

**IN THE CIRCUIT COURT FOR THE FIFTH JUDICIAL CIRCUIT
VERMILION COUNTY, STATE OF ILLINOIS**

PEOPLE OF THE STATE OF ILLINOIS)	
<i>ex rel.</i> KWAME RAOUL, Attorney General)	
of the State of Illinois,)	
)	
Plaintiff,)	
)	
v.)	No. 22-CH-11
)	
BRAINERD CHEMICAL MIDWEST LLC,)	
an Oklahoma limited liability company,)	
)	
Defendant.)	

AGREED INTERIM ORDER

Under Sections 42(e) and 43(a) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/42(e) and 43(a) (2020), by motion of the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* KWAME RAOUL, Attorney General of the State of Illinois, and the Illinois Environmental Protection Agency (collectively referred to as “Plaintiff”), and Defendant BRAINERD CHEMICAL MIDWEST LLC, (“Defendant”), the following Agreed Interim Order is submitted to the Court for approval.

I. STATEMENT OF FACTS AND ALLEGATIONS

1. Plaintiff alleges, in its Verified Complaint for Injunctive Relief and Civil Penalties (“Verified Complaint”) filed in this matter and incorporated by reference herein, that a danger to public health and the environment was created as a result of Defendant causing or allowing emissions of hydrogen fluoride.

2. Defendant operates a commercial chemical distribution facility located at 209 Brewer Road, Danville, Vermilion County, Illinois (“Facility”). The Facility is located between Brewer Road to the west, and a rail line to the east.

3. The Facility handles various chemicals, including hydrofluoric acid, in a commercial setting. Defendant operates the Facility as a batch facility, primarily blending hydrofluoric acid and repackaging it for use elsewhere.

4. Hydrofluoric acid is formed when hydrogen fluoride (“HF”) is dissolved in water. The National Institute for Occupational Safety and Health states that HF is a colorless fuming liquid below 67 degrees Fahrenheit, or a colorless gas. When HF is combined with water, it is known as hydrofluoric acid. Hydrofluoric acid that is more than 40 percent HF fumes in air. *See* https://www.cdc.gov/niosh/ershdb/emergencyresponsecard_29750030.html.

5. On July 12 and 13, 2022, Illinois EPA received complaints from three residents (“Residents”) living near the Facility on Brewer Road. Brewer Road is lined mostly by residential properties that lie directly to the west and southwest of the Facility.

6. The Residents advised Illinois EPA that, on Friday, July 8, 2022, all vegetation in their yards had appeared normal, but, on the next day, Saturday, July 9, 2022, a number of plant species and turf grass in their yards had turned brown and appeared dead.

7. On July 15, 2022, Illinois EPA inspected the Facility.

8. On July 15, 2022, Illinois EPA observed damaged and dead vegetation, particularly trees, for approximately a quarter mile south of the Facility’s entrance on Brewer Road.

9. During the July 15, 2022 inspection, Illinois EPA observed the building where the Facility’s HF storage tanks and liquid fill station are installed (the “hydrofluoric acid building”). The hydrofluoric acid building is located in the southwest corner of the Facility, about 500 feet

from Brewer Road.

10. Plaintiff alleges that during the July 15, 2022 inspection, Illinois EPA observed that the hydrofluoric acid building was damaged, with several holes in its metal walls, potentially allowing fugitive HF emissions to escape directly to the atmosphere.

11. Plaintiff alleges that during the July 15, 2022 inspection, upon entering the hydrofluoric acid building, Illinois EPA detected an irritating acid odor that caused coughing.

12. Plaintiff further alleges that during the July 15, 2022 inspection, there was a visible plume of emissions from the packed wet scrubber that controls HF emissions from the HF storage tanks and liquid fill station, drifting in the direction of the Residents' homes on Brewer Road.

13. On July 15, 2022, upon the request of Illinois EPA, Defendant shut down HF operations at the Facility.

14. On July 22, 2022, Plaintiff conveyed a list of information requests to Defendant, attached hereto as Exhibit A.

15. Plaintiff alleges that the discharge and threatened discharge of HF into the atmosphere constitutes a substantial danger to the environment and to the public health and welfare of residents in the area surrounding the Facility.

