

ILLINOIS POLLUTION CONTROL BOARD

March 14, 2019

THE PREMCOR REFINING)	
GROUP, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 07-30
)	PCB 10-55
ILLINOIS ENVIRONMENTAL)	(CAAPP Permit Appeal - Air)
PROTECTION AGENCY,)	(Consolidated)
)	
Respondent.)	

ORDER OF THE BOARD (by B.K. Carter):

On March 7, 2019, The Premcor Refining Group, Inc. (Premcor) and the Illinois Environmental Protection Agency (IEPA) filed a joint motion asking the Board to lift a stay of uncontested conditions in a revised Clean Air Act Permit Program (CAAPP) permit for Premcor's petroleum bulk storage and loading terminal in Hartford, Madison County (Hartford Terminal). The joint motion also asks the Board to remand the permit to IEPA while continuing to stay the remaining contested conditions. The remand will allow IEPA to revise the permit in accordance with the parties' settlement negotiations. For the reasons below, the Board grants the motion.

PROCEDURAL BACKGROUND

On two separate occasions, Premcor petitioned the Board to review two versions of the same CAAPP permit issued by IEPA for its Hartford Terminal. *See* 415 ILCS 5/40.2(a) (2016); 35 Ill. Adm. Code 105.302(e). In each proceeding, the Board accepted the appeal for hearing and confirmed the automatic stay of the CAAPP permit's effectiveness. *See Premcor Refining Group, Inc. v. IEPA*, PCB 07-30 (Nov. 16, 2006 & Jan. 26, 2007); *Premcor Refining Group, Inc. v. IEPA*, PCB 10-55 (Feb. 4, 2010 & Apr. 1, 2010). Subsequently, the Board consolidated the two appeals at the parties' request. *Premcor Refining Group, Inc.*, PCB 07-30, 10-55, slip op. at 1-2 (Mar. 3, 2016); *see* 35 Ill. Adm. Code 101.406. On March 7, 2019, the parties filed a joint motion (Mot.) asking the Board to lift the stay on the uncontested permit conditions and remand the most recent permit to IEPA. Mot. at 1.

The joint motion states that the parties have reached a substantial agreement on the contested permit conditions. Mot. at 2. In order to incorporate the negotiated changes, the parties ask the Board to lift the stay on the uncontested conditions and remand the permit to IEPA. *Id.* at 2. IEPA will issue a revised permit reflecting the new effective and expiration dates on the same day that the Board remands. *Id.* The United States Environmental Protection Agency will then complete its 45-day review period of the proposed permit modifications. *Id.*

Once the modified permit is issued, Premcor will file the appropriate request with the Board to bring this matter to resolution. *Id.*

DISCUSSION

In 2007 and 2010, the Board found the automatic stay provisions of the Administrative Procedure Act (APA), as it existed at the time (5 ILCS 100/10-65 (2005)), applied to this appeal. Subsequently, a new section was added to the Environmental Protection Act (415 ILCS 5/40.2(f) (2016)). Under this new section, the APA's automatic stay provisions do not apply to CAAPP permit appeals. *Id.* Instead, the Board must stay contested permit conditions at the request of the permit applicant, but has discretion whether to stay the uncontested conditions.

The Board has previously granted similar motions, finding the requests both within its authority and appropriate. *See, e.g., Ameren Energy Generating Co., Coffeen Power Station v. IEPA*, PCB 06-64, slip op. at 2-4 (Sept. 20, 2012); *Kincaid Generation, L.L.C. v. IEPA*, PCB 06-62, slip op. at 2-3 (Feb. 2, 2015).

Under this authority, the Board grants the motion lifting the stay on the uncontested conditions while continuing to stay the contested conditions. The contested conditions are listed in Premcor's petition filed January 27, 2010. The Board will also remand the permit to IEPA while retaining jurisdiction over contested conditions.

ORDER

1. The Board lifts the stay of uncontested conditions in Premcor's CAAPP permit for its Hartford Terminal.
2. The Board continues to stay the contested conditions in Premcor's CAAPP permit and retains jurisdiction over them.
3. The Board remands the permit to IEPA.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 14, 2019, by a vote of 5-0.



Don A. Brown, Clerk
Illinois Pollution Control Board