

ILLINOIS POLLUTION CONTROL BOARD
September 8, 2011

BENEFICIAL REUSE MANAGEMENT, LLC)
AND SOUTHERN ILLINOIS POWER)
COOPERATIVE,)
)
Petitioners,)
)
v.) PCB 12-23
) (Permit Appeal - Water)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

On July 28, 2011, Beneficial Reuse Management, LLC (BRM), and Southern Illinois Power Cooperative (SIPC) (collectively, petitioners) timely filed a petition (Pet.) asking the Board to review a June 23, 2011 permit determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2010); 35 Ill. Adm. Code 101.300(b), 105.206. The determination concerns SIPC's coal-fired electric generating station located at 11543 Lake of Egypt Road, Marion, Williamson County. Additionally, on July 28, 2011, petitioners filed a motion for stay the effectiveness of the contested permit conditions. Pet. at 10. The petitioners argue that they are not obligated to obtain a Water Pollution Control Permit for the land application of flue gas desulphurization (FGD) gypsum. *Id.* at 3-5. Petitioners also contest the Agency's failure to list BRM as a co-permittee on the permit and the issuance of the permit itself. *Id.* at 5-9. The petitioners, therefore, request the Board to "stay Special Conditions 1.A.3, 1.C, 1.D, 1.E, 2, 3, and 4 during the pendency of this appeal." *Id.* at 9. In the August 4, 2011 order, the Board accepted the permit appeal for hearing, but reserved ruling on the motion for stay. For the reasons below, the Board now grants the motion for stay.

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 the petitioners' 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 petitioners' requested stay for Special Conditions 1.A.3, 1.C, 1.D, 1.E, 2, 3, and 4 of the Water Pollution Control Permit. 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 September 8, 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 flourish extending to the right.

John Therriault, Assistant Clerk
Illinois Pollution Control Board