

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

THE PREMCOR REFINING)	
GROUP, INC.,)	
)	
Petitioner,)	
)	PCB No. 07-030
v.)	(CAAPP Permit Appeal)
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

Carol Webb
Hearing Officer
600 S. Second Street
Suite 402
Springfield, Illinois 62704

Katherine D. Hodge and Monica T. Rios
Hodge Dwyer Zeman
3150 Roland Avenue
P.O. Box 5776
Springfield, Illinois 62705-5776

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board the **APPEARANCE** and a **MOTION TO DISMISS** of the Respondent, Illinois Environmental Protection Agency, a copy of which is herewith served upon the assigned Hearing Officer and the attorneys for the Petitioner.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

_____/s/_____
Robb H. Layman
Assistant Counsel

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217)524-9137
Dated: November 27, 2006

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

THE PREMCOR REFINING)	
GROUP, INC.,)	
)	
Petitioner,)	
)	PCB No. 07-030
v.)	(CAAPP Permit Appeal)
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

APPEARANCE

NOW COMES Robb Layman, as an authorized legal representative, and enters his appearance on behalf of the Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, in the above-captioned matter.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

_____/s/_____
Robb H. Layman
Assistant Counsel

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217)524-9137
Dated: November 27, 2006

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

THE PREMCOR REFINING)	
GROUP, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB No. 07-030
)	(CAAPP Permit Appeal)
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

MOTION TO DISMISS

NOW COMES the Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), by and through its attorney, and, pursuant to 35 Ill. Adm. Code 101.506, moves the Illinois Pollution Control Board (“Board”) to dismiss the Petition for Review (hereinafter “Petition”) filed by the Petitioner, THE PREMCOR REFINING GROUP, INC., (hereinafter “Premcor”), in the above-captioned matter or, in the alternative, compel the filing of an amended Petition that is consistent with the pleading requirements set forth in the applicable Board’s regulations.

1. The Illinois EPA issued a Clean Air Act Permit Program (“CAAPP”) permit and Title I permit to Premcor on September 19, 2006, authorizing the operation of a Marine Terminal facility located at 201 East Hawthorne, Hartford, Madison County, Illinois.

2. On or about October 24, 2006, Premcor’s attorneys filed a four-page Petition for Review with the Board challenging the Illinois EPA’s September 14, 2006 CAAPP permitting decision.

3. The Illinois EPA was served with a copy of the Petition on October 25, 2006.

4. Petitioner generally contends that the CAAPP permit issued by the Illinois EPA does not reflect the most “current” applicable requirements or activities related to the Petitioner’s facility. *See, Petition at page 4.* Petitioner further alleges that the CAAPP permit contains conditions are seemingly unlawful because they are not necessary to satisfy the statutory standards for issuance. *Id.* Both of these legal objections apparently stem from the Illinois EPA’s failure to “make certain changes” to the CAAPP permit that were requested by Petitioner’s earlier comments and the failure to incorporate conditions from prior construction permits. *See, Petition at page 3.* Three exhibits are attached to the Petition that purport to represent the Petitioner’s earlier comments (i.e., Petitioner’s Exhibits A, B and C). Three exhibits attached to the Petition identify earlier construction permits (i.e., Petitioner’s Exhibits E, F and G).

5. In this Motion, the Illinois EPA challenges the sufficiency of the Petition for the reason that it does not conform to the petition content requirements of the Board’s Subtitle A regulations and therefore fails to provide adequate specificity to apprise either the Board or the Illinois EPA of the subject matter of the appeal.¹

6. Section 105.304(a)(2) of Title 35 of the Board’s procedural regulations provides that a petition for appeal of a CAAPP permit, including the issuance of a CAAPP permit with one or more conditions or limitations, must contain a “statement of the Agency’s decision or part thereof to be reviewed.” 35 Ill. Adm. Code 105.304(a)(2). Section 105.108 of Title 35 provides the Board with authority to dismiss any petition that

¹ The Illinois EPA notes that the Petitioner, by a separate motion, has sought a stay of the effectiveness of the CAAPP permit in its entirety. In view of the Board’s prior stay rulings in other CAAPP appeals, the Illinois EPA will not contest Petitioner’s request for stay.

fails to contain the “informational” requirements set forth in the afore-mentioned Section 105.304.

