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STATE OF ILLINOIS
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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 20, 2003

Dorothy Gunn, Clerk
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601-3286

Re: People v. Passavant Area Hospital
PCB No. 03-183

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a NOTICE OF FILING, COMPLAINANT'S MOTION TO FILE SECOND SUPPLEMENTAL AND AMENDED COMPLAINT and SECOND SUPPLEMENTAL AND AMENDED COMPLAINT in regard to the above captioned matter. Please file the originals and return a file-stamped copy to our office in the enclosed self-addressed stamped envelope.

Thank you for your cooperation and consideration.

Sincerely,

Sally A. Carter
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706

SAC/pp
Enclosures

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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, ex rel. LISA MADIGAN, Attorney General of the State of Illinois,	)	
Complainant,	)	
-vs-	)	**No. 03-183**
PASSAVANT AREA HOSPITAL, an Illinois not-for-profit corporation,	)	
Respondent.	)	

NOTICE OF FILING

To: Babette P. Salus
Schwing & Salus, P.C.
1100 South Fifth Street
Springfield, IL 62703

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, COMPLAINANT'S MOTION TO FILE SECOND SUPPLEMENTAL AND AMENDED COMPLAINT and SECOND SUPPLEMENTAL AND AMENDED COMPLAINT, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

ex rel. LISA MADIGAN
Attorney General of the
State of Illinois

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

BY: Sally A. Carter
SALLY A. CARTER
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: November 21, 2003

CERTIFICATE OF SERVICE

I hereby certify that I did on November 21, 2003, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, COMPLAINANT'S MOTION TO FILE SECOND SUPPLEMENTAL AND AMENDED COMPLAINT and SECOND SUPPLEMENTAL AND AMENDED COMPLAINT:

To: Babette P. Salus
Schwing & Salus, P.C.
1100 South Fifth Street
Springfield, IL 62703

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

A copy was also sent by First Class Mail with postage thereon fully prepaid

To: Carol Sudman
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Sally A. Carter
Assistant Attorney General

This filing is submitted on recycled paper.

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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, Complainant,	)	
vs.	)	No. 3-183 (Enforcement)
PASSAVANT AREA HOSPITAL, an Illinois not-for-profit corporation, Respondent.	)	

COMPLAINANT'S MOTION TO FILE SECOND SUPPLEMENTAL AND AMENDED COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, filed a three-count Complaint against the Respondent, PASSAVANT AREA HOSPITAL, on April 8, 2003 and a five-count First Supplemental and Amended Complaint against the Respondent on August 15, 2003. The People respectfully move, pursuant to Section 103.206(d) of the Board's Procedural Rules, 35 Ill. Adm. Code 103.206(d), for leave to file the attached Second Supplemental and Amended Complaint in order to include violations that have occurred subsequent to the filing of the First Supplemental and Amended Complaint.

Subsequent to the filing of the First Supplemental and Amended Complaint, the Complainant was informed of the violations now pleaded within Count VI. In the interests of administrative efficiency, the inclusion of these additional violations within the pending enforcement proceeding is necessary. The additional claims arise out of the occurrences that are the subject of the proceeding, thereby satisfying the requirement of Section 103.206(e)(1) of the Board's Procedural Rules. The claims are brought upon the Attorney General's own motion and at the request of the Illinois Environmental Protection Agency. The Respondent has

waived the requirements of Section 31 of the Act, 415 ILCS 5/31 (2002), regarding the allegations within Count VI.

Pursuant to Section 103.204(f) of the Board's Procedural Rules, the Respondent is hereby notified: Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.

. WHEREFORE, Complainant respectfully asks that this Motion to File Second Supplemental and Amended Complaint be granted and that the Complainant be allowed to enforce the additional allegations in this pending matter.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN
Attorney General
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement Division

BY: Sally A. Carter
SALLY A. CARTER
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: November 20, 2003

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Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
vs.	)	PCB No. 03-183
	)	(Enforcement)
PASSAVANT AREA HOSPITAL,	)	
an Illinois not-for-profit corporation,	)	
	)	
Respondent.	)	

SECOND SUPPLEMENTAL AND AMENDED COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, PASSAVANT AREA HOSPITAL, an Illinois not-for-profit corporation, as follows:

COUNT I
AIR POLLUTION and PERMIT VIOLATIONS

1. This Complaint is brought by the People of the State of Illinois, by Lisa Madigan, the Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2002).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2002), and charged, *inter alia*, with the duty of enforcing the Act.

3. The Respondent, PASSAVANT AREA HOSPITAL, (hereinafter, "Passavant Hospital"), is and was at all times relevant to this Complaint, an Illinois not-for-profit corporation in good standing and authorized to do business in the State of Illinois.

4. The Respondent operates a medium hospital medical/infectious waste incinerator (hereinafter "HMIWI") at its hospital, which is located at 1600 West Walnut Street, Jacksonville, Morgan County, Illinois.

