ILLINOIS POLLUTION CONTROL BOARD December 19, 2013

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)	PCB 14-25 (Dermit Appeal NBDES)
)	(Permit Appeal - NPDES)
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ORDER OF THE BOARD (by D. Glosser)¹:

On December 5, 2013, the Board accepted Will Scarlet Properties, L.L.C.'s (petitioner) timely filed petition for review. Petitioner is seeking review of a decision by the Illinois Environmental Protection Agency (Agency) to impose conditions on a National Pollutant Discharge Elimination System (NPDES) permit. The Agency's determination concerns petitioner's facility, Old Will Scarlet Mine located in Saline and Williamson Counties. On November 25, 2013, petitioner also moved to stay the effectiveness of the challenged conditions in the permit during the pendency of this proceeding. Pet. at 5-6, citing 5 ILCS 100/10-65 (2012) (Illinois Administrative Procedure Act (IAPA)).

The Board's December 5, 2013 order reserved ruling on petitioner's motion for partial stay to allow the Agency's 14-day response period to run. *See* 35 Ill. Adm. Code 101.500(d). That time period has elapsed without any Agency response being filed, meaning that by rule, the Agency is deemed to have waived any objection to the Board granting petitioner's motion for partial stay of the NPDES permit. *Id*.

Although the IAPA (5 ILCS 100/10-65(b) (2012)) subjects certain permits in their entirety to an automatic stay during appeals, a petitioner may choose not to avail itself of this stay and instead ask that the Board stay only the contested conditions of the permit. *See Ameren* <u>Energy Generating Co. v. IEPA</u>, PCB 06-67 (Feb. 16, 2006), slip op. at 7, n.1. The Board has consistently held that it "has the authority to grant discretionary stays from permit conditions." <u>Community Landfill Co. and City of Morris v. IEPA</u>, PCB 01-48, PCB 01-49 (consol.) (Oct. 19, 2000); *see also, e.g.*, <u>Hartford Working Group v. IEPA</u>, PCB 05-74, slip op. at 1 (Nov. 18, 2004). As the Board explained in <u>Community Landfill</u>, the permit appeal system would be "rendered meaningless in many cases, if the Board did not have the authority to stay permit

¹ Chad Kruse, who worked for the Illinois Environmental Protection Agency prior to joining the Board as an attorney assistant on March 19, 2013, took no part in the Board's drafting or deliberation of any order or issue in this matter.

conditions." <u>Community Landfill</u>, PCB 01-48, PCB 01-49 (consol.), slip op. at 4 (granting stay of challenged permit conditions).

In deciding whether to grant a discretionary stay, the Board may consider various factors, such as the avoidance of irreparable harm to the petitioner, as well as "the likelihood of environmental harm if a stay is granted." <u>Community Landfill</u>, PCB 01-48, PCB 01-49 (consol.), slip op. at 4, citing <u>Motor Oils Refining Co. v. IEPA</u>, PCB 89-116, slip op. at 2 (Aug. 31, 1989).

Petitioner argues that it will be irreparably harmed if the petitioner is required to comply with the manganese and sulfate limits in the renewed permit.

The Board takes into account the representations of petitioner, and the absence of any Agency response to the motion. Exercising its discretion, the Board grants a stay of the manganese and sulfate limits stated in the NPDES permit. By this ruling, the Board "makes no findings on the merits of the permit appeal" <u>Motor Oils</u>, PCB 89-116, slip op. at 2. The partial stay remains in effect until the Board takes final action in this appeal or the Board orders otherwise.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 19, 2013, by a vote of 4-0.

In T. Therian

John T. Therriault, Clerk Illinois Pollution Control Board