

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	R25-17
AMENDMENTS TO 35 ILL. ADM. CODE 217,)	(Rulemaking – Air)
NITROGEN OXIDES EMISSIONS)	

NOTICE

TO: Don Brown
Clerk
Illinois Pollution Control Board
60 E. Van Buren St., Suite 630
Chicago, IL 60605
don.brown@illinois.gov

ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board the POST-HEARING COMMENTS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Gina Roccaforte
Gina Roccaforte
Assistant Counsel
Division of Legal Counsel

DATED: October 17, 2024

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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AMENDMENTS TO 35 ILL. ADM. CODE 217,)	(Rulemaking – Air)
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**POST-HEARING COMMENTS OF THE
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA" or "Agency"), by its attorney, and respectfully submits its post-hearing comments in the above rulemaking proceeding with regard to the September 26, 2024, hearing.

The Agency's Responses to Questions Posed by the Illinois Pollution Control Board ("Board") at Hearing

In response to the Board's pre-filed Question 79 and request at hearing, the Agency has attached the Consent Order, *People of the State of Illinois v. Gerresheimer Glass Inc.*, (No. 2024CH000384, Circuit Court Cook County, September 18, 2024).

In response to the Board's pre-filed Question 83, the Agency recommends that Section 217.388(a)(1)(D) be amended as set forth below under *The Agency's Suggested Revisions to the Rulemaking Proposal*.

The Agency's Responses to Pre-filed Questions Not Answered at Hearing

The Agency submits the following responses to pre-filed Questions 2 through 5 from the Illinois Attorney General's Office, dated September 19, 2024, as indicated by the Agency at the hearing (Transcript of September 26, 2024, Hearing ("Tr.") at 11:12-24; 12:1-6):

Question 2: *IEPA identifies several counties as part of the Chicago and Metro-East NAAs. TSD at 1-2. Are any of these counties listed below, or parts of them, considered areas of environmental justice concern? If so, how would emissions reductions from the proposed rules affect these environmental justice communities?*

a. Chicago NAA:

- i. Cook, DuPage, Kane, Lake, McHenry, and Will Counties*
- ii. Aux Sable, Goose Lake townships in Grundy County*
- iii. Oswego township in Kendall County*

b. Metro East NAA:

- i. Madison, Monroe, and St. Clair Counties*

Response: Yes, there are portions of all of these counties that are considered areas of environmental justice concern. Emissions reductions from the proposed rule would benefit these environmental justice communities by reducing emissions of NO_x, which is an ozone precursor, thereby reducing adverse health effect effects and risks attributable to high ozone concentrations.

Question 3: *What are the potential health impacts of exposure to NO_x emissions on the people living in the non-attainment areas?*

Response: NO_x is a precursor to ozone and PM_{2.5}, and NO₂ (a large component of NO_x) is a criteria pollutant with its own NAAQS. An evaluation of potential public health impacts is set forth in the United States Environmental Protection Agency's ("USEPA") Final Rule, National Ambient Air Quality Standards for Ozone, 80 Fed. Reg. 65292 (October 15, 2015).

See also:

<https://www.epa.gov/no2-pollution/basic-information-about-no2>
<https://www.epa.gov/ground-level-ozone-pollution/health-effects-ozone-pollution>
<https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm>

Question 4: *IEPA indicated that although it has not quantified anticipated reductions, it does anticipate that there will be NO_x emission reductions in both NAAs. TSD at 3. Will these anticipated reductions reduce any concerns about health impacts?*

Response: Yes, these anticipated reductions in NO_x emissions will reduce concerns about health impacts as set forth in the response to Question 2, above.

Question 5: *What environmental justice considerations did IEPA take into account when designing the new regulations?*

Response: The Agency strongly supports the concept of environmental justice, which rests on the principles of fair treatment and meaningful participation by all interested

persons in the decision-making processes of environmental law. The Agency demonstrates this support by implementing an Environmental Justice Policy that promotes strategies for enhancing public outreach, improving language accessibility and promptly responding to EJ-related concerns, inquiries or grievances. The EJ Policy can be found on the Agency's website at: <https://epa.illinois.gov/topics/environmental-justice/ej-policy.html>. As to the current rulemaking, the Agency acknowledges that the areas affected by the nonattainment rules overlap with areas of potential environmental justice concern. The Agency retrieved data from its EJ Start mapping tool confirming this belief and conducted Agency outreach well in advance of filing the proposed rulemaking and with the participation of EJ organizations.

The Agency's Responses to Additional Questions Posed by the Illinois Environmental Regulatory Group ("IERG") at Hearing

At the hearing, the Agency provided testimony and responded to questions; however, some outstanding responses remain to be addressed in these post-hearing comments.

Representatives of IERG directed the following questions to Mr. Davis who indicated that the Agency would respond to such questions in writing.

Question: *Can the Agency clarify the compliance and reporting requirements for units that may take months or even years to produce 30 operating days to calculate actual emission units where these units are not emergency or standby units?* Tr. at 38:21-24; 39:1.

Response: While this question was regarding Section 217.157, provisions addressing emergency and standby units relate to engines and turbines. Therefore, in instances where a unit may not have 30 operating days to calculate actual emissions, the Agency proposes a revision to Section 217.392, as set forth below under *The Agency's Suggested Revisions to the Rulemaking Proposal*, to allow for those units to comply on an annual basis for a given calendar year until 30 operating days are accumulated.

Question: *Is the Agency amenable to adding a new subsection under subpart (q) Section 217.386 A-52 upper case (C) -- this would be the new subsection -- for the applicability of stationary RICE and turbines providing that an emission unit emits 15 tons or more of NOx to the atmosphere per calendar year, which is identical to the applicability language found in subsection 217.150 (a) -- as in apple -- (2) upper case (B) -- as in boy -- for subparts E, F, G, H, I, and M?* Tr. at 48; 9-19.

Response: At hearing, Mr. Davis indicated that the Agency would consider it. The Agency does not believe that a 15 ton unit-level applicability threshold for engines and turbines is appropriate because in many cases sources have many units that are identical or similar. For instance, a source that operates 12 turbines, that source could potentially emit nearly 180 tons of NO_x in a year and not be subject to the limits of Subpart Q. This same determination was made when the rules were originally adopted.

