

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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MAY 21 2010

STATE OF ILLINOIS
Pollution Control Board

AMERICAN LOUVER COMPANY)

Petitioner,)

v.)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY)

Respondent.)

PCB # 10-99
(Permit Appeal - Air)

NOTICE OF FILING

To: Division of Legal Counsel
Illinois Environmental Protection Agency
1021 N. Grand Ave.
P.O. 19276
Springfield, IL 62794-9276

PLEASE TAKE NOTICE that I have today filed with the Pollution Control Board the following documents:

PETITION FOR REVIEW OF NOTICE OF INCOMPLETENESS OF
CONSTRUCTION PERMIT APPLICATION BY AMERICAN LOUVER COMPANY
OPEN WAIVER OF DECISION DEADLINE
APPEARANCE OF JOSEPH R. PODLEWSKI, JR. and
APPEARANCE OF HEIDI E. HANSON

Copies of which are hereby served upon you.

Respectfully submitted,


Joseph R. Podlewski, Jr.

Dated: May 20, 2010

Joseph R. Podlewski Jr.
Heidi E. Hanson
PODLEWSKI & HANSON P.C.
4721 Franklin Ave, Suite 1500
Western Springs, IL 60558-1720
(708) 784-0624

This filing is submitted on recycled paper.

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**PETITION FOR REVIEW OF NOTICE OF INCOMPLETENESS OF
CONSTRUCTION PERMIT APPLICATION BY AMERICAN LOUVER
COMPANY**

NOW COMES the Petitioner, American Louver Company, by and through its attorneys, Podlewski & Hanson P.C., and pursuant to Section 40 of the Illinois Environmental Protection Act (415 ILCS 5/40) and 35 Ill Adm. Code 105 Subpart B, and 35 Ill Adm. Code 201.158 petitions the Illinois Pollution Control Board for review of the Illinois Environmental Protection Agency's April 15, 2010 Notice of Incompleteness of Construction Permit (Application No. 09110020) issued to American Louver Company.

In support thereof, Petitioner states as follows:

Background

1. American Louver Company ("ALC") is located in Skokie, Illinois. Currently, ALC manufactures, among other things, plastic highway barricades and "A" Frame Stands signs. Prior to the application for a construction permit that is the subject matter of this appeal, ALC's plastic manufacturing process (its Plastic Molding Department) included the operation of three (3) resin pellet storage silos, four (4) regular plastic injection molding machines and three (3) plastic blow molders. The injection molders and blow molders operate similarly and produce

plastic products through an extruder. Both the blow molders and injection molders are volatile organic materials ("VOM") emission sources. ALC's injection molders are also a source of hazardous air pollutants ("HAPs").

2. In late 2009, ALC decided to replace one of its injection molding machines with a new Plastic Blow Molding Machine with Dual Extruder. With the replacement of one of the injection molders with the new blow molder, ALC's Plastic Molding Department would consist of the resin silos, three (3) injection molders and four (4) blow molders. ALC desired to make this change and to have the new blow molder installed and on-line by mid-2010.
3. Including the operation of the new blow molder, ALC calculates the VOM potential to emit ("PTE") of the Plastic Molding Department to be approximately 16 tons/year. The HAP PTE of the Plastic Molding Department is calculated to be approximately 14 tons/year.
4. Although ALC believed that no permit was required for the new blow molder because of permit exemptions under 35 Ill. Adm. Code 201.146(cc) and 201.146(III),¹ the Illinois Environmental Protection Agency ("Agency") insisted that construction of the new blow molder required an Agency construction permit under 35 Ill. Adm. Code 201.142.
5. In order to avoid a dispute with the Agency over the need for a permit and the delay in the construction and operation of the new blow molder that would likely

¹ ALC has had a FESOP application pending with the Agency since 2005. Although it is ALC's position that no state permits are required for the plastic blow molders and injection molders at its facility by virtue of the permit exemptions of 35 Ill. Adm. Code 201.146(cc) and 201.146(III), respectively, these emission sources would nonetheless be included in the FESOP as insignificant emission sources.

result, ALC acceded to the Agency's request and applied for a construction permit for a new "Plastic Blow Molding Machine with Dual Extruder."

