

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
 DIVISION OF LEGAL COUNSEL
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PARTY'S NAME: Eurika Durr, Clerk of the Board

FIRM/COMPANY NAME: Environmental Appeals Board

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TELEPHONE NO: _____

FROM: Sally Carter

RE: City of Springfield, PSD Appeal No. 06-08

TOTAL NUMBER OF PAGES (INCLUDING THIS PAGE): 20

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

IN THE MATTER OF:)

CITY OF SPRINGFIELD)
APPLICATION NO.: 04110050)
I.D. NO.: 167120AAO)

PSD APPEAL NO. 06-08

NOTICE

To:
Eurika Durr, Clerk of the Board
Environmental Appeals Board
U.S. Environmental Protection Agency
1341 G Street, N.W., Suite 600
Washington, D.C. 20005

ENVIR. APPEALS BOARD

2006 OCT 20 AM 11:54

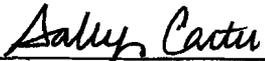
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SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have today filed with the Clerk of the Environmental Appeals Board an original (1) and five (5) copies of the **MOTION FOR LEAVE TO FILE PARTIAL REPLY TO SIERRA CLUB'S RESPONSE TO DAVID MAULDING'S MOTION FOR LEAVE TO INTERVENE** and **PARTIAL REPLY TO SIERRA CLUB'S REPONSE TO DAVID MAULDING'S MOTION FOR LEAVE TO INTERVENE** of the Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,



Sally Carter
Assistant Counsel
Division of Legal Counsel

Date: October 20, 2006

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
217/782-5544

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

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ENVIR. APPEALS BOARD

IN THE MATTER OF:)
)
CITY OF SPRINGFIELD)
APPLICATION NO.: 04110050) PSD APPEAL NO. 06-08
I.D. NO.: 167120AAO)
)

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

NOW COMES the Respondent, the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), by and through its attorney, and files with the ENVIRONMENTAL APPEALS BOARD ("Board") this Motion for Leave to File Partial Reply to Sierra Club's Response to David Maulding's Motion for Leave to Intervene (hereinafter "Motion") filed by Petitioner, SIERRA CLUB, in the above-referenced cause.

Petitioner argues that its Petition was timely filed with the Board as the pertinent regulation provides it with thirty-three days from the date of issuance to file a petition with the Board and, alternatively, the Illinois EPA's notice was "legally insufficient" as it did not provide the "final permit documents" to the public but rather notified commenters that these documents were "available either on the agency's website or by mail." See, Motion at pages 1-2. Petitioner's argument that the Illinois EPA's notice was "legally insufficient" was raised for the first time in Sierra Club's Response to David Maulding's Motion for Leave to Intervene and, as such, the Illinois EPA has not had the opportunity to respond to such allegation. In fact, Petitioner's latter argument can be read as a back-door attempt to raise an additional issue with the Board, i.e, the legal sufficiency of the Illinois EPA's notice, that has not been preserved for appeal.

The introduction of any additional rationale for appeal is plainly outside of the original filing requirements imposed by the Part 124 regulations. Petitions to review a PSD permit must be filed within 30 days of the Administrator's issuance of the final permit decision and any exception is reserved "for only the most extraordinary or compelling circumstances." 40 CFR §124.19(a); *see also, In re Georgetown Steel Corporation*, RCRA Appeal No. 91-1 at 5 (Adm'r June 10, 1991). For this reason, the Board has often been reluctant to review new points of concern after the 30-day filing deadline has passed. *See, In re Indeck-Elwood, LLC*, PSD Appeal No. 03-04, slip op. at 9 (February 3, 2004), *citing In re Rohm & Hass Co.*, 9 E.A.D. 499, 513 (EAB 2000); *In re Zion Energy, LLC.*, 9 E.A.D. 701, 707 (EAB 2001). This is especially true where the Petitioner's concerns were "reasonably ascertainable" at the time of the filing of the initial petition. *In re Rohm & Hass Co.*, 9 E.A.D. 499, 513 (EAB 2000).

In the event that the Board decides to entertain Petitioner's latter argument, due to the potential implications of this argument to the pending Construction Permit – PSD Approval and to any future notices of Construction Permit – PSD Approval issued by the Illinois EPA, the Illinois EPA requests leave of the Board to file the attached Partial Reply to Sierra Club's Response to David Maulding's Motion for Leave to Intervene to respond to the second part of Petitioner's argument.

