

ILLINOIS POLLUTION CONTROL BOARD
July 23, 2015

IPH, LLC and ILLINOIS POWER)
RESOURCES GENERATING, LLC (E.D.)
EDWARDS POWER PLANT),)
)
Petitioner,)
)
v.) PCB 15-202
) (NDPES Permit Appeal - Water)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)

Respondent.

ORDER OF THE BOARD (by J.D. O’Leary):

On May 27, 2015, IPH, LLC and Illinois Power Resources Generating, LLC (IPRG) (collectively, petitioners) timely filed a petition (Pet.) asking the Board to review an April 22, 2015 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2014); 35 Ill. Adm. Code 101.300(b), 105.206. The Agency’s determination concerns NPDES Permit No. IL0001970 issued to the E.D. Edwards power plant, a coal-fired steam electric generating plant owned and operated by IPRG located at 7800 South Cilco Road, Bartonville, Peoria County. Pet. at 1. On June 4, 2015, the Board accepted the petition for hearing but reserved ruling on petitioners’ request to stay the effectiveness of contested permit conditions to allow the Agency’s response time to run. On June 22, 2015, the Agency filed a motion for an extension of time to answer the petition (Mot.). The Agency states that it does not object to the petitioner’s motion for a partial stay. Mot. at 1. For the reasons below, the Board grants petitioners’ request for a partial stay.

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 has explained, 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).

Petitioners request that the Board stay the effectiveness of contested Special Condition 3 regarding metal cleaning waste until either the Board takes final action in this matter or the Agency issues a revised permit. Pet. at 4, 7. Petitioners add that they “have no objection to the balance of the conditions contained in the 2015 Permit and seek to stay only Special Condition 3 of the 2015 Permit.” *Id.* at 4.

In deciding whether to grant a discretionary stay, the Board may consider various factors, including avoidance of irreparable harm to the petitioners and “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).

Petitioners argue that they will suffer irreparable injury if the contested condition is not stayed. Pet. at 5. They state that compliance with Special Condition 3 would require significant modifications to the plant, implementation of which would require three to four years and “substantial” cost. *Id.* Petitioners add that, if they complied with the condition and then succeeded on the merits of this appeal, “the costs would be lost. Thus, Petitioners would suffer irreparable injury.” *Id.* at 6.

Petitioners argue that a stay of the contested condition would not result in harm to human health or the environment. Pet. at 6. They state that they will continue to operate the plant as it has been operated. Petitioners add that they will continue to treat the metal cleaning waste at issue as authorized by the previous permit and continue to monitor the outfall through which it is discharged. *Id.*

In addition, petitioners argue that a stay is needed to protect their appeal rights “and to prevent the imposition of unlawful, arbitrary and capricious conditions before Petitioners are able to exercise their right to appeal and be heard by the Board.” Pet. at 5. Petitioners assert that they thus “have an ascertainable right that needs protection.” *Id.* Finally, petitioners argue that “[t]he Board has granted discretionary stays in a number of cases. . . .” *Id.* at 6 (citations omitted).

The Board has reviewed petitioners’ request for a stay and the Agency’s statement that it does not object to the request. Exercising its discretion, the Board grants petitioners’ unopposed request to stay the effectiveness of Special Condition 3 of Permit No. IL0001970. In doing so, the Board “makes no findings on the merits of the permit appeal. . . .” Motor Oils, PCB 89-116, slip op. at 2. The partial stay will remain in effect until the Board takes final action in this matter or until the Board orders otherwise.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 23, 2015, by a vote of 5-0



John T. Therriault, Clerk
Illinois Pollution Control Board