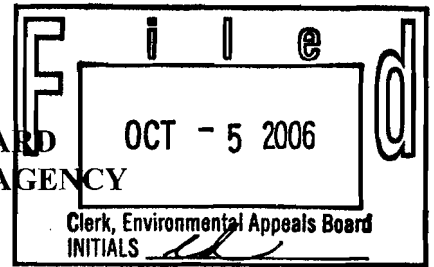


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



_____))
In re:))
City of Springfield) PSD Appeal No. 06-07
PSD Permit No. 167120AAO)
_____)

ORDER DISMISSING PETITION FOR REVIEW

On August 10, 2006, the Illinois Environmental Protection Agency (“IEPA”)¹ issued a federal prevention of significant deterioration (“PSD”) permit to the City of Springfield, Illinois (hereinafter “City”) under section 165 of the Clean Air Act (“CAA” or “Act”), 42 U.S.C. § 7475, for the construction of a new 250-megawatt coal-fired electric generating unit at the City’s existing power plant in Sangamon County, Illinois. On September 8, 2006, the Board received a petition for review filed by Mr. David Maulding (hereinafter “Petitioner”) seeking review of certain conditions added to the permit after the close of the public comment period.² Both IEPA and the City have filed responses seeking summary disposition of the Petition. *See* [IEPA’s] Response Seeking Summary Disposition (Sept. 29, 2006) ; The City of Springfield’s Response

¹ A delegation agreement between Region 5 of the U.S. Environmental Protection Agency and the State of Illinois authorizes IEPA to make PSD permit decisions. *See* 40 C.F.R. § 52.21(u); 46 Fed. Reg. 9580 (Jan. 29, 1981) (delegating federal PSD program authority within Illinois to the Illinois Environmental Protection Agency). Because IEPA exercises delegated federal authority when it issues PSD permits, such permits are considered EPA-issued permits and may be appealed to the Environmental Appeals Board (“Board”) in accordance with 40 C.F.R. § 124.19.

² A Petition for Review has also been filed by the Sierra Club (designated as PSD Appeal No. 06-08). A determination on that Petition will be made at a later date.

Seeking Summary Disposition and Motion for Summary Disposition (Sept. 29, 2006) (“City’s Response”).

The permit conditions to which Petitioner objects were added to the permit after the close of the comment period pursuant to an agreement between the City and the Sierra Club.³ See Petition at 4-5. Petitioner raises several objections to the inclusion of these conditions. In particular, Petitioner raises the following issues:

1. Petitioner asserts that IEPA has failed to document or articulate any explanation for the changes made to the final Permit. IEPA simply notes that an agreement between the City and the Sierra Club was reached, and simply incorporates those terms into the permit, with no explanation of the decision making process, and no articulation of the impact of those contract terms on the environmental conditions at the core of the permitting process.

2. Petitioner asserts that IEPA has imposed conditions or requirements not reasonably related to the discharges associated with the proposed plant. Permit conditions must be somewhat related to the discharges from the proposed plant to have any basis in law. The conditions exceed the authority and jurisdiction of IEPA.

2. Based on this appeal, and the explicit terms of the Permti, this Permit must be amended to reflect that the contingent Conditions imposed by Condition 1.6 and Attachment 5 are null and void.

Petition at 6.

The terms and conditions of the agreement reached between the City and the Sierra Club were incorporated in the final permit pursuant to Permit Condition 1.6(c) and Permit Attachment

5. Permit Condition 1.6(c) states, in part, as follows:

If the issuance of this permit is appealed pursuant to federal law, under 40 C.F.R. Part 124 or other federal regulations or provisions under the Clean Air Act * * * the [additional permit] requirements, which were voluntarily accepted by the

³ Although Petitioner did not participate in the permitting process during the comment period, he nonetheless has standing to file the current Petition “to the extent of the changes from the draft to the final permit decision.” 40 C.F.R. § 124.19(a).

Permittee pursuant to an agreement with the Sierra Club with the objective of avoiding such an appeal *shall not be effective*.

Permit Condition 1.6(c) (emphasis added). Thus, under the express terms of the Permit, the filing of the current Petition has rendered the disputed permit terms ineffective. Indeed, the City itself has conceded that the challenged permit conditions are now “without effect.” City’s Response at 5.

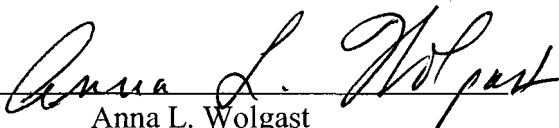
Under these circumstances, with the sole permit conditions challenged by Petitioner now null and void, the Petition is dismissed as moot.⁴

So ordered.⁵

Dated:

October 5, 2006

ENVIRONMENTAL APPEALS BOARD


Anna L. Wolgast
Environmental Appeals Judge

⁴ We note that Permit Condition 1.6(c) also states that in the event that the disputed permit conditions are rendered ineffective by the filing of an appeal, the conditions could again become effective “if and to the extent that the acceptance of the agreement is reaffirmed by the Permittee and the Sierra Club.” Permit Condition 1.6(c). In its response, the City states that this provision is “superfluous.” City’s Response at 6. In particular, the City suggests that a formal permit modification, including public comment, would be required before any “reaffirmed” conditions could become effective. *Id.* We agree to the extent that in order for any reaffirmed conditions to become effective, IEPA would be required to modify or reissue the permit in compliance with any applicable regulations. In the event that the disputed conditions are included in a modified or reissued permit, Petitioner would have the opportunity to challenge the conditions at that time in accordance with the applicable regulations.

⁵ The panel deciding this matter is comprised of Environmental Appeals Judges Scott C. Fulton, Kathie A. Stein, and Anna L. Wolgast.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Dismissing Petition for Review in the matter of City of Springfield, PSD Appeal No. 06-07, were sent to the following persons in the manner indicated:

By Certified Mail:

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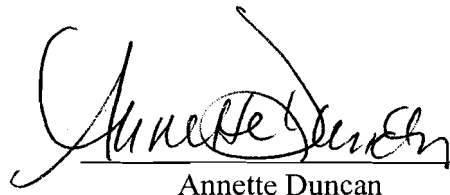
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Date: OCT - 5 2006



Annette Duncan
Secretary