

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No. 13-
)	(Enforcement – Air)
NACME STEEL PROCESSING, LLC,)	
a Delaware limited liability corporation,)	
)	
Respondent.)	

NOTICE OF ELECTRONIC FILING

TO: Edward V. Walsh, III
ReedSmith LLP
10 South Wacker Drive
Chicago, Illinois 60606-7507

PLEASE TAKE NOTICE that today, September 5, 2012, I have filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Complaint a true and correct copy of which is attached and hereby served upon you.

Pursuant to 35 Ill. Adm. Code 103.204(f), I am required to state that failure to file an answer to this Complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the Complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.

CERTIFICATE OF SERVICE

I, Nancy J. Tikalsky, an Assistant Attorney General, do certify that a true and correct copy of the Complaint and Notice of Filing were sent by certified mail with return receipt requested to the persons listed on the Notice of Filing on September 5, 2012.

BY:



NANCY J. TIKALSKI


NOTIFICATION

YOU ARE HEREBY NOTIFIED that financing may be available through the Illinois Environmental Facilities Financing Act (20 ILCS 3515/1 *et seq.*) to correct the alleged pollution.

THIS FILING IS SUBMITTED ON RECYCLED PAPER

PEOPLE OF THE STATE OF ILLINOIS,
by LISA MADIGAN, Attorney General
of the State of Illinois

BY:



NANCY J. TIKALSKY
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Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
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Date: September 5, 2012

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COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by 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"), complains of Respondent, Nacme Steel Processing, LLC ("Nacme"), as follows:

COUNT I

**OPERATING A MAJOR STATIONARY SOURCE
WITHOUT A CAAPP PERMIT**

1. This count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois EPA, pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"); 415 ILCS 5/31(2010).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2010), and charged, *inter alia*, with the duty of enforcing the Act.

3. At all times relevant to this complaint, Respondent has been and is a Delaware limited liability corporation in good standing and duly authorized to do

business in the State of Illinois. Nacme owns and operates a steel processing facility located at 429 West 127th Street, Chicago, Cook County, Illinois ("Facility").

4. At the Facility, Nacme operates a ninety (90) ton per hour continuous coil pickling line, comprised of four (4) pickling tanks enclosed in a turbo tunnel enclosure, and a four (4) stage washer. Emissions from the tanks and washers are vented to a Pro-Eco four tray scrubber ("scrubber").

5. The pickling tanks, which are heated to approximately 190 degrees Fahrenheit, utilize hydrochloric acid ("HCL") at various concentrations in a dissolution process to remove impurities from hot rolled steel ("pickling"). After pickling, the steel goes through an aqueous based four stage washer ("washing").

6. During the pickling and washing, air emissions are captured in ducts and transported via piping to the scrubber. Additionally, pickling and washing tanks containing the HCL are equipped with covers to minimize exposure of HCL to the atmosphere when not in use.

7. On February 8, 2001, the Illinois EPA issued Nacme State Operating Permit No. 96020074 ("SOP") for control of its air emissions at the Facility. The SOP expired on October 25, 2005.

8. On April 12, 2002, the Illinois EPA issued revised construction permit No. 01040081 to Nacme for the installation of an emissions tunnel which required retesting of the modified steel pickling process and allowed Nacme to operate its steel pickling process with a rate greater than that allowed by the SOP for the purposes of stack testing only.

9. On April 16, 2002, Nacme conducted a stack test at its Facility (“April 2002 stack test”). The April 2002 stack test was based on a maximum steel process rate lower than the permitted steel process rate of Nacme’s SOP and resulted in emissions greater than allowed by its SOP.

10. On April 4, 2005, Nacme submitted its SOP renewal application to the Illinois EPA (“April 2005 SOP renewal application”).

11. On April 13, 2005, the Illinois EPA issued a Notice of Incompleteness to Nacme’s April 2005 SOP renewal application for failure to provide a potential to emit (“PTE”) calculation for HCL and to demonstrate eligibility for a state operating permit.

