

ILLINOIS POLLUTION CONTROL BOARD  
May 26, 2022

SIERRA CLUB and PRAIRIE RIVERS NETWORK,	)	c
	)	
	)	
Petitioners,	)	
	)	
v.	)	PCB 22-69
	)	(Third-Party NPDES Permit Appeal -
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY and WILLIAMSON ENERGY, LLC,	)	Water)
	)	
	)	
Respondents.	)	

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

On May 10, 2022, Sierra Club and Prairie Rivers Network (collectively, petitioners) timely filed a petition (Pet.) asking the Board to review an April 15, 2022 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(e)(1) (2020); 35 Ill. Adm. Code 101.300(b), 105.204(b). The Agency reissued National Pollutant Discharge Elimination System (NPDES) Permit No. IL0077666 to Williamson Energy, LLC (Williamson Energy) for its Pond Creek coal mine, located four miles east of Johnson City in Williamson and Franklin Counties.

Under the Environmental Protection Act (415 ILCS 5 (2020)), the Agency is the permitting authority responsible for administering Illinois' regulatory programs to protect the environment. NPDES permits are required for discharges of contaminants from point sources to surface waters. If the Agency grants an NPDES permit, certain third parties may appeal the Agency's decision to the Board. *See* 415 ILCS 5/40(e)(1) (2020); 35 Ill. Adm. Code 105.204(b). In this case, petitioners appeal on the grounds that the permit does not ensure compliance with Illinois water standards or permitting rules. For the reasons below, the Board accepts petitioners' petition for hearing.

**THIRD-PARTY APPEAL**

If a third party wishes to appeal an Agency determination to grant an NPDES permit, the Act requires that the third party's petition to the Board contain:

a demonstration that the petitioner raised the issues contained within the petition during the public notice period or during the public hearing on the NPDES permit application, if a public hearing was held; and

a demonstration that the petitioner is so situated as to be affected by the permitted facility. 415 ILCS 5/40(e)(2) (2020); *see also* 35 Ill. Adm. Code 105.210(d).

The petition also must, among other things, specify the grounds for appeal and include a copy of the issued permit. *See* 35 Ill. Adm. Code 105.210(a), (c). The third party must file the petition within 35 days after the “date of issuance of the Agency’s decision.” 415 ILCS 5/40(e)(1) (2020); *see also* 35 Ill. Adm. Code 105.206(b). If the Board determines that the third party’s petition for review is not “duplicative or frivolous,” the Board will hear the petition. 415 ILCS 5/40(e)(3) (2020); *see also* 35 Ill. Adm. Code 105.214(d).

Petitioners’ petition states that, after the Agency provided notice that it had tentatively decided to issue the permit, petitioners filed initial comments on the draft permit and a request for a public hearing. Pet. at 3, citing Exh. D. Petitioners state that they provided additional comments by testifying at the public hearing on the draft permit held on December 18, 2019. Pet. at 3, citing Exh. B. Petitioners add that they submitted post-hearing comments including expert testimony and exhibits. Pet. at 3, citing Exh. E. Petitioners state that these comments and testimony “raised legal and scientific issues regarding flaws in the draft Permit and IEPA’s consideration of the draft Permit.” Pet. at 3. The petition also states that petitioners are so situated as to be affected by the permitted facility (Pet. at 2-3) and includes a copy of the issued permit (Exh. A). Petitioner request that the Board remand the permit to the Agency to establish conditions and limits that protect water and comply with legal authorities. Pet. at 11. The petition meets the content requirements of 35 Ill. Adm. Code 105.210. In addition, petitioners filed their petition within 35 days after the Agency issued its determination on April 15, 2022.

An action before the Board is duplicative if it is “identical or substantially similar to one brought before the Board or another forum.” 35 Ill. Adm. Code 101.202. An action before the Board is frivolous if it is “a request for relief that the Board does not have the authority to grant” or “fails to state a cause of action upon which the Board can grant relief.” *Id.* No evidence now before the Board indicates that this action is duplicative or frivolous. The Board accepts petitioners’ petition for hearing.

### **HEARING AND DECISION DEADLINE**

Petitioners have the burden of proof. *See* 415 ILCS 5/40(e)(3) (2020); 35 Ill. Adm. Code 105.112(a). Hearings “will be based exclusively on the record before the Agency at the time the permit or decision was issued.” 35 Ill. Adm. Code 105.214(a); *see* 415 ILCS 5/40(e)(3) (2020). Accordingly, information developed after the Agency’s decision typically is not admitted at hearing or considered by the Board. *See Alton Packaging Corp. v. PCB*, 162 Ill. App. 3d 731, 738, 516 N.E.2d 275, 280 (5th Dist. 1987); *Community Landfill Co. & City of Morris v. IEPA*, PCB 01-170 (Dec. 6, 2001), *aff’d sub nom. Community Landfill Co. & City of Morris v. PCB & IEPA*, 331 Ill. App. 3d 1056, 772 N.E.2d 231 (3rd Dist. 2002).

Upon its own motion or the motion of any party, the Board or the hearing officer may order that the hearing be held by videoconference. In deciding whether to hold the hearing by videoconference, factors that the Board or the hearing officer will consider include cost-

effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties' preferences, and the proceeding's complexity and contentiousness. *See* 35 Ill. Adm. Code 101.600(b), 105.110.

Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(3) (2020)), which only Williamson Energy may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Williamson Energy "shall be entitled to an Appellate Court order pursuant to subsection (d) of Section 41 [415 ILCS 5/41(d) (2020)]." 415 ILCS 5/40(a)(3) (2020). Currently, the decision deadline is Wednesday, September 7, 2022, which is the 120th day after the Board received the petition. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for Thursday, August 25, 2022.

### **AGENCY RECORD**

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by Thursday, June 9, 2022, which is 30 days after the Board received petitioners' petition. *See* 35 Ill. Adm. Code 105.116(a), 105.212(a). If the Agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed. *See* 35 Ill. Adm. Code 105.116(a). The record must comply with the Board's requirements for content, organization, and certification. *See* 35 Ill. Adm. Code 101.1030(g), 105.116(b), 105.212(b). In addition, the Agency must file the record electronically instead of in paper. Specifically, the record must be filed through the Clerk's Office On-Line (COOL) or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF. *See* 35 Ill. Adm. Code 101.302(h)(2)(A), 105.116(a).<sup>1</sup>

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 26, 2022, by a vote of 4-0.



Don A. Brown, Clerk  
Illinois Pollution Control Board

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<sup>1</sup> Any questions about filing the record in an electronic format should be directed to the Clerk's Office at (312) 814-3620 or (312) 814-3461.