

ILLINOIS POLLUTION CONTROL BOARD

July 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):

Petitioner Midwest Generation, LLC, Will County Generating Station (Midwest) filed an appeal contesting various conditions placed in a construction permit issued on March 3, 2006, by the Illinois Environmental Protection Agency (Agency). In its appeal, Midwest requested that the Board grant a partial stay of the construction permit by staying 14 specified contested conditions. In its reply to the Agency's response to its request, Midwest submitted an edited permit identifying the specific contested language within each condition that is truly the basis for its appeal and request for stay.

Today, the Board is not ruling on the merits of the construction permit appeal but instead addresses Midwest's request for a partial stay. For the reasons below, the Board grants Midwest's request for a partial stay consistent with the edited permit filed by Midwest, as modified by this order.

PROCEDURAL BACKGROUND

On April 7, 2006, Midwest filed an appeal (Pet.) contesting conditions contained in a construction permit issued to it by the Agency on March 3, 2006. In its petition for review, Midwest requested that the Board stay the effectiveness of fourteen specified contested conditions. In an April 20, 2006 order, the Board accepted the petition for hearing but reserved ruling on the request for a partial stay.

On April 25, 2006, the Agency filed a response (Resp.) opposing Midwest's request for a stay. On May 12, 2006, Midwest filed a motion for leave to file a reply and its reply to the Agency's response (Reply). On May 26, 2006, the Agency filed a motion for leave to file a surreply and its surreply (Sur.).

The Board has not received a response to either motion for leave to file. The Board grants both motions for leave to file and has reviewed all filings submitted to it.

FACTUAL BACKGROUND

The Will County Generating Station (Station) is an electric generating station owned by Midwest Generation, LLC, and operated by Midwest. Pet. at 1-2. The Station, located at 529 East 135th Road, Romeoville, Will County, went online between 1955 and 1963 and is an intermediate load plant capable of generating approximately 1100 megawatts. Pet. at 2.

At the Station, Midwest operates four coal-fired boilers and associated coal handling, coal processing, and ash handling activities. Pet. at 2. Midwest crushes and prepares coal in a breaker building and then sends coal through conveyors to bunkers. *Id.* From the bunkers, Midwest transfers coal through pulverizers, which further reduce coal size. *Id.* Midwest then blows pulverized coal into its boilers. *Id.*

The Station is situated within the Chicago nonattainment areas for ozone and particulate matter less than 2.5 microns in aerodynamic diameter (PM_{2.5}), and it “is a major source subject to the Clean Air Act Permitting Program (CAAPP).” Pet. at 2. On September 29, 2005, the Agency issued Midwest a CAAPP permit for the Station. *Id.* On November 2, 2005, Midwest appealed that CAAPP permit to the Board. *Id.*; see Midwest Generation, LLC, Will County Generating Station v. IEPA, PCB 06-60. In determining Midwest’s request for a stay of the CAAPP permit, the Board found that the automatic stay provisions of the Administrative Procedure Act (5 ILCS 100/10-65(b) (2004)) effectively stay Midwest’s CAAPP permit by operation of law. Midwest Generation, LLC, Will County Generating Station v. IEPA, PCB 06-60, slip op. at 7 (Feb. 16, 2006); see also Borg-Warner Corp. v. Mauzy, 427 N.E.2d 415 (3rd Dist. 1981).

Midwest has historically controlled emissions from its bunkers at the Station through the use of baghouses or rotoclones with water spray. Pet. at 3. Midwest sought the construction permit at issue in this proceeding in order to construct and operate wet dust extractor control devices as replacements for the rotoclones. *Id.* A dust extractor creates negative pressure inside the bunkers so that it can capture dust-laden air created by drops from the conveyors and by withdrawal of coal from the bunkers. *Id.* “The dust/air/water mixture passes through a mesh panel, which separates the dust particles in the air stream.” *Id.*

Midwest intended to install wet dust extractors during a planned outage beginning March 4, 2006, and Midwest submitted its construction permit application to the Agency on February 2, 2006. *Id.* On March 3, 2006, the Agency issued a construction permit including various conditions. Pet. at 3; see Pet., Exh. 1.

PETITIONER’S REQUEST FOR STAY

Midwest states that, in the course of discussing its construction permit with the Agency, it “learned that the Agency intended to include provisions that mirrored language that has been appealed in the CAAPP permit issued to Will County.” Pet. at 3, see Midwest Generation, LLC, Will County Generating Station v. IEPA, PCB 06-60. Midwest further states that it asked the Agency to remove from the construction permit the language it had contested in its CAAPP

permit appeal but the Agency declined to do so. *Id.*, citing Pet., Exh. 2 (e-mail correspondence between Midwest and Agency).