The Parties have met and mutually agree to the following. IT IS HEREBY ORDERED THAT the Court enters the following Agreed Interim Order directed to Defendant, which shall remain in full force and effect until further order by this Court.

II. GENERAL PROVISIONS

16. This Agreed Interim Order shall apply to and bind the Parties.

17. This Agreed Interim Order is not a final resolution on the merits of Plaintiff's Verified Complaint, nor is it an admission of liability, but rather addresses Plaintiff's immediate

concerns alleged in the Verified Complaint.

18. By entering into this Agreed Interim Order and complying with its terms, Defendant does not admit any wrongful conduct or violation of any applicable statute, law, or regulations, and this Agreed Interim Order and compliance therewith shall not be interpreted as any such admission.

19. This Court shall retain jurisdiction of this matter for the purpose of interpreting the terms and conditions of this Agreed Interim Order.

**III. IMMEDIATE COMPLIANCE MEASURES BY
BRainerd CHEMICAL MIDWEST**

20. Upon entry of this Agreed Interim Order, Defendant, Brainerd Chemical Midwest LLC, shall take the following actions:

- A. Immediately upon entry of this Agreed Interim Order, and continuing until either (i) Plaintiff's written approval of a request to restart HF operations pursuant to Paragraph 20.C.vi, below, or (ii) further order of the Court, cease receiving, shipping, and blending HF at the Facility (the parties agree that other operations at the Facility may continue in full force and effect) except as provided in in Paragraph 20.B;
- B. Within seven (7) days of entry of this Agreed Interim Order, submit to Plaintiff, for its review and approval, a written plan for removal of any HF product remaining in the Facility's HF storage tanks and shipment to a facility permitted to accept it, including measures to ensure that excess HF emissions do not occur during product removal and a proposed timeframe for completion and, upon Plaintiff's approval, implement the plan as approved;
- C. Retain a third party contractor to:
 - i. Within seven (7) days of entry of this Agreed Interim Order, suggest actions necessary to address any impacts to human health and the environment from the effects of HF that has been emitted from the Facility, including as necessary to address any health-related concerns of any persons exposed to HF emissions from the Facility, and provide the results to Plaintiff for review;

- ii. Within fourteen (14) days of entry of this Agreed Interim Order, identify and assess the viability of interim measures such as the installation of a nitrogen blanket in the HF storage tanks to prevent further emissions of HF and provide the results to Plaintiff for review;
 - iii. Within thirty (30) days of entry of this Agreed Interim Order, conduct an assessment of the integrity and effectiveness of the packed wet scrubber controlling the tanks and liquid fill station, including an assessment of scrubber chemistry and the use of water as the sole scrubbant, and provide the results to Plaintiff for review;
 - iv. Within sixty (60) days after all HF product remaining in Defendant's tanks has been shipped offsite, conduct a tank integrity assessment and provide the results to Plaintiff for review;
 - v. Within thirty (30) days of completion and submission of above items i. through iv., submit for Plaintiff's review and approval a corrective action plan, to address any defects and deficiencies in the tanks and packed wet scrubber. The corrective action plan shall contain any Facility modifications and/or procedures needed to prevent the occurrence of similar events and releases in the future, including but not limited to (a) an enhanced monitoring plan, (b) an inspection and maintenance plan, (c) recordkeeping requirements associated with monitoring, inspection, and maintenance, and (d) a plan for emissions testing upon restart of HF operations, as well as timelines for completion of corrective action. Upon Plaintiff's approval of the corrective action plan, Defendant shall implement the plan as approved.
 - vi. Upon Defendant's implementation of an approved corrective action plan, Defendant may submit to Plaintiff for its review and approval a written request to restart HF operations at the Facility, including documentation that any modifications or procedural changes required by the corrective action plan have been implemented, and that Defendant is in compliance with construction permit no. 20100022 and state operating permit no. 72100740. Upon receipt of Plaintiff's written approval, Defendant may resume receiving, shipping, and blending HF at the Facility. After restarting operations, Defendant shall implement the plan for emissions testing contained within the approved corrective action plan.
- D. Within thirty (30) days of the entry of this Agreed Interim Order, submit to Plaintiff records of periodic maintenance and repair to the packed wet scrubber for calendar years 2021 and 2022;

