

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No.
	)	(Enforcement - Air)
	)	
BEHR ALUMINUM, INC., an Illinois	)	
Corporation,	)	
	)	
Respondent.	)	

**NOTICE OF FILING**  
(VIA ELECTRONIC FILING)

TO: See attached service list

PLEASE TAKE NOTICE that today, September 5, 2008, I have electronically filed with the Office of the Clerk of the Pollution Control Board a Complaint for Civil Penalties, a copy of which is attached and hereby served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,  
*ex rel.* LISA MADIGAN, Attorney General  
of the State of Illinois

BY:   
 LORREN NICHOLE CUNNINGHAM  
 Assistant Attorney General  
 Environmental Bureau  
 69 W. Washington St., 18<sup>th</sup> Flr.  
 Chicago, Illinois 60602  
 (312) 814-3532

**SERVICE LIST**

Mr. Bradley P. Halloran, Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph, Suite 11-500  
Chicago, IL 60601

Jon S. Faletto  
Hinshaw & Culbertson LLP  
416 Main Street - 6th Floor  
Peoria, IL 61602

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
<i>ex rel.</i> LISA MADIGAN, Attorney General	)	
of the State of Illinois,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No.
	)	(Enforcement – Air)
BEHR ALUMINUM, INC., an Illinois	)	
Corporation,	)	
	)	
Respondent.	)	

**COMPLAINT FOR CIVIL PENALTIES**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency, complains of Respondent, BEHR ALUMINUM, INC., an Illinois corporation, as follows:

**COUNT I**

**AIR POLLUTION IN VIOLATION OF POLLUTION CONTROL BOARD EMISSION STANDARDS**

1. This Complaint is brought on behalf of the People of the State of Illinois *ex rel.* Lisa Madigan, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency (“Illinois EPA”) pursuant to Section 31 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31 (2006).

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2006), and charged, *inter alia*, with the duty of enforcing the Act.

3. Respondent, BEHR ALUMINUM, INC. ("Behr Aluminum"), is an Illinois corporation in good standing.

4. At all times relevant to the Complaint, Behr Aluminum was a secondary aluminum smelting facility located at 1100 Seminary Drive, Rockford, Illinois 61104 ("Facility"). Behr Aluminum manufactured aluminum alloy ingots for use by various commercial and industrial die cast manufacturing facilities.

5. Emission sources and air pollution control equipment operated at the Behr Aluminum Facility included one aluminum reverberatory furnace with baghouse, one scrap crushing hammermill ("hammermill"), and an aluminum and steel turnings dryer ("rotary dryer") controlled by a cyclone, afterburner, spray chamber and baghouse.

6. The hammermill was a source of particulate matter ("PM"), and the rotary dryer was a source of PM, dioxin and furan ("D/F") emissions.

7. On September 28, 2001, the Illinois EPA issued revised Lifetime Operating Permit Number 72120576 ("September 2001 Permit") to Behr Metals, Inc., now known as ("n/k/a") Behr Aluminum. The September 2001 Permit contained PM emission limits for the operation of the rotary dryer and hammermill with the baghouse in bypass.

8. On August 13, 2002, the Illinois EPA issued another revision of Lifetime Operating Permit Number 72120576 ("August 2002 Permit") to Behr Metals, Inc., n/k/a Behr Aluminum. The August 2002 Permit contained the same PM emission limits for the rotary dryer and hammermill as the September 2001 Permit.

9. On September 6, 2002, the Illinois EPA inspected the Facility ("September 2002 Inspection"). During the inspection, Respondent operated one rotary

dryer with the baghouse in bypass, i.e. without utilizing a baghouse to control PM emissions.

10. On September 13, 2002, Behr Aluminum informed the Illinois EPA by electronic mail that the Facility had operated its rotary dryer with the baghouse in bypass since September 2001.

11. On September 14-15, 2004, Behr Aluminum conducted stack testing to determine the quantity of PM emissions generated during operation of the rotary dryer with the baghouse in bypass ("September 2004 Stack Test"). The September 2004 Stack Test showed that operation of the rotary dryer without the baghouse resulted in potential maximum PM emissions of 89.32 lb/hr.

12. On August 24, 2007, or on a date better known to Respondent, Behr Aluminum ceased secondary aluminum production at the Facility and, therefore, ceased to operate the rotary dryer.

13. Section 3.315 of the Act, 415 ILCS 5/3.315 (2006), provides the following definition:

"Person" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, associate, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

14. Behr Aluminum, a corporation, is a "person," as that term is defined in Section 3.315 of the Act.

15. Section 3.165 of the Act, 415 ILCS 5/3.165 (2006), contains the following definition:

"Contaminant" is any solid, liquid, gaseous matter, any odor, or any form of energy, from whatever source.

16. PM is a "contaminant" as that term is defined in Section 3.165 of the Act.

17. Section 3.115 of the Act, 415 ILCS 5/3.115 (2006), provides the following definition:

"Air Pollution" is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

18. Section 9(a) of the Act, 415 ILCS 5/9(a) (2006), provide the following:

No person shall:

(a) Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act;

19. Section 201.141 of the Illinois Pollution Control Board's ("Board") Air Pollution Regulations, 35 Ill. Adm. Code 201.141 (2006), provides as follows:

No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution in Illinois, or so as to violate the provisions of this Chapter, or so as to prevent the attainment or maintenance of any applicable ambient air quality standard.