12. On September 12, 2005, Nacme submitted a second application for renewal of its SOP (“September 2005 SOP renewal application”).

13. On September 20, 2005, the Illinois EPA issued a Notice of Incompleteness (“September 2005 Notice”) to Nacme’s September 2005 SOP renewal application for Nacme’s failure to substantiate the requested permit limits with any stack testing results.

14. Additionally, Nacme was notified in the September 2005 Notice that it required a construction permit because its September 2005 SOP renewal application requested a modification consisting of an increase in the maximum steel process rate allowed by its SOP.

15. Finally, the Illinois EPA notified Nacme in its September 2005 Notice that Illinois EPA had determined that the estimated PTE for the HCL emissions at the Facility based on information provided in Nacme’s September 2005 SOP renewal application was greater than 10 tons per year (“tpy”) of HCL from a single source. Accordingly, Illinois

EPA informed Nacme in writing that it required a Clean Air Act Permit Program (“CAAPP”) permit or, alternatively, a Federally Enforceable State Operating Permit (“FESOP”).

16. On October 25, 2005, Nacme submitted to the Illinois EPA a CAAPP application with a request for a FESOP (“2005 FESOP application”). In its 2005 FESOP application, Nacme requested a maximum steel process rate greater than the maximum steel process rate allowed by Nacme’s SOP.

17. On December 6, 2005, the Illinois EPA issued a notice of completeness determination of Nacme’s FESOP application (“December 2005 Notice”). In addition, in the December 2005 Notice, the Illinois EPA informed Nacme that “notwithstanding the completeness determination, the Agency may request additional information necessary to evaluate or take final action on the FESOP application.”

18. On December 21, 2006, Nacme conducted another stack test (“December 2006 stack test”). The test was conducted with a maximum steel process rate greater than the maximum steel process rate allowed by its SOP. Results of the test were reported to the Illinois EPA on February 2, 2007.

19. As of February 1, 2012, or a date better known to Respondents, Nacme has failed to submit a construction permit application for process modifications as an amendment to either its 2005 FESOP application or its 2007 FESOP application.

20. Section 9(b) of the Act, 415 ILCS 5/9(b) (2010), provides as follows:

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;

21. Section 3.315 of the Act, 415 ILCS 5/3.315 (2010), provides the following definition:

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

22. Respondent is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2010).

23. Section 3.165 of the Act, 415 ILCS 5/3.165 (2010), provides the following definition:

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

24. HCL is a "contaminant" as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2010).

25. Section 3.115 of the Act, 415 ILCS 5/3.115 (2010), 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.

26. Because the Facility emits, or is capable of emitting, HCL, a contaminant, to the atmosphere, it is capable of causing or contributing to "air pollution" as that term is defined in Section 3.115 of the Act, 415 ILCS 5/3.115 (2010).

27. Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b) (2010), provides as follows:

Prohibition

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

28. Section 39.5(5) of the Act, 415 ILCS 5/39.5(5) (2010), provides, in pertinent part, as follows:

Applications and Completeness.

* * *

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

29. Section 39.5(2) of the Act, 415 ILCS 5/39.5(2) (2010), provides, in pertinent part, as follows:

Applicability

a. Sources subject to this Section shall include:

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

* * *

c. For purposes of this Section the term "major source" means any source that is:

i. A major source under Section 112 of the Clean Air Act, which is defined as:

A. For pollutants other than radionuclides, 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, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to Section 112(b) of the Clean Air Act, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as USEPA may establish by rule.

30. Section 39.5(3) of the Act, 415 ILCS 5/39.5(3) (2010), provides, in pertinent part, as follows:

Agency Authority to Issue CAAPP Permits and Federally Enforceable State Operating Permits.

c. The Agency shall have the authority to issue a State operating permit for a source under subsection (a) of Section 39 of this Act, as amended, and regulations promulgated thereunder, which includes federally enforceable conditions limiting the "potential to emit" of the source to a level below the major source threshold for that source as described in paragraph (c) of subsection 2 of this Section, thereby excluding the source from the CAAPP, when requested by the applicant pursuant to paragraph (u) of subsection 5 of this Section.

