BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ABITEC CORPORATION,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB xx-xxx 03-95
	)	(Permit Appeal – Air)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORIGINAL

NOTICE OF FILING

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

PLEASE TAKE NOTICE that I have today filed with the Office of the Pollution Control Board the **ENTRY OF APPEARANCE OF NEAL H. WEINFIELD, BRYAN E. KEYT, THOR W. KETZBACK** and **PETITION FOR HEARING AND APPEAL**, copies of which are herewith served upon you.

Neal Weinfield

Neal H. Weinfield

Neal H. Weinfield, Esq.
Bryan E. Keyt, Esq.
Thor W. Ketzback, Esq.
Bell, Boyd & Lloyd LLC
Three First National Plaza
70 West Madison Street
Chicago, Illinois 60602
Telephone: 312.372.1121
Facsimile: 312.827.8000

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached **ENTRY OF APPEARANCES FOR NEAL H. WEINFIELD, BRYAN E. KEYT** and **THOR W. KETZBACK**, and **PETITION FOR HEARING AND APPEAL** by depositing said document in the United States Mail in Chicago, Illinois on December 31, 2002, upon: the following persons:

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

Neal Weinfield

Neal H. Weinfield

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ABITEC CORPORATION,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB xx-xxx 03-95
	)	(Permit Appeal – Air)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ENTRY AND APPEARANCE OF NEAL H. WEINFIELD

I hereby file my appearance in this proceeding, on behalf of ABITEC CORPORATION.

Neal Weinfield
Neal H. Weinfield

ORIGINAL

Neal H. Weinfield, Esq.
Bell, Boyd & Lloyd LLC
Three First National Plaza
70 West Madison Street
Chicago, Illinois 60602
Telephone: 312.807.4282
Facsimile: 312.827.8182

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ABITEC CORPORATION,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB xx-xxx 03-95
	)	(Permit Appeal – Air)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
	)	
Respondent.	)	

ENTRY AND APPEARANCE OF BRYAN E. KEYT

I hereby file my appearance in this proceeding, on behalf of ABITEC CORPORATION.

Bryan E. Keyt

ORIGINAL

Bryan E. Keyt
Bell, Boyd & Lloyd LLC
Three First National Plaza
70 West Madison Street
Chicago, Illinois 60602
Telephone: 312.372.4328
Facsimile: 312.827.8110

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ABITEC CORPORATION,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB xx-xxx 03-95
	)	(Permit Appeal – Air)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ENTRY AND APPEARANCE OF THOR W. KETZBACK

I hereby file my appearance in this proceeding, on behalf of ABITEC CORPORATION.

Thor W. Ketzback

ORIGINAL

Thor W. Ketzback
Bell, Boyd & Lloyd LLC
Three First National Plaza
70 West Madison Street
Chicago, Illinois 60602
Telephone: 312.807.4437
Facsimile: 312.827.1298

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ABITEC CORPORATION,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 03-95
	)	(Permit Appeal – Air)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Respondent.	)	

PETITION FOR HEARING AND APPEAL

Petitioner, ABITEC CORPORATION ("ABITEC"), by and through its attorneys, Bell, Boyd & Lloyd LLC, submits its Petition for Hearing and Appeal ("Petition") of certain conditions within its Clean Air Act Permit Program ("CAAPP") permit pursuant to Section 40.2(a) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/40.2(a), and 35 Ill. Adm. Code 105.300(c). Under 415 ILCS 5/39.5(10), the Illinois Environmental Protection Agency's ("IEPA" or "Agency") issued a final CAAPP permit to ABITEC on November 26, 2002 ("Final CAAPP Permit") which constitutes final agency action subject to appeal (Exhibit 1). ABITEC appeals IEPA's determination that ABITEC's "sterol plant operations at the source constitute a chemical process and are subject to a 100 ton per year TPY major source threshold," and the imposition of permit conditions 5.10 and 7.1.13. In support of this Petition, ABITEC states as follows:

I. INTRODUCTION AND BACKGROUND

ABITEC owns a food processing plant in Paris, Illinois ("Paris Facility"). The Paris Facility processes vegetable oils and animal fats to produce multiple food products, including fat derived products, vegetable shortenings and sterols. Sterols, which are at issue in this case, are essential ingredients in certain margarine products sold on the market, such as Benecol® and

Take Control®, as well as salad dressings. Because the Paris Facility's products are edible food products used as ingredients by downstream food producers, it operates under Standard Industrial Classification ("SIC") Major Group 20 (Food and Kindred Products) which includes Shortening, Table Oils, Margarine, and Other Edible Fats and Oils (SIC Code 2079), and Food Preparations, Not Elsewhere Classified (SIC Code 2099). As a food production facility, the Paris Facility is subject to regulation under the Clean Air Act's ("CAA") Prevention of Significant Deterioration ("PSD") program if it has the potential to emit 250 tons per year ("TPY") or more of any regulated pollutant. CAA § 169.

Nevertheless, on November 26, 2002, based on its misunderstanding of the Paris Facility's sterol refining and transesterification process, IEPA issued ABITEC a Final CAAPP Permit that incorrectly characterizes some portion (IEPA is ambiguous as to *which* portion) of the Paris Facility as a "chemical process plant," subject to the PSD program's 100 TPY as opposed to 250 TPY major source threshold. Under the PSD regulations, a plant is considered a chemical process plant if it falls within Standard Industrial Code (SIC) Major Group 28. Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans ("PSD Preamble"), 45 Fed. Reg. 52676, 52695 (August 7, 1980).

The IEPA itself has historically considered the Paris Facility's operations to be solely a food processing plant subject to the 250 tpy threshold. The IEPA issued a Joint Construction and Operating Permit in 1993 and a Revised Operating Permit in 1995 to the Paris Facility on the basis that it was not a major source of volatile organic material ("VOM") since it did not exceed the *250* TPY PSD threshold. *See* Joint Construction and Operating Permit (July 29, 1993), Operating Permit-Revised (September 22, 1995) and Construction Permit (June 2, 1998)

(Exhibits 4, 5 and 6). None of these permits made any mention of the 100 TPY limits applicable to chemical process plants.

