

ILLINOIS POLLUTION CONTROL BOARD
November 17, 2005

KINCAID GENERATION, L.L.C.,)
)
 Petitioner,)
)
 v.) PCB 06-62
) (CAAPP Permit Appeal – Air)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by T.E. Johnson):

On November 3, 2005, Kincaid Generation, L.L.C. (Kincaid) timely filed a petition asking the Board to review a September 29, 2005 determination of the Illinois Environmental Protection Agency (Agency) to issue a Clean Air Act Permit Program (CAAPP) permit with conditions. *See* 415 ILCS 5/40.2(a) (2004); 35 Ill. Adm. Code 105.302(e). Kincaid is challenging the issue and effective date, as well as numerous conditions including those relating to records and reporting, retroactive compliance, boiler operating and testing, handling and processing, maintenance, and repair protocols. The CAAPP permit application concerns Kincaid’s electrical power generating station located four miles west of Kincaid on Route 104, Christian County.

Section 40.2(a) of the Illinois Environmental Protection Act (Act) (415 ILCS 5/40.2(a) (2004)) allows several persons to appeal Agency CAAPP permit determinations: permit applicants; persons who participated in the Agency’s public comment process under Section 39.5(8) of the Act (415 ILCS 5/39.5(8) (2004)); and persons who could obtain judicial review under Section 41(a) of the Act (415 ILCS 5/41(a) (2004)). 415 ILCS 5/40.2(a) (2004); *see also* 35 Ill. Adm. Code 105.302(c). Kincaid is the CAAPP permit applicant. Kincaid appeals the permit on numerous grounds. The Board accepts the petition for hearing.

Kincaid has the burden of proof. 415 ILCS 5/40.2(a) (2004); *see also* 35 Ill. Adm. Code 105.112(a). Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40.2(c) (2004)), which only Kincaid 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) (2004)].” 415 ILCS 5/40.2(c) (2004). Currently, the decision deadline is March 3, 2006 (the 120th day after Kincaid filed its petition). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for March 2, 2006.

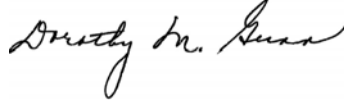
Unless the Board or the hearing officer orders otherwise, the Agency must file an answer, including the entire record of its determination within 30 days after it is served with the petition.

35 Ill. Adm. Code 105.302(f). 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. 35 Ill. Adm. Code 105.116. The record must comply with the content requirements of 35 Ill. Adm. Code 105.302(f).

Kincaid requested a stay of the permit and the appealed conditions. The Board will reserve ruling on that request to allow for a response from the Agency.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 17, 2005, by a vote of 4-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board