

ILLINOIS POLLUTION CONTROL BOARD

May 6, 2004

OASIS INDUSTRIES, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 04-116
)	(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 April 15, 2004. In its petition filed April 6, 2004, Oasis Industries, Inc. (Oasis) included a motion to stay the effectiveness of conditions 3.2.3, 5.2.7, 5.6.2(b), 5.9.1(a) and 7.1.12(c) (contested conditions) of CAAPP permit No. 99090059, in accordance with Section 105.304(b) of the Board's procedural rules. 35 Ill. Adm. Code 105.304(b). The Board reserved ruling on the motion to allow the Agency time to respond. This order addresses the petitioner's motion to stay. To date, the Environmental Protection Agency (Agency) has not responded 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).

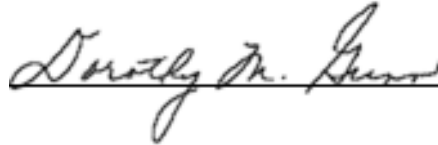
Motions to stay a proceeding must be accompanied by sufficient information detailing why a stay is needed. 35 Ill. Adm. Code 101.514(a). If a party fails to respond to a motion within 14 days the party will be deemed to have waived objection to the granting of the motion. See 35 Ill. Adm. Code 101.500(d). Oasis contends the contested conditions are not found in previous permits and are not supported by the Act or Board regulations. Oasis contends that a stay of the contested conditions is necessary to prevent irreparable harm and will not harm the public or the environment. Pet. at 5.

The Board finds that Oasis clearly has a right to appeal the CAAPP permit conditions imposed by the Agency. The Board further finds that absent a stay, Oasis will suffer irreparable

harm. The Board grants Oasis' motion to stay effectiveness of the CAAPP permit conditions 3.2.3, 5.2.7, 5.6.2(b), 5.9.1(a) and 7.1.12(c) 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 May 6, 2004, by a vote of 5-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board