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ENVIR. APPEALS BOARD

October 16, 2006

Via Fax and U.S. Mail

Ms. Erika Durr, Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
Ariel Rios Building
1200 Pennsylvania Ave, N.W.
Washington, D.C. 20460-0001

Re: PSD Appeal Number 06-08
PSD Permit Number: 16712OAAO
City of Springfield, Dallman 4

Dear Ms. Durr:

Enclosed for filing is one original and five copies of SIERRA CLUB'S RESPONSE TO DAVID MAULDING'S MOTION FOR LEAVE TO INTERVENE. If you have any questions about this filing or if I can be of any further assistance please call me at 608.257.4994.

Sincerely,



Bruce E. Nilles
Attorney for Sierra Club
122 W. Washington Ave, Suite 830
Madison, WI 53703
608.257.4994 (phone)
608.257.3513 (fax)
Bruce.nilles@sierraclub.org

Enclosures

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

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ENVIR. APPEALS BOARD

IN THE MATTER OF:) APPEAL NUMBER: PSD 06-08
CITY OF SPRINGFIELD) APPLICATION NUMBER: 04110050
) PSD PERMIT NUMBER: 16712OAAO

**SIERRA CLUB'S RESPONSE TO DAVID MAULDING'S MOTION FOR LEAVE
TO INTERVENE**

Mr. David Maulding requests leave to intervene for the limited purpose of challenging the timeliness of Sierra Club's petition. *See* Maulding Motion at 1 ("Specifically, Maulding wishes to raise the time lines of the filing of the Sierra Club petition."). Because Maulding's challenge to Sierra Club's petition as untimely lacks any merit the Board should deny his request for leave to intervene.

Maulding asserts that Sierra Club failed to file its petition within thirty days of the IEPA issuing its permit decision.¹ This argument fails on at least two grounds. First, the controlling regulation provides thirty-three days, not thirty days, for Sierra Club to file its petition. Specifically, 40 C.F.R. § 124.20(d) provides that "[w]henver a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper upon him or her by mail, *3 days shall be added to the prescribed time.*" (Emphasis added). The IEPA issued a letter announcing the issuance of the final Dallman Unit 4 PSD permit on August 10, 2006. *See* Letter from Bradley Frost, IEPA to Bruce Nilles, Sierra Club (August 10, 2006) attached as Sierra Club Ex. 7.

¹ Maulding also asserts erroneously that the thirty-three day appeal period does not apply to the Sierra Club because it is not an interested party and the IEPA notice was not mailed to Sierra Club. Maulding Motion at 2. The Sierra Club is an interested party to this proceeding because it submitted comments on the draft permit and Exhibit 7 attached to this pleading is a copy of the letter IEPA mailed to the Sierra Club on August 10, 2006 announcing the availability of the final permitting documents.

Thirty-three days later, beginning with August 11 as day one², is September 12, 2006.

The Board received Sierra Club's petition for review on that date.

Second, the "notice" IEPA mailed to commenters on August 10, 2006 was legally insufficient and, therefore, the thirty-three day appeal time line did not commence on August 10, 2006. The Board's regulations state that the appeal time line is triggered when a permitting agency makes the final permit documents "available to the public." 40 C.F.R. § 124.17(c). The August 10, 2006 letter did not make the documents available to the public, it merely notified commenters that these documents were available either on the agency's website or by mail. Accordingly, a commenter who received the IEPA letter and requested a copy of the final decision documents by mail would not have had the documents available for his or her review, *i.e.* received the final permitting documents, until as much as one to two weeks after August 10, 2006.

The Board previously has flagged its concern about the inadequacy of IEPA's notification process and the impact it can have on the public's appeal rights:

While it is true that IEPA did give written notice that a permit decision has been issued, a commenter would have no way of determining whether to petition for review or the basis for such a petition until he or she had the opportunity to review the actual permit decision. One consideration raised in *Hillman* was whether merely posting information on a website could adversely affect appeal rights, which are time-limited. However, as these issues were not raised in the present matter, we do not address these issues here.

In re Prairie State, PSD Appeal No. 05-02 at 3 n.4 (March 25, 2005). Accordingly, even if Sierra Club had not filed its petition within thirty-three days of IEPA issuing its August

² 40 C.F.R. § 124.20(a) "Any time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event."