Questions: *Regarding the removal of the turnaround provision in the NO_x RACT proposal as request from USEPA, do you have that in writing?* Tr. 62:1-2.

Is there something that you can provide the public demonstrating that this was a requirement of the NO_x RACT SIP submittal? Tr. 62:2-4.

Would it be appropriate or would you be open to sharing what USEPA has requested concerning the maintenance turnaround provisions similar to how you shared the other deficiencies for the SIP submittal? Tr. at 62:11-15.

Response: USEPA confirmed the Agency's understanding that emission limits are to apply at all times and that retaining (i.e., not sunseting) these exemptions is unacceptable to USEPA. The Agency does have email correspondence that confirms this and has attached the correspondence.

Questions: *Under Subpart U, can the Agency submit two SIP submittals within one rulemaking?* Tr. 62:20-21.

While the Agency is conducting one rulemaking, is it possible for the Agency to submit two separate SIP submittals to USEPA? Tr. 62:24; 63:1-2.

[Clarification of the question requested by the Agency]

So in the event that the Agency is working on a rulemaking and there are two -- there's one body of information that they'd like to submit for SIP approval and there is another body that is still being teased out and they would like to later submit as part of their SIP submittal, is that possible? Tr. at 63:5-11.

Response: Theoretically, the Agency could submit two SIP submittals at different times for different portions of rules that were revised in a single rulemaking. However, USEPA indicated that it cannot assure the Agency that the changes to Subpart U that IERG is seeking are approvable. As the Agency testified at hearing, amendments to Subpart U would also require approval from a different branch of USEPA and that would cause additional delays.

Questions: *So in a hypothetical situation where a source begins to emit 15 tons per year -- or a particular unit begins to emit 15 tons per year or more, let's say, in 2026, at what point would that particular unit become subject to the rule? Would it be immediate, or would there be some time thereafter where that source becomes subject to the rule?* Tr. at 67:23-24; 68:1-5.

Response: Generally, if a previously non-subject existing unit at an affected source begins to emit 15 tons or more in a given year, the unit would become subject to the applicable provisions of Part 217 at the beginning of the following year.

The Agency's Suggested Revisions to the Rulemaking Proposal

As the Agency explained at hearing, a few issues have arisen in the context of this rulemaking proposal, and as a result, the Agency has engaged in negotiations with interested parties on these issues. As to the following proposed amendments, below, the Agency's proposed revisions are based on the rulemaking proposal as published in the Illinois Register, 48 Ill. Reg. 11469 (August 9, 2024).

An additional amendatory provision for an exemption is being proposed for an industrial boiler when (1) backup distillate fuel oil is used in lieu of natural gas during periods of natural gas curtailment or gas supply interruption or (2) during periods of periodic testing and maintenance of backup fuels or operator training, not exceeding 48 hours in a calendar year. This provision is similar to provisions under the National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters, 40 CFR 63, Subpart DDDDD, regarding the operation of boilers during infrequent periods when natural gas is not available to allow the boilers to continue to operate and protect site assets and personnel. "Periods of natural gas curtailment or gas supply interruption" refers to a period during which the supply of gaseous fuel to an industrial boiler is restricted or halted for reasons beyond the control of the source. A recordkeeping and reporting requirement is also being proposed to require records documenting these periods.

In addition, amendatory provisions are being proposed to address a request to modify the commencement date for emission units that may be included in an averaging plan (i.e., units that commenced operation after January 1, 2017, instead of January 1, 2002), and also allow emission units that are not otherwise subject to Subpart E, F, G, H, I, or M, as applicable, under Section 217.150(a)(2)(B), but that share a common stack with a unit that is subject to Subpart E, F, G, H, I, or M, as applicable, to be included in an averaging plan.

An additional revision is recommended regarding units that may be included in an emissions averaging plan to allow for inclusion, on and after May 1, 2025, units that are not otherwise subject to Subpart E, F, G, H, I, or M, as applicable, under Section 217.150(a)(2)(B), or Subpart Q, as applicable, under Section 217.386(b)(2)(A) or (B), but that the owner or operator chooses to include in an emissions averaging plan. For as long as such a unit is included in an emissions averaging plan, it will be treated as an affected unit and subject to the applicable emissions limitations, testing, monitoring, recordkeeping and reporting requirements.

Furthermore, an additional method to calculate allowable emissions under Subpart Q is being proposed to allow units that use a CEMS to determine NO_x emissions and monitor fuel flow, in lieu of stack flow, under 40 CFR, Appendix D.

Additionally, on the question at hearing by Mr. Rao, Chief Environmental Scientist for the Board, asking if the Agency is going to conduct any future modeling for the 2015 standard or whether an attainment demonstration or some kind of other part of the SIP will require modeling that would include reductions from the proposed amendments compared to the existing rule, Tr. at 74:24; 75:1-2, the Agency provides the following additional information. The USEPA's final rule, *Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements*, addresses the range of

nonattainment area SIP requirements for the 2015 ozone National Ambient Air Quality Standard (“NAAQS”), including attainment demonstrations, reasonable further progress and associated milestone demonstrations, reasonably available control technology (“RACT”), reasonably available control measures, major nonattainment new source review, emissions inventories, the timing of required SIP submissions and compliance with emission control measures in the SIP. 83 Fed. Reg. 62998 (December 6, 2018). Accordingly, the Agency reiterates that regardless of any of the other Clean Air Act requirements, RACT is required on existing sources in areas that are not meeting the NAAQS.

To further clarify, and as Mr. Davis explained at hearing, the Agency is not attempting to quantify reductions projected from the proposed regulations for the purposes of any modeling exercise, mainly because those projections would be for 2023 in the current attainment demonstration and that year has elapsed. This is because the 2023 ozone season was the last full ozone season before the moderate attainment date of August 4, 2024. The quantification of the emission reductions from this rulemaking is also likely not necessary in future modeling that may be conducted for future attainment demonstrations.

The Agency continues its ongoing discussions with affected sources and anticipates that it may submit further proposed revisions and will do so as soon as possible. The Agency is now proposing to amend the rulemaking proposal as set forth herein. Accordingly, the Agency recommends the acceptance by the Board of the following amendments to the rulemaking proposal:

Amend Section 217.156 by adding a new subsection (b)(13) as follows:

- 13) On and after May 1, 2025, if, under Section 217.152(f), an industrial boiler is using backup distillate fuel oil in lieu of natural gas during periods of natural gas curtailment or gas supply interruption, or during periods of periodic testing and maintenance of backup fuels or operator training, not exceeding 48 hours in a

calendar year, records documenting the total hours per calendar year of the industrial boiler during these periods.

