

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

SOYLAND POWER)	
COOPERATIVE, INC.)	
)	
Petitioner,)	
)	
v.)	PCB No. 2006-055
)	(CAAPP Permit Appeal)
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE

To: Dorothy Gunn, Clerk	Amy L. Jackson
Illinois Pollution Control Board	Rammelkamp Bradney. P.C.
100 West Randolph Street	232 West State Street
Suite 11-500	P.O. Box 550
Chicago, Illinois 60601	Jacksonville, Illinois 62651

Carol Sudman
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9276

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board the **APPEARANCES and MOTION IN SUPPORT OF PETITIONER'S REQUEST FOR STAY** of the Respondent, Illinois Environmental Protection Agency, a copy of which is herewith served upon the assigned Hearing Officer and the attorney for the Petitioner.

Respectfully submitted by,



Robb H. Layman
Assistant Counsel

Dated: November 16, 2005
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 524-9137



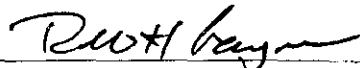
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)	
Respondent.)	

APPEARANCE

NOW COMES Robb H. Layman and enters his appearance on behalf of the Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, as one of its attorneys in the above-captioned matter.

Respectfully submitted by,



Robb H. Layman
Assistant Counsel

Dated: November 16, 2005
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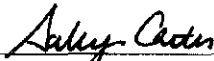
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APPEARANCE

NOW COMES Sally Carter and enters her appearance on behalf of the Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, as one of its attorneys in the above-captioned matter.

Respectfully submitted by,



Sally Carter
Assistant Counsel

Dated: November 16, 2005
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
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Petitioner,)	
)	PCB No. 2006-055
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ILLINOIS ENVIRONMENTAL)	
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)	
Respondent.)	

**MOTION IN SUPPORT OF
PETITIONER'S REQUEST FOR STAY**

NOW COMES the Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), by and through its attorneys, and moves in support of Petitioner's, SOYLAND POWER COOPERATIVE, INC.'s (hereinafter "Soyland" or "Petitioner") request for a stay of the effectiveness of the contested conditions of Clean Air Act Permit Program ("CAAPP") permit issued in the above-captioned matter.

INTRODUCTION

Acting in accordance with its authority under the CAAPP provisions of the Illinois Environmental Protection Act (hereinafter "Act"), 415 ILCS 5/39.5(2004), the Illinois EPA issued a CAAPP permit to Soyland on September 29, 2005. The permit authorized the operation of an electrical power generation facility located at Highway 100, Pearl, Pike County, Illinois.

On November 2, 2005, attorneys for the Petitioner filed this appeal (hereinafter "Petition") with the Board challenging certain permit conditions contained within the

CAAPP permit issued by the Illinois EPA. Formal notice of the appeal was served upon the Illinois EPA on November 2, 2005.

As part of its Petition, Soyland seeks a stay of the effectiveness of the conditions appealed in the CAAPP permit. *See, Petition* at paragraph 14. In accordance with the Board's procedural requirements, the Illinois EPA may file a response to any motion within 14 days after service of the motion. *See, 35 Ill. Adm. Code 101.500(d)*.

STATEMENT IN SUPPORT

Section 105.304(b) of Title 35 of the Board's procedural regulations provides that a petition for review of a CAAPP permit may include a request for stay. The Board has frequently granted stays in permit proceedings, often citing to the various factors considered by Illinois courts at common law. The factors that are usually examined by the Board include the existence of a clearly ascertainable right that warrants protection, irreparable injury in the absence of a stay, the lack of an adequate legal remedy and a probability of success on the merits of the controversy. *See, Bridgestone/Firestone Off-road Tire Company v. Illinois EPA*, PCB 02-31 at page 3 (November 1, 2001); *Community Landfill Company and City of Morris v. Illinois EPA*, PCB No. 01-48 and 01-49 (consolidated) at page 5 (October 19, 2000), citing *Junkunc v. S.J. Advanced Technology & Manufacturing*, 498 N.E.2d 1179 (1st Dist. 1986). However, the Board has noted that its consideration is not confined exclusively to those factors or must each one of those factors be considered by the Board in every case. *See, Bridgestone/Firestone* at page 3.

The Board has commonly evaluated stay requests with an eye towards the nature of the injury that might befall an applicant from having to comply with permit conditions,

such as the compelled expenditure of "significant resources," *Abitec Corporation v. Illinois EPA*, PCB No. 03-95 at page 1 (February 20, 2003), or the effectual loss of appeal rights prior to a final legal determination. *Bridgestone/Firestone* at page 3. The Board has also afforded special attention to the "likelihood of environmental harm" for any stay that may be granted. *See, Bridgestone/Firestone* at page 3; *Abitec Corporation* at 1; *Community Landfill Company and City of Morris v. Illinois EPA*, at page 4.

Petitioner's Motion touches, albeit sketchily, on some of the relevant factors in this analysis. *See, Petition* at paragraph 14. The Illinois EPA generally accepts that a petitioner should not be required to expend exorbitant costs in complying with challenged permit conditions until after it is provided its proverbial 'day in court.' Similarly, the Illinois EPA accepts that a petitioner's right of appeal should not be cut short or rendered moot because it was unable to obtain a legal ruling before being required to comply with those terms of the permit that are deemed objectionable. Because the Petitioner seeks a limited stay of the CAAPP permit, which is confined only to those permit conditions contested in this appeal, the Illinois EPA is agreeable to Petitioner's requested stay relief.

CONCLUSION

For the reasons explained above, the Illinois EPA supports the Petitioner's request for a stay of the effectiveness of the contested conditions of the CAAPP permit.

Respectfully submitted by,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,



Robb H. Layman
Assistant Counsel

Dated: November 16, 2005
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
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CERTIFICATE OF SERVICE

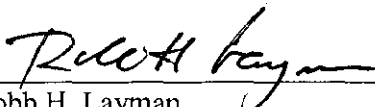
I hereby certify that on the 16th day of November 2005, I did send, by electronic email with prior approval, the following instruments entitled **APPEARANCES and MOTION IN SUPPORT OF PETITIONER'S REQUEST FOR STAY** to:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

and a true and correct copy of the same foregoing instrument, by First Class Mail with postage thereon fully paid and deposited into the possession of the United States Postal Service, to:

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794

Amy Jackson
Rammelkamp Bradney, P.C.
232 West State Street
P.O. Box 550
Jacksonville, IL 62651



Robb H. Layman
Assistant Counsel

