

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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NOV 25 2008

STATE OF ILLINOIS
Pollution Control Board

APOLLO PLASTICS CORPORATION)

Petitioner)

v.)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)

Respondent.)

No. PCB 09- 36

(Air-Permit Appeals)

NOTICE OF FILING

To: See attached service list.

PLEASE TAKE NOTICE that on November 25, 2008, we filed with the Illinois Pollution Control Board an original and nine (9) copies of Appearance of Harvey M. Sheldon and a Petition for Hearing, pursuant to 415 ILCS 5/40,2(a), in the above-referenced matter on behalf of Apollo Plastics Corporation, a copy of which is hereby served upon you.

DATED: November 25, 2008

Respectfully submitted,

APOLLO PLASTICS CORPORATION

By: 
One of Its Attorneys

Harvey M. Sheldon, Esq.
Hinshaw & Culbertson LLP
222 North LaSalle Street
Suite 300
Chicago, IL 60601
(312) 704-3000

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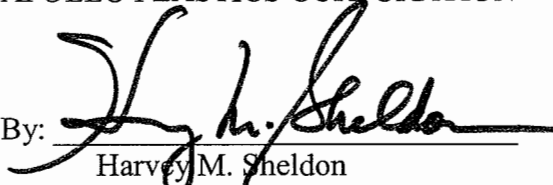
APPEARANCE OF COUNSEL

PLEASE TAKE NOTICE that I hereby file my appearance and that of my firm as counsel for the Petitioner Apollo Plastics Corporation in the above-captioned matter. Please serve me with all future orders, notice and pleadings to Apollo.

DATED: November 25, 2008

Respectfully submitted,

APOLLO PLASTICS CORPORATION

By: 
Harvey M. Sheldon
Hinshaw & Culbertson LLP

Harvey M. Sheldon, Esq.
Hinshaw & Culbertson LLP
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(312) 704-3504
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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

APOLLO PLASTICS CORPORATION

Petitioner

v.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

No. PCB 08-32

(Air-Permit Appeal)

09-36

PETITION FOR HEARING

NOW COMES, Petitioner Apollo Plastics Corporation ("Apollo"), by and through its attorneys, Harvey M. Sheldon and Hinshaw & Culbertson LLP, pursuant to Section 40.2(a) of the Illinois Environmental Protection Act, 415 ILCS 5/40.2(a) (the "Act") and Section 105.304 of the Illinois Administrative Code, 35 Ill. Adm. Code § 105.304, and petitions the Board in Count I for review of the Illinois Environmental Protection Agency's (the "Agency") failure to timely act on Apollo's Air Operating Permit application, and, in Count II, for review of the Agency's denial of renewal of its Construction Permit Application covering air pollution control equipment.

In support thereof, Apollo states as follows:

COUNT I:

PETITION FOR REVIEW OF THE AGENCY'S FAILURE TO TIMELY ACT UPON THE

APPLICATION OF PETITIONER FOR A FEDERALLY ENFORCEABLE STATE

OPERATING PERMIT

1. Pursuant to Section 504 of the Clean Air Act, 42 USC § 7661b(c), and Section

39.5 of the Act, Apollo submitted an application for an initial FESOP on a CAAPP application form to the Agency for its facility located in Chicago, Illinois in 2006.

2. On or about October 27, 2006 the Agency sent a notice to Apollo informing Apollo that its CAAPP application was complete pursuant to Section 39.5 of the Act. (See attached CAAPP Application Completeness Determination and Source Fee Determination, which is Exhibit A hereto).

3. Pursuant to 415 ILCS 5/39.5(5)(j), the Agency shall act on initial CAAPP applications within two (2) years after the date of a completed application. The two (2) year time period for Agency action begins to run from the date that a complete application was submitted.

4. As of the date of this Petition, two years have passed, however the Agency has failed to take any action on Apollo's initial CAAPP application for a FESOP.

5. Apollo can demonstrate that based upon the information that is or should be a part of the Agency's record, the operations for which the FESOP is sought will not cause a violation of the Illinois Environmental Protection Act or relevant rules.

6. Where, as here, the agency fails to act within two (2) years, its failure to act is treated as a final permit action for purposes of judicial review pursuant to Sections 40.2 and 41 of the Act. 415 ILCS 5/39.5(5)(j). Apollo, therefore, files this Petition for Hearing, pursuant to Section 40.2(a) of the Act and Section 105.304 of the Illinois Administrative Code, 35 Ill. Adm. Code § 105.304. This filing is within thirty-five (35) days of the expiration of the two year period provided for agency action.