- E. Within thirty (30) days of the entry of this Agreed Interim Order, submit to Plaintiff records of HF throughput (gallons/month and gallons/year) for calendar years 2021 and 2022;
- F. Within thirty (30) days of the entry of this Agreed Interim Order, submit to Plaintiff records of HF emissions (tons/month and tons/year) for calendar years 2021 and 2022, with supporting calculations;
- G. Within thirty (30) days of the entry of this Agreed Interim Order, submit to Plaintiff calculations of the emission of hazardous air pollutants (“HAPs”) and organic material for the shipment of HF on July 8, 2022 and July 15, 2022;
- H. Within thirty (30) days of the entry of this Agreed Interim Order, submit to Plaintiff responses to all other information requests identified in Exhibit A not otherwise referenced in this Agreed Interim Order;
- I. Prepare and maintain all records required by construction permit no. 20100022 and state operating permit no. 72100740; and
- J. Timely submit all future deviation reports to Plaintiff.

21. Beginning fourteen (14) days after entry of this Agreed Interim Order, and every fourteen (14) days thereafter, Defendant shall submit to Plaintiff a progress report detailing all actions taken pursuant to this Agreed Interim Order during the previous fourteen (14) days, and summarizing the work to be undertaken over the next fourteen (14) days.

22. If Plaintiff disapproves of any document submitted pursuant to Paragraph 20 for its review and approval, then Defendant shall, within seven (7) days of receiving written notice of disapproval, or such other time as Plaintiff agrees in writing, submit to Plaintiff for review and approval a revised document that corrects all deficiencies identified by Plaintiff in its disapproval letter. This process shall continue until Plaintiff approves the document or any party invokes the Dispute Resolution procedure in Section VII of this Order.

IV. NOTICES

23. All submittals and correspondence relating the requirements of this Agreed Interim

Order shall be directed to the following persons:

FOR PLAINTIFF

Raymond Callery
Kevin Barnai
Assistant Attorneys General
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706
raymond.callery@ilag.gov
kevin.barnai@ilag.gov
(217) 782-9031
(by electronic mail)

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Assistant Counsel, Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
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(by electronic mail and one hard copy)

FOR BRAINERD CHEMICAL

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V. RIGHT OF ENTRY; SITE ACCESS

24. In addition to any other authority, Defendant, its respective employees and representatives, grant the Illinois EPA and the Attorney General and their respective employees and agents the right of entry onto all portions of the Facility to which Defendant has a right of access during hours of operation, and with notice, after hours of operation, for purposes of conducting inspections or evaluating compliance status. In conducting such inspections, Illinois

EPA, its employees, agents and representatives, and the Attorney General, his employees, agents and representatives, may take photographs, samples and collect information with the landowner’s permission and as they deem necessary. Any Illinois EPA or Attorney General employees and representatives who enter the Facility shall undergo any training required and/or comply with any and all safety protocols, Health and Safety Plans, or other applicable requirements.

VI. STIPULATED PENALTIES

25. If Defendant fails to comply with any of the requirements of this Agreed Interim Order without an agreed modification pursuant to Section IX, Defendant shall pay to Plaintiff the following stipulated penalties for each violation from the date the violation occurred until such time as compliance is achieved:

<u>Period of Noncompliance</u>	<u>Stipulated Penalty</u>
1st to 30th Calendar Days	\$1,250.00/day per violation
31st to 60th Calendar Days	\$1,500.00/day per violation
After 60th Calendar Day	\$1,750.00/day per violation

26. If written notice of any violation of this Agreed Interim Order is given, it shall be served upon Defendant via certified or overnight U.S. Mail, to the persons identified in Section IV (Notices) of this Agreed Interim Order.

