

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED

JAN - 6 2004

STATE OF ILLINOIS
POLLUTION CONTROL BOARD

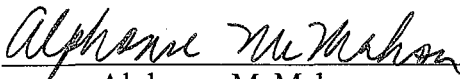
GENERAL ELECTRIC COMPANY)
d/b/a GE Plastics,)
)
Petitioner,)
)
v.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

PCB 04-115
(Permit Appeal-)

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

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the Petition for Review, Motion to Appear Pro Hac Vice (by Alphonse McMahon), Motion to Appear Pro Hac Vice (by Shannon S. Broome), Notice of Appearance (of Alphonse McMahon), Notice of Appearance (of Shannon S. Broome), and Certificate of Service of Petitioner General Electric Company, copies of which are herewith served upon you.


Alphonse McMahon

December 30, 2003

Alphonse McMahon
Counsel – Environmental, Health & Safety Programs
General Electric Company
One Lexan Lane
Mount Vernon, IN 47620
Phone: (812) 831-4688
Fax: (812) 831-7294
E-mail: al.mcmahon@gepex.ge.com

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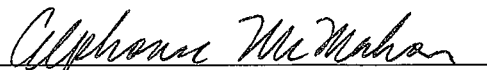
MOTION TO APPEAR PRO HAC VICE

COMES NOW Alphonse McMahon and, pursuant to 35 IAC 101.400(a)(3), requests permission from the Illinois Pollution Control Board ("Board") to appear on behalf of Petitioner General Electric Company d/b/a GE Plastics and to represent the same as its attorney for all matters before the Board regarding the Petition for Review filed in conjunction with this Motion. In support of this Motion, Alphonse McMahon states as follows:

1. He is an attorney, licensed to practice law in the State of Indiana (Indiana Law License No. 19723-65).
2. He is in good standing with all courts to which he is admitted.
3. He is employed by General Electric Company, and his office is located at One Lexan Lane, Mount Vernon, Indiana 47620.

WHEREFORE, Alphonse McMahon requests that the Board grant this Motion and allow him to represent Petitioner General Electric Company d/b/a GE Plastics in all matters before the Board regarding the Petition for Review filed in conjunction with this Motion.

Respectfully submitted,

A handwritten signature in cursive script, reading "Alphonse McMahon", is written over a horizontal line.

Alphonse McMahon

Counsel – Environmental, Health & Safety Programs

General Electric Company

Attorney for General Electric Company d/b/a

GE Plastics

One Lexan Lane

Mount Vernon, IN 47620

Phone: 812-831-4688

Fax: 812-831-7294

E-mail: al.mcmahon@gepex.ge.com

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MOTION TO APPEAR PRO HAC VICE

COMES NOW Shannon S. Broome and, pursuant to 35 IAC 101.400(a)(3), requests permission from the Illinois Pollution Control Board ("Board") to appear on behalf of Petitioner General Electric Company d/b/a GE Plastics and to represent the same as its attorney for all matters before the Board regarding the Petition for Review filed in conjunction with this Motion. In support of this Motion, Shannon S. Broome states as follows:

1. She is an attorney, licensed to practice law in the State of California (California State Bar No. 150119).
2. She is in good standing with all courts to which she is admitted and with the State Bar of California.
3. She is employed by Shannon S. Broome, Professional Corporation, a law firm located at 5001 Proctor Avenue, Oakland, CA 94618.

WHEREFORE, Shannon S. Broome requests that the Board grant this Motion and allow her to represent Petitioner General Electric Company d/b/a GE Plastics in all matters before the Board regarding the Petition for Review filed in conjunction with this Motion.

Respectfully submitted,

Shannon S. Broome / Am

Shannon S. Broome
Shannon S. Broome, PC
Attorney for General Electric Company d/b/a
GE Plastics
5001 Proctor Avenue
Oakland, CA 94618
Phone: (510) 985-1710
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E-mail: sbroome@pacbell.net

Dated: December 30, 2003

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NOTICE OF APPEARANCE

Alphonse McMahon hereby enters his appearance on behalf of Petitioner General
Electric Company d/b/a GE Plastics in the above-captioned matter.

