

ILLINOIS POLLUTION CONTROL BOARD
September 5, 2002

DYNEGY MIDWEST GENERATION)
(BALDWIN POWER STATION),)
)
Petitioner,)
)
v.) PCB 03-27
) (Provisional Variance - Water)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by C.A. Manning):

On September 4, 2002, the Illinois Environmental Protection Agency (Agency) recommended that the Board grant a 45-day provisional variance to Dynegy Midwest Generation (Dynegy) with an effective date of September 2, 2002. The provisional variance from the daily maximum and monthly average total suspended solids (TSS) effluent limits in Dynegy's National Pollutant Discharge Elimination System (NPDES) permit would allow Dynegy to dredge the secondary cell of the plant's ash pond system. According to Dynegy, dredging the pond will restore settling capacity for compliance with TSS effluent limitations. Dynegy's coal-fired generating system is located near Baldwin in St. Clair and Randolph Counties. The Agency states that failure to grant the provisional variance would impose an arbitrary or unreasonable hardship on Dynegy.

Section 35(b) of the Environmental Protection Act (415 ILCS 5/35(b) (2000)) provides:

The Board shall grant provisional variances, only upon notification from the Agency that compliance on a short term basis with any rule or regulation, requirement or order of the Board, or with any permit requirement would impose an arbitrary or unreasonable hardship. Such provisional variances shall be issued within 2 working days of notification from the Agency. 415 ILCS 5/35(b) (2000); *see also* 35 Ill. Adm. Code 104.302.

A provisional variance lasts for no more than 45 days, but the Board can extend the time period up to an additional 45 days on the Agency's recommendation. Provisional variances granted to one person cannot exceed a total of 90 days during any calendar year. 415 ILCS 5/36(c) (2000); 35 Ill. Adm. Code 104.308.

The Board grants Dynegy a provisional variance from 35 Ill. Adm. Code 304.124(a) and its NPDES permit, subject to the following conditions:

- 1) The term of this provisional variance shall begin on September 2, 2002, and continue for a period of 45 days from September 2, 2002 or until completion of the construction, whichever occurs earlier.
- 2) During the provisional variance period, Dynegy shall meet a total suspended solids limit of 50 mg/L monthly average and a sampling frequency of once per week using a 24-hour composite.
- 3) Dynegy shall notify Barb Conner of the Agency by telephone at 217/782-9720 when dredging work on the secondary cell is completed. Also, Dynegy shall make written notification of the event within five days of the start of construction to the following address:

Illinois Environmental Protection Agency
Bureau of Water- Water Pollution Control
Compliance Assurance Section
Wastewater Compliance Assurance Unit
1021 N. Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
Attn.: Barb Conner

- 4) Monitoring results of all testing and dates shall be tabulated and submitted to the Agency for the provisional variance period. This information shall be sent to the address indicated above.
- 5) Dynegy shall also complete the maintenance related work on the secondary cell of the plant's ash pond system as expeditiously as possible. During the provisional variance period, Dynegy shall operate the facility in such a manner as to produce the best effluent practicable.
- 6) Dynegy shall continue to monitor and maintain compliance with all other parameters and conditions specified in NPDES permit number IL0000043.

IT IS SO ORDERED.

If Dynegy chooses to accept this provisional variance, it must execute a Certificate of Acceptance of all terms and conditions of this provisional variance and, within 10 days after the date of the above order, forward the executed certificate to Barb Conner at the Agency at the above address. The form of the certificate is as follows:

CERTIFICATE OF ACCEPTANCE

Dynegy accepts and agrees to be bound by all terms and conditions of the Pollution Control Board's September 5, 2002 order in PCB 03-27.

Petitioner

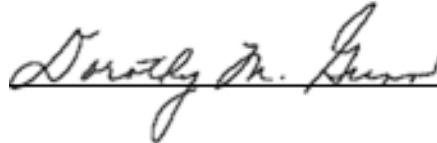
Authorized Agent

Title

Date

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2000); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 5, 2002, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board