

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD DEC 22 2003  
OF THE STATE OF ILLINOIS

STATE OF ILLINOIS  
*Pollution Control Board*

XCTC LIMITED PARTNERSHIP,

Petitioner,

v.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Respondent.

PCB No. 2001-46  
(Permit Appeal – Air, Third Party)

GEORGIA-PACIFIC TISSUE, LLC

Petitioner,

v.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

Respondent.

PCB No. 2001-51  
(Permit Appeal – Air)  
(Consolidated)

NOTICE

TO: Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph Street, Suite 11-500  
Chicago, Illinois 60601

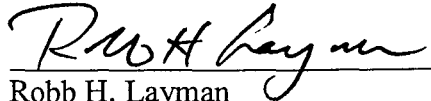
Mr. Michael S. McCauley  
Ms. Monica M. Tynan  
Quarles & Brady LLP  
411 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202-5525

Mr. Bradley Halloran,  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph Street, Suite 11-500  
Chicago, Illinois 60601

Mr. James T. Harrington  
McGuire Woods Ross & Hardies  
150 N. Michigan Avenue  
Suite 2500  
Chicago, Illinois 60601-7567

PLEASE TAKE NOTICE that I have today filed with the Office of the Pollution  
Control Board the APPEARANCE, MOTION TO DISMISS AND MOTION FOR LEAVE

TO FILE INSTANTER of the Illinois Environmental Protection Agency, a copy of which is  
herewith served upon you.

By:   
Robb H. Layman  
Special Assistant Attorney General  
ARDC #6205498

Date: December 17, 2003

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276  
Telephone: 217/782-5544  
Facsimile: 217/782-9807

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CLERK'S OFFICE

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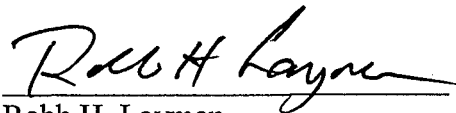
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PCB No. 2001-51  
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(Consolidated)

APPEARANCE

I hereby file my Appearance in this proceeding on behalf of the Illinois Environmental  
Protection Agency.

By:



Robb H. Layman  
Special Assistant Attorney General  
ARDC #6205498

DATED: December 17, 2003

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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**MOTION TO DISMISS**

NOW COMES the Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), by and through its attorneys, and moves the ILLINOIS POLLUTION CONTROL BOARD (“Board”) to dismiss the Petitioner’s, GEORGIA-PACIFIC TISSUE, LLC, (“Georgia-Pacific”), Amended Permit Appeal relating to the Clean Air Act Permit Program (“CAAPP”) permit decision by the Illinois EPA in the above-captioned matter. In support thereof, the Illinois EPA states as follows:

1. The Illinois EPA issued a CAAPP permit to Georgia-Pacific on August 4, 2000, for the operation of a tissue manufacturing facility located at 13101 South Pulaski Road, Alsip, Cook County, Illinois.

2. XCTC LIMITED PARTNERSHIP ("XCTC") filed a third-party petition for appeal of the CAAPP permit with the Board on September 1, 2000, and the Board accepted the petition for hearing in an order dated September 7, 2000.

3. Georgia Pacific filed a petition seeking review of the CAAPP permit with the Board on September 8, 2000. The Board accepted the petition for hearing and consolidated the separate appeals into the above-referenced proceeding on September 21, 2000.

4. The permit appeal has been pending with the Board since the date of its initial filing, at the request of the parties, so as to allow for on-going settlement discussions concerning compliance, permitting and related enforcement issues.

5. Georgia-Pacific recently filed a petition before the Board entitled "Amended Permit Appeal from Title V – Clean Air Act Permit Program Permit, Application No. 95090118, I.D.No. 031003ADF, Date Issued: August 4, 2000." The Board received the petition on November 24, 2003, and the Illinois EPA received a copy of the petition on or about that same date. The Illinois EPA notes that Georgia-Pacific does not appear to have sought leave from the Board for the filing of its petition.

6. Georgia-Pacific's Amended Permit Appeal seeks to incorporate a CAAPP permit provision concerning Subpart G of the Board's Subtitle B air pollution regulations into this appeal proceeding. The relevant provision is contained at Permit Condition 7.1.3(c), which has its origins from the organic material usage requirements of 35 Ill. Adm. Code 218.301. Commonly known as the "8 pounds per hour" rule, the permit condition simply recites the Board's regulatory language requiring that "no person shall cause or allow the discharge of more than 3.6 kg/hr (8 lbs/hr) of organic material into the atmosphere from any emission unit."

7. The Illinois EPA does not dispute that Subpart G has become a topic of settlement discussions between the parties over the course of the last several months. Even so,

the newfound relevance of this regulation to settlement discussions does not create a jurisdictional nexus by which Georgia-Pacific can obtain Board review for its Amended Permit Appeal.

