

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MIDWEST GENERATION, LLC,)
WILL COUNTY GENERATING STATION,)
)
Petitioner,)
)
v.) **PCB _____**
) **(Permit Appeal – Air)**
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

NOTICE OF FILING

To: Pollution Control Board, Attn: Clerk Division of Legal Counsel
James R. Thompson Center Illinois Environmental Protection Agency
100 W. Randolph 1021 North Grand Avenue, East
Suite 11-500 P.O. Box 19276
Chicago, Illinois 60601 Springfield, Illinois 62794-9276

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution control Board the original and nine copies of the **Appeal of CAAPP Permit of Midwest Generation, LLC, Will County Generating Station** and the **Appearances of Sheldon A. Zabel, Kathleen C. Bassi, Stephen J. Bonebrake, and Kavita M. Patel**, copies of which are herewith served upon you.

/s/ Kathleen C. Bassi
Kathleen C. Bassi

Dated: April 7, 2006

Sheldon A. Zabel
Kathleen C. Bassi
Stephen J. Bonebrake
Kavita M. Patel
SCHIFF HARDIN, LLP
6600 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
312-258-5500
Fax: 312-258-5600

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APPEARANCE

I hereby file my appearance in this proceeding, on behalf of Midwest Generation, LLC, Will County Generating Station.

/s/ Kathleen C. Bassi
Kathleen C. Bassi

Dated: April 7, 2006

Sheldon A. Zabel
Kathleen C. Bassi
Stephen J. Bonebrake
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APPEARANCE

I hereby file my appearance in this proceeding, on behalf of Midwest Generation, LLC, Will County Generating Station.

/s/ Sheldon A. Zabel
Sheldon A. Zabel

Dated: April 7, 2006

Sheldon A. Zabel
Kathleen C. Bassi
Stephen J. Bonebrake
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APPEARANCE

I hereby file my appearance in this proceeding, on behalf of Midwest Generation, LLC, Will County Generating Station.

/s/ **Stephen J. Bonebrake**
Stephen J. Bonebrake

Dated: April 7, 2006

Sheldon A. Zabel
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SCHIFF HARDIN, LLP
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APPEARANCE

I hereby file my appearance in this proceeding, on behalf of Midwest Generation, LLC, Will County Generating Station.

/s/ **Kavita M. Patel**
Kavita M. Patel

Dated: April 7, 2006

Sheldon A. Zabel
Kathleen C. Bassi
Stephen J. Bonebrake
Joshua R. More
Kavita M. Patel
SCHIFF HARDIN, LLP
6600 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
312-258-5500
Fax: 312-258-5600

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

APPEAL OF CONSTRUCTION PERMIT

NOW COMES Petitioner, MIDWEST GENERATION, LLC, WILL COUNTY GENERATING STATION (“Petitioner,” “Will County,” or “Midwest Generation”), pursuant to Section 40(a)(1) of the Illinois Environmental Protection Act (“Act”) (415 ILCS 5/40(a)(1)) and 35 Ill.Adm.Code § 105.200 *et seq.*, and requests a hearing before the Board to contest the decisions contained in the construction permit¹ issued to Petitioner on March 3, 2006, (received via facsimile) pursuant to Section 39(a) of the Act (415 ILCS 5/39(a) and 35 Ill.Adm.Code § 201.142 (“the construction permit”) and attached hereto as Exhibit 1. 35 Ill.Adm.Code §§ 105.210(a) and (b). Pursuant to Section 39(a) of the Act and 35 Ill.Adm.Code § 105.206(a), this Petition is timely filed with the Board. In support of its Petition, Petitioner states as follows:

I. BACKGROUND

1. The Will County Generating Station (“Will County” or the “Station”), Agency I.D. No. 197810AAK, is an electric generating station owned by Midwest Generation, LLC, and

¹ Application No. 06020009.

operated by Midwest Generation, LLC – Will County Generating Station. The Will County electrical generating units (“EGUs”) went online between 1955 and 1963. The Station is located at 529 East 135th Road, Romeoville, Will County, Illinois 60446-1538, within the Chicago ozone and PM_{2.5}² nonattainment areas. Will County is an intermediate load plant and can generate approximately 1100 megawatts. Midwest Generation employs 190 people at the Will County Generating Station.

2. Will County is a major source subject to the Clean Air Act Permitting Program (“CAAPP”). 415 ILCS 5/39.5. The Agency issued a CAAPP permit to Midwest Generation for Will County on September 29, 2005. Subsequently, on November 2, 2005, Midwest Generation timely appealed the CAAPP permit for Will County at PCB 06-060. The Board accepted the appeal for hearing on November 17, 2005. On February 16, 2006, the Board found that, pursuant to Section 10-65(b) of the Administrative Procedure Act (5 ILCS 100/10-65(b)) (“APA”) and the holding in *Borg-Warner Corp. v. Mauzy*, 427 N.E. 2d 415 (Ill.App.Ct. 1981) (“*Borg-Warner*”), the CAAPP permit is stayed, upon appeal, as a matter of law. *Order, Midwest Generation, LLC, Will County Generating Station v. Illinois Environmental Protection Agency, PCB 06-060 (February 16, 2006) (“Order 1”), p. 2.*

3. Midwest Generation operates four coal-fired boilers at Will County and associated coal handling, coal processing, and ash handling activities. Coal is crushed and prepared in the breaker building and then sent through a series of conveyors to the bunkers. The coal is transferred from the bunkers through pulverizers to further reduce the coal size and then blown into the boilers.

² Particulate matter less than 2.5 microns in aerodynamic diameter.

4. Historically, emissions from the bunkers have been controlled by baghouses or rotoclones with water spray. The construction permit that Midwest Generation is appealing here was issued to permit the construction and operation of wet dust extractor control devices, installed as replacements of the rotoclones. The dust extractor creates a negative pressure inside the coal bunkers so that dust-laden air created from drops from the conveyors and from withdrawal of coal from the bunkers is captured. The dust/air/water mixture passes through a mesh panel, which separates the dust particles in the air stream.

5. The Agency received Midwest Generation's application for the construction permit on February 2, 2006. Midwest Generation required the construction permit so that it could install wet dust extractors during the planned outage that was to begin March 4, 2006. During its discussions with the Agency regarding the construction permit, Midwest Generation learned that the Agency intended to include provisions that mirrored language that has been appealed in the CAAPP permit issued to Will County. Midwest Generation alerted the Agency to this already-appealed language, but the Agency persisted in including such language in the construction permit. See Exhibit 2, attached hereto.

II. EFFECTIVENESS OF PERMIT

6. Pursuant to Section 10-65(b) of the Illinois Administrative Procedures Act ("APA"), 5 ILCS 100/10-65, and the holding in *Borg-Warner Corp. v. Mauzy*, 427 N.E. 2d 415 (Ill.App.Ct. 1981) ("Borg-Warner"), the construction permit issued by the Agency to Will County is not effective by operation of law 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. See *Order, Midwest Generation, LLC, Will County Generating Station v. Illinois Environmental Protection Agency, PCB 06-060* (February 26, 2006) ("Order 2"). In Order 2, the

Board recognized, however, that it may grant a stay of less than the entirety of an appealed permit if the permittee so requests. Order 2 at p. 8, fn 3. Historically, the Board has granted partial stays in permit appeals where a petitioner has so requested. C.f. *Hartford Working Group v. Illinois Environmental Protection Agency*, PCB 05-74 (November 18, 2004) (granted stay of the effectiveness of Special Condition 2.0 of an air construction permit); *Community Landfill Company and City of Morris v. Illinois Environmental Protection Agency*, PCB 01-48 and 01-49 (Consolidated) (October 19, 2000) (granted stay of effectiveness of challenged conditions for two permits of two parcels of the landfill); *Allied Tube & Conduit Corp. v. Illinois Environmental Protection Agency*, PCB 96-108 (December 7, 1995) (granted stay of the effectiveness of Conditions 4(a), 5(a), and 7(a) of an air permit).

7. As discussed below, the Agency has included in the construction permit language that Midwest Generation is appealing at Docket 06-060. Midwest Generation understands that the operating conditions included in the construction permit will roll into the CAAPP permit when it becomes effective. See Exhibit 1, Condition 11. Midwest Generation will suffer irreparable harm if this language is allowed to remain in the construction permit for inclusion, ultimately, in the CAAPP permit if the Board finds, in Docket 06-060, that the language should be struck from the CAAPP permit. Moreover, Midwest Generation would suffer irreparable harm if it were required to comply now, through the construction permit, with conditions that the Board may determine, in Docket 06-060, are inappropriate. Inclusion of such language in the construction permit effectively denies Midwest Generation its statutory right to its appeal of the CAAPP permit unless the Board stays the contested language.

8. Moreover, Midwest Generation will suffer irreparable harm and the environment will not receive the benefit of the improved pollution control devices if Midwest Generation is

not allowed to construct and operate the wet dust extractor system on the coal bunkers for Units 3 and 4 at the Will County Generating Station. The Agency has issued permits for the construction and operation of the same equipment for Midwest Generation's Crawford and Powerton Generating Stations without the contested language included. See Exhibits 3 and 4, attached hereto. Midwest Generation's request for stay of the contested language would result in a construction permit that is effectively the same as those for the Crawford and Powerton Generating Stations, thus providing the necessary and appropriate authorizations to install and operate the equipment in a manner to protect the environment.

9. Midwest Generation requests in this instance that the Board exercise its inherent discretionary authority to grant a partial stay of the construction permit, staying only the contested conditions: Conditions 2, 5(a)(i), 5(a)(ii)(B), 5(b)(i), 6(a)(i)(A), 6(a)(ii)(A), 6(b), 7(a), 7(d)(ii), 7(d)(vii), 9(a), 9(a)(ii), 9(b)(i)(A), and 9(b)(ii).

III. ISSUES ON APPEAL
(35 Ill. Adm. Code §§ 105.210(c))

10. Midwest Generation appealed various conditions in the CAAPP permit applicable to coal handling, including conditions containing language that has reappeared in the construction permit issued to Will County. The construction permit allows for operation of the new equipment until such time as an operating permit issued to Will County becomes effective. See Exhibit 1, Condition 11. In essence, then, the construction permit is also, at least temporarily, an operating permit. In issuing the construction permit, the Agency is attempting to impose operating conditions through the construction permit that have been appealed in the context of the CAAPP permit appeal prior to the Board's decision on these points. Additionally, the Agency is inappropriately imposing the New Source Performance Standards ("NSPS") for Coal Handling, 40 CFR 60.Subpart Y ("Subpart Y") (attached hereto with additional pertinent

provisions from 40 CFR 60.Subpart A as Exhibit 5 for the Board's convenience), through the construction permit.

A. The Agency Has Inappropriately Imposed Language in the Construction Permit That Was Appealed in PCB 06-060 (Will County CAAPP Appeal) and Has Included Other Inappropriate Conditions in the Construction Permit.

