

REPLY IN SUPPORT OF PEOPLE'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT LIST

- EXHIBIT A            June 2013 Board Order
- EXHIBIT B            August 2014 Board Order
- EXHIBIT C            Permit Appeal 01-85, Board Petition
- EXHIBIT D            Thomas Reuter Supplemental Affidavit
1.     March 22, 2000 Agency Facsimile - 1997 Stack Test Data
  2.     April 19, 2000 Agency Facsimile - 99.99% Capture Efficiency
  3.     August 21, 2002 Agency Memorandum 2002 Stack Test – Validity Certification

ILLINOIS POLLUTION CONTROL BOARD  
June 6, 2013

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 13-12
	)	(Enforcement – Air)
NACME STEEL PROCESSING, LLC, a	)	
Delaware limited liability corporation,	)	
	)	
Respondent.	)	

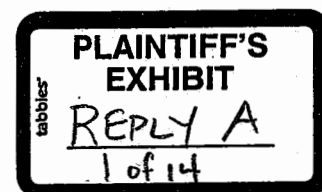
ORDER OF THE BOARD (by D. Glosser):

The People of the State of Illinois (People) filed a complaint against NACME Steel Processing, LLC (NACME) on September 5, 2012, alleging that NACME operates a major stationary source without a Clean Air Act Permit Program (CAAPP) permit in violation of various provisions of the Illinois Environmental Protection Act (415 ILCS 5/1 *et seq.*) (Act). The complaint concerns NACME's steel processing facility located at 429 West 127th Street, Chicago, Cook County. On November 11, 2012, NACME answered the complaint, and on January 15, 2013, NACME filed an amended answer and affirmative defenses. On February 8, 2013, the People filed a motion to strike the affirmative defenses (Mot.). On March 11, 2013, NACME requested that the Board deny the People's motion to strike the affirmative defenses (Resp.).

On March 25, 2013, the People filed a motion for leave to file reply *instanter* (MotReply) and reply brief (Reply) in support of their motion to strike and dismiss NACME's amended affirmative defenses. On April 1, 2013, NACME filed an objection to the People's motion for leave to file a reply brief (Obj.). .

For the reasons discussed below, the Board grants the People's motion for leave to file a reply and the People's motion to strike NACME's first affirmative defense of a valid federally enforceable state operating permit. The Board denies the People's motion to strike NACME's second and third defenses of laches and waiver.

Below, the Board first describes the procedural background and then discusses the motion for leave to file a reply. The Board next addresses the affirmative defenses by first setting forth the statutory background. Next, the Board summarizes the People's complaint and NACME's affirmative defenses. The Board next summarizes the People's motion to strike the affirmative defenses, NACME's response to the motion to strike, and the People's reply. The Board then outlines the standard of review applicable to motions to strike affirmative defenses. Finally, the Board discusses each of the defenses raised by NACME.



### **PROCEDURAL BACKGROUND**

On September 5, 2012, the People filed the complaint against NACME (Comp.). The complaint alleges NACME violated Sections 9(b), 39.5(5)(x), and 39.5(6)(b) of Act (415 ILCS 5/9(b), 39.5(5)(x), and 39.5(6)(b) (2010)). The complaint alleges that NACME violated these provisions of the Act by operating a major air pollution source without obtaining the proper permits. On September 20, 2012, the Board accepted the People's complaint for hearing.

On November 1, 2012, NACME filed an answer and affirmative defenses to the complaint. On November 30, 2012, the People filed a motion to strike and dismiss the affirmative defenses NACME asserted in response to the complaint. On January 4, 2013, NACME filed a motion, to which the People agreed, to withdraw and re-plead affirmative defenses. By hearing officer order, the motion was granted and a schedule was established by which NACME was to file amended affirmative defenses. *See* Hearing Officer Order (Jan. 9, 2013).

On January 15, 2013, NACME filed an amended answer and amended affirmative defenses (Am. Ans.). On February 8, 2013, the People filed a motion to strike and dismiss NACME's affirmative defenses (Mot.), and on March 11, 2013, NACME filed a response to the People's motion (Resp.).

On March 25, 2013, the People filed a motion for leave to file reply *instanter* and reply brief in support of their motion to strike and dismiss NACME's amended affirmative defenses. On April 1, 2013, NACME filed an objection to the People's motion for leave to file a reply brief.

### **MOTION FOR LEAVE TO FILE A REPLY**

On March 25, 2013, the People filed a Motion for Leave to Reply. The People argue that NACME's response contains multiple factual and legal misrepresentations of the People's position that could result in material prejudice. The People believe that these misrepresentations require a response from the People, and the People request that the Board grant it leave to file a Reply. MotReply at 1.

NACME objects to the filing of the reply and argues that the People ignore Section 101.500 of the Board's rules (35 Ill. Adm. Code 101.500) by submitting the People's reply before the Board grants leave. NACME further asserts that the People offer no support for its basic statement that the People will be prejudiced if not allowed to reply in order to explain alleged "misrepresentations". Obj. at 1.

More specifically, NACME argues that in the reply the People merely assert its own interpretation of the law and facts, but the People fail to cite a single case in support of its argument concerning the Federally Enforceable State Operating Permit (FESOP) defense. Furthermore, NACME claims that the People do not rebut NACME's reliance on case law. Obj. at 1.

NACME argues that the People's "misrepresentations" allegation is unsupported. Obj. at 1. NACME maintains that the People fail to show any need to reply in order to "prevent material prejudice", and the reply merely argues a different interpretation of the case law with regards to NACME's waiver defense. *Id.* at 2.

NACME asserts that the People are not materially prejudiced merely because NACME has a different view of the relevant facts and the case law as applied to those facts. Obj. at 2. NACME asks that the Board deny the People's motion for leave to reply. *Id.*

The Board has reviewed the arguments, and the Board disagrees with NACME. The Board finds that material prejudice may result to the People and allowing a reply is appropriate in this instance. The Board grants the motion for leave to file a reply and will consider the People's reply.

### **AFFIRMATIVE DEFENSES**

The following will set forth the statutory background of the allegations in the complaint. Next, the Board summarizes the People's complaint and NACME's affirmative defenses. Then the Board summarizes the People's motion to strike the affirmative defenses, NACME's response to the motion to strike and the People's reply. The Board concludes this section by discussing its decision.

### **Statutory Background**

The following sections are the provisions of the Act that the People allege NACME violated. First, Section 9(b) of the Act, states:

No person shall:

- (b) Construct, install, or operate any equipment, facility, vehicle, vessel, or aircraft capable of causing or contributing to air pollution or designed to prevent air pollution, of any type designated by Board regulations, without a permit granted by the [Illinois Environmental Protection] Agency, or in violation of any conditions imposed by such permit. 415 ILCS 5/9(b) (2010)

Section 39.5(6) of the Act, states:

Prohibition

After the applicable CAAPP permit or renewal application submittal date, as specified in subsection 5 of this Section, no person shall operate a CAAPP source without a CAAPP permit unless the complete CAAPP permit or renewal application for such a source has been timely submitted to the Agency. 415 ILCS 5/39.5(6)(b) (2010).

Section 39.5(5) of the Act, provides, in pertinent part, as follows:

Applications and Completeness

\* \* \*

- (x) ... The owner or operator of an existing source that has been excluded from the provisions of this Section under subsection 1.1 or paragraph (c) of subsection 3 of this Section and that becomes subject to the CAAPP solely due to a change in operation at the source shall submit its complete CAAPP application consistent with this subsection at least 180 days before commencing operation in accordance with the change in operation. 415 ILCS 5/39.5(5) (2010).

Complaint

NACME owns and operates a steel processing facility located at 429 West 127th Street, Chicago (facility). Comp at 2, ¶ 4. At the facility, NACME operates a ninety ton-per-hour continuous pickling line, which includes four pickling tanks and a four-stage washer. *Id.* at 2, ¶ 5. The People allege that:

As a major source since at least April 16, 2002, NACME was required to apply for and submit an application to the [Illinois Environmental Protection Agency] for a CAAPP or alternatively, a FESOP. ... By operating a major source without timely submitting an application NACME violated Section 39.5(5)(x) of the Act, 415 ILCS 5/39.5(5)(x) (2010), and, thereby, violated sections 39.5(6)(b) and 9(b) of the Act, 415 ILCS 39.5(6)(b) and 9(b) (2010). Comp. at 9-10, ¶ 37.

On February 8, 2001, the Illinois Environmental Protection Agency (IEPA) issued NACME a State Operating Permit No. 96020074 (SOP), expiring on October 25, 2005, for control of air emissions at the facility. Comp. at 2, ¶ 7.

On April 12, 2002, IEPA issued a revised construction permit to NACME for the installation of an emissions tunnel that required retesting of the modified steel pickling process. The revised permit allowed NACME to operate its steel pickling process at a rate greater than that allowed by the SOP for purposes of stack testing only. Comp. at 2, ¶ 8. The People allege that on April 16, 2002, NACME conducted a stack test at the facility based on a maximum steel process rate lower than the permitted steel process rate of the SOP. *Id.* at 3, ¶ 9. The People maintain that the test resulted in emissions greater than those allowed by the SOP. *Id.*

The People assert that on April 4, 2005, NACME submitted a SOP renewal application to IEPA, and on April 13, 2005, IEPA issued a Notice of Incompleteness to NACME for failure to provide a potential to emit (PTE) calculation for hydrochloric acid (HCL) in the pickling tanks and to demonstrate eligibility for a state operating permit. Comp. at 3, ¶ 10-11.

On September 12, 2005, NACME submitted a second SOP renewal application, and on September 20, 2005, IEPA issued a Notice of Incompleteness to NACME for failure to substantiate the requested permit limits with any stack testing results. Comp. at 3, ¶ 12-13. The

People allege that in the September 20, 2005 Notice of Incompleteness, IEPA informed NACME that:

- 1) NACME required a construction permit, because its September 2005 SOP renewal application requested a modification consisting of an increase in the maximum steel process rate allowed by its SOP; and
- 2) NACME required either a CAAPP permit or a FESOP, because according to the information NACME provided in its September SOP renewal application, the estimated PTE for HCL emissions at the facility was greater than 10 tons per year of HCL from a single source. Comp. at 3-4, ¶ 14-15.

The People claim that on October 25, 2005, NACME submitted to IEPA a CAAPP application with a request for a FESOP. Comp. at 4, ¶ 16. On December 6, 2005, IEPA issued a notice of completeness of NACME's FESOP application, and IEPA also informed NACME that notwithstanding the completeness determination, IEPA may request additional information necessary to evaluate or take final action on the FESOP application. *Id.* at 4, ¶ 17.

The People allege that on December 21, 2006, NACME conducted another stack test with a maximum steel process rate greater than the maximum steel process rate allowed by its SOP. The People maintain that NACME delivered the results of the tests to IEPA on February 2, 2007. Comp. at 4, ¶ 18. The People maintain that beginning on at least April 16, 2002, NACME changed its operation resulting in a PTE of a single hazardous air pollutant, HCL, of greater than 10 tons per year, the major source threshold. Comp. at 9 ¶35. As of February 1, 2012, NACME failed to submit a construction permit application for process modifications as an amendment to the 2005 FESOP application. *Id.* at ¶19. Therefore, the complaint concludes that the facility qualifies as a "major source" under the Act, and as of April 16, 2002, NACME was required to apply for a CAAPP or FESOP from IEPA at least 180 days prior to commencing operation in accordance with the change in operations at the facility. The People claim that by operating a major source without timely submitting an application within at least 180 days prior to commencing operation as a major source, NACME violated Section 39.5(5)(x) of the Act, 415 ILCS 5/39.5(5)(x), and thereby violated Sections 39.5(6)(b) and 9(b) of the Act, 415 ILCS 5.39.5(6)(b) and 9(b) (2010). *Id.* at 9-10, ¶37.

### **NACME's Answer And Affirmative Defenses**

In its amended answer, NACME admits to some facts and denies others and raises three affirmative defenses. The Board now summarizes each of the three affirmative defenses raised by NACME.

#### **Valid Federally Enforceable State Operating Permit**

NACME argues that the People's claim is defeated "because, as repeatedly admitted by the [People], at all relevant times and currently NACME holds a valid SOP #96020074 which limits its emissions to below major source thresholds." Am. Ans. at 1, ¶ 1. Additionally,

NACME contends that, under applicable law, a SOP is another type of “federally enforceable” permit. *Id.*

NACME claims that this is the second time that IEPA has asserted that NACME is a major source requiring a CAAPP or FESOP, the first time dating back to 2001 when IEPA issued NACME’s initial operating permit with special conditions. Am. Ans. at 1-2, ¶ 2. NACME claims that through the conditions in the initial 2001 permit issuance, IEPA sought to classify NACME’s facility as a “support facility” that automatically qualified it as a major source requiring a CAAPP permit or FESOP. *Id.* NACME alleges that it appealed the permit condition, and as a result, on February 8, 2001 IEPA issued SOP #96020074 without the condition. *Id.*

NACME asserts that in October 2005, NACME applied for the FESOP that IEPA claims it is required to have; however, NACME argues it did not receive a draft of the FESOP from IEPA until April 26, 2012. Am. Ans. at 2, ¶ 3. NACME claims that the draft contained an unacceptable condition that would have converted NACME into a “new source,” but that NACME’s subsequent appeal of this condition was held not ripe by the Board. *Id.*

NACME argues that a state operating permit is a federally enforceable permit where the state has acknowledged its validity. Am. Ans. at 3, ¶ 9. NACME asserts that IEPA has on four occasions acknowledged that NACME’s SOP is still valid and in effect, particularly where IEPA has threatened to sue NACME for alleged violations of the SOP. *Id.* at 2, ¶ 4. First, NACME cites a “Tier III” inspection report dated September 29, 2010, wherein IEPA indicates that the SOP is in effect and notes purported violations of the SOP. *Id.*, citing Exhibit A. Second, NACME cites a “Violation Notice” issued by IEPA dated March 3, 2011, which cites NACME for the same purported violations, indicating IEPA’s acknowledgement of the effectiveness of NACME’s SOP. *Id.* at 2, ¶ 6, citing Exhibit B. NACME claims that “the notice also states that NACME ‘may be required to obtain a CAAPP permit or FESOP.’” *Id.*

Third, NACME alleges that in a notice of intent to pursue legal action from IEPA dated July 15, 2011, IEPA again states the same purported violations against NACME, and notes that NACME ‘may be required’ to obtain a CAAPP permit or FESOP. Am. Ans. at 2, ¶ 7, citing Exhibit C. Finally, NACME claims that in a January 5, 2012 letter from the Illinois Attorney General’s Office, IEPA again admits the validity of the SOP by asserting the same purported violations against NACME, stating that NACME “may be required” to obtain a CAAPP permit or FESOP. *Id.* at 3, ¶ 8.

