

ILLINOIS POLLUTION CONTROL BOARD  
December 5, 2013

AMERENENERGY RESOURCES )  
GENERATING COMPANY, )  
 )  
Petitioner, )  
 )  
v. ) PCB 14-41  
 ) (Permit Appeal - Land)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

ORDER OF THE BOARD (by D. Glosser):

On November 27, 2013, Amerenenergy Resources Generating Company (petitioner) timely filed a petition (Pet.) asking the Board to review a disapproval of petitioner's Request for a Beneficial Use Determination (BUD), pursuant to Section 3.135(b) of the Illinois Environmental Protection Act (Act) (415 ILCS 5/3.135(b)). Petitioner asserts that Illinois Environmental Protection Agency (Agency) failed to act on the request within the statutory timeframe and as a result the request is deemed disapproved. *See* 415 ILCS 5/3.135(b) and 40 (2012); 35 Ill. Adm. Code 101.300(b), 105.206. The determination concerns petitioner's intent to beneficially use coal combustion by-product (CCB) from the E.D. Edwards Power Generating Station as structural fill material to construct a railroad embankment and a haul road (the "Rail and Road Project") at the Duck Creek Power Generating Station, located at 17751 N. Cilco Road, Canton, Fulton County. For the reasons below, the Board accepts the petition for review.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2012)), the Agency is granted the authority to approve or disapprove beneficial uses of CCB. *See* 415 ILCS 5/3.135(b). If the Agency denies a use, grants one with conditions, or fails to act within 90-days, the applicant may appeal the Agency's decision to the Board. *See* 415 ILCS 5/3.135(b), 40 (2012); 35 Ill. Adm. Code 105.Subpart B. In this case, on August 7, 2013, petitioner states it submitted to the Agency a BUD request for the Rail and Road Project. Petitioner appeals on the grounds that the BUD request and supporting documentation fully demonstrates that the beneficial use met and continues to meet the requirements for a beneficial use determination under Section 3.135(b) of the Act. Petitioner also states that the Agency failed to respond to petitioner's BUD application within 90 days and failed to provide any explanation whatsoever for its denial by inaction as required by Section 3.135(b) of the Act.

Petitioner's petition meets the content requirements of 35 Ill. Adm. Code 105.210. The Board accepts the petition for hearing. Petitioner has the burden of proof. 415 ILCS 5/40 (2012); *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 decision. *See* 35 Ill. Adm. Code 105.214(a). Accordingly, though the Board hearing affords an applicant the opportunity to challenge the

Agency's reasons for denying or conditionally granting the use, 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 (2012)), which only Petitioner may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Petitioner may deem the requested permit issued. 415 ILCS 5/40 (2012). Currently, the decision deadline is March 27, 2014, which is the 120th day after the Board received the petition. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled to take place on March 20, 2014.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by Friday, December 27, 2013, which is the 30th day after the Board received Petitioner'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).

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 5, 2013, by a vote of 4-0.



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John T. Therriault, Clerk  
Illinois Pollution Control Board