

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

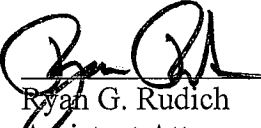
PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. ) PCB No. 15-112  
) (Enforcement – Air)  
INCOBRASA INDUSTRIES, LTD., )  
an Illinois corporation, )  
)  
Respondent. )

**NOTICE OF ELECTRONIC FILING**

To: **By U.S. Mail & E-Mail**  
LaDonna Driver  
Hodge Dwyer & Driver  
3150 Roland Avenue  
Springfield, Illinois 62703

PLEASE TAKE NOTICE that on June 12, 2015, the Complainant in the above-captioned matter electronically filed with the Office of the Clerk of the Pollution Control Board a Motion for Leave to File First Amended Complaint matter, a copy of which is attached hereto and hereby served upon you.

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

By:   
\_\_\_\_\_  
Ryan G. Rudich  
Assistant Attorney General  
Environmental Bureau  
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DATE: June 12, 2015

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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Complainant,	)	
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	)	(Enforcement – Air)
INCOBRASA INDUSTRIES, LTD.,	)	
an Illinois corporation,	)	
	)	
Respondent.	)	

**COMPLAINANT’S MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT**

NOW COMES COMPLAINANT, People of the State of Illinois, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, pursuant to Section 103.206(d) of the Illinois Pollution Control Board’s (“Board”) procedural rules, 35 Ill. Adm. Code 103.206(d), and respectfully moves the Board for leave to file its First Amended Complaint, a true and correct copy of which is attached hereto as Exhibit A. In support of this motion, the Complainant states as follows:

1. Section 103.206(d) of the Board’s procedural rules, 35 Ill. Adm. Code 103.206(d), provides as follows:

(d) If a party wishes to file a counter-complaint, cross-complaint, or third-party complaint, the party must move the Board for leave to file the pleading. If a party wishes to file an amendment to a complaint, counter-complaint, cross-complaint, or third-party complaint that sets forth a new or modified claim against another person, the party who wishes to file the pleading must move the Board for leave to file the pleading.

2. On December 19, 2014, Complainant filed its Complaint (“Original Complaint”) against Respondent Incobrasa Industries, Ltd. (“Incobrasa”), an Illinois corporation.

3. Subsequent to the filing of the Original Complaint, Complainant determined that facts exist to support additional claims against Incobrasa.

4. The Board should allow Complainant to file its First Amended Complaint for the following reasons. First, Incobrasa will be neither be surprised nor prejudiced by the inclusion of the additional claims in the First Amended Complaint, as Incobrasa is already on notice regarding the State's additional allegations. Second, discovery in this case has not begun. And finally, allowing Complainant to file its First Amended Complaint will expedite the handling of this case by the Board.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board enter an order granting this motion, allowing the filing of the First Amended Complaint, and granting such other relief as the Board deems proper.

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

By:



RYAN G. RUDICH  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602  
(312) 814-1511

# Exhibit A

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,	)	
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Complainant,	)	
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v.	)	PCB No. 15-112
	)	(Enforcement – Air)
INCOBRASA INDUSTRIES, LTD.,	)	
an Illinois corporation,	)	
	)	
Respondent.	)	

**FIRST AMENDED COMPLAINT**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, INCOBRASA INDUSTRIES, LTD., as follows:

**COUNT I**

**FAILURE TO INSTALL AND OPERATE A CONTINUOUS EMISSIONS MONITORING SYSTEM**

1. This First Amended Complaint 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 Environmental Protection Agency (“Illinois EPA”), pursuant to Section 31 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31 (2014), against Respondent.

2. The Illinois EPA is an administrative agency of the State of Illinois created by Section 4 of the Act, 415 ILCS 5/4 (2014), and is charged, *inter alia*, with the duty of enforcing the Act.

3. At all times relevant to this First Amended Complaint, Respondent Incobrasa Industries, Ltd., an Illinois corporation in good standing, has owned and operated a soybean

processing and biodiesel manufacturing facility located at 540 East US Highway 24, Gilman, Iroquois County, Illinois ("Facility" or "Source").

4. The Facility produces Biodiesel B100 and B99.9, soybean meal, and Long Life brand salad oils.

5. On November 25, 2002, the Illinois EPA issued Respondent Clean Air Act Permit Program ("CAAPP") permit 98070042, which authorized operation of the Facility, including grain handling operations, material handling operations, a soybean oil extractor, boilers, grain dryers and an oil refinery hotwell.

6. On April 30, 2004, the Illinois EPA issued Respondent revised CAAPP permit 98070042, which included revised emissions calculations.

7. The Facility is permitted as a "major source" based on its emissions of Volatile Organic Material ("VOM"), Particulate Matter ("PM"), and Hexane, which is listed as a Hazardous Air Pollutant ("HAP") in Section 112(b) of the Clean Air Act, 42 U.S.C. §7412.

8. On August 26, 2004, the Illinois EPA issued Respondent construction permit 04080059, authorizing the construction of a new natural gas-fired boiler at the Facility ("Boiler A"). Construction permit 04080059 also contained condition 8(a), which required Respondent to "install, operate, and maintain a continuous monitoring system on the boiler for NO<sub>x</sub> emissions...."

9. Sometime near the end of 2005, the precise date better known to Respondent, Respondent began operating Boiler A, which emits or is capable of emitting nitrogen oxides ("NO<sub>x</sub>"), Carbon Monoxide ("CO"), PM, Sulfur Dioxide ("SO<sub>2</sub>"), and VOM.

10. On February 3, 2006, the Illinois EPA issued Respondent revised CAAPP permit 98070042, which incorporated the NO<sub>x</sub> monitoring requirements included in condition 8(a) of

construction permit 04080059 and required Respondent to develop and submit to the Illinois EPA an episode action plan.

11. On July 25, 2006, the Illinois EPA issued Respondent construction permit 06050042, allowing the construction of emission sources and pollution control equipment for a new biodiesel plant at the Facility ("Biodiesel Plant"). Revised construction permit 06050042, authorizing increased vegetable oil processing, was issued to Respondent on July 21, 2011. Among other contaminants, the Biodiesel Plant emits Hexane and VOM.

12. On August 10, 2007, the Illinois EPA issued Respondent construction permit 07050034, authorizing the construction of a new natural gas-fired boiler ("Boiler B") at the Facility. Boiler B emits or is capable of emitting NO<sub>x</sub> and CO.

13. On June 18, 2012, the Illinois EPA inspected the Facility.

14. On or about May 9, 2013, Respondent installed a Continuous Emission Monitoring System ("CEMS") to monitor NO<sub>x</sub> emissions generated during Boiler A operations.

15. Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2014), 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 pursuant 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 (A) without a permit granted by the Agency whenever a permit is required pursuant to (i) this Act or Board regulations or (ii) Section 111, 112, 165, or 173 of the Clean Air Act or federal regulations adopted pursuant thereto or (B) in violation of any conditions imposed by such permit. Any denial of such a permit or any

conditions imposed in such a permit shall be reviewable by the Board in accordance with Section 40 of this Act.

16. Section 3.315 of the Act, 415 ILCS 5/3.315 (2014), provides as follows:

“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.

17. Respondent is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2014).

18. Section 111 of the Clean Air Act, 42 U.S.C. §7411, establishes the New Source Performance Standards (“NSPS”). The NSPS regulations are codified in Title 40, Part 60 of the Code of Federal Regulations (“NSPS Regulations”). The Illinois EPA administers the NSPS for subject sources in Illinois pursuant to a delegation agreement with the United States Environmental Protection Agency (“USEPA”).

19. The NSPS Regulations governing Industrial-Commercial-Institutional Steam Generating Units are found in Subpart Db of Title 40, Part 60 (“Subpart Db”). Section 60.48b of the Subpart Db, 40 C.F.R. 60.48b, provides, in pertinent part, as follows:

- (b) Except as provided under paragraphs (g), (h), and (i) of this section, the owner or operator of an affected facility subject to a NOX standard under § 60.44b shall comply with either paragraphs (b)(1) or (b)(2) of this section.
  - (1) Install, calibrate, maintain, and operate CEMS for measuring NOX and O2 (or CO2) emissions discharged to the atmosphere, and shall record the output of the system; or
  - (2) If the owner or operator has installed a NOX emission rate CEMS to meet the requirements of part 75 of this chapter and is continuing to meet the ongoing requirements of part 75 of this chapter, that CEMS may be used to meet the requirements of this section, except that the owner or operator shall also meet the requirements of § 60.49b. Data



reported to meet the requirements of § 60.49b shall not include data substituted using the missing data procedures in subpart D of part 75 of this chapter, nor shall the data have been bias adjusted according to the procedures of part 75 of this chapter.

- (c) The CEMS required under paragraph (b) of this section shall be operated and data recorded during all periods of operation of the affected facility except for CEMS breakdowns and repairs. Data is recorded during calibration checks, and zero and span adjustments.

\* \* \*

- (e) The procedures under § 60.13 shall be followed for installation, evaluation, and operation of the continuous monitoring systems.

20. Section 60.40b(a) of Subpart Db, 40 C.F.R. 60.40b(a), provides as follows:

- (a) The affected facility to which this subpart applies is each steam generating unit that commences construction, modification, or reconstruction after June 19, 1984, and that has a heat input capacity from fuels combusted in the steam generating unit of greater than 29 megawatts (MW) (100 million British thermal units per hour (MMBtu/hr)).

21. Section 60.44b(a) of subpart Db, 40 C.F.R. 60.44b(a), provides, in relevant part, as follows:

- (a) Except as provided under paragraphs (k) and (l) of this section, on and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that is subject to the provisions of this section and that combusts only coal, oil, or natural gas shall cause to be discharged into the atmosphere from that affected facility any gases that contain NOX (expressed as NO2) in excess of the following emission limits...

22. Boiler A is a steam generating unit that commenced construction after June 19, 1984, that has a heat input capacity from fuels combusted in the steam generating unit of greater than 100 mmBtu/hr and that combusts only natural gas. It is therefore an affected facility required to comply with the requirements of Subpart Db, including the NO<sub>x</sub> standards of Section

60.44b, 40 C.F.R. 60.44b, and Section 60.48b, 40 C.F.R. 60.48b.

23. At the time of the June 18, 2012 inspection, Respondent had not installed a CEMS to monitor NO<sub>x</sub> emissions from Boiler A.

24. From at least June 18, 2012 through on or about May 9, 2013, Respondent operated Boiler A without a CEMS, thereby violating paragraphs (b), (c) and (e) of Section 60.48b of Subpart Db, 40 C.F.R. 60.48b(b), (c) and (e).

25. By violating paragraphs (b), (c) and (e) of Section 60.48b of Subpart Db, 40 C.F.R. 60.48b(b), (c) and (e), Respondent violated Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2014).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent with respect to this Count I:

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

2. Finding that the Respondent has violated Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2014), and paragraphs (b), (c) and (e) of Section 60.48b of Subpart Db, 40 C.F.R. 60.48b(b), (c) and (e);

3. Ordering Respondent to cease and desist from any future violations of Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2014), and paragraphs (b), (c) and (e) of Section 60.48b of Subpart Db, 40 C.F.R. 60.48b(b), (c) and (e);

4. Assessing against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day during which the violations continue;

5. Ordering the Respondent to pay all costs of this action pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2014), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

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

**COUNT II**

**FAILURE TO SUBMIT EXCESS EMISSION REPORTS**

1-22. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 22 of Count I as paragraphs 1 through 22 of this Count II.

23. Section 60.49b of the NSPS Regulations governing Industrial-Commercial-Institutional Steam Generating Units, 40 C.F.R. 60.49b, provides, in relevant part, as follows:

(h) The owner or operator of any affected facility in any category listed in paragraphs (h)(1) or (2) of this section is required to submit excess emission reports for any excess emissions that occurred during the reporting period.

(1) Any affected facility subject to the opacity standards in § 60.43b(f) or to the operating parameter monitoring requirements in § 60.13(i)(1).

(2) Any affected facility that is subject to the NOX standard of § 60.44b, and that:

(i) Combusts natural gas, distillate oil, gasified coal, or residual oil with a nitrogen content of 0.3 weight percent or less; or

(ii) Has a heat input capacity of 73 MW (250 MMBtu/hr) or less and is required to monitor NOX emissions on a continuous basis under § 60.48b(g)(1) or steam generating unit operating conditions under § 60.48b(g)(2).

\*

\*

\*

(w) The reporting period for the reports required under this subpart is each 6 month period. All reports shall be submitted to the

Administrator and shall be postmarked by the 30th day following the end of the reporting period.

24. Section 60.48b(g) of Subpart Db, 40 C.F.R. 60.48b(g), provides as follows:

- (g) The owner or operator of an affected facility that has a heat input capacity of 73 MW (250 MMBtu/hr) or less, and that has an annual capacity factor for residual oil having a nitrogen content of 0.30 weight percent or less, natural gas, distillate oil, gasified coal, or any mixture of these fuels, greater than 10 percent (0.10) shall:
  - (1) Comply with the provisions of paragraphs (b), (c), (d), (e)(2), (e)(3), and (f) of this section; or
  - (2) Monitor steam generating unit operating conditions and predict NOX emission rates as specified in a plan submitted pursuant to § 60.49b(c).

