

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

v.

OASIS INDUSTRIES INC.

Respondent.

PCB # 05-98

(Enforcement - Air)

RECEIVED
CLERK'S OFFICE

FEB 15 2005

STATE OF ILLINOIS
Pollution Control Board

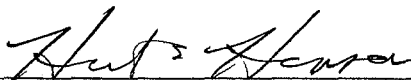
NOTICE OF FILING

To:

Mr. Zemeheret Bereket-AB
Environmental Bureau
Office of the Attorney General
188 West Randolph, 20th Floor
Chicago, IL 60601

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the original and nine copies of Respondent's ANSWER AND AFFIRMATIVE DEFENSES , a copy of which is hereby served upon you.

Respectfully submitted,



Heidi E. Hanson

Dated - February 11, 2005

Heidi E. Hanson
H. E. Hanson, Esq. P.C.
4721 Franklin Ave, Suite 1500
Western Springs, IL 60558-1720
(708) 784-0624

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

v.

OASIS INDUSTRIES INC.

Respondent.

ORIGINAL

) PCB # 05-98
)
)
)
)
)

(Enforcement - Air)

RECEIVED
CLERK'S OFFICE

FEB 15 2005

STATE OF ILLINOIS
Pollution Control Board

ANSWER AND AFFIRMATIVE DEFENSES

NOW COMES Oasis Industries, Inc. ("Oasis") by and through its attorney, H. E. HANSON ESQ. P.C. and for its Answer to the Complaint and its Affirmative Defenses states as follows:

COUNT I

OPERATING A MAJOR SOURCE WITHOUT A CAAPP PERMIT

1. Respondent lacks knowledge or information sufficient to admit or deny the allegations contained in Paragraph 1.
2. The Illinois Environmental Protection Act speaks for itself, therefore no answer is required.
3. Respondent admits the allegations contained in paragraph 3.
4. Respondent denies that emission units at the facility include fiberglass/resin lay-up stations. Respondent admits all other allegations of paragraph 4.
5. Respondent admits that the emission units in the aggregate, emit or have the potential to emit more than 10 tons per year of volatile organic material from 1998 to the present however the emission units at the Facility did not emit or have the potential to emit more than 10 tons per year of VOM for calendar year 1997. The remainder of the paragraph alleges legal conclusions to which no answer is required.
6. This paragraph alleges legal conclusions to which no answer is required.
7. Oasis denies that it "did not file a CAAPP permit application until September 22, 1999, two years after it was required to do so". Oasis admits that a Clean Air Act Permit Program ("CAAPP") permit was issued to it, but denies that it was issued on November 20, 2003.

8. On information and belief Oasis admits that the Illinois EPA inspected the Facility on May 17, 2002. What the it discovered is better known to the Illinois EPA, so Oasis can neither admit nor deny allegations relating to Illinois EPA's discovery.

9. The Illinois Environmental Protection Act speaks for itself, therefore no answer is required.

10. Respondent admits the allegations contained in paragraph 10.

11. Respondent admits the allegations contained in paragraph 11.

12. The Illinois Environmental Protection Act speaks for itself, therefore no answer is required.

13. Respondent denies that "Section 39.5(4)(x) of the Act, 415 ILCS 5/39.5(4)(x)(2002)" exists in the Illinois Environmental Protection Act.

14. The Illinois Environmental Protection Act speaks for itself, therefore no answer is required.

15. Respondent denies that it emitted 15.7 tons per year of Styrene Resin. It denies that Styrene Resin is a Hazardous Air Pollutant. It denies that it has a potential to emit of greater than 25 tpy, but it admits that its potential to emit has exceeded 25 tpy in the past. Respondent admits that the Facility is located in an area currently classified severe nonattainment for ozone. The remainder of this paragraph alleges legal conclusions to which no answer is required. With regard to "construction" of the source it should be noted that the Board's regulations contain two different definitions of "construction. Since no definition is specified here the ambiguity created renders the relevant segment of the paragraph unanswerable.

