

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

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ENVIR. APPEALS BOARD

IN RE: )  
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CITY OF SPRINGFIELD ) APPEAL NO.: PSD 06-08  
APPLICATION NO.: 0411005D )  
I.D. NO.: 167120AAO )

**DAVID MAULDING'S MOTION FOR LEAVE TO INTERVENE**

In accordance with the Environmental Appeals Board Practice Manual § III.D.4, David Maulding ("Maulding") hereby moves for leave to intervene in the Petition for Review filed by the Sierra Club pursuant to 40 C.F.R. § 124.19. The Petition for Review involves the decision by the Illinois Environmental Protection Agency ("IEPA") to issue a Prevention of Significant Deterioration ("PSD") permit to the City of Springfield to construct a 250 MW coal-fired electric generating unit at its power plant, known as City Water, Light & Power ("CWLP") located in Springfield, Sangamon County, Illinois. The petition is premised on the argument that IEPA issued the PSD permit without adequate factual or legal basis.

Your Petitioner, Maulding, has filed his own Petition for Review relating to this permit and has an interest in the Sierra Club's Petition for Review. Specifically, Maulding wishes to raise the time lines of the filing of the Sierra Club's petition.

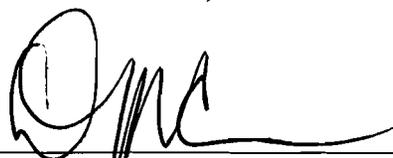
The Sierra Club clearly intends to use its Petition as a means to extract promises from the City in return for withdrawing its appeal. If the Petition was not timely filed, the Sierra Club has no leverage to exercise upon the City, except the merits of its position.

Maulding, as a citizen and rate payer, has an interest in expediting the termination of the Sierra Club's Petition.

For this reason, Maulding hereby respectfully requests that the Board grant Maulding's leave to intervene in this proceeding and that the Board serve all correspondence in this matter upon Maulding's undersigned counsel, and allow the filing of the suggestion of late filing submitted herewith.

Respectfully submitted,

DAVID MAULDING, Petitioner

A handwritten signature in black ink, appearing to read 'D. Craven', written over a horizontal line.

Donald M. Craven, Attorney for Petitioner

Donald M. Craven  
Registration #6180492  
Donald M. Craven, P.C.  
Counselors at Law  
1005 North Seventh Street  
Springfield, IL 62702  
217/544-1777  
217/544-0713 (Facsimile)  
[don@cravenlawoffice.com](mailto:don@cravenlawoffice.com)

**CERTIFICATE OF SERVICE**

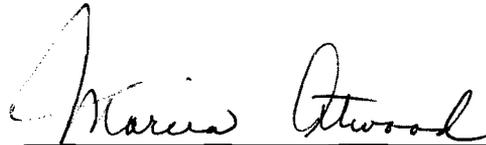
The undersigned hereby certifies that a copy of the foregoing was served on:

Sally Carter  
Assistant Counsel  
Environmental Protection Agency  
1021 North Grand Avenue, East  
P. O. Box 19276  
Springfield, IL 62794-9276

Bruce Nilles  
Sierra Club  
122 West Washington Avenue, Suite 830  
Madison, WI 53703

Elizabeth A. Leifel  
Sonnenschein, Nath & Rosenthal, LLP  
7800 Sears Tower  
233 South Wacker Drive  
Chicago, IL 60606

by placing the same in an envelope clearly addressed, with postage fully prepaid, and by placing said envelope in a U.S. Mailbox on October 4, 2006.

  
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ENVIR. APPEALS BOARD

IN RE:

CITY OF SPRINGFIELD  
APPLICATION NO.: 0411005D  
I.D. NO.: 167120AAO

**SUGGESTION OF LATE FILING**

Donald M. Craven  
Registration #6180492  
Donald M. Craven, P.C.  
Counselors at Law  
1005 North Seventh Street  
Springfield, IL 62702  
217/544-1777  
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### **SUGGESTION OF LATE FILING**

Now comes David Maulding, and respectfully suggests to this Board that the Petition for Review filed by the Sierra Club was filed late, and should be stricken by this Board. Mr. Maulding timely filed his Petition for Review on September 8, 2006. The Sierra Club Petition was filed on September 12, one day after the 30 day time period expired.

The Petition for Review filed by the Sierra Club appears to have been filed out of the time frame established by Section 124.19 (40 CFR 124.19). That section contemplates that any Petition to Review shall be filed within 30 days of the final permit decision. The 30 day period within which a person may request review begins with the service of notice of the Regional Administration's action.

The Permit in this case was issued on August 10, 2006, and section 124.20(a) (40 CFR 124.20(a)) states that the 30 day time period begins on the day after the act or event. The 30 day time period in this case began on August 11, 2006. Thirty days from that date was September 10, a Sunday, which would then roll over to Monday, September 11.

The Sierra Club Petition for Review was filed on September 12, 2006, past the September 11 deadline, and this Board should dismiss the Petition as untimely, or in the alternative should recognize that because the Sierra Club Petition was filed late, this Board is without jurisdiction to process that Petition for Review.

The Sierra Club will no doubt argue that Section 124.20(d) adds a three day grace period to the period for filing the Petition for Review. However, the facts of this case do not meet the requirements to allow the three day notice period to be extended to this filing.

Section 124.20(d) provides:

“Whenever any part 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.”

This time period began to run from the issuance of a permit by IEPA. The service of notice of the action of the Regional Administrator was mailed to the City of Springfield, not to the Sierra Club. The first page of the permit, announcing the issuance of the permit, is attached hereto. (The entire permit is in this record, attached to Mr. Maulding’s Petition for Review). Nowhere on the notice from IEPA does it appear that the notice was mailed to the Sierra Club.

The three day grace period applies, by its own terms, only when the time period begins with service of notice on the interested party. Taking out the superfluous language, that section reads: When an interested party is required to act within a prescribed period after the service of notice upon him or her by mail, add three days. This 30 day notice began on August 11, 2006, the day after the service of notice of issuance of the permit by mail, upon the City of Springfield.

The grace period does not apply, and the Petition for Review from the Sierra Club was not filed in a timely fashion, and should be stricken.

Respectfully submitted,

DAVID MAULDING, Petitioner

A handwritten signature in black ink, appearing to read "Donald M. Craven", written over a horizontal line.

Donald M. Craven, Attorney for Petitioner

Donald M. Craven  
Registration #6180492  
Donald M. Craven, P.C.  
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217/544-1777  
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[don@cravenlawoffice.com](mailto:don@cravenlawoffice.com)

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was served on:

S. David Farris, CIH, CSP  
Environmental Health and Safety Manager  
City of Springfield  
Municipal Center Complex  
800 Monroe Street  
Springfield, IL 62757

Bruce Nilles  
Sierra Club  
122 W. Washington Ave., Suite 830  
Madison, WI 53703

Donald E. Sutton, P. E.  
Manager, Permit Section  
Division of Air Pollution Control, MC-11  
Environmental Protection Agency  
1021 North Grand Avenue, East  
Springfield, IL 62702

Jenifer Johnson  
City of Springfield  
Office of Corporation Counsel  
Municipal Center East, Suite 313  
800 East Monroe Street  
Springfield, IL 62701

by placing the same in an envelope clearly addressed, with postage fully prepaid, and by placing said envelope in a U.S. Mailbox on September 15, 2006.

  
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