

AN ACT concerning safety.

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

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

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

Sec. 40.2. Application of review process.

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

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

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

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

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

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

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

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

(f) If requested by the applicant, the Board may stay the effectiveness of any final Agency action identified in subsection (a) of this Section during the pendency of the review process. If requested by the applicant, the Board shall stay the effectiveness of all the contested conditions of a CAAPP permit. The Board may stay the effectiveness of any or

all uncontested conditions if the Board determines that the uncontested conditions would be affected by its review of contested conditions. If the Board stays any, but not all, conditions, then the applicant shall continue to operate in accordance with any related terms and conditions of any other applicable permits until final Board action in the review process. If the Board stays all conditions, then the applicant shall continue to operate in accordance with all related terms and conditions of any other applicable permits until final Board action in the review process. Any stays granted by the Board shall be deemed effective upon the date of final Agency action appealed by the applicant under this subsection (f). Subsection (b) of Section 10-65 of the Illinois Administrative Procedure Act shall not apply to actions under this subsection.

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

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