16. Oasis denies that it filed a CAAPP application on September 22, 1999 but admits that it submitted an update to a CAAPP application on or about September 22, 1999. The remainder of the paragraph alleges legal conclusions to which no answer is required.

17. This paragraph 17 alleges legal conclusions to which no answer is required.

WHEREFORE, Respondent prays that Count I of the Complaint be dismissed.

FIRST AFFIRMATIVE DEFENSE TO COUNT I - VALID PERMIT APPLICATION TRANSFER

1. Count I of the Complaint is premised on the argument that Respondent did not file a CAAPP application for the Aurora facility until September of 1999.

2. This affirmative defense is being raised to introduce new facts, specifically that an earlier application which was originally filed for the Batavia facility, was validly transferred to the Aurora facility sometime in 1997. Therefore, the fact that Oasis did not file a CAAPP application for the Aurora facility prior July 31, 1998, to the one year anniversary of the transfer of operations, does not constitute a violation.

3. Oasis submitted a CAAPP application on or about November 24, 1995 for its Batavia Facility. Illinois EPA received the application and issued a completeness determination for it.

4. In July of 1997 Oasis moved its equipment from Batavia to Aurora. It was Oasis' understanding, based on correspondence and discussions with the Illinois EPA, that the Batavia application was being transferred to the Aurora facility.

5. There are no Illinois rules or regulations prohibiting or limiting the transfer of a CAAPP permit application.

6. Section 39.5(4) of the Illinois Environmental Protection Act ("Act"), 415 ILCS5/39.5(4)(c) provides that

An owner or operator of a CAAPP source seeking to make a modification to a source prior to issuance of its CAAPP permit shall be required to obtain a construction and/or operating permit as required for such modification in accordance with the State permit program under Section 39(a) of this Act, as amended, and shall be considered an amendment to the CAAPP application submitted for such source."

7. On July 17, 1997 Oasis submitted state permit application forms for the Aurora operation in order to continue to operate the same equipment, at the same emission level, that it had been operated at in Batavia. On July 25 of 1997 the Illinois EPA issued a state construction and operating permit for the Aurora location for the equipment that had been moved from Batavia and on July 30, 1997 the Aurora location began production.

8. The Illinois EPA continued to act on the CAAPP application in such a way as to indicate that it had been transferred to the Aurora site, and that the September 25, 1997 permit would be treated as an amendment. These actions included processing an April 1998 Supplement to the CAAPP application, and issuing a Notice of ERMS status to the Aurora site on April 21, 1998, which included the statement that the Agency was proceeding with the development of a draft permit.

9. The Illinois EPA also issued a second state construction and operating permit to the Aurora facility on August 31, 1998 more than one month after July 31, 1998, the date on which the CAAPP application would have been due if it had not been transferred. The issuance of the 98 state permit on that date would also indicate that the CAAPP application was in fact, transferred and pending.

10. It was not uncommon for the Illinois EPA to take more than the two years allotted by 415 ILCS 5/39.5(j) to process a CAAPP application. Pursuant to 5/39.5(h) Oasis' failure to have a permit would not be considered a violation until the Illinois EPA took final agency action, so the lengthy wait for the issuance of the CAAPP permit did not indicate to Oasis that the Illinois EPA had decided not to recognize the transfer of the permit.

11. Section 5/39.5(x) of the Act, 415 ILCS 5/39.5(5)(x) provides that "the owner or operator of a new CAAPP source shall submit its complete CAAPP application consistent with this subsection within 12 months after commencing operation."

12. Because it had been misled into believing that it had a pending application Oasis allowed the one year grace period that it would have had pursuant to 415 ILCS 5/39.5(5)(x) to lapse, thus arguably, subjecting it to enforcement.

13. In September of 1999 at the Illinois EPA's request Oasis submitted an updated application marked "modification". The Illinois EPA issued Oasis a CAAPP permit for the first time in 2003.

