

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE
APR 27 2010
STATE OF ILLINOIS
Pollution Control Board

AMERICAN LOUVER COMPANY)
)
Petitioner,)
v.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY)
)
Respondent.)

PCB # 10-90
(Permit Appeal - Air)

NOTICE OF FILING

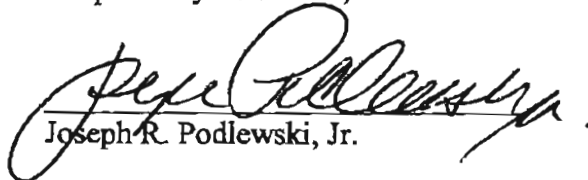
To: Division of Legal Counsel
Illinois Environmental Protection Agency
1021 N. Grand Ave.
P.O. 19276
Springfield, IL 62794-9276

PLEASE TAKE NOTICE that I have today filed with the Pollution Control Board the following documents:

PETITION FOR REVIEW OF CONSTRUCTION PERMIT FOR AMERICAN LOUVER COMPANY
APPEARANCE OF JOSEPH R. PODLEWSKI JR., and
APPEARANCE OF HEIDI E. HANSON,

Copies of which are hereby served upon you.

Respectfully submitted,


Joseph R. Podlewski, Jr.

Dated: April 26, 2010

Joseph R. Podlewski Jr.
Heidi E. Hanson
PODLEWSKI & HANSON P.C.
4721 Franklin Ave, Suite 1500
Western Springs, IL 60558-1720
(708) 784-0624

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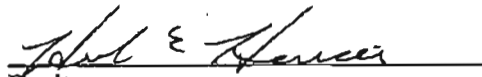
APPEARANCE OF HEIDI E. HANSON

NOW COMES Heidi E. Hanson, of the law firm of PODLEWSKI & HANSON

P.C. and hereby enters her appearance on behalf of Petitioner.

Respectfully submitted,

AMERICAN LOUVER COMPANY


By its attorney,
Heidi E. Hanson

Dated: April 26, 2010

Joseph R. Podlewski Jr.
Heidi E. Hanson
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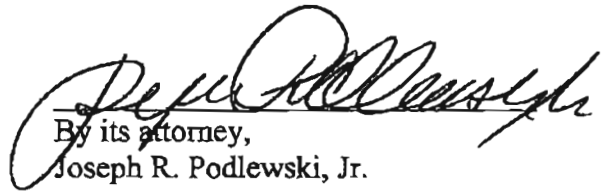
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APPEARANCE OF JOSEPH R. PODLEWSKI, JR.

NOW COMES Joseph R. Podlewski, Jr., of the law firm of PODLEWSKI &
HANSON P.C. and hereby enters his appearance on behalf of Petitioner.

Respectfully submitted,

AMERICAN LOUVER COMPANY


By its attorney,
Joseph R. Podlewski, Jr.

Dated: April 26, 2010

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Heidi E. Hanson
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PETITION FOR REVIEW OF CONSTRUCTION PERMIT FOR AMERICAN LOUVER COMPANY

NOW COMES the Petitioner, American Louver Company, by and through its attorneys, Podlewski & Hanson P.C., and pursuant to Section 40 of the Illinois Environmental Protection Act (415 ILCS 5/40) and 35 Ill Adm. Code 105 Subpart B, petitions the Illinois Pollution Control Board for review of the Illinois Environmental Protection Agency Construction Permit (Application No. 09110020) issued to American Louver Company, and further petitions for (i) a stay of Standard Condition No. 6 of the permit during the pendency of this appeal and (ii) return of the Construction Permit fee of Four Thousand Dollars (\$4,000).

In support thereof, Petitioner states as follows:

Background

1. American Louver Company ("ALC") is located in Skokie, Illinois. Currently, ALC manufactures, among other things, plastic highway barricades and "A" Frame Stands signs. Prior to the application for a construction permit that is the subject matter of this appeal, ALC's plastic manufacturing process (its Plastic Molding Department) included the operation of three (3) resin pellet storage silos, four (4) regular plastic injection molding machines and three (3) plastic blow molders. The injection molders and blow

molders operate similarly and produce plastic products through an extruder. Both the blow molders and injection molders are volatile organic materials (“VOM”) emission sources. (Although the ALC’s injection molders are also hazardous air pollutant (“HAP”) emission sources, the new blow molder is not.)

