

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

GENERAL III, LLC,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 2021-007
	)	(Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**NOTICE OF ELECTRONIC FILING**

To: *See Attached Service List*

PLEASE TAKE NOTICE that on the 12th day of August, 2020, I caused to be filed with the Office of the Clerk of the Pollution Control Board by electronic filing the attached Appearances of Daniel Robertson, Kathryn A. Pamenter and Stephen J. Sylvester, and Respondent Illinois Environmental Protection Agency's Response to Petitioner's Request for a Discretionary Stay of Contested Permit Conditions, copies of which are attached hereto and hereby served upon you.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

/s/ Daniel Robertson  
Daniel Robertson  
Assistant Attorney General  
Environmental Bureau  
Office of the Illinois Attorney General  
69 W. Washington Street, 18<sup>th</sup> Floor  
Chicago, IL 60602  
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**SERVICE LIST**

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*Counsel for General III, LLC*  
*(via e-mail)*

**CERTIFICATE OF SERVICE**

I, Daniel Robertson, an Assistant Attorney General, hereby certify that on the 12th day of August, 2020, I caused to be served the foregoing Notice of Filing, Appearances of Daniel Robertson, Kathryn A. Pamenter and Stephen J. Sylvester, and Respondent Illinois Environmental Protection Agency's Response to Petitioner's Request for a Discretionary Stay of Contested Permit Conditions, to the parties named on the attached Service List, via e-mail or electronic filing as indicated.

/s/ Daniel Robertson  
Daniel Robertson  
Assistant Attorney General  
Environmental Bureau  
Office of the Illinois Attorney General  
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Chicago, IL 60602  
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Petitioner,	)	
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v.	)	PCB 2021-007
	)	(Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**APPEARANCE**

I, Daniel Robertson, hereby file my appearance in this proceeding for the Respondent, the Illinois Environmental Protection Agency.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

By: s/ Daniel Robertson  
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	)	(Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**APPEARANCE**

I, Kathryn A. Pamenter, hereby file my appearance in this proceeding for the Respondent, the Illinois Environmental Protection Agency.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

By: /s/ Kathryn A. Pamenter  
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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

GENERAL III, LLC,	)	
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Petitioner,	)	
	)	
v.	)	PCB 2021-007
	)	(Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**APPEARANCE**

I, Stephen J. Sylvester, hereby file my appearance in this proceeding for the Respondent, the Illinois Environmental Protection Agency.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

GENERAL III, LLC,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 21-7
	)	(Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL PROTECTION	)	
AGENCY,	)	
	)	
Respondent.	)	

**RESPONDENT’S RESPONSE TO PETITIONER’S REQUEST  
FOR A DISCRETIONARY STAY OF CONTESTED PERMIT CONDITIONS**

The Illinois Environmental Protection Agency (“Illinois EPA”) respectfully asks that the Illinois Pollution Control Board (“Board”) deny Petitioner General III, LLC’s (“GIII”) request for a discretionary stay of the contested permit conditions. If granted, the stay sought by GIII would curtail Illinois EPA’s oversight of GIII’s operations in that, among other things, GIII would not be required to conduct emissions testing at frequencies specified in the permit. Yet, in support of the request, GIII offers only bald, conclusory statements. Because GIII cannot satisfy its burden of demonstrating that such a stay is necessary, GIII’s request should be denied.

**I. BACKGROUND**

On September 25, 2019, the Illinois EPA received a permit application from GIII for authorization to construct a scrap metal recycling facility in an environmental justice community at 11600 South Burley Avenue, Chicago, Cook County (the “Facility”). *See* GIII’s Petition for Review of Air Construction Permit and Request for Stay of Contested Conditions at Exhibit A (“Petition Exh. A”), p. 1. On June 25, 2020, the Illinois EPA issued a Construction Permit to GIII (the “Permit”) for the Facility. Petition Exh. A. On July 30, 2020, GIII filed its Petition for Review of Air Construction Permit and Request for Stay of Contested Conditions with the Board

(“Petition”). Through the Petition, GIII appeals Conditions 1(f), 10(c), 11(k), 11(l), 16(a)(i) and (ii), 16(a)(iv), and 21(a)(iii)(E), (F) and (G). In addition, GIII requests that the Board grant a discretionary stay of such appealed permit conditions (the “Request”), to which the Illinois EPA objects.

## II. LEGAL STANDARD

In appeals of final Illinois EPA decisions pending before the Board (subject to one exception not applicable here), the burden of proof is on the petitioner. 35 Ill. Adm. Code 105.112(a). When reviewing a motion for a discretionary stay in such an appeal, the petitioner must demonstrate that: (1) a certain and clearly ascertainable right needs protection; (2) irreparable injury will occur without the injunction; (3) no adequate remedy at law exists; (4) there is a probability of success on the merits; and (5) environmental harm would not occur if a stay is granted. Community Landfill Co., Inc. et al. v. IEPA, PCB 01-48 and PCB 01-49, slip op. at 4 (Oct. 19, 2000); Motor Oils Refining Co., Inc. v. IEPA, PCB 89-116, slip op. at 2 (Aug. 31, 1989).

