

ILLINOIS POLLUTION CONTROL BOARD
January 26, 2007

THE PREMCOR REFINING GROUP INC.,)
)
 Petitioner,)
)
 v.) PCB 07-30
) (CAAPP Permit Appeal – Air)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

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

This matter is before the Board today on a number of pleadings filed by the parties. On October 24, 2006, the Premcor Refining Group Inc. (Premcor) timely filed a petition asking the Board to review a September 19, 2006 determination of the Illinois Environmental Protection Agency (Agency) to issue a Clean Air Act Permit Program (CAAPP) permit (415 ILCS 5/40.2(a) (2004)); 35 Ill. Adm. Code 105.302(e). The CAAPP permit application concerns Premcor's petroleum bulk storage and loading terminal at 201 East Hawthorne, Hartford, Madison County. Premcor filed a motion to stay the effectiveness of the CAAPP permit concurrently with the petition. The Board accepted the petition for review on November 16, 2006, but reserved ruling on Premcor's motion to stay.

PROCEDURAL BACKGROUND

On November 27, 2006, the Agency filed a motion to dismiss the petition for review. On November 28, 2006, the Board hearing officer issued an order noting that the Agency does not object to Premcor's motion to stay the effectiveness of the CAAPP permit. The Agency filed the record, accompanied by a motion for leave to file *instanter*, on December 7, 2006. On December 12, 2006, Premcor filed a motion for extension of time to respond to the Agency's motion, and an open waiver of the statutory 120-day decision deadline. The Board hearing officer granted the motion for extension of time on December 18, 2006.

On December 22, 2006, Premcor filed an amended petition, accompanied by a motion for leave to file. On January 9, 2007, the Agency filed a response to the motion for leave to file the amended petition for review.

In its motion to dismiss, the Agency asserts that the petition did not sufficiently identify the challenged permit conditions. Mot. at 5. The Agency sought dismissal of the petition or, as alternative relief, that an amended petition that identified the specific permit conditions challenged on appeal be filed. Mot. at 6.

To address the motion to dismiss, Premcor filed the aforementioned motion for extension of time, the amended petition, and a motion for leave to file the amended petition. In the motion

for leave to file the amended appeal, Premcor asserts that it has consulted with the Agency regarding the concerns as described in the motion, and based on those discussions, it is Premcor's understanding that filing an amended petition reiterating in detail the comments listed in Premcor's exhibits to the original petition will resolve the Agency's concerns. Mot. for Leave at 2. Premcor notes that while it does not concur with the Agency's position that the original petition is inadequate, Premcor is seeking leave to file the amended petition in order to address the Agency's concerns. *Id.* Premcor asserts that the amended petition would not change the bases of the appeal, but rather restates those bases in a form more acceptable to the Agency. *Id.*

In its response to the motion for leave to file the amended petition, the Agency asserts that it does not object to Premcor's motion for leave to file, but that it expects to exercise its right to object to the sufficiency of the amended petition, as authorized pursuant to 35 Ill. Adm. Code 101.506, following the Board's final action on the motion for leave to file the amended petition for review. Resp. at 3.

DISCUSSION

Initially, the Board grants the Agency's motion for leave to file the administrative record *instanter*, and accepts the administrative record. As noted earlier, the Agency does not object to Premcor's motion for leave to file an amended petition, and the Board grants Premcor's motion. The Agency's motion to dismiss is thereby rendered moot, and will not be ruled upon.

In the amended petition, Premcor alleges that the Agency failed to make certain changes to the CAAPP permit, as requested by Premcor, and failed to appropriately incorporate provisions from construction permits, ultimately resulting in duplicative and inconsistent requirements. Am. Pet. at 3. Premcor specifically lists concerns raised by Premcor prior to the issuance of the final CAAPP permit, but not incorporated by the Agency into the final CAAPP permit. Am. Pet. at 4-13. Premcor also lists additional comments for consideration by the Agency. Am. Pet. at 13-17.

Section 40.2(a) of the Illinois Environmental Protection Act (Act) (415 ILCS 5/40.2(a) (2004)) 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) (2004)); and persons who could obtain judicial review under Section 41(a) of the Act (415 ILCS 5/41(a) (2004)). 415 ILCS 5/40.2(a) (2004); *see also* 35 Ill. Adm. Code 105.302(c). Premcor is the CAAPP permit applicant. Premcor appeals on the grounds that the CAAPP permit does not reflect the current applicable requirements or the current operations of the facility, and thus is not consistent with the Clean Air Act and regulations promulgated thereunder. Am. Pet. at 4, 17. Further, Premcor appeals because certain conditions as discussed in the amended petition are not required to accomplish the purposes and provisions of the Act and to assure compliance with applicable requirements. Am. Pet. at 17.

The Board accepts the amended petition for hearing. Premcor has the burden of proof. 415 ILCS 5/40.2(a) (2004); *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) (2004)), which only Premcor 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) (2004)].” 415 ILCS 5/40.2(c) (2004). As noted above, Premcor has filed an open waiver of the decision deadline.

The Agency has already filed the record of its determination. In addition, the Board notes that the Agency will have the ability to object to the sufficiency of the amended petition as authorized under the Board’s procedural rules.

As stated, Premcor filed a motion to stay the effectiveness of the CAAPP permit concurrently with the original petition. Although the amended petition does not contain a similar motion, the initial motion is still pending.

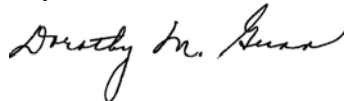
In Nielsen & Bainbridge v. IEPA, PCB 03-98 (Feb. 6, 2003), the Board found that motions to stay must be accompanied by sufficient information detailing why a stay is needed. In the motion to stay, Premcor asserts that a stay of effectiveness of the CAAPP permit is needed to prevent irreparable harm to Premcor and to protect Premcor’s certain and clearly ascertainable right to appeal permit conditions. Mot. to Stay at 1. Premcor contends that the Agency, the public, and the environment will not be harmed if a stay is granted. Mot. to Stay at 2. As noted above, the Agency does not object to the motion to stay. The Board grants Premcor’s motion to stay effectiveness of CAAPP permit until the Board’s final action in this matter or until the Board orders otherwise.

CONCLUSION

The Board grants Premcor’s motion for leave to file an amended petition, and accepts the amended petition for review. The Agency’s motion to dismiss is moot, and not considered by the Board. The Board also grants Premcor’s motion to stay the effectiveness of the CAAPP permit. Further, the Board grants the Agency’s motion for leave to file the administrative record *instanter*, and accepts the administrative record.

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 26, 2007, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board