10th letter, the time line for filing an appeal did not commence on August 10, 2006 because IEPA's notification on that date was legally defective.

For these reasons, the Sierra Club requests that the Board deny Maulding's motion for leave to intervene in this proceeding.

Dated October 16, 2006



Bruce E. Nilles, Attorney
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CERTIFICATE OF SERVICE

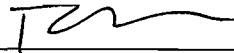
I hereby certify that on the 17th day of October, 2006, service of a complete copy of the **Sierra Club's Response to David Maulding's Motion for Leave to Intervene** was made upon the following parties:

Sally Carter, Esq.
Office of General Counsel
Illinois Environmental Protection Agency
1021 N. Grand Avenue East
P.O. Box 19276
Springfield, IL 62794

Thomas A. Andreoli, Esq.
Elizabeth A. Leifel, Esq.
SONNENSCHNEIN NATH & ROSENTHAL LLP
7800 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606

Donald M. Craven, Esq.
Counselors at Law
1005 North Seventh Street
Springfield, IL 62702

by depositing the same in the U.S. Mail.



Bruce E. Nilles



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19506, SPRINGFIELD, ILLINOIS 62794-9506 - (217) 782-2113

ROD R. BLAGOJEVICH, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

217/782-2113
217/782-9143 TDD

August 10, 2006

Sierra Club
Bruce Nilles
200 North Michigan Ave, Suite 505
Chicago, IL 60601-5908

Re: Notice of Final Permit Decision - Proposed Dallman Unit 4

Dear Mr. Nilles:

Thank you for your comments on the draft Construction Permit/Prevention of Significant Deterioration (PSD) approval for City Water, Light and Power's proposed Dallman Unit 4. The Illinois EPA has made a final decision to issue the permit. The Illinois EPA has prepared a Responsiveness Summary addressing comments and questions raised during the public comment period. Copies of the final permit decision and Responsiveness Summary can be obtained by the following means:

1. By contacting the Illinois EPA by phone, fax, or e-mail at:

Illinois EPA
Brad Frost
1021 North Grand Avenue, East
PO Box 19506
Springfield, IL 62794-9506
1-888-372-1996 toll-free
217/782-7027
217/782-9143 TDD
217/524-5023 fax
brad.frost@epa.state.il.us

2. At the local repository established for the hearing at:

Lincoln Library
Sangamon Valley Collection Room
326 South Seventh Street
Springfield, IL

3. On the web at www.epa.state.il.us/public-notices/general-notices.html or www.epa.gov/region5/air/permits/ilonline.htm (for the second address look under All Permit Records, PSD, New).

To obtain a printed copy free of charge, please contact the Agency through the contact information listed in #1 above.

The permit being issued for the proposed plant grants approval to construct pursuant to the federal rules for Prevention of Significant Deterioration of Air Quality (PSD), 40 CFR 52.21. Accordingly, individuals who filed comments on the draft permit or participated in the public hearing may petition the U.S. Environmental Protection Agency (USEPA) to review the PSD provisions of

PSD Appeal 06-08
SC Ex. 7

the issued permit. In addition, as comments were submitted on the draft permit for the proposed facility that requested a change in the draft permit, the issued permit does not become effective until after the period for filing of an appeal has passed. This letter is the service of notice that a final permit decision has been made. The procedures governing appeals are contained in the Code of Federal Regulations (CFR), "Appeal of RCRA, UIC and PSD permits," 40 CFR 124.19. If an appeal request will be submitted to USEPA by a means other than regular mail, refer to the Environmental Appeals Board website at www.epa.gov/eab/eabfaq.htm#3 for instructions. If an appeal request will be filed by regular mail, it should be sent on a timely basis to the following address:

U.S. Environmental Protection Agency
Clerk of the Board, Environmental Appeals Board (MC 1103B)
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001
Telephone: 202/233-0122

If you have any questions about the permit please call me at 217/782-7027.

Sincerely,

A handwritten signature in black ink, appearing to read "Bradley Frost", with a long horizontal flourish extending to the right.

Bradley Frost
Office of Community Relations