11. In this situation where ultimately the operating permit will be the CAAPP permit,³ that the Agency included in the construction permit language appealed in the CAAPP permit in Docket 06-060 ignores Midwest Generation's right to challenge and have a fair hearing on the appropriateness of the language in the CAAPP permit. The implication of the language is that the operating conditions identified in the construction permit will become the applicable operating conditions during operation pursuant to the construction permit and eventually in the CAAPP permit, even though that language is currently being challenged in the CAAPP Appeal. Inclusion of such language forces Midwest Generation into this second appeal in order to preserve the integrity of its appeal of the CAAPP permit, as well as to prevent the imposition of inappropriate conditions in the construction permit, the state operating permit, and ultimately the CAAPP permit. It undermines the Board's authority to determine whether challenged language is appropriate through the statutory process established in the Act by the General Assembly. If the Board determines that the challenged language is appropriate, then the language will become applicable to the equipment at the time that the CAAPP permit becomes effective, as the language is already in the CAAPP permit. If the Board determines that the challenged language

³ The draft permit reviewed by Midwest Generation provided that the construction permit would remain in effect until a CAAPP permit became effective. The reference was changed to an operating permit in Condition 11 of the final construction permit. Regardless, the coal bunkers and their control devices are included in Section 7.2 of the CAAPP permit, and these new wet dust extractors will be addressed by the CAAPP permit eventually. Even if Midwest Generation must seek an operating permit for the wet dust extractors during the pendency of the CAAPP appeal, the Agency will, at some point in time, have to roll it into the CAAPP permit.

is not appropriate, then the Agency will have undermined that decision by including the language in this construction permit (unless it is appealed), which would be rolled into the CAAPP permit upon termination of the CAAPP appeal process under Docket 06-060. Meanwhile, if Midwest Generation did not appeal the construction permit, the challenged language would apply during the operation phase of the construction permit. The challenged language has no more stature when included in the construction permit than it did in the CAAPP permit.

12. Regardless of one's perspective, the Agency's inclusion of the challenged language during the pendency of the appeal of Will County's CAAPP permit is inappropriate, injurious to Midwest Generation's rights under Sections 39, 39.5, and 40.2 of the Act and under the APA, subversive and disrespectful of the Board's Order 2 in PCB 06-060 regarding the applicability of the APA to appealed permits, and not in good faith.

(i) Inspection Requirements – Condition 5(a)(i)

13. Condition 7.2.8(a) of the CAAPP permit issued to Midwest Generation for the Will County Generating Station contains inspection requirements for the coal handling operations at the plant. Both Condition 7.2.8(a) of the CAAPP Permit and Condition 5(a)(i) of the construction permit require that “[t]hese inspections shall be performed with personnel not directly involved in the day-to [sic] day operation of the affected operations. . . .” These inspection requirements were appealed in Docket No. 06-060 at paragraphs 116-117 of Midwest Generation's Appeal of CAAPP Permit (“CAAPP Appeal”), and Midwest Generation is compelled to appeal them again here with respect to the construction permit.

14. In addition to the apparent attempt to undermine the appeal process initiated for the CAAPP permit, the Agency again provides no basis for this requirement. There is no basis in law or practicality for this provision. To identify in a construction permit condition who can perform an inspection is overstepping the Agency's authority.

15. The requirement must be stricken from the permit. Midwest Generation requests that the Board stay Condition 5(a)(i) during the pendency of this appeal.

(ii) Inspection Requirements – Condition 5(a)(ii)(B)

16. Condition 7.2.9(d)(i)(B) of the CAAPP permit requires that Midwest Generation observe whether there are accumulations of coal fines in the vicinity of the coal bunkers. This condition was included in the CAAPP Appeal at paragraphs 129-130. This requirement appears also in the construction permit at Condition 5(a)(ii)(B) despite the fact that it is under appeal in Docket No. 06-060.

17. There is no applicable requirement that Midwest Generation observe whether coal fines are present. Rather, Midwest Generation is required to develop and implement a fugitive dust plan pursuant to 35 Ill. Adm. Code § 212.309(a) and to periodically update it pursuant to § 212.312. If the permittee does not comply with its fugitive dust plan or the Agency finds that the fugitive dust plan is not adequate, there are procedures and remedies available to the Agency to address the issue. However, the Agency cannot supplement a fugitive dust plan, which is the regulatorily-required control mechanism, through a permit where there are no specific regulations addressing the particular issue, here coal fines.

18. Condition 5(a)(ii)(B) should be deleted from the permit, and Midwest Generation requests that the Board grant a stay of this condition during the pendency of this appeal.

(iii) Inspection Requirements – Condition 5(b)(i)

19. Conditions 7.2.8(b) of the appealed CAAPP permit requires that inspections of coal handling be conducted every 15 months while the process is not operating. Midwest Generation appealed this requirement in the CAAPP Appeal (see paragraphs 118, 120, 122), yet the same language appears in Condition 5(b)(i) of the construction permit. This is another

example of the Agency's attempt to undermine the CAAPP appeal process and to deny Petitioner its statutorily-granted right to an appeal.

20. In any given area of the station, station personnel are constantly alert to any "abnormal" operations during the course of the day. Although these are not formal inspections, they are informal inspections and action is taken to address any "abnormalities" observed as quickly as possible. Midwest Generation's best interests are to run its operations as efficiently and safely as possible. It appears that these conditions are administrative compliance traps for work that is done as part of the normal activities at the station.

21. The Agency has not indicated why this particular frequency for inspections is appropriate. Essentially, the Agency is creating an outage schedule, as these processes are intricately linked to the operation of the boilers. As the construction permit requires these particular inspections when the equipment is not operating, and as the equipment would not operate during an outage of the boiler, it is not necessary for the Agency to dictate the frequency of the operations. Rather, it is logical that these inspections should be linked to planned boiler outages. Further, the normal inspection frequency for this equipment while it is operating, which is more often than every 15 months, means any maintenance issues will be identified long before the 15-month inspections required by this condition would occur.

22. Condition 5(b)(i) should be stricken from the permit, and Midwest Generation requests that the Board stay Condition 5(b)(i) during the pendency of this appeal.

(iv) Testing Requirements – Condition 6(b)

23. The Agency requires stack testing of the wet dust extractor system in accordance with Method 5 in Condition 6(b). This requirement was appealed in the CAAPP appeals for other Midwest Generation generating stations. C.f. paragraph 111 of the Appeal of CAAPP Permit, Crawford Generating Station, Docket No. 06-056. That the language was not appealed

in the Will County CAAPP permit appeal, as it was not an issue in Will County CAAPP permit, does not relieve the Agency of its responsibility to respect Midwest Generation's statutory right to appeal the CAAPP permits and still has the effect of undermining the appeal process pending before the Board.

24. A part of complying with Method 5 is complying with Method 1, which establishes the physical parameters necessary to test. Midwest Generation cannot comply with Method 1 for the wet dust extractor system. The stacks for sources such as wetting systems are narrow and not structurally built to accommodate testing ports and platforms for stack testing. The particulate matter ("PM") emissions for these types of pollution control devices are very low. Inspection, monitoring, and recordkeeping requirements are the only feasible methods to assure compliance and are sufficient to assure compliance.

25. Condition 6(b) should be deleted from the permit, and Midwest Generation requests that the Board stay Condition 6(b) during the pendency of this appeal.

(v) Recordkeeping Requirements – Conditions 7(d)(ii) and (vii)

26. Condition 7(d)(ii) requires Midwest Generation to provide the magnitude of PM emissions during an incident where the coal handling operation continues without the use of control measures. Midwest Generation has established that it has no means to measure exact PM emissions from the coal bunkers or wet dust extractors. Therefore, for the Agency to require reporting of the magnitude of PM emissions is inappropriate. Midwest Generation appealed the requirement to provide the magnitude of PM emissions in the Will County CAAPP Appeal. See paragraph 127 in the CAAPP Appeal. Midwest Generation requests that the Board stay Condition 7(d)(ii) during the pendency of this appeal.

27. Condition 7(d)(vii) refers to Condition 2(b), which Midwest Generation has appealed here. Therefore, because of the connection of Condition 7(d)(vii) with Condition 2(b),

Midwest Generation also appeals Condition 7(d)(vii) and requests that the Board stay this condition.

(vi) Reporting/Notification Requirements – Conditions 9(a), 9(a)(ii), 9(b)(i)(A), and 9(b)(ii)

28. Condition 9(a) requires Midwest Generation to report deviations from the requirements of the construction permit. Deviation reporting is not required by Illinois' regulations and is, rather, a construct of CAAPP permitting. The construction permit is not a CAAPP permit. CAAPP permit conditions, including deviation reporting, will apply to the wet dust extractors when the CAAPP permit becomes effective. Applying CAAPP requirements in this construction permit is inappropriate and should be stricken from the permit. Midwest Generation requests that the Board stay Condition 9(a) during the pendency of this appeal.

29. Condition 9(a)(ii) requires notification of operation without customary control measures or with excess emissions. To the extent that this required reporting is not deviation reporting, as appealed in Condition 9(a) above, operation without control equipment should be required only when there are excess emissions, as it is not always the case that operation without the control equipment would result in excess emissions. The word or should be and. This requirement was appealed in the Will County CAAPP Appeal at paragraph 133, again raising the question of the Agency's good faith in including appealed conditions in the construction permit. Condition 9(a)(ii) should be deleted from the permit, and Midwest Generation requests that the Board stay the condition during the pendency of this appeal.

30. Condition 9(b)(i)(A) reflects Condition 7.2.10(b)(i)(A) in the Will County CAAPP permit, a condition which was appealed in CAAPP Appeal at paragraphs 134-135. The Agency requires reporting when the opacity limitation may have been exceeded. That a limitation may have been exceeded does not rise to the level of an actual exceedance. Midwest

Generation believes that it is beyond the scope of the Agency's authority to require reporting of suppositions of exceedances.

31. Additionally, the Agency requires in this condition reporting if opacity exceeded the limit for "five or more 6-minute averaging periods." The next sentence in the condition says, "(Otherwise, . . . for not more than five consecutive 6-minute averaging periods. . . .)" The language in the condition is internally inconsistent. First, the word consecutive should appear before "6-minute averaging periods" in the first instance quoted above. Otherwise, the reporting could be triggered by any five random six-minute averaging periods of opacity greater than the limitation. Moreover, the omission of the word consecutive in the first instance is inconsistent with its inclusion in the second instance quoted above. Midwest Generation believes the second instance, using the word consecutive, is correct. At the least, there should be an outside timeframe during which the five six-minute opacity averages exceed the limitation before reporting is required. Second, one cannot tell whether five six-minute averaging periods of excess opacity readings do or do not require reporting.

32. Condition 9(b)(i)(A) is ambiguous and has been appealed in the CAAPP Appeal. It was inappropriate for the Agency to include the condition in the construction permit, and it should be struck or appropriately clarified. Midwest Generation requests that the Board stay Condition 9(b)(i)(A) during the pendency of this appeal.

33. Condition 9(b)(ii) requires quarterly reporting, a frequency that is a function of the CAAPP and not of Illinois' regulations applicable to the source prior to the effectiveness of the CAAPP permit. Also, Condition 9(b)(ii)(B) refers to Condition 9(a), appealed herein. Therefore, Condition 9(b)(ii) should be deleted from the permit, and Midwest Generation requests that the Board stay the condition during the pendency of this appeal.

B. The Agency Has Inappropriately Determined that the NSPS for Coal Preparation Plants, 40 CFR 60.Subpart Y Applies (Conditions 2, 6(a)(i)(A) and (ii)(A), and 7(a)).

