

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:)	
)	
RCH NEWCO II)	
)	
Petitioner,)	
)	PCB 24-66
)	(Permit Appeal - RCRA)
)	
v.)	
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY)	
)	
Respondent.)	

NOTICE OF FILING

To: See attached Service List

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Pollution Control Board RCH Newco II, LLC's Response and Objection to Respondent's Motion for Extension of Time to Respond to Request for Stay a copy of which is herewith served upon you.

Dated: August 8, 2024

RCH NEWCO II, LLC

By: /s/Jennifer T. Nijman

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that a true copy of the foregoing Response and Objection to Respondent's Motion for Extension of Time to Respond to Request for Stay on behalf of Petitioner, RCH Newco II, LLC was electronically filed on August 8, 2024 with the following:

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and that copies were sent via e-mail on August 8, 2024 to the parties on the service list.

Dated: August 8, 2024

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**RESPONSE AND OBJECTION TO RESPONDENT’S MOTION FOR
EXTENSION OF TIME TO RESPOND TO REQUEST FOR STAY**

Petitioner, RCH Newco II, LLC (RCH Newco), objects to the Illinois Environmental Protection Agency’s (“Illinois EPA’s”) Motion for Extension of Time to File Response to Petitioner’s Motion to Stay (“Motion”). By failing to timely file a response, Illinois EPA waived its objection to RCH Newco’s Request for a Stay. Illinois EPA’s Motion is also untimely under Section 101.500(d), the applicable Illinois Pollution Control Board (“Board”) Rule. Even if Illinois EPA attempts to rely on Section 101.522 to justify filing its Motion *after* the required response period, it has failed to show “good cause” for an extension of time as mandated by that section. For each of these reasons, and as explained as follows, the Board must disregard and deny the Motion.

A. Background

1. On July 19, 2024, RCH Newco timely filed a “Petition to Appeal Illinois EPA’s Final Determination and Request for Stay” (“Petition and Request for Stay”) with the Board.

2. The same day, July 19, 2024, RCH Newco served its Petition and Request for Stay on Illinois EPA. Motion, ¶2.

3. Late on August 7, 2024, five days after the due date and without prior notice to RCH Newco, Illinois EPA filed its Motion for extension, requesting that the Board allow it additional time to file a response to RCH Newco's motion for stay that was filed as part of RCH Newco's Petition for appeal.

4. In its Motion, Illinois EPA relies on Section 101.500(d) of the Board Rules, yet concedes that its response to RCH Newco's Request for a Stay was due within 14 days of service, which in this case was August 2, 2024. Motion, ¶ 4, citing 35 Ill. Adm. Code 101.500(d).

5. Illinois EPA also cites to Section 101.522 of the Board Rules, yet again concedes that a motion under 101.522 requires good cause. Motion, ¶ 5, citing 35 Ill. Adm. Code 101.522. While admitting that its Motion is late under 101.500(d), Illinois EPA does not describe the basis for its belated motion for extension, other than that it was "due to unforeseen circumstances." Motion, ¶6. The Motion does not even mention "good cause", as required by 101.522, except when citing to the Board Rule.

6. Without establishing any cause, and five days after Illinois EPA's request should have been filed, Illinois EPA's request that the Board grant it an extension of time should be denied.

B. Illinois EPA has Waived Its Objection to RCH Newco's Request

7. Following the requirement that a response must be filed within 14 days of service, Section 101.500(d) of the Board Rules states that "If no response is filed, the party waives objection to granting of the motion," 35 Ill. Adm. Code 101.500(d).

8. Here, because Illinois EPA failed to file a response within 14 days of being served with RCH Newco's request for stay, Illinois EPA has waived its objection and its request for an extension must be denied. 35 Ill. Adm. Code 101.500(d).

C. Illinois EPA's Motion is Untimely

9. In addition to stating the deadline for a response to a motion, Section 101.500(d) allows parties to "request that the Board grant more time to respond by filing a motion for extension of time *before the response period expires.*" 35 Ill. Adm. Code 101.500(d) (emphasis added). Section 101.500(d) is the applicable provision and Illinois EPA failed to timely file its Motion within the required response period.

10. Realizing that it missed the required deadline for its Motion, Illinois EPA attempts to rely on Section 101.522, which states that a motion for extension of time for "any deadline required by this Part [101, General Rules]" may be filed either before or after the deadline expires. 35 Ill. Adm. Code 101.522.

