

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**


NACME STEEL PROCESSING, L.L.C.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB No. 15-153
	)	(Permit Appeal-CAAPP)
ILLINOIS ENVIRONMENTAL PROTECTION	)	
AGENCY,	)	
	)	
Respondent.	)	

**NOTICE OF SERVICE**

To: See Attached Service List  
(VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that I have today filed with the Illinois Pollution Control Board, the **AGENCY'S MOTION FOR SUMMARY JUDGMENT.**

Respectfully submitted,

  
\_\_\_\_\_  
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Date: May 4, 2015

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

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**CERTIFICATE OF SERVICE**

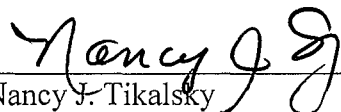
I, the undersigned attorney at law, hereby certify that on May 4, 2015, I served true and correct copies of the AGENCY'S MOTION FOR SUMMARY JUDGEMENT, upon the persons and by the methods as follows:

*[First Class U.S. Mail]*

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*[electronically]*

Bradley P. Halloran, Hearing Officer  
Illinois Pollution Control Board  
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**AGENCY'S MOTION FOR SUMMARY JUDGMENT**

Now Comes Respondent, Illinois Environmental Protection Agency ("Agency"), by and through its attorney, Lisa Madigan, Attorney General of the State of Illinois, and pursuant to 35 Ill. Adm. Code 101.516, respectfully moves the Illinois Pollution Control Board ("Board") to enter summary judgment in favor of the Agency and against NACME Steel Processing, L.L.C., ("Petitioner" or "Nacme") in this matter. The Agency Record shows there is no issue of material fact and the Agency properly found that the Petitioner's oil coating operation is subject to the New Source Performance Standards<sup>1</sup>: Standards of Performance for Metal Coil Surface Coating pursuant to 40 CFR<sup>2</sup> 60 Subpart TT, as set forth in special conditions 2a and 2b of Federally Enforceable State Operating Permit<sup>3</sup> No. 031600FWL issued on December 22, 2014 ("Nacme FESOP").

Hence, the Agency is entitled to summary judgment as a matter of law, and to a ruling upholding the Nacme FESOP as issued. In support of its Motion for Summary Judgment, the Agency states as follows:

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<sup>1</sup> ("NSPS")

<sup>2</sup> Code of Federal Regulations ("CFR")

<sup>3</sup> ("FESOP")

## I. INTRODUCTION

In this matter, the Agency asserts that Petitioner's process of applying a rust preventative oil coating to its pickled steel coils ("oil coating operation") is subject to 40 CFR 60 Subpart TT. In making its finding that 40 CFR 60 Subpart TT is applicable to the Petitioner's oil coating operation, the Agency relies on the regulatory definitions and a USEPA<sup>4</sup> Region 5 applicability determination letter, *NSPS Applicability to Coil Coating Operations, Larry F. Kertcher, U.S. Environmental Protection Agency Applicability Determination Index, Control Number: NR 41, Region 5, (09/19/1988)* ("USEPA Determination"). In the USEPA Determination, USEPA finds 40 CFR 60 Subpart TT applicable to performance testing of a metal coil coating line that does not contain a flash off area or curing oven.

Petitioner seeks a hearing on the Agency's decision that Petitioner is subject to the NSPS Standards of Performance for Metal Coil Surface Coating pursuant to 40 CFR 60 Subpart TT as set forth in special conditions 2a and 2b in the Nacme FESOP ("Special Conditions"). (Agency Record ("R") at 01-20). Petitioner's arguments that the Special Conditions do not apply to its oil coating operation fall flat in light of the regulations as a whole and the USEPA Determination as follows: 1) the oil Nacme applies to its steel coils before shipping to its customers is a "finish coat operation" as defined in 40 CFR 60 Subpart TT; 2) a curing oven and a quench station are not required for a coating operation under the definition of "finish coat operation" at 40 CFR 60.461; 3) the fact that Nacme neither dries nor cures the oil after it is applied on its steel coils is not required for the applicability of 40 CFR 60 Subpart TT; and 4) Nacme's oil coating operation contains measurable solids to meet the compliance standards of VOM limitations expressed as

