BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MIDWEST GENERATION, LLC – POWERTON GENERATING STATION,	)	
Petitioner,	)	
v.	)	**PCB 07-_____**
	)	**(Permit Appeal – Air)**
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
Respondent.	)	

NOTICE OF FILING

To:

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

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

PLEASE TAKE NOTICE that we have today electronically filed with the Office of the Clerk of the Pollution Control Board **APPEAL OF CONSTRUCTION PERMIT** and **APPEARANCES OF SHELDON A. ZABEL, KATHLEEN C. BASSI, STEPHEN J. BONEBRAKE, and ANDREW N. SAWULA**, copies of which are herewith served upon you.

Kathleen C. Bassi

Dated: April 9, 2007

Sheldon A. Zabel
Kathleen C. Bassi
Stephen J. Bonebrake
Andrew N. Sawula
SCHIFF HARDIN, LLP
6600 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
312-258-5500

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Respondent.	)	

APPEARANCE

I, Kathleen C. Bassi, hereby file my appearance in this proceeding on behalf of Petitioner, Midwest Generation, LLC – Powerton Generating Station.

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Respondent.	)	

APPEARANCE

I, Stephen J. Bonebrake, hereby file my appearance in this proceeding on behalf of Petitioner, Midwest Generation, LLC – Powerton Generating Station.

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Dated: April 9, 2007

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Respondent.	)	

APPEARANCE

I, Andrew N. Sawula, hereby file my appearance in this proceeding on behalf of Petitioner, Midwest Generation, LLC – Powerton Generating Station.

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Dated: April 9, 2007

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
Respondent.	)	

APPEARANCE

I, Sheldon A. Zabel, hereby file my appearance in this proceeding on behalf of Petitioner, Midwest Generation, LLC – Powerton Generating Station.

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Dated: April 9, 2007

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
Respondent.	)	

APPEAL OF CONSTRUCTION PERMIT

NOW COMES Petitioner, MIDWEST GENERATION, LLC – POWERTON GENERATING STATION ("Petitioner" or "Midwest Generation"), pursuant to Section 40(a)(1) of the Illinois Environmental Protection Act ("Act") (415 ILCS 5/40(a)(1)) and 35 Ill.Adm.Code § 105.200 *et seq.*, and requests a hearing before the Board to contest the decisions contained in the construction permit[1] issued to Petitioner on March 5, 2007, (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. In support of its Petition, Petitioner states as follows:

I. BACKGROUND

1. The Powerton Generating Station ("Powerton" or the "Station"), Agency I.D. No. 179801AAA, is an electric generating station owned by Midwest Generation, LLC, and operated

[1] Application No. 06120004.

by Midwest Generation, LLC – Powerton Generating Station. The Powerton electrical generating units ("EGUs") went online between 1972 and 1975. Powerton is an intermediate load plant and can generate approximately 1697 megawatts. Midwest Generation employs 190 people at the Powerton Generating Station. The Station is located at 13082 East Manito Road, Pekin, Tazewell County, Illinois 61554-8587. Tazewell County is in attainment of all criteria pollutants.

2. Powerton 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 CAAPP permit to Midwest Generation for Powerton on September 29, 2005. Subsequently, on November 2, 2005, Midwest Generation timely appealed the CAAPP permit for Powerton at PCB 06-059. The Board accepted the appeal for hearing on November 17, 2005. On February 16, 2006, the Board found that, pursuant to Section 10-65(b) of the Administrative Procedure Act (5 ILCS 100/10-65(b)) ("APA") and the holding in *Borg-Warner Corp. v. Mauzy*, 427 N.E. 2d 415 (Ill.App.Ct. 1981) ("*Borg-Warner*"), the CAAPP permit is stayed, upon appeal, as a matter of law. Order, *Midwest Generation, LLC, Powerton Generating Station v. Illinois Environmental Protection Agency*, PCB 06-059 (February 16, 2006) ("Order 1"), p. 2.

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

4. Historically, emissions from the bunkers and crusher house have been controlled by ten baghouses which were installed in 1973 and 1985 and one wet dust extractor installed in

2004. The construction permit that Midwest Generation is appealing here was issued to permit the construction and operation of wet dust extractor control devices, installed as replacements of the baghouses and existing wet dust extractor. The wet dust extractor creates a negative pressure inside the coal bunkers and in the storage areas and transfer points of the crusher house so that dust-laden air created from drops from the conveyors and from withdrawal of coal is captured. The dust/air/water mixture passes through a mesh panel, which separates the dust particles in the air stream.

5. The Agency received Midwest Generation's application for the construction permit on December 4, 2006. Midwest Generation required the construction permit so that it could install the new wet dust extractors during the planned outage which began on March 31, 2007. During its discussions with the Agency regarding the construction permit, Midwest Generation learned that the Agency intended to include provisions that mirrored language that has been appealed in the CAAPP permit issued to Powerton. Midwest Generation alerted the Agency to this already-appealed language, but the Agency persisted in including such language in the construction permit. See Exhibit 2, attached hereto. The construction permit also contains other conditions that Midwest Generation is appealing here, as well.

II. EFFECTIVENESS OF THE CONSTRUCTION PERMIT AND REQUEST FOR PARTIAL STAY

6. Pursuant to Section 10-65(b) of the Illinois Administrative Procedures Act ("APA"), 5 ILCS 100/10-65, and the holding in *Borg-Warner Corp.*, the construction permit issued by the Agency to Powerton is not effective by operation of law until after a ruling by the Board on the permit appeal and, in the event of a remand, until the Agency has issued the permit consistent with the Board's order. *See* Order, *Midwest Generation, LLC, Powerton Generating Station v. Illinois Environmental Protection Agency*, PCB 06-059 (February 26, 2006) ("Order

2"). 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; *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); *Dynegy Midwest Generation, Inc. (Vermilion Power Station), v. Illinois Environmental Protection Agency*, PCB 06-194 (October 19, 2006) (granted stay "of the portions of the permit Dynegy contests"); *Hartford Working Group v. Illinois Environmental Protection Agency*, PCB 05-74 (November 18, 2004) (granted stay of the effectiveness of Special Condition 2.0 of an air construction permit); *Community Landfill Company and City of Morris v. Illinois Environmental Protection Agency*, PCB 01-48 and 01-49 (Consolidated) (October 19, 2000) (granted stay of effectiveness of challenged conditions for two permits of two parcels of the landfill); *Allied Tube & Conduit Corp. v. Illinois Environmental Protection Agency*, PCB 96-108 (December 7, 1995) (granted stay of the effectiveness of Conditions 4(a), 5(a), and 7(a) of an air permit).

7. Midwest Generation will suffer irreparable harm and the environment will not receive the benefit of the improved pollution control devices if Midwest Generation is not allowed to construct and operate the wet dust extractor system on the coal bunkers for Units 5 and 6 and for the crusher house at the Powerton Generating Station. The Agency has issued a permit for the construction and operation of the same equipment for Midwest Generation's Crawford Generating Station without the contested language included. *See* Exhibit 3, attached hereto. Midwest Generation's request for stay of the contested language would result in a construction permit that is effectively the same as that for the Crawford Generating Station, thus providing the necessary and appropriate authorizations to install and operate the equipment in a manner to protect the environment.

8. Midwest Generation requests in this instance that the Board exercise its inherent discretionary authority to grant a partial stay of the construction permit, staying only those portions of Conditions 3, 6(b), 6(c), 8(a)(i), 8(a)(ii)(B), 9, 10(a), 10d(ii), 10(d)(vii), 10(f), 12(a), 12(b)(ii), 12(c) as indicated in Exhibit 4. The Board similarly stayed conditions in *Midwest Generation, LLC, Will County Generating Station*, PCB 06-156. In the alternative, if the Board believes that it must stay the entirety of an appealed condition rather than only portions of the conditions where so indicated in Exhibit 4, Midwest Generation requests that the entirety of each of the conditions listed above in this paragraph.

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

9. Midwest Generation appealed various conditions in the CAAPP permit applicable to coal handling, including conditions containing language that has reappeared in the construction permit issued to Powerton. The construction permit allows for operation of the new equipment until such time as an operating permit issued to Powerton becomes effective. *See* Exhibit 1, Condition 14. In essence, then, the construction permit is also, at least temporarily, an operating permit. In issuing the construction permit, the Agency is attempting to impose operating conditions through the construction permit that have been appealed in the context of the CAAPP permit appeal prior to the Board's decision on these points. Additionally, the Agency is inappropriately imposing the New Source Performance Standards ("NSPS") for Coal Handling, 40 CFR 60.Subpart Y ("Subpart Y") (attached hereto with additional pertinent provisions from 40 CFR 60.Subpart A as Exhibit 5 for the Board's convenience), through the construction permit. Furthermore, the Agency is imposing requirements related to, but not required or authorized by, Prevention of Significant Deterioration ("PSD") regulations, 40 CFR 52.21 (relevant portions attached hereto as Exhibit 6 for the Board's convenience).

A. The Agency Has Inappropriately Imposed Language in the Construction Permit That Was Appealed in PCB 06-059 (Powerton CAAPP Appeal) and Has Included Other Inappropriate Conditions in the Construction Permit.

10. In this situation where ultimately the operating permit will be the CAAPP permit, that the Agency included in the construction permit language appealed in the CAAPP permit in Docket 06-059 ignores Midwest Generation's right to challenge and have a fair hearing on the appropriateness of the language in the CAAPP permit. The implication of the language is that the operating conditions identified in the construction permit will become the applicable operating conditions during operation pursuant to the construction permit and eventually in the CAAPP permit, even though that language is currently being challenged in the CAAPP Appeal. Inclusion of such language forces Midwest Generation into this second appeal in order to preserve the integrity of its appeal of the CAAPP permit, as well as to prevent the imposition of inappropriate conditions in the construction permit, the state operating permit, and ultimately the CAAPP permit.[2] 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 06-059. Meanwhile, if Midwest Generation did not appeal the construction permit, the challenged language would apply during

[2] Midwest Generation understands that the operating conditions included in the construction permit will roll into the CAAPP permit when it becomes effective. *See* Exhibit 1, Condition 14.

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.

11. Regardless of one's perspective, the Agency's inclusion of the challenged language during the pendency of the appeal of Powerton's CAAPP permit is inappropriate, injurious to Midwest Generation's rights under Sections 39, 39.5, and 40.2 of the Act and under the APA, inconsistent with the Board's Order 2 in PCB 06-059 regarding the applicability of the APA to appealed permits, and not in good faith. Midwest Generation will suffer irreparable harm if this language is allowed to remain in the construction permit for inclusion, ultimately, in the CAAPP permit if the Board finds in Docket 06-059 that the language should be stricken from the CAAPP permit. Moreover, Midwest Generation would suffer irreparable harm if it were required to comply now, through the construction permit, with conditions that the Board may determine in Docket 06-059 are inappropriate.

