

ILLINOIS POLLUTION CONTROL BOARD
August 9, 2012

NACME STEEL PROCESSING, LLC,)
)
 Petitioner,)
)
 v.) PCB 13-7
) (CAAPP Permit Appeal – Air)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by T.A. Hollbrook):

On August 1, 2012, NACME Steel Processing, LLC (NACME or petitioner) filed a petition for hearing (Pet.) asking the Board to review a June 27, 2012 determination of the Illinois Environmental Protection Agency (Agency or Illinois EPA). *See* 415 ILCS 5/40(a)(1) (2010); 35 Ill. Adm. Code 101.300(b), 105.206. The determination concerns NACME’s steel pickling facility at 429 West 127th Street, Chicago, Cook County. For the reasons below, the Board accepts the petition as timely filed but directs NACME to file an amended petition as described below.

Under the Environmental Protection Act (415 ILCS 5 (2010)), the Agency is the permitting authority, responsible for administering Illinois’ regulatory programs to protect the environment. If the Agency denies a permit or grants one with conditions, the permit applicant may appeal the Agency’s decision to the Board. *See* 415 ILCS 5/4, 5, 40(a)(1) (2010); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency issued a draft Federally Enforceable State Operating Permit (FESOP) to the petitioner on April 26, 2012. *See* Pet., Exh. A NACME’s petition for hearing and the other exhibits attached to it show ongoing discussion of the terms of the draft FESOP.

The June 27, 2012 determination is e-mail correspondence from Valeriy Brodsky of the Agency’s Bureau of Air to Britt Wenzel of Mostardi Platt and responding to NACME comments on the draft FESOP. That correspondence states in its entirety that

[t]he Illinois EPA position on NSPS [New Source Performance Standards] Subpart TT applicability is guided by the memo received from US EPA and cited in the previous communication. In spite of the fact that the subject of requested determination was testing procedure, it is very doubtful that US EPA would make procedural determination for non-subject source. The Illinois EPA continues to consider NACME protective oil application operations as being subject to NSOS Subpart TT requirements. Pet., Exh. G.

NACME appeals on the grounds that special permit condition 2a of the FESOP is inapplicable to its facility and should be removed from the permit. *See* Pet. at 4-6.

The Board accepts the petition as timely filed but directs NACME to file an amended petition. Section 105.210(a) of the Board's procedural rules requires that the petition include "[t]he Agency's final decision or issued permit." 35 Ill. Adm. Code 105.201(a). In the typical permit appeal filed with the Board, the Agency determination is written and delivered to the permit applicant by U.S. Mail, or is contained in a final permit. Agency practice may differ when processing an application for a FESOP. The Board directs NACME either to file the "final decision or issued permit" or verify that the draft permit and subsequent e-mail correspondence (Pet., Exhs. A, G) are the only documents it possesses that convey the Agency final determination appealed by the petition.

In addition, the Board notes that Exhibit A, a "preliminary draft" FESOP for NACME, includes only odd-numbered pages, which do not include condition 2a. Therefore, the Board directs the petitioner to file an amended petition as directed in the preceding paragraph and a complete preliminary draft permit by September 10, 2012, or this appeal may be dismissed.

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 August 9, 2012 by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board