Wherefore, the Illinois EPA respectfully requests that Board the grant the Respondent's Motion for Leave to File Partial Reply to Sierra Club's Response to David Maulding's Motion for Leave to Intervene or, in the alternative, order such relief that is deemed just and appropriate.

Respectfully submitted,
ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,



Sally Carter
Assistant Counsel
Division of Legal Counsel

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
217/782-5544

Date: October 20, 2006

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

ENVIR. APPEALS BOARD

IN THE MATTER OF:)
)
CITY OF SPRINGFIELD)
APPLICATION NO.: 04110050) PSD APPEAL NO. 06-08
I.D. NO.: 167120AAO)
)

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

NOW COMES the Respondent, the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), by and through its attorney, and files with the ENVIRONMENTAL APPEALS BOARD ("Board") this Partial Reply to Sierra Club's Response to David Maulding's Motion for Leave to Intervene (hereinafter "Motion") filed by Petitioner, SIERRA CLUB, in the above-referenced cause.

Petitioner asserts that its Petition was timely filed with the Board as the pertinent regulation provides it with thirty-three days from the date of permit issuance to file an appeal with the Board. The Illinois EPA agrees with the Petitioner that its Petition was timely filed. However, the Petitioner argues, in the alternative, that the Illinois EPA's notice was "legally insufficient" as it did not provide the "final permit documents" to the public but, rather, notified public participants that these documents were "available either on the agency's website or by mail."¹ In doing so, the Illinois EPA purportedly did not

¹ In fact, the notice informed those participants in the public comment period that the documents could not only be obtained by contacting the agency by telephone, facsimile or electronic mail and through the Illinois EPA's website but also that the documents were accessible at the local repository, the Lincoln Library *See*, Sierra Club's Exhibit 7. Certain portions of the Administrative Record relied upon in this Partial Reply to Sierra Club's Motion are attached hereto and are identified throughout as "Respondent's Exhibits." The document within the Administrative Record that was identified by the Petitioner in its attachment, the Illinois EPA's August 10, 2006, Notice of Final Permit Decision – Proposed Dallman Unit 4 has not been duplicated here in the interests of conserving paper and minimizing the size of this filing. Where

make the documents “available to the public” in accordance with 40 C.F.R. §124.17(c).² *See*, Motion at 1-2. In conjunction with the latter argument, Petitioner references a footnote in the first Prairie State decision in which the Board “previously . . . flagged its concern about the inaduequacy of IEPA’s notification process.” *See*, Motion at 2, citing *In re Prairie State Generation Station*, PSD Appeal No. 05-02, slip op. at 3, fn. 4 (EAB, March 25, 2005) (hereinafter “*Prairie State I*”). With regard to this second argument, Petitioner’s line of reasoning is specious.

At the outset, Petitioner construes the requirement that the response to comments “be available to the public” to imply that the “final permit documents”³ should have been mailed to participants. *See*, 40 C.F.R. §124.17(c). Petitioner’s argument is fundamentally flawed. Section 124.17(c) does not require the permitting authority mail copies of the Responsiveness Summary to all participants, but merely requires that the response to comments be “available” to the public. *Id.* Similarly, Section 124.15(a) does not ostensibly compel a permit authority to mail or serve a copy of the actual final permit to satisfy the “notice” requirement promulgated therein. Such distinctions are not only

the Respondent has referred to a part of the Administrative Record that was the Petitioner’s Exhibit, it is denominated herein as “Sierra Club’s Exhibit.” Consistent with the Board’s October 17, 2006, Order Extending Time to File Response, the Certified Index of the Administrative Record and attached affidavits will be filed in conjunction with the Respondent’s Response to Petition.

² While arguing that the Illinois EPA neglected to provide the “final permit documents” to the public in accordance with 40 C.F.R. §124.17(c), Petitioner fails to identify the meaning it affords to the phrase “final permit documents.” Respondent can only assume that the Petitioner refers to the issuance of both the Illinois EPA’s final permitting decision and accompanying Responsiveness Summary. Although overlooked by Petitioner, 40 C.F.R. §124.17(c) merely applies to the response to comments while 40 C.F.R. §124.15 addresses the notice of the permitting decision, itself. As Petitioner failed to raise the issue whether the Illinois EPA’s notice complied with the requirements of 40 C.F.R. §124.15, the Respondent will not directly address the issue in this filing. *Accord*, *Prairie State I* slip op. at 4, fn. 4.