2. In late 2009, ALC decided to replace one of its injection molding machines with a new Plastic Blow Molding Machine with Dual Extruder. With the replacement of one of the injection molders with the new blow molder, ALC’s Plastic Molding Department would consist of the resin silos, three (3) injection molders and four (4) blow molders. ALC desired to make this change and to have the new blow molder installed and on-line by mid-2010.
3. Including the operation of the new blow molder, ALC calculates the VOM potential to emit (“PTE”) of the Plastic Molding Department to be approximately 16 tons/year. The HAP PTE of the Plastic Molding Department is calculated to be approximately 14 tons/year.
4. Although ALC believed that no permit was required for the new blow molder because of permit exemptions under 35 Ill. Adm. Code 201.146(cc)¹ and the 201.146(III) the Illinois Environmental Protection Agency (“Agency”) insisted that construction of the new blow molder required an Agency construction permit under 35 Ill. Adm. Code 201.142.
5. In order to avoid a dispute with the Agency over the need for a permit and the delay in the construction and operation of the new blow molder that would likely result, ALC

¹ ALC has had a FESOP application pending with the Agency since 2005. Although it is ALC’s position that no state permits are required for the plastic blow molders and injection molders at its facility by virtue of the permit exemptions of 35 Ill. Adm. Code 201.146(cc) and 201.146(III), respectively, these emission sources would nonetheless be included in the FESOP as insignificant emission sources. See paragraph 19 herein.

acceded to the Agency's request and applied for a construction permit for a new "Plastic Blow Molding Machine with Dual Extruder." The Agency received the application on January 21, 2010. A construction permit fee of four thousand dollars (\$4,000) accompanied the permit application. The Agency assigned Application No. 09110020 to the application.

6. The Agency issued a construction permit (the "Construction Permit") to ALC for the new Plastic Blow Molding Machine with Dual Extruder on March 19, 2010. A true and correct copy of the Construction Permit is attached hereto as Exhibit A.
7. On March 2, 2010 ALC submitted a rule Determination Request to the Agency asking for a finding that its blow molder was exempt from permitting. The Agency did not respond to that request other than to issue the construction permit which is the subject of this appeal.
8. The Construction Permit was dated March 19, 2010 and received by ALC on March 22, 2010.
9. Because the Agency has acted on its permit application, but severely limited its ability to operate the molder, by restricting it to only 30 days or less, ALC has no option, other than this petition, for obtaining review of the Agency's apparent decision that the molder is not exempt from construction and operating permit requirements.

Grounds for Appeal

10. Construction of the new Plastic Blow Molding Machine with Dual Extruder does not require a state construction permit under 35 Ill. Adm. Code 201.142 because extruders that process plastics are specifically exempt from state permit requirements under 35

Ill. Adm. Code 201.146(cc). Section 201.146(cc) provides, in pertinent part, as follows:

Section 201.146 Exemptions from State Permit Requirements

Construction or operating permits, pursuant to Sections 201.142, 201.143 and 201.144 of this Part, are not required for the classes of equipment and activities listed below in this Section.

....

- cc) Extruders used for the extrusion of metals, minerals, plastics, rubber or wood, excluding:
 - 1) Extruders used in the manufacture of polymers;
 - 2) Extruders using foaming agents or release agents that contain volatile organic materials or Class I or II substances subject to the requirements of Title VI of the Clean Air Act; and
 - 3) Extruders processing scrap material that was produced using foaming agents containing volatile organic materials or Class I or II substances subject to the requirements of Title VI of the Clean Air Act; . . .

11. None of the exclusions to the extruder exemption apply to ALC's new blow molder. It is not used in the manufacture of polymers (Section 201.146(cc)(1)), does not use foaming agents or release agents that contain VOM or Class I or II substances subject to the requirements of Title VI of the Clean Air Act (Section 201.146(cc)(2)) and does not process scrap material that was produced using foaming agents containing VOM or Class I or II substances subject to the requirements of Title VI of the Clean Air Act. (Section 201.146(cc)(3)). Accordingly, no state construction permit is necessary or required in order for ALC to construct its new blow molder and operate it.

