

ILLINOIS POLLUTION CONTROL BOARD
March 16, 1995

FORREST WILLIAMS d/b/a)	
WILLIAMS MOBIL,)	
)	
Petitioner,)	
)	
v.)	PCB 95-57
)	PCB 95-58
ILLINOIS ENVIRONMENTAL)	(Consolidated)
PROTECTION AGENCY,)	(UST - Appeal)
)	
Respondent.)	

ORDER OF THE BOARD (by M. McFawn):

This matter is before the Board upon two motions for stay filed by petitioner Forrest Williams d/b/a Williams Mobil (Williams) on February 17, 1995. The first motion, filed in PCB 95-57, seeks to stay the effect of the Illinois Environmental Protection Agency's (Agency) January 27, 1995 modification of Williams' revised leaking underground storage tank (LUST) site classification completion report (site classification report) during the pendency of Williams' appeal of the Agency modification. The second motion, filed in PCB 95-58, seeks to stay during the pendency of this appeal the effect of the Agency's modification of Williams' physical soil classification and groundwater investigation plan (soil and groundwater plan) and the Agency's approval of Williams' total budget for the physical soil classification and groundwater investigation (soil and groundwater budget), but only to the extent they affect Williams' right to elect to defer corrective action. We also note that Williams filed a waiver of the decision deadline until October 30, 1995.

The Agency has not filed a response to either motion. Pursuant to Section 103.140(c) of the Board's procedural rules, if no response to a motion is filed, the parties shall be deemed to have waived objection to the granting of the motion, but such waiver of objection does not bind the Board in its determination. We will therefore proceed to the merits of each motion.

Motion to Stay Effect of Site Classification Report Modification

Williams asserts that unless the effect of the Agency's modification of its site classification report is stayed during the pendency of this appeal, pursuant to Section 732.503(f), Williams will be obligated to submit a revised site classification completion report within 30 days of the Agency's modification, or the Agency's modification will be approved by operation of law.

Section 732.503(f) provides:

Any action by the Agency to reject or require modification of a plan or report shall be subject to appeal to the Board within 35 days after the Agency's final action in the manner provided for the review of permit decisions in Section 40 of the Act. Any owner or operator may elect to incorporate modifications required by the Agency and shall do so by submitting a revised plan or report within 30 days after the receipt of the Agency's written notification. If no revised plan or report is submitted to the Agency or *no appeal to the Board [is] filed within the specified time frames*, the plan or report shall be deemed approved as modified by the Agency. (Emphasis added).

Because Williams filed a timely appeal of the Agency's modification of Williams' site classification report, the language in 732.503(f) which states that the modified plan shall be approved within 30 days does not apply to Williams. By excepting situations where a timely appeal is filed, the regulation has the effect of staying a rejection or modification until the appeal is resolved. Therefore, it is unnecessary to grant Williams a stay from that provision.

Williams also asserts that it "is to submit" a corrective action plan to the Agency within 90 days of the Agency modification. Williams asserts that in this corrective action plan it will be required to address all the criteria for which the Agency designated the site high priority, including the criteria Williams is contesting in this appeal. Williams also points out that the Agency would be required to review proposed corrective action submittals which may be found to be unnecessary.

Williams has cited no provision requiring the submittal of a corrective action plan within 90 days of the Agency modification of a site classification report. Section 732.405(a) of the Board's LUST rules merely requires owners and operators to submit a High Priority corrective action plan to the Agency prior to conducting corrective action activities. Alternatively, pursuant to Section 732.405(d), an owner or operator can even proceed with corrective action activities prior to submitting a corrective action plan to the Agency or receiving Agency approval of the plan. Under this second option the owner or operator must subsequently submit the corrective action costs to the Agency for approval before payment will be authorized, and the owner or operator therefore runs the risk that incurred costs will not be approved, and will therefore not be reimbursed.

Because we find that there is nothing which compels Williams to submit its corrective action plan to the Agency prior to the resolution of the issues in this appeal, it is not necessary or appropriate for the Board to grant a stay.

Motion to Stay Effect of Soil and Groundwater Plan and Budget

Williams' second motion seeks to stay the effect of the Agency's modification of its soil and groundwater plan and the Agency's approval of its soil and groundwater budget to the extent these actions affect Williams' right to defer corrective action. Section 732.406(a) of the LUST rules provides:

- a) Notwithstanding any other provision or rule of law with the exception of the early action requirement of Subpart B of this Part, the owner or operator who has submitted any budget plan pursuant to this Part and who is eligible for payment from the Underground Storage Tank Fund shall be eligible to elect to commence corrective action upon the availability of funds. *Such election shall be made in writing to the Agency within 30 days of receipt of Agency approval of a budget plan.* The Agency shall provide notice to the owner or operator whether sufficient resources are available in order to immediately commence the approved measures. (Emphasis added.)

In the Agency's January 27, 1995 notification letter to Williams concerning the soil and groundwater plan and the soil and groundwater budget, the Agency states that there are insufficient resources available in the LUST Fund to reimburse the corrective action costs approved in the budget, and that an election to defer corrective action must be made within 30 days. The letter refers to the "total proposed budget for the Physical Classification and Groundwater Investigation Plan." Because Williams is appealing certain conditions included in the Agency's modification of its soil and groundwater plan, Williams seeks a stay of the effect of the budget's approval to the extent it triggers the running of the 30-day period in which Williams can elect to defer the corrective actions specified in the approved budget.

Because Williams is appealing the Agency's modifications to its soil and groundwater plan, it is unclear what costs will ultimately need to be included in the soil and groundwater budget. Williams may choose to submit a revised budget pursuant to Section 732.305(e) of the UST rules. Therefore, we find that it is appropriate to toll the running of the 30-day period for electing to defer the corrective actions specified in the budget during the pendency of this appeal. We hereby grant Williams the requested stay from the effect of Agency approval of the soil and groundwater budget to the extent it affects Williams' rights to

elect to defer corrective action pursuant to Section 732.406(a), during the pendency of 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 16th day of MARCH 1995, by a vote of 7-0.

Dorothy M. Gunn, Clerk
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Illinois Pollution Control Board