

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

| | | |
|-----------------------------------|---|----------------------|
| BRANDIS AIRCRAFT, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | PCB No. 20-_____ |
| |) | (RCRA Permit Appeal) |
| |) | |
| ILLINOIS ENVIRONMENTAL PROTECTION |) | |
| AGENCY, |) | |
| |) | |
| Respondent. |) | |

NOTICE OF FILING/PROOF OF SERVICE

Don Brown, Clerk
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, IL 60601-3218

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

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, pursuant to Section 101.302(d) of the Board's procedural rules, 35 Ill. Adm. Code 101.302(d), a Petition for Review of RCRA Permit Denial, and an Entry of Appearance, copies of which are served upon the attorneys of record in this cause.

The undersigned certifies that a true and correct copy of this Notice of Filing/Proof of Service, together with the Petition for Review of RCRA Permit Denial and of the Entry of Appearance described above, were today served upon counsel of record of all parties to this cause by enclosing same in envelopes addressed to such attorneys with postage fully prepaid, and by depositing said envelopes in the U.S. post office mailbox in Springfield, Illinois on the

24th day of May, 2021.

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| Respondent. |) | |

ENTRY OF APPEARANCE

The undersigned, Stephen F. Hedinger and the firm Sorling Northrup, hereby enter their appearance as counsel of record in this proceeding for and on behalf of Petitioner, BRANDIS AIRCRAFT.

Date: 24~~th~~ of May, 2021

Respectfully submitted,
SORLING NORTHRUP

By: 
Stephen F. Hedinger

Sorling Northrup
Stephen F. Hedinger, of Counsel
1 North Old State Capitol Plaza, Suite 200
P.O. Box 5131
Springfield, IL 62705
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Respectfully submitted,
BRANDIS AIRCRAFT, Petitioner

By:


Stephen F. Hedinger

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PETITION FOR REVIEW OF RCRA PERMIT DENIAL

NOW COMES Petitioner, BRANDIS AIRCRAFT, through its undersigned attorneys, Sorling Northrup, Stephen F. Hedinger of counsel, and pursuant to Section 40 of the Illinois Environmental Protection Act, 415 ILCS 5/40(a)(1), 35 Ill. Adm. Code Part 105, Subpart B, and 35 Ill. Adm. Code § 705.212, hereby appeals the April 21, 2021 denial of the Closure Certification and Documentation for <90-Day Unit (hereinafter the “Certification of Closure”) submitted by Petitioner on November 25, 2020. In support of this petition, Brandis Aircraft states as follows:

1. Petitioner operates an aircraft repair and refurbishing business located in Taylorville, Christian County, Illinois. A portion of the business is devoted to repainting aircraft, and is sometimes referred to as the “Paint Shop.”

2. Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (hereinafter “Illinois EPA”), performed an inspection of Petitioner’s business in 2014 and claimed that certain conditions and activities performed at the Paint Shop portion of the business had inadvertently become subject to requirements of the Resource Conservation and Recovery Act (RCRA), as adopted and incorporated in Illinois through the Illinois Environmental Protection Act

and the Board's regulations, as a result of storage of certain hazardous wastes for too long a period (S01), and improper use of a piece of equipment to evaporate water from waste liquids (T04).

3. In response to the Illinois EPA's claims, Brandis Aircraft immediately arranged for the proper removal and disposal of the hazardous wastes that had been stored for too long, and ceased use of the identified piece of equipment, and performed other activities to close the units.

4. In 2018 the Illinois EPA performed another inspection, and following that inspection claimed that Brandis Aircraft had not certified the closure of the two hazardous waste management units identified during the 2014 inspection. In response to the 2018 claims, Petitioner's retained engineering consultants requested clarification as to what the Illinois EPA required of Brandis Aircraft, and by email correspondence dated April 15, 2019, counsel for the Illinois EPA informed Petitioner's consulting engineers that, "to bring the site into technical compliance," among other things, and relevant here, Brandis Aircraft must "[c]omplete RCRA closure (and receive closure certification) for the previously operated S01 (container storage) and T04 (tank treatment) units."

5. In conformance with the directions of the Illinois EPA, Division of Legal Counsel, Petitioner, through its engineering consultant, submitted on November 25, 2020, the Certification of Closure. The submittal included a signed certification, along with discussion and documentation regarding the applicable closure performance standards, the history of leaks or spills, and discussion of Brandis Aircraft's compliance with the closure performance standards.

6. By correspondence dated April 21, 2021, Respondent denied the submitted Certification of Closure, claiming as reasons for the denial: "(1) The Paint Shop has not demonstrated that the closure performance standards of 35 Ill. Adm. Code 725.211 were met. (2) A closure plan was not submitted or approved for the container storage area (SO1) and waste

treatment tank (TO4) as required by 35 Ill. Adm. Code 725.212. Therefore, Brandis Aircraft must submit to the Illinois EPA a RCRA Closure Plan for review.”

7. The Illinois EPA’s bases for denial of the submitted Certification of Closure is arbitrary, capricious, and incorrect as a matter of law and fact, for the following reasons:

- A. Contrary to the Respondent’s assertion, the Certification of Closure expressly addressed and demonstrated that the applicable closure performance standards had been met.
- B. Contrary to Respondent’s assertion, the Certification of Closure constituted a closure plan while simultaneously documenting compliance with and completion of that plan.
- C. The denial was arbitrary and capricious. Petitioner fully complied with the instructions provided by the Illinois EPA’s Division of Legal Counsel, yet the Illinois EPA arbitrarily rejected the Certification of Closure.

