

ILLINOIS POLLUTION CONTROL BOARD
November 17, 2005

MIDWEST GENERATION, LLC, FISK)
GENERATING STATION,)
)
Petitioner,)
)
v.) PCB 06-57
) (CAAPP Permit Appeal – Air)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by A.S. Moore):

On November 2, 2005, Midwest Generation, LLC, Fisk Generating Station (Midwest) timely filed a petition asking the Board to review a September 29, 2005 determination of the Illinois Environmental Protection Agency (Agency). In the determination, the Agency issued a Clean Air Act Permit Program (CAAPP) permit with conditions. *See* 415 ILCS 5/40.2(a) (2004); 35 Ill. Adm. Code 105.302(e). The CAAPP permit concerns Midwest’s electric generating station located at 1111 West Cermak Road in Chicago, Cook County.

Section 40.2(a) of the Environmental Protection Act (Act) (415 ILCS 5/40.2(a) (2004)) allows several persons to appeal Agency CAAPP permit determinations: permit applicants; persons who participated in the Agency’s public comment process under Section 39.5(8) of the Act (415 ILCS 5/39.5(8) (2004)); and persons who could obtain judicial review under Section 41(a) of the Act (415 ILCS 5/41(a) (2004)). *See* 415 ILCS 5/40.2(a) (2004); *see also* 35 Ill. Adm. Code 105.302(c). Midwest is the CAAPP permit applicant. Midwest challenges the CAAPP permit on numerous grounds. The Board accepts the petition for hearing.

Midwest has the burden of proof. *See* 415 ILCS 5/40.2(a) (2004); *see also* 35 Ill. Adm. Code 105.112(a). Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40.2(c) (2004)), which only Midwest may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, “the permit shall not be deemed issued; rather, the petitioner shall be entitled to an Appellate Court order pursuant to Section 41(d) of this Act [415 ILCS 5/41(d) (2004)].” 415 ILCS 5/40.2(c) (2004). Currently, the decision deadline is March 2, 2006, which is the 120th day after the Board received Midwest’s petition. *See* 35 Ill. Adm. Code 105.114. A Board meeting is currently scheduled for March 2, 2006.

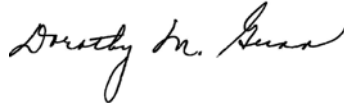
Unless the Board or the hearing officer orders otherwise, the Agency must file an answer, including the entire record of its determination within 30 days after it is served with the petition. *See* 35 Ill. Adm. Code 105.302(f). If the Agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed.

See 35 Ill. Adm. Code 105.116. The record must comply with the content requirements of 35 Ill. Adm. Code 105.302(f).

In its petition, Midwest also asks the Board to rule that the effectiveness of the entire CAAPP permit is stayed. The Board reserves ruling on that motion to allow for the Agency to respond.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 17, 2005, by a vote of 4-0.

A handwritten signature in cursive script, appearing to read "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board