

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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NOV 03 2005

THE CITY OF SPRINGFIELD,)
a municipal corporation,)
Petitioner,)
vi.)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

PCB 06-75 STATE OF ILLINOIS
(Permit Appeal - Air) Pollution Control Board

NOTICE OF FILING

To: Dorothy M. Gunn
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph
Suite 11-500
Chicago, IL 60601

Robert P. Messina
Chief Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Please take notice that on November 3, 2005, we filed with the Office of the Clerk of the Illinois Pollution Control Board, an original and 9 copies of the following: (1) **MOTION TO STAY EFFECTIVENESS OF CAAPP PERMIT**; (2) **APPEARANCE OF CYNTHIA A. FAUR AND** (3) **MOTION FOR LEAVE TO EXCEED THE PAGE LIMIT**, which are served upon you.

Respectfully submitted,

THE CITY OF SPRINGFIELD,
a municipal corporation

By Cynthia A. Faur
One of its attorneys

Dated: November 3, 2005

Cynthia A. Faur
Mary A. Gade
Elizabeth A. Leifel
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11961772

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Pollution Control Board

THE CITY OF SPRINGFIELD,)
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Petitioner,)
v.)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

PCB 06-15
(Permit Appeal – Air)

MOTION TO STAY EFFECTIVENESS OF CAAPP PERMIT

The City of Springfield owns and operates an electric generation and transmission company commonly known as City Water, Light & Power ("CWLP"). The City of Springfield, hereinafter referred to as CWLP, by its attorneys, Cynthia A. Faur, Mary A. Gade, Elizabeth A. Leifel, and Sonnenschein Nath & Rosenthal LLP, hereby petitions the Illinois Pollution Control Board (the "Board") to stay the effectiveness of CWLP's Clean Air Act Permit Program ("CAAPP") permit in this matter, pursuant to 415 ILCS 5/40.2, and in accordance with 35 Ill. Admin. Code § 105.304(b).

CWLP requests a stay of the effectiveness of its CAAPP permit. It recognizes, however, that the Board could find that such a stay is unnecessary because CWLP's CAAPP permit never became effective pursuant to § 10-65(b) of the Illinois Administrative Procedures Act (the "APA") and the holding in *Borg-Warner Corp. v. Mauzy*, 100 Ill. App. 3d 862, 427 N.E.2d 415 (3d Dist. 1981). Section 10-65(b) of the APA provides that when a permittee (referred to as a licensee in the APA) has made a timely and sufficient application for a permit renewal (or license renewal as it is referred to in the APA) or a new permit (or license) for an activity of a continuing nature, the permit (or license) shall continue in effect until the final agency decision has been made unless a later date is fixed by order of the reviewing court. 5 ILCS 100/10-65(b).

The Appellate Court in *Borg-Warner* held that a final decision for the purposes of § 10-65(b) of the APA would not occur until the Board were to rule on any appeal of an issued permit. *Borg-Warner Corp.* 100 Ill. App. 3d. at 870-871, 427 N.E. 2d. at 421. In this instance, CWLP submitted a timely and sufficient application to the Agency for a CAAPP permit. The purpose of the CAAPP permit is to take the place of CWLP's existing operating permits. Accordingly, the Board could find that pursuant to § 10-65(b) of the APA, CWLP's CAAPP permit never became effective and that a stay of effectiveness is not necessary.

In the alternative, if the Board determines that § 10-65(b) of the APA does not apply in this instance, CWLP states as follows in support of its Motion for Stay:

1. On September 29, 2005, the Illinois Environmental Protection Agency (the "Agency") issued a final CAAPP permit, Application No. 95090091, (the "Permit") to CWLP's Dallman and Lakeside Stations, located at 3100 Stevenson Drive, Springfield, Illinois.

2. Today, November 3, 2005, CWLP has filed a Petition for Hearing to Review Clean Air Act Permit Program Permit Issuance (the "Petition") in order to preserve its right to appeal in this matter.

