

ILLINOIS POLLUTION CONTROL BOARD
February 5, 2004

XCTC LIMITED PARTNERSHIP,)	
)	
Petitioner,)	
)	
v.)	
)	PCB 01-46
ILLINOIS ENVIRONMENTAL)	(CAAPP Permit Appeal – Air, Third Party)
PROTECTION AGENCY,)	
)	
Respondent.)	

GEORGIA-PACIFIC TISSUE, L.L.C.,)	
)	
Petitioner,)	
)	
v.)	PCB 01-51
)	(CAAPP Permit Appeal – Air)
ILLINOIS ENVIRONMENTAL)	Consolidated
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by G.T. Girard):

On November 24, 2003, Georgia-Pacific Tissue, L.L.C. (Georgia-Pacific) filed an amended petition for appeal of a Clean Air Act Permit Program (CAAPP) permit. On December 18, 2003, the Illinois Environmental Protection Agency (Agency) filed a motion to dismiss the amended petition *instanter* (Mot). On January 2, 2004, Georgia-Pacific filed a response (Resp.). The Board grants the Agency's motion to file *instanter* and for the reasons enunciated below dismisses the amended petition.

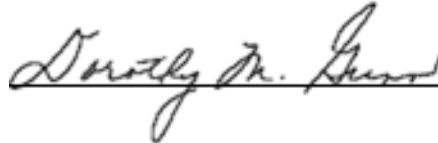
On August 4, 2000, the Agency issued a CAAPP permit to Georgia-Pacific and on September 8, 2000, Georgia-Pacific timely filed an appeal with the Board. Mot. at 1-2. The amended petition seeks to incorporate a permit condition (7.1.3(c)) concerning organic material usage requirements. Mot. at 2. The Agency concedes that the provision is being discussed as a part of settlement negotiations; however, the Agency argues that the relevance to settlement negotiations does not translate to the Board having jurisdiction to review the amended permit appeal. Mot. at 2-3.

The Board agrees that in this instance, the Board lacks jurisdiction to consider an amended petition in a permit appeal. Section 40.2 of the Environmental Protection Act (Act) (415 ILCS 5/40.2 (2002) allows an applicant to appeal conditions of a CAAPP permit within 35

days of the Agency's decision. The only exceptions to the 35-day limit are if an agreed extension is sought or "if such petitions are based solely on grounds arising after the 35-day period expires." 415 ILCS 5/40.2(a) (2002). In certain instances the Board allows amended petitions to be filed (*e.g.* Wei Enterprises v. IEPA, PCB 04-83 (Nov. 20, 2003); Randall Industries, Inc. v. IEPA, PCB 03-129 (Sept. 18, 2003); Landfill 33 LTD. v. Effingham County Board et al, PCB 0-43 (Oct. 17, 2002); St. Clair Properties Development, Inc. v. IEPA, PCB 98-72 (Nov. 20, 1997)). However, the instances where the Board allows for amended petitions are generally instances where the initial petition lacks pertinent information required by Board rules and the Board allows the petitioner a set amount of time to correct the deficiencies. In this case, Georgia-Pacific seeks to amend the petition three years after the initial appeal was filed and seeks review of a condition not previously cited. The Board finds that such an amended petition is prohibited by the express language of Section 40.2 of the Act (415 ILCS 5/40.2 (2002)). Therefore, the Board strikes the amended petition filed by Georgia-Pacific; however, the permit appeal shall proceed pursuant to the original petition for appeal.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 5, 2004, by a vote of 4-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board