NACME thus argues that because IEPA has recognized NACME’s SOP as a valid permit, NACME has a type of federally enforceable state operating permit that limits emissions to below major source status. Am. Ans. at 3, ¶ 11. NACME therefore concludes that the existence of this valid FESOP bars the People’s claim in this case. *Id.*

### **Laches**

In its second affirmative defense, NACME argues the People’s complaint is barred by the doctrine of laches because IEPA “has known for years of the facts underlying its claim but failed to act until years later, to NACME’s prejudice.” Am. Ans. at 4, ¶ 12. NACME contends that the

People were “aware, or should have been aware, of its alleged claim many years before it issued its violation notice in March 2011.” *Id.* at 3, ¶ 12. NACME maintains that IEPA had been aware that NACME had the potential to emit as a major source since 2001, when IEPA had initially tried and failed to designate NACME as a major source. *Id.* NACME thus concludes that it was prejudiced by IEPA’s unreasonable and unjustified delay in issuing the notice of violation, because the People’s complaint would subject NACME to a penalty of \$10,000 per day of violation. *Id.*

### **Waiver**

In its third affirmative defense, NACME argues that the People’s complaint is barred by the doctrine of waiver because IEPA “was aware of NACME’s alleged potential to emit as a ‘major source’ since at least 2001 when [IEPA] first tried, and failed, to designate NACME as a ‘major source’.” Am. Ans. at 4, ¶ 13. NACME thus concludes that the People’s “unreasonable delay” in bringing the claim “warrants an inference that the [People] intended to waive its claim” and that the People are thereby barred from bringing this action against NACME. *Id.*

### **People’s Motion To Strike And Dismiss**

Generally the People argue that the test for whether a defense is an affirmative defense that must be pled by a respondent is whether the defense “gives color to the opposing party’s claim and then asserts new matter by which the apparent right is defeated”. Condon v. American Telephone and Telegraph Company, Inc., 210 Ill.App.3d 701, 709, 569 N.E.2d 518, 523 (2nd Dist. 1991); Vroegh v. J & M Forklift, 165 Ill.2d 523,530, 651 N.E.2d 121, 126 (1995). The People state that an affirmative defense confesses or admits the cause of action alleged, and then seeks to avoid it by asserting new matter not contained in the complaint and answer. Womer Agency, Inc. v. Doyle, 121 Ill. App.3d 219, 222, 459 N.E.2d 633, 635-636 (4th Dist. 1984); *see also* People v. Community Landfill Co., PCB 97-193, slip op. at 3 (Aug. 6, 1998). The People opine that an affirmative defense must do more than offer evidence to refute properly pled facts in a complaint. Pryweller v. Cohen, 282 Ill.App.3d 89, 668 N.E.2d 1144, 1149 (1st Dist. 1996), *appeal denied*, 169 Ill.2d 588 (1996); Heller Equity Capital Corp. v. Clem Environmental Corp., 272 Ill. App. 3d 173, 178, 596 N.E.2d 1275, 1280 (1st Dist. 1993); People v. Wood River Refining Company, PCB 99-120 at 6 (Aug. 8, 2002); Farmer's People Bank v. Phillips Petroleum Co. PCB 97-100, slip op. at 2 n.1 (Jan. 23, 1997) (affirmative defense does not attack the truth of the claim, but the right to bring a claim).

The People maintain that the facts establishing an affirmative defense must be pled with the same degree of specificity required by a plaintiff to establish a cause of action. International Insurance Co. v. Sargent & Lundy, 242 Ill.App.3d 614, 630, 609 N.E.2d 842, 853 (1st Dist. 1993); Community Landfill, PCB 97-192 slip op. at 4. The People argue that the issue raised by an affirmative defense must be one outside of the four corners of the complaint. Mot. at 3.

The Board will now summarize the People’s arguments with respect to each of the affirmative defenses asserted by NACME separately.



**Valid Federally Enforceable State Operating Permit**

The People argue that NACME's "Valid Federally Enforceable State Operating Permit" defense is factually and legally insufficient. Mot. at 4. The People first argue that NACME's first affirmative defense fails to set forth any relevant facts. The People claim that NACME fails to provide any new facts relevant to the People's claim that NACME was operating a major source without a CAAPP permit. *Id.*, citing Condon, 210 Ill.App.3d at 709 and International Insurance, 609 N.E. 2d at 853. The People contend that NACME merely presents facts that are not related to the complaint by arguing that "at all relevant times and currently, NACME holds a valid state operating permit . . . that limits its emissions to below major source thresholds and that is another type of 'federally enforceable permit' under applicable law." *Id.* The People argue that NACME's claim merely "denies facts alleged in the complaint regarding the major source status of NACME's PTE." *Id.* The People therefore conclude that NACME's first affirmative defense is factually insufficient. *Id.*

Second, the People contend that NACME's first affirmative defense fails to meet the fundamental legal requirement that "an affirmative defense give color to a plaintiff's claim, or assert new matter that defeats it." Mot. at at 5. The People argue that NACME simply denies the People's allegations that NACME has operated a major source without a CAAPP permit. *Id.* Additionally, the People claim that NACME failed to assert any new matter by claiming that it was operating under a SOP for a non-major source operation. *Id.* Rather, the People claim that NACME's argument about its federally enforceable SOP for non-major source operations is irrelevant to the People's claim that NACME was operating a major source operation without a CAAPP permit. *Id.* The People therefore conclude that NACME's first affirmative defense is factually and legally insufficient.

**Laches**

The People contend NACME's second affirmative defense, which asserts the People's claim is barred by the doctrine of laches, is factually and legally insufficient. Mot. at 5. The People argue NACME's second affirmative defense fails to plead facts sufficient to fulfill the elements of a valid laches defense, because NACME has failed to show that 1) the People have unreasonably delayed bringing their claim; and 2) the delay resulted in prejudice to NACME, or NACME has taken a different course of action than it otherwise would have taken. *Id.* at 6, citing Patrick Media Group, Inc. v. City of Chicago, 255 Ill. App.3d 1, 626 N.E.2d 1066, 1071 (1st Dist. 1993).

First, the People argue that NACME failed to plead facts showing that the People's delay in bringing the claim was unreasonable. The People cite NACME's admitted continual dialogue with IEPA regarding air emissions at the Facility, including discussions on SOP violations. Mot. at 6. The People claim that these SOP violations are calculated at the same rate as the air pollution and operating without a CAAPP permit violations. *Id.*

Second, the People argue that NACME failed to plead facts showing that NACME was misled or prejudiced, or changed its course of action because of the alleged delay. The People claim that since at least 2005, NACME was well aware that IEPA had requested on multiple

occasions that NACME obtain a CAAPP permit for its facility, but "NACME continued to operate without pause." Mot. at 6. The People thus contend that NACME's laches defense is factually and legally insufficient, and argue that any prejudice NACME experiences might be attributed to its own failure to either demonstrate it was not operating as a major source, or to apply for and obtain a CAAPP and construction permit for the Facility.

Additionally, the People contend "the doctrine of laches is disfavored when the defense is raised against a complainant that is exercising its government function and protecting a substantial public interest." Mot. at 6, citing Cook County v. Chicago Magnet Wire Corp., 152 Ill. App.3d 726, 727-28, 504 N.E.2d 904, 905 (1st Dist. 1987). The People cite numerous cases where Illinois courts have been reluctant to allow the affirmative defense of laches where it might impair the People's ability to perform its government function. *Id.*, citing In re Vandeventer's Estate, 16 Ill. App.3d 163, 165, 305 N.E.2d 299, 301 (4th Dist. 1973); In re Grimley's Estate, 7 Ill. App.3d 563, 566, 288 N.E.2d 66, 67 (4th Dist. 1972); Shoretime Builder Co. v. City of Park Ridge, 60 Ill. App.2d 282, 294, 209 N.E.2d 878, 884-885 (1st Dist. 1965).

The People claim that in this case, they seek to exercise the government function of enforcing environmental statutes and regulations, and as a result, NACME has a higher burden of proving its affirmative defense of laches. *Id.* at 7. The People argue that NACME's arguments are insufficient to satisfy this higher burden of proof, because NACME failed to submit facts that show it has been misled or prejudiced, or taken a different course of action than it might otherwise have taken due to the People's delay in bringing the complaint. *Id.* at 8. The People therefore conclude that NACME's second affirmative defense of laches is factually and legally insufficient.

### Waiver

The People argue that NACME's third defense of waiver is insufficient, because NACME has failed to allege facts sufficient to support the affirmative defense of waiver. Mot. at 9. The People claim that a waiver is the intentional relinquishment of a known right. *See People v. Douglas Furniture of Cal., Inc.*, PCB No. 97-133, slip op. at 10 (May 1, 1997) (citing Hartford Accident & Indem. Co. v. D.F. Bast, Inc., 56 Ill. App.3d 960, 372 N.E.2d 829 (1st Dist. 1977)). Further, the People opine there must be both knowledge of the existence of the right and an intention to relinquish it, or conduct that warrants an inference of that intention. City of Chicago v. Chicago Fiber Optic Corp., 287 Ill. App.3d 566, 575, 678 N.E.2d 693, 700 (1st Dist. 1997). The People state that "[t]he party claiming implied waiver has the burden of proving a clear, unequivocal, and decisive act of the opponent manifesting his intention to waive his rights." *Id.*

The People contend NACME's allegation that the People delayed filing the complaint for several years does not provide "a 'clear, unequivocal, and decisive act'" of the People manifesting an intention to waive the People's right to bring a cause of action against NACME." *Id.* at 9-10. The People maintain that NACME has not put forth a single fact that demonstrates an intention by IEPA or the People to relinquish the right to bring an enforcement action against NACME for the alleged violations. *Id.* at 10. The People claim that, because IEPA spent years meeting with NACME regarding the facility's status as a major source and communicating concerns of possible violations, the decision to file the complaint was merely an exercise of

discretion. *Id.* The People cite Section 31 of the Act (415 ILCS 5/31 (2010)), which directs IEPA to engage in a multi-step process to address violations with non-compliant parties, as an indication that “any inference that initiating enforcement after a certain lapse of time can be construed as an intention not to sue” is negated. *Id.*

### **NACME’s Response to the People’s Motion**

On March 11, 2013, NACME filed its response to the People’s motion to dismiss the amended affirmative defenses, claiming it has adequately pled all three affirmative defenses. Resp. at 1-2. NACME notes that the Board had defined an affirmative defense as “a response to a plaintiff’s claim which attacks the plaintiff’s legal right to bring an action, as opposed to attacking the truth of the claim.” Resp. at 2 quoting People of the State of Illinois v Aargus Plastics, Inc., PCB 04-09 slip op. at 5 (May 20, 2004). NACME argues that its affirmative defenses do not attack the truth of the allegations, but rather challenge the legal right to bring the complaint. Resp. at 2. NACME claims that under Illinois law, a motion to strike affirmative defenses must admit well-pled facts and attack the legal sufficiency of the defenses. *Id.*, citing International Insurance, 609 N.E. 2d 842.

First, NACME argues that its first affirmative defense of a valid federally enforceable state operating permit is adequate, because the existence of the SOP, as a state operating permit, which is federally enforceable by law and that limits emissions to below major source levels, will defeat the People’s legal right to bring the enforcement action. *Id.* at 2.

Additionally, NACME claims its second and third defenses of laches and waiver are valid because “the Board has held, in denying motions to strike affirmative defenses, a party asserting an affirmative defense need not prove the merits of the defense prior to hearing.” Resp. at 4. NACME points to Aargus, noting that the Board upheld affirmative defenses in that case nearly identical to those pled here. *Id.* NACME also relies on People of the State of Illinois v. John Crane, Inc., PCB 01-76 (May 17, 2001), in which the Board also allowed the defenses of laches and waiver to be heard. NACME concludes that the Board should reject the People’s motion to strike affirmative defenses, because the merits of a defense may only be decided by hearing evidence, and the People’s failure to file a timely notice of violation prejudices NACME by subjecting it to greater penalty amounts. *Id.* NACME asserts that here, as in the other Board decisions, the defenses of laches and waiver are affirmatively pled defenses whose merits should be determined at hearing. *Id.* at 4-5.

### **People’s Reply**

In its reply, the People first reassert that NACME’s FESOP affirmative defense and response is factually and legally insufficient and should be dismissed and stricken with prejudice. *Id.* The People argue that NACME disputes and fails to accept the following facts: 1) NACME’s SOP expired on October 25, 2005; 2) NACME failed to prove eligibility for a SOP; and 3) NACME submitted to IEPA a CAAPP application with a request for a FESOP. Furthermore, the People maintain that NACME muddles the characterization of the different permit programs as if they are all one permit program. *Id.* at 3. The People argue that NACME incorrectly references the Section 39.5 of the Act (415 ILCS 5/39.5 (2010)) definition of “federally enforceable” while

NACME's SOP was issued under Section 39 of the Act (415 ILCS 5/39 (2010)). *Id.* The People also allege that NACME's FESOP affirmative defense is legally insufficient because it fails to give color to the People's claim and fails to assert a new matter by which the apparent right is defeated. *Id.*

In the People's second argument, the People again allege that NACME's laches and waiver affirmative defenses and response are factually and legally insufficient. *Id.* The People concede that NACME is not required to prove the merits of its affirmative defense, but NACME is required to plead new facts that will defeat the People's claim. Here, the People argue NACME failed to do so. *Id.*

The People also assert that NACME mischaracterizes the facts in Crane and Aargus. *Id.* at 5. The People state that even if NACME accepts the well-pled facts of the complaint as true, NACME has not provided any facts that demonstrate that NACME was misled or uninformed about its various permit violations. To the contrary, the People claim the facts show that NACME was well informed of IEPA's opinion that it was a "major source" operating with an incomplete permit application and in violation of conditions of its expired SOP. *Id.* In addition, the People argue that NACME does not present facts "nearly identical" to Crane or Aargus as NACME claims, and NACME fails to present any new facts that meet the threshold requirement of an affirmative defense. *Id.* at 6.