20. The rotary dryer at the Behr Aluminum Facility causes or threatens the emission of PM so as to cause or tend to cause air pollution in Illinois.

21. Section 212.321 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 212.321, provides, in part, as follows:

Process Emission Units For Which Construction or Modification  
Commenced On or After April 14, 1972

(a) Except as further provided in this Part, no person shall cause or allow the emission of particulate matter into the atmosphere in any one hour period from any new process emission unit which, either alone or in combination with the emission of particulate matter from all other similar process emission units for which construction or modification commenced on or after April 14, 1972, at a source or premises, exceeds the allowable emission rates specified in subsection (c) of this Section.

(b) Interpolated and extrapolated values of the data in subsection (c) of this Section shall be determined by using the equation:

$$E = A(P)^B$$

where

P = Process weight rate; and

E = Allowable emission rate; and,

(1) Up to process weight rates of 408 MG/hr  
(450 T/hr):

**English**

<b>P</b>	T/hr
<b>E</b>	lbs/hr
<b>A</b>	2.54
<b>B</b>	0.534

(2) For process weight rate greater than or equal  
to 408 Mg/hr (450 T/hr):

**English**

<b>P</b>	T/hr
<b>E</b>	lbs/hr
<b>A</b>	24.8
<b>B</b>	0.16

(c) Limits for Process Emission Units For Which Construction or Modification Commenced On or After April 14,1972

**English**

	P T/hr		E lbs/hr
*		*	*
	4.00		5.35
	5.00		6.00
	10.00		8.70
*		*	*

where:

P = Process weight rate in metric or T/hr, and  
E = Allowable emission rate in kg/hr or lbs/hr.

22. Based upon the weight of scrap material charged into the rotary dryer during the September 2004 Stack Test, the maximum allowable PM emission rate during operation of Respondent's rotary dryer is 6.01 lb/hr.

23. Upon information and belief, based on test data resulting from the September 2004 Stack Test, Behr Aluminum's operation of its rotary dryer without the baghouse from September 2001 to August 2007 caused PM emissions in excess of the regulatory limit of 6.01 lb/hr prescribed by Section 212.321 of the Board's Air Pollution Regulations.

24. By causing or allowing PM emissions into the atmosphere in excess of the allowable emission rate, Behr Aluminum violated Section 9(a) of the Act and Sections 201.141 and 212.321 of the Board's Air Pollution Regulations.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, BEHR ALUMINUM, INC., for the following relief:

1. Authorize a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated Section 9(a) of the Act and Sections 201.141 and 212.321 of the Board's Air Pollution Regulations;
3. Ordering Respondent to cease and desist from any further violations of Section 9(a) of the Act and Sections 201.141 and 212.321 of the Board's Air Pollution Regulations;
4. Assessing civil penalties pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2006), of Fifty Thousand Dollars (\$50,000.00) against Respondent for each violation and Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Assessing all costs against Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), including expert witness, consultant and attorney's fees; and
6. Granting such other relief as this Board deems appropriate.

**COUNT II**

**DISCHARGE OF CONTAMINANTS IN VIOLATION OF PERMIT**

1-16. Complainant realleges and incorporates by reference herein paragraphs 1 through 16 of Count I as paragraphs 1 through 16 of this Count II.

17. Section 9(b) of the Act, 415 ILCS 5/9(b) (2006), provides the following:

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 Agency, or in violation of any conditions imposed by such permit.

18. Special Condition 2(a) of Respondent's September 2001 Permit provides, in pertinent part, as follows:

2a. Emissions and operation of equipment shall not exceed the following limits:

<i>Equipment</i>	<i>Condition</i>	Throughput		Emission Factor	Control	PM Emissions	
		<u>(T/Hr)</u>	<u>(T/Yr)</u>	<u>(Lb/Ton)</u>	<u>(%)</u>	<u>(Lb/Hr)</u>	<u>(T/Yr)</u>
Rotary Dryer (Unpainted Scrap)	Bypass	6	21,000	14.5	97	2.61	4.57
	*	*	*	*			

\*\* Bypass means that the exhaust can bypass the Main Baghouse

19. Special Condition 3(a) of Respondent's August 2002 Permit provides as follows:

3a. Emissions and operation of equipment shall not exceed the following limits:

<i>Equipment</i>	<i>Condition</i>	Throughput		Emission Factor	Control	PM Emissions	
		<u>(T/Hr)</u>	<u>(T/Yr)</u>	<u>(Lb/Ton)</u>	<u>(%)</u>	<u>(Lb/Hr)</u>	<u>(T/Yr)</u>
Rotary Dryer (Unpainted Scrap)	Bypass	6	21,000	14.5	97	2.61	4.57
	*	*	*	*			

\*\* Bypass means that the exhaust can bypass the Main Baghouse

20. During the September 2004 Stack Test at the Facility, potential maximum PM emissions from the rotary dryer were 89.32 lb/hr when the baghouse was in bypass.

21. By operating the rotary dryer without utilizing the baghouse from September 2001 to August 2007, or on dates better known to Respondent, Behr

Aluminum operated the rotary dryer in violation of the 2.61 lb/hr limit contained in the special conditions of its operating permit.

