

ILLINOIS POLLUTION CONTROL BOARD
January 22, 2004

NOVEON, INC.,)
)
Petitioner,)
)
v.) PCB 04-102
) (CAAPP Permit Appeal – Air)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by N.J. Melas):

The Board accepted this Clean Air Act Permit Program (CAAPP) permit appeal for hearing on January 8, 2004. Accompanying the petition (pet.), filed December 24, 2003, Noveon, Inc. (Noveon) filed a motion to stay the effectiveness of the CAAPP permit No. 96030152. This order addresses the petitioner's motion to stay. To date, the Environmental Protection Agency (Agency) has not responded to the motion.

The Board has recognized that Illinois law provides standards to determine whether a stay is appropriate. Community Landfill Company and City of Morris v. IEPA, PCB 01-48, 49 (Oct. 19, 2000), *citing* Motor Oils Refining Co., Inc. v. IEPA, PCB 89-116 (Aug. 31, 1989). The four standards are as follows: (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. Motor Oils, PCB 89-116, slip op. at 1-2 (Aug. 31, 1989), *citing* Junkunc v. S.J. Advanced Technology & Mfg., 149 Ill. App. 3d 114, 498 N.E. 2d 1179 (1st Dist. 1986). The Board has held that it is not required to specifically address each of these factors in making a stay determination. Bridgestone/Firestone Off-Road Tire Company v. IEPA, PCB 02-31 (Nov. 1, 2001).

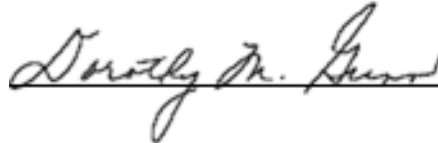
Motions to stay a proceeding must be accompanied by sufficient information detailing why a stay is needed. 35 Ill. Adm. Code 101.514(a). If a party files no response to a motion within 14 days the party will be deemed to have waived objection to the granting of the motion. *See* 35 Ill. Adm. Code 101.500(d). Noveon contends the Agency issued the CAAPP permit on November 24, 2003, also making the permit effective on that date. According to Noveon, the immediate effective date did not allow reasonable time to for Noveon to review the permit and make changes necessary to ensure continuous compliance. Noveon requests that the Board stay the effectiveness of the final CAAPP permit conditions 7.1.2, 7.1.3(d), 7.1.13, 7.2.1, 7.2.3(c), 7.2.7, 7.3.2, 7.3.8(b), 7.4.8(b), 7.5.2, 7.5.3(c), 7.5.8(b), 7.6.2, 7.6.3(c), 7.6.5(b)-(c), 7.6.8(b), 7.6.9(f), 7.7.5(a), and 7.7.8(b) (disputed conditions) until the Board's final action in this matter. Pet. at 9. Further, Noveon requests a stay regarding the remaining provisions of the CAAPP permit until January 31, 2004, to allow Noveon time to begin complying with those provisions.

The Board finds that Noveon clearly has a right to appeal the CAAPP permit conditions imposed by the Agency. The Board further finds that absent a stay, Noveon will suffer irreparable harm. Although Noveon does not include condition 4.0 in its request for relief, Noveon objects to condition 4.0 in the body of the permit appeal. *See* Pet. at 3. Condition 4.0 lists the significant emissions units at the Noveon facility and the associated emission control equipment, which Noveon disputes. Pet. at 3. Accordingly, the Board includes condition 4.0 as part of Noveon's requested relief.

The Board grants Noveon's motion to stay effectiveness of the CAAPP permit conditions 4.0, 7.1.2, 7.1.3(d), 7.1.13, 7.2.1, 7.2.3(c), 7.2.7, 7.3.2, 7.3.8(b), 7.4.8(b), 7.5.2, 7.5.3(c), 7.5.8(b), 7.6.2, 7.6.3(c), 7.6.5(b)-(c), 7.6.8(b), 7.6.9(f), 7.7.5(a), and 7.7.8(b) until the Board's final action in this matter, or until the Board orders otherwise. The Board further grants Noveon's motion to stay effectiveness of the remaining provisions of the CAAPP permit until January 31, 2004. The Board directs the parties to proceed as expeditiously as practicable.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 22, 2004, by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board