Amend Section 217.156(j)(3), in relation to a First Notice typographical error, to read as follows:

- 3) The calculations that demonstrate that the total mass of actual NO_x emissions is less than the total mass of allowable NO_x emissions using equations in Section 217.158(h)(g).

Amend Section 217.158(a)(1)(A) to read as follows:

- A) Units that commenced operation on or before January 1, 2017~~2002~~.

Amend Section 217.158(a)(1)(C) to read as follows (proposed revision in bold):

- C) On and after May 1, 2025, units that are not otherwise subject to Subpart E, F, G, H, I, or M, as applicable, under Section 217.150(a)(2)(B), **or Subpart Q, as applicable, under Section 217.386(b)(2)(A) or (B)**, but that the owner or operator chooses to include in an emissions averaging plan. For as long as the unit is included in an emissions averaging plan, it will be treated as an affected unit and subject to the applicable emissions limitations, testing, monitoring, recordkeeping and reporting requirements.

Amend Section 217.158(a)(1)(D) to read as follows:

- ~~D~~E) Units that commence operation after January 1, 2017~~2002~~, if the unit replaces a unit that commenced operation on or before January 1, 2017~~2002~~, or it replaces a unit that replaced a unit that commenced operation on or before January 1, 2017~~2002~~. The new unit must be used for the same purpose and have substantially equivalent or less process capacity or be permitted for less NO_x emissions on an annual basis than the actual NO_x emissions of the unit or units that are replaced. Within 90 days after permanently shutting down a unit that is replaced, the owner or operator of the~~such~~ unit must submit a written request to withdraw or amend the applicable permit to reflect that the unit is no longer in service before the replacement unit may be included in an emissions averaging plan.

Amend Section 217.158 by adding new subsections (a)(1)(E) as follows:

- E) On and after May 1, 2025, units that are not otherwise subject to Subpart E, F, G, H, I, or M, as applicable, under Section 217.150(a)(2)(B), but that share a common stack with a unit that is subject to Subpart E, F, G, H, I, or M, as applicable.

Amend Section 217.158(a)(2)(A) to read as follows:

- A) Units that commenced operation after January 1, ~~2017~~2002, except as provided by subsection (a)(1)(C) of this Section.

Amend Section 217.160 by adding new subsection (d) as follows:

- d) On and after May 1, 2025, the provisions of this Subpart, except for recordkeeping and reporting requirements, do not apply to an industrial boiler when (1) backup distillate fuel oil is used in lieu of natural gas during periods of natural gas curtailment or gas supply interruption; or (2) during periods of periodic testing and maintenance of backup fuels or operator training, not exceeding 48 hours in a calendar year.

Amend Section 217.388(a)(1)(D) to read as follows:

- D) Before May 1, 2025, 660 ppmv (corrected to 15 percent O₂ on a dry basis) for diesel engines, except for diesel engines constructed on and after May 1, 2025;
On and after May 1, 2025, 210 ppmv (corrected to 15 percent O₂ on a dry basis) for diesel engines that are constructed on and after May 1, 2025;

Amend Section 217.390(a)(1) to read as follows:

- 1) A unit or units that commenced operation before January 1, ~~2017~~2002 may be included in only one emissions averaging plan, as follows:

Amend Section 217.390(a)(2)(A) to read as follows:

- A) Units that commence operation after January 1, ~~2017~~2002, unless the unit or units replace a unit or units described in subsection (a)(1) of this Section that commenced operation on or before January 1, ~~2017~~2002, or the unit or units replace a unit or units described in subsection (a)(1) of this Section that replaced a unit or units that commenced operation on or before January 1, ~~2017~~2002. The new unit must be used for the same purpose and have substantially equivalent or

less process capacity or be permitted for less NO_x emissions on an annual basis than the actual NO_x emissions of the unit or units that are replaced. The owner or operator of a unit that is shut down and replaced must comply with the provisions of Section 217.396(c)(3) before the replacement unit may be included in an emissions averaging plan.

Amend Section 217.390 by adding a new subsection (l)(3) to read as follows:

- 3) Alternatively, for units that monitor fuel flow in accordance with 40 CFR 75, Appendix D, in lieu of monitoring stack flow, the total mass of allowable NO_x emissions may be calculated using the following equation:

$$EM_{all(i)} = \sum_{j=1}^m (C_{d(all(j))} \times F_d \times \left(\frac{20.9}{20.9 - \%O_{2d}} \right) \times H_i)$$

Where:

<u>EM_{all(i)}</u>	≡	<u>Total mass of allowable NO_x emissions in lbs for a unit.</u>
<u>H</u>	≡	<u>Heat input (mmBtu) calculated from fuel flow meter and the heating value of the fuel used.</u>
<u>C_{d(all)}</u>	≡	<u>Allowable concentration of NO_x in lb/dscf (allowable emissions concentration in ppmv specified in Section 217.388(a)(1) multiplied by 1.194 x 10⁻⁷) on a dry basis for the fuel used.</u>
<u>F_d</u>	≡	<u>The ratio of the gas volume of the products of combustion to the heat content of the fuel (dscf/mmBtu) as given in the table of F Factors included in 40 CFR 60, appendix A, Method 19 or as determined using 40 CFR 60, appendix A, Method 19.</u>
<u>%O_{2d}</u>	≡	<u>Concentration of oxygen in effluent gas stream measured on a dry basis during each hour used for determining emissions, as represented by a whole number percent, e.g., for 18.7%O_{2d}, 18.7 would be used.</u>
<u>i</u>	≡	<u>subscript denoting each hour operation of a given unit.</u>
<u>m</u>	≡	<u>Total number of hours of operation of a unit.</u>
<u>i</u>	≡	<u>Subscript denoting an individual unit and the fuel used.</u>

Amend Section 217.392 by amending subsection (c) to read as follows (proposed revision in bold):