25. Boiler A is an affected facility with a heat input capacity of less than 250 mmBtu/hr and an annual capacity factor for natural gas greater than ten percent. Respondent is therefore required to monitor Boiler A NO<sub>x</sub> emissions on a continuous basis under Section 60.48b(g)(1) of Subpart Db, 40 C.F.R. 60.48b(g)(1). Because Boiler A is also subject to the NO<sub>x</sub> standards of § 60.44b, respondent was required to submit excess emission reports for each six month period.

26. In or around January 2014, Respondent submitted an excess emission report covering the period of July 2013 through December 2013. At no time did Respondent submit excess emission reports covering the period between the commencement of operation of Boiler A and June 2013.

27. By failing to submit excess emission reports between commencement of operation of Boiler A and June 2013, Respondent violated Sections 60.49b(h) and (w) of the NSPS Regulations governing Industrial-Commercial-Institutional Steam Generating Units, 40 C.F.R. 60.49b(h) and (w), thereby violating Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2014).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent with respect to this Count II:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that the Respondent has violated Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2014), and Sections 60.49b(h) and (w) of the NSPS Regulations governing Industrial-Commercial-Institutional Steam Generating Units, 40 C.F.R. 60.49b(h) and (w);
3. Ordering Respondent to cease and desist from any future violations of Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2014), and Sections 60.49b(h) and (w) of the NSPS Regulations governing Industrial-Commercial-Institutional Steam Generating Units, 40 C.F.R. 60.49b(h) and (w);
4. Assessing against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day during which the violations continue;
5. Ordering the Respondent to pay all costs of this action pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2014), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

### **COUNT III**

#### **FAILURE TO MAINTAIN A WRITTEN EPISODE ACTION PLAN**

1-16. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 14 and 16 through 17 of Count I as paragraphs 1 through 16 of this Count III.

17. Section 9(a) of the Act, 415 ILCS 5/9(a) (2014), provides as follows:

Acts prohibited. 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 violate regulations or standards adopted by the Board under this Act.

18. Section 3.165 of the Act, 415 ILCS 5/3.165 (2014), provides the following definition:

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

19. VOM is a “contaminant” as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2014).

20. Pursuant to the authority granted in Sections 10 and 27 of the Act, 415 ILCS 5/10 and 5/27 (2014), the Illinois Pollution Control Board (“Board”) has promulgated rules and regulations to control air pollution in Illinois, codified at 35 Ill. Adm. Code, Subtitle B, Chapter 1 (“Board Air Pollution Regulations”).

21. Section 244.141 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 244.141, provides, in relevant part, as follows:

All persons responsible for the operation of a facility of a type set forth in Section 244.142 shall have on file with the Agency written episode action plans (plans), consistent with safe operating procedures, for reducing the levels of air contaminants during yellow alerts, red alerts and emergencies. These plans shall be designed to reduce air contaminants in accordance with the provisions of these rules and shall be on forms designed by the Agency....

22. Section 244.142(c) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 244.142(c), titled “Facilities for which Action Plans are Required,” provides as follows:

- (c) Facilities emitting more than 91 Mg/yr or 249 kg per operating day (100 tons per year or 550 pounds per operating day) of sulfur dioxide, carbon monoxide, nitrogen oxides, particulate matter, organic material or of any other air contaminant designated by the Agency as harmful to human health.

23. The Facility emits more than 100 tons per year of VOM. It is therefore a facility for which an episode action plan is required.

24. On or around February 21, 2013, Respondent submitted an Episode Action Plan to the Illinois EPA.

25. From at least June 18, 2012 through on or around February 21, 2013, Respondent did not submit or have on file with the Illinois EPA an Episode Action Plan, in violation of Section 244.141 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 244.141.

26. By violating Section 244.141 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 244.141, Respondent violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2014).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent with respect to this Count III:

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

2. Finding that the Respondent has violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2014), and Section 244.141 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 244.141;

3. Ordering Respondent to cease and desist from any future violations of Section 9(a) of the Act, 415 ILCS 5/9(a) (2014), and Section 244.141 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 244.141;

4. Assessing against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day during which the violations continue;

5. Ordering the Respondent to pay all costs of this action pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2014), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

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

**COUNT IV**

**FAILURE TO SUBMIT NESHAP NOTIFICATIONS**

1-17. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 17 of Count I as paragraphs 1 through 17 of this Count IV.

18. Part 63, Subpart GGGG of Title 40 of the Code of Federal Regulations establishes National Emission Standards for Hazardous Air Pollutants (“NESHAP”) for Solvent Extraction for Vegetable Oil Production (“Subpart GGGG”). Section 63.2860 of Subpart GGGG, 40 C.F.R. 63.2860, provides, in relevant part, as follows:

You must submit the one-time notifications listed in paragraphs (a) through (d) of this section to the responsible agency:

(a) Initial notification for existing sources. For an existing source, submit an initial notification to the agency responsible for these NESHAP no later than 120 days after the effective date of this subpart.

\* \* \*

(d) Notification of compliance status. As an existing, new, or reconstructed source, you must submit a notification of compliance status report to the responsible agency no later than 60 days after determining your initial 12 operating months compliance ratio. If you are an existing source, you generally must submit this notification no later than 50 calendar months after the effective date of these NESHAP (36 calendar months for compliance, 12 operating months to record data, and 2 calendar months to complete the report). If you are a new or reconstructed source, the notification of compliance status is generally due no later than 20 calendar months after initial startup (6 calendar months for the initial startup period, 12 operating months to record data, and 2 calendar months to complete the report)....



19. Section 63.2832(a) of Subpart GGGG, 40 C.F.R. 63.2832(a), provides as follows:

(a) You are an affected source subject to this subpart if you meet all of the criteria listed in paragraphs (a)(1) and (2) of this section:

(1) You own or operate a vegetable oil production process that is a major source of HAP emissions or is collocated within a plant site with other sources that are individually or collectively a major source of HAP emissions.

(i) A vegetable oil production process is defined in § 63.2872. In general, it is the collection of continuous process equipment and activities that produce crude vegetable oil and meal products by removing oil from oilseeds listed in Table 1 to § 63.2840 through direct contact with an organic solvent, such as a hexane isomer blend.

(ii) A major source of HAP emissions is a plant site that emits or has the potential to emit any single HAP at a rate of 10 tons (9.07 megagrams) or more per year or any combination of HAP at a rate of 25 tons (22.68 megagrams) or more per year.

