

ILLINOIS POLLUTION CONTROL BOARD  
February 20, 2014

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 11-79
	)	(Enforcement - Water)
INVERSE INVESTMENTS L.L.C., an Illinois	)	
limited liability company,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by D. Glosser):

On October 17, 2013, in response to a motion filed by Inverse Investments L.L.C. (Inverse) to stay the proceeding, the Board stayed the proceedings until February 18, 2014. The People of the State of Illinois (People) filed a response to the motion and did not object to the stay. On February 5, 2014, the parties filed a joint motion asking that the Board extend the stay for six months. For the reasons discussed below the extension of the stay is granted.

**PROCEDURAL HISTORY**

The People filed the complaint on May 4, 2011, alleging that Inverse violated Section 12(a) of the Illinois Environmental Protection Act (Act) (415 ILCS 5/12(a) (2012)). The complaint concerns a mixed-use commercial, residential and recreational area in McHenry that is owned by Inverse and managed by Richard A. Adams II. The Board accepted the complaint for hearing on May 19, 2011. Inverse filed a motion to dismiss on September 21, 2011, and the People responded on November 7, 2011. On February 16, 2012, the Board denied Inverse's motion to dismiss.

On March 9, 2012, Inverse filed an answer and affirmative defenses to the complaint. The People filed a motion to strike the affirmative defense on April 10, 2012, to which Inverse filed a response on April 18, 2012. On June 11, 2012, the Board denied the motion to strike the affirmative defenses. Since that time, the parties have conducted discovery (*see generally* Hearing Officer orders Sept. 13, 2012, Nov. 15, 2012) and reached a settlement (*see generally* Hearing Officer orders Jan. 17, 2013, Apr. 11, 2013, Aug. 27, 2013).

On September 25, 2013, the motion to stay was filed by Inverse. On October 7, 2013, the People responded that it does not object to the stay. On February 5, 2014, a joint request for extension and status report was filed by the parties (Request).

## **BACKGROUND**

On August 19, 2013, a stipulation and settlement was circulated among the parties, and the terms of any agreement included a requirement that Inverse perform specific remedial activities at the site. People v. Inverse Investments L.L.C., PCB 11-79 slip op. at 1 (Oct. 17, 2013). On August 26, 2013, Inverse received notification from the United States Environmental Protection Agency (USEPA) that it had identified Inverse as a potentially responsible party under Section 7 of CERCLA (42 U.S.C. §9607). *Id.* USEPA indicated it might issue an order requiring Inverse to perform specified work at the site; however at that time USEPA had not specifically identified the remedial action it would require of Inverse. *Id.* at 1-2.

Conflicts over the site were already occurring; Inverse specifically noted that the Illinois Environmental Protection Agency (IEPA) sent a request on September 19, 2013, asking for access to the site to perform sampling and other activities. People v. Inverse Investments L.L.C., PCB 11-79 slip op. at 2 (Oct. 17, 2013). On September 20, 2013, USEPA sought access to the site also to perform sampling and other activities.

Inverse explained that during the pendency of this proceeding, and the USEPA-initiated action, Inverse has conducted remedial activities at the site in accordance with Inverse's Illinois Site Remediation Plan (SRP). People v. Inverse Investments L.L.C., PCB 11-79 slip op. at 2 (Oct. 17, 2013). Inverse is committed to completing the actions that were initiated with the SRP as soon as the IEPA and USEPA actions are resolved. *Id.*

The People did not object to the stay, but asked that the stay be for a period of four months, with the ability to extend the stay as warranted. People v. Inverse Investments L.L.C., PCB 11-79 slip op. at 3 (Oct. 17, 2013). The People also asked that periodic statuses be set to ensure the stay is still justified.

## **STATUS REPORT AND REQUEST FOR EXTENSION**

The joint status report indicates that USEPA has conducted sampling at the site, but has not yet determined how USEPA will proceed. Request at ¶7. The parties claim that because of USEPA's status, and in order to avoid "continued practical difficulties that might arise from conflicting remedial orders" from IEPA and USEPA, an additional stay is requested. *Id.* at ¶8. The parties ask for an additional six months, and that the parties be allowed to request an additional stay if necessary. *Id.*

## **DISCUSSION**

The Board's rules state:

Motions to stay a proceeding must be directed to the Board and must be accompanied by sufficient information detailing why a stay is needed, and in decision deadline proceedings, by a waiver of any decision deadline. 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*, 352 Ill. App. 3d 813, 822 N.E.2d 876 (2nd Dist. 2004). The Board finds that continuing the stay is appropriate in this proceeding to avoid potential conflicts in remediation and to allow for coordination of the site remediation. The Board grants a stay until August 18, 2014. If the parties wish to continue that stay, they must file a status report and request an additional stay at that time.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on February 20, 2014, by a vote of 4-0.



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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board