34. The Agency has inappropriately imposed conditions in the construction permit based upon its determination that the replacement of the rotoclones with the wet dust extractors causes the coal bunkers to become subject to the NSPS for Coal Preparation Plants at 40 CFR 60.Subpart Y, attached hereto as Exhibit 5. In order for the NSPS to apply to the bunkers, there must have been a modification of the bunkers after October 24, 1974. 40 CFR § 60.250(b). However, there has been no modification of the bunkers that would trigger the applicability of Subpart Y.

35. The NSPS defines modification as follows:

any physical change in, or change in the method of operation of, an existing facility which increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted.

40 CFR § 60.2, attached in part hereto as Exhibit 5. The term *modification* is further clarified at 40 CFR § 60.14(e)(5):

The following shall not, by themselves, be considered modifications under this part:

* * *

- (5) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the Administrator determines to be less environmentally beneficial.

40 CFR § 60.14(e)(5), attached hereto as Exhibit 5. (Emphasis added). Because the wet dust extractors are devices whose primary function is the reduction of air pollutants and because they are not (nor have they been determined to be) less environmentally beneficial than the

rotoclones, whether a modification, as defined at § 60.2 of the NSPS occurred, is a question that is never reached. Because there was no modification, Subpart Y does not apply and cannot be included in the construction permit. All references to the requirements of Subpart Y must be deleted from the permit.

36. Note that while the emissions limitation may be measured as the emissions exit the pollution control device, the only equipment to which Subpart Y can apply is to the coal storage system, defined as "any facility used to store coal except for open storage piles." 40 CFR § 60.251(h), Exhibit 5. An affected facility is "with reference to a stationary source, any apparatus to which a standard is applicable." 40 CFR § 60.2, Exhibit 5. USEPA Region 5 states that "all coal storage equipment is treated collectively as one affected facility. . . ." Applicability Determination, Control No. 0300127 (June 30, 2003), p. 3, attached hereto as Exhibit 6. The system is all of the bunkers. The definition does not imply that the system includes more than the actual storage facilities, i.e., the bunkers and not the pollution control device.

37. Condition 2 of the construction permit provides that Subpart Y is applicable to the wet dust extractor system. Conditions 6(a)(i)(A) and 6(a)(ii)(A) reflect Subpart Y requirements. Condition 7(a) applies the NSPS recordkeeping requirements. All of these conditions must be struck from the permit, and Midwest Generation requests that the Board stay their applicability during the pendency of the permit appeal.

WHEREFORE, for the reasons set forth above, Midwest Generation requests that the Board grant its petition to appeal the construction permit issued March 3, 2006, and that it stay the conditions appealed herein.

Respectfully submitted,

MIDWEST GENERATION, LLC,
WILL COUNTY GENERATING STATION

by:



One of Its Attorneys

Dated: April 7, 2006

SCHIFF HARDIN, LLP
Sheldon A. Zabel
Kathleen C. Bassi
Stephen J. Bonebrake
Kavita M. Patel
6600 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
312-258-5500
Fax: 312-258-2600

CH2: 1385445.2

EXHIBIT LIST

Exhibit No.

- 1 Construction permit
- 2 Email correspondence between Constantelos and Romaine
- 3 Crawford construction permit
- 4 Powerton construction permit
- 5 NSPS Portions of 40 CFR.Subpart A and the Entirety of Subpart Y,
www.ecfr.gpoaccess.gov (2005)
- 6 Applicability Determination, Control No. 0300127 (June 30, 2003)

Exhibit 1



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19506, SPRINGFIELD, ILLINOIS 62794-9506 - (217) 782-2113

ROD R. BLAGOJEVICI, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

217/782-2113

CONSTRUCTION PERMIT

PERMITTEE

Midwest Generation EMB, LLC
 Attn: Andrea Crapici
 440 South LaSalle Street, Suite 3500
 Chicago, Illinois 60605

Application No: 06020009I.D. No.: 197810AAKApplicants Designation:Date Received: February 2, 2006Subject: Wet Dust Extractors for Unit 3 and Unit 4 Coal BunkersDate Issued: March 3, 2006Location: Will County Generating Station, 529 East 135th Street, Romeoville,

Permit is hereby granted to the above-designated Permittee to CONSTRUCT emission source(s) and/or air pollution control equipment consisting of new wet dust extractor control devices for the Unit 3 and Unit 4 coal bunkers, as described in the above referenced application. This Permit is subject to standard conditions attached hereto and the following special condition(s):

1. This permit authorizes installation of new particulate matter control equipment on the coal bunkers for Unit 3 and Unit 4,, replacing the existing Rotoclone control devices, as requested by the Permittee to improve safety and operational performance. For the purpose of this permit, the "affected operations" are the coal bunkers for Unit 3 and Unit 4 following installation of the new air pollution control equipment.
- 2a. The affected operations are subject to the New Source Performance Standards (NSPS) for Coal Preparation Plants, 40 CFR 60 Subpart Y. This requirement is being imposed because coal is prepared at the source and the application did not demonstrate that the changes in the control equipment would not be modifications, i.e., the hourly particulate matter emissions from the coal bunkers would not increase with the new air pollution control equipment.
 - b. i. The opacity of the exhaust into the atmosphere from each affected operation shall not be 20 percent or greater, pursuant to the NSPS, 40 CFR 60.252.
 - ii. Notwithstanding the above, as provided by 40 CFR 60.8(c), opacity in excess of the above limit during periods of startup, shutdown and malfunction, as defined by 40 CFR 60.2, shall not be considered a violation.
 - c. At all times, the affected operations shall be operated in accordance with good air pollution control practice, as required by 40 CFR 60.11(d).
- 3a. Pursuant to 35 IAC 212.123(a), the emission of smoke or other particulate matter from each affected operation shall not exceed an

opacity greater than 30 percent, on six-minute average, except as allowed by 35 IAC 212.123(b) and 212.124.

- b. Subject to the following terms and conditions, the Permittee is authorized to continue operation of an affected operation in violation of the applicable limit of Condition 3(a) (35 IAC 212.123) in the event of a malfunction or breakdown. This authorization is provided pursuant to 35 IAC 201.149, 201.161 and 201.262, as the Permittee has applied for such authorization in its application, generally explaining why such continued operation would be required to provide essential service or to prevent injury to personnel or severe damage to equipment, and describing the measures that will be taken to minimize emissions from any malfunctions and breakdowns.
- i. This authorization only allows such continued operation as related to the operation of the Unit 3 and Unit 4 boilers as necessary to provide essential service or to prevent injury to personnel or severe damage to equipment and does not extend to continued operation solely for the economic benefit of the Permittee.
 - ii. Upon occurrence of excess emissions due to malfunction or breakdown, the Permittee shall as soon as practicable repair the affected operation, remove the affected operation from service or undertake other action so that excess emissions cease.
 - iii. The Permittee shall fulfill applicable recordkeeping and reporting requirements of Conditions 7(e) and 9(b), respectively.
 - iv. Following notification to the Illinois EPA of a malfunction or breakdown with excess emissions, the Permittee shall comply with all reasonable directives of the Illinois EPA with respect to such incident, pursuant to 35 IAC 201.263.
 - v. This authorization does not relieve the Permittee from the continuing obligation to minimize excess emissions during malfunction or breakdown. As provided by 35 IAC 201.265, an authorization in a permit for continued operation with excess emissions during malfunction and breakdown does not shield the Permittee from enforcement for any such violation and only constitutes a prima facie defense to such an enforcement action provided that the Permittee has fully complied with all terms and conditions connected with such authorization.

Note: These provisions addressing continued operation during a malfunction or breakdown event may be revised in an operating permit addressing the affected operations.

- 4a. Particulate matter emissions from the Unit 3 affected operation shall not exceed 1.7 pounds/hour and 7.6 tons/year and from the Unit 4 affected operation shall not exceed 1.6 pounds/hour and 7.1 tons/year.
- b. Notwithstanding the above, in the event of a malfunction or breakdown, the particulate matter emissions from the Unit 3 and Unit 4 affected operations may exceed 1.7 and 1.6 pounds/hour, respectively, subject to the terms and conditions established in Condition 3(b) for an exceedance of 35 IAC 212.123(a) in the event of malfunction or breakdown.

- 5a. i. The Permittee shall perform inspections of the affected operations at least once per month, including the associated control measures, while the affected operations are in use, to confirm compliance with the requirements of this permit. These inspections shall be performed with personnel not directly involved in the day-to day operation of the affected operations.
- ii. The Permittee shall maintain records of the following for the above inspections:
- A. Date and time the inspection was performed and name(s) of inspection personnel.
 - B. The observed condition of the control measures for the affected operations, including the presence of any visible emissions or accumulations of coal fines in the vicinity of an operation.
 - C. A description of any maintenance or repair associated with the control measures that is recommended as a result of the inspection and a review of outstanding recommendations for maintenance or repair from previous inspection(s), i.e., whether recommended action has been taken, is yet to be performed or no longer appears to be required.
 - D. A summary of the observed implementation or status of actual control measures as compared to the customary control measures.
- b. i. The Permittee shall perform detailed inspections of the control equipment for each affected operation at least every 15 months while the operation is out of service, with an initial inspection performed before any maintenance and repair activities are conducted during the period the operation is out of service and a follow-up inspection performed after any such activities are completed.
- ii. The Permittee shall maintain records of the following for the above inspections:
- A. Date and time the inspection was performed and name(s) of inspection personnel.
 - B. The observed condition of the control equipment.
 - C. A summary of the maintenance and repair that is to be or was conducted on the control equipment.
 - D. A description of any maintenance or repair that is recommended as a result of the inspection and a review of outstanding recommendations for maintenance or repair from previous inspection(s), i.e., whether recommended action has been taken, is yet to be performed or no longer appears to be required.

- E. A summary of the observed condition of the control equipment as related to its ability to reliably and effectively control emissions.
- 6a. i. The Permittee shall have the opacity of the emissions from the affected operations during representative weather and operating conditions determined by a qualified observer in accordance with USEPA Test Method 9, as further specified below.
- A. For each affected operation, an initial performance test shall be conducted in accordance with 40 CFR 60.8 and 60.252 following installation of the new control equipment.
- B. Following the initial performance test, periodic testing shall be conducted at least annually for each affected operation.
- C. Upon written request by the Illinois EPA, testing of the affected operations shall be conducted within 45 calendar days of the request or on the date agreed upon by the Illinois EPA, whichever is later.
- ii. A. The initial performance tests for opacity shall be conducted in accordance with 40 CFR 60.254.
- B. For periodic testing, the duration of opacity observations shall be at least 30 minutes (five 6-minute averages) unless the average opacities for the first 12 minutes of observations (two six-minute averages) are both less than 10.0 percent.
- iii. A. The Permittee shall notify the Illinois EPA at least 7 days in advance of the date and time of these tests, in order to allow the Illinois EPA to witness testing. This notification shall include the name(s) and employer(s) of the qualified observer(s).
- B. The Permittee shall promptly notify the Illinois EPA of any changes in the time or date for testing.
- iv. The Permittee shall provide a copy of its observer's readings to the Illinois EPA at the time of testing, if Illinois EPA personnel are present.
- v. The Permittee shall submit a written report for this testing within 15 days of the date of testing. This report shall include:
- A. Date and time of testing.
- B. Name and employer of qualified observer.
- C. Copy of current certification.
- D. Description of observation condition, including recent weather.
- E. Description of the operating conditions of the affected operations.

