

ILLINOIS POLLUTION CONTROL BOARD
March 20, 2014

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

ORDER OF THE BOARD (by J.D. O’Leary):

AmerenEnergy Resources Generating Company (AERG) seeks review of the disapproval by the Illinois Environmental Protection Agency (Agency) of AERG’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) (2012)). AERG asserts that the Agency failed to act on the request within the statutory timeframe and as a result the request is deemed disapproved by operation of law. *See* 415 ILCS 5/3.135(b) and 40 (2012); 35 Ill. Adm. Code 101.300(b), 105.206. The determination concerns AERG’s use of 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 (rail and road project) at the Duck Creek generating station, located at 17751 N. Cilco Road, Canton, Fulton County.

In this order, the Board rules on AERG’s motion to strike a portion of the administrative record filed by the Agency. Below, the Board first provides the relevant procedural history, followed by descriptions of the applicable statutory provision, the internal Agency memorandum that AERG asks the Board to strike and other items in the record, and AERG’s petition for review. Next, the Board summarizes the filings on the motion to strike, and then analyzes and rules on the motion. For the reasons set forth in this order, the Board denies AERG’s motion to strike.

PROCEDURAL HISTORY

On November 27, 2013, AERG timely filed the petition for review. By order of December 5, 2013, the Board accepted the petition for hearing and ordered the Agency to file the administrative record on or before December 27, 2013. The Agency filed the record on January 23, 2014, including a September 12, 2013 intra-Agency memorandum that addresses AERG’s BUD application (internal memorandum).

On February 4, 2014, AERG filed the motion to strike the internal memorandum from the record (Mot.). The Agency filed a response in opposition to that motion (Resp.) on February 14,

2014. With leave of the hearing officer, on February 24, 2014, AERG filed a reply in support of its motion (Reply).

BACKGROUND

Below, the Board first sets out Section 3.135(b) of the Act (415 ILCS 5/3.135(b) (2012)) in relevant part. The Board then summarizes the internal memorandum and briefly notes the other contents of the record, concluding this section with a summary of AERG's petition for review.

Applicable Statutory Provision

Section 3.135(b) of the Act provides in relevant part:

- (b) to encourage and promote the utilization of CCB in productive and beneficial applications, upon request by the applicant, the Agency shall make a written beneficial use determination that the coal-combustion waste is CCB when used in a manner other than those uses specified in subsection (a) of this Section if the applicant demonstrates that use of the coal-combustion waste satisfies all of the following criteria: the use will not cause, threaten, or allow the discharge of any contaminant into the environment; the use will otherwise protect human health and safety and the environment; and the use constitutes a legitimate use of the coal-combustion waste as an ingredient or raw material.

Within 90 days after the receipt of an application for a [BUD] under this subsection (b), the Agency shall, in writing, approve, disapprove, or approve with conditions the beneficial use. Any disapproval or approval with conditions shall include the Agency's reasons for the disapproval or conditions. Failure of the Agency to issue a decision within 90 days shall constitute disapproval of the beneficial use request. These beneficial use determinations are subject to review under Section 40 of the Act.

* * *

415 ILCS 5/3.135(b) (2012).

The Internal Memorandum and Other Record Items

The twelve-page internal memorandum is dated September 12, 2013, and is addressed to Mary Riegle, of the Agency's Disposal Alternatives Unit from Agency Groundwater Unit employee Scott Kaufman. The memorandum addresses the groundwater aspects of the rail and road project. R. 243-53.¹ The memorandum provides the background to the BUD request (R. 243-44) and a summary of the groundwater portions of the request (R. 244-49), and then

¹ Although the internal memorandum refers to attachments, the copy of the memorandum in the record includes cover pages for attachments 1 and 2, but no attachments (R. 254-55).

