

ILLINOIS POLLUTION CONTROL BOARD  
April 16, 2020

SABIC INNOVATIVE PLASTICS US LLC, )  
)  
Petitioner, )  
)  
v. ) PCB 04-115  
) (CAAPP Permit Appeal - Air)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
)  
Respondent. )

ORDER OF THE BOARD (by C.M. Santos):

On April 6, 2020, SABIC Innovative Plastics US LLC (SABIC) and the Illinois Environmental Protection Agency (IEPA) filed a joint motion (Mot.) asking the Board to remand the Clean Air Act Permit Program (CAAPP) permit that is the subject of this appeal to IEPA while maintaining jurisdiction.

Today's order provides a brief procedural history of this case and summarizes the joint motion. The Board then grants the joint motion and remands the permit while retaining jurisdiction over this appeal.

**PROCEDURAL HISTORY**

On November 25, 2003, IEPA issued a Clean Air Act Permit Program (CAAPP) permit with conditions to General Electric Company (GE) for its plastics manufacturing facility at 2148 North 2753rd Road in Ottawa, LaSalle County. On January 6, 2004, GE timely filed a petition asking the Board to review IEPA's determination to impose specified conditions. *See* 415 ILCS 5/40.2(a) (2002); 35 Ill. Adm. Code 105.302(e). On January 12, 2017, the hearing officer granted petitioner's unopposed motion to amend the caption to reflect a change in ownership of the facility from GE to SABIC.

The joint motion states that "the Board did not issue a discretionary stay of the permit in this proceeding." Mot. at 1; *see General Electric Co. v. IEPA*, PCB 04-115 (Jan. 22, 2004) (accepting petition for hearing). The joint motion adds that "the automatic stay provision of the Administrative Procedure Act [APA], 5 ILCS 100/10-65 (2004), that was in effect at the time of filing provided for an automatic stay of the CAAPP permit issued to the source." Mot. at 2 (citations omitted).

On April 6, 2020, the parties filed a joint motion requesting that the Board remand the permit that is the subject of this appeal to IEPA while maintaining jurisdiction over the appeal.

**JOINT MOTION**

The parties report that their negotiation “have reached substantial agreement as to all contested conditions.” Mot. at 1. However, they add that the various conditions “require differing procedures in order to revise the CAAPP Permit and resolve the appeal.” *Id.*

To allow IEPA to modify the permit, the parties request that the Board remand the permit to IEPA while maintaining jurisdiction of the appeal. Mot. at 2. On the day the Board remands, IEPA “will establish new effective and expiration dates reflecting the five-year tenure of the CAAPP permit.” *Id.* With the permit then in effect, IEPA can incorporate revisions negotiated by the parties, “which will similarly be issued on the same day of the Board’s remand.” *Id.* When IEPA issues the modified permit, SABIC will move to voluntarily dismiss its petition, and the parties “will continue working toward completion of a comprehensive update to the CAAPP Permit through the permit reopening process.” *Id.* When IEPA issues the reopened permit, it will provide notice for public comment and review but he Unites States Environmental Protection Agency. *Id.* at 3.

## **DISCUSSION**

### **Stay**

GE’s 2004 petition did not request a stay (General Electric Co. v. IEPA, PCB 04-115 (Jan. 6, 2004) , and the Board’s order accepting the petition did not grant a stay (General Electric Co. v. IEPA, PCB 04-115 (Jan. 22, 2004)). The joint motion states that the automatic stay provision of the APA in effect at the time of filing provided for an automatic stay of the CAAPP permit. Mot. at 2, citing 5 ILCS 100/10-65 (2004) (citations omitted).

The General Assembly later added Section 40.2(f) to the Environmental Protection Act. 415 ICLS 5/40.2(f) (2018); *see* Public Act 96-934, eff. June 21, 2010. Under this provision, the APA’s automatic stay provisions do not apply to CAAPP permit appeals. Instead, the Board must stay contested permit conditions at the request of the permit applicant but has discretion to stay uncontested conditions. 415 ILCS 5/40.2(f) (2018).

Under these authorities, the Board will lift the stay on the uncontested conditions as the parties request. *See* Mot. at 1.


### **Remand**

The parties ask the Board to remand the uncontested conditions of the permit to IEPA while retaining jurisdiction. *See* Mot. at 1. In a recent CAAPP permit appeal, the Board lifted the stay on uncontested conditions, remanded it, and retained jurisdiction. Ameren Energy Generating Co., Newton Power Station v. IEPA, PCB 06-68, slip op. at 2 (Nov. 19, 2015). The parties’ present requests are similar, and the Board likewise remands the uncontested conditions of the permit and retains jurisdiction.

When IEPA issues a modified permit, the Environmental Protection Act allows persons with standing to appeal. 415 ILCS 5/40.2 (2018). Though the Board retains jurisdiction of this matter, if others with standing appeal, the Board will, if appropriate, accept and docket those appeals under a different case number.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 16, 2020 by a vote of 4-0.

A handwritten signature in cursive script that reads "Don A. Brown". The signature is written in black ink and is positioned above a horizontal line.

Don A. Brown, Clerk  
Illinois Pollution Control Board