

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

DYNEGY MIDWEST GENERATION, INC.)	
(VERMILION POWER STATION),)	
)	
Petitioner,)	
)	
v.)	PCB 06-194
)	(Permit Appeal – Air -- Extension)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING

To:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
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Chicago, Illinois 60601

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PLEASE TAKE NOTICE that we have today filed with the Office of the Clerk of the Pollution Control Board **APPEAL OF CONSTRUCTION PERMIT**, copies of which are herewith served upon you.

/s/ Kathleen C. Bassi

Kathleen C. Bassi

Dated: October 3, 2006

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APPEAL OF CONSTRUCTION PERMIT

NOW COMES Petitioner, DYNEGY MIDWEST GENERATION, INC., VERMILION POWER STATION (“Petitioner” or “DMG”), by and through its attorneys, SCHIFF HARDIN LLP, 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 May 30, 2006, (received via mail) 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. On July 6, 2006, the Board granted a joint request to extend the 35-day period within which DMG may appeal the Construction Permit to October 3, 2006. In support of its Petition, Petitioner states as follows:

¹ Application No. 06030002.

I. BACKGROUND

1. The Vermilion Power Station (“Vermilion” or the “Station”), I.D. No. 183814AAA, is an electric generating station owned and operated by DMG. Vermilion electrical generating Units 1 and 2 (“EGUs”) began commercial operation in 1955 and 1956, respectively. The Station is located at County Road 2150N, Oakwood, Vermilion County, Illinois 61858. DMG employs approximately 53 people at Vermilion.

2. DMG operates two coal-fired boilers at Vermilion and one natural gas -fired heating boiler. In addition to the boilers, DMG operates one distillate oil-fired internal combustion engine to start one distillate oil-fired combustion turbine. Vermilion also operates associated coal handling, coal processing and ash handling activities.

3. Vermilion is a major source subject to the Clean Air Act Permitting Program (“CAAPP”). 415 ILCS 5/39.5. The Illinois Environmental Protection Agency (“Agency”) issued a final CAAPP permit to DMG for Vermilion on September 29, 2005. Subsequently, on November 2, 2005, DMG timely appealed the CAAPP permit for Vermilion at PCB 06-073. The Board accepted the appeal for hearing on November 17, 2005. On February 16, 2006, the Board held 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, *Dynegy Midwest Generation, Inc. (Vermilion Power Station) v. Illinois Environmental Protection Agency*, PCB 06-073 (February 16, 2006) (“Order 1”), p. 2.

4. On February 27, 2006, DMG submitted an application for a Construction Permit. The Construction Permit that DMG sought was to permit the construction a baghouse, to be

installed as air pollution control equipment on the two coal-fired boilers. The baghouse is to be installed downstream of, and in series with, the existing electrostatic precipitators ("ESP") of each unit. The baghouse would collect ash that passes through the ESPs as well as sorbent injected into the flue gas stream after the ESPs. The layer of sorbent collected on the baghouse filters would adsorb mercury from the flue gas. DMG required the Construction Permit to promptly begin the six-month on-site construction of the baghouse and sorbent injection system so that this equipment could be installed during Vermilion's planned outage that is scheduled to begin March 31, 2007. DMG did not apply for an operating permit. DMG did not apply for a construction permit for the unloading or storage of sorbent injection system since those activities qualified for the permitting exemption of 35 IAC 201.146.

5. The Agency received DMG's application for the Construction Permit on March 1, 2006. On March 25, 2006 DMG sent comments to the Agency regarding the draft Construction Permit which included its objection to the inclusion of language that has been appealed in the CAAPP permit. *See* email dated May 25, 2006, sent by Rick Diericx to Christopher Romaine at the Agency, attached hereto as Exhibit 2. However, the Agency persisted in including such language in the Construction Permit issued by the Agency on May 30, 2006.

6. Following a meeting regarding the Construction Permit with the Agency, DMG filed a joint request for a 90-day extension of the time for appeal, pursuant to Section 40(a)(1) of the Act. *See* Joint Request for Ninety Day Extension of Appeal Period, *Dynegy Midwest Generation, Inc. (Vermilion Power Station) v. Illinois Environmental Protection Agency*, PCB 06-194 (June 29, 2006). The Agency supported this request, and on July 6, 2006 the Board granted the extension to October 3, 2006. *Order, Dynegy Midwest Generation, Inc. (Vermilion Power Station) v. Illinois Environmental Protection Agency*, PCB 06-194 (July 6, 2006).

Subsequent to that request for extension, DMG has provided the Agency with additional comments, but DMG and the Agency have not arrived at resolution of DMG's issues with the Construction Permit. Therefore, this appeal is necessary and is timely.

II. EFFECTIVENESS OF THE CONSTRUCTION PERMIT

7. Pursuant to Section 10-65(b) of the Illinois Administrative Procedures Act ("APA"), 5 ILCS 100/10-65 the APA applies to the portion of the Construction Permit that is *de facto* an operating permit. The Construction Permit issued, though titled a construction permit, includes authorization for DMG to operate the two coal-fired boilers with a baghouse and sorbent injection system. Therefore, the Construction Permit is both a construction permit and operating permit. The conditions that DMG has appealed all relate to the portion of the Construction Permit that is an operating permit. In that context, the underlying activity, operation of the coal-fired boilers, is continuing in nature. The addition of a sorbent injection system and baghouse to the coal-fired boilers does not affect the need to operate or the continuing nature of the operation of the coal-fired boilers. The pollution control equipment would not be needed nor would it operate absent the presence of the coal-fired boilers, which is the source of the emissions being controlled. The authorization to operate in Condition 11 addresses the "affected boilers," *i.e.*, the two coal-fired boilers, with the new pollution control equipment. It cannot be disputed that the operation of the coal-fired boilers is a continuing activity. Therefore, Section 10-65(b) of the APA applies to the portion of the Construction Permit that is an operating permit.

8. Historically, the Board has granted partial stays in permit appeals where a petitioner has so requested. *C.f.* Order 2 at p.8 fn 3; Order, *Midwest Generation, LLC, Will County Generating Station v. Illinois Environmental Protection Agency*, PCB 06-156 (July 20,

2006) (“Order 3”) (granted stay of the effectiveness of contested conditions of a construction permit); *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 01-048 and 01-049 (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). In Order 3 the Board noted that the Board in *Community Landfill* stated 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.” Order 3 at p. 6.

9. The only way in which the Board can protect its own jurisdiction and authority in Docket No. 06-073 is if a partial stay in this matter is available or to acknowledge that the challenged permit conditions are stayed under Section 10-65. Without a stay here the Agency can impose the challenged language despite the Board’s findings in Docket No. 06-073, as discussed in more detail below. To require a stay of the entire permit would, effectively, require Vermilion to shut down in order to avoid imposition of the challenged provisions until the Board completes its deliberations under Docket 06-073.

10. As discussed below, the Agency has included in the Construction Permit language that DMG is appealing at Docket 06-073. DMG understands that the operating conditions included in the Construction Permit will roll into the CAAPP permit when it becomes effective. See Exhibit 1, Condition 1.11. DMG 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 06-073, that the language should be struck from the CAAPP permit. Moreover, DMG would suffer irreparable harm if it were required to comply now, through the Construction Permit, with conditions that the Board may determine, in Docket 06-073, are inappropriate. Inclusion of such language in the Construction Permit effectively denies DMG its statutory right to its appeal of the CAAPP permit unless the Board stays the contested language.

11. Moreover, DMG will suffer irreparable harm and the environment will not receive the benefit of the improved pollution control devices if DMG is not allowed to construct and operate the baghouse and sorbent injection system on the boilers for Units 1 and 2 at Vermilion. Additionally, DMG will suffer irreparable harm if it is not allowed to construct and operate the baghouse and sorbent injection system on the boilers for Units 1 and 2 at Vermilion because it would cause DMG to be in violation of the Consent Decree entered on May 27, 2005, by the United States District Court for the Southern District of Illinois in the matter of the *United States of America, et al. v. Dynegy Midwest Generation, et al.*, Case No. 99-833-MJR (the "Consent Decree"). DMG notes that while the Consent Decree requires the installation of the baghouse and sorbent injection system, it does not authorize the Agency to abuse the conditions of the Consent Decree or to force DMG to agree to inappropriate permit conditions in order to avoid noncompliance with the Consent Decree.

12. DMG requests in this instance that the Board exercise its inherent discretionary authority to grant a partial stay of the Construction Permit, staying only those contested portions of the following conditions, as the Board stayed conditions in *Midwest Generation, LLC, Will County Generating Station*: Conditions 1.1(a), 1.1(b), 1.2, 1.4, 1.5, 1.6, 1.7, 1.8, 1.9-1, 1.9-2, 1.9-4, 1.10-2, 1-11. In the alternative, if the Board finds that it cannot grant a stay of only the

indicated language in any of these conditions, DMG requests that the Board stay the entire condition.

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

13. DMG appealed various conditions in the CAAPP permit applicable to control equipment, including conditions containing language that has reappeared in the Construction Permit issued to Vermilion. Additionally, the Construction Permit improperly interprets and incorporates provisions from the Consent Decree. Furthermore, there are conditions contained in the Construction Permit that are duplicative of the CAAPP permit, typographically incorrect, and factually incorrect.