concludes with two sections entitled “ILLINOIS EPA COMMENTS” (R. 249-51) and “ILLINOIS EPA RECOMMENDATIONS” (R. 251-53). In the Agency comments section, the memorandum identifies assertions in the request with which the Agency does or does not “concur[],” such as that “in-situ surficial materials at the site are low and therefore restrict migration of groundwater”—a claim with which the Agency disagrees. R. 251. At the outset of the recommendations section, the memorandum states, “[t]he Illinois EPA has determined that it cannot approve the [BUD] for the ash fill at the Duck Creek rail spur/haul road.” *Id.* In support of this statement, the memorandum cites the following: (1) laboratory results showing that groundwater in certain monitoring wells exceeds the Class I groundwater quality standards (GQSs) for three parameters—antimony, boron, and chromium; (2) the inapplicability, according to the Agency, of Class II GQSs to the formerly mined portions of the site; (3) the inapplicability, according to the Agency, of the exclusion from Class II GQSs (35 Ill. Adm. Code 620.420(a)(3)) for “fill material” on property not within the “rural property class”; (4) the potential for groundwater contamination by the rail spur; and (5) exceedances of the Class I GQSs and other standards for boron at a monitoring well adjacent to the rail spur. *Id.* at 252-53.

Aside from the internal memorandum, the record consists entirely of AERG’s BUD application (R. 1-26) and attachments (R. 27-242).

AERG’s Petition for Review

In its petition for review, AERG notes that in July 2004, AERG advised the Agency that it intended to “use beneficially” CCB from the E.D. Edwards generating station as structural fill material to construct a railroad embankment and a haul road at the Duck Creek plant. Pet. at 1-2. AERG explains that the rail and road project was developed to provide a “transportation alternative for coal delivery” to the Duck Creek station and to permit access to the on-site landfill proposed, and subsequently approved, for waste disposal at the plant. *Id.* at 2. Since AERG finished the rail and road project in 2005, the rail and road have been “integral to the operation” of the Duck Creek plant, according to AERG. *Id.*

AERG further states that based on an inspection of the site, the Agency issued in 2006 a violation notice to AERG alleging that the rail and road project violated “parts of Section 21 of the Act” and 35 Ill. Adm. Code 812.101(a). Pet. at 2. Following a meeting, AERG submitted a proposed Compliance Commitment Agreement (CCA) to the Agency, which the Agency later rejected. *Id.* at 3.

AERG also notes that on February 4, 2013, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a complaint with the Board against AERG alleging that the rail and road project violated subsections of Section 21 of the Act and 35 Ill. Adm. Code 812.101(a) because AERG failed to obtain a BUD for the project from the Agency. *Id.*, citing People v. Ameren Energy Resources Generating Co., PCB 13-41.

AERG adds that in response to the “position taken by the State,” it submitted on August 7, 2013, the BUD request at issue in this case. Pet. at 3. AERG states that the request explained CCB was applied for the rail and road project in a manner protective of health and the environment; that AERG’s investigation of the site found that “much of the fill was placed over

coal mine spoils”; and that there are no exceedances of GQSs. *Id.* at 3-4. The request, according to AERG, claimed that the application for a BUD thus met the requirements for a BUD pursuant to Section 3.135(b) of the Act (415 ILCS 5/3.135(b) (2012)). *Id.* at 4. Because the Agency failed to act on the BUD application within the 90-day statutory review period, AERG continues, the Agency is deemed to have disapproved the application by operation of law. *Id.* AERG further argues that because there is no final Agency decision on the BUD request, the record in this case “must be limited to AERG’s BUD application” and exhibits. *Id.* at 5-6.

AERG argues that its application demonstrates that the rail and road project was a “legitimate use” of coal combustion waste, which was used in the project as an “effective substitute for analogous construction materials.” Pet. at 8. AERG concludes that the Board “should determine that the [BUD] application satisfied the requirements of Section 3.135(b).” *Id.* at 9.

DISCUSSION

In this section, the Board first summarizes the filings concerning the motion to strike. The Board then analyzes and rules upon the motion.

Motion to Strike Internal Memorandum

Background

AERG states that it submitted the BUD request to the Agency on August 7, 2013, regarding the rail and road project at the Duck Creek power plant. Mot. at 1. The request, AERG adds, explains that this application of CCB was protective of human health and the environment, that AERG’s investigation determined that much of the “fill” was placed on top of “coal mine spoils,” and that there are no exceedances of applicable GQSs. *Id.* at 1-2.

