

ILLINOIS POLLUTION CONTROL BOARD

June 5, 2008

PILKINGTON NORTH AMERICA, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 08-90
)	(CAAPP Permit Appeal – Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On May 19, 2008, Pilkington North America, Inc. (Pilkington) timely filed a petition asking the Board to review an April 10, 2008 permit determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40.2(a) (2006); 35 Ill. Adm. Code 101.300(b), 105.302(e). The determination concerns Pilkington's flat glass manufacturing facility located at Center and 20th Street, P.O. Box 578, Ottawa, LaSalle County. Additionally, with the petition, attorney Kurt A. Kissling (Kissling) filed a motion to appear *pro hac vice* on behalf of Pilkington. *See* 35 Ill. Adm. Code 101.400(a)(3). For the reasons below, the Board accepts Pilkington's petition for hearing and grants Kissling's motion to appear before the Board in this appeal.

Section 39.5 of the Environmental Protection Act (Act) (415 ILCS 5/39.5 (2006)) sets forth the Clean Air Act Permit Program (CAAPP), reflecting the requirements of Title V of the federal Clean Air Act Amendments of 1990 (42 U.S.C. §§ 7661-7661f). Generally, a CAAPP permit is designed to be a single, comprehensive document of all air pollution obligations that apply to a facility. The Agency decides whether to approve CAAPP permit applications, and Agency decisions may be appealed to the Board by, among others, the permit applicant and persons who participated in the Agency's public comment process. *See* 415 ILCS 5/40.2(a) (2006); 35 Ill. Adm. Code 105.SubpartC. In this case, the Agency issued a revised CAAPP permit, subject to conditions, for Pilkington's LaSalle County facility. Pilkington appeals on the grounds that the revised CAAPP permit contains numerous errors, rendering it inconsistent with the federal Clean Air Act, the Act, and their respective underlying regulations.

The Board accepts the petition for hearing. Pilkington has the burden of proof. *See* 415 ILCS 5/40.2(a) (2006); 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its permit decision. *See* 35 Ill. Adm. Code 105.214(a). Accordingly, though the Board hearing affords a permit applicant the opportunity to challenge the Agency's reasons for denying or conditionally granting the permit, information developed after the Agency's decision typically is not admitted at hearing or considered by the Board. *See* Alton Packaging Corp. v. PCB, 162 Ill. App. 3d 731, 738, 516 N.E.2d 275, 280 (5th Dist. 1987); Community Landfill Co. & City of Morris v. IEPA, PCB 01-

170 (Dec. 6, 2001), *aff'd sub nom. Community Landfill Co. & City of Morris v. PCB & IEPA*, 331 Ill. App. 3d 1056, 772 N.E.2d 231 (3rd Dist. 2002).

Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40.2(c) (2006)), which only Pilkington 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) (2006)].” 415 ILCS 5/40.2(c) (2006). Currently, the decision deadline is September 16, 2008, which is the 120th day after the Board received the petition. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for September 4, 2008.

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. *See* 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. *See* 35 Ill. Adm. Code 105.116. The record must comply with the content requirements of 35 Ill. Adm. Code 105.302(f).

Finally, Kissling, counsel for Pilkington, filed a motion to appear *pro hac vice* on behalf of Pilkington. Under the Board’s procedural rules, attorneys who are licensed to practice in a state other than Illinois and who are not licensed and registered to practice in Illinois “may request to appear *pro hac vice* on a particular matter by a motion filed with the Board.” 35 Ill. Adm. Code 101.400(a)(3). Kissling states that he is a licensed attorney in the State of Michigan. He further represents that he is in good standing, has never been the subject of disciplinary or disbarment proceedings, and is familiar with the Board’s procedural rules. The Board grants Kissling’s motion to appear on behalf of Pilkington in this appeal.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 5, 2008, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board