

ILLINOIS POLLUTION CONTROL BOARD
February 5, 2009

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

ORDER OF THE BOARD (by A.S. Moore):

On January 8, 2009, the Board directed Apollo Plastics Corporation (Apollo) to file an amended petition for review of the Illinois Environmental Protection Agency's (Agency) alleged failure to act on Apollo's Clean Air Act Permit Program (CAAPP) application. The Board directed Apollo to file the amended petition by February 9, 2009. On January 22, 2009, Apollo timely filed an amended petition asking the Board to review the Agency's inaction. *See* 415 ILCS 5/40.2(a) (2006); 35 Ill. Adm. Code 105.302(e). The CAAPP application concerns Apollo's facility at 5333 N. Elston Avenue, Chicago, Cook County. For the reasons below, the Board accepts Apollo's petition for hearing.

Section 39.5 of the Environmental Protection Act (Act) (415 ILCS 5/39.5 (2006) sets forth the 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 applications, and Agency decisions may be appealed to the Board by, among others, the permit applicant and any person who participated in the Agency's public comment process. *See* 415 ILCS 5/40.2(a)(2006); 35 Ill. Adm. Code 105.Subpart C. In this case, Apollo states that it submitted an application for "an initial FESOP (Federally Enforceable State Operating Permit) on a CAAPP application form to the Agency on September 29, 2006." Amended Petition at 2. According to the petition, on or about October 27, 2006, the Agency sent a notice to Apollo informing the company that "its CAAPP application was complete pursuant to section 39.5 of the Act." *Id.*

Section 39.5(5)(j) of the Act provides that the Agency shall issue or deny a CAAPP permit within 18 months after the date of receiving the complete CAAPP application, with several exceptions. *See* 415 ILCS 5/39.5(5)(j) (2006). Under Section 39.5(5)(j)(ii), the Agency "shall act on initial CAAPP applications within 24 months after the date of receipt of the complete CAAPP application." 415 ILCS 5/39.5(5)(j)(ii) (2006). The Act further provides that when the Agency fails to take final action within the required time period, the permit is not deemed issued, but rather the Agency's failure is treated as a final permit action subject to judicial review pursuant to Section 40.2 and 41 of the Act. *See* 415 ILCS 5/39.5(5)(j) (2006); *see also* 35 Ill. Adm. Code 105.302(c). Section 40.2 in turn provides that if the final permit

action being challenged is the Agency's failure to timely take final action, "a petition for a hearing before the Board shall be filed before the Agency denies or issues the final permit." 415 ILCS 5/40.2(a) (2006); see also 35 Ill. Adm. Code 105.302(e). Apollo maintains that as of the date of its petition, the Agency has failed to take any action on the company's initial CAAPP application. Petition at 2.

The Board accepts the petition for hearing. Apollo has the burden of proof. 415 ILCS 5/40(a)(1) (2006); *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(a)(2) (2006)), which only Apollo 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(a)(2) (2006). Currently, the decision deadline is May 22, 2009, which is the 120th day after the Board received the amended petition. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for May 21, 2009.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by February 23, 2009, which is the first business day following the 30th day after the Board received Apollo's petition. *See* 35 Ill. Adm. Code 105.212(a). 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 105.212(b).

IT IS SO ORDERED.

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



John Therriault, Assistant Clerk
Illinois Pollution Control Board