(i) Inspection Requirements – Condition 8(a)(i)

12. Condition 7.2.8(a) of the CAAPP permit issued to Midwest Generation for the Powerton Generating Station contains inspection requirements for the coal handling operations at the plant. Both Condition 7.2.8(a) of the CAAPP permit and Condition 8(a)(i) of the construction permit require that "[t]hese inspections shall be performed with supervisory personnel or other personnel not directly involved in the day-to [SIC] day operation of the affected operations. . . ." These inspection requirements were appealed in Docket No. 06-059 at paragraphs 117-118 of Midwest Generation's Appeal of CAAPP Permit ("CAAPP Appeal"), and Midwest Generation is compelled to appeal them again here with respect to the construction permit.

13. In addition to the apparent attempt to undermine the appeal process initiated for the CAAPP permit, the Agency again provides no basis for this requirement. There is no basis in

law or practicality for this provision. To identify in a construction permit condition who can perform an inspection is overstepping the Agency's authority.

14. The requirement must be stricken from the permit. Midwest Generation requests that the Board stay Condition 8(a)(i) during the pendency of this appeal.

(ii) Inspection Requirements – Condition 8(a)(ii)(B)

15. Condition 7.2.9(d)(i)(B) of the CAAPP permit requires that Midwest Generation observe whether there are accumulations of coal fines in the vicinity of the coal bunkers. This condition was included in the CAAPP Appeal at paragraphs 131-132. This requirement appears also in the construction permit at Condition 8(a)(ii)(B) despite the fact that it is under appeal in Docket No. 06-059.

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

17. Condition 8(a)(ii)(B) should be deleted from the permit, and Midwest Generation requests that the Board grant a stay of this condition during the pendency of this appeal.

(iii) Recordkeeping Requirements – Conditions 10(d)(ii) and (vii)

18. Condition 10(d)(ii) requires Midwest Generation to provide the magnitude of emissions of particulate matter ("PM") during an incident where the coal handling operation continues without the use of control measures. Midwest Generation has established that it has no

means to measure exact PM emissions from the coal bunkers, crusher house, or wet dust extractors. Therefore, for the Agency to require reporting of the magnitude of PM emissions is inappropriate. Midwest Generation appealed the requirement to provide the magnitude of PM emissions in the Powerton CAAPP Appeal. *See* paragraph 129 in the CAAPP Appeal. Midwest Generation requests that the Board stay Condition 10(d)(ii) during the pendency of this appeal.

19. Condition 10(d)(vii) refers to Condition 3, which Midwest Generation has appealed here. Therefore, because of the connection of Condition 10(d)(vii) with Condition 3, Midwest Generation also appeals Condition 10(d)(vii) and requests that the Board stay this condition.

(iv) Reporting/Notification Requirements – Conditions 12(a), 12(a)(ii), and 12(b)(ii)

20. Condition 12(a) requires Midwest Generation to report deviations from the requirements of the construction permit. Deviation reporting is not required by Illinois' regulations and is, rather, a construct of CAAPP permitting. The construction permit is not a CAAPP permit. CAAPP permit conditions, including deviation reporting, will apply to the wet dust extractors when the CAAPP permit becomes effective. Applying CAAPP requirements in this construction permit is inappropriate and should be stricken from the permit. Midwest Generation requests that the Board stay Condition 12(a), including its subparts, during the pendency of this appeal.

21. Also, Condition 12(a)(ii) requires notification of operation without customary control measures. The last sentence of Condition 12(a)(ii) imposes a requirement to accompany such notifications with records required by Condition 10(g)(ii). However, Condition 10(g)(ii) does not exist. Although Midwest Generation has requested that Condition 12(a) and all of its subparts be stayed, which would include Condition 12(a)(ii), at the least the reference to

Condition 10(g)(ii) should be stricken from Condition 12(a)(ii), and Midwest Generation requests that the Board stay the condition during the pendency of this appeal.

22. Condition 12(b)(ii) requires quarterly reporting, a frequency that is a function of the CAAPP and not of Illinois' regulations applicable to the source prior to the effectiveness of the CAAPP permit. Also, Condition 12(b)(ii)(B) refers to Condition 12(a), appealed herein. Therefore, Condition 12(b)(ii) should be deleted from the permit, and Midwest Generation requests that the Board stay the condition during the pendency of this appeal.

B. The Agency Has Inappropriately Determined that the NSPS for Coal Preparation Plants, 40 CFR 60.Subpart Y Applies (Conditions 3, 9, 10(a) and 12(c)).

23. The Agency has inappropriately imposed conditions in the construction permit based upon its determination that the replacement of the baghouses with the wet dust extractors causes the coal bunkers to become subject to the NSPS for Coal Preparation Plants at 40 CFR 60.Subpart Y, attached hereto as Exhibit 5. The Agency asserts that Subpart Y is applicable because the replacement of the baghouses and existing wet dust extractor with new wet dust extractors is a modification of the bunkers after October 24, 1974. 40 CFR § 60.250(b). However, there has been no modification of the bunkers that would trigger the applicability of Subpart Y.

24. The NSPS defines modification as follows:

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

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

> The following shall not, by themselves, be considered modifications under this part:
>
> * * *
>
> (5) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the Administrator determines to be less environmentally beneficial.

40 CFR § 60.14(e)(5) (emphasis added), attached hereto as Exhibit 5. Because the wet dust extractors are devices whose primary function is the reduction of air pollutants and because they are not less environmentally beneficial than the old baghouses or the old wet dust extractor, whether a modification, as defined at § 60.2 of the NSPS occurred, is a question that is never reached. Certainly replacing a wet dust extractor with a new wet dust extractor will be equally as environmentally beneficial. In this instance, replacing the existing baghouses with the wet dust extractor will be at least as environmentally beneficial. Because there was no modification, Subpart Y does not apply and cannot be included in the construction permit. All references to the requirements of Subpart Y must be deleted from the permit.

25. While an emissions limitation may be measured as the emissions exit the pollution control device, the only equipment to which Subpart Y can apply is to the "coal storage system," defined as "any facility used to store coal except for open storage piles." 40 CFR § 60.251(h), Exhibit 5. An affected facility is, "with reference to a stationary source, any apparatus to which a standard is applicable." 40 CFR § 60.2, Exhibit 5. USEPA Region 5 states that "all coal storage equipment is treated collectively as one affected facility. . . ." Applicability Determination, Control No. 0300127 (June 30, 2003), p. 3, attached hereto as Exhibit 7. The "coal storage system" is all of the bunkers. That system is limited, however, to facilities "used to

store coal." A pollution control device, such as a wet dust extractor, is not part of the facility that can be regulated under Subpart Y.

26. Condition 3 of the construction permit provides that Subpart Y is applicable to the wet dust extractor system. Condition 9 of the construction permit also reflects Subpart Y requirements. Condition 10(a) applies the NSPS recordkeeping requirements. Condition 12(c) applies the NSPS reporting requirements. All of these conditions must be stricken from the permit, and Midwest Generation requests that the Board stay their applicability during the pendency of the permit appeal.

C. The Agency Has Inappropriately Imposed Conditions That Are Inconsistent with PSD Regulations (Conditions 6(a)-(c) and 10(f)).

27. The Agency has appropriately concluded that the proposed replacement of the old baghouses and wet dust extractor with new wet dust extractors does not trigger PSD. The Agency's description of its determination, however, is incomplete. Moreover, the Agency has imposed PSD conditions that are inapplicable in light of its determination or simply not authorized under the PSD regulations.

(i) Non-applicability Determination – Condition 6(a)

28. Condition 6(a) states that the Agency issued the permit on the basis that this project is not subject to PSD for emissions of PM. Condition 6(a) lists one sufficient, but not necessary, reason for why this project does not trigger PSD: Midwest Generation projects a decrease in annual emissions of PM. For clarity, the Agency should have summarized several other reasons underlying this determination, each one sufficient but not independently necessary.

29. For PSD to apply to an existing major stationary source, an existing emissions unit must undergo a "major modification," *i.e.*, a physical or operational change that results in a significant emissions increase and significant net emissions increase of a regulated PSD

pollutant. 40 C.F.R. § 52.21(a)(2)(iii) and (b)(2), Exhibit 6. Activities that are routine maintenance, repair, or replacement are excluded from the definition of physical or operational change – and, thus, are not major modifications – irrespective of their impacts on emissions. 40 C.F.R. § 52.21(b)(2)(iii)(*a*), Exhibit 6. Because replacement of pollution control equipment occurs routinely, this replacement of pollution control equipment also satisfies the "routine maintenance, repair, or replacement" exclusion from the applicability of PSD.

(ii) Compliance and Recordkeeping Requirements – Conditions 6(b), 6(c), and 10(f)

30. Conditions 6(b) and 6(c) are unnecessary because, as the Agency determined, this is not a PSD permit. Therefore, these conditions should not be included in the permit.

31. Condition 10(f) requires Midwest Generation to maintain records of the PM/PM10 emissions, on both a tons per month and tons per year basis, consistent with Condition 6(b). Because this is not a PSD source, Condition 10(f) is also inappropriate and should be struck. Even if PSD did apply, the Agency has misapplied the provision for recordkeeping. The provision clearly conflicts with the PSD regulations.

32. First, Condition 10(f) references Condition 6(b), which Midwest Generation is appealing. By requiring that records be kept "consistent with Condition 6(b)," Condition 10(f) suffers from the same defects as Condition 6(b), which are articulated above.

33. Second, to the extent that the Agency is attempting to reiterate the PSD recordkeeping and reporting requirements cited in Condition 6(c), it has incorrectly articulated those requirements. Pursuant to 40 C.F.R. § 52.21(r)(6)(iii), an owner or operator must "calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis." Section 52.21(r)(6) contains no requirement to calculate or maintain records of emissions expressed as *tons per month*.

34. Accordingly, Midwest Generation requests that the Board stay Conditions 6(b), 6(c) and 10(f) during the pendency of this appeal and order the Agency to strike both from the permit.