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<sup>4</sup> United States Environmental Protection Agency

pounds VOM per gallon of coating solids (“lbs. VOM/gal.”) required for each affected facility under 40 CFR 60 Subpart TT.<sup>5</sup>

Furthermore, neither the Indiana Department of Environmental Management (“IDEM”) decisions nor the USEPA<sup>6</sup> *National Emission Standards for Hazardous Air Pollutants: Metal Coil Surface Coating Industry Background Information for Proposed Standards, Doc. No. EPA-453/P-00-001 (2000)* (footnote added) (“USEPA Survey”), for which Petitioner relies on to support its argument, are based on USEPA interpretations of 40 CFR 60 Subpart TT. As a result, the Petitioner fails to provide the relevant legal authority or persuasiveness for the Agency to rely on in making its determination on the applicability of 40 CFR 60 Subpart TT to the Petitioner’s oil coating operation.

In sum, the Agency Record before the Board demonstrates that the 40 CFR 60 Subpart TT is applicable to Nacme’s oil coating operation and that the Special Conditions are necessary to effectuate the purpose of the Act and regulations. Thus, the Petitioner fails to meet its burden of proof that removing the Special Conditions from the Nacme FESOP would not violate the Act and regulations and, therefore, are not necessary to accomplish the purpose of the Act and regulations.

The Agency respectfully requests that the Board enter an order granting the Agency’s Motion for Summary Judgment in support of the Nacme FESOP as issued.

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<sup>5</sup> See 40 CFR 60.462 and 60.463.

<sup>6</sup> United States Environmental Protection Agency (“USEPA”)

## II. SUMMARY OF UNDISPUTED FACTS

The Agency Record demonstrates that there is no genuine issue of material facts as follows:

Petitioner is the owner and operator of a steel pickling operation located at 429 West 127<sup>th</sup> Street, Chicago, Illinois (“Facility”). Petition (“P”) at 1, R. at 795-865, 240-354. The Facility processes involve a steel pickling line that pickles steel coils to remove oxide scale. R. at 252 and 712. Then, a VOM<sup>7</sup>-containing oil coating is applied to the metal coils at an oil application station at the end of the steel pickling line. Id. After the coating oil is applied to the steel, it is recoiled before shipping to customers. Id.

The Agency is the permitting authority responsible for administering the Illinois Environmental Protection Act (“Act”) and related regulatory programs to protect the environment pursuant to 415 ILCS 5/4 (2014). The Agency is the authority in Illinois to issue FESOP pursuant to 415 ILCS 5/39.5 (3) (2014).

On October 25, 2005, the Agency received a FESOP application from the Petitioner for its Facility. R. at 795-865. In a letter dated January 13, 2006, the Petitioner, upon the Agency’s request, provided additional information demonstrating the oil used in Petitioner’s metal coil surface coating operation contained VOC<sup>8</sup>. R. at 747 – 756.

In or about February 2012, Petitioner submitted an Air Emission Source Construction Permit Application (“Construction Application”) for the Facility to the Agency. R. at 240 – 354. In the Construction Application, the Petitioner lists NSPS 40 CFR 60 Subpart TT as an applicable regulation for which it is in compliance with the VOM limitations of coating solids

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<sup>7</sup> Volatile Organic Matter

<sup>8</sup> Volatile Organic Compound

applied. R. at 253 – 254, 262; see also R. at 309 - 315. Specifically, Nacme attests in its Construction Application that “the maximum VOM content of the coating oil applied is 0.37 lbs VOM/gallon which is in compliance with the standards of this subpart.” Id.

On April 26, 2012, the Agency issued a Construction Permit with operational allowance for Nacme’s Facility (“Construction Permit”). R. at 221 – 239. The Construction Permit included the NSPS Standards of Performance for Metal Coil Surface Coating pursuant to 40 CFR 60 Subpart TT as set forth in special conditions 2a and 2b. R. at 222.

