

ILLINOIS POLLUTION CONTROL BOARD

November 6, 2003

SAINT-GOBAIN CONTAINERS, INC., a)	
Delaware corporation,)	
)	
Petitioner,)	
)	PCB 04-47
v.)	(CAAPP Permit Appeal – Air)
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by N.J. Melas):

The Board accepted this Clean Air Act Permit Program (CAAPP) permit appeal for hearing on October 16, 2003. Accompanying the petition, filed October 3, 2002, Saint-Gobain Containers, Inc. (Saint-Gobain) filed a motion to stay the effectiveness of the CAAPP permit No. 95090132. This order addresses the petitioner's motion to stay. To date, the Environmental Protection Agency (Agency) has not filed a response to the motion.

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

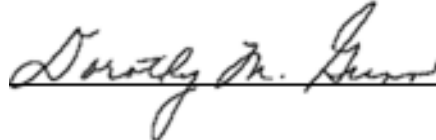
Motions to stay a proceeding must be accompanied by sufficient information detailing why a stay is needed. 35 Ill. Adm. Code 101.514(a). If a party files no response to a motion within 14 days the party will be deemed to have waived objection to the granting of the motion. *See* 35 Ill. Adm. Code 101.500(d). Saint-Gobain contends that a stay is necessary to prevent irreparable harm during this appeal of the CAAPP permit No. 95090132 conditions. Saint-Gobain requests the stay last until the Board's final action in this matter.

The Board finds that Saint-Gobain clearly has a right to appeal the CAAPP permit conditions imposed by the Agency. The Board further finds that absent a stay, Saint-

Gobain will suffer irreparable harm. The Board grants Saint-Gobain's 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 parties 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 November 6, 2003, by a vote of 6-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board