- c) On and after May 1, 2025, an owner or operator of a stationary internal combustion engine or turbine subject to this Subpart Q must not operate the affected engine or turbine unless the requirements of this Subpart Q are met. Compliance must be demonstrated with the applicable emissions concentration or emissions averaging plan on a 30-day rolling average basis. A 30-day rolling average consists of 30 operating days where an operating day is a calendar day in which any subject emission unit combusts any fuel. Compliance with the 30-day rolling average for units that have conducted an initial performance test under Section 217.394(a) or installed and operated a CEMS under Section 217.394(e) shall be demonstrated 30 operating days after May 1, 2025. A 30-day rolling average is calculated using the total mass of emissions from the period and the total volume of products of combustion in the period. **If an affected engine or turbine does not operate 30 operating days in a calendar year, the owner or operator of the unit must demonstrate compliance on an annual calendar year basis until 30 operating days are accumulated on and after May 1, 2025.**

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: _____
Gina Roccaforte
Assistant Counsel
Division of Legal Counsel

DATED: October 17, 2024

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217/782-5544

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

PEOPLE OF THE STATE OF ILLINOIS,)	
<i>ex. rel.</i> KWAME RAOUL, Attorney)	
General of the State of Illinois,)	
)	
Plaintiff,)	
)	
v.)	No. 2024CH00384
)	
GERRESHEIMER GLASS INC., a)	
Delaware corporation,)	
)	
Defendant.)	

CONSENT ORDER

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* KWAME RAOUL, Attorney General of the State of Illinois, the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), and Defendant, GERRESHEIMER GLASS INC., (collectively "Parties to the Consent Order"), have agreed to the making of this Consent Order and submit it to this Court for approval.

I. INTRODUCTION

This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Court's entry of the Consent Order and issuance of any injunctive relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2022), the National Emission Standards for Hazardous Air Pollutants ("NESHAP") regulations, the Illinois Pollution Control Board ("Board") regulations, the Illinois EPA Air Pollution regulations, CAAPP Permit 95090043 (as defined below), and Construction Permit 15030011 (as defined below) alleged in the Complaint and the August 7, 2023 Violation Notice (as defined below),

except as otherwise provided herein. It is the intent of the Parties to this Consent Order that it be a final judgment on the merits of this matter.

A. Parties

1. On January 19, 2024, a Complaint was filed on behalf of the People of the State of Illinois by Kwame Raoul, Attorney General of the State of Illinois, on his own motion and upon the request of Illinois EPA, pursuant to Sections 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e) (2022), against Gerresheimer Glass Inc. ("Defendant").

2. Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2022).

3. At all times relevant to the Complaint, Defendant was and is a Delaware corporation that is in good standing with the Illinois Secretary of State.

4. At all times relevant to the Complaint, Defendant has been and continues to be the owner and operator of a borosilicate glass container production facility located at 1131 Arnold Street, Chicago Heights, Cook County, Illinois (the "Facility").

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

6. On April 1, 2014, Illinois EPA issued Clean Air Act Permit Program ("CAAPP") Permit No. 95090043 to Defendant for the Facility, which was revised on September 20, 2016 (collectively, "CAAPP Permit 95090043").

7. On July 8, 2015, Illinois EPA issued Construction Permit No. 15030011 to Defendant for the Facility which, among other things, approved Defendant's construction of emission sources and/or air pollution control equipment consisting of changes to the glass furnace B at the Facility ("Construction Permit 15030011").

8. On April 3, 2019, Defendant submitted to Illinois EPA a CAAPP Permit renewal application for the Facility (the "CAAPP Permit Renewal Application"), which remains pending with Illinois EPA.

B. Allegations of Non-Compliance

1. In the Complaint, Plaintiff contends that Defendant violated the following provisions of the Act, the NESHAP regulations, the Board regulations, the Illinois EPA Air Pollution regulations, CAAPP Permit 95090043, and Construction Permit 15030011:

- Count I: NOx Emission Exceedances in violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2022), and Condition 5(a)(i)(A) of Construction Permit 15030011.
- Count II: Failure to Timely Test SO₂ Emissions in violation of Section 39.5(6)(a) of the Act, 415 ILCS 5/39.5(6)(a) (2022), and Condition 4.3.2.c.ii.B. of CAAPP Permit 95090043.
- Count III: Failure to Timely Test NOx Emissions in violation of Section 39.5(6)(a) of the Act, 415 ILCS 5/39.5(6)(a) (2022), and Condition 4.3.2.d.ii.B of CAAPP Permit 95090043.
- Count IV: Failure to Keep Records on the Electrostatic Precipitator in violation of Sections 9.1(d)(1) and 39.5(6)(a) of the Act, 415 ILCS 5/9.1(d)(1) and 39.5(6)(a) (2022), Sections 63.11457(a)(5) and (a)(6) of the NESHAP regulations, 40 C.F.R. §§ 63.11457(a)(5) and (a)(6), and Condition 4.3.2.f.ii.C of CAAPP Permit 95090043.
- Count V: Failure to Report Deviations Relating to Electrostatic Precipitator Records in violation of Section 39.5(6)(a) of the Act, 415 ILCS 5/39.5(6)(a) (2022), and Condition 4.3.5.a.i. of CAAPP Permit 95090043.
- Count VI: Failure to Timely Amend Fugitive Dust Program and Submit it to Illinois EPA in violation of Sections 9(a) and 39.5(6)(a) of the Act, 415 ILCS 5/9(a) and 39.5(6)(a) (2022), Section 212.312 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 212.312, and Condition 3.2.a.ii. of CAAPP Permit 95090043.