A. The Agency Has Inappropriately Imposed Language in the Construction Permit That Was Appealed in PCB 06-073 (Vermilion CAAPP Appeal).

14. The Construction Permit allows for operation of the new equipment until such time as final action is taken to address these devices in the CAAPP permit for the source provided that the Permittee submits an appropriate application for CAAPP permit that incorporates new requirements established by this permit within one year of beginning operations of the affected boilers with either of these new control devices. *See* Exhibit 1, Condition 1.11. 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.

15. The Agency's action ignores DMG's right to challenge and have a fair hearing on the appropriateness of the language in the CAAPP permit. Inclusion of such language forces

DMG 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 and 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 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 06-073. Meanwhile, if DMG 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.

16. Regardless of one's perspective, the Agency's inclusion of the challenged language during the pendency of the appeal of Vermilion's CAAPP permit is inappropriate, injurious to DMG's rights under Sections 39, 39.5, and 40.2 of the Act and under the APA, and contrary to the Board's Order 2 in PCB 06-073 regarding the applicability of the APA to appealed permits.

- (i) **The Construction Permit Improperly Requires Control Plans, Operating Logs, Reporting Requirements and Recordkeeping Requirements for PM Emissions in Conditions 1.6(c), 1.9-2(a), 1.9-2(b), 1.9-4, 1.10-2(a)(i), and 1.10-2(a)(ii).**

17. Conditions 1.6(c), 1.9-2(b), 1.9-4, 1.10-2(a)(i), and 1.10-2(a)(ii) of the Construction Permit require DMG to maintain records of the procedures and practices for the

control of particulate matter (“PM”) emissions, defined in the Construction Permit as a “control plan.” DMG appealed these requirements in the CAAPP appeal for Vermilion. *C.f.* paragraphs 110 - 114 of the Vermilion CAAPP Appeal, Docket No. 06-073. Furthermore, the Consent Decree already requires optimization plans for the electrostatic precipitator. Adding another PM control plan requirement is unnecessary and could result in additional and inconsistent obligations. Accordingly, the requirements concerning PM controls plans are arbitrary and capricious and unauthorized by law.

18. In addition, Condition 1.9-4(a)(vii) of the Construction Permit imposes recordkeeping requirements on DMG if the “PM emission standards or limits . . . may have been violated.” This requirement appears in the Construction Permit despite the fact that a similar requirement is under appeal in Vermilion CAAPP Appeal, Docket No. 06-073. The Agency is demanding that DMG record the mere supposition that there have been PM violations. The Agency has provided no regulatory basis for recording suppositions. At the very least, DMG should be granted the opportunity to investigate whether operating conditions are such that support or negate the likelihood that there may have been PM emissions violations. DMG does not believe that even this is necessary, since the Agency lacks a regulatory basis for this requirement in the first place. Therefore, the condition as written is arbitrary and capricious.

19. For these reasons, DMG requests that the Board order the Agency to delete Conditions 1.6(c), 1.9-2(b), 1.9-4, 1.10-2(a)(i) and 1.10-2(a)(ii) of the Construction Permit. DMG further requests that the Board stay Conditions 1.6(c), 1.9-2(b), 1.9-4, 1.10-2(a)(i) and 1.10-2(a)(ii) during the pendency of this appeal.

20. Condition 1.9-2(a) of the Construction Permit requires DMG to maintain operating logs “related to the baghouse that are required to be or are otherwise implemented pursuant to Conditions 1.6(a) . . .” Condition 1.6(a), in turn, requires compliance with various provisions of the Consent Decree that, as described below, should be deleted from the Construction Permit.

21. Neither the Consent Decree nor any other applicable requirement authorizes or imposes the obligations set forth in Condition 1.9-2(a). Condition 1.6(a) characterizes and describes various requirements of the Consent Decree, which is improper and unnecessary for the reasons set forth later in this petition in Section III(B).

22. For these reasons, DMG requests that the Board order the Agency to delete Condition 1.9-2(a) from the Construction Permit, and DMG requests that the Board stay Condition 1.9-2(a) during the pendency of this appeal.

(ii) The Construction Permit Improperly Requires DMG to Perform and Provide Information on PM Emissions Testing in Conditions 1.7(b)(ii)(B) and 1.7(e)(i) – 1.7 (e)(viii).

23. The Agency requires condensable PM emission testing of Units 1 and 2 of the boilers in accordance with Method 202 in Condition 1.7(b)(ii)(B). This requirement was appealed in the Vermilion CAAPP Appeal. *C.f.* paragraphs 76 - 82 of the Vermilion CAAPP Appeal, Docket No. 06-073. As mentioned in the Vermilion CAAPP Appeal, this requirement is beyond the scope of the Agency’s authority to include in a CAAPP permit. The inclusion of Method 202 testing requirements is inappropriate because there is no regulatory requirement that applies PM10 limitations to Vermilion.

24. Vermilion is subject to the requirements of 35 Ill.Adm.Code 212.Subpart E, Particulate Matter Emissions from Fuel Combustion Emission Units. It is not and never has been located in a PM10 nonattainment area.² The Board's PM regulations are structured such that particular PM10 requirements apply to identified sources located in the PM10 nonattainment areas.³ No such requirements apply now or have ever applied to the Vermilion Power Station.

25. The measurement method for PM, referencing only Method 5 or derivatives of Method 5, is at 35 Ill.Adm.Code § 212.110. This section of the Board's rules applies to Vermilion. The measurement method for PM10, on the other hand, is found at 35 Ill.Adm.Code § 212.108, Measurement Methods for PM-10 Emissions and Condensable PM-10 Emissions. This section references both Methods 5 and 202, among others. Not subject to PM10 limitations, Vermilion is not subject to § 212.108. Therefore, there is no basis for the Agency to require in the Construction Permit, that Vermilion be tested pursuant to Method 202.

26. DMG requests that the Board order the Agency to delete Condition 1.7(b)(ii)(B) from the Construction Permit, and DMG requests that the Board stay Condition 1.7(b)(ii)(B) during the pendency of this appeal.

27. Condition 1.7(e) requires DMG to provide detailed information that is to be included in certain test reports, including target levels and settings. DMG appealed the requirement to provide this information in test reports in the Vermilion CAAPP Appeal. *See*

² In fact, there are no more PM10 nonattainment areas in the state. *See* 70 Fed.Reg. 55541 and 55545 (September 22, 2005), redesignating to attainment the McCook and Lake Calumet nonattainment areas, respectively.

³ Presumably, these sources will remain subject to those requirements as part of Illinois' maintenance plan.

paragraph 117 in the Vermilion CAAPP Appeal. DMG has already stated that operation of an electric generating station depends upon many variables – ambient air temperature, cooling water supply temperature, fuel supply, equipment variations, and so forth – such that different settings are used on a daily basis. Using those settings as some type of monitoring device or parametric compliance data would be inappropriate.

28. For these reasons, DMG requests that the Board order the Agency to delete Conditions 1.7(e)(i) – 1.7(e)(viii) from the Construction Permit, and DMG requests that the Board stay Conditions 1.7(e)(i) – 1.7(e)(viii) during the pendency of this appeal.

B. The Construction Permit Improperly Interprets and Incorporates Consent Decree Requirements.

29. Under Section 157 of the Consent Decree, “any term or limit established by or under this Consent Decree shall be enforceable under this Consent Decree regardless of whether such term has or will become a part of a Title V permit” Although the Consent Decree remains enforceable by its terms, many conditions of the Construction Permit improperly interpret or incorporate requirements set forth in the Consent Decree. *See* Conditions 1.1(a), 1.2(b), 1.4, 1.6(a) and 1.6(b). The references to and the characterizations and purported incorporation of the Consent Decree requirements in multiple conditions result in duplicative and potentially inconsistent obligations, unauthorized requirements, confusion, and ambiguity. Thus, the portions of these conditions that attempt to summarize or incorporate language from or otherwise characterize or refer to the Consent Decree and conditions that reference or relate to such conditions are arbitrary and capricious and unauthorized by law.

30. Condition 1.1(a) incorrectly states that “the baghouse would be designed to allow the boilers to comply with an outlet emission rate for particulate matter (PM) of 0.030 lb/mmBtu

...” without qualifying when the 0.030 lb/mmBtu emission rate is to take effect. According to the Consent Decree, that rate is not required until the end of 2010.

31. Condition 1.2(b) of the Construction Permit purports to summarize the definition of “Unit” as defined in Paragraph 50 of the Consent Decree. However, this summary of the definition creates confusion as to the actual definition.

32. Condition 1.4 of this Construction Permit purports to summarize the requirements set forth in Paragraphs 86 and 90 of the Consent Decree but, in reality, if sustained, would create confusion as to the obligation. According to the Consent Decree, the PM emission rate will not take effect until December 31, 2010.

33. Condition 1.6(a) of this Construction Permit purports to summarize the requirements set forth in Paragraphs 83 and 87 of the Consent Decree but, in reality, if sustained, would create confusion as to the obligation.