12. In addition, the new blow molder is exempt pursuant to Section 201.146 (Ill). This section specifically exempts plastic injection molding from the state permit requirements of Section 201.142. Section 201.146(III) provides as follows:

- III) Plastic injection molding equipment with an annual through-put not exceeding 5,000 tons of plastic resin in the aggregate from all plastic injection molding equipment at the source, and all associated plastic resin loading, unloading, conveying, mixing, storage, grinding, and drying equipment and associated mold release and mold cleaning agents.
13. Effective in August of 2009, this new exemption applies to injection molders. Blow molders are a subset of injection molders because they both use extruders and both inject melted plastic into a mold for forming and shaping. A blow molder injects the plastic into an accumulator head and the injection molder injects directly into a mold. ALC's plastic injection molding equipment does not have an annual throughput exceeding is 5,000 tons of plastic resin.
14. Because the new blow molder is exempt from state construction permit requirements, the Agency's demand that ALC submit a construction permit application for the blow molder and pay a construction permit fee was without authority and lacked any conceivable legal basis. Instead of issuing a permit for a source that is clearly exempt from permit requirements by Board rule and keeping the application fee, the Agency should have advised ALC that no construction permit was required and returned the \$4,000.
15. No state construction permit is required for the new blow molder. The Agency had no legal or factual basis for demanding that ALC prepare an application for a construction permit that was not necessary and to pay an application fee that was not required. Accordingly, the Construction Permit issued by the Agency should be voided by the Illinois Pollution Control Board and the \$4,000 application fee returned to ALC.

Request for Stay of Standard Condition No. 6

16. The Board has the authority to grant discretionary stays of permit conditions. *Community Landfill Co. and City of Morris v. IEPA*, PCB 01-48, 01-49, slip op. at 4 (Oct. 19, 2000). In

the absence of a stay, all special and standard conditions of the Construction Permit will remain in full force and effect during the pendency of this appeal.

17. The Construction Permit includes the following condition as Standard Condition No. 6:
 - a. Unless a joint construction/operation permit has been issued, a permit for operation shall be obtained from the Agency before the equipment covered by this permit is placed into operation.
 - b. For purposes of shakedown and testing, unless otherwise specified by a special condition, the equipment covered under this permit may be operated for a period not to exceed thirty (30) days.
18. The Construction Permit is not a joint construction and operating permit, and contains no special condition addressing operation beyond thirty days.
19. ALC's federally enforceable state operating permit expired July 20, 2005 and ALC applied to renew it on June 6, 2005. ALC was not notified that the application was incomplete, and the Agency took no action on the operating permit application until late April or early May of 2008 when it notified ALC that it wanted ALC to resubmit the application on different forms. ALC complied and sent additional forms and information to the Agency in June of 2008 and again in September of 2008. The Agency took no further action on the application until March 22, 2010 when it produced a draft permit for ALC's review. On April 15, 2010 the Agency informed ALC that it "considers the plastic blow molding machine to have been incorporated into" the FESOP application, which application is still pending, but not yet granted. ALC believes that due to the Agency's inaction on its original permit application it has a permit by operation of law but it is unclear whether that would extend to new equipment. Therefore, until the new molder is found to be exempt, or the Agency finally issues the FESOP, which would

encompass operation of the new blow molder, ALC may be unable to use the molder for more than 30 days unless a stay of Standard Condition No. 6 is granted.

20. Because no operating permit is required for the new blow molder, conditioning operation beyond thirty days upon issuance of an unnecessary operating permit yields an absurd result and is unreasonable. It also works an undue hardship upon ALC, which must commence operation of the new blow molder by early summer in order to meet long-standing contractual commitments.

21. Therefore, ALC requests that the Board stay the effectiveness of Construction Permit Standard Condition No. 6 during the pendency of this appeal. Under these facts, the Agency's imposition of Standard Condition No. 6 is not supported by the Illinois Environmental Protection Act or the Illinois Pollution Control Board's Air Pollution Control Regulations. In addition, a stay is necessary in order to avert irreparable harm to Petitioner. No harm to the public or to the environment will arise from allowing ALC to operate the new blow molder during the pendency of this appeal.²

22. ALC reserves the right to review the permit record and verify that all materials sent to the Agency and which should appear in the record, does in fact appear in the record, including but not limited to file comments, notes of meetings and telephone conversations.

WHEREFORE, Petitioner American Louver Company requests that the Illinois Pollution Control Board:

² ALC calculates its VOM PTE from the new blow molder to be approximately 0.5 tons/year. The new blow molder is not a HAP source.

- a. Stay Standard Condition No. 6 of the Construction Permit during the pendency of this appeal;
- b. Void the Construction Permit, as being issued by the Agency without authority under the Illinois Environmental Protection Act and the Illinois Pollution Control Board's Air Pollution Control Regulations for an emission source exempt from state permitting requirements; and
- c. Direct the Agency to refund the \$4,000 application fee to ALC.

Respectfully submitted.

AMERICAN LOUVER COMPANY

Dated: April 20, 2010

By:


Joseph R. Podlewski, Jr.