- Count VII: Failure to Report Deviations Relating to Fugitive Dust Program in violation of Section 39.5(6)(a) of the Act, 415 ILCS 5/39.5(6)(a) (2022), and Condition 3.5.a.i. of CAAPP Permit 95090043.
- Count VIII: Failure to Maintain Records of Baghouse Inspections in violation of Section 39.5(6)(a) of the Act, 415 ILCS 5/39.5(6)(a) (2022), and Condition 4.1.2.b.ii.C. of CAAPP Permit 95090043.
- Count IX: Failure to Report Deviations Relating to Baghouse Inspections in violation of Section 39.5(6)(a) of the Act, 415 ILCS 5/39.5(6)(a) (2022), and Condition 4.1.5.a.i. of CAAPP Permit 95090043.
- Count X: Failure to Submit Semiannual Monitoring Reports in violation of Section 39.5(6)(a) of the Act, 415 ILCS 5/39.5(6)(a) (2022), and Condition 3.5.b. of CAAPP Permit 95090043.
- Count XI: Failure to Submit CAAPP Compliance Certifications in violation of Section 39.5(6)(a) of the Act, 415 ILCS 5/39.5(6)(a) (2022), and Condition 2.6 of CAAPP Permit 95090043.
- Count XII: Failure to Timely Apply for a CAAPP Permit in violation of Section 39.5(6)(a) of the Act, 415 ILCS 5/39.5(6)(a) (2022).
- Count XIII: Failure to Conduct Performance Testing in violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2022), and Condition 6(a) of Construction Permit 15030011.
- Count XIV: Failure to Maintain Records on Furnace B in violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2022), and Condition 7 of Construction Permit 15030011.
- Count XV: Failure to Report Furnace B Operation Resumption in violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2022), and Condition 8(a) of Construction Permit 15030011.
- Count XVI: Failure to Report Deviations from Construction Permit 15030011 in violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2022), and Condition 8(b) of Construction Permit 15030011.
- Count XVII: Failure to Submit Annual Emissions Report in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2022), Section 201.302(a) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.302(a), and Section 254.132(a) of the Illinois EPA Air Pollution Regulations, 35 Ill. Adm. Code 254.132(a).

Count XVIII: Failure to Maintain and Operate Furnace B in a Manner Consistent with Good Air Pollution Control Practices for Minimizing Emissions in violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2022), and Condition 4(c) of Construction Permit 15030011.

2. On August 7, 2023, Illinois EPA issued Violation Notice A-2023-00110 to Defendant regarding the Facility (the "August 7, 2023 Violation Notice").

C. Non-Admission of Violations

Defendant represents that it has entered into this Consent Order for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Consent Order and complying with its terms, Defendant does not affirmatively admit the allegations of violation within the Complaint, the August 7, 2023 Violation Notice, and referenced above, and this Consent Order shall not be interpreted as including such admission.

II. APPLICABILITY

1. This Consent Order shall apply to and be binding upon the Parties to the Consent Order. Defendant waives as a defense to any enforcement action taken pursuant to this Consent Order the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Consent Order. This Consent Order may be used against Defendant in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violations of the Act, the NESHAP regulations, the Board regulations, the Illinois EPA Air Pollution regulations, CAAPP Permit 95090043, and Construction Permit 15030011 for all violations alleged in the Complaint and the August 7, 2023 Violation Notice in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2022).

2. Defendant shall notify each contractor to be retained to perform work required in this Consent Order of each of the requirements of this Consent Order relevant to the activities to

be performed by that contractor, including all relevant work schedules and reporting deadlines, and shall provide a copy of this Consent Order to each contractor already retained no later than thirty (30) calendar days after the date of entry of this Consent Order. In addition, Defendant shall provide copies of all schedules for implementation of the provisions of this Consent Order to the prime vendor(s) supplying the control technology systems and other equipment required by this Consent Order.

3. No change in ownership, corporate status or operator of the Facility shall in any way alter the responsibilities of Defendant under this Consent Order. In the event that Defendant proposes to sell or transfer any real property or operations subject to this Consent Order, Defendant shall notify the Plaintiff thirty (30) calendar days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the Facility or a portion thereof. Defendant shall make as a condition of any such sale or transfer, that the purchaser or successor provide to Defendant site access and all cooperation necessary for Defendant to perform to completion any compliance obligation(s) required by this Consent Order. Defendant shall provide a copy of this Consent Order to any such successor in interest and Defendant shall continue to be bound by and remain liable for performance of all obligations under this Consent Order. In appropriate circumstances, however, Defendant and a proposed purchaser or operator of the Facility may jointly request, and the Plaintiff, in its discretion, may consider modification of this Consent Order to obligate the proposed purchaser or operator to carry out future requirements of this Consent Order in place of, or in addition to, Defendant. This provision does not relieve Defendant from compliance with any regulatory requirement regarding notice and transfer of applicable Facility permits.

III. JUDGMENT ORDER

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

A. Civil Penalty

1. Defendant shall pay a civil penalty of Two Hundred and Eight Thousand Eight Hundred and Twenty Dollars (\$208,820.00). Payment shall be tendered at the time of entry of the Consent Order.

2. The civil penalty payment shall be made by certified check or money order payable to Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF").

3. The case name and case number shall appear on the face of the certified check or money order.

B. Stipulated Penalties, Interest and Default

1. If Defendant fails to complete any activity or fails to comply with any response or reporting requirement by the date specified in this Consent Order, Defendant shall provide notice to the Plaintiff of each failure to comply with this Consent Order and shall pay stipulated penalties in the amount of \$400.00 per day per violation for up to the first fifteen (15) days of violation, \$500.00 per day per violation for the next fifteen (15) days of violation, and \$1,000.00 per day per violation thereafter until such time that compliance is achieved. The Plaintiff may make a demand for stipulated penalties upon Defendant for its noncompliance with this Consent Order. However, failure by the Plaintiff to make this demand shall not relieve Defendant of the obligation to pay stipulated penalties. All stipulated penalties shall be payable within thirty (30) calendar days of the

date Defendant knows or should have known of its noncompliance with any provision of this Consent Order.

2. If Defendant fails to make any payment required by this Consent Order on or before the date upon which the payment is due, Defendant shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Plaintiff shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

3. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by Defendant not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

4. The stipulated penalties shall be enforceable by the Plaintiff and shall be in addition to, and shall not preclude the use of, any other remedies or sanctions arising from the failure to comply with this Consent Order.

C. Stipulated Penalty and Interest Payment Procedures

1. All payments required by Section III.B of this Consent Order shall be made by certified check or money order payable to Illinois EPA for deposit into the EPTF. Payments shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

2. The case name and case number shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Kathryn A. Pamentier
Senior Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

D. Future Compliance

1. Within thirty (30) days of the date of the entry of the Consent Order, Defendant shall submit to Illinois EPA:

- a. A revised Fugitive Particulate Matter Operating Program for the Facility, which includes information relative to (i) Defendant's supervision of the program, (ii) Defendant's processing of dust collected at the control devices, and (iii) the frequency of Defendant's fugitive dust control applications.
- b. Defendant's written internal policy to ensure future deviation reports relating to the Facility are timely submitted to Illinois EPA.
- c. Defendant's written compliance plan to ensure that the glass furnace B at the Facility is operated in a manner consistent with good air pollution control practices for minimizing emissions and ensuring compliance with the NOx emission limits set forth in Construction Permit 15030011 for the Facility, which plan shall include, at a minimum, (i) all interim and permanent measures and procedures that have been completed or will be completed, (ii) all necessary milestones, (iii) the dates those milestones will

be achieved, to prevent noncompliance, and (iv) a copy of all manufacturer recommended procedures for operation and maintenance of each burner of the glass furnace B at the Facility.