7. Although the Petitioner generally cites to the Illinois EPA’s final decision in issuing CAAPP permit, scant details can be drawn from the Petition as to which aspect or part of the CAAPP permitting decision is to be reviewed. While Petitioner alludes to “certain” conditions that do not reflect Petitioner’s requested changes or conditions from prior construction permits, nothing in the Petition identifies any particular condition or component of the CAAPP permit determination that is now being challenged.

8. A petitioner seeking an appeal from a permit issuance by the Illinois EPA should be required to plead, with some degree of specificity, the identity of the challenged permit conditions. In the absence of such delineation, the Illinois EPA might potentially never be certain as to which parts of the permit are being challenged on appeal. In this case, the parts of the Illinois EPA permit decision being raised on appeal are, at best, only noted indirectly (i.e., incorporated by reference to attached exhibits). Even then, it is not clear which of the attached comments were satisfactorily addressed in the Illinois EPA’s permitting decision and which were not. Such a vague and inconclusive petition filing not only has the effect of complicating the Illinois EPA’s pre-hearing posture as to the merits of the appeal but may also frustrate settlement negotiations aimed at resolving the appeal prior to a final Board ruling.

9. Petitioner might suggest that its attempt to incorporate prior comments, to the extent that they are submitted as attached exhibits and contain references to specific permit conditions, should suffice in meeting the petition content requirements of Section 105.304(a)(2). While those comments may identify certain permit conditions, it does not

resolve the issue of which comments, and thus, which permit conditions, are now being challenged.

10. In *Lone Star Industries, Inc., v. Illinois EPA, PCB No. 03-94 (March 6, 2003)*, the Board issued an order denying the Illinois EPA's motion seeking dismissal of a CAAPP appeal, which, in part, had challenged the petition based on the failure to articulate the nature or substance of the appeal. Several aspects of that case are arguably similar here, including the allegations that certain comments by the petitioner were not addressed by the Illinois EPA's permitting decision. The one noteworthy distinction, however, is that the petition in *Lone Star* at least identified the permit conditions by their specific, numerical reference. The Board found that the petition satisfied the procedural requirements of Section 105.304(a)(2), as the petition specifically identified those portions of the permit for which review was sought. *Id. at page 3.*

11. In this instance, the Petition fails to clearly identify those conditions of the CAAPP permit that are raised on appeal. By failing to pinpoint the relevant permit conditions that are challenged on appeal, Petitioner has failed to comply with the petition content requirements of 35 Ill. Adm. Code 105.304(a)(2). Moreover, the crux of the Board's ruling in *Lone Star* would suggest that, at a minimum, the Illinois EPA should be entitled to know which component of its permitting decision is being challenged on appeal.

WHEREFORE, the Illinois EPA respectfully requests that the Board dismiss Premcor's Petition or, in the alternative, compel the filing of an amended Petition that clearly articulates those permit conditions of the CAAPP permit that are being challenged in this appeal.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

_____/s/_____
Robb H. Layman
Assistant Counsel

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217)524-9137
Dated: November 27, 2006

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of November 2006, I did send, by electronic mail, the following instruments entitled **APPEARANCE** and **MOTION TO DISMISS** to:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

and a true and correct copy of the same foregoing instruments, by First Class Mail with postage thereon fully paid and deposited into the possession of the United States Postal Service, to:

Carol Webb
Hearing Officer
600 S. Second Street
Suite 402
Springfield, Illinois 62704

Katherine D. Hodge and Monica T. Rios
Hodge Dwyer Zeman
3150 Roland Avenue
P.O. Box 5776
Springfield, Illinois 62705-5776

_____/s/_____
Robb H. Layman
Assistant Counsel