

ILLINOIS POLLUTION CONTROL BOARD

January 9, 2003

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| LONE STAR INDUSTRIES, INC., |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | PCB 03-94 |
| |) | (CAAPP Permit Appeal – Air) |
| ILLINOIS ENVIRONMENTAL |) | |
| PROTECTION AGENCY, |) | |
| |) | |
| Respondent. |) | |

ORDER OF THE BOARD (by T. E. Johnson):

Today, the Board accepts for hearing Lone Star Industries, Inc.'s (Lone Star) timely petition appealing the Illinois Environmental Protection Agency's (Agency) conditional acceptance of Lone Star's application for a Clean Air Act Permit Program (CAAPP) permit. The Board hears appeals of Agency decisions to issue or deny permits in environmental programs. *See* 415 ILCS 5/40.2 (2000), *amended by* P.A. 92-0574, eff. June 26, 2002. The Board's review of a permit appeal is generally limited to the record before the Agency, and is not based on information developed by the permit applicant or the Agency after the Agency's decision. Alton Packaging Corp. v. PCB, 162 Ill. App. 3d 731, 738, 516 N.E.2d 275, 280 (5th Dist. 1987).

On December 27, 2002, Lone Star timely filed a petition asking the Board to review a November 22, 2002 determination of the Agency. *See* 415 ILCS 5/40.2(a) (2000), *amended by* P.A. 92-0574, eff. June 26, 2002; 35 Ill. Adm. Code 105.302(e). The Agency conditionally accepted Lone Star's application for a CAAPP permit under Section 39.5 of the Environmental Protection Act (Act) (415 ILCS 5/39.5 (2000)). The CAAPP permit application concerns Lone Star's Portland cement facility at Portland Avenue, Oglesby, LaSalle County.

Section 40.2(a) of the Act (415 ILCS 5/40.2(a) (2000), *amended by* P.A. 92-0574, eff. June 26, 2002) allows several persons to appeal Agency CAAPP permit determinations: permit applicants; persons who participated in the Agency's public comment process under Section 39.5(8) of the Act (415 ILCS 5/39.5(8) (2000)); and persons who could obtain judicial review under Section 41(a) of the Act (415 ILCS 5/41(a) (2000)). 415 ILCS 5/40.2(a) (2000), *amended by* P.A. 92-0574, eff. June 26, 2002; *see also* 35 Ill. Adm. Code 105.302(c). Lone Star is the CAAPP permit applicant.

Lone Star appeals on the grounds that certain permit conditions are neither consistent with the Clean Air Act and its regulations nor the Act and its regulations.

Lone Star has the burden of proof. 415 ILCS 5/40.2(a) (2000), *amended by* P.A. 92-0574, eff. June 26, 2002; *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 5/40.2(c) (2000), *amended by* P.A. 92-0574, eff. June 26, 2002), which only Lone Star may extend by

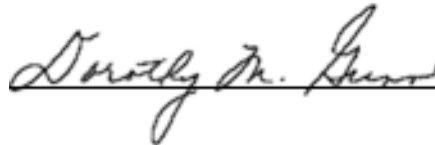
waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, “the permit shall not be deemed issued; rather, the petitioner shall be entitled to an Appellate Court order pursuant to Section 41(d) of this Act [415 ILCS 5/41(d) (2000)].” 415 ILCS 5/40.2(c) (2000), *amended by* P.A. 92-0574, eff. June 26, 2002. Currently, the decision deadline is April 16, 2003 (the 120th day after December 17, 2002). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for April 3, 2003.

Unless the Board or the hearing officer orders otherwise, the Agency must file an answer, including the entire record of its determination within 30 days after it is served with the petition. 35 Ill. Adm. Code 105.302(f). 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. 35 Ill. Adm. Code 105.116. The record must comply with the content requirements of 35 Ill. Adm. Code 105.302(f).

Lone Star has concurrently filed a motion to stay effectiveness of CAAPP permit. Motions to stay a proceeding must be accompanied by sufficient information detailing why a stay is needed. 35 Ill. Adm. Code 101.514(A). Lone Star contends that a stay of the CAAPP permit is necessary to protect its right to appeal permit conditions. The motion recites that IEPA has no objection to the motion. The Board grants Lone star’s motion to stay effectiveness of CAAPP permit until the Board’s final action in this matter or until the Board orders otherwise.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 9, 2003, by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board