³ *See*, footnote 2.

suggested by the plain language of the rule, but are equally compelling as a matter of common sense. Had the Board deemed it necessary for a permitting authority to satisfy these basic “notice” requirements by physically placing both the final permit decision and the response to comments in the United States mail, it conceivably would have promulgated rules in Part 124 to that clear effect.

At least one Board decision aptly illustrates this argument. While in the context of a discussion of 40 C.F.R. §§124.15 and 124.19, the Hillman decision reveals the Board’s reluctance to impose additional requirements not articulated or even contemplated by Section 124.15. Instead, the Board opted for some form of personal notification “reasonably calculated . . . to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *See, In re Hillman Power, LLC*, PSD Appeal Nos. 02-04, 02-05, and 02-06, slip op. at 6 (EAB, May 24, 2002) (hereinafter “*Hillman*”) (Order Directing Service of PSD Permit Decision on Parties that Filed Written Comments on Draft PSD Permit Decision, Denying Motions to Dismiss, and Directing Briefing on Merits) citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (citing *Milliken v. Meyer*, 311 U.S. 457 (1940)).

Rather than acknowledging the Board’s previous exercise of restraint, the Petitioner selectively isolates a portion of a footnote excerpted from *Prairie State I*. In that ruling, the Board admittedly cautioned the Illinois EPA regarding the extent to which it must provide notice to participants of its final deliberations in future permitting matters. The entire context of the footnote is particularly relevant to the instant notice, which was developed to address the Board’s guidance in this decision. In its entirety, the footnote provided that:

Although Petitioners also use January 21 as the date of issuance for the responsiveness summary, the Board questions whether IEPA's action of simply directing those who participated during the comment period to IEPA's website was sufficient to make the responsiveness summary "available to the public" as required by 40 C.F.R.124.17(c). IEPA's actions in this regard presupposes that all persons who comment on permits will have access to the internet. In other analogous circumstances, we have found this not to be a reasonable assumption. See *In re Hillman Power Co. L.L.C.*, PSD Appeal Nos. 02-04, 02-05, and 02-06 (Order Directing Service of PSD Permit Decision on Parties that Filed Written Comments on Draft PSD Permit Decision, Denying Motions to Dismiss, and Directing Briefing on Merits) at 4 (EAB, May 24, 2002) ("Indeed, it is not reasonable to assume that all persons who comment on permits will even have access to the internet."). Moreover, merely notifying commenters by mail that a permit had been issued and directing them to a web site to view copies of the permit itself, as IEPA apparently did here, may not satisfy the obligation under 40 C.F.R. § 124.15 to notify "each person who submitted written comments or requested notice of the permit decision." See *In re Hillman Power Co., L.L.C.*, *supra*, interlocutory order at 3-6 (EAB, May 24, 2002) (finding mere posting on permitting authorities' website to be insufficient to satisfy obligation under 40 C.F.R. § 124.15 to notify commenters of the permit decision), available electronically at <http://www.epa.gov/eab/psd-int.loc.ords/hillman.pdf>. While it is true that IEPA did give written notice that a permit decision had been issued, a commenter would have no way of determining whether to petition for review or the basis for any such 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.

See, *Prairie State I* slip op. at 3-4, fn. 4.

For purposes of both 40 C.F.R. §124.15 and 40 C.F.R. §124.17, the Board's footnote emphasized the need to make material more readily available to the public in the future, beyond a written notice directing individuals to the Illinois EPA's website because it was not necessarily reasonable to assume that everyone has internet access. *Id.* citing *Hillman*. In light of the comments articulated by the Board in the above-referenced footnote, the Illinois EPA reflected further on the *Hillman* decision prior to notifying public participants of its final permitting decisions. As previously alluded to, in *Hillman*, the Michigan Department of Environmental Quality ("MDEQ") provided notice to the

Michigan Environmental Council ("MEC") of its final permitting decision by merely "posting" the decision on MDEQ's website; no written notice of the posting on the website was ever provided to MEC. See, *Hillman* slip op. at 2. While the Board agreed with MDEQ that 40 C.F.R. §124.15 "did not specify the means by which notice should be given of final permit decisions", the Board found fault with the MDEQ's notice as it could not be assumed that MEC received notice on the date of posting particularly since everyone does not have internet access. *Id.* at 4. Equally important was the Board's recognition that commenters would have no reason to know when the permit was issued and thus, when to check the agency's web page. *Id.* "This means of 'serving' improperly puts the onus on the interested party to continually check for permit agency developments, lest some portion of the party's time to appeal be lost." *Id.* Again, the Board found that the lack of specificity in the Part 124 regulations did not suggest that any form of "service" would be sufficient but must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Id.* at 5-6 citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (citing *Milliken v. Meyer*, 311 U.S. 457 (1940)). The Board ultimately concluded that MEC "should have been mailed a copy of the final permit decision or provided some other form of personal notification."⁴

