

ensuring that the gas will move along the pipeline and be delivered to customers at serviceable pressures. By burning fuel, these compressor engines emit nitrogen oxides (NOx) into the air. NOx is a pollutant under the federal Clean Air Act (42 U.S.C. § 7401 *et seq.*).

The Illinois Environmental Protection Agency (Agency) issued permits to Panhandle to limit these NOx emissions. Specifically, the permits included a NOx emission limit of 461.3 tons per year (TPY), applicable to four natural gas compressor engines added in 1988 at Glenarm Station: engines 1116, 1117, 1118, and 1119. Compliance with the permit limit would have allowed Panhandle to avoid the applicability of the federal Prevention of Significant Deterioration (PSD) program. PSD, a cornerstone of the federal Clean Air Act, is designed to protect air quality from diminishing in areas with relatively clean air. Sources that emit NOx above the applicable PSD threshold are subject to stringent and expensive air pollution control requirements, including having to obtain a PSD permit and install the best available control technology (BACT) to limit emissions.

In its November 15, 2001 decision, the Board found that Panhandle's NOx emissions from engines 1116-1119 had greatly exceeded the permit limit for years. Panhandle therefore violated Sections 9(b), 9.1(d)(1), and 9.1(d)(2) of the Act (415 ILCS 5/9(b), 9.1(d)(1), 9.1(d)(2) (2000)), which require compliance with air permits and PSD. The Board ordered Panhandle to cease and desist from further violations, imposed a total civil penalty on Panhandle of \$850,000, and awarded costs and attorney fees of \$115,750.25 to the People.

Before the Board's November 15, 2001 decision, neither party requested that the Board issue an order that would give Panhandle a specific period of time to correct its violations. The People, in its complaint and post-hearing briefs, sought an order from the Board requiring Panhandle to cease and desist from further violations, which, as noted, the Board issued. Panhandle's motion to reconsider and modify has now placed the issue of a delayed compliance schedule before the Board.

DISCUSSION

Panhandle's Motion

Within 35 days after receiving a final Board order, a party may move the Board to reconsider and modify its decision. 35 Ill. Adm. Code 101.520(a). Panhandle has done so here.¹ Panhandle does not ask the Board to reconsider or modify its finding of violations or its decision to impose the civil penalty or the costs and attorney fees. Panhandle asks only that the Board reconsider and modify the cease and desist portion of the Board's November 15, 2001 order. Mot. at 4, 6.

Panhandle states in its motion that it cannot immediately reduce its NOx emissions to less than the permit limit of 461.3 TPY. Mot. at 2. Mr. Richard E. Keyser, vice president of operations and engineering for Panhandle, states in an affidavit attached to the motion² that

¹ Panhandle's motion to reconsider and modify is cited as "Mot. at _."

² Each numbered paragraph within the affidavit is cited as "Aff. at Para. _."

Panhandle is obligated to operate Glenarm Station pursuant to Certificates of Convenience and Authority granted by the Federal Energy Regulatory Commission (FERC). Aff. at Para. 1-3. Mr. Keyser explained:

If Panhandle is required to take engine Nos. 1116, 1117, 1118, and 1119 out of service for a period of time during those months [November through April], the capacity it is able to transport through that location will be reduced during that period of time. The result will be during those days Panhandle's ability to serve the requirements and heating demands of its customers as required by the certificates issued by the FERC will be impaired. The impact upon Panhandle and its customers could be significant if throughput is reduced during periods of significant winter heating demands during periods of extreme cold weather. Aff. at Para. 5.

Panhandle further states that its "environmental dispatch" program cannot ensure that NOx emissions from engines 1116-1119 will be below 461.3 TPY. Mot. at 3. Under the environmental dispatch program, Panhandle attempts to operate the three engines at Glenarm Station that are not subject to the 461.3 TPY permit limit (engines 1113, 1114, and 1115) before operating engines 1116-1119, and to take those three engines out of service last. *Id.*

Panhandle also states that it is unable to immediately comply with PSD. Panhandle, in August 1999, submitted a PSD permit application to the Agency. Panhandle seeks to install emission controls on engines 1116 and 1117 and to update existing emission controls on engines 1118 and 1119. Panhandle explains that it proposed these new emission controls to ensure that all four engines are operated using BACT. Mot. at 2. The Agency had not taken final action on the PSD permit application as of the Board's November 15, 2001 decision. *Id.* Panhandle states that since the Board's decision, Panhandle has met with the Agency to discuss the PSD permit application, and Panhandle has provided the Agency with additional information. *Id.* at 3. Panhandle represents that the Agency anticipates issuing a PSD permit to Panhandle "in the near future," but that "work on the engines is expected to take an extended period of time once the permit is issued." *Id.*