Further, before issuing the Paris Facility a National Pollution Discharge Elimination System ("NPDES") permit under the Clean Water Act ("CWA"), IEPA examined whether the Paris Facility's sterol refining operations could subject it to regulation under the Pharmaceutical Manufacturing Point Source Category (40 C.F.R. Part 439). The relevant issue involved in that inquiry was very similar to the inquiry in this case – whether the sterol operations constituted a pharmaceutical plant – which, like chemical process plants, are classified under SIC Major Group 28. On March 29, 2001, the Paris Facility submitted correspondence explaining that it manufactures goods, including sterols, properly classified under SIC Code Major Group 20 that are food products rather than drugs or pharmaceuticals. (Exhibit 16). IEPA adopted the Paris Facility's position that its sterol refining operations produce food products, rather than drugs, and issued an NPDES permit on August 10, 2001 (No. 2001 EE 3931) regulating the Paris Facility as a food processing plant. In fact, IEPA still maintains that the sterol refining operations do not manufacture pharmaceutical products subjecting it to CAA standards for hazardous air pollutants for Pharmaceuticals Production (40 C.F.R. Part 63, Subpart GGG) in the Final CAAPP Permit at pages 15 and 23. (Exhibit 1). However, IEPA is now attempting to find a new path to characterize the Paris Facility under SIC Major Group 28.

ABITEC is appealing IEPA's decision to classify any part of its sterol refining process, or its other food production operations, as a "chemical process plant" for PSD purposes. Such a determination is inconsistent with the expressed and implied purpose of the federal PSD regulations. As set forth below, ABITEC contends that the sterol transesterification process as well as the sterol refining process, are food processes in and of themselves, as well as support

processes for the other food ingredient manufacturing operations at the Paris Facility. Further, in issuing the Final CAAPP Permit, IEPA failed to provide adequate notice to ABITEC and the public and an opportunity to comment on the new CAAPP permit conditions allegedly required by Illinois and Federal law. IEPA's decision may have serious potential consequences for large segments of the entire food industry where transesterification is a common process. This is not what Congress or U.S. EPA intended.

II. DESCRIPTION OF THE SOURCE

The Paris Facility operates three different production processes: (1) vegetable shortening, animal fat, fat derivatives, and emulsifiers flaking ("Flaking"),[1] (2) vegetable shortening, animal fat, fat derivatives and emulsifiers spray-chilling ("Spray-Chilling");[2] and (3) sterol refining and prilling. *See* Sarrazin Affidavit, at ¶ 4 (Exhibit 7) and Hinkle Affidavit, at ¶ 4 (Exhibit 8). Sterol refining accounts for approximately 17% of the Paris Facility's throughput. *See* Hinkle Affidavit at ¶ 9. All three operations are food production processes. Flaking takes hydrogenated vegetable shortening, animal fat, fat derivatives and emulsifiers and subjects it to temperature changes that convert it from a liquid into a solid so that it can then be packaged and ultimately used by the baking industry as a shortening chip. Hinkle Affidavit, at ¶ 6. Similarly, Spray Chilling converts hydrogenated vegetable shortening, animal fat, fat derivatives and emulsifiers from a liquid to a solid state for sale to the baking industry. Hinkle Affidavit, at ¶ 7.

---

[1] This operation takes raw materials such as hydrogenated vegetable shortening, animal fat, fat derivatives and emulsifiers, which are in a molten liquid state and pours the raw materials over a chill roll (ammonia/glycol cooling loop), where the raw materials congeal and immediately flakes off of the chill roll. The liquid raw materials flake because the process subjects it to temperature changes that chill the materials. The flakes are used as shortening "chips" by the baking industry.

[2] The same raw materials used in the Flaking process can be subjected to Spray-Chilling. The liquid raw materials are sprayed using a high pressure pump into the top of a large chamber. During the process the raw materials are cooled and become a solid. The Spray-Chilling operations produces a finer and more spherical product than the Flaking operations. Similar to the flakes, after these materials are packaged, they are used as food additives and lubricants in the baking industry.

Sterols, the food ingredient that IEPA has focused on, are complex groups of alcohols that naturally occur in plants and vegetable oils and are used as food ingredients in margarine and salad dressing. Sarrazin affidavit, at ¶ 12. The Paris Facility receives two basic raw materials for its sterol operations: (1) crude free sterols, and (2) sterol ester residues ("SER"). *Id.* at ¶ 5. Crude free sterols amount to approximately 64% of the sterols processed at the Paris Facility. Hinkle Affidavit at ¶ 10. SERs amount to approximately 36% of the sterols processed at the Paris Facility. *Id.* Only SERs undergo the transesterification process which IEPA contends subjects at the Paris Facility to the 100 TPY threshold. The Paris Facility refines these two raw materials using the methods described below to extract impurities leaving refined free sterols. Sarrazin affidavit, at ¶ 5. The refined free sterols are then sent to the Paris Facility's prilling/chilling operations ("Prilling Department") where they are spray congealed into a solid product that is sold to other food producers who add these ingredients to food products. Sarrazin affidavit, at ¶ 11.

Because ABITEC receives raw material in two separate forms (crude free sterols and SERs), it uses two separate sterol purification processes. In the SER process, which occurs in vessels K1, K4, and K6, crude free sterols are separated from the esters in the SERs using methanol and sodium methylate in a heptane solvent via a transesterification process whereby fatty acid methyl esters are detached from the crude free sterols. Sarrazin affidavit, at ¶ 6. Transesterification is merely the separation of an ester from the crude free sterols. It is essentially no different than the digestion process which breaks down certain foods in the human stomach. After the transesterification process is completed, the crude free sterols are physically concentrated by recrystallization. *Id.* at ¶ 9. This is followed by a series of washings and filtrations in vessels K2, K5 and K7. *Id.* at ¶ 10. After each washing, the material is physically

filtered to capture the free sterol product and remove impurities such as salts, fatty acids, sterol by-products, squalene, and methanol. *Id.* The purified free sterols are then transferred in molten form to the Prilling Department. *Id.* at ¶ 11.

In the crude free sterol process, the Paris Facility receives concentrated sterol distillate (crude free sterols) in the form of solid blocks referred to as "pigs." The solid pigs are melted down and recrystallized in vessels K1, K4 and K6. Sarrazin Affidavit ¶ 7. They are then transferred to vessels K2, K5 and K7 where they are washed using heptane to separate the impurities from free sterols. *Id.* at ¶ 8. The "pigs" do not undergo transesterification. *Id.* at ¶ 5. As in the SER process, the final step in the crude free sterol process requires the purified free sterols to be sent in molten form to the Prilling Department. *Id.* at ¶ 11.