WHEREFORE, for the reasons set forth above, Midwest Generation requests that the Board grant its petition to appeal the construction permit issued March 5, 2007, and that it stay all or the portions of Conditions 3, 6(b), 6(c), 8(a)(i), 8(a)(ii)(B), 9, 10(a), 10d(ii), 10(d)(vii), 10(f), 12(a), 12(b)(ii), 12(c) appealed herein, as set forth in Exhibit 4.

Respectfully submitted,

MIDWEST GENERATION, LLC –
POWERTON GENERATING STATION

by:

One of Its Attorneys

Dated: April 9, 2007

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EXHIBIT LIST

Exhibit No.	
1	Construction Permit issued to the Powerton Generating Station March 5, 2007
2	Email correspondence between Andrea Crapisi, Midwest Generation, and Kunj Patel, Illinois EPA (March 4-5, 2007)
3	Construction Permit issued to the Crawford Generating Station April 2, 2004
4	Powerton Construction Permit, redlined to indicate the specific language Midwest Generation requests be stayed
5	NSPS, 40 CFR.Subpart A, in part, and Subpart Y, www.ecfr.gpoaccess.gov (2007)
6	PSD, 40 CFR 52.21(a)(2)(ii), (b)(2), and (r)(6)(iii), www.ecfr.gpoaccess.gov (2007)
7	Applicability Determination, Control No. 0300127 (June 30, 2003)

Exhibit 1

Construction Permit

(issued March 5, 2007)

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 - NSPS

PERMITTEE

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

Application No: 06120004 I.D. No.: 179801AAA
Applicant's Designation: Date Received: December 4, 2006
Subject: Wet Dust Extractors for Unit 5 & Unit 6 Coal Bunkers & Crusher House
Date Issued: March 5, 2007
Location: Powerton Generating Station, 13082 E. Manito Road, Pekin

Permit is hereby granted to the above-designated Permittee to CONSTRUCT emission source(s) and/or air pollution control equipment consisting of 11 new wet dust extractor control devices (DE-1 through DE-11) for the Unit 5 and Unit 6 coal bunkers and crusher house, as described in the above referenced application. This Permit is subject to standard conditions attached hereto and the following special condition(s):

1a. This permit authorizes installation of 11 new wet dust extractor control devices for the Unit 5 and Unit 6 coal bunkers and crusher house, replacing existing ten baghouses and one wet dust extractor, as requested by the Permittee to improve safety and operational performance. For the purpose of this permit, the "affected operations" are the coal handling and processing operations for the Unit 5 and Unit 6 coal bunkers and crusher house following installation of the new wet dust extractors.

b. This permit does not authorize any increase in coal throughput limits for the affected operations.

2. This permit does not relax or otherwise revise any requirements and conditions that apply to the operation of the Unit 5 and Unit 6 boilers, including applicable monitoring, testing, recordkeeping, and reporting requirements pursuant to current operating permits issued for this source.

3a. The affected operations are subject to the New Source Performance Standards (NSPS) for Coal Preparation Plants, 40 CFR 60 Subpart Y. This requirement is being imposed because coal is prepared at the source and the application did not demonstrate that the changes in the control equipment would not be modifications, i.e., the hourly particulate matter emissions from the affected operations would not increase with the new air pollution control equipment.

b. i. The opacity of the exhaust into the atmosphere from each affected operation shall not be 20 percent or greater, pursuant to the NSPS, 40 CFR 60.252.

ii. Notwithstanding the above, as provided by 40 CFR 60.8(c), opacity in excess of the above limit during periods of startup, shutdown and malfunction, as defined by 40 CFR 60.2, shall not be considered a violation.

c. At all times, the Permittee shall, to the extent practicable, maintain and operate the affected operations, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions, pursuant to 40 CFR 60.11(d).

4a. Pursuant to 35 IAC 212.123(a), the emission of smoke or other particulate matter from each affected operation shall not exceed an opacity greater than 30 percent, on six-minute average, except as allowed by 35 IAC 212.123(b) and 212.124.

b. Subject to the following terms and conditions, the Permittee is authorized to continue operation of an affected operation in violation of the applicable limit of Condition 4(a) (35 IAC 212.123) in the event of a malfunction or breakdown. This authorization is provided pursuant to 35 IAC 201.149, 201.161 and 201.262, as the Permittee has applied for such authorization in its application, generally explaining why such continued operation would be required to provide essential service or to prevent injury to personnel or severe damage to equipment, and describing the measures that will be taken to minimize emissions from any malfunctions and breakdowns.

i. This authorization only allows such continued operation as related to the operation of the Unit 5 and Unit 6 boilers as necessary to provide essential service or to prevent injury to personnel or severe damage to equipment and does not extend to continued operation solely for the economic benefit of the Permittee.

ii. Upon occurrence of excess emissions due to malfunction or breakdown, the Permittee shall as soon as practicable repair the affected operation, remove the affected operation from service or undertake other action so that excess emissions cease.

iii. The Permittee shall fulfill applicable recordkeeping and reporting requirements of Conditions 10(g) and 12(b), respectively.

iv. Following notification to the Illinois EPA of a malfunction or breakdown with excess emissions, the Permittee shall comply with all reasonable directives of the Illinois EPA with respect to such incident, pursuant to 35 IAC 201.263.

v. This authorization does not relieve the Permittee from the continuing obligation to minimize excess emissions during malfunction or breakdown. As provided by 35 IAC 201.265, an authorization in a permit for continued operation with excess

emissions during malfunction and breakdown does not shield the Permittee from enforcement for any such violation and only constitutes a prima facie defense to such an enforcement action provided that the Permittee has fully complied with all terms and conditions connected with such authorization.

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

5a. The affected operations are subject to 35 IAC 212.301, which provides that no person shall cause or allow the emission of fugitive particulate matter from any emission unit that is visible by an observer looking generally toward the zenith (that is, looking at the sky directly overhead) from a point beyond the property line of the plant.

b. The coal crushing operations at the crusher house is subject to 35 IAC 212.321, which provides that no person shall cause or allow the particulate matter (PM) emissions in any one hour period from any new process emission unit in excess of applicable PM emissions limit specified in 35 IAC 212.321(c).

6a. This Permit is issued based on this project not being subject to PSD for emissions of PM. In particular, the Permittee has submitted a demonstration comparing the past actual emissions from the existing operations and the projected future actual emissions that would occur after this project, showing that this project should be accompanied by decreases in annual emissions of PM.

b. The Permittee shall, for a period beginning with the first alteration of the control systems for the affected operations addressed by this permit and continuing for 10 years following resumption of regular operation after this project is completed, operate the source in such a manner that this project does not result in a significant increase in emissions of and qualify as a major modification for PM emissions.

c. The Permittee shall fulfill the relevant recordkeeping and reporting requirements of the PSD rules, 40 CFR 52.21(r)(6)(iii) and (iv), for the affected emissions units at this source and this project, to verify that the project has not resulted in a significant increase in PM emissions.

7a. i. The Permittee shall implement and maintain control measures for the affected operations, such as enclosures and dust extractors, that minimizes visible emissions of PM and provide assurance of compliance with the applicable emission standards in Conditions 3, 4, and 5.

ii. The Permittee shall operate and maintain each affected operation with the customary control measures identified in the records required in Condition 10(c).

b. Operation of the affected operations shall not begin until all associated air pollution control equipment has been constructed and is operational.

8a. i. The Permittee shall perform inspections of the affected operations at least once per month, including the associated control measures, while the affected operations are operating, to address compliance with the requirements of this permit. These inspections shall be performed with supervisory personnel or other personnel not directly involved in the day-to day operation of the affected operation.

ii. The Permittee shall maintain records of the following for the above inspections:

A. Date and time the inspection was performed and name(s) of inspection personnel.

B. The observed condition of the established control measures for the affected operation, including the presence of any visible emissions or accumulations of coal fines in the vicinity of an operation.

C. A description of any maintenance or repair associated with the established control measures that are recommended as a result of the inspection and a review of outstanding recommendations for maintenance or repair from previous inspection(s), i.e., whether recommended action has been taken, is yet to be performed or no longer appears to be required.

D. A summary of the observed implementation or status of actual control measures as compared to the established control measures.

9a. i. The Permittee shall have the opacity of the emissions from the affected operations during representative weather and operating conditions determined by a qualified observer in accordance with USEPA Test Method 9, as further specified below.

A. For each affected operation, an initial performance test shall be conducted in accordance with 40 CFR 60.8 and 60.252 following installation of the new control equipment.

B. Following the initial performance test, periodic testing shall be conducted at least annually for each affected operation.

C. Upon written request by the Illinois EPA, testing of the affected operations shall be conducted within 45 calendar

days of the request or on the date agreed upon by the Illinois EPA, whichever is later.

ii. A. The initial performance tests for opacity shall be conducted in accordance with 40 CFR 60.254.

B. For periodic testing, the duration of opacity observations shall be at least 30 minutes (five 6-minute averages) unless the average opacities for the first 12 minutes of observations (two six-minute averages) are both less than 10.0 percent.

iii. A. The Permittee shall notify the Illinois EPA at least 7 days in advance of the date and time of these tests, in order to allow the Illinois EPA to witness testing. This notification shall include the name(s) and employer(s) of the qualified observer(s).

