

ILLINOIS POLLUTION CONTROL BOARD
February 6, 2003

PECHINEY PLASTIC PACKAGING, INC.,)
)
Petitioner,)
)
v.) PCB 03-58
) (CAAPP Permit Appeal – Air)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

On November 7, 2002, the Board, at the parties' request, extended until January 27, 2003, the time period within which Pechiney Plastic Packaging, Inc. (PPPI), might appeal the Illinois Environmental Protection Agency (Agency) decision not to take any action on an application to modify a Clean Air Act Permit Program (CAAPP) permit. *See* 415 ILCS 5/40.2(a) (2002). On January 27, 2003, PPPI filed a petition asking the Board to review the Agency's decision not to take action on a permit request. The Agency issued a CAAPP permit on May 28, 2002. However, on June 18, 2002, PPPI submitted to the Agency a request for administrative amendment and for minor permit modification for the issued CAAPP permit under Section 39.5 of the Environmental Protection Act (Act) (415 ILCS 5/39.5 (2002)); the Agency did not respond to this request at any time. The CAAPP permit concerns PPPI's flexible plastic packaging facility at 475 North Kirk Road in Batavia, Kane County.

Section 40.2(a) of the Act (415 ILCS 5/40.2(a) (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) (2002)); and persons who could obtain judicial review under Section 41(a) of the Act (415 ILCS 5/41(a) (2002)). 415 ILCS 5/40.2(a) (2002); *see also* 35 Ill. Adm. Code 105.302(c). PPPI is the CAAPP permit applicant. PPPI appeals on the grounds that the Agency's failure to act on PPPI's request for administrative amendment and for minor permit modification for the issued CAAPP permit within 90 days of the request was arbitrary and capricious. The Board accepts the petition for hearing.

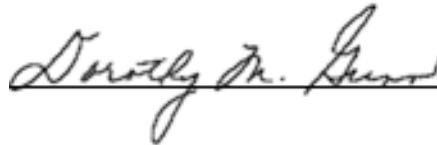
PPPI has the burden of proof. 415 ILCS 5/40.2(a) (2002); *see also* 35 Ill. Adm. Code 105.112(a). Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40.2(c) (2002)), which only PPPI may extend by waiver. *See* 35 Ill. Adm. Code 101.308. 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) (2002)]." 415 ILCS 5/40.2(c) (2002). Currently, the decision deadline is May 27, 2003 (the 120th day after January 27, 2003).

See 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for May 15, 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).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 6, 2003, by a vote of 7-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board