- F. Raw data.
 - G. Opacity determinations.
 - H. Conclusions.
- b. i. Within 90 days of a written request from the Illinois EPA, the Permittee shall have the particulate matter emissions at the stacks or vents of the affected operations, as specified in such request, measured during representative operating conditions, as set forth below.
- ii. A. Testing shall be conducted using appropriate USEPA Reference Test Methods, including Method 5 for particulate matter emissions.
 - B. Compliance may be determined from the average of three valid test runs, subject to the limitations and conditions contained in 35 IAC Part 283.
 - iii. The Permittee shall submit a test plan to the Illinois EPA at least 60 days prior to testing in accordance with 35 IAC Part 283.
 - iv. The Illinois EPA shall be notified prior to these tests to enable the Illinois EPA to observe these tests. Notification of the expected date of testing shall be submitted a minimum of 30 days prior to the expected date. Notification of the actual date and expected time of testing shall be submitted a minimum of 5 working days prior to the actual date of the test. The Illinois EPA may, at its discretion, accept notification with shorter advance notice provided that the Illinois EPA will not accept such notification if it interferes with the Illinois EPA's ability to observe the testing.
 - v. The Permittee shall expeditiously submit complete Final Report(s) for required emission testing to the Illinois EPA, no later than 90 days after the date of testing. These reports shall include the following information:
 - A. A summary of results.
 - B. Detailed description of test method(s), including description of sampling points, sampling train, analysis equipment, and test schedule.
 - C. Detailed description of the operating conditions of the affected process during testing, including operating rate (tons/hr) and the control measures being used.
 - D. The date and time of the sampling or measurements;
 - E. The date any analyses were performed;
 - F. The name of the company that performed the tests and/or analyses;

- G. The detailed results of the tests including raw data, and/or analyses including sample calculations;
 - H. The name of any relevant observers present including the testing company's representatives, any Illinois EPA or USEPA representatives, and the representatives of the source.
- 7a. The Permittee shall fulfill the applicable recordkeeping requirements of the NSPS, 40 CFR 60.7(b), for the affected operations.
- b. The Permittee shall keep the following file(s) and log(s) for the air pollution control equipment for the affected operations:
- i. File(s) containing the following data for the equipment, with supporting information, which file(s) shall be kept up to date:
 - 1) The design particulate matter control efficiency or performance specification for particulate matter emissions, gr/dscf; 2) The maximum design emission rate, pounds particulate matter/hour, and 3) The applicable particulate matter emission factor normally used by the Permittee to calculate actual particulate matter emissions, if a factor other than the maximum hourly emission rate is normally used.
 - ii. Maintenance and repair log(s) for the control equipment, which log(s) shall list the activities performed on each item of equipment, with date and description.
- c. The Permittee shall maintain records for the amount of material handled, operating hours, or other measure of activity of each affected operation on a monthly and annual basis, which data is in the terms normally used by the Permittee to calculate actual emissions of each affected operation.
- d. The Permittee shall maintain records of the following for each incident when an affected operation operated without the customary control measures:
- i. The date of the incident and identification of the affected operation that was involved.
 - ii. A description of the incident, including the customary control measures that were not present or implemented; the customary control measures that were present, if any; other control measures or mitigation measures that were implemented, if any; and the magnitude of the particulate matter emissions during the incident.
 - iii. The time and means by which the incident was identified, e.g., scheduled inspection or observation by operating personnel.
 - iv. The length of time after the incident was identified that the affected operations continued to operate before customary control measures were in place or the operations were shutdown (to resume operation only after customary control measures were in place) and, if this time was more than one hour, an explanation why this time was not shorter, including a description of any mitigation measures that were implemented during the incident.

- v. The estimated total duration of the incident, i.e., the total length of time that the affected operations ran without customary control measures and the estimated amount of material handled during the incident.
 - vi. A discussion of the probable cause of the incident and any preventative measures taken.
 - vii. A discussion whether an applicable standard, as listed in Condition 2(b) or 3(a) or a particulate matter emission limitation in Condition 4(a) may have been violated during the incident, with an estimate of the amount of any additional or excess particulate matter emissions (pounds) from the incident, with supporting explanation.
- c. Pursuant to 35 IAC 201.263, the Permittee shall maintain records, related to malfunction and breakdown for each affected operation that, at a minimum, shall include:
- i. Maintenance and repair log(s) for the affected operation that, at a minimum, address aspects or components of such operations for which malfunction or breakdown has resulted in excess emissions, which shall list the activities performed on such aspects or components, with date, description and reason for the activity. In addition, in the maintenance and repair log(s), the Permittee shall also list the reason for the activities that are performed.
 - ii. Records for each incident when operation of an affected operation continued during malfunction or breakdown, including continued operation with excess emissions as addressed by Condition 3(a), that include the following information:
 - A. Date and duration of malfunction or breakdown.
 - B. A description of the malfunction or breakdown.
 - C. The corrective actions used to reduce the quantity of emissions and the duration of the incident.
 - D. Confirmation of fulfillment of the requirements of Condition 9(b)(i), as applicable, including copies of follow-up reports submitted pursuant to Condition 9(b)(i)(B).
 - E. If excess emissions occurred for two or more hours:
 - I. A detailed explanation why continued operation of the affected operation was necessary.
 - II. A detailed explanation of the preventative measures planned or taken to prevent similar malfunctions or breakdowns or reduce their frequency and severity.
 - III. An estimate of the magnitude of excess emissions occurring during the incident.

- f. The Permittee shall maintain the following records for the particulate matter emissions from each affected operation (tons/month and tons/yr), with supporting calculations.
- g. The Permittee shall keep records for any opacity observations performed by Method 9 that the Permittee conducts or are conducted at its behest, including name of the observer, date and time, duration of observation, raw data, results, and conclusion.
8. The Permittee shall retain all records required by this permit at the source for at least 5 years from the date of entry and these records shall be readily accessible to the Illinois EPA for inspection and copying upon request.
- 9a. The Permittee shall promptly notify the Illinois EPA of deviations from requirements of this permit for the affected operations, as follows. Such notifications shall include a description of each incident and a discussion of the probable cause of deviation, any corrective actions taken, and any preventative measures taken.
 - i. Notification and reporting as specified in Condition 9(b)(i) for certain deviations from an applicable opacity standard.
 - ii. Notification within 30 days for operation of an affected operation without customary control measures or with emissions in excess of the applicable hourly limitation in Condition 4(a) that continued for more than 12 operating hours from the time that it was identified. Such notifications shall be accompanied by a copy of the records for the incident required by Condition 7(e)(ii).
 - iii. A. Notification with the quarterly reports required by Condition 9(b)(ii) for other deviations, including deviations from applicable emission standards, inspection requirements and recordkeeping requirements.
B. With the quarterly report, the Permittee shall also address deviations that occurred during the quarter that have been separately reported to the Illinois EPA, with a summary of such deviations. For this purpose, the Permittee need not resubmit the detailed information provided in prior notifications and reports for such deviations.
- b. Pursuant to 35 IAC 201.263, the Permittee shall provide the following notifications and reports to the Illinois EPA, concerning incidents when operation of an affected operation continued with excess emissions, including continued operation during malfunction or breakdown as addressed by Condition 3(b).
 - i. A. The Permittee shall immediately notify the Illinois EPA's Regional Office, by telephone (voice, facsimile or electronic) for each incident in which the opacity from an affected operation exceeds or may have exceeded the applicable opacity standard for five or more 5-minute averaging periods. (Otherwise, if opacity during a malfunction or breakdown incident only exceeds or may have exceeded the applicable standard for no more than five consecutive 5-minute averaging

periods, the Permittee need only report the incident in accordance with Condition 9(b)(ii).)

- B. Upon conclusion of each incident that is two hours or more in duration, the Permittee shall submit a written follow-up notice to the Illinois EPA, Compliance Section and Regional Office, within 15 days providing a detailed description of the incident and its cause(s), an explanation why continued operation was necessary, the length of time during which operation continued under such conditions, the measures taken by the Permittee to minimize and correct deficiencies with chronology, and when the repairs were completed or the affected operation was taken out of service.
- ii. The Permittee shall submit quarterly reports to the Illinois EPA that include the following information for incidents during the quarter in which the affected operation continued to operate during malfunction or breakdown with excess emissions.
 - A. A listing of such incidents, in chronological order, that includes: (1) the date, time, and duration of each incident, (2) the identity of the affected operation(s) involved in the incident, and (3) whether a follow-up notice was submitted for the incident pursuant to Condition 9(b)(i)(B), with the date of the notice.
 - B. The detailed information for each such incident required pursuant to Condition 9(a). For this purpose, the Permittee need not resubmit information provided in a prior report for an incident, as identified above, but may elect to supplement the prior submittal.
 - C. The aggregate duration of all incidents during the quarter.
 - D. If there have been no such incidents during the calendar quarter, this shall be stated in the report.
- 10a. Unless otherwise specified in a particular condition of this permit or in the written instructions distributed by the Illinois EPA for particular reports, reports and notifications shall be sent to the Illinois EPA - Air Compliance Section with a copy sent to the Illinois EPA - Air Regional Field Office.
- b. The current addresses of the offices that should generally be utilized for the submittal of reports and notifications are as follows:

- i. Illinois EPA - Air Compliance Section

Illinois Environmental Protection Agency (MC 40)
Bureau of Air
Compliance & Enforcement Section (MC 40)
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Phone: 217/782-5811 Fax: 217/782-6348

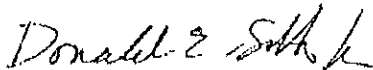
ii. Illinois EPA - Air Regional Field Office

Illinois Environmental Protection Agency
Division of Air Pollution Control
9511 West Harrison
Des Plaines, Illinois 60016

Phone: 847/294-4000 Fax: 847/294-4018

11. The affected operations may be operated with the new control systems pursuant to this construction permit until an operating permit becomes effective that addresses operation of these operations with the new control systems.

If you have any questions concerning this permit, please contact Manish Patel at 217/782-2113.



Donald H. Sutton, P.E.
Manager, Permit Section
Division of Air Pollution Control

DHS:MNP:psj

cc: Region 1



STATE OF ILLINOIS
 ENVIRONMENTAL PROTECTION AGENCY
 DIVISION OF AIR POLLUTION CONTROL
 P. O. BOX 19506
 SPRINGFIELD, ILLINOIS 62794-9506

**STANDARD CONDITIONS FOR CONSTRUCTION/DEVELOPMENT PERMITS
 ISSUED BY THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

July 1, 1985

The Illinois Environmental Protection Act (Illinois Revised Statutes, Chapter 111-1/2, Section 1039) authorizes the Environmental Protection Agency to impose conditions on permits which it issues.

The following conditions are applicable unless superseded by special condition(s).

