

ILLINOIS POLLUTION CONTROL BOARD  
July 21, 2008

KCBX TERMINALS COMPANY, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 08-103  
 ) (Permit Appeal - Air)  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

ORDER OF THE BOARD (by T.E. Johnson):

On June 27, 2008, KCBX Terminals Company (KCBX) timely filed a petition asking the Board to review a May 23, 2008 air permit determination of the Illinois Environmental Protection Agency (Agency). The Agency denied an operating permit and granted, with conditions, a construction permit in response to KCBX's joint construction and operating permit application for two conveyors at the company's bulk material terminal. The facility is located at 3259 East 100th Street, Chicago, Cook County. Also on June 27, 2008, KCBX filed a motion to stay the effectiveness of the contested permit conditions.

On July 10, 2008, the Board accepted KCBX's petition for hearing but reserved ruling on the motion to stay the effectiveness of the contested permit conditions. The Board reserved ruling on the motion to allow the Agency's 14-day response time to run. *See* 35 Ill. Adm. Code 101.500(d). The 14 days have expired without any response filed by the Agency. Accordingly, the Agency waives any objection to the Board granting KCBX's motion for stay. *Id.*

Motions to stay a proceeding must be "accompanied by sufficient information detailing why a stay is needed." 35 Ill. Adm. Code 101.514(a). KCBX alleges that the contested permit conditions are not required by the Environmental Protection Act (Act) (415 ILCS 5 (2008)) or regulations, and are not necessary to correct, detect, or prevent noncompliance with, or to otherwise accomplish the purposes of the Act or regulations. KCBX seeks a stay of permit conditions 2, 8, 11, 13, 18, 6(a)(i), 12(b), and 16. Motion at 2.

KCBX asserts that the stay is needed to prevent "irreparable harm" to the company. Motion at 2. According to KCBX, each condition:

would require KCBX to incur costs to comply with these Conditions, where the activities that the Conditions require either are unneeded or will not provide the Illinois EPA with the information necessary to review KCBX's compliance status. *Id.*

KCBX further maintains that the requested stay is necessary to “protect KCBX’s right to appeal permit conditions” as its appeal would be “rendered meaningless” if the company must comply with the conditions while the appeal is pending. *Id.* Finally, KCBX adds that “no adequate remedy exists at law, and KCBX has a probability of success on the merits.” *Id.*

The Board grants KCBX’s unopposed motion to stay the effectiveness of permit conditions 2, 8, 11, 13, 18, 6(a)(i), 12(b), and 16 until the Board takes final action in this appeal or until the Board orders otherwise. *See, e.g., Midwest Generation, LLC, Will County Generating Station v. IEPA*, PCB 06-156, slip op. at 5-6 (July 20, 2006) (granting request for partial stay of permit); *Community Landfill Co. and City of Morris v. IEPA*, PCB 01-48, 01-49 (consol.), slip op. at 4 (Oct. 19, 2000) (granting stay of challenged permit conditions).

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 21, 2008, by a vote of 4-0.



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John Therriault, Assistant Clerk  
Illinois Pollution Control Board