BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	**PCB No. 13 - 12**
	)	(Enforcement – Air)
NACME STEEL PROCESSING, LLC, a Delaware limited liability corporation,	)	
	)	
Respondent.	)	

NACME STEEL PROCESSING, LLC's INTERIM RESPONSE TO STATE'S MOTION FOR SUMMARY JUDGMENT

NACME Steel Processing, LLC ("NACME") files this interim Response to the State's pending Motion for Summary Judgment pending the Board's consideration of and ruling on NACME's Motion to Strike the affidavit of Valeriy Brodsky which was attached to the People's Motion for Summary Judgment herein, and in support of its motion states as follows:

1. This brief is submitted so that there is a clear record in these proceedings.

2. On May 16, 2014 the State filed a Motion for Summary Judgment pursuant to Section 101.516 of the Board's regulations (35 IAC 101.516) and section 2-1005 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1005) (the State's Motion, without exhibits, is attached as Attachment 1)

3. The fundamental issue in this case is whether NACME is a major source of regulated pollutants and is required, but failed, to obtain a Title V permit or federally enforceable state operating permit. (*See*, State's Complaint herein)

4. The State alleges that NACME is a major source because it has the potential to emit pollutants at more than the major source threshold. It is axiomatic that the State bears the

burden of proof on each element of its case, including that NACME had the potential to emit pollutants above major source thresholds.

5. In support of its Motion for Summary Judgment the State attaches the affidavit of Valeriy Brodsky, a longtime Illinois Environmental Protection Agency ("IEPA") employee and a "permit writer" in the Bureau of Air.

6. Mr. Brodsky's affidavit apparently attempts to support the State's theory that NACME had a potential to emit above major source thresholds. Brodsky's affidavit is the key (and only) technical testimony offered by the State on NACME's potential to emit. The affidavit contains mathematical calculations performed by Brodsky followed by his opinion on NACME's potential to emit.

7. On June 5, 2014, and well within NACME's time to file a response to the State's Motion, NACME moved to strike Mr. Brodsky's affidavit. (*See*, Attachment B with relevant attachments) At that time NACME specifically requested of the Board additional time to file a substantive response to the State's Motion as measured from the Board's ruling on NACME's Motion to Strike.

8. In a status conference-call with hearing officer Bradley Halloran on June 19, 2014 the State took the remarkable position that NACME had waived its right to substantively respond to the Motion for Summary Judgment and, at the same time, that NACME's Motion to Strike the Brodsky affidavit constitutes its response to the State's Motion.

9. The State's position is wrong for at least two reasons. First, NACME specifically requested time to substantively respond to the State's Motion following the Board's ruling on NACME's Motion to Strike, and did so within the deadline set by hearing officer Halloran for filing a response to the State's Motion. As such, clearly no waiver occurred. In fact, NACME

intends to file a detailed response to the State's Motion following the Board's ruling on the Brodsky affidavit. Second, until the Board rules on NACME's Motion, NACME is unable to substantively respond to the State's Motion because Brodsky's affidavit is the key (and in NACME's view only) potentially admissible testimony offered by the State about NACME's potential to emit.

10. Until the Board rules on the Motion to Strike, which may include denying NACME's motion, striking the affidavit in whole, striking it in part or giving the State leave to submit an amended affidavit, NACME is not in a position to substantively respond to the State's Motion, including by counter-affidavit. In fact, until the Board rules NACME does not know what it is responding to. Rather, the Board's ruling will fundamentally determine how NACME responds. For example were the State given leave to file an amended affidavit it would result in a substantive change to the State's Motion for Summary Judgment to which NACME would then have the right to respond, including by counter-affidavit rebutting Brodsky's assertions. If on the other hand the affidavit were stricken in whole or part, NACME would then be in a position to respond under that scenario. Until the Board rules, NACME is hamstrung as it does not know what in fact it is responding to.

11. As explained in the Motion to Strike, Brodsky's affidavit falls so far short of a proper Rule 191(a) affidavit, and is so vague and confusing on its face, that NACME was forced to move to strike it before it could even attempt to respond substantively, including by securing a counter-affidavit, to the State's Motion.[1]

[1] NACME's Motion to Strike also shows that Mr. Brodsky, disclosed only as a lay witness, attempts to state an expert opinion. Should the affidavit be stricken by the Board, or should the state be allowed to amend the affidavit while still including an expert opinion, NACME will at that time move the Board to allow NACME to provide expert witness on the issues raised by Brodsky.

12. In sum, until the Board rules on the Motion to Strike, it is evident that NACME is not in a position to file a response to the State's Motion for Summary Judgment. In its response NACME will show that the record is replete with questions of fact precluding the entry of summary judgment, including extensive contrary data known to but nowhere mentioned by Mr. Brodsky in his affidavit. Moreover, there is no prejudice to the State whatsoever in the Board's granting to NACME the requested additional time to respond to the State's Motion following the Board's ruling on NACME's Motion to Strike the facially deficient affidavit that the State has submitted.

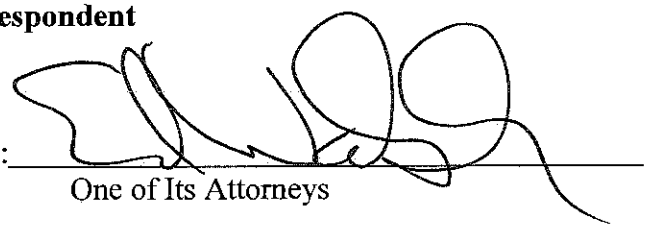
WHEREFORE, for all of the above reasons NACME requests (and reiterates the specific request it made in its June 5, 2014 Motion to Strike):

That NACME's time to respond to the State's Motion for Summary Judgment be extended to a time 14 days after ruling on the subject Motion to Strike.

Respectfully Submitted,

NACME STEEL PROCESSING, L.L.C.,

Respondent



By: _____
One of Its Attorneys

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

CERTIFICATE OF SERVICE

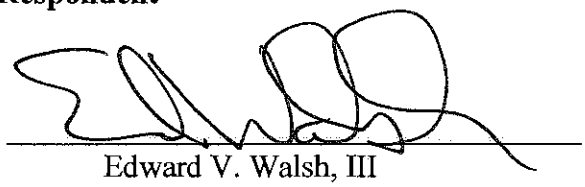
I, the undersigned, certify that I have served the attached **NACME STEEL PROCESSING, LLC's INTERIM RESPONSE TO STATE'S MOTION FOR SUMMARY JUDGMENT**, by e-mail or U.S. Regular Mail, upon the following persons:

Nancy J. Tikalsky (via mail)
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 (via e-mail)
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

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

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

By: 
Edward V. Walsh, III

Date: June 20, 2014

ATTACHMENT 1

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE PEOPLE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 13 - 12
	)	(Enforcement – Air)
NACME STEEL PROCESSING, LLC, a Delaware limited liability corporation,	)	
	)	
	)	
Respondent.	)	

NOTICE OF SERVICE

To: See Attached Service List
(VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that I have today filed with the Illinois Pollution Control Board, the **PEOPLE'S MOTION FOR SUMMARY JUDGMENT ON ALL COUNTS OF COMPLAINT AGAINST RESPONDENT, NACME STEEL PROCESSING, LLC**

Respectfully submitted,

Nancy J. Tikalsky
Assistant Attorney General
Office of the Illinois Attorney General
Environmental Bureau
69 West Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 814-8567

Date: May 16, 2014

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

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

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

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE PEOPLE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 13 - 12
	)	(Enforcement – Air)
NACME STEEL PROCESSING, LLC, a Delaware limited liability corporation,	)	
	)	
	)	
Respondent.	)	

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on May 16, 2014, I served true and correct copies of the **PEOPLE'S MOTION FOR SUMMARY JUDGMENT ON ALL COUNTS OF COMPLAINT AGAINST RESPONDENT, NACME STEEL PROCESSING, LLC**, upon the persons and by the methods as follows:

[First Class U.S. Mail]

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

[electronically]

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

Nancy J. Tikalsky
Assistant Attorney General
Office of the Illinois Attorney General
Environmental Bureau
69 West Washington Street, Suite 1800
Chicago, IL 60602
(312) 814-8567