1. Unless this permit has been extended or it has been voided by a newly issued permit, this permit will expire one year from the date of issuance, unless a continuous program of construction or development on this project has started by such time.
2. The construction or development covered by this permit shall be done in compliance with applicable provisions of the Illinois Environmental Protection Act and Regulations adopted by the Illinois Pollution Control Board.
3. There shall be no deviations from the approved plans and specifications unless a written request for modification, along with plans and specifications as required, shall have been submitted to the Agency and a supplemental written permit issued.
4. The permittee shall allow any duly authorized agent of the Agency upon the presentation of credentials, at reasonable times:
 - a. to enter the permittee's property where actual or potential effluent, emission or noise sources are located or where any activity is to be conducted pursuant to this permit,
 - b. to have access to and to copy any records required to be kept under the terms and conditions of this permit,
 - c. to inspect, including during any hours of operation of equipment constructed or operated under this permit, such equipment and any equipment required to be kept, used, operated, calibrated and maintained under this permit,
 - d. to obtain and remove samples of any discharge or emissions of pollutants, and
 - e. to enter and utilize any photographic, recording, testing, monitoring or other equipment for the purpose of preserving, testing, monitoring, or recording any activity, discharge, or emission authorized by this permit.
5. The issuance of this permit:
 - a. shall not be considered as in any manner affecting the title of the premises upon which the permitted facilities are to be located,
 - b. does not release the permittee from any liability for damage to person or property caused by or resulting from the construction, maintenance, or operation of the proposed facilities,
 - c. does not release the permittee from compliance with other applicable statutes and regulations of the United States, of the State of Illinois, or with applicable local laws, ordinances and regulations,
 - d. does not take into consideration or attest to the structural stability of any units or parts of the project, and

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- e. in no manner implies or suggests that the Agency (or its officers, agents or employees) assumes any liability, directly or indirectly, for any loss due to damage, installation, maintenance, or operation of the proposed equipment or facility.
6. a. Unless a joint construction/operation permit has been issued, a permit for operation shall be obtained from the Agency before the equipment covered by this permit is placed into operation.
b. For purposes of shakedown and testing, unless otherwise specified by a special permit condition, the equipment covered under this permit may be operated for a period not to exceed thirty (30) days.
7. The Agency may file a complaint with the Board for modification, suspension or revocation of a permit:
 - a. upon discovery that the permit application contained misrepresentations, misinformation or false statements or that all relevant facts were not disclosed, or
 - b. upon finding that any standard or special conditions have been violated, or
 - c. upon any violations of the Environmental Protection Act or any regulation effective thereunder as a result of the construction or development authorized by this permit.

Exhibit 2

Bassi, Kathleen C.

From: Bill Constantelos [BConstantelos@MWGen.com]
Sent: Friday, March 03, 2006 12:55 PM
To: Andrea Crapisi; Bassi, Kathleen C.; Zabel, Sheldon
Subject: Fw: Will County Permit

FYI

Basil G. Constantelos
Director, Environmental Services
Midwest Generation
312-583-6029

----- Forwarded by Bill Constantelos/Chicago/MWGEN on 03/03/2006 12:54 PM -----

"Chris Romaine" <Chris.Romaine@epa.state.il.us>

To <BConstantelos@MWGen.com>

"Don Sutton" <Don.Sutton@epa.state.il.us>, "Julie Armitage"

cc <Julie.Armitage@epa.state.il.us>, "Laurel Kroack" <Laurel.Kroack@epa.state.il.us>,

"Manish Patel" <Manish.Patel@epa.state.il.us>

03/03/2006 11:27 AM

Subject Re: Will County Permit

No.

>>> Bill Constantelos <BConstantelos@MWGen.com> 3/3/2006 9:54 AM >>>
Chris,

We received the attached permit last night and I wanted to be sure you

know that we have asked that you remove the conditions we are
appealing
in our Title V permits. We are agreeable to having any conditions
apply after we reach settlement.

Can you do this? Please?

Bill

Basil G. Constantelos
Director, Environmental Services
Midwest Generation
312-583-6029

3/6/2006

EXHIBIT 2

Exhibit 3



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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

RENFF CIPRIANO, DIRECTOR

217/762-2113

CONSTRUCTION PERMIT

PERMITTEE

Midwest Generation, LLC
Attn: Scott B. Miller
440 South LaSalle Street, Suite 3500
Chicago, Illinois 60605

Application No: 04030033

I.D. No.: 031600AIN

Applicants Designation:

Date Received: March 11, 2004

Subject: Control for Coal Handling System

Date Issued: April 2, 2004

Location: Crawford Generating Station, 3501 South Pulaski Road, Chicago, Cook County

Permit is hereby granted to the above-designated Permittee to CONSTRUCT air pollution control equipment consisting of wet dust extractor systems for the coal bunkers for Units 7 and 8, as described in the above referenced application. This Permit is subject to standard conditions attached hereto and the following special condition(s):

1. This permit is issued based on the new wet dust extractor systems replacing existing baghouses, to improve safety and operational performance. The existing rotoclones which served as back-up control systems to the baghouses, will be retained as a back-up controls for the coal bunkers.
- 2a. Pursuant to 35 IAC 212.123(a), the emission of smoke or other particulate matter from the coal bunkers for Units 7 and 8 shall not exceed an opacity greater than 30 percent, except as allowed by 35 IAC 212.123(b) and 212.124.
 - b. i. The opacity of particulate matter emissions from the bunker for Units 7 and 8 shall not exceed 20 percent pursuant to the NSPS for coal preparation plants, 40 CFR 60, Subpart Y. This requirement is being imposed because the change in control is considered a modification, as it increases hourly particulate matter emissions from coal handling operations associated with preparation of coal at the plant.
 - ii. Notwithstanding the above, as provided by 40 CFR 60.8(c), opacity in excess of the above limit during periods of startup, shutdown and malfunction as defined by 40 CFR 60.7, shall not be considered a violation.
- c. At all times, the coal bunkers shall be operated in accordance with good air pollution control practices, as required by 40 CFR 60.11(d).
- 3a. The Permittee is authorized to continue operation of a coal bunker in violation of the applicable requirements of 35 IAC 212.123 (Condition 2a) in the event of a malfunction or breakdown, subject to the following provisions. This authorization is provided pursuant to 35 IAC 201.262 as the Permittee has submitted "... proof that continued operation is required to provide essential service, prevent risk of injury to personnel or severe damage to equipment."

ROD R. BLAGOJEVICH, GOVERNOR

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EXHIBIT 3

Page 2

- i. This authorization only allows such continued operation as necessary to provide essential service, prevent risk of injury to personnel or severe damage to equipment and does not extend to continued operation solely for the economic benefit of the Permittee. As provided by 35 IAC 201.265, this authorization does not shield the Permittee from enforcement for any such violation and shall only constitute a prima facie defense to such an enforcement action.
 - ii. Upon occurrence of excess emissions due to malfunction or breakdown, the Permittee shall as soon as practicable repair the affected unit or remove the affected unit from service so that excess emissions cease. Unless the Permittee obtains an extension from the Illinois EPA, this shall be accomplished within 24 hours* or noon of the Illinois EPA's next business day*, whichever is later. The Permittee may obtain an extension for up to a total of 72 hours* from the Illinois EPA, Air Regional Office. The Illinois EPA, Air Compliance Section, in Springfield, may grant a longer extension if the Permittee demonstrates that extraordinary circumstances exist and the unit can not reasonably be repaired or removed from service within the allowed time, it will repair the unit or remove the unit from service as soon as practicable; and it is taking all reasonable steps to minimize excess emissions, based on the actions that have been and will be taken.
 - * For this purpose and other related provisions, time shall be measured from the start of a particular incident. The absence of excess emissions for a short period shall not be considered to end the incident if excess emissions resume. In such circumstances, the incident shall be considered to continue until corrective actions are taken so that excess emissions cease or the Permittee takes the affected operation out of service.
 - iii. The Permittee shall fulfill applicable recordkeeping and reporting requirements of Conditions 3(b) and 4(c).
 - iv. Following notification to the Illinois EPA of a malfunction or breakdown with excess emissions, the Permittee shall comply with all reasonable directives of the Illinois EPA with respect to such incident, pursuant to 35 IAC 201.263.
- b. Pursuant to 35 IAC 201.263, the Permittee shall maintain records for each incident when operation of a coal bunker continued during malfunction or breakdown with excess emissions, including the following information:
- i. Date and duration of malfunction or breakdown.
 - ii. A description of the malfunction or breakdown.

Page 3

- iii. The corrective actions used to reduce the quantity of emissions and the duration of the incident, including a discussion of the transition to the rotoclones.
- iv. Confirmation of fulfillment of the requirements of Condition 4(c)(i), as applicable, including copies of follow-up reports submitted pursuant to Condition 4(c)(ii).
- v. If excess emissions occurred for two or more hours:
 - A. An explanation why continued operation was necessary.
 - B. The preventative measures planned or taken to prevent similar malfunctions or breakdowns or reduce their frequency and severity.
 - C. An estimate of the magnitude of excess emissions occurring during the incident.
- 4a. Particulate matter emissions from each coal bunker shall not exceed 0.83 lb/hour and 6.0 tons/year.
- b. Notwithstanding the above, particulate matter emissions from a coal bunker may exceed 0.83 lb/hour during a malfunction or breakdown. This authorization is subject to the same terms and conditions established in Condition 3 for exceedance of the opacity standard during a malfunction and breakdown.
- c. Pursuant to 35 IAC 201.263, the Permittee shall provide the following notifications and reports to the Illinois EPA, Compliance Section and Regional Office, concerning incidents when operation of a coal bunker continued during malfunction or breakdowns.
 - i. The Permittee shall notify the Illinois EPA's Regional Office, by telephone (voice, facsimile or electronic) as soon as possible during normal working hours for each incident in which the opacity from a coal bunker exceeds 30 percent for more than five consecutive 6-minute averaging periods. (Otherwise, if opacity during a malfunction or breakdown incident only exceeds 30 percent for less than five consecutive 6-minute averaging periods in a row, the Permittee need only report the incident in the quarterly report.)
 - ii. Upon conclusion of each incident that is two hours or more in duration, the Permittee shall submit a written follow-up notice to the Illinois EPA, Compliance Section and Regional Office, within 15 days providing a detailed explanation of the event, an explanation why continued operation of an bunker was necessary, the length of time during which operation continued under such conditions, the measures taken by the Permittee to minimize and correct deficiencies with chronology, and when the repairs were completed or when the coal bunker was taken out of service.

Page 4

- d. These provisions addressing continued operation during a malfunction or breakdown event may be revised in the CAAPP permit for the source.
- 5a. The Permittee shall perform inspections of the operations of the affected units as necessary but at least once per month, including the associated control measures, while the affected units are in operation, to confirm compliance with the requirements of this permit.
- b. The Permittee shall maintain records of the following for the above inspections:
 - i. Date and time the inspection was performed and name(s) of inspection personnel.
 - ii. The observed condition of the established control measures for the affected unit.
 - iii. A description of any maintenance or repair associated with established control measures that is recommended as a result of the inspection and a review of outstanding recommendations for maintenance or repair from previous inspection(s), i.e., whether recommended action has been taken, is yet to be performed or no longer appears to be required.
 - iv. A summary of compliance compared to the established control measures.
6. Upon written request by the Illinois EPA, the Permittee shall conduct observations of opacity for a coal bunker in accordance with USEPA Reference Method 9.
7. The Permittee shall maintain the following records for Unit 7 and 8 coal bunkers:
 - a. A maintenance and repair logs for each dust extractor system, including the date and nature of maintenance and repair activities performed.
 - b. Operating and maintenance logs for rotoclones, including date and period of operation.
 - c. To demonstrate compliance with Condition 4(a), the Permittee shall keep records for particulate matter emissions from a coal bunker (tons/month and tons/yr), with supporting calculations.
 - d. Records for any opacity observations performed by Method 9 that Permittee conducts or are conducted on its behalf to demonstrate compliance with Condition 2, including name of the observer, date and time, duration of observation, raw data, and conclusion.
8. All records required by this permit shall be retained at the source for at least 5 years from the date of entry and shall be readily accessible to the Illinois EPA for inspection and copying upon request.
9. The coal bunkers for Units 7 and 8 may be operated with the new wet dust extractor systems pursuant to this construction permit until a CAAPP permit is issued for the source that addresses these systems.

