

ILLINOIS POLLUTION CONTROL BOARD
June 16, 2016

SIERRA CLUB, NATURAL RESOURCES)	
DEFENSE COUNCIL, PRARIE RIVERS)	
NETWORK, and ENVIRONMENTAL LAW)	
& POLICY CENTER,)	
)	
Petitioners,)	
)	
v.)	PCB 15-189
)	(Third-Party NPDES Permit Appeal –
ILLINOIS ENVIRONMENTAL)	Water)
PROTECTION AGENCY and MIDWEST)	
GENERATION, LLC,)	
)	
Respondents.)	

OPINION AND ORDER OF THE BOARD (by G.M. Keenan):

The Sierra Club, Natural Resources Defense Council, Prairie Rivers Network, and Environmental Law & Policy Center (collectively, “Environmental Groups”) petitioned the Board on April 29, 2015. Their petition requested that the Board review the Waukegan Generating Station’s water permit which the Illinois Environmental Protection Agency issued under the National Pollutant Discharge Elimination System (“NPDES”) program. Midwest Generation, LLC (“Midwest Gen”), a co-respondent, owns the Waukegan Generating Station, a coal-fired power plant in Waukegan, Lake County.

After the Agency submitted the administrative record for its permitting decision, all parties moved for summary judgment. In an April 7, 2016 order, the Board granted each motion in part and denied each motion in part.¹ The Board did not render complete summary judgment because it could not resolve certain questions of law due to genuine issues of material fact in the administrative record.² The Board decided three specific legal issues that did not rely on material facts at issue. The Board left other legal issues unresolved, pending a hearing on facts at issue.

The Environmental Groups filed a motion for clarification (Mot.) on May 9, 2016. They requested the Board rule on two legal questions that the April Order did not resolve. Midwest Gen and the Agency both responded (MWG Resp., IEPA Resp.) on May 23, 2016. They argued that the Environmental Groups’ motion should be evaluated as a motion for reconsideration, and

¹ Board Order, Sierra Club v. IEPA, PCB 15-189 (Apr. 7, 2016) (April Order).

² *Id.* at 2, *citing* Prairie Rivers Network v. IPCB, 2016 IL App. (1st) 150971 at ¶ 24 (Feb. 26, 2016). (Cross-motions for summary judgment do “not establish that there is no genuine issue of material fact, nor does it obligate the Board to render summary judgment.”)

that the motion should be denied.³ The Board agrees with the respondents: the Environmental Groups' motion is functionally a motion for reconsideration and, because it did not identify a recognized ground for reconsideration, it will be denied.

**THE ENVIRONMENTAL GROUPS' MOTION
IS FUNCTIONALLY A MOTION FOR RECONSIDERATION**

Parties may validly move that the Board clarify a previous order. The Board's procedural rules allow parties to file any motion "permissible under the [Environmental Protection] Act or other applicable law, these rules, or the Illinois Code of Civil Procedure." 35 Ill. Adm. Code 101.500(a) (2015). The Board's rules and the Illinois Code of Civil Procedure do not explicitly allow a motion for clarification. However, decisions in Illinois courts and before the Board (*i.e.*, other applicable law) have recognized motions for clarification.⁴ Therefore, the Environmental Groups' motion is facially permissible.

Though the Environmental Groups style their motion as a request for clarification, in substance, it seeks to alter the April Order. The Environmental Groups seek a ruling from the Board on two legal issues that the April Order did not directly address. Mot. at 4. They do not request that the Board clarify reasoning for its rulings. Instead, the motion requests that the Board make additional rulings. For this reason, the motion does not seek clarification; it is functionally a motion to reconsider the Board's decision to rule only on limited legal issues.

**THE ENVIRONMENTAL GROUPS DID NOT PROVIDE
A RECOGNIZED GROUND FOR RECONSIDERATION**

The Board's procedural rules require it to consider certain factors on a motion for reconsideration. These factors include "new evidence, or a change in the law, to conclude that the Board's decision was in error." 35 Ill. Adm. Code 101.902 (2015). In addition, the Board will reconsider a decision that erred in applying existing law.⁵ The Environmental Groups did not show that any of these factors exist, so the Board will not reconsider its April Order.

The Environmental Groups do not argue that any new facts or changed laws have arisen since April, so those grounds clearly do not support reconsideration. Nor do the Environmental Groups directly argue that the Board erred in applying existing law when it chose to rule on certain legal questions, but not others, in its April Order.

The Environmental Groups raise concerns with the April Order, but do not argue that the Board misapplied existing law. The Environmental Groups argue that the Board must either decide the outstanding legal issues or identify issues of fact that preclude deciding them. Mot. at

³ MWG Resp. at 8, IEPA Resp. at 3-4.

⁴ *E.g.*, People v. Poland, PCB 98-148 (Jan. 24, 2002); Giammanco v. Giammanco, 253 Ill. App. 3d 750 (2d Dist. 1993).

⁵ Chatham BP v. IEPA, PCB 15-173, slip op. at 2 (Nov. 5, 2015), *citing* Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622 (1st Dist. 1991).

3. They also argue that proceeding to hearing before deciding those legal issues is premature. Mot. at 4. However, the Environmental Groups do not argue that the Board's decisions in its April Order misapplied any existing law which would require the Board to address its concerns.

The Environmental Groups did not provide a recognized ground under the Board's procedural rules for the Board to reconsider its April Order. Therefore its motion is denied.

ORDER

The Environmental Groups' motion for clarification is denied. The Board orders the parties to proceed in the manner provided by its April 7, 2016 order.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on June 16, 2016, by a vote of 5-0.



John T. Therriault, Clerk
Illinois Pollution Control Board