34. Condition 1.6(b) of this Construction Permit purports to summarize the requirements set forth in Paragraph 84 of the Consent Decree. However, this summary also creates confusion similar to the confusion caused in Conditions 1.2(b), 1.4, and 1.6(a).

35. For these reasons, DMG requests that the Board order the Agency to delete the portions of these conditions that attempt to interpret or summarize the Consent Decree. *See* Exhibit 3. DMG further requests that the Board stay those portions of Conditions 1.1(a), 1.2(b), 1.4, 1.6(a), and 1.6(b) indicated in the redlined version of the Construction Permit, Exhibit 3, during the pendency of this appeal. In the alternative, DMG requests that the Board stay the

entirety of Conditions 1.2(b), 1.4, 1.6(a), and 1.6(b) during the pendency of this appeal. This stay will have no effect on the enforceability of the Consent Decree under its own terms.

C. The Construction Permit Improperly Requires DMG to Submit a Plan for Compliance Assurance Monitoring of PM Emissions in Condition 1.5.

36. Condition 1.5 of the Construction Permit requires DMG to submit a plan to the Agency for compliance assurance monitoring (“CAM”) of PM Emissions in accordance with 40 C.F.R Part 64. This condition duplicates the requirement in the CAAPP permit issued to DMG for Vermilion. The Construction Permit requirements will roll into the CAAPP permit when it becomes effective. Thus, the duplicative requirements are unnecessary, arbitrary and capricious. Moreover, CAM is not applicable, under Illinois’ Title V scheme, until reissuance of the CAAPP permit, *i.e.*, the permit is renewed after its initial issuance.

37. For these reasons, DMG requests that the Board order the Agency to delete Condition 1.5 from the Construction Permit, and DMG requests that the Board stay Condition 1.5 during the pendency of this appeal.

D. The Construction Permit Imposes Improper Monitoring Requirements on DMG in Conditions 1.8(a) and 1.8(b).

38. Condition 1.8(a) requires DMG to “install, operate, calibrate and maintain continuous monitoring equipment for” the bypass ductwork and baghouse. The conditions do not relate to monitoring any emissions from the bypass ductwork and baghouse. The condition addresses whether the equipment is functioning properly. Thus, it would be appropriate to delete “install, operate, calibrate and maintain continuous monitoring equipment for” and keep only “monitor.” *See* Exhibit 3.

39. Condition 1.8(b) requires DMG to “install, operate, calibrate and maintain continuous monitoring equipment to measure” certain operating parameters of the baghouse. The condition relates to how the equipment is functioning rather than the actual data that is generated from the equipment. Thus, “install, operate, calibrate and maintain continuous monitoring equipment to measure” should be deleted from the Construction Permit and retain only the word “monitor.” *See* Exhibit 3. This accomplishes the Agency’s apparent goal of requiring DMG to know whether the baghouse is being bypassed.

40. DMG requests that the Board order the Agency to delete from Condition 1.8(a) “install, operate, calibrate and maintain continuous monitoring equipment for” and retain only the word “monitor” as indicated in Exhibit 3. DMG further requests that the Board order the Agency to delete from Condition 1.8(b) “install, operate, calibrate and maintain continuous monitoring equipment to measure” and retain only the word “monitor” as indicated in Exhibit 3. DMG requests that the Board stay those portions of Conditions 1.8(a) and 1.8(b) indicated in the redlined version of the Construction Permit, Exhibit 3, during the pendency of this appeal. In the alternative, DMG requests that the Board stay the entirety of Conditions 1.8(a) and (b) during the pendency of this appeal.

E. The Construction Permit Improperly Imposes Monitoring and Recordkeeping Requirements for the Sorbent Injection System

41. Conditions 1.8(c) and 1.9-2(c) require DMG to monitor and maintain records, respectively, for the sorbent injection system. However, the sorbent injection system is not required for the coal-fired boilers by any Agency or other state regulations. Therefore, there is no basis for the Agency to require in the Construction Permit that Vermilion monitor and maintain records for the sorbent injection system.

42. For these reasons, DMG requests that the Board order the Agency to delete Conditions 1.8(c) and 1.9-2(c) from the Construction Permit, and DMG requests that the Board stay Conditions 1.8(c) and 1.9-2(c) during the pendency of this appeal.

F. The Construction Permit Improperly Imposes Recordkeeping Requirements for the Affected Boilers

43. Condition 1.9-1 requires DMG to “sample and analyze samples of the coal supply to the affected boilers for mercury and chlorine content.” However, there are no Agency or other state regulations that requires DMG to measure mercury and chlorine content of the coal supply. Therefore, the Agency has not basis to impose the above requirement on DMG in the Construction Permit.

44. For these reasons, DMG requests that the Board order the Agency to delete Conditions 1.9-1 from the Construction Permit, and DMG requests that the Board stay Condition 1.9-1 during the pendency of this appeal.

G. The Construction Permit Contains Numerous Typographical and Factual Errors in Various Conditions.

45. The Construction Permit contains numerous conditions that are factually inaccurate or reference a condition that does not exist or otherwise contain errors. These mistakes and errors create confusion and ambiguity and result in uncertainty regarding how certain conditions are to be implemented and interpreted.

46. Condition 1.1(b)(i) states “which will not increase emissions of PSD pollutants other than PM.” This contradicts the first part of the same sentence that states “will be to reduce PM.” This condition should be corrected by deleting “other than PM.” *See* Exhibit 3. DMG

requests that the Board order the Agency to delete from Condition 1.1(b)(ii) the phrase “other than PM.” DMG further requests that the Board stay the redlined portions of this condition as indicated in Exhibit 3. In the alternative, DMG requests that the Board stay the entire condition.

47. Condition 1.1(b)(ii) states “[t]his does affect the Permittee’s obligation to comply with all applicable requirements that apply to the receiving, storage and handling of sorbent.” The Agency has inadvertently omitted the word “not” after “does” in the above sentence. DMG does not request any stay with respect to this condition because the meaning of Condition 1.1(b)(ii) is apparent. Nevertheless, DMG does request that the Board order the Agency to correct this omission in the final permit following the conclusion of this appeal.

48. Condition 1.2(a) should read “two existing coal-fired boilers” not “two existing coal-fired boiler.” DMG does not request any stay with respect to this condition because the meaning of Condition 1.2(a) is apparent without the correction. Nevertheless, DMG does request that the Board order the Agency to correct this typographical error in the final permit following conclusion of this appeal.

49. Both affected boilers always exhaust through the common stack. Therefore, Condition 1.3(a)(ii) should state, “ when the PM compliance test is performed in the common stack with both units operating simultaneously the PM limit shall be 0.10 lb/mmBtu, otherwise each unit’s respective PM rate limit applies.” Note that the comma between “0.10 lb/mmBtu” and “otherwise” should be a semicolon. Because this condition cannot be corrected through redlining, DMG requests that the Board stay the entire condition during the pendency of this appeal, as the limit for Unit 1’s boiler need only meet 0.12 lb/mmBtu when Unit 2’s boiler is not operating.

50. Condition 1.6(c) cites 1.9-2(b)(ii)(A), but there is no Condition 1.9-2(b)(ii)(A) in the Construction Permit. In Section A(i), above, DMG requests that Condition 1.6(c) be deleted because it requires PM control plan requirements which are duplicative of the requirements set forth in the Consent Decree. The deletion of Condition 1.6(c) would address the unnecessary reference to Condition 1.9-2(b)(ii)(A). *See Id.*

51. Condition 1.7(a) ends with the phrase “shall have measurements conducted for the PM emissions of the affected boilers with control provided by the baghouse, as follows.” However, there are no measures following. *See Id.*

52. Condition 1.7(b) should add “PM” before “measurements.”

53. Condition 1.7(c) should add “PM” before “emission testing.”

54. Condition 7.1(d) add “PM” before “emission tests.”

55. For the above-mentioned reasons, DMG requests that the Board order the Agency to correct these errors. Because DMG cannot identify “surgical” stays of conditions identified in paragraphs 51-54 above, DMG requests that the Board stay these conditions during the pendency of this appeal.

56. Condition 1.11 states in pertinent part “which incorporates new requirements established by this permit within one year (365 days) of beginning operations of the affected boilers with either of these new control devices.” The only control device that is being added to the boilers is a new baghouse. The sorbent injection system is not a control device. Therefore, DMG requests that the Board order the Agency to delete from Condition 1.11 “control” before

“devices.” DMG further requests that the Board stay the redlined portions of this condition as indicated in Exhibit 3. In the alternative, DMG requests that the Board stay the entire condition.

WHEREFORE, for the reasons set forth above, DMG requests that the Board grant its petition to appeal the Construction Permit issued May 30, 2006, and that it stay the portions or entirety of the conditions as set forth in Exhibit 3 or, in the alternative, that the Board stay the entirety of all of the conditions appealed herein.

