutant,” as that term is defined in Section 39.5(1) of the Act, 415 ILCS 5/39.5(1) (2014).

**ANSWER:** The allegations of paragraph 19 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

20. Section 201.102 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.102, provides the following definition:

“Modification”: any physical change in, or change in the method of operations of, an emission source or of air pollution control equipment which increases the amount of any specified air contaminant emitted by such source or equipment or which results in the emission of any specified air contaminant not previous emitted. It shall be presumed that an increase in the use of raw materials, the time of operation or the rate of production will change the amount of any specified air contaminant emitted. Notwithstanding any other provisions of this definition, for purposes of permits issued pursuant to Subpart D, the Illinois Environmental Protection Agency (Agency) may specify conditions under which an emission source or air pollution control equipment may be operated without causing a modification as herein defined, and normal cyclical variations, before the date operating permits are required, shall not be considered modifications.

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

21. By constructing the Sand Screen at the Facility in 2008, Respondent modified a major source and was required to apply for and obtain an amended CAAPP permit identifying all of the existing emission units at the Facility.

**ANSWER:** The allegations of paragraph 21 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

22. On September 10, 2010, Respondent submitted to the Illinois EPA an application for a renewal of the CAAPP Permit, which included a request to modify the permit to include the operation of the Sand Screen.

**ANSWER:** Respondent admits the allegations of paragraph 22.

23. By operating a major source without the requisite CAAPP permit, Respondent violated Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b) (2014).

**ANSWER:** The allegations of paragraph 23 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

### COUNT XIII

#### VIOLATIONS OF NESHAP REQUIREMENTS

1-25. Complainant realleges and incorporates by reference paragraphs 1 through 13, 20, and 21 of the foregoing section of this Complaint titled “The Parties and Background,” paragraphs 13 and 14 of Count I, and paragraphs 112 through 120 of Count XI as paragraphs 1 through 25 of this Count XIII.

**ANSWER:** Respondent realleges and incorporates by reference its answers to paragraphs 1 through 13, 20, and 21 of the foregoing section of this Complaint titled “The Parties and Background,” paragraphs 13 and 14 of Count I, and paragraphs 112

through 120 of Count XI, as its answers to paragraphs 1 through 25 of this Count XIII.

26. Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2014), provides as follows:

No person shall:

1. Violate any provisions of Sections 111, 112, 165, or 173 of the Clean Air Act, as now or hereafter amended, or federal regulations adopted pursuant thereto.

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

27. Section 63.10880(f) of Subpart ZZZZZ, 40 C.F.R. § 63.10880(f), provides as follows:

- (f) If you own an existing affected source, you must determine the initial applicability requirements of this subpart to a small foundry or a large foundry based on your facility's metal melt production for calendar year 2008. If the metal melt production for calendar year 2008 is 20,000 tons or less, your area source is a small foundry. If your metal melt production for calendar year 2008 is greater than 20,000 tons, your area source is a large foundry. You must submit a written notification to the Administrator that identifies your area source as a small foundry or a large foundry no later than January 2, 2009.

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

28. Section 63.10906 of Subpart ZZZZZ, 40 C.F.R. § 63.10906, contains the following definitions:

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section.

*Annual metal melt capacity* means the lower of the total metal melting furnace equipment melt rate capacity assuming 8,760 operating hours per year summed for all metal melting furnaces at the foundry or, if applicable, the maximum permitted metal melt production rate for the iron and steel foundry calculated on an annual basis. Unless otherwise specified in the permit, permitted metal melt production rates that are not specified on an annual basis must be annualized assuming 24 hours per day, 365 days per year of operation. If the permit limits the operating

hours of the furnace(s) or foundry, then the permitted operating hours are used to annualize the maximum permitted metal melt production rate.

*Annual metal melt production* means the quantity of metal melted in a metal melting furnace or group of all metal melting furnaces at the iron and steel foundry in a given calendar year. For the purposes of this subpart, metal melt production is determined on the basis on the quantity of metal charged to each metal melting furnace; the sum of the metal melt production for each furnace in a given calendar year is the annual metal melt production of the foundry.

