

ILLINOIS POLLUTION CONTROL BOARD  
September 22, 2022

PQ LLC, )  
)  
Petitioner, )  
)  
v. ) PCB 23-15  
) (Permit Appeal - Air)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
)  
Respondent. )

ORDER OF THE BOARD (by M. Gibson):

On July 18, 2022, PQ LLC (PQ) timely filed a petition asking the Board to review a June 13, 2022, permit determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2020); 35 Ill. Adm. Code 101.300(b), 105.206. The determination concerns PQ’s sodium silicate manufacturing facility at 111 Ingalls Avenue, Joliet in Will County. Additionally, on July 18, 2022, PQ requested to stay the effectiveness of the contested Condition 6 of the permit. On August 29, 2022, PQ filed a motion to stay the effectiveness of the contested Condition 6 of the permit. For the reasons below, the Board grants the motion for partial stay.

PQ requests that the Board stay the effectiveness of Condition 6 within the permit for the rebuild of PQ’s sodium silicate furnace. In this case, the Illinois Environmental Protection Agency (Agency) issued PQ a Construction Permit regarding PQ’s Joliet facility on June 13, 2022 (2022 Permit). PQ argues that the Agency’s Condition 6 requirement in the 2022 Permit was erroneous, arbitrary, capricious, not supported by statutory or regulatory authority, and unnecessary to accomplish the purposes of the Act. Specifically, PQ alleges that Condition 6 improperly requires it to install and operate a NOx continuous emissions monitoring system (CEMS).

PQ requests that the Board exercise its authority to grant a partial, discretionary stay of Conditions 6 until either the Board takes final action in this matter, or the Agency issues a revised permit. Pet. 5. On August 11, 2022, the Board accepted PQ’s petition for hearing but reserved ruling on the request for partial stay. *See* 35 Ill. Adm. Code 101.500(d). In a status conference on August 25, 2022, the Agency stated that it does not object to the requested partial stay of Condition 6. Hearing officer order (Aug. 25, 2022).

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)).

PQ argues that it has “a statutory right to appeal conditions in the Construction Permit” and its petition “would likely be rendered moot if it remained subject to Condition 6 during this appeal.” Pet. at 4. PQ also contends that Condition 6 would “impose a significant economic hardship” and cause irreparable harm to PQ “given the significant costs associated with procuring CEMS equipment, calibrating such equipment, and hiring third-party consultants that is usually necessary to effectively operate a CEMS.” Pet. at 4-5. Additionally, PQ states that it does not have any other remedy at law than a permit appeal to contest these requirements. Pet. at 5. Finally, PQ claims that no harm to human health or the environment will result from the stay because PQ “does not seek review of any emissions limits, and granting a stay will not affect the Facility’s emissions.” *Id.*

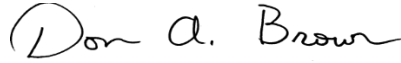
The Board reviewed PQ’s unopposed request for partial stay, as well as the specific conditions requested to be stayed. Based on that review and the Agency’s response, the Board finds that granting a discretionary stay is warranted. The Board is persuaded that PQ has an ascertainable right that needs protection. Appeal of the permit conditions would be rendered moot if PQ 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 Petitioner to challenge the contested conditions. The Board finds that a stay of the contested conditions would not result in an increased likelihood of environmental harm, as PQ will continue to comply with its emissions limits.

Exercising its discretion, the Board grants PQ’s motion for partial stay of the contested

Conditions 6 in the 2022 Permit. 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 September 22, 2022, by a vote of 5-0.

A handwritten signature in cursive script that reads "Don A. Brown". The signature is written in black ink and is positioned above a horizontal line.

Don A. Brown, Clerk  
Illinois Pollution Control Board