Respectfully submitted,

DYNEGEY MIDWEST GENERATION, INC.,
VERMILION POWER STATION

by:

/s/ Kathleen C. Bassi

One of Its Attorneys

Dated: October 3, 2006

SCHIFF HARDIN, LLP
Sheldon A. Zabel
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Stephen J. Bonebrake
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6600 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
312-258-5500
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CH2\ 1459872.5

EXHIBIT 1



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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

ROD R. BLAGOJEVICH, GOVERNOR

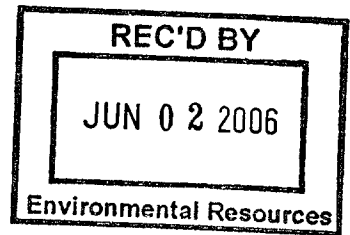
DOUGLAS P. SCOTT, DIRECTOR

217/782-2113

CONSTRUCTION PERMIT

PERMITTEE

Dynegy Midwest Generation, Inc.
 Attn: Rick Diericx
 2828 North Monroe Street
 Decatur, Illinois 62526

Application No.: 06030002I.D. No.: 183814AAAApplicant's Designation:Date Received: March 1, 2006Subject: Baghouse and Sorbent Injection System for Units 1 and 2Date Issued: May 30, 2006Location: Vermilion Power Plant, Box 250, Country Road 2150, Oakwood

Permit is hereby granted to the above-designated Permittee to CONSTRUCT equipment consisting of a sorbent injection system and baghouse for the Unit 1 and 2 Boilers, as described in the above referenced application. This Permit is subject to standard conditions attached hereto and the following special condition(s):

1.1 Introduction

- a. This Permit authorizes the Permittee to construct a baghouse and sorbent injection system to supplement the existing emission control systems on the two existing coal-fired boilers at its Vermilion Power Station. The new baghouse and sorbent injection system would serve both boilers and further process the flue gas from the existing electrostatic precipitator (ESP) on each boiler. In particular, the baghouse would be designed to allow the boilers to comply with an outlet emission rate for particulate matter (PM) of 0.030 lb/mmBtu, as measured by USEPA Method 5, as is required to be achieved by a Consent Decree that addresses this source (See Conditions 1(d) and 1.4). The new ductwork to accommodate these new control systems would include bypass ductwork, which would allow the exhaust from each boiler to bypass the baghouse as may be needed for startup and maintenance of the baghouse, and a booster fan, which would compensate for the additional pressure drop created by the baghouse and additional ductwork.
- b. i. This permit is issued based on this project being an emissions control project, whose purpose and effect will be to reduce emissions of particulate matter (PM) from the existing boilers and which will not increase emissions of PSD pollutants other than PM. As such, the terms and conditions of the existing permits will continue to govern emissions and operation of the boilers except as specifically indicated.

Page 2

- ii. This permit is issued based on the receiving, storage and handling of sorbent for the new sorbent injection system qualifying as an insignificant activity, with annual emissions of PM in the absence of control equipment that would be no more than 0.44 tons, so that this activity need not be addressed by this permit. This does affect the Permittee's obligation to comply with all applicable requirements that apply to the receiving, storage and handling of sorbent.
- c. This permit does not authorize any modifications to the existing boilers or generating units, which would increase capacity or potential emissions.
- d. This permit does not affect requirements for the affected boilers established by the Consent Decree in *United States of America and the State of Illinois, American Bottom Conservancy, Health and Environmental Justice-St. Louis, Inc., Illinois Stewardship Alliance, and Prairie Rivers Network, v. Illinois Power Company and Dynegy Midwest Generation Inc.*, Civil Action No. 99-833-MJR, U.S. District Court, Southern District of Illinois (Decree), certain provisions of which are referenced by this permit.*

* Electronic links to a copy of the Decree, as initially entered by the Court on May 27, 2005 are provided for convenience in Attachment 1 of this permit.

Note: This permit does not address whether this project will qualify as a Supplemental Environmental Project (SEP) for control of mercury emissions from the boilers under the Consent Decree as this is a matter for the parties to the Consent Decree to determine. This permit also does not address Paragraph 88 of the Consent Decree, as the parties to the Decree have agreed to modify the Decree to delete Paragraph 88 in its entirety.

1.2 Applicability Provisions

- a. The "affected boilers" for the purpose of these unit-specific conditions are the two existing coal-fired boiler at this source after the initial startup of the baghouse, as described in Condition 1.1.
- b. For purposes of certain conditions related to the Consent Decree, each affected boiler is also part of a "Unit" as defined by Paragraph 50 of the Decree, which defines a "Unit" to mean collectively, the boiler that produce steam for the steam turbine (i.e., an affected boiler), the coal pulverizer, stationary equipment that feeds coal to the boiler, the steam turbine, the generator, the equipment necessary to operate the generator, steam turbine and boiler, and all ancillary equipment, including pollution control equipment.

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1.3 Applicable Emission Standards for the Affected Boilers

- a. i. The affected boilers shall comply with applicable emission standards under Title 35, Subtitle B, Chapter I, Subchapter c of the Illinois Administrative Code, as addressed in existing permits for the affected boilers.
- ii. When both affected boilers are exhausted through the common baghouse, the PM emissions of the affected boilers shall comply with 35 IAC 212.202, which limits PM emissions to no more than 0.10 lb/mmBtu of actual heat input in any one hour period.

Note: This permit does not affect requirements contained in the existing CAAPP permit for the source that would accompany the Permittee's reliance upon 35 IAC 212.123(b) for the affected boilers, which would allow opacity greater than 30 percent (6-minute average) from the affected boilers in certain circumstances.

- b. This permit does not affect the authorizations in existing operating permits, pursuant to 35 IAC 201.149, 201.161 and 201.262, that allow the Permittee:
 - i. To operate an affected boiler in violation of certain state emission standards during startup of the boiler or the terms and conditions that accompanied such authorization.
 - ii. To continue to operate an affected boiler in violation of certain state emission standards during malfunction or breakdown of the boiler, including control devices and ancillary systems, or the terms and conditions that accompanied such authorization.

1.4 PM Emission Rate under the Consent Decree

The PM emission rate of each affected boiler shall be no greater than the limit specified in Paragraph 86 of the Decree, i.e., 0.030 lb/mmBtu, by the date specified in Paragraph 86, i.e., no later than December 31, 2010. Emission testing conducted to determine compliance with these limits shall use methods and procedures as specified in Paragraph 90 of the Decree, (which, among other matters, specifies use of USEPA Reference Method 5 or an alternative method approved by USEPA and the State of Illinois for such measurements).

Note: The PM emission rate for the affected boiler pursuant to the Decree, when it takes effect, will be more stringent than the applicable state emission standard(s) for PM.

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1.5 Compliance Assurance Monitoring for PM

If the Permittee applies for a significant modification of the CAAPP Permit for the source to include the new baghouse, the Permittee shall submit a plan for monitoring to address the PM emissions from each affected boiler in accordance with 40 CFR Part 64, Compliance Assurance Monitoring, as provided by 40 CFR 64.5(a)(2)

1.6 Work Practices and Operational Requirements

- a. The Permittee shall operate and maintain each PM control device on each affected boiler in accordance with Paragraphs 83 and 87 of the Decree (which generally require that these devices be operated to maximize PM emission reductions at all times when the Unit is in operation to the extent reasonably practicable and specify certain minimum operating and maintenance practices that the Permittee must implement for this purpose).
- b. The Permittee shall operate and maintain the ESP on each affected boiler in accordance with Paragraph 84 of the Decree (which requires that the Permittee implement the practices recommended by the PM Emission Control Optimization Studies performed in or other alternative actions approved by USEPA in accordance with Paragraph 84 of the Decree), unless the criterion in Paragraph 87 of the Decree that lift this requirement have been satisfied.
- c. The Permittee shall operate and maintain each affected boiler and Unit, and associated PM control equipment in accordance with the PM control plan maintained by the Permittee pursuant to Condition 1.9-2(b)(ii)(A).

1.7 Testing Requirements

- a. i. Within 180 days after initial startup of an affected boiler with the baghouse, the Permittee shall have measurements conducted for the PM emissions of the affected boilers with control provided by the baghouse, as follows.
- ii. The Permittee shall also have measurements conducted for the PM emissions from the affected boilers within 90 days (or such later date set by the Illinois EPA) following a request by the Illinois EPA for such measurements.
- b. i. These measurements shall be performed in the maximum operating range of the affected boilers and otherwise under representative operating conditions.
- ii. A. The methods and procedures used for PM testing to determine compliance with the applicable PM emission standards and limitation shall be in accordance with Paragraph 90 of the Decree.

