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DEC 24 2003

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD STATE OF ILLINOIS
Pollution Control Board

Noveon, Inc.)
)
Petitioner,)
)
v.)
)
Illinois Environmental Protection Agency,)
)
Respondent.)

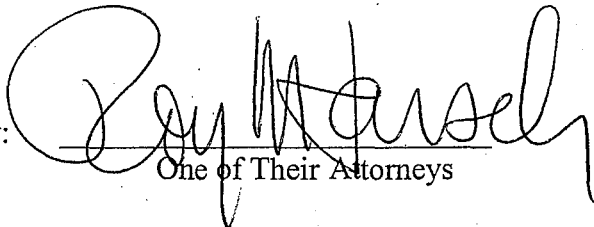
04-102
PCB
(Permit Appeal - Air)

NOTICE OF FILING

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

Ms. Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thomson Center
100 W. Randolph - Suite 11-500
Chicago, IL 60601

PLEASE TAKE NOTICE that on Wednesday, December 24, 2003, I have filed with the Office of the Clerk of the Pollution Control Board the **Petition for CAAPP Permit Appeal and Hearing and Request to Stay Certain CAAPP Permit Conditions**, a copy of which is attached hereto and herewith served upon you.

By: 
One of Their Attorneys

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THIS FILING IS SUBMITTED ON RECYCLED PAPER

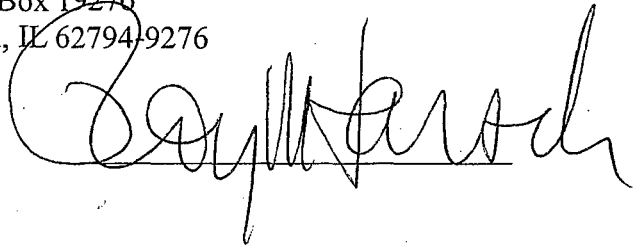
CERTIFICATE OF SERVICE

The undersigned states that he caused a copy of the **Petition for CAAPP Permit Appeal and Hearing and Request to Stay Certain CAAPP Permit Conditions** to be delivered via messenger delivery this Wednesday, December 24, 2003 to the following:

Ms. Dorothy Gunn
Clerk - Illinois Pollution Control Board
100 W. Randolph Street, Rm 11-100
Chicago, IL 60601

and delivered via United States Mail, postage prepaid, on this Wednesday, December 24, 2003 to the following:

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



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PETITION FOR CAAPP PERMIT APPEAL AND HEARING
AND
REQUEST TO STAY CERTAIN CAAPP PERMIT CONDITIONS

Petitioner, Noveon, Inc. ("Noveon"), hereby submits this Petition to Appeal certain conditions of its Clean Air Act Permit Program ("CAAPP") permit and for a related Hearing pursuant to Section 40.2(a) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/40.2(a), and 35 Ill. Adm. Code § 105.300(c). Petitioner also requests an immediate stay of certain CAAPP permit conditions pursuant to 35 IAC § 105.304(b), as explained and identified below, until the Illinois Pollution Control Board ("Board") takes final action pursuant to Section 40.2 of the Act. In support of this Petition, Noveon states as follows:

I. Procedural History

On March 7, 1996, the Illinois Environmental Protection Agency ("Illinois EPA") received a timely application for a CAAPP permit (Application No. 96030152) for Noveon's facility located at 1550 County Road, 1450 N, Henry, Illinois, Facility ID No. 123803AAD ("Facility"). *Attachment 1.* On September 17, 2003, the Illinois EPA issued a draft CAAPP permit to the Facility and opened the 30-day public comment period soliciting comments about that permit. *Id.* During the public comment period, Noveon submitted detailed comments to the Illinois EPA regarding certain draft permit conditions ("Comment Letter"). *Attachment 2.*

On November 24, 2003, the Illinois EPA issued to Noveon a final CAAPP permit that became effective upon issuance. *Attachment 1*. While the Illinois EPA modified some conditions of the final CAAPP permit in response to Noveon's Comment Letter, it did not modify the final CAAPP permit to respond to all of Noveon's significant comments. The Illinois EPA's failure to modify the final CAAPP permit, as requested, is inconsistent with the Illinois Environmental Protection Act and the corresponding regulations. Consequently, Noveon is submitting this timely Petition for Hearing and Appeal of its final CAAPP permit.