On April 26, 2012, the Agency also forwarded a draft FESOP for the Facility (“draft FESOP”) to the Petitioner for comment. R. at 723-734. On May 16, 2012, Petitioner emailed an electronic letter attachment response to the draft FESOP objecting to the applicability of the Special Conditions to its oil coating operation citing definitions of 40 CFR 60 Subpart TT. R. at 119 – 125. On May 23, 2012, the Agency provided an email response rejecting the Petitioner’s request to remove the Special Conditions citing the applicability of the definitions contained in 40 CFR 60 Subpart TT to Petitioner’s oil coating operation. R. at 117, and 107-110. On June 14, 2012, Petitioner, again, responded by email letter attachment iterating its objections and citing and attaching IDEM decisions and the USEPA Survey as support of its position. R. at 396 - 437. On June 15, 2012, the Agency provided email responses again rejecting the Petitioner’s request to remove the Special Conditions citing and attaching the USEPA Determination as additional support for the Agency’s interpretation of 40 CFR 60 Subpart TT that shows the regulation’s applicability to Petitioner’s oil coating operation. R. at 117, and 107-110.

On June 27, 2012, Petitioner submitted additional comments by email with letter attachment dated June 26, 2012 reiterating its objection to the Special Conditions by objecting to



the USEPA Determination and iterating support of the relevancy of IDEM decisions and USEPA Survey. R. at 97 – 104. On June 27, 2012, the Agency again responded rejecting the Petitioners request to remove the Special Conditions pursuant to 40 CFR 60 Subpart TT citing the regulatory definitions and the USEPA Determination. R. at 96. On January 24, 2013, Petitioner stated in an email it had no further comments regarding the draft FESOP. R. at 91.

On February 22, 2013, the Agency published a public notice of Nacme FESOP. R. at 195 – 218. On March 19, 2013, the Agency received comments from the Petitioner in a letter dated March 15, 2013 during the public notice period that reiterates its objection to the Special Conditions. R. at 381- 383.

On December 22, 2014, the Agency issued the Nacme FESOP, including the Special Conditions that require Petitioner to comply with the NSPS Standard of Performance for Metal Coil Surface Coating standards pursuant to 40 CFR 60 Subpart TT. R. at 01-20.

On January 26, 2015, Petitioner filed its Petition for Review requesting that the Special Conditions in the Nacme FESOP be removed as inapplicable to its oil coating operation.

### **III. LEGAL STANDARD FOR SUMMARY JUDGMENT**

Section 101.516 of the Board's Procedural Rules, 35 Ill. Adm. Code 101.516(b), provides, in pertinent part, as follows:

- (b) If the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law, the Board will enter summary judgment.

Summary judgment is appropriate in a permit appeal when the Agency record demonstrates that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Clayton Chemical Acquisition, LLC v. IEPA*, PCB 98-

113 at 3. (March 1, 2001), *citing Outboard Marine Corporation v. Liberty Mutual Ins. Co.*, 154 Ill. 2d 90 (1992).

In the instant case, the Record establishes “that there is no genuine issue of material fact” and the facts in the Agency Record support the Nacme FESOP as issued. Accordingly, summary judgment is appropriate to uphold the Agency’s decision to issue the Nacme FESOP with the Special Conditions.

#### IV. STANDARD OF REVIEW

The Agency properly found that the Petitioner’s oil coating operation is subject to 40 CFR Subpart TT, which is supported by the Agency Record, and is necessary to effectuate the purposes of the Act and Board regulations. Consequently, the Petitioner fails to meet its burden for summary judgment and the Agency’s Motion for Summary Judgment must be granted as a matter of law.

##### A. Burden of Proof

The Petitioner bears the burden of proof in permit appeals brought under Section 40(a)(1) of the Act, 415 ILCS 5/40(a)(1).

