

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PREMCOR REFINING GROUP,)	
)	
Petitioner,)	
)	
v.)	PCB 04-66
)	(RCRA Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING

TO: Mr. Don Brown	Carol Webb, Esq.
Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 West Randolph Street	1021 North Grand Avenue East
Suite 11-500	Post Office Box 19274
Chicago, Illinois 60601	Springfield, Illinois 62794-9274
(VIA ELECTRONIC MAIL)	(VIA ELECTRONIC MAIL)

(SEE PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the **JOINT MOTION TO STAY AND STATUS REPORT** a copy of which is hereby served upon you.

Respectfully submitted,

HEPLERBROOM, LLC,

Dated: October 19, 2017

By: /s/ Edward W. Dwyer
One of Its Attorneys

Edward W. Dwyer
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CERTIFICATE OF SERVICE

I, Edward W. Dwyer, the undersigned, certify that I have served the attached JOINT MOTION TO STAY AND STATUS REPORT upon:

Mr. Don Brown
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

Carol Webb, Esq.
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Post Office Box 19274
Springfield, Illinois 62794-9274

Jim Morgan
Division of Legal Counsel
Air Enforcement
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
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via electronic mail on October 19, 2017.

/s/ Edward W. Dwyer

Edward W. Dwyer

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

THE PREMCOR REFINING
GROUP INC.,

Petitioner,

v.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

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PCB 2004-66

(RCRA Permit Appeal)

JOINT MOTION TO STAY AND STATUS REPORT

NOW COMES Petitioner, THE PREMCOR REFINING GROUP INC. (“Premcor” or “Petitioner”), by and through its attorneys, HEPLERBROOM, LLC, and Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA” or “Respondent”) (hereinafter collectively “the Parties”), pursuant to 35 Ill. Admin. Code §§ 101.500 and 101.514 and request that the Illinois Pollution Control Board (“Board”) grant this Joint Motion to Stay the Proceedings and accept this Status Report. In support of this Motion and Status Report, the Parties provide as follows:

MOTION TO STAY

1. The Parties now move to stay this proceeding in order to allow time to pursue a resolution in the Circuit Court.
2. For background on this permit appeal and the related proceeding in the Madison County Circuit Court (No. 03-CH-459), please see the Motion to Stay filed by Petitioner in this matter on January 1, 2016, the Status Report filed on July 6, 2016, and the Joint Motion to Stay the Proceedings and Status Report filed on March 9, 2017.

3. Premcor previously filed a Motion to Stay the Proceedings in this matter, which was granted by the Board on March 3, 2016. This matter was stayed until December 31, 2016. Pursuant to the Board's Order dated March 3, 2016, Premcor was directed to file a Status Report. Premcor filed a Status Report on July 6, 2016.

4. Subsequently, the parties filed a Joint Motion to Stay the Proceedings and Status Report on March 9, 2017. The Board accepted the status report and granted the Motion to Stay on April 12, 2017.

5. The Parties are now requesting an additional stay of this proceeding for six months from the date the Board grants this Motion to Stay.

6. Section 101.514 of the Board's rules requires that motions to stay a proceeding be accompanied by sufficient information detailing why a stay is needed, a waiver of the decision deadline, and a status report. 35 Ill. Admin. Code § 101.514(a).

7. A stay is needed in this proceeding because resolution of the Circuit Court matter would likely eliminate the need to pursue this permit appeal.

8. The issues regarding liability for groundwater contamination and the related RCRA closure obligations continue to be litigated in the Circuit Court case among the parties. Due to joinder of third party claims, the litigation of the Circuit Court case is complex and additional time is needed to come to a fair and just resolution of all claims.

9. Maintaining this permit appeal is necessary to protect Premcor's defenses in the related Circuit Court case and maintain its third party claims.

10. Petitioner filed an open waiver of the decision deadline in this matter on October 5, 2007. Accordingly, a waiver is not included with this filing.

11. A status report updating the Board on the status of this matter and the related Circuit Court case is included in the following section of this filing.

12. The Parties have satisfied the requirements of 35 Ill. Admin. § Code 101.514(a).

13. Furthermore, the Board has granted stays in permit appeals in prior cases so there is precedent for doing so here. *See Saint-Gobain Containers, Inc. v. IEPA*, PCB 4-47 (Ill.Pol.Control.Bd. Feb. 16, 2006); *Stepan Company v. Illinois EPA*, PCB 01-72 (Ill.Pol.Control.Bd. Jan. 4, 2001); *C&S Recycling, Inc. v. Illinois EPA*, PCB 95-100 (Ill.Pol.Control.Bd. Apr. 4, 1996); *Cabot Corp. v. Illinois EPA*, PCB 91-197 (Ill.Pol.Control.Bd. Jan. 21, 1993).

14. Granting a stay here would not result in any harm to the parties or the public. Premcor is currently performing activities at its facility under the review of and with the consent of the Illinois EPA and the Office of the Illinois Attorney General (“AGO”).

STATUS REPORT

15. Since the last status report filed by Premcor on March 9, 2017, the litigation in the Circuit Court case has progressed. On October 16, 2017, a Partial Consent Order between Premcor and the State of Illinois was entered by the Circuit Court. The remaining issues that are not covered by the Partial Consent Order have been set for trial on June 25, 2018, which include issues relating to the instant permit appeal.

16. Premcor continues to conduct investigation and remediation activities pursuant to the draft preliminary injunction order and its appendices.

17. Premcor also continues, under the oversight of Illinois EPA, to voluntarily conduct sequential investigations of surface and subsurface conditions at the refinery and

perform remediation, which includes continuing operation of a groundwater pumping system to recover hydrocarbon and maintain gradient control along its western property boundary.

18. Premcor continues to provide the State with quarterly updates since the last Status Report detailing the ongoing site work and its progress, including Quarterly Groundwater Gauging.

19. Granting the stay sought above will allow Premcor and the State to focus efforts on resolving the Circuit Court case. In six months, Premcor should be in a position to advise the Board of the status of the Circuit Court case and whether the trial will be proceeding as scheduled.

20. Counsel for Premcor has shared this Status Report with Complainant's counsel and has been advised the Complainant has no objection or additions to the Status Report.

WHEREFORE, the Parties respectfully requests that the Board:

- (a) Grant the Joint Motion to Stay and stay this proceeding for six months from the date of the Board's order granting the Motion to Stay;
- (b) Accept this Status Report; and
- (c) Award any other relief the Board deems appropriate in this matter.

Dated: October 19, 2017

THE PREMCOR REFINING GROUP INC.,
Petitioner,

By: /s/ Edward W. Dwyer
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Respectfully submitted,

THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY, Respondent,

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