5. Section 9(a) of the Act, 415 ILCS 5/9 (a)(2002), provides:

> No person shall:
>
> a. Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act;

6. Section 39.5 (6)(a) of the Act, 415 ILCS 5/39.5(6)(a) provides, in pertinent part:

> It shall be unlawful for any person to violate any terms or conditions of a permit issued under this Section, to operate any CAAPP source except in compliance with a permit issued by the Agency under this Section or to violate any other applicable requirements.

7. Section 201.141 of the Illinois Pollution Control Board's Air Pollution Regulations, 35 Ill. Adm. Code 204.141, provides:

> No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution in Illinois, or so as to violate the provisions of this Chapter, or so as to prevent the attainment or maintenance of any applicable ambient air quality standard.

8. Section 229.102 of the Illinois Pollution Control Board's Air Pollution Regulations, 35 Ill. Adm. Code 229.102, provides:

> "Hospital" means any facility that has an organized medical staff, maintaining at lest 6 inpatient beds and where the primary function of the facility is to provide diagnostic and therapeutic patient services and continuous nursing care primarily to human inpatients who are not related and who stay on average in excess of 24 hours per admission. This definition does not include facilities maintained for the sole purpose of providing nursing or convalescent care to human patients who generally are not acutely ill but who require continuing medical supervision.

"Hospital/medical/infectious waste incinerator" or "HMIWI" means any device that combusts any amount of hospital waste or medical/infectious waste.

"Hospital waste" means discards generated at a hospital, except unused items returned to the manufacturer. The definition of hospital waste does not include human corpses, remains, or anatomical parts that are intended for interment or cremation.

"HMIWI operator" means any person who operates, controls, or supervises the day-to-day operation of an HMIWI.

"Medical/infectious waste" means any waste generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals. The definition of medical/infectious waste does not include hazardous waste identified or listed under the regulations in 40 CFR 261; household waste, as defined in 40 CFR 261.4(b)(1); and domestic sewage materials identified in 40 CFR 261.4(a)(1). . .

"Medium HMIWI" means:

An HMIWI whose maximum design waste burning capacity is more than 200 lbs per hour but less than or equal to 500 lbs per hour; or

A continuous or intermittent HMIWI whose maximum charge rate, as set by permit, is more than 200 lbs per hour but less than or qual to 500 lbs per hour; or

A batch HMIWI whose maximum charge rate, as set by permit, is more than 1,600 lbs per day but less than or equal to 4,000 lbs per day.

9. Section 229.125 (b) of the Illinois Pollution Control Board's Air Pollution Regulations, 35 Ill. Adm. Code 229.125 (b), provides, in pertinent part:

Section 229.125(b) Emission Limitations for Small, Medium and Large HMIWIs

b) The emission limits for . . . medium . . . HMIWIs are as follows:

Pollutant	Units	Limits
Particulate Matter (PM)	milligrams per dry standard cubic foot (grains per dscf)	69 (0.03)
Dioxins/furans	nanograms per dry standard cubic meter (grains per billion dscf) or nanograms per dscm TEQ (grains per billion dscf)	125 (55) or 23 (1.0)
Hydrogen Chloride (HCl)	parts per million by volume	100
Cadmium (Cd)	mg per dscm (grains per thousand dscf)	0.16 (0.07)

10. On June 18, 2001, the Illinois EPA, pursuant to the Clean Air Act Permit Program ("CAAPP"), issued Permit No. 00090039 to Respondent to operate the HMIWI. The HMIWI is limited to a waste charge-rate of 240 pounds per hour by the CAAPP permit. By being limited to 240 pounds per hour, the incineration is considered a medium HMIWI per the Part 229 HMIWI regulations.

11. Section 7.1.8 of CAAPP Permit No. 00090039 contained the following conditions, in pertinent part:

> In addition to Condition 5.2.2 and the source wide emission limitations in Condition 5.5.1, the affected medium HMIWI is subject to the following emission limits, as established in 35 IAC 229.125(b):

Pollutant	Units (7% oxygen, dry basis)	Emissions Limits for Medium HMIWI
PM	mg per dscm (grains per dscf)	69 (0.03)
Dioxins/Furans	nanograms per dscm, total dioxins/furans (grains per billion dscf), or nanograms per dscm TEQ (grains per billion dscf)	125 (55) or 2.3 (1.0)

Hcl	ppmv	100
Cd	mg per dscm (grains per thousand dscf)	0.16 (0.07)

12. On or about September 25 and 26, 2001, Passavant conducted its annual performance test. Emissions were measured at the following levels for the following pollutants:

Pollutant	Measured level (Limit)
Particulate Matter (mg/dscm)	82.78 (69)
Dioxins/furans (ng/dscm)	961.72 (125)
Hydrogen Chloride	170.7 (100)

13. On or about November 13 and 14, 2001, Passavant retested the incinerator. Emissions were measured at the following levels for the following pollutants:

Pollutant	Measured Level (Limit)
Dioxins/furans (ng/dscm)	177.6 (125)
Cadmium (mg/dscm)	0.561 (0.16)
Hydrogen Chloride (ppmv)	282.2 (100)

14. Given the elevated dioxin/furan results from the September test, on November 15, 2001, the Illinois EPA sought a voluntary shutdown of the incinerator pending the results of the November test. On November 15, 2001, Passavant faxed the Illinois EPA a letter agreeing to voluntarily shut down the incinerator pending the results of the November compliance test. The incinerator actually ceased operation on November 20, 2001.