II. Petition Content Requirements

A. Source Description [35 IAC § 105.304(a)(1)]

The source is a petrochemical manufacturing facility located at 1550 County Road, 1450 N in Henry, Illinois. The Facility manufactures organic chemicals, specifically antioxidants and accelerators to be used in the manufacture of rubber and plastics, coatings used in the electronics industry and personal care products used for personal hygiene such as hair conditioners. In addition, the source houses storage tanks for raw material, intermediates and finished products and operates a wastewater treatment facility and a small process fluid heater for process heat.

B. CAAPP Permit Conditions To Which Noveon Objects [35 IAC § 105.304(a)(2)]

On October 17, 2003, Noveon submitted its Comment Letter to the Illinois EPA by Certified Mail (7002 2410 0001 1456 0630). *Attachment 2*. The Comment Letter included thirty detailed objections to the Illinois EPA's draft of the Facility's CAAPP permit. *Id.* As discussed in more detail below, the Illinois EPA failed to consider some of the most significant comments raised in the Comment Letter prior to issuing the final CAAPP permit for the Facility, including Comments 4, 7, 9, 11, 13, 14, 19, 21, 22, 25, 26, 27, and 28 ("Objections"). The final CAAPP

permit. Specifically, the Illinois EPA issued the CAAPP permit on November 24, 2003 and the permit became effective on that same date. Therefore, from a legal standpoint, Noveon was expected to begin complying with all of conditions of the CAAPP permit on November 24, 2003.

However, by issuing the CAAPP permit and making it effective on the same date, the Illinois EPA made continuous compliance with all of the final permit's terms and conditions impossible. To start, Noveon did not actually receive the CAAPP permit from the Illinois EPA until December 1, 2003. Furthermore, once received, Noveon had insufficient time to adequately review its entire eighty-page permit, ensure that it understood all of the conditions with which it must begin to comply, and institute necessary changes at the Facility to ensure continuous compliance. Consequently, by making the permit effective before Noveon received it and not allowing the Facility a reasonable time to review this complex permit prior to mandating compliance with its terms, the Illinois EPA made continuous compliance with the permit as of the effective date unattainable. Thus, the additional issues for review by the Board are:

- (5) Whether the Illinois EPA provided a reasonable time after issuance for Noveon to comply with the final CAAPP permit;
- (6) Whether the effective date of the final CAAPP permit should have been postponed after issuance to allow the Facility a reasonable time to adequately review the permit and implement the necessary compliance measures to ensure continuous compliance.

If the Board resolves these issues in favor of Noveon, as described below, the final CAAPP permit should be modified to allow Noveon until at least January 31, 2004, to comply with all of the conditions of the final CAAPP permit, other than the Disputed Conditions.

C. Justification for Noveon's Objections to Agency's Decision [35 IAC § 105.304(a)(3)]

The Illinois EPA's failure to modify the final CAAPP permit consistent with Noveon's Objections related to the Disputed Conditions lacks the support of substantial facts and evidence, lacks a rational basis, and is arbitrary and capricious. Furthermore, the Illinois EPA's requirement for the Facility to begin complying with an eighty-page CAAPP permit for a complex petrochemical manufacturing facility prior to the Facility's receipt and adequate review of that permit is unreasonable and arbitrary and capricious.

1. The Facility's Condensers are "Air Pollution Control Equipment"

"Air pollution control equipment" means "any equipment or apparatus of a type intended to eliminate, prevent, reduce or control the emission of air contaminants into the atmosphere." 35 IAC § 211.410; see also Board Rule 101. The condensers fall squarely within the Board's definition of "air pollution control equipment," and, since 1972, the Facility's condensers and other control devices have been properly designated as "air pollution control equipment" by the Illinois EPA because they control more than 85 percent of the organic material that would otherwise be emitted into the atmosphere from the Facility's petrochemical processes.