*Large foundry* means, for an existing affects source, an iron and steel foundry with an annual metal melt production greater than 20,000 tons. For a new affected source, *large foundry* means an iron and steel foundry with an annual metal melt capacity greater than 10,000 tons.

*Mercury switch* means each mercury-containing capsule or switch assembly that is part of a convenience light switch mechanism installed in a vehicle.

*Motor vehicle* means an automotive vehicle not operated on rails and usually is operated with rubber tires for use on highways.

*Motor vehicle scrap* means vehicle or automobile bodies, including automobile body hulks, that have been processed through a shredder.

*Motor vehicle scrap* does not include automobile manufacturing bundles, or miscellaneous vehicle parts, such as wheels, bumpers, or other components that do not contain mercury switches.

*Scrap provider* means the person (including a broker) who contracts directly with an iron and steel foundry to provide motor vehicle scrap. Scrap processors such as shredder operators or vehicle dismantlers that do not sell scrap directly to a foundry are not *scrap providers*.

**ANSWER: The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.**

29. Respondent's Facility, an existing affected source, had an annual metal melt capacity of approximately 90,000 tons for the year 2008.

**ANSWER: The allegation that the Facility is "an existing affected source" is a legal conclusion to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph 29.**

30. Respondent's Facility is a "large foundry" as that term is defined in Section 63.10906(a) of Subpart ZZZZZ, 40 C.F.R. § 63.10906(a).

**ANSWER:** The allegations of paragraph 30 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

31. Section 63.10895(e) of Subpart ZZZZZ, 40 C.F.R. § 63.10895(e) provides as follows:

What are my standards and management practices?

\*\*\*

(e) If you own or operate a new or existing iron and steel foundry, you must not discharge to the atmosphere fugitive emissions from foundry operations that exhibit opacity greater than 20 percent (6-minute average), except for one 6-minute average per hour that does not exceed 30 percent.

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

32. Section 63.10898(h) of Subpart ZZZZZ, 40 C.F.R. § 63.10898(h), provides as follows:

What are my performance test requirements?

\*\*\*

(h) You must conduct each opacity test for fugitive emissions according to the requirements in § 63.6(h)(5) and Table 1 to this subpart.

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

33. Table 1 to Subpart ZZZZZ of Part 63 provides as follows:

Performance Test Requirements for New and Existing Affected Sources Classified as Large Foundries.

As required in § 63.10898(c) and (h), you must conduct performance tests according to the test methods and procedures in the following table:

For ...	You must ...	According to the following requirements ...
***	***	***
2. Fugitive emissions from buildings or structures housing any iron and steel foundry emissions sources subject to opacity limit in §63.10895(e).	a. Using a certified observer, conduct each opacity test according to EPA Method 9 (40 CFR part 60, appendix A-4) and 40 CFR 63.6(h)(5).	i. The certified observer may identify a limited number of openings or vents that appear to have the highest opacities and perform opacity observations on the identified openings or vents in lieu of performing observations for each opening or vent from the building or structure. Alternatively, a single opacity observation for the entire building or structure may be performed, if the fugitive release points afford such an observation.
		ii. During testing intervals when PM or total metal HAP performance tests, if applicable, are being conducted, conduct the opacity test such that the opacity observations are recorded during the PM or total metal HAP performance tests.
	b. An alternative to Method 9 performance test, conduct visible emissions test by Method 22 (40 CFR part 60, appendix A-7). The test is successful if no visible emissions are observed for 90 percent of the readings over 1 hour. If VE is observed greater than 10 percent of the time over 1 hour, then the facility must conduct another performance test as soon as possible, but not later than 15 calendar days after the Method 22 test, using Method 9 (40 CFR part 60, appendix A-4)	i. The observer may identify a limited number of openings or vents that appear to have the highest visible emissions and perform observations on the identified openings or vents in lieu of performing observations for each opening or vent from the building or structure. Alternatively, a single observation for the entire building or structure may be performed, if the fugitive release points afford such an observation.  ii. During testing intervals when PM or total metal HAP performance tests, if applicable, are being conducted, conduct the visible emissions during the PM or total metal HAP performance tests.

