

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 15-112
	)	(Enforcement - Air)
INCOBRASA INDUSTRIES, LTD.,	)	
an Illinois corporation,	)	
	)	
Respondent.	)	

**NOTICE OF FILING**

TO: John T. Therriault	Carol Webb, Esq.
Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
James R. Thompson Center	1021 North Grand Avenue East
100 West Randolph, Suite 11-500	Post Office Box 19274
Chicago, Illinois 60601	Springfield, Illinois 62794-9274
(VIA ELECTRONIC MAIL)	(VIA U.S. MAIL)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the **ENTRY OF APPEARANCE OF EDWARD W. DWYER, ENTRY OF APPEARANCE OF MELISSA S. BROWN, and ANSWER TO THE FIRST AMENDED COMPLAINT** copies of which are herewith served upon you.

Respectfully submitted,  
INCOBRASA INDUSTRIES, LTD.,  
Petitioner,

Dated: December 8, 2015

By: /s/ N. LaDonna Driver  
One of Its Attorneys

N. LaDonna Driver  
Edward W. Dwyer  
Matthew C. Read  
Melissa S. Brown  
HODGE DWYER & DRIVER  
3150 Roland Avenue  
Post Office Box 5776  
Springfield, Illinois 62705-5776  
(217) 523-4900

**CERTIFICATE OF SERVICE**

I, N. LaDonna Driver, the undersigned, hereby certify that I have served the attached **ENTRY OF APPEARANCE OF EDWARD W. DWYER, ENTRY OF APPEARANCE OF MELISSA S. BROWN, and ANSWER TO THE FIRST AMENDED COMPLAINT**, upon:

John T. Therriault  
Clerk of the Board  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

via electronic mail on December 8, 2015; and upon:

Carol Webb, Esq.  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
Post Office Box 19274  
Springfield, Illinois 62794-9274

Ryan G. Rudich  
Assistant Attorney General  
69 West Washington Street, Suite 1800  
Chicago, Illinois 60602

by depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois on December 8, 2015.

/s/ N. LaDonna Driver  
N. LaDonna Driver

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an Illinois corporation,	)	
	)	
Respondent.	)	

**ENTRY OF APPEARANCE OF EDWARD W. DWYER**

NOW COMES Edward W. Dwyer, of the law firm of HODGE DWYER & DRIVER, and hereby enters his appearance on behalf of INCOBRASA INDUSTRIES, LTD., in the above-referenced matter.

Respectfully submitted,

By:     /s/ Edward W. Dwyer      
Edward W. Dwyer

Dated: December 8, 2015

Edward W. Dwyer  
HODGE DWYER & DRIVER  
3150 Roland Avenue  
Post Office Box 5776  
Springfield, Illinois 62705-5776  
(217) 523-4900

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an Illinois corporation,	)	
	)	
Respondent.	)	

**ENTRY OF APPEARANCE OF MELISSA S. BROWN**

NOW COMES Melissa S. Brown, of the law firm of HODGE DWYER & DRIVER, and hereby enters her appearance on behalf of INCOBRASA INDUSTRIES, LTD., in the above-referenced matter.

Respectfully submitted,

By:     /s/ Melissa S. Brown      
Melissa S. Brown

Dated: December 8, 2015

Melissa S. Brown  
HODGE DWYER & DRIVER  
3150 Roland Avenue  
Post Office Box 5776  
Springfield, Illinois 62705-5776  
(217) 523-4900

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS, )  
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v. ) PCB 15-112  
) (Enforcement - Air)  
INCOBRASA INDUSTRIES, LTD., )  
an Illinois corporation, )  
)  
Respondent. )

**ANSWER TO THE FIRST AMENDED COMPLAINT**

NOW COMES Respondent, INCOBRASA INDUSTRIES, LTD. (hereinafter "Incobrasa" or "Respondent"), by and through its attorneys, HODGE DWYER & DRIVER and for its Answer and Affirmative Defenses to the First Amended Complaint, states as follows:

**COUNT I  
FAILURE TO INSTALL AND OPERATE A CONTINUOUS EMISSION  
MONITORING SYSTEM**

1. This First Amended Complaint is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, 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 (2014), against Respondent.

**ANSWER:** Respondent admits the allegations in paragraph 1.

2. The Illinois EPA is an administrative agency of the State of Illinois created by Section 4 of the Act, 415 ILCS 5/4 (2014), and is charged, *inter alia*, with the duty of enforcing the Act.

**ANSWER:** Respondent admits the allegations in paragraph 2.

3. At all times relevant to this First Amended Complaint, Respondent Incobrasa Industries, Ltd., an Illinois corporation in good standing, has owned and operated a soybean processing and biodiesel manufacturing facility located at 540 East US Highway 24, Gilman, Iroquois County, Illinois ("Facility" or "Source").

**ANSWER:** Respondent admits the allegations in paragraph 3.

4. The Facility produces Biodiesel B100 and B99.9, soybean meal, and Long Life brand salad oils.

**ANSWER:** Respondent admits the allegations in paragraph 4.

5. On November 25, 2002, the Illinois EPA issued Respondent Clean Air Act Permit Program ("CAAPP") permit 98070042, which authorized operation of the Facility, including grain handling operations, material handling operations, a soybean oil extractor, boilers, grain dryers and an oil refinery hotwell.

**ANSWER:** Respondent admits the allegations in paragraph 5.

6. On April 30, 2004, the Illinois EPA issued Respondent revised CAAPP permit 98070042, which included revised emissions calculations.

**ANSWER:** Respondent admits the allegations in paragraph 6.

7. The Facility is permitted as a "major source" based on its emissions of Volatile Organic Material ("VOM"), Particulate Matter ("PM"), and Hexane, which is listed as a Hazardous Air Pollutant ("HAP") in Section 112(b) of the Clean Air Act, 42 U.S.C. §7412.

**ANSWER:** Paragraph 7 contains legal conclusions that require no response from Respondent. Respondent denies any remaining factual allegations in paragraph 7.

8. On August 26, 2004, the Illinois EPA issued Respondent construction permit 04080059, authorizing the construction of a new natural gas-fired boiler at the Facility ("Boiler

A”). Construction permit 04080059 also contained condition 8(a), which required Respondent to “install, operate, and maintain a continuous monitoring system on the boiler for NO<sub>x</sub> emissions....”

**ANSWER:** Respondent admits the allegations in paragraph 8.

9. Sometime near the end of 2005, the precise date better known to Respondent, Respondent began operating Boiler A, which emits or is capable of emitting nitrogen oxides (“NO<sub>x</sub>”), Carbon Monoxide (“CO”), PM, Sulfur Dioxide (“SO<sub>2</sub>”), and VOM.

**ANSWER:** Respondent denies the allegations in paragraph 9 to the extent it alleges that, sometime near the end of 2005, Respondent began operating Boiler A. Respondent admits the remaining allegations in paragraph 9. Respondent affirmatively states that it began operating Boiler A on September 15, 2004.

10. On February 3, 2006, the Illinois EPA issued Respondent’s revised CAAPP permit 98070042, which incorporated the NO<sub>x</sub> monitoring requirements included in condition 8(a) of construction permit 04080059 and required Respondent to develop and submit to the Illinois EPA an episode action plan.

**ANSWER:** Respondent admits the allegations in paragraph 10.

11. On July 25, 2006, the Illinois EPA issued Respondent construction permit 06050042, allowing the construction of emission sources and pollution control equipment for a new biodiesel plant at the Facility (“Biodiesel Plant”). Revised construction permit 06050042, authorizing increased vegetable oil processing, was issued to Respondent on July 21, 2011. Among other contaminants, the Biodiesel Plant emits Hexane and VOM.

**ANSWER:** Respondent admits the allegations in paragraph 11.

12. On August 10, 2007, the Illinois EPA issued Respondent construction permit 07050034, authorizing the construction of a new natural gas-fired boiler ("Boiler B") at the Facility. Boiler B emits or is capable of emitting NO<sub>x</sub> and CO.

**ANSWER:** Respondent admits the allegations in paragraph 12.

13. On June 18, 2012, the Illinois EPA inspected the Facility.

**ANSWER:** Respondent admits the allegations in paragraph 13.

14. On or about May 9, 2013, Respondent installed a Continuous Emission Monitoring System ("CEMS") to monitor NO<sub>x</sub> emissions generated during Boiler A operations.

**ANSWER:** Respondent admits the allegations in paragraph 14.

15. Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2014), provides as follows:

(d) No person shall:

(1) violate any provisions of Sections 111, 112, 165 or 173 of the Clean Air Act, as now or hereafter amended, or federal regulations adopted pursuant thereto; or

(2) construct, install, modify or operate any equipment, building, facility, source or installation which is subject to regulation under Sections 111, 112, 165 or 173 of the Clean Air Act, as now or hereafter amended, except in compliance with the requirements of such Sections and federal regulations adopted pursuant thereto, and no such action shall be undertaken (A) without a permit granted by the Agency whenever a permit is required pursuant to (i) this Act or Board regulations or (ii) Section 111, 112, 165, or 173 of the Clean Air Act or federal regulations adopted pursuant thereto or (B) in violation of any conditions imposed by such permit. Any denial of such a permit or any conditions imposed in such a permit shall be reviewable by the Board in accordance with Section 40 of this Act.

**ANSWER:** The statutory section cited in paragraph 15 speaks for itself and requires no response. Respondent denies any remaining allegations in paragraph 15.



16. Section 3.315 of the Act, 415 ILCS 5/3.315 (2014), provides as follows:

“Person” is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

**ANSWER:** The statutory section cited in paragraph 16 speaks for itself and requires no response. Respondent denies any remaining allegations in paragraph 16.

17. Respondent is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2014).

**ANSWER:** Paragraph 17 contains legal conclusions that require no response from Respondent. Respondent denies any remaining factual allegations in paragraph 17.

18. Section 111 of the Clean Air Act, 42 U.S.C. § 7411, establishes the New Source Performance Standards (“NSPS”). The NSPS regulations are codified in Title 40, Part 60 of the Code of Federal Regulations (“NSPS Regulations”). The Illinois EPA administers the NSPS for subject sources in Illinois pursuant to a delegation agreement with the United States Environmental Protection Agency (“USEPA”).