22. By failing to operate within the conditions imposed by its permit, Respondent violated Section 9(b) of the Act, Special Permit Condition 2(a) of Respondent's September 2001 Permit and Special Permit Condition 3(a) of the August 2002 Permit.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, BEHR ALUMINUM, INC., for the following relief:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated Section 9(b) of the Act, Special Permit Condition 2(a) of Respondent's September 2001 Permit and Special Permit Condition 3(a) of the August 2002 Permit;
3. Ordering Respondent to cease and desist from any further violations of Section 9(b) of the Act, Special Permit Condition 2(a) of Respondent's September 2001 Permit and Special Permit Condition 3(a) of the August 2002 Permit;
4. Assessing civil penalties pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2006), of Fifty Thousand Dollars (\$50,000.00) against Respondent for each violation and Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Assessing all costs against Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), including expert witness, consultant and attorney's fees; and

6. Granting such other relief as the Board deems appropriate.

**COUNT III**

**FAILURE TO TIMELY CONDUCT EMISSIONS TESTING**

1-16. Complainant realleges and incorporates by reference herein paragraphs 1 through 16 of Count I as paragraphs 1 through 16 of this Count III.

17. On November 24, 2000, Behr Aluminum submitted to the Illinois EPA a permit application to revise Lifetime Operating Permit Number 72120576 to allow Behr Aluminum to bypass the baghouse when utilizing its rotary dryer and hammermill for processing clean, unpainted aluminum chips.

18. On February 28, 2001, the Illinois EPA reissued Lifetime Operating Permit Number 72120576 ("February 2001 Permit") to Behr Aluminum, directing the Respondent to conduct PM emissions testing within 180 days, to demonstrate that PM emissions generated during rotary dryer and hammermill operations with the baghouse in bypass would be in compliance with PM emission limits specified by the permit. The PM emission testing was to be done while processing clean, unpainted aluminum scrap.

19. On September 13, 2001, Behr Aluminum requested an additional 90 days in which to conduct stack testing.

20. On September 28, 2001, the Illinois EPA issued Behr Aluminum's September 2001 Permit directing the Respondent to conduct stack testing during operation of the rotary dryer and hammermill within 90 days.

21. On February 27, 2002, Behr Aluminum requested an additional 90 days to conduct stack testing.

22. On March 1, 2002, the Illinois EPA issued a Violation Notice ("VN") to

Behr Aluminum for, among other things, Respondent's failure to conduct the required stack testing.

23. On August 13, 2002, the Illinois EPA reissued Behr Aluminum's Lifetime Operating Permit Number 72120576 ("August 2002 Permit") directing Behr Aluminum to conduct stack testing within 90 days during operation of the rotary dryer and hammermill.

24. On December 16, 2002, the Illinois EPA issued a second VN to Behr Aluminum for, among other things, failure to conduct stack testing.

25. On March 21, 2003, Behr Aluminum conducted PM emissions testing at the Facility ("March 2003 Stack Test").

26. On July 23, 2003, Respondent submitted to the Illinois EPA data resulting from the March 2003 Stack Test.

27. On October 10, 2003, the Illinois EPA determined that the data submitted from the March 2003 Stack Test did not accurately document the type of material processed and the method utilized to perform weight measurement determinations by Behr Aluminum during testing.

28. On January 3, 2004, the Respondent discovered that one of the three test runs from the March 2003 Stack Test was invalid because it did not fall within acceptable isokinetic variation criteria.

29. Section 9(b) of the Act, 415 ILCS 5/9(b) (2006), provide the following:

No person shall:

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

Agency, or in violation of any conditions imposed by such permit.

30. Special Condition number 5(a) of Respondent's September 2001 Permit

provides as follows:

Within 90 days of receipt of this permit, the emissions of particulate matter from the afterburner and cyclone shall be measured during conditions which are representative of maximum emissions when processing unpainted or clean aluminum scrap with the main baghouse in bypass.

31. Respondent did not measure PM emissions during the 90 days following the issuance of the September 2001 Permit.

32. Special Condition number 6(a) of Respondent's August 2002 Permit

provides as follows:

Within 90 days of the issuance date of this permit, the emissions of particulate matter from the afterburner and cyclone shall be measured during conditions which are representative of maximum emissions when processing unpainted or clean aluminum scrap with the main baghouse in bypass.

33. Respondent did not measure PM emissions during the 90 days following the issuance of the August 2002 Permit.

34. By failing to timely test PM emissions from the rotary dryer and hammermill, Respondent violated Section 9(b) of the Act, Special Condition number 5(a) of its September 2001 Permit and Special Condition number 6(a) of its August 2002 Permit.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, BEHR ALUMINUM, INC., for the following relief:

1. Authorizing a hearing in this matter at which time Respondent will be

required to answer the allegations herein;

2. Finding that Respondent violated Section 9(b) of the Act, Special Condition number 5(a) of the September 2001 Permit and Special Condition number 6(a) of its August 2002 Permit;

3. Ordering Respondent to cease and desist from any further violations of Section 9(b) of the Act;

4. Assessing civil penalties pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2006), of Fifty Thousand Dollars (\$50,000.00) against Respondent for each violation and Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Assessing all costs against Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), including expert witness, consultant and attorney's fees; and

6. Granting such other relief as the Board deems appropriate.

**COUNT IV**

**FAILURE TO UTILIZE POLLUTION CONTROL EQUIPMENT**

1-33. Complainant realleges and incorporates by reference herein paragraphs 1 through 33 of Count III as paragraphs 1 through 33 of this Count IV.