14. The transfer of the CAAPP application from Batavia to Aurora was effective as a matter of law and was evidenced and repeatedly ratified by the Illinois EPA's correspondence and permit actions after the transfer therefore Oasis was not operating without a CAAPP application.

SECOND AFFIRMATIVE DEFENSE TO COUNT I - ESTOPPEL

1.-13. Respondent realleges and incorporates by reference paragraphs 1-13 of its First Affirmative Defense to Count I of the Complaint as paragraphs 1-13 of its Second Affirmative Defense to Count I of the Complaint.

14. As an alternative to its First Affirmative defense, in the event the Board should find the transfer to be not effective, Oasis pleads that Complainant should be equitably estopped from pursuing its claim that Oasis did not submit a permit application prior to September 22, 1999.

15. Oasis reasonably relied on the statements and correspondence regarding its CAAPP application status made by Illinois EPA, the Agency charged with analyzing permit applications and issuing permits.

16. Such reliance acted to its detriment because it would have been a simple matter to retype the 1995 CAAPP application, changing the address to Aurora, and resubmit it prior to the one year anniversary of beginning operations in Aurora. Balancing the ease of revising the application against the risk of enforcement Oasis clearly would have revised the application had it believed that it had reason to do so. Instead it is now facing enforcement and must incur fees for legal services to remedy this situation.

17. The Illinois EPA took such repeated, official, affirmative acts, better described above, as issuing the 1998 permit, reviewing the ERMs application and issuing the ERMS letter, all of which indicated to Oasis that its CAAPP application had been transferred and was still pending.

18. If the words and actions described above do not, as plead in the First Affirmative Defense, constitute evidence that the permit was transferred, then alternatively, the words and actions are official and knowing affirmative misrepresentations of the CAAPP permit application status.

19. The Illinois EPA must have known or expected that Oasis would continue to act on the belief that its application was pending and in fact Oasis did so act, and Oasis will be prejudiced, in that it will be subject to enforcement if the Complainant is allowed to deny the truth of its misrepresentation.

20. Furthermore, invoking equitable relief to restore Oasis to its proper position will not in any way defeat the operation of public policy because Oasis' case is unique, and no harm befell the environment or the State of Illinois as a result of Oasis acting on its reasonable belief that it had a pending CAAPP permit application.

21. The trust that Oasis reposed in the Illinois EPA as the agency charged with handling permits and permit applications, together with the repeated indications that the transferred permit application was pending and the ease of submitting a new application, for the same process, constitute exceptional and compelling circumstances warranting application of equitable estoppel.

THIRD AFFIRMATIVE DEFENSE TO COUNT I - LACHES

1.-20. Respondent realleges and incorporates by reference paragraphs 1-20 of its Second Affirmative Defense to Count I of the Complaint as paragraphs 1-20 of its Third Affirmative Defense to Count I of the Complaint.

21. As an alternative to its First Affirmative Defense, in the event the Board should find the transfer to be not effective Oasis pleads that Complainant should be barred by the doctrine of laches from pursuing its claim.

22. If the 1995 CAAPP application was not transferred then Oasis was misled and prejudiced by Complainant's failure to assert its right to a CAAPP application within one year of the date that Oasis began operations on the new site.

23. Oasis acted with due diligence by continuing to communicate with the Illinois EPA and responding to each of the Agency's requests for permit forms beginning in May of 1997.

24. As described above the Illinois EPA had, in various contacts with Oasis, after operations were moved from Batavia to Aurora, indicated that the CAAPP application was transferred and still pending. Oasis had no way of determining otherwise. The Complainant failed to act with due diligence in that it took no steps to remedy its apparent misrepresentation prior to issuing a Violation Notice.

24. If the permit application was not transferred, the Illinois EPA delayed in asserting its "right" to a new permit application, it misled Oasis into believing that its permit application had been transferred, and prejudiced Oasis by inducing it not to file another permit application thereby subjecting it to enforcement.