⁴ Although, the Board ultimately directed MDEQ to notify through mail or personal service any party similarly situated to MEC, such order was in response to the "less-than-thorough way in which MDEQ attempted to discharge its vital public participation responsibilities." See, *Hillman* slip op. at 6-7. The Board's action reveals its decision to sanction MDEQ rather than establishing an absolute rule that effectively removes any latitude by the permit authority to satisfy its notice obligations. Moreover, as illustrated above, the same cannot be said of the Illinois EPA as the Hillman MDEQ due to the former's thorough consideration of the Part 124 regulations and related Board precedent in reevaluating the appropriate manner to apprise all participants in the public comment period of its final permitting decision and to make the Responsiveness Summary available to the public.

Id. at 6. The Board's ruling reveals a spectrum of options that a permit authority, in its discretion, may turn to in providing notice of its final deliberations. As the Board recognized not just "any notice" is sufficient to fulfill an obligation to alert participants of final agency decisions, however, it does not mean that Petitioner's notion, i.e., the mailing of both the final permit decision and Responsiveness Summary, is the only option.

After reviewing the Board's guidance in *Prairie State I*, the Illinois EPA subsequently declined to pursue the approach of mailing to each commenter the typically-voluminous final permitting decisions and Responsiveness Summaries that accompany its Construction Permits – PSD Approvals.⁵ Neither the Part 124 regulations or Board caselaw dictate such a costly and paper-consumptive approach by permitting authorities. However, the Illinois EPA did ultimately choose to modify the earlier notice that was addressed in *Prairie State I*.⁶ For instance, the written notice in *Prairie State I* merely directed participants in the public comment period to the Illinois EPA's website to retrieve copies of the final permit decision and the Responsiveness Summary. Subsequent written notices informed participants that copies of the final permit decision

⁵ For instance, the instant Construction Permit-PSD Approval and Responsiveness Summary combined for a total of 165 pages.

⁶ In fact, the EAB encouraged further discussion between the parties after its issuance of the *Prairie State I* decision. *See, Prairie State* slip op. at 7. In accordance with the EAB's order, the Illinois EPA met with representatives of the Sierra Club and other Petitioners in the midst of the *Prairie State* proceedings. This discussion facilitated changes to the notice issued on April 28, 2005, as compared to the notice issued on January 21, 2005. Consistent with the recent CWLP notice, the notice issued in the second *Prairie State* proceeding informed commenters that copies of the final permit decision and Responsiveness Summary could be obtained by contacting the Illinois EPA by phone (including a toll-free number), facsimile or electronic mail, by visiting the local repositories, or by visiting the Illinois EPA's website. *See, Respondent's Exhibit 2* and attached affidavit of Ms. Julie Armitage. The Petitioner did not challenge that the notice underlying the second *Prairie State* decision was legally deficient. *See, In re Prairie State Generating Company, LLC, PSD Appeal No. 05-05, Petition for Review, dated June 8, 2005.*

and Responsiveness Summary could be obtained by contacting the Illinois EPA by telephone (including a toll-free telephone number), facsimile or electronic mail, by visiting the local repository established for the hearing, or by visiting the Illinois EPA's website. *Compare*, Respondent's Exhibit 1, 2 & Sierra Club's Exhibit 7.

The Illinois EPA nonetheless recognized the additional time associated with an individual requesting a copy of the final permit and the Responsiveness Summary through the mail.⁷ In revising the notice, the Illinois EPA sought to maximize access by different individuals depending on their particular circumstances while at the same time minimizing the delay for any individual. For instance, the Illinois EPA's written notice not only provided the Illinois EPA's website, the appropriate staff contact's telephone and facsimile numbers and electronic mail address, but utilized a toll-free telephone number for those individuals that may not have access to long-distance telephone service or may not wish to incur the additional cost of a long-distance telephone call. In addition, consistent with the public comment period, the Illinois EPA made the final permitting decision and Responsiveness Summary available at the local repository established for hearing, the local public library.