(2) Your vegetable oil production process processes any combination of eight types of oilseeds listed in paragraphs (a)(2)(i) through (viii) of this section:

(i) Corn germ;

(ii) Cottonseed;

(iii) Flax;

(iv) Peanut;

(v) Rapeseed (for example, canola);

(vi) Safflower;

(vii) Soybean; and

(viii) Sunflower.

20. Because the Facility uses a vegetable oil production process that is a major source of emissions of Hexane, a HAP, and processes soybeans, Respondent is subject to Section 63.2860 of Subpart GGGG, 40 C.F.R. 63.2860.

21. Section 63.2861 of Subpart GGGG, 40 C.F.R. 63.2861, provides, in relevant part, as follows:

After the initial notifications, you must submit the reports in paragraphs (a) through (d) of this section to the agency responsible for these NESHAP at the appropriate time intervals:

- (a) Annual compliance certifications. The first annual compliance certification is due 12 calendar months after you submit the notification of compliance status. Each subsequent annual compliance certification is due 12 calendar months after the previous annual compliance certification. The annual compliance certification provides the compliance status for each operating month during the 12 calendar months period ending 60 days prior to the date on which the report is due....

22. Respondent, by letter dated January 30, 2013, submitted to the Illinois EPA an initial notification report.

23. At no time did Respondent submit to the Illinois EPA a notification of compliance status or annual compliance certifications for the years 2004 through 2011.

24. By failing to timely submit initial NESHAP notifications, and by failing to submit notification of NESHAP compliance status and annual compliance certifications for the years 2004 through 2011, Respondent violated Sections 63.2860(a) and (d) of Subpart GGGG, 40 C.F.R. 63.2860(a) and (d), and Section 63.2861(a) of Subpart GGGG, 40 C.F.R. 63.2861(a), thereby violating Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2014).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent with respect to this Count IV:

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

2. Finding that the Respondent has violated Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2014), Sections 63.2860(a) and (d) of Subpart GGGG, 40 C.F.R. 63.2860(a) and (d), and Section 63.2861(a) of Subpart GGGG, 40 C.F.R. 63.2861(a);

3. Ordering Respondent to cease and desist from any future violations of Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2014), Sections 63.2860(a) and (d) of Subpart GGGG, 40 C.F.R. 63.2860(a) and (d), and Section 63.2861(a) of Subpart GGGG, 40 C.F.R. 63.2861(a);

4. Assessing against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day during which the violations continue;

5. Ordering the Respondent to pay all costs of this action pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2014), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

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

#### **COUNT V**

#### **FAILURE TO KEEP RECORDS**

1-22. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 22 of Count I as paragraphs 1 through 22 of this Count V.

23. Section 60.49b(g) of Subpart Db, 40 C.F.R. 60.49b(g), provides, in relevant part, as follows:

- (g) Except as provided under paragraph (p) of this section, the owner or operator of an affected facility subject to the NOX standards under § 60.44b shall maintain records of the following information for each steam generating unit operating day:

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\*

\*

- (2) The average hourly NOX emission rates (expressed as NO<sub>2</sub>) (ng/J or lb/MMBtu heat input) measured or predicted;
- (3) The 30-day average NOX emission rates (ng/J or lb/MMBtu heat input) calculated at the end of each steam generating unit operating day from the measured or predicted hourly nitrogen oxide emission rates for the preceding 30 steam generating unit operating days;
- (4) Identification of the steam generating unit operating days when the calculated 30-day average NOX emission rates are in excess of the NOX emissions standards under § 60.44b, with the reasons for such excess emissions as well as a description of corrective actions taken;
- (5) Identification of the steam generating unit operating days for which pollutant data have not been obtained, including reasons for not obtaining sufficient data and a description of corrective actions taken;
- (6) Identification of the times when emission data have been excluded from the calculation of average emission rates and the reasons for excluding data;
- (7) Identification of "F" factor used for calculations, method of determination, and type of fuel combusted;
- (8) Identification of the times when the pollutant concentration exceeded full span of the CEMS;
- (9) Description of any modifications to the CEMS that could affect the ability of the CEMS to comply with Performance Specification 2 or 3; and
- (10) Results of daily CEMS drift tests and quarterly accuracy assessments as required under appendix F, Procedure 1 of this part.

24. From at least June 18, 2012 through a date better known to Respondent, Respondent failed to maintain the records for Boiler A required by 40 C.F.R. 60.49b(g)(2) through (10).

25. Section 63.2862(d) of Subpart GGGG, 40 C.F.R. 63.2862(d), provides, in pertinent part, as follows:

(d) After your source has processed listed oilseed for 12 operating months, and you are not operating during an initial startup period as described in § 63.2850(c)(2) or (d)(2), or a malfunction period as described in § 63.2850(e)(2), record the items in paragraphs (d)(1) through (5) of this section by the end of the calendar month following each operating month:

- (1) The 12 operating months rolling sum of the actual solvent loss in gallons as described in § 63.2853(c).
- (2) The weighted average volume fraction of HAP in extraction solvent received for the previous 12 operating months as described in § 63.2854(b)(3).

26. From at least June 18, 2012 through a date better known to Respondent, Respondent did not record the items required by paragraphs (1) and (2) of Section 63.2862(d) of Subpart GGGG, 40 C.F.R. 63.2862(d)(1) and (2).

27. By violating Section 60.49b(g)(2) through (10) of Subpart Db, 40 C.F.R. 60.49b(g)(2) through (10), and Section 63.2862(d)(1) and (2) of Subpart GGGG, 40 C.F.R. 63.2862(d)(1) and (2), Respondent violated Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2014).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent with respect to this Count V:

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

2. Finding that the Respondent has violated Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2014), Section 60.49b(g)(2) through (10) of Subpart Db, 40 C.F.R. 60.49b(g)(2)

through (10), and Section 63.2862(d)(1) and (2) of Subpart GGGG, 40 C.F.R. 63.2862(d)(1) and (2);

3. Ordering Respondent to cease and desist from any future violation of Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2014), Section 60.49b(g)(2) through (10) of Subpart Db, 40 C.F.R. 60.49b(g)(2) through (10), and Section 63.2862(d)(1) and (2) of Subpart GGGG, 40 C.F.R. 63.2862(d)(1) and (2);

4. Assessing against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day during which the violations continue;

5. Ordering the Respondent to pay all costs of this action pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2014), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

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

#### **COUNT VI**

#### **VIOLATING CAAPP PERMIT CONDITIONS**

1-28. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 14, 16 through 17, 19, and 23 through 24 of Count I, paragraph 25 of Count II, paragraphs 24 through 25 of Count III, paragraphs 18 and 22 through 23 of Count IV, and paragraph 23 through 24 and 26 of Count V, as paragraphs 1 through 20 of this Count VI.