27. All penalties owed shall be payable within thirty (30) calendar days after written notice of the violation is given to Defendant. Payment shall be made by certified check payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund (“EPTF”) and delivered to:

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

The case name and number shall appear on the face of the check. A copy of the certified check and any transmittal letter shall be sent to:

Raymond Callery
Kevin Barnai
Assistant Attorneys General
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706
raymond.callery@ilag.gov
kevin.barnai@ilag.gov
(217) 782-9031

28. Stipulated penalties shall be in addition to, and not a substitute for, any other remedy or sanction available to Plaintiff.

VII. DISPUTE RESOLUTION

29. The parties shall use their best efforts to resolve any and all disputes or differences of opinion arising with regard to this Agreed Interim Order, informally and in good faith. If, however, a dispute arises concerning this Agreed Interim Order that the parties are unable to resolve informally either party may, by written motion, request that an evidentiary hearing be held before the Circuit Court for the Fifth Judicial Circuit, Vermilion County, Illinois, to resolve the dispute between the parties. The Court shall not draw inferences nor establish any presumptions adverse to any party as a result of the parties' inability to reach agreement on disputed issues.

VIII. FORCE MAJEURE

30. For the purpose of this Agreed Interim Order, *force majeure* is an event arising beyond the reasonable control of Defendant which prevents the timely performance of any of the requirements of this Agreed Interim Order. For purposes of this Agreed Interim Order, *force majeure* shall include, but is not limited to, events such as floods, fires, tornadoes, other natural

disasters, pandemics, orders from governmental authorities, supply chain delays and disruptions, delays by contractors and labor disputes, so long as such events are beyond the reasonable control of Defendant.

31. When, in the opinion of Defendant, circumstances have occurred that cause or may cause a delay in the performance of any of the requirements of this Agreed Interim Order, Defendant shall notify the Attorney General's Office and the Illinois EPA in writing as soon as practicable, but oral notice shall be given to the Attorney General's Office and the Illinois EPA within 48 hours of the occurrence and written notice shall be given to the Attorney General's Office and the Illinois EPA no later than ten (10) calendar days after the claimed occurrence. Failure to so notify the Attorney General's Office and the Illinois EPA shall constitute a waiver of any defense under this Section of this Agreed Interim Order arising from said circumstances. Defendant shall provide a detailed written description of the precise cause or causes of the claimed occurrence which resulted or will result in the delay, the nature of the delay and its expected duration, the measures taken or to be taken to prevent or mitigate the delay and the timetable under which such measures will be taken. Defendant shall adopt all reasonable measures to avoid or minimize such delay.

32. If the parties agree that the delay has been or will be caused by circumstances beyond the control of Defendant, the time for performance may be extended for a period equal to the length of the delay as determined by the parties, and no stipulated penalties shall accrue during the extended time for performance.

33. In the event that the parties cannot agree that a *force majeure* event has occurred or the extent thereof, the dispute shall be resolved in accordance with Section VII of this Agreed Interim Order. Provided however, that the invocation of the Dispute Resolution provisions of

Section VII of this Agreed Interim Order is not in and of itself a *force majeure* event. Defendant shall have the burden of proving *force majeure* by a preponderance of the evidence as a defense to compliance with this Agreed Interim Order. Should the Court find that a *force majeure* event has occurred, the time for performance shall be extended for a period equal to the length of the delay as determined by the Court, and no stipulated penalties shall accrue during the extended time for performance.

34. An increase in costs associated with implementing any requirement of this Agreed Interim Order shall not, by itself, excuse Defendant under the provisions of this Section of the Agreed Interim Order from a failure to comply with such a requirement.

IX. MODIFICATION OF ORDER

35. The parties to this Agreed Interim Order may, by mutual written consent, extend any compliance date or modify the terms of any work plan or obligation without leave of Court. A request for modification shall be in writing and be submitted to the designated representative(s) of the parties to the Agreed Interim Order indicated in Section IV (Notices). Each such agreed modification shall be in writing and signed by an authorized representative of each party, which shall then be deemed incorporated by reference to this Agreed Interim Order.

