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PSD/Clean Air Act: Maryland Department of the Environment Issues Final Decision Addressing Expiration of Proposed Baltimore City, Maryland Waste Combustion Facility Permit

Arkansas Environmental, Energy, and Water Law Blog

03/28/2016

The Maryland Department of the Environment ("MDE") issued a March 17th final decision regarding the expiration of air quality provisions of the Certificate of Public Convenience and Necessity ("CPCN") issued by the Maryland Public Service Commission in regards to a proposed Baltimore City, Maryland waste combustion facility.

As noted in a previous post <http://www.mitchellwilliamslaw.com/clean-air-act-construction-of-baltimore-city-maryland-waste-energy-project-challenged-because-of-alleged-expiration-of-psd-permit>, the Environmental Integrity Project ("EIP") had sent a February 10th Notice of Intent to Sue Energy Answers International, Inc. and Energy Answers Baltimore, LLC (collectively, "EA") alleging that a Clean Air Act Prevention of Significant Deterioration ("PSD") permit that had been issued for the construction of a waste combustion facility known as the Fairfield Renewable Energy Project expired.

EIP alleged that the lapse in construction of the Project was of such length, that under the PSD regulations, the permit automatically expired.

The MDE addresses this issue in its March 17th final decision. The decision notes in part:

... As you know, the Department issued Prevention of Significant Deterioration ("PSD") and Nonattainment New Source Review ("N-NSR") approvals as part of the CPCN issued by the Public Service Commission on August 6, 2010, for the construction of Energy Answers' 120 MW generation station in Curtis Bay, Baltimore. Pursuant to Air Quality Requirement No. A.6 of the CPCN, COMAR 26.11.02.04B, and 40 CFR 52.21(r)(1), if a lapse in construction of 18 months or longer occurs, as determined by the Department, the air quality provisions of the CPCN expire.

MDE states it determined:

... that more than 18 months have elapsed since the last construction activity was performed at the Energy Answers' Fairfield facility. Specifically, no activity that would be considered construction under the Clean Air Act has occurred on the site since Energy Answers completed driving thirty-two piles of support the emission stack. The pile driving ceased on October 31, 2013. Consequently, by operation of law, the air quality provisions of the Energy Answers CPCN have expired and are no longer valid.

[Click here to download a copy of the decision.](#)