Date: May 16, 2014

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 13 - 12
	)	(Enforcement – Air)
NACME STEEL PROCESSING, LLC, a Delaware limited liability company,	)	
	)	
	)	
Respondent.	)	

PEOPLE'S MOTION FOR SUMMARY JUDGMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois ("Complainant" or "State" or "People"), pursuant to Section 101.516 of the Illinois Pollution Control Board's ("Board") Procedural Regulations, 35 Ill. Adm. Code 101.516 and Section 2-1005 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-1005 (2012), hereby moves for summary judgment in favor of the People and against the Respondent, NACME STEEL PROCESSING, LLC ("Respondent" or "Nacme") on the issue of liability and civil penalties as alleged in the People's Complaint filed on September 5, 2012 ("Complaint") (hereto attached as Exhibit A). For the reason that the pleadings, depositions, admissions and affidavits show that there is no genuine issue as to any material fact, the Complainant is entitled to summary judgment on liability and civil penalties as a matter of law. In support thereof, Complainant states as follows:

I. INTRODUCTION

From at least April 16, 2002 through February 11, 2012, Respondent conducted pickling operations at its steel processing facility located at 429 West 127th Street, Chicago, Cook County, Illinois ("Facility"), a major source for air emissions, without a

Title V Clean Air Act Permit Program ("CAAPP") permit or, in the alternative, a Federally Enforceable State Operating Permit ("FESOP") in violation of Sections 39.5(5)(x), 39.5(6)(b), and 9(b) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/39.5(5)(x), 39.5(6)(b), and 9(b) (2010). In 2001, the Illinois Environmental Protection Agency ("Illinois EPA" or "Agency") issued Nacme a State Operating Permit No. 96020074 for air emissions with an expiration date of October 25, 2005 ("Nacme's SOP").

During the relevant time period, April 16, 2002 through February 11, 2012, Nacme submitted FESOP applications and a construction application to the Agency attesting that Nacme's Facility was a major source with a potential to emit ("PTE") hydrochloric acid ("HCL"), a hazardous air pollutant ("HAP"), air emissions greater than 10 tons per year ("tpy"). Each application relied on reports from one of the following stack tests conducted at Nacme's Facility on the following dates: April 16, 2002, ("April 2002 Stack Test"), and December 21, 2006 ("December 2006 Stack Test").

October 18, 2005 was the first time Nacme submitted to the Agency a CAAPP application requesting a FESOP to conduct pickling operations at the Facility, which relied on Nacme's April 2002 Stack Test results ("2005 FESOP Application"). Nacme submitted its 2005 FESOP Application 3½ years *after* Nacme had obtained the results for its April 2002 Stack Test showing that the PTE HCL air emissions exceeded 10 tpy, and *after* the Agency determined Nacme's two prior SOP renewal applications submitted in 2005 to be incomplete for failure to provide: 1.) adequate emissions information to assess the Facility's HCL PTE, and 2.) justification for Nacme's proposed actual air emissions

factors for the HCL ("April 2005 Notice of Incompleteness" and "September 2005 Notice of Incompleteness").[1]

In the September 2005 Notice of Incompleteness, the Agency informed Nacme it was required to submit a CAAPP application because its PTE HCL air emissions exceeded 10 tpy for a single source during the April 2002 Stack Test, which qualified the Facility as a major source for purposes of the Act, 415 ILCS 5/39.5(5)(x), 39.5(6)(b), and 9(b) (2010). In the same notice, the Agency stated that Nacme needed to submit a construction permit application if it wanted the Agency to consider an increase in the maximum annual steel throughput process rate ("process rate") proposed in its 2005 FESOP Application because the process rate proposed in Nacme's 2005 FESOP application exceeded the previous process rates the Agency could consider for the 2005 FESOP application as follows: 1.) the process rate derives from Nacme's April 2002 Stack Test results, and 2.) the process rate the Agency permitted Nacme's SOP ("Process Modification").[2]

In its 2005 FESOP Application, Nacme proposed a FESOP which would permit the Facility to operate with a Process Modification. At that time, Nacme failed to submit a construction permit application for the Process Modification proposed in its 2005 FESOP Application. In December 2005, the Agency informed Nacme a construction permit would be required for the Agency to issue a FESOP with the Process Modification as proposed in Nacme's 2005 FESOP Application. At the same time, the Agency informed Nacme that it would need to conduct a stack test at the proposed process rate

1 Nacme's initial SOP renewal application received by the Agency on April 12, 2005 was determined to be incomplete by the Agency in a letter dated April 13, 2005. Nacme again submitted an SOP renewal application received by the Agency on September 12, 2005 in response to the April 2005 Notice of Incompleteness, which the Agency also determined to be incomplete in a letter dated September 20, 2005.
2 Nacme's 2005 FESOP application proposed a process rate of 85.6 tph while its April 2002 Stack Test shows that the stack test was conducted at a process rate of 33.3 tph.

because the April 2002 Stack Test resulted in a process rate below the process rate proposed in its 2005 FESOP Application.

In March 2007, Nacme submitted to the Agency a change request to its 2005 FESOP Application for a proposed Process Modification that equaled the process rate conducted during its December 2006 Stack Test ("2007 FESOP Application").[3] Although Nacme submitted a Fee Determination for Construction Permit Application with its request, Nacme failed to submit a construction permit application for the Process Modification. Once again, the Agency informed Nacme a construction permit would be required that included the equivalent Process Modification proposed in its 2007 FESOP Application because it was a change in process rate from Nacme's SOP.

On February 12, 2012, Nacme submitted a construction permit application for the Process Modification it requested in its 2007 FESOP Application. On April 26, 2012, the Agency approved and issued Construction Permit – NSPS Source No. 031600FWL ("2012 Construction Permit"). A special condition in the Construction Permit authorized Nacme to operate the equipment listed in the Construction Permit at the Facility with the proposed Process Modification until the Agency takes final action on the 2012 FESOP Application.

Nacme's Answer and Affirmative Defense of Nacme Steel Processing, LLC to the Complaint of the People of the State of Illinois ("Answer")(hereto attached as Exhibit B and incorporated herein), Nacme Steel Processing, LLC.'s Response to Complainant's First Request for Admission of Facts ("Nacme's Admission of Facts") (hereto attached as Exhibit C and incorporated herein), the Deposition of Britt Wenzel ("Wenzel

3 Nacme proposed a Process Modification from the current process rate of 33.3 tph in its 2005 FESOP application to a process rate of 119.9983 tph.

Deposition") (hereto attached as Exhibit D and incorporated herein), together with the People's affidavits by Valeriy Brodsky ("IEPA Brodsky's Affidavit) (hereto attached as Exhibit E and incorporated herein) and Tom Reuter ("IEPA Reuter Affidavit")(hereto attached as Exhibit F and incorporated herein), support this motion and establish all material facts necessary to prove Nacme's liability and the People's entitlement to penalties. Accordingly, because there is no genuine issue of material fact, the People are entitled to summary judgment and civil penalties as a matter of law.

II. PROCEDURAL HISTORY

On September 5, 2012, the People filed a one-count Complaint against Nacme alleging violations of the Act, 415 ILCS 5/1 *et seq*. The People allege 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). Specifically, the People allege Nacme 'Operated a Major Stationary Source without a Clean Air Act Permit Program permit' from at least April 16, 2002 through February 11, 2012.

On November 2, 2012, the People received service of Nacme's Answer, which had been filed with the Board on November 1, 2012.

On November 30, 2012, the People filed with the Board its Motion to Strike and Dismiss Respondent's Affirmative Defenses. On January 8, 2013, the Hearing Officer issued an Order granting the parties an agreed motion to allow Respondent to withdraw its affirmative defenses and file amended affirmative defenses to the Complaint. On January 16, 2013, the People received service by Nacme of its Amended Affirmative Defenses to the Complaint, which had been filed with the Board on January 15, 2013. On February 8, 2013, the People filed with the Board its Motion to Strike and Dismiss

Respondent's Amended Affirmative Defenses. On March 11, 2013, Nacme filed its Response to People's Motion to Strike and Dismiss Respondent's Amended Affirmative Defenses. On March 25, 2013, People filed its Motion for Leave to File Reply Instanter and Reply Brief in Support of Motion to Strike and Dismiss Respondent's Amended Affirmative Defenses, and on April 1, 2013, Nacme filed its Objection to State's Request to File Reply Brief in Support of Motion to Strike Affirmative Defenses. On June 6, 2013 the Board issued an order allowing Nacme's Amended Affirmative Defenses on Laches and Waiver only.