31. Section 39.5(1) of the Act, 415 ILCS 5/39.5(1) (2010), provides, in pertinent part, 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.

"POTENTIAL TO EMIT" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by USEPA. This definition does not alter or affect the use of this term for any other purposes under the Clean Air Act, or the term "capacity factor" as used in Title IV of the Clean Air Act or the regulations promulgated thereunder.

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

"STATIONARY SOURCE" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant

"REGULATED AIR POLLUTANT" means the following:

* * *

(5) Any pollutant subject to a standard promulgated under Section 112 or other requirements established under Section 112 of the Clean Air Act,

32. Section 112(a) (6) of the Clean Air Act, 42 USC 7412(a)(6), provides, in pertinent part, the following definition:

(6) Hazardous air pollutant

The term “hazardous air pollutant” means any air pollutant listed pursuant to subsection (b) of this section.

33. Section 112(b) (List of Pollutants) of the Clean Air Act, 42 USC 112(b)(1), provides, in pertinent part, the following:

(1) Initial list

The Congress establishes for purposes of this section a list of hazardous air pollutants as follows:

Hydrochloric acid

34. HCL is a “hazardous air pollutant” (“HAP”) and a “regulated air pollutant”, as those terms are defined by Section 112(b) (List of Pollutants) of the Clean Air Act, 42 USC 112(b)(1), and Section 39.5(1) of the Act, 415 ILCS 5/39.5(1) (2010), respectively.

35. The Facility is a “source” and “stationary source,” as those terms are defined in Section 39.5(1) of the Act, 415 ILCS 5/39.5(1) (2010).

36. Beginning on at least April 16, 2002, or on a date best known to Nacme, Nacme had changed its operations resulting in a PTE of a single HAP, HCL, of greater than 10 tpy, the major source threshold. Accordingly, the Facility is a “major source” as that term is defined in Section 39.5(2)(c) of the Act, 415 ILCS 5/39.5(2)(c) (2010).

37. As a major source since at least April 16, 2002, or a date better known to Nacme, Nacme was required to apply for and submit an application to the Illinois EPA for a CAAPP or, alternatively, a FESOP, at least 180 days before commencing operation

in accordance with the change in operation at the Facility. By operating a major source without timely submitting an application within at least 180 days before commencing operation as a major source, Nacme violated Section 39.5(5)(x) of the Act, 415 ILCS 5/39.5(5)(x) (2010), and, thereby, violated Sections 39.5(6)(b) and 9(b) of the Act, 415 ILCS5/39.5(6)(b) and 9(b) (2010).


WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an Order against the Respondent, NACME STEEL PROCESSING, LLC:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated Sections 39.5(5)(x), 39.5(6)(b), and 9(b) of the Act, 415 ILCS 5/39.5(5)(x), 39.5(6)(b), and 9(b) (2010);
3. Ordering the Respondent to cease and desist from any further violations of Sections 39.5(5)(x), 39.5(6)(b), and 9(b) of the Act, 415 ILCS 5/39.5(5)(x), 39.5(6)(b), and 9(b) (2010);
4. Ordering Nacme to immediately undertake the necessary corrective action that will result in a final and permanent abatement of violations of Sections 39.5(5)(x), 39.5(6)(b), and 9(b) of the Act, 415 ILCS 5/39.5(5)(x), 39.5(6)(b), and 9(b) (2010), including but not limited to securing a CAAPP or FESOP permit from the Illinois EPA that appropriately reflects the operations and emissions at the Facility;

5. Assessing against Nacme a civil penalty, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2010), of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
6. Taxing all costs in this action, including, but not limited to, attorney, expert witness and consultant fees, against Respondent; and
7. Granting such other relief as the Board deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS,
LISA MADIGAN,
Attorney General of the State of Illinois

MATTHEW J. DUNN, Chief
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