

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

HOLLAND ENERGY, LLC)	
)	
Petitioner,)	
)	
v.)	
)	PCB 11-85
ILLINOIS ENVIRONMENTAL)	(NPDES Permit Appeal – Water)
PROTECTION AGENCY,)	
)	
Respondent.)	
)	

NOTICE OF ELECTRONIC FILING

TO:

John Therriault, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, Petitioner's **NOTICE OF ELECTRONIC FILING, MOTION FOR CLARIFICATION** and **CERTIFICATE OF SERVICE**, copies of which are attached herewith served upon you.

Respectfully submitted,

ICE MILLER, LLP

Date: June 20, 2011

By: /s/ Susan Charles
One of its Attorneys

Susan Charles
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Susan.Charles@IceMiller.com

CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 20th day of June, 2011, I have served electronically the attached NOTICE OF ELECTRONIC FILING, and MOTION FOR CLARIFICATION upon the following person:

John Therriault, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

and by U.S. Mail, first class postage prepaid, to the following persons:

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274

Ms. Jane E. McBride
Office of the Attorney General
500 South Second Street
Springfield, IL 62706

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield IL 62794-9276

 /s/ Susan Charles

Susan Charles

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PETITIONER'S MOTION FOR CLARIFICATION

Petitioner, Holland Energy, LLC ("Petitioner"), pursuant to 35 Ill. Adm. Code § 101.500, hereby requests that the Illinois Pollution Control Board ("Board") clarify its June 16, 2011 Order granting Petitioner's request to stay the effectiveness of National Pollutant Discharge Elimination System ("NPDES") Permit No. IL0074268 issued by the Illinois Environmental Protection Agency ("Agency") on April 18, 2011. Petitioner seeks clarification that the June 16, 2011 Order applies to stay the entire NPDES permit and not just Special Condition 13 and Special Condition 14, which are the subject of Petitioner's above-captioned appeal. In support of this motion Petitioner states the following:

1. On July 21, 2000, the Agency issued NPDES Permit No. IL0074268 to Petitioner ("Prior NPDES Permit"). *See* Petition for Review of Agency NPDES Permit Decision and Motion to Confirm Automatic Stay of NPDES Permit ("Petition for Review"), at Exhibit 2. The Prior NPDES Permit has an effective date of July 21, 2000 and an expiration date of June 30, 2005. *Id.* Petitioner timely filed an application to renew the Prior NPDES Permit on December 29, 2004. *Id.* at ¶ 5.

2. On April 18, 2011, the Agency reissued NPDES Permit No. IL0074268 ("Reissued Permit") to Petitioner. Petitioner's Petition for Review timely requested that the Board review Special Condition 13 and Special Condition 14 of the Reissued Permit and, pursuant to Section 10-65(b) of the Illinois Administrative Procedures Act, 5 ILCS 100/1-1 *et seq.*, stay the effectiveness of the Reissued Permit pending resolution of Petitioner's appeal by the Board. *See* Petition for Review at ¶ 5 and ¶¶ 20 - 21.

3. On June 16, 2011 the Board issued an order ("June 16 Order") stating that it "grants Holland Energy's motion to stay until the Board takes final action on the permit appeal or orders otherwise." *See* June 16 Order (attached as Exhibit 1) at p. 1.

4. The June 16, 2011 Order further states that the Board "grants the requested stay, and Special Conditions 13 and 14 are stayed as requested by Holland Energy." *Id.* at p. 2.

5. Petitioner is filing this motion to clarify that the June 16, 2011 Order (a) stays the effectiveness of the entire Reissued Permit and (b) all of the terms and conditions of the Prior NPDES Permit continue in full force and effect until Petitioner's Petition for Review is resolved or the Board orders otherwise.

WHEREFORE, for the reasons set forth above, Petitioner Holland Energy, LLC, requests that the Board clarify its June 16, 2011 Order in this matter and confirm that the June 16, 2011 Order stays the effectiveness of all of the terms and conditions of the Reissued Permit and that all of the terms and conditions of the Prior NPDES Permit continue in full force and effect until the Board takes final action on the Petition for Review or orders otherwise.

Respectfully submitted,

HOLLAND ENERGY, LLC

By:

/s/ Susan Charles
One of its Attorneys

Dated: June 20, 2011

ICE MILLER LLP

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ILLINOIS POLLUTION CONTROL BOARD

June 16, 2011

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ORDER OF THE BOARD (by G.T. Girard):

On May 18, 2011, Holland Energy, LLC (Holland Energy), timely filed a petition (Pet.) asking the Board to review the April 18, 2011 determination including Special Conditions 13 and 14 of a National Pollutant Discharge Elimination System (NDPES) permit issued by the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2010); 35 Ill. Adm. Code 105.200. The Agency's determination concerns Permit Number IL0074268 for Holland Energy's electric generating station located at Section 16, Township 9 North, Range 4 East, Beecher City, Shelby County. Holland Energy appeals on the grounds that Special Conditions 13 and 14 of the permit are "internally inconsistent, impossible to comply with and, therefore, arbitrary, capricious, an abuse of discretion and otherwise not in accordance with law." Pet. at 4, 8. Holland Energy challenges the inclusion of Special Conditions 13 and 14 and asks the Board to stay their effect until ultimately ruling on the merits. *Id.* at 9-11. On June 2, 2011, the Board accepted the permit appeal for hearing, but reserved ruling on the motion to stay. This order grants Holland Energy's motion to stay until the Board takes final action on the permit appeal or orders otherwise.

Section 101.500(d) of the Board's procedural rules provides that, "[w]ithin 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of the motion." 35 Ill. Adm. Code 101.500(d). The Agency has filed no response to Holland Energy's request for a stay.

In Community Landfill Co. and City of Morris v. IEPA, PCB 01-48, 01-49, slip op. at 4 (Oct. 19, 2000), the Board found "that it has the authority to grant discretionary stays from permit conditions." The Board noted that it "has previously granted or denied discretionary stays in permit appeals, both when the Agency did and did not consent to such stays." *Id.* (citations omitted). The Board elaborated that "[the] permit appeal system would be rendered meaningless in many cases, if the Board did not have the authority to stay permit conditions." *Id.*

The Board grants the requested stay, and Special Conditions 13 and 14 are stayed as requested by Holland Energy. The stay remains in effect until the Board takes final action on the permit appeal or until the Board orders otherwise.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 16, 2011, by a vote of 5-0

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John Therriault, Assistant Clerk
Illinois Pollution Control Board