

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MIDWEST GENERATION, LLC –)	
WAUKEGAN GENERATING STATION,)	
)	
Petitioner,)	
)	
v.)	PCB 08-_____
)	(Permit Appeal – Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

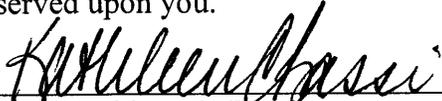
NOTICE OF FILING

To:

John Therriault, Assistant 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 FOR THE INSTALLATION OF ACTIVATED CARBON INJECTION SYSTEMS AND REQUEST FOR PARTIAL STAY OF THE PERMIT and APPEARANCES OF SHELDON A. ZABEL, KATHLEEN C. BASSI, and STEPHEN J. BONEBRAKE**, copies of which are herewith served upon you.



 Kathleen C. Bassi

Dated: August 27, 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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 WAUKEGAN GENERATING STATION,)
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 Petitioner,)
)
 v.)
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

PCB 08-_____
(Permit Appeal – Air)

APPEARANCE

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



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APPEARANCE

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



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APPEARANCE

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



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**APPEAL OF CONSTRUCTION PERMIT FOR THE INSTALLATION OF
ACTIVATED CARBON INJECTION SYSTEMS AND
REQUEST FOR PARTIAL STAY OF THE PERMIT**

NOW COMES Petitioner, MIDWEST GENERATION, LLC – WAUKEGAN 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 permit¹ issued to Petitioner on July 19, 2007, 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). Petitioner received the construction permit on July 23, 2007. *See* Exhibit 1. 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 to appeal the first paragraph of the permit and Conditions 1(a), 1(b)(ii), 2(a), 2(a) Note, 4, 5 (except for Conditions 5(b)(ii) and 5(d)), and 6, Petitioner states as follows:

¹ Application No. 07050007.

I. BACKGROUND
(35 Ill. Adm. Code § 105.304(a))

1. The Waukegan Generating Station (“Waukegan” or the “Station”), Agency I.D. No. 097190AAC, is an electric generating station owned by Midwest Generation, LLC, and operated by Midwest Generation, LLC – Waukegan Generating Station. The electrical generating units (“EGUs”) at the Waukegan Station went online between 1952 and 1962. The Waukegan Generating Station is located at 401 East Greenwood Avenue, Waukegan, Illinois 60087-5197, within the Chicago ozone and PM_{2.5}² nonattainment areas. Waukegan is an intermediate load plant and can generate approximately 781 net megawatts. Midwest Generation employs approximately 189 people at the Waukegan Generating Station.

2. Midwest Generation operates three coal-fired boilers at Waukegan with the capability to fire at various modes that include the combination of coal, natural gas, and/or fuel oil as their principal fuels. In addition, the boilers fire natural gas or fuel oil as auxiliary fuel during startup and for flame stabilization. Certain alternative fuels, such as used oils generated on-site, may be utilized as well. Waukegan also operates associated coal handling, coal processing, and ash handling activities. In addition to the boilers, Waukegan operates four oil-fired turbines, used during peak demand periods.

3. Relevant to this appeal, particulate matter (“PM”) emissions from each boiler are controlled by an electrostatic precipitator (“ESP”). The Waukegan Station also emits sulfur dioxide, carbon monoxide, nitrogen oxides, and minimal amounts of volatile organic compounds, all controlled pursuant to applicable requirements. Emissions of these pollutants are not an issue in this appeal.

² Particulate matter less than 2.5 microns in aerodynamic diameter.

4. Waukegan 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 Waukegan on September 29, 2005. Subsequently, on November 2, 2005, Midwest Generation timely appealed the CAAPP permit for Waukegan at PCB 06-146. 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), the CAAPP permit is stayed, upon appeal, as a matter of law. Order, *Midwest Generation, LLC, Waukegan Generating Station v. Illinois Environmental Protection Agency*, PCB 06-146 (February 16, 2006), p. 2.

5. On March 14, 2006, the Agency submitted a proposed rulemaking to the Board, “In the Matter Of: Proposed New 35 Ill.Adm.Code 225 Control of Emissions from Large Combustion Sources,” docketed at R06-25 (“the mercury rule”). The Board adopted this rule on December 21, 2006. The mercury rule includes some provisions in Subpart A of Part 225 and all of Subpart B of Part 225.