III. STATEMENT OF UNDISPUTED FACTS

The Agency is an administrative agency established in the executive branch of the State government by Section 4 of the Act, 415 ILCS 5/4 (2010), and charged, *inter alia*, with the duty of enforcing the Act. [Exhibit B, Answer ¶2]

Respondent, Nacme, is and has been a Delaware corporation registered in good standing with the Illinois Secretary of State and duly authorized to do business in the State of Illinois. [Exhibit B, Answer ¶3; Exhibit C, Nacme's Admission of Facts, Facts 1 and 2].

Nacme owns and operates a steel processing facility located at 429 West 127th Street, Chicago, Cook County, Illinois. [Exhibit B, Answer ¶3; Exhibit C, Nacme's Admission of Facts, Fact 1]

At the Facility, Nacme operates a continuous coil pickling line, comprised of four (4) pickling tanks in a turbo tunnel enclosure, and a four (4) stage washer. [Exhibit B, Answer ¶4; Exhibit C, Nacme's Admission of Facts, Fact 4] Emissions from the

pickling tanks and washer are vented to a Pro-Eco four tray scrubber ("scrubber"). [Exhibit B, Answer ¶4; Exhibit C, Nacme's Admission of Facts, Fact 3]

The pickling tanks, which can be heated to approximately 190 degrees Fahrenheit, utilize HCL at various concentrations in a dissolution process to remove impurities from hot rolled steel ("pickling"). [Exhibit B, Answer ¶5; Exhibit C, Nacme's Admission of Facts, Fact 4] After pickling, the steel goes through an aqueous based four stage washer ("washing"). [Exhibit B, Answer ¶5; Exhibit C, Nacme's Admission of Facts, Fact 4]

During the pickling and washing, air emissions are captured in ducts with a TurboTunnel enclosure and transported via piping to the scrubber. [Exhibit B, Answer ¶6] Additionally, pickling and washing tanks containing the HCL are equipped with covers to minimize exposure of HCL to the atmosphere when not in use. [Exhibit B, Answer ¶6; Exhibit C, Nacme's Admission of Facts, Fact 2]

On February 8, 2001, the Agency issued Nacme's SOP for control of its air emissions at the Facility. [Exhibit B, Answer ¶7] Nacme's SOP was issued as a condition of settlement of a permit appeal PCB 01-85. [Exhibit F1, IEPA Reuter Affidavit – Nacme's SOP, page 1, ¶1] Nacme's SOP expired on October 25, 2005. [Exhibit B, Answer ¶7; Exhibit F1, IEPA Reuter Affidavit – Nacme's SOP]

Nacme's SOP permitted a process rate at the Facility of 600,000 tpy[4] and an emission factor of 4.8 lbs of HCL per 1000 tons of steel throughput ("SOP emission factor")[Exhibit F1, IEPA Reuter affidavit – Nacme's SOP, page 1, ¶2]

On April 11, 2002, Nacme submitted an Operating Permit Revision Application with a cover letter requesting an operating permit revision and construction permit ("2002 Construction Permit Application"). [Exhibit F2, IEPA Reuter Affidavit – 2002

4 600,000 tpy/24 x 365 = 69 tph. [Exhibit E, IEPA Brodsky Affidavit ¶10]

Construction Permit Application] The 2002 Construction Permit Application addressed a modification to the Facility, installing a TurboTunnel enclosure, and requested an allowance to operate at a higher process rate of 750,000 tpy.[5] [Exhibit F2, IEPA affidavit – 2002 Construction Permit Application, page NMLP 0784]

On April 12, 2002, the Agency issued the 2002 Construction Permit to Nacme for the installation of an emissions tunnel and retesting of the modified steel pickling process. [Exhibit F3, IEPA Reuter Affidavit – 2002 Construction Permit] The 2002 Construction Permit allowed Nacme to operate with an emission factor of 4.8 and a process rate of 750,000 tpy for the purposes of stack testing only, which was greater than the process rate of 600,000 tpy permitted by Nacme's SOP. [Exhibit B, Answer ¶8; Exhibit F3, IEPA Reuter Affidavit – 2002 Construction Permit, page 1, ¶1; Exhibit F1, IEPA Reuter Affidavit – Nacme's SOP, page 1, ¶2]

On April 16, 2002, Nacme conducted the April 2002 Stack Test. [Exhibit B, Answer ¶9] The April 2002 Stack Test report indicated a process rate of 33.3 tons per hour ("tph").[6] [Exhibit E, IEPA Brodsky Affidavit, ¶3, (referencing Exhibit F4 IEPA Reuter Affidavit - April 2002 Stack Test, page IEPA FOIA 408); Exhibit F9, IEPA Reuter Affidavit - September 2005 Notice of Incompleteness, page 1, ¶2]

The April 2002 Stack Test resulted in PTE HCL air emissions of 95 tpy, which is greater than 10 tpy. [Exhibit E, IEPA Brodsky Affidavit, ¶¶4 and 10 (referencing average HCL controlled emissions found at F4, IEPA Reuter Affidavit - April 2002 Stack Test, 2.0 Summary of Results chart, page IEPA FOIA 402, line 2 and 6.0 Test Results

5 750,000 tpy process rate divided by (24x365) = 85.6tph process rate. [See Exhibit E, IEPA Brodsky affidavit, ¶10]
6 33.3 tph process rate x (24x365) = 292,000 tpy process rate. [See Exhibit E, IEPA Brodsky affidavit, ¶10]

Summary, page IEPA FOIA 406, line 9; Exhibit F9, IEPA Reuter Affidavit - September 2005 Notice of Incompleteness, pages 1-2, ¶3)]

On May 16, 2002, the Agency denied Nacme's Operating Permit Application - Revised dated April 11, 2002 ("2002 Operating Permit Denial"). [Exhibit F5, IEPA Reuter Affidavit - 2002 Operating Permit Denial]

On April 4, 2005, the Agency received a permit renewal application for Nacme's SOP submitted by Nacme ("April 2005 SOP Renewal Application"). [Exhibit B, Answer ¶10; Exhibit F6, IEPA Reuter Affidavit - April 2005 SOP Renewal Application]

On April 13, 2005, the Agency issued a Notice of Incompleteness to Nacme's April 2005 SOP Renewal Application for failure to provide detailed calculations for the Facility's actual emissions and PTE of hazardous air pollutant, HCL, and failure to provide updated information on production rate and emissions based on its April 2002 Stack Test. [Exhibit F7, IEPA Reuter Affidavit, April 2005 Notice of Incompleteness, page 1, ¶¶1 and 2]

On September 12, 2005 the Agency received a second permit renewal application for Nacme's SOP submitted by Nacme ("September 2005 SOP Renewal Application"). [Exhibit B, Answer ¶12; Exhibit F8, IEPA Reuter Affidavit, September 2005 SOP Renewal Application]

In its September 2005 SOP Renewal Application, Nacme proposed a process rate of 750,000 tpy. [Exhibit F8, IEPA Reuter Affidavit – September 2005 State Operating Permit Renewal Application, page NMLP 0952]

In its September 2005 SOP Renewal Application, Nacme stated that the control efficiency of its scrubber was 99.90 % for particulate emissions and 99.90% for gaseous

emissions. [Exhibit F8, IEPA Reuter Affidavit - September 2005 SOP Renewal Application, NMLP 0950]

In its September 2005 SOP Renewal Application, Nacme proposed the basis of its controlled HCL air emissions to be calculated utilizing its SOP Emission Factor and its proposed 750,000 tpy process rate, instead of basing it on the most recent emission factor and process rate that resulted from the April 2002 Stack Test.[7] [Exhibit F8, IEPA Reuter Affidavit - September 2005 SOP Renewal Application, page NMLP 0953; Exhibit F1, IEPA Reuter Affidavit - Nacme's SOP, page 1, ¶2; Exhibit F4, IEPA Reuter Affidavit - April 2002 Stack Test, pages NMLP 0402, 0406 and 0408; Exhibit E, IEPA Brodsky Affidavit, ¶¶6 and 5; and Exhibit F9, IEPA Reuter Affidavit - September 2005 Notice of Incompleteness, page 1, ¶2]