The Prilling Department takes the refined, purified free sterols and spray congeals them into small spheres or pellets called prills. Sarrazin Affidavit, at ¶ 11. The molten sterols are first pumped to the top of a prilling tower where they are sprayed down through a silo and cooled to form a solid, congealed free sterol substance which are sold to food manufacturers. *Id.* at ¶¶ 11 and 12.

The sterol refining process emits VOM formed when heating methanol and heptane. DeToro Affidavit at ¶ 4 (Exhibit 9). Each vessel is connected to a primary condenser that captures VOM. *Id.* The primary condensers are connected to two secondary condensers, SC-1 and SC-2, which recover 99 percent of all methanol emissions, and 43.5 percent of heptane emissions. *Id.* The maximum potential VOM emissions from the entire sterol process, including transesterification, crystallization and filtration, is 176 TPY. The maximum potential VOM emissions resulting solely from vessels K1, K4 and K6 (vessels where both crystallization and

transesterification occur) is 45.76 TPY. *Id.* at ¶ 5. The maximum potential VOM emissions from just transesterification in vessels K1, K4 and K6 is 28.60 TPY. *Id.*

III. IEPA's FINAL DECISION ON ABITEC'S CAAPP PERMIT

The Paris Facility[3] applied for a CAAPP permit on March 12, 1997. Five years later, on April 11, 2002, the IEPA issued a notice and draft CAAPP permit ("April Draft Permit") for public comment for the Paris Facility. (Exhibit 2). The public comment period closed on May 11, 2002. As required by 415 ILCS § 5/39.5(8)(b), the April Draft Permit contained the legal and factual basis for the permit conditions. However, notably absent from the April Draft Permit ("April Draft Permit") was any discussion of IEPA's view that ABITEC's sterol refining process was a "chemical process" under CAA § 169 that would subject it a 100 TPY PSD applicability threshold and subject the Paris Facility to a compliance plan and schedule. (April Draft Permit, Exhibit 3). After the close of the public comment period and only twelve days before issuing the Final CAAPP Permit, IEPA issued another draft CAAPP permit solely to ABITEC by e-mail on November 14, 2002. (November Draft Permit, Exhibit 2). The November Draft Permit was not publicly noticed pursuant to 415 ILCS § 5/39.5(8)(b). However, on pages 18-19 of the November Draft Permit, IEPA imposed, for the first time, a PSD emissions threshold of 100 TPY[4] on ABITEC's sterol refining process and imposed a costly and burdensome compliance plan and schedule. The IEPA explained the basis for its reasoning as follows:

---

[3] ABITEC purchased the Paris Facility from ACH Food Companies, Inc. ("ACH") on September 1, 2002. Prior to ABITEC, ACH purchased the Paris Facility from Morgan Specialties, Inc. on September 1, 1998.

[4] IEPA specifically imposed this limit on the Volatile Organic Material ("VOM") emissions emanating from ABITEC's sterol refining process. VOM are precursor pollutants that form ozone pollution.

The Illinois EPA's imposition of this requirement is authorized pursuant to Section 39.5.7(a) of the Act and is accompanied by a more detailed schedule of compliance in Condition 7.1.13 of this permit. This requirement is being imposed because the Illinois EPA has determined that the sterol plant operations at the source constitute a chemical process and are subject to a 100 tons per year major source threshold under PSD. In this regard, chemical process plants are one of the 28 stationary source categories under the PSD program that are subject to a 100 tons per year major source threshold, rather than a 250 tons per year threshold.

b. Note: The Illinois EPA has concluded that the sterol refining operations constitute a "chemical process plant" by virtue of the nature of sterol refining and a plain reading of the Standard Industrial Classification ("SIC") Manual. *The use of methanol and heptane solvents to convert crude sterol esters into crude free sterols and fatty acid methyl esters is a process known as "transesterification."*[5] *This component of the Permittee's sterol refining operations is a type of chemical processing that would commonly be found in manufacturing facilities regulated by the "chemical process plant" category of the PSD regulations.* The operations are also indicative of an industrial activity engaged in the manufacture of industrial organic chemicals under the SIC classification scheme adopted by the USEPA in administering the PSD regulations. A review of the SIC codes reveals that sterol manufacturing can reasonably be classified under 2869, entitled "Industrial Organic Chemicals, Not Elsewhere Classified."

The Illinois EPA has considered the Permittee's assertions that the primary activity of its facility is food manufacturing (processing of edible vegetable oils and animal fats). Even assuming that some portion of the stationary source is engaged in food manufacturing, the sterol manufacturing operations emit, or have the potential to emit, VOM emissions of greater than 100 tons per year and therefore constitute a major source by themselves. Because the sterol manufacturing operations represent an embedded part of the source that is distinguishable from, and not essential to, those activities that are otherwise classified as food manufacturing, they may be considered by themselves for purpose of determining whether they are a major source for purposes of PSD.

---

[5] IEPA's understanding of the process is incorrect. Sodium methylate, heptane and methanol are used to convert sterol ester residue into crude free sterols and fatty acid methyl esters. This process is known as transesterification.

See November Draft Permit, Condition ¶5.10 at 18-19 (Exhibit 2) (emphasis added). The IEPA issued the November Draft Permit as a final permit on November 26, 2002. *See* Final CAAPP permit (Exhibit 1).