6. On May 22, 2006, the Agency submitted a proposed rulemaking to the Board, “In the Matter of: Proposed New CAIR SO₂, CAIR NO_x Annual and CAIR NO_x Ozone Season Trading Programs, 35 Ill.Adm.Code 225, Control of Emissions from Large Combustion Sources, Subparts A, C, D, and E,” docketed at R06-26 (“CAIR”). On January 5, 2007, the Agency and Midwest Generation filed a joint comment in this rulemaking describing an agreement they reached regarding mercury control and purporting to set forth the substance of their agreement to add Subpart F to Part 225 (“Subpart F”).³ R06-26, PC # 9. Subsequently, on January 10, 2007,

³ Note that the Board’s website docket does not include substantive, regulatory language for Subpart F at PC # 9.

the Agency and Midwest Generation filed a joint comment providing the regulatory language for Subpart F, including amendments to that language. R06-26, PC # 11. On April 19, 2007, the Board proceeded to First Notice on the CAIR, including Subpart F. On June 25, 2007, Midwest Generation submitted comments on the First Notice CAIR, including requested revisions to Subpart F. R06-26, PC # 14. On July 26, 2007, the Board ordered the rule to Second Notice, including Subpart F with minor amendments. R06-26, Board Order (July 26, 2007). However, these rules were not adopted as of the date of issuance of the construction permit, and to date, the Board has not finally adopted either the proposed amendments to Part 225, Subpart A, or new Subparts C, D, E, or F.

7. Prior to final adoption of Subpart F, there were no requirements pursuant to Subpart F that are applicable to Midwest Generation. Pursuant to 35 Ill. Adm. Code § 225.240(b)(1), Midwest Generation must certify compliance of its mercury monitoring system by January 1, 2009, and it must comply with the mercury emission reduction standards by July 1, 2009 (35 Ill. Adm. Code § 225.230(a)(1)). If Midwest Generation chooses to opt in to Subpart F, it must notify the Agency of its intention by December 31, 2007. R06-26, Board Order, p. 130, § 225.610.

8. The Agency received Midwest Generation's application for the construction permit on May 3, 2007. Midwest Generation required the construction permit so that it could install the equipment necessary to store activated carbon and to inject the activated carbon into the emissions streams of Waukegan's Units 7 and 8 boilers. The construction permit contains conditions that Midwest Generation believes are incomplete, exceed the scope of the Agency's authority, or are otherwise inappropriate, as detailed *infra*.

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

9. 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 Waukegan 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, Waukegan Generating Station v. Illinois Environmental Protection Agency*, PCB 06-146 (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) (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).

10. Midwest Generation will suffer irreparable harm and the environment will not receive the benefit of the pollution control facilitated by the activated carbon injection (“ACI”) system if Midwest Generation is not allowed to construct and operate the ACI systems for Units

7 and 8 at the Waukegan Generating Station. Midwest Generation's request for stay of the contested language would provide the necessary and appropriate authorizations to install and operate the ACI equipment in a manner to protect the environment while allowing Midwest Generation to pursue its rights of appeal under Section 40(a) of the Act.

11. 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 Conditions or portions of Conditions 1(b)(ii), 2(a), 2(a) Note, 4, 5(a), 5(b), 5(b)(i), 5(c), and 6 as indicated in Exhibit 2. 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 2, 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))

12. The issues on appeal fall into several categories. The description of the scope of the permit is incomplete with regard to failure of the permit to explicitly describe the activated carbon storage and handling systems that are part of the request for the construction permit. The scope of the requirements included in some conditions is inappropriate because they exceed the scope of the application for the permit. The Agency appears to confuse the scope of this construction permit with the requirement of a source subject to the mercury rule to apply for an amendment to its CAAPP permit to incorporate the applicable requirements of the mercury rule. A third category of issues is the timing of requirements contained in some of the conditions of the permit. The permit requires instantaneous compliance even though Midwest Generation is under no obligation to operate the ACI systems unless it opts in to the Combined Pollutant Standards of Subpart F of Part 225, which this permit does not and cannot require it to do. Another category of issues relates to the actual requirements contained in the conditions; that is,

Midwest Generation objects to the inclusion of the requirement at all rather than merely requesting that the Agency clarify or refine the condition. The final category of issue on appeal is relative to CAAPP permitting.

A. The Description of the Scope of the Permit Is Incomplete – First Paragraph and Condition 1(a).

13. The description of the scope of the permit contained in the first paragraph of the permit and I Condition 1 is insufficient because it does not include the activated carbon handling and storage systems, though subsequent language in the permit implies that they are included within the authorization to construct. That is, these paragraphs announce that the permit is a construction permit (“Permit is hereby granted to the above-designated Permittee to CONSTRUCT. . . .” (Exhibit 1, first paragraph)). Then the first paragraph describes what the Permittee is authorized to construct: “equipment consisting of a sorbent injection system.” Exhibit 1, first paragraph. Additionally, Condition 1(a) provides information regarding what the permit authorizes the Permittee to construct: “This Permit authorizes construction of sorbent injection systems for each of the existing coal-fired boilers for Units 7 and 8. . . .” Exhibit 1, Condition 1(a).