6. The Agency issued a construction permit (the "Construction Permit") to ALC for the new Plastic Blow Molding Machine with Dual Extruder.
7. The Construction Permit was received by ALC on March 22, 2010.
8. The Construction Permit includes the following condition as Standard Condition No. 6:
 - a. Unless a joint construction/operation permit has been issued, a permit for operation shall be obtained from the Agency before the equipment covered by this permit is placed into operation.
 - b. For purposes of shakedown and testing, unless otherwise specified by a special condition, the equipment covered under this permit may be operated for a period not to exceed thirty (30) days.
9. The Construction Permit is not a joint construction and operating permit, and contains no special condition addressing operation beyond thirty days.
10. By letter dated March 25, 2010, ALC requested that the Construction Permit be revised to allow operation of the new Plastic Blow Molding Machine with Dual Extruder beyond thirty days and until an operating permit is issued. The Agency received ALC's letter on March 30, 2010, and apparently construed its letter request to constitute a new construction permit application.
11. On April 26, 2010, ALC received a letter from the Agency (dated April 15, 2010) notifying it that its application for a construction permit was incomplete (the "Notice of Incompleteness" or "NOI"). A true and correct copy of the NOI received by ALC is attached hereto as Exhibit A. It is this NOI that ALC appeals.

Grounds for Appeal

12. Construction of the new Plastic Blow Molding Machine with Dual Extruder does not require a state construction permit under 35 Ill. Adm. Code 201.142 because extruders that process plastics are specifically exempt from state permit requirements under 35 Ill. Adm. Code 201.146(cc). Section 201.146(cc) provides, in pertinent part, as follows:

Section 201.146 Exemptions from State Permit Requirements

Construction or operating permits, pursuant to Sections 201.142, 201.143 and 201.144 of this Part, are not required for the classes of equipment and activities listed below in this Section.

....

- cc) Extruders used for the extrusion of metals, minerals, plastics, rubber or wood, excluding:
 - 1) Extruders used in the manufacture of polymers;
 - 2) Extruders using foaming agents or release agents that contain volatile organic materials or Class I or II substances subject to the requirements of Title VI of the Clean Air Act; and
 - 3) Extruders processing scrap material that was produced using foaming agents containing volatile organic materials or Class I or II substances subject to the requirements of Title VI of the Clean Air Act; ...

13. None of the exclusions to the extruder exemption apply to ALC's new blow molder. It is not used in the manufacture of polymers (Section 201.146(cc)(1)), does not use foaming agents or release agents that contain VOM or Class I or II substances subject to the requirements of Title VI of the Clean Air Act (Section 201.146(cc)(2)) and does not process scrap material that was produced using foaming agents containing VOM or Class I or II substances subject to the

requirements of Title VI of the Clean Air Act. (Section 201.146(cc)(3)).

Accordingly, no state construction permit is necessary or required in order for ALC to construct its new blow molder.

14. In addition, the new blow molder is exempt pursuant to Section 201.146(III). This section specifically exempts plastic injection molding from the state permit requirements of Section 201. Section 201.146(III) provides as follows:

Section 201.146 Exemptions from State Permit Requirements

Construction or operating permits, pursuant to Sections 201.142, 201.143 and 201.144 of this Part, are not required for the classes of equipment and activities listed below in this Section.

....

- III) Plastic injection molding equipment with an annual through-put not exceeding 5,000 tons of plastic resin in the aggregate from all plastic injection molding equipment at the source, and all associated plastic resin loading, unloading, conveying, mixing, storage, grinding, and drying equipment and associated mold release and mold cleaning agents.

15. Effective in August of 2009, this new exemption applies to injection molders.

Blow molders are a subset of injection molders because they both use extruders and both inject melted plastic into a mold for forming and shaping. A blow molder injects the plastic into an accumulator head and the injection molder injects directly into a mold. ALC's plastic injection molding equipment does not have an annual throughput exceeding 5,000 tons of plastic resin.

16. Because the new blow molder is exempt from state construction permit requirements, the Agency's initial demand that ALC submit a construction permit application for the blow molder was without authority and lacked any conceivable legal basis. Instead of sending a Notice of Incompleteness in response to ALC's request for additional time to operate the new blow molder, the Agency should

have advised ALC that no construction permit was required.

17. On April 26, 2010, ALC appealed the March 19, 2010 Construction Permit to the Board. *American Louver Company v. Illinois Environmental Protection Agency*, PCB 2010-090 (Permit Appeal-Air). ALC bases its appeal of the Construction Permit on the state construction permit exemptions of 35 Ill. Adm. Code 201.146(cc) and 201.146(III). Simply put, the Agency's issuance of the Construction Permit was erroneous--and the Construction Permit unnecessary---because no state construction permit is required.
18. For the same reasons, the Agency's issuance of the NOI was erroneous. The Agency considered ALC's request that the Construction Permit be revised to allow operation of the new blow molder beyond thirty days and until issuance of an operating permit² to be an application for yet another construction permit. However, no state construction permit is required for the new blow molder. The Agency has no legal or factual basis for requiring ALC to prepare yet another construction permit application for a piece of equipment that is clearly exempt from state construction permit requirements. Accordingly, the NOI issued by the Agency should be voided by the Illinois Pollution Control Board and considered to be of no legal effect.
19. In addition, the NOI is erroneous, inappropriate and issued without basis or authority because in paragraph 1 of the NOI, the Agency purports to find the "application" incomplete because it does not provide "a listing or description of applicable emission or performance testing requirements for the plastic blow

² The proposed operating permit for ALC is a FESOP, which went to public notice on April 29, 2010. The Agency acknowledges in its NOI that operation of the new blow molder will be incorporated in the FESOP. See Paragraph 2a of the NOI (Exhibit A).

molding machine that would be required before an operating permit can be issued for this emission unit under 35 Ill. Adm. Code 201.160(b)(3).”

