ILLINOIS POLLUTION CONTROL BOARD September 21, 2006

| CITGO PETROLEUM CORPORATION, |) | |
|------------------------------|---|--|
| Petitioner, |) | |
| v. |) | PCB 07-10 (NPDES Permit Appeal – Water) |
| ILLINOIS ENVIRONMENTAL |) | (NI DES I etillit Appeal – Water) |
| PROTECTION AGENCY, |) | |
| |) | |
| Respondents. |) | |

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

On August 14, 2006, Citgo Petroleum Corporation (Citgo) timely filed a petition asking the Board to review a July 28, 2006 determination of the Illinois Environmental Protection Agency (Agency). See 415 ILCS 5/40(a)(1) (2004); 35 Ill. Adm. Code 101.300(b), 105.206(a). The Agency determination being appealed is a reissuance of a National Pollutant Discharge Elimination System (NPDES) permit to Citgo, with conditions. Citgo appeals on the grounds that certain specified conditions in the reissued NPDES permit are unnecessary or contain requirements that either are not applicable or are inconsistent with other requirements already applicable to the refinery. The Board accepted the petition for hearing on August 17, 2006.

On August 17, 2006, Citgo requested a stay of the effectiveness of the provisions and conditions appealed in the permit. To date, the Agency has not responded. If a party fails to respond to a motion within 14 days, the party is deemed to have waived objection to the granting of the motion. *See* 35 Ill. Adm. Code 101.500(d).

Citgo seeks a stay of special conditions 17, 18, and 19 of its reissued NPDES permit that is the subject of this appeal. Citgo states that it does not seek a stay of the remaining permit conditions because some of the provisions are necessary for Citgo to implement the actions required by a consent decree between Citgo, the United States Environmental Protection Agency, and the states of Illinois, Louisiana, New Jersey, and Georgia. Mot. at 1-2. Special conditions 17, 18, and 19, notes Citgo, are new to the permit and are not necessary to implement the consent decree. *Id.* at 2.

Citgo contends that the Board has granted discretionary stays in the past based on a consideration of the following standards:

(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. *See* Mot. at 2; citing <u>Nielsen & Bainbridge, L.L.C. v. IEPA</u>, PCB 03-98 (Feb. 6, 2003); <u>Saint-Gobain Containers</u>, <u>Inc. v. IEPA</u>, PCB 04-47 (Nov. 6, 2003).

According to Board precedent, contends Citgo, it is not necessary for the Board to determine that all four factors exist to grant a discretionary stay. Mot. at 2; *citing* Bridgestone/Firestone Off Road Tire Co. v. IEPA, PCB 02-31 (Nov. 1, 2001). Citgo argues that a stay is necessary in this proceeding to protect Citgo's right to appeal and prevent the applicability of new permit conditions before Citgo has the opportunity to exercise its right to appeal. Mot. at 2. Further, Citgo asserts it has no adequate remedy at law other than this permit appeal before the Board. The requested stay of special conditions 17, 18, and 19, argues Citgo, would not result in any harm to the Agency, the public, or the environment. *Id.* Finally, Citgo contends it is likely to succeed on the merits of the petition because the new conditions do not represent "applicable requirements" under Illinois law. *Id.*

Pursuant to the Illinois Administrative Procedure Act (APA) (5 ILCS 100/1-1 *et seq*. (2004)), and provided Citgo's assertions and the Agency's lack of response, the Board grants Citgo's motion. Under the APA, the conditions Citgo contests are automatically stayed. 5 ILCS 100/10-65(b) (2004). Borg-Warner Corp. v. Mauzy, 100 Ill. App. 3d 862, 427 N.E.2d 415 (3rd Dist. 1981). Accordingly, the Board grants the motion to stay the effectiveness of special conditions 17, 18, and 19 of Citgo's reissued NPDES Permit No. IL0001589.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 21, 2006, by a vote of 4-0.

Dorothy M. Gunn, Clerk

Illinois Pollution Control Board