

ILLINOIS POLLUTION CONTROL BOARD
December 20, 2007

IN THE MATTER OF:)
)
PETITION OF ILLINOIS DEPARTMENT OF) AS 08-1
TRANSPORTATION, DISTRICT 8,) (Adjusted Standard – Water)
BOWMAN AVENUE PUMP STATION AND)
DEEP WELL SYSTEM, FOR AN)
ADJUSTED STANDARD FROM 35 ILL.)
ADM. CODE 302.208(g) (NPDES PERMIT)
NO. IL0070955))

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

On July 27, 2007, the Illinois Department of Transportation (IDOT) filed a petition for an adjusted standard under Section 28.1 of the Environmental Protection Act (415 ILCS 5/28.1 (2006)). IDOT seeks an adjusted standard from the Board's general use water quality standards for sulfate and total dissolved solids (TDS) at 35 Ill. Adm. Code 302.208(g). IDOT's petition for relief concerns discharge from its District 8 Bowman Avenue Pump Station in East St. Louis, St. Clair County.

On November 13, 2007, IDOT filed a motion to stay this proceeding until resolution of a rulemaking pending before the Board, Triennial Review of Sulfate and Total Dissolved Solids Water Quality Standards: Proposed Amendments To 35 Ill. Adm. Code 302.102(b)(6), 302.102(b)(8), 302.102(b)(10), 302.208(g), 309.103(c)(3), 405.109(b)(2)(A), 409.109(b)(2)(B), 406.100(d); Repealer of 35 Ill. Adm. Code 406.203 and Part 407; and Proposed New 35 Ill. Adm. Code 302.208(h), R07-9 (R07-9 Triennial). The Illinois Environmental Protection Agency (Agency) has not responded to IDOT's motion. For the reasons below, the Board grants IDOT's motion for stay.

In this order, the Board first provides the procedural history of the case before discussing and ruling on IDOT's motion.

PROCEDURAL HISTORY

IDOT filed its adjusted standard petition on July 27, 2007. In the petition, IDOT waived its opportunity for a hearing. On August 15, 2007, IDOT filed a certificate of publication, documenting that the required notice of the petition was timely provided in the *Belleville News-Democrat* on August 1, 2007. The Board has received no public request for a hearing. On August 27, 2007, IDOT filed proof that the adjusted standard petition was served on the Agency on August 24, 2007.

In an order of September 6, 2007, the Board found that IDOT satisfied the statutory notice requirement for adjusted standard petitions, which is a prerequisite to the Board having jurisdiction over this proceeding. In the same order, the Board identified several informational

deficiencies in IDOT's petition and directed IDOT to file an amended petition to cure them by October 11, 2007.

On October 11, 2007, IDOT moved the Board to extend the filing deadline for the amended petition to November 13, 2007. IDOT requested more time to gather the information requested by the Board's September 6, 2007 order and, should a stay be sought based on R07-9 Triennial, to prepare a status report to accompany the motion for stay. The Agency did not respond to IDOT's motion for additional time, which the Board grants.

On November 13, 2007, IDOT filed an amended petition, as well as a motion to stay this proceeding (Mot.) accompanied by a status report.

DISCUSSION

In its motion for stay, IDOT states that if the Agency's proposal to amend the sulfate and TDS standards is adopted in R07-9 Triennial, then IDOT's adjusted standard request "would be satisfied" and IDOT's petition "would therefore be moot." Mot. at 2. IDOT notes that on September 20, 2007, the Board adopted a first-notice opinion and order in R07-9. IDOT requests that the Board stay this adjusted standard proceeding "until the Triennial Rulemaking is resolved." *Id.*

According to IDOT, the motion for stay is made in good faith and not for the purpose of undue delay, and the granting of the motion could preserve Board resources and promote judicial economy. Mot. at 2. IDOT's motion is accompanied by a status report, which correctly notes both that first-notice publication of the Board's R07-9 proposal appeared in the *Illinois Register* on October 5, 2007,¹ and that the hearing officer in that rulemaking extended the first-notice public comment period to December 3, 2007.

The Board's procedural rules address motions for stays:

Motions to stay a proceeding must be directed to the Board and must be accompanied by sufficient information detailing why a stay is needed A status report detailing the progress of the proceeding must be included in the motion. (See also Section 101.308 of this Part.) 35 Ill. Adm. Code 101.514(a).

The decision to grant or deny a motion for stay is "vested in the sound discretion of the Board." See People v. State Oil Co., PCB 97-103 (May 15, 2003), *aff'd sub nom State Oil Co. v. PCB*, 822 N.E.2d 876 (2nd Dist. 2004). IDOT maintains that the final adoption of R07-9 Triennial will render moot this adjusted standard proceeding. The Agency has not filed a response to IDOT's motion for stay and therefore waives any objection to the Board granting the motion. See 35 ILL. Adm. Code 101.500(d). Under these circumstances and in the interest of conserving the resources of the Board and the parties, the Board grants IDOT's motion for stay. Accordingly, unless the Board ends the stay sooner by order, the adjusted standard proceeding is stayed until the Board takes final action in R07-9 Triennial. In light of the stay, the Board at this

¹ 31 Ill. Reg. 13624-68 (Oct. 5, 2007).

time does not rule upon whether IDOT's amended petition remedied the informational deficiencies identified in the Board's September 6, 2007 order.

CONCLUSION

The Board grants IDOT's motion to stay this adjusted standard proceeding. The stay will therefore terminate when the Board takes final action in R07-9 Triennial, unless the Board issues an order in this case, AS 08-1, terminating the stay earlier. If the stay is terminated through final Board action in R07-9 Triennial, IDOT must, within 45 days thereafter, file with the Board either (1) a motion to voluntarily dismiss AS 08-1, or (2) a notice of IDOT's intent to go forward with the adjusted standard proceeding, accompanied by a status report (35 Ill. Adm. Code 101.514(b)).

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 20, 2007, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board