

ILLINOIS POLLUTION CONTROL BOARD
July 11, 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 D. Glosser):

Prairie Rivers Network and Sierra Club (petitioners) ask the Board to review an April 26, 2013 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(e) (2010). Specifically, the Agency granted a National Pollutant Discharge Elimination System (NPDES) permit to Springfield Coal Company, LLC (Springfield Coal) for Industry Mine, which is a coal mining facility located five miles southwest of Industry in McDonough and Schuyler Counties. Today’s order accepts petitioners’ amended petition for hearing, addresses the Board’s decision deadline, grants in part the Agency’s motion to file a reduced number of copies of the record of its determination, and grants a motion to appear *pro hac vice* on behalf of Springfield Coal.

HEARING

On May 31, 2013, petitioners filed their petition for review. On June 6, 2013, the Board issued an order in which the Board did the following: (1) accepted the petition as timely filed; (2) ruled that the petition was neither duplicative nor frivolous; and (3) found that the petition met all but one of the requirements for petition contents. *See Prairie Rivers Network & Sierra Club v. IEPA & Springfield Coal Co.*, PCB 13-67, slip op. at 2 (May 31, 2013). As the Board noted, the Board’s procedural rules require that a petition for review include a copy of the issued permit. *See* 35 Ill. Adm. Code 105.210(a). The petition here failed to include a copy of the NPDES permit issued to Springfield Coal. Accordingly, before the matter could be accepted for hearing, the Board’s May 31, 2013 order required that petitioners file, within 14 days, an amended petition to provide a copy of the issued NPDES permit. On June 13, 2013, petitioners timely filed an amended petition, repeating the petition but this time providing the issued permit rather than the draft permit. The Board accepts the amended petition for hearing.

Petitioners have the burden of proof. *See* 415 ILCS 5/40(e)(3) (2010); 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 also* 415 ILCS 5/40(e)(3)

(2010). 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). Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline, which is discussed below.

DECISION DEADLINE

Only Springfield Coal may extend the Board's decision deadline by waiver. *See* 35 Ill. Adm. Code 101.308. If the Board fails to take final action by the decision deadline, Springfield Coal "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 October 11, 2013, which is the 120th day after the Board received the amended petition. *See* 35 Ill. Adm. Code 105.114(b). The Board meeting immediately before the decision deadline is scheduled for October 3, 2013.

MOTION TO FILE FEWER COPIES OF AGENCY RECORD

Under the Board's procedural rules, the Agency must file the original record of its determination, along with four duplicate copies of the record. *See* 35 Ill. Adm. Code 101.302(h)(2). On July 2, 2013, the Agency filed a motion to file a reduced number of copies of the record. The motion was accompanied by the original Agency record, plus one hard copy of the record and one compact disc (CD) "containing all documents in .pdf format." Motion at ¶3. To "conserve scarce state resources," the Agency seeks to file only the original, the hard copy, and the CD. *Id.* at ¶2.

To avoid undue delay, the Board rules upon the Agency's motion today. *See* 35 Ill. Adm. Code 101.500(d). The Board observes that the record filed by the Agency consists of 53 documents and totals 1,016 pages in length. The Board grants the Agency's motion in part. The Board directs the Agency to file one additional hard copy of the record by August 12, 2013, which is the first business day following the 30th day after the date of this order.

MOTION TO APPEAR PRO HAC VICE

On June 12, 2013, Dale A. Guariglia of the law firm Bryan Cave LLP filed a motion to appear on behalf of Springfield Coal *pro hac vice*, *i.e.*, for this appeal. The Board's procedural rules provide that "[a]ttorneys who are licensed to practice in a state other than Illinois and who are not licensed and registered to practice in the State of Illinois may request to appear *pro hac vice* on a particular matter on a motion filed with the Board." 35 Ill. Adm. Code 101.400(a)(3). Mr. Guariglia's motion states that he is in good standing and admitted to practice before all state courts in the State of Missouri. No response has been filed to the motion. *See* 35 Ill. Adm. Code 101.500(d) (failure to respond to a motion constitutes a waiver of any objection to motion being granted). The Board grants the *pro hac vice* motion.

IT IS SO ORDERED.

Board Member J.A. Burke abstained.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 11, 2013, by a vote of 3-0.

A handwritten signature in black ink, reading "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John T. Therriault, Clerk
Illinois Pollution Control Board