Midwest notes that condition 11 of the construction permit provides “[t]he 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.” Pet. at 4, 6 n.3, citing Pet., Exh. 1 at 10. Midwest concludes from this language that “the operating conditions included in the construction permit will roll into the CAAPP permit when it becomes effective.” Pet. at 4. Midwest argues that, even if it must obtain an operating permit for its wet dust extractors while the CAAPP permit appeal is pending, the Agency will ultimately have to include the language of that permit in the CAAPP permit. Pet. at 6 n.3.

Midwest notes the Board may in a separate appeal strike contested conditions from the Station’s CAAPP permit. Pet. at 4. Midwest argues that it “will suffer irreparable harm” if these contested conditions remain in the construction permit and then carry forward into the CAAPP permit when it becomes effective. Pet. at 4. “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.” *Id.*

Arguing the Board has historically granted petitioners’ requests for partial stays in permit appeals (Pet. at 4 (citations omitted)), Midwest requests that the Board grant a partial stay of the construction permit by staying contested conditions 2, 5(a)(1), 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). Pet. at 5.

AGENCY’S RESPONSE TO REQUEST FOR STAY

The Agency states “the Board should evaluate Petitioner’s stay request by looking to the traditional factors frequently considered by the Board in prior proceedings.” Resp. at 4 (citations omitted). In a case cited by the Agency, the Board has stated that, “[i]n determining whether a discretionary stay is appropriate, the Board may refer to four factors: (1) a certain and clearly ascertainable right needs protection; (2) irreparable injury will occur without the stay; (3) no adequate remedy at law exists; and (4) there is a probability of success on the merits.” Resp. at 4, citing Bridgestone/Firestone Off-Road Tire Company v. IEPA, PCB 02-31, slip op. at 3 (Nov. 1, 2001); *see also* Community Landfill Company and City of Morris v. IEPA, PCB 01-48, 01-49, slip op. at 4 (Oct. 19, 2000).

The Agency acknowledges that Midwest’s request presents some of these traditional factors: “the Petitioner should not be required to expend significant costs, or run the risk that its appeal rights be cut short, in complying with the contested conditions of the permit prior to a Board ruling on the merits of the appeal.” Resp. at 5. The Agency continues by stating that, while the Board should review stay requests on a case-by-case basis, it generally favors stays limited to conditions contested by the permittee. *Id.*

Nonetheless, the Agency concludes that it cannot support Midwest's request because it is overly broad. Pet. at 5. "Petitioner's stay request would unnecessarily afford stay protection to matters unrelated to the substance of the appeal." *Id.*

The Agency claims that Midwest's request with regard to Condition 5(a)(1) is one example of this overbreadth. Resp. at 5. In its entirety, that condition provides

The Permittee shall perform inspection of the affected operation 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.

The Agency argues that Midwest's petition for review does not specifically challenge the inspections themselves as required by the first sentence of this condition but only challenges the type of personnel performing the required inspections as described in the second sentence. Resp. at 5, citing Pet. at 7-8. The Agency suggests that a stay of the entire condition would allow Midwest to avoid complying with a part of that condition to which it has not objected. *See* Resp. at 5-6. Consequently, the Agency states in its response that it cannot support Midwest's request for a stay. Resp. at 7.

PETITIONER'S REPLY TO AGENCY'S RESPONSE

Midwest states the same four traditional factors as the Agency that the Board considers in determining whether to grant a stay. Reply at 6. Without waiving its claims to a partial stay on other statutory grounds, Midwest argues that the four traditional factors favor granting its requested stay. *Id.* First, Midwest argues that its certain and clearly ascertainable statutory right to appeal conditions in its CAAPP would be "undercut" if the Board does not stay the contested conditions in the construction permit. Reply at 6. Second, Midwest claims that, if the Board does not grant a stay, it would suffer irreparable injury. Midwest "would be required to implement measures that are under appeal in Docket PCB 06-60 and upon which the Board has not yet rendered a decision." Reply at 6-7. Midwest suggests that that Agency shares its position on this factor because the Agency has acknowledged that Midwest "should not be required to expend significant costs, or run the risk that its appeal rights might be cut short, in complying with the contested conditions of the permit prior [to] a Board ruling on the merits of the appeal." Reply at 7, citing Resp. at 5 (§ 11). Third, Midwest claims that, outside the Board, it does not have an adequate remedy at law. Reply at 7. Finally, Midwest believes it has a probability of success on the merits of its appeal. *Id.*

In at least some cases, Midwest accepts the Agency's characterization that Midwest "objects to only certain limited provisions contained within the conditions and not the entire condition in all cases." Reply at 7. Midwest states that "[i]dentifying only the specific language that is objectionable appeared to be a level of detail that exceeded the scope of what was appropriate for inclusion in the Petition for Appeal, though it is a level of detail that would be addressed in a hearing on the matter." Reply at 8.