The legal and factual basis for IEPA's PSD determination is vague and ambiguous regarding exactly what part of ABITEC's food processing plant is subject to the 100 TPY PSD major source threshold as a "chemical process plant." It is unclear if IEPA is attempting to apply the 100 TPY threshold to: (1) the entire Paris Facility; (2) the entire sterol refining process; (3) vessels K1, K4 and K6 where the transesterification and recrystallization occur; or (4) just the transesterification operations in vessels K1, K4, and K6. IEPA appears to be taking seemingly irreconcilable positions. On one hand, IEPA may be taking the position that transesterification, which accounts for a minor percentage of the Paris Facility's total activity and less than one-third of the sterol refining process emissions, renders either or both of these operations, in their entirety, a chemical process plant. On the other hand, IEPA may be taking the position that even though the Paris Facility is a food processing plant under SIC Code 20, the transesterification process (or perhaps the entire sterols refining process) should be considered separate and distinct from the Paris Facility's other food processing operations, and regulated on its own. IEPA either wants the tail of the dog (the transesterification process) to be considered an animal unto itself (i.e., regulated under the 100 TPY threshold on its own) or to wag the dog (i.e., subject all activities within vessels K1, K4 and K6, the entire sterol refining process, or even perhaps the entire Paris Facility to the 100 TPY threshold). The PSD regulations and U.S. EPA guidance, however, provides that it is the operations of the entire dog, the Paris Facility as a whole which is subject to 250 TPY threshold, not the operations of the tail, that determines which PSD threshold applies. Below, ABITEC addresses each possible position taken by IEPA.

IV. THE PSD PROGRAM REGULATES THE PARIS FACILITY ACCORDING TO THE NATURE OF THE PRODUCTS IT PRODUCES AND TRANSESTERIFICATION IS A SUPPORT ACTIVITY NOT SUBJECT TO INDEPENDENT REGULATION

A. The Paris Facility is Regulated Based on its Primary Activity, Food Production, Classified Under SIC Code 20 and Thus is Subject to 250 TPY PSD Threshold

The CAA's New Source Review ("NSR") regulations are divided into two programs: (1) PSD and (2) Nonattainment NSR. PSD regulations apply to "major" stationary sources that are constructed or modified within areas that are in compliance with the National Ambient Air Quality Standards for a given pollutant ("Attainment Areas").[6] The Paris Facility is located in an ozone Attainment Area.

A stationary source must be "major" to be subject to PSD requirements. CAA § 169(1) provides two separate emission thresholds that trigger PSD requirements for a "major emitting facility."[7] A *chemical processing plant*,[8] among other stationary sources specifically listed at CAA § 169(1), is subject to PSD regulations if it has the potential to emit 100 TPY or more of any regulated pollutant. *Id.* On the other hand, stationary sources not specifically listed at CAA § 169(1), including food production plants, are only subject to PSD requirements if it has the

---

[6] Pursuant to 40 C.F.R. § 52.21(v), the United States Environmental Protection Agency ("U.S. EPA) can delegate to a State the authority to implement and enforce the Federal PSD program. Because Illinois did not create its own PSD program, on April 7, 1980, at Illinois' request, U.S. EPA delegated to Illinois the authority to implement and enforce the Federal PSD program. *See* 46 Fed. Reg. 9582 (January 29, 1981). According to the Illinois-U.S. EPA Agreement for Delegation, IEPA is the Illinois state agency with the authority to implement the Federal PSD program. *Id.*

[7] For purposes of PSD requirements, a "major emitting facility" is the same as a "major stationary source." "Major stationary source" is defined at 40 C.F.R. § 51.66(b)(1). A comparison of the language within CAA § 169(1) and 40 C.F.R. § 51.66(b)(1) reveals that the language is virtually identical.

[8] Although the CAA does not define "plant," a common interpretation of "plant", provided by Webster's Dictionary, is "an industrial or manufacturing establishment: FACTORY." *Webster's II, New Riverside University Dictionary*, (1988). To a reasonable person, under the PSD regulations, ABITEC's Paris Facility would be a food processing plant.

potential to emit 250 TPY or more of any pollutant. *Id.* Because ABITEC's Paris Facility is a food processing plant, it must be subject to the 250 TPY PSD emissions threshold, not the 100 TPY threshold.

The transesterification process which occurs only in vessels K1, K4 and K6 is not, in and of itself, a chemical process plant, and does not render the entire Paris Facility a chemical process plant. The PSD regulations group air emission units together into a single "stationary source" according to the major industry group in which they belong. The PSD regulations define a "stationary source" as "any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Act." 40 C.F.R. § 51.166(b)(5). "Building, structure, facility or installation" means the following:

> all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same *Major Group* (i.e., which have the same two-digit code) as described in the *Standard Industrial Classification Manual, 1972*, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

40 C.F.R. § 51.166(b)(6) (emphasis added). The definition of "plant" and "stationary source" under the PSD regulations are akin.[9] PSD Preamble, 45 Fed. Reg. at 52694. Thus, a stationary source includes all buildings that are used to produce a product contained in the same SIC code major grouping. The categorization of the plant depends on the nature of the products produced by the plant – in this case food ingredients – and not on the nature of the production process. The PSD classifications are based on the first two digits of the SIC code section connoting the

[9] As will be discussed in Section V(B) of this CAAPP appeal, the definition of stationary source differs under the PSD and Nonattainment NSR regulations.

major industrial group to which a facility belongs. PSD Preamble, 45 Fed. Reg. at 52695. The preamble to the PSD regulations provides that "[e]ach source is classified according to its primary activity, which is determined by its principal product, or group of products produced or distributed, or services rendered." *Id.* U.S. EPA, Region 5, has stated "if an entire source has the potential to emit of less than 250 TPY, then the existence of a major nested source does not make the entire source major for purposes of PSD applicability." Correspondence from Cheryl Newton, Chief, Permits and Grants Section to Robert Hodenbosi, Chief, Division of Air Pollution Control, Ohio Environmental Protection Agency, at 2-3 (January 22, 1998) (Exhibit 10).

The Paris Facility produces food ingredients covered by SIC Major Group 20 (Food and Kindred Products) which includes Shortening, Table Oils, Margarine, and Other Edible Fats and Oils (SIC Code 2079), and Food Preparations, Not Elsewhere Classified (SIC Code 2099), not chemicals covered under SIC Code 2869 (Industrial Organic Chemicals, not elsewhere classified). Because transesterification produces food ingredients, is an essential support activity to the Paris Facility's other food ingredient production processes, and constitutes a minority of the activities taking place not only within the sterol refining process, but also the entire Paris Facility, the transesterification process is considered a food production activity within an overall "stationary source" and along with the rest of the plant is subject to the 250 TPY major source threshold.

