

ILLINOIS POLLUTION CONTROL BOARD
November 1, 2001

BRIDGESTONE/FIRESTONE OFF-ROAD)	
TIRE COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 02-31
)	(Permit Appeal – Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by T.E. Johnson):

On September 10, 2001, Bridgestone/Firestone Off-Road Tire Company (Bridgestone/Firestone) timely filed a petition asking the Board to review an August 6, 2001 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40.2(a) (2000); 35 Ill. Adm. Code 105.302(e). In the petition, Bridgestone/Firestone requests a stay of effectiveness for the August 6, 2001 permit. On September 20, 2001, the Board accepted the petition for hearing, but reserved ruling on the request for stay of effectiveness. The Agency was directed to file a response to the request for stay on or before October 4, 2001.

On October 15, 2001, the Agency filed a response including a motion to strike the request to stay, accompanied by a motion for leave to file *instanter*. On October 23, 2001, Bridgestone/Firestone filed a response to the motion to strike. Bridgestone/Firestone did not object to the motion for leave to file *instanter* in its response, and the Board grants the Agency's motion for leave to file its response and motion to strike. Finally, for the reasons articulated below, the Board grants Bridgestone/Firestone's request for stay of effectiveness.

BACKGROUND

Bridgestone/Firestone is appealing an August 6, 2001 Clean Air Act Permit Program (CAAPP) permit that was issued with conditions. The CAAPP permit application concerns Bridgestone/Firestone's off-road rubber tire manufacturing facility located at Veterans Parkway and Fort Jesse Road, Bloomington, McClean County. Bridgestone/Firestone is appealing the permit on the grounds that permit condition 7.3.6 unreasonably separates the facility's tire assembly machines into separate groups, each with a different emission limit.

REQUEST OF STAY OF EFFECTIVENESS

In the petition, Bridgestone/Firestone requests that the challenged condition be stayed pending resolution of this permit appeal. The petitioner asserts that it would be harmed if it has to begin to implement requirements that are not legally supportable, and that the challenged condition would necessitate redundant and unnecessary record keeping prone to oversight, human error and unnecessary expense.¹ Pet. at 2. Bridgestone/Firestone contends that the applicable overall emission limits will not be affected by the requested stay, and that, therefore, the Agency and the public will not be harmed in any way if a stay is granted. Pet. at 2-3.

AGENCY'S RESPONSE AND MOTION TO STRIKE

The Agency argues that Section 105.304(d) of the Board's rules specifically states that a petition may include a request to stay the effectiveness of a *denial* of the CAAPP permit until final action is taken by the Board. Mot. at 2 (emphasis added by Agency). The Agency argues that the Board's rules allow a request for a stay to be included within a petition for review only when a CAAPP permit denial is involved. *Id.* In this case, the petitioner has appealed a condition of a CAAPP permit that was issued. Therefore, the Agency concludes, requesting a stay within the petition is not proper. *Id.*

The Agency cites case law in stating that statutory construction dictates that the intent of the promulgating body must be given effect and that the best indication of this intent is the plain and unambiguous language of the rule. *See* McTigue v. Personnel Board of the City of Chicago, 299 Ill. App. 3d 579, 701 N.E. 2d 135 (1st Dist. 1998). Finally, the Agency argues that the Board's inclusion of a specific provision authorizing a petitioner to request a stay from a permit denial in a petition for review must be interpreted to exclude the inclusion of such requests in said petition if the appeal involves an issued permit. Mot. at 3. The Agency requests that the Board strike Bridgestone/Firestone's request for a stay of the permit.