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

34. Section 63.10898(i) of Subpart ZZZZZ, 40 C.F.R. § 63.10898(i), provides as follows:

- (i) You must conduct subsequent performance tests to demonstrate compliance with the opacity limit in § 63.10895(e) no less frequently than every 6 months and each time you make a process change likely to increase fugitive emissions.

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

35. Section 63.10881(a)(3) of Subpart ZZZZZ, 40 C.F.R. § 63.10881(a)(3), provides as follows:

What are my compliance dates?

- (a) If you own or operate an existing affected source, you must achieve compliance with the applicable provisions of this subpart by the dates in paragraphs (a)(1) through (3) of this section.

\*\*\*

- (3) Except as provided in paragraph (d) of this section, not later than 2 years after the date of your large foundry's notification of the initial determination required in § 63.10880(f) for the standards and management practices in § 63.10895.

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

36. In 2008, the Illinois EPA notified Respondent of the Agency's determination that the Facility was a large foundry.

**ANSWER:** Respondent admits the allegations of paragraph 36.

37. Respondent was required to conduct the first semi-annual opacity test in 2010.

**ANSWER:** The allegations of paragraph 37 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

38. Since 2010, Respondent was required to conduct semi-annual opacity testing and submit a semi-annual testing report to the Illinois EPA.

**ANSWER:** The allegations of paragraph 38 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

39. From 2010 through the date of filing of this Complaint, Respondent has failed to conduct opacity testing on all buildings or structures housing emission sources involved in the foundry operations at the Facility.

**ANSWER:** Respondent denies the allegations of paragraph 39.

40. By failing to conduct opacity testing on all buildings or structures housing emission sources involved in the foundry operations at the Facility, Respondent violated Table 1 to Subpart ZZZZ of Part 63, and thereby Respondent has also violated 40 C.F.R. § 63.10898(h).

**ANSWER:** The allegations of paragraph 40 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

41. By not conducting opacity testing on all buildings or structures housing emission sources involved in the foundry operations at the Facility, Respondent did not conduct all required opacity testing on foundry operations every 6 months and thereby Respondent violated 40 C.F.R. § 63.10898(i).

**ANSWER:** The allegations of paragraph 41 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

42. Section 63.10885(b)(2) and (3) of Subpart ZZZZZ, 40 C.F.R. § 63.10885(b)(2) and (3), provides in pertinent part as follows:

What are my management practices for metallic scrap and mercury switches?

\*\*\*

- (b) Mercury requirements. For scrap containing motor vehicle scrap, you must procure the scrap pursuant to one of the compliance options in paragraphs (b)(1), (2), or (3) of this section for each scrap provider, contract, or shipment. For scrap that does not contain motor vehicle scrap, you must procure the scrap pursuant to the requirements in paragraph (b)(4) of this section for each scrap provider, contract, or shipment. You may have one scrap provider, contract, or shipment subject to one compliance provision and other subject to another compliance provision.

\*\*\*

- (2) Option for approved mercury programs. You must certify in your notification of compliance status that you participate in and purchase motor vehicle scrap only from scrap providers who participate in a program for removal of mercury switches that has been approved by the Administrator based on the criteria in paragraphs (b)(2)(i) through (iii) of this section. If you purchase motor vehicle scrap from a broker, you must certify that all scrap received from that broker was obtained from other scrap providers who participate in a program for the removal of mercury switches that has been approved by the Administrator based on the criteria in paragraphs (b)(2)(i) through (iii) of this section. The National Mercury Switch Recovery Program and the State of Main Mercury Switch Removal Program are EPA-approved programs under paragraph (b)(2) of this section unless and until the Administrator disapproves the program (in part or in whole) under paragraph (b)(2)(iii) of this section.
  - (i) The program includes outreach that informs the dismantlers of the need for removal of mercury switches and provides training and guidance for removing mercury switches.
  - (ii) The program has a goal to remove at least 80 percent of mercury switches from the motor vehicle scrap the scrap provider processes. Although a program approved under paragraph (b)(2) of this section may require only the removal of convenience light switch mechanisms, the Administrator will credit all documented and verifiable mercury-containing components removed from motor vehicle scrap (such as sensors in anti-locking brake systems, security systems, active ride control, and other applications) when evaluating progress towards the 80 percent goal; and
  - (iii) The program sponsor agrees to submit progress reports to the Administrator no less frequently than once every year that provide the number of mercury switches removed or the weight of mercury recovered from the switches, the estimated number of vehicles processed, an estimate of the