29. Section 39.5(6)(a) of the Act, 415 ILCS 5/39.5(6)(a) (2014), provides as follows:

#### **Prohibitions.**

- (a) It shall be unlawful for any person to violate any terms or conditions of a permit issued under this Section, to operate any CAAPP source except in compliance with a permit issued by the Agency under this Section or to violate any other applicable requirements. All terms and conditions of a permit issued under

this Section are enforceable by USEPA and citizens under the Clean Air Act, except those, if any, that are specifically designated as not being federally enforceable in the permit pursuant to paragraph (m) of subsection 7 of this Section.

30. Section 39.5.1 of the Act, 415 ILCS 5/39.5.1 (2014), provides the following definitions:

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

“CAAPP Permit” or “permit” (unless the context suggests otherwise) 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.

“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.

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

“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 common control of the same person (or persons under common control) and that belongs to a single major industrial grouping. For the purposes of defining “source,” a stationary source or group of stationary sources shall be considered part of a single major industrial grouping if all of the pollutant emitting activities at such source or group of sources located on contiguous or adjacent properties and under common control belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987, or such pollutant emitting activities at a stationary source (or group of stationary sources) located on contiguous or adjacent properties and under common control constitute a support facility. The determination as to whether any group of stationary sources are located on contiguous or adjacent properties, and/or are under common control, and/or whether the pollutant emitting activities at such group of stationary sources constitute a support facility shall be made on a case by case basis.

“Stationary source” means any building, structure, facility, or installation

that emits or may emit any regulated air pollutant or any pollutant listed under Section 112(b) of the Clean Air Act.

31. Respondent is the "Owner or operator" of the Source, as that term is defined in Section 39.5 of the Act, 415 ILCS 5/39.5 (2014).

32. The Source constitutes a "CAAPP source," a "Major source," and a "Stationary source" as those terms are defined in Section 39.5 of the Act, 415 ILCS 5/39.5 (2014).

33. Condition 7.4.8(a) of CAAPP permit 98070042 provides as follows:

(a) The permittee shall install, operate, and maintain a continuous monitoring system on Boiler A for NO<sub>x</sub> emissions in accordance with the applicable requirements of 40 CFR 60.48(b), including the following:

i. This system shall be operated during all periods of operation of the boiler except for continuous monitoring system breakdowns and repairs. Data is to be recorded during calibration checks, and zero and span adjustment [40 CFR 60.48b(c)]

ii. The procedures under 40 CFR 60.13 shall be followed for installation, evaluation and operation of the monitoring system. [40 CFR 60.48b(e)]

34. By operating Boiler A from at least June 18, 2012 through at least May 9, 2013 without a CEMS, Respondent violated Condition 7.4.8(a) of CAAPP permit 98070042.

35. Condition 5.2.6 of CAAPP permit 98070042, provides, in pertinent part, as follows:

#### Episode Action Plan

(a) If the source is required to have an episode action plan pursuant to 35 IAC 244.142, the Permittee shall maintain at the source and have on file with the Illinois EPA a written episode action plan (plan) for reducing the levels of emissions during yellow alerts, red alerts, and emergencies, consistent with safe operating procedures. The plan shall contain the information specified in 35 IAC 244.144.



\* \* \*

(d) For sources required to have a plan pursuant to 35 IAC 244.142, a copy of the original plan and any subsequent revisions shall be sent to:

i. Illinois EPA, Compliance Section....

36. By failing to maintain at the Source and have on file with the Illinois EPA a written episode action plan from at least June 18, 2012 through February 21, 2013, Respondent violated Condition 5.2.6 of CAAPP permit 98070042.

37. Condition 7.3.10(a) of CAAPP permit 98070042 provides as follows:

(a) No later than April 12, 2004, the Permittee shall comply with the reporting and notification requirements of 40 CFR 63.2860, whenever the extraction solvent being used contains n-hexane or other HAP.

38. By failing to comply with the reporting and notification requirements of 40 CFR 63.2860(a) and (d), Respondent violated Condition 7.3.10(a) of CAAPP permit 98070042.

39. Condition 7.4.9 of CAAPP permit 98070042, as revised on February 3, 2006, provides, in relevant part, as follows:

In addition to the records required by Condition 5.6, the Permittee shall maintain records of the following items for the affected boilers to demonstrate compliance with Conditions 5.5.1, 7.4.5 and 7.4.6, pursuant to Section 39.5(7)(b) of the Act:

\* \* \*

(d) The Permittee shall maintain records of the following items for Boiler A:

i. Records for continuous monitoring system and other required instrumentation on the boiler, including recorded data and records of maintenance, calibration, and operational activity associated with the system.

\* \* \*

- iii. Records to be kept for each operating day, pursuant to the NSPS, 40 CFR 60, Subpart Db:

\* \* \*

- C. The average hourly NO<sub>x</sub> emission rates (expressed in lb/million Btu heat input) measured or if parametric monitoring is approved, records shall be kept of NO<sub>x</sub> emissions as predicted by parametric monitoring [40 CFR 60.49b(g)(2)];
- D. The 30-day average NO<sub>x</sub> emission rates (lb/million Btu heat input) calculated at the end of each operating date from the measured or if parametric monitoring is approved, records shall be kept of NO<sub>x</sub> emissions as predicted by parametric monitoring, hourly NO<sub>x</sub> emission rates for the preceding 30 operating days [40 CFR 60.49b(g)(3)];
- E. Identification of the operating date when the calculated 30-day average NO<sub>x</sub> emission rates are in excess of the NO<sub>x</sub> emissions standards under 40 CFR 60.44b, with the reasons for such excess emissions as well as a description of corrective actions taken [40 CFR 60.49b(g)(4)];
- F. Identification of the operating days for which pollutant data have not been obtained, including reasons for not obtaining sufficient and a description of corrective actions taken [40 CFR 60.49b(g)(5)];
- G. Identification of the times when emission data have been excluded from the calculation of the average emission rates and the reasons for excluding data [40 CFR 60.49b(g)(7)];
- H. Identification of the times when the pollutant concentration exceeds full span of the continuous monitoring system [40 CFR 60.49b(g)(8)];
- I. Description of any modification to the continuous monitoring system that could affect the ability of the continuous monitoring system to comply with Performance Specification 2 or 3 [40 CFR 60.49b(g)(9)];
- J. Results of daily CEMS drift tests and quarterly accuracy assessments as required under Appendix F, Procedure 1 of 40 CFR 60 [40 CFR 60.49b(g)(10)]

40. Respondent failed to maintain records for Boiler A to demonstrate compliance with Conditions 5.5.1, 7.4.5 and 7.4.6 of CAAPP permit 98070042, thereby violating Conditions 7.4.9(d)(i) and (iii)(C) through (J) of CAAPP permit 98070042.