**ANSWER:** The first two sentences in paragraph 18 contain legal conclusions that require no response from Respondent. To the extent that the first two sentences contain any factual allegations, Respondent denies the same. Respondent admits the allegations in paragraph 18 to the extent it alleges that the Illinois EPA administers the NSPS for subject sources in Illinois pursuant to a delegation agreement with the United States Environmental Protection Agency (“USEPA”).

19. The NSPS Regulations governing Industrial-Commercial-Institutional Steam Generating Units are found in Subpart Db of Title 40, Part 60 (“Subpart Db”). Section 60.48b of the Subpart Db, 40 C.F.R. 60.48b, provides, in pertinent part, as follows:

- (b) Except as provided under paragraphs (g), (h), and (i) of this section, the owner or operator of an affected facility subject to a NOX standard under § 60.44b shall comply with either paragraphs (1) or (b)(2) of this section.
- (1) Install, calibrate, maintain, and operate CEMS for measuring NOX and O2 (or CO2) emissions discharged to the atmosphere, and shall record the output of the system; or
- (2) If the owner or operator has installed a NOX emission rate CEMS to meet the requirements of part 75 of this chapter and is continuing to meet the ongoing requirements of part 75 of this chapter, that CEMS may be used to meet the requirements of this section, except that the owner or operator shall also meet the requirements of § 60.49b. Data reported to meet the requirements of § 60.49b shall not include data substituted using the missing data procedures in subpart D of part 75 of this chapter, nor shall the data have been bias adjusted according to the procedures of part 75 of this chapter.
- (c) The CEMS required under paragraph (b) of this section shall be operated and data recorded during all periods of operation of the affected facility except for CEMS breakdowns and repairs. Data is recorded during calibration checks, and zero and span adjustments.
- \* \* \*
- (e) The procedures under § 60.13 shall be followed for installation, evaluation, and operation of the continuous monitoring systems.

**ANSWER:** The regulatory sections cited in paragraph 19 speak for themselves and require no response. Respondent denies any remaining allegations in paragraph 19.

20. Section 60.40b(a) of Subpart Db, 40 C.F.R. 60.40b(a), provides as follows:

- (a) The affected facility to which this subpart applies is each steam generating unit that commences construction, modification, or reconstruction after June 19, 1984, and that has a heat input capacity from fuels combusted in the steam generating unit of greater than 29 megawatts (MW) (100 million British thermal units per hour (MMBtu/hr)).

**ANSWER:** The regulatory section cited in paragraph 20 speaks for itself and requires no response. Respondent denies any remaining allegations in paragraph 20.

21. Section 60.44b(a) of subpart Db, 40 C.F.R. 60.44b(a), provides, in relevant part, as follows:

- (a) Except as provided under paragraphs (k) and (1) of this section, on and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that is subject to the provisions of this section and that combusts only coal, oil, or natural gas shall cause to be discharged into the atmosphere from that affected facility any gases that contain NOX (expressed as NO<sub>2</sub>) in excess of the following emission limits...

**ANSWER:** The regulatory section cited in paragraph 21 speaks for itself and requires no response. Respondent denies any remaining allegations in paragraph 21.

22. Boiler A is a steam generating unit that commenced construction after June 19, 1984, that has a heat input capacity from fuels combusted in the steam generating unit of greater than 100 mmBtu/hr and that combusts only natural gas. It is therefore an affected facility required to comply with the requirements of Subpart Db, including the NO<sub>x</sub> standards of Section 60.44b, 40 C.F.R. 60.44b, and Section 60.48b, 40 C.F.R. 60.48b.

**ANSWER:** Respondent admits the allegations in paragraph 22 to the extent it alleges that Boiler A is a steam generating unit that commenced construction after June 19, 1984 that has a heat input capacity from fuels combusted in the steam generating unit of greater than 100 mmBtu/hr and that combusts only natural gas. The remaining allegations in paragraph 22 contain legal conclusions that require no response from Respondent. Respondent denies any remaining factual allegations in paragraph 22.

23. At the time of the June 18, 2012 inspection, Respondent had not installed a CEMS to monitor NO<sub>x</sub> emissions from Boiler A.

**ANSWER:** Respondent admits the allegations in paragraph 23.

24. From at least June 18, 2012 through on or about May 9, 2013, Respondent operated Boiler A without a CEMS, thereby violating paragraphs (b), (c) and (e) of Section 60.48b of Subpart Db, 40 C.F.R. 60.48b(b), (c) and (e).

**ANSWER:** Respondent admits the allegations in paragraph 24 to the extent it alleges that, from at least June 18, 2012 to May 9, 2013, Respondent operated Boiler A without a CEMS. The remaining allegations in Paragraph 24 contain legal conclusions that require no response from Respondent. Respondent denies any remaining factual allegations in paragraph 24.

25. By violating paragraphs (b), (c) and (e) of Section 60.48b of Subpart Db, 40 C.F.R. 60.48b(b), (c) and (e), Respondent violated Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2014).

**ANSWER:** Paragraph 25 contains legal conclusions that require no response from Respondent. Respondent denies any remaining factual allegations in paragraph 25.

WHEREFORE, Respondent, INCOBRASA INDUSTRIES, LTD., asserts that Complainant is not entitled to the relief sought by Count I of its First Amended Complaint, and prays that Complainant take nothing by Count I of the First Amendment Complaint, that the Board enter judgment in favor of INCOBRASA INDUSTRIES, LTD. as to COUNT I of Complainant's First Amended Complaint, and that the Board award INCOBRASA INDUSTRIES, LTD. its costs and all other relief the Board finds just and proper.

**COUNT II**  
**FAILURE TO SUBMIT EXCESS EMISSION REPORTS**

*Note: To alleviate confusion, Respondent will continue with the numbering as it is in the Complainant's First Amended Complaint. However, Respondent is aware that Allegations 23-25 are duplicated.*

1-22. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 22

of Count I as paragraphs 1 through 22 of this Count II.

**ANSWER:** Respondent hereby incorporates by reference its responses to paragraphs 1-22 of Count I as and for its responses to paragraphs 1-22 of Count II.

23. Section 60.49b of the NSPS Regulations governing Industrial-Commercial-Institutional Steam Generating Units, 40 C.F.R. 60.49b, provides, in relevant part, as follows:

- (h) The owner or operator of any affected facility in any category listed in paragraphs (h)(1) or (2) of this section is required to submit excess emission reports for any excess emissions that occurred during the reporting period.
  - (1) Any affected facility subject to the opacity standards in § 60.43b(f) or to the operating parameter monitoring requirements in § 60.13(i)(I).
  - (2) Any affected facility that is subject to the NOX standard of § 60.44b, and that:
    - (i) Combusts natural gas, distillate oil, gasified coal, or residual oil with a nitrogen content of 0.3 weight percent or less; or
    - (ii) Has a heat input capacity of 73 MW (250 MMBtu/hr) or less and is required to monitor NOX emissions on a continuous basis under § 60.48b(g)(1) or steam generating unit operating conditions under § 60.48b(g)(2).

\* \* \*

- (w) The reporting period for the reports required under this subpart is each 6 month period. All reports shall be submitted to the Administrator and shall be postmarked by the 30th day following the end of the reporting period.

**ANSWER:** The regulatory sections cited in paragraph 23 speak for themselves and require no response. Respondent denies any remaining allegations in paragraph 23.

24. Section 60.48b(g) of Subpart Db, 40 C.F.R. 60.48b(g), provides as follows:

- (g) The owner or operator of an affected facility that has a heat input

capacity of 73 MW (250 MMBtu/hr) or less, and that has an annual capacity factor for residual oil having a nitrogen content of 0.30 weight percent or less, natural gas, distillate oil, gasified coal, or any mixture of these fuels, greater than 10 percent (0.10) shall:

- (1) Comply with the provisions of paragraphs (b), (c), (d), (e)(2), (e)(3), and (f) of this section; or
- (2) Monitor steam generating unit operating conditions and predict NOX emission rates as specified in a plan submitted pursuant to § 60.49b(c).

**ANSWER:** The regulatory sections cited in paragraph 24 speak for themselves and require no response. Respondent denies any remaining allegations in paragraph 24.

25. Boiler A is an affected facility with a heat input capacity of less than 250 mmBtu/hr and an annual capacity factor for natural gas greater than ten percent. Respondent is therefore required to monitor Boiler A NO<sub>x</sub> emissions on a continuous basis under Section 60.48b(g)(1) of Subpart Db, 40 C.F.R. 60.48b(g)(1). Because Boiler A is also subject to the NO<sub>x</sub> standards of § 60.44b, respondent was required to submit excess emission reports for each six month period.

**ANSWER:** Paragraph 25 contains legal conclusions that require no response from Respondent. Respondent denies any remaining factual allegations in paragraph 25.

26. In or around January 2014, Respondent submitted an excess emission report covering the period of July 2013 through December 2013. At no time did Respondent submit excess emission reports covering the period between the commencement of operation of Boiler A and June 2013.

**ANSWER:** Respondent admits the allegations in paragraph 26.

27. By failing to submit excess emission reports between commencement of operation of Boiler A and June 2013, Respondent violated Sections 60.49b(h) and (w) of the

NSPS Regulations governing Industrial-Commercial-Institutional Steam Generating Units, 40 C.F.R. 60.49b(h) and (w), thereby violating Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2014).

**ANSWER:** Paragraph 27 contains legal conclusions that require no response from Respondent. Respondent denies any remaining factual allegations in paragraph 27.

WHEREFORE, Respondent, INCOBRASA INDUSTRIES, LTD., asserts that Complainant is not entitled to the relief sought by Count II of its First Amended Complaint, and prays that Complainant take nothing by Count II of the First Amendment Complaint, that the Board enter judgment in favor of INCOBRASA INDUSTRIES, LTD. as to COUNT II of Complainant's First Amended Complaint, and that the Board award INCOBRASA INDUSTRIES, LTD. its costs and all other relief the Board finds just and proper.

**COUNT III**  
**FAILURE TO MAINTAIN A WRITTEN EPISODE ACTION PLAN**

*Note: To alleviate confusion, Respondent will continue with the numbering as it is in the Complainant's First Amended Complaint. However, Respondent is aware that Allegations 17-26 are duplicated.*

1-16. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 14 and 16 through 17 of Count I as paragraphs 1 through 16 of this Count III.