34. In Respondent's February 2001 Permit, September 2001 Permit and August 2002 Permit, which are all revisions of Behr Aluminum's Lifetime Operating Permit number 72120576, the Illinois EPA allowed operation of one hammermill and one rotary dryer without utilizing one baghouse only for the limited purpose of conducting stack testing.

35. Since at least September 2001 to August 2007, on dates better known to

Respondent, Behr Aluminum operated the rotary dryer without the baghouse at times other than for the performance of stack testing.

36. Special Condition 2(b) of Respondent's September 2001 Permit provides as follows:

This permit allows the Permittee to bypass the baghouse while processing clear or unpainted aluminum scrap in the hammermill and rotary dryer only for the purpose of stack testing for a period of 90 days as specified in Special Condition 5(a).

37. Special Condition 3(b) of Respondent's August 2002 Permit provides as follows (emphasis in original):

This permit allows the Permittee to bypass the baghouse while processing clear or unpainted aluminum scrap in the hammermill and rotary dryer only for the purpose of stack testing for a period of 90 days as specified in Special Condition 6(a).

38. By operating the hammermill and rotary dryer without the baghouse for purposes other than stack testing and outside of the time period allowed by Lifetime Operating Permit number 72120576, Behr Aluminum violated Section 9(b) of the Act, Special Condition 2(b) of its September 2001 Permit, and Special Condition 3(b) of its August 2002 Permit.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, BEHR ALUMINUM, INC., for the following relief:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;

2. Finding that Respondent violated Section 9(b) of the Act, Special Condition 2(b) of its September 2001 Permit, and Special Condition 3(b) of its August

2002 Permit;

3. Ordering Respondent to cease and desist from any further violations of Section 9(b) of the Act, Special Condition 2(b) of its September 2001 Permit, and Special Condition 3(b) of its August 2002 Permit;

4. Assessing civil penalties pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2006), of Fifty Thousand Dollars (\$50,000.00) against Respondent for each violation and Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Assessing all costs against Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), including expert witness, consultant and attorney's fees; and

6. Granting such other relief as the Board deems appropriate.

#### COUNT V

#### FAILURE TO OBTAIN CONSTRUCTION PERMIT

1-37. Complainant realleges and incorporates by reference herein paragraphs 1 through 37 of Count IV as paragraphs 1 through 37 of this Count V.

38. Section 201.102 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.102 (2006), provides the following definitions:

"Person": any individual, corporation, partnership, firm, association, trust estate, public or private institution, group, agency, political subdivision of this State, any other State or political subdivision or agency thereof or any legal successor, representative, agent or agency of the foregoing.

"Specified Air Contaminant": any air contaminant as to which this Subtitle contains emissions standards or other specific limitations and any contaminant regulated in Illinois pursuant to Section 9.1 of the Act.

"Emission Source": any equipment or facility of a type capable of

emitting specified air contaminants to the atmosphere.

“Air Pollution Control Equipment”: any equipment or facility of a type intended to eliminate, prevent, reduce or control the emission of specified air contaminants to the atmosphere.

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

39. Behr Aluminum is a “person,” as defined by Section 201.102 of the Board’s Air Pollution Regulations.
40. PM is “specified air contaminant,” as defined by Section 201.102 of the Board’s Air Pollution Regulations.
41. The rotary dryer and hammermill at Respondent’s Facility are each an “emission source,” as that term is defined by Section 201.102 of the Board’s Air Pollution Regulations.
42. The baghouse located at the Facility is “air pollution control equipment,” as that term is defined by Section 201.102 of the Board’s Air Pollution Regulations.
43. Behr Aluminum’s disconnection of the rotary dryer from the baghouse was a “modification,” as that term is defined in the Board’s Air Pollution Regulations,

because it caused a change in the method of operation of emission sources and air pollution control equipment that increased the amount of an air contaminant.

44. Section 201.142 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.142 (2006), provides the following:

Construction Permit Required

No person shall cause or allow the construction of any new emission source or any new air pollution control equipment, or cause or allow the modification of any existing emission source or air pollution control equipment, without first obtaining a construction permit from the Agency, except as provided in Sections 201.146 or Section 201.170(b) of this Part.

45. By failing to obtain a construction permit from the Illinois EPA prior to modifying its emissions sources by disconnecting the rotary dryer from the baghouse in September 2001 and causing PM emissions in excess of permitted PM emission limits, Behr Aluminum violated Section 9(b) of the Act and Section 201.142 of the Board's Air Pollution Regulations.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, BEHR ALUMINUM, INC., for the following relief:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated Section 9(b) of the Act and Section 201.142 of the Board's Air Pollution Regulations;
3. Ordering Respondent to cease and desist from any further violations of Section 9(b) of the Act and Section 201.142 of the Board's Air Pollution Regulations;
4. Assessing civil penalties pursuant to Section 42(a) of the Act, 415 ILCS

5/42(a) (2006), of Fifty Thousand Dollars (\$50,000.00) against Respondent for each violation and Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Assessing all costs against Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), including expert witness, consultant and attorney's fees; and
6. Granting such other relief as the Board deems appropriate.

**COUNT VI**

**FAILURE TO MAINTAIN RECORDS**

1-16. Complainant realleges and incorporates by reference herein paragraphs 1 through 16 of Count I as paragraphs 1 through 16 of this Count VI.

17. Sections 9(b) of the Act, 415 ILCS 5/9(b) (2006), provide the following:

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 Agency, or in violation of any conditions imposed by such permit.

