

ILLINOIS POLLUTION CONTROL BOARD
July 8, 1999

PANHANDLE EASTERN PIPE LINE)	
COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 98-102
)	(Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by K.M. Hennessey):

On June 24, 1999, petitioner Panhandle Eastern Pipeline Company (Panhandle) moved the Board to stay the Board's order of January 21, 1999, in this matter (Motion). See Panhandle Eastern Pipeline Company v. Illinois Environmental Protection Agency (January 21, 1999), PCB 98-102. Panhandle has filed a petition for review of the Board's order with the Fourth District Appellate Court of Illinois and asks the Board to stay its order while judicial review of the order is pending. Motion at 2-3. The Illinois Environmental Protection Agency did not respond to the Motion.

BACKGROUND

The Board's January 21, 1999 order affirmed the Agency's denial of Panhandle's application to revise an air permit regarding certain compressor engines at Panhandle's Glenarm Station in Sangamon County, Illinois. See Panhandle, PCB 98-102, slip op. at 1, 19. The Board found that Panhandle failed to show that issuing the permit would not violate the Environmental Protection Act, 415 ILCS 5/1 *et seq.* (1998). In part, the Board found that Panhandle failed to demonstrate that it would satisfy the requirements for the Prevention of Significant Deterioration (PSD) in air quality under the federal Clean Air Act. Specifically, Panhandle did not show that its proposed performance levels for controls on emissions of nitrogen oxides from the compressor engines constitute the best available control technology. *Id.* at 2-3, 8-9, 16, 19. The Board also refused to estop the Agency from requiring Panhandle to submit a PSD permit application. *Id.* at 18.

DISCUSSION

Panhandle seeks a stay under Section 101.303 of the Board's procedural rules, which provides that the "procedure for stay of any Board order during appeal shall be as provided in Rule 335 of the Rules of the Supreme Court of Illinois." 35 Ill. Adm. Code 101.303. Illinois Supreme Court Rule 335(g) provides that the "[a]pplication for a stay of a decision or order of

an agency pending direct review in the Appellate Court shall ordinarily be made in the first instance to the agency.” 172 Ill. 2d R. 335(g).

Panhandle seeks a stay because it is “seeking judicial review of the permit denial and specifically seeks consideration of whether it must obtain a PSD permit.” Motion at 3. Panhandle argues that the stay is necessary “so that Panhandle is not compelled to apply for a PSD permit during the appellate court’s review of whether it is even required to do so.” *Id.* Panhandle asserts that it would suffer undue economic hardship if the Board denies the Motion. Panhandle states that the PSD permit application process is “arduous, time consuming and expensive” and that if it obtains a PSD permit before judicial review is complete, Panhandle “may also be required to undergo costly construction and other activities” *Id.*

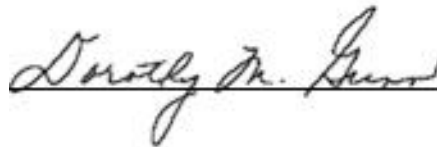
The Board has been reluctant to stay its orders when a stay may result in harm to the public or the environment. See, e.g., Illinois Environmental Protection Agency v. Piolet Bros. Trading, Inc. (February 4, 1982), PCB 80-185, slip op. at 1, *aff’d sub nom. Piolet Bros. Trading, Inc. v. Pollution Control Board*, 110 Ill. App. 3d 752, 442 N.E.2d 1374 (5th Dist. 1982); Illinois Environmental Protection Agency v. Incinerator, Inc. (October 14, 1971), PCB 71-69, slip op. at 1, 3, *aff’d sub nom. Incinerator, Inc. v. Pollution Control Board*, 15 Ill. App. 3d 514, 305 N.E.2d 35 (1st Dist. 1973), *aff’d*, 59 Ill. 2d 290, 319 N.E.2d 794 (1974). In this case, the PSD requirements that apply to Panhandle are intended to prevent significant deterioration in air quality, and thereby to protect public health and welfare. See 42 U.S.C. §§ 7409, 7470-7492. If Panhandle delays implementing PSD requirements, deterioration in air quality, and harm to public health and welfare, may result. This factor militates against a stay; in addition, Panhandle provides only generalizations about the costs it may incur to meet PSD requirements. Under these circumstances, the Board finds that a stay of its January 21, 1999 order is inappropriate and therefore denies the Motion.

CONCLUSION

The Board denies Panhandle’s request to stay the Board’s January 21, 1999 order. The Board notes that Panhandle may seek a stay from the appellate court under Illinois Supreme Court Rule 335(g).

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 8th day July of 1999 by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board