3. In this Motion, CWLP requests that the Board stay the effectiveness of its CAAPP permit. Such a stay is appropriate based upon the standards articulated by the Board. Illinois law provides the following standards to be used in determining the appropriateness of a stay: (1) a certain ascertainable right needs protection; (2) irreparable injury will occur without the injunction; (3) no adequate remedy at law exists, and (4) there is a probability of success on the merits); *See Nielsen & Bainbridge, L.L.C. v. IEPA*, Docket No. 03-98 (Ill. Pollution Control Bd. Feb. 6, 2003); *see also Saint-Gobain Containers, Inc. v. IEPA*, Docket No. 04-47 (Ill. Pollution Control Bd. Nov. 6, 2003); *Noveon, Inc. v. IEPA*, Docket No. 04-102 (Ill. Pollution Control Bd. Jan. 22, 2004); and *Bridgestone/Firestone Off Road Tire Company v. IEPA*, Docket No. 02-31

(Ill. Pollution Control Bd. Nov. 1, 2001) (noting that it is not necessary for the Board to consider all four factors).

4. First, a stay of effectiveness of the Permit is necessary to protect CWLP's right to appeal and to prevent the imposition of contested permit conditions before CWLP is able to exercise its right to appeal and be heard by the Board.

5. Second, if the stay is not granted, CWLP will suffer irreparable harm. As discussed in the Petition, the Permit contains numerous conditions that are arbitrary and capricious, unduly burdensome, and not otherwise required by applicable law. To require CWLP to come into compliance with this Permit prior to resolution of the Petition would take a significant amount of time and would require substantial capital expenditures, placing an undue burden on CWLP, in the event that the contested permit conditions are overturned. Granting a stay of the Permit would alleviate this hardship.

6. Third, CWLP has no adequate remedy at law other than to appeal its Permit to the Board. Further, CWLP is likely to succeed on the merits of the Petition. As detailed in the Petition, the CAAPP permit, as issued, contains numerous conditions that do not represent "applicable requirements." Under Illinois law, the Agency has exceeded its authority with regard to certain conditions, and certain conditions are arbitrary and capricious.

7. A stay of this Permit would not result in any harm to the Illinois EPA, the public or the environment. CWLP would continue to operate in compliance with its existing operating permits while the Petition is pending.

8. A stay of the effectiveness of the entire CAAPP permit is appropriate in this instance because CWLP in its Petition has contested numerous subsections of 48 permit conditions. To the extent that the Board were to grant a CWLP a partial stay of the Permit based only on the contested conditions, it would create unnecessary confusion because CWLP would need to

comply with existing permit terms for certain items and the requirements of the CAAPP Permit for others.


9. The Board has stayed the effectiveness of other CAAPP permits in their entirety when requested. *See, Nielsen & Brainbridge, L.L.C. V. IEPA*, Docket No. 03-98 (Ill. Pollution Control Bd. Feb. 6, 2003); *Saint-Gobain Containers, Inc. v. IEPA*, Docket No. 04-47 (Ill. Pollution Control Bd. Nov. 6, 2003); *Midwest Generation, LLC - Collins Generating Station v. IEPA*, Docket No. 04-108 (Ill. Pollution Control Bd. Jan. 22, 2004); and *Board of Trustees of Eastern Illinois University v. IEPA*, Docket No. 04-110 (Ill. Pollution Control Bd. Feb. 5, 2004).

10. While a stay of effectiveness of CWLP's CAAPP permit is appropriate in this instance, should the Board determine that such a stay is not warranted, CWLP requests, in the alternative, that the Board grant a stay of the contested conditions of the Permit.

WHEREFORE, CWLP respectfully requests that the Board grant a stay of effectiveness of CWLP's CAAPP permit until the Board's final action in this matter.

Respectfully submitted,

THE CITY OF SPRINGFIELD,
a municipal corporation

By 
One of its Attorneys

Dated: November 3, 2005

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PCB 06-75
(Permit Appeal - Air)

APPEARANCE OF CYNTHIA A. FAUR

The undersigned, as one of its attorneys, hereby enters an Appearance on behalf of The City of Springfield.

