

ILLINOIS POLLUTION CONTROL BOARD
May 16, 2013

THE CITY OF SPRINGFIELD, a municipal)
corporation,)
)
Petitioner,)
)
v.) PCB 06-75
) (CAAPP Permit Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by J.A. Burke):

On May 3, 2013, the City of Springfield (City) and the Illinois Environmental Protection Agency (Agency) filed an amended joint motion to lift the stay of uncontested Clean Air Act Permit Program (CAAPP) permit conditions and request for remand to the Agency to revise the permit's term of duration (Motion). For the reasons discussed below, the Board grants the parties' motion.

PROCEDURAL BACKGROUND

On November 3, 2005, the City timely filed a petition for review asking the Board to review a September 29, 2005 determination of the Agency to issue a CAAPP permit with conditions. The City is challenging numerous conditions, including conditions relating to reporting and recordkeeping, as well as the issuance and effective date of the permit, and the inadequacy of the statement of basis for the permit conditions. The CAAPP permit application concerns the City's Dallman and Lakeside generating stations, as well as a water purification plant, all located at 3100 Stevenson Drive, Springfield, Sangamon County.

On February 16, 2006, the Board found that the Administrative Procedure Act (APA) automatic stay provision¹ applied to this case, consistent with long-standing case law under the Environmental Protection Act (Act): Borg-Warner Corp. v. Mauzy, 100 Ill. App. 3d 862, 427 N.E. 2d 415 (3rd Dist. 1981). The Board stated that "Section 10-65(b) of the APA in effect issues a stay by operation of law, so that it is unnecessary for the Board to reach the issue of whether to exercise discretion to enter a stay in a particular case." City of Springfield v. IEPA, PCB 06-75, slip op. at 9 (Feb. 16, 2006).

On November 26, 2012, the parties filed a joint motion to lift the stay on uncontested permit conditions and request for remand to the Agency to revise the permit's term of duration. On December 5, 2012, the parties filed an emergency joint motion to hold the November 26,

¹ See generally 5 ILCS 100/1-5, 1-35, 1-40, 10-65 (2010).

2012 joint motion as it appeared on the Board's December 6, 2012 meeting agenda and to withdraw the motion from further consideration. On December 20, 2012, the Board deemed the parties' motion to hold the matter at its December 6, 2012 Board meeting as moot and granted the parties' motion to withdraw the November 26, 2012 joint motion.

On May 3, 2013, the parties filed their amended joint motion.

AMENDED JOINT MOTION

The parties state that, while they have reached substantial agreement as to all contested conditions, the conditions require differing procedures in order to revise the CAAPP permit and resolve this appeal. Mot. at 2. The Agency has "developed a multi-step process for incorporating all agreed conditions into the permit." *Id.* The parties therefore request that the Board lift the stay as to the uncontested permit conditions and remand the permit back to the Agency in order to implement this approach. *Id.* The Agency intends to

establish a new effective date and an expiration date reflecting the five-year tenure of the permit, thereby establishing a valid and effective Title V permit for [the City] (with some conditions yet stayed). *Id.*

The parties note that the Board took similar action to what is requested here in Ameren Energy Generating Company, Coffeen Power Station v. IEPA, PCB 06-64 (Sept. 20, 2012). Mot. at 2. The Agency also commits to noticing for public comment the negotiated permit conditions that potentially constitute "significant modifications" and to submit the negotiated permit conditions that constitute "minor modifications" to the United States Environmental Protection Agency for review. *Id.* at 2-3.

The parties expect the various permitting revisions to be issued and the permit amended with the negotiated conditions following the completion of the minor and significant modifications. Mot. at 3. The City "will request appropriate Board action to bring this matter to resolution" once the agreed permit is in final form. *Id.*

DISCUSSION

The parties jointly request that the Board lift the pending stay on the uncontested conditions and the subject permit and remand the permit to the Agency for revision of dates signifying term of duration, while maintaining the stay of the contested conditions and the Board's jurisdiction over them.

Lifting the Stay

On February 16, 2006, the Board found that the automatic stay provisions of Section 10-65(b) of the APA (5 ILCS 100/10-65 (2010)) applied to this appeal. *See City of Springfield*, PCB 06-75, slip op. at 9 (Feb. 16, 2006). Subsequently, on June 21, 2010, Section 40.2(f) of the Act was added by P.A. 96-934 (415 ILCS 5/40.2(f)). Section 40.2(f) of the Act specifically provides that "subsection (b) of Section 10-65 of the Illinois Administrative Procedure Act shall

not apply to actions” taken under the CAAPP provisions at Section 39.5 of the Act (415 ILCS 5/39.5 (2010)). 415 ILCS 5/40.2(f). Section 40.2(f) of the Act requires the Board to stay the contested conditions upon the request of the applicant, and allows the Board to stay the effectiveness of “any or all uncontested conditions.” *Id.* Therefore, as requested by the parties, the Board will lift the stay of the uncontested conditions, while continuing to stay the contested conditions. The contested conditions are set forth in the petition for review filed on November 3, 2005.

Remand of Permit

The parties ask that the permit be remanded to the Agency while the Board retains jurisdiction. The Board took similar action in Ameren, PCB 06-64 (Sept. 20, 2012). In Ameren, the Board stated

the Board has reviewed Section 39.5 and 40.2 of the Act (415 ILCS 5/39.5 and 40.2 (2010)). Sections 39.5 (13) and (14) of the Act (415 ILCS 5/39.5 (13) and (14) (2010)) allow for CAAPP permit modification by the Agency, upon submittal of an application by the source. Such modifications may be “administrative amendments”, “minor” or “significant” modifications and the Act sets forth specific procedures for the Agency to follow when modifying a CAAPP permit. *Id.* Thus, the Agency is given specific statutory authority to modify its decision on a CAAPP permit.


Section 40.2(a) of the Act (415 ILCS 5/40.2(a) (2010)) allows for review of an Agency decision on a CAAPP permit. Therefore, the Agency’s decision on “minor” or “significant” modifications to a CAAPP permit is appealable to the Board. *Id.* The Board is convinced that because the Agency’s decision on a permit modification can be appealed to the Board, retaining jurisdiction is appropriate in this case. The Board’s remanding of the permit while retaining jurisdiction will allow the parties to proceed with the permit modifications, but will also protect the appeal rights of the parties in this proceeding. In addition, if there continues to be disagreement on contested conditions, a remand will promote a more efficient record and hearing before the Board. Ameren, PCB 06-64, slip op. at 3-4 (Sept. 20, 2012).

The Board grants the parties’ amended joint motion to lift the stay of uncontested CAAPP permit conditions and request for remand to the Agency to revise the permit’s term of duration, while maintaining the stay of the contested conditions and the Board’s jurisdiction over them.

Section 40.2 of the Act provides for appeals by persons who have standing other than the applicant. 415 ILCS 5/40.2 (2010). Even though the Board retains jurisdiction of this matter, if other persons have standing and wish to appeal, those appeals, if appropriate, will be accepted and docketed under a different case number.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above interim opinion and order on May 16, 2013, 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 T. Therriault, Assistant Clerk
Illinois Pollution Control Board