

ILLINOIS POLLUTION CONTROL BOARD
February 15, 2001

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

ORDER OF THE BOARD (by S.T. Lawton, Jr.):

On January 30, 2001, the Prairie Rivers Network (PRN) filed a petition to contest the issuance of a National Pollutant Discharge Elimination System (NPDES) permit pursuant to Section 40(e)(1) of the Environmental Protection Act (Act) (415 ILCS 5/40(e)(1) (1998)). The permit was issued by the Illinois Environmental Protection Agency (Agency) on December 27, 2000, to the Black Beauty Coal Company (BBCC) to operate a new underground coal mine over 447.6 acres in Vermilion County, Illinois. The mine would be located approximately 2.5 miles south of Georgetown, Illinois, and one mile west of State Highway 1.

A third-party appeal of an NPDES permit is authorized by Section 40(e) of the Act. 415 ILCS 5/40(e) (1998). The Board's new procedural rules state that "[i]f the Agency grants or denies a permit under subsection (b) of Section 39 of the Act, a third party, other than the permit applicant or Agency, may petition the Board for a hearing to contest the decision of the Agency (citation omitted)" 35 Ill. Adm. Code 105.204(b).

The Board's new procedural rules also state that petitions for review of an NPDES permit decision must include "a demonstration that the petitioner raised the issues contained within the petition during the public notice period or during the public hearing of 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)]." 35 Ill. Adm. Code 105.210(d).

The petition states that petitioner raised various issues during both the public notice period and the public hearing for the NPDES permit in this matter. The petitioner outlines the alleged legal and scientific flaws in the draft permit and in the Agency's consideration of the draft permit, asserting that members of PRN raised these issues in both public comment and the public hearing on the draft permit on September 27, 2000.

The petition also recites that the petitioner, or more specifically members of PRN, are so situated as to be affected by the permitted facility. The petitioner states that:

Many of PRN's members live in the Little Vermilion River watershed and are concerned with pollution that would affect their ability to enjoy recreation activities dependent on the ecological health of the Little Vermilion River including fishing, boating, canoeing, nature study and hiking. Concerned citizen members of PRN may also be affected by the proposed mine through effects on the member's properties and way of life. Pet. at 1-2.¹

The petition also listed the names of 17 members of PRN who appeared at the hearing held in this proceeding and are allegedly situated in a manner as to be affected by the NPDES permit. Pet. at 2. The petitioner incorporated several pages of the transcript of the hearing, written comments, and the Public Hearing Responsiveness Survey for Vermilion Grove Mine, into the petition for review, which discuss the effect of the permitted activity of the mine on such citizens.

This matter is accepted for hearing. The hearing in this matter must be scheduled and completed in a timely manner, consistent with Board practices, and the applicable statutory decision deadline (set out in Section 40(a)(3) of the Act), or the decision deadline as extended by waiver.

As the Board noted in McHenry County Defenders, Inc. v. IEPA (August 6, 1998), PCB 98-173, slip op. at 4-5, the Board has construed the Act and Section 40(e) as giving the person who has requested the permit: (1) the right to a decision within the applicable statutory timeframe (now 120 days); and (2) the right to waive (extend) the decision period. The BBCC, as permit applicant, has the right to a decision within 120 days and is the only party with the right to waive the decision deadline. If the Board fails to act within the 120 days, the permit applicant, BBCC, can pursue an appellate court order as detailed in Section 40(b)(3) of the Act. 415 ILCS 5/40(b)(3) (1998).

The Board will assign a hearing officer to conduct hearings consistent with this order and the Clerk of the Board will promptly issue appropriate directions to that assigned hearing officer. The assigned hearing officer must inform the Clerk of the Board of the time and location of the hearing at least 40 days in advance of hearing so that a 30-day public notice of hearing may be published. After hearing, the hearing officer must submit an exhibit list, a statement regarding credibility of witnesses, and all actual exhibits to the Board within five days after the hearing.

Any briefing schedule must provide for final filings as expeditiously as possible. Absent any future waivers of the decision deadline, the statutory deadline is now May 30, 2001 (120 days from January 30, 2001). The Board meeting immediately preceding the decision deadline is scheduled for May 17, 2001.

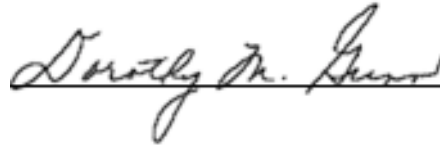
If, after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if, after an attempt the hearing officer is unable to consult with all of the parties, the hearing officer shall unilaterally set a hearing date. The hearing officer and the parties are

¹ The petitioner filed a petition for review with the Board on January 30, 2001, which will be referred to as "Pet. at ____."

encouraged to expedite this proceeding as much as possible. The Board notes that Board's new procedural rules (35 Ill. Adm. Code 105.116, 212) require the Agency to file the entire Agency record of the permit application within 30 days after the filing of the petition for review with the Board.

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 15th day of February 2001 by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written in black ink. The signature is positioned above a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board