

ILLINOIS POLLUTION CONTROL BOARD
October 27, 2016

ILLINOIS POWER GENERATING)
COMPANY (COFFEEN POWER STATION),)
)
Petitioner,)
)
v.) PCB 17-15
) (NPDES Permit Appeal – Water)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by G.M. Keenan):

On October 21, 2016, Illinois Power Generating Company (Illinois Power) timely filed a petition asking the Board to review the Illinois Environmental Protection Agency's September 16, 2016 permit determination. *See* 415 ILCS 5/40(a)(1) (2014); 35 Ill. Adm. Code 101.300(b), 105.206. The determination concerns Illinois Power's coal-fired steam electric generating plant located at 134 CIPS Lane, Coffeen, Montgomery County. Additionally, on October 21, 2016, Illinois Power filed a motion to stay the effectiveness of the permit in its entirety. For the reasons below, the Board accepts the petition for review, but reserves ruling on the motion for stay.

Under the Environmental Protection Act (Act), the Agency is the permitting authority responsible for administering Illinois' regulatory programs to protect the environment. 415 ILCS 5 (2014). If the Agency denies a permit or grants one with conditions, the permit applicant may appeal the Agency's decision to the Board. *See* 415 ILCS 5/4, 5, 40(a)(1) (2014); 35 Ill. Adm. Code 105.Subpart B. The Agency issued Illinois Power a renewed National Pollutant Discharge Elimination System (NPDES) permit for its Coffeen facility. Illinois Power challenges four conditions in the permit: (1) a new requirement to monitor fecal coliform discharges; (2) a more stringent limit on total suspended solids (TSS) discharges; (3) a requirement to conduct annual fish studies in Coffeen Lake; and (4) a requirement to submit a demonstration study plan concerning the facility's thermal effluent discharges. Petition at ¶¶ 3–12. The Board finds that Illinois Power's petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. Illinois Power has the burden of proof. 415 ILCS 5/40(a)(1) (2014); *see also* 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its permit decision. *See* 35 Ill. Adm. Code 105.214(a). Accordingly, though the Board hearing affords a permit applicant the opportunity to challenge the Agency's reasons for denying or conditionally granting the permit, 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)(2) (2014)), which only Illinois Power may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Illinois Power may deem the requested permit issued. 415 ILCS 5/40(a)(2) (2014). Currently, the decision deadline is February 20, 2017, which is the first business day following 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 February 16, 2017.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by November 21, 2016, the first business day 30 days after the Board received the 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 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).¹

Illinois Power also moved to stay the effectiveness of contested permit conditions. The Board reserves ruling on the motion for stay to allow the Agency's response time to run. *See* 35 Ill. Adm. Code 101.500(d).

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 27, 2016 by a vote of 5-0.



John T. Therriault, Clerk

¹ Any questions about filing the record in an electronic format should be directed to the Clerk's Office at 312-814-3629.

Illinois Pollution Control Board