

ILLINOIS POLLUTION CONTROL BOARD
June 2, 1988

VILLAGE OF SAUGET,)	
)	
Petitioner,)	
)	
v.)	
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	PCB 86-58
_____)	(Consolidated with
)	PCB 86-63)
MONSANTO COMPANY,)	
)	
Petitioner,)	
)	
v.)	
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

INTERIM ORDER OF THE BOARD (by R. C. Flemal):

On April 28, 1988 the Village of Sauget ("Sauget") filed a Motion to Extend Stay, requesting that enforcement of the conditions of Sauget's NPDES permit #IL00655145 for its American Bottoms Regional Wastewater Treatment plant ("AB plant") be stayed until a final determination is made by the Board in the instant matter or until September 19, 1988. Alternatively, Sauget requests that the Board determine that an automatic stay is in place pursuant to Section 16(b) of the Illinois Administrative Procedure Act ("APA").

On May 13, 1988 the Illinois Environmental Protection Agency ("Agency") filed an Objection ("Objection") to Sauget's motion, and on May 17, 1988 Sauget filed a Reply ("Reply") to the Agency's Objection. Both Objection and Reply were filed with an accompanying Motion for Leave to File. Filing of neither the Objection or Reply was made pursuant to the Board's procedural rules governing such matters. However, in view of the substance of the issues which the Board is here asked to address, the Board hereby grants both Motions for Leave to File and thereby accepts both Objection and Reply.

FACTS

On April 18, 1986 Sauget filed an appeal of certain conditions of NPDES Permit #IL00655145 dated March 21, 1986 relating to the AB plant. At that time the AB plant was under construction and not yet operational. Permit #IL00655145 was the first NPDES permit issued to the AB plant.

The AB plant was designed to replace two primary treatment plants, the East St. Louis and Metro East Sanitary District (Cahokia) treatment plants, plus to receive and further treat the effluent produced by Sauget's physical/chemical plant ("P/C plant"). The AB plant first received complete diversion of all flows on November 4, 1987.

On July 11, 1986 Sauget filed a motion to stay enforcement of the contested conditions of NPDES Permit #IL00655145, similar to that of the instant request. That motion was granted by Board Order of July 31, 1986, with grant of stay effective through January 21, 1987. No request to extend the stay beyond January 21, 1987, other than the instant request, has been filed.

In granting the initial stay (to January 21, 1987), the Board weighed Sauget's assertion that grant of the stay would have minimal environmental impact because the AB plant would not be operational until after expiration of the stay. The Board also specifically noted that the Agency had made no response to Sauget's motion for the stay.

AUTOMATIC STAY

The threshold issue here present is whether the APA, as applied to the particular circumstances of this case, confers an automatic stay. Should such prove to be the case, the remaining arguments regarding the merits of granting Sauget's request are moot.

In pertinent part, the APA specifies at 127 Ill. Rev. Stat. Section 1016(b):

When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license shall continue in full force and effect until the final agency decision on the application has been made unless a later date is fixed by order of a reviewing court.

It is uncontested that the licensee, Sauget, has made timely and sufficient application for a license (i.e., the NPDES

permit). It is contested, however, (a) whether Sauget's application is for "renewal" of a license; (b) whether the sought after license is for an "activity of a continuing nature"; and (c) what, if any, constitutes the "existing license"?

Sauget contends that because it has held prior NPDES permits for operation of a waste treatment facility (albeit, not the same facility as the AB plant and not the identical influent waste stream), Sauget's application constitutes a renewal action as well as an application for an activity of a continuing nature. Under this interpretation, Sauget contends that the prior NPDES permits constitute the existing license.

Conversely, the Agency contends that because the AB plant has held no prior permit, Sauget's application can not properly be considered to be a license renewal or to refer to an activity of a continuing nature. Under this interpretation, there is no "existing license".