WHEREFORE, Apollo petitions the Board for a hearing on the Illinois Environmental Protection Agency's failure to take timely action on Apollo's application for a FESOP under the CAAPP Permit program.

COUNT II
APPEAL OF DENIAL OF CONSTRUCTION PERMIT
FOR POLLUTION CONTROL EQUIPMENT

7. Apollo was, until at least October 24, 2008, lawfully operating certain lines at its Chicago facility under the authority of a Construction Permit to install a Regenerative Thermal Oxidation (RTO) system for control of Volatile Organic Material (VOM). The RTO was constructed and operating to assure maintenance and operation of Apollo as a minor source. The RTO continues so to operate.

8. The RTO system was tested in December 2007, and, on information and belief, the test results demonstrated to the Agency's satisfaction that the RTO operates as required. Given that Apollo's FESOP had not yet been issued, earlier this year Apollo requested that its RTO Construction Permit be renewed. However, the Agency issued a Construction Permit renewal denial on October 24, 2008, which was received by Apollo on October 29, 2008. A true copy of the action of Denial is attached as Exhibit B.

9. Although "information available to Illinois EPA" indicating that the "construction or modification of the equipment...has been completed" is referenced as possibly some part of the basis that the Agency used to deny the renewal of the Construction Permit for this system, the lack of possession of an operating permit is also cited. The denial states, in part, that "an operating permit is to be obtained prior to operation of any emission unit or air pollution control equipment for which a construction permit is required" and that the "permit application is denied because Sections 9 and 39 of the Illinois Environmental Protection Act and 35 Ill. Adm. Code 201.142 might be violated." As so stated, the denial of the renewal of the Construction Permit complained of in this Count II misstates the applicable law, and the denial also was arbitrary and

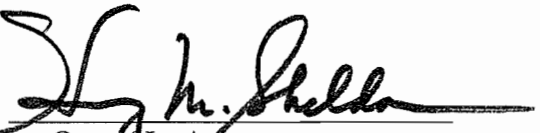
capricious, because it is based on the Agency's own failure to timely act to issue the FESOP application that is the subject of Count I hereof.

WHEREFORE, Apollo petitions the Board for a hearing on the denial of the renewal of the Construction Permit application.

DATED: November 25, 2008

Respectfully submitted,

APOLLO PLASTICS CORPORATION

By: 
One of Its Attorneys

Harvey M. Sheldon
Hinshaw & Culbertson LLP
222 North LaSalle Street
Suite 300
Chicago, IL 60601
(312) 704-3504
Fax: 312-704-3001
E-mail: hsheldon@hinshawlaw.com



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19506, SPRINGFIELD, ILLINOIS 62794-9506 - (217) 782-2113

ROD R. BLAGOJEVICH, GOVERNOR DOUGLAS P. SCOTT, DIRECTOR

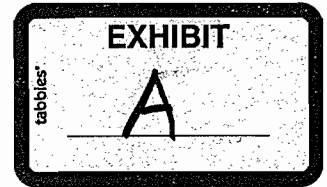
217/785-5151

CAAPP APPLICATION COMPLETENESS DETERMINATION AND SOURCE FEE DETERMINATION

APPLICANT

Apollo Plastics Corporation
Attn: Larry Polleck
5333 North Elston Avenue
Chicago, Illinois 60630

Date of Determination: October 27, 2006
Application/Permit No.: 06090078
I.D. Number: 031600FMK
Date Received: September 29, 2006
Source Name:
Location of Source: 5333 North Elston Avenue, Chicago, 60630



Dear Mr. Polleck:

This letter provides notification that your Clean Air Act Permit Program (CAAPP) application received on the date indicated above, has been determined by the Illinois EPA to be complete pursuant to Section 39.5(5) of the Illinois Environmental Protection Act (Act).

As provided in Section 39.5(18) of the Act, a CAAPP source shall pay a fee. Attached is the annual fee bill for this CAAPP source as determined from information included in your application, on Form 292-CAAPP - FEE DETERMINATION FOR CAAPP PERMIT. Payment of the fee is due within 45 days of the billing date indicated on the billing statement.

Notwithstanding the completeness determination, the Illinois EPA may request additional information necessary to evaluate or take final action on the CAAPP application. If such additional information affects your allowable emission limits, a revised Form 292-CAAPP-FEE DETERMINATION FOR CAAPP PERMIT must be submitted with the requested information. The failure to submit to the Illinois EPA the requested information within the time frame specified by the Illinois EPA, may force the Illinois EPA to deny your CAAPP application pursuant to Section 39.5 of the Act.