B. The Permittee shall promptly notify the Illinois EPA of any changes in the time or date for testing.

iv. The Permittee shall provide a copy of its observer's readings to the Illinois EPA at the time of testing, if Illinois EPA personnel are present.

v. The Permittee shall submit a written report for this testing within 15 days of the date of testing. This report shall include:

A. Date and time of testing.

B. Name and employer of qualified observer.

C. Copy of current certification.

D. Description of observation condition, including recent weather.

E. Description of the operating conditions of the affected operations.

F. Raw data.

G. Opacity determinations.

H. Conclusions.

10a. The Permittee shall fulfill the applicable recordkeeping requirements of the NSPS, 40 CFR 60.7(b), for the affected operations subject to the NSPS, as identified in Condition 3(a).

b. The Permittee shall maintain records for the amount of coal handled, operating hours, or other measure of activity of each affected operation on a monthly and annual basis, which data is in the terms normally used by the Permittee to calculate actual emissions of each affected operation.

c. The Permittee shall keep the following file(s) and log(s) for the air pollution control equipment for the affected operations:

   i. File(s) containing the following data for the equipment, with supporting information, which file(s) shall be kept up to date: 1) The design particulate matter control efficiency or performance specification for particulate matter emissions, gr/dscf; 2) The maximum design emission rate, pounds particulate matter/hour, and 3) The applicable particulate matter emission factor normally used by the Permittee to calculate actual particulate matter emissions, if a factor other than the maximum hourly emission rate is normally used.

   ii. Maintenance and repair log(s) for the control equipment, which log(s) shall list the activities performed on each item of equipment, with date and description.

d. The Permittee shall maintain records of the following for each incident when an affected operation operated without the customary control measures:

   i. The date of the incident and identification of the affected operation that was involved.

   ii. A description of the incident, including the customary control measures that were not present or implemented; the customary control measures that were present, if any; other control measures or mitigation measures that were implemented, if any; and the magnitude of the particulate matter emissions during the incident.

   iii. The time at and means by which the incident was identified, e.g., scheduled inspection or observation by operating personnel.

   iv. The length of time after the incident was identified that the affected operations continued to operate before customary control measures were in place or the operations were shutdown (to resume operation only after customary control measures were in place) and, if this time was more than one hour, an explanation why this time was not shorter, including a description of any mitigation measures that were implemented during the incident.

   v. The estimated total duration of the incident, i.e., the total length of time that the affected operations ran without customary control measures and the estimated amount of material handled during the incident.

vi. A discussion of the probable cause of the incident and any preventative measures taken.

vii. A discussion whether an applicable standard, as listed in Condition 3, 4, and 5 may have been violated during the incident, with an estimate of the amount of any additional or excess particulate matter emissions (pounds) from the incident, with supporting explanation.

e. Pursuant to 35 IAC 201.263, the Permittee shall maintain records, related to malfunction and breakdown for each affected operation that, at a minimum, shall include:

i. Maintenance and repair log(s) for the affected operation that, at a minimum, address aspects or components of such operations for which malfunction or breakdown has resulted in excess emissions, which shall list the activities performed on such aspects or components, with date, description and reason for the activity. In addition, in the maintenance and repair log(s), the Permittee shall also list the reason for the activities that are performed.

ii. Records for each incident when operation of an affected operation continued during malfunction or breakdown, including continued operation with excess emissions as addressed by Condition 3(a), that include the following information:

A. Date and duration of malfunction or breakdown.

B. A description of the malfunction or breakdown.

C. The corrective actions used to reduce the quantity of emissions and the duration of the incident.

D. Confirmation of fulfillment of the requirements of Condition 12(b)(i), as applicable, including copies of follow-up reports submitted pursuant to Condition 12(b)(i)(B).

E. If excess emissions occurred for two or more hours:

I. A detailed explanation why continued operation of the affected operation was necessary.

II. A detailed explanation of the preventative measures planned or taken to prevent similar malfunctions or breakdowns or reduce their frequency and severity.

III. An estimate of the magnitude of excess emissions occurring during the incident.

f. The Permittee shall maintain records of the PM/PM_{10} Emissions (tons/month and tons/year), from each affected operation consistent with Condition 6(b), with supporting calculations.

g. The Permittee shall keep records for any opacity observations performed by Method 9 that the Permittee conducts or are conducted at its behest, including name of the observer, date and time, duration of observation, raw data, results, and conclusion.

11. The Permittee shall retain all records required by this permit at the source for at least 5 years from the date of entry and these records shall be readily accessible to the Illinois EPA for inspection and copying upon request.

12a. The Permittee shall promptly notify the Illinois EPA of deviations from requirements of this permit for the affected operations, as follows. Such notifications shall include a description of each incident and a discussion of the probable cause of deviation, any corrective actions taken, and any preventative measures taken.

i. Notification and reporting as specified in Condition 12(b)(i) for certain deviations from an applicable opacity standard.

ii. Notification within 30 days for operation of an affected operation without associated control equipment that continued for more than 12 operating hours from the time that it was identified. Such notifications shall be accompanied by a copy of the records for the incident required by Condition 10(g)(ii).

iii. A. Notification with the quarterly reports required by Condition 12(b)(ii) for other deviations, including deviations from applicable emission standards, inspection requirements and recordkeeping requirements.

B. With the quarterly report, the Permittee shall also address deviations that occurred during the quarter that have been separately reported to the Illinois EPA, with a summary of such deviations. For this purpose, the Permittee need not resubmit the detailed information provided in prior notifications and reports for such deviations.

b. Pursuant to 35 IAC 201.263, the Permittee shall provide the following notifications and reports to the Illinois EPA, concerning incidents when operation of an affected operation continued with excess emissions, including continued operation during malfunction or breakdown as addressed by Condition 3(b).

i. A. The Permittee shall immediately notify the Illinois EPA's Regional Office, by telephone (voice, facsimile or electronic) for each incident in which the opacity from an affected operation exceeds the applicable opacity standard for five or more consecutive 6-minute averaging periods.

(Otherwise, if opacity during a malfunction or breakdown incident only exceeds or may have exceeded the applicable standard for no more than five consecutive 6-minute averaging periods, the Permittee need only report the incident in accordance with Condition 12(b)(ii).)

B. Upon conclusion of each incident that is two hours or more in duration, the Permittee shall submit a written follow-up notice to the Illinois EPA, Compliance Section and Regional Office, within 15 days providing a detailed description of the incident and its cause(s), an explanation why continued operation was necessary, the length of time during which operation continued under such conditions, the measures taken by the Permittee to minimize and correct deficiencies with chronology, and when the repairs were completed or the affected operation was taken out of service.

ii. The Permittee shall submit quarterly reports to the Illinois EPA that include the following information for incidents during the quarter in which the affected operation continued to operate during malfunction or breakdown with excess emissions.

A. A listing of such incidents, in chronological order, that includes: (1) the date, time, and duration of each incident, (2) the identity of the affected operation(s) involved in the incident, and (3) whether a follow-up notice was submitted for the incident pursuant to Condition 12(b)(i)(B), with the date of the notice.

B. The detailed information for each such incident required pursuant to Condition 12(a). For this purpose, the Permittee need not resubmit information provided in a prior report for an incident, as identified above, but may elect to supplement the prior submittal.

C. The aggregate duration of all incidents during the quarter.

D. If there have been no such incidents during the calendar quarter, this shall be stated in the report.

c. The Permittee shall fulfill applicable reporting requirements of the NSPS, 40 CFR 60.8, for affected operations subject to the NSPS.

13a. Unless otherwise specified in a particular condition of this permit or in the written instructions distributed by the Illinois EPA for particular reports, reports and notifications shall be sent to the Illinois EPA - Air Compliance Section with a copy sent to the Illinois EPA - Air Regional Field Office.

b. The current addresses of the offices that should generally be utilized for the submittal of reports and notifications are as follows:

i. Illinois EPA - Air Compliance Section

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

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

ii. Illinois EPA - Air Regional Field Office

Illinois Environmental Protection Agency
Division of Air Pollution Control
5415 North University Avenue
Peoria, Illinois 61614

Phone: 309/693-5461 Fax: 309/693-5467

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

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

Edwin C. Bakowski, P.E.
Michael T. Reed
3/5/07

Edwin C. Bakowski, P.E.
Acting Manager, Permit Section
Division of Air Pollution Control

ECB:CPR:KMP:psj

cc: Region 2

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 susperseded 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

DIRECTORY
ENVIRONMENTAL PROTECTION AGENCY
BUREAU OF AIR

For assistance in preparing a permit application contact the Permit Section.

Illinois Environmental Protection Agency
Division of Air Pollution Control
Permit Section
1021 N. Grand Ave E.
P.O.Box 19506
Springfield, Illinois 62794-9506

or a regional office of the Field Operations Section. The regional offices and their areas of responsibility are shown on the map. The addresses and telephone numbers of the regional offices are as follows:

Illinois EPA
Region 1
Bureau of air, FOS
9511 West Harrison
Des Plaines, Illinois 60016
847/294-4000

Illinois EPA
Region 2
5415 North University
Peoria, Illinois 61614
309/693-5463

Illinois EPA
Region 3
2009 Mall Street
Collinsville, Illinois 62234
618/346-5120

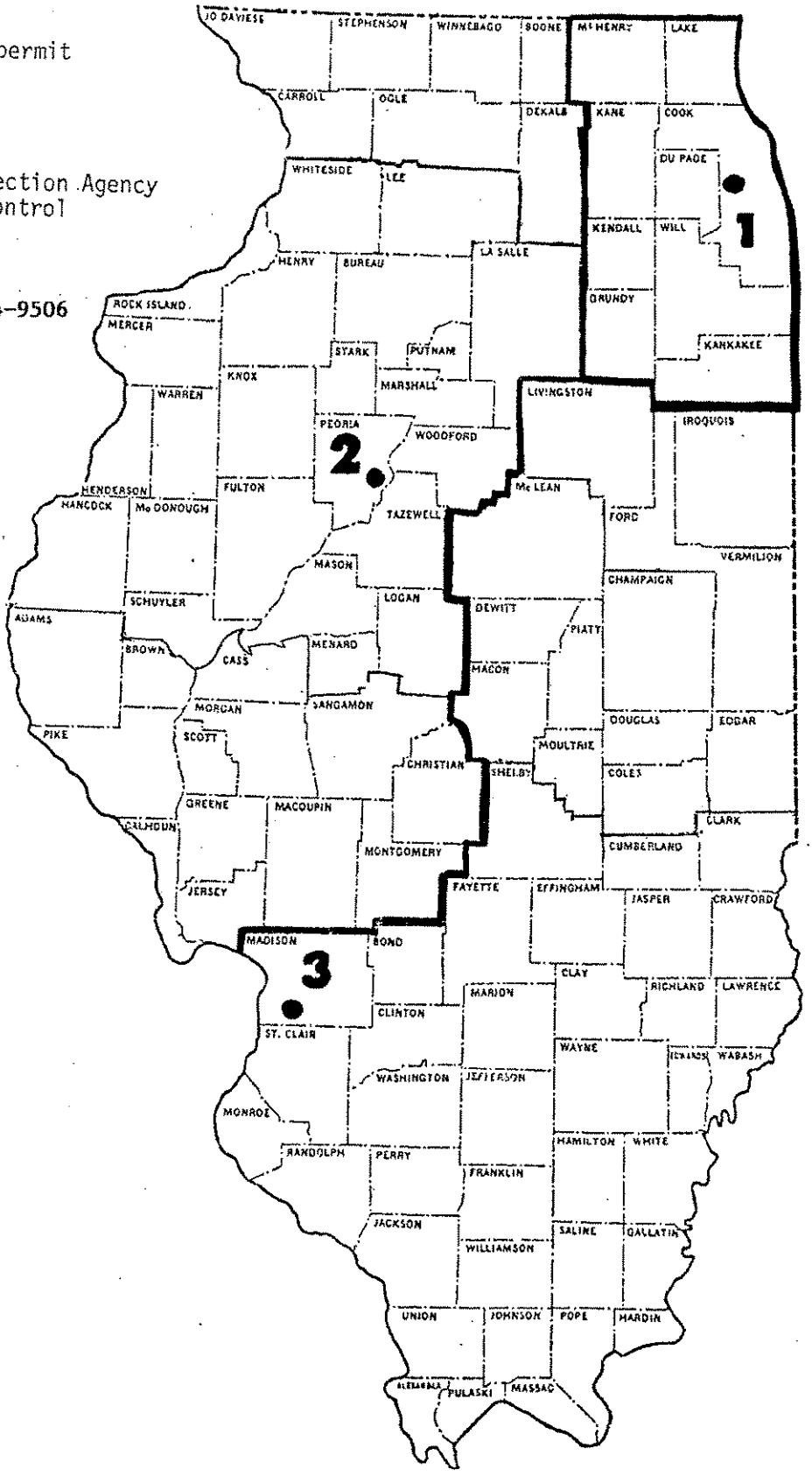

Exhibit 2

Email Correspondence Between Andrea Crapisi, Midwest Generation, and Kunj Patel, Illinois EPA