percent of mercury switches recovered, and certification that the recovered mercury switches were recycled at facilities with permits as required under the rules implementing subtitle C of RCRA (40 CFR parts 261 through 265 and 268). The progress reports must be based on a database that includes data for each program participant; however, data must be aggregated at the State level for progress reports that will be publicly available. The Administrator may change the approval status of a program or portion of a program (e.g., at the State level) following 90-days' notice based on the progress reports or on other information.

- (iv) You must develop and maintain onsite a plan demonstrating the manner through which your facility is participating in the EPA-approved program.
  - (A) The plan must include facility-specific implementation elements, corporate-wide policies, and/or efforts coordinated by a trade association as appropriate for each facility.
  - (B) You must provide in the plan documentation or direction to appropriate staff to communicate to suppliers through the scrap supply chain the need to promote the removal of mercury switches from end-of-life vehicles. Upon the request of the Administrator or delegated authority, you must provide examples of materials that are used for outreach to suppliers, such as letters, contract language, policies for purchasing agents, and scrap inspection.
  - (C) You must conduct periodic inspections or other means of corroboration to ensure that scrap providers are aware of the need for and are implementing appropriate steps to minimize the presence of mercury in scrap from end-of-life vehicles.
- (3) Option for specialty metal scrap. You must certify in your notification of compliance status and maintain records of documentation that the only materials from motor vehicles in the scrap are materials recovered for their specialty alloy (including, but not limited to, chromium, nickel, molybdenum, or other alloys) content (such as certain exhaust system) and, based on the nature of the scrap is not reasonably expected to contain mercury switches.

**ANSWER:** The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.

43. On February 3, 2010, Respondent submitted to the Illinois EPA a Notification of Compliance Status wherein Respondent certified that it will only accept scrap metal for foundry operations at the Facility from suppliers who participate in a program for removal of mercury switches that has been approved by the Administrator based on the criteria in 40 C.F.R. § 63.10885(b)(2)(i)-(iii).

**ANSWER:** Respondent admits the allegations of paragraph 43.

44. Respondent receives scrap metal for foundry operations at the Facility from a broker.

**ANSWER:** Respondent admits the allegations of paragraph 44.

45. At the time of the Illinois EPA's May 2012 Inspection of the Facility, Respondent failed to keep records to ensure that only scrap providers who participated in a program for removal of mercury switches approved by the Administrator were used to provide scrap metal to the Facility.

**ANSWER:** Respondent denies the allegations of paragraph 45.

46. By failing to keep records to ensure that only scrap providers who participated in a program for removal of mercury switches approved by the Administrator were used to provide scrap to the Facility, Respondent violated Section 63.10885(b)(2) of Subpart ZZZZ, 40 C.F.R. § 63.10885(b)(2).

**ANSWER:** The allegations of paragraph 46 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

47. At the time of the Illinois EPA's May 2012 Inspection of the Facility, Respondent failed to maintain a record of all scrap metal suppliers to Respondent's scrap broker that identified that the type of scrap metal would not reasonably be expected to contain mercury switches.

**ANSWER: Respondent denies the allegations of paragraph 45.**

48. By failing to maintain a record of all scrap metal supplies to Respondent's scrap broker that identified that the type of scrap metal would not reasonably be expected to contain mercury switches, Respondent violated Section 63.1085(b)(3) of Subpart ZZZZZ, 40 C.F.R. § 63.10885(b)(3).