Page 5

9. The coal bunkers for Units 7 and 8 may be operated with the new wet dust extractor systems pursuant to this construction permit until a CAAPP permit is issued for the source that addresses these systems.

If you have any questions concerning this, please contact Kunj Patel at 217/782-2113.

Donald E. Sutton

Donald E. Sutton, P.E.
Manager, Permit Section
Division of Air Pollution Control

DES:KMP:jar

cc: Region 1

Exhibit 4



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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

RENEE CIPRIANO, DIRECTOR

217/782-2113

CONSTRUCTION PERMIT

PERMITTEE

Midwest Generation, LLC
Attn: Scott B. Miller
440 South LaSalle Street, Suite 3500
Chicago, Illinois 60605

Application No: 04030053

I.D. No.: 179801AAA

Applicants Designation:

Date Received: March 22, 2004

Subject: Control for Coal Handling System

Date Issued: April 2, 2004

Location: Powerton Generating Station, 13082 East Manito Road, Pekin,
Tazewell County

Permit is hereby granted to the above-designated Permittee to CONSTRUCT air pollution control equipment consisting of wet dust extractor system for the coal silo for Unit 5, and dry fogger systems on the traveling tripper car and at some tripper room transfer points, as described in the above referenced application. This Permit is subject to standard conditions attached hereto and the following special condition(s):

1. This permit is issued based on the new wet dust extractor system replacing existing baghouses, to improve safety and operational performance. The dry fogger systems will be used as a secondary control systems for the Unit 5 coal silo.
- 2a. Pursuant to 35 IAC 212.123(a), the emission of smoke or other particulate matter from the coal silo for Unit 5 shall not exceed an opacity greater than 30 percent, except as allowed by 35 IAC 212.123(b) and 212.124.
 - b. i. The opacity of particulate matter emissions from the silo for Unit 5 shall not exceed 20 percent pursuant to the NSPS for coal preparation plants, 40 CFR 60, Subpart Y: This requirement is being imposed because the change in control is considered a modification, as it increases hourly particulate matter emissions from coal handling operations associated with preparation of coal at the plant.
 - ii. Notwithstanding the above, as provided by 40 CFR 60.8(c), opacity in excess of the above limit during periods of startup, shutdown and malfunction as defined by 40 CFR 60.7, shall not be considered a violation.
- c. At all times, the coal bunkers shall be operated in accordance with good air pollution control practices, as required by 40 CFR 60.11(d).
- 3a. The Permittee is authorized to continue operation of a coal silo in violation of the applicable requirements of 35 IAC 212.123 (Condition 2a) in the event of a malfunction or breakdown, subject to the following provisions. This authorization is provided pursuant to 35 IAC 201.262 as the Permittee has submitted "... proof that continued operation is required to provide essential service, prevent risk of injury to personnel or severe damage to equipment."

ROD R. BLAGOJEVICH, GOVERNOR

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- i. This authorization only allows such continued operation as necessary to provide essential service, prevent risk of injury to personnel or severe damage to equipment and does not extend to continued operation solely for the economic benefit of the Permittee. As provided by 35 IAC 201.265, this authorization does not shield the Permittee from enforcement for any such violation and shall only constitute a prima facie defense to such an enforcement action.
 - ii. Upon occurrence of excess emissions due to malfunction or breakdown, the Permittee shall as soon as practicable repair the affected unit or remove the affected unit from service so that excess emissions cease. Unless the Permittee obtains an extension from the Illinois EPA, this shall be accomplished within 24 hours* or noon of the Illinois EPA's next business day*, whichever is later. The Permittee may obtain an extension for up to a total of 72 hours* from the Illinois EPA, Air Regional Office. The Illinois EPA, Air Compliance Section, in Springfield, may grant a longer extension if the Permittee demonstrates that extraordinary circumstances exist and the unit can not reasonably be repaired or removed from service within the allowed time, it will repair the unit or remove the unit from service as soon as practicable; and it is taking all reasonable steps to minimize excess emissions, based on the actions that have been and will be taken.
 - * For this purpose and other related provisions, time shall be measured from the start of a particular incident. The absence of excess emissions for a short period shall not be considered to end the incident if excess emissions resume. In such circumstances, the incident shall be considered to continue until corrective actions are taken so that excess emissions cease or the Permittee takes the affected operation out of service.
 - iii. The Permittee shall fulfill applicable recordkeeping and reporting requirements of Conditions 3(b) and 4(c).
 - iv. Following notification to the Illinois EPA of a malfunction or breakdown with excess emissions, the Permittee shall comply with all reasonable directives of the Illinois EPA with respect to such incident, pursuant to 35 IAC 201.263.
- b. Pursuant to 35 IAC 201.263, the Permittee shall maintain records for each incident when operation of a coal silo continued during malfunction or breakdown with excess emissions, including the following information:
- i. Date and duration of malfunction or breakdown.
 - ii. A description of the malfunction or breakdown.

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- iii. The corrective actions used to reduce the quantity of emissions and the duration of the incident, including a discussion of the transition to the rotoclones.
 - iv. Confirmation of fulfillment of the requirements of Condition 4(c)(i), as applicable, including copies of follow-up reports submitted pursuant to Condition 4(c)(ii).
 - v. If excess emissions occurred for two or more hours:
 - A. An explanation why continued operation was necessary.
 - B. The preventative measures planned or taken to prevent similar malfunctions or breakdowns or reduce their frequency and severity.
 - C. An estimate of the magnitude of excess emissions occurring during the incident.
- 4a. Particulate matter emissions from coal silo for Unit 5 shall not exceed 0.83 lb/hour and 6.0 tons/year.
- b. Notwithstanding the above, particulate matter emissions from a coal silo may exceed 0.83 lb/hour during a malfunction or breakdown. This authorization is subject to the same terms and conditions established in Condition 3 for exceedance of the opacity standard during a malfunction and breakdown.
 - c. Pursuant to 35 IAC 201.263, the Permittee shall provide the following notifications and reports to the Illinois EPA, Compliance Section and Regional Office, concerning incidents when operation of a coal bunker continued during malfunction or breakdowns.
 - i. The Permittee shall notify the Illinois EPA's Regional Office, by telephone (voice, facsimile or electronic) as soon as possible during normal working hours for each incident in which the opacity from a coal bunker exceeds 30 percent for more than five consecutive 6-minute averaging periods. (Otherwise, if opacity during a malfunction or breakdown incident only exceeds 30 percent for less than five consecutive 6-minute averaging periods in a row, the Permittee need only report the incident in the quarterly report.)
 - ii. Upon conclusion of each incident that is two hours or more in duration, the Permittee shall submit a written follow-up notice to the Illinois EPA, Compliance Section and Regional Office, within 15 days providing a detailed explanation of the event, an explanation why continued operation of an bunker was necessary, the length of time during which operation continued under such conditions, the measures taken by the Permittee to minimize and

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correct deficiencies with chronology, and when the repairs were completed or when the coal bunker was taken out of service.

- d. These provisions addressing continued operation during a malfunction or breakdown event may be revised in the CAAPP permit for the source.
- 5a. The Permittee shall perform inspections of the operations of the affected units as necessary but at least once per month, including the associated control measures, while affected units are in operation to confirm compliance with the requirements of this permit.
- b. The Permittee shall maintain records of the following for the above inspections:
 - i. Date and time the inspection was performed and name(s) of inspection personnel.
 - ii. The observed condition of the established control measures for the affected unit.
 - iii. A description of any maintenance or repair associated with established control measures that is recommended as a result of the inspection and a review of outstanding recommendations for maintenance or repair from previous inspection(s), i.e., whether recommended action has been taken, is yet to be performed or no longer appears to be required.
 - iv. A summary of compliance compared to the established control measures.
6. Upon written request by the Illinois EPA, the Permittee shall conduct observations of opacity for a coal silo in accordance with USEPA Reference Method 9.
7. The Permittee shall maintain the following records for Unit 5 coal silo:
 - a. A maintenance and repair logs for the dust extractor system, including the date and nature of maintenance and repair activities performed.
 - b. Operating and maintenance logs for fogger systems, including date and period of operation.
 - c. To demonstrate compliance with Condition 4(a), the Permittee shall keep records for particulate matter emissions from a coal silo (tons/month and tons/yr), with supporting calculations.
 - d. Records for any opacity observations performed by Method 9 that Permittee conducts or are conducted on its behalf to demonstrate compliance with Condition 2, including name of the observer, date and time, duration of observation, raw data, and conclusion.
8. All records required by this permit shall be retained at the source for at least 5 years from the date of entry and shall be readily accessible to the Illinois EPA for inspection and copying upon request.

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9. The coal silo for Unit 5 may be operated with the new wet dust extractor system pursuant to this construction permit until a CAAPP permit is issued for the source that addresses these systems.

If you have any questions concerning this, please contact Kunj Patel at 217/782-2113.

Donald E. Sutton

Donald E. Sutton, P.E.
Manager, Permit Section
Division of Air Pollution Control

DES:KMP:psj

cc: Region 2

Exhibit 5

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Title 40: Protection of Environment

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Subpart A—General Provisions

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§ 60.2 Definitions.

The terms used in this part are defined in the Act or in this section as follows:

Act means the Clean Air Act (42 U.S.C. 7401 *et seq.*)

Administrator means the Administrator of the Environmental Protection Agency or his authorized representative.

Affected facility means, with reference to a stationary source, any apparatus to which a standard is applicable.

Alternative method means any method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the Administrator's satisfaction to, in specific cases, produce results adequate for his determination of compliance.

Approved permit program means a State permit program approved by the Administrator as meeting the requirements of part 70 of this chapter or a Federal permit program established in this chapter pursuant to Title V of the Act (42 U.S.C. 7661).

Capital expenditure means an expenditure for a physical or operational change to an existing facility which exceeds the product of the applicable "annual asset guideline repair allowance percentage" specified in the latest edition of Internal Revenue Service (IRS) Publication 534 and the existing facility's basis, as defined by section 1012 of the Internal Revenue Code. However, the total expenditure for a physical or operational change to an existing facility must not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

Clean coal technology demonstration project means a project using funds appropriated under the heading 'Department of Energy-Clean Coal Technology', up to a total amount of \$2,500,000,000 for commercial demonstrations of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency.

Commenced means, with respect to the definition of *new source* in section 111(a)(2) of the Act, that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification.

Construction means fabrication, erection, or installation of an affected facility.

Continuous monitoring system means the total equipment, required under the emission monitoring sections in applicable subparts, used to sample and condition (if applicable), to analyze, and to provide a permanent record of emissions or process parameters.

