

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MIDWEST GENERATION LLC,)
)
) PCB 2016-019
)
) Petitioner,) (Variance -Water)
)
) v.)
)
)
) ILLINOIS ENVIRONMENTAL PROTECTION)
) AGENCY,)
)
)
) Respondent.

NOTICE OF FILING

To: John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
Via Electronic Mail and First Class Mail

Brad Halloran, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Post Office Box 19274
Springfield, IL 62794

PLEASE TAKE NOTICE that I have today filed with the Office of the Pollution Control Board the APPEARANCE and MOTION TO STAY for the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Stefanie Diers
Stefanie Diers
Assistant Counsel
Division of Legal Counsel

DATED: August 18, 2015

1021 N. Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276
(217) 782-5544

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MIDWEST GENERATION LLC,)	
)	PCB 2016-019
)	
Petitioner,)	(Variance -Water)
)	
v.)	
)	
ILLINOIS ENVIRONMENTAL PROTECTION)	
AGENCY,)	
)	
Respondent.		

APPEARANCE

The undersigned hereby enters her appearance as an attorney on behalf of the Illinois Environmental Protection Agency.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Stefanie Diers
Stefanie Diers
Assistant Counsel
Division of Legal Counsel

DATED: August 17, 2015

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MIDWEST GENERATION LLC,)	
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AGENCY,)	
)	
Respondent.)	

MOTION FOR STAY FOR FILING THE AGENCY'S RECOMMENDATION ON THE VARIANCE PETITION

The Illinois Environmental Protection Agency ("Illinois EPA" or "Agency"), by and through its attorney, hereby submits its Motion For Stay with respect to the filing of the Agency's Recommendation on the Petitioner's Variance Petition. In support thereof, the Illinois EPA states as follows:

- 1) On July 21, 2015, the Petitioner filed its Petition for a Variance with the Illinois Pollution Control Board ("Board") from the temperature water quality standards adopted in R08-9 (Subdocket D).
- 2) The Petitioner argues there is confusion as to the effective date of the chloride standards adopted in R08-9 (Subdocket D). The adopted rules were published in the Illinois Register on July 10, 2015, with an effective date of July 1, 2015. (See, Ill. Reg., 39, Issue 28, P. 9388, 9423 and 9433).
- 3) The Notice of Adopted Rule states the effective date of the adopted rules is July 1, 2015. However, Section 302.408(b) states the new temperature water quality standard is will be applicable beginning July 1, 2018.

4) Because of this confusion the Petitioner filed its Variance Petition was filed with the Board on July 21, 2015, pursuant to the language found in Section 38(b) of the Environmental Protection Act ("Act"), seeking a stay of the effectiveness of the chloride and temperature water quality standards. See 415 ILCS 5/38(b). Section 38(b) of the Act provides that if a variance is sought within 20 days of the effective date of the rule or regulation, the operation of the rule or regulation is stayed to such person pending disposition of the petition. The Agency notes that other petitions similar to the present case have been filed with the Board.

5) The Agency believes the effective date of the rules for the temperature water quality standard at issue is July 1, 2018, and has filed with the Board a Motion for Clarification in R08-9 (Subdocket D), to help erase the confusion the different dates have caused parties involved in the rulemaking.

6) Therefore, until the effective date for the temperature water quality standard for purposes of application of Section 38(b) of the Act is determined through clarification by the Board, the Agency asks the Board to stay the Agency's requirement of filing a recommendation on the variance petition since it appears the variance request may be premature. The Agency asks that should the Board determine the variance petition should go forward, the 45 day requirement to file a recommendation with respect to the variance petition be extended for at least 60 days after a decision is reached on the clarification issue.

7) The Agency has reached out to the Petitioner and they have advised the Illinois EPA they have no objection to the requested Motion to Stay. Therefore, the requested Motion should not prejudice or harm any interested parties.

WHEREFORE, the Illinois EPA respectfully requests the Board grant its Motion to Stay filing a recommendation until clarification is provided as to the effective date of the water quality standards adopted for temperature in R08-9 (Subdocket D) and if the Board determines the effective date is July 1, 2015 and the variance petition was timely filed, the Agency asks that the 45 days to file a recommendation be extended to at least 60 days following a determination by the Board.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Stefanie Diers
Stefanie Diers
Assistant Counsel
Division of Legal Counsel

DATED: August 18, 2015

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CERTIFICATE OF SERVICE

I, the undersigned, an attorney, state that I have served the attached the NOTICE OF FILING, APPEARANCE, and MOTION TO STAY for the Illinois Environmental Protection Agency upon the person to whom it is directed, by electronic email to the hearing officer and mailing it by first-class mail from Springfield, Illinois, with sufficient postage affixed, to the following persons:

John Therriault, Assistant Clerk
Brad Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601-3218

Susan M. Franzetti
Vincent R. Angermeier
Nijman Franzetti LLP
10 South LaSalle Street
Suite 3600
Chicago, Illinois 60603

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Stefanie Diers
Stefanie Diers
Assistant Counsel
Division of Legal Counsel

DATED: August 18, 2015

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