**ANSWER: The allegations of paragraph 48 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.**

49. Section 63.10899(a) of Subpart ZZZZZ, 40 C.F.R. § 63.10899(a), provide as follows:

What are my recordkeeping and reporting requirements?

- (a) As required by § 63.10(b)(1), you must maintain files of all information (including all reports and notifications) for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. At a minimum, the most recent 2 years of data shall be retained on site. The remaining 3 years of data may be retained off site. Such files may be maintained on microfilm, on a computer, on computer floppy disks, on magnetic tape disks, or on microfiche.

**ANSWER: The quoted section speaks for itself, and no answer is necessary. However, respondent denies any factual or legal inference about respondent or its activities.**

50. At the time of the Illinois EPA's May 2012 inspection of the Facility, Respondent failed to maintain files of all information for the previous five years following the date of each occurrence, measurement, maintenance, corrective action, report, and/or record at the Facility.

**ANSWER:** The allegations of paragraph 50 are so broad and vague that respondent has insufficient information to answer. To the extent an answer is required, respondent denies the allegations of this paragraph.

51. By failing to maintain files of all information for at least five years following the date of each occurrence, measurement, maintenance, corrective action, report, or record at the Facility, Respondent violated Section 63.10889(a) of Subpart ZZZZZ, 40 C.F.R. § 63.10899(a).

**ANSWER:** The allegations of paragraph 51 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

52. By violating 40 C.F.R. §§ 63.10885(b)(2) and (3), 63.10898(h), 63.10898(i), and 63.10899(a), Respondent thereby violated Section 9.1(d) of the Act ILCS 5/9.1(d) (2014).

**ANSWER:** The allegations of paragraph 52 are legal conclusions, to which no answer is required. To any extent an answer is required, respondent denies the allegations of this paragraph.

### **AFFIRMATIVE DEFENSES**

Respondent Amsted Rail Company, Inc. pleads the following affirmative defenses:

#### **First Affirmative Defense** **Illinois Statute of Limitations** **(Counts VII, VIII, X, XI, and XII)**

1. This complaint was filed with the Board on November 16, 2015.
2. The Illinois Environmental Protection Act (Act) does not contain a statute of limitations on enforcement actions brought pursuant to the Act. Likewise, the Board's procedural rules do not contain a statute of limitations on enforcement actions.
3. However, the Illinois Code of Civil Procedure establishes a five-year statute of limitations for "all civil actions not otherwise provided for." 735 ILCS 5/13-205.

4. The Board's procedural rules specifically provide that "the Board may look to the Code of Civil Procedure...where the Board's procedural rules are silent." 35 Ill. Adm. Code 101.100(b).
5. The violations alleged in Counts VII, VIII, X, XI, and XII are not brought on behalf of the public interest. All of those violations are past violations, long since corrected, and mostly paperwork violations.
6. Thus, the five-year statute of limitations (735 ILCS 5/13-205) is applicable to matters alleged in this complaint.
7. All alleged violations occurring prior to November 16, 2010 are barred by the Illinois five-year statute of limitations.
8. Counts VII and XI allege some violations which allegedly occurred in 2008, and others which allegedly occurred in 2012. All of the violations alleged in Counts VII and XI which occurred before November 16, 2010 are barred by the Illinois statute of limitations.
9. The violations alleged in Count VIII are based on permit 08060024. That permit was issued on August 7, 2008. Count VIII does not specify when the alleged violations occurred. To the extent the violations alleged in Count VIII occurred prior to November 16, 2010, such violations are barred by the Illinois statute of limitations.
10. Count X alleges violations which purportedly occurred from December 2007 "through the date of filing" of the complaint. All alleged violations which occurred prior to November 16, 2010 are barred by the Illinois statute of limitations.
11. Count XII alleges violations which were, by the plaintiff's own pleading, resolved by September 10, 2010. Therefore, the violations alleged in Count XII are barred by the Illinois statute of limitations.

WHEREFORE, the Board should find that the violations alleged in Counts VII, VIII, X, XI, and XII are barred by the Illinois statute of limitations, and provide such other relief as the Board deems appropriate.