14. However, these descriptions do not clearly define the full scope of what Midwest Generation seeks to install and operate. It is unclear whether the ACI systems as described in the permit include the activated carbon storage and handling systems. The Agency acknowledges the storage and handling systems in Condition 1(b), where it refers to the “storage and handling of sorbent for the sorbent injection systems.” Condition 1(b)(ii). (Emphasis added.) That these are “for” the sorbent injection system implicitly acknowledges that the storage and handling systems are ancillary to the sorbent injection systems. The inclusion of an emissions limitation

at Condition 1(b)(ii) implies that the Agency intends the construction permit to include construction of the storage and handling systems as well as the sorbent injection systems.

15. One could argue that the activated carbon storage and handling systems are included in the “sorbent injection system[s],” as it would be impossible for Midwest Generation to inject sorbent without the storage and handling systems. On the basis of that interpretation and the implications of the language in Condition 1(b)(ii), Midwest Generation will proceed with construction and operation of the storage and handling systems ancillary to the sorbent injection systems but requests that the Board require the Agency to clarify either that the “sorbent injection system[s]” include the storage and handling systems or to specifically add reference to the storage and handling systems to the permit.

16. Although Midwest Generation hereby appeals the first paragraph and Condition 1(a) of the permit, Midwest Generation does not seek a stay of any portion of the first paragraph or Condition 1(a) of the permit.

B. The Agency Has Inappropriately Included Conditions Whose Only Purpose Is to Effectuate the Mercury Rule – Conditions 2(a), 2(a) Note, 4(a), 5(a), and 5(c).

17. The Agency has included a number of conditions that bear no direct relationship to the construction and operation of ACI systems. Specifically, Condition 2(a) requires compliance with the mercury emissions limitations of Part 225, Subpart B or F; Condition 4(a) requires compliance with “all applicable requirements of 35 IAC Part 225”; Condition 5(a) requires Midwest Generation to maintain records relative to the mercury content of the coal supply; and Condition 5(c) requires records regarding mercury emissions. There are no applicable requirements relevant to this permit that authorize the Agency to include these conditions in this permit. Subpart B requires a source subject to the mercury rule to submit an application to modify its CAAPP permit to include the requirements applicable to the mercury

rule; it does not provide for implementation of the mercury rule through a construction permit.
See 35 Ill.Adm.Code § 225.220.

18. The purpose of this permit is to authorize the construction and operation of the ACI systems and the related storage and handling systems. While use of these systems will allow Midwest Generation to reduce its mercury emissions, use of ACI systems is not required by the mercury rule; it is required by Subpart F. However, the applicability of Subpart F is dependent upon Midwest Generation formally notifying the Agency that it intends to comply with the mercury limits pursuant to Subpart F. The Agency notes that the “Permittee expects that it will comply with . . . Subpart F. . . .” Condition 2(a) Note. Midwest Generation has not formally notified the Agency of its. Moreover, at the time that this permit was issued, there was not yet an applicable basis for Midwest Generation to notify the Agency of its intentions, because Subpart F had not been adopted by the Board. Subpart F was adopted by the Board on August 23, 2007, only a couple of days before this appeal was filed.

19. The installation and operation of ACI systems do not, in and of themselves, require the imposition of mercury limitations. Therefore, the inclusion of mercury limitations in Condition 2(a) is inappropriate and arbitrary and capricious and should be deleted from the permit. Midwest Generation requests that Condition 2(a) be stayed, as set forth in Exhibit 2, during the pendency of this appeal.

20. Likewise, the requirement of Condition 2(a) Note that Midwest Generation comply with the provisions of Subpart F are beyond the scope of the Agency’s authority relative to this permit. Construction and installation of ACI systems do not trigger the applicability of either Subpart B or Subpart F. Condition 2(a) Note is arbitrary and capricious, and Midwest Generation request that the Board order the Agency to delete it from the permit. Midwest

Generation requests that the Board stay the effectiveness of Condition 2(a) Note, as set forth in Exhibit 2, during the pendency of this appeal.

21. Condition 4(a) is also an expansion of the scope of a simple construction permit authorizing the installation of ACI systems. From that request, the Agency leapt to requiring that Midwest Generation comply with all applicable requirements of Part 225 related to monitoring mercury emissions. Monitoring mercury emissions is not directly related to constructing and operating ACI systems. That is, the construction and operation of an ACI system does not necessarily lead to a requirement to monitor mercury emissions. Rather, that requirement is a function of implementation of the mercury rule. Condition 4(a) is inappropriate and arbitrary and capricious and should be deleted from the permit. Midwest Generation requests that the Board stay the effectiveness of Condition 4(a), as set forth in Exhibit 2, during the pendency of this appeal.

22. Condition 5(a) exceeds the Agency's authority. Condition 5(a) requires the Permittee to maintain records regarding the amounts of mercury in its coal supply. Even if Midwest Generation were to concede that monitoring mercury emissions were appropriate, the broad, general requirement stated in Condition 5(a) for Midwest Generation to sample its coal supply for mercury content and keep records thereof is inappropriate and arbitrary and capricious because measuring mercury in the coal supply is required under the mercury rule only if the Permittee chooses to demonstrate compliance pursuant to Section 225.230(a)(1)(B), the requirement for a 90% reduction from input mercury. If the Permittee chooses to comply with Section 225.230(a)(1)(A), on the other hand, there is no requirement in the mercury rule that the Permittee monitor the mercury content of its coal supply.

