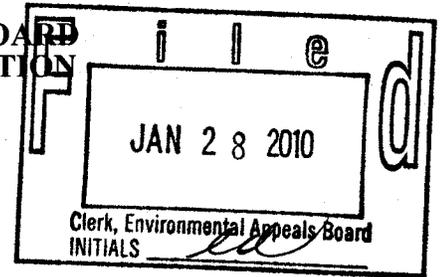


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



In re:

MGP Ingredients of Illinois, Inc.

Permit No. 07030058

PSD Appeal No. 09-03

**REMAND ORDER**

Sierra Club petitioned the Environmental Appeals Board (“Board”) to review various aspects of the above-captioned Clean Air Act Prevention of Significant Deterioration (“PSD”) permit that the Illinois Environmental Protection Agency (“IEPA”) issued to MGP Ingredients of Illinois, Inc.<sup>1</sup> (“MGP”) on June 22, 2009.<sup>2</sup> The permit authorizes construction of “emission source(s) and/or air pollution control equipment” at an existing MGP plant in Pekin, Illinois.

After obtaining several extensions of the filing deadline for the certified index of the administrative record and the response to the petition, on January 21, 2010, the Illinois Attorney General’s Office (“Illinois AGO”), on behalf of IEPA, filed a motion for voluntary remand of the permit. Illinois AGO seeks remand to allow IEPA to reconsider the Best Available Control Technology (“BACT”) analysis, specifically, “the steps used to assess the cost-effectiveness of natural gas and low-sulfur coal during the permit [application] review process.” Motion for

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<sup>1</sup> The permit applicant did not seek to intervene in this matter before the Board.

<sup>2</sup> The federal PSD program is administered by the United States Environmental Protection Agency (“EPA”). Illinois issues PSD permits as part of a delegation of federal PSD program authority to the State. See 40 C.F.R. § 52.21(a)(1), (u); *Delegation of Authority to State Agencies*, 46 Fed. Reg. 9580, 9582 (Jan. 29, 1981). PSD permits issued by delegated states, such as Illinois, are considered EPA-issued permits and are governed by federal regulations. *In re Christian County Generation, LLC*, PSD Appeal No. 07-01, slip op. at 2 n.1 (EAB Jan. 28, 2008), 13 E.A.D. \_\_\_ (citing *In re SEI Birchwood, Inc.*, 5 E.A.D. 25, 26 (EAB 1994)).

Voluntary Remand 1 (Jan. 21, 2010) (“Motion”). Illinois AGO relies on an earlier statement by the Board that “[a] voluntary remand is generally available where the permitting authority \* \* \* wishes to reconsider some element of the permit decision before reissuing the permit.” *Id.* at 2 (quoting *In re Indeck-Elwood, LLC*, PSD Appeal No. 03-04, at 6 (EAB May 20, 2004) (Order Denying Respondent’s Motion for Voluntary Partial Remand and Petitioners’ Cross Motion for Complete Remand, and Staying the Board’s Decision on the Petition for Review)). Finally, Illinois AGO further states that it has discussed the Motion, filed in lieu of a response to the petition for review, with the petitioner, Sierra Club, and that Sierra Club does not object to the Motion. *Id.*

The Board hereby GRANTS the Motion for Voluntary Remand. The permit is remanded to IEPA so that it may, as requested, “reconsider \* \* \* element[s] of the permit decision before reissuing the permit.”<sup>3</sup> Accordingly, Sierra Club’s petition is DISMISSED WITH PREJUDICE. This dismissal with prejudice will have no effect on Sierra Club’s rights to submit comments on any draft permit on remand or to seek Board review of any future IEPA permit action in accordance with 40 C.F.R. § 124.19.

So ordered.<sup>4</sup>

Dated:

January 28, 2010

ENVIRONMENTAL APPEALS BOARD

By:

  
Anna L. Wolgast  
Environmental Appeals Judge

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<sup>3</sup> Pursuant to Part 124, IEPA’s permit decision shall be based on the administrative record, which shall be complete on the date the final permit is issued. 40 C.F.R. § 124.18(a), (c).

<sup>4</sup> The three-member panel deciding this matter is comprised of Environmental Appeals Judges Charles J. Sheehan, Kathie A. Stein, and Anna L. Wolgast. 40 C.F.R. § 1.25(e)(1).

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Remand Order** in *MGP Ingredients of Illinois, Inc.*, PSD Appeal No. 09-03, were sent to the following persons in the manner indicated:

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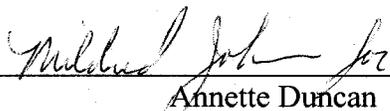
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Date: JAN 29 2010

  
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Annette Duncan  
Secretary