Panhandle states that it and the People have agreed to a construction schedule, discussed below, for the proposed modifications to engines 1116-1119. Mot. at 3. The schedule would begin when the Agency issues a final PSD permit. Panhandle states that it is only able to complete the proposed modifications during the summer season (May through October) due to FERC requirements discussed above. *Id.* at 3-4.

Specifically, to allow time for PSD permitting and construction of the new emission controls, the proposed language in Panhandle's motion would stay the Board's cease and desist order. Mot. at 4. Panhandle would be required to obtain necessary permits from the Agency and complete construction by dates certain. If the Agency issues a final PSD permit by March 1, 2002, Panhandle would have to undertake construction at the earliest practicable time, except that construction would have to be completed on engines 1116 and 1117 by November 1, 2002, and on engines 1118 and 1119 by September 1, 2003. *Id.* If the Agency issues a final PSD permit after March 1, 2002, but before January 1, 2003, Panhandle would have to undertake

construction at the earliest practicable time, except that construction would have to be completed on engines 1116 and 1117 by October 1, 2003, and on engines 1118 and 1119 by November 1, 2003. *Id.*

In addition, under the proposed language, if Panhandle fails to complete construction by the applicable deadlines, Panhandle must pay “contingent penalties” into the Environmental Protection Trust Fund in the amount of \$250 per day of non-compliance for the first 90 days and \$500 per day of non-compliance after that. Mot. at 4-5. These penalties would not apply if the failure to meet the deadlines was caused by circumstances beyond Panhandle’s reasonable control. *Id.* at 5. Panhandle states that it has agreed to pay the contingent penalties in consideration for the People’s acceptance of the construction schedule. *Id.* Also, at all times during the stay, Panhandle would have to operate the compressor engines at Glenarm Station using good environmental practices, such as the environmental dispatch program. *Id.*

Finally, Panhandle represents that it and the People “have agreed that neither party will seek appellate or any other review” of the Board’s November 15, 2001 decision if the Board modifies its order as requested. Mot. at 5.

People’s Response

The People filed a response supporting Panhandle’s motion to reconsider and modify.³ The People do not dispute that requirements imposed by FERC “have severely constrained Panhandle’s ability to comply” with the 461.3 TPY permit limit. The People state that FERC requirements are more demanding in the winter months and that Panhandle therefore cannot be expected to retrofit engines 1116-1119 with the necessary emission controls during that time. Resp. at 2. The People believe that “the proposed schedule for achieving compliance, coupled with contingent penalties as a deterrent, will be adequate to ensure the timely achievement of environmental compliance in this case.” *Id.* The People also state that “[a]ny environmental consequences associated with the proposed compliance schedule . . . should be mitigated if Panhandle employs practices or procedures, such as the Environmental Dispatch program, that minimize NOx emissions from the four compressor engines during the interim period.” *Id.*

The People note that Panhandle, as part of the PSD permit application process, is attempting to demonstrate that its proposed emission controls are BACT. Resp. at 3. The People state that the Agency “anticipates issuing a permit by early or mid-February of 2002.” *Id.* The People also state that retrofitting the four engines with new emission controls, which cannot take place before a PSD permit is issued, is “unmistakably labor- and time-intensive.” *Id.* The People conclude that a stay of the cease and desist order is both reasonable and appropriate and urge the Board to incorporate the stay and the agreed-upon compliance schedule and contingent penalties. *Id.* at 3, 5. Finally, as Panhandle did, the People represent that the parties have agreed not to seek any review of the Board’s November 15, 2001 decision if the Board amends its order as requested. *Id.* at 4.

Board’s Analysis

³ The People’s response is cited as “Resp. at __.”