Respectfully submitted,

Alphonse McMahon

Alphonse McMahon
Counsel – Environmental, Health & Safety Programs
General Electric Company
Attorney for General Electric Company d/b/a
GE Plastics
One Lexan Lane
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(Permit Appeal-)

NOTICE OF APPEARANCE

Shannon S. Broome hereby enters her appearance on behalf of Petitioner General Electric Company d/b/a GE Plastics in the above-captioned matter.

Respectfully submitted,

Shannon S. Broome / Am

Shannon S. Broome
Shannon S. Broome, PC
Attorney for General Electric Company d/b/a
GE Plastics
5001 Proctor Avenue
Oakland, CA 94618
Phone: (510) 985-1710
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PETITION FOR REVIEW

I. Introduction and Jurisdiction

1. Pursuant to 415 ILCS 40.2 and 35 Illinois Administrative Code ("IAC") Part 105, Subpart C, General Electric Company d/b/a GE Plastics ("GE"), by and through its attorneys Alphonse McMahon and Shannon S. Broome, respectfully requests the Illinois Pollution Control Board (hereinafter "the Board") for review of the Clean Air Act Permit Program (CAAPP) Permit and Title I Permit (hereinafter "CAAPP Permit") issued to GE on November 25, 2003. A copy of the CAAPP Permit is attached hereto as Exhibit A.

2. The Board has jurisdiction to hear this matter pursuant to Section 40.2 of the Environmental Protection Act, 415 ILCS 5/40.2. This section charges the Board with responsibility to adjudicate disputes arising out of CAAPP Permit decisions. In particular, this section states that if "the Agency refuses to grant or grants with conditions a CAAPP permit...the applicant...may within 35 days after final permit action, petition for a hearing before the Board to contest the decision of the Agency." 415 ILCS 5/40.2(a).

II. Concise Description of the CAAPP Source

3. GE owns and operates a plastics manufacturing plant located at 2148 North 2753rd Road in Ottawa (LaSalle County), Illinois (I.D. No. 099829AAA) and is a Clean Air Act Permit Program source. The operations at this facility include the tank storage of raw materials, the manufacture of thermoplastic resins and their subsequent blending with additives to make final products, along with the operation of boilers and a wastewater treatment plant in support of the manufacturing activities.

III. Procedural and Factual Background of this CAAPP Permit

4. GE was required to apply for a CAAPP permit for the Ottawa plant, which GE did in 1996.

5. On October 10, 2003, the Illinois Environmental Protection Agency ("Agency") caused a notice to be published of an opportunity to comment on GE's draft CAAPP permit.

6. GE submitted comments on the draft CAAPP permit in a timely manner. Those comments are attached hereto as Exhibit B and incorporated by reference.

7. On November 25, 2003, the Agency issued the CAAPP Permit to GE.

8. GE is appealing the Agency's final action in issuing the CAAPP Permit.

9. This Petition for Review is timely filed because it was filed within 35 days after final permit action by the Agency.

IV. Legislative Background

10. "Title V" refers to Title V of the federal Clean Air Act, as codified at 42 USC §7661 *et seq.* In the 1990 Amendments to the Clean Air Act, Congress enacted Title V, which establishes the requirements for a federal operating permit program applicable to certain types of industrial facilities.

11. In Section 502(b) of the Clean Air Act, 42 USC §7661a(b), Congress directed the United States Environmental Protection Agency ("U.S. EPA") to establish the elements of the

operating permit programs for state agencies that would implement them. Pursuant to this directive, U.S. EPA adopted rules to govern the development of Title V permitting programs by the states. *See* 57 Fed. Reg. 32250, Part II (July 21, 1992). Those federal rules appear at 40 CFR Part 70.

12. The Illinois legislature passed legislation to create Illinois' Clean Air Act Permit Program. The legislation is codified at 415 ILCS 5/39.5 (the "Act").

