

ILLINOIS POLLUTION CONTROL BOARD
July 7, 2011

HOLLAND ENERGY, LLC,)	
)	
Petitioner,)	
)	
v.)	PCB 11-85
)	(NPDES Permit Appeal – Water)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by G.T. Girard):

On May 18, 2011, Holland Energy, LLC (Holland Energy), timely filed a petition (Pet.) asking the Board to review the April 18, 2011 determination including Special Conditions 13 and 14 of a National Pollutant Discharge Elimination System (NPDES) permit issued by the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2010); 35 Ill. Adm. Code 105.200. The Agency’s determination concerns Permit Number IL0074268 for Holland Energy’s electric generating station located at Section 16, Township 9 North, Range 4 East, Beecher City, Shelby County.

Holland Energy appeals on the grounds that Special Conditions 13 and 14 of the permit are “internally inconsistent, impossible to comply with and, therefore, arbitrary, capricious, an abuse of discretion and otherwise not in accordance with law.” Pet. at 4, 8. Holland Energy challenges the inclusion of Special Conditions 13 and 14 and asks the Board to stay the effectiveness of the NPDES permit until ultimately ruling on the merits. *Id.* at 9-11. On June 2, 2011, the Board accepted the permit appeal for hearing, but reserved ruling on the motion to stay.

On June 16, the Board granted Holland Energy’s motion to stay the effectiveness of the NPDES permit until the Board takes final action on the permit appeal or orders otherwise. On June 20, 2011, the Board received from Holland Energy a motion to clarify the Board’s June 16, 2011 order. The Agency has not responded to the Holland Energy’s motion to clarify.

Section 101.500(d) of the Board’s procedural rules provides that, “[w]ithin 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of the motion.” 35 Ill. Adm. Code 101.500(d). The Agency has filed no response to Holland Energy’s request for a to clarify the June 16, 2011 order.

In Community Landfill Co. and City of Morris v. IEPA, PCB 01-48, 01-49, slip op. at 4 (Oct. 19, 2000), the Board found “that it has the authority to grant discretionary stays from

permit conditions.” The Board noted that it “has previously granted or denied discretionary stays in permit appeals, both when the Agency did and did not consent to such stays.” *Id.* (citations omitted). The Board elaborated that “[the] permit appeal system would be rendered meaningless in many cases, if the Board did not have the authority to stay permit conditions.” *Id.*

The Board grants the motion to clarify and grants the stay as requested by Holland Energy. The stay remains in effect until the Board takes final action on the permit appeal or until the Board orders otherwise.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 7, 2011, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John Therriault, Assistant Clerk
Illinois Pollution Control Board