U.S. EPA has specifically acknowledged that neither it nor Congress intended the term "chemical process plant" to encompass every facility that contained a chemical process. In fact, U.S. EPA specifically limited the scope of a "chemical process plant" to SIC Major Group 28:

> For several years the Agency has been faced with the problem of defining certain of the 28 listed categories of 100 TPY sources for PSD in an objective and comprehensive manner. The case of the category chemical process plant is particularly difficult since virtually any manufacturing process which combines raw materials could, in some way, be construed as a "chemical process plant." The Agency had to make a judgment as to what it would consider as a "chemical process plant." EPA, in the August 7, 1980 PSD rules, refined the definition of source to include a reference to the source's industrial grouping. This was defined as activities identified within the same first two digit code of the Standard Industrial Classification (SIC) Manual. For several reasons, including the desire to maintain consistency with the aforementioned use of the SIC Major Group listing, *the Agency decided to adopt the Major Group 28 listing as the definition of "chemical process plant."* The Agency needed a definition that would be objective and provide an easy reference for industry as well as permitting authorities. The SIC manual is accepted and used throughout industry, trade associations and government agencies for industrial groupings. Major Group 28 provides a quick reference and comprehensive listing of chemical processes and products. Use of this definition would minimize any possible subjective determinations when implementing the PSD rules. . . . In summary, the Agency decided to adopt the SIC Manual Major Group 28 listing as the description of chemical process plant for the purposes of PSD review and this office has consistently informed EPA's Regional Offices of this policy in order to ensure uniform regional implementation of this requirement.

See Classification of the Bardstown Fuel Alcohol Company under PSD, August 21, 1981 (emphasis added) (Exhibit 11). When determining whether a facility fits within a particular SIC Code, U.S. EPA looks at the nature of the facility's product, not the nature of the facility's process.

In further support of this conclusion, U.S. EPA has issued guidance and correspondence asserting that sources outside of SIC Major Group 28 are not "chemical process plants." For instance, a beverage distillery is not a chemical process plant because they are SIC Major Group 20. Correspondence from Thomas W. Devine, Director Air and Hazardous Materials Division, United States Environmental Protection Agency, Region IV to State/Local Director, at 3 (March 11, 1981). (Exhibit 12). Also, U.S. EPA opined that it was not Congressional intent to cover glass manufacturing plants under the chemical process plant category. Correspondence from

Walter C. Barber, Director, Office of Air Quality and Planning Standards to Roger Strelow, Leva, Hawes, Symington, Martin & Oppenheimer, (December 21, 1979).[10] (Exhibit 13).

In addition, a plain reading of the SIC Manual clearly indicates that facilities which manufacture food products are not classified under Major Group 28—Chemicals and Allied Products. In describing a chemical product, the SIC Manual clearly distinguishes between chemical products and food products. "This major group includes establishments producing basic chemicals, and establishments manufacturing products by predominantly chemical processes. Establishments classified in this major group manufacture three general classes of products: (1) basic chemicals, such as acids, alkalis, salts, and organic chemicals; (2) chemical products to be used in further manufacture, such as synthetic fibers, plastics materials, dry colors, and pigments; and (3) finished chemical products to be used for ultimate consumption, such as drugs, cosmetics, and soaps; or to be used as materials or supplies in other industries, such as paints, fertilizers and explosives...*Those manufacturing baking powder, other leavening compounds, and starches are classified in Major Group 20...*" Standard Industrial Classification Manual, 132 (1987) (emphasis added).[11] The Paris Facility produces shortening and edible food ingredients (Hinkle Affidavit, at ¶ 6 and 7 and Sarrazin Affidavit at ¶ 12)rather than basic chemicals, synthetics, drugs or explosives and thus is classified under Major Group 20. Thus, the SIC Manual, which U.S. EPA relies on to define "stationary sources" under its PSD regulations, categorizes ABITEC's food ingredient refining process in the Major Group 20

[10] The analysis in this letter is based on the 1977 CAA § 169. However, the 1990 CAA § 169 is virtually identical.

[11] Further, an examination of the numerous industrial organic chemicals listed at SIC Code 2869, which IEPA contends sterols can be classified as, reveals that sterols are not within that list. Standard Industrial Classification Manual, at 145 (1987).

which applies to food manufacturers rather than chemical products manufacturers listed in Major Group 28.

Finally, it should be noted that if Congress or U.S. EPA intended to impose the same PSD emission threshold that applies to "chemical processing plants" to "food processing plants," it would have listed food processing plants in CAA § 169 as one of the 28 types of facilities to which the 100 TPY emission threshold applies.

B. The Paris Facility's Primary SIC Code is 20 and the Transesterification Process is a Food Ingredient Production Support Activity Not Subject to Separate Regulation

Even if the transesterification process were to fall within SIC Code 28, because it supports other food processing operations that occur at the Paris Facility, the PSD regulations provide that it is still not regulated separately from the Paris Facility's other food manufacturing operations. The PSD regulations require that emissions units, such as vessels K1, K4, and K6, be considered within the context of the entire plant, not as a stand-alone units subject to their own set of regulations.

When U.S. EPA evaluated whether emission units should be regulated individually under the PSD regulation (applicable to Attainment Areas), as they are under the nonattainment NSR ("NSR," applicable to nonattainment areas), U.S. EPA concluded that whereas the nonattainment NSR regulations can apply to each individual emissions unit, the PSD regulations would apply to the entire plant. PSD Preamble, 45 Fed. Reg. at 52697. As a result, nonattainment NSR "would bring in more sources or modifications for review than would the plant-wide definition used for PSD purposes." *Id.* Nonattainment NSR regulates a broader range of sources because the purpose of its provisions are to "positively reduce emissions," not merely hold emissions constant. *Id.* On the other hand, the goal of PSD provisions are to maintain existing air quality. *Id.* Thus, a "stationary source" or "plant" is not an "emission unit" under PSD. Rather, a

"stationary source" is an aggregation of "emission units" which make up the "common sense notion of a plant." *Id.* at 52694.

The preamble to PSD regulations states that "one source classification encompasses both primary and support facilities, even when the latter includes units with a different two-digit SIC code." *Id.* The preamble to the PSD regulations defines support facility as "those which convey, store, or otherwise assist in the production of the principal product." *Id.* at 52695. U.S. EPA Region 5 has stated a support facility is one "where more than 50% of the output or services provided by one facility is dedicated to another facility that it supports." Correspondence from Robert B. Miller, Chief, Permits and Grants Section to William Baumann, Chief, Combustion and Forest Products Section, Wisconsin Department of Natural Resources, at 2 (August 25, 1999) (regarding Oscar Meyer Foods) (Exhibit 14). Any other interpretation would infringe on the common sense notion of a plant. *See* PSD Preamble, 45 Fed. Reg. at 52695. Here, all of the transesterification process output is dedicated to the sterol refining process which, in turn supports the prilling department which produces food ingredients.