18. Special Condition 9 of Respondent's September 2001 Permit provides, in pertinent part, as follows:

The Permittee shall maintain the records of the following items:

(a) Daily records of the amount of aluminum scrap in each individual batch processed in the dryer and hammermill (tons/day, tons/month and tons/year);

\* \* \*

(c) Daily records of whether the baghouse was in bypass or not in bypass for each individual batch processed in the dryer and hammermill; [and]

\* \* \*

(g) Calculations of PM emissions (tons/month and tons/year).

19. Special Condition 10 of Respondent's August 2002 Permit provides, in pertinent part, as follows:

The Permittee shall maintain the records of the following items:

(a) Daily records of the amount of aluminum scrap in each individual batch processed in the dryer and hammermill (tons/day, tons/month and tons/year);

\* \* \*

(c) Daily records of whether the baghouse was in bypass or not in bypass for each individual batch processed in the dryer and hammermill; [and]

\* \* \*

(g) Calculations of PM emissions (tons/month and tons/year).

20. Since at least September 2002 to August 2007, or on dates better known to Respondent, Behr Aluminum failed to keep an accurate record setting forth when the baghouse was bypassed and calculations of monthly PM emissions and failed to maintain accurate daily and monthly records of the emissions from its hammermill.

21. By failing to maintain records required by the September 2001 Permit and the August 2002 Permit, Behr Aluminum violated Section 9(b) of the Act, Special Conditions 9(a), (c) and (g) of the September 2001 Permit, and Special Conditions 10(a), (c) and (g) of the August 2002 Permit.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against

Respondent, BEHR ALUMINUM, INC., for the following relief:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated Section 9(b) of the Act, Special Conditions 9(a), (c) and (g) of the September 2001 Permit, and Special Conditions 10(a), (c) and (g) of the August 2002 Permit;
3. Ordering Respondent to cease and desist from any further violations of Section 9(b) of the Act, Special Conditions 9(a), (c) and (g) of the September 2001 Permit, and Special Conditions 10(a), (c) and (g) of the August 2002 Permit;
4. Assessing civil penalties pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2006), of Fifty Thousand Dollars (\$50,000.00) against Respondent for each violation and Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Assessing all costs against Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), including expert witness, consultant and attorney's fees; and
6. Granting such other relief as the Board deems appropriate.

**COUNT VII**

**FAILURE TO TIMELY DEMONSTRATE COMPLIANCE WITH NESHP**

1-17. Complainant realleges and incorporates by reference herein paragraphs 1 through 13 of Count I and paragraphs 24 through 27 of Count III as paragraphs 1 through 17 of this Count VII.

18. From at least February 1999 to August 2007, Respondent operated a secondary aluminum production facility.

19. On March 23, 2000, the U.S. EPA promulgated National Emissions Standards for Hazardous Air Pollutants ("NESHAP") for new and existing sources at secondary aluminum production facilities, 40 C.F.R. Part 63, Subpart RRR, (hereinafter, "NESHAP for secondary aluminum production") requiring that secondary aluminum production facilities meet emission standards reflecting the application of maximum achievable control technology ("MACT").

20. On June 28, 2004, the Illinois EPA received from Behr Aluminum a site-specific test plan to facilitate performance testing pursuant to the NESHAP for secondary aluminum production.

21. Respondent's September 2004 Stack Test included dioxin/furan testing pursuant to the NESHAP for secondary aluminum production.

22. Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d) (2006), provides as follows:

(d) No person shall:

(1) violate any provisions of Sections 111, 112, 165 or 173 of the Clean Air Act, as now or hereafter amended, or federal regulations adopted thereto;

23. The NESHAP for secondary aluminum production was promulgated pursuant to Section 112 of the federal Clean Air Act ("CAA"), 42 U.S.C. § 7412,

24. Section 63.1503 of the NESHAP for secondary aluminum production, 40 C.F.R. § 63.1503, provides the following definitions:

*Dioxins and furans* means tetra-, penta-, hexa-, and octachlorinated dibenzo dioxins and furans.

*Secondary aluminum production facility* means any establishment using clean charge, aluminum scrap, or dross from aluminum production, as the raw material and performing one or more of the

following processes: scrap shredding, scrap drying/ delacquering/ decoating, thermal chip drying, . . . .

*Aluminum scrap shredder* means a unit that crushes, grinds, or breaks aluminum scrap into a more uniform size prior to processing or charging to a scrap dryer/delacquering kiln/decoating kiln, or furnace. A bale breaker is not an aluminum scrap shredder.

*Thermal chip dryer* means a device that uses heat to evaporate oil or oil/water mixtures from unpainted/uncoated aluminum chips. Pre-heating boxes or other dryers which are used solely to remove water from aluminum scrap are not considered to be thermal chip dryers for purposes of this subpart.

25. Section 63.2 of the NESHAP for secondary aluminum production, 40

C.F.R. § 63.2, provides the following definitions:

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

*Stationary source* means any building, structure, facility, or installation which emits or may emit any air pollutant.

*Hazardous air pollutant* means any air pollutant listed in or pursuant to section 112(b) of the Act.

*Area source* means any stationary source of hazardous air pollutants that is not a major source as defined in this part.

*Major source* means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless the Administrator establishes a lesser quantity, or in the case of radionuclides, different criteria from those specified in this sentence.

*Existing source* means any affected source that is not a new source.

*New source* means any affected source the construction or reconstruction of which is commenced after the Administrator first proposes a relevant emission standard under this part establishing an emission standard applicable to such source.