Section 33(a) of the Act authorizes the Board to enter such final enforcement orders “as it shall deem appropriate under the circumstances” and Section 33(b) provides that Board orders may allow “a reasonable delay during which to correct a violation.” 415 ILCS 5/33(a), (b) (2000). The Board has previously fashioned enforcement orders to allow respondents time to comply with provisions they were found to have violated. *See* IEPA v. Trilla Steel Drum Corp., PCB 86-9, 86-56, slip op. at 2 (Aug. 6, 1987), *rev’d on other grounds sub nom; Trilla Steel Drum Corp. v. PCB*, 180 Ill. App. 3d 1010, 536 N.E.2d 788 (1st Dist. 1989); IEPA v. City of Abingdon, PCB 80-105, slip op. at 5 (June 10, 1981).

Consistent with this authority and based on the information provided in Panhandle’s motion, the affidavit of Mr. Keyser, and the People’s response, the Board grants the motion and modifies the cease and desist portion of its order. In doing so, the Board takes into account its November 15, 2001 findings on the factors of Sections 33(c) and 42(h) of the Act (415 ILCS 5/33(c), 42(h) (2000)). Lastly, for clarity and consistency, the Board modifies the original deadline for Panhandle to pay civil penalties and costs and attorney fees (*see* 35 Ill. Adm. Code 101.520(c)) and makes several minor changes to the proposed language in Panhandle’s motion. The entire final order, as amended, is set forth below.

ORDER

1. The Board finds that Panhandle Eastern Pipe Line Company (Panhandle) violated Sections 9(b), 9.1(d)(1), and 9.1(d)(2) of the Environmental Protection Act (Act) (415 ILCS 5/9(b), 9.1(d)(1), 9.1(d)(2) (2000)).
2. Except as provided in paragraph 3 of this order, Panhandle must cease and desist from any further violations of Sections 9(b), 9.1(d)(1), and 9.1(d)(2) of the Act.
3. The cease and desist requirement in paragraph 2 of this order is stayed to allow sufficient time for Panhandle to obtain the required construction permit and to make the modifications at Glenarm Station described in that permit in accordance with the following requirements:
 - a. Panhandle must obtain necessary permits from the Illinois Environmental Protection Agency (Agency) and must subsequently complete construction of proposed modifications to engines 1116, 1117, 1118, and 1119 by the following construction completion dates:
 - i. If the Agency issues a final Prevention of Significant Deterioration (PSD) permit to Panhandle by March 1, 2002, then Panhandle must undertake construction of necessary modifications at the earliest practicable time, except that construction must be completed on engines 1116 and 1117 by November 1, 2002, and on engines 1118 and 1119 by September 1, 2003.
 - ii. If the Agency issues a final PSD permit to Panhandle after March 1, 2002, but before January 1, 2003, then Panhandle must

undertake construction of necessary modifications at the earliest practicable time, except that construction must be completed on engines 1116 and 1117 by October 1, 2003, and on engines 1118 and 1119 by November 1, 2003.

- b. If Panhandle does not complete construction by the applicable construction completion dates in paragraph 3(a) of this order, then Panhandle must pay contingent penalties to the Environmental Protection Trust Fund in the amount of \$250 per day for each day of non-compliance for the first 90 days of non-compliance and \$500 per day for each day of non-compliance after the first 90 days of non-compliance. However, Panhandle is not subject to the contingent penalties if the failure to complete construction by the applicable construction completion dates was caused by circumstances beyond Panhandle's reasonable control.
 - c. At all times during the stay of the cease and desist requirement in paragraph 2 of this order, Panhandle must, to the maximum extent possible, operate its natural gas compressor engines at Glenarm Station by employing good environmental practices, such as the environmental dispatch program.
4. No later than March 11, 2002, which is the 60th day after the date of this order, Panhandle must pay \$850,000 in civil penalties and \$115,750.25 in costs and attorney fees of the People of the State of Illinois. Panhandle must pay the civil penalty by certified check or money order, payable to the Environmental Protection Trust Fund. Panhandle must pay the costs and attorney fees by certified check or money order, payable to the Hazardous Waste Fund. The case number, case name, and Panhandle's social security number or federal employer identification number must be included on each certified check or money order.
 5. Panhandle must send each certified check or money order to:

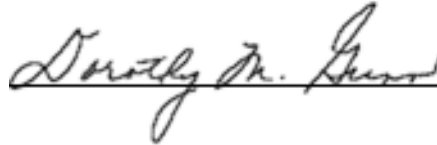
Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
 6. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Act (415 ILCS 5/42(g) (2000)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2000)).

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the

order. 415 ILCS 5/41(a) (2000); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on January 10, 2002, by a vote of 6-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board