

ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)
ILLINOIS,)
Complainant,)
)
v.)
)
APOLLO PLASTICS)
CORPORATION, an Indiana)
corporation, Respondent.)
)

PCB 09-108
(Enforcement – Air)

NOTICE OF FILING

RESPONDENT'S VERIFIED MOTION FOR STAY OF PROCEEDINGS

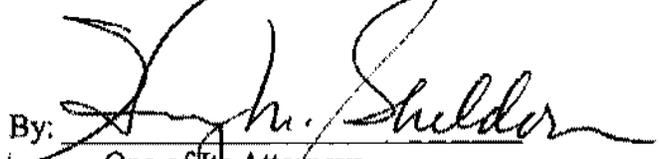
TO: See attached service list.

PLEASE TAKE NOTICE that on September 8, 2010, I filed with the Illinois Pollution Control Board an original and nine (9) copies of the Respondent's Verified Motion for Stay of Proceedings in the above-referenced matter on behalf of Apollo Plastics Corporation, a copy of which is hereby served upon you.

DATED: September 8, 2010

Respectfully submitted,

APOLLO PLASTICS CORPORATION

By: 
One of Its Attorneys

Harvey M. Sheldon, Esq.
Hinshaw & Culbertson LLP
222 North LaSalle Street
Suite 300
Chicago, IL 60601
(312) 704-3504
E-mail: hsheldon@hinshawlaw.com

ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)
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RESPONDENT'S VERIFIED MOTION FOR STAY OF PROCEEDINGS

Respondent Apollo Plastics Corporation (Apollo), by its attorneys, hereby moves the Pollution Control Board for a Stay of Proceedings, pursuant to Illinois Pollution Control Board Rule 101.514 (35 IAC §101.514).

In support of this Motion for Stay, Respondent respectfully submits:

1. This is an enforcement proceeding in which the Complainant alleges a number of past violations of the rules governing air pollution and permitting of facilities respecting emissions of VOM.
2. Apollo is a small, family owned business that was newly formed in December 2000 to buy the operating assets of a similar business being sold by owners unrelated to Apollo's ownership. Apollo began operating the assets at a plastic parts coating plant on North Elston Avenue in Chicago in January 2001. Apollo was given representations and warranties (since expired) by the selling company, and was told that no air permits from Illinois EPA were required. The company was shown a 1991 Illinois EPA letter to the seller so stating. At a subsequent Illinois EPA inspection a similar statement was made by the inspector from Illinois EPA. Both the inspector and the seller led Apollo to believe its operations, which historically used less than 5000 gallons a year of VOM containing coatings, were exempt from permitting under the law and regulations due to this low coating volume. Exhibit A is a copy of Illinois EPA 1991 letter

and the inspection report from 2002 stating that the company is in compliance and that permits are not needed.

3. Apollo later experienced a rise in business, in 2004, when some competitors went out of business. Apollo, on realizing it could not take in all the potential new business without expanding operations and exceeding a 5000 gallon annual usage rate, engaged engineers and voluntarily invested in sophisticated pollution control devices at a cost of over \$500,000. The new control equipment was installed and is fully operational.
4. As part of this new controls installation process Apollo applied to Illinois EPA for a construction permit and a FESOP (synthetic minor federally enforceable operating permit). The Construction Permit was granted. Apparently on account of the disclosures in the permit application to the Agency, Apollo received a Violation Notice in June of 2007. The Notice asserted, *inter alia*, that Apollo's potential to emit makes it a major source and that it should have had permits earlier. . The Agency's delay but eventual grant of a FESOP permit is documented in Illinois PCB Proceedings 09-036 and 09-044. Exhibit B is a copy of the first page of the FESOP operating permit.
5. Discussions with the Agency in 2007 led to resolution of all operational and compliance related issues, including payment of an administrative penalty of \$9220.05 for excess emissions during the ERMS seasons of 2005 through 2007. However the Agency continues to demand a very substantial additional penalty from Apollo.
6. Apollo's parts coating business in recent years has become highly concentrated and it is very heavily dependent on the automobile industry in the United States. Apollo principally coats dashboard and other control parts for new automobiles. Given the steep recession that began with the housing "bubble" collapse of the economy in late 2007, the 2008 financial crisis, and the persistence of the very weak economy of the last couple of years, Apollo's business has suffered very materially, and it cannot absorb a high penalty of the sort the Agency has insisted upon.

