

ILLINOIS POLLUTION CONTROL BOARD
March 1, 2007

LONE STAR INDUSTRIES, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 07-71
)	(Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by A.S. Moore):

On January 29, 2007, Lone Star Industries, Inc. (Lone Star) timely filed a petition (Pet.) asking the Board to review a December 22, 2006 permit determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2004); 35 Ill. Adm. Code 105.206(a). The Agency's determination concerns the issuance of a revised air construction permit with conditions for Lone Star's Portland cement manufacturing facility at 490 Portland Avenue in Oglesby, LaSalle County. Also on January 29, 2007, Lone Star filed a motion to stay the effectiveness of three contested permit conditions (Mot.).

In an order dated February 15, 2007, the Board accepted Lone Star's petition for review but reserved ruling on the motion for stay. The Board reserved ruling on the motion for stay in order to allow that Agency's 14-day response time to run. *See* 35 Ill. Adm. Code 101.500(d). That time has now expired without any response to the motion from the Agency. Accordingly, the Agency waives any objection to the Board granting the motion for stay. *Id.*

The Board's procedural rules provide that a motion to stay a proceeding "must be accompanied by sufficient information detailing why a stay is needed." 35 Ill. Adm. Code 101.514(a); *see Motor Oils Refining Co, Inc. v. IEPA*, PCB 89-116, slip op. at 1-1 ((Aug. 31, 1989) (providing standards for determining whether stay appropriate). Lone Star argues that Special Conditions 1.1.9(d), 1.1.10(d), and 1.17-2 in its revised permit "are not required by the Illinois Environmental Protection Act or regulations promulgated thereunder, and are not necessary to correct, detect, or prevent noncompliance with, or accomplish the purposes of, the Act or regulations promulgated thereunder." Mot. at 1; Pet. at 3.

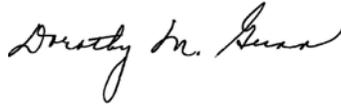
Lone Star's motion alleges that a stay of the contested permit conditions "is needed to prevent irreparable harm." Mot. at 2. Specifically, Lone Star argues that compliance with the three contested conditions would require it to incur costs in undertaking activities that are either unneeded or will generate "the information necessary to review Lone Star's compliance status." *Id.* Lone Star further argues that a stay is necessary to protect its appeal rights, as any appeal "would be rendered meaningless if it must comply with these provisions while its appeal is pending." *Id.* Lone Star also argues that it has a probability of success on the merits and lacks

an adequate remedy at law. *Id.* Finally, Lone Star claims that “[t]he Illinois EPA, the public, and the environment will not be harmed if a stay is granted.” *Id.*

The Board grants Lone Star’s motion to stay the effectiveness of Special Conditions 1.1.9(d), 1.1.10(d), and 1.1.7-2 until the Board takes final action in this appeal or until the Board orders otherwise.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 1, 2007, by a vote of 4-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board