

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PREMCOR REFINING GROUP,)	
)	
Petitioner,)	
)	
v.)	PCB 04-66
)	(RCRA Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING

TO: Mr. John Therriault	Carol Webb, Esq.
Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 West Randolph Street	1021 North Grand Avenue East
Suite 11-500	Post Office Box 19274
Chicago, Illinois 60601	Springfield, Illinois 62794-9274
(VIA ELECTRONIC MAIL)	(VIA FIRST CLASS MAIL)

(SEE PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the **MOTION TO STAY THE PROCEEDINGS**, a copy of which is hereby served upon you.

Respectfully submitted,

HEPLERBROOM, LLC,

Dated: January 21, 2016

By: /s/ Edward W. Dwyer

One of Its Attorneys

Edward W. Dwyer
HEPLERBROOM, LLC
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CERTIFICATE OF SERVICE

I, Edward W. Dwyer, the undersigned, certify that I have served the attached MOTION TO STAY THE PROCEEDINGS upon:

Mr. John Therriault
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

via electronic mail on January 21, 2016; and upon:

Carol Webb, Esq.
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Post Office Box 19274
Springfield, Illinois 62794-9274

Scott Sievers, Esq.
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

by depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois,
on January 21, 2016.

/s/ Edward W. Dwyer

Edward W. Dwyer

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

THE PREMCOR REFINING
GROUP INC.,

Petitioner,

v.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

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PCB 2004-66
(RCRA Permit Appeal)

MOTION TO STAY THE PROCEEDINGS

NOW COMES Petitioner, THE PREMCOR REFINING GROUP INC. ("Premcor" or "Petitioner"), by and through its attorneys, HEPLERBROOM, LLC, pursuant to 35 Ill. Admin. Code §§ 101.500 and 101.514 and requests that the Illinois Pollution Control Board ("Board") grant this Motion to Stay the Proceedings. In support of this Motion, Petitioner provides as follows:

1. Premcor now moves to stay this proceeding until December 31, 2016 in order to allow time to pursue an alternative means of resolution through a Consent Order in Circuit Court.
2. As background, Premcor owns property where a petroleum refinery is located in Hartford, Illinois ("Refinery"). Premcor formerly operated the Refinery and refined petroleum into gasoline, diesel fuel, asphalt, and other products until September 27, 2002, when it ceased refinery operations. Premcor continues to perform petroleum storage, distribution, and terminal operations at parts of the Refinery.
3. On June 28, 2001, the Illinois Environmental Protection Agency ("Illinois EPA") approved the Resource Conservation and Recovery Act ("RCRA") closure plans for two former

hazardous waste management units, referred to as the "Dissolved Air Flotation Unit" and the "Roll-Off Box Container Storage Area."

4. Subsequently, Illinois EPA issued a Violation Notice ("VN") alleging that two units had not been properly closed and needed to be addressed during RCRA closure.

5. On May 30, 2003, Premcor submitted a request to modify the approved closure plans for the Dissolved Air Flotation Unit and the Roll-Off Box Container Storage Area.

6. On September 10, 2003, Illinois EPA denied Premcor's request.

7. On January 13, 2004, Premcor filed its appeal of Illinois EPA's disapproval of Premcor's request to modify its RCRA closure plans for the Dissolved Air Flotation Unit and the Roll-Off Box Container Storage Area.

8. On January 22, 2004, the Board accepted Premcor's petition.

9. On June 17, 2003, Premcor was served with a Complaint for Injunctive and Other Relief, (No. 03-CH-459 filed in Madison County Circuit Court) by the Office of the Illinois Attorney General ("AGO"), which addressed, *inter alia*, the units at issue in this permit appeal. On November 11, 2005, the AGO filed an Amended Complaint naming the Apex Oil Company a prior owner of the Refinery, as an additional defendant. In addition, in August of 2006, Premcor filed an Answer and Third Party Complaint naming approximately ten additional parties. The case is still ongoing in Madison County.

