

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
) AS 24-2
PETITION OF EAST DUBUQUE NITROGEN) (Adjusted Standard – Air)
FERTILIZERS, LLC FOR ADJUSTED)
STANDARD)

NOTICE

TO: Don Brown
Clerk
Illinois Pollution Control Board
60 E. Van Buren St., Ste. 630
Chicago, IL 60605

Byron F. Taylor
John M. Heyde
SIDLEY AUSTIN LLP
One South Dearborn
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Brad Halloran
Hearing Officer
Illinois Pollution Control Board
60 E. Van Buren St., Ste. 630
Chicago, IL 60605

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S STATUS REPORT AND MOTION TO EXTEND STAY OF PROCEEDING of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Gina Roccaforte
Gina Roccaforte
Assistant Counsel
Division of Legal Counsel

DATED: December 13, 2023

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PETITION OF EAST DUBUQUE NITROGEN) (Adjusted Standard – Air)
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**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S
STATUS REPORT AND MOTION TO EXTEND STAY OF PROCEEDING**

NOW COMES the Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”), by its attorneys, and pursuant to the Illinois Pollution Control Board’s (“Board”) Order dated October 5, 2023, and 35 Ill. Adm. Code 101.514, hereby submits its Status Report, and respectfully submits this Motion to Extend Stay of Proceeding (“Motion”). The Illinois EPA requests that the Hearing Officer enter an order extending the stay in this proceeding for an additional 120 days while the Board continues to consider the substantively similar rulemaking proposal filed in R23-18(A), *In the Matter of: Amendments to 35 Ill. Adm. Code Parts 201, 202, and 212*. In support of its Motion, the Illinois EPA states as follows:

Status Report

On September 5, 2023, the Illinois EPA filed a Motion for Stay of Proceeding, or in the Alternative, Motion for Extension of Time to File Recommendation, while the Board considers East Dubuque Nitrogen Fertilizers, LLC’s (“EDNF”) substantially similar rulemaking proposal filed in R23-18(A). On October 5, 2023, the Board granted the Illinois EPA’s Motion for Stay of Proceeding for 90 days, until December 27, 2023.

The R23-18(A) rulemaking is currently moving forward. On September 1, 2023, the proposed rule was published in the Illinois Register, 47 Ill. Reg. 12810, 12824, 12836, and 12842. On September 27, 2023, a public hearing was held in Springfield. On October 23, 2023, the Illinois EPA filed comments requesting that the Board solicit additional information from all

rule proponents and review such information, allowing the Illinois EPA to review as well, before adopting any amendments to the rule such that the air quality implications or impact of each proposal can be determined, and the appropriate review and consideration of the proposals may occur. *See* R23-18(A), *Illinois Environmental Protection Agency's Comments*, P.C. #5, October 23, 2023 ("Illinois EPA's Comments"). On October 26, 2023, a Motion for Additional Hearing on behalf of the Illinois Attorney General's Office for the People of the State of Illinois was filed with the Board.

On November 1, 2023, a second public hearing was held in Chicago. The Hearing Officer set a deadline of December 1, 2023, for rule proponents to file initial responses to the Illinois EPA's information requests and indicated that a status conference with all participants would also be conducted. Transcript November 1, 2023, Public Hearing at 16, lines 20-21. On November 16, 2023, the Board granted the Attorney General's Office's motion for an additional hearing and directed the Hearing Officer to expeditiously schedule a third hearing after the proponents' submission of the requested additional information.

On December 1, 2023, rule proponents in R23-18(A) filed responses to Illinois EPA's Comments, and EDNF stated that at the time of the second hearing, EDNF had already supplied Illinois EPA with some of the information that Illinois EPA had requested in its comment. *See*, R23-18(A), *East Dubuque Nitrogen Fertilizers LLC's Initial Response to Illinois EPA's Comment*, P.C. #10, December 1, 2023. In addition, EDNF stated that since the second hearing, EDNF has continued discussions with Illinois EPA on its other information requests, including meeting with Illinois EPA on November 29, 2023. *Id.* Moreover, EDNF stated that going forward, EDNF expects to continue to discuss with Illinois EPA EDNF's proposal and the information Illinois EPA has requested. *Id.* Following those discussions, EDNF anticipates

filing a supplemental response to Illinois EPA's comment to the docket in the rulemaking proceeding. *Id.*

A prehearing teleconference was scheduled for December 6, 2023, to discuss procedural matters regarding the third hearing. *See*, R23-18(A), Hearing Officer Order, November 16, 2023. However, on December 5, 2023, the Hearing Officer rescheduled this prehearing conference to February 7, 2024, because some of the participants indicated in their comments that they will provide information requested by the Illinois EPA by the end of January. *See*, R23-18(A), Hearing Officer Order, December 5, 2023.

Motion to Extend Stay of Proceeding

Section 101.514 provides, in part, "If the motion to stay is granted, at the close of the stay, the parties must file a status report in compliance with Subpart C. Additional requests for stay of the proceedings must be directed to the hearing officer." 35 Ill. Adm. Code 101.514(b).

The Hearing Officer should continue to stay this proceeding while the Board considers EDNF's rulemaking proposal and the additional information EDNF may provide. EDNF's proposed rule amendments substantively mirror its requested adjusted standard; both regard changes to/relief from the same Board regulations. EDNF itself explained that if the Board adopts EDNF's proposed rule amendment, an adjusted standard is not necessary and that its Petition was primarily intended as an alternative in the event the Board prefers an adjusted standard instead of a rulemaking and to preserve its arguments regarding a stay under Section 28.1(f) of the Act. Petition at 1-2.

As stated in the Illinois EPA's previous motion, simultaneously participating in both an expedited rulemaking and EDNF's adjusted standard proceeding will force the Agency, Board, EDNF, and potentially other participants to expend significant resources in proceedings that seek

similar relief. Conversely, issuing an additional stay here will conserve resources and allow participants to focus on EDNF's rulemaking proposal first, and this proceeding second (and only if still necessary).

Again, the Illinois EPA is not opining as to whether EDNF is entitled to a stay under Section 28.1(f) of the Act but acknowledges EDNF's stated position in this regard and clarifies that this request for an extension of the stay is not intended to have any impact on the legal posture of such position. The Illinois EPA is simply seeking to continue to "hold" this proceeding while the rulemaking moves forward, to be resumed later if necessary.

WHEREFORE, for the reasons set forth above, the Illinois EPA respectfully submits this Status Report and respectfully requests that the Hearing Officer grant this Motion to Extend Stay of Proceeding for 120 days up to and including April 25 (or a later date if deemed more appropriate by the Hearing Officer).

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Gina Roccaforte
Gina Roccaforte
Assistant Counsel
Division of Legal Counsel

DATED: December 13, 2023

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CERTIFICATE OF SERVICE

I, the undersigned, an attorney, state the following:

I have electronically served the attached ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S STATUS REPORT AND MOTION TO EXTEND STAY OF PROCEEDING upon the following persons:

Don Brown
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My e-mail address is gina.roccaforte@illinois.gov.

The number of pages in the e-mail transmission is 6.

The e-mail transmission took place before 5:00 p.m. on December 13, 2023.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

/s/ Gina Roccaforte
Gina Roccaforte
Assistant Counsel
Division of Legal Counsel

Dated: December 13, 2023

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