

ILLINOIS POLLUTION CONTROL BOARD  
July 6, 2023

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 23-131
	)	(Variance - Air)
T5@CHICAGO II, LP,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by J. Van Wie):

T5@Chicago II, LP (T5) owns and operates a data center at 200 Innovation Drive in Elk Grove Village, Cook County. In a letter filed with the Board on June 21, 2023, T5 requested “a determination for enforcement discretion” for construction activity at its facility. Based on its review of the request, the Board construes this request as a petition for a variance (Pet.) from requirements of a construction permit issued by the Illinois Environmental Protection Agency (IEPA). For the reasons below, the Board finds the petition procedurally insufficient and directs T5 to file an amended petition.

In this order, the Board first summarizes the background described in T5’s filing and its request for relief. The Board then addresses the procedural requirements that it concludes T5 has not met. The Board then issues its order directing T5 to file an amended petition.

**BACKGROUND OF PETITION**

Under a construction permit issued on December 14, 2021, T5 is permitted to construct 11 MTU diesel-fired emergency generators designated GEN01, GEN-R1, and GEN03 through GEN11. Pet. at 1. “Each of the 11 permitted generators is rated at 3,250 kilowatts (kWe) and will be used to provide emergency power to support data center operations in the event of utility power interruptions or a related on-site failure.” *Id.*

In 2022, T5 applied to modify the permit to install one additional generator for a total of 12 generators. Pet. at 1. T5 indicates that it revised this application a number of times, which delayed issuing a modified permit. *Id.* However, it states that “[t]hese revisions were required to account for market unpredictability and customer changes.” *Id.* T5 adds that its anticipated construction schedule meant that these revisions “could not be postponed into subsequent modifications.” *Id.*

In May 2023, T5 reports that it submitted its final application for a permit modification. T5 states that this application proposed the following three modifications. First, it sought to clarify the names of the approved 11 generators as GEN01 through GEN11. Pet. at 1. Second, it proposed to “[c]onstruct and operate four new generators (GEN12 - GEN15).” *Id.* These

include the single generator proposed in 2022 and three additional generators. *Id.* Third, it sought to use “either MTU 3,250 kWe units or Kohler 3,250 kWe units for all future installments.” *Id.*

T5 states that five of the 11 permitted generators have been constructed and begun operations: GEN 01, GEN02, GEN03, GEN 04, and GEN06. Pet. at 1. “The remaining generators are under various stages of construction or not yet constructed.” *Id.* Citing supply chain issues, T5 states that it could not determine which manufacturer and model it would use to install the remaining generators: GEN03 through GEN 05 and GEN07 through GEN15.<sup>1</sup>

While its application for a revised construction permit is pending, T5 requests a variance allowing it to commission two Kohler generators as GEN05 and GEN07. Pet. at 1. It reports that “[t]hese generators are currently installed and must finish all commissioning activities this month (June 2023) to meet the customer deadline of August 1, 2023.” *Id.* at 1-2. T5 asserts that IEPA considers commissioning activities as the final phase of the construction process. *Id.* at 2, citing Attach. 1.

T5 states that Condition 13a of its current construction permit sets an emission factor of 0.13 lb/gal for carbon monoxide (CO) and 0.30 lb/gal for nitrogen oxides (NO<sub>x</sub>). Pet. at 2, citing Attach. 2. T5 adds that the emission factors for the Kohler generators it intends to install are 0.22 lb/gal for CO and 0.40 lb/gal for NO<sub>x</sub>. Pet. at 2. It asserts that its pending application for a revised permit “incorporates the differences in emission factors and resultant decrease in allowable fuel for the facility to maintain compliance with the 45 ton per year NO<sub>x</sub> limit.” *Id.* However, T5 does not expect a revised permit until July or August of 2023. It reports that it must complete commissioning the two Kohler generators. If it does not meet a deadline of August 1, 2023, “T5 will incur significant financial penalties with their customer as they are contracted to have these two generators fully operation by that date.” *Id.*

### **PROCEDURAL REQUIREMENTS**

The Board finds the petition procedurally insufficient and directs T5 to file an amended petition. *See* 35 Ill. Adm. Code 104.228. The amended petition must correct the original petition’s deficiencies as identified below. Under 35 Ill. Adm. Code 104.204, “[i]f the petitioner believes that any petitioner content requirement does not apply to its request, “the petitioner must so state and explain the reasoning.”

- 1) Under 35 Ill. Adm. Code 104.204(b)(2), a variance petition must include information including “[t]he location of points of discharge” and, “if known, the location of the nearest air monitoring station maintained by the [Illinois Environmental Protection] Agency.” The petition provided the street address of T5’s center but did not specify this information.

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<sup>1</sup> The Board notes that T5’s filing indicates that GEN03 and GEN05 have been constructed and separately indicates that both are remaining generators not yet constructed. Pet. at 1.

Under 35 Ill. Adm. Code 104.204(b)(3), a variance petition must identify “any previous variance issued to the petitioner and, if known, the petitioner’s predecessors, concerning similar relief.” The petition did not provide this identification.