20. Section 201.160(b)(3) states as follows:

Section 201.160 Standards for Issuance

b) No operating permit shall be granted unless the applicant submits proof to the Agency that:

....

3) The emission unit or air pollution control equipment has been shown by tests in accordance with the provisions of Subpart J of this Part, applicable regulations, and permit conditions to operate in accordance with the emission limitations set forth in this Chapter, provided that the Agency may waive the requirement for actual tests where sufficient standard testing information is available;...

21. By incorporating the new Plastic Blow Molding Machine with Dual Extruder into the draft federally enforceable state operating permit (“FESOP”) the agency had already found that such additional information and testing was not necessary and had waived the requirement for actual tests.

22. The FESOP which included the new Plastic Blow Molding Machine with Dual Extruder was sent to public notice on or about May 3, 2010.

23. ALC reserves the right to review the permit record and verify that all materials sent to the Agency and which should appear in the record do in fact appear in the record, including but not limited to file comments, notes of meetings and telephone conversations.

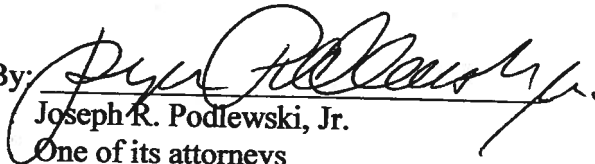
WHEREFORE, Petitioner American Louver Company requests that the Illinois Pollution Control Board void the Notice of Incompleteness, deem the original request issued due to

passage of time, or find that no further permitting action is necessary because the equipment at issue is exempt from state permitting requirements.

Respectfully submitted.

AMERICAN LOUVER COMPANY

Dated: May 20, 2010

By: 
Joseph R. Podlewski, Jr.
One of its attorneys

Joseph R. Podlewski
Heidi E. Hanson
PODLEWSKI & HANSON P. C.
4721 Franklin Ave, Suite 1500
Western Springs, IL 60558-1720
(708) 784-0624

217/782-2113

CERTIFIED MAIL

7007 0220 0000 0149 8558

NOTICE OF INCOMPLETENESS

April 15, 2010

American Louver Company
Attn: Carol Salas
7700 Austin Avenue
Skokie, Illinois 60077

Application Nos.: 09110020
I.D. No.: 031288AHN
Applicant's Designation: New Blow Molder
Received: March 30, 2010
Construction of: Plastics Blow Molder
Location: 7700 Austin Avenue, Skokie, Cook County

The Illinois EPA has determined the above referenced construction permit application to be incomplete because data and information was not provided as required by 35 Ill. Adm. Code 201.152.

Specifically, the following information must be supplied in order for the application to be considered complete:

- 1a. The application did not provide a listing or description of applicable emission or performance testing requirements for the plastic blow molding machine that would be required before an operating permit can be issued for this emission unit under 35 Ill. Adm. Code 201.160(b)(3).
- b. Pursuant to 35 Ill. Adm. Code 201.143, no person shall cause or allow the operation of any new emission source or new air pollution control equipment of a type for which a construction permit is required by 35 Ill. Adm. Code 201.142 without first obtaining an operating permit from the Illinois EPA, except for such testing operations as may be authorized by the construction permit. Applications for operating permits shall be made at such times and contain such information (in addition to the information required by 35 Ill. Adm. Code 201.157) as shall be specified in the construction permit.
- c. The previously issued construction permit (#09110020) does not contain any requirements for performance testing of the plastic blow molding machine.
- 2a. The Illinois EPA considers the plastic blow molding machine to have been incorporated into Enforceable State Operating Permit (FESOP) application submitted by this source (#08060078). A draft of the FESOP, which includes the plastic blow molding machine, was sent to the applicant for comments on March 19, 2010.
- b. Pursuant to Section 39.5(5)(u) of the Illinois Environmental Protection Act (Act), an owner or operator of a CAAPP source which seeks exclusion from the CAAPP through the imposition of federally enforceable

EXHIBIT A

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conditions, pursuant to Section 39.5(3)(c) of the Act, must request such exclusion within a CAAPP application submitted consistent with Section 39.5(5)(u) of the Act on or after the date that the CAAPP application for the source is due.