On September 20, 2005, the Agency issued a Notice of Incompleteness to Nacme's September 2005 SOP Renewal Application for Nacme's failure to substantiate the proposed permit emission factor of 4.8 lbs/10^3 tons with the results from the April 2002 Stack Test; the emissions factor derived from the April 2002 Stack Test was 6.51 lbs/10^3 Tons. [Exhibit F9, IEPA Reuter Affidavit - September 2005 Notice of Incompleteness, page 1, ¶2; Exhibit F4, IEPA Affidavit - April 2002 Stack Test, pages NMLP 0402, 0406 and 0408; and Exhibit E, IEPA Brodsky Affidavit, ¶¶5 and 6]

In the September 2005 Notice of Incompleteness, the Agency notified Nacme that it required a construction permit because Nacme's September 2005 SOP Renewal Application proposed a Process Modification when it proposed a change in process rate to 750,000 tpy from the process rate of 292,000 tpy that was the result of Nacme's April

7 April 2002 Stack Test resulted in a 6.51 lbs/10^3 tons of steel emission factor and a 33.3 tph process rate. [See Exhibit E, IEPA Brodsky Affidavit, ¶¶5 and 3]

2002 Stack Test.[8] [Exhibit C, Nacme's Admission of Facts, Fact 9; Exhibit F9, IEPA Reuter affidavit –September 2005 Notice of Incompleteness, page 1, ¶1; Exhibit E, IEPA Brodsky Affidavit, ¶¶7 and 8]

In the September 2005 Notice of Incompleteness, the Agency notified Nacme that the Agency had determined that the estimated PTE for the HCL air emissions at the Facility was greater than 10 tpy of HCL from a single source. [Exhibit F9, IEPA Affidavit - September 2005 Notice of Incompleteness, page 1, ¶3] The Agency calculated the HCL PTE air emissions from information provided in Nacme's September 2005 SOP Renewal Application; specifically, Nacme's April 2002 Stack Test results show a PTE greater than 10 tpy of HCL from a single source. [Exhibit F9, IEPA Affidavit - September 2005 Notice of Incompleteness, page 1, ¶3; Exhibit E, IEPA Brodsky Affidavit, ¶¶4 and 10 ; 2005 FESOP Application, page NMLP 0291]

Accordingly, in the September 2005 Notice of Incompleteness, the Agency informed Nacme in writing that the Facility was operating as a major source and required a CAAPP permit or, alternatively, a FESOP. [Exhibit F9, IEPA Reuter Affidavit - September 2005 Notice of Incompleteness, Pages 1, ¶3]

On October 18, 2005, Nacme submitted to the Agency its 2005 FESOP Application. [Exhibit C, Nacme's Admission of Facts, Fact 16; Exhibit F10, IEPA Reuter Affidavit - 2005 FESOP Application] In its 2005 FESOP Application, Nacme proposed a process rate of 750,000 tpy, which was previously permitted by its 2002 Construction Permit, but for stack testing only, and which was greater than the process rate of 600,000 tpy permitted in Nacme's SOP or 292,000 tpy resulting from Nacme's April 2002 Stack Test. [Exhibit C, Nacme's Admission of Facts, Fact 9; Exhibit F10,

8 292,000 tpy, See FN 6.

IEPA Reuter Affidavit - 2005 FESOP Application, HAP Emissions Summary, page 6-2 (NMLP 0311); Exhibit F3, IEPA Reuter Affidavit – 2002 Construction Permit, page 1, ¶1; Exhibit F1, IEPA Reuter Affidavit – Nacme's SOP, page 1, ¶2]

On December 6, 2005, the Agency issued a notice of completeness determination of Nacme's 2005 FESOP Application ("December 2005 Notice"). [Exhibit F11, IEPA Reuter Affidavit – December 2005 CAAPP Application Completion Determination] In addition, in the December 2005 Notice, the Agency informed Nacme that "notwithstanding the completeness determination, the Agency may request additional information necessary to evaluate or take final action on the FESOP application." [Exhibit F11, IEPA Reuter Affidavit – December 2005 CAAPP Application Completion Determination, page1, ¶3]

In December 2005, the Agency informed Nacme that it could issue a FESOP with an HCL air emissions process rate no greater than 33.3 tph pursuant to its April 2002 Stack Test results but not at the HCL air emissions process rate of 85.6 tph proposed in Nacme's 2005 FESOP Application.[9] [Exhibit E, IEPA Brodsky Affidavit, ¶7; Exhibit F14, IEPA Reuter Affidavit – 2007 FESOP Application, page NMLP 0271, ¶2] Additionally, the Agency informed Nacme that it was required to submit a construction permit before the Agency could approve the change in process rate. [IEPA Brodsky Affidavit, ¶8]

Nacme admits that the Process Modification request in its 2005 FESOP Application and 2007 FESOP Application are modifications in its operation and that a modification in the existing operation requires a construction permit. [Wenzel Deposition, pages 22, 48, 78-79]

9 33.3 tph = 292,000 tpy; 85.6 tph = 750,000 tpy. [IEPA Brodsky Affidavit, ¶10]

On December 21, 2006, Nacme conducted its December 2006 Stack Test. [Exhibit B, Answer ¶18] The test resulted in an HCL air emissions process rate of 119.9983 tph. [Exhibit F13, IEPA Reuter Affidavit – 2007 FESOP Application, page 2, ¶3; and Exhibit F12, IEPA Reuter Affidavit – December 2006 Stack Test, Test Results Summaries page NMLP 0026]

On March 23, 2007, Nacme submitted its 2007 FESOP Application with a proposed Process Modification to operate at a process rate of 119.9983 tph, which exceeds the process rate of 69 tph of Nacme's SOP, it's most recent operating permit. [See Exhibit C, Nacme Admission of Facts, Fact 11; Exhibit F1, IEPA Reuter Affidavit – Nacme's SOP, page 2, ¶3; Exhibit F13, IEPA Reuter Affidavit – 2007 FESOP Application, page 2, ¶3; Exhibit E, IEPA Brodsky Affidavit, ¶10]

From December 2005 through at least January 24, 2012, when Nacme met with the People in a litigation prefiling meeting, the Agency requested Nacme submit a construction permit for the Process Modification requested in its 2007 FESOP Application. [See Exhibit E, IEPA Brodsky Affidavit, ¶8]

On or about February 12, 2012, Nacme submitted a construction permit application requesting the process modification of 120 tph, which was equivalent to the Process Modification requested in its 2007 FESOP Application. [See Exhibit E, IEPA Brodsky Affidavit, ¶9]

On April 26, 2012, the Agency issued the 2012 Construction Permit for the Facility with special condition 1c authorizing Nacme to operate at the Facility with the proposed Process Modification until the Agency took final action on the 2007 FESOP Application. [Exhibit F13, IEPA Reuter Affidavit – 2007 FESOP Application]

IV. LEGAL STANDARD FOR SUMMARY JUDGMENT

Section 101.516(b) of the Board's Procedural Regulations, 35 Ill. Adm. Code 101.516(b), provides as follows:

> b) If the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law, the Board will enter summary judgment.

Section 2-1005 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-1005 (2012), provides, in relevant part, as follows:

> Summary Judgments
>
> (a) For Complainant. Any time after the opposite party has appeared or after the time which he or she is required to appear has expired, a Complainant may move with or without supporting affidavits for a summary judgment in his or her favor for all or part of the relief sought.

Summary judgment is appropriate when the pleadings and depositions, together with any affidavits and other items in the record, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. (*citing Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 693 N.E.2d 358 (1998).

The purpose of the summary judgment procedure is to aid in the expeditious resolution of a lawsuit. *Atwood v. St. Paul Fire & Marine Ins. Co.*, 363 Ill.App.3d 861, 863, 845 N.E.2d 68, 70 (2d Dist. 2006), *Olson v. Etheridge*, 177 Ill.2d 396, 404, 686 N.E.2d 563, 566 (1997). The purpose of a summary judgment proceeding is not to try an issue of fact, but to determine whether any genuine issue of material fact exists. *Happel v. Wal-Mart Stores, Inc.*, 199 Ill.2d 179, 186, 766 N.E.2d 1118, 1123 (2002). The use of summary judgment is encouraged under Illinois law. *Bolingbrook Equity I Limited*

Partnership v. Zayre of Illinois, Inc., 252 Ill.App.3d 753, 764, 624 N.E.2d 1287, 1295 (1st Dist. 1993).

