

ILLINOIS POLLUTION CONTROL BOARD
April 1, 2010

THE PREMCOR REFINING GROUP INC.,)
)
Petitioner,)
)
v.) PCB 10-55
) (CAAPP Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

On January 27, 2010, the Premcor Refining Group Inc. (Premcor) timely filed a petition (Pet.) asking the Board to review the December 23, 2009 issuance of a Clean Air Act Permit Program (CAAPP) permit by the Illinois Environmental Protection Agency (IEPA). The CAAPP permit concerns Premcor's petroleum bulk storage and loading terminal located at 201 East Hawthorne in Hartford, Madison County. On February 4, 2010, the Board accepted for hearing Premcor's appeal, which concerns conditions of the CAAPP permit. Accompanying Premcor's petition for review was a "Motion to Confirm Automatic Stay of Effectiveness of CAAPP Permit" (Mot. Stay), which the Board rules on today. For the reasons below, the Board grants Premcor's motion, confirming that the effectiveness of the CAAPP permit issued to Premcor is automatically stayed.

In the motion for stay, Premcor states that the Board has determined that the provisions of the Administrative Procedure Act (APA) (5 ILCS 100/10-65(b) (2008)) for the "automatic stay" of licenses apply to CAAPP permits. Mot. Stay at 2, citing U.S. Steel Corp. v. IEPA, PCB 10-23 (Nov. 19, 2009). Premcor therefore requests that the Board confirm the automatic stay of effectiveness of the CAAPP permit issued to Premcor. Mot. Stay at 2. Premcor adds, among other things, that "a stay of the entire CAAPP permit will not harm the public or the environment as the facility will continue to operate in accordance with all applicable federal and state regulations, as well as existing permits." *Id.* at 1-2. IEPA has filed no response to Premcor's motion for stay and therefore waives any objection to the Board granting the motion. *See* 35 Ill. Adm. Code 101.500(d).

The automatic stay provisions at Section 10-65(b) of the APA state:

When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license shall continue in full force and effect until the final agency decision on the application has been made unless a later date is fixed by order of a reviewing court. 5 ILCS 100/10-65(b) (2008).

Interpreting this language in the context of an appealed National Pollutant Discharge Elimination System (NPDES) permit, the appellate court held in Borg-Warner Corp. v. Mauzy, 100 Ill. App. 3d 862, 427 N.E.2d 415 (3rd Dist. 1981) as follows:

Borg-Warner made application for renewal of its NPDES permit, that application was timely and sufficient on the record before us, and therefore its original permit continues in effect until final action on the application by the administrative bodies charged with making the determination. A final decision, in the sense of a final and binding decision coming out of the administrative process before the administrative agencies with decision making power, will not be forthcoming in the instant case until the PCB rules on the permit application, after Borg-Warner has been given its adjudicatory hearing before the PCB. Thus, until that time, under [the APA automatic stay], the effectiveness of the renewed permit issued by the EPA is stayed. Borg-Warner, 100 Ill. App. 3d at 870-71, 427 N.E.2d at 421.

The CAAPP implements Title V of the federal Clean Air Act (CAA) (42 U.S.C. §§7661-7661f). Generally, a CAAPP permit is designed to be a single, comprehensive document of all air pollution obligations that apply to a facility. CAAPP permits replace existing State operating permits. *See* 415 ILCS 5/39.5(4) (2008); *see also, e.g., Dynegy Midwest Generation, Inc. (Havana Power Station) v. IEPA*, PCB 06-71, slip op. at 1, 5 (Feb. 16, 2006).

Here, Premcor represents that it submitted a CAAPP permit application to IEPA pursuant to Section 504(c) of the CAA (42 U.S.C. §7661b(c)) and Section 39.5(5) of the Environmental Protection Act (415 ILCS 5/39.5(5) (2008)). Pet. at 2; *see also* Mot. at 1. These statutory provisions address the required contents of CAAPP permit applications and when those applications must be submitted. *See* 42 U.S.C. §7661b(c); 415 ILCS 5/39.5(5) (2008). A complete initial application for a CAAPP source in Standard Industrial Classification (SIC) Code 29 (petroleum refining not including 2951 asphalt paving mixtures and blocks) was due within 12 months after the effective date of Illinois' CAAPP. *See* 35 Ill. Adm. Code 270.201(d); *see also* 415 ILCS 5/39.5(4)(c) (2008); Pet. at 1 ("major source"). The United States Environmental Protection Agency granted interim approval for Illinois' CAAPP, effective March 7, 1995. *See* 40 C.F.R. 70, App. A. On March 7, 1996, Premcor submitted its application to IEPA. Pet. at 2. On December 23, 2009, IEPA issued the final CAAPP permit, which is the subject of this appeal. Mot. at 1; Pet. at 2-3.

Under like circumstances, when moved to do so by a petitioner, the Board has consistently ruled that the APA's automatic stay provisions (5 ILCS 100/10-65(b) (2008)) apply to the CAAPP permit, relying upon Borg-Warner. *See, e.g., U.S. Steel*, PCB 10-23, slip op. at 2-3; Dynegy, PCB 06-71, slip op. at 7-8. Accordingly, the Board grants Premcor's motion, confirming that the effectiveness of the CAAPP permit issued to Premcor is automatically stayed under the APA.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 1, 2010, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John Therriault, Assistant Clerk
Illinois Pollution Control Board