- b. Pursuant to Section 39.5(4)(a) of the Act, an owner or operator of a CAAPP source seeking to make a modification to a source prior to the issuance of its CAAPP permit shall be required to obtain a construction and/or operating permit as required for such modification in accordance with the State permit program under Section 39(a) of the Act, as amended, and regulations promulgated thereunder. The application for such construction and/or operating permit shall be considered an amendment to the CAAPP application submitted for such source.

The Illinois EPA welcomes and in fact encourages discussions, either in person or by telephone, with persons proposing projects which may be subject to the above regulations. Such discussions may explain and resolve issues much more effectively than written correspondence, to the benefit of both the Illinois EPA and an applicant. Please contact us if you believe such discussions would be helpful.

The Illinois EPA will be pleased to review a reapplication for this permit that includes the necessary information and documentation to correct the deficiencies noted above. The reapplication will be considered filed on the date it is received by the Illinois EPA and will constitute a new permit application for purposes of Section 39(a) of the Act. Two copies of this information must be submitted and should reference the application and I.D. numbers assigned above.

If you have any questions on this, please call George Kennedy at 217/782-2113.



Edwin C. Bakowski, P.E.
Manager, Permit Section
Division of Air Pollution Control

Date Signed: 4/15/2010

ECB:GMK:jws

cc: Region 1
Ray Pilapil, CES

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**OPEN WAIVER OF DECISION DEADLINE AND OPEN WAIVER OF
DEADLINE FOR FILING OF AGENCY RECORD**

Petitioner, American Louver Company, hereby waives the Illinois Pollution Control Board's decision deadline in the above-captioned matter. Petitioner also waives the Illinois Environmental Protection Agency's deadline for filing the Agency Record with the Illinois Pollution Control Board under 35 Ill. Adm. Code 105.116 and 35 Ill. Adm. Code 105.212.

Respectfully submitted.


on behalf of American Louver Company

Dated: May 20, 2010

Joseph R. Podlewski Jr.
Heidi E. Hanson
PODLEWSKI & HANSON P.C.
4721 Franklin Ave, Suite 1500
Western Springs, IL 60558-1720
(708) 784-0624

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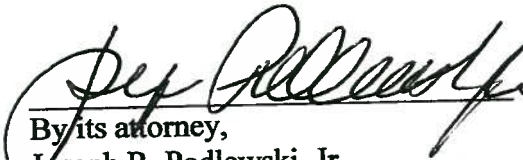
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APPEARANCE OF JOSEPH R. PODLEWSKI, JR.

NOW COMES Joseph R. Podlewski, Jr., of the law firm of PODLEWSKI &
HANSON P.C. and hereby enters his appearance on behalf of Petitioner.

Respectfully submitted,

AMERICAN LOUVER COMPANY


By its attorney,
Joseph R. Podlewski, Jr.

Dated: May 20, 2010

Joseph R. Podlewski, Jr.
Heidi E. Hanson
PODLEWSKI & HANSON P.C.
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Western Springs, IL 60558-1720
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APPEARANCE OF HEIDI E. HANSON

NOW COMES Heidi E. Hanson, of the law firm of PODLEWSKI & HANSON

P.C. and hereby enters her appearance on behalf of Petitioner.

Respectfully submitted,

AMERICAN LOUVER COMPANY



By its attorney,
Heidi E. Hanson

Dated: May 20, 2010

Joseph R. Podlewski Jr.
Heidi E. Hanson
PODLEWSKI & HANSON P.C.
4721 Franklin Ave, Suite 1500
Western Springs, IL 60558-1720
(708) 784-0624

CERTIFICATE OF SERVICE

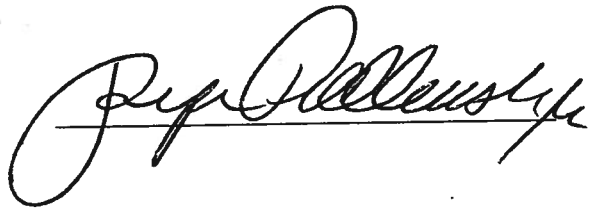
I, the undersigned attorney, certify that I have served the attached PETITION FOR REVIEW OF NOTICE OF INCOMPLETENESS OF CONSTRUCTION PERMIT APPLICATION BY AMERICAN LOUVER COMPANY, OPEN WAIVER OF DECISION DEADLINE, APPEARANCE OF JOSEPH R. PODLEWSKI JR., and APPEARANCE OF HEIDI E. HANSON, by depositing same in the U. S. Mail at Western Springs, Illinois before 4:30 p.m. on May 20, 2010, postage prepaid, upon the following persons:

Original including check for filing fee, and nine (9) copies:

Illinois Pollution Control Board, Attn: Clerk
100 West Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, Illinois 60601-3218

One copy to:

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Ave. East
P.O. 19276
Springfield, IL 62794-9276

A handwritten signature in black ink, appearing to read "Joe Podlowski Jr.", written over a horizontal line.