##### B. Standard of Review for Permit Appeal

###### 1. *Standard for Permit Appeal Contesting Special Conditions*

“The Agency may impose such other conditions as may be necessary to accomplish the purposes of this Act, and as are not inconsistent with the regulations promulgated by the Board hereunder.” 415 ILCS 5/39. In a permit appeal before the Board, the issue is whether the disputed permit condition is necessary to accomplish the purposes of the Act and regulations. *Sherex Chemical Company, Inc. v. Illinois Environmental Protection Agency*, 1992 WL 196660,

at \*1 (citing *Joliet Sand & Gravel v. IPCB* (3d Dist.1987), 163 Ill.App.3d 830, 516 N.E.2d 955, 958.

## **2. Purpose of the Act and Regulations**

The public policy of the State of Illinois concerning pollution, as articulated in the 1970 Constitution, is “to provide and maintain a healthful environment for the benefit of this and future generations.” Ill. Const.1970, art. 11, § 1; *City of Chicago v. Krisjon Const. Co.*, 246 Ill. App. 3d 950, 957 (1st Dist., 1993). The Constitution of 1970 further stated that the “General Assembly shall provide by law for the implementation and enforcement of this public policy.” Ill. Const. art. XI, § 1. To implement this Constitutional policy, the General Assembly created the Act to prevent the spread of environmental damage and to reduce and eliminate pollution. *Id.* 415 ILCS 5/1 *et seq.*

In Section 2(b) of the Act, the General Assembly set forth the purposes of the Act, which are “to restore, protect and enhance the quality of the environment, and to assure that adverse effects upon the environment are fully considered and borne by those who cause them.” 415 ILCS 5/2(b) (2012); *Town & Country Utilities, Inc. v. Illinois Pollution Control Bd.*, 225 Ill. 2d 103, 107 (2007).

In Section 8 of the Act, the General Assembly set forth its findings and purpose governing pollution of the State’s air, 415 ILCS 5/8, provided in pertinent part:

The General Assembly finds that pollution of the air of this State constitutes a menace to public health and welfare, creates public nuisances, adds to cleaning costs, accelerates the deterioration of materials, adversely affects agriculture, business, industry, recreation, climate, and visibility, depresses property values, and offends the senses.

It is the purpose of this Title to restore, maintain, and enhance the purity of the air of this State in order to protect health, welfare, property, and the quality of life

and to assure that no air contaminants are discharged into the atmosphere without being given the degree of treatment or control necessary to prevent pollution.

The Illinois General Assembly intended the Act to be consistent with the Clean Air Act<sup>9</sup> New Source Performance Standards (42 USC 7411) and the regulations promulgated thereunder (40 CFR Chapter I, Subchapter C, Part 60), 415 ILCS 5/9.1, provided in pertinent part:

(a) The General Assembly finds that the federal Clean Air Act, as amended, 42 USCA 7401 et seq., and regulations adopted pursuant thereto establish complex and detailed provisions for State-federal cooperation in the field of air pollution control, .... and that the General Assembly cannot conveniently or advantageously set forth in this Act all the requirements of such federal Act or all regulations which may be established thereunder. It is the purpose of this Section to avoid the existence of duplicative, overlapping or conflicting State and federal regulatory systems.

(b) *The provisions of Section 111 of the federal Clean Air Act (42 USC 7411), as amended, relating to standards of performance for new stationary sources, and Section 112 of the federal Clean Air Act (42 USC 7412), as amended, relating to the establishment of national emission standards for hazardous air pollutants are applicable in this State and are enforceable under this Act. .... (emphasis added)*

(d) No person shall:

(2) construct, install, modify or operate any equipment, building, facility, source or installation which is subject to regulation under Sections 111, 112, 165 or 173 of the Clean Air Act, as now or hereafter amended, except in compliance with the requirements of such Sections and federal regulations adopted pursuant thereto, and no such action shall be undertaken (A) without a permit granted by the Agency whenever a permit is required pursuant to (i) this Act or Board regulations or (ii) Section 111, 112, 165, or 173 of the Clean Air Act or federal regulations adopted pursuant thereto or (B) in violation of any conditions imposed by such permit. Any denial of such a permit or any conditions imposed in such a permit shall be reviewable by the Board in accordance with Section 40 of this Act.

