

ILLINOIS POLLUTION CONTROL BOARD  
October 19, 2023

BUNGE MILLING, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 23-92
	)	(Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by M. Gibson):

On February 14, 2023, Bunge Milling, Inc. (Bunge) timely filed a petition (Pet.) asking the Board to review a January 4, 2023, permit determination of the Illinois Environmental Protection Agency (IEPA). *See* 415 ILCS 5/40(a)(1) (2022); 35 Ill. Adm. Code 101.300(b), 105.206. The determination concerns Bunge’s grain elevator and corn milling facility at 321 East North Street, Danville in Will County. Additionally, in its petition Bunge requested a stay of the effectiveness of the contested Conditions 9(a), 12(c) (but only as to the challenged limits), 12(f), 23(a)(vii), 23(a)(viii), 18(a)(ii), and 18(c). On March 2, 2023, the Board accepted the petition for hearing but reserved ruling on Bunge’s request for a partial stay. For the reasons below, the Board grants Bunge’s motion for a partial stay.

Bunge requests that the Board stay the effectiveness of Conditions 9(a), 12(c) (but only as to the challenged emission limits), 12(f), 23(a)(vii), 23(a)(viii), 18(a)(ii), and 18(c) of its Federally Enforceable State Operating Permit (FESOP) for the operation of its grain elevator and corn milling facility. In this case, Bunge previously operated under a 2003 Clean Air Act Permit Program (CAAPP) permit. Pet. at 1. In 2011, Bunge submitted an application for a FESOP and on January 4, 2023, IEPA issued Bunge a FESOP with conditions regarding its Danville facility. *Id.* at 1-2.

On March 13, 2023, the Illinois Attorney General’s Office (AG), on behalf of IEPA, filed a response to Bunge’s request for stay (IEPA Resp.) opposing the stay of Conditions 12(f), 23(a)(vii), and 23(a)(viii) of the petition. IEPA Resp. at 2. On March 27, 2023, Bunge filed a motion to file a reply, along with a reply (Bunge Reply), in support of staying the contested conditions. Bunge Reply at 7. On April 10, 2023, the AG’s Office, on behalf of IEPA, filed a response to Bunge’s motion to file a reply (IEPA Reply) reiterating its opposition to staying Condition 12(f), 23(a)(vii), and 23(a)(viii) of Bunge’s FESOP. The Board finds that Bunge would be materially prejudiced without the opportunity to file a reply and therefore the Board grants Bunge’s motion.

The Board has the authority to grant discretionary stays of the type requested here. In Illinois Power Generating Co. v. IEPA, PCB 16-60, slip op. at 2 (December 17, 2015), the Board

found “that it has the authority to grant discretionary stays from permit conditions.” The Board noted it “has previously granted or denied discretionary stays in permit appeals, both when the Agency did and did not consent to such stays.” *Id.* (citations omitted); *see also*, AkzoNobel Surface Chemistry, LLC v. IEPA, PCB 13-49, slip op. (Apr. 18, 2013); Community Landfill Co. and City of Morris v. IEPA, PCB 01-48, 01-49 (consol.), slip op. at 4 (Oct. 19, 2000). The Board elaborated that “[t]he permit appeal system would be rendered meaningless in many cases, if the Board did not have the authority to stay permit conditions.” Illinois Power Generating Co., PCB 16-60, slip op. at 2.

The Board has long recognized that Illinois law provides standards to help determine whether it is appropriate to grant a discretionary stay:

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. Illinois Power Generating Co., PCB 16-60, slip op. at 2 (citations omitted); *see* Pet. at 15.

The Board is not required to consider each of these factors when deciding whether to grant a discretionary stay. Bridgestone/Firestone Off Road Tire Co. v. IEPA, PCB 02-31, slip op. at 3 (Nov. 1, 2001). The likelihood of environmental harm should a stay be granted is of particular concern for the Board. *Id.* (citing Motor Oils Refining Co. v. IEPA, PCB 89-116, slip op. at 2 (Aug. 31, 1989)).