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- B. In conjunction with such measurements, measurements of condensable PM shall also be conducted by USEPA Method 202 (40 CFR Part 51, Appendix M) or other established test method approved by the Illinois EPA.
- c. Except for minor deviations in test methods, as defined by 35 IAC 283.130, emission testing shall be conducted in accordance with a test plan prepared by the testing service or the Permittee and submitted to the Illinois EPA for review prior to emission testing, and the conditions, if any, imposed by the Illinois EPA as part of its review and approval of the test plan, pursuant to 35 IAC 283.220 and 283.230. The Permittee shall submit this test plan at least 60 days prior to the actual date of testing.
- d. The Permittee shall notify the Illinois EPA prior to conducting emission tests to enable the Illinois EPA to observe testing. Notification for the expected test date shall be submitted a minimum of 30 days prior to the expected date of testing. Notification of the actual date and expected time of testing shall be submitted a minimum of 5 working days prior to the actual test date. The Illinois EPA may on a case-by case basis accept shorter advance notice if it would not interfere with the Illinois EPA's ability to observe testing.
- e. The Permittee shall submit the Final Report(s) for this emission testing to the Illinois EPA within 45 days of completion of testing, which report(s) shall include the following information:
 - i. The name and identification of the affected unit(s) and the results of the tests.
 - ii. The name of the company that performed the tests.
 - iii. The name of any relevant observers present including the testing company's representatives, any Illinois EPA or USEPA representatives, and the representatives of the Permittee.
 - iv. The date and time of measurements.
 - v. Description of test method(s), including description of sampling points, sampling train, analysis equipment, and test schedule, including a description of any minor deviations from the test plan, as provided by 35 IAC 283.230(a).
 - vi. Detailed description of operating conditions during testing, including:
 - A. Source(s) of fuel and specifications (ash, sulfur and heat content).

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- B. Operating information for the affected boilers, i.e., firing rate of each boiler (million Btu/hr) and composition of fuel as burned (ash, sulfur and heat content).
- C. Combustion system information, i.e., settings for distribution of primary and secondary combustion air, target level for O₂ in the flue gas, and levels of CO, CO₂ or O₂ in the flue gas, as determined by any diagnostic measurements.
- D. Control equipment information, i.e., equipment condition and operating parameters during testing, including any use of the flue gas conditioning system.
- E. Load during testing (gross megawatt output and steam flow).
- vii. Data and calculations, including copies of all raw data sheets and records of laboratory analyses, sample calculations, and data on equipment calibration.
- viii. The SO₂, NO_x, O₂ or CO₂, (hourly averages) and opacity data (6-minute averages) measured during testing.

Note: This permit does not affect the requirements for emission testing contained in the existing permits for the source. It also does not address requirements under the Decree that may be applicable to PM emission tests.

1.8 Monitoring Requirements

- a. The Permittee shall install, operate, calibrate and maintain continuous monitoring equipment for the bypass ductwork to indicate operation of a boiler with flue gas flow bypassing the baghouse through the bypass ductwork.
- b. The Permittee shall install, operate, calibrate and maintain continuous monitoring equipment to measure the following operating parameters of the baghouse:
 - i. The temperature of the flue gas at the inlet of the baghouse (hourly average).
 - ii. The pressure drop across the baghouse (hourly average).
- c. The Permittee shall install, operate, calibrate and maintain continuous monitoring equipment to measure the following operating parameters of the sorbent injection system:
 - i. Operation, i.e., injection of sorbent.

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- ii. If sorbent feed rate is either automatically or remotely adjusted, sorbent feed rate, in pound or cubic foot per unit of operation of the boilers, e.g., pound or cubic foot per million actual cubic feet of exhaust, million Btu of heat input to the boilers, or MW-hr output from the boilers.

Note: This permit does not affect the requirements for operational monitoring contained in the existing permits for the source.

1.9-1 Recordkeeping Requirements for the Affected Boilers

The Permittee shall sample and analyze samples of the coal supply to the affected boilers for mercury and chlorine content so as to have representative data for the mercury and chlorine content of the coal supply to the boilers to accompany mercury emission data collected for the affected boilers. (See also Condition 1.9.1) This sampling and analysis shall be conducted using appropriate ASTM Methods or other methods developed, approved or endorsed by USEPA.

Note: This permit does not affect the recordkeeping requirements in the existing permits for the source.

1.9-2 Records for Control Devices and Control Equipment

The Permittee shall maintain the following records for the new baghouse and sorbent injection system on the affected boilers:

- a. i. Logs for the Baghouse
 - A. An operating log or other records for the baghouse that, at a minimum: (1) Identifies the trigger for bag cleaning, e.g., manual, timer, or pressure drop; (2) Identifies each period when a Unit was in operation and the baghouse was not being operated or was not operating effectively; (3) Identifies each period when any baghouse module(s) were removed from regular service, with identification of the module(s) and explanation; and (4) Specifically documents the implementation of the operating procedures related to the baghouse that are required to be or are otherwise implemented pursuant to Conditions 1.6(a) and (c).
 - B. Maintenance and repair log or other records for the baghouse that, at a minimum: (1) List the activities performed, with date and description, and (2) Specifically document the maintenance and repair activities related to the baghouse that are required to be or are otherwise performed pursuant to Conditions 1.6(a) and (c).

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ii. Logs for the Sorbent Injection System

- A. An operating log or other records for the system that, at a minimum, identify the sorbent that is being used, target sorbent injection rate(s) and each period of time when an affected boiler was in operation and the system was also being operated.
- B. Maintenance and repair log or other records for the system that, at a minimum, list the activities performed, with date and description.

b. PM Emission Control Planning

i. The following records related to the procedures and practices for control of PM emissions from the affected boilers:

- A. A record, which shall be kept up to date, identifying the specific operating procedures and maintenance practices (including procedures and practices specifically related to startups and malfunction/breakdown incidents) currently being implemented by the Permittee for each affected boiler and Unit and associated PM control equipment to satisfy Conditions 1.6(a) and (c). These procedures and practices are referred to as the "PM Control Plan" in this permit.
- B. Accompanying this record, the Permittee shall maintain a demonstration showing that the above PM Control Plan fulfills the requirements of Conditions 1.6(a) and (b), as applicable.

ii. Copies of the records required by Conditions 1.9-2(b)(i) shall be submitted to the Illinois EPA upon request.

iii. Accompanying the records required by Conditions 1.9-2(b)(i), a file containing a copy of all correspondence and other written material exchanged with USEPA that addresses the procedures and practices that must be implemented pursuant to Paragraph 56 and Paragraphs 83, 84 and 87 of the Decree. This file shall be retained for at least three years after the permanent shutdown of both affected Units.

c. Specific Records for the Sorbent Injection System

- i. Usage of sorbent (lbs/month) and average sorbent injection rates (lbs/Unit operation).
- ii. The setting for sorbent feed rate, if not monitored pursuant to Condition 1.8(c)(ii).

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Note: This permit does not affect the recordkeeping requirements for the existing electrostatic precipitators and associated flue gas conditioning systems that are contained in the existing permits for the source.

1.9-3 Records for Continuous Monitoring Systems

- a. The Permittee shall maintain operating records for the continuous monitoring systems required by Condition 1.8 that, at a minimum, include:
 - i. Measured data.
 - ii. Performance evaluations and other quality assurance/control activities, including calibration checks and maintenance and adjustment performed.
 - iii. Periods other than performance of routine quality assurance, calibration, and maintenance, as addressed above, when the monitor was inoperative, with reason.
 - iv. Quarterly reports submitted in accordance with Condition 7.1.10-2(a).

Note: This permit does not affect the recordkeeping requirements for the continuous opacity monitoring systems on the affected boilers that are contained in the existing permits for the source.

1.9-4 Other Recordkeeping Requirements

- a. Summary Records Related to the PM Control Plan

The Permittee shall maintain the following records for each incident when applicable action(s) required pursuant to the PM Control Plan were not taken for affected boiler(s) or Unit(s):

- i. The date of the incident.
- ii. A description of the incident, including the required action(s) that were not taken; other actions or mitigation measures that were taken, if any; and the likely consequences of the incidents as related to emissions.
- iii. The time at and means by which the incident was identified.
- iv. The length of time after the incident was identified before required action(s) were taken or were no longer required and an explanation why this time was not shorter, including a discussion of the timing of any mitigation measures that were taken for the incident.

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- v. The estimated total duration of the incident, i.e., the total length of time that the affected boiler ran without the required action(s) being taken.
- vi. A discussion of the probable cause of the incident and any preventative measures taken.
- vii. A discussion whether any applicable PM emission standards or limits, as listed in Condition 1.3, 1.4 or 1.6, may have been violated, either during or as a result of the incident, with supporting explanation.

b. Records Related to Mercury Emissions

The Permittee shall maintain the following records related to operation of the sorbent injection system and mercury emissions:

- i. Records of emission data for mercury collected for the affected boilers by the Permittee, including emissions (micrograms per cubic meter, pounds per hour, and pounds per million Btu) and control efficiency for each mode of operation of the boilers and sorbent injection system, with identification and description of the various modes of operations.
- ii. A copy of any formal report(s) that are prepared for evaluation(s) of operation of the sorbent injection system that include: (1) a description of the evaluation, (2) technical data gathered during the evaluation, including data for the elemental composition and heat content of the coal supply to the boilers, boiler operating rates, loss on ignition, (i.e., carbon carry over in ash), sorbent injection rates, flue gas temperatures, mercury emissions, measured mercury concentrations in the flue gas, SO₂ and NO_x emissions monitored during the period of evaluation, and any determinations of mercury control efficiency or oxidation rates, and (3) a description of the analytical methodology by which measurements were conducted.

1.10-1 Reporting Requirements - Reporting of Deviations

a. Prompt Reporting of Deviations

For each affected boiler, the Permittee shall promptly notify the Illinois EPA of deviations from permit requirements as follows. At a minimum, these notifications shall include a description of such deviations, including whether they occurred during startup or malfunction/breakdown, and a discussion of the possible cause of such deviations, any corrective actions and any preventative measures taken.