*Affected source*, for the purposes of this part, means the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a section 112(c) source category or subcategory for which a section 112(d) standard or other relevant standard is established pursuant to section 112 of the Act. . . .

26. Section 63.1500 of the NESHAP for secondary aluminum production, 40

C.F.R. § 63.1500, provides, in pertinent part, as follows:

(a) The requirements of this subpart apply to the owner or operator of each secondary aluminum production facility as defined in § 63.1503.

\* \* \*

(c) The requirements of this subpart pertaining to dioxin and furan (D/F) emissions and associated operating, monitoring, reporting and recordkeeping requirements apply to the following affected sources, located at a secondary aluminum production facility that is an area source of HAPs as defined in § 63.2:

(1) Each new and existing thermal chip dryer;

27. At all times relevant to the Complaint, Behr Aluminum was the “owner or operator” of a “secondary aluminum production facility” that utilized a thermal chip dryer and aluminum scrap shredder.

28. Respondent’s thermal chip dryer and aluminum scrap shredder emitted dioxins and furans (“D/F”).

29. D/F is a hazardous air pollutant (“HAP”).

30. As a facility emitting less than 10 tons per year of D/F, the Facility was an “area source” of HAPs.

31. Because a thermal chip dryer was operated at the Facility, which was a secondary aluminum production facility that was an area source of HAPs, it was an “affected source.”

32. Because the Facility was in operation before U.S. EPA promulgated the NESHAP for secondary aluminum production, Behr Aluminum was an "existing affected source."

33. Section 63.1511(a) and (b) of the NESHAP for secondary aluminum production, 40 C.F.R. § 63.1511(a) and (b), provides as follows:

(a) Site-specific test plan. Prior to conducting any performance test required by this subpart, the owner or operator must prepare a site-specific test plan which satisfies all of the requirements, and must obtain approval of the plan pursuant to the procedures, set forth in § 63.7(c).

(b) Initial performance test. Following approval of the site-specific test plan, the owner or operator must demonstrate initial compliance with each applicable emission, equipment, work practice, or operational standard for each affected source and emission unit, and report the results in the notification of compliance status report as described in § 63.1515(b). The owner or operator of any existing affected source for which an initial performance test is required to demonstrate compliance must conduct this initial performance test no later than the date for compliance established by § 63.1501(a). The owner or operator of any new affected source for which an initial performance test is required must conduct this initial performance test within 90 days after the date for compliance established by § 63.1501(b). Except for the date by which the performance test must be conducted, the owner or operator must conduct each performance test in accordance with the requirements and procedures set forth in § 63.7(c). Owners or operators of affected sources located at facilities which are area sources are subject only to those performance testing requirements pertaining to D/F. Owners or operators of sweat furnaces meeting the specifications of § 63.1505(f)(1) are not required to conduct a performance test.

34. Section 63.1501(a) of the NESHAP for secondary aluminum production, 40 C.F.R. § 63.1501(a), provides as follows:

The owner or operator of an existing affected source must comply with the requirements of this subpart by March 24, 2003.

35. By failing to submit a site-specific test plan to the Illinois EPA and to conduct initial performance by the deadlines established in Sections 63.1511(a) and (b) and 63.1501(a) of the NESHAP, Behr Aluminum violated Section 9.1(d)(1) of the Act and Sections 63.1511(a) and (b) and 63.1501(a) of the NESHAP for secondary aluminum production.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, BEHR ALUMINUM, INC., for the following relief:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated Section 9.1(d)(1) of the Act and Sections 63.1511(a) and (b) and 63.1501(a) of the NESHAP for secondary aluminum production;
3. Ordering Respondent to cease and desist from any further violations of Section 9.1(d)(1) of the Act and Sections 63.1511(a) and (b) and 63.1501(a) of the NESHAP for secondary aluminum production;
4. Assessing civil penalties pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2006), of Fifty Thousand Dollars (\$50,000.00) against Respondent for each violation and Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Assessing all costs against Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), including expert witness, consultant and attorney's fees; and
6. Granting such other relief as the Board deems appropriate.

COUNT VIII

**FAILURE TO TIMELY SUBMIT NOTICE OF COMPLIANCE WITH NESHAP**

1-30. Complainant realleges and incorporates by reference herein paragraphs 1 through 30 of Count VII as paragraphs 1 through 30 of this Count VIII.

31. On September 24, 2003, the Illinois EPA received from Behr Aluminum a compliance status report that was based on the March 2003 Stack Test, which was invalid, and that failed to contain all information specified in the NESHAP for secondary aluminum production.

32. The Respondent did not submit to the Illinois EPA a compliance status report meeting the requirements of the NESHAP for secondary aluminum production.

33. Section 63.1515(b) of the NESHAP for secondary aluminum production, 40 C.F.R. § 63.1515(b), provides as follows:

(b) Notification of compliance status report. Each owner or operator of an existing affected source must submit a notification of compliance status report within 60 days after the compliance date established by § 63.1501(a). Each owner or operator of a new affected source must submit a notification of compliance status report within 90 days after conducting the initial performance test required by § 63.1511(b), or within 90 days after the compliance date established by § 63.1501(b) if no initial performance test is required. The notification must be signed by the responsible official who must certify its accuracy. A complete notification of compliance status report must include the information specified in paragraphs (a)(1) through (10) of this section. The required information may be submitted in an operating permit application, in an amendment to an operating permit application, in a separate submittal, or in any combination. In a State with an approved operating permit program where delegation of authority under section 112(l) of the CAA has not been requested or approved, the owner or operator must provide duplicate notification to the applicable Regional Administrator. If an owner or operator submits the information specified in this section at different times or in different submittals, later submittals may refer to earlier submittals instead of duplicating and resubmitting the information previously

submitted. A complete notification of compliance status report must include . . . .