23. Additionally, the phrase “current coal supply” in Condition 5(a)(ii) is ambiguous. It could refer to the supply of coal at the Station at the time the permit is issued. The level of mercury in the supply of coal at the Waukegan Station on July 19, 2007, is irrelevant in terms of compliance with the mercury rule emissions limits. In the alternative, it could refer to some other period of time, though what that period of time is is not apparent.

24. Condition 5(a) is arbitrary and capricious, exceeds the scope of the Agency’s authority, and should be deleted from the permit. If the Board determines that Condition 5(a) should remain in the permit, then Midwest Generation requests that the Board order the Agency to include qualifying language in Condition 5(a) that restricts the applicability of the condition to only those times that the Permittee relies on Section 225.230(a)(1)(B) to comply with the emissions limitations of the mercury rule. Midwest Generation requests that the Board stay the effectiveness of Condition 5(a), as set forth in Exhibit 2, during the pendency of this appeal.

25. Condition 5(c)(i) requires maintenance of “all applicable records required by 35 IAC Part 225, by the dates specified in the rules, related of [SIC] monitoring mercury emissions.” As discussed above, construction and installation of an ACI system does not trigger a requirement to comply with the mercury rule. Condition 5(c)(i) is arbitrary and capricious and should be deleted from the permit. Midwest Generation requests that the Board stay Condition 5(c)(i), as set forth in Exhibit 2, during the pendency of this appeal.

26. Condition 5(c)(ii) is particularly unacceptable. Here the Agency requires the Permittee to “maintain records of any mercury emission data collected for the affected boilers” “[d]uring the period before the Permittee is required to conduct monitoring for mercury emissions . . . pursuant to 35 IAC Part 225.” Exhibit 1, Condition 5(c)(ii). (Emphasis added.) There is no authority for the Agency to require such monitoring and recordkeeping. Requesting

such information through a permit is inappropriate. There is no provision in the Act or any of the applicable regulations that authorizes the Agency to include conditions in permits merely to aid the Agency in gathering data not otherwise required. Condition 5(c)(ii) is arbitrary and capricious, not based upon any applicable requirements, and beyond the scope of the Agency's authority to require. It should be deleted from the permit, and Midwest Generation requests that the Board stay the effectiveness of Condition 5(c)(ii), as set forth in Exhibit 2, during the pendency of this appeal.

C. The Agency Has Inappropriately Failed to Include Language Specifying Compliance Dates for Certain Conditions Consistent with Applicable Requirements – First Paragraph of Condition 5(b) and Condition 5(b)(i).

27. The ultimate purpose of the ACI systems that Midwest Generation seeks to install is to reduce emissions of mercury from Waukegan Units 7 and 8. In order to comply with the deadlines contained in the mercury rule, Midwest Generation must begin the process of installation, shakedown, and testing prior to the compliance date. Because of the number of ACI systems that must be installed across Midwest Generation's fleet and because of the timing of planned outages, Midwest Generation must proceed now, nearly two years prior to the compliance date of July 1, 2009 (§ 225.230(a)(1)) – or even before final adoption of Subpart F, which establishes a July 2008 compliance date for Midwest Generation – should it choose to opt in to the provisions of Subpart F.

28. Nevertheless, the dates by which sources must comply with the requirements of either the mercury rule or Subpart F are established by the rules. A source cannot be required by a permit to comply with an emissions limitation or other requirements prior to the compliance dates established in the relevant rule. Yet the Agency attempts through this permit to require

compliance with mercury provisions prior to the dates in the rules, apparently simply because Midwest Generation has sought to install and operate the ACI systems.

29. Condition 5(b)(i) requires Midwest Generation to maintain records regarding the sorbent being used, the settings for the sorbent injection rate, and each period of time when both the boilers and sorbent injection were being used. As discussed above, the use of sorbent is required by the mercury rule only if Midwest Generation opts in to Subpart F, and notification of its intentions in that regard are not due until the end of this year. To the extent that Subpart F is the applicable requirement underlying Condition 5(b)(i), the provisions of this condition are premature absent qualifying language tying the requirements to Subpart F. Midwest Generation understand and expects that the Agency would require records and reporting of sorbent use as they relate to emissions of PM. However, Condition 5(b)(i) is more specific than that by requiring, for example, the brand of the sorbent used, which is a function of Subpart F.

30. Moreover, a phrase in Condition 5(b)(i) addresses records for the period of time when the ACI systems are not operated. Nothing requires that Midwest Generation operate the ACI systems unless and until it notifies the Agency that it is opting in to Subpart F. Until that time, there is no applicable requirement that underlies this condition.