A motion for summary judgment should be granted when the pleadings and affidavits reveal that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Balla v. Gambro, Inc.*, 145 Ill.2d 492, 508, 584 N.E.2d 104, 112 (1991).

In moving for summary judgment, the People rely, in part, on Respondent's admissions of certain material facts in its Answer and Response to Complainant's Requests to Admit. The Board's Procedural Regulations, 35 Ill. Adm. Code 101.516(b), and Supreme Court Rule 216 plainly allow requests for admission of any fact which is relevant, and ultimate facts fall within this broad category, *P.R.S. Int'l., Inc. v. Shred Pax Corp.*, 184 Ill.2d 224, 236, 703 N.E.2d 71, 77 (1998).

Given the proffered evidence and Respondent's material admissions, the legal and factual bases for the People's theories of liability are set forth as follows:

V. ARGUMENT-NO GENUINE ISSUE OF MATERIAL FACT

The Complaint and Answer filed in this cause, and Nacme's Response to the State's Requests to Admit, together with the People's affidavits, IEPA Brodsky's Affidavit and IEPA Reuter Affidavit, supporting this motion, establish all undisputed material facts necessary to prove Nacme 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). Respondent's operations at the Facility are subject to the Act and the rules and regulations promulgated by the Board and the Agency. Accordingly, because there is no genuine issue as to any

material fact, the Complainant is entitled to summary judgment as a matter of law on Count I:

Summary Judgment as to Sections 9(b), 39.5(5)(x), and 39.5(6)(b) of the Act alleged: Nacme operated a CAAPP Facility and equipment without a CAAPP or FESOP permit

Complainant realleges and incorporates by reference into its Motion for Summary Judgment on Count I the foregoing sections of this Complainant's Motion for Summary Judgment entitled "Procedural History," "Statement of Undisputed Facts," and "Legal Standard."

From at least April 16, 2002 through at least February 11, 2012, Respondent operated pickling operations at its Facility, a major source for HCL air emissions, without a Title V CAAPP permit or, in the alternative, a FESOP. In fact, by Nacme's own attestation in its 2005 FESOP Application, 2007 FESOP Application, and 2012 Construction Permit submitted to the Agency, Nacme admits that the Facility's PTE for HCL, a HAP, air emissions have been and are greater than 10 tpy and that each of the aforementioned FESOP applications relied on one of following stack test results for the Facility: April 2002 Stack Test and December 2006 Stack Test. Accordingly, Nacme's FESOP applications are admissions that its Facility was a "major source" and required a FESOP permit to operate its Facility from at least April 16, 2002, when Nacme's April 2002 Stack Test results demonstrated the PTE of HCL, a HAP, at the Facility was 10 tpy or greater, through at least February 11, 2012, when the Agency received Nacme's 2012 Construction permit.

Additionally, the facts clearly show that Nacme's SOP was not a CAAPP, or in the alternative, a FESOP, that permitted Nacme, a "major source," to conduct pickling

operations at the Facility from at least April 16, 2002 through at least February 11, 2012. In fact, when Nacme failed to submit a CAAPP application after it learned from the results of the April 2002 Stack Test that its Facility was a "major source" for HCL air emissions, Nacme was no longer permitted to conduct pickling operations at is Facility.

In Count I of the Complaint, the People seek a finding that the Respondent violated Sections 9(b), 39.5(5)(x), and 39.5(6)(b) of the Act, 415 ILCS 5/9(b), 39.5(6)(b), 39.5(5)(x), and (2010), which provide as follows:

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;

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.

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.

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.

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.

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.

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.

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

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, ...

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.

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

1. NACME is a "person."

Nacme was and is a limited liability company and, therefore, a "person" as that term is defined under Section 3.315 of the Act, 415 ILCS 5/3.315 (2010).

2. HCL is a "contaminant", "regulated air pollutant" and "hazardous air pollutant" whose presence in the atmosphere is "air pollution."

HCL volatilizes as a gas and particulate matter in air emissions at the Facility and is therefore, a "contaminant" as that term is defined under Section 3.165 of the Act, 415 ILCS 5/3.165 (2010). 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. Accordingly, in sufficient quantities and of such characteristics and duration, HCL is injurious to human, plant, or animal life, to health, to property, and unreasonably interferes with the enjoyment of life or property, and, therefore, constitutes "air pollution" as that term is defined under Section 3.115 of the Act, 415 ILCS 5/3.115.

3. The operation of equipment at the Facility is capable of causing or contributing to air pollution or designed to prevent air pollution.

From April 16, 2002 through February 11, 2012, four (4) pickling tanks enclosed in a turbo tunnel enclosure, and a four (4) stage washer containing HCL, operating at the Facility have been and are equipment capable of emitting HCL emissions and causing or

contributing to air pollution. The scrubber and the TurboTunnel enclosure that capture air emissions from operations of the washing and pickling process have been and are equipment used to prevent HCL air emissions, a HAP and contaminant, from the Facility.

4. **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), and 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).**

The Nacme Facility, which emits HCL air emissions, a HAP, and "regulated air pollutant," is a "stationary source" and "source" as those terms are defined under Section 39.5(1) of the Act, 415 ILCS 5/39.5(1) (2010). Beginning on at least April 16, 2002, when Nacme conducted its April 2002 Stack Test at the Facility that resulted in a change in Nacme's previously reported PTE of a single HAP, HCL, to greater than 10 tpy, through February 11, 2012, when Nacme submitted its CAAPP Construction Permit Application, the Facility was and is a "major source" as that term is defined under Section 39.5(1) of the Act, 415 ILCS 5/39.5(1) (2010).

5. **Nacme failed to apply for and submit an application to the Agency for a CAAPP or, alternatively, a FESOP, at least 180 days before commencing operation in accordance with the change in operation at the Facility.**

As a major source since at least April 16, 2002, Nacme was required to apply for and submit an application to the Agency for a CAAPP or, alternatively, a FESOP, at least 180 days before commencing operation in accordance with the change in PTE of its HCL emissions at the Facility. The Illinois EPA received Nacme's initial complete application for a FESOP on October 18, 2005, more than 3 years and 6 months after the Facility became a major source.

6. Nacme operated a CAAPP source without a CAAPP permit or timely submitting a complete CAAPP permit application for a major source to the Agency.

From at least April 16, 2002 through at least February 11, 2012, Nacme continued operating the Facility without a CAAPP or FESOP permit issued by the Agency. On December 6, 2005, the Agency responded to Nacme's 2005 FESOP Application with a request for additional information; specifically, the Agency requested Nacme to submit a construction permit application for the Process Modification it proposed in its 2005 FESOP Application. The plain language of the Section 201.102 of the Illinois Pollution Control Board's Regulations, 35 Ill. Adm. Code 201.102, states that increasing output is a Modification:

> "Modification": any physical change in, or change in the method of operations of, an emission source or of air pollution control equipment which increases the amount of any specified air contaminant emitted by such source or equipment or which results in the emission of any specified air contaminant not previously emitted. *It shall be presumed that an increase in the use of raw materials, the time of operation or the rate of production will change the amount of any specified air contaminant emitted. .... Emphasis added.*

Nacme admits that it intentionally did not provide the construction permit application as requested by the Agency because Nacme claims that a construction permit is not required for its FESOP applications. Yet, Nacme admits that the Process Modification is a modification and that modifications require a construction permit application. Thus, a construction permit is plainly required by law for the Agency to permit an increase in the maximum annual steel throughput permitted in Nacme's SOP, its most recent permit at the time of Nacme proposed the Process Modification it its 2005 FESOP Application and 2007 FESOP Application. Nevertheless, Nacme failed to submit a construction permit for over 6 years, even after several notifications from the Agency of its noncompliance

and the need to submit a construction permit application to obtain a FESOP with the Process Modification Nacme proposed.

By operating a major source without timely submitting an application within at least 180 days before commencing operation as a major source, and by operating a "major source" without a CAAPP permit, 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).