If you have any questions regarding this matter, please contact the Division of Air Pollution Control Permit Section at 217/782-2113.

Sincerely,

Donald E. Sutton, P.E. (handwritten signature) MTR

Donald E. Sutton, P.E.
Manager, Permit Section
Division of Air Pollution Control

DES:YMC:psj

Enclosure(s)

cc: FOS, Region 1
Application File
Compliance & Systems Management Section

Sent 11/17/06
Check # 029657 (handwritten note)



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-3397
JAMES R. THOMSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 - (312) 814-6026

ROD R. BLAGOIEVICH, GOVERNOR DOUGLAS P. SCOTT, DIRECTOR

INVOICE DIVISION OF AIR POLLUTION CONTROL INITIAL TITLE V PERMIT FEE

October 27, 2006
Larry Polleck
Apollo Plastics Corp
5333 N Elston Ave
Chicago, IL 60630

Site to which fee applies
Id: 031600FMK

Apollo Plastics
5333 N Elston Ave
Chicago, IL 60630

This is your initial Air Pollution Control Title V Permit Fee invoice. If balance is due, make either check or money order payable to: "Illinois Environmental Protection Agency".

In accordance with the Environmental Protection Act Section 18(iiB): Except for the first year of the CAAPP the applicant or permittee may pay the fee annually or semiannually for those fees greater than \$5,000. If you elect to pay annually or semiannually, the initial fee or one-half of the initial fee and any balance forward is due December 11, 2006.

In order to ensure the proper crediting of your account, you must return one copy of this invoice with payment in the envelope provided. If you have any questions, please contact the Air, Permit Section at the above address or telephone 217/782-2113 within 45 days.

FUND	DESCRIPTION	AMOUNT
0091	Initial Fee	\$1,800.00

	Balance Due	\$1,800.00

Please provide the following information:

Amount Enclosed \$ _____

Please indicate designated site Id Number 031600FMK on your check and return one copy of this invoice with payment.



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19506, SPRINGFIELD, ILLINOIS 62794-9506 - (217) 782-2113

ROD R. BLAGOJEVICH, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR



217/782-2113

CERTIFIED MAIL

7007 0220 0000 0153 5314

PERMIT DENIAL

October 24, 2008

RECEIVED

OCT 29 2008

APOLLO PLASTICS

Apollo Plastics
Attn: Larry Polleck
5333 North Elston Avenue
Chicago, Illinois 660630

Application No.: 06090077

I.D. No.: 031600FMK

Applicant's Designation:

Date Received: August 21, 2008

Subject: Molded Plastic Parts Coating Line (Renewal Request)

Date Issued: October 24, 2008

Location: 5333 North Elston Avenue, Chicago, Cook County

The Illinois EPA has reviewed your Application for Construction Permit for the above referenced project. The permit application is DENIED because Sections 9 and 39 of the Illinois Environmental Protection Act (Act) and 35 Ill. Adm. Code 201.142 might be violated.

The following are specific reasons why the Act and the Rules and Regulations may not be met:

1. Pursuant to 35 Ill. Adm. Code 201.143, an operating permit is to be obtained prior to operation of any emission unit or air pollution control equipment of any type for which a construction permit is required Pursuant to 35 Ill. Adm. Code 201.142. Information available to the Illinois EPA indicated that the construction or modification of the equipment described in this application has been completed. Consequently, your application for construction permit is hereby denied.

If you have any questions on this, please call German Barria at 217/782-2113.

Edwin C. Bakowski
RMB

10/24/2008

Edwin C. Bakowski, P.E.
Acting Manager of Permit Section
Division of Air Pollution Control

ECB:GB:psj

cc: Region 1
Ray Pilapil, CES

CERTIFICATE OF SERVICE

I, Kathryn Messina, hereby certify that I caused copies of the attached NOTICE OF FILING, APPEARANCES OF HARVEY M. SHELDON and PETITION FOR HEARING to be served on:

SERVICE LIST

Clerk of the Board
Attn: Mr. John Therriault
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601
(Via Hand Delivery)

Julie Armitage, Esq.
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794

Maureen Wozniak, Esq.
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794

By United States Mail, first-class postage affixed thereto, at 222 N. LaSalle Street, Chicago, Illinois 60601, first-class postage prepaid on November 25, 2008.

