

ILLINOIS POLLUTION CONTROL BOARD

November 17, 2005

DYNEGY MIDWEST GENERATION, INC.)	
(VERMILION POWER STATION),)	
)	
Petitioner,)	
)	
v.)	
)	PCB 06-73
ILLINOIS ENVIRONMENTAL)	(CAAPP Permit Appeal – Air)
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by N.J. Melas):

On November 3, 2005, Dynegy Midwest Generation, Inc. (Vermilion Power Station) (Dynegy) timely filed a petition asking the Board to review a September 29, 2005 determination of the Illinois Environmental Protection Agency (Agency) to issue a Clean Air Act Permit Program (CAAPP) permit with conditions. *See* 415 ILCS 5/40.2(a) (2004); 35 Ill. Adm. Code 105.302(e). Dynegy is challenging numerous conditions of the permit. The CAAPP permit application concerns Dynegy's coal-fired electric generating station, called the Vermilion Power Station, located at 2150 North County Road, Oakwood, Vermilion County.

Section 40.2(a) of the Environmental Protection Act (Act) (415 ILCS 5/40.2(a) (2004)) allows several persons to appeal Agency CAAPP permit determinations: permit applicants; persons who participated in the Agency's public comment process under Section 39.5(8) of the Act (415 ILCS 5/39.5(8) (2004)); and persons who could obtain judicial review under Section 41(a) of the Act (415 ILCS 5/41(a) (2004)). 415 ILCS 5/40.2(a) (2004); *see also* 35 Ill. Adm. Code 105.302(c). Dynegy is the CAAPP permit applicant. Dynegy appeals on the grounds that the conditions should be removed and that many conditions were included in violation of Section 39.5(7)(n) of the Act (415 ILCS 5/39.5(7)(n) (2004)). The Board accepts the petition for hearing.

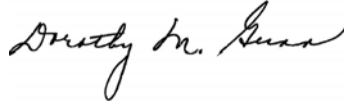
Dynegy has the burden of proof. 415 ILCS 5/40.2(a) (2004); *see also* 35 Ill. Adm. Code 105.112(a). Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40.2(c) (2004)), which only Dynegy may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, "the permit shall not be deemed issued; rather, the petitioner shall be entitled to an Appellate Court order pursuant to Section 41(d) of this Act [415 ILCS 5/41(d) (2004)]." 415 ILCS 5/40.2(c) (2004). Currently, the decision deadline is March 3, 2006 (the 120th day after Dynegy filed its petition). *See* 35 Ill. Adm. Code 105.114. A Board meeting is currently scheduled for March 2, 2006.

Unless the Board or the hearing officer orders otherwise, the Agency must file an answer, including the entire record of its determination within 30 days after it is served with the petition. 35 Ill. Adm. Code 105.302(f). 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. 35 Ill. Adm. Code 105.116. The record must comply with the content requirements of 35 Ill. Adm. Code 105.302(f).

As part of the permit appeal, Dynegy moves the Board to exercise its discretionary authority to stay the entire CAAPP permit on appeal. The Board reserves ruling on Dynegy's motion to allow the Agency time to respond.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 17, 2005, by a vote of 4-0.

A handwritten signature in cursive script, appearing to read "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board