FOURTH AFFIRMATIVE DEFENSE TO COUNT I - WAIVER

1.-20. Respondent realleges and incorporates by reference paragraphs 1-20 of its Second Affirmative Defense to Count I of the Complaint as paragraphs 1-20 of its Fourth Affirmative Defense to Count I of the Complaint.

21. As an alternative to its First Affirmative Defense, in the event the Board should find the transfer to be not effective, Oasis pleads that Complainant should be barred from pursuing its claim because its conduct warrants an inference that it has knowingly and intentionally waived the right to do so.

22. The Illinois EPA has, by its actions described above, given repeated assurances to Oasis that its 1995 CAAPP application was transferred and pending, therefore Complainant has waived the "right" to now claim that the transfer did not occur, as well as the "right" to pursue enforcement against Oasis for failure to have timely filed a permit application.

COUNT II CONSTRUCTION OF A MAJOR SOURCE IN VIOLATION OF NEW SOURCE REVIEW

1-6. Respondent realleges and incorporates by reference its answer to Paragraphs 1 through 5 and Paragraph 15 of Count I herein as its answer to Paragraphs 1 through 6 of this Count II.

7. The Illinois Environmental Protection Act speaks for itself therefore no answer to this allegation is required.
8. The Illinois Environmental Protection Act speaks for itself therefore no answer to this allegation is required.
9. Respondent admits the allegation contained in paragraph 9.
10. The Illinois Pollution Control Board Rules speak for themselves therefore no answer to this allegation is required. However Respondent notes that paragraph 10 fails to accurately quote 35 Ill. Adm. Code 203.201.
11. Respondent denies that in 1997 its Facility was a major stationary source, but admits that it was located in an area designated as severe nonattainment for ozone. The Board's regulations contain two different definitions of "construction". Since no definition is specified here, the ambiguity created renders the allegation in the first sentence unanswerable as it relates to construction. Respondent admits that it modified the source in 1998.
12. Respondent admits that on July 25, 1997 the Illinois EPA issued Oasis joint construction and operating permit #97070058 which established a yearly limit of VOM emissions. Respondent denies that the limit was 15.75.
13. Respondent admits the allegations contained in paragraph 13.
14. Respondent admits that on January 6, and March 15, 2003, it submitted data to the Illinois EPA. Respondent lacks knowledge sufficient to form a belief and as a result can neither admit nor deny that such data documented emissions for calendar years 1999, 2000 and 2001 because USEPA repudiated and withdrew the applicable emissions factor and no other, sanctioned, emission factor was offered to replace it, therefore there was no approved way to calculate Oasis' emissions. However Respondent admits that the emissions were calculated using the method that was given in its permit and that had been initially approved but later repudiated. Respondent denies that such data documented total VOM tons per year emissions for calendar year 2002 because on January 6, 2003 Oasis had not completed calculations for the year 2002 and submitted only partial data clearly marked as such.
15. Oasis admits that the data submitted to the Illinois EPA showed the listed numbers of VOM for years 1999, 2000, and 2001, but lacks knowledge sufficient to form a belief and so can neither admit nor deny that they "show" emissions, in the absence of an approved method of calculating emissions. Oasis denies that the data submitted showed 34.13 (T/Yr) as the total VOM emissions for 2002.

16. Respondent denies that the "above date[sic] shows that Oasis emitted VOM in excess of the permitted levels" for years 1999, 2000 and 2001. Adding the permitted levels alleged in paragraphs 12 and 13 of Count II yields a total of 24.55 (T/Yr) VOM which is greater than the total emissions shown for years 1999, 2000 and 2001 in paragraph 15. With regard to the data shown for 2002, in paragraph 15, Respondent admits that the number is greater than 24.55 but denies that the number shows the total emission of VOM for the year. The remainder of the paragraph alleges a legal conclusion to which no answer is required.

