

ILLINOIS POLLUTION CONTROL BOARD
February 6, 2003

PPG INDUSTRIES, INC.,)
)
Petitioner,)
)
v.) PCB 03-82
) (Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by W.A. Marovitz):

On December 10, 2002, PPG Industries, Inc. (PPG) timely filed a petition asking the Board to review a November 7, 2002 determination of the Illinois Environmental Protection Agency (Agency) and stay certain portions of the permit. *See* 415 ILCS 5/40(a)(1) (2002). The Agency imposed certain emission limitations on the Title V Permit for PPG's flat glass manufacturing facility located at Elwin and Mount Zion Roads in Mount Zion, Macon County. On December 19, 2002, the Board accepted the petition for hearing but did not rule on the motion to stay. The Agency has not responded to the motion to stay.

The Board has recognized that Illinois law provides standards to help determine whether stays are appropriate. Community Landfill Company and City of Morris v. IEPA, PCB 01-48, 49 (Oct. 19, 2000), citing Motor Oils Refining Company, Inc. v. IEPA, PCB 89-116 (Aug. 31, 1989). Those standards are: (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. Motor Oils, PCB 89-116, slip op. at 1-2 (Aug. 31, 1989), citing Junkunc v. S.J. Advanced Technology & Mfg., 149 Ill. App. 3d 114, 498 N.E. 2d 1179 (1st Dist. 1986). The Board has held that it is not required to specifically address each of these factors in making a stay determination. Bridgestone/Firestone Off-Road Tire Company v. IEPA, PCB 02-31 (Nov. 1, 2001).

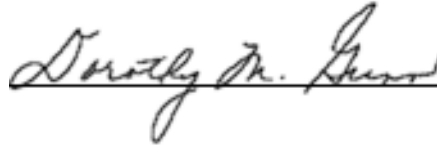
PPG request that the Board stay permit condition 7.3.6 and the emission factors and calculations used in the permit to measure compliance. PPG alleges it would be harmed if it has to begin to implement requirements that are neither legally supportable nor realistic of its operations. Mot. at 5. PPG argues that neither the public nor the Agency would be harmed if the stay is granted because the currently applicable emission limits will not be affected. Mot. at 5. Further, PPG argues that PPG is likely to succeed on the merits of its claims. Mot. at 5.

In this instance, the Board finds that PPG's right to appeal the condition is a certain and ascertainable right that needs protection. The Board grants the motion to stay the permit

condition 7.3.6 and the emission factors and calculations used in the permit to measure compliance. The Board directs the hearing officer to proceed as expeditiously as practicable.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 6, 2003, by a vote of 7-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a solid horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board