Finally, statutes should be read so as to yield logical and meaningful results and to avoid constructions that render specific language meaningless or superfluous. *Rochelle Disposal Serv.,*

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<sup>9</sup> ("CAA")

*Inc. v. Ill. Pollution Control Bd.*, 266 Ill. App. 3d 192, 198 (2nd Dist., 1994). Furthermore, words and phrases should not be construed in isolation, but must be interpreted in light of other relevant provisions of the statute. *Alternate Fuels, Inc.*, at 238.

Thus, it is Petitioner's burden to establish that the Special Conditions it contests do not apply to its oil coating operation at its Facility and are, therefore, are not necessary to accomplish the purposes of the Act and regulations.

With these guiding principles in mind, the Agency will show under the plain language of the Act the Agency properly found that 40 CFR 60 Subpart TT applies to Petitioner's oil coating operation and, therefore, are necessary to effectuate the purpose of the Act and regulations.

#### **V. ARGUMENT**

The Agency Record supports the Agency's decision to incorporate NSPS Standards of Performance for Metal Coil Surface Coating pursuant to 40 CFR 60 Subpart TT in the Nacme FESOP as special conditions 2a. and 2b. Consequently, the Special Conditions are necessary to prevent a violation of the Act and regulations and are, therefore, necessary to effectuate the purpose of the Act and regulations. Thus, Petitioner fails to meet its burden of proof that 40 CFR 60 Subpart TT is not applicable to its oil coating operation and are not necessary to effectuate the purpose of the Act and regulations.

First, the Petitioners oil coating operation meets the definitions of 40 CFR 60.461 that define applicability for the regulation. The Petitioner fails to consider all the definitions as a whole found in 40 CFR 60.461, which broadly define the application of organic surface coatings to metal coils. Next, the Agency relies on the USEPA Determination that the Agency provided Petitioner that interprets the applicability of 40 CFR 60 Subpart TT to operations that do not

contain curing ovens or flash off areas. Finally, Nacme attests in its Construction Application that 40 CFR 60 Subpart TT is a regulation applicable to its Facility's oil coating operation and provided the Agency with a compliance measurement of its VOC in lbs VOM/gallon for its oil coating operation in its Construction Application.

Accordingly, the Board must grant the Agency its Motion for Summary Judgment and deny the Petitioner's request to remove the Special Conditions.

**A. NSPS Metal Coil Surface Coating regulation, 40 CFR 60 Subpart TT, applies to Petitioner's oil coating operation.**

Outlined below, the Agency shows how it found 40 CFR 60 Subpart TT applicable to Petitioner's oil coating operation, and therefore, necessary to effectuate the purpose of the Act and regulations. Accordingly, the Agency is entitled to its Motion for Summary Judgment as a matter of law and Petitioner's request to remove the Special Conditions denied.

***1. By regulatory definition, 40 CFR 60 Subpart TT is applicable to the Petitioner's oil coating operation.***

Under the plain language of the regulation, the Petitioner's oil coating operation is subject to 40 CFR 60 Subpart TT.

40 C.F.R. 60.460 provides as follows:

Applicability and designation of affected facility.

(a) The provisions of this subpart apply to the following affected facilities in a metal coil surface coating operation: each prime coat operation, each finish coat operation, and each prime and finish coat operation combined when the finish coat is applied wet on wet over the prime coat and both coatings are cured simultaneously. (*emphasis added*)

40 CFR 60.461 provides the following relevant definitions:

COATING means any organic material that is applied to the surface of metal coil. (*emphasis added*)

COATING APPLICATION STATION means that portion of the metal coil surface coating operation where the coating is applied to the surface of the metal coil.