**ANSWER:** Respondent hereby incorporates by reference its responses to paragraphs 1-14 and 16-17 of Count I as and for its responses to paragraphs 1-16 of Count III.

17. Section 9(a) of the Act, 415 ILCS 5/9(a) (2014), provides as follows:

Acts prohibited. 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 violate regulations or standards adopted by the Board under this Act.

**ANSWER:** The statutory section cited in paragraph 17 speaks for itself and requires no response. Respondent denies any remaining allegations in paragraph 17.

18. Section 3.165 of the Act, 415 ILCS 5/3.165 (2014), provides the following definition:

“Contaminant” is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

**ANSWER:** The statutory section cited in paragraph 18 speaks for itself and requires no response. Respondent denies any remaining allegations in paragraph 18.

19. VOM is a “contaminant” as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2014).

**ANSWER:** Paragraph 19 contains legal conclusions that require no response from Respondent. Respondent denies any remaining factual allegations in paragraph 19.

20. Pursuant to the authority granted in Sections 10 and 27 of the Act, 415 ILCS 5/10 and 5/27 (2014), the Illinois Pollution Control Board (“Board”) has promulgated rules and regulations to control air pollution in Illinois, codified at 35 Ill. Adm. Code, Subtitle B, Chapter 1 (“Board Air Pollution Regulations”).

**ANSWER:** Respondent admits the allegations in paragraph 20.

21. Section 244.141 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 244.141, provides, in relevant part, as follows:

All persons responsible for the operation of a facility of a type set forth in Section 244.142 shall have on file with the Agency written episode action plans (plans), consistent with safe operating procedures, for reducing the levels of air contaminants during yellow alerts, red alerts and emergencies. These plans shall be designed to reduce air contaminants in accordance with the provisions of these rules and shall be on forms designed by the Agency....

**ANSWER:** The regulatory section cited in paragraph 21 speaks for itself and requires no response. Respondent denies any remaining allegations in paragraph 21.



22. Section 244.142(c) of the Board Air Pollution Regulations, 35 Ill. Adm. Code 244.142(c), titled "Facilities for which Action Plans are Required," provides as follows:

- (b) Facilities emitting more than 91 Mg/yr or 249 kg per operating day (100 tons per year or 550 pounds per operating day) of sulfur dioxide, carbon monoxide, nitrogen oxides, particulate matter, organic material or of any other air contaminant designated by the Agency as harmful to human health.

**ANSWER:** The regulatory section cited in paragraph 22 speaks for itself and requires no response. Respondent denies any remaining allegations in paragraph 22.

23. The Facility emits more than 100 tons per year of VOM. It is therefore a facility for which an episode action plan is required.

**ANSWER:** Respondent admits the allegations in paragraph 23 to the extent it alleges that the Facility emits more than 100 tons per year of VOM. The remaining allegation in paragraph 23 contains a legal conclusion that requires no response from Respondent. Respondent denies any remaining factual allegations in paragraph 23.

24. On or around February 21, 2013, Respondent submitted an Episode Action Plan to the Illinois EPA.

**ANSWER:** Respondent admits the allegation in paragraph 24. Respondent affirmatively states that it submitted an Episode Action Plan to the Illinois EPA on February 14, 2013.

25. From at least June 18, 2012 through on or around February 21, 2013, Respondent did not submit or have on file with the Illinois EPA an Episode Action Plan, in violation of Section 244.141 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 244.141.

**ANSWER:** Respondent admits the allegations in paragraph 25 to the extent it alleges that Respondent did not submit or have on file with the Illinois EPA an Episode Action Plan

from at least June 18, 2012 through on or around February 21, 2013. The remaining allegation in paragraph 25 contains a legal conclusion that requires no response from Respondent.

Respondent denies any remaining factual allegations in paragraph 25. Respondent affirmatively states that it submitted an Episode Action Plan to the Illinois EPA on February 14, 2013.

26. By violating Section 244.141 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 244.141, Respondent violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2014).

**ANSWER:** Paragraph 26 contains legal conclusions that require no response from Respondent. Respondent denies any remaining factual allegations in paragraph 26.

WHEREFORE, Respondent, INCOBRASA INDUSTRIES, LTD., asserts that Complainant is not entitled to the relief sought by Count III of its First Amended Complaint, and prays that Complainant take nothing by Count III of the First Amendment Complaint, that the Board enter judgment in favor of INCOBRASA INDUSTRIES, LTD. as to COUNT III of Complainant's First Amended Complaint, and that the Board award INCOBRASA INDUSTRIES, LTD. its costs and all other relief the Board finds just and proper.

**COUNT IV**  
**FAILURE TO SUBMIT NESHAP NOTIFICATIONS**

*Note: To alleviate confusion, Respondent will continue with the numbering as it is in the Complainant's First Amended Complaint. However, Respondent is aware that Allegations 18-24 are duplicated.*

1-17, Plaintiff realleges and incorporates herein by reference paragraphs 1 through 17 of Count I as paragraphs 1 through 17 of this Count IV.

**ANSWER:** Respondent hereby incorporates by reference its responses to paragraphs 1-17 of Count I as and for its responses to paragraphs 1-17 of Count IV.

18. Part 63, Subpart GGGG of Title 40 of the Code of Federal Regulations establishes National Emission Standards for Hazardous Air Pollutants ("NESHAP") for Solvent Extraction

for Vegetable Oil Production ("Subpart GGGG"). Section 63.2860 of Subpart GGGG, 40 C.F.R.

63.2860, provides, in relevant part, as follows:

You must submit the one-time notifications listed in paragraphs (a) through (d) of this section to the responsible agency:

- (a) Initial notification for existing sources. For an existing source, submit an initial notification to the agency responsible for these NESHAP no later than 120 days after the effective date of this subpart.

\* \* \*

- (d) Notification of compliance status. As an existing, new, or reconstructed source, you must submit a notification of compliance status report to the responsible agency no later than 60 days after determining your initial 12 operating months compliance ratio. If you are an existing source, you generally must submit this notification no later than 50 calendar months after the effective date of these NESHAP (36 calendar months for compliance, 12 operating months to record data, and 2 calendar months to complete the report). If you are a new or reconstructed source, the notification of compliance status is generally due no later than 20 calendar months after initial startup (6 calendar months for the initial startup period, 12 operating months to record data, and 2 calendar months to complete the report)....

**ANSWER:** The regulatory sections cited in paragraph 18 speak for themselves and require no response. Respondent denies any remaining allegations in paragraph 18.

19. Section 63.2832(a) of Subpart GGGG, 40 C.F.R. 63.2832(a), provides as follows:

- (a) You are an affected source subject to this subpart if you meet all of the criteria listed in paragraphs (a)(1) and (2) of this section:

- (1) You own or operate a vegetable oil production process that is a major source of HAP emissions or is collocated within a plant site with other sources that are individually or collectively a major source of HAP emissions.

- (i) A vegetable oil production process is defined in § 63.2872. In general, it is the collection of continuous process equipment and activities that produce crude vegetable oil and meal products by removing oil from oilseeds listed in Table 1 to § 63.2840 through direct contact with an organic

solvent, such as a hexane isomer blend.

- (ii) A major source of HAP emissions is a plant site that emits or has the potential to emit any single HAP at a rate of 10 tons (9.07 megagrams) or more per year or any combination of HAP at a rate of 25 tons (22.68 megagrams) or more per year.
- (2) Your vegetable oil production process processes any combination of eight types of oilseeds listed in paragraphs (a)(2)(i) through (viii) of this section:
- (i) Corn germ;
  - (iii) Cottonseed;
  - (iii) Flax;
  - (iv) Peanut;
  - (v) Rapeseed (for example, canola);
  - (vi) Safflower;
  - (vii) Soybean; and

**ANSWER:** The regulatory sections cited in paragraph 19 speak for themselves and require no response. Respondent denies any remaining allegations in paragraph 19.

20. Because the Facility uses a vegetable oil production process that is a major source of emissions of Hexane, a HAP, and processes soybeans, Respondent is subject to Section 63.2860 of Subpart GGGG, 40 C.F.R. 63.2860.

**ANSWER:** Paragraph 20 contains legal conclusions that require no response from Respondent. Respondent denies any remaining factual allegations in paragraph 20.

21 Section 63.2861 of Subpart GGGG, 40 C.F.R. 63.2861, provides, in relevant part, as follows:

After the initial notifications, you must submit the reports in paragraphs (a) through (d) of this section to the agency responsible for these NESHAP at the appropriate time intervals:

- (a) Annual compliance certifications. The first annual compliance certification is due 12 calendar months after you submit the notification of compliance status. Each subsequent annual compliance certification is due 12 calendar months after the previous annual compliance certification. The annual compliance certification provides the compliance status for each operating month during the 12 calendar months period ending 60 days prior to the date on which the report is due....

**ANSWER:** The regulatory section cited in paragraph 21 speaks for itself and requires no response. Respondent denies any remaining allegations in paragraph 21.

22. Respondent, by letter dated January 30, 2013, submitted to the Illinois EPA an initial notification report.

**ANSWER:** Respondent admits the allegation in paragraph 22.

23. At no time did Respondent submit to the Illinois EPA a notification of compliance status or annual compliance certifications for the years 2004 through 2011.

**ANSWER:** Respondent denies the allegations in paragraph 23.

24. By failing to timely submit initial NESHAP notifications, and by failing to submit notification of NESHAP compliance status and annual compliance certifications for the years 2004 through 2011, Respondent violated Sections 63.2860(a) and (d) of Subpart GGGG, 40 C.F.R. 63.2860(a) and (d), and Section 63.2861(a) of Subpart GGGG, 40 C.F.R. 63.2861(a), thereby violating Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2014).

**ANSWER:** Paragraph 24 contains legal conclusions that require no response from Respondent. Respondent denies any remaining factual allegations in paragraph 24.

WHEREFORE, Respondent, INCOBRASA INDUSTRIES, LTD., asserts that Complainant is not entitled to the relief sought by Count IV of its First Amended Complaint, and prays that Complainant take nothing by Count IV of the First Amendment Complaint, that the Board enter judgment in favor of INCOBRASA INDUSTRIES, LTD. as to COUNT IV of Complainant's First Amended Complaint, and that the Board award INCOBRASA INDUSTRIES, LTD. its costs and all other relief the Board finds just and proper.