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- i. Immediate notification for bypass of the baghouse other than during startup or shutdown of the boiler.
- ii. Notification with the quarterly reports required by Condition 1.10-2(a) for deviations not addressed above, including deviations from other applicable requirements, e.g., work practice requirements, required operating procedures, required maintenance practices, and recordkeeping requirements.

b. Periodic Reporting of Deviations

The quarterly reports required by Condition 1.10-2(a) shall include the following information for the affected boilers related to deviations from permit requirements during the quarter.

- i. A listing of all instances of deviations that have been reported in writing to the Illinois EPA as provided by Condition 1.10-1(a)(i), including identification of each such written notification or report. For this purpose, the Permittee need not resubmit copies of these previous notifications or reports but may elect to supplement such material.
- ii. Detailed information, as required by Condition 1.10-1(a)(ii), for all other deviations.

Note: This permit does not affect the requirements for reporting of deviations contained in the existing permits for the source.

1.10-2 Reporting Requirements - Periodic Reporting

a. Quarterly Reports

The Permittee shall submit quarterly reports to the Illinois EPA.

- i. These reports shall include a summary of information recorded during the quarter pursuant to Conditions 1.9-4(a) and (b).
- ii. These reports shall include the information for the affected boiler related to deviations during the quarter specified by Condition 1.10-1(b).
- iii. These reports shall be submitted within 45 days after the end of each calendar quarter. For example, the quarterly report for the first quarter, i.e., January, February and March, shall be submitted by May 15.

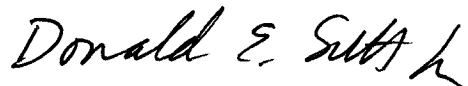
Note: This permit does not affect the requirements for quarterly reporting contained in the existing permits for the source.

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1.11 Authorization for Operation

The Permittee may operate the affected boilers with the new baghouse and sorbent injection system under this construction permit until such time as final action is taken to address these devices in the CAAPP permit for the source provided that the Permittee submits an appropriate application for CAAPP permit, which incorporates new requirements established by this permit within one year (365 days) of beginning operations of the affected boilers with either of these new control devices.

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

A handwritten signature in black ink that reads "Donald E. Sutton". The signature is written in a cursive, slightly slanted style.

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

DES:CPR:psj

cc: Region 3

Attachment 1

Electronic links to the Consent Decree in United States of America and the State of Illinois, American Bottom Conservancy, Health and Environmental Justice-St. Louis, Inc., Illinois Stewardship Alliance, and Prairie Rivers Network, v. Illinois Power Company and Dynegy Midwest Generation Inc., Civil Action No. 99-833-MJR, U.S. District Court, Southern District of Illinois, as initially entered by the Court on May 27, 2005 (Decree)

This Consent Decree is available at either:

http://yosemite.epa.gov/r5/il_permt.nsf/1187a64140e3f8ad862568b700763ce9/603884da715c88a585256f88005067f4!OpenDocument

or at <http://www.epa.gov/region5/air/permits/ilonline.htm>
(under Title V Permit Records, look for Dynegy, Baldwin plant.)

This Consent Decree can also be found at the following US District Court's website:

<http://www.ilsd.uscourts.gov/Forms/dmgfinal-cd.pdf>

CPR:psj



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

- 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: rick_diericx@dynegy.com
Sent: Tuesday, June 27, 2006 7:43 AM
To: Bassi, Kathleen C.
Subject: Fw: Vermilion - Baghouse and sorbent injection system

Attachments: DMG Comments on Draft Construction Permit 5-25-06.doc; Dynegy - Vermilion - baghouse - permit drafting 5.doc



DMG Comments on Dynegy - Vermilion -
Draft Construc... baghouse ...

And here are the comments we submitted on the draft permit.

Rick

----- Forwarded by Rick Diericx/DNM/Dynegy on 06/27/2006 07:42 AM -----

Rick Diericx

To: chris.romaine@epa.state.il.us
05/25/2006 04:53 PM cc: Kunj.Patel@epa.state.il.us
Subject: Fw: Vermilion - Baghouse and sorbent injection
system

Chris,

We have reviewed the preliminary draft construction permit.

I am sending you a red-lined version that includes Dynegy's initial comments and suggestions.

Our comments and suggestions are based on four main themes:

1. Reference the appropriate Consent Decree paragraph or quote the CD but do not re-write the CD language.
2. Conditions should relate only to PM. Rely on the recordkeeping and reporting requirements of our mercury test plan to avoid creating additional or conflicting requirements in the construction permit.
3. Omit testing requirements that do not have a regulatory basis.
4. Provisions that have been challenged in the appeal of the Title V permit should be deleted.

(See attached file: DMG Comments on Draft Construction Permit 5-25-06.doc)

Thanks,
Rick

"Chris Romaine"
<Chris.Romaine@epa.s To: <Michelle.M.Chestnut@dynegy.com>,
<rick_diericx@dynegy.com>

tate.il.us> cc: "Kunj Patel" <Kunj.Patel@epa.state.il.us>
Subject: Vermilion - Baghouse and sorbent injection system
05/15/2006 03:16 AM

Preliminary draft of a construction permit for these units, for Dynegy's review and suggestions. (See attached file: Dynegy - Vermilion - baghouse - permit drafting 5.doc)

EXHIBIT 3

217/782-2113

CONSTRUCTION PERMIT

PERMITTEE

Dynegy Midwest Generation, Inc.
 Attn: Rick Diericx
 2828 North Monroe Street
 Decatur, Illinois 62526

Application No.: 06030002I.D. No.: 183814AAAApplicant's Designation:Date Received: March 1, 2006Subject: Baghouse and Sorbent Injection System for Units 1 and 2Date Issued: May 30, 2006Location: Vermilion Power Plant, Box 250, Country Road 2150, Oakwood

Permit is hereby granted to the above-designated Permittee to CONSTRUCT equipment consisting of a sorbent injection system and baghouse for the Unit 1 and 2 Boilers, as described in the above referenced application. This Permit is subject to standard conditions attached hereto and the following special condition(s):

1.1 Introduction

- a. This Permit authorizes the Permittee to construct a baghouse and sorbent injection system to supplement the existing emission control systems on the two existing coal-fired boilers at its Vermilion Power Station. The new baghouse and sorbent injection system would serve both boilers and further process the flue gas from the existing electrostatic precipitator (ESP) on each boiler. ~~In particular, the baghouse would be designed to allow the boilers to comply with an outlet emission rate for particulate matter (PM) of 0.030 lb/mmBtu, as measured by USEPA Method 5, as is required to be achieved by a Consent Decree that addresses this source (See Conditions 1(d) and 1.4).~~ The new ductwork to accommodate these new control systems would include bypass ductwork, which would allow the exhaust from each boiler to bypass the baghouse as may be needed for startup and maintenance of the baghouse, and a booster fan, which would compensate for the additional pressure drop created by the baghouse and additional ductwork.
- b. i. This permit is issued based on this project being an emissions control project, whose purpose and effect will be to reduce emissions of particulate matter (PM) from the existing boilers and which will not increase emissions of PSD pollutants ~~other than PM~~. As such, the terms and conditions of the existing permits will continue to govern emissions and operation of the boilers except as specifically indicated.

Page 2

- ii. This permit is issued based on the receiving, storage and handling of sorbent for the new sorbent injection system qualifying as an insignificant activity, with annual emissions of PM in the absence of control equipment that would be no more than 0.44 tons, so that this activity need not be addressed by this permit. This does affect the Permittee's obligation to comply with all applicable requirements that apply to the receiving, storage and handling of sorbent.
- c. This permit does not authorize any modifications to the existing boilers or generating units, which would increase capacity or potential emissions.
- d. This permit does not affect requirements for the affected boilers established by the Consent Decree in *United States of America and the State of Illinois, American Bottom Conservancy, Health and Environmental Justice-St. Louis, Inc., Illinois Stewardship Alliance, and Prairie Rivers Network, v. Illinois Power Company and Dynegy Midwest Generation Inc.*, Civil Action No. 99-833-MJR, U.S. District Court, Southern District of Illinois (Decree), certain provisions of which are referenced by this permit.*

* Electronic links to a copy of the Decree, as initially entered by the Court on May 27, 2005 are provided for convenience in Attachment 1 of this permit.

Note: This permit does not address whether this project will qualify as a Supplemental Environmental Project (SEP) for control of mercury emissions from the boilers under the Consent Decree as this is a matter for the parties to the Consent Decree to determine. This permit also does not address Paragraph 88 of the Consent Decree, as the parties to the Decree have agreed to modify the Decree to delete Paragraph 88 in its entirety.