Respectfully submitted,

THE CITY OF SPRINGFIELD,
a municipal corporation

By 
One of its Attorneys

Dated: November 3, 2005

Cynthia A. Faur
Mary A. Gade
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PCB 06-75
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MOTION FOR LEAVE TO EXCEED THE PAGE LIMIT

The City of Springfield owns and operates an electric generation and transmission utility commonly known as City Water, Light & Power ("CWLP"). The City of Springfield, hereinafter referred to as CWLP, by its attorneys, Cynthia A. Faur, Mary A. Gade, Elizabeth A. Leifel, and Sonnenschein Nath & Rosenthal LLP, hereby requests that the Illinois Pollution Control Board (the "Board") grant its Motion for Leave to Exceed the Page Limit ("Motion") for its Petition For Hearing To Review Clean Air Act Permit Program Permit Issuance. In support of this Motion, CWLP states as follows:

1. Section 101.302(k) of the Board's rules provides in relevant part that "[n]o motion, brief in support of motion or brief may exceed 50 pages." 35 Ill. Admin. Code § 101.302(k).

2. On November 3, 2005, CWLP filed, contemporaneous with this Motion, a Petition For Hearing To Review Clean Air Act Permit Program Permit Issuance ("Petition"). In this Petition, CWLP has objected to numerous subsections in 48 conditions in its Clean Air Act Permit Program ("CAAPP") permit, which itself was over 154 pages. This Petition is 70 pages.

3. While CWLP made every effort to meet the page limit specified in the Board's rules, in order for CWLP to fully satisfy the Board's requirements for appeals of CAAPP permits, CWLP's needs in excess of the 50 pages allowed by § 101.302(k). The requirements for CAAPP permit appeal are contained in 35 Ill. Admin. Code § 105.304(a). Pursuant to these rules, CWLP is required to provide the following information in its Petition for review of a CAAPP permit: (1) a concise description of the CAAPP source for which the permit is sought; (2) a statement of the Agency's decision or part thereof to be reviewed; (3) a justification as to why the Agency's decision or part thereof was in error; and (4) the other materials upon which the petitioner relies in its Petition. As CWLP stated above, it objected to 48 conditions in its CAAPP permit. To effectively set forth each condition appealed and state why each condition was in error, CWLP required additional pages.

4. In addition, CWLP has attached to its Petition a copy of the CAAPP permit which is the subject of the Petition, as well as other supporting documents upon which it relies in its Petition.

WHEREFORE, for the reasons set forth in this Motion, CWLP respectfully requests that the Board grant CWLP the authority file a Petition in excess of the 50 page limit set forth in 35 Ill. Admin. Code §101.302(k).

Respectfully submitted,

CITY OF SPRINGFIELD

By: 
One of its Attorneys

Dated: November 3, 2004

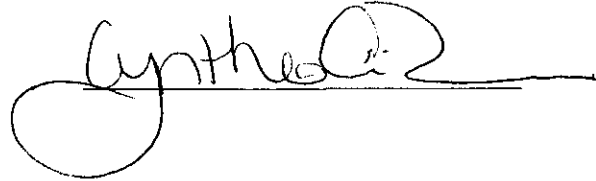
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CERTIFICATE OF SERVICE

The undersigned, an attorney, certify that I have served upon the individuals named on the attached Notice of Filing true and correct copies of the **(1) MOTION TO STAY EFFECTIVENESS OF CAAPP PERMIT; (2) APPEARANCE OF CYNTHIA A. FAUR AND (3) MOTION FOR LEAVE TO EXCEED THE PAGE LIMIT**, by Messenger and First Class Mail, postage prepaid on November 3, 2005.

A handwritten signature in black ink, appearing to read "Cynthia A. Faur", written over a horizontal line. The signature is stylized with a large loop at the beginning and a long horizontal stroke extending to the right.