

ILLINOIS POLLUTION CONTROL BOARD
August 31, 1989

MOTOR OILS REFINING COMPANY, INC.,)
)
 Petitioner,)
)
 v.) PCB 89-116
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by R. C. Flemal):

On July 14, 1989, Motor Oils Refining Company, Inc., ("MORCO") filed an appeal of the decision of the Illinois Environmental Protection Agency ("Agency") denying its application for a supplemental permit for its waste streams, permits 000044 through 000051 ("the permits"). In its permit appeal, MORCO requested the Board grant it a stay of the effect of the Agency's decision, thereby allowing it to continue to receive its waste streams, pending the outcome of this proceeding. On July 25, the Agency filed a Motion in Opposition to Stay. On August 10, 1989, the Board found that the automatic stay provision of Section 16(b) of the Illinois Administrative Procedure Act is inapplicable to MORCO's appeal. However, the Board ordered the parties to address the issue of whether a discretionary stay is appropriate, such consideration to include the potential for environmental harm in light of certain statements made in the Agency's June 15, 1989 denial letter. The Board ordered that such filings be received no later than August 23, 1989.

On August 23, 1989, MORCO filed its response to the Board Order. The Agency's response was received by the Board on August 24, 1989 with a motion to file instant. Although received one day later than that ordered by the Board, service on MORCO was had on August 23, 1989 and the Board finds no prejudice resulted from the one-day delay. The motion to file instant is granted.

The Agency, in its response entitled Motion in Opposition to Discretionary Stay, states that although there are no specific standards set by the Board for issuing stays, Illinois law provides for standards under which such equitable relief is appropriate. These are:

- 1) a certain and clearly ascertainable right needs protection;

- 2) irreparable injury will occur without the injunction;
- 3) no adequate remedy at law exists; and
- 4) there is a probability of success on the merits.

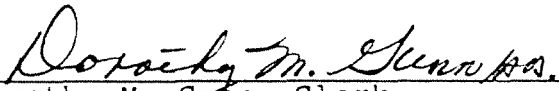
Junkunc v. S.J. Advanced Technology & Mfg., 101 Ill. Dec. 671, 498 N.E.2d 1179 (Ill. App. 1 Dist. 1986).

MORCO's response addresses only one of the four, alleging that a discretionary stay should be granted for reasons of irreparable injury to its business. Although the Board may look to these factors in making its determination of whether to grant a discretionary stay, the likelihood of environmental harm should a stay be granted is of particular concern for the Board. (See, Alburn, Inc. v. Illinois Environmental Protection Agency, 41 PCB 323 (May 1, 1981).

The Agency states in its response that the permit denial letter discusses various matters, including alleged unpermitted receipt of hazardous waste and the alleged existence of soil contamination at the site. MORCO generally denies the statements made in the Agency's permit denial letter, and further points to the fact that no enforcement actions have been filed for the allegations stated in the Agency's letter. Both MORCO and the Agency have attached documents to their responses in support of their positions. Upon review of the responses and attached documents, the Board finds that it is not persuaded that continued operation under the terms of the expired permits pending outcome of this appeal would not result in environmental harm. MORCO's motion for stay is accordingly denied. In so ruling, the Board makes no findings on the merits of the permit appeal, nor does it make any finding on the bearing which any of the filed documents may or may not have on the issues in this appeal.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 31st day of August, 1989, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board