**COUNT V**  
**FAILURE TO KEEP RECORDS**

*Note: To alleviate confusion, Respondent will continue with the numbering as it is in the Complainant's First Amended Complaint. However, Respondent is aware that Allegations 23-27 are duplicated.*

1-22. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 22 of Count I as paragraphs 1 through 22 of this Count V.

**ANSWER:** Respondent hereby incorporates by reference its responses to paragraphs 1-22 of Count I as and for its responses to paragraphs 1-22 of Count V.

23. Section 60.49b(g) of Subpart Db, 40 C.F.R. 60.49b(g), provides, in relevant part, as follows:

- (g) Except as provided under paragraph (p) of this section, the owner or operator of an affected facility subject to the NOX standards under § 60.44b shall maintain records of the following information for each steam generating unit operating day: The average hourly NOX emission rates (expressed as N02) (ng/J or lb/MMBtu heat input) measured or predicted;
  - (2) The 30-day average NOX emission rates (ng/J or lb/MMBtu heat input) calculated at the end of each steam generating unit operating day from the measured or predicted hourly nitrogen oxide emission rates for the preceding 30 steam generating unit operating days;
  - (3) Identification of the steam generating unit operating days when the calculated 30-day average NOX emission rates

are in excess of the NOX emissions standards under § 60.44b, with the reasons for such excess emissions as well as a description of corrective actions taken;

- (4) Identification of the steam generating unit operating days for which pollutant data have not been obtained, including reasons for not obtaining sufficient data and a description of corrective actions taken;
- (5) Identification of the times when emission data have been excluded from the calculation of average emission rates and the reasons for excluding data;
- (6) Identification of "F" factor used for calculations, method of determination, and type of fuel combusted;
- (7) Identification of the times when the pollutant concentration exceeded full span of the CEMS;
- (8) Description of any modifications to the CEMS that could affect the ability of the CEMS to comply with Performance Specification 2 or 3; and
- (9) Results of daily CEMS drift tests and quarterly accuracy assessments as required under appendix F, Procedure 1 of this part.

**ANSWER:** The regulatory sections cited in paragraph 23 speak for themselves and require no response. Respondent denies any remaining allegations in paragraph 23.

24. From at least June 18, 2012 through a date better known to Respondent, Respondent failed to maintain the records for Boiler A required by 40 C.F.R. 60.49b(g)(2) through (10).

**ANSWER:** Respondent admits the allegations in paragraph 24.

25. Section 63.2862(d) of Subpart GGGG, 40 C.F.R. 63.2862(d), provides, in pertinent part, as follows:

- (d) After your source has processed listed oilseed for 12 operating months, and you are not operating during an initial startup period as described in § 63.2850(c)(2) or (d)(2), or a

malfunction period as described in § 63.2850(e)(2), record the items in paragraphs (d)(1) through (5) of this section by the end of the calendar month following each operating month:

- (1) The 12 operating months rolling sum of the actual solvent loss in gallons as described in § 63.2853(c).
- (2) The weighted average volume fraction of HAP in extraction solvent received for the previous 12 operating months as described in § 63.2854(b)(3).

**ANSWER:** The regulatory sections cited in paragraph 25 speak for themselves and require no response. Respondent denies any remaining allegations in paragraph 25.

26. From at least June 18, 2012 through a date better known to Respondent, Respondent did not record the items required by paragraphs (1) and (2) of Section 63.2862(d) of Subpart GGGG, 40 C.F.R. 63.2862(d)(1) and (2).

**ANSWER:** Respondent admits the allegations in paragraph 26.

27. By violating Section 60.49b(g)(2) through (10) of Subpart Db, 40 C.F.R. 60.49b(g)(2) through (10), and Section 63.2862(d)(1) and (2) of Subpart GGGG, 40 C.F.R. 63.2862(d)(1) and (2), Respondent violated Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2014).

**ANSWER:** Paragraph 27 contains legal conclusions that require no response from Respondent. Respondent denies any remaining factual allegations in paragraph 27.

WHEREFORE, Respondent, INCOBRASA INDUSTRIES, LTD., asserts that Complainant is not entitled to the relief sought by Count V of its First Amended Complaint, and prays that Complainant take nothing by Count V of the First Amendment Complaint, that the Board enter judgment in favor of INCOBRASA INDUSTRIES, LTD. as to COUNT V of Complainant's First Amended Complaint, and that the Board award INCOBRASA INDUSTRIES, LTD. its costs and all other relief the Board finds just and proper.



**COUNT VI**  
**VIOLATING CAAPP PERMIT CONDITIONS**

1-28. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 14, 16 through 17, 19, and 23 through 24 of Count I, paragraph 25 of Count II, paragraphs 24 through 25 of Count III, paragraphs 18 and 22 through 23 of Count IV, and paragraph 23 through 24 and 26 of Count V, as paragraphs 1 through 20 of this Count VI.

**ANSWER:** Respondent hereby incorporates by reference its responses to paragraphs 1-14, 16-17, 19, 23-24 of Count I, paragraph 25 of Count II, paragraphs 24-25 of Count III, paragraphs 18, 22-23 of Count IV, and paragraphs 23-24, and 26 of Count V, as and for its responses to paragraphs 1-28 of Count VI.

29. Section 39.5(6)(a) of the Act, 415 ILCS 5/39.5(6)(a) (2014), provides as follows:  
Prohibitions.

- (a) 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. All terms and conditions of a permit issued under this Section are enforceable by USEPA and citizens under the Clean Air Act, except those, if any, that are specifically designated as not being federally enforceable in the permit pursuant to paragraph (m) of subsection 7 of this Section.

**ANSWER:** The statutory section cited in paragraph 29 speaks for itself and requires no response. Respondent denies any remaining allegations in paragraph 29.

30. Section 39.5.1 of the Act, 415 ILCS 5/39.5.1 (2014), provides the following definitions:

“CAAPP” means the Clean Air Act Permit Program, developed pursuant to Title V of the Clean Air Act.

“CAAPP Permit” or “permit” (unless the context suggests otherwise) means any permit issued, renewed, amended, modified or revised pursuant to Title V of the Clean Air Act.

“CAAPP source” means any source for which the owner or operator is required to obtain a CAAPP permit pursuant to subsection 2 of this Section.

“Major source” means a source for which emissions of one or more air pollutants meet the criteria for major status pursuant to paragraph 2(c) of this Section.

“Owner or operator” means any person who owns, leases, operates, controls, or supervises a stationary source.

“Source” means any stationary source (or any group of stationary sources) that are located on one or more contiguous or adjacent properties that are under common control of the same person (or persons under common control) and that belongs to a single major industrial grouping. For the purposes of defining “source,” a stationary source or group of stationary sources shall be considered part of a single major industrial grouping if all of the pollutant emitting activities at such source or group of sources located on contiguous or adjacent properties and under common control belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987, or such pollutant emitting activities at a stationary source (or group of stationary sources) located on contiguous or adjacent properties and under common control constitute a support facility. The determination as to whether any group of stationary sources are located on contiguous or adjacent properties, and/or are under common control, and/or whether the pollutant emitting activities at such group of stationary sources constitute a support facility shall be made on a case by case basis.

“Stationary source” means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under Section 112(b) of the Clean Air Act.

**ANSWER:** The statutory sections cited in paragraph 30 speak for themselves and require no response. Respondent denies any remaining allegations in paragraph 30.

31. Respondent is the “Owner or operator” of the Source, as that term is defined in Section 39.5 of the Act, 415 ILCS 5/39.5 (2014).

**ANSWER:** Paragraph 31 contains legal conclusions that require no response from Respondent. Respondent denies any remaining factual allegations in paragraph 31.

32. The Source constitutes a "CAAPP source," a "Major source," and a "Stationary source" as those terms are defined in Section 39.5 of the Act, 415 ILCS 5/39.5 (2014).

**ANSWER:** Paragraph 32 contains legal conclusions that require no response from Respondent. Respondent denies any remaining factual allegations in paragraph 32.

33. Condition 7.4.8(a) of CAAPP permit 98070042 provides as follows:

- (a) The permittee shall install, operate, and maintain a continuous monitoring system on Boiler A for NOx emissions in accordance with the applicable requirements of 40 CFR 60.48(b), including the following:
  - i. This system shall be operated during all periods of operation of the boiler except for continuous monitoring system breakdowns and repairs. Data is to be recorded during calibration checks, and zero and span adjustment [40 CFR 60.48b(c)]
  - ii. The procedures under 40 CFR 60.13 shall be followed for installation, evaluation and operation of the monitoring system. [40 CFR 60.48b(e)]

**ANSWER:** The permit conditions cited in paragraph 33 speak for themselves and require no response. Respondent denies any remaining allegations in paragraph 33.

34. By operating Boiler A from at least June 18, 2012 through at least May 9, 2013 without a CEMS, Respondent violated Condition 7.4.8(a) of CAAPP permit 98070042.

**ANSWER:** Paragraph 34 contains legal conclusions that require no response from Respondent. Respondent denies any remaining factual allegations in paragraph 34.

35. Condition 5.2.6 of CAAPP permit 98070042, provides, in pertinent part, as follows:

Episode Action Plan

- (a) If the source is required to have an episode action plan pursuant to 35 IAC 244.142, the Permittee shall maintain at the source and have on file with the Illinois EPA a written episode action

plan (plan) for reducing the levels of emissions during yellow alerts, red alerts, and emergencies, consistent with safe operating procedures. The plan shall contain the information specified in 35 IAC 244.144.

\* \* \*

(d) For sources required to have a plan pursuant to 35 IAC 244.142, a copy of the original plan and any subsequent revisions shall be sent to:

i. Illinois EPA, Compliance Section....

**ANSWER:** The permit conditions cited in paragraph 35 speak for themselves and require no response. Respondent denies any remaining allegations in paragraph 35.

36. By failing to maintain at the Source and have on file with the Illinois EPA a written episode action plan from at least June 18, 2012 through February 21, 2013, Respondent violated Condition 5.2.6 of CAAPP permit 98070042.

**ANSWER:** Paragraph 36 contains legal conclusions that require no response from Respondent. Respondent denies any remaining factual allegations in paragraph 36.