8. The Board's past rulings certainly do not support Georgia-Pacific's attempt to amend its earlier appeal in order to challenge yet another component of the Illinois EPA's permitting decision. The Board has occasionally allowed appellants the opportunity to amend their initial petitions to cure certain defects revealed at the time of the original filing. *See, Randall Industries v. Illinois EPA*, PCB No. 03-219 (September 18, 2003); *St. Clair Properties Development, Inc., v. Illinois EPA*, PCB No. 98-72 (November 20, 1997); *THF Belleville Development, L.P., v. Illinois EPA*, PCB No. 96-99 (November 16, 1995). The narrow reaches of those Board decisions, however, should not be construed to apply here, especially where the petition comes three years after the initial filing and the new matter involves a wholly unrelated permit condition.

9. The Illinois EPA acknowledges that the CAAPP-related provisions of the Act may eventually give rise to the Board's consideration of other post-appeal period petitions. Section 40.2(a) of the Act, 415 ILCS 5/40.2(a)(2002), provides, in pertinent part:

\* \* \*

Notwithstanding the preceding requirements, petitions for a hearing before the Board under this subsection may be filed after the 35-day period, only if such petitions are based solely on grounds arising after the 35-day period expires. Such petitions shall be filed within 35 days after the new grounds for review arise.

\* \* \*

The Board's regulations are consistent with the statute's requirements. [See, 35 Ill. Adm. Code 105.302(e).

10. Even assuming that a "petition" is defined so as to enable a petitioner to raise additional points of contention about a disputed permit's terms several months or years after

the timely filing of an initial appeal, Georgia-Pacific cannot, in this instance, bring itself into the statute's fold for several reasons.

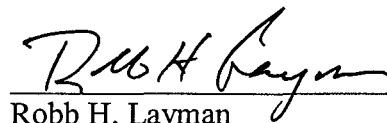
11. First, Georgia-Pacific has not alleged any grounds for seeking review of the challenged permit condition. Secondly, Georgia-Pacific has not pled facts sufficient to demonstrate that any such grounds arose within the 35 day period occurring immediately prior to its filing of the Amended Permit Appeal. Moreover, Georgia-Pacific has not substantiated whether such grounds derive from a controversy that is drawn from the permit itself or, rather, from other peripheral circumstances. The latter case, in the Illinois EPA's view, should not warrant consideration in these types of cases because such circumstances will always fall outside of the purview of, and be distinctly unrelated to, the Illinois EPA's permit decision.

WHEREFORE, the Illinois EPA respectfully requests that the Board dismiss Georgia-Pacific's filing of the Amended Permit Appeal or, in the alternative, order such relief as may be deemed appropriate.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By:



Robb H. Layman  
Special Assistant Attorney General  
ARDC #6205498

DATED: December 17, 2003

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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P.O. Box 19276  
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**MOTION FOR LEAVE TO FILE INSTANTER**

NOW COMES the Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), by and through its attorneys, and moves the POLLUTION CONTROL BOARD (“Board”) to allow leave for the Respondent to file the accompanying Motion to Dismiss with respect to the Petitioner’s, GEORGIA-PACIFIC TISSUE, LLC, (“Georgia-Pacific”), Amended Permit Appeal. In support thereof, the Illinois EPA states as follows:



1. The Illinois EPA received a copy of the petition filed by Georgia-Pacific on or about November 24, 2003.

2. In accordance with the Board's procedural regulations, the Illinois EPA was required to have responded to a formal motion within 14 days after service. [See, 35 Ill. Adm. Code 101.500(d).

3. Due to the press of enforcement case responsibilities handled by the undersigned attorney during the last several weeks, the Illinois EPA has been unable to respond to Georgia-Pacific's filing until the present date.

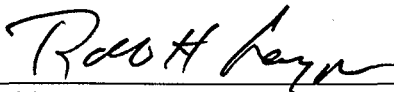
4. No hardship or material prejudice will result to the Petitioner or any other person by the Board's granting of leave for the filing of the Illinois EPA's motion.

WHEREFORE, the Respondent respectfully requests that the Board grant leave for the filing of the accompanying Motion To Dismiss in this cause.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By:

  
Robb H. Layman  
Special Assistant Attorney General  
ARDC #6205498

DATED: December 17, 2003

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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Telephone: 217/782-5544  
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PROOF OF SERVICE

I, the undersigned, certify that I have served the attached Appearance and Recommendation upon the person to whom it is directed, by placing them in an envelope addressed to:

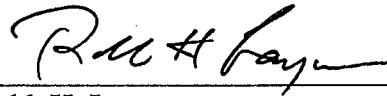
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Hearing Officer  
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Mr. Michael S. McCauley  
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Quarles & Brady LLP  
411 E. Wisconsin Avenue  
Milwaukee, Wisconsin 53202-5525

Mr. James T. Harrington  
McGuire Woods Ross & Hardies  
150 N. Michigan Avenue  
Suite 2500  
Chicago, Illinois 60601-7567

and mailing it by First Class Mail from Springfield, Illinois on December 18, 2003. As per authorization from the assigned Hearing Officer, a copy of the attached documents was also filed by facsimile with the Board on the afternoon of December 17, 2003.



Robb H. Layman  
Special Assistant Attorney General  
ARDC #6205498

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