31. Therefore, the condition is arbitrary and capricious because there is no underlying applicable requirement for it. The last phrase of Condition 5(b)(i), “and each period of time when an affected boiler was in operation without the system being operated with explanation, e.g., the boiler was being fired on natural gas,” should be deleted from the permit.

32. The first paragraph of Condition 5(b) and Condition 5(b)(i) are arbitrary and capricious and should be deleted from the permit. Midwest Generation requests that the Board order the Agency to delete the first paragraph of Condition 5(b) and Condition 5(b)(i). Midwest

Generation requests that the Board stay the effectiveness of the first paragraph of Condition 5(b) and of Condition 5(b)(i), as set forth in Exhibit 2, during the pendency of this appeal.

D. The Requirements of Some Conditions Are Not Acceptable – Conditions 1(b)(ii), 4(b), and 5(b)(i).

33. Condition 1(a)(ii) establishes a PM emissions limitation of 0.44 tons/year from the activated carbon storage and handling systems. There will be two activated storage and handling systems constructed and operated pursuant to this permit, one for each unit. The language of the condition states that the limitation of 0.44 tons/year applies to both systems, yet in other permits that the Agency has issued for ACI systems, this limitation has applied to single storage and handling systems. *C.f.*, Appeal of Construction Permit, Exhibit 1, Condition 1(b)(ii) PCB 08-018 (August 23, 2007) (Midwest Generation/Fisk Generating Station), incorporated by reference herein for the limited purpose of demonstrating the inconsistency in emissions limitations applicable to ACI storage and handling systems. The Fisk permit is for a single ACI system connected to a single boiler. There will be one activated carbon and storage and handling system for the Fisk ACI system, and yet the PM emissions limitation for Waukegan, with two storage and handling systems, is the same as the one for Fisk: 0.44 tons/year.

34. Midwest Generation requests that the Board order the Agency to classify the emissions from the activated carbon storage and handling system as insignificant in Condition 1(b)(ii). The Agency provided that the storage and handling of sorbent is an insignificant activity in the construction permit issued to Dynegy Midwest Generation's Havana Power Station. *See* Appeal of Construction Permit, Exhibit 1, Condition 1.1(b)(ii), PCB 07-115 (August 22, 2007) (Dynegy/Havana Power Station), incorporated by reference herein for the limited purposes of demonstrating inconsistency in treatment of emissions limitations for ACI storage and handling systems.

35. Additionally, Condition 1(b)(ii) requires the Permittee to comply with “all applicable requirements of 35 Ill.Adm.Code Part 212 that apply to the storage and handling of sorbent.” (Condition 1(b)(ii)). Part 212 does not address the storage and handling of sorbent.

36. For the reasons set forth above, Midwest Generation requests that the last two sentences of Condition 1(b)(ii) be deleted from the permit as they are arbitrary and capricious. Further, Midwest Generation requests that they be stayed, as set forth in Exhibit 2, during the pendency of this appeal.

37. Conditions 4(b) and 5(b)(i) suggest that the Agency misunderstands the manner in which Midwest Generation will control the amount of activated carbon that will be injected into the flue gas. Injection of the activated carbon into the flue gas will be computerized. The computer will monitor appropriate parameters and will calculate and cause to be injected the appropriate amount of activated carbon on an on-going basis. There are no manual controls of the carbon injection rates and no remote control of the carbon injection rates from the control room, as implied by Condition 4(b). The “setting,” required by Condition 5(b)(i), is the 5 lb/macf or whatever the applicable regulation requires. For these reasons, Conditions 4(b) and 5(b)(i) are inappropriate and should be deleted from the permit. Midwest Generation requests that the Board order the Agency to delete Conditions 4(b) and 5(b)(i) and that it stay these conditions, as set forth in Exhibit 2, during the pendency of this appeal.

E. Midwest Generation Objects to the Inclusion of Deviation Reporting – Condition 6.

38. Condition 6 requires deviation reporting. Deviation reporting is a function of CAAPP permitting. *See* 415 ILCS 5/39.5(7)(f)(ii). It is not a requirement found in the permitting requirements of Section 39 of the Act (415 ILCS 5/39) or the construction permitting regulations of 35 Ill.Adm.Code Part 201, the provisions of the Act and regulations under which this permit was issued. While the pertinent provisions of this construction permit will eventually be rolled in to Waukegan’s CAAPP permit, the construction permitting rules do not provide for

deviation reporting prior to inclusion of the pertinent provisions in the CAAPP permit. Although this construction permit will, indeed, serve as an operating permit for the ACI systems until such time as the pertinent provisions are transferred to the CAAPP permit, this construction permit is not a CAAPP permit. It is not subject to any of the CAAPP requirements for permitting.