Central to the resolution of each of these issues is the matter of who or what is licensed in the NPDES process. The Board believes that it is patently apparent that it is the discharges of a particular facility which are licensed. As illustration thereto, an NPDES permit is defined as a permit which is issued to a treatment works pursuant to section 402 of the Clean Water Act (EPA Effluent Limitations Guidelines, 40 CFR 403.3(1) (1987)) and the Environmental Protection Act refers to NPDES permits in such phrases as "... a facility for which an NPDES permit has been issued ..." (Ill. Rev. Stat. 111-1/2, Section 1013(b)). Inherent in this interpretation is that it is not the operator of the facility who is licensed, and that therefore it is of no weight in the matter at hand that Sauget has held, and even continues to hold, an NPDES permit for another and separate wastewater treatment facility (i.e., Sauget P/C). The Board notes that, although an NPDES permit may be issued to a person, it is nonetheless a permit particular to, and a licensing of, a facility. It is the capabilities of the particular facility upon which the decision to grant a license must turn.

Similarly, there is no basis in the NPDES permitting process to allow an interpretation that an NPDES permit attaches to a particular influent waste stream. Thus, the fact that Sauget may have held responsibility for treating a portion of the AB plant's influent at times previous is of no weight. In fact, the influent received by the AB plant is not the same influent received at any previous time or place either by Sauget or by any other previous or prior holder of any NPDES permit. Neither is the AB plant's treatment process the same as that practiced at Sauget's P/C plant or any of the predecessor plants. It is thus difficult to conceive of the AB plant's treatment process as constituting a "continuing activity" in other than the simplest generic sense of it being a sewage treatment process.

Based on the above, the Board finds that Sauget's application for NPDES permit #IL00655145 does not constitute application for renewal of a license in the context of Section 1016(b) of the APA; that Sauget's application for NPDES permit #IL00655145 does not constitute an application for a new license for an activity of a continuing nature in the context of Section 1016(b) of the APA; and that a consequence of the foregoing, there exists no license which is currently in force and effect in the context of Section 1016(b) of the APA. Accordingly, the Board finds that the APA does not confer an automatic stay under the circumstances at hand.

DISCRETIONARY STAY

In granting the earlier stay (to January 21, 1987), Sauget argued and the Board accepted that minimum or no environmental harm would be caused because the stay would be in effect only prior to the time the AB plant was operational. The Board was further persuaded to grant the earlier stay based on Sauget's assertions that resolution of the contested permit conditions was imminent. Although Sauget contends that the instant stay request should be granted for the same reasons that the prior stay was granted (Motion at par. 2), the Board notes that the reasons for granting the prior stay no longer apply. Not only has resolution of the contested conditions not proven imminent, but the AB plant is now operational and the Agency strongly contests whether it is operating without environmental harm.

Sauget further identifies its purpose for seeking the stay as "to protect itself from prosecution for violations of permit conditions where such conditions have been improperly imposed" (Reply at par. 2). At the same time Sauget has not taken full steps to demonstrate before this Board that the conditions actually have in fact been "improperly imposed" as is its burden under the permit appeal process. In spite of the vintage of this matter, the parties have yet to come to hearing; neither have the parties presented the Board with any evidence that they have come to an understanding on any of the issues in this matter.

Accordingly, the Board believes that there has been presented no sufficient justification for grant of the requested stay. The Motion for Stay is denied.

DIRECTIVE TO HEARING OFFICER

In the reading of the full record in this matter occasioned by the instant motion, the Board cannot help but have its attention recalled to the slow pace of this proceeding. The original filing in this matter is over two years old. Nevertheless, despite repeated assertions by both parties that


they desire rapid resolution of this matter, there is nothing in the record which convinces the Board that the parties are diligently pursuing a resolution. The Board further observes that the Illinois Environmental Protection Act ("Act") contemplates rapid disposition of permit appeals pursuant to concomitant needs to expeditiously resolve disputes and assure environmental protection.

Moreover, the Board notes that certain portions of the pleadings filed with the instant motion raise reasonable question as to whether the AB plant is being operated in accordance with the Illinois Environmental Protection Act. The Board is not certain what light may be cast on these circumstances by resolution of the permit appeal issues. However, it is clear that progress towards unraveling this entire matter must be made somewhere, and that resolution of the permit matters is a logical point.

For these reasons the Board believes that the public good requires expeditious resolution of the instant matter. Accordingly, the Board hereby directs the Hearing Officer to schedule a hearing in this matter at some convenient time no later than August 15, 1988 and take all reasonable efforts to expeditiously conclude this proceeding.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Interim Order was adopted on the 2nd day of June, 1988, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board