34. By failing to timely submit a complete and accurate notification of compliance status report by May 23, 2003, as required by the NESHAP for secondary aluminum production, Behr Aluminum violated Section 9.1(d)(1) of the Act and Section 63.1515(b) of the NESHAP for secondary aluminum production.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, BEHR ALUMINUM, INC., for the following relief:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated Section 9.1(d)(1) of the Act and Section 63.1515(b) of the NESHAP for secondary aluminum production;
3. Ordering Respondent to cease and desist from any further violations of Section 9.1(d)(1) of the Act and Section 63.1515(b) of the NESHAP for secondary aluminum production;
4. Assessing civil penalties pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2006), of Fifty Thousand Dollars (\$50,000.00) against Respondent for each violation and Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Assessing all costs against Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), including expert witness, consultant and attorney's fees; and
6. Granting such other relief as the Board deems appropriate.

COUNT IX

**FAILURE TO COMPLY WITH PSD REQUIREMENTS**

1-21. Complainant realleges and incorporates by reference herein paragraphs 1 through 21 of Count I as paragraphs 1 through 21 of this Count IX.

22. Based upon the September 2004 Stack Test, the Facility had a potential to emit ("PTE") approximately 391 tons per year ("tpy") of PM when the rotary dryer was operated without the baghouse.

23. Sections 9.1(d)(1) and (2) of the Act, 415 ILCS 5/9.1(d)(1) and (2) (2006), provide as follows:

(d) No person shall:

(1) violate any provisions of Sections 111, 112, 165 or 173 of the Clean Air Act, as now or hereafter amended, or federal regulations adopted thereto; or

(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 without a permit granted by the Agency or 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.

24. Section 165 of the Clean Air Act ("CAA") contains the preconstruction requirements for sources subject to Part C of the CAA. Part C of the CAA establishes a scheme for the Prevention of Significant Deterioration of Air Quality.

25. Pursuant to Section 161 of the CAA, 42 U.S.C.A. § 7471, Part C applies to sources that are located in areas designated by the Governor of a State as attainment or

unclassifiable in accordance with Section 107 of the CAA, 42 U.S.C.A. § 7407.

26. The Governor of the State of Illinois has designated Winnebago County, the area in which the Respondent's Facility was located, as an attainment area for PM.

27. Sections 165(a)(1) and (4) of the Clean Air Act, 42 U.S.C.S. § 7475(a)(1) and (4), provide as follows:

No major emitting facility on which construction is commenced after August 7, 1977, may be constructed in any area to which this part applies unless –

(1) a permit has been issued for such proposed facility in accordance with this part setting forth emission limitations for such facility which conform to the requirements of this part; [and]

\* \* \*

(4) the proposed facility is subject to the best available control technology for each pollutant subject to regulation under this chapter emitted from, or which results from, such facility;

28. On June 19, 1978, the Administrator of the U.S. EPA promulgated Prevention of Significant Deterioration ("PSD") regulations pursuant to Part C of the CAA. These regulations were codified at 40 CFR §52.21 (hereinafter, "PSD Regulations").

29. Section 52.21(a)(2) of the PSD Regulations, 40 C.F.R. § 52.21(a)(2), provides, in pertinent part, as follows:

(2) Applicability procedures.

(i) The requirements of this section apply to the construction of any new major stationary source (as defined in paragraph (b)(1) of this section) or any project at an existing major stationary source in an area designated as attainment or unclassifiable under sections 107(d)(1)(A)(ii) or (iii) of the Act.

(ii) The requirements of paragraphs (j) through (r) of this section apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this section otherwise provides.

(iii) No new major stationary source or major modification to which the requirements of paragraphs (j) through (r)(5) of this section apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements. The Administrator has authority to issue any such permit.

30. Section 52.21(b) of the PSD Regulations, 40 C.F.R. § 52.21(b) provides the following definitions:

(1)(i) *Major Stationary Source* means:

(a) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Act: . . . , secondary metal production plants . . . ;

\* \* \*

(c) Any physical change that would occur at a stationary source not otherwise qualifying under paragraph (b)(1) of this section, as a major stationary source, if the changes would constitute a major stationary source by itself.

\* \* \*

(5) *Stationary Source* means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

\* \* \*

(8) *Construction* means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

\* \* \*

(11) *Begin actual construction* means, in general, initiation of physical onsite construction activities on an emissions unit which

are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(12) *Best Available Control Technology* means an emissions limitation (including a visible emission standard) based upon the maximum degree of reduction for each pollutant subject to regulation under the Act which would be emitted from any proposed major stationary source or major modification which the Administrator, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. . . .

31. Section 52.21(j)(1) & (2) of the PSD Regulations, 40 C.F.R. §52.21(j)(1) & (2), provides:

*Control technology review.*

(1) A major stationary source or major modification shall meet each applicable emissions limitation under the State Implementation Plan and each applicable standard and standard of performance under 40 CFR parts 60 and 61.