41. Condition 7.4.9(b) of CAAPP permit 98070042 provides as follows:

In addition to the records required by Condition 5.6, the Permittee shall maintain records of the following items for the affected boilers to demonstrate compliance with Conditions 5.5.1, 7.4.5 and 7.4.6, pursuant to Section 39.5(7)(b) of the Act:

\* \* \*

(b) Emissions of NO<sub>x</sub>, CO, PM/PM<sub>10</sub>, SO<sub>2</sub>, and VOM from Boiler A, based on operating data from the boiler and emission monitoring data (NO<sub>x</sub>) or appropriate emission factors, with supporting calculations (tons/month and tons/year)...

42. From at least June 18, 2012 through a date better known to Respondent, Respondent failed to maintain records of monthly and rolling 12-month SO<sub>2</sub> emissions from Boiler A, thereby violating Condition 7.4.9(b) of CAAPP permit 98070042.

43. Condition 7.1.9 of CAAPP permit 98070042 provides, in relevant part, as follows:

In addition to the records required by Condition 5.6, the Permittee shall maintain records of the following items for the affected grain handling operation to demonstrate compliance with conditions 5.5.1, 7.1.5 and 7.1.6, pursuant to Section 39.5(7)(b) of the Act:

(a) Grain Processed (bushels/month and bushels/year)

\* \* \*

(d) PM emissions from the affected grain handling operation (tons/month and tons/year) with supporting calculations

44. From at least June 18, 2012 through a date better known to Respondent, Respondent failed to maintain a record of a running 12-month total of the quantity of grain

processed and the running 12-month total of PM emissions from the Facility's grain handling operations, in violation of Condition 7.1.9(a) and (d) of CAAPP permit 98070042.

45. Condition 7.2.9(a) of CAAPP permit 98070042 provides as follows:

In addition to the records required by Condition 5.6, the Permittee shall maintain records of the following items for the affected material handling units to demonstrate compliance with Conditions 5.5.1, 7.2.5 and 7.2.6, pursuant to Section 39.5(7)(b) of the Act:

- (a) Condition of equipment at least once per day and key operating parameters for air pollution control equipment, at least once per day;

46. From at least June 18, 2012 through a date better known to Respondent, Respondent failed to maintain records of the condition of equipment and the key operating parameters of air pollution control equipment at least once per day, in violation of Condition 7.2.9(a) of CAAPP permit 98070042.

47. On August 7, 2014, the Illinois EPA again inspected the Facility.

48. Condition 7.3.9 of CAAPP permit 98070042 provides as follows:

In addition to the records required by Condition 5.6, the Permittee shall maintain records of the following items for the affected extractor to demonstrate compliance with Conditions 5.5.1, 7.3.5 and 7.3.6, pursuant to Section 39.5(7)(b) of the Act:

- (a) The Permittee shall maintain records of the following items for the affected extractor:
  - i. The Permittee shall keep records of the monitoring activity conducted pursuant to Condition 7.3.8.
  - ii. Operating records for the affected extractor:
    - (A) Commodity(s) processed and rate (tons of commodity processed);
    - (B) Amount of extraction solvent used from inventory records (tons/month and tons/year);

- (C) HAP content of extraction solvent with supporting documentation;
  - (D) Operating hours (hours/month); and
  - (E) Maintain an operating and maintenance log for the scrubber and the cyclone dust collectors.
- iii. The Permittee shall measure and record the pressure drop of the cyclone dust collectors on at least a weekly basis.
- iv. Emission records for the affected extractor:
- (A) VOM and HAP emissions (tons/month and tons/year); and
  - (B) Monthly HAP Compliance ratio, with supporting calculations;
- (b) No later than April 12, 2004, the Permittee shall comply with the recordkeeping requirements specified at 40 CFR 63.2860, whenever the extraction solvent being used contains n-hexane or other HAP.
- (c) No later than April 12, 2004,
- i. Pursuant to 40 CFR 63.2863, the records must be in a form suitable and readily available for review in accordance with 40 CFR 63.10(b)(1).
  - ii. As specified in 40 CFR 63.10(b)(1), the Permittee shall keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.
  - iii. The Permittee shall keep each record on-site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, in accordance with 40 CFR 63.10(b)(1). The Permittee may keep the records off-site for the remaining 3 years.
- (d) i. The owner or operator of sources subject to 35 IAC 215.340 and 215.342 shall maintain daily records of solvent storage inventory, and conventional and specialty soybean crush or raw corn germ. Each day the total decreases in solvent storage inventory, and total conventional and

specialty soybean crush or raw corn germ for the previous 180 days shall be calculated [35 IAC 215.344(a)]

- ii. The Illinois EPA shall have access to records required under this 35 IAC 215.344(a) upon reasonable notice [35 IAC 215.344(a)].

49. From at least June 18, 2012 through a date better known to Respondent, Respondent did not maintain records of the items listed in Condition 7.3.9(a)(ii)((D) and (iv)(A) and (B) of CAAPP permit 98070042.

50. From at least June 18, 2012 through at least August 7, 2014, the precise date better known to Respondent, Respondent failed to maintain records of the amount of extraction solvent used from inventory in units of tons per month in violation of Condition 7.3.9(a)(ii)(B) of CAAPP permit 98070042.

51. Condition 7.5.9 of CAAPP permit 98070042 provides as follows:

In addition to the records required by Condition 5.6, the Permittee shall maintain records of the following items for the affected grain dryers to demonstrate compliance with Conditions 5.5.1, 7.5.5 and 7.5.6, pursuant to Section 39.5(7)(b) of the Act:

- (a) Amount of fuel combusted (mmscf/month and mmscf/year); and
- (b) Emissions of NO<sub>x</sub>, PM, SO<sub>2</sub>, and VOM from the affected grain dryers, based on fuel consumption and the applicable emission factors, with supporting calculations (tons/month and tons/year).

52. From at least June 18, 2012 through a date better known to Respondent, Respondent failed to maintain records of monthly and running 12-month totals of the amount of fuel combusted, and emissions of NO<sub>x</sub>, PM, SO<sub>2</sub>, and VOM, from the Facility's grain dryer operations, in violation of Condition 7.5.9(a) and (b) of CAAPP permit 98070042.

