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JAN 30 2006

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PETITION OF LAFARGE MIDWEST, INC.) AS 06-001
FOR BOILER DETERMINATION) (Adjusted Standard -- Land)
PURSUANT TO 35 Ill. Adm. Code 720.132 and)
720.133.)

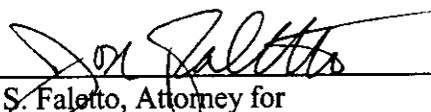
NOTICE OF FILING

TO: Illinois Pollution Control Board
Attn: Dorothy M. Gunn, Clerk
100 West Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, IL 60601-3218

James G. Richardson, Assistant Counsel
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 on this 26th day of January 2006, a copy of the attached *Petitioner's Response to Illinois EPA Amended Recommendation* was filed with the Office of the Clerk of the Illinois Pollution Control Board, a copy of which is herewith served on you.

Respectfully submitted,



Jon S. Falotto, Attorney for
Petitioner Lafarge Midwest, Inc.

Howard & Howard Attorneys, P.C.
One Technology Plaza, Suite 600
211 Fulton Street
Peoria, IL 61602
(309) 672-1483

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**PETITIONER'S RESPONSE TO ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY AMENDED RECOMMENDATION**

NOW COMES the Petitioner, LAFARGE MIDWEST, INC., by and through its attorneys, Howard & Howard Attorneys, P. C., pursuant to Section 104.418(c) of the procedural rules [35 Ill. Admin. Code 104.418(c)], and presents to the Illinois Pollution Control Board ("Board") its Response to *Illinois EPA Amended Recommendation*.

In support of its Response, the Petitioner states as follows:

I. Background and Procedural History

On September 12, 2005, this Petitioner filed a Petition with the Illinois Pollution Control Board seeking a determination that a slag dryer operated at its South Chicago Slag Grinding Plant may be considered a boiler for the purposes of reclaiming thermal energy from utilizing off-specification used oil as a supplemental fuel. The Board regulations at 35 Ill. Admin. Code 720.132 provide that the Board will make such a determination on a case-by-case basis by evaluating the criteria specified at 35 Ill. Admin. Code 720.132 and by utilizing the Adjusted Standard procedures of Subpart D of 35 Ill. Admin. Code Part 104.

In accordance with the Board's procedural rules, specifically 35 Ill. Adm. Code 104.408(a), Petitioner arranged for publication of notice of its Petition in a newspaper of general circulation in the area likely to be affected by Petitioner's activity. On September 30, 2005, Petitioner timely filed with the Board a certificate of publication stating that the *Daily Southtown*

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had published notice of the Petition on September 15, 2005. Filing of the certificate complied with the Board's procedural rules at 35 Ill. Adm. Code 104.410.

On October 24, 2005, the Illinois Environmental Protection Agency, through its Assistant Counsel James G. Richardson, filed its Recommendation to the Board in accordance with 35 Ill. Adm. Code 104.416. The Agency recommended that the Board grant the Petitioner's requested relief.

On October 20, 2005, the Board issued an Order in this proceeding which directed the Petitioner to provide additional information in support of its Petition and request for relief. The Board's October 20th Order directed Petitioner to provide the requested additional information by filing an Amended Petition in these pending proceedings.

On December 5, 2005, Petitioner filed its Amended Petition for boiler determination through adjusted standard proceedings. The Amended Petition addressed the Board's requests for additional information and clarification as specified in its Order entered on October 20, 2005.

On December 15, 2005, the Board issued an Order finding that Petitioner's Amended Petition complied with the petition content requirements set forth in the Board's procedural rules [35 Ill. Admin. Code 104.406], based on its initial review of the additional information, clarifications and explanations provided in the Amended Petition. The Board's December 15th Order allowed the Illinois Environmental Protection Agency (hereafter "IEPA" or "Agency"), to file an Amended Recommendation, provided the amendment did not cause material prejudice. The Agency was directed to file its Amended Recommendation, if it chose to do so, on or before January 17, 2006. As provided by the Board's procedural rules at Section 104.418(c) [35 Ill. Admin. Code 104.418(c)], Petitioner was given permission to file a reply to the Agency's Amended Recommendation within 14 days after the date of receipt of the Amended Recommendation.

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On January 12, 2006, the Agency filed with the Board its Amended Recommendation, designated *Illinois EPA Amended Recommendation*, a copy of which was received by legal counsel for the Petitioner on January 17, 2006. The Agency's Amended Recommendation essentially asks Petitioner to clarify two statements or items of information included in the Amended Petition. The Agency continues to recommend approval of the relief requested by the Petitioner, provided its questions are addressed through these proceedings.