37. Condition 7.3.10(a) of CAAPP permit 98070042 provides as follows:

(a) No later than April 12, 2004, the Permittee shall comply with the reporting and notification requirements of 40 CFR 63.2860, whenever the extraction solvent being used contains n-hexane or other HAP.

**ANSWER:** The permit condition cited in paragraph 37 speaks for itself and requires no response. Respondent denies any remaining allegations in paragraph 37.

38. By failing to comply with the reporting and notification requirements of 40 CFR 63.2860(a) and (d), Respondent violated Condition 7.3.10(a) of CAAPP permit 98070042.

**ANSWER:** Paragraph 38 contains legal conclusions that require no response from Respondent. Respondent denies any remaining factual allegations in paragraph 38.

39. Condition 7.4.9 of CAAPP permit 98070042, as revised on February 3, 2006, provides, in relevant part, as follows:

In addition to the records required by Condition 5.6, the Permittee shall maintain records of the following items for the affected boilers to demonstrate compliance with Conditions 5.5.1, 7.4.5 and 7.4.6, pursuant to Section 39.5(7)(b) of the Act:

- \* \* \*
- (d) The Permittee shall maintain records of the following items for Boiler A:
  - (i) Records for continuous monitoring system and other required instrumentation on the boiler, including recorded data and records of maintenance, calibration, and operational activity associated with the system.
    - \* \* \*
  - (iii) Records to be kept for each operating day, pursuant to the NSPS, 40 CFR 60, Subpart Db:
    - \* \* \*
- C. The average hourly NO<sub>x</sub> emission rates (expressed in lb/million Btu heat input) measured or if parametric monitoring is approved, records shall be kept of NO<sub>x</sub> emissions as predicted by parametric monitoring [40 CFR 60.49b(g)(2)];
- D. The 30-day average NO<sub>x</sub> emission rates (lb/million Btu heat input) calculated at the end of each operating date from the measured or if parametric monitoring is approved, records shall be kept of NO<sub>x</sub> emissions as predicted by parametric monitoring, hourly NO<sub>x</sub> emission rates for the preceding 30 operating days [40 CFR 60.49b(g)(3)];
- E. Identification of the operating date when the calculated 30- day average NO<sub>x</sub> emission rates are in excess of the NO<sub>x</sub> emissions standards under 40 CFR 60.44b, with the reasons for such excess emissions as well as a description of corrective actions taken [40 CFR 60.49b(g)(4)];
- F. Identification of the operating days for which pollutant data have not been obtained, including reasons for not obtaining sufficient and a description of corrective actions taken [40 CFR

60.49b(g)(5)];

- G. Identification of the times when emission data have been excluded from the calculation of the average emission rates and the reasons for excluding data [40 CFR 60.49b(g)(7)];
- H. Identification of the times when the pollutant concentration exceeds full span of the continuous monitoring system [40 CFR 60.49b(g)(8)];
- I. Description of any modification to the continuous monitoring system that could affect the ability of the continuous monitoring system to comply with Performance Specification 2 or 3 [40 CFR 60.49b(g)(9)];
- J. Results of daily CEMS drift tests and quarterly accuracy assessments as required under Appendix F, Procedure 1 of 40 CFR 60 [40 CFR 60.49b(g)(10)]

**ANSWER:** The permit conditions cited in paragraph 39 speak for themselves and require no response. Respondent denies any remaining allegations in paragraph 39.

40. Respondent failed to maintain records for Boiler A to demonstrate compliance with Conditions 5.5.1, 7.4.5 and 7.4.6 of CAAPP permit 98070042, thereby violating Conditions 7.4.9(d)(i) and (iii)(C) through (J) of CAAPP permit 98070042.

**ANSWER:** Respondent admits the allegations in paragraph 40 to the extent it alleges that Respondent failed to maintain records for Boiler A to demonstrate compliance with Conditions 5.5.1, 7.4.5 and 7.4.6 of CAAPP permit 98070042. The remaining allegation in paragraph 40 contains a legal conclusion that requires no response from Respondent. Respondent denies any remaining factual allegations in paragraph 40.

41. Condition 7.4.9(b) of CAAPP permit 98070042 provides as follows:

In addition to the records required by Condition 5.6, the Permittee shall maintain records of the following items for the affected boilers to demonstrate compliance with Conditions 5.5.1, 7.4.5 and 7.4.6, pursuant to Section 39.5(7)(b) of the Act:

\*

\*

\*

- (b) Emissions of NO<sub>x</sub>, CO, PM/PM<sub>10</sub>, SO<sub>2</sub>, and VOM from Boiler A, based on operating data from the boiler and emission monitoring data (NO<sub>x</sub>) or appropriate emission factors, with supporting calculations (tons/month and tons/year)...

**ANSWER:** The permit condition cited in paragraph 41 speaks for itself and requires no response. Respondent denies any remaining allegations in paragraph 41.

42. From at least June 18, 2012 through a date better known to Respondent, Respondent failed to maintain records of monthly and rolling 12-month SO<sub>2</sub> emissions from Boiler A, thereby violating Condition 7.4.9(b) of CAAPP permit 98070042.

**ANSWER:** Respondent denies the allegations in paragraph 42 to the extent it alleges that, from at least June 18, 2012 through a date better known to Respondent, Respondent failed to maintain records of monthly SO<sub>2</sub> emissions from Boiler A. Respondent admits the allegations in paragraph 42 to the extent it alleges that, from at least June 18, 2012 through a date better known to Respondent, Respondent failed to maintain records of rolling 12-month SO<sub>2</sub> emissions from Boiler A. The remaining allegation in paragraph 42 contains a legal conclusion that requires no response from Respondent. Respondent denies any remaining factual allegations in paragraph 42. Respondent affirmatively states that the recordkeeping requirement at Condition 7.4.9(b) does not specify that records of SO<sub>2</sub> emissions must be kept on a rolling 12-month basis. Additionally, Respondent affirmatively states that it maintained records of daily, monthly, and calendar year SO<sub>2</sub> emissions.

43. Condition 7.1.9 of CAAPP permit 98070042 provides, in relevant part, as follows:

In addition to the records required by Condition 5.6, the Permittee shall maintain records of the following items for the affected grain handling operation to demonstrate compliance with conditions 5.5.1, 7.1.5 and

pursuant to Section 39.5(7)(b) of the Act:

(a) Grain Processed (bushels/month and bushels/year)

\* \* \*

(c) PM emissions from the affected grain handling operation  
(tons/month and tons/year) with supporting calculations

**ANSWER:** The permit conditions cited in paragraph 43 speak for themselves and require no response. Respondent denies any remaining allegations in paragraph 43.

44. From at least June 18, 2012 through a date better known to Respondent, Respondent failed to maintain a record of a running 12-month total of the quantity of grain processed and the running 12-month total of PM emissions from the Facility's grain handling operations, in violation of Condition 7.1.9(a) and (d) of CAAPP permit 98070042.

**ANSWER:** Respondent admits the allegations in paragraph 44 to the extent it alleges that, from at least June 18, 2012 through a date better known to Respondent, Respondent failed to maintain a record of a running 12-month total of the quantity of grain processed and the running 12-month total of PM emissions from the Facility's grain handling operations. The remaining allegation in paragraph 44 contains a legal conclusion that requires no response from Respondent. Respondent denies any remaining factual allegations in paragraph 44. Respondent affirmatively states that the recordkeeping requirement at Condition 7.1.9(a) does not specify that the bushels/year record must be kept on a rolling 12-month basis. Respondent has maintained records on a calendar-year basis for grain processed by the grain handling operation. Additionally, Respondent affirmatively states that the recordkeeping requirement at Condition 7.1.9(d) does not specify that the PM emissions record must be kept on a rolling 12-month basis. Respondent has maintained records on a calendar-year basis for particulate matter emissions from the grain handling operation.



45. Condition 7.2.9(a) of CAAPP permit 98070042 provides as follows:

In addition to the records required by Condition 5.6, the Permittee shall maintain records of the following items for the affected material handling units to demonstrate compliance with Conditions 5.5.1, 7.2.5 and 7.2.6, pursuant to Section 39.5(7)(b) of the Act:

- (a) Condition of equipment at least once per day and key operating parameters for air pollution control equipment, at least once per day;

**ANSWER:** The permit condition cited in paragraph 45 speaks for itself and requires no response. Respondent denies any remaining allegations in paragraph 45.

46. From at least June 18, 2012 through a date better known to Respondent, Respondent failed to maintain records of the condition of equipment and the key operating parameters of air pollution control equipment at least once per day, in violation of Condition 7.2.9(a) of CAAPP permit 98070042.

**ANSWER:** Respondent admits the allegations in paragraph 46 to the extent it alleges that, from at least June 18, 2012 to a date better known to Respondent, Respondent failed to maintain records of the condition of equipment and the key operating parameters of air pollution control equipment at least once per day. The remaining allegation in paragraph 46 contains a legal conclusion that requires no response from Respondent. Respondent denies any remaining factual allegations in paragraph 46. Respondent affirmatively states that Condition 7.2.5 specifies *periodic* inspection of cyclones and filters and visual inspections of air pollution control equipment on a *regular* basis. There is no requirement for daily inspections. Respondent maintained records of the key operation parameters of air pollution control equipment for the material handling operations on a weekly basis. Respondent also maintained records of the condition of material handling equipment as maintenance activities occurred.

47. On August 7, 2014, the Illinois EPA again inspected the Facility.

**ANSWER:** Respondent admits the allegation in paragraph 47.

48. Condition 7.3.9 of CAAPP permit 98070042 provides as follows:

In addition to the records required by Condition 5.6, the Permittee shall maintain records of the following items for the affected extractor to demonstrate compliance with Conditions 5.5.1, 7.3.5 and 7.3.6, pursuant to Section 39.5(7)(b) of the Act:

- (a) The Permittee shall maintain records of the following items for the affected extractor:
  - i. The Permittee shall keep records of the monitoring activity conducted pursuant to Condition 7.3.8.
  - ii. Operating records for the affected extractor:
    - (A) Commodity(s) processed and rate (tons of commodity processed);
    - (B) Amount of extraction solvent used from inventory records (tons/month and tons/year);
    - (C) HAP content of extraction solvent with supporting documentation;
    - (D) Operating hours (hours/month); and
    - (E) Maintain an operating and maintenance log for the scrubber and the cyclone dust collectors.
  - iii. The Permittee shall measure and record the pressure drop of the cyclone dust collectors on at least a weekly basis.
  - iv. Emission records for the affected extractor:
    - (A) VOM and HAP emissions (tons/month and tons/year);  
and
    - (B) Monthly HAP Compliance ratio, with supporting calculations;
- (b) No later than April 12, 2004, the Permittee shall comply with the recordkeeping requirements specified at 40 CFR 63.2860,

whenever the extraction solvent being used contains n-hexane or other HAP.

