

ILLINOIS POLLUTION CONTROL BOARD
November 17, 2011

CENTERPOINT ENERGY – MISSISSIPPI)
RIVER TRANSMISSION, LLC,)
)
Petitioner,)
)
v.) PCB 12-14
) (Permit Appeal – CAAPP)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

On October 20, 2011, the Board accepted for hearing a petition submitted by Centerpoint Energy – Mississippi River Transmission, LLC (CenterPoint), for review of a June 11, 2011 determination by the Illinois Environmental Protection Agency (Agency). The determination involved issuing CenterPoint a revised Clean Air Act Permit Program (CAAPP) permit to operate a natural gas compressor station located along Summerfield Road in St. Jacob, Madison County. CenterPoint’s petition for review was accompanied by a motion seeking to stay the effectiveness of the contested permit conditions or, alternatively, to confirm an automatic stay of the effectiveness of the permit. The Board reserved ruling on the motion to give the Agency time to respond. As of the date of this order, no Agency response has been filed. For the reasons stated below, the Board grants CenterPoint’s motion to stay the effectiveness of the CAAPP permit.

CAAPP permits are issued under Section 39.5 of the Illinois Environmental Protection Act (Act). See 415 ILCS 5/39.5 (2010). Prior to the addition of subsection (f) to Section 40.2 of the Act, the Board applied the automatic stay provisions of the Illinois Administrative Procedure Act (APA) to CAAPP permits. See 5 ILCS 100/10-65(b) (2008); United States Steel Corp. v. IEPA, PCB 10-23 (Nov. 19, 2009); Dynegy Midwest Generation, Inc. (Havana Power Station) v. IEPA, PCB 06-71 (Feb. 16, 2006).

Section 40.2(f) became law on June 21, 2010 and states as follows:

If requested by the applicant, the Board may stay the effectiveness of *any final Agency action identified in subsection (a) of this Section* during the pendency of the review process. If requested by the applicant, the Board shall stay the effectiveness of all the contested conditions of a CAAPP permit. The Board may stay the effectiveness of any or all uncontested conditions if the Board determines that the uncontested conditions would be affected by its review of contested conditions. If the Board stays any, but not all, conditions, then the applicant shall continue to operate in accordance with any related terms and conditions of any

other applicable permits until final Board action in the review process. If the Board stays all conditions, then the applicant shall continue to operate in accordance with all related terms and conditions of any other applicable permits until final Board action in the review process. Any stays granted by the Board shall be deemed effective upon the date of final Agency action appealed by the applicant under this subsection (f). *Subsection (b) of Section 10-65 of the Illinois Administrative Procedure Act shall not apply to actions under this subsection.* 415 ILCS 5/40.2(f), added by P.A. 96-934, eff. June 21, 2010 (emphasis added).

The last sentence of subsection (f) effectively replaced the APA's automatic stay with the application-for-stay language for instances of "final Agency action." Those are identified in Subsection (a) as instances when "the Agency refuses to grant or grants with conditions a CAAPP permit, makes a determination of incompleteness regarding a submitted CAAPP application, or fails to act on an application for a CAAPP permit, permit renewal, or permit revision within the time specified in paragraph 5(j) of Section 39.5 of this Act. . . ." 415 ILCS 5/40.2(a) (2010).

Here, the Agency granted CenterPoint a CAAPP permit with conditions, which constitutes "final Agency action" under Section 40.2(a) and is therefore excluded from automatic stay under the APA by the language of Section 40.2(f). *See KCBX Terminals Company v. IEPA*, PCB-10-110, 10-43 (cons.) (Apr. 21, 2011).

The Agency did not file a response to CenterPoint's motion to stay effectiveness and has thus waived objection to the granting of the stay. *See* 35 Ill. Adm. Code 101.500(d). The Board has discretionary authority to grant a stay of effectiveness of permit conditions "both when the Agency did and did not consent to such stays." *Holland Energy, LLC v. IEPA*, PCB 11-85 (July 7, 2011), *quoting* *Community Landfill Company v. IEPA*, PCB 01-48 (Oct. 19, 2000). Without this authority, the permit appeal system "would be rendered meaningless." *Id.* Accordingly, the Board has discretionary authority to grant CenterPoint's motion to stay effectiveness of its CAAPP permit.

CenterPoint "requests confirmation from the Board that the [f]inal [p]ermit was automatically stayed pursuant to the APA and Section 40.2(f) of the Act, until the final Board decision on the permit has been made." Section 40.2(f) of the Act makes clear that contested conditions shall be stayed at the request of the applicant and the Board may stay all uncontested conditions "if the Board determines that the uncontested conditions would be affected by its review of contested conditions." 415 ILCS 5/40.2(f) (2010). CenterPoint challenges the Agency's issuance of the permit. For the reasons discussed above, the Board grants CenterPoint's motion to stay the effectiveness of its revised CAAPP permit.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 17, 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