

ILLINOIS POLLUTION CONTROL BOARD  
November 7, 2013

J & A INVESTORS, LLC, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 14-23  
 ) (NPDES Permit Appeal)  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

ORDER OF THE BOARD (by J.D. O’Leary):

On October 3, 2013, the Board accepted for hearing the petition of J & A Investors, LLC, (petitioner). The petition seeks review of conditions of a renewed National Pollutant Discharge Elimination System (NPDES) permit issued to petitioner by the Illinois Environmental Protection Agency (Agency). Petitioner’s appeal concerns its pork harvesting facility located at 205 Turner Drive in Rantoul, Champaign County. With the petition, petitioner filed a motion (Mot.) seeking a stay of certain NPDES permit conditions. Today the Board grants petitioner’s unopposed motion.

**MOTION FOR PARTIAL STAY**

Petitioner requests that the Board stay during the pendency of its appeal the effectiveness of Special Condition 1, Special Condition 2.F.2, Special Condition 2.N, Special Condition 3.A, and Special Condition 3.B imposed by the Agency. Mot. at 2. Petitioner argues that the Board may grant a stay and that a stay is needed to prevent irreparable harm to petitioner. Mot. at 2-3. Petitioner further argues that the appeal would be rendered meaningless if it is required to meet the conditions while the appeal is pending. Mot. at 2-3.

**DISCUSSION**

The Board’s October 3, 2013 order reserved ruling on petitioner’s motion for partial stay to allow the Agency’s 14-day response period to run. *See* 35 Ill. Adm. Code 101.500(d). During a status conference with the Board’s hearing office on October 15, 2013, the parties agreed to extend the Agency’s deadline to respond to the request for a stay to October 29, 2013. The extended deadline has passed without the filing of any Agency response. Under Section 101.500(d) of the Board’s procedural rules, the Agency is deemed to have waived any objection to the Board granting petitioner’s motion for partial stay of the NPDES permit. *Id.*

Although the Illinois Administrative Procedure Act (5 ILCS 100/10-65(b) (2012)) subjects certain permits in their entirety to an automatic stay during appeals, a petitioner may choose not to avail itself of this stay and instead ask that the Board stay only the contested

conditions of the permit. *See Ameren Energy Generating Co. v. IEPA*, PCB 06-67 (Feb. 16, 2006), slip op. at 7, n.1. The Board has consistently held that it “has the authority to grant discretionary stays from permit conditions.” *Community Landfill Co. and City of Morris v. IEPA*, PCB 01-48, 01-49 (consol.) (Oct. 19, 2000); *see also, e.g., Hartford Working Group v. IEPA*, PCB 05-74, slip op. at 1 (Nov. 18, 2004). As the Board explained in *Community Landfill*, the permit appeal system would be “rendered meaningless in many cases, if the Board did not have the authority to stay permit conditions.” *Community Landfill*, PCB 01-48, 01-49 (consol.), slip op. at 4 (granting stay of challenged permit conditions).

In deciding whether to grant a discretionary stay, the Board may consider various factors, such as the avoidance of irreparable harm to the petitioner, as well as “the likelihood of environmental harm if a stay is granted.” *Community Landfill*, PCB 01-48 01-49 (consol.), slip op. at 4, citing *Motor Oils Refining Co. v. IEPA*, PCB 89-116, slip op. at 2 (Aug. 31, 1989). Exercising its discretion, the Board grants petitioner’s motion for partial stay. Accordingly, only the NPDES permit’s Special Condition 1, Special Condition 2.F.2, Special Condition 2.N, Special Condition 3.A, and Special Condition 3.B are stayed. By this ruling, the Board “makes no findings on the merits of the permit appeal . . . .” *Motor Oils*, PCB 89-116, slip op. at 2. The partial stay remains in effect until the Board takes final action in this appeal or the Board orders otherwise.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 7, 2013, by a vote of 4-0.



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John T. Therriault, Clerk  
Illinois Pollution Control Board