(March 4-5, 2007)

Patel, Kavita

Subject: RE: Comments on Powerton Station Permit

"Kunj Patel" <Kunj.Patel@illinois.gov>

03/05/2007 11:41 AM

To "Andrea Crapisi" <ACrapisi@mwgen.com>
cc "Chris Romaine" <Chris.Romaine@illinois.gov>
Subject Re: Comments on Powerton Station Permit

The application does not demonstrate that the new control systems will be better or equally "environmentally beneficial" than the current systems, so the Illinois EPA cannot rely on the exemption at 40 CFR 60.14(e)(5). While the new systems may be better for workers, this is not sufficient to show that they are environmentally beneficial.

In particular, fabric filters are commonly recognized as achieving 99+ percent efficiency (less than 0.005 gr/scf) for control of total PM emissions, with good control of PM10 emissions. The application indicates that the new wet extractors will not achieve this level of emissions control, with maximum efficiency of only 99 percent for total PM, an outlet grain loading of 0.03 gr/scf, and only 96 to 97 percent control for respirable PM.
The application also only indicates that, in total, the air flow will be reduced by about 15 percent, from the current level. Moreover, even if the air flow from the units will be reduced by a factor of 85 percent or more to compensate for increased concentration of PM emissions, it is not clear that the reduction in air flow is directly correlated with a reduction in PM emissions. Accordingly, if Midwest Generation wants to pursue the exemption from the NSPS for these new systems, consideration needs to be given to testing of the existing systems to establish solid information for the current levels of PM emissions.

In conclusion, the Agency will be issuing the construction permit today, as proposed, unless Midwest Generation provides a waiver of the Agency's decision deadline , to allow further discussion of this matter.

Kunj Patel
Please note that my new Email address is kunj.patel@illinois.gov

>>> Andrea Crapisi <ACrapisi@mwgen.com> 3/4/2007 12:25 PM >>>

Kunj,

I have attached a redlined version of the draft permit that you provided. We would like to request the deletion of several items which are under appeal in our Title V permits. These items will be resolved in the Title V process and then applied to this equipment in the operating permit.

Additionally, we are requesting that you remove the requirement to do follow-up NSR submittals. This project involves the construction of better air pollution equipment that is also safer for the employees so we do not believe that submitting NSR records for ten years is required. Also, pursuant to IAC 201.146(hhh), it is even possible to construct these sources without obtaining a permit since it is replacing air pollution control equipment for an

existing unit; however it is Midwest Generation's preference to notify the agency of what air pollution control equipment is in service for Title V purposes.

You will note that we also do not believe that this project is subject to the NSPS. Per 40 CFR 60.14(e)(5), it states that the following should not be considered a modification:

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

Therefore, since we are not replacing this with less beneficial equipment and the primary function is to reduce air pollutants, then we do not believe it is subject to the NSPS.

Please let me know if you have any questions on our comments on this draft permit.

Thanks.

Andrea Crapisi
Midwest Generation
Office (312) 583-6126
Cell (312) 636-3228
acrapisi@mwgen.com

Exhibit 3

Construction Permit Issued to the Crawford Generating Station

(issued April 2, 2004)

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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

RENFF CIPRIANO, DIRECTOR

217/782-2113

CONSTRUCTION PERMIT

PERMITTEE

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

Application No: 04030033 I.D. No.: 031600AIN
Applicants Designation: Date Received: March 11, 2004
Subject: Control for Coal Handling System
Date Issued: April 2, 2004
Location: Crawford Generating Station, 3501 South Pulaski Road, Chicago, Cook County

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

1. This permit is issued based on the new wet dust extractor systems replacing existing baghouses, to improve safety and operational performance. The existing rotoclones which served as back-up control systems to the baghouses, will be retained as a back-up controls for the coal bunkers.

2a. Pursuant to 35 IAC 212.123(a), the emission of smoke or other particulate matter from the coal bunkers for Units 7 and 8 shall not exceed an opacity greater than 30 percent, except as allowed by 35 IAC 212.123(b) and 212.124.

b. i. The opacity of particulate matter emissions from the bunker for Units 7 and 8 shall not exceed 20 percent pursuant to the NSPS for coal preparation plants, 40 CFR 60, Subpart Y: This requirement is being imposed because the change in control is considered a modification, as it increases hourly particulate matter emissions from coal handling operations associated with preparation of coal at the plant.

ii. Notwithstanding the above, as provided by 40 CFR 60.8(c), opacity in excess of the above limit during periods of startup, shutdown and malfunction as defined by 40 CFR 60.7, shall not be considered a violation.

c. At all times, the coal bunkers shall be operated in accordance with good air pollution control practices, as required by 40 CFR 60.11(d).

3a. The Permittee is authorized to continue operation of a coal bunker in violation of the applicable requirements of 35 IAC 212.123 (Condition 2a) in the event of a malfunction or breakdown, subject to the following provisions. This authorization is provided pursuant to 35 IAC 201.262 as the Permittee has submitted "... proof that continued operation is required to provide essential service, prevent risk of injury to personnel or severe damage to equipment."

i. This authorization only allows such continued operation as necessary to provide essential service, prevent risk of injury to personnel or severe damage to equipment and does not extend to continued operation solely for the economic benefit of the Permittee. As provided by 35 IAC 201.265, this authorization does not shield the Permittee from enforcement for any such violation and shall only constitute a prima facie defense to such an enforcement action.

ii. Upon occurrence of excess emissions due to malfunction or breakdown, the Permittee shall as soon as practicable repair the affected unit or remove the affected unit from service so that excess emissions cease. Unless the Permittee obtains an extension from the Illinois EPA, this shall be accomplished within 24 hours* or noon of the Illinois EPA's next business day*, whichever is later. The Permittee may obtain an extension for up to a total of 72 hours* from the Illinois EPA, Air Regional Office. The Illinois EPA, Air Compliance Section, in Springfield, may grant a longer extension if the Permittee demonstrates that extraordinary circumstances exist and the unit can not reasonably be repaired or removed from service within the allowed time, it will repair the unit or remove the unit from service as soon as practicable; and it is taking all reasonable steps to minimize excess emissions, based on the actions that have been and will be taken.

* For this purpose and other related provisions, time shall be measured from the start of a particular incident. The absence of excess emissions for a short period shall not be considered to end the incident if excess emissions resume. In such circumstances, the incident shall be considered to continue until corrective actions are taken so that excess emissions cease or the Permittee takes the affected operation out of service.

iii. The Permittee shall fulfill applicable recordkeeping and reporting requirements of Conditions 3(b) and 4(c).

iv. Following notification to the Illinois EPA of a malfunction or breakdown with excess emissions, the Permittee shall comply with all reasonable directives of the Illinois EPA with respect to such incident, pursuant to 35 IAC 201.263.

b. Pursuant to 35 IAC 201.263, the Permittee shall maintain records for each incident when operation of a coal bunker continued during malfunction or breakdown with excess emissions, including the following information:

i. Date and duration of malfunction or breakdown.

ii. A description of the malfunction or breakdown.

iii. The corrective actions used to reduce the quantity of emissions and the duration of the incident, including a discussion of the transition to the rotoclones.

iv. Confirmation of fulfillment of the requirements of Condition 4(c)(i), as applicable, including copies of follow-up reports submitted pursuant to Condition 4(c)(ii).

v. If excess emissions occurred for two or more hours:

A. An explanation why continued operation was necessary.

B. The preventative measures planned or taken to prevent similar malfunctions or breakdowns or reduce their frequency and severity.

C. An estimate of the magnitude of excess emissions occurring during the incident.

4a. Particulate matter emissions from each coal bunker shall not exceed 0.83 lb/hour and 6.0 tons/year.

b. Notwithstanding the above, particulate matter emissions from a coal bunker may exceed 0.83 lb/hour during a malfunction or breakdown. This authorization is subject to the same terms and conditions established in Condition 3 for exceedance of the opacity standard during a malfunction and breakdown.

c. Pursuant to 35 IAC 201.263, the Permittee shall provide the following notifications and reports to the Illinois EPA, Compliance Section and Regional Office, concerning incidents when operation of a coal bunker continued during malfunction or breakdowns.

i. The Permittee shall notify the Illinois EPA's Regional Office, by telephone (voice, facsimile or electronic) as soon as possible during normal working hours for each incident in which the opacity from a coal bunker exceeds 30 percent for more than five consecutive 6-minute averaging periods. (Otherwise, if opacity during a malfunction or breakdown incident only exceeds 30 percent for less than five consecutive 6-minute averaging periods in a row, the Permittee need only report the incident in the quarterly report.)

ii. Upon conclusion of each incident that is two hours or more in duration, the Permittee shall submit a written follow-up notice to the Illinois EPA, Compliance Section and Regional Office, within 15 days providing a detailed explanation of the event, an explanation why continued operation of an bunker was necessary, the length of time during which operation continued under such conditions, the measures taken by the Permittee to minimize and correct deficiencies with chronology, and when the repairs were completed or when the coal bunker was taken out of service.

d. These provisions addressing continued operation during a malfunction or breakdown event may be revised in the CAAPP permit for the source.

