

ILLINOIS POLLUTION CONTROL BOARD
March 17, 2005

ROHM AND HAAS COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 05-164
)	(Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On March 11, 2005, Rohm and Haas Company timely filed a petition asking the Board to review a February 7, 2005 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.206(a). Because the postmark date of the joint request is within the extended time for filing, the petition was timely filed. 35 Ill. Adm. Code 101.300(b)(2), 105.404. The Agency issued a renewed Federally Enforceable State Operating Permit (FESOP) with new conditions for Rohm and Haas Company's polymer emulsion manufacturing facility at 1400 Harvard Drive, Kankakee, Kankakee County.

Rohm and Haas Company appeals on the grounds that (1) the new conditions are not necessary to accomplish the purposes of the Act; (2) the conditions conflict with Section 9.1(a) of the Act (415 ILCS 5/9.1(a) (2002)); (3) the conditions create an unworkable and unpredictable set of conditions that potentially subject the plant to arbitrary enforcement; and (4) no violation would occur if the prior FESOP was renewed as requested without the new conditions. Rohm and Haas Company's petition meets the content requirements of 35 Ill. Adm. Code 105.210. The Board accepts the petition for hearing.

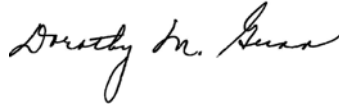
Rohm and Haas Company has the burden of proof. 415 ILCS 5/40(a)(1) (2002); *see also* 35 Ill. Adm. Code 105.112(a). Hearings "will be based exclusively on the record before the Agency at the time the permit or decision was issued." 35 Ill. Adm. Code 105.214(a). Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2002)), which only Rohm and Haas Company may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Rohm and Haas Company "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 July 9, 2005 (the 120th day after March 11, 2005). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for June 2, 2005.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by April 10, 2005, which is 30 days after Rohm and Haas Company 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, Rohm and Haas Company 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. 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 March 17, 2005, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board