FINISH COAT OPERATION means the coating application station, curing oven, and quench station used to apply and dry or cure the final coating(s) on the surface of the metal coil. Where only a single coating is applied to the metal coil, that coating is considered a finish coat. (*emphasis added*)

METAL COIL SURFACE COATING OPERATION means the application system used to apply an organic coating to the surface of any continuous metal strip with thickness of 0.15 millimeter (mm) (0.006 in.) or more that is packaged in a roll or coil.

The Petitioner's rust prevention oil coating contains oil and VOM, which are organic<sup>10</sup> materials and, therefore, "coating" as that term is defined by 40 CFR 60.461. The area where the oil coating is applied at the Facility is a "coating application station" as that term is defined.<sup>11</sup> The application system used at the Facility to apply an organic coating to the surface of metal and then recoiled before shipping to customers is a "metal coil surface coating operation" as that term is defined by 40 CFR 60.461. The Petitioner's oil coating operation that contains a coating application station and applies a single coating of rust prevention oil is a "finish coat operation" as defined by 40 CFR 60.461.

As a "finish coat operation" and a "metal coil surface coating operation", Petitioner's oil coating operation meets the applicability requirement under 40 CFR 60.460. Therefore, 40 CFR 60 Subpart TT applies to Petitioner's oil coating operation.

Petitioner quibbles that its oil application station is not a "finish coat operation" because it only contains an oil application station and lacks a curing oven or quench station.<sup>12</sup> The plain language of the definition fails to state that a "finish coat operation" shall have all the

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<sup>10</sup> See <http://www.merriam-webster.com/dictionary/organic>.

<sup>11</sup> See R. At 387-388,

<sup>12</sup> See R. at 387 – 388, 254.

components listed in the definition. In fact stating “apply and dry or cure”, the definition contemplates that there may not be a curing oven.

As a result, reading all the definitions as a whole by the plain language shows that 40 CFR 60 Subpart TT is applicable to Petitioner’s oil coating operation at the Facility.

***2. By USEPA interpretation in the USEPA Determination, 40 CFR 60 Subpart TT is applicable to Petitioner’s oil coating operation.***

Additionally the Agency presented Petitioner with the USEPA Determination that found an affected facility was subject to the compliance procedures of 40 CFR 60 Subpart TT irrespective of the fact that the “finish coat operation” did not contain a flash off area or a curing oven. The USEPA Determination was made by USEPA, Region 5. Region 5 is the region directly responsible for overseeing permitting decisions made by the Agency.

The fact that the USEPA Determination was not addressing an identical inquiry as the issue presented here is irrelevant. The USEPA clearly recognized and determined that a “finish coat operation” without a curing oven or flash off area must still meet the performance test requirements set forth in 40 CFR 60 Subpart TT. One can only conclude by applying the logic in the USEPA Determination, that when the USEPA found a facility that lacked a flash off area and curing oven was subject to the performance test standards set forth in 40 CFR 60 Subpart TT, it also determined that the subject facility met the applicability standard of 40 CFR 60 Subpart TT. It would be an absurd interpretation of the USEPA Determination to conclude otherwise.

Here, like the USEPA Determination, 40 CFR 60 Subpart TT applies to the Petitioner’s oil coating operation that meets all the regulatory definitional requirements but does not have a curing oven or flash off area.



The Petitioner argues that the USEPA Determination was to interpret whether the subject facility met performance testing requirements under 40 CFR 60 Subpart TT and is not a USEPA interpretation of the applicability of 40 CFR 60 Subpart TT to the subject facility, which like the Petitioner, did not have a flash off area or curing oven. Such an interpretation conveniently ignores the very fact that if a facility is required to meet performance test standards under 40 CFR 60 Subpart TT, then it must have triggered the applicability requirements set forth the same subpart.

Finally, the Petitioner failed to present the Agency with any USEPA Determination stating that 40 CFR 60 Subpart TT is not applicable to its Facility or another facility with a similar metal coil surface coating operation.

In light of the USEPA's Determination, the Agency found the Petitioner's oil application station met the definition of a "finish coat operation" despite the absence of a quenching station and curing oven. Given that the oil is an organic material and the oil application process met the requirements of a "finish coat operation," the Agency determined that the 40 CFR 60 Subpart TT applied to the Petitioner's oil coating operation at the Facility.