8. A true and correct copy of the Illinois EPA’s April 21, 2021 letter denying the Certification of Closure is attached hereto as Exhibit 1.

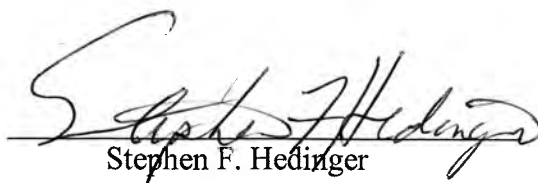
9. The decision of the Illinois EPA is erroneous as a matter of law and fact, was arbitrary and capricious, and should be reversed.

WHEREFORE Petitioner, BRANDIS AIRCRAFT, respectfully requests that this Board reverse the Illinois EPA’s permit denial, and grant to BRANDIS AIRCRAFT all such other and further relief as the Board deems available and appropriate.

Dated: May 24, 2021

Respectfully submitted,
BRANDIS AIRCRAFT, Petitioner

By:


Stephen F. Hedinger

Sorling Northrup
Stephen F. Hedinger, of Counsel
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P.O. Box 5131
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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 · (217) 782-3397

JB PRITZKER, GOVERNOR

JOHN J. KIM, DIRECTOR

217/524-3300

7020 1290 0002 1665 7907

APR 21 2021

The Paint Shop
Attn: Michael Brandis
2207 S. Spresser Street
Taylorville, Illinois 62568

RE: 0210600007—Christian County
Brandis Aircraft, The Paint Shop
ILD 982 621 690
Log No. C-900
RCRA Closure File

Dear Mr. Brandis:

This is in response to the certification of closure submittal by Allison S. Kmett, P.E. of Andrews Engineering on your behalf dated November 25, 2020 and received by the Illinois EPA on December 1, 2020. It appears this submittal responds to the Illinois EPA May 16, 2014 RCRA inspection and subsequent September 19, 2014 Violation Notice.

The Certification of Closure is hereby denied for the following reasons: 1. The Paint Shop has not demonstrated that the closure performance standards of 35 Ill. Adm. Code 725.211 were met. 2. A closure plan was not submitted or approved for the container storage area (S01) and waste treatment tank (T04) as required by 35 IAC 725.212. Therefore, Brandis Aircraft must submit to the Illinois EPA a RCRA Closure Plan for review.

This RCRA Closure Plan must be submitted to the Illinois EPA within 60 days of the date of this letter. Guidance for preparing this RCRA Closure Plan may be found online at www2.epa.state.il.us.

When the facility has completed RCRA closure of the hazardous waste container storage area (S01) and hazardous waste treatment (T04) area in accordance with an approved plan, a new Certification of Closure must be submitted. This certification must detail all the work completed as approved by the RCRA Closure Plan.

This letter shall constitute Illinois EPA's final decision on the subject submittal. The applicant may appeal this final decision to the Illinois Pollution Control Board pursuant to Section 40 of the Act by filing a petition for a hearing within 35 days after the date of issuance of the final decision. However, the 35-day period may be extended for a period of time not to exceed 90 days by written notice from the applicant and the Illinois EPA within the initial 35-day appeal period. If the owner or operator wishes to receive a 90-day extension, a written request that includes a statement of the date the final decision was received, along with a copy of this decision, must be sent to the Illinois EPA as soon as possible.

2125 S. First Street, Champaign, IL 61820 (217) 278-5800
1101 Eastport Plaza Dr., Suite 100, Collinsville, IL 62234 (618) 346-5120
9511 Harrison Street, Des Plaines, IL 60016 (847) 294-4000
595 S. State Street, Elgin, IL 60123 (847) 608-3131

2309 W. Main Street, Suite 116, Marion, IL 62959 (618) 993-7200
412 SW Washington Street, Suite D, Peoria, IL 61602 (309) 671-3022
4302 N. Main Street, Rockford, IL 61103 (815) 987-7760

For information regarding the request for an extension, please contact:

Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276
217/782-5544

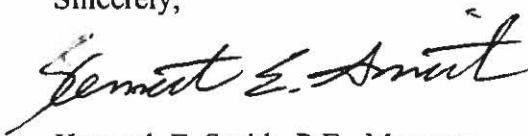
For information regarding the filing of an appeal, please contact:

Illinois Pollution Control Board, Clerk
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, IL 60601
312/814-3620

Work required by this letter, your submittal, or the regulations may also be subject to other laws governing professional services, such as the Illinois Professional Land Surveyor Act of 1989, the Professional Engineering Act of 1989, the Professional Geologist Licensing Act and the Structural Engineering Act of 1989. This letter does not relieve anyone from compliance with these laws. All work that falls within the scope and definition of these laws must be performed in compliance with them. The Illinois EPA may refer any discovered violation to the appropriate regulating authority.

Should you have any questions regarding this letter, please contact William T. Sinnott, II at 217/524-3310.

Sincerely,



Kenneth E. Smith, P.E., Manager
Permit Section
Division of Land Pollution Control
Bureau of Land

KES:WTS:0210600007-RCRA-C-900-Denial.docx

WPS

cc: Alison S. Kmett, P.E., Andrews Engineering
Stephen F. Hedinger, Sorling Northrup
Fred C. Prillaman, Sorling Northrup

bcc: Bureau File
Spfld Regional Office
Rob Watson
William Sinnott
Greg Richardson