Bunge contends that it “has a statutory right to appeal the contested conditions in the [FESOP] Permit” and that the “appeal would be rendered moot if Bunge were forced to comply with the contested conditions during the pendency of this appeal.” Pet. at 22. Bunge also argues that it “would suffer irreparable injury if required to comply with the contested permit conditions during the pendency of this appeal” because the contested conditions “are arbitrary, unlawful, inaccurate, and/or technologically and economically infeasible.” *Id.* Additionally, Bunge states that “no adequate remedy at law exists outside this forum at this time” and it “has demonstrated a probability of success on the merits warranting a stay of the contested conditions.” *Id.* Lastly, Bunge alleges that staying the contested conditions “will not result in any environmental harm. While the contested conditions are stayed, Bunge will continue operating in compliance with applicable emission limits, as well as monitoring, recordkeeping and reporting requirements outlined in the uncontested provisions of the [FESOP] Permit.” *Id.* at 22-23.

IEPA opposes staying Conditions 12(f), 23(a)(vii), and 23(a)(viii) of the petition. IEPA Resp. at 2. Condition 12(f) requires “that compliance with the annual emission limits in Conditions 12(a) through 12(e) be determined on a daily basis from the sum of the data for the current day plus the preceding 364 days (running 365 days total).” *Id.* at 3. Conditions 23(a)(vii) and 23(a)(viii) require Bunge to “maintain records of total hours of operation of each baghouse (hours/day and hours/year) and daily and annual emissions of particulate matter (PM) and particulate matter with an aerodynamic diameter of 10 microns or less (PM10) from the source.” *Id.* at 5. According to IEPA, a stay of the averaging period in Condition 12(f) “would render the annual emission limits for all 135 emission units at the source unenforceable as no

other averaging period is provided by Condition 12(f) of the Permit and, consequently, . . . would increase the likelihood of environmental harm. IEPA Resp. at 2. Furthermore, IEPA argues that “a stay of the [Condition 23(a)(vii) and 23(a)(viii)] requirement to maintain records necessary to demonstrate compliance with the annual emission limits, based on a 365-day rolling total, would increase the likelihood of environmental harm. *Id.*


In response, Bunge restated its reasons for requesting a stay of the contested conditions and offered to maintain records either on a 12-month rolling basis or a 365-day rolling basis, but with daily approximation of the emissions instead of actual emissions. Bunge Reply at 7. IEPA responded by reiterating its opposition to staying Conditions 12(f), 23(a)(vii), and 23(a)(viii). IEPA alleges that Bunge can exceed the emission limits of its FESOP and that it can calculate its emission with information Bunge currently collects. IEPA Reply at 2-7.

The Board reviewed Bunge’s request for partial stay, as well as IEPA’s response and both replies. Based on that review, the Board finds that granting a discretionary stay is warranted. The Board is persuaded that Bunge has an ascertainable right that needs protection. Appeal of the permit conditions would be rendered moot if Bunge was required to comply with the contested condition during the appeal. If petitioner prevailed, “the cost and the point of the appeal would be lost.” Community Landfill Co. and City of Morris v. IEPA, PCB 01-48, PCB 01-49 (consol.), slip op. at 4 (Oct. 19, 2000). The Board also agrees that this appeal is the remedy available for Bunge to challenge the contested conditions.

Exercising its discretion, the Board grants Bunge’s motion for partial stay of the contested Conditions 9(a), 12(c) (but only as to the challenged limits), 12(f), 23(a)(vii), 23(a)(viii), 18(a)(ii), and 18(c) in the FESOP. To address IEPA’s concerns, the Board also requires Bunge to comply with the annual limits in Conditions 12(a) through 12(e) of the FESOP both on a monthly basis from the sum of the data for the current month plus the preceding 12 months and on a daily approximation basis from the sum of the approximated data for the current day plus the preceding 364 days (running 365 days total). In doing so, the Board “makes no findings on the merits of the permit appeal . . .” Motor Oils Refining Co. v. IEPA, PCB 89-116, slip op. at 2 (Aug. 31, 1989). The partial stay remains in effect until the Board takes final action on the permit appeal, or until the Board orders otherwise.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 19, 2023, by a vote of 4-0.



Don A. Brown, Clerk  
Illinois Pollution Control Board