

ILLINOIS POLLUTION CONTROL BOARD
May 19, 2016

IN THE MATTER OF:)
)
COAL COMBUSTION WASTE (CCW) AND) R14-10
SURFACE IMPOUNDMENTS AT POWER) (Rulemaking - Water)
GENERATING STATIONS: PROPOSED)
NEW 35 ILL. ADM. CODE 841)

ORDER OF THE BOARD (by J.D. O’Leary)¹:

On March 17, 2016, the Board granted an unopposed motion by the Illinois Environmental Protection Agency (Agency) to extend a stay of this proceeding for 90 days to June 15, 2016. The Board directed the Agency to file a status report addressing specified matters at the conclusion of the extended stay. The Illinois Environmental Regulatory Group (IERG) now requests that the Board extend the stay for 30 days for comments and resolution of differences among the participants. IERG reports that the request is not opposed by other participants. The Board extends the stay to July 15, 2016.

Filed May 16, 2016, IERG’s motion states that the Agency has “identified seven differences between the federal rule and its most recent proposed regulations.” Mot. at 2. The motion reports that the Agency is working with stakeholders to revise its proposal. *Id.* The Agency has requested stakeholder comments “on the new approach” by Friday, May 20, 2016, so that it can prepare its status report to the Board by the deadline of June 15, 2016. *Id.*

IERG states that “[m]ore time is needed for the participants to provide comment on the new approach.” Mot. at 2. IERG argues that the requested extension will allow the Agency and participants to resolve differences and “avoid any unnecessary proceedings.” *Id.* IERG reports that counsel for the Agency, the Illinois Attorney General’s Office, and the environmental groups “have indicated that they do not object to an extension to the stay.” *Id.* IERG “respectfully requests” that the Board consider this motion at its scheduled meeting on May 19, 2016. *Id.*

Motions to stay must include sufficient information describing why a stay is needed and must report on the progress of the proceeding. 35 Ill. Adm. Code 101.514(a). The decision to grant or deny a motion for stay is “vested in the sound discretion of the Board.” *See People v. State Oil Co., et al.*, PCB 97-103, slip op. at 2 (May 15, 2003), *aff’d sub nom. State Oil Co. v. PCB*, 822 N.E.2d 876, 291 Ill. Dec. 1 (2nd Dist. 2004).

Although the Board’s procedural rules generally allow 14 days to respond to a motion, the Board may grant a motion before the 14-day period expires if undue delay would result. 35

¹ Chad Kruse, who worked for the Illinois Environmental Protection Agency prior to joining the Board as an attorney assistant on March 19, 2013, took no part in the Board’s drafting or deliberation of any order or issue in this matter.

Ill. Adm. Code 101.500(d). IERG reports that the Agency requests comments from participants on a new approach to its proposed rules by Friday, May 20, 2016. IERG suggests that, if the Board does not decide this motion at its May 19, 2016 meeting, then that deadline will require participants to file incomplete comments. IERG further suggests that these incomplete comments would impede “the constructive dialogue the Agency engaged in during the stay” and may not provide the Agency information that would address the issues listed by the Board in its March 17, 2016 order. IERG argues that, if the Board considered the motion at the following regularly-scheduled meeting on June 2, 2016, the issue would be moot. IERG also stresses that the other participants in this proceeding do not object to the motion. The Board finds that allowing the 14-day response deadline to expire under these circumstances would result in undue delay and proceeds to decide the Agency’s motion.

In deciding this motion, the Board places particular stress on four factors. First, the Agency’s March 4, 2016 motion for an extended stay committed to communicate with participants and determine the most effective course in this proceeding. IERG’s motion indicates that this communication is taking place and that this process is underway. Second, the Board notes that IERG has requested a limited extension of 30 days in order for participants to comment on the Agency’s new approach. Third, IERG’s motion reports that other participants including the Agency, the environmental groups, and the Illinois Attorney General’s Office are aware of the request for an extension and do not object to it. Finally, as the Board noted in its March 17, 2016 order, the federal rule differs from the Agency’s most recent proposal, but it has taken effect and protects groundwater that may be impacted by CCW surface impoundments.

In its March 17, 2016 order, the Board noted that “the federal rules and the proposed state rules are similar but not identical. If the federal rule does not address sites or issues, an extended stay would mean that those sites and issues would also not be addressed in a state rule.” The Board considers these sites and issues significant. The Board also recognizes that the requested 30-day extension may allow participants to resolve their differences and allow the Board to consider those matters more efficiently. Accordingly, the Board grants IERG’s motion and extends the stay for 30 days to Friday, July 15, 2016. During the 30-day extension, the Board anticipates that participants will continue to address the issues identified by the Board in its March 17, 2016 order. At the conclusion of the extended stay on Friday, July 15, 2016, the Board directs the Agency to file a status report addressing in detail matters including the following:

the current status of litigation and legislation addressing the federal rule;

the general outcome of communication with participants, particularly during the 30-day extension;

the status of the preparation of any revised proposal and any anticipated date of submitting it to the Board; and

the Agency’s recommendation on how the Board should proceed in this docket.

Having granted the IERG's unopposed motion, the Board continues to reserve ruling on the environmental groups' September 15, 2015 motion to re-open.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 19, 2016, 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 at the end.

John T. Therriault, Clerk
Illinois Pollution Control Board