

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

BUNGE NORTH AMERICA, INC.,)	
)	
Petitioner,)	
)	
v.)	
)	PCB No. 2023-089
ILLINOIS ENVIRONMENTAL PROTECTION)	(Permit Appeal – Air)
AGENCY)	
)	
Respondent.)	

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that the undersigned filed today with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following RESPONDENT’S RESPONSE TO PETITIONER’S MOTION FOR STAY, a copy of which is attached hereto and hereby served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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Dated: February 8, 2023

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RESPONDENT’S RESPONSE TO PETITIONER’S MOTION FOR STAY

NOW COMES Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), by and through its attorney, KWAME RAOUL, Attorney General of the State of Illinois, and for its RESPONSE to Petitioner’s Request for Stay of Contested Conditions, hereby states as follows:

1. On January 25, 2023, Petitioner filed its Petition for Review of Air Construction Permit and Request for Stay of Contested Conditions (“Permit Appeal”).
2. Petitioner’s Request for Stay seeks a “stay of the contested conditions described in Section II of this Petition – i.e., Conditions 4-1.d.ii, 5-1.a through 5-1.c, 5-2.a.v, and 6.a through 6.e during the pendency of this appeal.” (Permit Appeal at ¶ 42.)
3. Illinois EPA does not object to Petitioner’s requested stay as to the contested *provisions* of Conditions 4-1.d.ii, 5-1.a through 5-1.c, 5-2.a.v, and 6.a through 6.e.
4. With respect to Condition 4-1.d.ii, Petitioner “proposes to eliminate the monthly [fuel usage] limit in Condition 4-1.d.ii and instead demonstrate compliance with the annual [fuel usage] limit monthly on a 12-month rolling basis.” (Permit Appeal at ¶ 23.)

5. Condition 4-1.d.ii includes both the monthly fuel usage limit (53.1 million standard cubic feet), which Petitioner contests, and the annual fuel usage limit (318.5 million standard cubic feet), which Petitioner does not contest.

6. Accordingly, Respondent does not object to the stay of the contested provisions of Conditions 4-1.d.ii, 5-1.a through 5-1.c, 5-2.a.v, and 6.a through 6.e, but does object to a stay that covers the annual limit in 4-1.d.ii, an uncontested provision within Condition 4-1.d.ii.

7. In not objecting to Petitioner's Requested Stay as to the contested provisions of Conditions 4-1.d.ii, 5-1.a through 5-1.c, 5-2.a.v, and 6.a through 6.e, Illinois EPA reserves all arguments as to the merits of the Permit Appeal. *Cf. Ill. Power Generating Co. (Newton Power Station) v. IEPA*, PCB 16-60, slip. op. at 3 (Dec. 17, 2015) (quoting *Motor Oils Refining Co. v. IEPA*, PCB 89-116, slip. op. at 2 (Aug. 31, 1989) (in granting the unopposed stay, "the Board 'makes no findings on the merits of the permit appeal ...'").

WHEREFORE, Illinois EPA does not object to the entry of an Order granting Petitioner's Request for Stay as to Petitioner's obligations under the monthly limit in Condition 4-1.d.ii, and Conditions 5-1.a through 5-1.c, 5-2.a.v, and 6.a through 6.e

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 8, 2023, she caused to be served by electronic mail, a true and correct copy of the following instruments entitled Notice of Filing and Respondent's Response to Petitioner's Motion for Stay to:

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/s/ Lilia M. Brown
Lilia M. Brown
Administrative Secretary
Environmental Bureau

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Certificate of Service are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

/s/ Lilia M. Brown
Lilia M. Brown
Administrative Secretary
Environmental Bureau