15. By exceeding the emissions limits set forth in 35 Ill. Adm. Code 229.125 (b), Respondent violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), and 35 Ill. Adm. Code 229.125(b).

16. By exceeding the emissions limits set forth in Section 7.1.8 of CAAPP Permit No. 00090039, Respondent violated Section 39.5 (6)(a) of the Act, 415 ILCS 39.5(6)(a) (2002).

17. By causing, threatening or allowing the discharge or emission of any contaminant into the environment in the State, the Respondent has violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2002) and Section 201.141 of the Illinois Pollution Control Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.141.

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent,

A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

B. Finding that Respondent has violated the Act and regulations as alleged herein;

C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;

D. Assessing against Respondent a civil penalty of fifty thousand dollars ($50,000) for each violation of the Act;

E. Awarding to Complainant its costs and reasonable attorney's fees; and

F. Granting such other relief as the Board may deem appropriate.

COUNT II

OPERATING VIOLATIONS

1-8. Plaintiff re-alleges and incorporates by reference herein paragraphs 1 through 6, 8 and 10 of Count I as paragraphs 1 through 8 of this Count II.

9. On June 18, 2001, the Illinois EPA issued CAAPP Permit No. 00090039 to Respondent to operate a medium HMIWI.

10. CAAPP Permit No. 00090039 contained the following conditions, in pertinent part:

a. Section 7.1.6 (a) of the permit provides:

> No HMIWI shall be operated unless a trained and qualified HMIWI operator, as specified in 35 IAC Part 229, is available on-site to operate or supervise the operation of the HMIWI.

b. Section 7.1.9 (g) of the permit provides:

> Following the date on which the initial performance test is completed, as required by 35 IAC 229.142, the Permittee shall conduct an annual opacity test by September 15 of each year.

c. Section 7.1.9 (i) of the permit provides:

> Following the date on which the initial performance test is completed, as required by this permit and 35 IAC 229.142, the Permittee shall conduct an annual performance test, by September 15 of each year to determine compliance with the PM, HCl, Cd, CO and dioxins/furans emission limits specified in 35 IAC 229.125 (b), using the applicable test procedures and methods specified in 35 IAC 229.140. This condition is more stringent and supercedes [sic] 35 IAC 229.148, because the affected HMIWI is not equipped with any type of control device and an annual re-testing is the most accurate and reliable tool for demonstration of compliance with emissions standards established in 35 IAC 229.

d. Section 7.1.10(a) of the permit provides:

> Once the initial performance test required by this permit and 35 IAC 229.142 has been performed, and the site-specific minimum and maximum operating parameter values have been established, the owner or operator of the affected large HMIWI shall continuously monitor these parameters.

e. Section 7.1.10 (d) of the permit provides:

> The Permittee shall monitor emissions of CO by utilizing Continuous Emission Monitoring System (CEMS).

11. Section 229.146 of the Illinois Pollution Control Board's Air Pollution Regulations, 35 Ill. Adm. Code 229.146, provides, in pertinent part:

> Following the date on which the initial performance test is completed, as required by Section 229.142 of this Section, the owners or operators of all HMIWIs shall conduct an annual opacity test, in accordance with Section 229.140 of this Part, by September 15 of each year.

12. Section 229.148 of the Illinois Pollution Control Board's Air Pollution Regulations, 35 Ill. Adm. Code 229.148, provides, in pertinent part:

> Following the date on which the initial performance test is completed, as required by Section 229.142 of this Part, all owners or operators of small, medium or large HMIWIs shall conduct an annual performance test, by September 15 of each year to determine compliance with the PM, CO and HCl emission limits specified in Section 229.125 (b) of this Part, using the applicable test procedures and methods specified in Section 229. 140 of this Part.

13. Section 229.152 (a) of the Illinois Pollution Control Board's Air Pollution Regulations, 35 Ill. Adm. Code 229.152 (a) provides, in pertinent part:

> The owner or operator of an HMIWI may use a CEMS to demonstrate compliance with any of the emission limits under Section 229.125(b) of this Part, if provided for in its permit. Any HMIWI that is allowed to use a CEMS to demonstrate compliance with the emission limits of this Part shall:
>
> > a) Determine compliance with the applicable emission limits using a 12-hour rolling average, calculated each hour as the average of the previous 12 operating hours, not including startup, shutdown, or malfunction.
>
> * * *

14. Section 229.166(a) of the Illinois Pollution Control Board's Air Pollution Regulations, 35 Ill. Adm. Code 229.166(a), provides, in pertinent part:

> Once the initial performance test required by Section 229.142 of this Part has been performed, and the site-specific minimum and maximum operating parameter values have been established, the owner or operator of a small, medium or large HMIWI shall continuously monitor those parameters.