According to AERG, although the Agency claimed AERG needed approval for the project to “be considered in compliance with the law,” the Agency failed to act on the BUD application by the 90-day statutory deadline of November 5, 2013. Mot. at 2. Thus, AERG continues, the request is deemed denied by operation of law, pursuant to Section 3.135(b) of the Act (415 ILCS 5/3.135(b) (2012)). There is, therefore, no written Agency decision regarding the BUD application. Nor, according to AERG, did the Agency grant AERG’s “repeated requests” for “at least a technical discussion” of the request or seek to extend the statutory deadline. *Id.*

AERG notes that the Agency also missed the December 27, 2013 deadline to file the administrative record and instead filed the record on January 22, 2014. Mot. at 3. AERG insists that the record “should only include” AERG’s BUD request, but that the Agency included the internal memorandum, which the motion seeks to strike from the record. *Id.* AERG claims the memorandum is not “styled as a decision document,” was not shared with AERG, and was not cited by the Agency when it “failed to act” on the BUD request. *Id.*

Request to Strike

AERG notes it is the Agency’s responsibility to file the “complete record that was before it at the time a decision was made.” Mot. at 3, citing KCBX Terminals Co. v. IEPA, PCB 10-110 (May 19, 2011); *see also* 35 Ill. Adm. Code 105.116. AERG quotes Section 105.212(b) of the Board’s procedural rules, governing the Agency record in permit appeals, which provides as follows:

- b) The record must include:
 - 1) Any permit application or other request that resulted in the Agency’s final decision;
 - 2) Correspondence with the petitioner and any documents or materials submitted by the petitioner to the Agency related to the permit application;
 - 3) The permit denial letter . . . of the issued permit or other Agency final decision;
 - 4) The hearing file of any hearing that may have been held before the Agency, including any transcripts and exhibits; and
 - 5) Any other information the Agency relied upon in making its final decision.
- 35 Ill. Adm. Code 105.212(b).

AERG maintains that because the Agency did not hold a hearing or issue a decision on the BUD request, the record must be limited to the BUD application and exhibits. Mot. at 4. AERG acknowledges that the date on the internal memorandum was 54 days before the statutory 90-day decision period expired, but contends the memorandum is still improper because it is not relevant to the “true basis of the BUD denial—the expiration of the 90 day period.” *Id.*

Nor, according to AERG, does the internal memorandum fall within any of the five categories of materials that must be included in the record under Section 105.212(b). Mot. at 4. AERG recites that the internal memorandum is not part of AERG’s BUD application, is not correspondence, is not a permit denial letter, and is not part of a hearing file. *Id.* AERG argues that the internal memorandum also was not, and could not have been, “relied upon” by the Agency in making a final determination in this matter, because there was no final Agency decision in this case. *Id.* Rather, according to AERG, the memorandum merely sets out the “thoughts and recommendations of one or more Agency staff persons about the BUD application”—views which AERG asserts were never incorporated into a final Agency decision.

Furthermore, AERG continues, the internal memorandum contains significant factual and legal errors that “undercut [the memorandum’s] underlying rationale.” Mot. at 5. For example, AERG explains, Board regulations exclude certain inorganic chemicals, including boron, from Class II GQSs for groundwater located within fill material or within “the upper 10 feet of parent material,” as long as the site is “not within the rural property class. . . .” *Id.*, citing 35 Ill. Adm. Code 620.240(a)(3). The applicable property class designation is determined by how the property is identified by the county tax assessor. *Id.*, citing 35 Ill. Adm. Code 620.110. As stated in the BUD application, AERG maintains that water quality samples demonstrate that the CCB exceeds Class I GQSs only for boron, at one monitoring well within a Class IV area of “mine spoil fill.” *Id.* The internal memorandum concludes that this exclusion from Class I

GQSs does not apply because the BUD application describes the site's surroundings as "a sparsely populated rural area. . . ." *Id.*, citing R. 251-52. AERG contends that the Fulton County Assessor classifies the site as industrial rather than rural, and asserts that the description of the area in the BUD request around the rail spur was intended as a nontechnical description rather than a formal property tax classification of the property. *Id.*