In other situations similar to that at the Paris Facility, U.S. EPA has repeatedly determined that a support facility is not to be regulated separately from the rest of the plant. For example, U.S. EPA determined that an electrical power plant that supplied all its electricity to a Coors brewery must be considered a part of the brewery itself and thus a single source because the electrical power plant was a support facility for the primary economic activity of Coors, brewing beer (which is SIC Major Group 20). Correspondence from Richard R. Long, Director, Air Division to Julie Wrend, Air Pollution Control Division, Colorado Department of Public Health and Environment, (November 12, 1998) (Exhibit 15). *See also* Correspondence from Robert B. Miller, Chief, Permits and Grants Section to William Baumann, Chief, Combustion

and Forest Products Section, Wisconsin Department of Natural Resources, at 2 (August 25, 1999) (regarding Oscar Meyer Foods) (Exhibit 14).

Transesterification is a separate *support* activity preceding sterol refining, and is the classic example of a support process. The Paris Facility receives SERs which must be transesterified before they can be refined into purified free sterols. Without transesterification, the crude free sterols cannot be adequately refined to mix with other ingredients that comprise certain salad dressings and margarines. Sarrazin Affidavit, at ¶ 12. Surely, if U.S. EPA considers an electrical power plant to be a support process for Coors' brewing facility, then transesterification must be a support process for ABITEC's food production facility. Consequently, the PSD regulations that govern food producers apply to all of the Paris Facility's operations, including transesterification. Because transesterification is a minor portion of the sterol refining "stationary source" under the PSD regulations, and that "stationary source" produces food ingredients, the 250 TPY emission threshold that applies to food producers in SIC Major Group 20 is applicable to transesterification and the rest of the sterol refining process.

As discussed above, all Paris Facility activities are categorized under SIC Major Group 20, including the activities taking place in vessels K1, K4, and K6, and are conducted to create food ingredients. When creating the PSD regulations, U.S. EPA did not intend to regulate the three vessels (K1, K4 and K6) used for transesterification separately as "chemical process plants" under the PSD regulations. U.S. EPA intended for individual pollutant emitting activities to be grouped when they can reasonably be grouped together within a common industrial classification. IEPA's attempt to segregate the transesterification activities in vessels K1, K4 and K6 from the rest of the Paris Plant violates U.S. EPA's intent and the PSD regulations.

V. PURSUANT TO THE PSD REGULATIONS, THE TRANSESTERIFICATION PROCESS, IN AND OF ITSELF, DOES NOT TRIGGER PSD REGULATIONS

Even if the IPCB concludes that the transesterification process should be considered a separate emission source, the process still does not meet the definition of a chemical process plant set forth in Major Group 28. Further, the process has a potential to emit VOM of less than 100 tpy which is below the major source threshold applicable to chemical process plants.

A. Transesterification is not a chemical process plant.

First, the transesterification process does not "manufacture" the products covered by SIC code Major Grouping 28: (1) basic chemicals, such as acids, alkalis, salts and organic chemicals; (2) chemical products to be used in further manufacture such as synthetic fibers, plastic materials, dry colors, and pigments; and (3) finished chemical products to be used for ultimate consumption, such as drugs, cosmetics and soaps, or to be used as materials or supplies in other industries, such as paints, fertilizers and explosives . . ." Standard Industrial Classification Manual at 132 (1987). Crude free sterols certainly do not fit the definition of "basic chemicals" which is defined as "a chemical produced in tonnage quantities, often in a relatively impure state." Hawley's Condensed Chemical Dictionary at 587, (12th ed. 1993). The sterols do not exhibit characteristics similar to "synthetic fibers, plastic materials, dry colors and pigment." Moreover, IEPA has admitted that the sterols are not "drugs" or "pharmaceuticals," and has never alleged that the sterols are "cosmetics or soaps," nevermind "paints, fertilizers and explosives." (*See* Exhibit 1, Final Permit, Condition 5.3.1.) Rather, as described throughout this Petition, transesterification is a food production process.

B. Transesterification has the potential to emit less than TPY VOM and does not trigger PSD major source threshold.

Even if the vessels used for transesterification in and of themselves constitute a "chemical process plant,"[12] which they do not, potential emissions from these three vessels are less than the 100 TPY threshold. As described in his affidavit, ABITEC's expert consultant, Jeff DeToro, calculated the potential VOM emissions from K1, K4, and K6 where transesterification and crystallization occur and the VOM emissions that result solely from transesterification using the same methodologies and assumptions which form the basis for the Final CAAPP Permit. DeToro Affidavit, at ¶ 5. Mr. DeToro found that maximum potential VOM emissions of vessels K1, K 4 and K6 are approximately 45.76 TPY (includes transesterification and crystallization) and the VOM emissions from transesterification alone are 28.60 TPY, respectively. *Id.* Because these emissions are less than 100 TPY, even if the PSD emissions threshold for "chemical process plant" is employed, the vessels K1, K4 and K6 are not a "major stationary source" under PSD regulations.[13]

---

[12] If IEPA insists on labeling the transesterification vessels a chemical process and regulated under SIC Major Group 28, then they must be carved out from the rest of the sterol refining operations in order to be consistent with the definition of "stationary source" or "plant" under the PSD regulations. These regulations require an aggregation of emission units with the same industrial grouping (SIC Major Group classification). PSD Preamble, 45 Fed. Reg. at 52694.

