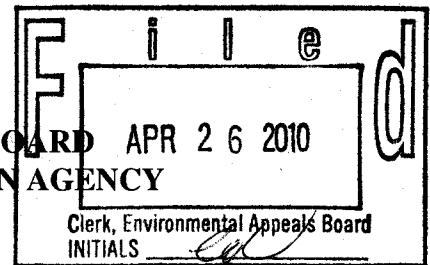


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



\_\_\_\_\_  
In re: )  
)  
Power Holdings of Illinois, LLC ) PSD Appeal No. 09-04  
)  
Permit No. 081801AAF )  
\_\_\_\_\_ )

**ORDER ALLOWING ADDITIONAL RESPONSE**

On November 25, 2009, the Sierra Club filed a petition with the Environmental Appeals Board (“Board”) seeking review of a Prevention of Significant Deterioration (“PSD”) Permit issued by the Illinois Environmental Protection Agency (“IEPA”) to Power Holdings of Illinois (“PHIL”). Petition for Review (Nov. 25, 2009). With permission from the Board, PHIL filed a response to the Petition on February 26, 2010. Permittee’s Response to Petition for Review (Feb. 26, 2010). IEPA filed a response to the Petition on March 4, 2010. Response to Petition for Review (Mar. 4, 2010).

By order dated March 17, 2010, the Board granted the Sierra Club’s request to file a reply to the responses filed by PHIL and IEPA. Order Granting Motion to File Reply and Setting Deadline for Sur-Replies (Mar. 17, 2010). As the title of the Order indicates, the Board also allowed PHIL and IEPA to file sur-replies. The Sierra Club’s Reply and the sur-replies have now been filed. *See* Petitioner’s Reply (Apr. 5, 2010); Permittee’s Sur-Reply (Apr. 19, 2010); Sur-Reply of the State of Illinois (Apr. 20, 2010).

Although the Board considers that the issues raised in the petition have essentially been fully briefed, the Board has decided to allow the Sierra Club the opportunity file a reply to one

argument raised in IEPA's sur-reply. According to IEPA, a 1998 Illinois Statute, the Kyoto Protocol Act of 1998, 415 Ill. Comp. Stat. 140/15, prohibits IEPA from imposing any enforceable permit limits on greenhouse gas emissions "unless required to do so by an act of Congress or the United States ratifies the Kyoto Protocol." IEPA Sur-Reply at 6. IEPA thus argues that, contrary to Sierra Club's contention, 35 Ill. Admin. Code § 201.141 cannot be read as requiring control of greenhouse gases.

From the record before us, it appears that this is the first time this argument has been raised in these proceedings. More specifically, we find no reference to the Kyoto Protocol Act of 1998 in either the Response to Comments or any of IEPA's previous filings with the Board. Under these circumstances, the Sierra Club may, if it chooses, file by no later than May 10, 2010, a response limited to this issue. No additional arguments will be considered.

So ordered.

Dated: 4/26/10

ENVIRONMENTAL APPEALS BOARD

By: \_\_\_\_\_



Edward E. Reich  
Environmental Appeals Judge

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the forgoing Order Allowing Additional Response in the matter of Power Holdings of Illinois, LLC, PSD Appeal No. 09-04, were sent to the following persons in the manner indicated:

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Secretary