

ILLINOIS POLLUTION CONTROL BOARD  
June 17, 2021

CTI DEVELOPMENT, LLC,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 21-110
	)	(Variance - Land)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by C.M. Santos):

On May 11, 2021, CTI Development, LLC (CTI) filed a petition for a variance (Pet.) for the Wood River Power Station. For the West Ash Pond System at the Station, CTI requests additional time under Section 22.59(e) of the Environmental Protection Act to complete a closure plan. 415 ILCS 5/22.59(e) (2018).

**SUMMARY OF REQUESTED VARIANCE**

Before May 1, 2019, Dynegy Midwest Generation, LLC (Dynegy) submitted a closure plan for the West Ash Complex to the Illinois Environmental Protection Agency (IEPA), and IEPA approved it. Pet. at 2; *see id.*, Atts. 1, 2. On August 30, 2019, Dynegy transferred ownership of the Wood River Power Station, including the West Ash Complex, to CTI. *Id.* at 1. On November 19, 2019, “[t]he NPDES [National Pollutant Discharge Elimination System] permit modification and necessary construction permits were submitted to Illinois EPA.” Pet. at 2. On December 4, 2019, IEPA approved closing the West Ash Complex under the closure plan. *Id.* at 2; *see id.*, Att. 2. IEPA required CTI to obtain a construction permit under 35 Ill. Adm. Code 309 before beginning closure. *Id.* CTI states that, shortly after IEPA approved transferring responsibility for closure, “the State of Illinois issued numerous emergency orders related to the outbreak of Coronavirus Disease 2019.” Pet. at 2.

On April 16, 2020, IEPA received “[t]he final permit modification . . . to allow for pond dewatering and initiation of closure.” Pet. at 2. CTI states that it “was not effectively able to initiate closure activities until April 2020 due to the delay in the issuance of the NPDES permit modification.” *Id.* On May 5, 2021, CTI received NPDES Permit No. IL 0000701. *Id.* CTI states that it “could not start construction/remediation at the West Ash Impoundment until it received the NPDES permit.” *Id.*

CTI cites 35 Ill. Adm. Code 845.200(a)(4), which provides that, “[e]xcept as provided in Section 22.59(e) of the Act, no person must close a CCR surface impoundment without obtaining a construction permit for closure issued by the Agency under this Part. Pet. at 3. Under Section 22.59(e), “[o]wners or operators of CCR surface impoundments who have submitted a closure

plan to the Agency before May 1, 2019, and who have completed closure prior to 24 months after the effective date of this amendatory Act of the 101st General Assembly shall not be required to obtain a construction permit for the surface impoundment closure under this Section.” 415 ILCS 5/22.59(e); Public Act 101-171, eff. July 30, 2019.

CTI argues that IEPA received a closure plan for the West Ash Complex before May 1, 2019, and it is in the process of closing the West Ash impoundment. Pet. at 2. CTI concludes that it is unable to complete the closure plan by July 30, 2021, “due to the delay in its NPDES permit and other significant delays due to the impact of COVID-19 on equipment, labor and supplies.” *Id.* CTI requests a variance extending the deadline to complete closure to July 30, 2022. *Id.* at 3.

### **PUBLICATION OF NOTICE OF FILING**

CTI must provide prompt public notice of filing its petition, including publishing notice within 14 days after filing the petition in a newspaper of general circulation in the county where its facility is located. 415 ILCS 5/37(a) (2018); 35 Ill. Adm. Code 104.214(a). Within 21 days after publishing notice, CTI must file with the Board a certification of publication including the date on which it published notice and a copy of the published notice. 35 Ill. Adm. Code 104.214(e).

On June 3, 2021, CTI filed a certificate of publication of notice in *The Telegraph of Madison County* on May 25, 2021. The Board finds that CTI has provided timely publication of notice that meets the content requirements of 35 Ill. Adm. Code 104.214(d). The Board accepts CTI’s petition for hearing but at this stage of the proceeding makes no determination on the informational sufficiency or the merits of the petition. Through an order of its own or its assigned hearing officer, the Board may direct CTI to provide additional information concerning its petition.

### **SUMMARY OF PROCEDURAL REQUIREMENTS**

The Board’s hearing officer is responsible, as appropriate, for guiding parties through status conferences and hearing officer orders to promptly resolve this matter. The hearing will be scheduled and completed in a timely manner consistent with the statutory decision deadline, which only CTI may extend through a waiver. 415 ILCS 5/38(a) (2018); 35 Ill. Adm. Code 104.232. On June 7, 2021, CTI waived its decision deadline to March 7, 2022. *See* 35 Ill. Adm. Code 104.232.

IEPA is required to file its recommendation on the requested variance with the Board within 45 days after the filing of the petition, or at least 30 days prior to a scheduled hearing, whichever is earlier. 35 Ill. Adm. Code 104.216. IEPA’s 45-day deadline is now Friday, June 25, 2021. Within 14 days after service of IEPA’s recommendation, CTI may file a response to IEPA’s recommendation or an amended petition. 35 Ill. Adm. Code 104.220.

On June 7, 2021, CTI filed an agreed motion for extension (Mot. Ext.). CTI states it intends to file an amended petition and has filed a limited waiver of its statutory decision

deadline. Mot. Ext. at 2. CTI filed an agreed motion to extend the 30-day deadline for IEPA to file a motion to dismiss and the 45-day deadline for IEPA to file a recommendation. *Id.*, citing 35 Ill. Adm. Code 101.506, 104.216(b). CTI and IEPA jointly “request that these deadlines be extended to 30 days after the date that the Hearing Officer or the Board enter an order ruling on CTI’s motion to file an Amended Petition.” *Id.* In an order on June 15, 2021, the hearing officer granted the motion to extend, provided that the amended petition is filed within 90 days.

CTI requests a hearing on its petition. Pet. at 6; *see* 35 Ill. Adm. Code 104.204(n). In an order on June 1, 2021, the hearing officer scheduled a hearing on July 7, 2021. 415 ILCS 5/37(a) (2018); 35 Ill. Adm. Code 104.234. On June 3, 2021, the Board published notice of the hearing in the *Edwardsville Intelligencer*. On June 9, 2021, CTI filed a motion to cancel the hearing (Mot.). In an order on June 15, 2021, the hearing officer granted the motion to cancel.

### **CONCLUSION**

The Board accepts CTI’s petition for hearing. The Board directs its assigned hearing officer to proceed to hearing.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 17, 2021, by a vote of 4-0.



Don A. Brown, Clerk  
Illinois Pollution Control Board