

ILLINOIS POLLUTION CONTROL BOARD
January 8, 2009

APOLLO PLASTICS CORPORATION,)
)
Petitioner,)
)
v.) PCB 09-36
) (Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)
APOLLO PLASTICS CORPORATION,)
)
Petitioner,)
)
v.) PCB 09-44
) (Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

On November 25, 2008, the Apollo Plastics Corporation (Apollo) filed what it labeled as a two-count petition for review of two separate permitting actions by the Illinois Environmental Protection Agency (IEPA). The petition asserts that the petition is filed pursuant to Section 40.2 of the Environmental Protection Act (Act), 415 ILCS 5/40.2 (2006). and 35 Ill. Adm. Code 105.304. The Agency's actions concern Apollo's facility at 5333 N. Elston Avenue, Chicago, Cook County. For the reasons below, the Board accepts the petition for review as timely filed but deficient due to the attempted consolidation of two appeals in one petition. The Board directs the filing of amended petitions in PCB 09-36 and the reserved docket PCB 09-44 along with a filing fee. The amended petitions must be filed by February 9, 2009, or the appeals will be dismissed. The filing of the amended petitions will restart the Board's decision 120-day decision timeframe. *See* 35 Ill. Adm. Code 105.114(b).

The petition's first count challenges the Agency's alleged failure to make a timely determination on Apollo's application for an initial federally-enforceable state operating permit (FESOP) under the Clean Air Act Permit Program (CAAPP). The petition, read with exhibit A, alleges that the Agency received the application September 29, 2006, determined that it was complete October 27, 2006, but allegedly failed to make a final FESOP determination within two years, as required by Section 39.9(5) of the Act, 415 ILCS 5/39.5(5) (2006).

The second count of the petition, read with Exhibit B, challenges the Agency's October 24, 2008 denial of a renewal of the construction permit for installation of a Regenerative Thermal Oxidation system for control of volatile organic material. The Agency denied the permit on the stated grounds that construction had been completed, also citing lack of an operating permit. The petition asserts that the denial was arbitrary and capricious, and based on the alleged Agency failure to timely act on the FESOP application.

The Board cannot accept Apollo's petition as filed. In this instance, the Agency's permitting actions appear to have been taken under two different sections of the Act: The first under the CAAPP provisions of Section 39.5 of the Act (415 ILCS 5/39.5 (2006)) and the second under the general permit provisions of Section 39 of the Act (415 ILCS 5/39 (2006)). If so, the Board's decision would also be governed by two sections of the Act with differing requirements, namely Section 40.2 and Section 40 (415 ILCS 5/40.2 and 40 (2006)). Separate Agency permitting actions must each be challenged in a separate petition, each accompanied by a \$75 filing fee, and each satisfying the informational requirements of the appropriate subpart of 35 Ill. Adm. Code 105. *See* 35 Ill. Adm. Code 105.Subparts B and C.

If Apollo wishes to pursue an appeal of either or both separate permitting actions, Apollo must file amended petitions in the Board dockets. The Board docketed the original petition as PCB 09-36, and will use that docket to deal with any amended petition on the FESOP issue. The Board has today reserved docket PCB 09-44 for use to deal with any amended petition on the air construction permit renewal. Any amended petition in PCB 09-44 must also be accompanied by a \$75 filing fee.

The Board directs Apollo to file an amended petition by February 9, 2009, which is first business day following the 30th day after the date of this order, curing these informational deficiencies in either or both dockets. Failure to do so will subject the November 25, 2008 petition and the respective docket(s) to dismissal. *See* 35 Ill. Adm. Code 105.108.

The 120-day statutory period for the Board to render a final decision will commence upon the filing of the amended petition. *See* 35 Ill. Adm. Code 105.114(b). In each docket, the Agency record must be filed within 30 days after Apollo files any amended petition. *See* 35 Ill. Adm. Code 105.116, 105.212.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 8, 2009, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board