13. Accuracy of CAAPP Permit terms is important because CAAPP sources are prohibited from operating except in compliance with a CAAPP Permit and are required to certify compliance on an annual basis with all permit terms and conditions. 415 ILCS 5/39.5(7)(p). Moreover, if a permit term is inaccurate or conditions change at the CAAPP source, the permit must be revised to include any new applicable requirements or correct such errors. 415 ILCS 5/39.5(13)-(14).

V. Terms and Conditions Being Appealed

a. The Agency failed to reference the origin and authority for each condition

14. Section 39.5(7)(n) of the Act provides that "[e]ach CAAPP permit issued under subsection 10 of this Section shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based." (emphasis added)

15. The following conditions in the CAAPP Permit do not specify and reference the origin of and authority for the condition: Conditions 5.2.5(a), 5.2.5(b), 5.5.1, 9.1.3, 9.2.2, 9.2.4, 9.3(e), 9.3(f), 9.4, 9.5.1, 9.5.2, 9.5.3, 9.5.4, and 9.6.1.

16. Accordingly, either a reference to the origin of and authority for each such condition should be added to the CAAPP Permit, or each such condition for which no authority exists should be removed from the CAAPP Permit.

b. The Agency included language in CAAPP Permit that was not in the underlying construction permit

17. The Agency has included in the CAAPP Permit applicable requirements from state construction permits, but has added language to several conditions of the CAAPP Permit regarding the Prevention of Significant Deterioration ("PSD") rule that is not in the respective underlying construction permits.

18. In general, this new language provides that the limitations were established pursuant to the PSD rule and ensure that the construction and/or modification addressed in the construction permit does not constitute a new major source or major modification (the "PSD Provisions").

19. The affected conditions of the CAAPP Permit containing the PSD Provisions are: Conditions 7.2.5(f)(i); 7.2.5(f)(ii); 7.2.5(f)(iii); 7.2.5(g); 7.3.5(c); 7.3.5(d); 7.3.6(b)(i); 7.3.6(b)(ii); 7.3.6(b)(iii); 7.3.6(b)(iv); 7.3.6(b)(v); 7.3.6(b)(vi); 7.3.6(d); 7.3.8; 7.6.5(c); and, 7.6.6(a).

20. The Agency lacks authority to add the PSD Provisions, and acted in an arbitrary and capricious manner in adding them.

21. Accordingly, the PSD Provisions should be removed from the CAAPP Permit.

c. The Agency removed appropriate non-applicability determinations that were in the draft permit

22. Condition 7.1.4 of the draft CAAPP permit contained a provision stating that the storage vessels associated with the affected latex area were not subject to 40 CFR 60 Subpart Kb.

23. Condition 7.5.4(c) of the draft CAAPP permit contained a provision stating that Boilers 1 and 2 were not subject to 40 CFR 60 Subpart Db.

24. Condition 7.5.4(d) of the draft CAAPP permit contained a provision stating that Boiler 3 was not subject to 40 CFR 60 Subpart Dc.

25. Each of these non-applicability determinations that was removed is factually correct.

26. In its comments on the draft CAAPP permit, GE requested changes to the language to clarify the reasons for the inapplicability of these rules but did not request that these provisions be removed.

27. The Agency did not include these provisions in the CAAPP Permit.

28. The Agency's action in removing the provisions was arbitrary and capricious, and without basis in law.

29. Accordingly, these provisions, as revised by GE in its comments to the draft CAAPP permit, should be added to the CAAPP Permit.

d. The Agency used column headings that are inaccurate and misleading

30. The table in Section 4.0 of the CAAPP Permit contains four columns. The two left-hand columns are labeled "Emission Unit/Group" and "Description", respectively.

31. These headings are inaccurate and misleading. The information listed in the column headed "Emission Unit/Group" is of the operating areas at the GE plant, not of emission units or emission groups. The information listed in the column headed "Description" is a list of the emission units themselves, not a description of the emission unit/group or of the operating area.

32. The tables in Conditions 7.1.2, 7.2.2, 7.3.2, and 7.4.2 of the CAAPP Permit contain three columns. The two left-hand columns are labeled "Emission Unit" and "Description", respectively.