The People argue that NACME's waiver defense and response fail to meet the threshold that a "clear, unequivocal, and decisive act" by the People, which relinquishes the People's right to sue occurred. *Id.* The People argue that NACME's laches defense and response fails to provide facts that, if true, show NACME may have been misled or prejudiced, or has taken a different course of action than it might have otherwise taken. *Id.* Therefore, the People argue that NACME's amended affirmative defenses should be stricken pursuant to Section 101.506 of the Board's rule (35 Ill. Adm. Code 101.506) and Section 2-615 of the Illinois Code of Civil procedure, 735 ILCS 5/2-615 (2010). *Id.*

### **Discussion of Affirmative Defenses**

The Board sets forth the standard of review to be applied by the Board when dealing with motions to strike affirmative defenses. The Board next separately addresses each of the three defenses pled.

#### **Standard Of Review**

The Board defines an affirmative defense as the "[r]espondent's allegation of 'new facts or arguments that, if true, will defeat ... the government's claim even if all allegations in the complaint are true.'" Community Landfill, PCB 97-193, slip op. at 3 (quoting *Black's Law Dictionary*). A defense that merely attacks the sufficiency of a claim fails to be an affirmative defense. Worner Agency v. Doyle, 121 Ill. App.3d 219, 222-223, 459 N.E.2d 633, 636 (4th Dist. 1984). The Illinois Appellate Court stated that "[t]he test of whether a defense is affirmative and must be pled by a defendant is whether the defense gives color to the opposing party's claim and

then asserts new matter by which the apparent right is defeated.” Worner, 121 Ill. App.3d at 222, 459 N.E.2d at 636.

The Board’s procedural rules on affirmative defenses state that “[a]ny facts constituting an affirmative defense must be plainly set forth before hearing in the answer or in a supplemental answer, unless the affirmative defense could not have been known before hearing.” 35 Ill. Adm. Code 103.204(d). In addition, the party asserting the affirmative defense must plead it with the same degree of specificity necessary for establishing a cause of action. International Insurance, 242 Ill. App.3d 614, 6320, 609 N.E.2d 842, 853 (1st Dist. 1993). The party pleading an affirmative defense need not set out evidence, so long as the party alleges the ultimate facts to be proven. People v. Carriage 5 Way West, Inc., 88 Ill.2d 300, 308, 430 N.E.2d 1005, 1008-09 (1981). However, legal conclusions that are not supported by allegations of specific facts are insufficient. LaSalle National Trust N.A. v. Village of Mettawa, 249 Ill. App.3d 550, 557, 616 N.E.2d 1297 (2nd Dist. 1993).

The Board previously held that “[a] motion to strike an affirmative defense admits well-pled facts constituting the defense, as well as all reasonable inferences that may be drawn therefrom, and attacks only the legal sufficiency of the facts.” Elmhurst Memorial Healthcare and Elmhurst Memorial Hospital v. Chevron U.A.A., Inc. and Texaco, Inc., PCB 09-066, slip op. at 21 (March 18, 2010), *citing* Rapragher v. Allstate Insurance Co., 183 Ill. App.3d 847, 854, 539 N.E.2d 787, 791 (2nd Dist. 1989). An affirmative defense should not be stricken “[w]here the well-pled facts [of an affirmative defense] ... raise the possibility that the party asserting the defense will prevail....” Rapragher, 183 Ill. App.3d at 854, 539 N.E.2d at 791.

#### **Valid Federally Enforceable State Operating Permit**

NACME raises the defense that it holds a valid FESOP. NACME argues that a SOP, like SOP #96020074 that NACME currently holds, and that the state acknowledges is in effect, is a federally enforceable permit. Am. Ans. at 1, ¶ 1. NACME claims that assuming the People’s allegation in the complaint is true (*i.e.* that NACME has the potential to emit pollutants above a major source threshold), NACME already has in place a valid FESOP (SOP #96020074) that automatically defeats the People’s claim.

The People assert that NACME fails to provide any new facts relevant to the People’s claim that NACME was operating a major source without a CAAPP permit and that NACME fails to give color to the People’s claims.

The Board has reviewed the pleadings and finds that NACME’s assertion of the existence of a FESOP is not an affirmative defense. NACME’s claims are denials of the allegations in the complaint, not an argument that that will defeat the claim even if true. Specifically, the Board finds that NACME’s claim that a valid FESOP exists does not “give color” to the People’s allegations, but instead denies them. Therefore, the Board finds that NACME’s alleged affirmative defense of the existence of a FESOP must be stricken.

**Laches**

NACME raises the defense of laches arguing that IEPA was aware, or should have been aware, of its alleged violation many years before IEPA issued its violation notice in March 2011. NACME argues that IEPA was aware or should have been aware of NACME's alleged potential to emit as a major source since at least 2001, when IEPA first tried, and failed, to designate NACME as a major source. Am. Ans. at 4, ¶ 12. NACME claims that the unreasonable and unjustified delay in issuing the notice of violation prejudiced NACME by subjecting it to greater penalty amounts. *Id.*

The People argue that for NACME to prevail on a defense of laches, NACME must establish that the People have exhibited unreasonable delay in asserting the claim and that NACME has been prejudiced. Mot. at 5, citing City of Rolling Meadows v. Nat'l Adver. Co., 228 Ill. App.3d 737, 593 N.E.2d 551, 557 (1st Dist. 1992); Patrick Media Group, Inc. v. City of Chicago, 225 Ill. App.3d 1, 626 N.E.2d 1066, 1071 (1st Dist. 1993).

The defense of laches is an affirmative defense as the defense "gives color to the opposing party's claim and then asserts new matter by which the apparent right is defeated." Worner, 121 Ill. App.3d at 222, 459 N.E.2d at 636. The issue then is whether the affirmative defense has been sufficiently pled. In prior cases, the Board denied a motion to dismiss the affirmative defense of laches where a respondent: 1) pled facts that the People knew or should have known of the respondent's activities, and, 2) claimed that respondent was prejudiced by the People's failure to raise the claim. See People of the State of Illinois v. Tradition Investments, LLC, PCB 11-68, slip op. at 13-14 (October 6, 2011); People of the State of Illinois v. Peabody Coal Company, PCB 99-134, slip op. at 8 (June 5, 2003); People of the State of Illinois v. John Crane, Inc., PCB 01-76, slip op. at 8 (May 17, 2001).

Pursuant to Section 103.204(d) of the Board's rules, "any facts constituting an affirmative defense must be plainly set forth before hearing in the answer or in a supplemental answer, unless the affirmative defense could not have been known before hearing." 35 Ill. Adm. Code 103.204(d). Although the Board recognizes that applying laches to public bodies is disfavored, the Illinois Supreme Court held in Hickey v. Illinois Central Railroad Co., 35 Ill.2d 427, 220 N.E.2d 415 (1966) that the doctrine can apply to governmental bodies under compelling circumstances. While the affirmative defense of laches carries an elevated standard of proof when applied to the People, the Board cannot decide on the merits of the defense before hearing the evidence. See Peabody, PCB 99-134, slip op. at 8.

The Board therefore finds that while not specific, NACME has alleged sufficient facts to raise the affirmative defense of laches. In this proceeding, the Board notes that NACME must also meet the burden of proving that "compelling circumstances" warrant application of laches. The People's motion to strike is denied as to the affirmative defense of laches.

**Waiver**

NACME's argument for waiver is similar to its arguments for laches. NACME asserts that the People's claim is barred by the doctrine of waiver because the People knew or should

have known of NACME's potential to emit as a major source since 2001. Am. Ans. at 4, ¶ 13. Conversely, the People argue that NACME has not pled sufficient facts to form a valid affirmative defense of waiver. Specifically the People allege that because NACME failed to provide facts establishing "a 'clear, unequivocal, and decisive act' of the People manifesting an intention to waive the People's right to bring a cause of action against NACME" the defense must be struck. Mot. at 9-10.

The doctrine of waiver applies when a party intentionally relinquishes a known right or his conduct warrants an inference to relinquish the right. See Hartford Accident and Indemnity Co. v. D.F. Bast, Inc., 56 Ill. App.3d 960, 962, 372 N.E.2d 829, 831 (1st Dist. 1977); People v. Douglas Furniture of California, Inc., PCB 97-133, slip op. at 5 (May 1, 1997). See also Peabody, PCB 99-134, slip op. at 8; Crane, PCB 01-76 at 20. NACME alleges it will show that through the continued correspondence between IEPA and NACME, IEPA and the People relinquished their right to bring the claim alleged in the complaint. Resp. at 3-4. Furthermore, NACME states that it will show it has been prejudiced. *Id.* The Board will allow NACME the opportunity to meet the burden of establishing waiver against the People. The Board therefore denies the People's motion to strike this affirmative defense.

#### CONCLUSION

The Board finds that NACME's alleged affirmative defense that a valid FESOP exists is not an affirmative defense and should be struck. The Board further finds that NACME's affirmative defenses of laches and waiver are sufficiently pled and NACME may proceed with those affirmative defenses.

IT IS SO ORDERED.

I, John Therriault, Clerk of the Illinois Pollution Control Board, hereby certify that the Board adopted the above opinion and order on June 6, 2013, by a vote of 5-0.



---

John Therriault, Assistant Clerk  
Illinois Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD  
August 7, 2014

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 13-12
	)	(Enforcement – Air)
NACME STEEL PROCESSING, LLC, a	)	
Delaware limited liability corporation,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by D. Glosser):

The People of the State of Illinois (People) filed a complaint against NACME Steel Processing, LLC (NACME) on September 5, 2012, alleging that NACME operates a major stationary source without a Clean Air Act Permit Program (CAAPP) permit in violation of various provisions of the Illinois Environmental Protection Act (415 ILCS 5/1 *et seq.* (2012)) (Act). The complaint concerns NACME’s steel processing facility located at 429 West 127th Street, Chicago, Cook County.

The Board today rules on a motion to strike the affidavit of Valeriy Brodsky, an employee with the Illinois Environmental Protection Agency (Agency), Bureau of Air. The Board reserves ruling on the motion for summary judgment. NACME may file a response to the motion for summary judgment by August 21, 2014. The People may file a reply by September 4, 2014.

**PROCEDURAL BACKGROUND**

On September 5, 2012, the People filed the complaint against NACME (Comp.). The complaint alleges NACME violated Sections 9(b), 39.5(5)(x), and 39.5(6)(b) of Act (415 ILCS 5/9(b), 39.5(5)(x), and 39.5(6)(b) (2012)). The complaint alleges that NACME violated these provisions of the Act by operating a major air pollution source without obtaining the proper permits. On September 20, 2012, the Board accepted the People’s complaint for hearing.

On June 6, 2013, the Board granted the People’s motion to strike certain affirmative defenses filed by NACME. The Board also denied the People’s request to strike other defenses and allowed NACME the right to argue laches and waiver.

On May 16, 2014, the People filed a motion for summary judgment that included an affidavit by Mr. Brodsky. On June 5, 2014, NACME filed a motion to strike the affidavit (Mot.). On June 20, 2014, the People responded to the motion to strike (Resp.). Also on June 20, 2014, NACME filed an interim response to the People’s motion for summary judgment.





**NACME's MOTION TO STRIKE**

NACME filed a motion to strike the affidavit of Mr. Brodsky as opposed to filing a motion for summary judgment as contemplated by the Hearing Officer order of March 27, 2014. NACME argues that the motion to strike should be granted for two reasons. First, the affidavit failed to comply with the Illinois Supreme Court Rule 191(a). Second Mr. Brodsky has not been disclosed as an expert witness. The Board will address those arguments in turn below.

**Failure to Comply with Supreme Court Rule 191(a)**

NACME argues that Mr. Brodsky's affidavit fails to comply with Supreme Court Rule 191(a). Rule 191(a) requires that affidavits be made on "the personal knowledge of the affiants" and "shall not consist of conclusion". Mot. at 2. NACME argues that Mr. Brodsky more than once stated in the affidavit that he relied on third party information. Mot. at 3. NACME asserts that in the affidavit, Mr. Brodsky made a variety of conclusions without providing the factual basis for those conclusions, such as mathematical equations and abbreviations, without explaining what they mean. *Id.* Additionally, NACME claims that Mr. Brodsky failed to attach certified copies of the papers he relied on to make his conclusions, such as permit applications and stack tests. Mot. at 4. Finally, NACME argues that there is nothing included in Mr. Brodsky's affidavit that indicates that he can competently testify about what he is asserting. *Id.*

**Not Disclosed as an Expert Witness**

NACME also argues that Mr. Brodsky was never disclosed as an expert witness. He was only disclosed as a lay witness, yet NACME claims his affidavit makes assertions that an expert witness would normally make. Mot. at 5. "Under Supreme Court Rule 213(f)(1), a 'lay witness' is a person giving only fact or lay opinion testimony". *Id.*, quoting S. Ct. Rule 213(f)(1). However, NACME asserts that Mr. Brodsky's affidavit delivers technical analysis as well. *Id.* Because Mr. Brodsky was only disclosed as a lay witness, NACME asserts it was unable to depose him as an expert witness. *Id.* Additionally, NACME maintains that the non-disclosure of Mr. Brodsky as an expert witness violated the hearing officer's orders. *Id.*

**Relief Requested**

Based on these failures, NACME argues that Mr. Brodsky's affidavit must be stricken. Mot. at 5. If the Board decides not to strike the affidavit, NACME requests that they be allowed to re-depose Mr. Brodsky as an expert witness. *Id.* Additionally, NACME requests that it's time to respond to the People's motion for summary judgment be extended for 14 days after the ruling on this motion to strike. *Id.*

**PEOPLE'S RESPONSE**

The People argue that the Board should deny NACME's motion, deny NACME's request for additional time to depose Mr. Brodsky, deny NACME an extension of time to respond to the People's motion for summary judgment, and ultimately grant the People's motion for summary

judgment. In support of its requests, the People argue: 1) the Board is not subject to the Supreme Court rules, and that even if the Board took the Supreme Court rules into consideration, Mr. Brodsky's affidavit fulfills the requirements of the rule; 2) that NACME should not be allowed additional time to depose Mr. Brodsky because he is not an expert witness; and 3) NACME should not be allowed additional time to file a response to the People's motion for summary judgment because they had an opportunity to file it along with a counter affidavit and chose to file the motion to strike instead of a timely response.

### **The Board is Not Subject to the Supreme Court Rules**

The People indicate that, as part of the Board's procedural rules, the Board is not bound by any rules other than its own; however, the Board may consider the Supreme Court Rules and the Code of Civil procedure for guidance. 35 Ill. Adm. Code 101.100. With this in mind, the People argue that even if the Board consulted the Supreme Court Rules and the Code of Civil Procedure, Mr. Brodsky's affidavit is within the requirements. Resp. at 4.