One of its attorneys

Joseph R. Podlewski
Heidi E. Hanson
PODLEWSKI & HANSON P. C.
4721 Franklin Ave, Suite 1500
Western Springs, IL 60558-1720
(708) 784-0624

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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

PAT QUINN, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

217/782-2113

CONSTRUCTION PERMIT

PERMITTEE

American Louver Company
Attn: Carol Salas
7700 Austin Avenue
Skokie, Illinois 60077

Application No.: 09110020

I.D. No.: 031288ARN

Applicant's Designation: NEWBLOWMOLDER

Date Received: January 21, 2010

Subject: New Plastic Blow Molder

Date Issued: March 19, 2010

Location: 7700 Austin Avenue, Skokie, Cook County, 60077

This permit is hereby granted to the above-designated Permittee to CONSTRUCT emission source(s) and/or air pollution control equipment consisting of one (1) Plastic Blow Molding Machine with Dual Extruder (Blow Molder #8) pursuant to the above-referenced application. This Permit is subject to standard conditions attached hereto and the following special condition(s):

- 1a. This permit is issued based on the emission of Hazardous Air Pollutants (HAP) as listed in Section 112(g) of the Clean Air Act being less than 10 tons/year of any single HAP and 25 tons/year of any combination of such HAPs. As a result, this permit is issued based on the emissions of all HAPs from this source not triggering the requirements of Section 112(g) of the Clean Air Act.
- b. This permit is issued based on the construction of the Plastic Blow Molding Machine not constituting a new major source or major modification pursuant to Title I of the Clean Air Act, specifically 35 Ill. Adm. Code Part 203, Major Stationary Sources Construction and Modification. The source has requested that the Illinois EPA establish emission limitations and other appropriate terms and conditions in this permit that limit the volatile organic material (VOM) emissions from the above-listed equipment below the levels that would trigger the applicability of these rules.
2. Pursuant to 35 Ill. Adm. Code 218.301, no person shall cause or allow the discharge of more than 3.6 kg/hour (8 lbs/hour) of organic material into the atmosphere from any emission unit, except as provided in 35 Ill. Adm. Code 218.302, 218.303, or 218.304 and the following exception: If no odor nuisance exists the limitation of 35 Ill. Adm. Code 218 Subpart G shall only apply to photochemically reactive material.
3. This permit is issued based on the blow molding operation not being subject to the control requirements of 35 Ill. Adm. Code 218 TT (Other Emission Units). This is a result of the federally enforceable production and operating limitations, which restrict the potential to emit for VOM to less than 25 tons per year.

EXHIBIT A

Page 2

4. In the event that the operation of this source results in an odor nuisance, the Permittee shall take appropriate and necessary actions to minimize odors, including but not limited to, changes in raw material or installation of controls, in order to eliminate the odor nuisance.
5. Emissions and operation of Blow Molder #8 shall not exceed the following limits:

<u>Emission Unit</u>	<u>Production</u>	<u>VOM Emissions</u>		
	<u>Rate</u>	<u>(Lbs VOM/10⁶ lb)</u>	<u>(Lbs/Hour)</u>	<u>(Tons/Year)</u>
Blow Molder #8	800	157.4	0.13	0.55

These limits are based on the maximum production rate of the blow molder, a maximum of 8,760 hours/year of operation, and an emission factor (157.4 lbs VOM/million lb plastic production) from the Society of Plastic Industry (SPI). Note that there is a "nested" limit on the emissions of the combination of HAPs as a result of the limit on VOM emissions. The HAPs emitted at this source have been determined to be VOCs and therefore limiting VOM emissions also limits HAP emissions.

- b. Compliance with the annual limits of this permit shall be determined on a monthly basis from the sum of the data for the current month plus the preceding 11 months (running 12 month total).
- 6a. The Permittee shall maintain records of the following items so as to demonstrate compliance with the conditions of this permit:
 - i. Plastic production rate for the blow molder (tons/month and tons/year); and
 - ii. Monthly and annual VOM and HAP emissions from the blow molder with supporting calculations (tons/month and tons/year).
- b. All records and logs required by this permit shall be retained at a readily accessible location at the source for at least five (5) years from the date of entry and shall be made available for inspection and copying by the Illinois EPA and USEPA upon request. Any records retained in an electronic format (e.g., computer storage device) shall be capable of being retrieved and printed on paper during normal source office hours so as to be able to respond to an Illinois EPA or USEPA request for records during the course of a source inspection.
7. Pursuant to 35 Ill. Adm. Code 218.990, upon request by the Illinois EPA, the owner or operator of an emission unit which is exempt from the requirements of 35 Ill. Adm. Code 218 Subparts PP, QQ, RR, TT or 35 Ill. Adm. Code 218.208(b) shall submit records to the Illinois EPA within 30 calendar days from the date of the request that document that the emission unit is exempt from those requirements.

