

ILLINOIS POLLUTION CONTROL BOARD
December 3, 2009

HIGHLAND BAKING COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 10-32
)	(CAAPP Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by A.S. Moore):

On November 10, 2009, Highland Baking Company (HBC) timely filed a petition (Pet.) asking the Board to review an October 2, 2009, determination of the Illinois Environmental Protection Agency (Agency) regarding HBC's facility located at 2301 Shermer Road, Northbrook, Cook County. *See* 415 ILCS 5/40.2(a) (2008); 35 Ill. Adm. Code 105.302. The Agency granted HBC a Clean Air Act Permit Program (CAAPP) permit, subject to conditions. HBC appeals on the grounds that "the contested conditions are not necessary to accomplish the purposes of the Act or [Board] Regulations, are arbitrary, capricious, and unnecessary, are beyond the Agency's authority, and/or render certain permit sections ambiguous or internally inconsistent." Pet. at 4. HBC also requested that the Board grant a partial stay of the permit by staying portions of specified conditions. *Id.* In an order dated November 19, 2009, the Board accepted HBC's petition for hearing but reserved ruling on the requested partial stay pending any response from the Agency.

In its request for a partial stay, HBC "asks that the Board stay the effectiveness of permit special conditions, 7(c), 8(a), 8(b) and 16(a)(ii) through 16(a)(vii) inclusive and 16(a)(ix). . . ." Pet. at 4. Arguing that those provisions of the permit "impose requirements not found in previous permits and are not supported by the Act or the Regulations," HBC states that "[s]uch stay is necessary in order to avert irreparable harm to Petitioner." *Id.* HBC claims that "[s]uch stay will not harm the public or the environment." *Id.*

Section 100.500(d) of the Board's procedural rules provides in pertinent part that, "[w]ithin 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of the motion." 35 Ill. Adm. Code 101.500(d). The Agency has filed no response to HBC's request for a partial stay.

In Community Landfill Co. and City of Morris v. IEPA, PCB 01-48, 01-49, slip op. at 4 (Oct. 19, 2000), the Board found that "it has the authority to grant discretionary stays from permit conditions." The Board noted that it "has previously granted or denied discretionary stays

in permit appeals, both when the Agency did and did not consent to such stays.” *Id.* (citations omitted). The Board elaborated that “[t]he permit appeal system would be rendered meaningless in many cases, if the Board did not have the authority to stay permit conditions.” *Id.*

The Board has reviewed HBC’s request for a partial stay, grants the requested partial stay of contested permit conditions, and stays all or part of permit conditions 7(c), 8(a), 8(b) and 16(a)(ii) through 16(a)(vii) inclusive and 16(a)(ix), as requested by HBC. The partial stay will remain in effect until the Board takes final action on the permit appeal or until the Board orders otherwise.

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 3, 2009, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John Therriault, Assistant Clerk
Illinois Pollution Control Board