



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB2812

Introduced 1/28/2010, by Sen. Don Harmon

SYNOPSIS AS INTRODUCED:

415 ILCS 5/40.2

from Ch. 111 1/2, par. 1040.2

Amends the Environmental Protection Act. Authorizes the Illinois Pollution Control Board to stay the effectiveness of certain actions taken or permit conditions imposed by the Environmental Protection Agency in the course of administering the Clean Air Act Permit Program (CAAPP). Provides that if the Board stays any contested conditions, then any related conditions from any prior existing permit continue in full force and effect until the Board makes its final decision regarding the appeal of the granted CAAPP permit. Authorizes the Board to stay all the conditions in a CAAPP permit upon a demonstration that the issues raised on appeal can be reasonably expected to affect the CAAPP permit in its entirety. Provides that if the entire CAAPP permit is stayed by the Board, then any prior existing permit continues in full force and effect until the Board makes its final decision regarding the appeal of the granted CAAPP permit. Effective immediately.

LRB096 15132 JDS 30189 b

1 AN ACT concerning safety.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Environmental Protection Act is amended by
5 changing Section 40.2 as follows:

6 (415 ILCS 5/40.2) (from Ch. 111 1/2, par. 1040.2)

7 Sec. 40.2. Application of review process.

8 (a) Subsection (a) of Section 40 does not apply to any
9 permit which is subject to Section 39.5. If the Agency refuses
10 to grant or grants with conditions a CAAPP permit, makes a
11 determination of incompleteness regarding a submitted CAAPP
12 application, or fails to act on an application for a CAAPP
13 permit, permit renewal, or permit revision within the time
14 specified in paragraph 5(j) of Section 39.5 of this Act, the
15 applicant, any person who participated in the public comment
16 process pursuant to subsection 8 of Section 39.5 of this Act,
17 or any other person who could obtain judicial review pursuant
18 to Section 41(a) of this Act, may, within 35 days after final
19 permit action, petition for a hearing before the Board to
20 contest the decision of the Agency. However, the 35-day period
21 for petitioning for a hearing may be extended by the applicant
22 for an additional period of time not to exceed 90 days by
23 written notice provided to the Board from the applicant and the

1 Agency within the initial appeal period. If another person with
2 standing to appeal wishes to obtain an extension, there must be
3 a written notice provided to the Board by that person, the
4 Agency, and the applicant, within the initial appeal period.
5 Notwithstanding the preceding requirements, petitions for a
6 hearing before the Board under this subsection may be filed
7 after the 35-day period, only if such petitions are based
8 solely on grounds arising after the 35-day period expires. Such
9 petitions shall be filed within 35 days after the new grounds
10 for review arise. If the final permit action being challenged
11 is the Agency's failure to take final action, a petition for a
12 hearing before the Board shall be filed before the Agency
13 denies or issues the final permit.

14 The Agency shall appear as respondent in such hearing. At
15 such hearing the rules prescribed in Sections 32 and 33(a) of
16 this Act shall apply, and the burden of proof shall be on the
17 petitioner.

18 (b) The Agency's failure to take final action within 90
19 days of receipt of an application requesting minor permit
20 modification procedures (or 180 days for modifications subject
21 to group processing requirements), pursuant to subsection 14 of
22 Section 39.5, will be subject to this Section and Section 41 of
23 this Act.

24 (c) If there is no final action by the Board within 120
25 days after the date on which it received the petition, the
26 permit shall not be deemed issued; rather, the petitioner shall

1 be entitled to an Appellate Court order pursuant to Section
2 41(d) of this Act. The period of 120 days shall not run for any
3 period of time, not to exceed 30 days, during which the Board
4 is without sufficient membership to constitute the quorum
5 required by subsection (a) of Section 5 of this Act; the 120
6 day period shall not be stayed for lack of quorum beyond 30
7 days, regardless of whether the lack of quorum exists at the
8 beginning of the 120 day period or occurs during the running of
9 the 120 day period.

10 (d) Any person who files a petition to contest the final
11 permit action by the Agency under this Section shall pay a
12 filing fee.

13 (e) The Agency shall notify USEPA, in writing, of any
14 petition for hearing brought under this Section involving a
15 provision or denial of a Phase II acid rain permit within 30
16 days of the filing of the petition. USEPA may intervene as a
17 matter of right in any such hearing. The Agency shall notify
18 USEPA, in writing, of any determination or order in a hearing
19 brought under this Section that interprets, voids, or otherwise
20 relates to any portion of a Phase II acid rain permit.

21 (f) The Board may stay the effectiveness of any final
22 Agency action identified in subsection (a) of this Section
23 during the pendency of the review process. The Board may stay
24 the effectiveness of any or all of the contested conditions of
25 a CAAPP permit if requested. If the Board stays any contested
26 conditions, then any related conditions from any prior existing

1 permit continue in full force and effect until the final Board
2 decision on the appeal of the granted CAAPP permit has been
3 made. The Board may grant a request to stay all the conditions
4 in a CAAPP permit upon a demonstration that the issues raised
5 on appeal can be reasonably expected to affect the CAAPP permit
6 in its entirety. If the entire CAAPP permit is stayed by the
7 Board, then any prior existing permit continues in full force
8 and effect until the final Board decision on the appeal of the
9 granted CAAPP permit has been made.

10 (Source: P.A. 91-357, eff. 7-29-99; 92-574, eff. 6-26-02.)

11 Section 99. Effective date. This Act takes effect upon
12 becoming law.