

ILLINOIS POLLUTION CONTROL BOARD
August 22, 2013

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
)	
Complainant,)	
)	
v.)	PCB 13-35
)	PCB 13-36
THE BOARD OF TRUSTEES OF THE)	(Enforcement - Air)
UNIVERSITY OF ILLINOIS, a body)	(Consolidated)
corporate and politic,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J.D. O’Leary):

Today’s order grants a joint motion to extend the stay of these consolidated enforcement proceedings until September 19, 2013, with a status report to be filed on September 18, 2013. Below, the Board provides the relevant procedural history before describing the joint motion, after which the Board states its reasons for granting the motion.

PROCEDURAL HISTORY

On January 3, 2013, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed two complaints against the Board of Trustees of the University of Illinois (University). The Board opened a docket for each complaint, PCB 13-35 and PCB 13-36, and issued separate orders on January 10, 2013, accepting the respective complaints for hearing. Both complaints concern campus facilities in Chicago, Cook County, and allege air pollution control violations by the University. PCB 13-35 concerns a power plant located at 1140 South Morgan Street for the University’s East Campus, while PCB 13-36 concerns a power plant located at 1717 West Taylor Street for the University’s West Campus.

On February 27, 2013, the University filed a motion in each of the then-separate cases, seeking to consolidate the two proceedings and, in turn, to stay the consolidated proceedings. The People did not object to consolidation or a stay. The request for stay was based upon the University’s pending lawsuit in the Circuit Court of Cook County, The Board of Trustees of the University of Illinois v. Illinois Environmental Protection Agency, et al., No. 13-CH-162, through which the University seeks a declaratory judgment that jurisdiction over the People’s claims against the University rests solely with the Illinois Court of Claims.

By order of April 18, 2013, the Board consolidated PCB 13-35 and PCB 13-36 for purposes of hearing and decision. The Board’s order also stayed the consolidated proceedings until August 19, 2013, unless the Board terminated the stay earlier. The Board also required that during the term of the stay, the parties file status reports every 30 days regarding the progress of

the Cook County Circuit Court action and notify the Board promptly upon the Circuit Court's final disposition of the University's lawsuit. See People v. The Board of Trustees of the University of Illinois, PCB 13-35, PCB 13-36 (consol.) (Apr. 18, 2013).

Joint status reports were filed by the parties on May 16, June 17, and July 17, 2013. On August 14, 2013, the parties filed a fourth joint status report and a joint motion to extend the stay (Mot.).

JOINT MOTION TO EXTEND THE STAY

The parties state that pursuant to the order of Judge Sophia H. Hall of the Cook County Circuit Court in No. 13-CH-162, the State filed a motion for judgment on the pleadings and supporting brief on May 1, 2013; the University filed a cross-motion for judgment on the pleadings and combined brief in support and response on May 22, 2013; the State filed a reply in support of its motion and a response in opposition to the University's cross-motion on June 11, 2013; and the University filed a reply in support of its cross-motion on July 3, 2013. Mot. at 2-3. According to the joint motion to extend the stay, the State and the University argued their motions before Judge Hall on July 15, 2013, at which time Judge Hall set the motions for decision on September 13, 2013, at 11:00 a.m. *Id.* at 3

The joint motion states that at the July 15, 2013 hearing before Judge Hall, the State and the University informed Judge Hall that the Board had entered a temporary stay. Mot. at 3. According to the joint motion, Judge Hall "asked if the stay of the Board cases could be extended slightly until after her decision and [the State and the University] agreed that would be appropriate." *Id.*; see also *id.*, Exhibit A, Transcript of July 15, 2013 Hearing at 23-24. The parties therefore request that the Board extend the stay of the consolidated enforcement actions "until September 19, 2013, with further status reports to be filed September 18, 2013." *Id.*

DISCUSSION

The decision to grant or deny a motion for stay is "vested in the sound discretion of the Board." See People v. State Oil Co., PCB 97-103 (May 15, 2003), *aff'd sub nom State Oil Co. v. PCB*, 822 N.E.2d 876 (2nd Dist. 2004); see also 35 Ill. Adm. Code 101.514(a). The Board issued a four-month stay of these consolidated enforcement proceedings on April 18, 2013. The parties now seek to extend the stay until September 19, 2013.

The requested extension of the stay is based upon an anticipated ruling by Judge Sophia H. Hall of the Cook County Circuit Court, who is presiding over the University's lawsuit against the State, The Board of Trustees of the University of Illinois v. Illinois Environmental Protection Agency, et al., No. 13-CH-162. The University seeks a declaratory judgment that only the Illinois Court of Claims has jurisdiction over the People's claims against the University. Judge Hall is expected to decide, on September 13, 2013, the pending cross-motions for judgment on the pleadings. During a July 13, 2013 hearing, Judge Hall expressed interest in having the stay of these Board proceedings extended until after she issues her decision on the cross-motions. The parties move to extend the stay under these circumstances and offer to file a status report with the Board on September 18, 2013.

The Board notes that the extension of the stay is requested jointly and only for one month. The Board finds it appropriate to accommodate Judge Hall's request. The Board also finds that a short extension of the stay will help to avoid the potentially unnecessary expenditure of resources by the Board and the parties. The Board grants the joint motion to extend the stay of these consolidated enforcement proceedings. The stay will last until September 19, 2013, unless the Board issues an order terminating the stay sooner. On September 18, 2013, the parties must file, separately or jointly, a status report regarding No. 13-CH-162.

Lastly, in accord with the Board's April 18, 2013 order, the University's answers to, or motions to strike or dismiss, the complaints may be filed no later than 45 days after the date of the stay's termination. The University's filing of a motion to strike or dismiss a complaint during this 45-day period will stay the 45-day period to answer the corresponding complaint until the Board disposes of the motion.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 22, 2013, by a vote of 4-0.



John T. Therriault, Clerk
Illinois Pollution Control Board