1.2 Applicability Provisions

- a. The "affected boilers" for the purpose of these unit-specific conditions are the two existing coal-fired boiler at this source after the initial startup of the baghouse, as described in Condition 1.1.
- b. For purposes of certain conditions related to the Consent Decree, each affected boiler is also part of a "Unit" as defined by Paragraph 50 of the Decree, ~~which defines a "Unit" to mean collectively, the boiler that produce steam for the steam turbine (i.e., an affected boiler), the coal pulverizer, stationary equipment that feeds coal to the boiler, the steam turbine, the generator, the equipment necessary to operate the generator, steam turbine and boiler, and all ancillary equipment, including pollution control equipment.~~

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1.3 Applicable Emission Standards for the Affected Boilers

- a. i. The affected boilers shall comply with applicable emission standards under Title 35, Subtitle B, Chapter I, Subchapter c of the Illinois Administrative Code, as addressed in existing permits for the affected boilers.

- ii. When ~~both affected boilers are exhausted through the common baghouse, the PM emissions of the affected boilers shall comply with 35 IAC 212.202, which limits PM emissions to no more than 0.10 lb/mmBtu of actual heat input in any one hour period.~~

Note: This permit does not affect requirements contained in the existing CAAPP permit for the source that would accompany the Permittee's reliance upon 35 IAC 212.123(b) for the affected boilers, which would allow opacity greater than 30 percent (6-minute average) from the affected boilers in certain circumstances.

- b. This permit does not affect the authorizations in existing operating permits, pursuant to 35 IAC 201.149, 201.161 and 201.262, that allow the Permittee:
 - i. To operate an affected boiler in violation of certain state emission standards during startup of the boiler or the terms and conditions that accompanied such authorization.
 - ii. To continue to operate an affected boiler in violation of certain state emission standards during malfunction or breakdown of the boiler, including control devices and ancillary systems, or the terms and conditions that accompanied such authorization.

1.4 PM Emission Rate under the Consent Decree

The PM emission rate of each affected boiler shall be no greater than the limit specified in Paragraph 86 of the Decree, ~~i.e., 0.030 lb/mmBtu,~~ by the date specified in Paragraph 86, ~~i.e., no later than December 31, 2010.~~ Emission testing conducted to determine compliance with these limits shall use methods and procedures as specified in Paragraph 90 of the Decree, ~~(which, among other matters, specifies use of USEPA Reference Method 5 or an alternative method approved by USEPA and the State of Illinois for such measurements).~~

Note: The PM emission rate for the affected boiler pursuant to the Decree, when it takes effect, will be more stringent than the applicable state emission standard(s) for PM.

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1.5 ~~Compliance Assurance Monitoring for PM~~

~~If the Permittee applies for a significant modification of the CAAPP Permit for the source to include the new baghouse, the Permittee shall submit a plan for monitoring to address the PM emissions from each affected boiler in accordance with 40 CFR Part 64, Compliance Assurance Monitoring, as provided by 40 CFR 64.5(a)(2).~~

1.6 Work Practices and Operational Requirements

a. The Permittee shall operate and maintain each PM control device on each affected boiler in accordance with Paragraphs 83 and 87 of the Decree ~~(which generally require that these devices be operated to maximize PM emission reductions at all times when the Unit is in operation to the extent reasonably practicable and specify certain minimum operating and maintenance practices that the Permittee must implement for this purpose).~~

b. The Permittee shall operate and maintain the ESP on each affected boiler in accordance with Paragraph 84 of the Decree ~~(which requires that the Permittee implement the practices recommended by the PM Emission Control Optimization Studies performed in or other alternative actions approved by USEPA in accordance with Paragraph 84 of the Decree),~~ unless the criterion in Paragraph 87 of the Decree that lift this requirement have been satisfied.

~~c. The Permittee shall operate and maintain each affected boiler and Unit, and associated PM control equipment in accordance with the PM control plan maintained by the Permittee pursuant to Condition 1.9 2(b)(ii)(A).~~

1.7 Testing Requirements

a. i. Within 180 days after initial startup of an affected boiler with the baghouse, the Permittee shall have measurements conducted for the PM emissions of the affected boilers with control provided by the baghouse, as follows.

ii. The Permittee shall also have measurements conducted for the PM emissions from the affected boilers within 90 days (or such later date set by the Illinois EPA) following a request by the Illinois EPA for such measurements.

b. i. These measurements shall be performed in the maximum operating range of the affected boilers and otherwise under representative operating conditions.

ii. A. The methods and procedures used for PM testing to determine compliance with the applicable PM emission standards and limitation shall be in accordance with Paragraph 90 of the Decree.

~~B. In conjunction with such measurements, measurements of condensable PM shall also be conducted by USEPA Method 202 (40 CFR Part 51, Appendix M) or other established test method approved by the Illinois EPA.~~

- c. Except for minor deviations in test methods, as defined by 35 IAC 283.130, emission testing shall be conducted in accordance with a test plan prepared by the testing service or the Permittee and submitted to the Illinois EPA for review prior to emission testing, and the conditions, if any, imposed by the Illinois EPA as part of its review and approval of the test plan, pursuant to 35 IAC 283.220 and 283.230. The Permittee shall submit this test plan at least 60 days prior to the actual date of testing.
- d. The Permittee shall notify the Illinois EPA prior to conducting emission tests to enable the Illinois EPA to observe testing. Notification for the expected test date shall be submitted a minimum of 30 days prior to the expected date of testing. Notification of the actual date and expected time of testing shall be submitted a minimum of 5 working days prior to the actual test date. The Illinois EPA may on a case-by case basis accept shorter advance notice if it would not interfere with the Illinois EPA's ability to observe testing.
- e. The Permittee shall submit the Final Report(s) for this emission testing to the Illinois EPA within 45 days of completion of testing, ~~which report(s) shall include the following information:~~
 - ~~i. The name and identification of the affected unit(s) and the results of the tests.~~
 - ~~ii. The name of the company that performed the tests.~~
 - ~~iii. The name of any relevant observers present including the testing company's representatives, any Illinois EPA or USEPA representatives, and the representatives of the Permittee.~~
 - ~~iv. The date and time of measurements.~~
 - ~~v. Description of test method(s), including description of sampling points, sampling train, analysis equipment, and test schedule, including a description of any minor deviations from the test plan, as provided by 35 IAC 283.230(a).~~
 - ~~vi. Detailed description of operating conditions during testing, including:~~
 - ~~A. Source(s) of fuel and specifications (ash, sulfur and heat content).~~

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- ~~B. Operating information for the affected boilers, i.e., firing rate of each boiler (million Btu/hr) and composition of fuel as burned (ash, sulfur and heat content).~~
- ~~C. Combustion system information, i.e., settings for distribution of primary and secondary combustion air, target level for O₂ in the flue gas, and levels of CO, CO₂ or O₂ in the flue gas, as determined by any diagnostic measurements.~~
- ~~D. Control equipment information, i.e., equipment condition and operating parameters during testing, including any use of the flue gas conditioning system.~~
- ~~E. Load during testing (gross megawatt output and steam flow).~~
- ~~vii. Data and calculations, including copies of all raw data sheets and records of laboratory analyses, sample calculations, and data on equipment calibration.~~
- ~~viii. The SO₂, NO_x, O₂ or CO₂, (hourly averages) and opacity data (6 minute averages) measured during testing.~~

Note: This permit does not affect the requirements for emission testing contained in the existing permits for the source. It also does not address requirements under the Decree that may be applicable to PM emission tests.

1.8 Monitoring Requirements

- a. The Permittee shall ~~install, operate, calibrate and maintain continuous monitoring equipment for~~ the bypass ductwork to indicate operation of a boiler with flue gas flow bypassing the baghouse through the bypass ductwork.
- b. The Permittee shall ~~install, operate, calibrate and maintain continuous monitoring equipment to~~ measure the following operating parameters of the baghouse:
 - i. The temperature of the flue gas at the inlet of the baghouse (hourly average).
 - ii. The pressure drop across the baghouse (hourly average).
- ~~c. The Permittee shall install, operate, calibrate and maintain continuous monitoring equipment to measure the following operating parameters of the sorbent injection system:~~
 - ~~i. Operation, i.e., injection of sorbent.~~

- ~~ii. If sorbent feed rate is either automatically or remotely adjusted, sorbent feed rate, in pound or cubic foot per unit of operation of the boilers, e.g., pound or cubic foot per million actual cubic feet of exhaust, million Btu of heat input to the boilers, or MW hr output from the boilers.~~

Note: This permit does not affect the requirements for operational monitoring contained in the existing permits for the source.

