

ILLINOIS POLLUTION CONTROL BOARD
December 4, 2008

IN THE MATTER OF:)
)
PETITION OF ILLINOIS DEPARTMENT OF) AS 08-1
TRANSPORTATION, DISTRICT 8,) (Adjusted Standard – Water)
BOWMAN AVENUE PUMP STATION AND)
DEEP WELL SYSTEM, FOR AN)
ADJUSTED STANDARD FROM 35 ILL.)
ADM. CODE 302.208(g) (NPDES PERMIT)
NO. IL0070955))

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

The Board today grants the motion of the Illinois Department of Transportation (IDOT) to stay this adjusted standard proceeding, as described below. The stay will last through June 4, 2009, unless the Board issues an order terminating the stay sooner. In this order, the Board provides relevant procedural history before turning to IDOT's motion.

PROCEDURAL HISTORY

On July 27, 2007, IDOT filed a petition for an adjusted standard under Section 28.1 of the Environmental Protection Act (415 ILCS 5/28.1 (2006)). IDOT sought an adjusted standard from the Board's general use water quality standards for sulfate and total dissolved solids (TDS) in effect at that time (35 Ill. Adm. Code 302.208(g)). IDOT's petition for relief concerns discharge from its District 8 Bowman Avenue Pump Station in East St. Louis, St. Clair County.

In an order of September 6, 2007, the Board found that IDOT satisfied the statutory notice requirement for adjusted standard petitions. In the same order, the Board identified several informational deficiencies in IDOT's petition and directed IDOT to file an amended petition to cure them. On November 13, 2007, IDOT filed an amended petition, as well as a motion to stay this proceeding.

On December 20, 2007, the Board issued an order granting IDOT's motion for stay and stating:

The stay will therefore terminate when the Board takes final action in R07-9 Triennial, unless the Board issues an order in this case, AS 08-1, terminating the stay earlier. If the stay is terminated through final Board action in R07-9 Triennial, IDOT must, within 45 days thereafter, file with the Board either (1) a motion to voluntarily dismiss AS 08-1, or (2) a notice of IDOT's intent to go forward with the adjusted standard proceeding, accompanied by a status report (35 Ill. Adm. Code 101.514(b)). Petition of Illinois Department of Transportation, District 8, Bowman Avenue Pump Station and Deep Well System, for an Adjusted Standard from 35 Ill. Adm. Code 302.208(g) (NPDES Permit No.

IL0070955), AS 08-1, slip op. at 3 (Dec. 20, 2007).

On September 4, 2008, the Board issued its final opinion and order in Triennial Review of Sulfate and Total Dissolved Solids Water Quality Standards: Proposed Amendments To 35 Ill. Adm. Code 302.102(b)(6), 302.102(b)(8), 302.102(b)(10), 302.208(g), 309.103(c)(3), 405.109(b)(2)(A), 409.109(b)(2)(B), 406.100(d); Repealer of 35 Ill. Adm. Code 406.203 and Part 407; and Proposed New 35 Ill. Adm. Code 302.208(h), R07-9 (Sept. 4, 2008) (R07-9 Triennial), adopting various regulatory amendments as final rules. Under the terms of the Board's December 20, 2007 order in AS 08-1, the stay of this adjusted standard proceeding terminated upon the Board taking final action in R07-9 Triennial.

On November 3, 2008, IDOT filed a motion for leave to file *instanter* (1) a motion to continue to stay this adjusted standard proceeding and (2) a status report, both of which accompanied the motion for leave. In the motion for leave, IDOT states that it inadvertently failed to comply with the 45-day filing deadline of the Board's December 20, 2007 order. The Board grants the motion for leave to file *instanter* and accepts IDOT's motion for stay (Mot.) and status report (SR).

DISCUSSION

In its motion for stay, IDOT asks that the Board continue to stay AS 08-1 pending the "40 CFR 131.21 review" of the R07-9 Triennial rules by the United States Environmental Protection Agency (USEPA). Mot. at 1. IDOT states that R07-9 Triennial, as adopted by the Board on September 4, 2008, "satisfies [IDOT's] petition for adjusted standard for sulfate and TDS." *Id.* at 2. IDOT adds, however, that to its knowledge, "USEPA has not issued a review of the Triennial Rule as required under 40 CFR 131.21." *Id.* The Board notes that 40 C.F.R. §131.21 addresses USEPA review and approval or disapproval of state water quality standards.

According to IDOT, its motion for stay is made in good faith and not for the purpose of undue delay, and the granting of the motion could preserve Board resources and promote judicial economy. Mot. at 2. IDOT emphasizes that its pending adjusted standard petition will be "moot" if the R07-9 Triennial rules are "approved by the USEPA." SR at 2.

The Board's procedural rules address motions for stays:

Motions to stay a proceeding must be directed to the Board and must be accompanied by sufficient information detailing why a stay is needed A status report detailing the progress of the proceeding must be included in the motion. (See also Section 101.308 of this Part.) 35 Ill. Adm. Code 101.514(a).

The decision to grant or deny a motion for stay is "vested in the sound discretion of the Board." See People v. State Oil Co., PCB 97-103 (May 15, 2003), *aff'd sub nom* State Oil Co. v. PCB, 822 N.E.2d 876 (2nd Dist. 2004).

IDOT maintains that USEPA approval of the R07-9 Triennial rules will render moot this adjusted standard proceeding. The Illinois Environmental Protection Agency has not filed a

response to IDOT's motion for stay and therefore waives any objection to the Board granting the motion. *See* 35 Ill. Adm. Code 101.500(d). Under these circumstances and to conserve the resources of the Board and the parties, the Board grants IDOT's motion for stay as described below.

In the interest of promoting efficient case management, the Board will establish a date certain for termination of the stay. The Board stays this adjusted standard proceeding through June 4, 2009. The stay accordingly is in effect through June 4, 2009, unless the Board issues an order terminating the stay earlier. By June 4, 2009, IDOT must file with the Board (1) a motion to voluntarily dismiss AS 08-1 or (2) a motion to continue to stay this case, accompanied by a status report.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 4, 2008, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board