- (c) No later than April 12, 2004,
  - i. Pursuant to 40 CFR 63.2863, the records must be in a form suitable and readily available for review in accordance with 40 CFR 63.10(b)(1).
  - ii. As specified in 40 CFR 63.10(b)(1), the Permittee shall keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.
  - iii. The Permittee shall keep each record on-site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, in accordance with 40 CFR 63.10(b)(1). The Permittee may keep the records off-site for the remaining 3 years.
- (d)
  - i. The owner or operator of sources subject to 35 IAC 215.340 and 215.342 shall maintain daily records of solvent storage inventory, and conventional and specialty soybean crush or raw com germ. Each day the total decreases in solvent storage inventory, and total conventional and specialty soybean crush or raw com germ for the previous 180 days shall be calculated [35 IAC 215.344(a)]
  - ii. The Illinois EPA shall have access to records required under this 35 IAC .344(a) upon reasonable notice [35 IAC 215.344(a)].

**ANSWER:** The permit conditions cited in paragraph 48 speak for themselves and require no response. Respondent denies any remaining allegations in paragraph 48.

49. From at least June 18, 2012 through a date better known to Respondent, Respondent did not maintain records of the items listed in Condition 7.3.9(a)(ii)(D) and (iv)(A) and (B) of CAAPP permit 98070042.

**ANSWER:** Respondent admits the allegations in paragraph 49 to the extent it alleges that, from at least June 18, 2012 through a date better known to Respondent, Respondent did not maintain records of the items listed in Condition 7.3.9(a)(ii)(D) and (iv)(B) of CAAPP permit

98070042. Respondent denies the allegation in paragraph 49 to the extent it alleges that, from at least June 18, 2012 through a date better known to Respondent, Respondent did not maintain records of the items listed in Condition 7.3.9(a)(iv)(A) of CAAPP permit 98070042.

50. From at least June 18, 2012 through at least August 7, 2014, the precise date better known to Respondent, Respondent failed to maintain records of the amount of extraction solvent used from inventory in units of tons per month in violation of Condition 7.3.9(a)(ii)(B) of CAAPP permit 98070042.

**ANSWER:** Respondent denies the allegations in paragraph 50 to the extent it alleges that, from at least June 18, 2012 through at least August 7, 2014, the precise date better known to Respondent, Respondent failed to maintain records of the amount of extraction solvent used from inventory in units of tons per month. The remaining allegation in paragraph 50 contains a legal conclusion that requires no response from Respondent. Respondent denies any remaining factual allegations in paragraph 50.

51. Condition 7.5.9 of CAAPP permit 98070042 provides as follows:

In addition to the records required by Condition 5.6, the Permittee shall maintain records of the following items for the affected grain dryers to demonstrate compliance with Conditions 5.5.1, 7.5.5 and 7.5.6, pursuant to Section 39.5(7)(b) of the Act:

- (a) Amount of fuel combusted (mmscf/month and mmscf/year); and
- (b) Emissions of NO<sub>x</sub>, PM, SO<sub>2</sub>, and VOM from the affected grain dryers, based on fuel consumption and the applicable emission factors, with supporting calculations (tons/month and tons/year).

**ANSWER:** The permit conditions cited in paragraph 51 speak for themselves and require no response. Respondent denies any remaining allegations in paragraph 51.

52. From at least June 18, 2012 through a date better known to Respondent, Respondent failed to maintain records of monthly and running 12-month totals of the amount of

fuel combusted, and emissions of NO<sub>X</sub>, PM, SO<sub>2</sub>, and VOM, from the Facility's grain dryer operations, in violation of Condition 7.5.9(a) and (b) of CAAPP permit 98070042.

**ANSWER:** Respondent admits the allegations in paragraph 52 to the extent it alleges that, from at least June 18, 2012 through a date better known to Respondent, Respondent failed to maintain records of monthly and running 12-month totals of the amount of fuel combusted, and emissions of NO<sub>X</sub>, PM, SO<sub>2</sub>, and VOM, from the Facility's grain dryer operations. The remaining allegation in paragraph 52 contains a legal conclusion that requires no response from Respondent. Respondent denies any remaining factual allegations in paragraph 52. Respondent affirmatively states that the recordkeeping requirement at Condition 7.5.9(a) does not specify that the record must be kept on a rolling 12-month basis. Respondent has maintained records on a daily and calendar-year basis for amount of fuel combusted by the grain dryers. Respondent further affirmatively states that the recordkeeping requirement at Condition 7.5.9(b) does not specify that the emission records must be kept on a rolling 12-month basis. Respondent has maintained records on a daily and calendar-year basis for emissions from the grain dryers.

53. Condition 7.6.9 of CAAPP permit 98070042 provides, in relevant part, as follows:

In addition to the records required by Condition 5.6, the Permittee shall maintain records of the following items for the affected oil refinery hotwell to demonstrate compliance with Conditions 5.5.1, 7.6.5(a) and pursuant to Section 39.5(7)(b) of the Act:

(a) Annual pour weight (tons/month);

\* \* \*

(c) VOM and HAP emissions with supporting calculations  
(tons/month and tons/year)

**ANSWER:** The permit conditions cited in paragraph 53 speak for themselves and require no response. Respondent denies any remaining allegations in paragraph 53.

54. From at least June 18, 2012 through a date better known to Respondent, Respondent failed to maintain records of the running 12-month annual pour weight and the monthly and running 12-month VOM and HAP emissions generated during oil refinery hotwell operations, in violation of Condition 7.6.9(a) and (c) of CAAPP permit 98070042.

**ANSWER:** Respondent admits the allegations in paragraph 54 to the extent it alleges that, from at least June 18, 2012 through a date better known to Respondent, Respondent failed to maintain records of the running 12-month annual pour weight and the monthly and running 12-month VOM and HAP emissions generate during oil refinery hotwell operations. The remaining allegation in paragraph 54 contains a legal conclusion that requires no response from Respondent. Respondent denies any remaining factual allegations in paragraph 54. Respondent affirmatively states that the recordkeeping requirement at Condition 7.6.9(a) does not specify that the pour weight record must be kept on a rolling 12-month basis. Respondent has maintained records on a calendar-year basis for pour weight for the oil refinery hotwell. Respondent further affirmatively states that the recordkeeping requirement at Condition 7.6.9(c) does not specify that the emissions record must be kept on a rolling 12-month basis. Respondent has maintained records on a calendar-year basis for VOM and HAP emissions from the oil refinery hotwell.

55. Condition 5.6.3(a) of CAAPP permit 98070042 provides as follows:

- (a) The Permittee shall maintain a record of the maximum aggregate annual emissions of fugitive VOM from process system flanges, seals, valves, etc. during both normal and upset modes of operation, estimated based on the applicable emission factors and formulas specified by Condition 5.9.3, with supporting calculations, so as to demonstrate compliance with the limits in Condition 5.5.

**ANSWER:** The permit condition cited in paragraph 55 speaks for itself and requires no response. Respondent denies any remaining allegations in paragraph 55.

56. From at least August 7, 2014 through a date better known to Respondent, Respondent failed to maintain a record of the maximum aggregate annual emissions of fugitive VOM from process system flanges, seals, valves, etc. in violation of Condition 5.6.3(a) of CAAPP permit 98070042.

**ANSWER:** Respondent admits the allegations in paragraph 56.

57. Condition 5.7.1 of CAAPP permit 98070042 provides as follows:

The Permittee shall promptly notify the Illinois EPA, Compliance Section, of deviations of the source with the permit requirements as follows, pursuant to Section 39.5(7)(f)(ii) of the Act. Reports shall describe the probable cause of such deviations, and any corrective actions or preventive measures taken.

**ANSWER:** The permit condition cited in paragraph 57 speaks for itself and requires no response. Respondent denies any remaining allegations in paragraph 57.

58. From at least August 7, 2014 through a date better known to Respondent, Respondent failed to notify the Illinois EPA that it was failing to maintain the records required by Conditions 5.6.3(a) and 7.3.9(a)(ii)(B) of CAAPP permit 98070042, thereby violating Condition 5.7.1 of CAAPP permit 98070042.

**ANSWER:** Paragraph 58 contains legal conclusions that require no response from Respondent. Respondent denies any remaining factual allegations in paragraph 58.

59. By violating Conditions 7.4.8(a), 5.2.6, 7.3.10(a), 7.4.9(d)(i) and (iii)(C) through (J), 7.4.9(b), 7.1.9(a) and (d), 7.2.9(a), 7.3.9(a)(ii)(B) and (D) and (iv)(A) and (B), 7.5.9(a) and 7.6.9(a) and (c), 5.6.3(a), and 5.7.1 of CAAPP permit 98070042, Respondent violated Section 39.5(6)(a) of the Act, 415 ILCS 5/39.5(6)(a) (2014).

**ANSWER:** Paragraph 59 contains legal conclusions that require no response from Respondent. Respondent denies any remaining factual allegations in paragraph 58.

WHEREFORE, Respondent, INCOBRASA INDUSTRIES, LTD., asserts that Complainant is not entitled to the relief sought by Count VI of its First Amended Complaint, and prays that Complainant take nothing by Count VI of the First Amendment Complaint, that the Board enter judgment in favor of INCOBRASA INDUSTRIES, LTD. as to COUNT VI of Complainant's First Amended Complaint, and that the Board award INCOBRASA INDUSTRIES, LTD. its costs and all other relief the Board finds just and proper.

**COUNT VII**  
**EMISSIONS IN EXCESS OF CAAPP PERMIT FEE LIMITS**

*Note: To alleviate confusion, Respondent will continue with the numbering as it is in the Complainant's First Amended Complaint. However, Respondent is aware that Allegations 21-24 are duplicated.*

1-20. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 14 and 16 through 17 of Count I, and paragraphs 29 through 32 of Count VI, as paragraphs 1 through 20 of this Count VII.

