

ILLINOIS POLLUTION CONTROL BOARD

May 7, 2015

IN THE MATTER OF:)
)
COAL COMBUSTION WASTE (CCW) AND) R14-10
SURFACE IMPOUNDMENTS AT POWER) (Rulemaking - Water)
GENERATING STATIONS: PROPOSED)
NEW 35 ILL. ADM. CODE 841)

ORDER OF THE BOARD (by J.D. O’Leary):

On October 28, 2013, the Illinois Environmental Protection Agency (Agency) filed a proposal to add Part 841 entitled “Coal Combustion Waste Surface Impoundments at Power Generating Facilities” to the Board’s Subtitle G waste disposal regulations. The Agency proposed generally applicable rules establishing processes to monitor these impoundments and for preventive response, corrective action, and closure. The Board has held four hearings on the proposed regulations. While the Board has received post-hearing comments from various participants, it has not submitted a first-notice proposal to publication.

On January 20, 2015, the Agency filed a motion to stay this proceeding (Mot.). The Agency states that the United States Environmental Protection Agency (USEPA) finalized its rules for disposal of coal combustion residuals (CCR) from electric utilities on December 19, 2014. Mot. at 1, citing <http://www2.epa.gov/coalash/pre-publication-version-coal-combustion-residuals-final-rule>. The Agency further states that “[t]he federal rule contains minimum criteria for CCR surface impoundments consisting of location restrictions, design and operating criteria, groundwater monitoring, corrective action, closure requirements, post closure care, recordkeeping, and notification requirements.” Mot. at 2. The Agency argues that the federal rules are similar but not identical to proposed rules submitted to the Board in this docket. *Id.*

When the Agency filed its motion, USEPA’s final rule had not appeared in the *Federal Register*. The rules were published on April 17, 2015 and will become effective six months after that date on October 14, 2015. 80 Fed. Reg. 21302-21501 (Apr. 17, 2005).

The Agency seeks to stay Board action for 90 days while it “evaluates whether changes to the Agency’s proposal are necessary as a result of the newly adopted minimum federal criteria.” Mot. at 2. The Agency states that, at the conclusion of any stay granted by the Board, it will file a status report.” *Id.*, citing 35 Ill. Adm. Code 101.514 (Motions to Stay Proceedings).

On January 30, 2015, Midwest Generation L.L.C. (MG) filed a response supporting the Agency’s motion. (Resp.). MG agrees with the Agency that “a brief stay would conserve administrative resources and assist the Board in developing rules that are appropriate and do not conflict with” the federal rule. Resp. at 1. Noting that the Agency commits to filing a status report at the conclusion of a stay, MG “anticipates that this status report will contain substantive remarks on the federal CCR rule.” *Id.* at 1-2. MG argues that “the Board should allow for a 30 day comment period following the filing of the Agency’s status report.” *Id.* at 2. MG indicates

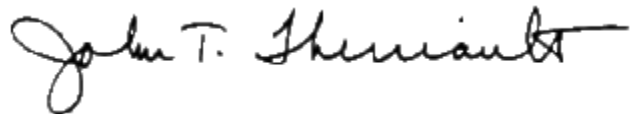
that this response time would allow the other participants in this rulemaking to address substantive remarks in the Agency's status report. *Id.*

The Board notes USEPA's publication of CCR rules on April 17, 2015, and has reviewed the Agency's motion and MG's response. The Board agrees that a 90-day stay will allow the Agency to review the federal CCR rules and determine whether to revise its proposal. The Board grants the Agency's motion for a 90-day stay and directs the Agency to file a status report on or before Wednesday, August 5, 2015, 90 days from the date of this order. 35 Ill. Adm. Code 101.514(b).

The Board notes MG's argument that a 30-day response period would allow other participants in this rulemaking to address any substantive comments made by the Agency in its status report. If the status report includes comment beyond a request to extend the stay of these proceedings, the Board's hearing officer will set a deadline to file a response. *See* 35 Ill. Adm. Code 101.514(b).

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 7, 2015, by a vote of 5-0.



John T. Therriault, Clerk
Illinois Pollution Control Board