VI. RELIEF REQUESTED

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, prays for the entry of summary judgment in its favor and against NACME STEEL PROCESSING, LLC on Count I of the Complaint for the reason that the pleadings, judicial admissions on file, and affidavits show that there is no genuine issue as to any material fact and that the People are entitled to summary judgment as a matter of law. Specifically, Complainant seeks an order:

1. Finding that Nacme 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);

2. Ordering Nacme to cease and desist from any further violation 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);

3. Assessing against Nacme a civil penalty of One Hundred Thousand dollars ($100,000.00);

4. Ordering Nacme to pay all costs of this action, including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

5. Granting such other relief as this Board deems appropriate and just.

VI. REMEDY

Section 2(b) of the Act, 415 ILCS 5/2(b)(2010), provides:

> It is the purpose of this Act, as more specifically described in later sections, to establish a unified, state-wide program supplemented by private remedies, to restore, protect and enhance the quality of the environment, *and to assure that adverse effects upon the environment are fully considered and borne by those who cause them.* (emphasis added)

Impact on the Public Resulting from Respondent's Alleged Non-Compliance

Section 33(c) of the Act, 415 ILCS 5/33(c) (2006), provides as follows:

> In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:
>
> 1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
>
> 2. the social and economic value of the pollution source;
>
> 3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
>
> 4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
>
> 5. any subsequent compliance.

In response to these factors, the Complainant states the following:

1. The impact to the public resulting from Respondent's failure to timely apply for a CAAPP when it knew or should have known it was a "major soure" in connection with the pickling operations at its Facility resulted in the threat of air pollution

of HCL air emissions, a HAP, which threatened human health and the environment. Accordingly, the Illinois EPA's information gathering responsibilities were hindered by the Respondent's violations thereby threatening human health and the environment.

2. There is social and economic benefit to the facility.

3. Operation of the facility is suitable for the area in which it occurs.

4. Submitting a timely FESOP application prior to becoming a major source by changing operations at the site is both technically practicable and economically reasonable.

5. Respondent has subsequently complied with the Act and the Board regulations.

A civil penalty should be assessed against Nacme because of the potentially severe impact the threat of exposure to HCL air emissions, a HAP, had on human health and the environment.

Explanation of Civil Penalties Requested

Section 2(b) of the Act, 415 ILCS 5/2(b) (2006), provides:

> It is the purpose of this Act, as more specifically described in later sections, to establish a unified, state-wide program supplemented by private remedies, to restore, protect and enhance the quality of the environment, *and to assure that adverse effects upon the environment are fully considered and borne by those who cause them.* (Emphasis added.)

The principal reason for penalties for violations of the Act is to aid in enforcement. Punitive considerations are secondary. *Tri-County Landfill Company v. Illinois Pollution Control Board*, 41 Ill.App.3d 249, 353 N.E.2d 316, 325 (2nd Dist. 1976). The Board does grant motions for summary judgment and rules on civil penalties without sending the case to hearing. *See e.g. People v. Zachary Isaac et al*, PCB 11-58

(Sept. 20, 2012); *see also People v. Byrom Ward et al,* PCB 10-72 (July 7, 2011 and Nov. 17, 2011) (no hearing was held, but parties were asked to brief the issue of civil penalties), *People v. Roxana Landfill, Inc.*, PCB 12-123 slip op at 5 (May 3, 2012); *People v. Ogoco, Inc.*, PCB 06-16 (Sept. 21, 2006); *People v. Steve's Concrete & Excavating*, PCB 08-87 (Mar. 5, 2009); *People v. Payne Rogers & Black Gold International*, PCB 00-127 (Aug. 9, 2001).

Section 42(a) of the Act, 415 ILCS 5/42(a) (2010), provides in pertinent part, as follows:

> a) Except as provided in this Section, any person that violates any provision of this Act or any regulation adopted by the Board, or any permit or term or condition thereof, or that violates any order of the Board pursuant to this Act, shall be liable for a civil penalty of not to exceed $50,000 for the violation and an additional civil penalty of not to exceed $10,000 for each day during which the violation continues;

Section 42 of the Act provides guidance for calculating civil penalties for violations of the Act. The statutory maximums provided in the Act have been used as "a natural or logical benchmark from which to begin considering factors in aggravation and mitigation of the penalty amounts." *Illinois EPA v. Allen Barry*, Individually and d/b/a Allen Barry Livestock, 1990 WL 271319, 48 (Slip Op. May 10, 1990, PCB. 88-71).

Assuming for the sake of civil penalties calculation that the Respondent's violations of the statutory provisions alleged in the Complaint were committed from October 26, 2005 through January 31, 2012, the maximum statutory civil penalties that Section 42 of the Act, 415 ILCS 5/42 (2010) authorizes for these violations is $69,120,000.00. The statutory maximum is calculated as follows:

Count I

1 violation of Section 39.5(5)(x) of the Act	$50,000.00
Duration of 2299 days 10/26/2005-2/11/2012	$22,990,000.00
1 violation of Section 39.5(6)(b) of the Act	$50,000.00
Duration of 2299 days 10/26/2005-2/11/2012	$22,990,000.00
1 violation of Section 9(b)	$50,000.00
Duration of 2299 days 10/26/2005-2/11/2012	$22,990,000.00
Total	**$69,120,000.00**

Assuming for the sake of civil penalties calculation that the Respondent's violations of the statutory provisions alleged in the Complaint were committed from April 16, 2002 through February 11, 2012, the maximum statutory civil penalties that Section 42 of the Act, 415 ILCS 5/42 (2010) authorizes for these violations is $107,730,000.00. The statutory maximum is calculated as follows:

Count I

1 violation of Section 39.5(5)(x) of the Act	$50,000.00
Duration of 3586 days 4/16/2002-2/11/2012	$35,860,000.00
1 violation of Section 39.5(6)(b) of the Act	$50,000.00
Duration of 3586 days 4/16/2002-2/11/2012	$35,860,000.00
1 violation of Section 9(b)	$50,000.00
Duration of 3586 days 4/16/2002-2/11/2012	$35,860,000.00
Total	**$107,730,000.00**

Consideration of Section 42(H) Factors

Section 42(h) of the Act, 415 ILCS 5/42(h) (2010), provides:

> In determining the appropriate civil penalty to be imposed under ..., the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;

2. the presence or absence of due diligence on the part of Nacme in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;

3. any economic benefits accrued by Nacme because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;

4. the amount of monetary penalty which will serve to deter further violations by Nacme to otherwise aid in enhancing voluntary compliance with this Act by the violator and other persons similarly subject to the Act;

5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator.

6. whether Nacme voluntarily self-disclosed, in accordance with Subsection (i) of this Section, the non-compliance to the Agency; and

7. whether Nacme has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that Nacme agrees to undertake in settlement of an enforcement action brought under this Act, but which Nacme is not otherwise legally required to perform.

In response to these factors, the Complainant states as follows:

1. The duration of the violations that are the subject of the Complaint are alleged by the People to have occurred at a minimum of a nearly ten year period from at least April 16, 2002 through February 11, 2012. The gravity of the alleged violation is egregious because of the length of time Nacme operated without the requisite CAAPP, despite the fact that it was a "major source" for air emissions of HCL as determined during its April 2002 Stack Test, and the several requests to Nacme from the Agency during this time period to provide a construction permit to the Agency so it could approve

and issue a FESOP based on Nacme's proposed Process Modifications in its FESOP applications.

On December 6, 2005, the Agency responded to Nacme's 2005 FESOP Application with a request for additional information; specifically, that Nacme submit a construction permit application for the Process Modification it was requesting in its 2005 FESOP Application. The plain language of the Act states that increasing of steel throughput is a modification. Nacme admits that it intentionally did not provide the construction permit application as requested by the Agency, even though the plain language of the law is clear for Nacme's proposed Process Modification. Nacme failed to submit a construction permit application for over 6 years after several notifications from the Agency of its noncompliance.

In addition, the April 2002 Stack Test conducted at Nacme's Facility demonstrated that PTE HCL air emissions were greater than 10 tpy, qualifying the Facility as a "major source" that required a CAAPP to operate. At no time before October 18, 2005, did Nacme submit a CAAPP application to operate its Facility.