7. Apollo and the Illinois EPA have been engaged in serious negotiations of a settlement of this matter. As part of these negotiations, Apollo has indicated that it is in serious financial difficulty. The Illinois EPA agreed to review the financial condition of the company. Apollo has submitted a great deal of financial data to Illinois EPA.
8. The Agency has an established procedure for evaluation of economic hardship. Respondent has at all times been cooperative and compliant with that procedure. Respondent timely furnished its tax returns and financial data when requested.
9. Apollo submitted copies of tax returns of the company on October 7, 2009 in response to the Agency's request for same. The Agency asked for supplemented tax information and verification as well as cash flow information, and on October 22, 2009 Apollo submitted what it believed was needed to respond to the Agency's request. Again on November 20, 2009 and then on December 2, 2009 Apollo supplied additional information responsive to Agency requests..
10. A meeting was arranged with the Agency's financial analyst and the Agency for the purpose of clarifying any and all issues. At the meeting May 25, 2010 in Springfield, Respondent's accountant answered questions and furnished a comprehensive multi-page financial analysis to the Agency. The accountant's analysis shows a very weak company.
11. The financial hardship analyst for the Agency is reportedly an academic and acting in the capacity of a contractor available to Illinois EPA on a limited basis through the State's Central Management Services agency. This reviewer has not completed his analysis, and the Agency does not apparently have the capability to mandate that this be done timely.
12. The Attorney General's office has determined that it wishes the case to proceed to active enforcement, because they do not know when the analyst will complete his work. This is not Apollo's fault. The concept of "inability to pay" is a long-standing policy concern not only for settlement, but for final decisions of adjudicating bodies such as this Board. It is an expressed factor of concern under the Illinois Environmental Protection Act. If the delay is due to increased

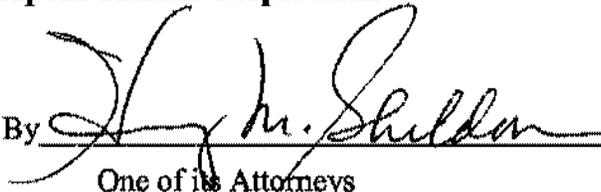
workloads and the use of furloughs and other means for the state to keep its costs down (as well may be the case here), is it not the height of irony, indifference to present economic realities, and poor judgment for the State to insist a respondent suffer the consequences of the State's economic troubles?

13. The expense of the mounting of a defense is significant and it would further imperil Apollo's economic capacity to function as a going business. Moreover, a requirement that Apollo pay a penalty as substantial as is being demanded would create a situation that a Lender could deem a default under Apollo's present financing arrangements.
14. Apollo will be unfairly prejudiced legally and financially if its financial hardship situation is not honored by the Complainant.

For the reasons above stated, as verified by the chief financial officer of Respondent on the attached Verification, this Board should grant a Stay of these proceedings until such time as the Agency's analysis of the Respondent's financial condition is completed, and the parties have had a reasonable opportunity to further negotiate a resolution by mutual agreement.

Respectfully submitted,

Apollo Plastics Corporation

By 
One of its Attorneys

September 8, 2010



PLANT 1A
CORPORATION
A-2007-00102

M.A.M.



Illinois Environmental Protection Agency • P. O. Box 19276, Springfield, IL 62794-9276

217/782-2113

PERMIT NOT REQUIRED

CERTIFIED MAIL
P 681 207 212

September 12, 1991

Apollo Plastics
Attn: Robert S. Derenski
5333 N. Elston Avenue
Chicago, IL 60630

<u>Application No.:</u>	91070008
<u>I.D. No.:</u>	031600FHK
<u>Applicant's Designation:</u>	PLANT 1
<u>Received:</u>	June 28, 1991
<u>Construction/Operation of:</u>	Spray Painting & Screen Printing
<u>Location:</u>	5333 N. Elston Avenue, Chicago

A review of the permit application referenced above for Operation of 3 automatic spray guns and 5 screen printing presses indicates that this project does not require a permit pursuant to 35 Ill. Adm. Code 201.145(g) and (m). A permit will be required if the painting operation uses in excess of 5000 gallons of paint (including thinner) per year or if the printing operation uses in excess of 750 gallons of organic solvents per year. This determination is based upon the information submitted to the Agency at this time.

If you have any questions or need any assistance regarding this matter, please contact Raymond Pilapil at 217/782-2113.

Donald E. Sutton
Donald E. Sutton, P.E.
Manager, Permit Section,
Division of Air Pollution Control

DES:REP:mxd/563M/sp/5
KEY
cc: Region 1

EXHIBIT
A (p. 2)
ALL-STATE LEGAL

PERMIT TO
CORPORATION
E A-2007-00102

file

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

9511 WEST HARRISON STREET, DES PLAINES, ILLINOIS 60016

RENEE CIPRIANO, DIRECTOR

TIER II INSPECTION

Date:	February 20, 2002	Date of Inspection:	January 18, 2002
To:	Ed Bakowski	Last Inspection Date:	None
From:	Nick Relwani, P.E.	ID#:	031 600 FMK
Source:	Apollo Plastics	R/D: 1/	12
Address:	5333 North Elston Avenue	SIC#:	3089
City/Zip:	Chicago, IL 60630-1667		
Contact/Title:	Larry Polleck, Purchase	Tel No.:	773/282-9222
Purpose of Inspection: Workplan 2002 - Rubber/Plastic			

DESCRIPTION

Source uses plastic pellets and makes plastic parts for automotive dashboard buttons, etc. Source has 21 injection molding machines and one printer.

FINDINGS

This source was inspected on 01/18/02 and Mr. Larry Polleck, Purchasing Manager provided plant tour and necessary information. The records of paint and thinner usage for the Year 2001 were reviewed and found to be less than 5000 gal per year and thus this source does not need IEPA permit.

The source is in compliance. No odors were detected on or off site.