The affidavit fulfills the requirements of Supreme Court Rule 191(a) because the affidavit consists of factual statements based on personal and special knowledge, not based on hearsay. Resp. at 5. The statements rely on knowledge that Mr. Brodsky acquired through his 19 years of work experience with the Agency. Mr. Brodsky states in his affidavits that he gathered the information used to perform his calculations from documents that NACME submitted to the Agency. Memo. at 6. He further identifies the two documents he relied on as NACME's 2002 Construction Permit Application and the 2005 federally enforceable state operating permit application. *Id.*

Additionally, the People argue that NACME's claim that Mr. Brodsky's statements use vague abbreviations and mathematics is not supported. The People point out that each of the abbreviations that Mr. Brodsky uses in his affidavit are defined in the People's motion for summary judgment. Resp. at 7. The People also state that NACME erred when arguing that Mr. Brodsky's calculations of the potential to emit were "offhand conclusions" because the meaning is explicitly defined by Section 39.5(1) of the Act (415 ILCS 5/39.5(1) (2012)).

Finally, the People state that there was no need for Mr. Brodsky to attach supporting documentation to the affidavit because all supporting documents mentioned were submitted in the People's motion for summary judgment. Memo. at 10. Therefore, there is no need to submit duplicate documents because Mr. Brodsky's affidavit is part of the motion for summary judgment. *Id.*

### **NACME Should Not Have Additional Time to Depose Mr. Brodsky**

The People argue that NACME should not have additional time to depose Mr. Brodsky because Mr. Brodsky is not an expert witness. Memo. at 11. The People state that Mr. Brodsky is merely a lay witness with special knowledge and the calculations that he performs in the affidavit are "application of special knowledge performing simple math . . . to a formula that Mr. Brodsky learned during his 19 years working at the Agency . . .". Resp. at 12. The People further argue that even if Mr. Brodsky's statements were his personal opinion, he is exempt from

the rule prohibiting lay witness opinions in testimony because he had special knowledge of the matter. Resp. at 12 (*citing Gowdy v. Richter*, 20 Ill. App. 3d 514, 527).

Furthermore, the People argue that NACME falsely claims that it did not have an opportunity to depose Mr. Brodsky on the issues presented in his affidavit because NACME conducted a deposition that exceeded 3 hours and extensively questioned Mr. Brodsky's qualifications and knowledge of how to calculate a potential to emit (PTE) calculation. Memo. at 14.

Finally, the People argue that NACME had ample time to acquire any additional materials prior to the close of discovery. Memo. at 15. The People also state that NACME possessed all of the certified copies of the documents presented in the People's motion for summary judgment before it deposed Mr. Brodsky. *Id.*

#### **NACME Should Not be Granted a Filing Extension**

Finally, the People argue that NACME should not be granted its requested filing extension for a response to the People's motion for summary judgment. NACME did not even file its own motion for summary judgment. The People argue that NACME could have filed a response to the People's motion for summary judgment and a counter affidavit to Mr. Brodsky's affidavit by June 16th. Resp. at 16. However, NACME chose to file its motion to strike instead.

#### **Relief Requested**

Because of this rationale, the People request that NACME be denied both its motion to strike and its request for a filing extension for its response to the motion for summary judgment. The People contend that the Board does not have to adhere to the Supreme Court Rules; that NACME had ample time to depose Mr. Brodsky and should not be granted additional time because he is not an expert witness and, in fact, testified on the issues presented in his affidavit; and that NACME did not follow the deadline to submit a response to the People's motion for summary judgment, but chose to file a motion to strike instead, and therefore should not be granted an extension. Taking all of this into consideration, the People ultimately request that the Board grant its motion for summary judgment.

#### **DISCUSSION**

The Board's procedural rules provide:

The provisions of the Code of Civil Procedure [735 ILCS 5] and the Supreme Court Rules [Ill. S. Ct. Rules] do not expressly apply to proceedings before the Board. However, the Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance where the Board's procedural rules are silent. 35 Ill. Adm. Code 101.100(b)

The Board's procedural rules do not provide specifics on expert witnesses or on material to be included in an affidavit. Therefore the Board will look to the Supreme Court Rules for guidance.

The Supreme Court rules require that “upon written interrogatory, a party must furnish the identities and addresses of witnesses who will testify” at trial and identify if they are a lay witness or an expert witness. S. Ct. Rule 213(f)(1) and (2) (2014). “A ‘lay witness’ is a person giving only fact or lay opinion testimony. *Id.* Further, the Supreme Court rules provide that in motions for summary judgment, “affidavits in support of and in opposition to a motion for summary judgment . . . shall be made on the personal knowledge of the affiants; shall set forth with particularity the facts upon which the claim, counterclaim, or defense is based; shall have attached thereto sworn or certified copies of all documents upon which the affiant relies; shall not consist of conclusions but of facts admissible in evidence; and shall affirmatively show that the affiant, if sworn as a witness, can testify competently thereto.” S. Ct. Rule 191 (a) (2014).

The Board reviewed the affidavit of Mr. Brodsky and the other filings by the People in the motion for summary judgment. The Board is unconvinced by the arguments of NACME. Mr. Brodsky testified to facts which are within his purview as an employee for the Agency and used documents and materials that the Agency had at its disposal in preparing Mr. Brodsky’s affidavit. Furthermore, the documents relied upon by Mr. Brodsky are either in NACME’s possession or were included in a different attachment to the motion for summary judgment. *See* Attach F to People’s motion for summary judgment. NACME had the opportunity to depose Mr. Brodsky in his role as an Agency employee. Specifically, Mr. Brodsky was identified as being;

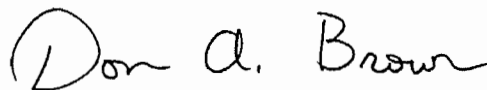
Expected to testify in support of the violations alleged in the People’s complaint, including his familiar [*sic*] with permit applications and permit-related communications and documentation, including stack tests, associated with the NACME Facility. . . .Mr. Brodsky is expected to testify about documents and correspondence submitted by NACME and its environmental consultants to the Agency. Mot. Attach D at 2.

Clearly NACME was on notice concerning Mr. Brodsky’s potential testimony, and the Board finds that the affidavit is within the scope identified by the People. Therefore, the Board denies the motion to strike Mr. Brodsky’s affidavit.

NACME may provide a counter-affidavit in its response to the motion for summary judgment, which the Board will allow. NACME must file its response by August 21, 2014 and the People may file a reply by September 4, 2014.

IT IS SO ORDERED.

I, Don A. Brown, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 7, 2014, by a vote of 4-0.



Don A. Brown, Assistant Clerk  
Illinois Pollution Control Board

ORIGINAL

ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

NOV 22 2000

STATE OF ILLINOIS  
Pollution Control Board

NACME Steel Processing, L.L.C., )

*Petitioner,* )

v. )

PCB 01-85

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )

*Respondent.* )

**NOTICE OF FILING**

TO Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East, P.O. Box 19276  
Springfield, IL 62794-9276

PLEASE TAKE NOTICE that we have on this day caused to be filed with the Office of the Clerk of the Illinois Pollution Control Board the **Petition for Hearing**, a copy of which is attached hereto and herewith served upon you.

Dated: November 22, 2000.

NACME Steel Processing, L.L.C., *Petitioner*

By: *Edward Walsh*  
One of Its Attorneys

Edward V. Walsh, III  
SACHNOFF & WEAVER, LTD.  
30 South Wacker Drive  
Suite 2900  
Chicago, Illinois 60606  
(312) 207-3898

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NOV 22 2000

STATE OF ILLINOIS  
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD

NACME Steel Processing, L.L.C., )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

PCB 01-8

PETITION FOR HEARING

Petitioner NACME Steel Processing, L.L.C. ("NACME"), by its attorneys, Sachnoff & Weaver, Ltd., pursuant to Section 40 of the Illinois Environmental Protection Act (the "Act"), petitions the Board for review of the Illinois Environmental Protection Agency's (the "Agency") grant of a permit under Section 39 of the Act with contested conditions, and in support of its Petition states as follows:

1. Petitioner is the owner/operator of a steel pickling facility located at 429 West 127<sup>th</sup> Street, Chicago, Illinois (the "Facility"). In connection with Facility processes, NACME operates an Agency permitted "scrubber" for its hydrochloric acid ("HCL") air emissions.
2. On or about July 25, 2000, NACME, by its air emissions consultant, Mostardi-Platt Associates, Inc. ("MPA"), submitted an "Air Emission Services Operating Permit Revision Application" to the Agency. The purpose of the permit application was to request an increase in permitted HCL emission rates to more accurately reflect potential emission levels from Facility processes (a copy of the permit application is attached hereto as Exhibit A).
3. By letter dated August 29, 2000, the Agency requested further information concerning the permit application from NACME, including information demonstrating that NACME's Facility was not a "support facility" with respect to the ACME Steel Company

facility in Riverdale, Illinois. NACME understands based on Agency statements that the ACME facility is a Title V source of air emissions. In its request for further information, the Agency speculated, based on unknown information, that the NACME and Acme facilities may constitute a single source for purposes of Title V permitting under Section 39.5 of the Act (a copy of the Agency's August 29, 2000, letter is attached hereto as Exhibit B).

4. By letter dated September 19, 2000, NACME, through MPA, responded to the Agency's August 29, 2000, request for further information. Among other things, MPA provided information showing that NACME's Facility is not a "support facility" with regard to the Acme steel facility because (i) the NACME Facility does not assist to a significant extent in the production of steel coils at the Acme steel facility; (ii) the NACME and Acme facilities are not under the common control of the same person; and (iii) the NACME and Acme facilities are neither contiguous nor adjacent to one another. Specifically, MPA pointed out that Acme is merely a minority owner of NACME (one of three such owners) and that NACME is not under the common control of any one owner but, rather, has entirely separate management from ACME and the other owners (a copy of the September 19, 2000, letter is attached hereto as Exhibit C).

5. On or about October 25, 2000, the Agency issued to NACME a state operating permit with respect to NACME's HCL air emissions. The operating permit established various conditions with respect to HCL air emissions in separately numbered paragraphs, as well as in a "standard conditions for operating permits" attachment to the permit (a copy of the October 25, 2000, permit is attached hereto as Exhibit D).

6. However, the operating permit also included an unnumbered conclusion paragraph, as follows:

Please note that the Illinois EPA has determined that NACME Steel Processing pickling plant constitutes a support facility to the Title V source, Acme Steel plant

(I.D. 031258AAD). Accordingly, NACME Steel Processing is required to submit a Title V application. Since NACME Steel Processing is part of a major source of Hazardous Air Pollutant (HAP) emission, the NACME Steel Processing is a subject to the National Emission Standards for Hazardous Air Pollutants (NESHAP) 40 CFR 63, Subpart CCC pursuant to applicability criteria of 63.1155(a). The NACME Steel Processing shall demonstrate compliance with 40 CFR 63, Subpart CCC no later than June 22, 2001.

7. The Agency is inaccurate in its assertion that NACME is required to submit a Title V application for its Facility and the findings and conditions contained in the above quoted portion of the permit are wrong and misplaced.

8. As pointed out to the Agency during the permit application process, NACME's Facility does not constitute a "support facility" to a Title V source as defined under Illinois law (415 ILCS 5/39.5) because, among other things, (a) NACME does not convey, store or otherwise assist to a significant extent in the production of a principal product at another stationary source, namely Acme Steel Company; and (b) NACME is not located on a contiguous or adjacent property to a Title V source that is under the common control of the same person.

9. The Agency's unwarranted imposition of the above findings and conclusions in NACME's operating permit will result in onerous permit application and regulatory compliance duties unless the mistaken findings and conclusions are stricken from the permit.

For the above reasons, Petitioner requests a hearing venued in the City of Chicago concerning the contested conditions inaccurately included in NACME's state operating permit and for appropriate relief including, but not limited to, removal of the unsupported conditions from NACME's permit.

Dated: November 22, 2000.



Respectfully submitted,

**NACME STEEL PROCESSING, L.L.C.,**  
*Petitioner*

By: 

One of Its Attorneys

Edward V. Walsh, III  
SACHNOFF & WEAVER, LTD.  
30 South Wacker Drive  
Suite 2900  
Chicago, Illinois 60606  
(312) 207-1000

July 25, 2000

Mr. Donald E. Sutton, P.E.  
Manager, Permit Section  
Division of Air Pollution Control  
Illinois Environmental Protection Agency  
Bureau of Air  
1021 North Grand Avenue East  
Springfield, Illinois 62702-9276

Dear Mr. Sutton:

Enclosed please find two copies of an Illinois Environmental Protection Agency (IEPA) Operating Permit revision request for the NACME Steel Processing facility (ID No. 031600FWL) location at 429 West 127<sup>th</sup> Street in Chicago, Illinois (the facility).

The purpose of the request is to increase permitted emission rates from the existing hydrochloric acid (HCl) pickling process to more accurately reflect potential emission levels from this process. Current permitted emission rates as outlined in the facility's existing IEPA Operating Permit (Application No. 96020074) are 0.02 pounds of HCl per hour (lbs HCl/hr) and 0.09 tons HCl per year (tons HCl/yr). NACME, a minor HCL emission source, respectfully requests the rates be revised to 0.52 lbs HCl/hr and 2.28 tons HCl/yr.

If you have any questions, please feel free to contact the undersigned or Mr. Britt E. Wenzel of Mostardi-Platt Associates, Inc. at (630) 993-2123.