**ANSWER:** Respondent hereby incorporates by reference its responses to paragraphs 1-14 and 16-17 of Count I and paragraphs 29-32 of Count VI, as and for its responses to paragraphs 1-20 of Count VII.

21. Condition 5.5.1 of CAAPP permit 98070042 provides as follows:

Permitted Emissions for Fees

The annual emissions from the source, not considering insignificant activities as addressed by Section 3.0 of this permit, shall not exceed the following limitations. The overall source emissions shall be determined by adding emissions from all emission units. Compliance with these limits shall be determined on a calendar year basis. These limitations (Condition 5.5.1) are set for the purpose of establishing fees and are not federally enforceable.



Permitted Emissions of Regulated Pollutants

Pollutant	Tons/Year
Volatile Organic Material (VOM)	418.30
Sulfur Dioxide (SO <sub>2</sub> )	0.24
Particulate Matter (PM)	58.50
Nitrogen Oxides (NO <sub>x</sub> )	38.00
HAP, not included in VOM or PM	----
Total	515.04

**ANSWER:** The permit condition cited in paragraph 21 speaks for itself and requires no response. Respondent denies any remaining allegations in paragraph 21.

22. In 2012, the Facility emitted 522.646738 tons of VOM and 69.071217 tons of PM. In 2011, the Facility emitted 422.1 tons of VOM and 61.04 tons of PM. In 2009, the Facility emitted 428.39 tons of VOM and 77.94 tons of PM. In 2008, the Facility emitted 75.1 tons of PM. In 2007, the Facility emitted 71.9 tons of PM.

**ANSWER:** Respondent admits the allegations in paragraph 22.

23. By emitting more than 418.30 tons of VOM in 2012, 2011 and 2009, and by emitting more than 58.50 tons of PM in 2012, 2011, 2009, 2008 and 2007, Respondent violated Condition 5.5.1 of CAAPP permit 98070042.

**ANSWER:** Paragraph 23 contains legal conclusions that require no response from Respondent. Respondent denies any remaining factual allegations in paragraph 23. Respondent affirmatively states that the overall facility-wide emissions did not exceed the total allowable emissions for fee purposes in Condition 5.5.1 for the years 2009 and 2011 for VOM emissions and 2007, 2008, 2009, and 2011 for PM emissions. Therefore, the facility did not fail to pay accurate fees during those years.

24. By violating Condition 5.5.1 of CAAPP permit 98070042, Respondent violated Section 39.5(6)(a) of the Act, 415 ILCS 5/39.5(6)(a) (2014).

**ANSWER:** Paragraph 24 contains legal conclusions that require no response from Respondent. Respondent denies any remaining factual allegations in paragraph 24.

WHEREFORE, Respondent, INCOBRASA INDUSTRIES, LTD., asserts that Complainant is not entitled to the relief sought by Count VII of its First Amended Complaint, and prays that Complainant take nothing by Count VII of the First Amendment Complaint, that the Board enter judgment in favor of INCOBRASA INDUSTRIES, LTD. as to COUNT VII of Complainant's First Amended Complaint, and that the Board award INCOBRASA INDUSTRIES, LTD. its costs and all other relief the Board finds just and proper.

**COUNT VIII**  
**VIOLATING CONSTRUCTION PERMIT CONDITIONS**

*Note: To alleviate confusion, Respondent will continue with the numbering as it is in the Complainant's First Amended Complaint. However, Respondent is aware that Allegations 19-35 are duplicated.*

1-18: Plaintiff realleges and incorporates herein by reference paragraphs 1 through 14 and 16 through 17 of Count I, paragraph 18 of Count III, and paragraph 47 of Count VI, as paragraphs 1 through 18 of this Count VIII.

**ANSWER:** Respondent hereby incorporates by reference its responses to paragraphs 1-14 and 16-17 of Count I, paragraph 18 of Count III, and paragraph 47 of Count VI, as and for its responses to paragraphs 1-18 of Count VIII.

19. On July 25, 2006, the Illinois EPA issued Respondent construction permit 06050042, allowing the construction of emission sources and pollution control equipment for a new biodiesel plant at the Facility ("Biodiesel Plant"). Revised construction permit 06050042, authorizing increased vegetable oil processing, was issued to Respondent on July 21, 2011.

**ANSWER:** Respondent admits the allegations in paragraph 19.

20. On August 10, 2007, the Illinois EPA issued Respondent construction permit 07050034, authorizing the construction of a new natural gas-fired boiler ("Boiler B") at the Facility.

**ANSWER:** Respondent admits the allegations in paragraph 20.

21. Section 9(b) of the Act, 415 ILCS 5/9(b) (2014), provides as follows:

No person shall:

- (b) 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, (1) without a permit granted by the Agency unless otherwise exempt by this Act or Board regulations or (2) in violation of any conditions imposed by such permit.

**ANSWER:** The statutory section cited in paragraph 21 speaks for itself and requires no response. Respondent denies any remaining allegations in paragraph 21.

22. Section 3.115 of the Act, 415 ILCS 5/3.115 (2014), provides the following definition:

"Air pollution" is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

**ANSWER:** The statutory section cited in paragraph 22 speaks for itself and requires no response. Respondent denies any remaining allegations in paragraph 22.

23. The Biodiesel Plant emits HAP and VOM, and Boiler B emits carbon monoxide ("CO") and NO<sub>x</sub>, all of which are "contaminants," into the atmosphere.

**ANSWER:** Paragraph 23 contains legal conclusions that require no response from Respondent. Respondent denies any remaining factual allegations in paragraph 23.

24. The Biodiesel Plant and Boiler B are each equipment capable of causing or contributing to "air pollution" as that term is defined in Section 3.115 of the Act, 415 ILCS 5/3.115 (2014).

**ANSWER:** Paragraph 24 contains legal conclusions that require no response from Respondent. Respondent denies any remaining factual allegations in paragraph 24.

25. Condition 1.1.9 of construction permit 07050034 provides as follows:

The Permittee shall maintain records of the following items:

- (a) Natural gas usage for the affected boiler (ft<sup>3</sup>/month and ft<sup>3</sup>/year);
- (b) NO<sub>x</sub> and CO emissions from the affected boiler, tons month and tons/year, based on fuel consumption and the applicable emission factors, with supporting calculations.

**ANSWER:** The permit conditions cited in paragraph 25 speak for themselves and require no response. Respondent denies any remaining allegations in paragraph 25.

26. From at least June 18, 2012 through a date better known to Respondent, Respondent failed to maintain records of monthly and rolling 12-month natural gas usage and monthly and rolling 12-month emissions of NO<sub>x</sub> and CO from Boiler B, in violation of Condition 1.1.9(a) and (b) of construction permit 07050034.

**ANSWER:** Respondent admits the allegations in paragraph 26 to the extent it alleges that, from at least June 18, 2012 through a date better known to Respondent, Respondent failed to maintain records of monthly and rolling 12-month natural gas usage and monthly and rolling 12-month emissions of NO<sub>x</sub> and CO from Boiler B. The remaining allegation in paragraph 26 contains a legal conclusion that requires no response from Respondent. Respondent denies any remaining factual allegations in paragraph 26. Respondent affirmatively states that the recordkeeping requirement at Condition 1.1.9 does not specify that records of natural gas usage

and NO<sub>x</sub> and CO emissions must be kept on a rolling 12-month basis. Additionally, Respondent affirmatively states that it maintained records natural gas usage and NO<sub>x</sub> and CO emissions from Boiler B on a daily and calendar-year basis.

27. By violating Condition 1.1.9(a) and (b) of construction permit 07050034, Respondent violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2014).

**ANSWER:** Paragraph 27 contains legal conclusions that require no response from Respondent. Respondent denies any remaining factual allegations in paragraph 27.

28. Condition 2.1.8(d) of construction permit 06050042 provides as follows:

- (d) The Permittee shall maintain records of the following items:
- i. Amount of vegetable oil used (tons/month and tons/year);
  - ii. Amount of alcohol (Methanol) used (tons/month and tons/year);
  - iii. HAP content of vegetable oil (% by weight); and
  - iv. VOM and HAP emissions with supporting calculations (tons/month and tons/year).

**ANSWER:** The permit conditions cited in paragraph 28 speak for themselves and require no response. Respondent denies any remaining allegations in paragraph 28.

29. From at least June 18, 2012 through a date better known to Respondent, Respondent failed to maintain a record of vegetable oil used annually, the quantity of methanol used monthly and annually, and the HAP content of vegetable oil at the Biodiesel Plant in violation of Condition 2.1.8(d)(i) through (iii) of construction permit 06050042.

**ANSWER:** Respondent denies the allegations in paragraph 29 to the extent it alleges that, from at least June 18, 2012 through a date better known to Respondent, Respondent failed to maintain a record of vegetable oil used annually, the quantity of methanol used monthly and

annually, and the HAP content of vegetable oil at the Biodiesel Plant. The remaining allegation in Paragraph 29 contains a legal conclusion that requires no response from Respondent.

Respondent denies any remaining factual allegations in paragraph 29.

30. From at least June 18, 2012 through at least August 7, 2014, the precise date better known to Respondent, Respondent failed to maintain 12-month rolling annual records of VOM and HAP emissions from the Biodiesel Plant in violation of Condition 2.1.8(d)(iv) of construction permit 06050042.

**ANSWER:** Respondent admits the allegations in Paragraph 30 to the extent it alleges that, from at least June 18, 2012 through at least August 7, 2014, the precise date better known to Respondent, Respondent failed to maintain 12-month rolling annual records of VOM and HAP emission from the Biodiesel Plant. The remaining allegation in paragraph 30 contains a legal conclusion that requires no response from Respondent. Respondent denies any remaining factual allegations in paragraph 30. Respondent affirmatively states that the recordkeeping requirement in Condition 2.1.8(d) does not specify that emissions of VOM and HAP be maintained on a 12-month rolling basis. Additionally, Respondent affirmatively states that it maintained records of VOM and HAP emissions from the Biodiesel Plant on a monthly and calendar-year basis.

