

Before the Illinois Pollution Control Board

RECEIVED
CLERK'S OFFICE
MAR 10 2006
STATE OF ILLINOIS
Pollution Control Board

Midwest Generation EME, LLC)
)
)
Complainant/Petitioner,)
)
v.)
)
Illinois Environmental Protection Agency)
)
)
Respondent.)

PCB 04-216 _____
(Trade Secret Appeal)

SUBPOENA DUCES TECUM

TO:
Lisa Madigan
Matthew Dunn
Ann Alexander
Paula Becker Wheeler
Office of the Attorney General
188 West Randolph Street, Suite 2000
Chicago, Illinois 60601

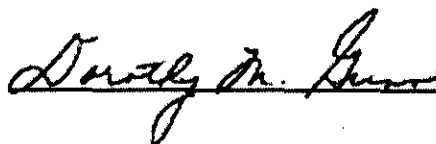
Pursuant to Section 5(e) of the Environmental Protection Act (415 ILCS 5/5(e) (2002)) and 35 Ill. Adm. Code 101, Subpart F, the most knowledgeable employee(s) or representative(s) of the Illinois Environmental Protection Agency are ordered to attend and give testimony at the hearing/deposition in the above-captioned matter at 9:00 a.m. on March 28, 2006, at the offices of Schiff Hardin LLP, 6600 Sears Tower, Chicago, IL 60606, or at some other location agreed upon by counsel. Specifically, the Illinois Environmental Protection Agency must designate and produce the most knowledgeable employee(s) or representative(s) to testify as to matters known or reasonably available to the Illinois Environmental Protection Agency concerning the topics listed in Attachment A

hereto. The deposition will be by oral examination with written record made thereof, before a notary public or other person authorized by law to administer oaths.

You are also ordered to bring with you documents relevant to the matter under consideration as designated in Attachment B hereto.

Failure to comply with this subpoena will subject you to sanctions under 35 Ill. Adm. Code 101.622(g) and 101802.

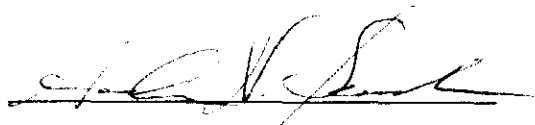
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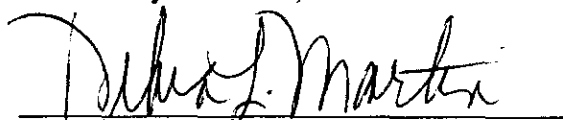
Dorothy M. Gunn, Clerk
Pollution Control Board

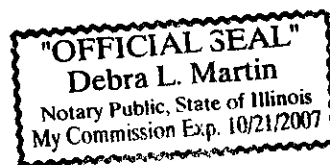
Date: March 10, 2006

I served this subpoena duces tecum by mailing a copy to Ann Alexander on March 10, 2006.



Subscribed and sworn to before me this 10th day of March, 2006.



Notary Public

Attachment A

Definitions

The “Act” means the Illinois Environmental Protection Act, 415 ILCS 5.

“FOIA” means the Illinois Freedom of Information Act, 5 ILCS 140.

“IEPA” means the Illinois Environmental Protection Agency (including the Director of the Illinois Environmental Protection Agency), its headquarters, offices, bureaus, and its present and former officers, directors, managers, employees, agents, contractors, consultants, attorneys, and affiliates, and all other persons acting or purporting to act on its behalf.

Topics for Deposition

1. IEPA’s practices, procedures and standards concerning the handling of documents that purport to contain trade secrets or other confidential information.
2. IEPA’s practices, procedures and standards for determining whether public records are exempt from disclosure pursuant to FOIA, the Act, the regulations set forth at 35 Ill. Adm. Code 1828, or the regulations set forth at 35 Ill. Adm. Code 130.
3. The manner in which IEPA has implemented Section 3(g) of FOIA and Section 7 of the Act, including IEPA’s practices and procedures for complying with the regulations set forth at 2 Ill. Adm. Code 1828.
4. The manner in which IEPA has implemented Sections 7 and 7.1 of the Act, including IEPA’s practices and procedures for complying with the regulations set forth at 35 Ill. Adm. Code 130.
5. The relationship between the regulations set forth at 2 Ill. Adm. Code 1828 and those set forth at 35 Ill. Adm. Code 130.