Sincerely,

**NACME STEEL PROCESSING**

Thomas Beach  
Vice President & Plant Manager

TB/kmt

Enclosures

**AIR EMISSION SERVICES OPERATING PERMIT  
REVISION APPLICATION**

**Prepared for  
NACME STEEL PROCESSING, INC.  
429 West 127<sup>th</sup> Street  
Chicago, Illinois**

**July 25, 2000**

STATE OF ILLINOIS  
 ENVIRONMENTAL PROTECTION AGENCY  
 DIVISION OF AIR POLLUTION CONTROL  
 2200 CHURCHILL ROAD  
 SPRINGFIELD, ILLINOIS 62794-9276

APPLICATION FOR PERMIT <sup>(A)</sup> <input type="checkbox"/> CONSTRUCT <input checked="" type="checkbox"/> OPERATE		FOR AGENCY USE ONLY	
NAME OF EQUIPMENT TO BE CONSTRUCTED OR OPERATED (B) <b>HCL Steel Pickling Line</b>		I.D. NO. _____	PERMIT NO. _____
		DATE _____	DATE _____

1a. NAME OF OWNER: <b>NACME Steel Processing</b>		2a. NAME OF OPERATOR: <b>NACME Steel Processing</b>	
1b. STREET ADDRESS OF OWNER: <b>429 West 127<sup>th</sup> Street</b>		2b. STREET ADDRESS OF OPERATOR: <b>429 West 127<sup>th</sup> Street</b>	
1c. CITY OF OWNER: <b>Chicago</b>		2c. CITY OF OPERATOR: <b>Chicago</b>	
1d. STATE OF OWNER: <b>Illinois</b>	1e. ZIP CODE: <b>60628</b>	2d. STATE OF OPERATOR: <b>Illinois</b>	2e. ZIP CODE: <b>60628</b>

3a. NAME OF CORPORATE DIVISION OR PLANT: <b>NACME Steel Processing</b>		3b. STREET ADDRESS OF EMISSION SOURCE: <b>429 West 127<sup>th</sup> Street</b>		
3c. CITY OF EMISSION SOURCE: <b>Chicago</b>	3d. LOCATED WITHIN CITY LIMITS: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	3e. TOWNSHIP:	3f. COUNTY: <b>Cook</b>	3g. ZIP CODE: <b>60628</b>

4. ALL CORRESPONDENCE TO: (TITLE AND/OR NAME OF INDIVIDUAL) <b>Tom Beach</b>	5. TELEPHONE NUMBER FOR AGENCY TO CALL: <b>773-291-1393</b>
6. ADDRESS FOR CORRESPONDENCE: (CHECK ONLY ONE) <input type="checkbox"/> OWNER <input checked="" type="checkbox"/> OPERATOR <input type="checkbox"/> EMISSION SOURCE	7. YOUR DESIGNATION FOR THIS APPLICATION: <sup>(C)</sup> <b>Pickling</b>

8. THE UNDERSIGNED HEREBY MAKES APPLICATION FOR A PERMIT AND CERTIFIES THAT THE STATEMENTS CONTAINED HEREIN ARE TRUE AND CORRECT, AND FURTHER CERTIFIES THAT ALL PREVIOUSLY SUBMITTED INFORMATION REFERENCED IN THIS APPLICATIONS REMAINS TRUE, CORRECT AND CURRENT, BY AFFIXING HIS SIGNATURE HERETO HE FURTHER CERTIFIES THAT HE IS AUTHORIZED TO EXECUTE THIS APPLICATION.

AUTHORIZED SIGNATURE(S)<sup>(D)</sup>

BY _____	DATE _____	BY _____	DATE _____
SIGNATURE <b>Thomas Beach</b>		SIGNATURE	
TYPED OR PRINTED NAME OF SIGNER <b>Vice President, Plant Manager</b>		TYPED OR PRINTED NAME OF SIGNER	
TITLE OF SIGNER		TITLE OF SIGNER	

(A) THIS FORM IS TO PROVIDE THE AGENCY WITH GENERAL INFORMATION ABOUT THE EQUIPMENT TO BE CONSTRUCTED OR OPERATED. THIS FORM MAY BE USED TO REQUEST A CONSTRUCTION PERMIT, AN OPERATING PERMIT, A CONSTRUCTION OR OPERATING PERMIT.

(B) ENTER THE GENERIC NAME OF THE EQUIPMENT TO BE CONSTRUCTED OR OPERATED. THIS NAME WILL APPEAR ON THE PERMIT WHICH MAY BE ISSUED PURSUANT TO THIS APPLICATION. THIS FORM MUST BE ACCOMPANIED BY OTHER APPLICABLE FORMS AND INFORMATION.

(C) PROVIDE A DESIGNATION IN ITEM 7 ABOVE WHICH YOU WOULD LIKE THE AGENCY TO USE FOR IDENTIFICATION OF YOUR EQUIPMENT. YOUR DESIGNATION WILL BE REFERENCED IN CORRESPONDENCE FROM THIS AGENCY RELATIVE TO THIS APPLICATION. YOUR DESIGNATION MUST NOT EXCEED TEN (10) CHARACTERS.

(D) THIS APPLICATION MUST BE SIGNED IN ACCORDANCE WITH 35 ILL. ADM. CODE 201.154 OR 201.159 WHICH STATES: "ALL APPLICATIONS AND SUPPLEMENTS THERETO SHALL BE SIGNED BY THE OWNER AND OPERATOR OF THE EMISSION SOURCE OR AIR POLLUTION CONTROL EQUIPMENT, OR THEIR AUTHORIZED AGENT, AND SHALL BE ACCOMPANIED BY EVIDENCE OF AUTHORITY TO SIGN THE APPLICATION."

IF THE OWNER OR OPERATOR IS A CORPORATION, SUCH CORPORATION MUST HAVE ON FILE WITH THE AGENCY A CERTIFIED COPY OF A RESOLUTION OF THE CORPORATION'S BOARD OF DIRECTORS AUTHORIZING THE PERSONS SIGNING THIS APPLICATION TO CAUSE OR ALLOW THE CONSTRUCTION OR OPERATION OF THE EQUIPMENT TO BE COVERED BY THE PERMIT.

9. DOES THIS APPLICATION CONTAIN A PLOT PLAN/MAP:  
 YES  NO

IF A PLOT PLAN/MAP HAS PREVIOUSLY BEEN SUBMITTED, SPECIFY:  
 AGENCY I.D. NUMBER **031600FWL** APPLICATION NUMBER **98020074**

IS THE APPROXIMATE SIZE OF APPLICANT'S PREMISES LESS THAN 1 ACRE?  
 YES  NO: SPECIFY ACRES **43**

---

10. DOES THIS APPLICATION CONTAIN A PROCESS FLOW DIAGRAM(S) THAT ACCURATELY AND CLEARLY REPRESENTS CURRENT PRACTICE.  
 YES  NO

---

11a. WAS ANY EQUIPMENT, COVERED BY THIS APPLICATION, OWNED OR CONTRACTED FOR, BY THE APPLICANT PRIOR TO APRIL 14, 1972:  
 YES  NO

IF "YES," ATTACH AN ADDITIONAL SHEET, EXHIBIT A, THAT:

(a) LISTS OR DESCRIBES THE EQUIPMENT  
 (b) STATES WHETHER THE EQUIPMENT WAS IN COMPLIANCE WITH THE RULES AND REGULATIONS GOVERNING THE CONTROL OF AIR POLLUTION PRIOR TO APRIL 4, 1972

11b. HAS ANY EQUIPMENT, COVERED BY THIS APPLICATION, NOT PREVIOUSLY RECEIVED AN OPERATING PERMIT:  
 YES  NO

IF "YES," ATTACH AN ADDITIONAL SHEET, EXHIBIT B, THAT:

(a) LISTS OR DESCRIBES THE EQUIPMENT  
 (b) STATES WHETHER THE EQUIPMENT  
     (i) IS ORIGINAL OR ADDITIONAL EQUIPMENT  
     (ii) REPLACES EXISTING EQUIPMENT, OR  
     (iii) MODIFIES EXISTING EQUIPMENT  
 (c) PROVIDES THE ANTICIPATED OR ACTUAL DATES OF THE COMMENCEMENT OF CONSTRUCTION AND THE START-UP OF THE EQUIPMENT

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12. IF THIS APPLICATION INCORPORATES BY REFERENCE A PREVIOUSLY GRANTED PERMIT(S), HAS FORM APC-210, "DATA AND INFORMATION-INCORPORATION BY REFERENCE" BEEN COMPLETED.  
 YES  NO

---

13. DOES THE STARTUP OF AN EMISSION SOURCE COVERED BY THIS APPLICATION PRODUCE AIR CONTAMINANT EMISSION IN EXCESS OF APPLICABLE STANDARDS:  
 YES  NO

IF "YES," HAS FORM APC-203, "OPERATION DURING STARTUP" BEEN COMPLETED FOR THIS SOURCE  
 YES  NO

---

14. DOES THIS APPLICATION REQUEST PERMISSION TO OPERATE AN EMISSION SOURCE DURING MALFUNCTION OR BREAKDOWNS:  
 YES  NO

IF "YES," HAS FORM APC-204, "OPERATION DURING MALFUNCTION AND BREAKDOWN" BEEN COMPLETED FOR THIS SOURCE  
 YES  NO

---

15. IS AN EMISSION SOURCE COVERED BY THIS APPLICATION SUBJECT TO A FUTURE COMPLIANCE DATE:  
 YES  NO

IF "YES," HAS FORM APC-202, "COMPLIANCE PROGRAM & PROJECT COMPLETION SCHEDULE," BEEN COMPLETED FOR THIS SOURCE:  
 YES  NO

---

16. DOES THE FACILITY COVERED BY THIS APPLICATION REQUIRE AN EPISODE ACTION PLAN (REFER TO GUIDELINES FOR EPISODE ACTION PLANS):  
 YES  NO

---

17. LIST AND IDENTIFY ALL FORMS, EXHIBITS, AND OTHER INFORMATION SUBMITTED AS PART OF THIS APPLICATION. INCLUDE THE PAGE NUMBERS OF EACH ITEM (ATTACH ADDITIONAL SHEETS IF NECESSARY):

**See Table of Contents**

TOTAL NUMBER OF PAGES

STATE OF ILLINOIS  
 ENVIRONMENTAL PROTECTION AGENCY  
 DIVISION OF AIR POLLUTION CONTROL  
 2200 CHURCHILL ROAD  
 SPRINGFIELD, ILLINOIS 62706

This Agency is authorized to require this information under Illinois Revised Statutes, 1979, Chapter 111 1/2, Section 1039. Disclosure of this information is required under that Section. Failure to do so may prevent this form from being processed and could result in your application being denied. This form has been approved by the Forms Management Center.

*DATA AND INFORMATION PROCESS EMISSION SOURCE	
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\*THIS INFORMATION FORM IS TO BE COMPLETED FOR AN EMISSION SOURCE OTHER THAN A FUEL COMBUSTION EMISSION SOURCE OR AN INCINERATOR. A FUEL COMBUSTION EMISSION SOURCE IS A FURNACE, BOILER, OR SIMILAR EQUIPMENT USED PRIMARILY FOR PRODUCING HEAT OR POWER BY INDIRECT HEAT TRANSFER. AN INCINERATOR IS AN APPARATUS IN WHICH REFUSE IS BURNED.

1. NAME OF PLANT OWNER: <i>NACME Steel Processing</i>	2. NAME OF CORPORATE DIVISION OR PLANT (IF DIFFERENT FROM OWNER): <i>NACME Steel Processing</i>
3. STREET ADDRESS OF EMISSION SOURCE: <i>428 West 127th Street</i>	4. CITY OF EMISSION SOURCE: <i>Chicago</i>

GENERAL INFORMATION		
5. NAME OF PROCESS: <i>HCL Steel Pickling</i>	6. NAME OF EMISSION SOURCE EQUIPMENT: <i>Enclosed Steel Pickling Line</i>	
7. EMISSION SOURCE EQUIPMENT MANUFACTURER: <i>PRO-ECO</i>	8. MODEL NUMBER:	9. SERIAL NUMBER:
10. FLOW DIAGRAM DESIGNATION(S) OF EMISSION SOURCE: <i>SPL1</i>		
11. IDENTITY(S) OF ANY SIMILAR SOURCE(S) AT THE PLANT OR PREMISES NOT COVERED BY THE FORM (IF THE SOURCE IS COVERED BY ANOTHER APPLICATION, IDENTIFY THE APPLICATION):		
12. AVERAGE OPERATING TIME OF EMISSION SOURCE: <i>24 HRS/DAY 7 DAYS/WK 52 WKS/YR</i>	13. MAXIMUM OPERATING TIME OF EMISSION SOURCE: <i>24 HRS/DAY 7 DAYS/WK 52 WKS/YR</i>	
14. PERCENT OF ANNUAL THROUGHPUT:		
DEC-FEB <i>25%</i>	MAR-MAY <i>25%</i>	JUN-AUG <i>25%</i> SEPT-NOV <i>25%</i>

INSTRUCTIONS	
1.	COMPLETE THE ABOVE IDENTIFICATION AND GENERAL INFORMATION SECTION.
2.	COMPLETE THE RAW MATERIAL, PRODUCT, WASTE MATERIAL, AND FUEL USAGE SECTIONS FOR THE PARTICULAR SOURCE EQUIPMENT. COMPOSITIONS OF MATERIALS MUST BE SUFFICIENTLY DETAILED TO ALLOW DETERMINATION OF THE NATURE AND QUANTITY OF POTENTIAL EMISSIONS. IN PARTICULAR, THE COMPOSITION OF PAINTS, INKS, ETC., AND ANY SOLVENTS MUST BE FULLY DETAILED.
3.	EMISSION AND EXHAUST POINT INFORMATION MUST BE COMPLETED, UNLESS EMISSIONS ARE EXHAUSTED THROUGH AIR POLLUTION CONTROL EQUIPMENT.
4.	OPERATING TIME AND CERTAIN OTHER ITEMS REQUIRE BOTH AVERAGE AND MAXIMUM VALUES.
5.	FOR GENERAL INFORMATION REFER TO "GENERAL INSTRUCTIONS FOR PERMIT APPLICATIONS," APC-201.

DEFINITIONS	
AVERAGE-	THE VALUE THAT SUMMARIZES OR REPRESENTS THE GENERAL CONDITION OF THE EMISSION SOURCE OR THE GENERAL STATE OF PRODUCTION OF THE EMISSION SOURCE, SPECIFICALLY:
AVERAGE OPERATING TIME-	GREATEST EXPECTED TOTAL HOURS OF OPERATIONS FOR THE PRECEDING TWELVE MONTH PERIOD.
AVERAGE RATE-	ACTUAL TOTAL QUANTITY OF "MATERIAL" FOR THE PRECEDING TWELVE MONTH PERIOD, DIVIDED BY THE AVERAGE OPERATING TIME.
AVERAGE OPERATION-	OPERATION TYPICAL OF THE PRECEDING TWELVE MONTH PERIOD, AS REPRESENTED BY AVERAGE OPERATING TIME AND AVERAGE RATES.
MAXIMUM-	THE GREATEST VALUE ATTAINABLE OR ATTAINED FROM THE EMISSION SOURCE OR THE PERIOD OF GREATEST OR UTMOST PRODUCTION OF THE EMISSION SOURCE, SPECIFICALLY:
MAXIMUM OPERATING TIME-	GREATEST EXPECTED TOTAL HOURS OF OPERATIONS FOR ANY TWELVE MONTH PERIOD.
MAXIMUM RATE-	GREATEST QUANTITY OF "MATERIAL" EXPECTED PER ANY ONE HOUR OF OPERATION.
MAXIMUM OPERATION-	GREATEST EXPECTED OPERATION, AS REPRESENTED BY MAXIMUM OPERATING TIME AND MAXIMUM RATES.