In addition, according to AERG, the memorandum improperly cites the general prohibition under Section 3.135(a-5) of the Act (415 ILCS 5/3.135(a-5) (2012)) on using CCB for beneficial use if analytical results demonstrate exceedance of Class I GQSs for metals. Mot. at 5, citing 415 ILCS 5/3.135(a-5)(B) (2012). AERG maintains that Section 3.135(b) of the Act (415 ILCS 3.135(b) (2012)) allows for the beneficial use of CCB without imposing the restrictions under Section 3.135(a-5) on which the internal memorandum relies. *Id.*

AERG claims these are just two examples of substantive errors in the internal memorandum, but refrains from a full-blown critique since AERG contends the memorandum should be struck. Mot. at 6 n.l. AER states that because the Agency improperly included the memorandum in the record, AERG is now "compelled" to bring to the Board's attention the two most "significant" errors. *Id.*

AERG asserts that the motion to strike presents a matter of first impression for the Board, as AERG does not know of any case in which the Agency sought to include "documents related to a decision that it never made." Mot. at 6 n.l. AERG explains that the law is settled that the record is limited to information before the Agency during the statutory review period and that the record does not include evidence that was not before the Agency at the time of its decision. *Id.* at 6-7, citing Community Landfill Co. v. IEPA, PCB 01-48 (Apr. 5, 2001); 35 Ill. Adm. Code 105.214(a); *see also Jackson v. Department of Labor, Board of Review*, 168 Ill. App. 3d 494, 523 N.E.2d 5 (4th Dist. 1988). But this authority is not directly on point here, according to AERG, because it pertains to cases in which the Agency issued a final decision. *Id.* at 7.

AERG insists that the Agency's inclusion of the internal memorandum in the record is a transparent attempt to provide an "after the fact legal and technical rationale" for denying the BUD application. Mot. at 8. AERG insists that, having failed to issue a timely decision, the Agency should not be permitted to put in the record materials that "purport to provide a rationale for an Agency decision that was never made." Mot. at 7. AERG claims that allowing the Agency to do so would amount to "corrupting the Record with extraneous materials that were not the basis of the BUD application denial," and would deny AERG substantive and procedural due process regarding "proper consideration of its BUD request." *Id.*

Response in Opposition to Motion to Strike

The Agency states that in August 2013, AERG requested Agency approval of the rail spur and haul road AERG had "constructed in 2005-06 with coal combustion waste." Resp. at 1. The Agency adds that the internal memorandum was prepared in response to that request and provides the "Agency's position" that the BUD request cannot be approved. *Id.* And, according to the Agency, the memorandum raises no new matters and "only responds to the arguments asserted by AERG" in the BUD request. *Id.* at 1-2.

The Agency also notes this case is related to People v. Ameren Energy Resources Generating Co., PCB 13-41. Resp. at 2. In that case, the Agency adds, “extensive discovery” has been conducted, including on AERG’s decision to proceed with construction of the rail spur and haul road “without approval.” *Id.*

The Agency notes that the internal memorandum cites “groundwater contact with the ash fill material and exceedances” of the Class I GQSs as a reason to deny the BUD request. Resp. at 2. It would be inappropriate not to include the internal memorandum in the record, the Agency concludes.

Reply in Support of Motion to Strike

AERG reiterates that because the Agency failed to issue a BUD determination by the statutory deadline and held no hearing on the matter, the record must be limited to the BUD application and exhibits. Reply at 1-2. And, AERG continues, because the Agency did not timely issue a decision as required by Section 3.135(b) of the Act (415 ILCS 5/3.135(b) (2012)), the internal memorandum cannot reflect the decision of the Agency. *Id.* at 2, citing West Suburban Recycling & Energy Center, L.P. v. IEPA, PCB 95-119 and PCB 95-125 (cons.) (Oct. 17, 1996), *aff’d in part, rev’d in part*, 299 Ill. App. 3d 1126, 740 N.E.2d 98 (1st Dist. 1998) (unpublished order under Illinois Supreme Court Rule 23). AERG contrasts the Agency’s position here with that in other Board cases in which the Agency has argued that memoranda written by its personnel during the permit review process did not constitute final Agency decisions, but merely present the “thoughts of particular personnel.” *Id.* AERG insists that in this case, too, the internal memorandum is just an “internal staff level recommendation addressed to a superior,” relating the “thoughts and recommendations” of one or more staff members. *Id.* at 2-3.

