

ILLINOIS POLLUTION CONTROL BOARD
October 1, 2015

ELECTRIC ENERGY, INC. (JOPPA ENERGY CENTER))	
)	
Petitioner,)	
)	
v.)	PCB 16-45
)	(NPDES Permit Appeal - Water)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J.D. O’Leary):

On September 3, 2015, Electric Energy, Inc. (petitioner) timely filed a petition (Pet.) asking the Board to review a July 30, 2015 permit determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2014); 35 Ill. Adm. Code 101.300(b), 105.206. In that determination, the Agency issued petitioner a revised National Pollutant Discharge Elimination System (NPDES) Permit No. IL0004171 with conditions for petitioner’s coal-fired steam electric generating plant at 2100 Portland Road, Joppa, Massac County. The petition included a motion to stay the effectiveness of the permit. Mot. at 6-7. In an order dated September 17, 2015, the Board accepted the petition for hearing but reserved ruling on the motion for stay to allow the Agency’s response time to run.

In its motion for a stay, petitioner states that, on filing an appeal with the Board “a permit applicant may seek to have the permit stayed in its entirety.” Mot. at 6, citing Borg-Warner v. Mauzy, 427 N.E.2d 415 (3rd Dist. 1981). Petitioner further states that “[a]n automatic stay applies to appeals of NPDES permits under the Illinois Administrative Procedure Act (APA).” Mot. at 6-7, citing 5 ILCS 100/10-65(b) (2014). Section 10-65(b) of the APA provides in pertinent part that, “[w]hen a licensee has made timely and sufficient application for the renewal of a license, . . . the existing license shall continue in full force and effect until the final agency decision on the application has been made unless a later date is fixed by order of a reviewing court.” 5 ILCS 100/10-65(b) (2014).

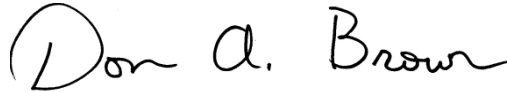
Petitioner requests that “the Board apply the automatic stay provisions of the APA to the 2015 permit in its entirety.” Mot. at 7. Petitioner states that, for the duration of the stay, the permit issued to the plant in 2009 will remain in effect. Petitioner further states that it “will continue to operate under the 2009 Permit as it existed prior to renewal.” *Id.* Petitioner moves that the Board grant an automatic stay from the August 1, 2015, effective date of the permit “until the later of (a) the Board’s final resolution of this Petition or, (b) if granted, the Agency’s issuance of a corrected permit.” *Id.* at 6, 7.

The Board's procedural rules provide that, "[w]ithin 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board . . . in its disposition of the motion." 35 Ill. Adm. Code 101.500(d). The Agency has not responded to petitioner's motion for stay.

The Board is persuaded based upon the record before it today and in the absence of any Agency opposition that the automatic stay provision of the APA applies to the renewed permit that is the subject of this appeal during the pendency of this proceeding. *See* 5 ILCS 100/10-65 (2014). In reaching this conclusion, the Board "makes no finding on the merits of the permit appeal. . . ." Kincaid Generation, L.L.C. v. IEPA, PCB 15-203, slip op. at 2 (July 23, 2015), citing Motor Oils Refining v. IEPA, PCB 89-116, slip op. at 2 (Aug. 31, 1989). The Board grants the motion for stay of the entire contested permit as requested by petitioner until the Board takes final action in this appeal or until the Board orders otherwise.

IT IS SO ORDERED.

I, Don A. Brown, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 1, 2015, by a vote of 5-0.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive, flowing style.

Don A. Brown, Assistant Clerk
Illinois Pollution Control Board