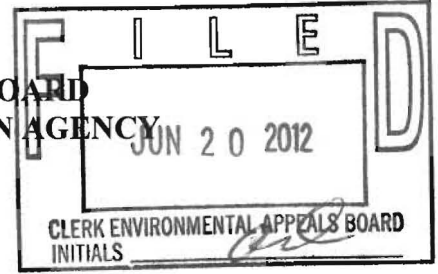


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC



_____))
In re:))
Christian County Generation, LLC) PSD Appeal No. 12-01
))
PSD Permit No. 02106ACB))
_____))

**ORDER REQUESTING EPA’S OFFICE OF AIR AND RADIATION, OFFICE OF
GENERAL COUNSEL, AND REGION 5 TO FILE A BRIEF**

By this order, the Environmental Appeals Board (“Board”) requests U.S. Environmental Protection Agency’s Office of Air and Radiation (“OAR”), Office of General Counsel (“OGC”), and Region 5 (“Region”) to file a joint brief addressing arguments arising from the amended petition filed in the above-captioned matter. These arguments arise in the context of a Clean Air Act prevention of significant deterioration (“PSD”) permit decision, Permit No. 02106ACB (“Permit”), issued by the Illinois Environmental Protection Agency (“IEPA”) to Christian County Generation, LLC (“CCG”).¹ The Board believes that OAR’s, OGC’s, and the Region’s views on this matter may assist the Board’s resolution of this case.

On May 30, 2012, Natural Resources Defense Council (“NRDC”) and Sierra Club commenced this proceeding by petitioning the Board to review IEPA’s decision to issue the

¹ IEPA administers the Clean Air Act PSD program in Illinois pursuant to a delegation of authority from U.S. EPA Region 5. 40 C.F.R. §§ 52.21(u), 52.719-.744; *see also* Delegation of Authority to State Agencies, 46 Fed. Reg. 9580 (Jan. 29, 1981). Because IEPA acts as EPA’s delegate in Illinois, IEPA’s PSD permits are considered EPA-issued permits, and appeals of the permit decisions are heard by the Board pursuant to 40 C.F.R. § 124.19.

Permit. On June 14, 2012, the Board ordered the petitioners to file by no later than Tuesday, June 19, 2012, an amended petition complying with the word limitation or page limit set forth in the Board's April 19, 2011 Order Governing Petitions for Review of Clean Air Act New Source Review Permits ("Standing Order"). Order Establishing Filing Deadlines for Amended Petition and Responses to Amended Petition, and Order Denying Motion to Exclude and Denying in Part Motion for Leave to Exceed Page Limit (June 14, 2012).

On June 19, 2012, the petitioners filed an amended petition and a statement of compliance with the word limitation set forth in the Standing Order. In the amended petition, the petitioners argue the following:

- (1) IEPA erred in its best available control technology ("BACT") determination for carbon dioxide emissions from the acid gas removal vent, Amended Petition at 4-21;
- (2) IEPA's failure to consider low sulfur coal in its BACT analysis violated the Supremacy Clause and Dormant Commerce Clause of the U.S. Constitution, *id.* at 21-26;
- (3) IEPA erred in its BACT determination for "fugitive" emissions by applying synthetic organic chemical manufacturing industry emissions factors, *id.* at 26-34;
- (4) CCG failed to conduct single-source air dispersion modeling when demonstrating compliance with the 8-hour ozone national ambient air quality standards, *id.* at 35-39; and
- (5) In light of a post-Permit announcement by CCG's parent company that it would construct the facility in two phases – with the natural gas combined-cycle "power block" built first, followed by construction of the coal gasification unit (and associated carbon capture equipment) at an indefinite time in the future, when market conditions improve – the Permit should be remanded to narrow the time frame in which construction of all

phases of the project is commenced, *id.* at 40-43.

After a preliminary examination of the amended petition, the Board believes that briefing from OAR, OGC, and the Region would be helpful in this case. Accordingly, the Board requests that on or before July 12, 2012, OAR, OGC, and the Region jointly file a brief addressing all issues identified in the amended petition.²

So ordered.

Dated:

June 20, 2012

ENVIRONMENTAL APPEALS BOARD

By:



Catherine R. McCabe

Environmental Appeals Judge

² This request does not reflect any determination by the Board at this time as to any substantive or procedural issues concerning the appeal.

CERTIFICATE OF SERVICE

I hereby certify that copies of the Foregoing **Order Requesting EPA's Office of Air and Radiation, Office of General Counsel, and Region 5 to File a Brief in *Christian County Generation, LLC***, PSD Appeal No. 12-01, were sent to the following persons in the manner indicated:

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Date: JUN 20 2012



Annette Duncan
Secretary