Midwest Generation acknowledges that some of the permitting procedures applicable under Part 201 may be the same or similar to some of the CAAPP permitting procedures. However, such similarities or overlaps do not imply that Part 201 permitting is the same as CAAPP permitting in terms of the types of requirements that can be included in the Part 201 permits.

39. The Agency has exceeded the scope of its authority under the Act and the applicable regulations by requiring deviation reporting in this construction permit. For these reasons, Midwest Generation requests that the Board order the Agency to delete Condition 6 from the permit and that it stay the effectiveness of Condition 6, as set forth in Exhibit 2, during the pendency of this appeal.

WHEREFORE, for the reasons set forth above, Midwest Generation appeals the first paragraph of the permit and Conditions 1(a), 1(b)(ii), 2(a), 2(a) Note, 4, 5 (except for Conditions 5(b)(ii) and 5(d)), and 6 of the construction permit issued July 19, 2007, for the Waukegan Generating Station. Additionally, Midwest Generation requests that the Board stay all or the portions of Conditions 1(b)(ii), 2(a), 2(a) Note, 4, 5(a), 5(b), 5(b)(i), 5(c), and 6, as set forth in Exhibit 2. Midwest Generation will comply with relevant monitoring, recordkeeping, and

reporting requirements of Part 225, Subpart B and/or Subpart F, as applicable, at the time they become applicable, during the pendency of this appeal.

Respectfully submitted,

MIDWEST GENERATION, LLC –
WAUKEGAN GENERATING STATION

by:



One of Its Attorneys

Dated: August 27, 2007

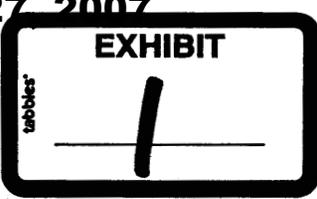
SCHIFF HARDIN, LLP
Sheldon A. Zabel
Kathleen C. Bassi
Stephen J. Bonebrake
6600 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
312-258-5500
Fax: 312-258-2600
kbassi@schiffhardin.com

EXHIBIT LIST

Exhibit No.

- 1 Construction Permit issued to the Waukegan Generating Station July 19, 2007
- 2 Waukegan Construction Permit, redlined to indicate the specific language Midwest Generation requests be stayed

CH2\2026130.1



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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

ROD R. BLAGOJEVICH, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

217/782-2113

RECEIVED

JUL 23 2007

CONSTRUCTION PERMIT

PERMITTEE

ENVIRONMENTAL SERVICES

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

MIDWEST GENERATION EME, LLC

Application No.: 07050007

I.D. No.: 097190AAC

Applicant's Designation:

Date Received: May 3, 2007

Subject: Sorbent Injection Systems for Units 7 and 8

Date Issued: July 19, 2007

Location: Waukegan Generating Station, 401 East Greenwood Avenue, Waukegan, 60087

Permit is hereby granted to the above-designated Permittee to CONSTRUCT equipment consisting of a sorbent injection system to control mercury emissions for each of the Unit 7 and 8 boilers, 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 construction of sorbent injection systems for each of the existing coal-fired boilers for Units 7 and 8 (affected boilers). The new sorbent injection systems would control mercury emissions by injecting sorbent, i.e., halogenated activated carbon, into the flue gas from these existing coal-fired boilers prior to the electrostatic precipitators (ESPs) for each affected boiler.
- b. i. This permit is issued based on this project being an emissions control project, whose purpose and effect will be to reduce emissions of mercury from the existing coal-fired boilers and which will not significantly increase emissions of other PSD pollutants. As such, the terms and conditions of the existing permits will continue to govern emissions and operation of the boilers except as specifically indicated.
- ii. This permit is issued based on negligible particulate matter (PM) emissions from the storage and handling of sorbent for the sorbent injection systems. For this purpose emissions shall not exceed 0.44 tons/year. However Permittee shall comply with all applicable requirements of 35 Ill. Adm. Code Part 212 that apply to the storage and handling of sorbent.
- c. This permit does not authorize any modifications to the affected boilers or generating units, which would increase capacity or potential emissions.
- 2a. The Permittee shall comply with applicable emission standards and requirements related to mercury emissions for the affected boilers pursuant to 35 IAC Part 225, Subpart B and/or Subpart F, by the applicable dates specified by these rules.

Page 2

Note: The Permittee expects that it will comply with certain provisions of 35 IAC Part 225, Subpart F, which is still proposed, as an alternative to compliance with 35 IAC Part 225, Subpart B. If the Permittee elects to comply with 35 IAC Part 225, Subpart F, certain provisions of subpart B would not be applicable, and the provisions of Subpart F would set the dates when certain other requirements do become applicable.