Attachment B

Definitions

The "Act" means the Illinois Environmental Protection Act, 415 ILCS 5.

"Documents" shall be interpreted in the broadest possible sense and include, without limitation, all written, recorded, printed, typed, transcribed, filmed, digitized, or graphic matter and all other tangible things and media upon which any handwriting, typing, printing, drawing, representation, electrostatic or other copy, sound or video recording, magnetic or electrical impulse, visual reproduction or communication is recorded, reproduced or represented, including, but not limited to books, records, correspondence, reports, memoranda, electronic mail (i.e., "e-mail"), contracts, tables, tabulations, graphs, charts, diagrams, plans, schedules, appointment books, calendars, diaries, time sheets, reports, studies, analyses, drafts, telegrams, teletype, or telecopy messages, files, telephone logs and messages, checks, microfilms, microfiche, pictures, photographs, printouts, electronic data compilations, tapes, diskettes, computer drives, removable media, notes, minutes or transcripts of proceedings. "Documents" shall include originals and non-identical copies (whether different from original because of notes made in or attached to such copy or different for any other reason), all other data compilations from which information can be obtained or translated, if necessary, and any preliminary versions, drafts and revisions of the foregoing.

"All documents" means every document within the custody, possession or control of the Respondent, its attorneys, representatives, agents, affiliates, consultants, divisions, and all other persons or entities of any kind now or at anytime acting or purporting to act on its behalf.

"FOIA" means the Illinois Freedom of Information Act, 5 ILCS 140.

"IEPA" means the Illinois Environmental Protection Agency (including the Director of the Illinois Environmental Protection Agency), its headquarters, offices, bureaus, and its present and former officers, directors, managers, employees, agents, contractors, consultants, attorneys, and affiliates, and all other persons acting or purporting to act on its behalf.

Documents Requested

1. All documents (including guidance documents), whether internal or external, formal or informal, that IEPA has drafted or relied upon in the past, or currently relies upon, that set forth IEPA's practices, procedures or standards regarding:

(a) the handling of documents that purport to contain trade secrets or other confidential information;

(b) determinations of whether public records are exempt from disclosure pursuant to FOIA, the Act, the regulations set forth at 35 Ill. Adm. Code 1828, or the regulations set forth at 35 Ill. Adm. Code 130;

(c) the implementation of Section 3(g) of FOIA and Section 7 of the Act, including IEPA's practices and procedures for complying with the regulations set forth at 2 Ill. Adm. Code 1828;

(d) the implementation of Sections 7 and 7.1 of the Act, including IEPA's practices and procedures for complying with the regulations set forth at 35 Ill. Adm. Code 130; or

(e) the relationship between the regulations set forth at 2 Ill. Adm. Code 1828 and those set forth at 35 Ill. Adm. Code 130.

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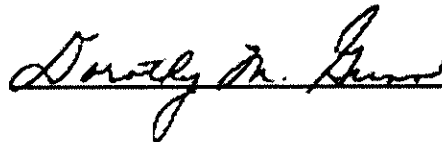
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hereto. The deposition will be by oral examination with written record made thereof, before a notary public or other person authorized by law to administer oaths.

You are also ordered to bring with you documents relevant to the matter under consideration as designated in Attachment B hereto.

Failure to comply with this subpoena will subject you to sanctions under 35 Ill. Adm. Code 101.622(g) and 101802.

