

ILLINOIS POLLUTION CONTROL BOARD
October 3, 2013

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 13-35
)	PCB 13-36
THE BOARD OF TRUSTEES OF THE)	(Enforcement - Air)
UNIVERSITY OF ILLINOIS, a body)	(Consolidated)
corporate and politic,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J.D. O’Leary):

Today’s order grants a joint status report and motion to extend the stay of these consolidated enforcement proceedings until October 10, 2013, with a status report to be filed on October 9, 2013. Below, the Board provides the relevant procedural history before describing the joint motion, after which the Board states its reasons for granting the motion.

PROCEDURAL HISTORY

On January 3, 2013, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed two complaints against the Board of Trustees of the University of Illinois (University). The Board opened a docket for each complaint, PCB 13-35 and PCB 13-36, and issued separate orders on January 10, 2013, accepting the respective complaints for hearing. Both complaints concern campus facilities in Chicago, Cook County, and allege air pollution control violations by the University. PCB 13-35 concerns a power plant located at 1140 South Morgan Street for the University’s East Campus, while PCB 13-36 concerns a power plant located at 1717 West Taylor Street for the University’s West Campus.

On February 27, 2013, the University filed a motion in each of the then-separate cases seeking to consolidate the two proceedings and, in turn, to stay the consolidated proceedings. The People did not object to consolidation or a stay. The request for stay was based upon the University’s pending lawsuit in the Circuit Court of Cook County, The Board of Trustees of the University of Illinois v. Illinois Environmental Protection Agency, et al., No. 13-CH-162, through which the University seeks a declaratory judgment that jurisdiction over the People’s claims against the University rests solely with the Illinois Court of Claims.

By order of April 18, 2013, the Board consolidated PCB 13-35 and PCB 13-36 for purposes of hearing and decision. The Board’s order also stayed the consolidated proceedings until August 19, 2013, unless the Board terminated the stay earlier. The Board also required that during the term of the stay, the parties file status reports every 30 days regarding the progress of the Cook County Circuit Court action and notify the Board promptly upon the Circuit Court’s

final disposition of the University's lawsuit. See People v. The Board of Trustees of the University of Illinois, PCB 13-35, PCB 13-36 (consol.) (Apr. 18, 2013).

Joint status reports were filed by the parties on May 16, June 17, and July 17, 2013. On August 14, 2013, the parties filed a fourth joint status report and a joint motion to extend the stay. The parties requested that a stay be issued until September 19, 2013. The Board granted the parties' joint motion to stay and required both parties to file a status report regarding No. 13-Ch-162 on September 18, 2013. On September 20, 2013 the parties filed a motion for leave to file status report *instanter* (Mot. Leave) accompanied by a fifth status report and joint motion to extend the stay to October 10, 2013.

MOTION FOR LEAVE TO FILE JOINT STATUS REPORT AND MOTION INSTANTER

The University requests that the Board grant its motion for leave to file *instanter*, and permit the parties to file their Fifth Joint Status Report and Motion to Extend Stay, which was due September 18, 2013, on September 20, 2013. The parties' joint motion requests that the Board extend the stay of this matter to October 10, 2013.

Section 101.500(d) of the Board's procedural rules provides that "[w]ithin 14 days after service of a motion, a party may file a response to the motion. . . . Unless undue delay or material prejudice would result, neither the Board nor the hearing office will grant any motion before expiration of the 14 day response period. . . ." 35 Ill. Adm. Code 101.500(d).

The Board notes that its meeting today is the only regularly-scheduled meeting between the filing of the request for an extension of the stay and the end of the requested extension on October 10, 2013. The Board also notes that there is no objection in the record to the motion for leave to file *instanter* and that the parties have submitted a joint status report and motion. Under these circumstances, the Board finds that undue delay would result from allowing the 14-day response period to run. The Board grants the motion for leave to file *instanter* and accepts the joint status report and motion to extend stay. See 35 Ill. Adm. Code 101.500(d).

JOINT MOTION TO EXTEND THE STAY

On August 22, 2013 the Board granted the parties' Motion to Extend Stay and ordered the parties to file a status report on September 18, 2013. The joint motion (Mot.) states that "[a]t the September, 13, 2013, hearing, Judge Hall indicated that she would need additional time to render her decision, and continued the case for decision to October 4, 2013, at 11:00 a.m." Mot. at 3.

DISCUSSION

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); see also 35 Ill. Adm. Code 101.514(a). The Board issued a four-month stay of these consolidated enforcement proceedings on April 18, 2013. The


Board issued an additional stay of these consolidated enforcement proceedings on August 22, 2013.

The requested extension of the stay is based upon an anticipated ruling by Judge Sophia H. Hall of the Cook County Circuit Court, who is presiding over the University's lawsuit against the State, The Board of Trustees of the University of Illinois v. Illinois Environmental Protection Agency, et al., No. 13-CH-162. The University seeks a declaratory judgment that only the Illinois Court of Claims has jurisdiction over the People's claims against the University. Judge Hall was expected to decide the pending cross-motions for judgment on the pleadings on September 13, 2013. At the September 13, 2013 hearing, Judge Hall indicated that she would need additional time to render a decision, and continued the case for decision to October 4, 2013. During a July 13, 2013 hearing, Judge Hall expressed interest in having the stay of these Board proceedings extended until after she issues her decision on the cross-motions. The parties move to extend the stay under these circumstances and offer to file a status report with the Board on October 9, 2013.

The Board notes that the extension of the stay is requested jointly and for less than one month. The Board finds it appropriate to accommodate Judge Hall's request. The Board also finds that a short extension of the stay will help to avoid the potentially unnecessary expenditure of resources by the Board and the parties. The Board grants the joint motion to extend the stay of these consolidated enforcement proceedings. The stay will last until October 10, 2013, unless the Board issues an order terminating the stay sooner. On October 9, 2013, the parties must file, separately or jointly, a status report regarding No. 13-CH-162.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 3, 2013, by a vote of 4-0.



John T. Therriault, Clerk
Illinois Pollution Control Board