

ILLINOIS POLLUTION CONTROL BOARD
November 17, 1988

CITY OF ST. CHARLES,)
)
 Petitioner,)
)
 v.) PCB 88-148
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by J. Marlin):

On October 31, 1988, the City of St. Charles (St. Charles) filed a Motion to Extend Time for Pre-hearing Conference, Hearing, and To Stay Special Condition #10. The Illinois Environmental Protection Agency (Agency) filed a Statement on November 16, 1988. This matter concerns the appeal of special condition #10 of a National Pollutant Discharge Elimination System (NPDES) permit issued by the Illinois Environmental Protection Agency (Agency) to St. Charles. By its October 31, 1988 filing, St. Charles is requesting that special condition #10 be stayed pending the Board's decision in this matter.

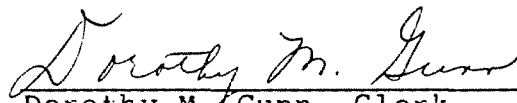
The Agency's Statement asserts that the Hearing Officer granted St. Charles a stay. It is the Agency's position that a stay request should be ruled upon by the Board. The Board agrees. However, the Agency also asserts that St. Charles is entitled to an automatic stay and that the Agency has no objection to such a stay.

In matters concerning the renewal of an NPDES permit, Section 16(b) of the Illinois Administrative Procedure Act (APA) governs, and the effectiveness of the renewed permit is stayed pending the challenge of that permit. The prior NPDES permit remains in effect during the appeal of the renewed permit. Section 16(b) of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1987, ch. 127, par. 1016(b); Borg-Warner Corporation v. Mauzy 100 Ill. App. 3d 862, 427 N.E.2d 415 (1981). In such situations the entry of a stay order is unnecessary as the stay provided by Section 16(b) of the APA is automatic. Village of Sauget v. Illinois Environmental Protection Agency, PCB 86-57, Monsanto Company v. Illinois Environmental Protection Agency, PCB 86-62 (Consolidated), (July 31, 1986); Electric Energy v. Illinois Environmental Protection Agency, PCB 85-14 (February 7, 1985).

Since the Board has no reason to believe that St. Charles should not receive an automatic stay, St. Charles' motion is moot in so far as the stay is conferred as a matter of law.

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 17th day of November, 1988, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board