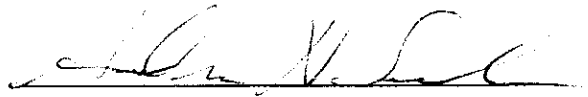
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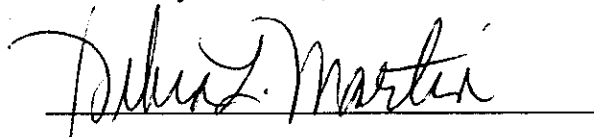
Dorothy M. Gunn, Clerk
Pollution Control Board

Date: March 10, 2006

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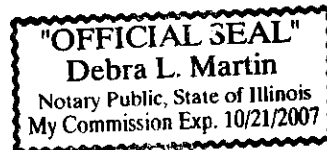


Subscribed and sworn to before me this 10th day of March, 2006.



Notary Public

CH2\1389646.1



Attachment A

Definitions

“Emissions data” refers to that term as it is now or was in the past defined under Section 7 of the Illinois Environmental Protection Act, 4115 ILCS 5/7, Section 114(c) of the Clean Air Act, 42 U.S.C. § 7417(c), or their predecessors, and their implementing regulations.

“IEPA” means the Illinois Environmental Protection Agency (including the Director of the Illinois Environmental Protection Agency), its headquarters, offices, bureaus, and its present and former officers, directors, managers, employees, agents, contractors, consultants, attorneys, and affiliates, and all other persons acting or purporting to act on its behalf.

Topics for Deposition

1. IEPA’s interpretations of the term emissions data.
2. IEPA’s denial of confidential treatment for information in public records on the basis that the information constitutes emissions data.
3. IEPA’s practices, procedures and standards regarding its denial of confidential treatment for information in public records on the basis that the information constitutes emissions data.
4. IEPA’s practices, procedures or standards regarding its determination that information constitutes emissions data.

Attachment B

Definitions

“Documents” shall be interpreted in the broadest possible sense and include, without limitation, all written, recorded, printed, typed, transcribed, filmed, digitized, or graphic matter and all other tangible things and media upon which any handwriting, typing, printing, drawing, representation, electrostatic or other copy, sound or video recording, magnetic or electrical impulse, visual reproduction or communication is recorded, reproduced or represented, including, but not limited to books, records, correspondence, reports, memoranda, electronic mail (i.e., “e-mail”), contracts, tables, tabulations, graphs, charts, diagrams, plans, schedules, appointment books, calendars, diaries, time sheets, reports, studies, analyses, drafts, telegrams, teletype, or telecopy messages, files, telephone logs and messages, checks, microfilms, microfiche, pictures, photographs, printouts, electronic data compilations, tapes, diskettes, computer drives, removable media, notes, minutes or transcripts of proceedings. “Documents” shall include originals and non-identical copies (whether different from original because of notes made in or attached to such copy or different for any other reason), all other data compilations from which information can be obtained or translated, if necessary, and any preliminary versions, drafts and revisions of the foregoing.

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“Emissions data” refers to that term as it is now or was in the past defined under Section 7 of the Illinois Environmental Protection Act, 4115 ILCS 5/7, Section 114(c) of the Clean Air Act, 42 U.S.C. § 7417(c), or their predecessors, and their implementing regulations.

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Documents Requested

1. All documents (including guidance documents), whether internal or external, formal or informal, that IEPA has drafted or relied upon in the past, or currently relies upon, that set forth:

(a) IEPA's interpretations of the term emissions data;

(b) IEPA's practices, procedures or standards regarding its determination that information constitutes emissions data; and

(c) IEPA's practices, procedures or standards regarding its denial of confidential treatment for information in public records on the basis that the information constitutes emissions data.

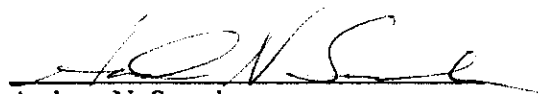
CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached Midwest Generation EME, LLC's Petitioner's two SUBPOENAS DUCES TECUM by U.S. Mail, upon the following persons:

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, IL 60601

Lisa Madigan
Matthew Dunn
Ann Alexander
Paula Becker Wheeler
Office of the Attorney General
188 West Randolph Street, Suite 2000
Chicago, Illinois 60601

Dated March 10, 2006



Andrew N. Sawula
Attorney for Petitioner