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Electric utility steam generating unit means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

Equivalent method means any method of sampling and analyzing for an air pollutant which has been demonstrated to the Administrator's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

Excess Emissions and Monitoring Systems Performance Report is a report that must be submitted periodically by a source in order to provide data on its compliance with stated emission limits and operating parameters, and on the performance of its monitoring systems.

Existing facility means, with reference to a stationary source, any apparatus of the type for which a standard is promulgated in this part, and the construction or modification of which was commenced before the date of proposal of that standard; or any apparatus which could be altered in such a way as to be of that type.

Isokinetic sampling means sampling in which the linear velocity of the gas entering the sampling nozzle is equal to that of the undisturbed gas stream at the sample point.

Issuance of a part 70 permit will occur, if the State is the permitting authority, in accordance with the requirements of part 70 of this chapter and the applicable, approved State permit program. When the EPA is the permitting authority, issuance of a Title V permit occurs immediately after the EPA takes final action on the final permit.

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

Modification means any physical change in, or change in the method of operation of, an existing facility which increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted.

Monitoring device means the total equipment, required under the monitoring of operations sections in applicable subparts, used to measure and record (if applicable) process parameters.

Nitrogen oxides means all oxides of nitrogen except nitrous oxide, as measured by test methods set forth in this part.

One-hour period means any 60-minute period commencing on the hour.

Opacity means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

Owner or operator means any person who owns, leases, operates, controls, or supervises an affected facility or a stationary source of which an affected facility is a part.

Part 70 permit means any permit issued, renewed, or revised pursuant to part 70 of this chapter.

Particulate matter means any finely divided solid or liquid material, other than uncombined water, as measured by the reference methods specified under each applicable subpart, or an equivalent or alternative method.

Permit program means a comprehensive State operating permit system established pursuant to title V of the Act (42 U.S.C. 7661) and regulations codified in part 70 of this chapter and applicable State regulations, or a comprehensive Federal operating permit system established pursuant to title V of the

Act and regulations codified in this chapter.

Permitting authority means:

- (1) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under part 70 of this chapter; or
- (2) The Administrator, in the case of EPA-implemented permit programs under title V of the Act (42 U.S.C. 7661).

Proportional sampling means sampling at a rate that produces a constant ratio of sampling rate to stack gas flow rate.

Reactivation of a very clean coal-fired electric utility steam generating unit means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

- (1) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the permitting authority's emissions inventory at the time of enactment;
- (2) Was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;
- (3) Is equipped with low-NO_x burners prior to the time of commencement of operations following reactivation; and
- (4) Is otherwise in compliance with the requirements of the Clean Air Act.

Reference method means any method of sampling and analyzing for an air pollutant as specified in the applicable subpart.

Repowering means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990. Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

Run means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

Shutdown means the cessation of operation of an affected facility for any purpose.

Six-minute period means any one of the 10 equal parts of a one-hour period.

Standard means a standard of performance proposed or promulgated under this part.

Standard conditions means a temperature of 293 K (68F) and a pressure of 101.3 kilopascals (29.92 in Hg).

Startup means the setting in operation of an affected facility for any purpose.

State means all non-Federal authorities, including local agencies, interstate associations, and State-wide programs, that have delegated authority to implement: (1) The provisions of this part; and/or (2) the

permit program established under part 70 of this chapter. The term State shall have its conventional meaning where clear from the context.

Stationary source means any building, structure, facility, or installation which emits or may emit any air pollutant.

Title V permit means any permit issued, renewed, or revised pursuant to Federal or State regulations established to implement title V of the Act (42 U.S.C. 7661). A title V permit issued by a State permitting authority is called a part 70 permit in this part.

Volatile Organic Compound means any organic compound which participates in atmospheric photochemical reactions; or which is measured by a reference method, an equivalent method, an alternative method, or which is determined by procedures specified under any subpart.

[44 FR 55173, Sept. 25, 1979, as amended at 45 FR 5617, Jan. 23, 1980; 45 FR 85415, Dec. 24, 1980; 54 FR 6662, Feb. 14, 1989; 55 FR 51382, Dec. 13, 1990; 57 FR 32338, July 21, 1992; 59 FR 12427, Mar. 16, 1994]

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Title 40: Protection of Environment

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Subpart A—General Provisions

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§ 60.14 Modification.

(a) Except as provided under paragraphs (e) and (f) of this section, any physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies shall be considered a modification within the meaning of section 111 of the Act. Upon modification, an existing facility shall become an affected facility for each pollutant to which a standard applies and for which there is an increase in the emission rate to the atmosphere.

(b) Emission rate shall be expressed as kg/hr of any pollutant discharged into the atmosphere for which a standard is applicable. The Administrator shall use the following to determine emission rate:

(1) Emission factors as specified in the latest issue of "Compilation of Air Pollutant Emission Factors," EPA Publication No. AP-42, or other emission factors determined by the Administrator to be superior to AP-42 emission factors, in cases where utilization of emission factors demonstrates that the emission level resulting from the physical or operational change will either clearly increase or clearly not increase.

(2) Material balances, continuous monitor data, or manual emission tests in cases where utilization of emission factors as referenced in paragraph (b)(1) of this section does not demonstrate to the Administrator's satisfaction whether the emission level resulting from the physical or operational change will either clearly increase or clearly not increase, or where an owner or operator demonstrates to the Administrator's satisfaction that there are reasonable grounds to dispute the result obtained by the Administrator utilizing emission factors as referenced in paragraph (b)(1) of this section. When the emission rate is based on results from manual emission tests or continuous monitoring systems, the procedures specified in appendix C of this part shall be used to determine whether an increase in emission rate has occurred. Tests shall be conducted under such conditions as the Administrator shall specify to the owner or operator based on representative performance of the facility. At least three valid test runs must be conducted before and at least three after the physical or operational change. All operating parameters which may affect emissions must be held constant to the maximum feasible degree for all test runs.

(c) The addition of an affected facility to a stationary source as an expansion to that source or as a replacement for an existing facility shall not by itself bring within the applicability of this part any other facility within that source.

(d) [Reserved]

(e) The following shall not, by themselves, be considered modifications under this part:

(1) Maintenance, repair, and replacement which the Administrator determines to be routine for a source category, subject to the provisions of paragraph (c) of this section and §60.15.

(2) An increase in production rate of an existing facility, if that increase can be accomplished without a capital expenditure on that facility.

(3) An increase in the hours of operation.

(4) Use of an alternative fuel or raw material if, prior to the date any standard under this part becomes applicable to that source type, as provided by §60.1, the existing facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change. Conversion to coal required for energy considerations, as specified in section 111(a)(8) of the Act, shall not be considered a modification.

(5) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the Administrator determines to be less environmentally beneficial.

(6) The relocation or change in ownership of an existing facility.

(f) Special provisions set forth under an applicable subpart of this part shall supersede any conflicting provisions of this section.

(g) Within 180 days of the completion of any physical or operational change subject to the control measures specified in paragraph (a) of this section, compliance with all applicable standards must be achieved.

(h) No physical change, or change in the method of operation, at an existing electric utility steam generating unit shall be treated as a modification for the purposes of this section provided that such change does not increase the maximum hourly emissions of any pollutant regulated under this section above the maximum hourly emissions achievable at that unit during the 5 years prior to the change.

(i) Repowering projects that are awarded funding from the Department of Energy as permanent clean coal technology demonstration projects (or similar projects funded by EPA) are exempt from the requirements of this section provided that such change does not increase the maximum hourly emissions of any pollutant regulated under this section above the maximum hourly emissions achievable at that unit during the five years prior to the change.

(j)(1) Repowering projects that qualify for an extension under section 409(b) of the Clean Air Act are exempt from the requirements of this section, provided that such change does not increase the actual hourly emissions of any pollutant regulated under this section above the actual hourly emissions achievable at that unit during the 5 years prior to the change.

(2) This exemption shall not apply to any new unit that:

(i) Is designated as a replacement for an existing unit;

(ii) Qualifies under section 409(b) of the Clean Air Act for an extension of an emission limitation compliance date under section 405 of the Clean Air Act; and

(iii) Is located at a different site than the existing unit.

(k) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project is exempt from the requirements of this section. A *temporary clean coal control technology demonstration project*, for the purposes of this section is a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the State implementation plan for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(l) The reactivation of a very clean coal-fired electric utility steam generating unit is exempt from the requirements of this section.

[40 FR 58419, Dec. 16, 1975, as amended at 43 FR 34347, Aug. 3, 1978; 45 FR 5617, Jan. 23, 1980; 57 FR 32339, July 21, 1992; 65 FR 61750, Oct. 17, 2000]

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Subpart Y—Standards of Performance for Coal Preparation Plants

§ 60.250 Applicability and designation of affected facility.

(a) The provisions of this subpart are applicable to any of the following affected facilities in coal preparation plants which process more than 181 Mg (200 tons) per day: Thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), coal storage systems, and coal transfer and loading systems.

(b) Any facility under paragraph (a) of this section that commences construction or modification after October 24, 1974, is subject to the requirements of this subpart.

[42 FR 37938, July 25, 1977; 42 FR 44812, Sept. 7, 1977, as amended at 65 FR 61757, Oct. 17, 2000]

§ 60.251 Definitions.

As used in this subpart, all terms not defined herein have the meaning given them in the Act and in subpart A of this part.

(a) *Coal preparation plant* means any facility (excluding underground mining operations) which prepares coal by one or more of the following processes: breaking, crushing, screening, wet or dry cleaning, and thermal drying.

(b) *Bituminous coal* means solid fossil fuel classified as bituminous coal by ASTM Designation D388–77, 90, 91, 95, or 98a (incorporated by reference—see §60.17).

(c) *Coal* means all solid fossil fuels classified as anthracite, bituminous, subbituminous, or lignite by ASTM Designation D388–77, 90, 91, 95, or 98a (incorporated by reference—see §60.17).

(d) *Cyclonic flow* means a spiraling movement of exhaust gases within a duct or stack.

(e) *Thermal dryer* means any facility in which the moisture content of bituminous coal is reduced by contact with a heated gas stream which is exhausted to the atmosphere.

(f) *Pneumatic coal-cleaning equipment* means any facility which classifies bituminous coal by size or separates bituminous coal from refuse by application of air stream(s).

(g) *Coal processing and conveying equipment* means any machinery used to reduce the size of coal or to separate coal from refuse, and the equipment used to convey coal to or remove coal and refuse from the machinery. This includes, but is not limited to, breakers, crushers, screens, and conveyor belts.

(h) *Coal storage system* means any facility used to store coal except for open storage piles.

(i) *Transfer and loading system* means any facility used to transfer and load coal for shipment.

[41 FR 2234, Jan. 15, 1976, as amended at 48 FR 3738, Jan. 27, 1983; 65 FR 61757, Oct. 17, 2000]

§ 60.252 Standards for particulate matter.

(a) On and after the date on which the performance test required to be conducted by §60.8 is completed, an owner or operator subject to the provisions of this subpart shall not cause to be discharged into the atmosphere from any thermal dryer gases which:

(1) Contain particulate matter in excess of 0.070 g/dscm (0.031 gr/dscf).

(2) Exhibit 20 percent opacity or greater.

