

ILLINOIS POLLUTION CONTROL BOARD
January 8, 2004

NOVEON, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 04-102
)	(Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J.P. Novak):

On December 24, 2003, Noveon, Inc. (Noveon) timely filed a petition asking the Board to review a November 24, 2003 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.206(a). The Agency issued a final Clean Air Act Permit Program permit for Noveon’s petrochemical manufacturing facility at 1550 County Road 1450 N in Henry, Marshall County. Noveon appeals on the grounds that the Agency modified the permit in response to some of the comments it submitted in response to the draft permit, but did not modify the permit in response to all Noveon’s significant comments. Noveon’s petition meets the content requirements of 35 Ill. Adm. Code 105.210. The Board accepts the petition for hearing.

Noveon has the burden of proof. 415 ILCS 5/40(a)(1) (2002); *see also* 35 Ill. Adm. Code 105.112(a). Hearings “will be based exclusively on the record before the Agency at the time the permit or decision was issued.” 35 Ill. Adm. Code 105.214(a). Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2002)), which only Noveon may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Noveon “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 April 22, 2004 (the 120th day after December 24, 2003). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for April 15, 2004.

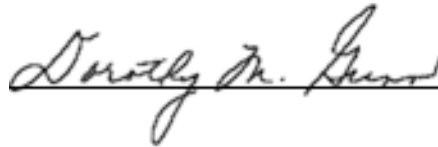
Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by January 23, 2004 which is 30 days after Noveon filed the petition. 35 Ill. Adm. Code 105.212(a). If the Agency wishes to seek additional time to file the record, it must file a request 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 105.212(b).

With its petition, Noveon submitted a request that the Board stay the effectiveness of various conditions of the permit until the Board has rendered its final decision in this matter.

Noveon asserts that compliance with the terms and conditions of the permit on the date of permit issuance was impossible. Noveon asserts that requiring compliance without allowing sufficient time to review the permit and ensure compliance prior to the effective date is arbitrary and capricious. The Agency has not yet responded to this request. *See* 35 Ill. Adm. Code 101.500(d) (2002). The Board reserves ruling on the issues relating to the requested stay pending the response of the Agency.

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 8, 2004, 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