BRIDGESTONE/FIRESTONE'S RESPONSE

Bridgestone/Firestone argues that the motion to strike the stay of effectiveness should be denied. The petitioner notes that it filed its petition pursuant to 415 ILCS 5/40.2 of the Environmental Protection Act (Act) which allows review of denials of CAAPP permits as well as review of the conditions imposed by such permits. Resp. at 1. Bridgestone/Firestone asserts that, in appealing CAAPP permits, the applicable regulations direct the permit applicant to consider any condition imposed by the Agency in a permit as a refusal by the Agency to grant the permit. Resp. at 1 citing 35 Ill. Adm. Code 201.168 and 201.207. As a result, Bridgestone/Firestone argues that the issuance of contested conditions in a permit is deemed to be the denial necessary to support a request for stay pursuant to 35 Ill. Adm. Code 105.304(d). Resp. at 2.

¹ The petition is cited as "Pet. at ___." The Agency's response and included motion to strike is cited as "Mot. at ___." Bridgestone/Firestone's response to the motion to strike is cited as "Resp. at ___."

Finally, Bridgestone/Firestone states that a stay is necessary in this instance to prevent irreparable injury to Bridgestone/Firestone, and reiterates that applicable overall emission limits will not be affected by the requested stay, and that the Agency and the public will not be harmed if a stay is granted. Resp. at 2.

DISCUSSION

Section 105.304 addresses petition content requirements for CAAPP permit appeals, and provides in part:

- b) The petition may include a request to stay the effectiveness of a denial of the CAAPP permit until final action is taken by the Board pursuant to Section 40.2 of the Act. 35 Ill. Adm. Code 105.304 (b)

The Board is not convinced by the Agency's argument that the word 'denial' in Section 105.204 must be interpreted to prohibit requests to stay in petitions involving a permit issued with conditions. As Bridgestone/Firestone notes, the applicable regulations direct the permit applicant to consider any contested condition imposed by the Agency in a permit as a refusal by the Agency to grant the permit. Accordingly, the motion to strike is denied.

Next, the Board must address the request for stay of effectiveness. The petitioner maintains that a stay is necessary to prevent irreparable injury, and that the public will not be harmed if a stay is granted. The Agency did not provide any arguments concerning the substance of the request to stay.

In determining whether a discretionary stay is appropriate, the Board may refer to four factors: (1) a certain and clearly ascertainable right needs protection; (2) irreparable injury will occur without the stay; (3) no adequate remedy at law exists; and (4) there is a probability of success on the merits. Community Landfill Company and City of Morris v. IEPA, PCB 01-48 and 01-49 (consolidated), slip op. at 5. (October 19, 2000), citing Junkunc v. S.J. Advanced Technology & Mfg., 149 Ill. App. 3d 114, 498 N.E.2d 1179 (1st Dist. 1986). The Board notes that while it may look to these four factors in determining whether or not to grant a stay, the Board is particularly concerned about the likelihood environmental harm if a stay is granted. Community Landfill, PCB 01-48 and 01-49, slip op. at 5.

Bridgestone/Firestone asserts that neither the public nor the Agency will be harmed if the stay is granted. The Agency did not address any potential environmental harm from the issuance of the stay. Based on the pleadings before it, the Board is persuaded that a stay will not effect applicable overall emission limits or result in environmental harm.

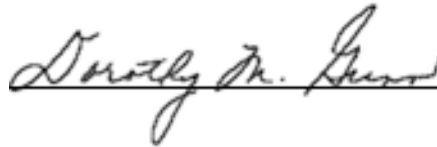
The Board is not required, nor does it find it necessary in this case, to consider each of the previously noted four factors. However, the Board finds that irreparable harm will befall Bridgestone/Firestone if the stay is not issued. Moreover, the Board is persuaded that the petitioner's appeal of the permit condition would be rendered moot if it had to comply with the contested condition during the appeal. In this instance, the Board finds that the petitioner's right to appeal the permit condition is a certain and ascertainable right that needs protection.

CONCLUSION

The request for a stay of effectiveness of the contested permit condition is granted. Although the Board grants the request to stay, the Board directs the hearing officer to proceed as expeditiously as practicable consistent with the decision deadline.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 1, 2001, by a vote of 6-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", is written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board