

ILLINOIS POLLUTION CONTROL BOARD
February 6, 2003

NIELSEN & BRAINBRIDGE, L.L.C.,)	
)	
Petitioner,)	
)	
v.)	PCB 03-98
)	(CAAPP Permit Appeal – Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On January 23, 2003, the Board accepted Nielsen & Brainbridge, L.L.C.'s (Nielsen) petition appealing the Illinois Environmental Protection Agency's (Agency) conditional approval Nielsen's application for a Clean Air Act Permit Program (CAAPP) permit, but reserved ruling on a concurrently filed motion to stay effectiveness of the CAAPP permit. To date, the Agency has not filed a response to the motion.

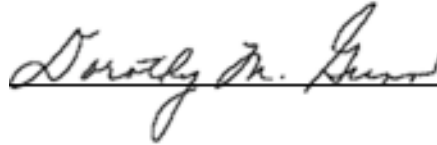
The Board has recognized that Illinois law provides standards to help determine whether stays are appropriate. Community Landfill Company and City of Morris v. IEPA, PCB 01-48, 49 (Oct. 19, 2000), citing Motor Oils Refining Company, Inc. v. IEPA, PCB 89-116 (Aug. 31, 1989). Those standards are: (1) a 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).

Motions to stay a proceeding must be accompanied by sufficient information detailing why a stay is needed. 35 Ill. Adm. Code 101.514(a). If a party files no response to a motion within 14 days the party will be deemed to have waived objection to the granting of the motion. *See* 35 Ill. Adm. Code 101.500(d). Nielsen contends that a stay of the CAAPP permit is necessary to protect its certain and clearly ascertainable right to appeal permit conditions. Nielsen asserts that the Agency, the public and the environment will not be harmed if a stay is granted.

In this instance, the Board finds that Nielsen's right to appeal the condition is a certain and ascertainable right that needs protection. The Board grants the motion to stay effectiveness of the CAAPP permit until the Board's final action in this matter or until the Board orders otherwise. 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, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board