33. These headings are inaccurate and misleading. The information listed in the columns headed "Emission Unit" is of a particular operating area at the GE plant, not of emission units. The information listed in the columns headed "Description" is a list of the emission units themselves, not a description of the emission unit.

34. Accordingly, the column headed "Emission Unit/Group" (in the case of Section 4.0) or "Emission Unit" (in the case of Conditions 7.1.2, 7.2.2, 7.3.2, and 7.4.2) should be changed to "Operating Area" and the column headed "Description" (in all five conditions) should be changed to "Emission Units".

e. The Agency improperly characterized descriptions of operating areas as permit conditions

35. Conditions 7.1.1, 7.2.1, 7.3.1, 7.4.1, 7.5.1, and 7.6.1 each set forth a description of the unit, or operating area, covered by the respective section of the CAAPP Permit.

36. None of these conditions is an applicable requirement or contains an applicable requirement. They are merely general descriptions of the activities conducted at the respective operating areas. However, the CAAPP Permit contains no indication that these conditions are not enforceable permit conditions.

37. Accordingly, each condition heading should be changed from "Description" to "Description (for informational purposes only)".

f. The Agency failed to include language in the CAAPP Permit from underlying construction permits

38. Condition 7.3.6(b)(iii), which contains particulate matter emission limits, is based on a condition in construction permit 97020059, which states that: "These limits are based on maximum emission rates indicated in the permit application and the maximum hours of operation (8,736 hr/yr)."

39. Condition 7.3.6(b)(v), which contains PM-10 emission limits, is based on a condition in construction permit 96030290, which states that: "These limits are based on maximum actual emissions."

40. Condition 7.3.6(c), which contains VOM and PM emission limits, is based on a condition in construction permit 00110016, which states that: "These limits are based on maximum production and the compliance procedures specified in condition 1.1.12."

41. Each of these three construction permit provisions was omitted from the CAAPP Permit. The omitted language from each construction permit forms an integral part of the emission limits because it shows that the limits are based on potential emissions and were not taken to avoid the application of the PSD rule.

42. Accordingly, the referenced language from these three construction permits should be added to the CAAPP Permit.

g. The Agency imposed an overbroad compliance certification requirement

43. Condition 5.2.5(a) requires GE, as part of its annual compliance certification, to certify compliance with any regulation issued pursuant to 40 CFR Parts 60, 61, or 63, or pursuant to 35 IAC, after the date the CAAPP Permit was issued.

44. This requirement is not in the Act.

45. The Agency's action in including this provision was arbitrary and capricious, and without basis in law.

46. Accordingly, Condition 5.2.5(a) should be revised by removing the phrase "and shall certify compliance with the applicable requirements of such regulation(s) as part of the annual compliance certification".

h. The Agency improperly created emission limitations

47. Condition 5.5.1 states, in pertinent part, that: "The annual emissions from the source ... shall not exceed the following limitations."

48. While this condition contains no citation or reference to its authority, it appears that the purpose of this provision is to implement the fee provision of section 39.5(18) of the Act.

That provision establishes a requirement to pay an annual fee based on allowable emissions. It does not establish any emission limitations.

49. Accordingly, Condition 5.5.1 should be removed from the CAAPP Permit, and the table of allowable emissions should be moved to Condition 9.2.5, which sets forth the duty to pay the annual fee. Corresponding changes in other portions of the CAAPP Permit will also need to be made.

i. The Agency improperly included a reference to the barge unloading system in Condition 7.6.9(c)

50. Condition 7.6.9(c) requires GE to maintain records of, among other things, the annual (calendar year) VOM and HAP emissions from the barge unloading system.

51. The only emissions from the barge unloading system occur when the fill line is disconnected after loading is completed. Any such emissions are fugitive emissions and are not subject to an emissions limitation.

52. Accordingly, the reference to the barge unloading system should be removed from Condition 7.6.9(c).

j. The Agency used an erroneous credible evidence provision

53. Condition 9.1.3 of the CAAPP Permit provides, in pertinent part, that “any person (including the Permittee) may also use other credible evidence to establish compliance or noncompliance with applicable requirements.”