Petitioner is now submitting its *Response to Illinois EPA Amended Recommendation* to address the request for clarification included in the Agency's Amended Recommendation. Petitioner's response is timely filed within the deadlines specified by the Board's December 15th Order and Section 104.418(c) the Board's procedural rules [35 Ill. Admin. Code 104.418(c)].

II. IEPA's Requests for Clarification – Costs of New or Modified Pollution Control Equipment

In its Amended Recommendation, the Agency correctly notes that Item 6 of the Board's October 20, 2005 Order requested information as to whether the use of off-specification used oil would require the installation of any new or additional air pollution control devices or the modification of existing pollution control equipment. If so, the Board requested information regarding the costs of such new or modified pollution control equipment.

In its Amended Petition, Petitioner addressed the Board's questions by providing a description of the existing high-efficiency fabric filter baghouse pollution control equipment currently controlling particulate emissions from the slag dryer and provided an estimate of the air emissions expected to result from the combustion of off-specification fuel oil. Based on the existence of state-of-the-art pollution controls for particulate emissions and the expected air emissions from combusting off-specification used oil, Petitioner continues to believe that no modifications to the existing baghouse control equipment will be required to further control any

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non-gaseous particulate emissions. Additionally, Petitioner continues to believe that no additional pollution control equipment will be required to control emissions from the combustion of off-specification used oil as supplemental fuel in the slag dryer.

As acknowledged in the Amended Petition, utilization of off-specification used oil fuel in the slag drying system would need to be reviewed and approved by the Agency's air permitting officials, with issuance of a Construction Permit and/or modifications to the existing Operating Permit. All questions about the air pollutant emissions associated with combustion of off-specification used oil fuel would be addressed and fully answered through the air permitting review process.

In its Amended Recommendation, the Agency notes a potential inconsistency between Petitioner's statements concerning the adequacy of its existing pollution control equipment and a statement regarding the costs of utilizing off-specification used oil as a supplemental fuel at the South Chicago Slag Drying facility. IEPA makes the following observation:

On line 2 of page 20 of the Amended Petition, Petitioner indicates its belief that the combustion of off-specification used oil as supplemental fuel in the slag dryer will not require additional pollution control equipment. On line 10 of page 14 is the statement that the cost savings from the use of specification used oil did not justify the investment to burn used oil, but the lower cost of off-specification used oil did make the project economically feasible.

These statements, and the statements referenced in Section 104.406(g) below, suggest that additional equipment and/or the modification of existing equipment is required for the burning of used oil, but no details about the equipment are contained in the Amended Petition.

Currently, the Grinding Plant is designed and permitted to utilize natural gas as the sole fuel for the slag drying system. If the Board makes a determination that the slag dryer is

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classified a “boiler by designation” and allowed to combust off-specification used oil fuel, Petitioner will need to make physical improvements at its South Chicago facility for the receipt of fuel shipments, on-site storage and conveyance of the used oil fuel to the slag dryer. In addition, Petitioner believes that the actual burners of the slag dryer may need to be modified such that the both natural gas and used oil fuel may be combusted in the slag dryer.

The “...investment required to burn used oil in the slag dryer” statement in the Amended Petition refers to the capital expenditures associated with design, purchase and installation of the ancillary equipment, such as tanks, pumps, piping and possibly burner reconfigurations, needed to receive, store, convey and combust the supplemental used oil fuel. Additional operation and maintenance costs are also associated with installation of the ancillary equipment to allow use of off-specification used oil as a supplemental fuel for the slag dryer. The projected capital costs associated with the proposed use of off-specification used oil fuel do not include new pollution control equipment or modifications to the existing control equipment.

The Agency’s Amended Recommendation also included a recommendation that Petitioner provide its costs of burning natural gas in the slag dryer. That cost information was not identified by IEPA as required to satisfy the substantive criteria for the Board to make a case-by-case boiler designation but only that such information “*could be useful.*”

Operating cost information for the South Chicago facility, particularly natural gas prices and contract terms, is extremely sensitive information the release of which could jeopardize Petitioner’s profitability and damage existing contractual relationships with suppliers and customers. Unless absolutely necessary to secure the relief requested from the Board, Petitioner respectfully declines to submit proprietary operating cost information and natural gas cost/pricing data at this time, because it would be fully accessible to the general public and to Petitioner’s competitors. If submittal of Petitioner’s operating costs, natural gas costs,

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contractual terms and/or natural gas pricing structure is deemed necessary for the Board's determination in these proceedings and is specifically requested by the Board, Petitioner will request that such information be maintained as confidential and protected against disclosure pursuant to Part 130 of the Board's rules [35 Ill. Admin. Code Part 130], designed for the protection of sensitive proprietary information such as trade secrets and other non-disclosable information.