NR/11 *Bakowski* 1/20/02
Apollo Plastics 031 600 FMK.12

cc: Ed Bakowski/Central File/BOA
BOA DesPlaines Regional File

TOL/Rev. 12/17/01

GEORGE H. RYAN, GOVERNOR

THIS DOCUMENT CONTAINS WITHHELD INFORMATION

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19506, SPRINGFIELD, ILLINOIS 62794-9506 - (217) 782-2113

ROD R. BLAGOJEVICH, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

217/782-2113

RECEIVED

FEDERALLY ENFORCEABLE STATE OPERATING PERMIT

APR 13 2009

PERMITTEE

APOLLO PLASTICS

Apollo Plastics
Attn: Larry Polleck
5333 North Elston Avenue
Chicago, Illinois 60630

Application No.: 06090078

I.D. No.: 031600FMK

Applicant's Designation:

Date Received: September 29, 2006

Subject: Coating of molded plastic parts for interior automotive use.

Date Issued: April 7, 2009

Expiration Date: April 7, 2014

Location: 5333 North Elston Avenue, Chicago, Cook County, 60630

This permit is hereby granted to the above-designated Permittee to OPERATE emission source(s) and/or air pollution control equipment consisting of:

- Three (3) Coating lines (Large C.O.E. Line (Line #1), Small C.O.E. Line (Line #2), and Robotic Line (Line #3)) and Recip Booth Controlled by a Regenerative Thermal Oxidizer (RTO);
- Twelve (12) Pad Printers (PP-1 - PP-12);
- Twenty-Six (26) Injection Molding Machines (IM-1 - IM-26); and
- Parts Washer

pursuant to the above-referenced application. This permit is subject to standard conditions attached hereto and the following special condition(s):

- 1a. This federally enforceable state operating permit is issued:
 - i. To limit the emissions of air pollutants from the source to less than major source thresholds (i.e., 100 tons/year for Volatile Organic Material (VOM), and 10 tons/year for any single Hazardous Air Pollutant (HAP) and 25 tons/year for any combination of such HAPs). As a result, the source is excluded from the requirement to obtain a Clean Air Act Permit Program (CAAPP) permit. The maximum emissions of this source, as limited by the conditions of this permit are described in Attachment A.
 - ii. To establish federally enforceable production and operating limitations, which restrict the potential to emit to less than 10 tons/year for any individual Hazardous Air Pollutant (HAP), and 25 tons/year of any combination of such HAPs so that the source is not subject to the requirements of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Coating of Plastic Parts and Products, 40 CFR 63 Subpart PPPP.

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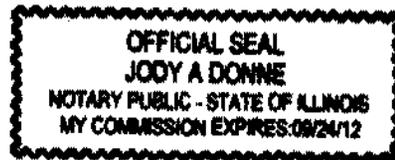
VERIFICATION OF RESPONDENT'S MOTION FOR STAY

The undersigned, Donald A. Lucas, upon oath, states that he is chief financial officer and a shareholder of Apollo Plastics Corporation, the Respondent in the above case, that he is familiar with the history of this case and with the operations and financial condition of Respondent, that he has participated in the negotiations for settlement of this matter, that he has read the Respondent's Verified Motion for Stay of Proceedings, and that of his personal knowledge and belief the facts stated and economic conditions described therein are true.

Donald A. Lucas
Donald A. Lucas
Chief Financial Officer

Signed and sworn to upon oath before me
by Donald A. Lucas, a person known to me;
In Witness Whereof, as a Notary Public
in good standing for the State of Illinois
County of Cook, I have set my hand and seal,
this 8th day of September, 2010.

Jody A. Donne (SEAL)
Notary Public



CERTIFICATE OF SERVICE

I, Harvey M. Sheldon, attorney of record, hereby certify that I caused copies of the attached NOTICE OF FILING, RESPONDENT'S VERIFIED MOTION FOR STAY OF PROCEEDINGS, and this Certificate of Service in case No. 09-108 to be served on:

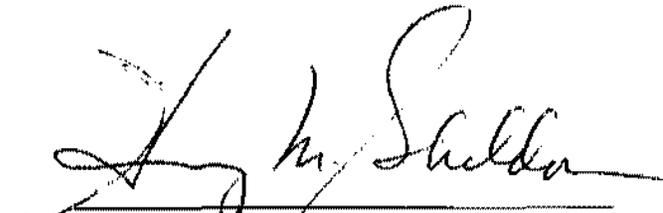
SERVICE LIST

Clerk of the Board
Attn: Mr. John Therriault
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

George D. Theophilos, Esq.
Assistant Attorney General
Environmental Enforcement Bureau
Illinois Attorney General's Office
69 West Washington Street, 18th Fl
Chicago, IL 60602

Hon. Bradley Halloran
Hearing Officer, Illinois PCB
Suite 11-500, Thompson Center
100 West Randolph Street
Chicago, IL 60601

By E-filing and e-mail, or Hand Delivery or United States Mail, first-class postage affixed thereto, at 222 N. LaSalle Street, Chicago, Illinois 60601, first-class postage prepaid on September 8, 2010.



Harvey M. Sheldon