15. Section 229.170 (a) of the Illinois Pollution Control Board's Air Pollution Regulations, 35 Ill. Adm. Code 229.170(a), provides:

> No HMIWI shall be operated unless a trained and qualified HMIWI operator, as specified in this Section, is available on-site to operate or supervise the operation of the HMIWI.

16. On September 5, 2001, the Illinois EPA inspected the HMIWI operated by Respondent.

17. On September 5, 2001, the Illinois EPA observed that the employees of Respondent who operated the HMIWI were not certified to do so.

18. The Respondent failed to complete an annual opacity test by September 15, 2001, and September 15, 2002.

19. The Respondent failed to complete an annual performance test of Particulate Matter (PM), Hydrogen Chloride (HCl), Cadmium (Cd), Carbon Monoxide (CO) and dioxins/furans emission limits by September 15, 2001, and September 15, 2002.

20. The Respondent failed to continuously monitor and record CO concentration since the initial performance test conducted September 25 and 26, 2001.

21. On September 5, 2001, the Illinois EPA observed that Respondent was not determining 12-hour rolling averages of CO emitted from its HMIWI.

22. By failing to operate its HMIWI with certified operators, Respondent violated Section 7.1.6 (a) of its CAAPP permit, Sections 9(a) and 39.5(6)(a) of the Act, 415 ILCS 5/9 (a) and 39.5 (6)(a) (2002), and Section 229.170 (a) of the Illinois Pollution Control Board's regulations, 35 Ill. Adm. Code 229.170(a).

23. By failing to complete an annual opacity test by September 15, 2001, and September 15, 2002, Respondent violated Section 7.1.9 (g) of its CAAPP permit, Sections 9(a) and 39.5(6)(a) of the Act, 415 ILCS 5/9 (a) and 39.5 (6)(a) (2002), and Section 229.146 of the Illinois Pollution Control Board's regulations, 35 Ill. Adm. Code 229.146.

24. By failing to complete an annual performance test measuring the emissions of PM, HCl, Cd, CO and dioxins/furans emission limits by September 15, 2001, Respondent

violated Section 7.1.9 (i) of its CAAPP permit, Sections 9(a) and 39.5(6)(a) of the Act, 415 ILCS 5/9 (a) and 39.5 (6)(a) (2002).

25. By failing to complete an annual performance test measuring the emissions of PM, CO and HCl emission limits, by September 15, 2001, Respondent violated Section 229.148 of the Illinois Pollution Control Board's regulations, 35 Ill. Adm. Code 229.148 and Sections 9(a) and 39.5(6)(a) of the Act, 415 ILCS 5/9(a) and 39.5(6)(a) (2002).

26. By failing to conduct continuous monitoring and recording of CO concentration since the initial performance test conducted September 25 and 26, 2001, Respondent violated Section 7.1.10 (a) and (d) of its CAAPP permit, Sections 9(a) and 39.5(6)(a) of the Act, 415 ILCS 5/9 (a) and 39.5 (6)(a) (2002), and Section 229.166 of the Illinois Pollution Control Board's regulations, 35 Ill. Adm. Code 229.166.

27. By failing to monitor 12-hour rolling averages of CO emitted from its HMIWI, Respondent violated Sections 9(a) and 39.5(6)(a) of the Act, 415 ILCS 5/9(a) and 39.5 (6)(a) (2002), and Section 229.152(a) of the Illinois Pollution Control Board's regulations, 35 Ill. Adm. Code 229.152(a).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent,

A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

B. Finding that Respondent has violated the Act and regulations as alleged herein;

C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;

D. Assessing against Respondent a civil penalty of fifty thousand dollars ($50,000) for each violation of the Act;

E. Awarding to Complainant its costs and reasonable attorney's fees; and

F. Granting such other relief as the Board may deem appropriate.

COUNT III

RECORD-KEEPING VIOLATIONS

1-8. Plaintiff re-alleges and incorporates by reference herein paragraphs 1 through 6, 8 and 10 of Count I as paragraphs 1 through 8 of this Count III.

