

ILLINOIS POLLUTION CONTROL BOARD

October 4, 2012

DYNEGY MIDWEST GENERATION, LLC)
(WOOD RIVER POWER STATION),)
)
Petitioner,)
)
v.) PCB 13-13
) (Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

On September 21, 2012, Dynegy Midwest Generation, LLC (DMG), timely filed a petition asking the Board to review an August 24, 2012 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 DMG’s Wood River Power Station located at 1 Chessen Lane, Alton, Madison County. Included in DMG’s petition was a request for partial stay of the contested permit conditions. For the reasons below, the Board accepts the petition for review, but reserves ruling on the request for stay.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2010)), the Agency is the permitting authority, responsible for administering Illinois’ regulatory programs to protect the environment. If the Agency denies a permit or grants one with conditions, the permit applicant may appeal the Agency’s decision to the Board. *See* 415 ILCS 5/4, 5, 40(a)(1) (2010); 35 Ill. Adm. Code 105.Subpart B. In this case, the Agency issued DMG a permit for the construction and operation of a sorbent injection system at DMG’s Madison County facility. DMG appeals on the grounds that certain conditions of the permit are arbitrary and unreasonable, and exceed the scope of the Agency’s authority to include in a construction permit for a sorbent injection system. DMG’s petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. DMG has the burden of proof. 415 ILCS 5/40(a)(1) (2010); *see also* 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its permit decision. *See* 35 Ill. Adm. Code 105.214(a). Accordingly, though the Board hearing affords a permit applicant the opportunity to challenge the Agency’s reasons for denying or conditionally granting the permit, information developed after the Agency’s decision typically is not admitted at hearing or considered by the Board. *See Alton Packaging Corp. v. PCB*, 162 Ill. App. 3d 731, 738, 516 N.E.2d 275, 280 (5th Dist. 1987); Community Landfill Co. & City of Morris v. IEPA, PCB 01-170 (Dec. 6, 2001), *aff’d sub nom. Community Landfill Co. & City of Morris v. PCB & IEPA*, 331 Ill. App. 3d 1056, 772 N.E.2d 231 (3rd Dist. 2002).

Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2010)), which only DMG may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, DMG may deem the requested permit issued. 415 ILCS 5/40(a)(2) (2010). Currently, the decision deadline is January 21, 2013, which is the first business day following the 120th day after the date the Board received the petition. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for January 10, 2013.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by October 22, 2012, which is the first business day following the 30th day after the date the Board received DMG's petition. *See* 35 Ill. Adm. Code 105.212(a). If the Agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed. *See* 35 Ill. Adm. Code 105.116. The record must comply with the content requirements of 35 Ill. Adm. Code 105.212(b).

Accompanying DMG's petition for review is a request for partial stay of the effectiveness of contested permit conditions. The Board reserves ruling on the request for stay to allow the Agency's response time to run. *See* 35 Ill. Adm. Code 101.500(d).

IT IS SO ORDERED.

Chairman Holbrook Abstained

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 4, 2012 by a vote of 3-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board