In essence, the VOC recovery columns, made up of condensers and other control devices, allow the Facility to recover a notable amount of VOC and then reuse it in the process. This process has historically allowed the Facility to emit organic material from individual emission units in excess of 8 lbs/hr because the process meets the alternative standard of compliance with the 8 lbs/hr rule authorized by the regulations. It is beyond dispute that, without the condensers and other control devices at issue, the VOC currently captured and controlled would be emitted into the atmosphere rather than recycled. Thus, the condensers and other control devices are air

pollution control equipment because they “eliminate, prevent, reduce or control the emission of air contaminants into the atmosphere.” *See 35 IAC § 211.410.*

The Facility’s views are consistent with the original rules promulgated by the Board as *Rules 101 and 205(f)* and the related Board rules promulgated since then as *35 IAC §§ 211.410, 215.301 and 215.302*. Furthermore, the Illinois EPA has historically been aware of the Facility’s position regarding its condensers’ and other control devices’ designation as air pollution control equipment and has, in fact, approved of the Facility’s position on numerous occasions informally, after inquiry, and formally, in past permits.

However, without any apparent or clear technical, legal or policy basis, the Illinois EPA is now attempting, through the CAAPP permitting process, to withdraw its historical acceptance of Noveon’s condensers and other control devices as air pollution control equipment. As Noveon understands it, the Illinois EPA is now trying to limit designating condensers and other control devices as air pollution control equipment based on their exact location in the manufacturing process. For example, under the Agency’s new position, primary condensers can no longer be considered air pollution control equipment despite the fact that they capture VOCs and prevent the emission of such materials into the atmosphere.

In contrast, Noveon contends that all of the condensers and other control devices used at the Facility that historically constituted “air pollution control equipment” continue to maintain that designation. That is because the exact location of condensers and other control devices in the manufacturing process (e.x. primary, secondary or tertiary step) should not impact their designation as air pollution control equipment. The position of the condensers and other control devices in a series is irrelevant because they have the same function, albeit to a lesser extent, regardless of their location. Furthermore, installing devices to measure inlet or outlet

temperature on each condenser, as required by the Agency in several of the Disputed Conditions, would require a complete redesign of Noveon's petrochemical manufacturing process. Even if that were possible, Noveon would incur a substantial cost with no improved removal of VOC or increased efficiency from the condensers. Consequently, the Illinois EPA's new position and the related CAAPP permit conditions cannot be justified and should not stand.

2. The Facility's Existing Processes Remove Sulfur Compounds

Also since 1972, the Facility has operated processes designed to remove sulfur compounds from the flue gases of petrochemical processes ("sulfur removal equipment"). This operational configuration has historically exempted the Facility from the general SO₂ emission limitation of 2000 ppm found at *35 IAC § 214.301*.

Pursuant to *35 IAC § 214.382(a)*, the general SO₂ emission limitation of 2000 ppm does not apply to existing processes, like the Facility's, that have sulfur removal equipment in place to remove and recycle sulfur compounds from the flue gases of its petrochemical processes. The emissions from the Facility's petrochemical batch reactor processes vent to condensers that remove hydrogen disulfide (H₂S), a sulfur compound, from the emitted gases and recycle that material back into the process. That recycling activity reduces approximately 23% percent of the total sulfur from the batch process gases. Importantly, *35 IAC § 214.382(a)* does not expressly state a level of sulfur reduction that must be achieved for a source to be exempt from the 2000 ppm standard. Therefore, in the absence of such a standard in the regulation, the Illinois EPA may not arbitrarily impose one in the CAAPP permitting process.

The Facility's processes are of the type excluded from the general SO₂ emission limitation of 2000 ppm since the Board promulgated the original rules as *Rule 204(f)* and updated those rules since then as *35 IAC §§ 214.301 and 214.382*. Furthermore, the Illinois EPA

has historically been aware of the Facility's ability to remove sulfur compounds from the flue gases of its petrochemical processes so that the general 2000 ppm SO₂ emission limitation clearly did not apply. In fact, the Agency has approved the Facility's position on numerous occasions informally, after inquiry, and formally, in past permits.