17. This paragraph 17 alleges legal conclusions to which no answer is required.

WHEREFORE, Respondent prays that Count II of the Complaint be dismissed.

COUNT III
FAILURE TO MEET WITH [SIC] THE LOWEST ACHIEVABLE EMISSION
RATE (LAER) REQUIREMENTS

1-6. Respondent realleges and incorporates by reference its answer to Paragraphs 1 through 5 and Paragraph 15 of Count I herein as its answer to Paragraphs 1 through 6 of this Count III.

7. The Illinois Pollution Control Board Rules speak for themselves therefore no answer to this allegation is required.

8. The Illinois Pollution Control Board Rules speak for themselves therefore no answer to this allegation is required.

9. Oasis admits that it operates in an area currently designated as severe nonattainment for ozone.

10. The Board's regulations contain two different definitions of "construction". Since no definition is specified here the ambiguity created renders this part of the allegation unanswerable. Oasis admits that it obtained construction permits with monthly and annual emission limits. It denies that the total of the limits was set at a level below that required for "major sources for purposes of new source review" in the period between August 31, 1998 and November 26, 2003, but admits that they were set at a level below that required for "major sources for purposes of new source review" before and after that period.

11. Oasis admits that it emitted VOM in excess of the permitted levels. Oasis lacks sufficient knowledge to form a belief and so can neither admit nor deny at this time that it produced the lowest achievable emission rate. Oasis admits that it has not provided emission offsets as required by 35 Ill Adm. Code 203.302(a)(1)(D). The remainder of the paragraph alleges legal conclusions to which no answer is required.

12. This paragraph alleges legal conclusions to which no answer is required.

WHEREFORE, Respondent prays that Count III of the Complaint be dismissed.

COUNT IV
FAILURE TO TIMELY SUBMIT AN EMISSION REDUCTION MARKET
SYSTEM (ERMS) APPLICATION

1-6. Respondent realleges and incorporates by reference its answer to Paragraphs 1 through 5 and Paragraph 15 of Count I herein as its answer to Paragraphs 1 through 6 of this Count IV.

7. The Illinois Environmental Protection Act speaks for itself, therefore no answer is required.

8. The Illinois Pollution Control Board Rules speak for themselves therefore no answer to this allegation is required. However, Respondent notes that Complainant has failed to fully and accurately quote 35 Ill Adm. Code Section 205.130 in material part.

9. The Illinois Pollution Control Board Rules speak for themselves therefore no answer to this allegation is required.

10. Oasis admits that it was operating prior to May 1, 1999. Oasis admits that it is located in the "Chicago ozone nonattainment area" as that term is defined in Board Air Pollution Regulation 35 Ill Adm. Code 205.130. Oasis admits that it has in the past been "required to obtain a CAAPP permit" but denies any implication that it does not currently have a CAAPP permit. Oasis is without sufficient knowledge to form a belief and so can neither admit nor deny that it is a participating source or that it "has a baseline emission of at least 10 tons in any seasonal allotment period beginning in 1999", because pursuant to 35 Ill Adm Code 205.320 "baseline emissions shall be determined by the [Illinois Environmental Protection] Agency" and that Agency has not yet informed Oasis of any such determination.

11. Oasis lacks sufficient information to form a belief and so can neither admit nor deny that its seasonal emissions exceeded 10 tons per season beginning in 2001, because USEPA had repudiated the applicable emission factor that was reflected in Oasis permit, therefore in the relevant time period there was no acceptable method of determining emissions from Oasis' process. Oasis provided the Illinois EPA with a number of estimates for 2001 tons per season ranging from 10.45 for the repudiated factor, to 8.44 based on numbers Oasis received from the resin manufacturer. The term "beginning in at least" is unclear as to whether it refers to other years before or after 2001 and so to that extent the paragraph is incapable of being answered.