[13] If IEPA is arguing that the entire sterol refining process (as opposed to just the transesterification process) constitutes a separate "chemical process plant," IEPA's argument fails because the remainder of the sterol refining process (i.e., after transesterification) does not constitute a *chemical* process. Rather, it is a series of *physical* processes. The recrystallization, washing and filtration, and prilling of sterols, which occur after transesterification is complete, are clearly "physical" processes according to the fundamental principles of chemistry. Chemical changes are defined as "a rearrangement of atoms, ions, or radicals of one or more substances resulting in the formation of new substances often having entirely different properties." Hawley's Condensed Chemical Dictionary (12th Ed.), at 250 (1993). "Chemical changes should be distinguished from physical changes, in which only the state or condition of a substance is modified, its chemical nature remaining the same." *Id.* Dale Sarrazin ("Mr. Sarrazin"), the supervisor of sterol refining activities at the Paris Facility, explains that recrystallization, washing and filtration, and prilling are physical processes. Sarrazin affidavit, at ¶¶ 9-11. According to Mr. Sarrazin, there are no chemical reactions associated with recrystallization and the crude free sterols subjected to recrystallization simply change from a

VI. IEPA FAILED TO SATISFY NOTICE AND PUBLIC COMMENT REQUIREMENTS

Section 5/39.5(8) of the Act requires the IEPA to provide public notice and an opportunity to comment on draft CAAPP permits. 415 ILCS § 5/39.5(8). Further, the draft CAAPP permit must contain "a statement that sets forth the legal and factual basis for the draft CAAPP permit conditions." 415 ILCS § 5/39.5(8)(b). *See also* Procedures For Public Review at 35 Ill. Adm. Code § 252.201. Moreover, the fact sheet accompanying a draft permit shall also "describe the basis for the IEPA's decision to grant the permit including an explanation of the source's effect of ambient air quality." 35 Ill. Adm. Code § 252.203(a).

On April 11, 2002, the IEPA issued a notice and the April Draft Permit for public comment on ABITEC's Facility. The public comment period closed on May 11, 2002. As required by 415 § 5/39.5(8)(b), the April Draft Permit contained the legal and factual basis for the permit conditions. However, notably absent from the April Draft Permit was a discussion of IEPA's conclusion that ABITEC's sterol refining process was a "chemical process" that would subject its refining activities to a 100 ton per year PSD applicability threshold. IEPA issued a second and final draft of the CAAPP permit solely to ABITEC by e-mail on November 14, 2002. The November Draft Permit did not follow the applicable public comment and notice requirements. IEPA finalized the November Draft Permit on November 26, 2002. Consequently,

---

liquid to a solid state of matter. *Id.* at ¶ 9. Similarly, washing and filtration (filtration is defined as "[t]he operation of separating suspended solids from a liquid (or gas) by forcing the mixture through a porous barrier." Hawley's Condensed Chemical Dictionary (12th Ed.), at 521 (1993)) of crude free sterols do not involve a chemical change of the crude free sterol. Impurities attached to the crude free sterols are separated from the sterol by washing, instead of a chemical reaction. *Id.* at ¶ 10. Next, the crude free sterol is separated from the liquid methanol used to wash the sterols by filtration. *Id.* Finally, after crude free sterols have undergone the Paris Facility's sterol refining processes, they are sent to the Prilling Department to be spray congealed from a liquid state into solid matter by chilling the sterols. *Id.* at ¶ 11. Once again, this only constitutes a change in the state of the crude free sterol, not a chemical reaction.

neither ABITEC nor any other potentially affected food processing source had an opportunity to provide comment as required by Section 5/39.5 of the Act.

CAAPP permits are considered a "license" under the federal and Illinois Administrative Procedure Acts. *See* 5 U.S.C. § 551(8). *See also* Illinois Administrative Procedure Act at 5 ILCS 100/1-35. While a final permit issued by a regulatory agency is not required to be identical to a draft permit, a final permit must be a "logical outgrowth of the draft permit." *Natural Resources Defense Counsel v. United States Environmental Protection Agency (NRDC I)*, 279 F.3d 1180 at 1185, *See Shell Oil Company v. Environmental Protection Agency*, 950 F.2d 741, 751 (D.C. Cir. 1992) (discussing the logical outgrowth concept in a rulemaking context). In other words, "the essential inquiry focuses on whether the interested parties reasonably could have anticipated the final rulemaking from the draft permit." *Id.*, quoting *NRDC v. EPA (NRDC II)*, 863 F.2d at 1429 (9th Cir. 1988). An essential question that must be answered to determine whether a final permit is a logical outgrowth of a draft permit is "whether a new round of notice and comment would provide the first opportunity for interested parties to offer comments that could persuade the agency to modify its rule." *Id.*, quoting *American Water Works Ass'n v. EPA*, 40 F.3d 1266, 1274 (D.C. Cir. 1994). Finally, a decision made without adequate public notice and comment is arbitrary and an abuse of discretion. *Id.*, *citing* 5 U.S.C. § 706(2)(A).

In *NRDC I*, the Court concluded that U.S. EPA's notice and comment procedures were inadequate to notify interested parties of a substantive change from the draft to the final permit National Priority Discharge Elimination System ("NPDES") permits proposed for log transfer facilities ("LTF"). *NRDC I* 950 F.2d. at 1186. U.S. EPA had issued a general NPDES permit applicable to nearly all LTFs in Alaska which included a discussion regarding a "zone of deposit" where bark and other woody debris can be released without violating applicable water

quality standards. *Id.* at 1184. U.S. EPA then sought certification to finalize the draft permit from the Alaska Department of Environmental Conservation ("ADEC"), which required ADEC to issue draft certifications to the public inviting public comment. *Id.* at 1185. Before U.S. EPA finalized the draft general permit, ADEC issued three draft certifications, the last of which was not circulated to the public and replaced the concept of "zone of deposit" with a new term, "project area." *Id.* The definition of "project area" greatly expanded the zone where LTFs could deposit bark and other woody debris without violating applicable water quality regulations. *Id.* U.S. EPA ultimately finalized the general permit for LTFs that included the definition of "project area" instead of "zone of deposit." *Id.* The Court specifically noted that a change in definition of "zone of deposit" was a substantive change that the petitioners did not realize was "on the table" because they were not adequately notified. *Id.* at 1188. Indeed, the substantive change in the final permit issued by U.S. EPA "...clearly caught petitioners...by surprise." *Id.*, quoting *Consumer Energy Council of America v. FERC*, 673 F.2d 425, 446-47 (D.C. Cir. 1982).

