

ILLINOIS POLLUTION CONTROL BOARD  
June 21, 2001

PRAIRIE RIVERS NETWORK, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 01-112  
 ) (Permit Appeal – NPDES, Third-Party)  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY and BLACK )  
 BEAUTY COAL COMPANY, )  
 )  
 Respondents. )

ORDER OF THE BOARD (by E.Z. Kezelis):

On June 11, 2001, Black Beauty Coal Company (Black Beauty) filed a motion renewing a request for oral argument that it originally filed with the Board on May 14, 2001. In its latest motion, Black Beauty seeks to have the Board reconsider its order of May 17, 2001, denying the request for oral argument. See Prairie Rivers Network v. IEPA (May 17, 2001), PCB 01-112. Black Beauty notes that the decision deadline in this case has been extended to August 10, 2001, thereby allowing, according to Black Beauty, enough time for the Board to entertain oral argument and timely resolve the case.

Neither Prairie Rivers Network (Prairie Rivers) nor the Illinois Environmental Protection Agency (Agency) has responded to this motion. The Board notes, however, that the hearing officer has inquired of attorneys for both Prairie Rivers and the Agency and has confirmed that neither intends to file a response. The Board also notes that Prairie Rivers initially sought oral argument, which the Board denied in the above-referenced May 17, 2001 order. Additionally, the Agency indicated on the record at hearing that it would not oppose oral argument in this case. Pursuant to Section 101.500(d) of the Board's procedural rules, unless undue delay or material prejudice would result, the Board will not grant any motion prior to the expiration of the 14-day response period. 35 Ill. Adm. Code 101.500(d). However, because the Board is faced with an approaching decision deadline and because neither Prairie Rivers nor the Agency intends to respond to this motion, the Board is acting on Black Beauty's motion prior to expiration of the 14-day response period.

Our May 17, 2001 order had denied the requests for oral argument because no posthearing briefs had yet been filed, and because we were unable at that time to conclude that the issues presented would require additional argument beyond that which the parties might present in their briefs. The Board was also cognizant of the approaching decision deadline, which at that time was July 2, 2001.

Having now had an opportunity to review the briefs and arguments of the parties, we conclude that oral argument would be beneficial in this matter. We further note the recent

extension of the decision deadline to August 10, 2001, should provide sufficient time for the Board to hold oral argument and render a timely decision at its August 9, 2001 Board meeting. Accordingly, pursuant to Section 101.700 of the Board's procedural rules, and in accordance with the following guidelines, Black Beauty's request for oral argument is hereby granted.

### GUIDELINES FOR ORAL ARGUMENT

The Board hereby schedules an oral argument in this matter for Thursday, July 12, 2001, at 10:00 a.m. The oral argument will take place before the Board in the Board's Chicago office, 100 West Randolph Street, Room 9-040, Chicago, Illinois 60601, with Board Member Elena Kezelis presiding for purposes of the argument. The oral argument will be transcribed by a court reporter to be provided by the Board and will become part of the record in this case. See 35 Ill. Adm. Code 101.700(a).

During oral argument, the Board will hear argument only from each of the three named parties: Prairie Rivers, Black Beauty, and the Agency. The Board notes that *amicus curiae* standing has been granted to Vermilion Coal and has been sought by the Illinois Environmental Regulatory Group (IERG). *Amicus* standing is hereby granted to IERG. For purposes of this oral argument, however, only the three named parties will be permitted to address the Board. In addition to hearing the arguments of the parties, the Board Members may also ask questions to further clarify the issues in this case. While this oral argument is, of course, open to the public and while members of the public are invited to attend, participation in the oral argument and questioning will be strictly limited to the three named parties and the Board Members.

The schedule of presentation will be as follows:

Petitioner Prairie Rivers – 25 minutes total  
Respondents Black Beauty and Agency– 25 minutes total

Prairie Rivers shall announce at the beginning of oral argument how much of the 25 minutes allocated to it shall be reserved for reply. Respondents Black Beauty and the Agency shall announce at the beginning of their oral argument how they have apportioned the 25 minutes allocated to respondents.

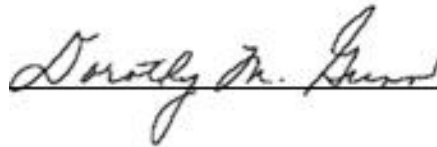
Furthermore, the Board requests that the parties address the following specific topics in oral argument: (1) the burden of proof and standard of review in third-party National Pollutant Discharge Elimination System (NPDES) permit appeals; (2) the extent to which the public should have been allowed to participate, if at all, in the permitting process after the conclusion of the public hearing; (3) the applicability of the general water quality standards of 35 Ill. Adm. Code 302.202 and 302.203 to Black Beauty; and (4) discussion of whether, as the Agency states in its final brief, that whole effluent toxicity (WET) testing is typically applied in discharges that occur during wet weather conditions, or whether, as it testified at hearing, that WET testing is less reliable than other types of monitoring during short term wet weather discharges.

Pursuant to Section 101.700 of the Board's procedural rules, "oral argument is to address legal questions . . . [it] is not intended to address new facts." 35 Ill. Adm. Code 101.700(a).

Therefore, any analysis or argument based on data collected after the issuance of the NPDES permit will not be considered by the Board during oral argument and is not properly within the scope of the Board's review of this case.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 21st day of June 2001 by a vote of 7-0 .

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board