Factoring
Molding and
Die Casting

Page 3

- 8a. If there is an exceedance of or a deviation from the requirements of this permit as determined by the records required by this permit, the Permittee shall submit a report to the Illinois EPA's Compliance Section in Springfield, Illinois within 30 days after the exceedance or deviation. The report shall include the emissions released in accordance with the recordkeeping requirements, a copy of the relevant records, and a description of the exceedance or deviation and efforts to reduce emissions and future occurrences.
- b. Two (2) copies of required reports and notifications shall be sent to:

Illinois Environmental Protection Agency
 Division of Air Pollution Control
 Compliance Section (#40)
 P.O. Box 19276
 Springfield, Illinois 62794-9276

and one (1) copy shall be sent to the Illinois EPA's regional office at the following address unless otherwise indicated:

Illinois Environmental Protection Agency
 Division of Air Pollution Control
 9511 West Harrison
 Des Plaines, Illinois 60016

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

COPY

Original Signed by

Edwin C. Bakowski, P.E.

Date Signed:

3/19/2010

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

CBK RMB
 ECB:CBK:pa

cc: Region 1



STATE OF ILLINOIS
ENVIRONMENTAL PROTECTION AGENCY
DIVISION OF AIR POLLUTION CONTROL
P. O. BOX 19506
SPRINGFIELD, ILLINOIS 62794-9506

**STANDARD CONDITIONS FOR CONSTRUCTION/DEVELOPMENT PERMITS
ISSUED BY THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

July 1, 1985

The Illinois Environmental Protection Act (Illinois Revised Statutes, Chapter 111-1/2, Section 1039) authorizes the Environmental Protection Agency to impose conditions on permits which it issues.

The following conditions are applicable unless superseded by special condition(s).

1. Unless this permit has been extended or it has been voided by a newly issued permit, this permit will expire one year from the date of issuance, unless a continuous program of construction or development on this project has started by such time.
2. The construction or development covered by this permit shall be done in compliance with applicable provisions of the Illinois Environmental Protection Act and Regulations adopted by the Illinois Pollution Control Board.
3. There shall be no deviations from the approved plans and specifications unless a written request for modification, along with plans and specifications as required, shall have been submitted to the Agency and a supplemental written permit issued.
4. The permittee shall allow any duly authorized agent of the Agency upon the presentation of credentials, at reasonable times:
 - a. to enter the permittee's property where actual or potential effluent, emission or noise sources are located or where any activity is to be conducted pursuant to this permit,
 - b. to have access to and to copy any records required to be kept under the terms and conditions of this permit,
 - c. to inspect, including during any hours of operation of equipment constructed or operated under this permit, such equipment and any equipment required to be kept, used, operated, calibrated and maintained under this permit,
 - d. to obtain and remove samples of any discharge or emissions of pollutants, and
 - e. to enter and utilize any photographic, recording, testing, monitoring or other equipment for the purpose of preserving, testing, monitoring, or recording any activity, discharge, or emission authorized by this permit.
5. The issuance of this permit:
 - a. shall not be considered as in any manner affecting the title of the premises upon which the permitted facilities are to be located,
 - b. does not release the permittee from any liability for damage to person or property caused by or resulting from the construction, maintenance, or operation of the proposed facilities,
 - c. does not release the permittee from compliance with other applicable statutes and regulations of the United States, of the State of Illinois, or with applicable local laws, ordinances and regulations,
 - d. does not take into consideration or attest to the structural stability of any units or parts of the project, and

IL 532-0226

APC 168 Rev. 5/99

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090-005

- a. in no manner implies or suggests that the Agency (or its officers, agents or employees) assumes any liability, directly or indirectly, for any loss due to damage, installation, maintenance, or operation of the proposed equipment or facility.
6. a. Unless a joint construction/operation permit has been issued, a permit for operation shall be obtained from the Agency before the equipment covered by this permit is placed into operation.
b. For purposes of shakedown and testing, unless otherwise specified by a special permit condition, the equipment covered under this permit may be operated for a period not to exceed thirty (30) days.
7. The Agency may file a complaint with the Board for modification, suspension or revocation of a permit:
 - a. upon discovery that the permit application contained misrepresentations, misinformation or false statements or that all relevant facts were not disclosed, or
 - b. upon finding that any standard or special conditions have been violated, or
 - c. upon any violations of the Environmental Protection Act or any regulation effective thereunder as a result of the construction or development authorized by this permit.