

ILLINOIS POLLUTION CONTROL BOARD
August 22, 2024

RCH NEWCO II, LLC,)
)
 Petitioner,)
)
 v.) PCB 24-66
) (Permit Appeal - RCRA)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by M.D. Mankowski):

On July 19, 2024, RCH Newco II, LLC (RCH Newco) filed, along with its petition, a request to stay the application of the Illinois Environmental Protection Agency’s (IEPA) final determination. On August 8, 2024, the Board accepted the petition for review. For the following reasons, the Board denies IEPA’s motion for extension of time to respond, and grants RCH Newco’s request for stay pending final Board determination.

REQUEST TO STAY

Initial Request

RCH Newco’s request for stay argues that, while under appeal, it should not be required to provide an application for a RCRA post-closure care permit within 180-days from the IEPA’s final determination date of March 13, 2024. Pet. at 14. Additionally, RCH Newco argues any modifications to the post-closure plan should also be stayed, including requirements to recalculate financial assurances. *Id.*

To support this position RCH Newco cites the Illinois Administrative Procedure Act (IAPA), arguing it allows for automatic stays during appeals of IEPA permit decisions regarding activity of a continuing nature. Pet. at 14, *citing* 5 ILCS 100/10-65(b). Additionally, RCH Newco argues that the Board procedural rules treat amendments to post-closure care plans as permit amendments. Pet. at 14, *citing* 35 Ill. Adm. Code 725.212 through 725.219. RCH Newco further cites 35 Ill. Adm. Code 105 to argue that permit amendments are considered permit denials. Pet. at 14.

RCH Newco also makes arguments for the Board to grant a discretionary stay in the event an automatic statutory stay does not apply. Pet. 14-15. RCH Newco contends it will be irreparably harmed by a requirement to extend post-closure care an additional 30-years and seek considerable financial assurances for the period. *Id.* at 15. RCH Newco also asserts it is likely to be successful on the merits of the appeal. *Id.*

IEPA Request for Extension of Time

On August 7, 2024, IEPA filed a motion for extension of time to respond to the request for stay (Mot.). IEPA admits that any response to the motion was due on August 2, 2024. Mot. at 1. IEPA’s motion argues that the Board can extend the response period if a party shows good cause for the extension. *Id.*, citing 35 Ill. Adm. Code 101.522. IEPA states that an extension is needed due to unforeseen circumstances that have the Illinois Attorney General’s Office (AGO) still reviewing the “relevant documents and information for purposes of filing its response to the Request to Stay.” *Id.* at 2. IEPA requested the deadline to respond be extended to September 6, 2024. *Id.*

RCH Newco Objection to Extension Request

On August 8, 2024, RCH Newco filed a response opposing IEPA’s motion for extension of time (Resp.). RCH Newco argues that by not filing a timely response IEPA waived any objection to the request to stay. Resp. at 2-3, citing 35 Ill. Adm. Code 101.500(d). Section 101.500(d) of the Board’s rules states that a party may request an extension of time to respond to a motion, but it must be filed prior to the expiration of the response deadline. *Id.* at 3.

RCH Newco argues that IEPA, after realizing they missed the deadline, incorrectly attempts to rely on 35 Ill. Adm. Code 101.522, rather than section 101.500(d). Resp. at 3. RCH Newco argues that Section 101.500(d) controls in this situation, and that Section 101.522 cannot apply because Section 101.500(d) is the “*specific provision* for responses to motions”. Resp. at 4, citing Knolls Condo Ass’n v. Harms, 202 Ill. 2d 450, 459 (2002) (emphasis added). RCH Newco contends that Section 101.522 applies to all other deadlines in Part 101, like deadlines for admissions, interrogatories, and filing of hearing exhibits. Resp. at 4.

RCH Newco additionally argues that even if Section 101.522 applies, IEPA did not show “good cause” for the extension of time as is required. Resp. at 4-5. RCH Newco contends IEPA made no claim that it has “good cause” for the extension, and only claims the request was due to “unforeseen circumstances.” *Id.* at 5. RCH Newco further states that under Illinois law, the moving party bears the burden of establishing good cause, 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.” *Id.*, quoting Vision Point of Sale, Inc. v. Haas, 226 Ill. 2d 334, 347-348.

BOARD DETERMINATION

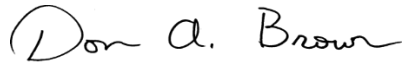
The Board denies IEPA’s motion for extension of time, finding that the request was filed five days late and failed to provide any “good cause” for the delay or extension. *See* 35 Ill. Adm. Code 101.522. Additionally, the Board notes that IEPA sought effectively a thirty five-day extension to September 6, 2024, in a case with a 120-day statutory deadline. Based on the Board’s calculations, with a requirement to apply for a post-closure care permit within 180-days of IEPA’s final determination, RCH Newco would have to apply by September 9, 2024. However, the Board declines to rule that 35 Ill. Adm. Code 101.522 does not apply to requests to extend response deadlines to motions as RCH Newco argues.

The Board agrees that 5 ILCS 100/10-65(b) of the IAPA provides for an automatic stay during permit appeals on IEPA decisions. *See Ill. Power Generating Co. (Coffeen Power Station) v. IEPA*, PCB 17-15 (Nov. 17, 2016). The Board grants RCH Newco's request for a stay until the Board takes final action or orders otherwise.

With this determination the Board makes no findings on the merits of the permit appeal.

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 22, 2024, by a vote of 4-0.

A handwritten signature in cursive script that reads "Don A. Brown". The signature is written in black ink and is positioned above a horizontal line.

Don A. Brown, Clerk
Illinois Pollution Control Board