~~1.9 1 Recordkeeping Requirements for the Affected Boilers~~

~~The Permittee shall sample and analyze samples of the coal supply to the affected boilers for mercury and chlorine content so as to have representative data for the mercury and chlorine content of the coal supply to the boilers to accompany mercury emission data collected for the affected boilers. (See also Condition 1.9.1) This sampling and analysis shall be conducted using appropriate ASTM Methods or other methods developed, approved or endorsed by USEPA.~~

~~Note: This permit does not affect the recordkeeping requirements in the existing permits for the source.~~

~~1.9 2 Records for Control Devices and Control Equipment~~

~~The Permittee shall maintain the following records for the new baghouse and sorbent injection system on the affected boilers:~~

~~a. i. Logs for the Baghouse~~

~~A. An operating log or other records for the baghouse that, at a minimum: (1) Identifies the trigger for bag cleaning, e.g., manual, timer, or pressure drop; (2) Identifies each period when a Unit was in operation and the baghouse was not being operated or was not operating effectively; (3) Identifies each period when any baghouse module(s) were removed from regular service, with identification of the module(s) and explanation; and (4) Specifically documents the implementation of the operating procedures related to the baghouse that are required to be or are otherwise implemented pursuant to Conditions 1.6(a) and (c).~~

~~B. Maintenance and repair log or other records for the baghouse that, at a minimum: (1) List the activities performed, with date and description, and (2) Specifically document the maintenance and repair activities related to the baghouse that are required to be or are otherwise performed pursuant to Conditions 1.6(a) and (c).~~

~~ii. Logs for the Sorbent Injection System~~

~~A. An operating log or other records for the system that, at a minimum, identify the sorbent that is being used, target sorbent injection rate(s) and each period of time when an affected boiler was in operation and the system was also being operated.~~

~~B. Maintenance and repair log or other records for the system that, at a minimum, list the activities performed, with date and description.~~

~~b. PM Emission Control Planning~~~~i. The following records related to the procedures and practices for control of PM emissions from the affected boilers:~~

~~A. A record, which shall be kept up to date, identifying the specific operating procedures and maintenance practices (including procedures and practices specifically related to startups and malfunction/breakdown incidents) currently being implemented by the Permittee for each affected boiler and Unit and associated PM control equipment to satisfy Conditions 1.6(a) and (c). These procedures and practices are referred to as the "PM Control Plan" in this permit.~~

~~B. Accompanying this record, the Permittee shall maintain a demonstration showing that the above PM Control Plan fulfills the requirements of Conditions 1.6(a) and (b), as applicable.~~

~~ii. Copies of the records required by Conditions 1.9-2(b)(i) shall be submitted to the Illinois EPA upon request.~~~~iii. Accompanying the records required by Conditions 1.9-2(b)(i), a file containing a copy of all correspondence and other written material exchanged with USEPA that addresses the procedures and practices that must be implemented pursuant to Paragraph 56 and Paragraphs 83, 84 and 87 of the Decree. This file shall be retained for at least three years after the permanent shutdown of both affected Units.~~~~c. Specific Records for the Sorbent Injection System~~~~i. Usage of sorbent (lbs/month) and average sorbent injection rates (lbs/Unit operation).~~~~ii. The setting for sorbent feed rate, if not monitored pursuant to Condition 1.8(c)(ii).~~

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~~Note: This permit does not affect the recordkeeping requirements for the existing electrostatic precipitators and associated flue gas conditioning systems that are contained in the existing permits for the source.~~

1.9-3 Records for Continuous Monitoring Systems

a. The Permittee shall maintain operating records for the continuous monitoring systems required by Condition 1.8 that, at a minimum, include:

- i. Measured data.
- ii. Performance evaluations and other quality assurance/control activities, including calibration checks and maintenance and adjustment performed.
- iii. Periods other than performance of routine quality assurance, calibration, and maintenance, as addressed above, when the monitor was inoperative, with reason.
- iv. Quarterly reports submitted in accordance with Condition 7.1.10-2(a).

~~Note: This permit does not affect the recordkeeping requirements for the continuous opacity monitoring systems on the affected boilers that are contained in the existing permits for the source.~~

~~1.9-4 Other Recordkeeping Requirements~~

~~a. Summary Records Related to the PM Control Plan~~

~~The Permittee shall maintain the following records for each incident when applicable action(s) required pursuant to the PM Control Plan were not taken for affected boiler(s) or Unit(s):~~

- ~~i. The date of the incident.~~
- ~~ii. A description of the incident, including the required action(s) that were not taken; other actions or mitigation measures that were taken, if any; and the likely consequences of the incidents as related to emissions.~~
- ~~iii. The time at and means by which the incident was identified.~~
- ~~iv. The length of time after the incident was identified before required action(s) were taken or were no longer required and an explanation why this time was not shorter, including a discussion of the timing of any mitigation measures that were taken for the incident.~~

- ~~v. The estimated total duration of the incident, i.e., the total length of time that the affected boiler ran without the required action(s) being taken.~~
- ~~vi. A discussion of the probable cause of the incident and any preventative measures taken.~~
- ~~vii. A discussion whether any applicable PM emission standards or limits, as listed in Condition 1.3, 1.4 or 1.6, may have been violated, either during or as a result of the incident, with supporting explanation.~~

~~b. Records Related to Mercury Emissions~~

~~The Permittee shall maintain the following records related to operation of the sorbent injection system and mercury emissions:~~

- ~~i. Records of emission data for mercury collected for the affected boilers by the Permittee, including emissions (micrograms per cubic meter, pounds per hour, and pounds per million Btu) and control efficiency for each mode of operation of the boilers and sorbent injection system, with identification and description of the various modes of operations.~~
- ~~ii. A copy of any formal report(s) that are prepared for evaluation(s) of operation of the sorbent injection system that include: (1) a description of the evaluation, (2) technical data gathered during the evaluation, including data for the elemental composition and heat content of the coal supply to the boilers, boiler operating rates, loss on ignition, (i.e., carbon carry over in ash), sorbent injection rates, flue gas temperatures, mercury emissions, measured mercury concentrations in the flue gas, SO₂ and NO_x emissions monitored during the period of evaluation, and any determinations of mercury control efficiency or oxidation rates, and (3) a description of the analytical methodology by which measurements were conducted.~~

1.10-1 Reporting Requirements - Reporting of Deviations

a. Prompt Reporting of Deviations

For each affected boiler, the Permittee shall promptly notify the Illinois EPA of deviations from permit requirements as follows. At a minimum, these notifications shall include a description of such deviations, including whether they occurred during startup or malfunction/breakdown, and a discussion of the possible cause of such deviations, any corrective actions and any preventative measures taken.

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- i. Immediate notification for bypass of the baghouse other than during startup or shutdown of the boiler.
- ii. Notification with the quarterly reports required by Condition 1.10-2(a) for deviations not addressed above, including deviations from other applicable requirements, e.g., work practice requirements, required operating procedures, required maintenance practices, and recordkeeping requirements.

b. Periodic Reporting of Deviations

The quarterly reports required by Condition 1.10-2(a) shall include the following information for the affected boilers related to deviations from permit requirements during the quarter.

- i. A listing of all instances of deviations that have been reported in writing to the Illinois EPA as provided by Condition 1.10-1(a)(i), including identification of each such written notification or report. For this purpose, the Permittee need not resubmit copies of these previous notifications or reports but may elect to supplement such material.
- ii. Detailed information, as required by Condition 1.10-1(a)(ii), for all other deviations.

Note: This permit does not affect the requirements for reporting of deviations contained in the existing permits for the source.

1.10-2 Reporting Requirements - Periodic Reporting

a. Quarterly Reports

The Permittee shall submit quarterly reports to the Illinois EPA.

- ~~i. These reports shall include a summary of information recorded during the quarter pursuant to Conditions 1.9-4(a) and (b).~~
- ~~ii. These reports shall include the information for the affected boiler related to deviations during the quarter specified by Condition 1.10-1(b).~~
- iii. These reports shall be submitted within 45 days after the end of each calendar quarter. For example, the quarterly report for the first quarter, i.e., January, February and March, shall be submitted by May 15.

Note: This permit does not affect the requirements for quarterly reporting contained in the existing permits for the source.

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1.11 Authorization for Operation

The Permittee may operate the affected boilers with the new baghouse and sorbent injection system under this construction permit until such time as final action is taken to address these devices in the CAAPP permit for the source provided that the Permittee submits an appropriate application for CAAPP permit, which incorporates new requirements established by this permit within one year (365 days) of beginning operations of the affected boilers with either of these new ~~control~~ devices.

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

ORIGINAL PERMIT SIGNED BY CHRISTOPHER ROMAINE FOR DONALD E. SUTTON

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

DES:CPR:psj

cc: Region 3

Attachment 1

Electronic links to the Consent Decree in United States of America and the State of Illinois, American Bottom Conservancy, Health and Environmental Justice-St. Louis, Inc., Illinois Stewardship Alliance, and Prairie Rivers Network, v. Illinois Power Company and Dynegy Midwest Generation Inc., Civil Action No. 99-833-MJR, U.S. District Court, Southern District of Illinois, as initially entered by the Court on May 27, 2005 (Decree)

This Consent Decree is available at either:

http://yosemite.epa.gov/r5/il_permt.nsf/1187a64140e3f8ad862568b700763ce9/603884da715c88a585256f88005067f4!OpenDocument

or at <http://www.epa.gov/region5/air/permits/ilonline.htm>
(under Title V Permit Records, look for Dynegy, Baldwin plant.)

This Consent Decree can also be found at the following US District Court's website:

<http://www.ilsd.uscourts.gov/Forms/dmgfinal-cd.pdf>

CPR:psj

CH2\1535698.1

CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 3rd day of October, 2006, I have served electronically the attached **APPEAL OF CONSTRUCTION PERMIT**, upon the following persons:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

and by first-class mail with postage thereon fully prepaid and affixed to the following persons:

Sally Carter
Robb Layman
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

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