090-008

RAW MATERIAL INFORMATION		
NAME OF RAW MATERIAL	AVERAGE RATE PER IDENTICAL SOURCE	MAXIMUM RATE PER IDENTICAL SOURCE
20a. <i>Steel Coils</i>	b. 180,000 LB/HR	c. 240,000 LB/HR
21a. <i>HCL</i>	b. 2,200 LB/HR	c. 2,200 LB/HR
22a. <i>Water</i>	b. 34,000 LB/HR	c. 34,000 LB/HR
23a.	b. LB/HR	c. LB/HR
24a.	b. LB/HR	c. LB/HR

PRODUCT INFORMATION		
NAME OF PRODUCT	AVERAGE RATE PER IDENTICAL SOURCE	MAXIMUM RATE PER IDENTICAL SOURCE
30a. <i>Uncoiled Steel Coils</i>	b. 180,000 LB/HR	c. 240,000 LB/HR
31a.	b. LB/HR	c. LB/HR
32a.	b. LB/HR	c. LB/HR
33a.	b. LB/HR	c. LB/HR
34a.	b. LB/HR	c. LB/HR

WASTE MATERIAL INFORMATION		
NAME OF WASTE MATERIAL	AVERAGE RATE PER IDENTICAL SOURCE	MAXIMUM RATE PER IDENTICAL SOURCE
40a. <i>Ferrous Chloride</i>	b. 5,800 LB/HR	c. 5,800 LB/HR
41a.	b. LB/HR	c. LB/HR
42a.	b. LB/HR	c. LB/HR
43a.	b. LB/HR	c. LB/HR
44a.	b. LB/HR	c. LB/HR

*FUEL USAGE INFORMATION - Not Applicable		
FUEL USED	TYPE	HEAT CONTENT
50a. NATURAL GAS <input type="checkbox"/>	b.	c. BTU/SCF
OTHER GAS <input type="checkbox"/>		BTU/SCF
OIL <input type="checkbox"/>		BTU/GAL
COAL <input type="checkbox"/>		BTU/LB
OTHER <input type="checkbox"/>		BTU/LB
d. AVERAGE FIRING RATE PER IDENTICAL SOURCE: BTU/HR		e. MAXIMUM FIRING RATE PER IDENTICAL SOURCE: BTU/HR

\* THIS SECTION IS TO BE COMPLETED FOR ANY FUEL USED DIRECTLY IN THE PROCESS EMISSION SOURCE, E.G. GAS IN A DRYER, OR COAL IN A MELT FURNACE.

*EMISSION INFORMATION				
51. NUMBER OF IDENTICAL SOURCES (DESCRIBE AS REQUIRED):				
AVERAGE OPERATION				
CONTAMINANT	CONCENTRATION OR EMISSION RATE PER IDENTICAL SOURCE			METHOD USED TO DETERMINE CONCENTRATION OR EMISSION RATE
PARTICULATE MATTER	52a.	GR/SCF	b. LB/HR	c.
CARBON MONOXIDE	53a.	PPM (VOL)	b. LB/HR	c.
NITROGEN OXIDES	54a.	PPM (VOL)	b. LB/HR	c.
ORGANIC MATERIAL	55a.	PPM (VOL)	b. LB/HR	c.
SULFUR DIOXIDE	56a.	PPM (VOL)	b. LB/HR	c.
**OTHER (SPECIFY)	57a.	PPM (VOL)	b. LB/HR	c. <i>See APC 260</i>
MAXIMUM OPERATION				
CONTAMINANT	CONCENTRATION OR EMISSION RATE PER IDENTICAL SOURCE			METHOD USED TO DETERMINE CONCENTRATION OR EMISSION RATE
PARTICULATE MATTER	58a.	GR/SCF	b. LB/HR	c.
CARBON MONOXIDE	59a.	PPM (VOL)	b. LB/HR	c.
NITROGEN OXIDES	60a.	PPM (VOL)	b. LB/HR	c.
ORGANIC MATERIAL	61a.	PPM (VOL)	b. LB/HR	c.
SULFUR DIOXIDE	62a.	PPM (VOL)	b. LB/HR	c.
**OTHER (SPECIFY)	63a.	PPM (VOL)	b. LB/HR	c. <i>See APC 260</i>

\* ITEMS 52 THROUGH 63 NEED NOT BE COMPLETED IF EMISSIONS ARE EXHAUSTED THROUGH AIR POLLUTION CONTROL EQUIPMENT.  
 \*\* 'OTHER' CONTAMINANT SHOULD BE USED FOR AN AIR CONTAMINANT NOT SPECIFICALLY NAMED ABOVE. POSSIBLE OTHER CONTAMINANTS ARE ASBESTOS, BERYLLIUM, MERCURY, VINYL CHLORIDE, LEAD, ETC.

***EXHAUST POINT INFORMATION			
64. FLOW DIAGRAM DESIGNATION(S) OF EXHAUST POINT: <i>See APC 260</i>			
65. DESCRIPTION OF EXHAUST POINT (LOCATION IN RELATION TO BUILDINGS, DIRECTION, HOODING, ETC.):			
66. EXIT HEIGHT ABOVE GRADE:		67. EXIT DIAMETER:	
68. GREATEST HEIGHT OF NEARBY BUILDINGS:		69. EXIT DISTANCE FROM NEAREST PLANT BOUNDARY:	
FT		FT	
AVERAGE OPERATION		MAXIMUM OPERATION	
70. EXIT GAS TEMPERATURE:		72. EXIT GAS TEMPERATURE:	
*F		*F	
71. GAS FLOW RATE THROUGH EACH EXIT:		73. GAS FLOW RATE THROUGH EACH EXIT:	
ACFM		ACFM	

\*\*\* THIS SECTION SHOULD NOT BE COMPLETED IF EMISSIONS ARE EXHAUSTED THROUGH AIR POLLUTION CONTROL EQUIPMENT.



STATE OF ILLINOIS  
 ENVIRONMENTAL PROTECTION AGENCY  
 DIVISION OF AIR POLLUTION CONTROL  
 2200 CHURCHILL ROAD  
 SPRINGFIELD, ILLINOIS 62706

This Agency is authorized to require this information under Illinois Revised Statutes, 1979, Chapter 111 1/2, Section 1029. Disclosure of this information is required under that Section. Failure to do so may prevent this form from being processed and could result in your application being denied. This form has been approved by the Forms Management Center.

*DATA AND INFORMATION  AIR POLLUTION CONTROL EQUIPMENT	
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\* THIS INFORMATION FORM IS FOR AN INDIVIDUAL UNIT OF AIR POLLUTION CONTROL EQUIPMENT OR AN AIR POLLUTION CONTROL SYSTEM.

1. NAME OF OWNER: <b>NACME Steel Processing</b>	2. NAME OF CORPORATE DIVISION OR PLANT (IF DIFFERENT FROM OWNER): <b>NACME Steel Processing</b>
3. STREET ADDRESS OF CONTROL EQUIPMENT: <b>429 West 127<sup>th</sup> Street</b>	4. CITY OF CONTROL EQUIPMENT: <b>Chicago</b>
5. NAME OF CONTROL EQUIPMENT OR CONTROL SYSTEM: <b>PRO-ECO Wet Scrubber</b>	

INSTRUCTIONS	
1.	COMPLETE THE ABOVE IDENTIFICATION.
2.	COMPLETE THE APPROPRIATE SECTION FOR THE UNIT OF CONTROL EQUIPMENT, OR THE APPROPRIATE SECTIONS FOR THE CONTROL SYSTEM. BE CERTAIN THAT THE ARRANGEMENT OF VARIOUS UNITS IN A CONTROL SYSTEM IS MADE CLEAR IN THE PROCESS FLOW DIAGRAM.
3.	COMPLETE PAGE 6 OF THIS FORM, EMISSION INFORMATION AND EXHAUST POINT INFORMATION.
4.	EFFICIENCY VALUES SHOULD BE SUPPORTED WITH A DETAILED EXPLANATION OF THE METHOD OF CALCULATION, THE MANNER OF ESTIMATION, OR THE SOURCE OF INFORMATION. REFERENCE TO THIS FORM ANY RELEVANT INFORMATION OR EXPLANATION INCLUDED IN THIS PERMIT APPLICATION.
5.	EFFICIENCY VALUES AND CERTAIN OTHER ITEMS OF INFORMATION ARE TO BE GIVEN FOR AVERAGE AND MAXIMUM OPERATION OF THE SOURCE EQUIPMENT. FOR EXAMPLE, "MAXIMUM EFFICIENCY" IS THE EFFICIENCY OF THE CONTROL EQUIPMENT WHEN THE SOURCE IS AT MAXIMUM OPERATION, AND "AVERAGE FLOW RATE" IS THE FLOW RATE INTO THE CONTROL EQUIPMENT WHEN THE SOURCE IS AT AVERAGE OPERATION.
6.	FOR GENERAL INFORMATION REFER TO "GENERAL INSTRUCTIONS FOR PERMIT APPLICATIONS", APC-201.

DEFINITIONS	
AVERAGE- AVERAGE OPERATION-	THE VALUE THAT SUMMARIZES OR REPRESENTS THE GENERAL CONDITION OF THE EMISSION SOURCE OR THE GENERAL STATE OF PRODUCTION OF THE EMISSION SOURCE. SPECIFICALLY: OPERATION TYPICAL OF THE PRECEDING TWELVE MONTH PERIOD, AS REPRESENTED BY AVERAGE OPERATING TIME AND AVERAGE RATES.
MAXIMUM- MAXIMUM OPERATION-	THE GREATEST VALUE ATTAINABLE OR ATTAINED FROM THE EMISSION SOURCE OR THE PERIOD OF GREATEST OR UTMOST PRODUCTION OF THE EMISSION SOURCE. SPECIFICALLY: THE GREATEST EXPECTED OPERATION, AS REPRESENTED BY MAXIMUM OPERATING TIME AND MAXIMUM RATES.

ADSORPTION UNIT - <i>Not Applicable</i>	
1. FLOW DIAGRAM DESIGNATION(S) OF ADSORPTION UNIT:	
2. MANUFACTURER:	3. MODEL NAME AND NUMBER:
4. ADSORBENT: ACTIVATED CHARCOAL: TYPE _____	OTHER: SPECIFY: _____
5. ADSORBATE(S):	
6. NUMBER OF BEDS PER UNIT:	7. WEIGHT OF ADSORBENT PER BED: _____ LB
8. DIMENSION OF BED: THICKNESS _____ IN, SURFACE AREA _____ SQUARE IN	
9. INLET GAS TEMPERATURE _____ °F	10. PRESSURE DROP ACROSS UNIT: _____ INCH H <sub>2</sub> O GAUGE
11. TYPE OF REGENERATION: <input type="checkbox"/> REPLACEMENT <input type="checkbox"/> STEAM <input type="checkbox"/> OTHER: SPECIFY: _____	
12. METHOD OF REGENERATION: <input type="checkbox"/> ALTERNATE USE OF _____ ENTIRE UNITS <input type="checkbox"/> ALTERNATE USE OF _____ BEDS IN A SINGLE UNIT <input type="checkbox"/> SOURCE SHUT DOWN <input type="checkbox"/> OTHER: DESCRIBE _____	
AVERAGE OPERATION OF SOURCE	MAXIMUM OPERATION OF SOURCE
13. TIME ON LINE BEFORE REGENERATION: _____ MIN/BED	15. TIME ON LINE BEFORE REGENERATION: _____ MIN/BED
14. EFFICIENCY OF ABSORBER (SEE INSTRUCTION 4): _____ %	16. EFFICIENCY OF ABSORBER (SEE INSTRUCTION 4): _____ %

AFTERBURNER - <i>Not Applicable</i>	
1. FLOW DIAGRAM DESIGNATION(S) OF AFTERBURNER:	
2. MANUFACTURER:	3. MODEL NAME AND NUMBER:
4. COMBUSTION CHAMBER DIMENSIONS: LENGTH _____ IN, CROSS-SECTIONAL AREA _____ SQUARE IN	
5. INLET GAS TEMPERATURE: _____ °F	7. FUEL <input type="checkbox"/> GAS <input type="checkbox"/> OIL: SULFUR _____ WT%
6. OPERATING TEMPERATURE OF COMBUSTION CHAMBER: _____ °F	8. BURNERS PER AFTERBURNER: _____ @ _____ BTU/HR EACH
9. CATALYST USED: <input type="checkbox"/> NO <input type="checkbox"/> YES: DESCRIBE CATALYST _____	
10. HEAT EXCHANGER USED: <input type="checkbox"/> NO <input type="checkbox"/> YES: DESCRIBE HEAT EXCHANGER _____	
AVERAGE OPERATION OF SOURCE	MAXIMUM OPERATION OF SOURCE
11. GAS FLOW RATE: _____ SCFM	13. GAS FLOW RATE: _____ SCFM
12. EFFICIENCY OF AFTERBURNER (SEE INSTRUCTION 4): _____ %	14. EFFICIENCY OF AFTERBURNER (SEE INSTRUCTION 4): _____ %

CYCLONE - <i>Not Applicable</i>	
1. FLOW DIAGRAM DESIGNATION(S) OF CYCLONE:	
2. MANUFACTURER:	3. MODEL:
4. TYPE OF CYCLONE: <input type="checkbox"/> SIMPLE <input type="checkbox"/> MULTIPLE	5. NUMBER OF CYCLONES IN EACH MULTIPLE CYCLONE:
6. DIMENSION THE APPROPRIATE SKETCH (IN INCHES) OR PROVIDE A DRAWING WITH EQUIVALENT INFORMATION:	
AVERAGE OPERATION OF SOURCE	MAXIMUM OPERATION OF SOURCE
7. GAS FLOW RATE: <span style="float: right;">SCFM</span>	9. GAS FLOW RATE: <span style="float: right;">SCFM</span>
8. EFFICIENCY OF CYCLONE (SEE INSTRUCTION 4): <span style="float: right;">%</span>	10. EFFICIENCY OF CYCLONE (SEE INSTRUCTION 4): <span style="float: right;">%</span>

CONDENSER - <i>Not Applicable</i>			
1. FLOW DIAGRAM DESIGNATION(S) OF CONDENSER:			
2. MANUFACTURER:		3. MODEL NAME AND NUMBER:	
4. HEAT EXCHANGE AREA:			FT <sup>2</sup>
AVERAGE OPERATION OF SOURCE		MAXIMUM OPERATION OF SOURCE	
5. COOLANT FLOW RATE PER CONDENSER: WATER _____ GPM AIR _____ SCFM OTHER: TYPE _____, FLOW RATE _____		10. COOLANT FLOW RATE PER CONDENSER: WATER _____ GPM AIR _____ SCFM OTHER: TYPE _____, FLOW RATE _____	
6. GAS FLOW RATE:  SCFM		11. GAS FLOW RATE:  SCFM	
7. COOLANT TEMPERATURE: INLET _____ °F, OUTLET _____ °F	8. GAS TEMPERATURE: INLET _____ °F, OUTLET _____ °F	12. COOLANT TEMPERATURE: INLET _____ °F, OUTLET _____ °F	13. GAS TEMPERATURE: INLET _____ °F, OUTLET _____ °F
9. EFFICIENCY OF CONDENSER (SEE INSTRUCTION 4):  %		14. EFFICIENCY OF CONDENSER (SEE INSTRUCTION 4):  %	

*ELECTRICAL PRECIPITATOR - <i>Not Applicable</i>			
1. FLOW DIAGRAM DESIGNATION OF ELECTRICAL PRECIPITATOR:			
2. MANUFACTURER:		3. MODEL NAME AND NUMBER:	
4. COLLECTING ELECTRODE AREA PER CONTROL DEVICE:			FT <sup>2</sup>
AVERAGE OPERATION OF SOURCE		MAXIMUM OPERATION OF SOURCE	
5. GAS FLOW RATE:  SCFM		7. GAS FLOW RATE:  SCFM	
6. EFFICIENCY OF ELECTRICAL PRECIPITATOR (SEE INSTRUCTION 4):  %		8. EFFICIENCY OF ELECTRICAL PRECIPITATOR (SEE INSTRUCTION 4):  %	
SUBMIT THE MANUFACTURER'S SPECIFICATIONS FOR THE ELECTRICAL PRECIPITATOR. REFERENCE THE INFORMATION TO THIS FORM.			