Under 35 Ill. Adm. Code 104.204(b)(4), a variance petition must identify “environmental permits held by petitioner for the activity which may be affected by the grant of the variance.” While the petition refers to a construction permit and a pending application to modify it, it does not clearly indicate whether any other permit addresses this activity.

Under 35 Ill. Adm. Code 104.204(b)(5-8), a variance petition must include specific information about the petitioner’s facility and activities, which is not provided in the petition.

- 2) Under 35 Ill. Adm. Code 104.204(d), a variance petition must describe “the efforts that would be necessary for the petitioner to achieve immediate compliance with the regulation, requirement, or Board order at issue” and include information about possible compliance alternatives. The petition does not include this description.
- 3) Under 35 Ill. Adm. Code 104.204(g), a variance petition must describe “the environmental impact of the petitioner’s activity” and include specified information. The petition does not include this description.
- 4) Under 35 Ill. Adm. Code 104.204(i), if the requested variance involves an existing or pending permit, the petition must include “a copy of the material portion of the permit or permit application.” Although T5’s Attachment 2 includes emission limits in its current permit, it has not included the pending application for a permit modification.
- 5) Under 35 Ill. Adm. Code 104.204(j), a variance petition must include “[a]ny conditions petitioner suggests for the variance.” The petition does not include suggested conditions.
- 6) Under 35 Ill. Adm. Code 104.204(k), a variance petition must include a beginning and ending date for it. If the petitioner requests that the variance begin “on any date other than the date on which the Board takes final action on the petition,” then the petition must include “a detailed explanation and justification for the alternative beginning date.” The petition does not provide these specific dates.
- 7) Under 35 Ill. Adm. Code 104.204(l), a variance petition must discuss whether the requested variance is consistent with federal law. The petition does not include this discussion.

- 8) Under 35 Ill. Adm. Code 104.204(m), a variance petition must include “[a]n affidavit verifying any facts submitted in the petition.” The petition does not include this affidavit.
- 9) Under 35 Ill. Adm. Code 104.204(n), a variance petition must include “[a] statement requesting or denying that a hearing should be held in this matter.” The petition does not include this statement.

Also,

- 10) In a Board adjudicatory proceeding such as a variance (35 Ill. Adm. Code 101.108(c)), “any person other than individuals must appear through an attorney-at-law licensed and registered to practice law.” 35 Ill. Adm. Code 101.400(a)(2). Although the petition was submitted by Executive Vice President Robbie Sovie and refers to Environmental Resources Manager Tiffany Cuni as a source of additional information, the petition does not indicate that either is an attorney and did not include an attorney’s appearance. *See* 35 Ill. Adm. Code 101.400(a)(4).
- 11) A variance petitioner must serve its petition and all related documents on the Illinois Environmental Protection Agency, and an affidavit of service must accompany the filing with the Board. 35 Ill. Adm. Code 104.202(c). T5’s petition did not include documentation of service.
- 12) If T5 files an amended petition, it must under the Environmental Protection Act and the Board’s procedural rules provide notice of the amended petition and file a certificate of newspaper publication with the Board. 35 Ill. Adm. Code 104.214. Specifically, “[w]ithin 14 days after the petition is filed, the petitioner must *publish a single notice of such petition in a newspaper of general circulation in the county where the facility or pollution source is located.*” 35 Ill. Adm. Code 104.214(a), citing 415 ILCS 5/37(a) (2020). “Upon filing the petition for variance, the petitioner *shall promptly give written notice of such petition*” to specified elected officials and other persons. 35 Ill. Adm. Code 104.214(b), citing 415 ILCS 5/37(a) (2020). These notices much include specified information. 35 Ill. Adm. Code 104.214(d). “Within 21 days after publication of notice, the petitioner must file with the Board a certificate of publication that states the date on which the notice was published and must attach a copy of the published notice.” 35 Ill. Adm. Code 104.214(e).

Based on the deficiencies above, the Board directs T5 to file an amended petition addressing those deficiencies by Monday, August 7, 2023, which is the first business day following the 30th day after the date of this order. *See Calpine Corporation v. IEPA*, PCB 16-112 (July 7, 2016). If T5 does not file an amended petition by that deadline, its petition may be dismissed. 35 Ill. Adm. Code 104.228. The decision deadline in this proceeding will be 120 days after T5 files an amended petition that meets the Board’s requirements. 35 Ill. Adm. Code 104.232(a)(2). This order does not find that T5’s petition otherwise meets applicable petition

content requirements. The Board will not accept the amended petition if it contains other deficiencies. *See* 35 Ill. Adm. Code 104.204.

In addition, T5 may consider whether it wishes to pursue a provisional variance from IEPA under Sections 35(b), 36(c), and 37(b) of the Act, 415 ILCS 5/35(b), 36(c) and 37(b) (2020).

**ORDER**

The Board directs T5 to file an amended petition addressing the deficiencies identified above by Monday, August 7, 2023, which is the first business day following the 30th day after the date of this order.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 6, 2023, by a vote of 3-0.

A handwritten signature in cursive script that reads "Don A. Brown".

Don A. Brown, Clerk  
Illinois Pollution Control Board