- b. This permit does not affect the authorizations in existing operating permits for the affected boilers, pursuant to 35 IAC 201.149, 201.161 and 201.262, that allow the Permittee:
 - i. To operate an affected boiler in violation of certain state emission standards during startup of the boiler or the terms and conditions that accompanied such authorization.
 - ii. To continue to operate an affected boiler in violation of certain state emission standards during malfunction or breakdown of the boiler, including control devices and ancillary systems, or the terms and conditions that accompanied such authorization.
- 3. At all times, the Permittee shall, to the extent practicable, maintain and operate the sorbent injection systems including storage and handling of sorbent, in a manner consistent with good air pollution control practice for minimizing emissions from the existing coal-fired boilers and the source.
- 4a. The Permittee shall comply with all applicable requirements of 35 IAC Part 225, by the dates specified in the rules, related to monitoring of mercury emissions from the affected boilers.
- b. If the sorbent injection systems can be adjusted remotely by personnel in the control room, the Permittee shall install, operate, and maintain instrumentation for measuring rate of sorbent injection for each affected boiler with the status of the system.
- 5a. The Permittee shall maintain following records for the coal supply for the affected boilers:
 - i. Applicable records required by 35 IAC Part 225, by the dates specified in the rules, related to sampling and analysis of the coal supply to the affected boilers for its mercury content.
 - ii. Records of mercury and heat content of the current coal supply to the affected boilers, with supporting data for the associated sampling and analysis methodology, so as to have representative data for the mercury content of the coal supply.
- b. The Permittee shall maintain the following records for the sorbent injection system on each affected boiler:

Page 3

- i. An operating log or other records for the system that, at a minimum, identify the sorbent that is being used, the setting(s) for sorbent injection rate and each period of time when an affected boiler was in operation without the system being operated with explanation, e.g., the boiler was being fired on natural gas.
 - ii. Maintenance and repair log or other records for the system that, at a minimum, list the activities performed, with date and description.
- c. The Permittee shall maintain following records related to mercury emissions from the affected boilers:
 - i. All applicable records required by 35 IAC Part 225, by the dates specified in the rules, related of monitoring mercury emissions.
 - ii. During the period before the Permittee is required to conduct monitoring for the mercury emissions of the affected boilers pursuant to 35 IAC Part 225, the Permittee shall maintain records of any mercury emission data collected for the affected boilers, including emissions or control efficiency with identification and description of the mode of operation.
- d. 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.
6. If there is any deviation from the requirements of this permit, the Permittee shall submit a report to the Illinois EPA within 30 days after the deviation or such other time period specified in the current CAAPP permit issued for the source. The report shall include a description of the deviation, a copy of relevant records, and measures to reduce emissions and future occurrences.
7. The Permittee shall notify the Illinois EPA when sorbent injection systems on affected boilers start operating.
8. The Illinois EPA has determined that this project, as described in the application, will not constitute a modification of the boiler under the federal New Source Performance Standards, 40 CFR 60, as the project has the primary function of reducing emissions and therefore is not considered a modification pursuant to 40 CFR 60.14(e)(5).
9. Two copies of required reports and notifications shall be sent to the Illinois EPA's Compliance Section at the following address unless otherwise indicated:

Illinois Environmental Protection Agency
Division of Air Pollution Control
Compliance Section (#40)
P.O. Box 19276
Springfield, Illinois 62794-9276

Page 4

and one copy shall be sent to the Illinois EPA's regional office at the following address unless otherwise indicated:

Illinois Environmental Protection Agency/Regional Office
Division of Air Pollution Control
9511 West Harrison
Des Plaines, Illinois 60016

10. The affected boilers may be operated with sorbent injection systems pursuant to this construction permit until an operating permit becomes effective that addresses operation of these boilers with these systems.

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

Edwin C. Bakowski

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

Date Issued:

July 19, 2007

ECB:CPR:KMP:psj

cc: Region 1



STATE OF ILLINOIS
ENVIRONMENTAL PROTECTION AGENCY
DIVISION OF AIR POLLUTION CONTROL
P. O. BOX 19506
SPRINGFIELD, ILLINOIS 62794-9506

**STANDARD CONDITIONS FOR CONSTRUCTION/DEVELOPMENT PERMITS
ISSUED BY THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

July 1, 1985

The Illinois Environmental Protection Act (Illinois Revised Statutes, Chapter 111-1/2, Section 1039) authorizes the Environmental Protection Agency to impose conditions on permits which it issues.

The following conditions are applicable unless superseded by special condition(s).

