

ILLINOIS POLLUTION CONTROL BOARD
December 17, 2009

EXXONMOBIL OIL CORPORATION,)
)
Petitioner,)
)
v.) PCB 10-30
) (NPDES Permit Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

Today the Board grants an uncontested motion for partial stay of the permit that is the subject of this appeal. On November 6, 2009, ExxonMobil Oil Corporation (ExxonMobil) timely filed a petition asking the Board to review a September 30, 2009 determination of the Illinois Environmental Protection Agency (Agency). In the determination, the Agency issued a National Pollutant Discharge Elimination System (NPDES) permit, No. IL0002861, subject to conditions, for ExxonMobil's petroleum refinery, which is located at I-55 and Arsenal Road in Channahon Township, Will County.

Also on November 6, 2009, ExxonMobil filed a motion for a "stay of effectiveness of the Agency's interpretation of the concentration limitations for ammonia nitrogen ('NH₃-N') at Outfall 001, as included in the Final NPDES Permit reissued to ExxonMobil," until the Board's final action in this case. Motion (Mot.) at 3, 4. On November 19, 2009, the Board issued an order accepting ExxonMobil's petition for hearing. The Board reserved ruling on the motion for partial stay, however, because the Agency's time period for responding to the motion had not elapsed. *See* 35 Ill. Adm. Code 101.500(d). With the hearing officer's leave, the Agency filed its response to the motion on December 3, 2009 (Resp.).

As the Board noted in its November 19, 2009 order, ExxonMobil appeals on the grounds that the Agency "improperly limited the concentration of ammonia nitrogen (NH₃-N) at Outfall 001 to 3.0 mg/L at all times, rather than only when the total discharge exceeds 100 lbs/day as specified in Section 304.122(b) of the Board's regulations (35 Ill. Adm. Code 304.122(b))." ExxonMobil Oil Corp. v. IEPA, PCB 10-30, slip op. at 1 (Nov. 19, 2009). According to ExxonMobil's motion, the requested partial stay is needed to "prevent irreparable harm" to the company:

Because the Agency did not include the limiting discussion regarding the NH₃-N limitations, as was included in the public notice draft NPDES permit (June 9, 2009), the Agency is requiring compliance with the concentrations limits for NH₃-N at Outfall 001 at all times, and thus, is improperly interpreting 35 Ill. Admin. Code § 304.122(b). Mot. at 3.

ExxonMobil maintains that its appeal would be “rendered meaningless if it must comply with these provisions while its appeal is pending.” Mot. at 3-4. ExxonMobil further asserts that “no adequate remedy exists at law,” and ExxonMobil has “a probability of success on the merits.” *Id.* at 4. ExxonMobil concludes that “the Agency, the public, and the environment will not be harmed if a stay is granted.” *Id.* The Agency has “no objection” to ExxonMobil’s request for partial stay. Resp. at 2.

The Board grants ExxonMobil’s unopposed motion for partial stay until the Board takes final action in this appeal or until the Board orders otherwise. *See, e.g., Midwest Generation, LLC, Will County Generating Station v. IEPA*, PCB 06-156, slip op. at 5-6 (July 20, 2006) (granting request for partial stay of permit); *Community Landfill Co. and City of Morris v. IEPA*, PCB 01-48, 01-49 (consol.), slip op. at 4 (Oct. 19, 2000) (granting stay of challenged permit conditions).

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 17, 2009, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board