Moreover, AERG reiterates that the memorandum “cannot possibly” state the Agency’s “final position” on the BUD request because the Agency never made a decision on the merits of the request. Reply at 2. Nor, according to AERG, is there any evidence that the memorandum was adopted, formally or informally, as the “Agency position.” *Id.* at 2-3.

Regardless, AERG continues, only information the Agency relied on in making its “final decision” should be included. Reply at 3. AERG argues again that the internal memorandum does not fall within this or any of the other categories of materials that belong in the record. *Id.*, citing 35 Ill. Adm. Code 105.212(b). The Agency’s response to the motion to strike “plainly misrepresents the nature and use” of the memorandum, AERG contends, and leaving the memorandum in the record would be “inappropriate and contrary to the Board’s rules.” *Id.*

Board Analysis and Ruling

Section 3.135(b) of the Act (415 ILCS 5/3.135(b) (2012)) makes Agency beneficial use determinations subject to Board review under Section 40 of the Act (415 ILCS 5/40 (2012)), which governs appeals of Agency permit decisions. In particular, Section 3.135(b) provides in relevant part that,

[w]ithin 90 days after receipt of an application for a [BUD] under this subsection (b), the Agency shall, in writing, approve, disapprove, or approve with conditions the beneficial use. Any disapproval or approval with conditions shall include the Agency's reasons for the disapproval or conditions. Failure of the Agency to issue a decision within 90 days shall constitute disapproval of the beneficial use request. These beneficial use determinations are subject to review under Section 40 of this Act. 415 ILCS 5/3.135 (2012).

Here, AERG maintains, and the Agency does not dispute, that the Agency did not take final action on AERG's August 7, 2013 BUD request for the rail and road project. Under Section 3.135(b), this failure resulted in disapproval of the request by operation of law, a result that is appealable to the Board.

Part 105 of the Board's procedural rules (35 Ill. Adm. Code part 105), in turn, governs Board handling of appeals of final agency decisions such as permit appeals and BUD requests. To be clear, Section 105.212(b) identifies items that *must* be included in the Agency record, and not items that *may* be included in the record. The Board, therefore, looks to the rule for guidance, while recognizing that it does not necessarily provide an exhaustive list of materials that may properly be put into the record.

The Board agrees with AERG that the internal memorandum does not come within any the first four categories of items under Section 105.212(b) (35 Ill. Adm. Code 105.212((b)(1)-(4)). That is, the memorandum is not the BUD request at issue; correspondence between the Agency and AERG or materials submitted by AERG concerning the BUD request; the Agency's final decision; or part of any hearing file.

The fifth category of materials required to be of record encompasses "[a]ny other information the Agency relied upon in making its final decision." 35 Ill. Adm. Code 105.212(b)(5). The Agency notes that the memorandum states the Agency's "position" on the BUD request. Resp. at 1. But, again, there was no final Agency decision in this case, so the internal memorandum does not fit within the literal terms of this category of materials, either. This conclusion is not dispositive of the motion, however, because, as noted above, the procedural rule does not by its terms address the items that the record may include. If Section 105.212(b) were controlling, arguably the BUD application itself would have to be excluded from the record because Section 105.212(b)(5) requires inclusion in the record only of "[a]ny permit application or other request *that resulted in the Agency's final decision.* . ." 35 Ill. Adm. Code 105.212(b)(5) (emphasis added). And here, the BUD request did *not* result in a final Agency "decision." This kind of absurd result illustrates why the Board declines to read Section 105.212(b) as AERG urges.

More on point here is the rule that the Board's decision in a permit appeal—or an appeal like this one, which is subject to the same procedural rules (*see* 415 ILCS 5/3.135(b) (2012))—must be based on the entire record before the Agency. Alton Packaging, Corp. v. PCB, 162 Ill. App. 3d 731, 738, 516 N.E.2d 275, 279-80 (5th Dist. 1987); Phillips 66 Co. v. IEPA, PCB 12-101, slip op. at 8 (Mar. 21, 2013); ESG Watts, Inc. v. IEPA, PCB 94-243, *et al.* (cons.), slip op.

at 3 (Mar. 21, 1996), *rev'd in part on other grounds*, ESG Watts, Inc. v. PCB, 286 Ill. App. 3d 325, 676 N.E.2d 299 (3d Dist. 1997).² And the Agency must provide the Board with a complete record that includes all documents on which the Agency relied or reasonably should have relied. United Disposal of Bradley, Inc. v. IEPA, PCB 03-235, slip op. at (June 17, 2004); Joliet Sand and Gravel v. IEPA, PCB 86-159, slip op. at 4 (Feb. 8, 1987), *aff'd*, 163 Ill. App. 3d 830, 516 N.E.2d 955 (3d Dist. 1987).