1. Unless this permit has been extended or it has been voided by a newly issued permit, this permit will expire one year from the date of issuance, unless a continuous program of construction or development on this project has started by such time.
2. The construction or development covered by this permit shall be done in compliance with applicable provisions of the Illinois Environmental Protection Act and Regulations adopted by the Illinois Pollution Control Board.
3. There shall be no deviations from the approved plans and specifications unless a written request for modification, along with plans and specifications as required, shall have been submitted to the Agency and a supplemental written permit issued.
4. The permittee shall allow any duly authorized agent of the Agency upon the presentation of credentials, at reasonable times:
 - a. to enter the permittee's property where actual or potential effluent, emission or noise sources are located or where any activity is to be conducted pursuant to this permit,
 - b. to have access to and to copy any records required to be kept under the terms and conditions of this permit,
 - c. to inspect, including during any hours of operation of equipment constructed or operated under this permit, such equipment and any equipment required to be kept, used, operated, calibrated and maintained under this permit,
 - d. to obtain and remove samples of any discharge or emissions of pollutants, and
 - e. to enter and utilize any photographic, recording, testing, monitoring or other equipment for the purpose of preserving, testing, monitoring, or recording any activity, discharge, or emission authorized by this permit.
5. The issuance of this permit:
 - a. shall not be considered as in any manner affecting the title of the premises upon which the permitted facilities are to be located,
 - b. does not release the permittee from any liability for damage to person or property caused by or resulting from the construction, maintenance, or operation of the proposed facilities,
 - c. does not release the permittee from compliance with other applicable statutes and regulations of the United States, of the State of Illinois, or with applicable local laws, ordinances and regulations,
 - d. does not take into consideration or attest to the structural stability of any units or parts of the project, and

- e. in no manner implies or suggests that the Agency (or its officers, agents or employees) assumes any liability, directly or indirectly, for any loss due to damage, installation, maintenance, or operation of the proposed equipment or facility.
6. a. Unless a joint construction/operation permit has been issued, a permit for operation shall be obtained from the Agency before the equipment covered by this permit is placed into operation.
- b. For purposes of shakedown and testing, unless otherwise specified by a special permit condition, the equipment covered under this permit may be operated for a period not to exceed thirty (30) days.
7. The Agency may file a complaint with the Board for modification, suspension or revocation of a permit:
- a. upon discovery that the permit application contained misrepresentations, misinformation or false statements or that all relevant facts were not disclosed, or
 - b. upon finding that any standard or special conditions have been violated, or
 - c. upon any violations of the Environmental Protection Act or any regulation effective thereunder as a result of the construction or development authorized by this permit.



CONSTRUCTION PERMIT

PERMITTEE

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

Application No.: 07050007 I.D. No.: 097190AAC
Applicant's Designation: Date Received: May 3, 2007
Subject: Sorbent Injection Systems for Units 7 and 8
Date Issued: July 19, 2007
Location: Waukegan Generating Station, 401 East Greenwood Avenue, Waukegan,
60007

Permit is hereby granted to the above-designated Permittee to CONSTRUCT equipment consisting of a sorbent injection system to control mercury emissions for each of the Unit 7 and 8 boilers, as described in the above referenced application. This Permit is subject to standard conditions attached hereto and the following special condition(s):

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 - i. This permit is issued based on this project being an emissions control project, whose purpose and effect will be to reduce emissions of mercury from the existing coal-fired boilers and which will not significantly increase emissions of other PSD pollutants. As such, the terms and conditions of the existing permits will continue to govern emissions and operation of the boilers except as specifically indicated.
 - ii. This permit is issued based on negligible particulate matter (PM) emissions from the storage and handling of sorbent for the sorbent injection systems. ~~For this purpose emissions shall not exceed 0.44 tons/year. However Permittee shall comply with all applicable requirements of 35 Ill. Adm. Code Part 212 that apply to the storage and handling of sorbent.~~
- c. This permit does not authorize any modifications to the affected boilers or generating units, which would increase capacity or potential emissions.
- 2a. ~~The Permittee shall comply with applicable emission standards and requirements related to mercury emissions for the affected boilers pursuant to 35 IAC Part 225, Subpart 8 and/or Subpart F, by the applicable dates specified by these rules.~~

~~Note: The Permittee expects that it will comply with certain provisions of 35 IAC Part 225, Subpart F, which is still proposed, as an~~

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~~alternative to compliance with 35 IAC Part 225, Subpart B. If the Permittee elects to comply with 35 IAC Part 225, Subpart F, certain provisions of subpart B would not be applicable, and the provisions of Subpart F would set the dates when certain other requirements do become applicable.~~

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Illinois Environmental Protection Agency/Regional Office
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9511 West Harrison
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If you have any questions on this permit, please call Kunj Patel at 217/782-2113.

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

Date Issued: _____

ECB:CPR:KMP:psj

cc: Region 1

CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 24th day of August, 2007, I have served electronically the attached **APPEAL OF CONSTRUCTION PERMIT FOR THE INSTALLATION OF ACTIVATED CARBON INJECTION SYSTEMS AND REQUEST FOR PARTIAL STAY OF THE PERMIT and APPEARANCES OF SHELDON A. ZABEL, KATHLEEN C. BASSI, and STEPHEN J. BONEBRAKE**, upon the following persons:

John Therriault, Assistant 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
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276



Kathleen C. Bassi

Sheldon A. Zabel
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