

ILLINOIS POLLUTION CONTROL BOARD
October 17, 2013

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 11-79
)	(Enforcement - Water)
INVERSE INVESTMENTS L.L.C., an Illinois)	
limited liability company,)	
)	
Respondent.)	

ORDER OF THE BOARD (by D. Glosser):

On September 25, 2013, Inverse Investments L.L.C. (Inverse) filed a motion to stay the proceeding. On October 7, 2013, the People of the State of Illinois (People) filed a response to the motion. For the reasons discussed below the stay is granted.

PROCEDURAL HISTORY

The People filed the complaint on May 4, 2011, alleging that Inverse violated Section 12(a) of the Illinois Environmental Protection Act (Act) (415 ILCS 5/12(a) (2012)). The complaint concerns a mixed-use commercial, residential and recreational area in McHenry that is owned by Inverse and managed by Richard A. Adams II. The Board accepted the complaint for hearing on May 19, 2011. Inverse filed a motion to dismiss on September 21, 2011, and the People responded on November 7, 2011. On February 16, 2012, the Board denied Inverse's motion to dismiss.

On March 9, 2012, Inverse filed answers and defenses to the complaint. The People filed a motion to strike the affirmative defense on April 10, 2012, to which Inverse filed a response on April 18, 2012. On June 11, 2012, the Board denied the motion to strike affirmative defenses. Since that time, the parties have conducted discovery (*see generally* Hearing Officer orders Sept. 13, 2012, Nov. 15, 2012) and reached a settlement (*see generally* Hearing officer orders Jan. 17, 2013, Apr. 11, 2013, Aug. 27, 2013).

On September 25, 2013, the motion to stay was filed by Inverse (Mot.). On October 7, 2013, the People responded that it does not object to the stay (Resp.).

MOTION TO STAY

Inverse explains that on August 19, 2013, a stipulation and settlement was circulated among the parties, and the terms of any agreement will include a requirement that Inverse perform specific remedial activities at the site. Mot. at 2. On August 26, 2013, Inverse received notification from the United States Environmental Protection Agency (USEPA) that it had

identified Inverse as a potentially responsible party under Section 7 of CERCLA (42 U.S.C. §9607). *Id.* USEPA indicated it might issue an order requiring Inverse to perform specified work at the site; however at this time USEPA has not specifically identified the remedial action it will require of Inverse. *Id.* at 2-3.

Inverse claims that conflicts over the site are already occurring. Mot. at 3. Specifically, Inverse notes that the Illinois Environmental Protection Agency (IEPA) sent a request on September 19, 2013, asking for access to the site to perform sampling and other activities. *Id.* On September 20, 2013, USEPA sought access to the site also to perform sampling and other activities.

Inverse offers that during the pendency of this proceeding, and the recently initiated action by USEPA, it has conducted remedial activities at the site in accordance with Inverse's Illinois Site Remediation Plan (SRP). Mot. at 3. Inverse is committed to completing the actions that were initiated with the SRP as soon as the IEPA and USEPA actions are resolved. *Id.*

Inverse argues that the Board has the discretion to stay the action, and the Board will consider four factors when ruling on a request for stay. Mot. at 3, citing People v. State Oil Co., PCB 97-103 (May 15, 2003) *aff'd sub nom State Oil Co. v. PCB*, 822 N.E.2d 876 (2nd Dist. 2004). Specifically, the Board looks at: 1) comity; 2) prevention of multiplicity, vexation, and harassment; 3) the likelihood of obtaining complete relief in the foreign jurisdiction; and 4) the *res judicata* effect of a foreign judgment in the Board proceeding. Mot. at 3-4, citing Midwest Generation EME, LLC v. IEPA, PCB 04-216 slip op. at 4 (Apr. 6, 2006).

Inverse opines that the Board should grant the stay based on the four factors until USEPA makes a final determination regarding Inverse's site. Mot. at 4. Inverse notes that the Board has granted stays in similar circumstances and points to U.S. Steel v. IEPA, PCB 10-23 (Feb. 2, 2012) and Midwest Generation, PCB 04-216 as examples. In U.S. Steel, the Board found that the uncertainty of the USEPA proceeding could impact the appeal and found that supported the stay. U.S. Steel, slip op. at 12. Also in Midwest Generation, the Board stayed the proceeding while USEPA was conducting its own determination in the matter. Midwest Generation, PCB 04-216.

Inverse maintains that it is likely that USEPA's actions will conflict with the proposed compliance plan, and a stay is justified because of considerations of comity for the USEPA as well as efficiency. Mot. at 4. Inverse claims that granting a stay will avoid a wasteful multiplicity in response activities, and while USEPA's action may not have a *res judicata* effect, the actions could be persuasive authority. Mot. at 5. Inverse argues that a stay is justified as there is no risk of ongoing environmental harm as no pollutants or contaminants of concern have been disposed, stored, discharged or released at the property in approximately 40 years. Mot. at 5-6.

Inverse argues "a stay of this matter is appropriate given the substantially similar determination involving the same Site and the same investigation as to the source of the contamination in the groundwater." Mot. at 6.

RESPONSE

The People do not object to the stay, but ask that the stay be for a period of four months, with the ability to extend the stay as warranted. Resp. at 2. The People also ask that periodic statuses be set to ensure the stay is still justified.

DISCUSSION

The Board's rules state:

Motions to stay a proceeding must be directed to the Board and must be accompanied by sufficient information detailing why a stay is needed, and in decision deadline proceedings, by a waiver of any decision deadline. A status report detailing the progress of the proceeding must be included in the motion. (*See also* Section 101.308 of this Part.) 35 Ill. Adm. Code 101.514(a).

The decision to grant or deny a motion for stay is "vested in the sound discretion of the Board." *See People v. State Oil Co.*, PCB 97-103 (May 15, 2003), *aff'd sub nom State Oil Co. v. PCB*, 822 N.E.2d 876 (2nd Dist. 2004). Inverse argues for a stay claiming that a stay would "avoid the practical difficulties that might arise from conflicting remedial orders" by IEPA and USEPA. Mot. at 6. Inverse further claims a stay will "avoid the costly and inefficient allocation of resources necessary resulting from duplicative proceedings". *Id.* And finally, Inverse argues that a stay will allow IEPA and USEPA to coordinate response actions and decisionmaking. *Id.* The People do not object to a stay but ask that the stay be of a limited duration and that status reports be required.

The Board finds that a stay is appropriate in this proceeding to avoid potential conflicts in remediation and to allow for coordination of the site remediation. However, the Board will not grant a request for an indefinite stay to ensure that progress is made at the site. Therefore, the Board grants a stay until February 18, 2014. If the parties wish to continue that stay, they must file a status report and request and additional stay at that time.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on October 17, 2013, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board