

ILLINOIS POLLUTION CONTROL BOARD
March 16, 2006

MIDWEST GENERATION, LLC,)	
WAUKEGAN GENERATING STATION,)	
)	
Petitioner,)	
)	
v.)	PCB 06-146
)	(CAAPP Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On March 13, 2006, Midwest Generation, LLC, Waukegan Generating Station (Midwest) timely filed a petition (Pet.) asking the Board to review a February 7, 2006 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2004); 35 Ill. Adm. Code 105.206(a). In the determination, the Agency issued a Clean Air Act Permit Program (CAAPP) permit with conditions. The CAAPP permit concerns Midwest's electric generating station located at 410 East Greenwood Avenue, Waukegan, Lake 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); 35 Ill. Adm. Code 105.302(c). Midwest is the CAAPP permit applicant. Midwest challenges the CAAPP permit on numerous grounds. *See generally* Pet. at 7-64. The Board accepts the petition for hearing.

Midwest has the burden of proof. 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 July 11, 2006, which is the 120th day after Midwest filed its petition. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for July 6, 2006.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by April 12, 2006, which is 30 days after Midwest filed the petition. 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. 35 Ill.

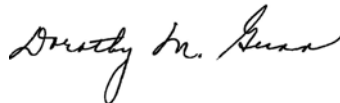
Adm. Code 105.116. The record must comply with the content requirements of 35 Ill. Adm. Code 105.212(b).

In its petition, Midwest notes that

consistent with the Board's decisions on February 16, 2006, in other recent appeals of CAAPP permits regarding the effectiveness of appealed permits under Section 10-65(b) of the Illinois Administrative Procedure Act ("APA"), 5 ILCS 100/10-65, and the holding in *Borg-Warner Corp. v. Mauzy*, 427 N.E. 2d 415 (Ill. App. Ct. 3rd Dist. 1981) ("Borg-Warner"), the CAAPP permit issued by the Agency to Midwest Generation for the Waukegan Generating Station does not become effective until after a ruling by the Board on the permit appeal, and, in the event of a remand, until the Agency has issued the permit consistent with the Board's order. Pet. at 6, citing Midwest Generation, LLC, Crawford Generating Station v. IEPA, PCB 06-56, slip op. at 7 (Feb. 16, 2006); Midwest Generation, LLC, Fisk Generating Station v. IEPA, PCB 06-57, slip op. at 7 (Feb. 16, 2006); Midwest Generation, LLC, Joliet Generating Station v. IEPA, PCB 06-58, slip op. at 7 (Feb. 16, 2006); Midwest Generation, LLC, Powerton Generating Station v. IEPA, PCB 06-59, slip op. at 7 (Feb. 16, 2006); Midwest Generation, LLC, Will County Generating Station v. IEPA, PCB 06-60, slip op. at 7 (Feb. 16, 2006).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 16, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board