53. Condition 7.6.9 of CAAPP permit 98070042 provides, in relevant part, as follows:

In addition to the records required by Condition 5.6, the Permittee shall maintain records of the following items for the affected oil refinery hotwell to demonstrate compliance with Conditions 5.5.1, 7.6.5(a) and 7.6.6, pursuant to Section 39.5(7)(b) of the Act:

(a) Annual pour weight (tons/month);

\* \* \*

(c) VOM and HAP emissions with supporting calculations (tons/month and tons/year)

54. From at least June 18, 2012 through a date better known to Respondent, Respondent failed to maintain records of the running 12-month annual pour weight and the monthly and running 12-month VOM and HAP emissions generated during oil refinery hotwell operations, in violation of Condition 7.6.9(a) and (c) of CAAPP permit 98070042.

55. Condition 5.6.3(a) of CAAPP permit 98070042 provides as follows:

(a) The Permittee shall maintain a record of the maximum aggregate annual emissions of fugitive VOM from process system flanges, seals, valves, etc. during both normal and upset modes of operation, estimated based on the applicable emission factors and formulas specified by Condition 5.9.3, with supporting calculations, so as to demonstrate compliance with the limits in Condition 5.5.

56. From at least August 7, 2014 through a date better known to Respondent, Respondent failed to maintain a record of the maximum aggregate annual emissions of fugitive VOM from process system flanges, seals, valves, etc. in violation of Condition 5.6.3(a) of CAAPP permit 98070042.

57. Condition 5.7.1 of CAAPP permit 98070042 provides as follows:

The Permittee shall promptly notify the Illinois EPA, Compliance Section, of deviations of the source with the permit requirements as follows, pursuant to Section 39.5(7)(f)(ii) of the Act. Reports shall describe the probable cause of such deviations, and any corrective actions or preventive measures taken.

58. From at least August 7, 2014 through a date better known to Respondent, Respondent failed to notify the Illinois EPA that it was failing to maintain the records required by Conditions 5.6.3(a) and 7.3.9(a)(ii)(B) of CAAPP permit 98070042, thereby violating Condition 5.7.1 of CAAPP permit 98070042.

59. By violating Conditions 7.4.8(a), 5.2.6, 7.3.10(a), 7.4.9(d)(i) and (iii)(C) through (J), 7.4.9(b), 7.1.9(a) and (d), 7.2.9(a), 7.3.9(a)(ii)(B) and (D) and (iv)(A) and (B), 7.5.9(a) and (b), 7.6.9(a) and (c), 5.6.3(a), and 5.7.1 of CAAPP permit 98070042, Respondent violated Section 39.5(6)(a) of the Act, 415 ILCS 5/39.5(6)(a) (2014).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent with respect to this Count VI:

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

2. Finding that the Respondent has violated Section 39.5(6)(a) of the Act, 415 ILCS 5/39.5(6)(a) (2014), and Conditions 7.4.8(a), 5.2.6, 7.3.10(a), 7.4.9(d)(i) and (iii)(C) through (J), 7.4.9(b), 7.1.9(a) and (d), 7.2.9(a), 7.3.9(a)(ii)(B) and (D) and (iv)(A) and (B), 7.5.9(a) and (b), 7.6.9(a) and (c), 5.6.3(a), and 5.7.1 of CAAPP permit 98070042;

3. Ordering Respondent to cease and desist from any future violations of Section 39.5(6)(a) of the Act, 415 ILCS 5/39.5(6)(a) (2014), and Conditions 7.4.8(a), 5.2.6, 7.3.10(a), 7.4.9(d)(i) and (iii)(C) through (J), 7.4.9(b), 7.1.9(a) and (d), 7.2.9(a), 7.3.9(a)(ii)(B) and (D) and (iv)(A) and (B), 7.5.9(a) and (b), 7.6.9(a) and (c), 5.6.3(a), and 5.7.1 of CAAPP permit 98070042;



4. Assessing against the Respondent a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation of Section 39.5(6)(a) of the Act, 415 ILCS 5/39.5(6)(a) (2014), and Conditions 7.4.8(a), 5.2.6, 7.3.10(a), 7.4.9(d)(i) and (iii)(C) through (J), 7.4.9(b), 7.1.9(a) and (d), 7.2.9(a), 7.3.9(a)(ii)(B) and (D) and (iv)(A) and (B), 7.5.9(a) and (b), 7.6.9(a) and (c), 5.6.3(a), and 5.7.1 of CAAPP permit 98070042;

5. Ordering the Respondent to pay all costs of this action pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2014), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

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

**COUNT VII**

**EMISSIONS IN EXCESS OF CAAPP PERMIT FEE LIMITS**

1-20. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 14 and 16 through 17 of Count I, and paragraphs 29 through 32 of Count VI, as paragraphs 1 through 20 of this Count VII.

21. Condition 5.5.1 of CAAPP permit 98070042 provides as follows:

**Permitted Emissions for Fees**

The annual emissions from the source, not considering insignificant activities as addressed by Section 3.0 of this permit, shall not exceed the following limitations. The overall source emissions shall be determined by adding emissions from all emission units. Compliance with these limits shall be determined on a calendar year basis. These limitations (Condition 5.5.1) are set for the purpose of establishing fees and are not federally enforceable.

**Permitted Emissions of Regulated Pollutants**

Pollutant	Tons/Year
Volatile Organic Material (VOM)	418.30
Sulfur Dioxide (SO <sub>2</sub> )	0.24
Particulate Matter (PM)	58.50
Nitrogen Oxides (NO <sub>x</sub> )	38.00

HAP, not included in VOM or PM	----
Total	515.04

22. In 2012, the Facility emitted 522.646738 tons of VOM and 69.071217 tons of PM. In 2011, the Facility emitted 422.1 tons of VOM and 61.04 tons of PM. In 2009, the Facility emitted 428.39 tons of VOM and 77.94 tons of PM. In 2008, the Facility emitted 75.1 tons of PM. In 2007, the Facility emitted 71.9 tons of PM.

23. By emitting more than 418.30 tons of VOM in 2012, 2011 and 2009, and by emitting more than 58.50 tons of PM in 2012, 2011, 2009, 2008 and 2007, Respondent violated Condition 5.5.1 of CAAPP permit 98070042.