9. On June 18, 2001, the Illinois EPA issued CAAPP Permit No. 00090039 to Respondent to operate a medium HMIWI.

10. CAAPP Permit No. 00090039 contained the following conditions, in pertinent part:

a. Section 5.6.1 of the permit provided:

> The Permittee shall maintain records of the following items for the source to demonstrate compliance with Condition 5.5.1, pursuant to Section 39.5 (7)(b) of the Act:
>
> > Total annual emissions on a calendar year basis for the emission units covered by Section 7 (Unit Specific Conditions) of this permit.

b. Section 5.6.2(a) of the permit provided:

> All records and logs required by this permit shall be retained for at least five years form the date of entry (unless a longer retention period is specified by the particular record keeping provision herein), shall be kept at a location at the source that is readily accessible to the Illinois EPA or USEPA, and shall be made available for inspection and copying by the Illinois EPA or USEPA upon request.

c. Section 7.1.10(d)(iv) of the permit provided:

> The Permittee shall monitor emissions of CO by utilizing Continuous Emission Monitoring System (CEMS). The CEMS

shall meet the applicable Performance Specification 4 (PS4) of 40 CFR 60, Appendix B. To verify the accuracy of the CO monitor readings, the Permittee shall perform daily calibration checks by using known calibration gases as described below.

* * *

iv. The Permittee shall maintain records of the daily CO monitor checks. These records shall be available for inspection by the Illinois EPA.

d. Section 7.1.11(a)(iii) of the permit provided:

In addition to the records required by Condition 5.6, the Permittee shall maintain records of the following items for the affected HMIWI to demonstrate compliance with Condition 5.5.1 and Section 7 of this permit, pursuant to Section 39.5(7)(b) of the Act:

a. The Permittee shall maintain records of the following information:

iii. Identification of any calendar days for which data on emission rates or operating parameters specified under Condition 7.1.5 have not been obtained, with an identification of the emission rates or operating parameters not measured, reasons for not obtaining data, and a description of the corrective actions taken;

e. Section 7.1.11 (b) of the permit provided:

In addition to the records required by Condition 5.6, the Permittee shall maintain records of the following items for the affected HMIWI to demonstrate compliance with Condition 5.5.1 and Section 7 of this permit, pursuant to Section 39.5 (7)(b) of the Act:

* * *

(b) Monthly and annual emissions of pollutants based upon results of initial and subsequent performance tests (lb/mo and lb/yr).

11. Sections 229.182 (a)(3), (a)(7) and (g) of the Illinois Pollution Control Board's Air Pollution Regulations, 35 Ill. Adm. Code 229.182(a)(3), (a)(7) and (g), provides:

a) The owner or operator of an HMIWI subject to the emission limits under Subpart E of this Part shall maintain records of the following information:

* * *

3) Identification of any calendar days for which data on emission rates or operating parameters specified under subsection (a)(2) of this Section have not been obtained, with an identification of the emission rates or operating parameters not measured, reasons for not obtaining data, and a description of the corrective actions taken;

* * *

7) Records of calibration of any monitoring devices as required under Sections 229.166(b)(1), (2) and (3) and 229.168(a) and (b) of this Part; and

* * *

g) All records required to be maintained pursuant to this Section shall be made available to the Agency upon request.

12. On September 5, 2001, the Illinois EPA conducted an inspection of the Respondent's facility. On that date:

a. No records reflecting total annual emissions for the emissions unit covered by the permit were available.

b. No records reflecting monitoring of daily CO concentrations were available.

c. No records of monthly and annual emissions of pollutants based upon results of initial and subsequent performance tests were available.

d. No records identifying the calendar days for which data on emissions rates or operating parameters were not obtained, the emission rates or operating parameters not measured, reasons for not obtaining data, and a description of the corrective action taken were available.

e. No monitoring equipment calibration records were available.

13. By failing to keep records of total annual emissions for the emissions unit covered by the permit, the Respondent violated Sections 5.6.1 and 5.6.2(a) of its CAAPP permit, Sections 9(a) and 39.5(6)(a) of the Act, 415 ILCS 5/9(a) and 39.5 (6)(a) (2002); and

Section 229.182 (g) of the Illinois Pollution Control Board's regulations, 35 Ill. Adm. Code 229.182(g).

14. By failing to keep records monitoring daily CO concentrations, the Respondent violated Sections 5.6.2(a) and 7.1.10 (d)(iv) of its CAAPP permit, Sections 9(a) and 39.5 6(a) of the Act, 415 ILCS 5/9(a) and 39.5 (6)(a) (2002); and Section 229.182 (g) of the Illinois Pollution Control Board's regulations, 35 Ill. Adm. Code 229.182(g).

15. By failing to keep records of monthly and annual emissions of pollutants based upon results of initial and subsequent performance tests, Respondent violated conditions 5.6.2(a) and 7.1.11(b) of its CAAPP permit; Sections 9(a) and 39.5 6(a) of the Act, 415 ILCS 5/9(a) and 39.5 (6)(a) (2002); and Section 229.182 (g) of the Illinois Pollution Control Board's regulations, 35 Ill. Adm. Code 229.182(g).