- d. Defendant's written standard operating procedures for (i) the operation and maintenance of the electrostatic precipitator ("ESP") at the Facility, and (ii) enhanced coordination with Defendant's third-party ESP contractor to better control the ESP efficiency rating, which shall include an additional inspection of the ESP separate from the annual inspection until the efficiency rating is confirmed for the ESP.
- e. Defendant's written plan for enhanced spare parts management on-site to help facilitate maintenance at the Facility.

2. Within thirty (30) days of the date of the entry of the Consent Order, Defendant shall submit to Illinois EPA copies of the following records and documents:

- a. A spreadsheet of the monthly operation, inspection, maintenance and repair logs, to the best of Defendant's knowledge, for the glass furnace B at the Facility for calendar year 2016 to the present.
- b. A copy of the complete and accurate deviation report, to the best of Defendant's knowledge, relating to the Facility in accordance with CAAPP Permit 95090043 and Construction Permit 15030011 for calendar year 2022.
- c. A copy of the complete and accurate semiannual monitoring reports, to the best of Defendant's knowledge, for the Facility for calendar year 2014, calendar year 2015, calendar year 2016, July 1-December 31, 2017, July 1-

December 31, 2018, calendar year 2022, and January 1-June 30, 2023, that include all instances of deviations.

- d. A copy of the complete and accurate Annual Compliance Certifications, to the best of Defendant's knowledge, for the Facility for reporting years 2014, 2015, 2016, 2019, 2021, and 2022, that include all instances of deviations.
- e. A complete and accurate spreadsheet of natural gas usage (million standard cubic feet ("mmscf")/month and mmscf/year), production rate of glass (tons/month and tons/year), emissions of NO_x, CO, PM, PM₁₀/PM_{2.5}, and VOM in lbs/ton of glass, tons/month, and tons/year, to the best of Defendant's knowledge, from glass furnace B at the Facility from September 2015 through the present.
- f. A copy of the complete and accurate Annual Emission Reports, to the best of Defendant's knowledge, for the Facility for reporting years 2014 - 2022.

3. Within thirty (30) days of the date of the entry of the Consent Order, Defendant shall submit to Illinois EPA a copy of the following:

- a. An updated form of baghouse maintenance log and inspection sheet for the Facility.
- b. An updated form of ESP maintenance log and inspection sheet for the Facility.

4. Commencing on the date that Illinois EPA issues a permit in response to the CAAPP Renewal Permit Application, Defendant shall comply with the terms and provisions of such issued permit.

5. Performance Testing.

- a. By no later than sixty (60) days of the date of the entry of the Consent Order, Defendant shall submit to Illinois EPA, for review and approval, the proposed SO₂, CO, VOM, and PM performance testing protocol that completely describes the methods and procedures that Defendant will utilize in such performance testing at the Facility, including of the ESP.
- b. By no later than ninety (90) days of the date of the entry of the Consent Order, Defendant shall conduct the SO₂, CO, VOM, and PM performance testing at the Facility in accordance with the Illinois EPA approved protocol.
- c. By no later than thirty (30) days prior to the planned SO₂, CO, VOM, and PM performance testing, Defendant shall submit to Illinois EPA a notification of the intent to conduct such performance testing at the Facility.
- d. By no later than ten (10) working days prior to the actual date of the testing, Defendant shall submit to Illinois EPA a notification of the actual date and time of the performance testing at the Facility.
- e. By no later than sixty (60) days of Defendant's completion of the required SO₂, CO, VOM, and PM performance testing, Defendant shall submit complete results of the performance testing at the Facility to Illinois EPA.

6. Within one-hundred eighty (180) days of the date of the entry of the Consent Order, Defendant shall (a) install, operate, and maintain a continuous monitoring system for NO_x on the glass furnace B at the Facility, (b) maintain the records of such NO_x continuous monitoring system at the Facility, and (c) make such records available to Illinois EPA upon request.

7. Within sixty (60) days of the date of the entry of the Consent Order, Defendant shall (a) install, operate, and maintain a data logger on the ESP at the Facility to record voltage and current outputs from the ESP, (b) maintain the records of the ESP outputs from the ESP data logger at the Facility, and (c) make such records available to Illinois EPA upon request.

8. Illinois EPA, its employees and representatives, and the Attorney General, his employees and representatives, shall have the right of entry into and upon Defendant's Facility which is the subject of this Consent Order, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, Illinois EPA, its employees and representatives, and the Attorney General, his employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

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

10. Defendant shall cease and desist from future violations of the Act, the NESHAP regulations, the Board regulations, the Illinois EPA Air Pollution regulations, CAAPP Permit 95090043, and Construction Permit 15030011 that were the subject matter of the Complaint and the August 7, 2023 Violation Notice.

E. *Force Majeure*

1. *Force majeure* is an event arising solely beyond the control of Defendant, which prevents the timely performance of any of the requirements of this Consent Order and shall include, but is not limited to, events such as floods, fires, tornadoes, other natural disasters, and labor disputes beyond the reasonable control of Defendant. An increase in costs associated with

implementing any requirement of this Consent Order shall not, by itself, excuse Defendant for a failure to comply with such a requirement.

2. When a *force majeure* event occurs which causes or may cause a delay in the performance of any of the requirements of this Consent Order, Defendant shall orally notify Illinois EPA (Yasmine Keppner-Bauman - 217-524-0908) within forty-eight (48) hours of the occurrence. Written notice shall be given to the Plaintiff's representatives as listed in Section III.H of this Consent Order as soon as practicable, but no later than ten (10) calendar days after the claimed occurrence. This section shall be of no effect as to the particular event involved if Defendant fails to comply with these notice requirements.