\* ELECTRICAL PRECIPITATORS VARY GREATLY IN THEIR DESIGN AND IN THEIR COMPLEXITY. THE ITEMS IN THIS SECTION PROVIDE A MINIMUM AMOUNT OF INFORMATION. THE APPLICANT MUST, HOWEVER, SUBMIT WITH THIS APPLICATION THE MANUFACTURER'S SPECIFICATIONS, INCLUDING ANY DRAWINGS, TECHNICAL DOCUMENTS, ETC. IF THE INFORMATION PROVIDED BY THE MANUFACTURER'S SPECIFICATIONS IS INSUFFICIENT FOR FULL AND ACCURATE ANALYSIS, THE AGENCY WILL REQUEST SPECIFIC ADDITIONAL INFORMATION.

FILTER UNIT - <i>Not Applicable</i>			
1. FLOW DIAGRAM DESIGNATION(S) OF FILTER UNIT:			
2. MANUFACTURER:		3. MODEL NAME AND NUMBER:	
4. FILTERING MATERIAL:		5. FILTERING AREA:	
6. CLEANING METHOD: <input type="checkbox"/> SHAKER <input type="checkbox"/> REVERSE AIR <input type="checkbox"/> PULSE AIR <input type="checkbox"/> PULSE JET <input type="checkbox"/> OTHER: SPECIFY _____			
7. GAS COOLING METHOD: <input type="checkbox"/> DUCTWORK: LENGTH _____ FT., DIAM _____ IN. <input type="checkbox"/> BLEED-IN AIR <input type="checkbox"/> WATER SPRAY <input type="checkbox"/> OTHER: SPECIFY _____			
AVERAGE OPERATION OF SOURCE		MAXIMUM OPERATION OF SOURCE	
8. GAS FLOW RATE (FROM SOURCE):  SCFM		12. GAS FLOW RATE (FROM SOURCE):  SCFM	
9. GAS COOLING FLOW RATE: <input type="checkbox"/> BLEED-IN AIR _____ SCFM, WATER SPRAY _____ GPM		13. GAS COOLING FLOW RATE: <input type="checkbox"/> BLEED-IN AIR _____ SCFM, WATER SPRAY _____ GPM	
10. INLET GAS CONDITION: TEMPERATURE _____ °F, DEWPOINT _____ °F		14. INLET GAS CONDITION: TEMPERATURE _____ °F, DEWPOINT _____ °F	
11. EFFICIENCY OF FILTER UNIT (SEE INSTRUCTION 4):  %		15. EFFICIENCY OF FILTER UNIT (SEE INSTRUCTION 4):  %	

SCRUBBER			
1. FLOW DIAGRAM DESIGNATION(S) OF SCRUBBER: <i>Pickling Line Wet Scrubber</i>			
2. MANUFACTURER: <i>PRO-ECO</i>		3. MODEL NAME AND NUMBER:	
4. TYPE OF SCRUBBER: <input type="checkbox"/> HIGH ENERGY: GAS STREAM PRESSURE DROP _____ INCH H <sub>2</sub> O <input type="checkbox"/> PACKED: PACKING TYPE _____, PACKING SIZE _____, PACKED HEIGHT _____ IN. <input type="checkbox"/> SPRAY: NUMBER OF NOZZLES _____, NOZZLE PRESSURE _____ PSIG <input checked="" type="checkbox"/> OTHER: SPECIFY - <i>4 Sieve Tray</i> - ATTACH DESCRIPTION AND SKETCH WITH DIMENSIONS			
5. TYPE OF FLOW: <input checked="" type="checkbox"/> CONCURRENT <input type="checkbox"/> COUNTERCURRENT <input type="checkbox"/> CROSSFLOW			
6. SCRUBBER GEOMETRY: LENGTH IN DIRECTION OF GAS FLOW <i>192</i> IN., CROSS-SECTIONAL AREA <i>13,824</i> SQUARE IN.			
7. CHEMICAL COMPOSITION OF SCRUBBANT: <i>Heavy Duty FRP</i>			
AVERAGE OPERATION OF SOURCE		MAXIMUM OPERATION OF SOURCE	
8. SCRUBBANT FLOW RATE: <i>1.5</i> GPM		12. SCRUBBANT FLOW RATE: <i>2</i> GPM	
9. GAS FLOW RATE: <i>4,975</i> SCFM		13. GAS FLOW RATE: <i>5,061</i> SCFM	
10. INLET GAS TEMPERATURE: <i>123</i> °F		14. INLET GAS TEMPERATURE: <i>125</i> °F	
11. EFFICIENCY OF SCRUBBER (SEE INSTRUCTION 4): <i>99.90 %</i> PARTICULATE <i>99.90 %</i> GASEOUS		15. EFFICIENCY OF SCRUBBER (SEE INSTRUCTION 4): <i>99.90 %</i> PARTICULATE <i>99.90 %</i> GASEOUS	

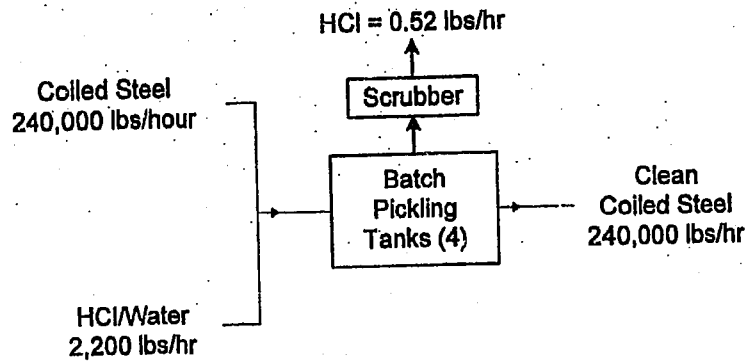
OTHER TYPE OF CONTROL EQUIPMENT - <i>Not Applicable</i>			
1. FLOW DIAGRAM DESIGNATION(S) OF "OTHER TYPE" OF CONTROL EQUIPMENT:			
2. GENERIC NAME OF "OTHER" EQUIPMENT:		3. MANUFACTURER:	4. MODEL NAME AND NUMBER:
5. DESCRIPTION AND SKETCH, WITH DIMENSIONS AND FLOW RATES, OF "OTHER" EQUIPMENT:			
AVERAGE OPERATION OF SOURCE		MAXIMUM OPERATION OF SOURCE	
6. FLOW RATES: _____ GPM    _____ SCFM		8. FLOW RATES: _____ GPM    _____ SCFM	
7. EFFICIENCY OF "OTHER" EQUIPMENT (SEE INSTRUCTION 4): %		9. EFFICIENCY OF "OTHER" EQUIPMENT (SEE INSTRUCTION 4): %	

EMISSION INFORMATION				
51. NUMBER OF IDENTICAL CONTROL UNITS OR CONTROL SYSTEMS (DESCRIBE AS REQUIRED):				
AVERAGE OPERATION OF SOURCE				
CONTAMINANT	CONCENTRATION OR EMISSION RATE PER IDENTICAL CONTROL UNIT OR CONTROL SYSTEM			METHOD USED TO DETERMINE CONCENTRATION OR EMISSION RATE
PARTICULATE MATTER	2a.	GR/SCF	b. LB/HR	c.
CARBON MONOXIDE	3a.	PPM (VOL)	b. LB/HR	c.
NITROGEN OXIDES	4a.	PPM (VOL)	b. LB/HR	c.
ORGANIC MATERIAL	5a.	PPM (VOL)	b. LB/HR	c.
SULFUR DIOXIDE	6a.	PPM (VOL)	b. LB/HR	c.
OTHER (SPECIFY) HCL	7a.	PPM (VOL)	b. 0.51 LB/HR	c. Engineering Estimate/Flow Measurements
MAXIMUM OPERATION OF SOURCE				
CONTAMINANT	CONCENTRATION OR EMISSION RATE PER IDENTICAL CONTROL UNIT OR CONTROL SYSTEM			METHOD USED TO DETERMINE CONCENTRATION OR EMISSION RATE
PARTICULATE MATTER	8a.	GR/SCF	b. LB/HR	c.
CARBON MONOXIDE	9a.	PPM (VOL)	b. LB/HR	c.
NITROGEN OXIDES	10a.	PPM (VOL)	b. LB/HR	c.
ORGANIC MATERIAL	11a.	PPM (VOL)	b. LB/HR	c.
SULFUR DIOXIDE	12a.	PPM (VOL)	b. LB/HR	c.
OTHER (SPECIFY) HCL	13a.	PPM (VOL)	b. 0.52 LB/HR	c. Engineering Estimate/Flow Measurements

\*\*\*OTHER\* CONTAMINANT SHOULD BE USED FOR AN AIR CONTAMINANT NOT SPECIFICALLY NAMED ABOVE. POSSIBLE OTHER CONTAMINANTS ARE ASBESTOS, BERYLLIUM, MERCURY, VINYL CHLORIDE, LEAD, ETC.

EXHAUST POINT INFORMATION			
1. FLOW DIAGRAM DESIGNATION(S) OF EXHAUST POINT: <i>Pickle Line Scrubber</i>			
2. DESCRIPTION OF EXHAUST POINT (LOCATION IN RELATION TO BUILDINGS, DIRECTION, HOODING, ETC.): <i>Vertical Stack</i>			
3. EXIT HEIGHT ABOVE GRADE: 50 FT		4. EXIT DIAMETER: 2 FT	
5. GREATEST HEIGHT OF NEARBY BUILDINGS: 42 FT		6. EXIT DISTANCE FROM NEAREST PLANT BOUNDARY: 250 FT	
AVERAGE OPERATION OF SOURCE		MAXIMUM OPERATION OF SOURCE	
7. EXIT GAS TEMPERATURE: 123 °F		9. EXIT GAS TEMPERATURE 125 °F	
8. GAS FLOW RATE THROUGH EACH EXIT: 6,446 ACFM		10. GAS FLOW RATE THROUGH EACH EXIT: 6,526 ACFM	

HCL PICKLING PROCESS AT MAXIMUM OPERATION  
FLOW DIAGRAM - SPL1



NACME STEEL PROCESSING  
429 WEST 127TH STREET  
CHICAGO, ILLINOIS

**HCL Pickling Line Emission Calculations  
NACME Steel Processing  
428 West 127th Street  
Chicago, Illinois**

---

**Average Operation Rate**

Requested Permit Limitation = 18 ppmv HCL  
Pickling Process Average Gas Flow Rate = 4,975 DCSFM\*

Emission Calculation

lbs/hr = ppm X Molecular Weight (mw) X DSCFM X (1.5584 x 10 E-7)

HCL lbs/hr = 18 ppmv X 36.453 X 4,975 DSCFM X (1.5584 x 10 E-7)

Hourly Emission Rate = 0.51 lbs HCL/hr

Annual Emission Rate = 0.51 lbs HCL/hr X 8,760 hr/yr / 2,000 lbs/ton = 2.23 tons HCL/yr

2,000 lbs/ton = 2.23 tons HCL/yr

**Maximum Operation Rate**

Requested Permit Limitation = 18 ppmv HCL  
Pickling Process Maximum Gas Flow Rate = 5,081 DSCFM\*

Emission Calculation

lbs/hr = ppm X Molecular Weight (mw) X DSCFM X (1.5584 x 10 E-7)

HCL lbs/hr = 18 ppmv X 36.453 X 5,081 DSCFM X (1.5584 x 10 E-7)

Hourly Emission Rate = 0.52 lbs HCL/hr

Annual Emission Rate = 0.52 HCL/hr X 8,760 hr/yr / 2,000 lbs/ton = 2.28 tons HCL/yr

\*Based Upon Year 2000 Flow Rate Measurements

Project No.: M002822

NACME Steel Processing



ILLINOIS POLLUTION CONTROL BOARD

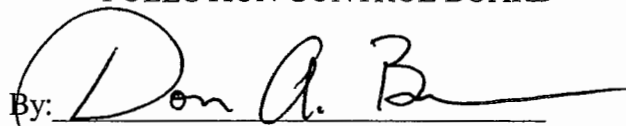
NACME STEEL PROCESSING, L.L.C.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 01-85
	)	
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	
	)	
	)	

CERTIFICATE

I, Don A. Brown, Paralegal Assistant of the Illinois Pollution Control Board, do hereby certify that I have the custody and control of all Board files and the records of the said Pollution Control Board; and that the listed item transmitted herewith is either the true original from the files of the Pollution Control Board or are a true and exact copy of said original item;

1. Petition for hearing

POLLUTION CONTROL BOARD

By:   
 Don A. Brown, Paralegal Assistant

DATED: September 30, 2013

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
PEOPLE OF THE PEOPLE OF ILLINOIS,

Complainant,

v.