(2) A new major stationary source shall apply best available control technology for each regulated NSR pollutant that it would have the potential to emit in significant amounts.

32. Based on the September 2004 Stack Test results, the Behr Aluminum Facility was a "major stationary source" with the potential to emit more than 100 tons per year of PM.

33. Behr Aluminum's disconnection of the rotary dryer from the baghouse was "construction," as that term is defined in Section 52.21(b)(8) of the CFR, because it was a change in the method of operation of an emission unit that resulted in a change in

emissions.

34. Behr Aluminum removed one baghouse from service that controlled PM emissions during rotary dryer operations without first conducting a BACT analysis consisting of a control technology review, applying for and obtaining from the Illinois EPA a PSD permit setting forth a BACT emission limit, and installing BACT.

35. By constructing a major stationary source located within an attainment area having the PTE to emit PM in excess of 100 t/yr, failing to perform a BACT review, failing to apply for and obtain a PSD permit prior to the construction of one rotary dryer without a baghouse, and failing to apply BACT to the rotary dryer, Behr Aluminum violated Sections 9.1(d)(1) & (2) of the Act, Sections 165(a)(1) and (4) of the Clean Air Act, and Sections 52.21(a) and (j) of the PSD Regulations.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, BEHR ALUMINUM, INC., for the following relief:

1. Finding that Respondent violated Sections 9.1(d)(1) and (2) of the Act, Sections 165(a)(1) and (4) of the Clean Air Act, and Sections 52.21(a) and (j) of the PSD Regulations;

2. Ordering Respondent to cease and desist from any further violations of Sections 9.1(d)(1) and (2) of the Act, Sections 165(a)(1) and (4) of the Clean Air Act, and Sections 52.21(a) and (j) of the PSD Regulations;

3. Assessing civil penalties pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2006), of Fifty Thousand Dollars (\$50,000.00) against Respondent for each violation and Ten Thousand Dollars (\$10,000.00) for each day of violation;

4. Assessing all costs against Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), including expert witness, consultant and attorney's fees; and
5. Granting such other relief as the Board deems appropriate.

**COUNT X**

**FAILURE TO OBTAIN CAAPP PERMIT**

1-18. Complainant realleges and incorporates by reference herein paragraphs 1 through 18 of Count I as paragraphs 1 through 18 of this Count X.

19. Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b) (2006), provides as follows:

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 of such source has been timely submitted to the Agency.

20. Section 39.5 of the Act, 415 ILCS 5/39.5 (2006), provides the following definitions:

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

“CAAPP permit” . . . means any permit issued, renewed, amended, modified or revised pursuant to Title V of the Clean Air Act.

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

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

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

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

21. Section 39.5(2)(a)(i) of the Act, 415 ILCS 5/39.5(2)(a)(i) (2006), provides, in pertinent part, as follows:

(a) Sources subject to this Section shall include:

\* \* \*

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

22. Section 39.5(2)(c)(ii) of the Act, 415 ILCS 5/39.5(2)(c)(ii) (2006), provides as follows:

(c) For purposes of this Section the term “major source” means any source that is:

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

23. Because the Facility had the potential to emit more than 100 tons per year of PM, it was a “major source” as defined by Section 39.5(2)(c)(ii) of the Act.

24. Behr Aluminum was the “owner or operator” of a “CAAPP source” required to obtain a “CAAPP permit,” as those terms are defined in Section 39.5 of the Act.

25. Section 39.5(5)(x) of the Act, 415 ILCS 5/39.5(5)(x) (2006), provides, in pertinent part, as follows:

. . . The owner or operator of an existing source . . . 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.

26. By failing to submit to the Illinois EPA an application for a CAAPP permit within 180 days prior to disconnecting the dryer from the baghouse, and thereafter operating the source, Behr Aluminum operated a CAAPP source without a CAAPP permit in violation of Section 39.5(6)(b) of the Act.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, BEHR ALUMINUM, INC., for the following relief:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated Section 39.5(6)(b) of the Act;
3. Ordering Respondent to cease and desist from any further violations of Section 39.5(6)(b) of the Act;
4. Assessing civil penalties pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2006), of Fifty Thousand Dollars (\$50,000.00) against Respondent for each violation and Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Assessing all costs against Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), including expert witness, consultant and attorney's fees; and
6. Granting such other relief as the Board deems appropriate.

PEOPLE OF THE STATE OF ILLINOIS,  
*ex rel.* LISA MADIGAN, Attorney  
General of the State of Illinois

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

By:



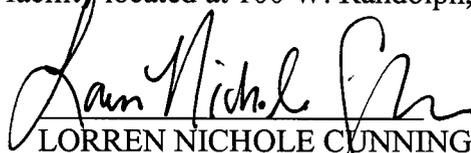
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

*Of Counsel:*

L. NICHOLE CUNNINGHAM  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington St., Suite 1800  
Chicago, Illinois 60602  
(312) 814-3532

CERTIFICATE OF SERVICE

I, Lorren Nichole Cunningham, Assistant Attorney General, do certify that on the 5<sup>th</sup> day of September, 2008, I caused to be served upon Respondent Behr Aluminum, Inc., the foregoing Complaint for Civil Penalties and Notice of Filing by depositing the same at the United States Postal Service facility located at 100 W. Randolph, Chicago, Illinois.



LORREN NICHOLE CUNNINGHAM  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington St., 18<sup>th</sup> Flr.  
Chicago, Illinois 60602  
(312) 814-3532