3. Within ten (10) calendar days of receipt of any written *force majeure* notice, the Plaintiff shall respond in writing regarding Defendant's claim of a delay or impediment to performance. If the Plaintiff agrees that the delay or impediment to performance has been or will be caused by circumstances beyond the control of Defendant and that Defendant could not have prevented the delay by the exercise of due diligence, the parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay, by a period equivalent to the delay actually caused by such circumstances. Such stipulation may be filed as a modification to this Consent Order. Defendant shall not be liable for stipulated penalties for the period of any such stipulated extension.

4. If the Plaintiff does not accept Defendant's claim of a *force majeure* event, Defendant must file a petition with the Court within twenty (20) calendar days of receipt of the Plaintiff's determination in order to contest the imposition of stipulated penalties. The Plaintiff shall have twenty (20) calendar days to file its response to said petition. The burden of proof of establishing that a *force majeure* event prevented the timely performance shall be upon Defendant.

If this Court determines that the delay or impediment to performance has been or will be caused by circumstances solely beyond the control of Defendant and that Defendant could not have prevented the delay by the exercise of due diligence, Defendant shall be excused as to that event (including any imposition of stipulated penalties), for all requirements affected by the delay, for a period of time equivalent to the delay or such other period as may be determined by this Court.

F. Enforcement and Modification of Consent Order

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

2. The Parties to the Consent Order may, by mutual written consent, extend any compliance dates or modify the terms of this Consent Order without leave of this Court. A request for any modification shall be made in writing and submitted to the representatives designated in Section III.H of this Consent Order. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Consent Order. Any such agreed modification shall be in writing and signed by authorized representatives of each party, for filing and incorporation by reference into this Consent Order.

G. Dispute Resolution

1. Except as provided herein, the Parties to the Consent Order may seek to informally resolve disputes arising under this Consent Order, including but not limited to Illinois EPA's decision regarding appropriate or necessary response activity, approval or denial of any report, plan or remediation objective, or the Plaintiff's rejection of a request for modification or

termination of the Consent Order. The Plaintiff reserves the right to seek enforcement by the Court where Defendant has failed to satisfy any compliance deadline within this Consent Order. The following are also not subject to the dispute resolution procedures provided by this section: a claim of *force majeure*, a failure to make any required payment and any circumstances posing a substantial danger to the environment or to the public health or welfare of persons.

2. The dispute resolution procedure must be invoked by a party through a written notice describing the nature of the dispute and the party's position with regard to such dispute. The other party shall acknowledge receipt of the notice and schedule a meeting to discuss the dispute informally not later than fourteen (14) calendar days from the receipt of such notice. These informal negotiations shall be concluded within thirty (30) calendar days from the date of the first meeting between the parties, unless the parties agree, in writing, to shorten or extend this period. The invocation of dispute resolution, in and of itself, shall not excuse compliance with any requirement, obligation or deadline contained herein, and stipulated penalties may be assessed for failure or noncompliance during the period of dispute resolution. As part of the resolution of any dispute, the Parties to the Consent Order, by agreement or by order of this Court, may extend or modify the schedule for completion of work under this Consent Order to account for the delay in the work that occurred as a result of dispute resolution.

3. In the event that the parties are unable to reach agreement during the informal negotiation period, the Plaintiff shall provide Defendant with a written summary of its position regarding the dispute. The position advanced by the Plaintiff shall be considered binding unless, within twenty (20) calendar days of Defendant's receipt of the written summary of the Plaintiff's position, Defendant files a petition with this Court seeking judicial resolution of the dispute. The Plaintiff shall respond to the petition by filing the administrative record of the dispute and any

argument responsive to the petition within twenty (20) calendar days of service of Defendant's petition. The administrative record of the dispute shall include the written notice of the dispute, any responsive submittals, the Plaintiff's written summary of its position, Defendant's petition before the Court and the Plaintiff's response to the petition. The Plaintiff's position shall be affirmed unless, based upon the administrative record, it is against the manifest weight of the evidence.

H. Notice and Submittals

Except for payments, the submittal of any notice, reports or other documents required under this Consent Order, shall be delivered to the following designated representatives:

As to the Plaintiff

Kathryn A. Pamenter
Senior Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
Kathryn.Pamenter@ilag.gov

Maureen Wozniak
Deputy General Counsel, Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
Maureen.Wozniak@illinois.gov

As to Defendant

Erin L. Brooks
Karalyn Berman
Bryan Cave Leighton Paisner LLP
161 N. Clark Street, Suite 4300
Chicago, IL 60601
erin.brooks@bclplaw.com
karalyn.berman@bclplaw.com

I. Release from Liability

In consideration of Defendant's payment of a \$208,820.00 penalty, its commitment to cease and desist as contained in Section III.D.10. above, and completion of all activities required hereunder, the Plaintiff releases, waives and discharges Defendant from any further liability or penalties for the violations of the Act, the NESHAP regulations, the Board regulations, the Illinois EPA Air Pollution regulations, CAAPP Permit 95090043, and Construction Permit 15030011 that were the subject matter of the Complaint herein and the August 7, 2023 Violation Notice. The release set forth above does not extend to any matters other than those expressly specified in Plaintiff's Complaint filed on January 19, 2024 and the August 7, 2023 Violation Notice. The Plaintiff reserves, and this Consent Order is without prejudice to, all rights of the State of Illinois against Defendant with respect to all other matters, including but not limited to the following:

- a. criminal liability;
- b. liability for future violations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. Defendant's failure to satisfy the requirements of this Consent Order.

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

J. Execution and Entry of Consent Order

This Order shall become effective only when executed by all Parties to the Consent Order and the Court. This Order may be executed by the parties in one or more counterparts, all of which taken together shall constitute one and the same instrument. The undersigned representatives for

each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Consent Order and to legally bind them to it.

[Remainder of Page Blank; Text Continues on Page 20]

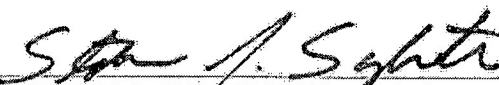
WHEREFORE, the parties, by their representatives, enter into this Consent Order and submit it to this Court that it may be approved and entered.

AGREED:

FOR THE PLAINTIFF:

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


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

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

DATE: 9/11/24

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

JAMES JENNINGS, Interim Director
Illinois Environmental Protection Agency

BY: 
ANDREW ARMSTRONG
Chief Legal Counsel

DATE: 9/9/24

FOR DEFENDANT:

GERRESHEIMER GLASS INC.