**Second Affirmative Defense**  
**Federal Statute of Limitations**  
**(Counts XI and XII)**

1. This complaint was filed on November 16, 2015.
2. Counts XI and XII allege violations of respondent's Clean Air Act Permit Program (CAAPP) permit.
3. CAAPP is the permit program established by Illinois to comply with the permit requirements of Title V of the federal Clean Air Act. 42 U.S.C. §7661a *et seq.* The Illinois General Assembly defined "CAAPP" as "the Clean Air Act Permit Program, developed pursuant to Title V of the Clean Air Act." 415 ILCS 5/39.5(1).
4. Although the United States Environmental Protection Agency (USEPA) has approved the Illinois CAAPP program as satisfying the requirements of the Clean Air Act, CAAPP remains a federal Clean Air Act program.
5. Clean Air Act violations are governed by a five-year statute of limitations. 28 U.S.C. §2462.
6. Because Counts XI and XII allege violations of the Clean Air Act CAAPP, those alleged violations are subject to the federal five-year statute of limitations.
7. Count XI alleges some violations which allegedly occurred in 2008, and others which allegedly occurred in 2012. All of the violations alleged in Count XI which occurred before November 16, 2010 are barred by the five-year federal statute of limitations.

8. Count XII alleges violations which were, by the plaintiff's own pleading, resolved by September 10, 2010. Therefore, the violations alleged in Count XII are barred by the five-year federal statute of limitations.

WHEREFORE, the Board should find that the violations alleged in Counts XI and XII are barred by the federal statute of limitations, and provide such other relief as the Board deems appropriate.

**Third Affirmative Defense**  
**Error in Permit Terms**  
**(Count X)**

1. Count X alleges violations of the Facility's emission limits, contained in its CAAPP permit.
2. The stated emission limits for particulate matter from its molding sand system #6 (MSS-6) are 0.5 tons per month, but only 0.5 tons per year. Permit Condition 7.2.6(a).
3. These emission limits are clearly an error, perhaps typographical. It is inconsistent and illogical to allow particulate emissions from MSS-6 of 0.5 tons per month, but also limit total annual emissions to the same 0.5 tons per year. This would result in respondent being allowed to run the MSS-6 process for only one month of twelve months.
4. The emission limits for particulate matter from respondent's shot blast machine #7 (SB-7) are 1.86 tons per month, but only 2.5 tons per year. Permit Condition 7.4.6(a).
5. These emission limits are clearly an error, perhaps typographical. It is inconsistent and illogical to allow particulate emissions from SB-7 of 1.86 tons per month, but also limit total annual emissions to 2.5 tons per year.
6. Incorrect and illogical permit emission limits cannot be the basis for alleged violations of those emission limits.

WHEREFORE, the Board should find that the violations alleged in Counts X are barred by the errors in the permit, which cannot be the basis of a substantive violation, and provide such other relief as the Board deems appropriate.

**Fourth Affirmative Defense**  
**Incorrect Testing Method**  
**(Count XIII)**

1. Count XIII alleges, among other things, that respondent has failed to conduct required opacity testing.
2. On the contrary, respondent has been conducting required opacity testing.
3. However, Illinois EPA has been inconsistent in selecting the opacity testing method it suggests.
4. Currently, Illinois EPA demands the use of an improper opacity testing method.
5. Illinois EPA's demand for use of an improper testing method does not equate to an alleged failure to conduct testing.

WHEREFORE, the Board should find that respondent has conducted the required opacity testing, and provide such other relief as the Board deems appropriate.

**Fifth Affirmative Defense**  
**Additional Affirmative Defenses**

1. The Board's procedural rules specifically allow for affirmative defenses to be pled after the filing of the answer, if the affirmative defense could not have been known before hearing. 35 Ill. Adm. Code 103.204(d).
2. Respondent reserves the right to assert any additional affirmative defense which could not have been known before hearing.

Respectfully submitted,

By:

  
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One of the attorneys for Respondent  
AMSTED RAIL COMPANY, INC.

Dated: January 15, 2016

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