Now, without any apparent or clear technical, legal or policy basis, the Illinois EPA is attempting, through the CAAPP permitting process, to withdraw its historical recognition and acceptance of Noveon's sulfur removal process design. Noveon understands that, from now on, the Illinois EPA only wants to approve existing processes designed to remove sulfur compounds that can achieve a specific minimum percentage of sulfur removal. However, the Illinois EPA has not disclosed exactly what that sulfur removal efficiency must be or what authorizes the Agency to ignore the express regulatory language of *35 IAC § 214.382(a)* outside of the rulemaking process. Consequently, the actions being taken by the Agency exceed its statutory authority because it is, in fact, rulemaking, which only the Board is allowed to do.

In contrast, Noveon contends that the Facility remains exempt from the general SO₂ emission limit of 2000 ppm in *35 IAC § 214.301* pursuant to *35 IAC § 214.382(a)* because its existing processes qualify as systems designed to remove sulfur compounds from the flue gases of petrochemical processes. Therefore, the Illinois EPA's new position and the related CAAPP permit conditions cannot be justified.

3. The CAAPP Permit Effective Date Should be Briefly Postponed

As explained above, the Illinois EPA made it impossible to comply with the CAAPP permit as of the effective date of November 24, 2003 because it did not provide the Facility with a copy of the permit until after that date. Furthermore, the Illinois EPA did not provide a reasonable time between the issuance of the permit and its effective date for the Facility to

adequately review the permit and institute necessary changes at the Facility to ensure continuous compliance. As a result, the Illinois EPA's position cannot be justified.

III. Conclusion and Prayer for Relief.

The Illinois EPA failed to modify the final CAAPP permit to address Noveon's Objections related to the Facility's historically accepted use of condensers as air pollution control equipment to control VOC emissions and use of sulfur recovery equipment to control SO₂ emissions. The Illinois EPA's new interpretations related to these issues lack the support of substantial facts and evidence, lacks a rational basis, and is arbitrary and capricious.

Furthermore, by requiring Noveon's compliance with the CAAPP permit terms and conditions on the date of issuance, the Illinois EPA effectively made Noveon's ability to comply with all of the permit conditions impossible. Consequently, requiring Noveon to comply with a complicated CAAPP permit without allowing sufficient time to review the permit and ensure compliance prior to the effective date is arbitrary and capricious and unreasonable.

WHEREFORE, for the foregoing reasons, Noveon respectfully petitions the Board for a hearing to address the issues discussed in this CAAPP permit appeal and modify the final CAAPP permit accordingly.

FURTHERMORE, pursuant to *35 IAC § 105.304(b)*, Noveon requests that the Board:

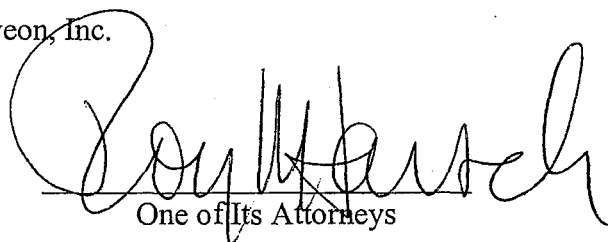
(1) Stay the effectiveness of the final CAAPP permit Conditions 7.1.2, 7.1.3(d), 7.1.13, 7.2.1, 7.2.3(c), 7.2.7, 7.3.2, 7.3.8(b), 7.4.8(b), 7.5.2, 7.5.3(c), 7.5.8 (b), 7.6.2, 7.6.3(c), 7.6.5(b)-(c), 7.6.8(b), 7.6.9(f), 7.7.5(a), and 7.7.8(b) until final action is taken by the Board pursuant to Section 40.2 of the Act; and

(2) Stay the remaining provisions of the CAAPP permit until January 31, 2004 to allow the Facility ample time to begin complying with those provisions.

Respectfully submitted,

Noveon, Inc.

By:



One of Its Attorneys

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Due to the volume of this pleading,

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