Accordingly, the plain language of the regulation and the interpretation by the USEPA Determination shows 40 CFR 60 Subpart TT applies to Petitioner's oil coating operation. The Petitioner has failed to meet its burden of proof to show otherwise.

***3. Petitioner attests in its Construction Application that 40 CFR 60 Subpart TT is a regulation applicable to its Facility's oil coating operation.***

The Petitioner's Construction Application submitted in February 2012, states that 40 CFR 60 Subpart TT applies to its oil coating operation. Nacme signed its Construction Application

attesting the truth, accuracy and completeness of its application.<sup>13</sup> Accordingly, the Agency reviewed 40 CFR 60 Subpart TT in light of the Petitioner's Construction Application and agreed that the oil coating operation was subject to 40 CFR 60 Subpart TT. Consequently, the Agency appropriately incorporated the regulations as the Special Conditions into Petitioner's Construction Permit and the Nacme FESOP.

**B. Petitioner's arguments do not support its contention that 40 CFR 60 Subpart TT does not apply to its oil coating operation.**

Instead, of relying on the USEPA Determination provided to Petitioner, the Petitioner cites decisions by the Indiana Department of Environmental Management ("IDEM"), and the *USEPA National Emission Standards for Hazardous Air Pollutants<sup>14</sup>: Metal Coil Surface Coating Industry Background Information for Proposed Standards, Doc. No. EPA-453/P-00-001 (2000)* (footnote added) ("USEPA Survey") as guidance that its oil coating operation is not "finish coat operation" pursuant to 40 CFR 60 Subpart TT. Neither document has any legal authority in the State of Illinois nor does the Agency find them persuasive to override the plain language of the 40 CFR 60 Subpart TT and the USEPA interpretation 40 CFR 60 Subpart TT.

Clearly, the Petitioner fails to meet its burden of proof that 40 CFR 60 Subpart TT is not applicable to its oil coating operation and are not necessary to effectuate the purpose of the Act and regulations by using IDEM decisions and a USEPA Survey for NESHAP coating operations to support its contention.

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<sup>13</sup> R. at 247.

<sup>14</sup> ("NESHAP")

***1. IDEM is not an authority the Agency is persuaded to rely upon.***

IDEM is a separate government entity and not subject to the legal structure of Illinois law. The Act adopts the federal CAA and the associated regulations but there is no instance where the Act adopts Indiana law or Indiana's interpretation of the Section 111 of the CAA or the relevant NSPS regulations. Illinois and Indiana have separate agreements with the USEPA to implement the CAA. The IDEM decisions for Indiana facilities do not cite to any USEPA Applicability Determinations that find these facilities are not subject to 40 CFR 60 Subpart TT.<sup>15</sup>

In the end, IDEM decisions do not trump a relevant USEPA Applicability Determination from Region 5 when interpreting the applicability of 40 CFR 60 Subpart TT to the Petitioner's oil coating operation. For these reasons, the Agency is not persuaded by the IDEM decisions on the applicability of 40 CFR 60 Subpart TT to coating operations similar to the Petitioner's oil coating operation.

***2. USEPA Survey document is neither legal or persuasive authority for NSPS nor a guidance document for the Agency to rely in determining whether 40 CFR 60 Subpart TT is applicable to its oil coating operation.***

The Agency finds the USEPA Survey is not persuasive in its finding the 40 CFR 60 Subpart TT applies to Petitioner's oil coating operation. First the USEPA Survey is not guidance document for 40 CFR 60 Subpart TT but a survey for developing NESHAP limitations for existing, not new, sources of metal coil surface coating source category regulations. Second, the USEPA Survey is a project study for NESHAP proposed standards and not NSPS; the title of the document itself speaks to the NESHAP focus of the document. Thus, the USEPA Survey the Petitioner cites to as support that 40 CFR 60 Subpart TT is not applicable to its oil coating

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<sup>15</sup> R. at 403 – 437.

operation, is not a document that speaks to the NSPS metal coil surface coating regulations, and is clearly not a USEPA guidance document in general.