11. On its face, there appears to be a conflict between Section 101.500(d), which requires that motions for extensions of time be filed "before the response period expires," and Section 101.522, which allows motion for extensions of time to be filed before or after the deadline. On further examination, it is evident that Section 101.500 is the applicable provision in this case.

12. As the Illinois Supreme Court has stated, under the principles of statutory construction "[s]tatutes relating to the same subject must be compared and construed with reference to each other so that effect may be given to all of the provisions of each if possible. Even when an apparent conflict between statutes exists, they must be construed in harmony with one

another if reasonably possible. *Knolls Condo. Ass'n v. Harms*, 202 Ill. 2d 450, 459 (2002) (internal citations omitted).¹

13. The Illinois Supreme Court further stated that “[i]t is also a fundamental rule of statutory construction that where there exists a general statutory provision and a specific statutory provision, either in the same or in another act, both relating to the same subject *the specific provision controls and should be applied.*” *Id.* (internal citations omitted, emphasis added)

14. Here, the apparent timing conflict between Section 101.500(d) and Section 101.522 is resolved because Section 101.500 is the specific provision for responses to motions. Indeed, Section 101.500 is called “Filing of Motions and Responses.” 35 Ill. Adm. Code 101.500. Whereas Section 101.522 is the general regulation because it is for the deadlines required throughout the General Rules in Part 101. In other words, Section 101.522 is for extensions of time as a general statement for the deadlines under Part 101, such as deadlines for Admissions (§101.618), Interrogatories (§101.620), Filing of Hearing Exhibits (§101.627).

15. Because Section 101.500 is the specific provision for responses to motion, it controls. Thus, pursuant to Section 101.500(d), the Illinois EPA was required to file its motion for an extension of time to respond “before the response period expire[d].” 35 Ill. Adm. Code 101.500(d). By failing to file within the 14-day response period, Illinois EPA’s motion is untimely and should be disregarded and denied.

D. Even if Section 101.522 is Applicable, Illinois EPA has Failed to Claim “Good Cause”

16. Even if Illinois EPA argues that Section 101.522 should apply to allow it to file its motion after the response period, Illinois EPA fails to meet the requirements of 101.522 because it has not shown “good cause” for an extension of time.

¹ The rules of construction that apply to statutes apply also to administrative regulations. *Moreco Energy, Inc. v. Penberthy-Houdaille*, 682 F. Supp. 933, 935 (N.D. Ill. 1988)

17. Section 101.522 states that “If a party’s motion shows good cause,...” the Board may extend any deadline before or after a due date. 35 Ill. Adm. Code 101.522 (emphasis added).

18. Illinois EPA’s Motion provides no basis for its belated motion for extension, other than to claim some unknown “unforeseen circumstances”. Motion, ¶6.

19. Illinois EPA makes no claim that it has “good cause” for an extension to file a response, nor does it describe that its Motion is for “good cause.”

20. Under Illinois law, the party moving for an extension of time bears “the burden of establishing good cause for the court to grant the time extension,” and “must submit to the court clear, objective reasons why it was unable to meet the original deadline and why an extension of time should be granted.” *Vision Point of Sale, Inc. v. Haas*, 226 Ill. 2d 334, 347-348.²

21. Here, Illinois EPA has failed to establish a good cause for the Board to grant the extension of time, and failed to submit to the Board a clear and objective reason why it was unable to meet the original deadline nor why an extension of time should be granted.

22. Accordingly, because the Illinois EPA has failed to establish “good cause”, the Board should deny Illinois EPA’s request for an extension to respond.

E. Conclusion

RCH Newco respectfully requests that the Board DENY Illinois EPA’s Motion for Extension of Time and GRANT RCH Newco’s Request to Stay pending resolution of the appeal. As RCH Newco stated in its Petition and Request, it would be irreparably harmed without the stay because it cannot prepare a RCRA permit for post-closure care within 180 days of the Agency’s Final Decision issued March 13, 2024 and because it must first establish how long the post-closure

² *Vision Point of Sale, Inc.* discusses Illinois Rule of Civil Procedure 183, which has similar language to Section 101.522, stating that a court, “for good cause shown on motion” may extend the time to file any pleading or any act required by the rules, “either before or after the expiration of the time.”

care will be. *See* Petition and Request, p. 14, paragraphs 44-47. RCH Newco will further be irreparably harmed without a stay by having to post financial assurance far greater than is regulatorily required.

Respectfully submitted,

RCH Newco II, LLC

Petitioner,

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One of its Attorneys

Dated: August 8, 2024

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