54. As noted above, the Agency failed to state the authority for including this permit term. To the extent that the Agency is relying on the U.S. EPA’s credible evidence rule (62 Federal Register 8314 (Feb. 24, 1997)) as the authority for including this permit term, the CAAPP Permit’s language does not reflect that the credible evidence rule does not apply to every federal standard (e.g., Part 63 standards) or any State standards, nor does the language in the CAAPP Permit reflect a key judicial interpretation that leaves open the opportunity to

challenge the applicability of the credible evidence rule in any future enforcement action (*Clean Air Implementation Project v. EPA*, 150 F.3d 1200 (D.C. Cir. 1998)).

k. The Agency included "liability" provisions that are not in the Act

55. Section 9.5 contains five conditions. Only the last one (Condition 9.5.5) can be found in the Act. The other four are not in the Act or in any other applicable requirement.

56. The Agency's action in including these four provisions was arbitrary and capricious, and without basis in law.

57. Accordingly, Conditions 9.5.1, 9.5.2, 9.5.3, and 9.5.4 should be removed from the CAAPP Permit.

l. Typographical errors that should be corrected

58. In Condition 7.1.12(b), the word "account" should be "amount".

59. In Conditions 7.4.3(c) and 7.4.3(d), the term "primary clarify" should be "primary clarifier".

60. In Condition 7.4.9, the phrase "Conditions 5.5.1" should be "Condition 5.5.1".

61. The accuracy of the CAAPP Permit would be improved by revising these provisions.

62. Accordingly, these typographical errors should be corrected.

63. GE does not, by reason of any of the foregoing, limit the grounds that may be advanced in this appeal, and reserves the right to amend and expand its assignments of error.

WHEREFORE, GE requests that:

- (A) The Board declare that the Agency's action imposing the CAAPP Permit terms and conditions identified above to be arbitrary, capricious, unreasonable, unlawful and/or beyond the regulatory and legislative authority of the Agency;

- (B) The Board vacate the Agency's action imposing the CAAPP Permit terms and conditions identified above and require the Agency to revise GE's CAAPP Permit to incorporate reasonable and lawful CAAPP permit terms and conditions; and
- (C) The Board grant GE such other and further relief as is just, necessary and proper.

Respectfully submitted,
GENERAL ELECTRIC COMPANY

By: Alphonse McMahon
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Of Counsel:

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Email: matthew.tanzer@corporate.ge.com

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I have served a copy of each of the following documents:

1. Petition for Review
2. Motion to Appear Pro Hac Vice (by Alphonse McMahon)
3. Motion to Appear Pro Hac Vice (by Shannon S. Broome)
4. Notice of Appearance (of Alphonse McMahon)
5. Notice of Appearance (of Shannon S. Broome)
6. Notice of Filing

upon the Illinois Environmental Protection Agency at:

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

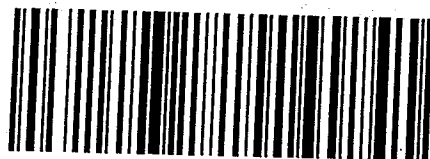
by depositing them in the United States mail, first-class postage prepaid, this 30th day of December, 2003.

Alphonse McMahon
Alphonse McMahon

Alphonse McMahon
GE Plastics Mt. Vernon, Inc.
1 Lexan Lane
Mt. Vernon, IN 47620

OF THE RETURN ADDRESS. FOLLOW DOTTED LINE

CERTIFIED MAIL



7002 0860 0003 2017 9524

★  ★
1800 U.S. POSTAGE PB 2229636 ★
9215 \$17.05 DEC 30 03 ★
3073 FROM ZIP CODE 47620 ★

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Pollution Control Board, Attn: Clerk
100 West Randolph Street
James R. Thompson Center
Suite 11-500
Chicago, IL 60601-3218

Due to the volume of this pleading,
please contact the Clerk's Office

at

312/814-3629

to view this file.

