

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. ) **PCB No. 12**  
) (Enforcement – Air)  
NACME STEEL PROCESSING, LLC, )  
a Delaware limited liability corporation, )  
)  
Respondent. )

**NOTICE OF ELECTRONIC FILING**

To: Nancy J. Tikalsky John T. Therriault, Assistant Clerk  
Assistant Attorney General Illinois Pollution Control Board  
Environmental Bureau 100 West Randolph Street, Suite 11-500  
69 W. Washington St., Suite 1800 Chicago, Illinois 60601  
Chicago, Illinois 814-8567


Bradley P. Halloran, Hearing Officer  
Illinois Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

PLEASE TAKE NOTICE that today, November 1, 2012, I have filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following **Answer and Affirmative Defense of NACME Steel Processing, LLC, to the Complaint of the People of the State of Illinois**, a true and correct copy of which is attached and hereby served upon you.

Dated: November 1, 2012

Respectfully submitted,

NACME STEEL PROCESSING, L.L.C.,  
Respondent

By:   
One of Its Attorneys

Edward V. Walsh, III  
ReedSmith, LLP  
10 South Wacker Drive  
Suite 4000  
Chicago, Illinois 60606  
(312) 207-1000



**ANSWER:** *NACME admits that the IEPA is an administrative agency of the State of Illinois. NACME denies that the State is entitled to its requested relief and is without knowledge of the truth of the remaining allegations contained in paragraph 2, and on that basis denies such allegations.*

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").

**ANSWER:** *Admitted.*

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").

**ANSWER:** *NACME admits that a continuous coil pickling line at its Facility has the capacity to operate at 90 tons per hour. NAMCE admits the remaining allegations of paragraph 4.*

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").

**ANSWER:** *NACME admits that the pickling tanks are at times heated to approximately 190 degrees Fahrenheit. NACME admits the remaining allegations contained in paragraph 5.*

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.

**ANSWER:** *Admitted.*

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.

**ANSWER:** *NACME admits that the IEPA issued to NACME a “State Operating Permit-Revised” number 96020074 with an “issued” date of February 8, 2001. NACME admits that the permit bears an “Expiration Date” of October 25, 2005. NACME denies that the permit expired on October 25, 2005. NACME further answers that the permit, which the State has failed to attach to its Complaint, speaks for itself and denies all allegations inconsistent therewith.*

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.

**ANSWER:** *NACME admits that the IEPA issued to NACME a “Construction Permit-Revised”, number 01040081 and bearing a “Date Issued” of April 12, 2002. NACME further answers that the referenced permit, which the State has failed to attach to its Complaint, speaks for itself and denies all allegations inconsistent therewith.*

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.

**ANSWER:** *NACME admits that it conducted a stack test at its Facility as reported in a written “Gaseous Emissions Test” dated April 16, 2002 provided to IEPA. NACME further answers that the report speaks for itself and NACME denies all allegations inconsistent therewith.*

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

**ANSWER:** *NACME admits that by letter dated March 23, 2005 it submitted to IEPA an APC 205A form for renewal of its state operating permit.*

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.

**ANSWER:** *NACME is without knowledge of the truth of the allegations contained in paragraph 11, further answering that the document upon which the State bases its allegations is not attached to the State's Complaint. On this basis NACME denies the allegations contained in paragraph 11.*

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

**ANSWER:** *NACME admits that on or about September 12, 2005, it submitted an application for renewal of its SOP.*

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.

**ANSWER:** *IEPA's September 20, 2005 notice, which the State has failed to attach to its Complaint, speaks for itself and NACME denies all allegations inconsistent therewith.*

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.

**ANSWER:** *IEPA's September 20, 2005 notice, which the State has failed to attach to its Complaint, speaks for itself and NACME denies all allegations inconsistent therewith. NACME*

*further denies that an increase "in the maximum steel process rate allowed by its SOP" constitutes a "modification" that required the submittal of a construction permit.*

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").

**ANSWER:** *IEPA's September 20, 2005 notice, which the State has failed to attach to its Complaint, speaks for itself and NACME denies all allegations inconsistent therewith, further stating that the information submitted to IEPA in the September 2005 SOP renewal application was known to IEPA long before that time. .*

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.

**ANSWER:** *NACME admits that by letter dated October 18, 2005 NACME submitted a FESOP application. NACME further answers that the application, which the State has failed to attach to its Complaint, speaks for itself and denies all allegations inconsistent therewith.*

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."

**ANSWER:** *NACME admits that IEPA issued a December 6, 2005 notice. The State has failed to attach the notice to its Complaint and the notice in any event speaks for itself and NACME denies all allegations inconsistent therewith.*

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.

**ANSWER:** *NACME admits that it conducted a stack test on or about December 21, 2006*

*further answering that the process rate used was known to and approved by IEPA ahead of time.*

*The December 2006 stack test report, which the State has failed to attach to its Complaint,*

*speaks for itself and NACME denies all allegations inconsistent therewith.*

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.

**ANSWER:** *NACME denies that it undertook “process modifications” and on this basis*

*denies that it was required to apply for a construction permit.*

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;

**ANSWER:** *NACME answers that the portion of the Act quoted speaks for itself and denies*

*that it is liable under any part of the Act.*

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.

**ANSWER:** *NACME answers that the portion of the Act quoted speaks for itself and denies that it is liable under any part of the Act.*

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

**ANSWER:** *NACME answers that the portion of the Act quoted speaks for itself and denies that it is liable under any part of the Act.*

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.

**ANSWER:** *NACME answers that the portion of the Act quoted speaks for itself and denies that it is liable under any part of the Act.*

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

**ANSWER:** *NACME answers that the portion of the Act quoted speaks for itself and denies that it is liable under any part of the Act.*

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.