16. By failing to keep records identifying the calendar days for which data on emissions rates or operating parameters were not obtained, the emission rates or operating parameters were not measured, reasons for not obtaining data, and a description of the corrective action taken, Respondent violated Sections 5.6.1, 5.6.2(a) and 7.1.11(a)(iii) of its CAAPP permit, Sections 9(a) and 39.5(6)(a) of the Act, 415 ILCS 5/9(a) and 39.5(6)(a) (2002); and Section 229.182(a)(3) and (g) of the Illinois Pollution Control Board's regulations, 35 Ill. Adm. Code 229.182(a)(3) and (g).

17. By failing to keep records reflecting calibration of the monitoring equipment, Respondent violated Sections 5.6.1 and 5.6.2(a) of its CAAPP permit, Sections 9(a) and 39.5(6)(a) of the Act, 415 ILCS 5/9(a) and 39.5(6)(a) (2002); and Sections 229.182 (a)(7) and (g) of the Illinois Pollution Control Board's regulations, 35 Ill. Adm. Code 229.182(a)(7) and (g).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent,

A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

B. Finding that Respondent has violated the Act and regulations as alleged herein;

C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;

D. Assessing against Respondent a civil penalty of fifty thousand dollars ($50,000) for each violation of the Act;

E. Awarding to Complainant its costs and reasonable attorney's fees; and

F. Granting such other relief as the Board may deem appropriate.

COUNT IV

ANNUAL COMPLIANCE CERTIFICATION VIOLATIONS

1-7. Plaintiff re-alleges and incorporates by reference herein paragraphs 2 through 6, 8 and 10 of Count I as paragraphs 1 through 7 of ths Count IV.

8. This Count is brought by the People of the State of Illinois by Lisa Madigan, the Attorney General of the State of Illinois, on her own motion and at the request of the Illinois EPA. The Illinois EPA requested that Passavant waive Section 31 requirements in a May 7, 2003, conference call. By letter dated May 14, 2003, Passavant agreed to waive Section 31 requirements.

9. Section 9.8 of CAAPP Permit No. 00090039 contained the following condition:

> Pursuant to Section 39.5(7)(p)(v) of the Act, the Permittee shall submit annual compliance certifications. The compliance certifications shall be submitted no later than May 1 or more frequently as specified in the applicable requirements or by permit condition. The compliance

certifications shall be submitted to the Air Compliance Section, Air Regional Field Office, and USEPA Region 5 - Air Branch. The addresses for the submittal of the compliance certifications are provided in Condition 8.6.4 of this permit.

a. The certification shall include the identification of each term or condition of this permit that is the basis of the certification; the compliance status; whether compliance was continuous or intermittent; the method(s) used for determining the compliance status of the source, both currently and over the reporting period consistent with the conditions of this permit.

b. All compliance certifications shall be submitted to USEPA Region 5 in Chicago as well as to the Illinois EPA.

c. All compliance reports required to be submitted shall include a certification in accordance with Condition 9.9.

10. On May 1, 2003, Passavant hand delivered the facility's 2002 Annual Emission Report (AER) and CAAPP annual compliance certification ("Certification"). Pursuant to Section 9.8 of CAAPP Permit No. 00090039, both documents were due on May 1, 2003.

11. The CAAPP annual compliance certification referenced in paragraph 10 above failed to:

a. Identify each term or condition of its CAAPP permit that is the basis for its certification;

b. The compliance status;

c. Whether compliance was continuous or intermittent;

d. The methods used for determining the compliance status of the source as required by Section 39.5(7)(p)(v) of the Act, 415 ILCS 5/39.5(7)(p)(v).

In addition, Passavant identified only two permit conditions in Tanks 1 and 2 of the CAAPP annual compliance certification.

12. In the Certification, Passavant certified that it was out of compliance with CAAPP permit condition 7.1.10(a) (monitoring requirement) which states that once the initial performance test required by its permit has been performed and the site-specific minimum and

maximum operating parameter values have been established, the owner or operator of the incinerator must continuously monitor these parameters. Passavant indicated that its carbon monoxide (CO) monitor was not certified for the duration of calender year 2002. However, Passavant did not address the CAAPP permit conditions which apply specifically to the CO monitor, (i.e., 7.1.10(d)).

13. Passavant also certified that it was out of compliance with CAAPP permit condition 7.1.9 which contains the incinerator testing requirements. Passavant indicated that it did not stack test and was in the process of installing a scrubber system. Pursuant to permit condition 7.1.9(i), Passavant is required to successfully pass a stack test by September 15 of each year. The stack test is conducted to determine compliance with, at a minimum, particulate matter, hydrogen chloride, cadmium, carbon monoxide and dioxins/furans. Passavant has attempted several test burns, some with hospital/medical/infectious waste and some without, and has never been able to successfully pass such tests. Passavant failed to identify the specific CAAPP permit conditions applicable to each pollutant and/or operating parameters, whether the facility was in compliance with each, what dates it was out of compliance, and any corrective actions taken.