AERG states that it submitted the BUD request on August 7, 2013. The internal memorandum is dated September 12, 2013, approximately one month after that, and clearly concerns the August 7, 2013 submittal. As such, the Board finds the internal memorandum to be a document on which the Agency relied or should have relied in its review of the BUD application, and, therefore, something the Agency properly included in the record in this appeal.

AERG argues, however, that there is in fact no evidence that the Agency, as opposed to individual Agency employees, relied on the memorandum. Reply at 2-3. The Agency counters that the memorandum summarizes the Agency's position regarding AERG's BUD request. The Board finds both positions beside the point in the context of the motion to strike. The internal memorandum is part of the record before the Agency, whether it is the position of a technical reviewer or the Agency as a whole.

The Board also finds AERG's reliance on West Suburban Recycling misplaced. In that permit appeal, based on an internal memorandum prepared shortly before the Agency denied the permits, the petitioner argued that some of the "denial points were manufactured," and the Agency's review process was otherwise flawed. The Board rejected the petitioner's argument. West Suburban Recycling, PCB 95-119, *et al.*, slip op. at 5-6. The Board agreed with the Agency's characterization of the memorandum as "simply an internal document representing the view of one member of the Agency at a time prior to the final Agency decision." *Id.* at 6. The Board distinguished between the "decision of *the Agency*" to grant or deny a permit and internal memoranda prepared by Agency personnel during the permit review process, which, the Board added, reflect the "thoughts of only one" Agency employee. *Id.* The Board decision in West Suburban Recycling related solely to whether the internal memorandum relayed the opinion of the Agency as a whole, not whether the document belonged in the Agency record for Board consideration. As such, West Suburban Recycling is clearly distinguishable from this case.

The Board appreciates AERG's complaint that the Agency did not meet its statutory obligation to "approve, disapprove, or approve with conditions" a BUD application within 90 days after it is filed. 415 ILCS 5/3.135(b) (2012). But the legislature chose to deal with such cases by deeming the BUD request denied and providing for Board review. That the Agency did not issue a BUD determination by the statutory deadline is, therefore, not grounds to strike the internal memorandum, and the motion to strike is denied.

² The Board notes that although the Board's review generally is limited to information in the record before the Agency, the Board does not apply manifest-weight review to the Agency's decision. *See IEPA v. PCB*, 115 Ill. 2d 65, 69-70, 503 N.E.2d 343, 345 (1986).

In making this ruling, the Board expresses no view on the merits of this appeal, which are not before the Board at this stage of the proceeding. The Board further notes that AERG will have ample opportunity at hearing to challenge the substance and use of the memorandum, on the grounds pressed in the motion to strike (Mot. at 4-6) or otherwise.

The Board is, therefore, not persuaded by AERG's claim that denying the motion to strike would deny it due process. *See* Mot. at 8. AERG plainly has notice that the internal memorandum is part of the record, and AERG will be able to challenge it in this proceeding. *See* IEPA v. PCB, 115 Ill. 2d at 70, 503 N.E.2d at 345 (noting that "safeguards of a due process hearing are absent" from permit process "until the hearing before the Board). Accordingly, AERG will receive all the process it is due. *See, e.g.,* Lyon v. Department of Child & Family Services, 209 Ill. 2d 264, 277, 807 N.E.2d 423, 433 (due process clause requires opportunity to be heard at a meaningful time and in a meaningful manner); *see also* Matthews v. Eldridge, 424 U.S. 319, 333 (1976).

Conclusion

For the above reasons, the Board denies AERG's motion to strike the internal memorandum from the record filed by the Agency in this case.

IT IS SO ORDERED.

I, John Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on March 20, 2014, by a vote of 4-0.



John Therriault, Clerk
Illinois Pollution Control Board