

Spectrum argues that it will suffer “irreparable harm” if the Board does not grant the motion for partial stay because:

[t]he incorporation of the Total Nitrogen limitations in the [f]inal NPDES Permit represents a substantial change over the previous NPDES Permit that had been in effect since 2004. Spectrum is not capable of consistently complying with the new Total Nitrogen limitations in the [f]inal NPDES Permit without installing certain equipment, which will require substantial expenditures of time and funds. Pet. at 2.

Spectrum also maintains that a stay of effectiveness of the Total Nitrogen concentration limits is necessary to preserve Spectrum’s appeal rights under Section 10-65(b) of the Illinois Administrative Procedure Act (IAPA) 5 ILCS 100/10-65(b). Pet. Mot. at 1.

DISCUSSION

The Board’s May 16, 2013 order reserved ruling on Spectrum’s motion for partial stay to allow the Agency’s 14-day response period to run. See 35 Ill. Adm. Code 101.500(d). That time period has elapsed without any Agency response being filed, meaning that by rule, the Agency is deemed to have waived any objection to the Board granting Spectrum’s motion for partial stay of the NPDES permit. *Id.*

Although the IAPA (5 ILCS 100/10-65(b) (2010)) subjects certain permits in their entirety to an automatic stay during appeals, a petitioner may choose not to avail itself of this stay and instead ask that the Board stay only the contested conditions of the permit. See Ameren Energy Generating Co. v. IEPA, PCB 06-67 (Feb. 16, 2006), slip op. at 7, n.1. The Board has consistently held that it “has the authority to grant discretionary stays from permit conditions.” Community Landfill Co. and City of Morris v. IEPA, PCB 01-48, PCB 01-49 (consol.) (Oct. 19, 2000); see also, e.g., Hartford Working Group v. IEPA, PCB 05-74, slip op. at 1 (Nov. 18, 2004). As the Board explained in Community Landfill, the permit appeal system would be “rendered meaningless in many cases, if the Board did not have the authority to stay permit conditions.” Community Landfill, PCB 01-48, PCB 01-49 (consol.), slip op. at 4 (granting stay of challenged permit conditions).

In deciding whether to grant a discretionary stay, the Board may consider various factors, such as the avoidance of irreparable harm to the petitioner, as well as “the likelihood of environmental harm if a stay is granted.” Community Landfill, PCB 01-48, PCB 01-49 (consol.), slip op. at 4, citing Motor Oils Refining Co. v. IEPA, PCB 89-116, slip op. at 2 (Aug. 31, 1989). The Board takes into account the representations of Spectrum described above, and the absence of any Agency response to the motion. Exercising its discretion, the Board grants Spectrum’s motion for partial stay. Accordingly, only the NPDES permit’s Total Nitrogen concentration effluent limitation for Outfall 001 is stayed. By this ruling, the Board “makes no findings on the merits of the permit appeal” Motor Oils, PCB 89-116, slip op. at 2. The partial stay remains in effect until the Board takes final action in this appeal or the Board orders otherwise.

IT IS SO ORDERED.

Board Member J. A. Burke abstains.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 11, 2013, by a vote of 3-0.

A handwritten signature in black ink, reading "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish at the end.

John T. Therriault, Clerk
Illinois Pollution Control Board