PCB No. 13 - 12  
(Enforcement — Air)

NACME STEEL PROCESSING, LLC,  
a Delaware limited liability corporation,

Respondent.

SUPPLEMENTAL AFFIDAVIT

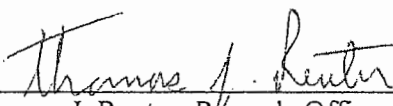
I, Thomas J. Reuter, being duly sworn on oath, depose and state that I am over 21 years of age, have personal knowledge of the facts stated herein, and, if called as a witness, could competently testify to the following:

1. I am employed by the Illinois Environmental Protection Agency (Illinois EPA), and serve as the Records Officer.
2. As part of my duties, I am responsible for the control, care, and safekeeping of the records of the Illinois EPA located in Springfield, Illinois.
3. When the Illinois EPA receives a document it is directed to the appropriate bureau for distribution and delivery to the designated program manager or staff member for review and action. Following program staff review and any needed action, documents are submitted to the Agency file and include a file heading consisting of an ID number specifying the site/facility/source location, the site name and a records category. All Agency records are maintained and segregated according to the file heading.
4. Attached to this affidavit is a certified copy of the following documents, which are "public documents" kept in the file at the Illinois EPA:




1. March 22, 2000 Facsimile from Blythe Cozza of Corporate Engineer re: Nacme Steel Operating Permit Application to Val Brodsky, Illinois EPA ("1997 Stack Test Data")
2. April 19, 2000 Facsimile from Blythe Cozza of Corporate Engineer re: Nacme Steel Operating Permit Application to Val Brodsky, Illinois EPA ("99.99% Capture Efficiency")
3. August 21, 2002 Memorandum from Ken Erewele, CES/Compliance to Julie Armitage re: Final Test Report on emissions testing on April 16, 2002 at Nacme Facility ("2002 Stack Test -Validity Certification")

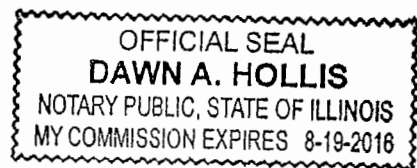
Further Affiant Sayeth Naught.

  
\_\_\_\_\_  
Thomas J. Reuter, Records Officer

State of Illinois  
County of Sangamon

SUBSCRIBED AND SWORN TO BEFORE ME,  
a notary public in and for the State of Illinois,  
this 30<sup>th</sup> day of September, 2014.

  
\_\_\_\_\_  
Notary Public



ID: 031680FWL

FACSIMILE MESSAGE FROM:



**CORPORATE ENGINEERING, INC.**  
103 N. Main St. - Suite 202  
Crown Point, IN 46307

RECEIVED

FAX NO. (219)663-0014

MAR 22 2008

*Regions copy -> VB.*

TO: IEPA DATE: 3/22/00

ATTN: Val Brodsky

FROM: Philip Croya RE: NAME STEEL PROCESSING LLC  
OPERATING PERMIT APPLICATION

FAX# (219) 524-5023 NUMBER OF PAGES 7 + COVER

MESSAGE: The following is from the stack test of 5/97  
conducted by Michael.

If you need anything further, please let me know

Thanks

TELEPHONE INQUIRIES:

INDIANA (219)663-1920

ILLINOIS (773)374-0260

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY, BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE.

THANK YOU.

"THE ENVIRONMENTAL SPECIALISTS"

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REPLY D1  
1 of 8

RECEIVED

MAR 22 2000

IEPA-DAPC-SPFLD.

Introduction

Microbac Laboratories, Inc. was retained by Mr. Kevin O'Drobinak of National Processing Company to conduct a scrubber efficiency test at the pickling line of their NACME Steel Processing Plant in Chicago, IL. Testing was to verify supplier performance data under actual operating conditions.

Testing was performed on May 7, 1997 by Timothy McLaughlin, Chris Solan, and Ed Markul of Microbac Laboratories. Testing was coordinated by Mr. O'Drobinak and Mr. Bob Hendrickson of NACME Steel.

### General Methods

Testing was performed at the pickling line scrubber at NACME Steel. This unit is a six-tray wet scrubber manufactured by Precision Engineering. Pressure drop across the scrubber was maintained at approximately 11.0" W.C. throughout the testing period. Testing was performed in triplicate at the inlet line to the scrubber, and at the exhaust stack above the roof. By triplicate, it is meant that three separate seventy-two (72) minute tests were performed at each location. Each test period was performed simultaneously at the inlet and exhaust stack.

Testing employed EPA Source Test Method 26A, utilizing Method 5 Isokinetic traverse schemes. Sampling was to determine hydrochloric acid concentrations in the flue gas. Sampling data for each run can be found in Appendix III.

Location of the testing ports of the scrubber outlet stack was approximately 12 feet above the roof line. These ports were approximately 10 duct diameters downstream from the nearest flow disturbance. The ports were located 10 feet, or 3 duct diameters upstream from the stack exit. The location of the testing port on the inlet to the scrubber was through a PVC plug access located approximately 3 duct diameters upstream to the scrubber unit. This access allowed a horizontal traverse only.

General Methods. continued

Location of sampling points were as follows:

	INLET	OUTLET
DUCT DIAMETER	24"	36"
PT. #1	1.1"	1.5"
PT. #2	3.5"	5.3"
PT. #3	7.1"	10.6"
PT. #4	16.9"	25.3"
PT. #5	20.5"	30.7"
PT. #6	22.9"	34.4"

At the inlet, each sample pt. in the traverse was sampled for 12 minutes, for a total test duration of 72 minutes. At the outlet, each sample pt. in the traverse was sampled for 6 minutes, through both traverses, for a total test duration of 72 minutes.

At the start of each testing period, stack gases at the inlet and outlet of the scrubber were tested via fyrite analyzers to determine stack gas molecular weight.



**Results**



**Field Data and Results Page**

Run #	Run 1	Run 2	Run 3	Average
<b><u>I. Field Data</u></b>				
Date	5/07/97	5/07/97	5/07/97	
Time Started	11:00	14:12	18:45	
Time Completed	12:17	15:25	17:58	
Stack Gas Temperature (F)	118	120.5	121.7	120.07
Stack Gas Velocity (FPS)	43.03	42.88	42.89	42.93
Stack Gas FlowRate (DSCFH)	397000	392000	391000	393333.33
Stack Gas FlowRate (ACFM)	8145	8108	8117	8123
Stack Gas FlowRate (DSCFM)	6817	6533	6517	6566
Area of Stack at Sampling Site (FT <sup>2</sup> )	3.14	3.14	3.14	3.14
Volume of Gas Samples (DSCF)	56.08	57.07	54.49	55.88
Moisture (Proportion of Gas Stream)	0.10	0.10	0.10	0.10
Barometric Pressure (In Hg)	29.88	29.81	29.6	29.63
Stack Pressure (In Hg)	29.58	29.5	29.51	29.53
Oxygen (%)	20.75	20.75	20.75	20.8
Carbon Dioxide (%)	0.25	0.25	0.25	0.3
Carbon Monoxide & Nitrogen (%)	79.0	79.0	79.0	79.0
Molecular Weight of Gas (G/Moles)	28.87	28.87	28.87	28.87
Isokinetic Sample Rate (%)	102	105	101	102.67

**II. Results**

HCl (GR/DSCF)	0.4033	0.3957	0.3417	0.38
HCl (Lbs/Hr)	22.91	22.21	19.12	21.41
Allowable HCl (Lbs/Hr)				0.00
(GR/DSCF)	0	0	0	0.00
(Lbs/Hr)	0	0	0	0.00

**III. Customer Supplied Information**

Estimated Process Rate (TPD)	450	450	450	450.00
Fuel Analysis in BTU/				
Isokinetic Sample Rate (%)	102	105	101	102.67

**Field Data and Results Page - NACME Steel Scrubber Outlet**

Run #	Run 1	Run 2	Run 3	Average
<b><u>I. Field Data</u></b>				
Date	5/07/97	5/07/97	5/07/97	
Time Started	11:00	14:10	16:45	
Time Completed	12:15	15:36	18:05	
Stack Gas Temperature (F)	111.9	110.2	109	110.37
Stack Gas Velocity (FPS)	28.33	27.7	28.11	28.05
Stack Gas FlowRate (DSCFH)	626000	608000	620000	618000
Stack Gas FlowRate (ACFM)	12062	11785	11967	11938
Stack Gas FlowRate (DSCFM)	10433	10133	10333	10300
Area of Stack at Sampling Site (FT <sup>2</sup> )	7.07	7.07	7.07	7.07
Volume of Gas Samples (DSCF)	54.37	54.63	54.58	54.53
Moisture (Proportion of Gas Stream)	0.06	0.06	0.06	0.06
Barometric Pressure (In Hg)	29.68	29.61	29.6	29.63
Stack Pressure (In Hg)	29.69	29.62	29.61	29.64
Oxygen (%)	20.5	20.5	20.5	20.5
Carbon Dioxide (%)	0.5	0.5	0.5	0.5
Carbon Monoxide & Nitrogen (%)	79.0	79.0	79.0	79.0
Molecular Weight of Gas (G/Moles)	28.9	28.9	28.9	28.90
Isokinetic Sample Rate (%)	94	97	97	96.00

**II. Results**

HCl (GR/DSCF)	0.0002	0.0002	0.0002	0.0002
HCl (Lbs/Hr)	< 0.02	< 0.02	< 0.02	< 0.02

**III. Customer Supplied Information**

Estimated Process Rate (TPH)	450	450	450	450.00
Fuel Analysis in BTU/	NA	NA	NA	

**Field Data & Results Page - NACME Scrubber Inlet**

Run #	Run 1	Run 2	Run 3	Average
<b><u>I. Field Data</u></b>				
Date	5/07/97	5/07/97	5/07/97	
Time Started	11:00	14:12	16:45	
Time Completed	12:17	15:25	17:58	
Stack Gas Temperature (F)	118	120.5	121.7	120.07
Stack Gas Velocity (FPS)	43.03	42.88	42.89	42.93
Stack Gas FlowRate (DSCFH)	397000	392000	391000	393333
Stack Gas FlowRate (ACFM)	8145	8108	8117	8123
Stack Gas FlowRate (DSCFM)	8617	8533	8517	8556
Area of Stack at Sampling Site (FT <sup>2</sup> )	3.14	3.14	3.14	3.14
Volume of Gas Samples (DSCF)	56.08	57.07	54.49	55.88
Moisture (Proportion of Gas Stream)	0.10	0.10	0.10	0.10
Barometric Pressure (in Hg)	29.68	29.61	29.6	29.63
Stack Pressure (in Hg)	29.58	29.5	29.51	29.53
Oxygen (%)	20.75	20.75	20.75	20.8
Carbon Dioxide (%)	0.25	0.25	0.25	0.3
Carbon Monoxide & Nitrogen (%)	79.0	79.0	79.0	79.0
Molecular Weight of Gas (G/Moles)	28.87	28.87	28.87	28.87
Isokinetic Sample Rate (%)	102	105	101	102.67

**II. Results**

HCl (GR/DSCF)	0.4033	0.3957	0.3417	0.38
HCl (Lbs/Hr)	22.91	22.21	19.12	21.41

**III. Customer Supplied Information**

Estimated Process Rate (TPD)	450	450	450	450.00
Fuel Analysis in BTU/	NA	NA	NA	

FACSIMILE MESSAGE FROM:



**CORPORATE ENGINEERING, INC.**  
103 N. Main St. - Suite 202  
Crown Point, IN 46307

APR 19 2000

FAX NO. (219)663-0014

IEPA-DAPC-SPFLD.

TO: IEPA-AIR DATE: 4/19/00

ATTN: Mr. BRODSKY

FROM: FRANK COZZA

FAX# (219) 524-5023 NUMBER OF PAGES 0 + COVER

MESSAGE: We believe the capture efficiency to be the same as the scrubber efficiency which was tested as > 99.9% for gaseous & particulate. I spoke with Andrew Mason with Amirobe, and while they did not test capture efficiency, he agreed that since the line is enclosed the capture efficiency would be the same. Please call if you have further questions. Thanks

**TELEPHONE INQUIRIES:**

INDIANA (219)663-1920

ILLINOIS (773)374-0260

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THANK YOU.

"THE ENVIRONMENTAL SPECIALISTS"

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**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276

RENEE CIPRIANO, DIRECTOR

I.D. #: 031600FWL

**MEMORANDUM**

Name: \_\_\_\_\_

DATE: August 21, 2002

Prog.: STATE Category: 10

TO: Julie Armitage, Acting Manager, BOA/CES

FROM: Ken Erewele, CES/Compliance

SUBJECT: NACME Steel Processing, LLC **Final Test Report**  
ID 031600FWL Construction Permit No. 01040081

On June 5, 2002, the Illinois EPA received a final test report from NACME Processing, LLC Chicago, Illinois, for emissions testing performed on April 16, 2002, by GE Mostardi Platt.

The objective of this test was to determine the hydrogen chloride (HCl) emissions on the steel pickling line scrubber exhaust stack, pursuant to 40 CFR 63, Subpart CCC and condition 3 of the referenced construction permit.

The emission test was conducted in accordance with USEPA test methods found at 40 CFR 60, Appendix A: Method 1 sampling location selection, method 2 gas flow and velocity, method 3 MW stack gas, method 4 moisture, and method 5 determination of particulate emissions and method 26A, "determination of Hydrogen Halide and Halogen emissions", pursuant to 40 CFR 63.1161(d).

Three (3) one-hour integrated twenty four point HCl samples were collected isokinetically from the gas stream and passed through dilute (0.1N) sulfuric acid. The dissolved HCl and formed chloride ions were analyzed by ion chromatography. The following table summarizes the results.

Parameter	Scrubber Exhaust Stack	Allowable
HCl Emission Rate, lbs/hr	0.217	0.41

Operations of the pickling baths were permitted at 16% hydrochloric acid concentration. Testing was conducted at 12% hydrochloric acid concentration, further, NACME Processing has requested that its permit be modified to accurately reflect the 12 % concentration bath.

The methodologies and general procedures described in the protocol comply with the testing requirements. The compliance section recommends that the BOA accept this test as valid.

Cc: SMU - Desplaines  
SMU - Springfield  
I.D - File  
Region 1

**PLAINTIFF'S EXHIBIT**  
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