2. For the aforesaid reasons in subsection 1 of this section, Nacme failed to demonstrate diligence toward returning to compliance after failing to submit a CAAPP application 3 ½ years after its April 2002 Stack Test resulted in PTE HCL air emission exceeding 10 tpy and, failing to submit a construction permit from October 2005 through January 2012, despite several requests by the Agency to submit a construction permit application. In fact Nacme outright refused to submit a construction permit application until it was notified of an impending lawsuit against the Respondent for noncompliance with the CAAPP.

3. There was no economic benefit resulting from the violations of the Complaint.

4. Although the maximum civil penalties is at least $107,730,000.00, the People believe that $100,000, less than .001% of the statutory maximum, is appropriate for the type of operations and the violations alleged in the Complaint and will serve to deter further violations by Nacme and other persons similarly subject to the Act and the Board Regulations, and otherwise aid in enhancing voluntary compliance with the Act and the Board Regulations.

5. To Complainant's knowledge, Nacme has had no previously adjudicated violations of the Act.

6. There was no self-disclosure by Respondent. In fact, Nacme intentionally chose not to comply with the Agency's repeated requests for a construction permit application required to issue the permit with the process rate Nacme proposed in its 2005 FESOP Application. Additionally, Nacme knew or should have known its PTE HCL air emissions during its April 2002 Stack Test exceeded 10 tpy and was negligent in applying for a CAAPP permit at that time.

7. a supplemental environmental program is not relevant where settlement is not being proffered.

These aggravating and mitigating factors provide guidance to the Board in determining the appropriate amount of a civil penalty in an environmental enforcement case. Accordingly, the People bring these factors to the Board's attention and request a civil penalty of $100,000.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board grant its Motion for Summary Judgment against Nacme on Count I by finding Nacme violated Sections 39.5(5)(x), 39.5(6)(b), and 9(b) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/39.5(5)(x), 39.5(6)(b), and 9(b) (2010), award a civil penalty of $100,000, and take such other action as the Board believes to be appropriate and just.

Respectfully submitted,

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

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

ELIZABETH WALLACE, Chief
Environmental Bureau
Assistant Attorney General

BY: _____

Nancy J. Tikalsky
Assistant Attorney General
Environmental Bureau North
69 W. Washington, Suite 1800
Chicago, Illinois 60602
(312) 814-0608

Dated: May 16, 2014

ATTACHMENT 2

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	**PCB No. 13 - 12**
	)	(Enforcement – Air)
NACME STEEL PROCESSING, LLC, a Delaware limited liability corporation,	)	
	)	
Respondent.	)	

NACME STEEL PROCESSING, LLC's MOTION TO STRIKE AFFIDAVIT OF VALERIY BRODSKY

NACME Steel Processing, LLC ("NACME") moves the Board to strike the affidavit of Valeriy Brodsky attached to the People's Motion for Summary Judgment and in support of its motion states as follows:

1. The State has filed herein a Motion for Summary Judgment pursuant to Section 101.516 of the Board's regulations (35 IAC 101.516) and section 2-1005 of the Illinois Code of Civil Procedure ("ICCP") (735 ILCS 5/2-1005) (the State's Motion, without exhibits, is attached as Attachment A)

2. The State's Motion attaches in support the affidavit of Valeriy Brodsky, a longtime Illinois Environmental Protection Agency ("IEPA") employee and a "permit writer" in the Bureau of Air. (*See*, Attachment B)

3. Mr. Brodsky's affidavit is fatally flawed in numerous ways including: A) the affidavit fails to meet the mandatory requirements of Supreme Court Rule 191(a); B) the affidavit

contains an expert opinion although the State has not disclosed Mr. Brodsky (or anyone else) as an expert; and, C) Mr. Brodsky relies on facts for which no evidentiary basis has been established.

Failure to Comply Supreme Court Rule 191(a)

4. Supreme Court Rule 191(a) states in relevant part: *Affidavits in support of and in opposition to a motion for summary judgment under section 2-1005 of the Code of Civil Procedure, ...shall be made on the personal knowledge of the affiants; shall set forth with particularity the facts upon which the claim, counterclaim, or defense is based; shall have attached thereto sworn or certified copies of all papers upon which the affiant relies; shall not consist of conclusions but of facts admissible in evidence; and shall affirmatively show that the affiant, if sworn as a witness, can testify competently thereto. If all of the facts to be shown are not within the personal knowledge of one person, two or more affidavits shall be used. (emphasis supplied)*

5. An affidavit submitted in the summary judgment context serves as a substitute for testimony at trial. Therefore it is necessary that there be strict compliance with Rule 191(a), including the requirement that papers relied on be attached, so as to insure that trial judges are presented with valid evidentiary facts upon which to base a decision. *Robidoux v Oliphant*, 775 N.E. 2d 987, 995-96 (Ill. S. Ct. 2002) (citations omitted); *See*, also, *Preze v Borden Chemical, Inc*, 782 N.E. 2d 710, 714 (Ill. App. 1st 2003) Affidavits in support of summary judgment must be strictly construed against the movant. *Schultz v American National Bank and Trust Company*, 353 N.E. 2d 310, 315 (Ill. App. 3d 1976) Unsupported assertions, opinions, and conclusions do not comply with Rule 191(a) and may be stricken. *Collins v St. Paul Mercury Insurance Company*, 886 N.E. 2d 1035, 1040 (Ill. App. 1st 2008)

6. Mr. Brodsky's affidavit fails to comply with Rule 191(a) for the following reasons:

a) Portions of the affidavit are based not on personal knowledge but on inadmissible hearsay. For example in paragraph 4 Mr. Brodsky relies on "the manufacture's guaranteed

efficiency result" in making calculations with regard to a scrubber control device at NACME's facility. Mr. Brodsksy does not state that he has personal knowledge of the purported guaranteed efficiency result, does not disclose the identify the manufacturer or the source of his information and provides no evidentiary basis for the information that he says he relied on. Because an affidavit is akin to testimony at trial, Mr. Brodsky must testify from his personal knowledge, and not based on hearsay.

b) Mr. Brodsky states a variety of conclusions but fails to state with particularity the facts upon which his conclusions are based. His conclusions are, moreover, vague and confusing. He uses many terms and phrases without defining them, including "controlled emission rate", "uncontrolled emission rate value", and "measured or assumed negligible controlled emission." (Aff. Par. 4) He uses numerous abbreviations without definition, including "PTE HCL", "FESOP", and "SOP". (Id.) He uses the abbreviation "PTE" with no reference to its meaning, source or how it is determined and upon what methodology. "PTE" presumably means "potential to emit" and it is the State's burden in this case to prove that NACME had the potential to emit above major source thresholds. Mr. Brodsky's offhand conclusions about NACME's "PTE" make it impossible for NACME to challenge Brodsky's conclusions by counter-affidavit. NACME is not required to guess whether Brodsky means what he seems to mean or whether he means something else.

c) Mr. Brodsky presents a series of calculations and figures with no particulars about their source or reliability. He provides no evidentiary foundation for his approach for determining NACME's potential to emit, fails to state whether it is the standard and generally accepted method in the air emissions testing community or even that it is IEPA's standard method.

d) In paragraph 7 of his affidavit Mr. Brodsky states that "[I]n December 2005, I informed Nacme that the Agency could issue a FESOP…", without providing the particulars, including how and to whom. In paragraph 8 he states, "on several occasions between December 2005 and January 26, 2012, …the Agency requested Nacme to submit a construction permit application…", but again fails to provide particulars about these purported Agency requests over this 6 year period. Also, in paragraph 10 he presents "relevant calculations for the facility", but without any particulars that elucidate how they are relevant, upon what methodology he relies, and whether his methodology is standard practice or is otherwise acceptable.

e) Adding to the confusion, Mr. Brodsky fails to attach sworn or certified copies of the papers he says he relied on, as specifically required by the Rule. These include a stack test and various permit applications that he refers to but does not attach either in whole or in part (See Aff. Pars. 3, 4, 6 and 9)

f) Finally, there is no showing in the affidavit, as required under the Rule, that Mr. Brodsky can competently testify about the matters he asserts. The affidavit, including paragraph 2 which describes his duties and responsibilities with IEPA, contains no statement of his qualifications to interpret stack tests or to perform the mathematical analysis of test data in order to reach his stated opinions.[1]

Because Mr. Brodsky's affidavit does not strictly comply with Rule 191 as required, it should be stricken in whole or part.

