

ILLINOIS POLLUTION CONTROL BOARD

April 3, 2014

METROPOLITAN WATER RECLAMATION))	
DISTRICT OF GREATER CHICAGO,)	
)	
Petitioner,)	
)	
v.)	PCB 14-103
)	(Calumet)
ILLINOIS ENVIRONMENTAL)	PCB 14-104
PROTECTION AGENCY,)	(O'Brien)
)	(Permit Appeals - Water)
Respondent.)	(Consolidated)

ORDER OF THE BOARD (by J.A. Burke):

On March 3, 2014, the Metropolitan Water Reclamation District of Greater Chicago (District) timely filed two petitions asking the Board to review two separate December 23, 2013 determinations of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2012); 35 Ill. Adm. Code 101.300(b). Each petition relates to the Agency's issuance of a National Pollutant Discharge Elimination System permit to the District for two separate District facilities in Cook County. The Board accepted the petitions for review on March 6, 2014. The Board docketed the permit appeals as PCB 14-103 for the District's Calumet facility, and PCB 14-104 for the District's O'Brien facility.

On January 27, 2014, Prairie Rivers Network, Natural Resources Defense Council, Sierra Club, Environmental Law & Policy Center, Friends of the Chicago River, and Gulf Restoration Network (collectively, third-party petitioners) timely filed three petitions asking the Board to review three separate December 23, 2013 determinations of the Agency. *See* 415 ILCS 5/40(e)(1) (2012); 35 Ill. Adm. Code 101.300(b), 105.204(b). Each petition relates to the Agency's issuance of a National Pollutant Discharge Elimination System permit to the District for three separate facilities in Cook County. The Board accepted all three petitions for hearing on February 6, 2014. The Board docketed the permit appeals as PCB 14-106 (O'Brien facility), PCB 14-107 (Calumet facility), and PCB 14-108 (Stickney facility). On March 6, 2014, the Board granted the Agency's agreed motions to consolidate the PCB 14-106, PCB 14-107, and PCB 14-108 permit appeals (collectively, third-party appeals) for hearing. The Agency filed the administrative record in the third-party appeals on March 26, 2014.

On March 20, 2014, the Agency filed identical motions in PCB 14-103 and PCB 14-104 to consolidate the permit appeals in all five of these cases. The Agency states that the five permit appeals "involve the same parties, the same or similar factual issues, and the same or similar legal issues." Mot. at 2. The Agency continues that "[t]he Permits are so similar in nature that the [Agency] held one joint public hearing to accept comments regarding all three draft permits and issued one Permit Responsiveness Summary addressing the three Permits together." *Id.* Further, the administrative records for the five permit appeals "will include

almost entirely identical documents.” *Id.* The Agency also states “[t]he Permit Appeals clearly involve overlapping factual and legal issues.” *Id.* The Agency believes that “it will be more convenient, efficient, and expeditious” for the parties and the Board to consolidate the permit appeals for hearing and decision, and that consolidation “will not cause material prejudice to any of the parties involved in this matter.” *Id.*, citing 35 Ill. Adm. Code 101.406. The Agency states that the District’s counsel has agreed to the motion to consolidate. *Id.* To date, the third-party petitioners have not filed a response to the motions.

The Board believes that consolidation of PCB 14-103 and PCB 14-104 “is in the interest of convenient, expeditious, and complete determination” of the claims. 35 Ill. Adm. Code 101.406. These two cases involve the same parties, and similar factual and legal issues. The Board therefore consolidates these two cases for hearing and decision. However, the Board declines to consolidate PCB 14-103 and PCB 14-104 with the third-party appeals. The third-party appeals involve different parties. The Board, at this time, does not find it “in the interest of convenient, expeditious, and complete determination” of the claims to consolidate the five cases for hearing and decision.

The Board is mindful of the overlapping factual background in the five cases and directs the hearing officer to coordinate hearings in the cases in an efficient manner. The Board notes that the District has waived the statutory deadline in all five cases. Further, as the Agency represents that the Agency record is “almost entirely identical” in these five proceedings, the Board accepts the record as filed in the third-party appeals for use in the PCB 14-103 and PCB 14-104 proceedings.

The Board therefore partially grants the Agency’s two motions to consolidate. The Board consolidates PCB 14-103 and PCB 14-104 for hearing. The consolidated third-party appeals remain separate from these proceedings. The record filed in the third-party appeals is accepted as the record in the PCB 14-103 and PCB 14-104 cases.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 3, 2014 by a vote of 4-0.



John T. Therriault, Clerk
Illinois Pollution Control Board