

ILLINOIS POLLUTION CONTROL BOARD
November 17, 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 a September 16, 2016 permit determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2014); 35 Ill. Adm. Code 101.300(b), 105.206. In that determination, the Agency issued Illinois Power a revised National Pollutant Discharge Elimination System (NPDES) Permit (No. IL0000108) with conditions for Illinois Power’s coal-fired steam electric generating plant located at 134 CIPS Lane, Coffeen, Montgomery County. The petition included a motion to stay the effectiveness of the permit. Pet. at 5–6. In an order dated October 27, 2016, the Board accepted the petition for hearing but reserved ruling on the motion for stay to allow the Agency’s response time to run.

In its motion for stay, Illinois Power states that, on filing an appeal with the Board, “a permit applicant may seek to have the permit stayed in its entirety.” Pet. at 5, *citing Borg-Warner v. Mauzy*, 427 N.E. 2d 415 (3rd Dist. 1981). Illinois Power further states that “[a]n automatic stay applies to appeals of NPDES permits under the Illinois Administrative Procedure Act (APA).” Pet. at 5, *citing* 5 ILCS 100/10-65(b) (2014). Section 10-65(b) of the APA provides in pertinent part that, “[w]hen a licensee has made timely and sufficient application for the renewal of a license, . . . the existing license shall continue in full force and effect until the final agency decision on the application has been made unless a later date is fixed by order of a reviewing court.” 5 ILCS 100/10-65(b) (2014).

Illinois Power requests that “the Board apply the automatic stay provisions of the APA to the 2016 permit in its entirety.” Pet. at 5. The company states that, for the duration of the stay, the permit issued to the plant in 2008 will remain in effect. Illinois Power further states that it “will continue to operate under the 2008 Permit as it existed prior to renewal.” *Id.* at 5–6. The company moves that the Board grant an automatic stay from the October 1, 2016, effective date of the permit “until the later of (a) the Board’s final resolution of this Petition or, (b) if granted, the Agency’s issuance of a correct permit.” *Id.* at 6.

The Board’s procedural rules provide that, “[w]ithin 14 days after service of a motion, a

party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board . . . in its disposition of the motion.” 35 Ill. Adm. Code 101.500(d). The Agency has not responded to Illinois Power’s motion for stay.

Based upon the record before it today and in the absence of any Agency opposition, the Board finds that the automatic stay provision of the APA applies. Accordingly, Illinois Power’s 2016 NPDES permit, which is the subject of this appeal, is stayed. During the stay, the company’s 2008 NPDES permit remains in effect. *See* 5 ILCS 100/10-65 (2014). In reaching this conclusion, the Board “makes no finding on the merits of the permit appeal” Kincaid Generation, L.L.C. v. IEPA, PCB 15-203, slip op. at 2 (July 23, 2015), *citing* Motor Oils Refining v. IEPA, PCB 89-116, slip op. at 2 (Aug. 31, 1989). The Board grants the motion for stay of the entire contested permit. The stay will last until the Board takes final action in this appeal or orders otherwise.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 17, 2016 by a vote of 5-0.



John T. Therriault, Clerk
Illinois Pollution Control Board