

ILLINOIS POLLUTION CONTROL BOARD
August 11, 2022

AQUA ILLINOIS, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 23-12
)	(Permit Appeal – Water)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by A. Palivos):

On July 8, 2022, Aqua Illinois, Inc. (Aqua) timely filed a petition asking the Board to review a June 29, 2022 special exception permit determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2020); 35 Ill. Adm. Code 101.300(b), 105.206. The determination concerns Aqua’s Illinois-University Park public water system (UP System) located in the Village of University Park, in both Will and Cook Counties. Included in Aqua’s petition was a motion to stay the effectiveness of the contested Additional Conditions 3, 4 and 5 of the permit. On July 21, 2022, the Board accepted the petition for hearing but reserved ruling on Aqua’s request for partial stay. For the reasons below, the Board grants the motion for partial stay.

Aqua requests that the Board stay the effectiveness of certain contested conditions within the permit for the operation of the UP System. In this case, the Agency issued Aqua a revised Special Exception Permit regarding Aqua’s University Park facility on June 29, 2022 (2022 Permit). Aqua argues that Agency’s determinations in the 2022 Permit were arbitrary and capricious and not necessary to accomplish the purpose of the Act or the Board’s regulations. Specifically, Aqua alleges that Additional Condition 3 states improper requisites to optimal water quality parameter ranges, and that the Agency improperly extended Additional Conditions 4 and 5.

Aqua therefore requests that the Board exercise its authority to grant a partial, discretionary stay of Additional Conditions 3, 4 and 5 until either the Board takes final action in this matter, or the Agency issues a revised permit. Pet. at 14. Aqua adds that it has “no objection to Additional Conditions 1 and 2” of the 2022 Permit and that, if the Board stays the contested conditions, the remaining uncontested conditions of the 2022 Permit will remain in effect. Pet. at 14. On July 21, 2022, the Board accepted Aqua’s petition for hearing but reserved ruling on the request for partial stay. *See* 35 Ill. Adm. Code 101.500(d). On July 29, 2022, the Agency filed a response stating that it does not object to the requested partial stay of Additional Conditions 3, 4 and 5.

The Board has the authority to grant discretionary stays of the type requested here. In Illinois Power Generating Co. v. IEPA, PCB 16-60, slip op. at 2 (December 17, 2015), the Board found “that it has the authority to grant discretionary stays from permit conditions.” The Board noted 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); *see also*, AkzoNobel Surface Chemistry, LLC v. IEPA, PCB 13-49, slip op. (Apr. 18, 2013); Community Landfill Co. and City of Morris v. IEPA, PCB 01-48, 01-49 (consol.), slip op. at 4 (Oct. 19, 2000). 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.” Illinois Power Generating Co., PCB 16-60, slip op. at 2.

The Board has long recognized that Illinois law provides standards to help determine whether it is appropriate to grant a discretionary stay:

1. a certain and clearly ascertainable right needs protection;
2. irreparable injury will occur without the injunction;
3. no adequate remedy at law exists; and
4. there is a probability of success on the merits. Illinois Power Generating Co., PCB 16-60, slip op. at 2 (citations omitted); *see* Pet. at 15.

The Board is not required to consider each of these factors in making a determination. Bridgestone/Firestone Off Road Tire Co. v. IEPA, PCB 02-31, slip op. at 3 (Nov. 1, 2001). The likelihood of environmental harm should a stay be granted is of particular concern for the Board. *Id.* (citing Motor Oils Refining Co. v. IEPA, PCB 89-116, slip op. at 2 (Aug. 31, 1989)).

Aqua argues that, historically, the Board has granted partial stays in permit appeals where a petitioner has so requested. Pet. at 15 (citations omitted). Aqua contends in support of its position that “a stay is necessary to protect Aqua’s right to appeal and to prevent the imposition of unlawful, arbitrary, and capricious conditions before Aqua is able to exercise its right to appeal and be heard by the Board.” Pet. at 15-16. Aqua further asserts that compliance with Additional Conditions 3, 4 and 5 “would require Aqua to continue costly additional monitoring and reporting activities well beyond what is required by the Lead and Copper Rule” and to “unnecessarily continue to devote significant resources which could best be used elsewhere to improve other aspects of the UP System.” *Id.* at 16. Aqua also contends it has no other remedy at law than a permit appeal to contest these requirements. *Id.* Finally, Aqua states that no harm to human health or the environment will result from the stay because it will continue to operate the UP System in compliance with the Lead and Copper Rule and with the remaining conditions of the 2022 Permit. *Id.*

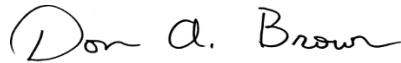
The Board has reviewed Aqua’s unopposed request for partial stay, as well as the specific conditions requested to be stayed. Based on that review and the Agency’s response, the Board finds that granting a discretionary stay is warranted. The Board is persuaded that Aqua has an ascertainable right that needs protection. Appeal of the permit conditions would be rendered moot if Aqua was required to comply with contested conditions during the appeal. If petitioner prevailed, “the cost and the point of the appeal would be lost.” Community Landfill Co. and City of Morris v. IEPA, PCB 01-48, PCB 01-49 (consol.), slip op. at 4 (Oct. 19, 2000). The Board

also agrees that this appeal is the remedy available for Petitioner to challenge the contested conditions. The Board concludes that a stay of the contested conditions would not result in an increased likelihood of environmental harm, as Aqua will continue to operate the UP System in compliance with the Lead and Copper Rule and with the remaining conditions of the 2022 Permit.

Exercising its discretion, the Board grants Aqua's motion for partial stay of the contested Additional Conditions 3, 4 and 5 in the 2022 Permit. In doing so, the Board "makes no findings on the merits of the permit appeal . . ." Motor Oils Refining Co. v. IEPA, PCB 89-116, slip op. at 2 (Aug. 31, 1989). The partial stay remains in effect until the Board takes final action on the permit appeal, or until the Board orders otherwise.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 11, 2022, by a vote of 5-0.

A handwritten signature in cursive script that reads "Don A. Brown".

Don A. Brown, Clerk
Illinois Pollution Control Board