

ILLINOIS POLLUTION CONTROL BOARD  
June 6, 2013

PRAIRIE RIVERS NETWORK and SIERRA )	)	
CLUB, )	)	
	)	
Petitioners, )	)	
	)	
v. )	)	PCB 13-67
	)	(Third-Party NPDES Permit Appeal -
ILLINOIS ENVIRONMENTAL )	)	Water)
PROTECTION AGENCY and SPRINGFIELD )	)	
COAL COMPANY, LLC, )	)	
	)	
Respondents. )	)	

ORDER OF THE BOARD (by T.A. Holbrook):

On May 31, 2013, Prairie Rivers Network and Sierra Club (collectively, petitioners) timely filed a petition asking the Board to review an April 26, 2013 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(e)(1) (2010); 35 Ill. Adm. Code 101.300(b), 105.204(b). The Agency granted a National Pollutant Discharge Elimination System (NPDES) permit to Springfield Coal Company, LLC – Industry Mine for its coal mining facility five miles southwest of Industry, McDonough and Schuyler Counties.

Under the Environmental Protection Act (415 ILCS 5 (2010)), 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) (2010); 35 Ill. Adm. Code 105.204(b). In this case, petitioners present six grounds for appeal: 1) the Agency should not have reissued the Industry Mine’s NPDES permit because the Agency cannot assure compliance with the permit’s terms, Illinois water quality standards, the Clean Water Act or the Illinois Environmental Protection Act; 2) the NPDES permit improperly weakened sulfate effluent limitations in violation of Clean Water Act antibacksliding and antidegradation rules; 3) the Agency established a compliance schedule for manganese that is not in compliance with law; 4) the NPDES permit improperly allowed coal processing at the proposed Grindstone Management, LLC – Littleton Mine; 5) the Agency improperly reclassified former alkaline mine drainage outfalls 029 and 030 as “reclamation area discharge” outfalls, removing some effluent limitations and monitoring requirements imposed under the 2003 NPDES permit; and 6) the Agency failed to ensure that discharges from the Industry Mine do not cause or contribute to a violation of Illinois water quality standards. For the reasons below, the Board accepts the petition as timely filed, but directs petitioners to file an amended petition by June 20, 2013.

### **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) (2010); *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) (2010); *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) (2010); *see also* 35 Ill. Adm. Code 105.214(d).

The petition states that, during the Agency's public notice period and hearing on Springfield Coal Company's NPDES permit application, petitioners raised the issues on which they now appeal. The petition also states that the petitioners are so situated as to be affected by the permitted facility and include a copy of the issued permit. Petitioners also filed their petition within 35 days after the Agency issued its determination. However, the copy of the permit included as Exhibit 1 appears to be the draft permit and not the final permit. Therefore, petitioners must file a copy of the "issued permit" within 14 days of today's order.

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 before the Board indicates that this action is duplicative or frivolous. The Board accepts petitioners' petition for hearing as timely filed but directs petitioners to file an amended petition.

### **DECISION DEADLINE**

Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(3) (2010)), which only Springfield Coal Company may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Springfield Coal Company "shall be entitled to an Appellate Court order pursuant to subsection (d) of Section 41 [415 ILCS 5/41(d) (2010)]." 415 ILCS 5/40(a)(3) (2010). Currently, the decision deadline is September 30, 2013, 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 September 26, 2013.

IT IS SO ORDERED.

Member Jennifer A. Burke Abstained.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 6, 2013 by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board