(b) On and after the date on which the performance test required to be conducted by §60.8 is completed, an owner or operator subject to the provisions of this subpart shall not cause to be discharged into the atmosphere from any pneumatic coal cleaning equipment, gases which:

(1) Contain particulate matter in excess of 0.040 g/dscm (0.017 gr/dscf).

(2) Exhibit 10 percent opacity or greater.

(c) On and after the date on which the performance test required to be conducted by §60.8 is completed, an owner or operator subject to the provisions of this subpart shall not cause to be discharged into the atmosphere from any coal processing and conveying equipment, coal storage system, or coal transfer and loading system processing coal, gases which exhibit 20 percent opacity or greater.

[41 FR 2234, Jan. 15, 1976, as amended at 65 FR 61757, Oct. 17, 2000]

§ 60.253 Monitoring of operations.

(a) The owner or operator of any thermal dryer shall install, calibrate, maintain, and continuously operate monitoring devices as follows:

(1) A monitoring device for the measurement of the temperature of the gas stream at the exit of the thermal dryer on a continuous basis. The monitoring device is to be certified by the manufacturer to be accurate within ± 1.7 °C (± 3 °F).

(2) For affected facilities that use venturi scrubber emission control equipment:

(i) A monitoring device for the continuous measurement of the pressure loss through the venturi constriction of the control equipment. The monitoring device is to be certified by the manufacturer to be accurate within ± 1 inch water gauge.

(ii) A monitoring device for the continuous measurement of the water supply pressure to the control equipment. The monitoring device is to be certified by the manufacturer to be accurate within ± 5 percent of design water supply pressure. The pressure sensor or tap must be located close to the water discharge point. The Administrator may be consulted for approval of alternative locations.

(b) All monitoring devices under paragraph (a) of this section are to be recalibrated annually in accordance with procedures under §60.13(b).

[41 FR 2234, Jan. 15, 1976, as amended at 54 FR 6671, Feb. 14, 1989; 65 FR 61757, Oct. 17, 2000]

§ 60.254 Test methods and procedures.

(a) In conducting the performance tests required in §60.8, the owner or operator shall use as reference methods and procedures the test methods in appendix A of this part or other methods and procedures

as specified in this section, except as provided in §60.8(b).

(b) The owner or operator shall determine compliance with the particular matter standards in §60.252 as follows:

(1) Method 5 shall be used to determine the particulate matter concentration. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf). Sampling shall begin no less than 30 minutes after startup and shall terminate before shutdown procedures begin.

(2) Method 9 and the procedures in §60.11 shall be used to determine opacity.

[54 FR 6671, Feb. 14, 1989]

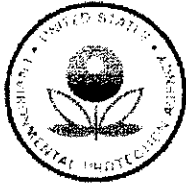
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Comments:

Subparts: Part 60, Y Coal Preparation Plants

- References:** 60.14
60.15
60.2
60.250(a)
60.251(g)

Abstract:

Q1: Does the replacement of an individual coal conveyor constitute construction or reconstruction of an affected facility or must one view the conveyors collectively as a group when determining if the replacement or construction of an individual conveyor constitutes the construction or reconstruction of an affected facility?

A1: Each conveyor must be evaluated individually to determine if the replacement of a single conveyor creates an affected facility subject to Part 60, Subpart Y. Based on the wording of the regulation, each conveyor is viewed individually. This determination confirms an earlier determination on this issue, and was also based on previous determinations concerning the applicability of Subpart Y.

Q2: When evaluating applicability of Subpart Y to coal processing and conveying equipment at a coal preparation plant, does one include all coal preparation equipment as a whole (system) or does one view each piece of processing and conveying equipment as a separate affected facility?

EXHIBIT 6

A2: The NSPS General Provisions in Subpart A define affected facility as any apparatus to which a standard is applicable. In general, when U.S. EPA seeks to regulate a process as a whole the regulation will refer to a system or facility, or will use the term "all" when describing the equipment that is part of the affected facility. Because Subpart Y defines coal processing and conveying equipment to be any machinery and because U.S. EPA did not identify coal processing and conveying equipment as a system, the affected facility is each individual coal conveyor.

Letter:

6-30-03
(AE-17J)

Frank P. Prager, Assistant General Counsel
Xcel Energy
1225 17th Street, Suite 900
Denver, Colorado 80202-5533

Re: NSPS Subpart Y Applicability to Xcel Energy, Alan King Facility

Dear Mr. Prager:

This letter is in response to your letter of February 4, 2002, in which you requested that the United States Environmental Protection Agency (U.S. EPA) reconsider a formal New Source Performance Standards (NSPS) - Subpart Y applicability determination it issued to the Minnesota Pollution Control Agency in a letter dated December 27, 2001. The determination concerned the potential applicability of NSPS - Subpart Y to the Flite Coal Conveyor replacement project at the Xcel Energy (Xcel), Allen S. King Generating Plant, in Bayport, Minnesota. Please note that this response only addresses the issue of NSPS Subpart Y applicability and does not address the applicability of other regulations including New Source Review, the federally approved State Implementation Plan, and other NSPS standards or requirements.

In your letter dated February 4, 2002, you make several assertions to support your position that the affected facility designated under NSPS Subpart Y as "coal processing and conveying equipment (including breakers and crushers)" must include all "coal preparation plant equipment as a whole." For example, you assert that at "no point do the regulations state . . . that each piece of processing and conveying equipment should be viewed as separate . . . [affected facilities]."

The NSPS General Provisions set forth at 40 C.F.R. Subpart A, 60.2, define "affected facility" as "any apparatus to which a standard is applicable." (Emphasis added.) The designation of affected facilities under NSPS Subpart Y at 40 C.F.R. 60.250 includes "coal processing and conveying equipment." NSPS Subpart Y at 40 C.F.R. 60.251(g) defines "coal processing and conveying equipment" as "any machinery used to reduce the size of coal or to separate coal from refuse, and the equipment used to convey

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coal to or remove coal and refuse from machinery. This includes, but is not limited to, breakers, crushers, screens, and conveyor belts." (Emphasis added.)

In general, where EPA seeks to regulate a process as a whole, or seeks to define a process or certain objects as a whole, the NSPS regulations will refer to the objects in the collective, such as describing the objects or process as a "system" or a "facility," or will use the term "all" in describing those objects. For example, the NSPS Subpart Y regulations designate "coal storage systems" and also "coal transfer and loading systems" as affected facilities, and defines them, respectively, as "any facility used to store coal" and as "any facility used to transfer and load coal for shipment." (Emphasis added.) Thus, under these designations, all coal storage equipment is treated collectively as one affected facility, and, correspondingly, all coal transfer and loading equipment used for shipping is treated collectively as one affected facility.

In contrast, NSPS Subpart Y identifies "coal processing and conveying equipment" as the affected facility. (Emphasis added.) Significantly, NSPS Subpart Y does not designate this affected facility as a "coal processing and conveying system." Correspondingly, NSPS Subpart Y, in defining this affected facility, refers to "any machinery" (emphasis added). NSPS Subpart Y does not define this affected facility as "any facility used to process or convey coal." Thus, it is clear from the plain language and context of NSPS Subpart Y that EPA did not intend to regulate all "coal processing and conveying equipment" as one collective affected facility.

Xcel also believes that U.S. EPA's position, as expressed in the December 27, 2001 letter to MPCA, is not logical because it would result in a situation where the NSPS is applicable to certain individual conveyors that had been replaced while the other equipment would remain exempt. Indeed, U.S. EPA's position is that there are a number of affected facilities at a coal preparation plant and it is possible for some of them to be subject to the Subpart Y NSPS while other facilities at the same plant are not subject to the Subpart Y NSPS. For example, one thermal dryer at a coal preparation plant could be subject to the NSPS while an adjacent older thermal dryer might not be subject to the NSPS. The logic of U.S. EPA's position arises from a basic premise of NSPS, which is, that new or modified sources of air pollution have the greatest flexibility to incorporate emission reduction technology. It should be noted that under certain NSPS standards certain companies have addressed the juxtaposition of existing and affected sources by simply using the emission

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controls required to meet the NSPS standard at both their affected and existing facilities.

Your letter also discusses U.S. EPA Region 5's position on the April 16, 1998, letter from EPA Region IV regarding a Carolina Power and Light plant. As we indicated in our December 27, 2001 letter, we acknowledge that this applicability determination could have been written with greater clarity. For example, the determination refers to a "coal conveying system" as being defined in the regulation - when, in fact, NSPS Subpart Y neither refers to nor defines such a term. However, U.S. EPA Region 5 does agree with Region IV's determination in relation to its finding that certain coal conveyors are subject to the requirements of NSPS Subpart Y, while other coal conveyors may, or may not, be subject to the requirements of NSPS Subpart Y. In reference to certain other coal conveyors that the company asserted were not subject to NSPS Subpart Y, Region IV's determination states that "if coal conveyors 6, 12A, 12B, 13A, and 13B were constructed after October 24, 1974, they are also affected facilities subject to Subpart Y." (Emphasis added.) In other words, although the determination refers to an undefined "coal conveying system," in fact, the Region IV determination does not treat the conveyors as one collective affected facility. This position is also reflected in the abstract for the Region IV applicability

determination, which states: "What portion of the coal conveying system is Subject to Subpart Y at a coal preparation plant?" This question can only be asked if individual conveyors can be subject to the Subpart Y NSPS.

Finally, if the Region IV determination were to reflect the position you attribute to it, that is, that all "coal processing and conveying equipment" must be treated as one affected facility, then Region IV would have analyzed the determination in a different manner. For example, rather than looking at the installation dates of individual conveyors, the determination would have discussed the construction costs and installation dates of all conveyors and processing equipment under a reconstruction or capital expenditure analysis.

U.S. EPA's letter of December 27, 2001, did not make a final determination regarding the applicability of the Subpart Y NSPS to the Xcel Energy, Alan King facility. U.S. EPA continues to believe that the appropriate way to determine applicability in this situation is to look at each conveyor that was replaced and determine if each conveyor was new, modified or reconstructed. The information provided by Xcel appears to indicate that each conveyor was entirely reconstructed. As a result, it appears that each individual conveyor is subject to NSPS Subpart Y.

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If there are any questions concerning this letter, please contact Jeffrey Bratko of my staff at (312) 886-6816 or via e-mail to Bratko.Jeffrey@EPA.mail

Sincerely yours,

George T. Czerniak, Chief
Air Enforcement and Compliance Assurance Branch

cc: Betsy Randt, MPCA

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MIDWEST GENERATION, LLC,)	
WILL COUNTY GENERATING STATION,)	
)	
Petitioner,)	
)	
v.)	PCB _____
)	(Permit Appeal – Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached **Appeal of CAAPP Permit of Midwest Generation, LLC, Will County Generating Station and Appearances of Sheldon A. Zabel, Kathleen C. Bassi, Stephen J. Bonebrake, and Kavita M. Patel,**

by electronic delivery upon the following person:

Pollution Control Board, Attn: Clerk
James R. Thompson Center
100 W. Randolph
Suite 11-500
Chicago, Illinois 60601

and by electronic and first class mail upon the following person:

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276

/s/ Kathleen C. Bassi

Kathleen C. Bassi

Dated: April 7, 2006

Sheldon A. Zabel
Kathleen C. Bassi
Stephen J. Bonebrake
Kavita M. Patel
SCHIFF HARDIN, LLP
6600 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
312-258-5500
Fax: 312-258-5600