10. Importantly, since 2003, Premcor has been negotiating a consent order to resolve the Circuit Court matter with the AGO and Illinois EPA. In the meantime, Premcor under the oversight of IEPA, has voluntarily conducted multiple investigations of surface and subsurface conditions at the Refinery and conducted remediation including installation and operation of a groundwater pumping system to maintain gradient control along its western property boundary

as part of its efforts to address the Illinois EPA's concerns regarding units at the Refinery, including the issues referenced in the Illinois EPA's letter denying modification of Premcor's RCRA Closure Plan, that is the subject of this pending appeal. Premcor has provided periodic reports detailing the ongoing site work and its progress to Illinois EPA. The Quarterly reports are prepared in accordance with review and oversight provided by Illinois EPA.

11. Resolution of the Circuit Court matter in the form of a Consent Order likely would eliminate the need to pursue this permit appeal since a Consent Order likely would govern permitting, cleanup, and assessment issues that were raised in Illinois EPA's denial.

12. Section 101.514 of the Board's rules requires that motions to stay a proceeding be accompanied by sufficient information detailing why a stay is needed, a waiver of the decision deadline, and a status report. 35 Ill. Admin. Code § 101.514(a).

13. On October 5, 2007, Petitioner filed an open waiver of the decision deadline in this matter. Accordingly, a waiver is not included with this filing.

14. As required by Section 101.514(a), Petitioner is hereby updating the Board on the status of this matter. Discussions between Premcor, Illinois EPA, and the AGO continue, and Premcor continues to provide the State with quarterly updates on its progress at the facility.

15. Further, granting a stay here would not result in any harm to the parties or the public. Premcor is currently performing activities at its facility under the review of and with the consent of the Illinois EPA and the AGO.

16. Thus, Petitioner has satisfied the requirements of 35 Ill. Admin. Code § 101.514(a).

17. Moreover, the Board has granted stays in permit appeals in prior cases so there is precedent for doing so here. In PCB 01-72, Stepan Company appealed a CAAPP permit issued

by Illinois EPA. *Stepan Company v. Illinois EPA*, PCB 01-72 (Ill.Pol.Control.Bd. Jan. 4, 2001). In *Stepan*, the Board found that a stay of the proceeding was necessary "to conserve the resources of the parties and the Board while settlement discussions continue." *Id.* at 1.

18. Also, the Board has granted stays while alternative methods of resolution are pursued by petitioners appealing a permit. In PCB No. 95-100, the Board granted a stay in the appeal of a denial of an application for a permit to develop and operate a solid waste management site in order to allow the petitioner to seek a legislative resolution. *C&S Recycling, Inc. v. Illinois EPA*, PCB 95-100 at 1 (Ill.Pol.Control.Bd. Apr. 4, 1996). In that case, the Board allowed the Petitioner "to continue to pursue legislation related to this matter before the Board rules on the pending motion for summary judgment." *Id.* Likewise, the Board determined that a stay was appropriate in a permit appeal matter where the petitioner filed a petition for an adjusted standard with the Board. *Acme Steel Co. v. Illinois EPA*, PCB 91-28, PCB 92-2 (cons.) at 1 (Ill.Pol.Control.Bd. Mar. 31, 1994).

19. Similarly, in another case the Board extended a stay of the proceedings to allow time for technical review of a permit application by Illinois EPA. *Cabot Corporation v. Illinois EPA*, PCB 91- 197 (Ill.Pol.Control.Bd. Jan. 21, 1993). In *Cabot*, a company submitted a RCRA Part B Post-Closure Application for Illinois EPA to review. *Id.* at 1. The company argued that the RCRA Part B Post-Closure Permit and its revised closure plan would replace the closure plan that was the subject of the appeal. *Id.* The Board granted the request of the parties to stay the matter until Illinois EPA finished its technical review of the company's Part B Post-Closure Permit Application and revised closure plan for a vaporizer bottom treatment tank and Illinois EPA issues a permit.

20. Counsel for Petitioner has consulted with Complainant's counsel and been advised that Complainant has no objection to the Motion.

WHEREFORE, Petitioner respectfully requests that the Board grant Premcor's Motion and stay this proceeding until December 31, 2016.

Respectfully submitted,
THE PREMCOR REFINING GROUP INC.,
Petitioner,

Dated: January 21, 2016

By: /s/ Edward W. Dwyer
Edward W. Dwyer

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