In *Village of Sauget,* the Appellate Court of Illinois, 5th District, held that IEPA improperly accepted late comments from U.S. EPA and then modified Monsanto Company's ("Monsanto") NPDES permit based on U.S. EPA's comments without providing Monsanto or the Village adequate notice or an opportunity to comment upon the changed permit conditions before the NPDES permit was finalized. *Village of Sauget and Monsanto Company v. Pollution Control Board*, 207 Ill. App.3d 974, 979, 982 (5th District, 1990). The Court noted that 35 Ill. Adm. Code § 309.108 required IEPA to provide a description of special conditions and a basis for each NPDES permit condition. *Id.* at 981-982. However, the substantive changes to Monsanto's permit proposed by U.S. EPA were not included in any draft permit and thus, neither Monsanto nor the Village had an opportunity to comment until after the close of the public

comment period. *Id.* at 982. Moreover, had U.S. EPA submitted its comments in a timely manner, Monsanto and the Village may have requested a hearing regarding the proposed changes. *Id.* at 980. Finally, the final permit was issued only 11 days after the Village received U.S. EPA's final comment letter. *Id.* Accordingly, the Court vacated the disputed permit conditions and ordered the IEPA to issue a new draft permit. *Village of Sauget*, 207 Ill. App.3d at 982.

Finally, in *American Water Works Association*, a rulemaking case, the Court held that U.S. EPA failed to provide the public an adequate opportunity for notice and comment and that petitioners could not have anticipated the changes in a final rule where U.S. EPA defined "control" of a public water system in its final rule for the first time. *American Water Works Association v. Environmental Protection Agency*, 40 F.3d 1266, 1275 (D.C. Cir. 1994).

Similar to the cases above, ABITEC, or any other potentially affected source in the food processing industry, could not have reasonably anticipated that IEPA considered ABITEC's sterol transesterification process or refining activities to be a "chemical process" and thus, subject to a more stringent PSD emission threshold. Like the change in crucial definitions in *NRDC I* and *American Water Works*, IEPA's decision to regulate transesterification as a chemical process was a substantive change that clearly caught ABITEC by surprise. *NRDC I*, 279 F.3d at 1185; *American Water Works*, 40 F.3d at 1275. When the IEPA issued the April Draft Permit for public notice and comment, the draft permit never even alluded to the possibility that any portion of ABITEC's Paris Facility could constitute a chemical process plant. Only on November 14, 2002, did the Agency impose the 100 tons per year PSD emissions threshold in ABITEC's draft CAAPP permit for the first time. Just like IEPA finalized the permit 11 days after providing the Village notice in *Village of Sauget*, IEPA finalized ABITEC's permit 12 days

after it first notified ABITEC that its sterol refining process was to be regulated as a chemical process plant. Moreover, as required for the NPDES permit in *Village of Sauget*, the IEPA was also required to publicly notice the November Draft Permit and issue to ABITEC and other interested parties a statement that sets forth the legal and factual basis for the draft CAAPP permit conditions. *See* 415 ILCS § 5/39.5(8)(b) and *Village of Sauget*, 207 Ill. App.3d at 981-82. IEPA never issued the November Draft Permit to the public. As a result, neither ABITEC nor other potentially affected food processing sources had an adequate opportunity to develop comments to the IEPA or possibly seek a hearing on the permit. Because ABITEC could not "divine the [I]EPA's unspoken thoughts," *Shell*, 950 F.2d at 751, the offending provisions should be struck due o the procedural deficiencies alone.

VII. REQUEST FOR RELIEF

By regulating food processing plants as chemical processing plants, IEPA overextends its regulatory authority under the PSD program. The PSD program was designed to aggregate for regulation common sources that have a common purpose. All of the Paris Facility's operations are utilized to produce food ingredients—not chemical products. If Congress or U.S. EPA intended for food processors to be regulated in the same manner as chemical processors, it would have clearly indicated that intent in the statute. Instead, for PSD purposes, Congress and the U.S. EPA refer to the SIC Manual, which clearly distinguishes between food and chemical manufacturers. Moreover, an examination of the non-chemical nature of the Facility's products as well as the notion of a "plant" under PSD, reveals that it is incorrect to characterize any part of the Paris Facility as a "chemical process plant." Even if IEPA can reasonably characterize the transesterification activities at the Paris Facility's sterol refining operations as a chemical process, those activities are a necessary support activity to the Paris Facility's food production operations, and not subject to independent regulation. If regulated independently, the VOM

emissions from K1, K4 and K6, and solely from transesterification activities, are 43.5 TPY and 28.6 TPY, respectively, well below the allegedly applicable 100 TPY PSD threshold. Finally, in addition to these substantive errors, IEPA failed to provide proper notice and opportunity to comment on the offending permit conditions 5.10 and 7.1.1.13.

WHEREFORE, for the foregoing reasons, ABITEC respectfully requests the IPCB to make the following determinations:

1. Determine that all of the operations at ABITEC are regulated as food processing activities under the PSD program and therefore subject to a 250 TPY emissions threshold for VOM emissions; or, alternatively

2. If the IPCB concludes that Vessels K1, K4, and K6 or the transesterification is a chemical process plant, that VOM emissions from these sources is less than 100 TPY emissions threshold for VOM emissions applicable to "chemical processing plants."

Additionally, ABITEC respectfully, petitions the IPCB to:

1. Hold a hearing regarding the matters discussed in its appeal of the CAAPP permit.

2. Stay the effectiveness of the Final CAAPP permit until final action is taken by the Board pursuant to Section 40.2 of the Act.

3. Strike Sections 5.10 and 7.1.13. of the CAAPP Permit, thereby deleting the Compliance Plan/Schedule of compliance from the CAAPP Permit.

4. Order the Agency to include language in the CAAPP Permit which concludes that the Paris Facility is subject to the 250 ton PSD threshold found under 40 C.F.R. § 52.21 (b)(l)(I)(b).

5. Revise the CAAPP Permit to clarify any language necessary to make it consistent with Federal Law.

6. Grant such other relief as the IPCB deems appropriate.

Dated: December 31, 2002

Respectfully submitted,

ABITEC CORPORATION

Neal H. Weinfield

Neal H. Weinfield, Esq.
Bryan E. Keyt, Esq.
Thor W. Ketzback, Esq.
Bell, Boyd & Lloyd LLC
Three First National Plaza
70 West Madison Street
Chicago, Illinois 60602
Telephone: 312.372.1121
Facsimile: 312.827.8000