

ILLINOIS POLLUTION CONTROL BOARD  
January 23, 2003

NIELSEN & BAINBRIDGE, LLC,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 03-98
	)	(CAAPP Permit Appeal – Air)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

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

On January 7, 2003, Nielsen & Bainbridge, LLC (Nielsen & Bainbridge) placed its petition, requesting the Board to review a December 3, 2002 Illinois Environmental Protection Agency (Agency) determination, into the United States mail. The Board received the petition on January 9, 2003. Because the postmark date precedes the filing deadline date, the petition is deemed timely filed on the postmark date. 35 Ill. Adm. Code 101.300(b)(2). The Agency conditionally approved a Clean Air Act Permit Program (CAAPP) permit application of Nielsen & Bainbridge under Section 39.5 of the Environmental Protection Act (Act) (415 ILCS 5/39.5 (2002)). The CAAPP permit application concerns Nielsen & Bainbridge's manufacturing facility at 8301 S. 77th Avenue in Bridgeview, Cook County.

Section 40.2(a) of the Act (415 ILCS 5/40.2(a) (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) (2002)); and persons who could obtain judicial review under Section 41(a) of the Act (415 ILCS 5/41(a) (2002)). 415 ILCS 5/40.2(a) (2002); *see also* 35 Ill. Adm. Code 105.302(c). Nielsen & Bainbridge is the CAAPP permit applicant. Nielsen & Bainbridge appeals on the grounds that the CAAPP permit does not reflect the appropriate applicable requirements or the correct allotment trading units for the manufacturing facility. The Board accepts the petition for hearing.

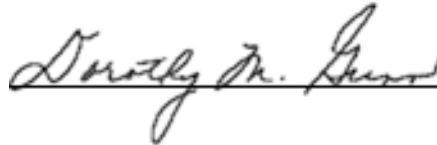
Nielsen & Bainbridge has the burden of proof. 415 ILCS 5/40.2(a) (2002); *see also* 35 Ill. Adm. Code 105.112(a). Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40.2(c) (2002)), which only Nielsen & Bainbridge may extend by waiver (*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) (2002)]." 415 ILCS 5/40.2(c) (2002). Currently, the decision deadline is April 10, 2003 (the 120th day after January 9, 2003). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for April 3, 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).

Nielsen & Bainbridge has concurrently filed a motion to stay effectiveness of CAAPP permit. 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 23, 2002, by a vote of 6-0.

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

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board