

ILLINOIS POLLUTION CONTROL BOARD  
April 20, 2006

MIDWEST GENERATION, LLC, WILL )  
COUNTY GENERATING STATION, )  
 )  
Petitioner, )  
 )  
v. ) PCB 06-156  
 ) (Permit Appeal - Air)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

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

On April 7, 2006, Midwest Generation, LLC, Will County Generating Station (Midwest) timely filed a petition (Pet.) asking the Board to review a March 3, 2006 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2004); 35 Ill. Adm. Code 105.206(a).

The Agency issued a construction permit with conditions regarding Midwest's electric generating station located at 529 E. 135th Road, Romeoville, Will County. *See* 415 ILCS 5/39(a) (2004). Midwest appeals on the grounds that "the Agency is attempting to impose operating conditions through the construction permit that have been appealed in the context of the CAAPP [Clean Air Act Permit Program] permit appeal prior to the Board's decision on these points." Pet. at 5; *see* Midwest Generation, LLC, Will County Generating Station, PCB 06-60. Midwest argues variously that these conditions lack a basis in law or are unnecessary, not feasible, inapplicable, inappropriate or ambiguous. Midwest's petition meets the content requirements of 35 Ill. Adm. Code 105.210. The Board accepts the petition for hearing.

Midwest has the burden of proof. 415 ILCS 5/40(a)(1) (2004); *see also* 35 Ill. Adm. Code 105.112(a). Hearings "will be based exclusively on the record before the Agency at the time the permit or decision was issued." 35 Ill. Adm. Code 105.214(a). Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2004)), which only Midwest may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Midwest "may deem the permit issued." 415 ILCS 5/40(a)(2) (2004). Currently, the decision deadline is August 5, 2006, the 120th day after April 7, 2006. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for August 3, 2006.

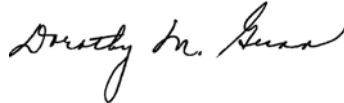
Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by May 8, 2006, which is 30 days after Midwest filed the petition. 35 Ill. Adm. Code 105.212(a). If the Agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed. 35 Ill.

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

The Board notes that Midwest has sought a stay of 14 specified permit conditions. Pet. at 5. Noting that this petition does not involve a renewal permit, the Board reserves ruling on the request for a stay of those conditions until the Agency's response time has elapsed.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 20, 2006, by a vote of 4-0.

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

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board