Mr. Brodsky Has Not Been Disclosed as an Expert Witness

[1] In fact Mr. Brodsky admitted at deposition that he has no expertise in the review of stack tests and relies on a specialist at the Agency for assistance and he would not in the normal course even see such test results unless he specifically requested one. (See attached deposition excerpts, Attachment C.)

7. Mr. Brodsky was disclosed only as a lay witness in this matter, and not as an expert. (See Attachment D, par. 3) Notwithstanding his disclosure as a lay witness, Mr. Brodsky states a number of expert opinions derived from mathematical calculations he has performed as set forth in paragraphs 3, 4, 5 and 10 of the affidavit. Under Supreme Court Rule 213(f)(1), a "lay witness" is a person giving only fact or lay opinion testimony. Mr. Brodsky's affidavit goes beyond lay witness testimony and ventures into technical analysis based on mathematical calculations ultimately stating, albeit in a vague way, an opinion about NACME's purported potential to emit pollutants from its facility.

8. Mr. Brodsky's affidavit testimony is in fact that of a controlled expert witness within the meaning of Rule 213(f)(3), but without required disclosure to NACME. NACME has not had the opportunity to conduct discovery, including by deposition, on Mr. Brodsky's belated expert opinions. Among other things NACME has not had the opportunity to question Mr. Brodsky on his qualifications to render these opinions, on the methodology used, its general acceptance and the like.

9. The State's non-disclosure of Mr. Brodsky as an expert is in direct contradiction of hearing officer Halloran's order of April 23, 2013 (See, Attachment E) and of the applicable Rules and is highly prejudicial to NACME.

WHEREFORE, for all of the above reasons NACME requests:

1. That Mr. Brodsky's affidavit be stricken in whole or in substantial part;

2. In the alternative that NACME be allowed to re-depose Mr. Brodsky with regards to the assertions in his affidavit and the expert opinion stated there; and,

3. That NACME's time to respond to the State's Motion for Summary Judgment be extended to a time 14 days after ruling on the subject Motion to Strike or re-deposition of Mr. Brodsky.

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

CERTIFICATE OF SERVICE

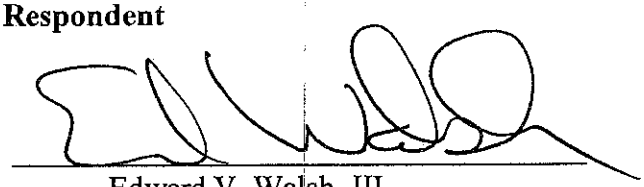
I, the undersigned, certify that I have served the attached **NACME STEEL PROCESSING, LLC's MOTION TO STRIKE AFFIDAVIT OF VALERIY BRODSKY,** by e-mail or U.S. Regular Mail, upon the following persons:

Nancy J. Tikalsky (via mail)
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 (via e-mail)
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

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

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

By: 
Edward V. Walsh, III

Date: June 5, 2014

ATTACHMENT A

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE PEOPLE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 13 - 12
	)	(Enforcement – Air)
NACME STEEL PROCESSING, LLC, a Delaware limited liability corporation,	)	
	)	
	)	
Respondent.	)	

NOTICE OF SERVICE

To: See Attached Service List
(VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that I have today filed with the Illinois Pollution Control Board, the **PEOPLE'S MOTION FOR SUMMARY JUDGMENT ON ALL COUNTS OF COMPLAINT AGAINST RESPONDENT, NACME STEEL PROCESSING, LLC**

Respectfully submitted,

Nancy J. Tikalsky
Assistant Attorney General
Office of the Illinois Attorney General
Environmental Bureau
69 West Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 814-8567

Date: May 16, 2014

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

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

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

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE PEOPLE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 13 - 12
	)	(Enforcement – Air)
NACME STEEL PROCESSING, LLC,	)	
a Delaware limited liability corporation,	)	
	)	
Respondent.	)	

AFFIDAVIT

I, Valeriy Brodsky, being duly sworn on oath, depose and state that I am over 21 years of age, have personal knowledge of the facts stated herein, and, if called as a witness, could competently testify to facts as set forth herein as follows:

1. I am currently employed by the Illinois Environmental Protection Agency ("Illinois EPA" or "Agency") as an Environmental Protection Engineer III, Bureau of Air, Permit Section, located at 1021 North Grand Avenue East, Springfield, Illinois. I have held this position from 1994 to the present. I was and continue to be the permit reviewer for Nacme Steel Processing, LLC

2. As an Environmental Protection Engineer III, my duties and responsibilities include, in part, review and recommend action on air permit applications, drafting correspondence and permits related to permit applications and ensure such activities are performed in compliance with the federal Clean Air Act, the Illinois Environmental Protection Act ("Act") and Pollution Control Board ("Board") regulations.

3. The April 2002 Stack Test shows the tons per hour (tph) of steel throughput that occurred during the stack test is based on 200 tons of steel pickled in a 6 hour period resulting in a calculation of 33.3 tph of steel throughput (process rate).

4. The April 2002 Stack Test results indicate the average HCL emission rate during the stack test to be .217 lbs/hr controlled emission rate. I calculated the PTE HCL (before control) on the maximum hourly controlled emission rate and the efficiency of the control at 99.90% efficiency stated in the 2002 Construction Permit and 2005 FESOP Application as the manufacturer's guaranteed efficiency result, which means that less than 1% of uncontrolled emissions are emitted. Thus, the measured or assumed negligible controlled emission shall be multiplied at least by 100 to get the uncontrolled emission rate value also known as PTE.

5. The emissions factor derived from the April 2002 Stack Test shows the HCL emissions factor to be 6.51 lbs. of HCl per 1,000 (10^3) tons of steel throughput. The emissions factor is calculated as follows: 0.217 lbs HCL per hour controlled emission rate divided by 33.3333 tons of steel/hour equals .0065 lbs HCl/Ton of Steel.

6. In Nacme's September 2005 SOP Renewal Application Nacme calculated the HCL PTE controlled emission rate to be 1.8 tpy of HCL emissions based on Nacme's 2005 SOP allowances of 4.8 lb/1000 tons and a 750,000 tpy proposed process rate, instead of the controlled emission rate and actual steel throughput shown in its April 2002 Stack Test results, which was the most recent indication of HCL emissions at the Facility.

7. In December 2005, I informed Nacme that the Agency could issue a FESOP with a process rate no greater than 33.3 tons per hour ("tph") pursuant to the results shown in its April 2002 Stack Test but not at the process rate of 85.6 tph proposed in Nacme's 2005 FESOP Application.

8. On several occasions between December 2005 and January 26, 2012, when Nacme met with the Complainant in a prefiling meeting, the Agency requested Nacme to submit a construction permit application for Nacme's proposed annual maximum steel throughput process modification requested in its 2005 FESOP Application and 2007 FESOP Application.

9. On or about February 12, 2012, Nacme submitted a construction permit application requesting the process modification of 120 tph, which was equivalent to Process Modification requested in its 2007 FESOP Application.

10. Relevant calculations for the Facility permits, permit applications and stack tests include the following:

Steel throughput process rates:

Nacme's 2005 SOP: 600,000 tpy divided by (24 x 365) = 69 tph

April 2002 Stack Test: 33.3 tph process rate x (24 x 365) = 292,000 tpy

Nacme's 2002 Construction Permit and 2005 FESOP Application:
750,000 tpy process rate divided by (24x365) = 85.6 tph process rate.

PTE HCL air emissions before control at the Facility:

0.217 lbs/hr air emissions after control x 100 = 21.70 lbs/hr x (24 x 365)
= 190,092 lbs/yr divided by 2000 lbs/ton
= 95.046 tpy of PTE HCL air emissions before control.

FURTHER, AFFIANT SAYETH NOT.

Valeriy Brodsky
VALERIY BRODSKY

SUBSCRIBED and SWORN to
Before me this 14th day
Of May, 2014.

Dawn A. Hollis
NOTARY PUBLIC

OFFICIAL SEAL
DAWN A. HOLLIS
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 8-19-2016