## III. ARGUMENT

GIII, through its Request, fails to satisfy its burden that a discretionary stay of the contested conditions is necessary. The Request should therefore be denied.

### A. **GIII has not established that a certain and clearly ascertainable right needs protection.**

With respect to the first factor in considering the appropriateness of a stay, GIII’s Request makes no claim that any ascertainable right needs protection during the pendency of this appeal. *See* Petition at 8-9. In fact, GIII only contends that one sentence of one condition allegedly “violates GIII’s due process rights”. Petition at 3. Specifically, GIII argues that “no procedures or remedies [are] available to GIII to address the Agency’s disapproval of an amended [Fugitive Emissions Operating Program (‘FPOP’)].” *Id.* Yet, even as to this condition, GIII does not describe

why speculative Illinois EPA action requires legal protection at the outset of this appeal. Further, GIII states that it intends to file with the Illinois EPA “a forthcoming application for modification of the permit” regarding this Permit condition. Petition at 8, FN1. The Board should therefore weigh this factor against GIII.

**B. GIII has not demonstrated that it would suffer irreparable harm if the discretionary stay is denied.**

As to the second factor, GIII contends that a discretionary stay is necessary “to prevent irreparable hardship on GIII.” Petition at 9. However, the only alleged hardships that GIII describes in its Request are that it “would be required to conduct emissions testing and implement other measures . . . and risks having to shut down its operations if the construction permit were allowed to expire. . . .” *Id.* GIII does not argue that the cost of complying with the conditions pending the appeal would be great. Community Landfill, PCB 01-48, slip op. at 5 (Oct. 19, 2000). In addition, GIII does not explain (1) why the challenged conditions pose irreparable harm now, (2) how Condition 1(f) restricts its ability to apply for an operating permit pursuant to Section 39.5(5)(x) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/39.5(5)(x) (2018), and (3) why the Illinois EPA cannot supersede standard conditions with special conditions.<sup>1</sup>

By contrast, staying these conditions would restrict the Illinois EPA’s statutory duty “to collect and disseminate such information, acquire such technical data, and conduct such experiments as may be required to carry out the purposes of this Act, including ascertainment of the quantity and nature of discharges from any containment source and data on those sources[.]” 415 ILCS 5/4(b) (2018). The Board should therefore weigh this factor against GIII.

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<sup>1</sup> Notably, allowing GIII to use its construction permit to indefinitely operate under Standard Condition 1 would directly conflict with Standard Condition 6, which requires that an operating permit be obtained from the Illinois EPA before the equipment covered by the permit is placed into operation.

**C. GIII has failed to satisfy its burden of showing that no adequate remedy at law exists.**

GIII's Request baldly states that "[a]n adequate remedy at law does not exist outside this forum at this time." Petition at 9. This conclusory statement should not be accepted by the Board. As stated above, GIII intends to submit an application for modification of the Permit to the Illinois EPA. The Board should therefore weigh this factor against GIII.

**D. GIII has not demonstrated that there is a probability of success on the merits.**

As to the fourth stay factor, GIII contends there is a probability of success on the merits due to "the Agency's imposition of unlawful and unreasonable permit conditions." Petition at 9. This conclusory statement is unsupported by facts or an affidavit. As stated above, the Illinois EPA has a statutory duty to oversee emissions from contaminant sources. 415 ILCS 5/4(b) (2018). The Illinois EPA will also prove through this appeal that the Permit conditions are supported by the Act and Board regulations. The Board should therefore weigh this factor against GIII.

**E. GIII has not met its burden to demonstrate the absence of environmental harm if a discretionary stay is granted.**

Regarding the fifth factor, GIII's Request simply states that "[t]he environment will not be harmed if a stay is granted." Petition at 9. GIII offers no support for this conclusory statement. In fact, this appeal does not concern an existing operation with a prior permit that will ensure emission compliance pending the appeal's outcome. KCBX Terminals Co. v. IEPA, PCB 10-110 and PCB 11-43, slip op. at 6-7 (April 21, 2011). Without the oversight and monitoring requirements set forth in the challenged conditions, the potential for environmental harm will increase, as the Illinois EPA's ability to oversee any potential emission exceedances is significantly weakened. The Board should therefore weigh this factor against GIII.

**IV. CONCLUSION**

As its Request is conclusory and unsupported by specific facts, GIII has not met its burden to establish that a discretionary stay is necessary pending the outcome of this appeal. Accordingly, the Board should deny GIII's Request for stay.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

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