

ILLINOIS POLLUTION CONTROL BOARD
February 17, 2022

SOUTHERN ILLINOIS POWER)	
COOPERATIVE,)	
)	
Petitioner,)	
)	PCB 06-61
v.)	(CAAPP Permit Appeal - Air)
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by B.F. Currie):

On January 10, 2022, the Illinois Environmental Protection Agency (IEPA) and Southern Illinois Power Cooperative (Southern) filed a joint motion (Mot.) asking the Board to lift the stay of uncontested conditions in the Clean Air Act Permit Program (CAAPP) permit at issue in this appeal. IEPA issued the permit for Southern’s electrical power generating station located in Williamson County. The joint motion also asks the Board to remand the permit to IEPA while continuing to stay the remaining contested conditions. The remand will allow IEPA to revise the permit in accordance with the parties’ settlement negotiations. For the reasons below, the Board grants the motion.

PROCEDURAL BACKGROUND

On November 2, 2005, Southern petitioned the Board to review the CAAPP permit that is the subject of this appeal. The Board accepted the petition for hearing on November 17, 2005. On February 16, 2006, the Board granted a stay of the permit as requested by Southern. The Board found that Section 10-65(b) of the Administrative Procedure Act (APA) applies to CAAPP permits and stays the newly-issued CAAPP permit by operation of law. Southern Illinois Power v. IEPA, PCB 06-61, slip op. at 7 (Feb. 16, 2006). “Petitioner must continue to operate by the terms and conditions of its prior State operating permit during the pendency of this appeal.” *Id.*

On June 21, 2010, however, the Environmental Protection Act (Act) was amended by P.A. 96-934, adding subsection (f) to Section 40.2 of the Act. Section 40.2(f) provides that Section 10-65(b) of the APA does not apply to CAAPP permits and specifies that the Board must stay the contested conditions upon the permit applicant’s request. 415 ILCS 5/40.2(f) (2020).

The parties’ joint motion asks the Board to: (1) lift the stay of uncontested conditions of the CAAPP permit; (2) maintain the stay of the remaining conditions and jurisdiction over them; and (3) remand the permit to IEPA so that it can revise the permit to incorporate modifications negotiated by the parties. Mot. at 1. The parties explain that they have negotiated an agreement

concerning the contested conditions. *Id.* The United States Environmental Protection Agency has completed its review of the negotiated changes. *Id.* at 2. To incorporate the changes and resolve the appeal, the parties ask the Board to remand the permit to IEPA. *Id.* In turn, IEPA will issue the modified version of the permit, incorporating the negotiated changes “[o]n the same day the CAAPP permit subject to this appeal is remanded by the Board...” *Id.* Following the issuance of the new permit, Southern will file a motion to dismiss the appeal. *Id.*

The Board has previously granted similar motions to lift a stay of uncontested conditions while retaining the stay of contested conditions and remanding the permit to IEPA, finding the requests both within its authority and appropriate. *See, e.g., Ameren Energy Generating Co., Coffeen Power Station v. IEPA*, PCB 06-64, slip op. at 2-4 (Sept. 20, 2012); *The Premcor Refining Group, Inc. v. IEPA*, PCB 07-30, PCB 10-55 (consol.), slip op. at 2 (Mar. 14, 2019); *AmerenEnergy Resources Generating Company, Edwards Power Station v. IEPA*, PCB 06-67, slip op. at 2 (April 11, 2019). The Board likewise grants the motion here.

Under Section 40.2(f) of the Act, because the stay applies to some but not all conditions of the permit, Southern must continue to operate in accordance with any related terms and conditions of any other applicable permits until final Board action in the review process. 415 ILCS 5/40.2(f) (2020).

The Board reminds the parties that when IEPA issues the permit with modifications, Section 40.2(a) of the Act provides for appeals by persons who have standing other than the applicant. 415 ILCS 5/40.2(a) (2020). Thus, even though the Board retains jurisdiction of this matter, if other persons have standing and wish to appeal, those appeals, if appropriate, will be accepted and docketed under a different case number.

ORDER

1. The Board lifts the stay of uncontested conditions in Southern’s CAAPP permit.
2. The Board continues to stay the contested conditions in Southern’s CAAPP permit and retains jurisdiction over them.
3. The Board remands the permit to IEPA.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 17, 2022, by a vote of 5-0.



Don A. Brown, Clerk
Illinois Pollution Control Board