12. This paragraph alleges legal conclusions to which no answer is required.
13. Oasis admits that it submitted its ERM's baseline application on January 14, 2003. The remainder of the allegation alleges a legal conclusion to which no answer is required.
14. This paragraph alleges legal conclusions to which no answer is required.

WHEREFORE, Respondent prays that Count IV of the Complaint be dismissed.

COUNT V
EXCEEDING PERMIT LIMITS

- 1-6. Respondent realleges and incorporates by reference its answer to Paragraphs 1 through 5 and Paragraph 15 of Count I herein as its answer to Paragraphs 1 through 6 of this Count V.
7. The Illinois Environmental Protection Act speaks for itself, therefore no answer is required.
8. Respondent admits the allegations contained in paragraph 8.
9. Respondent denies that paragraph 9 of the Complaint accurately quotes the emission limits for VOM tons per month final coat resin.
10. With regard to the total annual emissions Respondent denies that its Total tons per year VOM emissions exceeded its permit prior to 2001. The remainder of the allegation is incapable of being answered because it is not clear whether it refers to the annual and monthly limits for the booths individually or collectively.
11. This paragraph 11 alleges legal conclusions to which no answer is required.

WHEREFORE, Respondent prays that Count V of the Complaint be dismissed.

COUNT VI
FAILURE TO FILE ACCURATE AND COMPLETE ANNUAL EMISSION
REPORTS

- 1-6. Respondent realleges and incorporates by reference its answer to Paragraphs 1 through 5 and Paragraph 15 of Count I herein as its answer to Paragraphs 1 through 6 of this Count VI.
7. The Illinois Pollution Control Board Rules speak for themselves therefore no answer to this allegation is required.

8. Respondent denies that 35 Ill Admin. Code 254.132(a) is a Board rule.
9. This allegation is not capable of being answered because the term "correctly" is undefined and ambiguous given that the emission factor that was reflected in Oasis 1997 permit, and used to prepare the Annual Emission Reports in 1999, 2000 and 2001, was repudiated by the USEPA after it was written into the 1997 permit and no replacement emission factor was developed in the relevant time period. Therefore it is unclear whether the permit emission factor would be considered the "correct" factor for purposes of answering this allegation.
10. Respondent denies this allegation.
11. Respondent admits that it has not filed corrected AERs for calendar years 1999 through 2001.
12. This paragraph 12 alleges legal conclusions to which no answer is required.

WHEREFORE, Respondent prays that Count VI of the Complaint be dismissed.

AFFIRMATIVE DEFENSE TO COUNT VI

1. Rule 35 Ill Adm. Code Part 254 was not adopted by the Illinois Pollution Control Board.
2. Rule 35 Ill. Adm. Code 254.132(a) is an Illinois EPA rule.
3. Complainant asks the Board to find a violation of 35 Ill Adm. Code 243.132(a), however noncompliance with an Illinois EPA rule does not constitute an enforceable violation under the Illinois Environmental Protection Act, therefore the Board has no authority to find a violation of that Illinois EPA rule.
4. Furthermore the Illinois Environmental Protection Act does not authorize penalties for "violations" of Illinois EPA rules.

FIRST GENERAL AFFIRMATIVE DEFENSE TO COUNTS II THROUGH VI OF THE COMPLAINT EMISSION FACTOR ISSUE - LACHES

1. Every violation in the Counts II through VI of the Complaint is predicated on allegations regarding the amount of VOM emissions at Oasis' Aurora facility.
2. Counts II and III are premised on Oasis emitting VOM in an amount in excess of a level that would trigger new source review. Count IV is premised on Oasis having exceeded season emission of 10 tons in the ozone season. Count V alleges emissions

exceeding permit emission limits. Count VI alleges that the VOM emission numbers submitted for Oasis' annual emission reports were not "correct".

3. As a result of USEPA's repudiation of the emission factor listed in Oasis' permit and Illinois EPA's failure to (until the issuance of the CAAPP permit in 2003) revise the permit or otherwise specify how to calculate emissions, there was no "correct" way to calculate emissions for regulatory purposes.

