

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. Don Brown Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601
(VIA ELECTRONIC MAIL)

Carol Webb, Esq.
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Post Office Box 19274
Springfield, Illinois 62794-9274
(VIA ELECTRONIC 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 **JOINT MOTION TO STAY AND STATUS REPORT** a copy of which is hereby served upon you.

Respectfully submitted,

HEPLERBROOM, LLC,

Dated: March 9, 2017

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 JOINT MOTION TO STAY AND STATUS REPORT upon:

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

Carol Webb, Esq.
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Post Office Box 19274
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Scott Sievers, Esq.
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
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via electronic mail on March 9, 2017.

/s/ Edward W. Dwyer

Edward W. Dwyer

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

THE PREMCOR REFINING)	
GROUP INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 2004-66
)	(RCRA Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

JOINT MOTION TO STAY AND STATUS REPORT

NOW COMES Petitioner, THE PREMCOR REFINING GROUP INC. (“Premcor” or “Petitioner”), by and through its attorneys, HEPLERBROOM, LLC, and Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“State” or “Respondent”) (hereinafter collectively “the Parties”), pursuant to 35 Ill. Admin. Code §§ 101.500 and 101.514 and request that the Illinois Pollution Control Board (“Board”) grant this Joint Motion to Stay the Proceedings and accept this Status Report. In support of this Motion and Status Report, the Parties provide as follows:

MOTION TO STAY

1. The Parties now move to stay this proceeding in order to allow time to pursue an alternative means of resolution through a Consent Order in the Circuit Court.
2. For background on this permit appeal and the related proceeding in the Madison County Circuit Court (No. 03-CH-459), please see the Motion to Stay filed by Petitioner in this matter on January 1, 2016 and the Status Report filed on July 6, 2016.
3. Premcor previously filed a Motion to Stay the Proceedings in this matter, which was granted by the Board on March 3, 2016. This matter was stayed until December 31, 2016.

4. Pursuant to the Board's Order dated March 3, 2016, Premcor was directed to file a Status Report. Premcor filed a Status Report on July 6, 2016.

5. The Parties are now requesting an additional stay of this proceeding for six months from the date the Board grants this Motion to Stay.

6. 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).

7. A stay is needed in this proceeding because resolution of the Circuit Court matter in the form of a Consent Order would likely eliminate the need to pursue this permit appeal since a Consent Order will address current and future remediation obligations at the Premcor facility, including the issues raised in this permit appeal.

8. The issues regarding liability for groundwater contamination and the related RCRA closure obligations continue to be litigated in the Circuit Court case among the parties. Joinder of third party claims has made litigation of the Circuit Court case more complex and additional time is needed to come to a fair and just resolution of all claims. Currently, there are 17 third party defendants in the Circuit Court case.

9. Maintaining this permit appeal is necessary to protect Premcor's defenses in the related Circuit Court case and maintain its third party claims.

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

11. A status report updating the Board on the status of this matter and the related Circuit Court case is included in the following section of this filing.

12. The Parties have satisfied the requirements of 35 Ill. Admin. § Code 101.514(a).

13. Furthermore, the Board has granted stays in permit appeals in prior cases so there is precedent for doing so here. *See Saint-Gobain Containers, Inc. v. IEPA*, PCB 4-47 (Ill.Pol.Control.Bd. Feb. 16, 2006); *Stepan Company v. Illinois EPA*, PCB 01-72 (Ill.Pol.Control.Bd. Jan. 4, 2001); *C&S Recycling, Inc. v. Illinois EPA*, PCB 95-100 (Ill.Pol.Control.Bd. Apr. 4, 1996); *Cabot Corp. v. Illinois EPA*, PCB 91-197 (Ill.Pol.Control.Bd. Jan. 21, 1993).

14. 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 Environmental Protection Agency (“Illinois EPA”) and the Office of the Illinois Attorney General (“AGO”).

STATUS REPORT

15. Since the last status report filed by Premcor on July 6, 2016, Premcor remains interested in resolving the Circuit Court matter with the State of Illinois via a Consent Order.

16. A hearing occurred on August 12, 2016 in the Circuit Court regarding Premcor’s two motions for summary judgment. One motion concerned Premcor’s liability relative to the federal court (S.D.IL) order. The second motion concerned Premcor’s liability as affected by the bankruptcy court (E.D. MO) order and asset purchase agreement with co-defendant Apex Oil Company. On September 6, 2016, the Circuit Court denied Premcor’s motions.

17. Additionally, on August 12, 2016, the Court heard the State’s and co-defendant Apex Oil Company’s Joint Motion for Settlement Approval. The Court entered the Consent Order and Settlement on September 6, 2016 over Premcor’s and other defendants’ objections. The Court found that the Consent Order constituted a good faith settlement.

18. Premcor filed a Notice of Appeal on October 3, 2016 appealing the Court's good faith finding of the Consent Order and Settlement between the State and Apex Oil Company. Premcor also filed a Motion for Leave to Certify Questions for Appeal on October 5, 2016, which was denied by the Court on January 25, 2017.

19. A status conference was held in the Circuit Court on February 22, 2017. The parties reported ongoing settlement discussions to resolve the case.

20. Premcor filed its appellate court brief concerning the Consent Order and Settlement between the State and Apex Oil Company.

21. The next status conference in the Circuit Court case is set for April 26, 2017.

22. Discussions between Premcor, Illinois EPA, the AGO and other third party defendants continue. In February 2017, Premcor met with Illinois EPA and the AGO and are continuing to work on settlement issues and ultimate resolution of all pending claims.

23. Premcor continues to conduct investigation and remediation activities pursuant to the draft preliminary injunction order and its appendices.

24. Premcor also continues, under the oversight of Illinois EPA, to voluntarily conduct sequential investigations of surface and subsurface conditions at the refinery and perform remediation, which includes continuing operation of a groundwater pumping system to recover hydrocarbon and maintain gradient control along its western property boundary.

25. Premcor continues to provide the State with quarterly updates detailing the ongoing site work and its progress, including the following since July 6, 2016:

- Quarterly Groundwater Gauging – July 2016 and October 2016
- Semi-annual Groundwater Sampling – October 2016
- On-going Inward Gradient Control/Hydrocarbon Recovery Report
- On-going Light Non-Aqueous Phase Liquid (LNAPL) Recovery Systems Report

26. The Parties participated in a telephone status conference in this permit appeal matter on February 15, 2017. Counsel for the Parties indicated that site work is ongoing and provided a brief update regarding the negotiation of a consent order in the Circuit Court case. Petitioner offered to file a Motion to Stay and a Status Report within 30 days.

27. Granting the stay sought above will allow Premcor and the State to focus efforts on resolving the Circuit Court case.

28. Counsel for Premcor has shared this Status Report with Complainant's counsel and has been advised the Complainant has no objection or additions to the Status Report.

WHEREFORE, the Parties respectfully requests that the Board:

- (a) Grant the Joint Motion to Stay and stay this proceeding for six months from the date of the Board's order granting the Motion to Stay;
- (b) Accept this Status Report; and
- (c) Award any other relief the Board deems appropriate in this matter.

Dated: March 9, 2017

Respectfully submitted,

THE PREMCOR REFINING GROUP INC.,
Petitioner,

THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY, Respondent,

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