

ILLINOIS POLLUTION CONTROL BOARD

January 19, 2006

PRAIRIE RIVERS NETWORK and SIERRA CLUB,)	
)	
)	
Petitioners,)	
)	
v.)	PCB 06-124
)	(Third-Party NPDES Permit Appeal -
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY and PRAIRIE STATE GENERATING COMPANY, LLC,)	Water)
)	
)	
Respondents.)	
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AMERICAN BOTTOM CONSERVANCY and DALE WOJTKOWSKI,)	
)	
)	
Petitioners,)	
)	
v.)	PCB 06-127
)	(Third-Party NPDES Permit Appeal -
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY and PRARIE STATE GENERATING COMPANY, LLC,)	Water)
)	(Consolidated)
)	
)	
Respondents.)	

ORDER OF THE BOARD (by A.S. Moore):

On January 6, 2006, Prairie Rivers Network (Prairie Rivers) and Sierra Club filed a petition asking the Board to review a December 5, 2005 determination of the Illinois Environmental Protection Agency (Agency). The Agency granted a National Pollutant Discharge Elimination System (NPDES) permit to Prairie State Generating Company (Prairie State) for its coal-fired power plant located at Marigold Road and Highway 12 in Marissa, Washington County. On January 11, 2006, American Bottom Conservancy (ABC) and Dale Wojtkowski also filed a petition asking the Board to review the December 5, 2005 determination of the Agency to grant an NPDES permit to Prairie State. For the reasons set forth below, the Board accepts the petitions for hearing and on its own motion consolidates the two cases.

THIRD-PARTY APPEAL RIGHTS

Section 40(e)(1) of the Environmental Protection Act (Act) (415 ILCS 5/40(e)(1) (2004)) allows certain third parties to appeal Agency determinations to grant NPDES permits. The third party's petition to the Board must contain:

a demonstration that the petitioner raised the issues contained within the petition during the public notice period or during the public hearing on 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) (2004); *see also* 35 Ill. Adm. Code 105.210(d).

The petition also must, among other things, specify the grounds for appeal and include a copy of the issued permit. 35 Ill. Adm. Code 105.210(a), (c). The third party must file the petition within 35 days after the “date of issuance of the Agency’s decision.” 415 ILCS 5/40(e)(1) (2004); *see also* 35 Ill. Adm. Code 105.206(b). If the Board determines that the third party’s petition for review is not “duplicative or frivolous,” the Board will hear the petition. 415 ILCS 5/40(e)(3) (2004); *see also* 35 Ill. Adm. Code 105.214(d). An action before the Board is duplicative if it is “identical or substantially similar to one brought before the Board or another forum.” 35 Ill. Adm. Code 101.202. An action before the Board is frivolous if it is “a request for relief that the Board does not have the authority to grant” or “fails to state a cause of action upon which the Board can grant relief.” *Id.*

THE PETITIONS HERE

Prairie Rivers’ and Sierra Club’s petition in PCB 06-124 states that members of both organizations appeared at the Agency’s public hearing, submitted comments in opposition to the permit, or did both with regard to the issues on which it now appeals Prairie State’s NPDES permit. Specifically, Prairie Rivers and Sierra Club appeal on the grounds that the draft permit (1) allowed discharges of harmful chlorinated organics that will impair existing and designated uses of the Kaskaskia River and lead to concentrations of contaminants hazardous to human health; (2) allowed stormwater discharges before a stormwater pollution prevention plan (SWPPP) is prepared; (3) did not contain necessary effluent limitations for the proposed discharge of stormwater pursuant to an SWPPP; and, (4) in setting effluent limits, relied on assumptions that failed to consider withdrawals from the Kaskaskia River. Prairie Rivers’ and Sierra Club’s petition states that members of the two organizations are so situated as to be affected by the permitted facility and includes a copy of the issued permit.

ABC’s and Wojtkowski’s petition in PCB 06-127 states that ABC members and Wojtkowski testified at the Agency’s public hearing and submitted oral and written comments with regard to the issues on which it now appeals Prairie State’s NPDES permit. Specifically, ABC and Wojtkowski claim that the draft permit (1) allowed discharges of harmful chlorinated organics that will impair existing and designated uses of the Kaskaskia River and fails adequately to monitor those chemicals; (2) allowed stormwater discharges before an SWPPP is prepared; (3) did not contain necessary effluent limitations for the proposed discharge of stormwater pursuant to an SWPPP; and (4) did not consider cumulative impacts on water quality from the entire project. ABC’s and Wojtkowski’s petition states that they are so situated as to be affected by the permitted facility and includes a copy of the issued permit.

The Board finds that both petitions were timely filed and satisfy the content requirements of 35 Ill. Adm. Code 105.210. No evidence before the Board indicates that either action is duplicative or frivolous. The Board accepts Prairie Rivers' and Sierra Club's petition for hearing in PCB 06-124 and accepts ABC's and Wojtkowski's petition for hearing in PCB 06-127.

In addition, the Board finds that "consolidation is in the interest of convenient, expeditious, and complete determination" of these claims. 35 Ill. Adm. Code 101.406. The Board accordingly consolidates these two proceedings for hearing on its own motion, as has been its practice in similar situations involving multiple appeals of the same permit. *See, e.g., Village of Lake Barrington, Cuba Township, Prairie Rivers Network, Sierra Club, Beth Wentzel and Cynthia Skrukrud v. IEPA and Village of Wauconda; Slocum Lake Drainage District of Lake County, Illinois v. IEPA and Village of Wauconda; Al Phillips, et al. v. IEPA and Village of Wauconda*, PCB 05-55, 58, 59, slip op. at 3 (Oct. 7, 2004) (third-party NPDES permit appeal).

HEARING AND DECISION DEADLINE

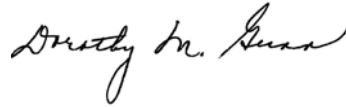
Petitioners Prairie Rivers and Sierra Club and ABC and Wojtkowski have the burden of proof. 415 ILCS 5/40(e)(3) (2004); *see also* 35 Ill. Adm. Code 105.112(a). Hearings "will be based exclusively on the record before the Agency at the time the permit or decision was issued." 35 Ill. Adm. Code 105.214(a); *see also* 415 ILCS 5/40(e)(3) (2004). Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline. *See* 415 ILCS 5/40(a)(3) (2004). Only Prairie State as the permit applicant may extend the decision deadline by waiver. *See* 35 Ill. Adm. Code 101.308. If the Board fails to take final action by the decision deadline, Prairie State "shall be entitled to an Appellate Court order pursuant to subsection (d) of Section 41 [415 ILCS 5/41(d) (2004)]." 415 ILCS 5/40(a)(3) (2004). Currently, the decision deadline is May 6, 2006, the 120th day after January 6, 2006, which is the filing date of the earlier petition in PCB 06-124. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for Thursday, May 4, 2006.

AGENCY RECORD

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination within 30 days after Prairie Rivers and Sierra Club filed the petition. 35 Ill. Adm. Code 105.212(a). 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 105.212(b).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 19, 2006, by a vote of 4-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board