

ILLINOIS POLLUTION CONTROL BOARD
May 3, 2007

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|------------------------------|---|----------------------|
| MIDWEST GENERATION, LLC – |) | |
| POWERTON GENERATING STATION, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | PCB 07-101 |
| |) | (Permit Appeal -Air) |
| ILLINOIS ENVIRONMENTAL |) | |
| PROTECTION AGENCY, |) | |
| |) | |
| Respondent. |) | |

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

On April 9, 2007, Midwest Generation, LLC – Powerton Generating Station (Midwest) timely filed a petition (Pet.) asking the Board to review a March 5, 2007 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2000); 35 Ill. Adm. Code 105.206(a). The Agency issued a construction permit with conditions for Midwest’s electric generating station at 13082 Manito Road in Pekin, Tazewell County. In addition, Midwest seeks a partial stay encompassing specified conditions in the construction permit.

PETITION FOR REVIEW

Midwest appeals on the grounds that the Agency is imposing through a construction permit conditions that have been appealed in a CAAPP permit appeal before the Board’s determination on those conditions. Pet. at 5, 6-7; *see Midwest Generation, LLC – Powerton Generating Station v. IEPA*, PCB 06-59. Midwest also appeals on the grounds that the Agency is inappropriately imposing New Source Performance Standards for Coal Handling through the construction permit. Pet. at 5, 10-12; *see* 40 C.F.R. 60.Subpart Y. Midwest also appeals on the grounds that the Agency is imposing requirements that are related to, but not required or authorized by, Prevention of Significant Deterioration regulations. Pet. at 5, 12-14; *see* 40 C.F.R. 52.21. Midwest’s petition meets the content requirements of 35 Ill. Adm. Code 105.210. The Board accepts the petition for hearing.

Midwest has the burden of proof. 415 ILCS 5/40(a)(1) (2004); *see also* 35 Ill. Adm. Code 105.112(a). Hearings “will be based exclusively on the record before the Agency at the time the permit or decision was issued.” 35 Ill. Adm. Code 105.214(a). Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2004)), which only Midwest may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Midwest “may deem the permit issued.” 415 ILCS 5/40(a)(2) (2004). Currently, the decision deadline is August 7, 2007. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for July 26, 2007.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by Wednesday, May 9, 2007, which is 30 days after Midwest filed the petition. 35 Ill. Adm. Code 105.212(a). If the Agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed. 35 Ill. Adm. Code 105.116. The record must comply with the content requirements of 35 Ill. Adm. Code 105.212(b).

REQUEST FOR PARTIAL STAY

Midwest argues that, “[h]istorically, the Board has granted partial stays in permit appeals where a petitioner has so requested.” Pet. at 4 (citations omitted). Stressing the risk that it will suffer irreparable harm and that the environment will not benefit from improved pollution control, Midwest asks “that the Board exercise its inherent discretionary authority to grant a partial stay of the construction permit” Pet. at 5. Specifically, Midwest seeks to stay only certain portions of Conditions 3, 6(b), 6(c), 8(a)(i), 8(a)(ii)(B), 9, 10(a), 10(d)(ii), 10(d)(vii), 10(f), 12(a), 12(b)(ii), and 12(c), as indicated in Exhibit 4 filed with its petition. Pet. at 5, *see* Pet., Exh. 4. Midwest claims that “[t]he 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.” Pet. at 4. Midwest further claims that the Board has similarly stayed conditions in the recent past. Pet. at 5, citing Midwest Generation, LLC – Will County Generating Station v. IEPA, PCB 06-156, slip op. at 6 (July 20, 2006). Alternatively, Midwest requests, “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,” that the Board stay the conditions listed above in their entirety. Pet. at 5.

Section 101.500(d) of the Board’s procedural rules provides that, “[w]ithin 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing office in its disposition of the motion.” 35 Ill. Adm. Code 101.500(d). The Agency has filed no response to Midwest’s request for a partial stay.

In Community Landfill Co. and City of Morris v. IEPA, PCB 01-48, 01-49, slip op. at 4 (Oct. 19, 2000), the Board found “that it has the authority to grant discretionary stays from permit conditions.” The Board noted it “has previously granted or denied discretionary stays in permit appeals, both when the Agency did and did not consent to such stays.” *Id.* The Board elaborated that “[t]he permit appeal system would be rendered meaningless in many cases, if the Board did not have the authority to stay permit conditions.” *Id.*

The Board has reviewed Midwest’s Exhibit 4, entitled “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 Pendency of this Appeal.” Pet., Exh. 4. The Board notes that Exhibit 4 strikes all or part of Conditions 3, 6(b), 6(c), 8(a)(i), 8(a)(ii)(B), 9, 10(a), 10(d)(ii), 10(d)(vii), 10(f), 12(a), 12(b)(ii), and 12(c) of Midwest’s construction permit. *See id.* On the basis of that review and consideration, and in the absence of

any response to the request from the Agency, the Board grants Midwest's request for a stay of the contested conditions in its construction permit, as those contested conditions are reflected in the edited permit filed as Exhibit 4 to Midwest's petition for review and request for stay. The partial stay remains in effect until the Board takes final action on the construction permit appeal, or until the Board orders otherwise.

The edited permit filed as Exhibit 4 to Midwest's petition for review and request for stay indicates the scope of the partial stay granted by the Board as plainly as any summary the Board might provide. Accordingly, the Board incorporates that document into this order. For the parties' convenience, that document is attached to this order below as Attachment A.

Attachment A

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.: 179601AAA

Applicant's Designation:
2006

Date Received: December 4,

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.~~
 - ~~e. 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 soot 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 60.3 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/PM₁₀ 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)(iii).~~
 - ~~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

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 3, 2007, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board