4. The permit that Illinois EPA issued to Oasis in 1997 stated that emissions shall be "calculated based upon ...the emission factors (%VOM Loss) provided in Condition 2." Condition 2 of the permit does not provide any emission factors, however Condition 1 lists an emissions factor (13%) and states that it was obtained from USEPA publication AP-42 (Table 4.12-2).

5. On March 18, 1998, USEPA repudiated and withdrew those AP-42 emission factors that applied to Oasis; the emission factors for open molding of composites. USEPA's website (<http://www.epa.gov/ttn/cheif/ap42/ch04/related/c04s04.html> (1/4/03)) states that "at this time there is no 'AP-42 factor' or estimation method for this category."

6. On March 23, 2000, the Illinois EPA sent a letter to Oasis with a copy of the USEPA announcement of the emission factor withdrawal and a request for comments on three alternative means of computing emissions. The Illinois EPA's letter cautioned Oasis that "these [new] values should not be used directly to calculate emissions." The letter also stated, quoting with approval from the USEPA website, that "users must evaluate their own application to determine the most appropriate method of estimating emissions."

7. Thus, Oasis' 1997 permit which remained in effect until 2003, required it to report its emissions on the basis of nonexistent emission factors and Illinois EPA gave Oasis no guidance regarding how it was to determine emissions.

8. The repudiation by USEPA of the AP-42 emissions factors raised an industry-wide question regarding how to calculate emissions. In response to that information void, the Composites Fabricators Association drafted several different versions of emissions factors (the Unified Emissions Factors or UEFs) however, no UEF was developed for the aqueous benzyol peroxide catalyst that Oasis was using.

9. Initially the repudiation of the AP-42 factor was not a cause for concern because Oasis' emissions were so much lower than either AP-42 or the UEFs. However Oasis recognized the need to definitively determine its emissions for regulatory purposes so it voluntarily initiated testing at Purdue University's CARL laboratory in order to determine a process specific emission factor.

10. Some initial testing was done in November of 2000 for Eastman Chemical, the producer of the aqueous BPO catalyst, at Purdue's CARL lab. The testing was flawed but still yielded some preliminary data. Based on that Oasis concluded that 9% VOM loss was

a reasonable, conservative, estimate of emission losses and used it the calculations that were provided as Attachment #2 to the January 6, 2003 letter. That letter cautioned that the numbers were only estimates and were being provided for information purposes only.

11. The manufacturer of the aqueous BPO catalyst stated that based on extrapolation from previous tests it believes that its catalyst as used in Oasis' process could result in emissions of "7% or less" of styrene. Oasis also provided an estimate of Oasis' 2001 and 2002 emissions using the 7% figure.

12 In 2001, for example, Oasis provided at the Illinois EPA's request, four different sets of emission calculations using each of the four alternative means of calculating emissions (AP-42, 9%, 7%, and the process specific emission factor). AP-42 had been repudiated, but none of the other methods had been formally approved.

13. For purposes of determining ERMs seasonal emissions, the method of determining emissions is supposed to be established in the permit, pursuant to 35 Ill Adm. Code 205.330. In Oasis' case it was established but later withdrawn with no replacement offered. Therefore for the remaining life of the 1997 permit Oasis had no formal direction on how to calculate its VOM emissions.

14. For purposes of the annual emissions report, 35 Ill Adm. Code 254.107 (as effective from May 14, 1993 to July 16, 2001, and 35 Ill Adm. Code 254.103 effective 7/17/01) the emission determination method is to be "the method generally accepted or used by those persons engaged in the field of air pollution control." At the relevant time there was no generally accepted factor although efforts were being made to develop the UEFs.

15. For purposes of the remaining counts, the determination of emissions is controlled by 35 Ill Adm Code 201.122 which provides for the use of standard emissions factors or other factors generally accepted as true by persons in the field. Again, there was no standard emission factor or generally accepted factor during the relevant time period.