**ANSWER:** *NACME answers that the portion of the Act quoted speaks for itself and denies that it is liable under any part of the Act.*

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).



**ANSWER:** *NACME answers that the portion of the Act quoted speaks for itself and denies that it is liable under any part of the Act.*

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.

**ANSWER:** *NACME answers that the portion of the Act quoted speaks for itself and denies that it is liable under any part of the Act.*

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.

**ANSWER:** *NACME answers that the portion of the Act quoted speaks for itself and denies that it is liable under any part of the Act.*

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.

**ANSWER:** *NACME answers that the portion of the Act quoted speaks for itself and denies that it is liable under any part of the Act.*

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.

**ANSWER:** *NACME answers that the portion of the Act quoted speaks for itself and denies that it is liable under any part of the Act.*

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, ....

**ANSWER:** *NACME answers that the portion of the Act quoted speaks for itself and denies that it is liable under any part of the 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.

**ANSWER:** *NACME answers that the portion of the Act quoted speaks for itself and denies that it is liable under any part of the Act.*

33. Section 112 (b) (List of Pollutants) of the Clean Air Act, 42 USC 12 (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

**ANSWER:** *NACME answers that the portion of the Act quoted speaks for itself and denies that it is liable under any part of the Act.*

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 12 (b) (1), and Section 39.5 (1) of the Act, 415 ILCS 5/39.5(1) (2010), respectively.

**ANSWER:** *NACME answers that the portion of the Act quoted speaks for itself and denies that it is liable under any part of the Act.*

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).

**ANSWER:** *NACME answers that the portion of the Act quoted speaks for itself and denies that it is liable under any part of the Act.*

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).

**ANSWER:** *Denied.*

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).

**ANSWER:** *NACME denies that it made any change in operation at the Facility as alleged.*

*NACME denies the balance of paragraph 37 as stating a legal conclusion to which no response is required.*

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.

**WHEREFORE:**

NACME requests that Complainant's complaint be dismissed with prejudice and that NACME be awarded its costs.

**AFFIRMATIVE DEFENSES**

Having fully answered the Complaint, NACME offers the following defenses in further response thereto:

**First Defense (Valid Permit)**

The State's Complaint fails to state a claim upon which relief can be granted because, among other things, at all times NACME held a valid state operating permit limiting its emissions to below major source thresholds and which, under applicable precedent, is federally enforceable.

**Second Defense (Lack of Jurisdiction)**

The IEPA did not issue and serve a violation notice upon NACME within 180 days after it became aware of the alleged violation as required by Section 31(a)(1) of the Illinois Environmental Protection Act. The State's allegation that the complaint is filed on its own motion is belied by the State's letter dated January 5, 2012 which states in relevant part: "The Illinois Environmental Protection Agency ("Illinois EPA") referred the above-referenced matter to the Office of the Attorney General for the initiation of an enforcement action". (See Exhibit A attached hereto) As a result, the Board lacks jurisdiction to hear the State's complaint.

**Third Defense (Laches)**

The State's Complaint is barred by the doctrine of laches because the IEPA has known for years, at least since 2000, of the facts underlying its claim, and has been in regular communication with NACME during that time, but failed without cause to act until now.

**Fourth Defense (Waiver)**

The State's claims have been waived, in whole or in part, because the IEPA knew or should have known of its purported enforcement rights against NACME, but relinquished those rights by failing to take action timely.

**Fifth Defense (Estoppel)**

The State's claims are barred, in whole or in part, by the doctrine of estoppel because the Agency regularly communicated with NACME, including thru numerous permit applications, stack tests and during inspections, and knew or should have known of the alleged violation, yet did not inform NACME that it was allegedly violating applicable requirements. Consequently, the IEPA impliedly authorized NACME's operations.

**Sixth Defense (No Economic Benefit)**

The alleged violation provided no economic benefit to NACME which always operated under and within the limitations of a valid state operating permit, thus no penalties as asserted are applicable.

**Seventh Defense (No Harm to Environment)**

The alleged violation caused no harm or threat of harm to the environment as NACME has always operated under and within the limitations of a valid state operating permit, thus no penalties as asserted are applicable.

**Eighth Defense (No Aid to Enforcement of the Act)**

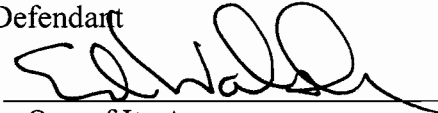
The alleged violation did not impair the IEPA's administration of its air permit program because NACME has always held a valid state operating permit, thus no penalties as asserted would aid in enforcement of the Act.

**Ninth Affirmative Defense (No Potential to Emit)**

NACME's facility has no potential to emit pollutants above the threshold for major source status as alleged by the IEPA because NACME's facility has a scrubber that is integral to the facility process that controls emissions to below major threshold status.

Respectfully submitted

NACME STEEL PROCESSING, LLC,  
Defendant



\_\_\_\_\_  
One of Its Attorneys

Edward V. Walsh, III  
REED SMITH LLP  
10 South Wacker Drive  
Chicago, Illinois 60606-7507  
(312) 207-1000

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that I have served the attached **ANSWER AND AFFIRMATIVE DEFENSE OF NACME STEEL PROCESSING, LLC, TO THE COMPLAINT OF THE PEOPLE OF THE STATE OF ILLINOIS**, by U.S. Regular Mail, upon the following persons:

Nancy J. Tikalsky  
Assistant Attorney General  
Office of the Illinois Attorney General  
Environmental Bureau  
69 West Washington Street, Suite 1800  
Chicago, Illinois 60602

John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

Bradley P. Halloran, Hearing Officer  
Illinois Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

By:



Edward V. Walsh, III

Date: November 1, 2012