5a. The Permittee shall perform inspections of the operations of the affected units as necessary but at least once per month, including the associated control measures, while the affected units are in operation, to confirm compliance with the requirements of this permit.

b. The Permittee shall maintain records of the following for the above inspections:

i. Date and time the inspection was performed and name(s) of inspection personnel.

ii. The observed condition of the established control measures for the affected unit.

iii. A description of any maintenance or repair associated with established control measures that is recommended as a result of the inspection and a review of outstanding recommendations for maintenance or repair from previous inspection(s), i.e., whether recommended action has been taken, is yet to be performed or no longer appears to be required.

iv. A summary of compliance compared to the established control measures.

6. Upon written request by the Illinois EPA, the Permittee shall conduct observations of opacity for a coal bunker in accordance with USEPA Reference Method 9.

7. The Permittee shall maintain the following records for Unit 7 and 8 coal bunkers:

a. A maintenance and repair logs for each dust extractor system, including the date and nature of maintenance and repair activities performed.

b. Operating and maintenance logs for rotoclones, including date and period of operation.

c. To demonstrate compliance with Condition 4(a), the Permittee shall keep records for particulate matter emissions from a coal bunker (tons/month and tons/yr), with supporting calculations.

d. Records for any opacity observations performed by Method 9 that Permittee conducts or are conducted on its behalf to demonstrate compliance with Condition 2, including name of the observer, date and time, duration of observation, raw data, and conclusion.

8. All records required by this permit shall be retained at the source for at least 5 years from the date of entry and shall be readily accessible to the Illinois EPA for inspection and copying upon request.

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

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

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

Donald E. Sutton

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

DES:KMP:jar

cc: Region 1

Exhibit 4

Redlined Version of the Construction Permit Issued to the Powerton Generating Station Identifying Those Portions of the Permit That Midwest Generation Requests Be Stayed During the Pendency of This Appeal

217/782-2113

CONSTRUCTION PERMIT - NSPS

PERMITTEE

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

Application No: 06120004 I.D. No.: 179801AAA
Applicant's Designation: Date Received: December 4, 2006
Subject: Wet Dust Extractors for Unit 5 & Unit 6 Coal Bunkers & Crusher House
Date Issued: March 5, 2007
Location: Powerton Generating Station, 13082 E. Manito Road, Pekin

Permit is hereby granted to the above-designated Permittee to CONSTRUCT emission source(s) and/or air pollution control equipment consisting of 11 new wet dust extractor control devices (DE-1 through DE-11) for the Unit 5 and Unit 6 coal bunkers and crusher house, as described in the above referenced application. This Permit is subject to standard conditions attached hereto and the following special condition(s):

1a. This permit authorizes installation of 11 new wet dust extractor control devices for the Unit 5 and Unit 6 coal bunkers and crusher house, replacing existing ten baghouses and one wet dust extractor, as requested by the Permittee to improve safety and operational performance. For the purpose of this permit, the "affected operations" are the coal handling and processing operations for the Unit 5 and Unit 6 coal bunkers and crusher house following installation of the new wet dust extractors.

b. This permit does not authorize any increase in coal throughput limits for the affected operations.

2. This permit does not relax or otherwise revise any requirements and conditions that apply to the operation of the Unit 5 and Unit 6 boilers, including applicable monitoring, testing, recordkeeping, and reporting requirements pursuant to current operating permits issued for this source.

3a. ~~The affected operations are subject to the New Source Performance Standards (NSPS) for Coal Preparation Plants, 40 CFR 60 Subpart Y. This requirement is being imposed because coal is prepared at the source and the application did not demonstrate that the changes in the control equipment would not be modifications, i.e., the hourly particulate matter emissions from the affected operations would not increase with the new air pollution control equipment.~~

~~b. i. The opacity of the exhaust into the atmosphere from each affected operation shall not be 20 percent or greater, pursuant to the NSPS, 40 CFR 60.252.~~

~~ii. Notwithstanding the above, as provided by 40 CFR 60.8(c), opacity in excess of the above limit during periods of startup, shutdown and malfunction, as defined by 40 CFR 60.2, shall not be considered a violation.~~

~~c. At all times, the Permittee shall, to the extent practicable, maintain and operate the affected operations, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions, pursuant to 40 CFR 60.11(d).~~

4a. Pursuant to 35 IAC 212.123(a), the emission of smoke or other particulate matter from each affected operation shall not exceed an opacity greater than 30 percent, on six-minute average, except as allowed by 35 IAC 212.123(b) and 212.124.

b. Subject to the following terms and conditions, the Permittee is authorized to continue operation of an affected operation in violation of the applicable limit of Condition 4(a) (35 IAC 212.123) in the event of a malfunction or breakdown. This authorization is provided pursuant to 35 IAC 201.149, 201.161 and 201.262, as the Permittee has applied for such authorization in its application, generally explaining why such continued operation would be required to provide essential service or to prevent injury to personnel or severe damage to equipment, and describing the measures that will be taken to minimize emissions from any malfunctions and breakdowns.

i. This authorization only allows such continued operation as related to the operation of the Unit 5 and Unit 6 boilers as necessary to provide essential service or to prevent injury to personnel or severe damage to equipment and does not extend to continued operation solely for the economic benefit of the Permittee.

ii. Upon occurrence of excess emissions due to malfunction or breakdown, the Permittee shall as soon as practicable repair the affected operation, remove the affected operation from service or undertake other action so that excess emissions cease.

iii. The Permittee shall fulfill applicable recordkeeping and reporting requirements of Conditions 10(g) and 12(b), respectively.

iv. Following notification to the Illinois EPA of a malfunction or breakdown with excess emissions, the Permittee shall comply with all reasonable directives of the Illinois EPA with respect to such incident, pursuant to 35 IAC 201.263.

v. This authorization does not relieve the Permittee from the continuing obligation to minimize excess emissions during malfunction or breakdown. As provided by 35 IAC 201.265, an authorization in a permit for continued operation with excess emissions during malfunction and breakdown does not shield the Permittee from enforcement for any such

violation and only constitutes a prima facie defense to such an enforcement action provided that the Permittee has fully complied with all terms and conditions connected with such authorization.

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

5a. The affected operations are subject to 35 IAC 212.301, which provides that no person shall cause or allow the emission of fugitive particulate matter from any emission unit that is visible by an observer looking generally toward the zenith (that is, looking at the sky directly overhead) from a point beyond the property line of the plant.

b. The coal crushing operations at the crusher house is subject to 35 IAC 212.321, which provides that no person shall cause or allow the particulate matter (PM) emissions in any one hour period from any new process emission unit in excess of applicable PM emissions limit specified in 35 IAC 212.321(c).

6a. This Permit is issued based on this project not being subject to PSD for emissions of PM. In particular, the Permittee has submitted a demonstration comparing the past actual emissions from the existing operations and the projected future actual emissions that would occur after this project, showing that this project should be accompanied by decreases in annual emissions of PM.

~~b. The Permittee shall, for a period beginning with the first alteration of the control systems for the affected operations addressed by this permit and continuing for 10 years following resumption of regular operation after this project is completed, operate the source in such a manner that this project does not result in a significant increase in emissions of and qualify as a major modification for PM emissions.~~

~~c. The Permittee shall fulfill the relevant recordkeeping and reporting requirements of the PSD rules, 40 CFR 52.21(r)(6)(iii) and (iv), for the affected emissions units at this source and this project, to verify that the project has not resulted in a significant increase in PM emissions.~~

7a. i. The Permittee shall implement and maintain control measures for the affected operations, such as enclosures and dust extractors, that minimizes visible emissions of PM and provide assurance of compliance with the applicable emission standards in Conditions 3, 4, and 5.

ii. The Permittee shall operate and maintain each affected operation with the customary control measures identified in the records required in Condition 10(c).

b. Operation of the affected operations shall not begin until all associated air pollution control equipment has been constructed and is operational.

8a. i. The Permittee shall perform inspections of the affected operations at least once per month, including the associated control measures, while the affected operations are operating, to address compliance with the requirements of this permit. ~~These inspections shall be performed with supervisory personnel or other personnel not directly involved in the day-to day operation of the affected operation.~~

ii. The Permittee shall maintain records of the following for the above inspections:

A. Date and time the inspection was performed and *name(s)* of inspection personnel.

B. The observed condition of the established control measures for the affected operation~~, including the presence of any visible emissions or accumulations of coal fines in the vicinity of an operation~~.

C. A description of any maintenance or repair associated with the established control measures that are recommended as a result of the inspection and a review of outstanding recommendations for maintenance or repair from previous inspection(s), i.e., whether recommended action has been taken, is yet to be performed or no longer appears to be required.

D. A summary of the observed implementation or status of actual control measures as compared to the established control measures.

~~9a. i. The Permittee shall have the opacity of the emissions from the affected operations during representative weather and operating conditions determined by a qualified observer in accordance with USEPA Test Method 9, as further specified below.~~

~~A. For each affected operation, an initial performance test shall be conducted in accordance with 40 CFR 60.8 and 60.252 following installation of the new control equipment.~~

~~B. Following the initial performance test, periodic testing shall be conducted at least annually for each affected operation.~~

~~C. Upon written request by the Illinois EPA, testing of the affected operations shall be conducted within 45 calendar days of the request or on the date agreed upon by the Illinois EPA, whichever is later.~~

~~ii. A. The initial performance tests for opacity shall be conducted in accordance with 40 CFR 60.254.~~

~~B. For periodic testing, the duration of opacity observations shall be at least 30 minutes (five 6-minute averages) unless the average opacities for the first 12 minutes of observations (two six-minute averages) are both less than 10.0 percent.~~

~~iii. A. The Permittee shall notify the Illinois EPA at least 7 days in advance of the date and time of these tests, in order to allow the Illinois EPA to witness testing. This notification shall include the name(s) and employer(s) of the qualified observer(s).~~

~~B. The Permittee shall promptly notify the Illinois EPA of any changes in the time or date for testing.~~

~~iv. The Permittee shall provide a copy of its observer's readings to the Illinois EPA at the time of testing, if Illinois EPA personnel are present.~~

~~v. The Permittee shall submit a written report for this testing within 15 days of the date of testing. This report shall include:~~

~~A. Date and time of testing.~~

~~B. Name and employer of qualified observer.~~

~~C. Copy of current certification.~~

~~D. Description of observation condition, including recent weather.~~

~~E. Description of the operating conditions of the affected operations.~~

~~F. Raw data.~~

~~G. Opacity determinations.~~

~~H. Conclusions.~~

~~10a. The Permittee shall fulfill the applicable recordkeeping requirements of the NSPS, 40 CFR 60.7(b), for the affected operations subject to the NSPS, as identified in Condition 3(a).~~

b. The Permittee shall maintain records for the amount of coal handled, operating hours, or other measure of activity of each affected operation on a monthly and annual basis, which data is in the terms normally used by the Permittee to calculate actual emissions of each affected operation.