Notwithstanding whether the USEPA Survey applies to NESHAP and not NSPS or is not a guidance document as Petitioner contends, the USEPA Survey does not require all NSPS metal coil surface coating operation to contain the exact equipment of an application station, curing oven, and quenching station. Rather, the USEPA Survey recognizes the variability of the equipment setup for each metal coil surface coating operation and summarizes the list as a general description of what areas a metal coil surface coating operation usually entails. The USEPA Survey provides the following, in pertinent part:

### 3.1 GENERAL PROCESS DESCRIPTION

“The metal coil surface coating source category includes any facility engaged in the surface coating of metal coil. In this process, a coil or roll of uncoated sheet metal is coated on one or both sides and repackaged as a coil or otherwise handles. Although the physical configuration of the equipment used in coil coating lines varies from one installation to another, the individual operations generally follow a set pattern....” (*emphasis added*)

Clearly, the Petitioner’s oil coating operation meets the broad description in this document of the process of metal coil surface coating: “a coil or roll of uncoated sheet metal is coated on one or both sides and repacked as a coil...” Nacme’s Construction Application, May and June 2012, and May 2013 letters describe its coating operation as applying protective rust preventative oil to metal coils at the end of the steel pickling line. R. at 254, 387-88, 297-298.

**3. *Petitioner's compliance measurement argument is irrespective to the determining the applicability of 40 CFR 60 Subpart TT to its oil coating operation.***

Petitioner fails to meet its burden of proof that the VOM content in the oil used in its oil coating operation cannot be measured as lbs. VOM/gallon to measure the VOM limitation standard because it is a liquid and does not contain solids.

First, when discussing the 40 CFR 60 Subpart TT standards, Nacme attests in its Construction Application for the Facility that “the maximum VOM content of the coating oil applied is 0.37 lbs VOM/gallon, which is in compliance with the standards of this subpart.” R. at 254, 308-313. Apparently, even by the Petitioner’s own admission, the Petitioner’s oil contains measurable solids.<sup>16</sup>

Furthermore, applicability and compliance are two distinct steps in the regulatory scheme. Meeting the VOM limitation standards only are not a requirement to determine the applicability of Petitioner’s oil coating operation as a NSPS Standard of Performance for Metal Coil Surface Coating pursuant to 40 CFR 60 Subpart TT. Yet, If Petitioner’s oil coating operation meets the applicability standard pursuant to 40 CFR 60.460, then the Petitioner is required to comply with the VOM limitation standards set forth in 40 CFR 60.462 through 60.466. Here, whether or not Petitioner believes it can measure for VOM content is irrelevant when making an applicability determination under 40 CFR 60.460.

For all the reasons presented, the Petitioner fails to meet its burden of proof that the 40 CFR 60 Subpart TT, reflected in the Nacme FESOP Special Conditions, is not applicable to its oil coating operation; and, therefore, compliance thereof are not necessary to effectuate the purpose of the Act and regulations.

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<sup>16</sup> See also R. at 310 – 315.

**VI. CONCLUSION**

For all the reasons stated above, the Agency Record shows there is no genuine issue of material fact, and the Petitioner fails to sustain its burden of proof that special conditions 2a and 2b of the Nacme FESOP setting forth the NSPS Metal Coil Surface Coating standards, 40 CFR 60 Subpart TT, are not applicable to its oil coating operation. Instead, the Agency Record before the Board demonstrates that, in fact, the Special Conditions are applicable to Nacme's oil coating operation and compliance thereof is necessary to effectuate the purpose of the Act and regulations.

Therefore, the Agency requests that the Board enter an order: 1) finding that the Agency is entitled to summary judgment as a matter of law; 2) granting the Agency's Motion for Summary Judgment; and 3) denying the Petitioner's request to remove the Special Conditions.

ILLINOIS ENVIRONMENTAL  
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