

ILLINOIS POLLUTION CONTROL BOARD
February 20, 2003

ABITEC CORPORATION,)
)
 Petitioner,)
)
 v.) PCB 03-95
) (Permit Appeal - Air)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by G.T. Girard):

On December 31, 2002, Abitec Corporation (Abitec) timely filed a petition asking the Board to review a November 26, 2002 determination of the Illinois Environmental Protection Agency (Agency) conditionally approving Abitec's application for a Clean Air Act Permit Program (CAAPP) permit. The Agency imposed certain conditions on the CAAPP Permit for Abitec's food processing plant in Paris, Edgar County. On January 9, 2003, the Board accepted this matter for hearing but reserved ruling on a request to stay effectiveness of the CAAPP permit. On February 6, 2003, the Board denied the requested stay because the request for stay was not accompanied by any explanation or reasons for the request. On February 6, 2003, the parties filed a joint motion to stay the effectiveness of the two sections of Abitec's CAAPP.

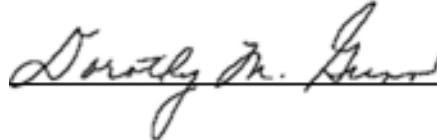
The Board has recognized that Illinois law provides standards to help determine whether stays are appropriate. Community Landfill Company and City of Morris v. IEPA, PCB 01-48, 49 (Oct. 19, 2000), citing Motor Oils Refining Company, Inc. v. IEPA, PCB 89-116 (Aug. 31, 1989). Those standards are: (1) a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

The motion requests that the Board stay permit conditions 5.10 and 7.1.13 of Abitec's CAAPP permit. The motion alleges that Abitec would be harmed because Abitec would be required to expend significant resources to comply with prevention of significant deterioration (PSD) requirements before a legal determination was made that Abitec is subject to PSD requirements. Mot.Memo at 2. The motion argues that allowing Abitec to operate without these conditions will not cause environmental harm as Abitec has already been operating with the current emissions requirements since the inception of the plant. *Id.*

In this instance, the Board finds that absent the stay irreparable injury will occur to Abitec. The Board grants the motion to stay permit conditions 5.10 and 7.1.13 of Abitec's CAAPP permit. 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 20, 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