Consequently, Midwest “is agreeable to a ‘surgical stay’ of only certain portions of some of the identified conditions.” Reply at 8. As Exhibit 1 of its reply, Midwest attached an edited permit that strikes “the language that is objectionable and that is truly the object of Midwest Generation’s appeal.” *Id.*; see Reply, Exh. 1. Midwest does state that it cannot indicate the language in condition 9(b)(i) that it seeks to stay simply by striking it. Reply at 8. In its entirety, Midwest’s edited condition 9(b)(i)(A) provides:

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 6-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 6-minute averaging periods, the Permittee need only report the incident in accordance with Condition 9(b)(ii).~~ Reply, Exh. 1 at 8.

Midwest states it “will interpret the condition to imply that the five six-minute periods identified in the condition are consecutive, even though the word consecutive is not included in the condition.” *Id.*

AGENCY’S SURREPLY

Noting that Midwest has indicated it is agreeable to a partial stay and that Midwest has submitted to the Board an edited version striking the specific conditions to which it objects, the Agency states that it “is prepared to accept the Petitioner’s attachment as an accurate representation of conditions currently being challenged on appeal.” Sur. at 6.

The Agency notes that it is troubled by Midwest’s approach in addressing condition 9(b)(i)(A). Sur. at 6. In its petition for review, Midwest argues that the condition is internally inconsistent because the word “consecutive” should appear in the phrase “five or more 6-minute averaging periods” in the first sentence just as that word appears in the next sentence regarding opacity during a malfunction or breakdown incident. See Pet. at 12. “Otherwise, the reporting requirement could be triggered by any five random six-minute averaging periods of opacity greater than the limitation.” *Id.*

The Agency states that, if Midwest believes that the word “consecutive” should appear in the first sentence of condition 9(b)(i)(A), “then it might be more appropriate to show that language as contested, and thus stayed, even if it leaves the remaining part of the condition without meaning.” Sur. at 6. Otherwise, argues the Agency, the part of the condition that is not stayed will have conflicting interpretations based on the explicit language and on Midwest’s “implied” insertion of the term. *Id.*

BOARD ANALYSIS

In Community Landfill Co. and City of Morris v. IEPA, PCB 01-48, 01-49, slip op. at 4 (Oct. 19, 2000), the Board found “that it has the authority to grant discretionary stays from

permit conditions.” The Board noted it “has previously granted or denied discretionary stays in permit appeals, both when the Agency did and did not consent to such stays.” *Id.* The Board elaborated that “[t]he permit appeal system would be rendered meaningless in many cases, if the Board did not have the authority to stay permit conditions.” *Id.*

The Board has reviewed Midwest’s edited permit filed with its reply as Exhibit 1, which strikes “the language that is objectionable and that is truly the object of Midwest Generation’s appeal.” The Board has also considered the Agency’s surreply and its position on that edited permit. On the basis of that review and consideration, the Board grants with only one exception Midwest’s request for a stay of the contested conditions in its construction permit, as those contested conditions are reflected in the edited permit filed as Exhibit 1 to Midwest’s Reply. With regard to that one exception, the Board finds, based on the parties’ filings, that the entire condition 9(b)(i)(A) is contested and should therefore be stayed in its entirety. The partial stay remains in effect until the Board takes final action on of the construction permit appeal, or until the Board orders otherwise.

The edited permit filed as Exhibit 1 to Midwest’s reply indicates the scope of the partial stay granted by the Board as plainly as any summary the Board might provide. Accordingly, the Board incorporates that document. For the parties’ convenience, that document is attached to this order as Attachment A.

Attachment A

217/782-2113

CONSTRUCTION PERMIT

PERMITTEE

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

Application No: 060Z0009

I.D. No.: 197810AAK

Applicants Designation:

Date Received: February 2, 2006

Subject: Wet Dust Extractors for Unit 3 and Unit 4 Coal Bunkers

Date Issued: March 2, 2006

Location: 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(e), 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 descriptor 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 at and means by which the incident was identified, e.g., scheduled inspection or observatioc 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.~~
- e. 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.
1. 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 6-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 6-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 Earrison
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 E. Sutton, P.E.
Manager, Permit Section
Division of Air Pollution Control

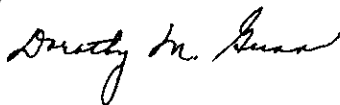
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cc: Region 1

CHA1425989.1

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 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