14. By failing to provide a complete and accurate CAAPP annual compliance certification, Respondent violated Section 9.8 of its CAAPP permit and Section 39.5(6)(a) of the Act, 415 ILCS 5/39.5(6)(a) (2002).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent,

A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

3) Owners or operators of sources in ozone nonattainment areas that have a potential to emit 25 tons per year or more of either VOM or NO[x] from all emission units.

12. Section 254.103 of the Illinois Pollution Control Board's Air Pollution regulations, 35 Ill. Adm. Code 254.103, provides:

> "Actual emissions" means the rate of emission of a regulated air pollutant from a source or an emission unit for the calendar year, seasonal period, day or other period of time, as specified, based on the best information available to the owner or operator of that emission unit. Actual emission rates include startup, shutdown or malfunction emissions. The calculation of actual emissions must follow an "emission determination method." Where, for any reason, a source has measured any of its emissions, the source must report the measured total as its "actual emissions" for those pollutants rather than using an estimation method to derive the total for that period of time during which the measurements were taken.
>
> "Annual Emissions Report" means the information and certifications required by Subparts B and C of this Part, as applicable under Section 254.102(a) or (b) of this Subpart, and any additional requirements for submission with the Annual Emissions Report specifically imposed by the source's permit.

13. Section 254.203 of the Illinois Pollution Control Board's Air Pollution regulations, 35 Ill. Adm. Code 254.203, provides:

> The Annual Emissions Report filed pursuant to this Subpart shall be limited to information requested by the Agency and required in the application for permits or renewals, including source identification information, emissions information, operating data, control device information, and exhaust point information for each regulated air pollutant emitted at the source. The information shall be provided for an individual emission unit or operation if this is also required in the application for permits or renewals. The Annual Emissions Report to be filed pursuant to this Subpart shall contain the following information, as applicable:
>
> a) Source identification information:
>
> 1) Source name, physical location and mailing address;
> 2) SIC code;
> 3) Source contact; and
> 4) Source contact telephone number.

b) Source-wide totals of actual emissions for all regulated air pollutants emitted by the source.

c) The following certification statement, unless another statement is required to be submitted pursuant to the source's permit: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete." The certification statement shall be signed and dated by the certifying individual and accompanied by the printed full name, title, and a telephone number of the certifying individual.

d) Emissions information for each emission unit producing or capable or producing any regulated air pollutant, including:

1) Annual actual emissions of each regulated air pollutant;
2) Actual VOM and/or NO(x) emissions for a typical peak ozone season day;
3) Startup, shutdown and malfunction emissions of each regulated air pollutant in excess of typical emissions;
4) Emission determination method for each of the actual emission figures reported; and
5) Emission factors, where applicable.

e) Operating data for each emission unit producing or capable of producing any regulated air pollutant, including:

1) Percent annual throughput by season;
2) Annual process rate;
3) Peak ozone season daily process rate for VOM and/or NO[x];
4) Fuel data, such as heat content and other fuel characteristics;
5) Physical characteristics of tanks, such as height and diameter;
6) Tank data, such as throughput and material stored;
7) Normal operating schedule, consisting of the following:

A) Hours per day;
B) Days per week;
C) Weeks per year; and
D) Hours per year.

8) Peak ozone season operating schedule for emission units that emit VOM or NO[x], consisting of the following:

A) Hours per day;
B) Days per week
C) Weeks per year; and
D) Hours per season.

f. Control device information, if any changes have occurred from the Annual Emissions Report for the prior year, including:

1) Description of the control method(s);
2) Capture efficiency in percent; and
3) Current control efficiency in percent for each regulated air pollutant.

g. Exhaust point parameters, if any changes have occurred form the Annual Emissions Report for the prior year, including:

1) Height;
(2) Diameter;
(3) Flow rate; and
(4) Exit temperature.

e. Any additional data required to be reported as specified in permit condition(s) for the source.

14. Section 254.204 of the Illinois Pollution Control Board's Air Pollution regulations, 35 Ill. Adm. Code 254.204, provides:

> The Annual Emissions Report shall be considered complete if it contains the information required by Section 254.203 of this Subpart for all regulated air pollutants emitted by the source to the extent that information is applicable to the activities, equipment or emissions of the source during the year for which the report is submitted. Information required by Section 254.203 of this Subpart and provided by the Agency in the Source Inventory Report must be either verified as accurate or modified by the owner or operator, to the extent the Source Inventory Report is relied upon by the owner or operator to compile the Annual Emissions Report. Information required by Section 254.203 of this Subpart but not provided by the Agency must be provided by the owner or operator, unless the information has been previously provided to the Agency.

15. Passavant is required to have an operating permit in accordance with Section 39.5 of the Act, 415 ILCS 5/39.5. Accordingly, pursuant to 35 Ill. Adm. Code 254.102, Subpart B of the Annual Emissions Report regulations are applicable to Passavant.

