

ILLINOIS POLLUTION CONTROL BOARD
July 23, 2019

SIERRA CLUB, ENVIRONMENTAL LAW)
AND POLICY CENTER, PRAIRIE RIVERS)
NETWORK, and CITIZENS AGAINST)
RUINING THE ENVIRONMENT,)
)
Complainants,)
)
v.) PCB 13-15
) (Citizen’s Enforcement – Water, Land)
MIDWEST GENERATION, LLC.,)
)
Respondent.)

HEARING OFFICER ORDER

On July 17, 2019, the respondent filed a motion for extension of time to file a motion for reconsideration and/or clarification of the Board’s June 20, 2019, interim order. (Motion). Respondent states that the motion for reconsideration is presently due on July 26, 2019. Motion at 2. Respondent requests an additional 45 days, or September 9, 2019, to file its motion for reconsideration and/or clarification. *Id.*

The respondent cites to Section 101.520 of the Board’s procedural rules that directs a party to file a motion for reconsideration or modification within 35 days after receipt of the order. Motion at 1. Respondent further states that “the scope and complexity of the Board’s Order...involves complicated legal conclusions and contains findings that require clarification in order to understand the scope of and prepare for the damages phase of the case.” *Id.* Finally, respondent’s counsel states that she has a previously scheduled vacation in the month of August. *Id.*

As directed, complainants timely filed their response to respondent’s motion on July 19, 2019. (Response). Complainants oppose the motion. Complainants argue that this case was filed in 2012 and that “delaying the remedy for another 45 days would fail to ensure that site remediation is conducted in a timely manner.” Response at 2. Complainants also argue that respondent’s vacation plans are not relevant. *Id.* Finally, complainants argue that contamination is ongoing and attach monitoring reports in support. *Id.*

On July 22, 2019, respondent filed a motion for leave to reply. Respondent’s motion for leave to file a reply is denied. *See* 35 Ill. Adm. Code 101.500 (e).

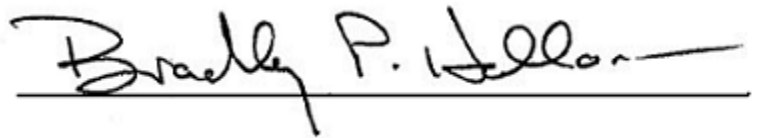
While it is true that this enforcement case was filed in October 2012, this case was not ripe for hearing until October 2017. A plethora of motions filed by both parties, including motions to amend the complaint, motion for summary judgment, prehearing motions, discovery and a Board issued stay because of an automatic stay ordered in the United States Bankruptcy

Court required the passage of time. The hearing in this case concluded in February 2018. Post-hearing briefing by the parties concluded in August 2018. The Board's interim order was issued on June 20, 2019.

After reviewing respondent's motion for an extension of time and complainants' response opposing the motion, I find cause in granting respondent's first motion for an extension of time. The Board's 93-page interim order is as complex as it is long. Complainants do not allege that they would be prejudiced if the motion was granted, only that "due to this continuing contamination, further delay would create concern." Response at 3.

Pursuant to Section 101.520 of the Board's procedural rules, and cited by the respondent, I construe respondent's motion as a motion for extension of time to file a motion for reconsideration or modification. Any request for clarification must be included in the motion for reconsideration. Respondent's motion for extension of time is granted. Respondent's motion for reconsideration or modification is now due to be filed on or before September 9, 2019.

IT IS SO ORDERED.

A handwritten signature in black ink that reads "Bradley P. Halloran" with a horizontal line underneath it.

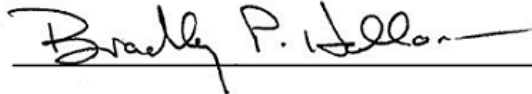
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CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were e-mailed on July 23, 2019, to each of the persons on the service list below.

It is hereby certified that a true copy of the foregoing order was e-mailed to the following on July 23, 2019:

Don Brown
Illinois Pollution Control Board
James R. Thompson Center
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Chicago, Illinois 60601

A handwritten signature in black ink that reads "Bradley P. Halloran" with a horizontal line underneath.

Bradley P. Halloran
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@ Consents to electronic service

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