BY: _____
Its: _____

DATE: _____

ENTERED:


JUDGE

DATE: _____

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

AGREED:

FOR THE PLAINTIFF:

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

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

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

JAMES JENNINGS, Interim Director
Illinois Environmental Protection Agency

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

BY: _____
ANDREW ARMSTRONG
Chief Legal Counsel

DATE: _____

DATE: _____

FOR DEFENDANT:

GERRESHEIMER GLASS INC.

BY: *Alison C. Conlon*
Its: _____

DATE: 4 Sept '24

Judge Alison C. Conlon

SEP 18 2024

Circuit Court - 2140

Judge Alison C. Conlon

ENTERED:

Alison C. Conlon
SEP 18 2024
JUDGE - 2140

DATE: _____

Davis, Rory

From: Mullen, Kathleen (she/her/hers) <Mullen.Kathleen@epa.gov>
Sent: Wednesday, October 9, 2024 4:44 PM
To: Davis, Rory
Cc: D'Agostino, Kathleen
Subject: [External] FW: Turnaround provisions.
Attachments: Document-110708.pdf

Hi Rory,

We confirm that it is the Agency's understanding that emission limits are to apply at all times and that keeping (i.e., not sunseting) these exemptions is unacceptable to USEPA. 45 days is too long for a shutdown. If infrequent turnaround periods make it impossible for the source to comply with the emission limits set up under the averaging plan, we can examine each source on a case by case basis to see if we can establish parameters for those emission units during the turnaround periods.

Thanks,

Katie

From: Davis, Rory <Rory.Davis@Illinois.gov>
Sent: Tuesday, October 8, 2024 2:21 PM
To: Mullen, Kathleen (she/her/hers) <Mullen.Kathleen@epa.gov>; D'Agostino, Kathleen <dagostino.kathleen@epa.gov>
Cc: Sottoriva, Kyle <Kyle.Sottoriva@Illinois.gov>; Roccaforte, Gina <Gina.Roccaforte@Illinois.gov>; Vetterhoffer, Dana <Dana.Vetterhoffer@Illinois.gov>
Subject: Turnaround provisions.

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi Katie,

This is the question we discussed Monday regarding sunseting the turnaround provisions in our existing rules. Attached is the proposed language that went to first notice in our rulemaking if that is helpful.

1. In an email dated April 25, 2024, the Agency asked the following (with your response in red): Sections 217.158(h), (i), and (j) are currently being sunset in response to conversations we had with Region V staff several years ago. Can any or all of them be left in and continue to apply considering USEPA's current position regarding acceptable alternative emission limits? We are looking into this. We have concerns with not including the emissions during shut down for a maintenance turnaround in the averaging calculation. Could you please explain what current position regarding acceptable alternative emission limits you are referring to? Does this relate to a multi-facility averaging program?

The "alternative emission limits" referenced above are in regard to the SSM policy. Also, in the case of the refinery turnarounds, emissions are much lower than during normal operation, but they may have trouble complying using their averaging plan or on a unit-by-unit basis because of which units are down during those periods. These would only be used with a single source averaging plan. It is the Agency's understanding that

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emission limits are to apply at all times and that keeping (i.e., not sunseting) these exemptions is unacceptable to USEPA. Please confirm.

- h) Until January 1, 2025, the The owner or operator of an emission unit located at a petroleum refinery who is demonstrating compliance with an applicable Subpart through an emissions averaging plan under this Section may exclude from the calculation demonstrating compliance those time periods when an emission unit included in the emissions averaging plan is shut down for a maintenance turnaround, provided that such owner or operator notify the Agency in writing at least 30 days in advance of the shutdown of the emission unit for the maintenance turnaround and the shutdown of the emission unit does not exceed 45 days per ozone season or calendar year and NO_x pollution control equipment, if any, continues to operate on all other emission units operating during the maintenance turnaround.
- i) Until January 1, 2025, the The owner or operator of an emission unit that combusts a combination of coke oven gas and other gaseous fuels and that is located at a source that manufactures iron and steel who is demonstrating compliance with an applicable Subpart through an emissions averaging plan under this Section may exclude from the calculation demonstrating compliance those time periods when the coke oven gas desulfurization unit included in the emissions averaging plan is shut down for maintenance, provided that such owner or operator notify the Agency in writing at least 30 days in advance of the shutdown of the coke oven gas desulfurization unit for maintenance and such shutdown does not exceed 35 days per ozone season or calendar year and NO_x pollution control equipment, if any, continues to operate on all other emission units operating during the maintenance period.
- j) Until January 1, 2025, the The owner or operator of an emission unit located at a petroleum refinery who is demonstrating compliance with an applicable Subpart through an emissions averaging plan under this Section may exclude from the calculation demonstrating compliance those time periods when NO_x pollution control equipment that controls one or more emission units included in the emissions averaging plan is shut down for a maintenance turnaround, provided that:
- 1) the owner or operator notify the Agency in writing, at least 30 days in advance of the shutdown, of the NO_x pollution control equipment for the maintenance turnaround;
 - 2) the shutdown of the NO_x pollution control equipment does not exceed 45 days per ozone season or calendar year; and
 - 3) except for those emission units vented to the NO_x pollution control equipment undergoing the maintenance turnaround, NO_x pollution control equipment, if any, continues to operate on all other emission units operating during the maintenance turnaround.

Thanks for any information you can provide.

Rory Davis
Regulatory Development Unit Manager
Air Quality Planning Section
Illinois Environmental Protection Agency – Bureau of Air
217-782-7397

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communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify the sender immediately by return e-mail and destroy this communication and all copies thereof, including all attachments. Receipt by an unintended recipient does not waive attorney-client privilege, attorney work product privilege, or any other exemption from disclosure.

CERTIFICATE OF SERVICE

I, the undersigned, an attorney, state the following:

I have electronically served the attached POST-HEARING COMMENTS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY upon the persons on the attached Service List.

My e-mail address is gina.roccaforte@illinois.gov.

The number of pages in the e-mail transmission is 37.

The e-mail transmission took place before 5:00 p.m. on October 17, 2024.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

/s/ Gina Roccaforte
Gina Roccaforte
Assistant Counsel
Division of Legal Counsel

Dated: October 17, 2024

1021 North Grand Avenue East
Springfield, Illinois 62794-9276
(217) 782-5544