III. IEPA's Requests for Clarification – Emissions of Sulfur Dioxide

In its Amended Recommendation, the Agency correctly notes that Item 7 of the Board's October 20, 2005 Order requested Petitioner to provide emission levels for all contaminants of concern under both the rule of general applicability and the proposed relief. That information was provided in the Amended Petition submitted by Petitioner on December 5, 2005, which was accepted by the Board for determination, as referenced in the Board's Order entered on December 15, 2005.

Although Petitioner has provided the information requested by the Board, the Agency raises a question about language in the Amended Petition characterizing the potential increases in sulfur dioxide emissions associated with annual combustion of 500,000 gallons/year of off-specification used oil supplemental fuel. IEPA makes the following observation:

On line 17 of page 5 of the Amended Petition, Petitioner indicates that a negligible increase in sulfur dioxide emissions is the only emissions change expected from the utilization of off-specification used oil. Then on line 5 of page 24, the statement is made that only the sulfur dioxide emission from the combustion of off-specification used oil would exceed the allowable emissions under the current Lifetime Operating Permit. The current Lifetime Operating Permit, provided in Exhibit G, indicates that the maximum annual allowable emission for sulfur dioxide is 1.23 tons/year. In Table 3 of Exhibit F, the potential

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emissions from the dryer when using off-specification used oil are 37.13 tons/year for sulfur dioxide.

These various references to sulfur dioxide emissions do not appear to be consistent and should be clarified by Petitioner.

Petitioner acknowledges that use of the term “negligible” in the introductory sections of the Petition may have caused some question about the amount of sulfur dioxide emissions that are estimated to be associated with utilizing off-specification used oil as a supplemental fuel. Use of the term “insignificant” would have been more accurate to characterize the expected emissions increase. The potential annual increase in sulfur dioxide emissions associated with combusting 500,000 gallons of supplemental off-specification used oil fuel, the maximum amount of supplemental used oil fuel anticipated by Petitioner, would not be “significant” as that term is used and applied in the Board’s air permitting regulations, e.g. see 35 Ill. Admin. Code Part 203.

Exhibit F to the Amended Petition provides calculations of the emissions of all contaminants of concern identified in the Board’s October 20th Order, specifically PM, SO₂, CO, VOM, and NO_x, that would result from the combustion of up to 500,000 gallons/year of off-specification used oil as supplemental dryer fuel. Exhibit F also includes calculations of the emissions of the same air contaminants, specifically PM, SO₂, CO, VOM, and NO_x, that result from the combustion of natural gas in the slag dryer under current facility operations.

Petitioner reaffirms the accuracy of the emissions estimates set forth in Exhibit F of the Amended Petition. As demonstrated by Exhibit F and the supporting calculations, there will be no “significant” increase in emissions of sulfur dioxide resulting from combustion of up to 500,000 gallons/year of off-specification used oil as supplemental dryer fuel. All air emissions associated with combustion of off-specification used oil fuel would be less than the allowable

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emissions under the current Lifetime Operating Permit for the South Chicago facility, with the exception of sulfur dioxide.

As acknowledged in the original and Amended Petitions, utilization of off-specification used oil fuel in the slag drying system must be reviewed and approved by the IEPA air permitting officials, with issuance of a Construction Permit prior to proceeding with the proposed project and modifications to the existing Lifetime Operating Permit. The permitting process would ensure that all emissions associated with combustion of off-specification used oil fuel would be in full compliance with all applicable regulatory requirements and environmental standards.

WHEREFORE, Petitioner requests a determination from the Illinois Pollution Control Board that the slag dryer operated at the South Chicago Slag Grinding Plant satisfies the criteria set forth in Section 720.132; is a "Boiler by designation" within the meaning of 35 Ill. Adm. Code 720.110; and may utilize off-specification used oil for energy recovery, in compliance with Section 739.161 of the Board's regulations (35 Ill. Adm. Code 739.161).

Respectfully submitted,

LAFARGE MIDWEST, INC., Petitioner

By:



Jon S. Faletto, Attorney for Petitioner

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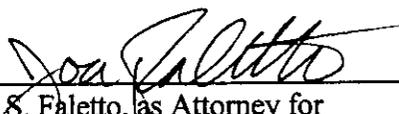
CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached *Petitioner's Response to Illinois EPA Amended Recommendation* upon the person or agency to whom it is directed, by placing it in an envelope addressed to:

Illinois Pollution Control Board
Attn: Dorothy M. Gunn, Clerk
100 West Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, IL 60601-3218

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

and mailing it via First Class U.S. Mail from Peoria, Illinois, on this 26th day of January 2006, with sufficient postage affixed thereto.



Jon S. Faletto, as Attorney for
Petitioner Lafarge Midwest, Inc.

Jon S. Faletto
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211 Fulton Street
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