16. In the Annual Emission Report ("AER"), Passavant reported the total operating hours during 2002 for the incinerator as 104.5 hours.

17. In November 2002, Passavant tested for 4 hours burning hospital/medical/ infectious waste without a properly functioning control device. However, Passavant failed to report hydrogen chloride, mercury, and dioxin/furan emissions.

18. In addition, the incinerator operated 100.5 additional hours, according to Passavant, without a proper functioning control device.

19. The Illinois EPA has repeatedly requested all information generated during any and all testing. However, Passavant has never provided the results and/or data generated during the testing.

20. Due to the limited operation, Passavant reported minuscule amounts of carbon monoxide, nitrogen oxides, particulate matter and sulfur dioxide. Passavant reported no emissions of hydrogen chloride, mercury, or dioxin/furans. Due to the incinerator's reported hours of operation and the failure of the control device to effectively control stack emissions, Passavant has underestimated emissions from the incinerator.

21. By failing to provide a complete and accurate AER, the Respondent violated Section 9.7 of CAAP permit No. 00090039, 35 Ill. Adm. Code 254.203 and 254.204; and Section 9(a) and 39.5(6)(a) of the Act, 415 ILCS 5/9(a) and 39.5(6)(a) (2002).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent,

A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

B. Finding that Respondent has violated the Act and regulations as alleged herein;

C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;

D. Assessing against Respondent a civil penalty of fifty thousand dollars ($50,000) for each violation of the Act;

E. Awarding to Complainant its costs and reasonable attorney's fees; and

F. Granting such other relief as the Board may deem appropriate.

COUNT VI

CONSTRUCTION PERMIT VIOLATIONS

1-5. Plaintiff realleges and incorporates by reference herein paragraphs 2 through 4 and 8 and 10 of Count I as paragraphs 1 through 5 of this Count VI.

6. This Count is brought by the People of the State of Illinois by Lisa Madigan, the Attorney General of the State of Illinois, on her own motion and at the request of the Illinois EPA. The Illinois EPA requested that Passavant waive the procedural requirements of Section 31 of the Act. By letter dated October 27, 2003, Passavant agreed to waive the Section 31 requirements.

7. Section 9(b) of the Act, 415 ILCS 5/9(b) (2002) provides:

> No person shall:
>
> 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;

8. Section 201.142 of the Board's Air Pollution regulations, 35 Ill. Adm. Code 201.142, provides:

> No person shall cause or allow the construction of any new emission source or any new air pollution control equipment, or cause or allow the modification of any existing emission source or air pollution control equipment, without first obtaining a construction permit from the Agency, except as provided in Section 201.146.

9. On March 8, 2002, the Illinois EPA issued Passavant a construction permit to install a scrubbing system to control emissions from the HMIWI.

10. On September 12, 2003, the Illinois EPA and the Illinois Attorney General's Office participated in a telephone conference with Passavant to discuss the operational status of the scrubber used to control emissions from the HMIWI. In addition, the parties discussed the performance testing necessary to demonstrate compliance with the Act and the HMIWI regulations.

11. During the September 2003 call, Passavant discussed many modifications to the control device not contemplated in the construction permit. In the September 2003 telephone conference and in a subsequent October 2003 submittal to the Illinois EPA, Passavant admitted that the modifications included the installation of a larger scrubber and a larger blower. In particular, a 5,000 CFM wet scrubber was installed on June 1, 2001. By July 1, 2002, Passavant determined that the 5,000 CFM wet scrubber was too small and on October 15, 2002, Passavant installed a 8,000 CFM wet scrubber. Passavant subsequently determined that more air flow was required to the incinerator and on February 1, 2003, a 10,000 CFM blower and motor was installed. Thereafter, Passavant deemed further air flow to the incinerator necessary and on April 1, 2003, a 35 horse power motor was installed. In addition, a transducer was added to control the pressure in the combustion chamber of the incinerator on

December 1, 2002. Finally, the pit probe location was moved to provide better pH control on June 30, 2003.

12. In the September 2003, telephone conference and in the subsequent October 2003 submittal to the Illinois EPA, Passavant also proposed installing and testing three different filter systems.

13. The modifications and proposed modifications require a construction permit issued by the Illinois EPA.

14. On September 18, 2003, Passavant submitted a construction permit application addressing the prior modifications and proposed modifications. The Illinois EPA is currently processing the construction permit application.

15. By installing and modifying an air pollution control device without obtaining a construction permit, the Respondent violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2002) and 35 Ill. Adm. Code 201.142.

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent,

A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

B. Finding that Respondent has violated the Act and regulations as alleged herein;

C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;

D. Assessing against Respondent a civil penalty of fifty thousand dollars ($50,000) for each violation of the Act;

E. Awarding to Complainant its costs and reasonable attorney's fees; and

F. Granting such other relief as the Board may deem appropriate.

PEOPLE OF THE STATE OF ILLINOIS

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