⁷ The Illinois EPA takes exception to Petitioner's statement that a "commenter who received the Illinois EPA 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." *See*, Petitioner's Response at 2. If the Board assumes that a mailing can be safely delivered in three days, as implied by 40 C.F.R. §124.20(d), it is difficult to envision Petitioner's scenario taking so long. Moreover, a commenter can logically assume that delays caused by a mailed request for a copy of the permit would exhaust more time than a request made by a toll-free telephone call or a visit to a local repository.

WHEREFORE, the Illinois EPA respectfully requests that the Board deny the Sierra Club's argument that the Illinois EPA's notice was "legally insufficient" in the Sierra Club's Response to David Maulding's Motion for Leave to Intervene on the basis that the Illinois EPA's notice was legally sufficient or, in the alternative, to award such other relief that is just and appropriate.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,



Sally Carter
Assistant Counsel
Division of Legal Counsel

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
217/782-5544

Date: October 20, 2006



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

P.O. Box 19506, SPRINGFIELD, ILLINOIS 62794-9506

RENEE CIPRIANO, DIRECTOR

January 21, 2005

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

Dear Mr. Nilles:

Thank you for your comments on the proposed issuance of the Prevention of Significant Deterioration (PSD) permit to Prairie State Generating Company. The Illinois EPA has made a decision to issue the permit for the facility. The Illinois EPA has prepared a Responsiveness Summary addressing comments and questions raised during the public comment period. Copies of the issued permit and Responsiveness Summary can be found at www.epa.gov/region5/air/permits/ilonline.htm (please look under All Permit Records, PSD, New).

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 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. 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 cursive script that reads "Bradley Frost".

Bradley Frost
Office of Community Relations

217/782-7027
217/782-9143 TDD

April 28, 2005

«Name»
«Address»
«CityStZip»

Re: Notice of Final Permit Decision
Prairie State Generating Company, LLC

Dear «Salutation»:

Thank you for your previous comments on the draft Construction Permit - Prevention of Significant Deterioration (PSD) Approval for Prairie State Generating Company, LLC. Following a remand order issued by the United States Environmental Protection Agency's Environmental Appeals Board ("EAB"), the Illinois EPA has been directed to correct a procedural error that resulted from the issuance of an earlier permit on January 14, 2005. To this end, the Illinois EPA is issuing both a final grant of Permit and a response to public comments ("Responsiveness Summary") as of the date of this letter. This letter constitutes formal notification of these actions, as well as an explanation of available appeal rights and access to the Permit and Responsiveness Summary.

This Permit authorizes construction of emission sources and air pollution control equipment associated with the proposed mine-mouth coal-fired power plant. Authorization is also granted for construction with respect to the federal rules for Prevention of Significant Deterioration of Air Quality (PSD), 40 CFR §52.21. As a general rule, individuals who filed comments on the draft permit or participated in the public hearing may petition the EAB to review the PSD provisions of the issued Permit. The PSD approval becomes effective on June 8, 2005, as authorized under the provisions of 40 CFR §124.15, unless a petition for review is filed with the EAB in accordance with the provisions of 40 CFR §124.19. Any such petition must be received by the EAB on or before June 8, 2005. An appeal request may be filed with the EAB by regular mail by sending it 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

Questions regarding filing or other appeal requirements may be directed to the EAB at 202-233-0122 or its web site at www.epa.gov/eab.



If you are interested, copies of the final Permit and Responsiveness Summary are available through the following means:

1. By viewing the documents at one of the following repositories:

Marissa Public Library
212 N. Main St
Marissa, IL 62257-1344
618/295-2825

Illinois EPA
Collinsville Regional Office
2009 Mall Street
Collinsville, IL 62234
618/346-5120

Illinois EPA
1021 North Grand Avenue, East
Springfield, IL 62794
217/782-7027

2. By contacting the Illinois EPA by telephone, facsimile or electronic mail:

Illinois EPA
Bradley Frost, Office of Community Relations Coordinator
888-372-1996 Toll Free - Environmental Helpline
217-782-7027 Desk line
217-782-9143 TDD
217-524-5023 Facsimile
brad.frost@epa.state.il.us

3. By accessing the World Wide 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 of the documents by mail and free of charge, please contact me at the contact information listed in #2 above.

