

ILLINOIS POLLUTION CONTROL BOARD
January 9, 2003

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

ORDER OF THE BOARD (by T. E. Johnson):

Today, the Board accepts for hearing Abitec Corporation's (Abitec) timely petition appealing the Illinois Environmental Protection Agency's (Agency) conditional acceptance of Abitec's application for a Clean Air Act Permit Program (CAAPP) permit. The Board hears appeals of Agency decisions to issue or deny permits in environmental programs. *See* 415 ILCS 5/40.2 (2000), *amended by* P.A. 92-0574, eff. June 26, 2002. The Board's review of a permit appeal is generally limited to the record before the Agency, and is not based on information developed by the permit applicant or the Agency after the Agency's decision. Alton Packaging Corp. v. PCB, 162 Ill. App. 3d 731, 738, 516 N.E.2d 275, 280 (5th Dist. 1987).

On December 31, 2002, Abitec timely filed a petition asking the Board to review a November 26, 2002 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40.2(a) (2000), *amended by* P.A. 92-0574, eff. June 26, 2002; 35 Ill. Adm. Code 105.302(e). The Agency conditionally accepted Abitec's application for a CAAPP permit under Section 39.5 of the Environmental Protection Act (Act) (415 ILCS 5/39.5 (2000)). The CAAPP permit application concerns Abitec's sterol and sterol refining facility at 1900 Marshall Street in the town of Paris, Illinois.

Section 40.2(a) of the Act (415 ILCS 5/40.2(a) (2000), *amended by* P.A. 92-0574, eff. June 26, 2002) allows several persons to appeal Agency CAAPP permit determinations: permit applicants; persons who participated in the Agency's public comment process under Section 39.5(8) of the Act (415 ILCS 5/39.5(8) (2000)); and persons who could obtain judicial review under Section 41(a) of the Act (415 ILCS 5/41(a) (2000)). 415 ILCS 5/40.2(a) (2000), *amended by* P.A. 92-0574, eff. June 26, 2002; *see also* 35 Ill. Adm. Code 105.302(c). ABitec is the CAAPP permit applicant. Abitec appeals on the grounds that the Agency incorrectly characterized Abitec's food processing operations as a chemical plant subject to the emission limitations outlined in the Clean Air Act's Prevention of Significant Deterioration program. Abitec also contends that the Agency failed to provide adequate notice to Abitec and the public of the new CAAPP permit conditions required by Illinois and federal law.

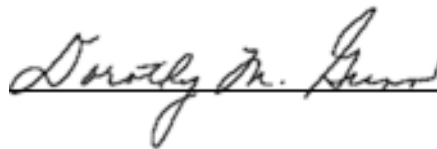
Abitec has the burden of proof. 415 ILCS 5/40.2(a) (2000), *amended by* P.A. 92-0574, eff. June 26, 2002; *see also* 35 Ill. Adm. Code 105.112(a). Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40.2(c) (2000), *amended by* P.A. 92-0574, eff. June 26, 2002), which only Abitec may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, “the permit shall not be deemed issued; rather, the petitioner shall be entitled to an Appellate Court order pursuant to Section 41(d) of this Act [415 ILCS 5/41(d) (2000)].” 415 ILCS 5/40.2(c) (2000), *amended by* P.A. 92-0574, eff. June 26, 2002. Currently, the decision deadline is April 30, 2003 (the 120th day after December 31, 2002). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for April 17, 2003.

Unless the Board or the hearing officer orders otherwise, the Agency must file an answer, including the entire record of its determination within 30 days after it is served with the petition. 35 Ill. Adm. Code 105.302(f). If the Agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed. 35 Ill. Adm. Code 105.116. The record must comply with the content requirements of 35 Ill. Adm. Code 105.302(f).

In the closing paragraph of its petition, Abitec requests the Board to stay the effectiveness of the CAAPP permit. Pet. at 25. The Board reminds Abitec that motions to stay a proceeding must be accompanied by sufficient information detailing why a stay is needed. 35 Ill. Adm. Code 101.514(a). Additionally, the time allotted for IEPA to respond to this request has not expired. 35 Ill. Adm. Code 101.500 (d). Consequently, the Board reserves ruling on the request for a stay of the CAAPP permit.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 9, 2003, by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board