

ILLINOIS POLLUTION CONTROL BOARD
April 18, 2013

AKZONOBEL SURFACE CHEMISTRY)	
LLC,)	
)	
Petitioner,)	
)	
v.)	PCB 13-49
)	(NPDES Permit Appeal - Water)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J.D. O’Leary):

On April 4, 2013, the Board accepted for hearing the petition (Pet.) of AkzoNobel Surface Chemistry LLC (AkzoNobel). The petition seeks review of conditions of a renewed National Pollutant Discharge Elimination System (NPDES) permit issued to AkzoNobel by the Illinois Environmental Protection Agency (Agency). AkzoNobel’s appeal concerns the company’s industrial organic chemicals manufacturing plant located at 8005 North Tabler Road in Morris, Grundy County. Within AkzoNobel’s petition for review is the company’s motion for partial stay of the NPDES permit. Today the Board grants AkzoNobel’s motion.

MOTION FOR PARTIAL STAY

AkzoNobel requests that the Board “stay the effectiveness of the effluent limitation of fecal coliform at Outfall 001 and related Special Condition No. 9, during the pendency of this appeal.” Pet. at 3. AkzoNobel notes that a permit may be automatically stayed in its entirety when appealed, but the Board retains “discretionary authority” to instead grant a partial stay of the challenged permit when requested by a petitioner. *Id.*, citing Ameren Energy Generating Co. v. IEPA, PCB 06-67 (Feb. 16, 2006); Borg-Warner Corp. v. Mauzy, 100 Ill. App. 3d 862 (3rd Dist. 1981).

AkzoNobel argues that it will suffer “irreparable harm” if the Board does not grant the motion for partial stay because:

AkzoNobel’s prior permit did not contain a fecal coliform limitation. As a result, if a stay is not granted, AkzoNobel must immediately devote resources to the development of technology to ensure that it can meet this new effluent limitation, which is stricter than the current water quality standard. Additionally, AkzoNobel risks potential enforcement should it not be able to meet this limitation. Pet. at 3.

AkzoNobel also maintains that it is “unlikely that any environmental harm will result from this stay.” *Id.* at 4. According to the company, its “current discharges are protective of the applicable fecal coliform water quality standard.” *Id.*

DISCUSSION

The Board’s April 4, 2013 order reserved ruling on AkzoNobel’s motion for partial stay to allow the Agency’s 14-day response period to run. *See* 35 Ill. Adm. Code 101.500(d). That time period has elapsed without any Agency response being filed, meaning that by rule, the Agency is deemed to have waived any objection to the Board granting AkzoNobel’s motion for partial stay of the NPDES permit. *Id.*

Although the Illinois Administrative Procedure Act (5 ILCS 100/10-65(b) (2010)) subjects certain permits in their entirety to an automatic stay during appeals, a petitioner may choose not to avail itself of this stay and instead ask that the Board stay only the contested conditions of the permit. *See Ameren*, PCB 06-67, slip op. at 7, n.1. The Board has consistently held that it “has the authority to grant discretionary stays from permit conditions.” Community Landfill Co. and City of Morris v. IEPA, PCB 01-48, PCB 01-49 (consol.) (Oct. 19, 2000); *see also, e.g., Hartford Working Group v. IEPA*, PCB 05-74, slip op. at 1 (Nov. 18, 2004). As the Board explained in Community Landfill, the permit appeal system would be “rendered meaningless in many cases, if the Board did not have the authority to stay permit conditions.” Community Landfill, PCB 01-48, PCB 01-49 (consol.), slip op. at 4 (granting stay of challenged permit conditions).

In deciding whether to grant a discretionary stay, the Board may consider various factors, such as the avoidance of irreparable harm to the petitioner, as well as “the likelihood of environmental harm if a stay is granted.” Community Landfill, PCB 01-48, PCB 01-49 (consol.), slip op. at 4, citing Motor Oils Refining Co. v. IEPA, PCB 89-116, slip op. at 2 (Aug. 31, 1989). The Board takes into account the representations of AkzoNobel described above, and the absence of any Agency response to the motion. Exercising its discretion, the Board grants AkzoNobel’s motion for partial stay. Accordingly, only the NPDES permit’s fecal coliform effluent limitation for Outfall 001 and Special Condition No. 9 are stayed. By this ruling, the Board “makes no findings on the merits of the permit appeal” Motor Oils, PCB 89-116, slip op. at 2. The partial stay remains in effect until the Board takes final action in this appeal or the Board orders otherwise.

IT IS SO ORDERED.

Board Member J.A. Burke abstained.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 18, 2013, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board