c. The Permittee shall keep the following file(s) and log(s) for the air pollution control equipment for the affected operations:

i. File(s) containing the following data for the equipment, with supporting information, which file(s) shall be kept up to date: 1) The design particulate matter control

efficiency or performance specification for particulate matter emissions, gr/dscf; 2) The maximum design emission rate, pounds particulate matter/hour, and 3) The applicable particulate matter emission factor normally used by the Permittee to calculate actual particulate matter emissions, if a factor other than the maximum hourly emission rate is normally used.

ii. Maintenance and repair log(s) for the control equipment, which log(s) shall list the activities performed on each item of equipment, with date and description.

d. The Permittee shall maintain records of the following for each incident when an affected operation operated without the customary control measures:

i. The date of the incident and identification of the affected operation that was involved.

ii. A description of the incident, including the customary control measures that were not present or implemented; the customary control measures that were present, if any; other control measures or mitigation measures that were implemented, if any~~; and the magnitude of the particulate matter emissions during the incident~~.

iii. The time at and means by which the incident was identified, e.g., scheduled inspection or observation by operating personnel.

iv. The length of time after the incident was identified that the affected operations continued to operate before customary control measures were in place or the operations were shutdown (to resume operation only after customary control measures were in place) and, if this time was more than one hour, an explanation why this time was not shorter, including a description of any mitigation measures that were implemented during the incident.

v. The estimated total duration of the incident, i.e., the total length of time that the affected operations ran without customary control measures and the estimated amount of material handled during the incident.

vi. A discussion of the probable cause of the incident and any preventative measures taken.

vii. ~~A discussion whether an applicable standard, as listed in Condition 3, 4, and 5 may have been violated during the incident, with an estimate of the amount of any additional or excess particulate matter emissions (pounds) from the incident, with supporting explanation.~~

e. Pursuant to 35 IAC 201.263, the Permittee shall maintain records, related to malfunction and breakdown for each affected operation that, at a minimum, shall include:

i. Maintenance and repair log(s) for the affected operation that, at a minimum, address aspects or components of such operations for which malfunction or breakdown has resulted in excess emissions, which shall list the activities performed on such aspects or components, with date, description and reason for the activity. In addition, in the maintenance and repair log(s), the Permittee shall also list the reason for the activities that are performed.

ii. Records for each incident when operation of an affected operation continued during malfunction or breakdown, including continued operation with excess emissions as addressed by Condition 3(a), that include the following information:

A. Date and duration of malfunction or breakdown.

B. A description of the malfunction or breakdown.

C. The corrective actions used to reduce the quantity of emissions and the duration of the incident.

D. Confirmation of fulfillment of the requirements of Condition 12(b)(i), as applicable, including copies of follow-up reports submitted pursuant to Condition 12(b)(i)(B).

E. If excess emissions occurred for two or more hours:

I. A detailed explanation why continued operation of the affected operation was necessary.

II. A detailed explanation of the preventative measures planned or taken to prevent similar malfunctions or breakdowns or reduce their frequency and severity.

III. An estimate of the magnitude of excess emissions occurring during the incident.

~~f. The Permittee shall maintain records of the PM/PM_{10} Emissions (tons/month and tons/year), from each affected operation consistent with Condition 6(b), with supporting calculations.~~

g. The Permittee shall keep records for any opacity observations performed by Method 9 that the Permittee conducts or are conducted at its behest, including name of the observer, date and time, duration of observation, raw data, results, and conclusion.

11. The Permittee shall retain all records required by this permit at the source for at least 5 years from the date of entry and these records shall be readily accessible to the Illinois EPA for inspection and copying upon request.

~~12a. The Permittee shall promptly notify the Illinois EPA of deviations from requirements of this permit for the affected operations, as follows. Such notifications shall include a~~

~~description of each incident and a discussion of the probable cause of deviation, any corrective actions taken, and any preventative measures taken.~~

~~i. Notification and reporting as specified in Condition 12(b)(i) for certain deviations from an applicable opacity standard.~~

~~ii. Notification within 30 days for operation of an affected operation without associated control equipment that continued for more than 12 operating hours from the time that it was identified. Such notifications shall be accompanied by a copy of the records for the incident required by Condition 10(g)(ii).~~

~~iii. A. Notification with the quarterly reports required by Condition 12(b)(ii) for other deviations, including deviations from applicable emission standards, inspection requirements and recordkeeping requirements.~~

~~B. With the quarterly report, the Permittee shall also address deviations that occurred during the quarter that have been separately reported to the Illinois EPA, with a summary of such deviations. For this purpose, the Permittee need not resubmit the detailed information provided in prior notifications and reports for such deviations.~~

b. Pursuant to 35 IAC 201.263, the Permittee shall provide the following notifications and reports to the Illinois EPA, concerning incidents when operation of an affected operation *continued with excess emissions*, including continued operation during malfunction or breakdown as addressed by Condition 3(b).

i. A. The Permittee shall immediately notify the Illinois *EPA's Regional Office*, by telephone (voice, facsimile or electronic) for each incident in which the opacity from an affected operation exceeds the applicable opacity standard for five or more consecutive 6-minute *averaging periods*. (*Otherwise, if opacity* during a malfunction or breakdown incident only exceeds or may have exceeded the applicable standard for no more than five consecutive 6-minute averaging periods, *the Permittee need only report the incident* in accordance with Condition 12(b)(ii).)

B. Upon conclusion of each incident that is two hours or more in duration, *the Permittee shall submit a* written follow-up notice to the Illinois EPA, Compliance Section and Regional Office, within 15 days providing a detailed description of the incident and its cause(s), an explanation why continued operation was necessary, the length of time during which operation continued under such conditions, the measures taken by the Permittee to minimize and correct deficiencies with chronology, and when the

repairs were completed or the affected operation was taken out of service.

ii. ~~The Permittee shall submit quarterly reports to the Illinois EPA that include the following information for incidents during the quarter in which the affected operation continued to operate during malfunction or breakdown with excess emissions.~~

~~A. A listing of such incidents, in chronological order, that includes: (1) the date, time, and duration of each incident, (2) the identity of the affected operation(s) involved in the incident, and (3) whether a follow-up notice was submitted for the incident pursuant to Condition 12(b)(i)(B), with the date of the notice.~~

~~B. The detailed information for each such incident required pursuant to Condition 12(a). For this purpose, the Permittee need not resubmit information provided in a prior report for an incident, as identified above, but may elect to supplement the prior submittal.~~

~~C. The aggregate duration of all incidents during the quarter.~~

~~D. If there have been no such incidents during the calendar quarter, this shall be stated in the report.~~

~~c. The Permittee shall fulfill applicable reporting requirements of the NSPS, 40 CFR 60.8, for affected operations subject to the NSPS.~~

13a. Unless otherwise specified in a particular condition of this permit or in the written instructions distributed by the Illinois EPA for particular reports, reports and notifications shall be sent to the Illinois EPA - Air Compliance Section with a copy sent to the Illinois EPA - Air Regional Field Office.

b. The current addresses of the offices that should generally be utilized for the submittal of reports and notifications are as follows:

i. Illinois EPA - Air Compliance Section

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

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

ii. Illinois EPA - Air Regional Field Office

Illinois Environmental Protection Agency
Division of Air Pollution Control
5415 North University Avenue
Peoria, Illinois 61614

Phone: 309/693-5461 Fax: 309/693-5467

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

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

Edwin C. Bakowski, P.E.
Acting Manager, Permit Section
Division of Air Pollution Control

ECB:CPR:KMP:psj

cc: Region 2

~~CH2\ 1751700.1~~
CH2\ 1751700.2

Illinois Environmental Protection Agency
Division of Air Pollution Control
5415 North University Avenue
Peoria, Illinois 61614

Phone: 309/693-5461 Fax: 309/693-5467

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Exhibit 5

NSPS
40 CFR 60.Subpart A (in part) and Subpart Y

Electronic Code of Federal Regulations (e-CFR)

e-CFR Data is current as of April 1, 2007

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Title 40: Protection of Environment

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES
Subpart A—General Provisions

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§ 60.2 Definitions.

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

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

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

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

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

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

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

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

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

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

Continuous monitoring system means the total equipment, required under the emission monitoring sections in applicable subparts, used to sample and condition (if applicable), to analyze, and to provide

a permanent record of emissions or process parameters.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Permit program means a comprehensive State operating permit system established pursuant to title V of

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

Permitting authority means:

(1) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under part 70 of this chapter; or

(2) The Administrator, in the case of EPA-implemented permit programs under title V of the Act (42 U.S.C. 7661).

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

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

(1) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the permitting authority's emissions inventory at the time of enactment;

(2) Was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(3) Is equipped with low-NO_X burners prior to the time of commencement of operations following reactivation; and

(4) Is otherwise in compliance with the requirements of the Clean Air Act.

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

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

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

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

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

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

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

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

State means all non-Federal authorities, including local agencies, interstate associations, and State-wide programs, that have delegated authority to implement: (1) The provisions of this part; and/or (2) the permit program established under part 70 of this chapter. The term State shall have its conventional meaning where clear from the context.

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

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

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

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

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Title 40: Protection of Environment

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES
Subpart A—General Provisions

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§ 60.14 Modification.

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

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

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

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

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

(d) [Reserved]

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

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

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

capital expenditure on that facility.

(3) An increase in the hours of operation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[40 FR 58419, Dec. 16, 1975, as amended at 43 FR 34347, Aug. 3, 1978; 45 FR 5617, Jan. 23, 1980;

57 FR 32339, July 21, 1992; 65 FR 61750, Oct. 17, 2000]

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Title 40: Protection of Environment

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES
Subpart Y—Standards of Performance for Coal Preparation Plants

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§ 60.251 Definitions.

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

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

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

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

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

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

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

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

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

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

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

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Section 508 / Accessibility

Last updated: February 19, 2007

Exhibit 6

PSD
40 CFR § 52.21(a)(2)(ii), (b)(2), and (r)(6)(iii)

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Title 40: Protection of Environment

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS
Subpart A—General Provisions

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§ 52.21 Prevention of significant deterioration of air quality.