24. By violating Condition 5.5.1 of CAAPP permit 98070042, Respondent violated Section 39.5(6)(a) of the Act, 415 ILCS 5/39.5(6)(a) (2014).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent with respect to this Count VII:

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

2. Finding that the Respondent has violated Section 39.5(6)(a) of the Act, 415 ILCS 5/39.5(6)(a) (2014), and Condition 5.5.1 of CAAPP permit 98070042;

3. Ordering Respondent to cease and desist from any future violations of Section 39.5(6)(a) of the Act, 415 ILCS 5/39.5(6)(a) (2014), and Condition 5.5.1 of CAAPP permit 98070042;

4. Assessing against the Respondent a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation of Section 39.5(6)(a) of the Act, 415 ILCS 5/39.5(6)(a) (2014), and Condition 5.5.1 of CAAPP permit 98070042;

5. Ordering the Respondent to pay all costs of this action pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2014), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

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

**COUNT VIII**

**VIOLATING CONSTRUCTION PERMIT CONDITIONS**

1-18. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 14 and 16 through 17 of Count I, paragraph 18 of Count III, and paragraph 47 of Count VI, as paragraphs 1 through 18 of this Count VIII.

19. On July 25, 2006, the Illinois EPA issued Respondent construction permit 06050042, allowing the construction of emission sources and pollution control equipment for a new biodiesel plant at the Facility ("Biodiesel Plant"). Revised construction permit 06050042, authorizing increased vegetable oil processing, was issued to Respondent on July 21, 2011.

20. On August 10, 2007, the Illinois EPA issued Respondent construction permit 07050034, authorizing the construction of a new natural gas-fired boiler ("Boiler B") at the Facility.

21. Section 9(b) of the Act, 415 ILCS 5/9(b) (2014), 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, (1) without a permit granted by the Agency unless otherwise exempt by this Act or Board regulations or (2) in violation of any conditions imposed by such permit.

22. Section 3.115 of the Act, 415 ILCS 5/3.115 (2014), 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.

23. The Biodiesel Plant emits HAP and VOM, and Boiler B emits carbon monoxide (“CO”) and NO<sub>x</sub>, all of which are “contaminants,” into the atmosphere.

24. The Biodiesel Plant and Boiler B are each equipment 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 (2014).

25. Condition 1.1.9 of construction permit 07050034 provides as follows:

The Permittee shall maintain records of the following items:

- (a) Natural gas usage for the affected boiler (ft<sup>3</sup>/month and ft<sup>3</sup>/year);
- (b) NO<sub>x</sub> and CO emissions from the affected boiler, tons month and tons/year, based on fuel consumption and the applicable emission factors, with supporting calculations.

26. From at least June 18, 2012 through a date better known to Respondent, Respondent failed to maintain records of monthly and rolling 12-month natural gas usage and monthly and rolling 12-month emissions of NO<sub>x</sub> and CO from Boiler B, in violation of Condition 1.1.9(a) and (b) of construction permit 07050034.

27. By violating Condition 1.1.9(a) and (b) of construction permit 07050034, Respondent violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2014).

28. Condition 2.1.8(d) of construction permit 06050042 provides as follows:

- (d) The Permittee shall maintain records of the following items:

- i. Amount of vegetable oil used (tons/month and tons/year);
- ii. Amount of alcohol (Methanol) used (tons/month and tons/year);
- iii. HAP content of vegetable oil (% by weight); and
- iv. VOM and HAP emissions with supporting calculations (tons/month and tons/year).

29. From at least June 18, 2012 through a date better known to Respondent, Respondent failed to maintain a record of vegetable oil used annually, the quantity of methanol used monthly and annually, and the HAP content of vegetable oil at the Biodiesel Plant in violation of Condition 2.1.8(d)(i) through (iii) of construction permit 06050042.

30. From at least June 18, 2012 through at least August 7, 2014, the precise date better known to Respondent, Respondent failed to maintain 12-month rolling annual records of VOM and HAP emissions from the Biodiesel Plant in violation of Condition 2.1.8(d)(iv) of construction permit 06050042.

31. Condition 2.2.4(a)(vi) of construction permit 06050042 provides as follows:

The Permittee shall maintain the following records related to leaking components:

- (a) The Permittee shall fulfill applicable recordkeeping requirements of the NSPS, including maintaining the following records:

\* \* \*

- (vi) Records on at least an annual basis of the VOM and HAP emissions attributable to affected components, with supporting documentation and calculations.

32. From at least August 7, 2014 through a date better known to Respondent, Respondent failed to maintain records on at least an annual basis of the VOM and HAP emissions attributable to the biodiesel plants pumps, valves, flanges and other affected

components, with supporting documentation and calculations, in violation of Condition 2.2.4(a)(vi) of construction permit 06050042.

33. Condition 1.6(b) of construction permit 06050042 provides as follows:

- (b) If there is an exceedance of or deviation from the requirements of this permit that is not addressed by reporting required by the NSPS or NESHAP, the Permittee shall submit a report to the Illinois EPA within 30 days after the exceedance/deviation. The report shall include the emissions released in accordance with the recordkeeping requirements, a copy of the relevant records, and a description of the exceedance or deviation and efforts to reduce emissions and future occurrences.

34. Respondent failed to submit a report to the Illinois EPA within 30 days of failing to maintain the records required by Conditions 2.1.8(d)(iv) and 2.2.4(a)(vi) of construction permit 06050042, thereby violating Condition 1.6(b) of construction permit 06050042.

35. By violating Conditions 2.1.8(d)(i) through (iv), 2.2.4(a)(vi), and 1.6(b) of construction permit 06050042, Respondent violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2014).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent with respect to this Count VIII:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that the Respondent has violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2014), and Conditions 2.1.8(d)(i) through (iv), 2.2.4(a)(vi), and 1.6(b) of construction permit 06050042;

3. Ordering Respondent to cease and desist from any future violations of Section 9(b) of the Act, 415 ILCS 5/9(b) (2014), and Conditions 2.1.8(d)(i) through (iv), 2.2.4(a)(vi), and 1.6(b) of construction permit 06050042;

4. Assessing against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day during which the violations continue;

5. Ordering the Respondent to pay all costs of this action pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2014), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

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

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

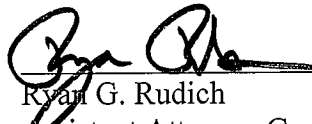
MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

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ELIZABETH WALLACE, Chief  
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**CERTIFICATE OF SERVICE**

I, Ryan G. Rudich, an Assistant Attorney General, certify that on the 12<sup>th</sup> day of June, 2015, I caused to be served by U.S. Mail the foregoing Notice of Electronic Filing and Motion for Leave to File First Amended Complaint on LaDonna Driver at the address listed on the Notice of Electronic Filing, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601, and by e-mail.



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