X. RESERVATION OF RIGHTS

36. Nothing contained herein shall be deemed a finding of fact or adjudication by this Court of any of the facts or claims contained in the Verified Complaint. Plaintiff reserves the right to seek additional technical relief and civil penalties in this matter and Defendant reserves all defenses to all claims asserted by Plaintiff. Nothing herein shall be construed as an admission or waiver of any legal argument or defense to liability for any claims asserted in the Complaint.

XI. STATUS CONFERENCE WITH THE COURT

37. This matter is set for a status conference on September 7, 2022, at 11:00 a.m., without further notice.

XII. SIGNATURE

38. This Agreed Interim Order may be signed in counterparts, all of which shall be considered one agreement.

WHEREFORE the parties, by their representatives, enter into this Agreed Interim Order and submit it to the Court that it may be approved and entered.

AGREED:

FOR THE PLAINTIFF:

PEOPLE OF THE STATE OF ILLINOIS
ex rel. KWAME RAOUL
Attorney General of the
State of Illinois

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

BY: Andrew Armstrong
ANDREW ARMSTRONG, Chief
Assistant Attorney General
Environmental Bureau

DATE: 08/19/2022

FOR THE DEFENDANT:

BRAINERD CHEMICAL MIDWEST LLC

BY: Neil Moran
Its: Chief operating officer

DATE: 8-18-2022

ENTERED:

Ng & H
JUDGE
DATE: 8/23/2022

Information Being Requested by Illinois EPA:

1. Last 12 months of records for the periodic inspections of the packed wet scrubber.
2. Last 12 months of records for prompt repairs of defects.
3. Last 12 months of records of water/scrubbant changes.
4. Last 12 months of emissions records.
5. Last 12 months of records of chemicals received.
6. Design specifications of scrubber.
Indicated efficacy of scrubber for control of HF and the operating parameters; It is expected that operating parameters will include parameters such as differential pressure, fan capacity, flow rates, composition of scrubber solution, and change-out of scrubber solution.
7. HF saturation range suggested by the manufacturer.
8. Last 12 months of records for wash downs performed on scrubber.
9. If the individuals who perform wash downs or maintenance are trained, the type of training.
10. Description of procedures and actions taken when performing wash down of scrubber.
11. The number of loading/unloading systems.
12. A list of chemicals received by rail and their MSDS.
13. List of chemicals stored in tanks #51—58 and their MSDS
14. List of any emission units/tanks not included in the operating permit.
15. List of emission units/tanks remaining on site from Honeywell with details of what is being stored in each tank with MSDS.
16. Records of HF throughput (gallons/month and gallons/year) for calendar years 2021 and 2022.
17. Calculations of the emission of HAPs and organic material for the shipment of HF on July 8, 2022.
18. A written description of the current HF/packed wet scrubber.
19. EPA materials provided by the packed wet scrubber manufacturer as referenced during the July 20, 2022, teleconference if different/additional than otherwise requested herein or provided in response.
20. Manufacturer specifications of the HF tanks.
21. A current, complete and accurate HF process flow diagram (loading, storage, blending, repackaging) depicting the current HF process, including the draining of the scrubber

- solution into the temporary tote and pumping of the scrubber solution from the temporary tote to the HF tanks. In addition, include a written description of the HF process at the facility. Include how HF is received – by truck, rail, loaded/unloaded, where it is stored, how it is processed. Include scrubber stack height.
22. Specifications for the temporary tote used to pump scrubber water from the packed wet scrubber to the HF tanks. Include a diagram of the temporary tote.
 23. EPA specifications for the two, new tanks on site at the facility. Include design and capacities.
 24. A current, complete and accurate overall site diagram layout identifying property boundaries, all emission units, controls, equipment, buildings, processes/operations/systems etc. and including labeling of units, controls, stack, processes/operations/systems.
 25. The “historical documents” referenced during the July 20, 2022, teleconference.
 26. Current process flow diagrams for each operation/process, other than the HF process, at the facility, and a written description of these other operations/processes at the facility. Identify each chemical received/used/stored for each operation/process and where it is stored/processed.
 27. The current Risk Management Plan for the facility.
 28. Record of delivery of HF on Friday, July 15, 2022.