

ILLINOIS POLLUTION CONTROL BOARD  
April 11, 2019

CITIZENS AGAINST RUINING THE ENVIRONMENT,	)	
	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 19-96
	)	(Third-Party NPDES Permit Appeal -
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY and JACKSON GENERATING, LLC,	)	Water)
	)	
	)	
Respondents.	)	

ORDER OF THE BOARD (by C.M. Santos):

On April 2, 2019, Citizens Against Ruining the Environment (CARE) timely filed a petition (Pet.) asking the Board to review a February 26, 2019 determination of the Illinois Environmental Protection Agency (IEPA). *See* 415 ILCS 5/40(e)(1) (2016); 35 Ill. Adm. Code 101.300(b), 105.204(b). IEPA granted a National Pollutant Discharge Elimination System (NPDES) permit to Jackson Generating, LLC (Jackson Generating) for the Jackson Energy Center at the intersection of Brandon and Noel Roads in Elwood, Will County.

Under the Environmental Protection Act (415 ILCS 5 (2016)), IEPA 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 IEPA grants an NPDES permit, certain third parties may appeal IEPA's decision to the Board. *See* 415 ILCS 5/40(e)(1) (2016); 35 Ill. Adm. Code 105.204(b). In this case, CARE appeals on the grounds that IEPA should not have issued the permit without addressing radium and that IEPA failed to respond to comments. For the reasons below, the Board accepts CARE's petition for hearing.

**THIRD-PARTY APPEAL**

If a third party wishes to appeal an IEPA 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) (2016); *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) (2014); *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) (2014); *see also* 35 Ill. Adm. Code 105.214(d).

CARE’s petition states that CARE members and representatives appeared at the November 27, 2018 hearing on the draft permit. Pet. at 1. During IEPA’s public notice period on Jackson Generating’s NPDES permit application, CARE raised issues on which it now appeals. Pet., Exh. C (CARE Post-Hearing Comments). CARE’s petition states that its members are so situated as to be affected by the permitted facility, and it includes a copy of the issued permit (Pet., Exh. A). The petition meets the content requirements of 35 Ill. Adm. Code 105.210. CARE also filed its petition within 35 days after IEPA issued its determination.

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 CARE’s petition for hearing.

### **HEARING AND DECISION DEADLINE**

CARE has the burden of proof. *See* 415 ILCS 5/40(e)(3) (2016); 35 Ill. Adm. Code 105.112(a). Hearings “will be based exclusively on the record before IEPA at the time the permit or decision was issued.” 35 Ill. Adm. Code 105.214(a); *see also* 415 ILCS 5/40(e)(3) (2016). Accordingly, information developed after IEPA’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)(3) (2016)), which only Jackson Generating may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Jackson Generating “shall be entitled to an Appellate Court order pursuant to subsection (d) of Section 41 [415 ILCS 5/41(d) (2016)].” 415 ILCS 5/40(a)(3) (2016).

Currently, the decision deadline is July 31, 2019, 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 July 25, 2019.

### **IEPA RECORD**

Unless the Board or the hearing officer orders otherwise, IEPA must file the entire record of its determination by May 2, 2019, which is 30 days after the Board received CARE's petition. *See* 35 Ill. Adm. Code 105.116(a), 105.212(a). If IEPA 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 101.1030(g), 105.116(b), 105.212(b). In addition, IEPA 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). Any questions about filing the record in an electronic format should be directed to the Clerk's Office at (312) 814-3620 or (312) 814-3461.

IT IS SO ORDERED.

Board Member B.K. Carter abstained

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 11, 2019, by a vote of 3-0.



Don A Brown, Clerk  
Illinois Pollution Control Board