(a)(1) *Plan disapproval.* The provisions of this section are applicable to any State implementation plan which has been disapproved with respect to prevention of significant deterioration of air quality in any portion of any State where the existing air quality is better than the national ambient air quality standards. Specific disapprovals are listed where applicable, in subparts B through DDD of this part. The provisions of this section have been incorporated by reference into the applicable implementation plans for various States, as provided in subparts B through DDD of this part. Where this section is so incorporated, the provisions shall also be applicable to all lands owned by the Federal Government and Indian Reservations located in such State. No disapproval with respect to a State's failure to prevent significant deterioration of air quality shall invalidate or otherwise affect the obligations of States, emission sources, or other persons with respect to all portions of plans approved or promulgated under this part.

(2) *Applicability procedures.* (i) The requirements of this section apply to the construction of any new major stationary source (as defined in paragraph (b)(1) of this section) or any project at an existing major stationary source in an area designated as attainment or unclassifiable under sections 107(d)(1)(A)(ii) or (iii) of the Act.

(ii) The requirements of paragraphs (j) through (r) of this section apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this section otherwise provides.

(iii) No new major stationary source or major modification to which the requirements of paragraphs (j) through (r)(5) of this section apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements. The Administrator has authority to issue any such permit.

(iv) The requirements of the program will be applied in accordance with the principles set out in paragraphs (a)(2)(iv)(*a*) through (*f*) of this section.

(*a*) Except as otherwise provided in paragraphs (a)(2)(v) and (vi) of this section, and consistent with the definition of major modification contained in paragraph (b)(2) of this section, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a significant emissions increase (as defined in paragraph (b)(40) of this section), and a significant net emissions increase (as defined in paragraphs (b)(3) and (b)(23) of this section). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(*b*) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (*i.e.*, the first step of the process) will occur depends upon the type of emissions units being modified, according to paragraphs (a)(2)(iv)(*c*) through (*f*) of this section. The procedure for

(*x*) Glass fiber processing plants;

(*y*) Charcoal production plants;

(*z*) Fossil fuel-fired steam electric plants of more that 250 million British thermal units per hour heat input, and

(*aa*) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

(2)(i) *Major modification* means any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase (as defined in paragraph (b)(40) of this section) of a regulated NSR pollutant (as defined in paragraph (b)(50) of this section); and a significant net emissions increase of that pollutant from the major stationary source.

(ii) Any significant emissions increase (as defined at paragraph (b)(40) of this section) from any emissions units or net emissions increase (as defined in paragraph (b)(3) of this section) at a major stationary source that is significant for volatile organic compounds or NO_X shall be considered significant for ozone.

(iii) A physical change or change in the method of operation shall not include:

(*a*) Routine maintenance, repair and replacement. Routine maintenance, repair and replacement shall include, but not be limited to, any activity(s) that meets the requirements of the equipment replacement provisions contained in paragraph (cc) of this section;

Note to paragraph(b)(2)(iii)(*a*): By court order on December 24, 2003, the second sentence of this paragraph (b)(2)(iii)(a) is stayed indefinitely. The stayed provisions will become effective immediately if the court terminates the stay. At that time, EPA will publish a document in theFederal Registeradvising the public of the termination of the stay.

(*b*) Use of an alternative fuel or raw material by reason of an order under sections 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plant pursuant to the Federal Power Act;

(*c*) Use of an alternative fuel by reason of an order or rule under section 125 of the Act;

(*d*) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(*e*) Use of an alternative fuel or raw material by a stationary source which:

(*1*) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR subpart I or 40 CFR 51.166; or

(*2*) The source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166;

(*f*) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR subpart I or 40 CFR 51.166.

(*g*) Any change in ownership at a stationary source.

(*h*) The addition, replacement, or use of a PCP, as defined in paragraph (b)(32) of this section, at an existing emissions unit meeting the requirements of paragraph (z) of this section. A replacement control

technology must provide more effective emission control than that of the replaced control technology to qualify for this exclusion.

(*i*) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(*1*) The State implementation plan for the State in which the project is located, and

(*2*) Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(*j*) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

(*k*) The reactivation of a very clean coal-fired electric utility steam generating unit.

(iv) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under paragraph (aa) of this section for a PAL for that pollutant. Instead, the definition at paragraph (aa)(2)(viii) of this section shall apply.

(3)(i) *Net emissions increase* means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(*a*) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to paragraph (a)(2)(iv) of this section; and

(*b*) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph (b)(3)(i)(*b*) shall be determined as provided in paragraph (b)(48) of this section, except that paragraphs (b)(48)(i)(*c*) and (b)(48)(ii)(*d*) of this section shall not apply.

(ii) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(*a*) The date five years before construction on the particular change commences; and

(*b*) The date that the increase from the particular change occurs.

(iii) An increase or decrease in actual emissions is creditable only if:

(*a*) The Administrator or other reviewing authority has not relied on it in issuing a permit for the source under this section, which permit is in effect when the increase in actual emissions from the particular change occurs; and

(*b*) The increase or decrease in emissions did not occur at a Clean Unit except as provided in paragraphs (x)(8) and (y)(10) of this section.

(iv) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

(v) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(vi) A decrease in actual emissions is creditable only to the extent that:

allowable increases over the baseline concentration and to assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less for more than 18 days, not necessarily consecutive, during any annual period:

Maximum Allowable Increase

[Micrograms per cubic meter]

Period of exposure	Terrain areas	
	Low	High
24-hr maximum	36	62
3-hr maximum	130	221

(q) *Public participation.* The Administrator shall follow the applicable procedures of 40 CFR part 124 in processing applications under this section. The Administrator shall follow the procedures at 40 CFR 52.21(r) as in effect on June 19, 1979, to the extent that the procedures of 40 CFR part 124 do not apply.

(r) *Source obligation.* (1) Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this section or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this section who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

(2) Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The Administrator may extend the 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

(3) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the State implementation plan and any other requirements under local, State, or Federal law.

(4) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements or paragraphs (j) through (s) of this section shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(5) [Reserved]

(6) The provisions of this paragraph (r)(6) apply to projects at an existing emissions unit at a major stationary source (other than projects at a Clean Unit or at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in paragraphs (b)(41)(ii)(*a*) through (*c*) of this section for calculating projected actual emissions.

(i) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(*a*) A description of the project;

(*b*) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(*c*) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph (b)(41)(ii)(*c*) of this section and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(ii) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in paragraph (r)(6)(i) of this section to the Administrator. Nothing in this paragraph (r)(6)(ii) shall be construed to require the owner or operator of such a unit to obtain any determination from the Administrator before beginning actual construction.

(iii) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in paragraph (r)(6)(i)(*b*) of this section; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity of or potential to emit that regulated NSR pollutant at such emissions unit.

(iv) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the Administrator within 60 days after the end of each year during which records must be generated under paragraph (r)(6)(iii) of this section setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(v) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the Administrator if the annual emissions, in tons per year, from the project identified in paragraph (r)(6)(i) of this section, exceed the baseline actual emissions (as documented and maintained pursuant to paragraph (r)(6)(i)(*c*) of this section), by a significant amount (as defined in paragraph (b)(23) of this section) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph (r)(6)(i)(*c*) of this section. Such report shall be submitted to the Administrator within 60 days after the end of such year. The report shall contain the following:

(*a*) The name, address and telephone number of the major stationary source;

(*b*) The annual emissions as calculated pursuant to paragraph (r)(6)(iii) of this section; and

(*c*) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

(7) The owner or operator of the source shall make the information required to be documented and maintained pursuant to paragraph (r)(6) of this section available for review upon a request for inspection by the Administrator or the general public pursuant to the requirements contained in §70.4(b)(3)(viii) of this chapter.

(s) *Environmental impact statements.* Whenever any proposed source or modification is subject to action by a Federal Agency which might necessitate preparation of an environmental impact statement pursuant to the National Environmental Policy Act (42 U.S.C. 4321), review by the Administrator conducted pursuant to this section shall be coordinated with the broad environmental reviews under that Act and under section 309 of the Clean Air Act to the maximum extent feasible and reasonable.

(t) *Disputed permits or redesignations.* If any State affected by the redesignation of an area by an Indian Governing Body, or any Indian Governing Body of a tribe affected by the redesignation of an area by a State, disagrees with such redesignation, or if a permit is proposed to be issued for any major stationary source or major modification proposed for construction in any State which the Governor of an affected State or Indian Governing Body of an affected tribe determines will cause or contribute to a cumulative change in air quality in excess of that allowed in this part within the affected State or Indian Reservation, the Governor or Indian Governing Body may request the Administrator to enter into negotiations with the parties involved to resolve such dispute. If requested by any State or Indian Governing Body involved, the Administrator shall make a recommendation to resolve the dispute and protect the air quality related values of the lands involved. If the parties involved do not reach agreement, the Administrator shall resolve the dispute and his determination, or the results of agreements reached through other means, shall become part of the applicable State implementation plan and shall be enforceable as part of such

Exhibit 7

Applicability Determination: 40 CFR 60.Subpart Y

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Determination Detail

Control Number: 0300127

Category: NSPS
EPA Office: Region 5
Date: 06/30/2003
Title: Applicability to Replacement of Individual Conveyors
Recipient: Frank Prager
Author: George Czerniak
Comments:

Subparts: Part 60, Y Coal Preparation Plants

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

Abstract:

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

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

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

A2: The NSPS General Provisions in Subpart A define affected facility as any apparatus

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

Letter:

6-30-03
(AE-17J)

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

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

Dear Mr. Prager:

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

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

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

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

In general, where EPA seeks to regulate a process as a whole, or seeks to define a process or certain objects as a whole, the NSPS regulations will refer to the objects in the collective, such as describing the objects or process as a "system" or a "facility," or will use the term "all" in describing those objects. For example, the NSPS Subpart Y

regulations designate "coal storage systems" and also "coal transfer and loading systems" as affected facilities, and defines them, respectively, as "any facility used to store coal" and as "any facility used to transfer and load coal for shipment." (Emphasis added.) Thus, under these designations, all coal storage equipment is treated collectively as one affected facility, and, correspondingly, all coal transfer and loading equipment used for shipping is treated collectively as one affected facility.

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

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

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

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

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

conveyors and processing equipment under a reconstruction or capital expenditure analysis.

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

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

Sincerely yours,

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

cc: Betsy Randt, MPCA

CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 9th day of April, 2007, I have served electronically the attached **APPEAL OF CONSTRUCTION PERMIT** and **APPEARANCES OF SHELDON A. ZABEL, KATHLEEN C. BASSI, STEPHEN J. BONEBRAKE, and ANDREW N. SAWULA**, 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, postage affixed, upon:

Illinois Environmental Protection Agency
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