

ILLINOIS POLLUTION CONTROL BOARD
September 19, 2024

PRAIRIE STATE GENERATING)
COMPANY, LLC,)
)
Petitioner,)
) PCB 25-11
v.) (Permit Appeal - Air)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by M. Gibson):

On August 30, 2024, Prairie State Generating Company, LLC (Prairie State) timely filed a petition (Pet.) asking the Board to review the Illinois Environmental Protection Agency’s (Agency) alleged failure to act on Prairie State’s Clean Air Act Permit Program (CAAPP) application. *See* 415 ILCS 5/40.2(a) (2022); 35 Ill. Adm. Code 105.302(e). The CAAPP application concerns Prairie State’s coal-fired power generation facility located at 3872 County Highway 12 in Marissa, Washington County. For the reasons below, the Board accepts Prairie State’s petition for review.

Section 39.5 of the Environmental Protection Act (Act) (415 ILCS 5/39.5 (2022)) sets forth the CAAPP, reflecting the requirements of Title V of the federal Clean Air Act Amendments of 1990 (42 U.S.C. §§ 7661-7661f). Generally, a CAAPP permit is designed to be a single, comprehensive document of all air pollution obligations that apply to facility. The Agency decides whether to approve CAAPP permit applications, and Agency decisions may be appealed to the Board by, among others, the permit applicant and persons who participated in the Agency’s public comment process. *See* 415 ILCS 5/40.2(a) (2022); 35 Ill. Adm. Code 105.SubpartC. In this case, Prairie State states that it submitted a “complete initial CAAPP application covering all emission units at the Facility on May 5, 2011.” Pet. at 1. According to the petition, the “application was deemed administratively complete on July 4, 2011, sixty (60) days after the Agency’s receipt of the application.” *Id.* at 1-2, *citing* 415 ILCS 5/39.5(5)(f); 35 Ill. Adm. Code 270.303(b).

Section 39.5(5)(j) of the Act provides that the Agency shall issue or deny a CAAPP permit within 18 months after the date of receiving the complete CAAPP application, with several exceptions. *See* 415 ILCS 5/39.5(5)(j) (2022). Under Section 39.5(5)(j)(ii), the Agency “shall act on initial CAAPP applications within 24 months after the date of receipt of the complete CAAPP application.” 415 ILCS 5/39.5(5)(j)(ii) (2022). The Act further provides that when the Agency fails to take final action within the required time period, the permit is not deemed issued, but rather the Agency’s failure is treated as a final permit action subject to

judicial review pursuant to Sections 40.2 and 41 of the Act. *See* 415 ILCS 5/39.5(5)(j) (2022); *see also* 35 Ill. Adm. Code 105.302(c). Section 40.2 in turn provides that if the final permit action being challenged is the Agency’s failure to timely take final action, “a petition for a hearing before the Board shall be filed before the Agency denies or issues the final permit.” 415 ILCS 5/40.2(a) (2022); *see also* 35 Ill. Adm. Code 105.302(e). Prairie State maintains that as of the date of its petition, the Agency has failed to take any action on the company’s initial CAAPP application. Pet. at 2.

The Board accepts the petition for hearing. Prairie State has the burden of proof. *See* 415 ILCS 5/40.2(a); 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency on Prairie State’s CAAPP application. *See* 35 Ill. Adm. Code 105.412. Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40.2(c) (2022)), which only Prairie State may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, “the permit shall not be deemed issued; rather, the petitioner shall be entitled to an Appellate Court order pursuant to Section 41(d) of this Act [415 ILCS 5/41(d) (2022)].” *See* 415 ILCS 5/40.2(c) (2022). Currently, the decision deadline is December 28, 2024, which is the 120th day after the date on which the Board received the petition, August 21, 2024. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for December 19, 2024.

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.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by September 30, 2024, which is the first business day following the 30th day after the date on which the Board received Prairie State’s petition. *See* 35 Ill. Adm. Code 105.116(a), 105.410(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 101.1030(g), 105.116(b), 105.410(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

IT IS SO ORDERED.

¹ 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.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 19, 2024, by a vote of 4-0.

Don A. Brown

Don A. Brown, Clerk
Illinois Pollution Control Board