16. Not having a state approved method to calculate its VOM emissions has prejudiced Oasis in that it is impossible to satisfy the state's demand for a "correct" annual emissions report. It also cannot determine when or whether, it has exceeded key thresholds. In addition it has been placed in a position where it must guess at which emission level it may operate.

17. The Illinois EPA did not act with due diligence in remedying this problem until the Oasis CAAPP permit was issued in 2003. Oasis however, was diligent in providing calculations of VOM emissions using a variety of methods, to the Illinois EPA at the Illinois EPA's request.

18 By its lack of due diligence in failing to choose a method for Oasis to use in determining its emissions the Illinois EPA prejudiced Oasis by forcing to act in a

regulatory vacuum in which it could not determine whether programs were applicable to it, or how much product it could make without exceeding its permit, or how to report its emissions. As a result Complainant should not be allowed to pursue its claims against Oasis to the extent they turn on the need to know, report, or act on, its VOM emissions levels.

SECOND GENERAL AFFIRMATIVE DEFENSE TO COUNTS II THROUGH VI OF
THE COMPLAINT EMISSION FACTOR ISSUE - WAIVER

1.-17. Respondent realleges and incorporates by reference paragraphs 1-11 of its First General Affirmative Defense to Count II through VI of the Complaint as paragraphs 1-11 of its Second General Affirmative Defense to Count II through VI of the Complaint.

18. Since there was no Illinois EPA approved "correct" way to determine emissions, and the Illinois EPA was fully aware of that situation and the position into which Oasis was placed, the Complainant has as a matter of general equity knowingly and intentionally waived its right to pursue its claims against Oasis, to the extent those claims turn on the need to know, report, or act on, specific VOM emissions numbers.

Respectfully submitted.


on behalf of Oasis Industries, Inc.

Dated: February 11, 2005

Heidi E. Hanson
H. E. Hanson, Esq. P.C.
4721 Franklin Ave, Suite 1500
Western Springs, IL 60558-1720
(708) 784-0624

RECEIVED
CLERK'S OFFICE

FEB 15 2005

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached Respondent's Answer and AFFIRMATIVE DEFENSES, by U. S. Mail before 4:30 February 11, upon the following persons:

original and nine copies to:

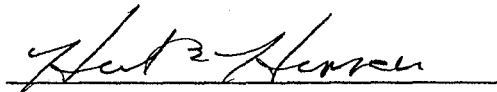
Clerk, Illinois Pollution Control Board
100 W. Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, Illinois 60601-3218

one copy each to:

Mr. Brad Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center Center
100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60601-3218

Mr. Zemeheret Bereket-AB
Environmental Bureau
Office of the Attorney General
188 West Randolph, 20th Floor
Chicago, IL 60601

Dated: February 11, 2005



Heidi E. Hanson
H. E. Hanson, Esq. P.C.
4721 Franklin Ave, Suite 1500
Western Springs, IL 60558-1720
(708) 784-0624

This filing is submitted on recycled paper.

ORIGINAL

H. E. HANSON, ESQ. P.C.

Law Office
4721 Franklin Ave., Suite 1500
Western Springs, IL 60558-1720

Telephone (708) 784-0624
Fax (708) 784-0627

RECEIVED
CLERK'S OFFICE

FEB 15 2005

STATE OF ILLINOIS
Pollution Control Board

February 10, 2005

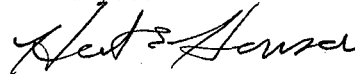
Clerk, Illinois Pollution Control Board
100 W. Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, Illinois 60601-3218

RE: People v. Oasis Industries, Inc. *PCB* 05-98

Dear Clerk:

I have enclosed an extra copy of the Respondent's ANSWER AND AFFIRMATIVE DEFENSES. Please date-stamp and return it to me in the enclosed self-addressed stamped envelope.

Thank you.



Heidi E. Hanson

Encl.