

ILLINOIS POLLUTION CONTROL BOARD
November 21, 2013

PEORIA DISPOSAL COMPANY,)
)
 Petitioner,)
)
 v.) PCB 14-28
) (Permit Appeal - NPDES)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by J.D. O’Leary):

On October 18, 2013, Peoria Disposal Company (PDC) filed a petition (Pet.) asking the Board to review a September 20, 2013 permit determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2012); 35 Ill. Adm. Code 101.300(b), 105.206. The Agency issued PDC a revised National Pollutant Discharge Elimination System (NPDES) Permit No. IL0064777 regarding PDC’s landfill facility located at 4349 Southport Rd., Peoria, Peoria County. Attached to the petition were exhibits including the contested permit and the permit application filed with the Agency and dated April 2, 2012. Also on October 18, 2013, PDC moved that the Board issue an order finding that the contested permit is stayed under the Illinois Administrative Procedure Act (APA) during the pendency of this proceeding. Pet. at 5-6. On November 7, 2013, the Board accepted PDC’s petition for review but reserved ruling on the motion for an order regarding a stay.

In its motion for an order regarding a stay, PDC claimed that, under the APA, “the effectiveness of the Final Permit is stayed as a matter of law, in its entirety, while this proceeding is pending before the Board.” Pet. at 5, citing 5 ILCS 100/10-65 (2012). Section 10-65(b) of the APA provides in its entirety that,

[w]hen a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license shall continue in full force and effect until the final agency decision on the application has been made unless a later date is fixed by order of a reviewing court. 5 ILCS 100/10-65(b) (2012).

PDC cited Borg-Warner Corp. v. Mauzy, 100 Ill. App. 3d 862, 870, 427 N.E.2d 415, 421 (3rd Dist. 1981), in which the Court stated that the petitioner “made application for renewal of its NPDES permit, that application was timely and sufficient on the record before us, and therefore its original permit continues in effect until final action on the application by the administrative bodies charged with making that determination.” Pet. at 5-6. PDC also cited the Court’s statement that “[a] final decision, in the sense of a final and binding decision coming out of the administrative process before the administrative agencies with decision making power, will not

be forthcoming in the instant case until the PCB rules on the permit application, after [petitioner] has been given its adjudicatory hearing before the PCB.” *Id.*, citing Borg-Warner, 100 Ill. App. 3d at 870-71, 427 N.E.2d at 421. PDC argued that the Board has relied on Borg-Warner in addressing a petitioner’s recent request for a stay. Pet. at 6, citing Amerenenergy Generating Co. v. IEPA, PCB 06-67, slip op. at 6-8 (Feb. 16, 2006).

PDC requested “that the Board enter an Order expressly finding that the Final Permit is stayed in its entirety by operation of law, and that PDC may continue operations under the previous iteration of NPDES Permit No. IL0064777, as it existed prior to renewal, throughout this proceeding.” Pet. at 6. PDC explained its motion as a request to clarify and assure PDC that it “is operating in compliance with the law during the pendency of this appeal.” *Id.*

The Board’s procedural rules provide that, “[w]ithin 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board . . . in its disposition of the motion.” 35 Ill. Adm. Code 101.500(d). The Agency has filed no response to PDC’s motion for a Board order.

The Board is persuaded based upon the record before it today and in the absence of any Agency opposition that the automatic stay provision of the APA applies to the renewed permit that is the subject of this appeal during the pendency of this proceeding. *See* 5 ILCS 100/10-65 (2012). While the Board does not believe that an order is necessary to effectuate this statutory provision, it issues this order to address the unopposed motion filed by PDC in its petition of October 18, 2013. *See* Pet. at 5-6.

IT IS SO ORDERED.

I, Don A. Brown, Acting Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 21, 2013, by a vote of 4-0.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive, flowing style.

Don A. Brown, Acting Clerk
Illinois Pollution Control Board