31. Condition 2.2.4(a)(vi) of construction permit 06050042 provides as follows:

The Permittee shall maintain the following records related to leaking components:

(a) The Permittee shall fulfill applicable recordkeeping requirements of the NSPS, including maintaining the following records:

\* \* \*

(vi) Records on at least an annual basis of the VOM and HAP emissions attributable to affected components, with supporting documentation and calculations.

**ANSWER:** The permit condition cited in paragraph 31 speaks for itself and requires no response. Respondent denies any remaining allegations in paragraph 31.

32. From at least August 7, 2014 through a date better known to Respondent, Respondent failed to maintain records on at least an annual basis of the VOM and HAP emissions attributable to the biodiesel plants pumps, valves, flanges and other affected components, with supporting documentation and calculations, in violation of Condition 2.2.4(a)(vi) of construction permit 06050042.

**ANSWER:** Respondent denies the allegations in paragraph 32 to the extent it alleges that, from at least August 7, 2014 through a date better known to Respondent, Respondent failed to maintain records on at least an annual basis of the VOM and HAP emission attributable to the biodiesel plants pumps, valves, flanges and other affected components, with supporting documentation and calculations. The remaining allegation in paragraph 32 states a legal conclusion that requires no response from Respondent. Respondent denies any remaining factual allegations in paragraph 32.

33. Condition 1.6(b) of construction permit 06050042 provides as follows:

- (b) If there is an exceedance of or deviation from the requirements of this permit that is not addressed by reporting required by the NSPS or NESHAP, the Permittee shall submit a report to the Illinois EPA within 30 days after the exceedance/deviation. The report shall include the emissions released in accordance with the recordkeeping requirements, a copy of the relevant records, and a description of the exceedance or deviation and efforts to reduce emissions and future occurrences.

**ANSWER:** The permit condition cited in paragraph 33 speaks for itself and requires no response. Respondent denies any remaining allegations in paragraph 33.

34. Respondent failed to submit a report to the Illinois EPA within 30 days of failing to maintain the records required by Conditions 2.1.8(d)(iv) and 2.2.4(a)(vi) of construction permit 06050042, thereby violating Condition 1.6(b) of construction permit 06050042.

**ANSWER:** Paragraph 34 contains legal conclusions that require no response from Respondent. Respondent denies any remaining factual allegations in paragraph 34.

35. By violating Conditions 2.1.8(d)(i) through (iv), 2.2.4(a)(vi), and 1.6(b) of construction permit 06050042, Respondent violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2014).

**ANSWER:** Paragraph 35 contains legal conclusions that require no response from Respondent. Respondent denies any remaining factual allegations in paragraph 35.

WHEREFORE, Respondent, INCOBRASA INDUSTRIES, LTD., asserts that Complainant is not entitled to the relief sought by Count VIII of its First Amended Complaint, and prays that Complainant take nothing by Count VIII of the First Amendment Complaint, that the Board enter judgment in favor of INCOBRASA INDUSTRIES, LTD. as to COUNT VIII of Complainant's First Amended Complaint, and that the Board award INCOBRASA INDUSTRIES, LTD. its costs and all other relief the Board finds just and proper.

#### **AFFIRMATIVE DEFENSES**

Respondent INCOBRASA INDUSTRIES, LTD. ("Respondent") by and through its attorneys, HODGE DWYER & DRIVER, for its Affirmative Defenses to Complainant's First Amended Complaint, states as follows:

**Affirmative Defense 1 (to certain allegations in Count VI).** Count VI is barred by an affirmative matter defeating the claim to the extent it alleges failure to maintain records of monthly SO<sub>2</sub> emissions from Boiler A from at least June 18, 2012 through a date better known to



Respondent. Respondent maintained records of monthly SO<sub>2</sub> emissions.

**Affirmative Defense 2 (to certain allegations in Count VI).** Count VI fails to state a cause of action to the extent it alleges failure to maintain records of rolling 12-month SO<sub>2</sub> emissions from Boiler A from at least June 18, 2012 through a date better known to Respondent. The recordkeeping requirement at Condition 7.4.9(b) does not specify that records of SO<sub>2</sub> emissions must be kept on a rolling 12-month basis. Respondent maintained records of daily, monthly, and calendar-year SO<sub>2</sub> emissions.

**Affirmative Defense 3 (to certain allegations in Count VI).** Count VI fails to state a cause of action to the extent it alleges failure to maintain a record of a running 12-month total of the quantity of grain processed from the Facility's grain handling operations from at least June 18, 2012 through a date better known to Respondent. The recordkeeping requirement at Condition 7.1.9(a) does not specify that the bushels/year record must be kept on a rolling 12-month basis. Respondent has maintained records on a calendar-year basis for grain processed by the grain handling operation.

**Affirmative Defense 4 (to certain allegations in Count VI).** Count VI fails to state a cause of action to the extent it alleges failure to maintain a record of a running 12-month total of PM emissions from the Facility's grain handling operations from at least June 18, 2012 through a date better known to Respondent. The recordkeeping requirement at Condition 7.1.9(d) does not specify that the PM emissions record must be kept on a rolling 12-month basis. The facility has maintained records on a calendar-year basis for particulate matter emissions from the grain handling operation.

**Affirmative Defense 5 (to certain allegations in Count VI).** Count VI fails to state a cause of action to the extent it alleges failure to maintain records of the condition of equipment

and the key operating parameters of air pollution control equipment as least once per day from at least June 18, 2012 through a date better known to Respondent. Condition 7.2.5 specifies *periodic* inspection of cyclones and filters and visual inspections of air pollution control equipment on a *regular* schedule. There is no requirement for daily inspections. The facility maintained records of the key operating parameters of air pollution control equipment for the material handling operations on a weekly basis. The facility maintained records of the condition of material handling equipment as maintenance activities occurred.

**Affirmative Defense 6 (to certain allegations in Count VI).** Count VI fails to state a cause of action to the extent it alleges failure to maintain records of monthly and running 12-month totals of the amount of fuel combusted from the Facility's grain dryer operations from at least June 18, 2012 through a date better known to Respondent. The recordkeeping requirement at Condition 7.5.9(a) does not specify that the record must be kept on a rolling 12-month basis. The facility has maintained records on a daily and calendar-year basis for amount of fuel combusted by the grain dryers.

**Affirmative Defense 7 (to certain allegations in Count VI).** Count VI fails to state a cause of action to the extent it alleges failure to maintain records of monthly and running 12-month totals of emissions of NO<sub>x</sub>, PM, SO<sub>2</sub>, and VOM from the Facility's grain dryer operations from at least June 18, 2012 through a date better known to Respondent. The recordkeeping requirement at Condition 7.5.9(b) does not specify that the emissions records must be kept on a rolling 12-month basis. Respondent has maintained records on a daily and calendar-year basis for emissions from the grain dryers.

**Affirmative Defense 8 (to certain allegations in Count VI).** Count VI fails to state a cause of action to the extent it alleges failure to maintain records of the running 12-month annual

pour weight generated during oil refinery hotwell operations from at least June 18, 2012 through a date better known to Respondent. The recordkeeping requirement at Condition 7.6.9(a) does not specify that the pour weight record must be kept on a rolling 12-month basis. The facility has maintained records on a calendar-year basis for pour weight for the oil refinery hotwell.

**Affirmative Defense 9 (to certain allegations in Count VI).** Count VI fails to state a cause of action to the extent it alleges failure to maintain records of the monthly and running 12-month VOM and HAP emissions generated during oil refinery hotwell operations from at least June 18, 2012 through a date better known to Respondent. The recordkeeping requirement at Condition 7.6.9(c) does not specify that the emissions record must be kept on a rolling 12-month basis. The facility has maintained records on a calendar-year basis for VOM and HAP emissions from the oil refinery hotwell.

**Affirmative Defense 10 (to certain allegations in VII).** Count VII is barred by an affirmative matter defeating the claim to the extent it alleges that Respondent violated Condition 5.5.1 of CAAPP Permit 98070042 during the years 2009 and 2011 for VOM emissions and 2007, 2008, 2009, and 2011 for PM emissions. While there were slight exceedances of facility-wide PM and VOM emissions in the years cited above, overall facility-wide emissions did not exceed the total allowable emissions for fee purposes in Condition 5.5.1, as shown below:

	<u>Emissions (Tons/year)</u>	<u>Limit (Tons/year)</u>
2007	495.05	515.04
2008	419.38	515.04
2009	510.79	515.04
2011	496.57	515.04

Therefore, the facility did not fail to pay accurate fees during those years.

**Affirmative Defense 11 (to certain allegations in Count VIII).** Count VIII fails to state a cause of action to the extent it alleges failure to maintain records of rolling 12-month

natural gas usage from Boiler B from at least June 18, 2012 through a date better known to Respondent. The recordkeeping requirement at Condition 1.1.9 does not specify that records of natural gas usage be kept on a rolling 12-month basis. Respondent maintained records of natural gas usage from Boiler B on a calendar-year basis.

**Affirmative Defense 12 (to certain allegations in Count VIII).** Count VIII fails to state a cause of action to the extent it alleges failure to maintain records of rolling 12-month NO<sub>x</sub> and CO emissions from Boiler B from at least June 18, 2012 through a date better known to Respondent. The recordkeeping requirement at Condition 1.1.9 does not specify that records of NO<sub>x</sub> and CO emissions be kept on a rolling 12-month basis. Respondent maintained records of NO<sub>x</sub> and CO emissions from Boiler B on a calendar-year basis.

**Affirmative Defense 13 (to certain allegations in Count VIII).** Count VIII fails to state a cause of action to the extent it alleges failure to maintain 12-month rolling annual records of VOM and HAP emissions from the Biodiesel Plant from at least June 18, 2012 through at least August 7, 2014. The recordkeeping requirement at Condition 2.1.8 does not specify that records of VOM and HAP emissions be maintained on a 12-month rolling basis. Respondent maintained records of VOM and HAP emissions from the Biodiesel Plant on a monthly and calendar-year basis.

Respondent reserves the right to amend this answer to allege any additional defenses which discovery may reveal to be appropriate.

Respectfully Submitted,

INCOBRASA INDUSTRIES, LTD.,  
Respondent,

By: /s/ N. LaDonna Driver  
N. LaDonna Driver

Dated: December 8, 2015

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