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

Sincerely,



Bradley Frost
Office of Community Relations

STATE OF ILLINOIS
COUNTY OF SANGAMON

AFFIDAVIT

I, Julie K. Armitage, being first duly sworn, depose and state that the following statements set forth in this instrument are true and correct, except as to matters therein stated to on information and belief and, as to such matters, the undersigned certifies that she believes the same to be true:

1. I am employed by the Illinois Environmental Protection Agency ("Illinois EPA") as the Managing Attorney, Air Enforcement Unit, for the Division of Legal Counsel located at 1021 North Grand Avenue East, Springfield, Illinois. I have been employed by the Illinois EPA since March 1990.

2. As Managing Attorney for the Illinois EPA's Air Enforcement Unit, my primary responsibility is to oversee and supervise the work of the air enforcement attorneys, whose primary duties range from initiating enforcement matters, responding to legal questions posed by Bureau of Air staff and responding to Freedom of Information Act requests to defending the Illinois EPA in eligibility determinations, permit and trade secret/confidential business information appeals, adjusted standard and variance proceedings and handling the Illinois EPA's provisional variance requests. I have the added responsibility of handling my own enforcement matters and responding to a multitude of legal questions from the Bureau of Air staff.

3. Two of my staff attorneys include Ms. Sally Carter and Mr. Robb Layman, the attorneys assigned to the defense of the January 2005 and April 2005 Construction Permit - PSD Approvals issued by the Illinois EPA to Prairie State Generating Company, LLC ("Prairie State") before the Environmental Appeals Board

("Board"). In this regard, I am familiar with the permittee, Prairie State, and its proposed construction of a 1500 MW mine-mouth coal-fired power plant in Washington County, Illinois. (Permit Application No. 01100065).

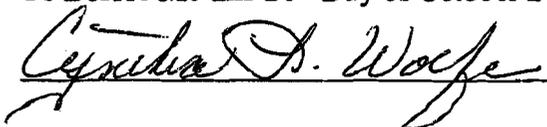
3. As part of my responsibilities, I participated in a settlement meeting encouraged by the Board between the Illinois EPA and the Prairie State Petitioners, et al., including counsel for the Sierra Club, Mr. Bruce Nilles. *See, In re Prairie State Generation Station*, PSD Appeal No. 05-02, slip op. at 7, fn. 6 (EAB, March 25, 2005) (hereinafter "*Prairie State I*").

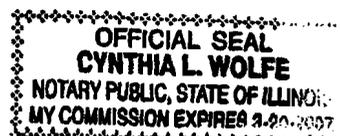
4. In the April, 2005, meeting prior to the Illinois EPA's April 28, 2005, issuance of the Construction Permit – PSD Approval to Prairie State, the parties discussed the notice underlying the *Prairie State I* decision. This discussion facilitated changes to the notice issued on April 28, 2005, as compared to the notice issued on January 21, 2005. Such modifications incorporated into the April 28, 2005, notice included informing commenters that copies of the final permit decision and Responsiveness Summary could be obtained by contacting the Illinois EPA by telephone (including a toll-free telephone number), facsimile or electronic mail, by visiting the local repositories, or by visiting the Illinois EPA's website. *See, Respondent's Exhibit 2.* During the April 2005 meeting, Mr. Nilles expressed no objection to this approach.

Further affiant sayeth not.


Julie K. Armitage

Subscribed and sworn
To Before Me this 20th Day of October 2006





CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of October, 2006, I did send, by Federal Express, postage prepaid, one (1) original and five (5) copies of the following instrument entitled **MOTION FOR LEAVE TO FILE PARTIAL REPLY TO SIERRA CLUB'S RESPONSE TO DAVID MAULDING'S MOTION FOR LEAVE TO INTERVENE** and **PARTIAL REPLY TO SIERRA CLUB'S RESPONSE TO DAVID MAULDING'S MOTION FOR LEAVE TO INTERVENE** to:

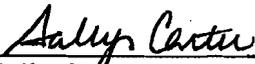
Eurika Durr,
Clerk of the Board
Environmental Appeals Board
U.S. Environmental Protection Agency
1341 G Street, N.W., Suite 600
Washington, D.C. 20005

and a true and correct copy of the same foregoing instruments, by First Class Mail with postage thereon fully paid and deposited into the possession of the United States Postal Service to:

SEE ATTACHED SERVICE LIST

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,



Sally Carter
Assistant Counsel
Division of Legal Counsel

Date: October 20, 2006

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
217/782-5544

This filing is submitted on recycled paper.

SERVICE LIST

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