

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

DYNEGY MIDWEST GENERATION, INC.)
(HENNEPIN POWER STATION),)

Petitioner,)

v.)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)

Respondent.)

PCB 07-123
(Permit Appeal – Air)

NOTICE OF FILING

To:

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

Persons on attached **SERVICE LIST**

PLEASE TAKE NOTICE that we have today filed with the Office of the Clerk of the Pollution Control Board **APPEAL OF CONSTRUCTION PERMIT FOR THE INSTALLATION OF BAGHOUSE, SORBENT INJECTION SYSTEM, AND INDUCED DRAFT FANS**, copies of which are herewith served upon you.


Kathleen C. Bassi

Dated: October 4, 2007

Kathleen C. Bassi
Stephen J. Bonebrake
Andrew N. Sawula
Sheldon A. Zabel
SCHIFF HARDIN, LLP
6600 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
312-258-5500
FAX: 312-258-5600
kbassi@schiffhardin.com

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**APPEAL OF CONSTRUCTION PERMIT FOR THE INSTALLATION OF
BAGHOUSE, SORBENT INJECTION SYSTEM, AND INDUCED DRAFT FANS**

NOW COMES Petitioner, DYNEGY MIDWEST GENERATION, INC. (HENNEPIN POWER STATION) (“Petitioner” or “Dynergy”), pursuant to Section 40(a)(1) of the Illinois Environmental Protection Act (“Act”) (415 ILCS 5/40(a)(1)) and 35 Ill.Adm.Code § 105.200 *et seq.*, and requests a hearing before the Board to contest the decisions contained in the construction permit¹ issued to Petitioner on May 29, 2007, pursuant to Section 39(a) of the Act (415 ILCS 5/39(a)) and 35 Ill.Adm.Code § 201.142 (“permit” or “construction permit”) and attached hereto as Exhibit 1. 35 Ill.Adm.Code §§ 105.210(a) and (b). Petitioner received the construction permit on June 1, 2007. *See* Exhibit 1. On June 5, 2007, Petitioner and the Illinois Environmental Protection Agency (“Agency”) timely submitted a Joint Request for Ninety Day Extension of Appeal Period pursuant to Section 40(a)(1) of the Act (415 ILCS 5/40(a)(1)) and 35 Ill.Adm.Code §§ 105.204 and 105.208. The Board granted the 90-day extension on June 21, 2007. Since at least May 2007, Dynergy and the Illinois Environmental Protection Agency have

¹ Application No. 07020036.

engaged in discussions regarding Dynegy's concerns with the construction permit issued to Dynegy for its Havana Power Station ("Havana"), which includes conditions similar to those included in the Hennepin permit and, likewise, has been appealed at PCB 07-115. Agreements regarding the Havana permit will likely apply, at least in part, to the Hennepin permit. Those discussions are continuing. The Board's Order (June 21, 2007) notes that the appeal period was extended to October 4, 2007. Pursuant to Sections 39(a) and 40(a)(1) of the Act, 35 Ill. Adm. Code §§ 105.206(a) 105.208(a), and the Board's Order (June 21, 2007), this Petition is timely filed with the Board.

In support of its Petition to appeal Conditions 1.1(a), 1.2(b), 1.3, 1.4(a)(ii), 1.4(a) Notes, 1.5, 1.6 including Notes, 1.7(a)(i), 1.7(b)(ii)(B), 1.7(c), 1.7(e)(v), 1.7(e)(viii), 1.7(e) Note, 1.8(a), 1.8(c), 1.8(c) Note, 1.9-1, 1.9-2, 1.9-3(a)(ii), 1.9-3(a)(iii), 1.9-3(a)(iv), 1.9-3(a) Note, 1.9-4, 1.10-1, and 1.10-2 of the construction permit issued May 29, 2007, for the Hennepin Power Station, Petitioner states as follows:

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

1. The Hennepin Power Station ("Hennepin" or the "Station"), Agency I.D. No. 155010AAA, is an electric generating station owned and operated by Dynegy. The Hennepin electrical generating units ("EGUs") went online between 1953 and 1959. The Hennepin Power Station can generate approximately 320 gross megawatts of electricity. The Station is located at 13498 East 800 Street, Hennepin, Bureau County, Illinois 61327. Bureau County is attainment for all national ambient air quality standards. Dynegy employs approximately 57 people at the Hennepin Power Station.

2. Dynegy operates two coal-fired boilers (Units 1 and 2) at Hennepin that have the capability to fire at various modes that include the combination of coal and/or natural gas as their

principal fuels. In addition, the boilers fire natural gas as auxiliary fuel during startup and for flame stabilization. Certain alternative fuels may be utilized as well. Dynegy also operates one natural gas fired boiler at Hennepin used for building heating purposes and to produce steam for auxiliary support. Hennepin also operates associated coal handling, coal processing, and ash handling equipment and systems. Finally, there is a 1000-gallon capacity gasoline tank located at Hennepin.

3. Relevant to this appeal, emissions of particulate matter (“PM”) from Units 1 and 2 are controlled by electrostatic precipitators (“ESPs”) with flue gas conditioning systems.

4. Hennepin is a major source subject to the Clean Air Act Permitting Program (“CAAPP”) (415 ILCS 5/39.5). The Agency issued a CAAPP permit to Dynegy for Hennepin on September 29, 2005. Subsequently, on November 3, 2005, Dynegy timely appealed the CAAPP permit for Hennepin at PCB 06-072. 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, *Dynegy Midwest Generation, Inc. (Hennepin Power Station) v. Illinois Environmental Protection Agency*, PCB 06-072 (February 16, 2006), p. 2. Hennepin is subject to the federal Acid Rain Program at Title IV of the Clean Air Act and has been issued a Phase II Acid Rain Permit.

5. Dynegy entered into a Consent Decree in the matter of the *United States of America, et al. v. Dynegy Midwest Generation, et al.*, Case No. 99-833-MJR in the United States District Court for the Southern District of Illinois (the “Consent Decree”). Applicable provisions in the Consent Decree must be reflected in permits issued to Dynegy. Dynegy’s operation of the

Hennepin Power Station must comply with the provisions of the Consent Decree as well as with applicable law and regulations.

6. Consistent with the Joint Request for Ninety Day Extension of Appeal Period, Dynegy and the Agency have been engaged in discussions regarding the language included in various conditions in the permit issued to the Havana Power Station (“Havana”). The permit issued to Havana contains language that is the same or very similar to the language contained in the permit issued to Hennepin. Resolution of issues relative to the Havana permit likely will address most or all of the issues raised here regarding the Hennepin permit. While Dynegy believes that there has been progress towards addressing its concerns with the permits, those discussions were not completed prior to the deadline for filing this appeal. The Act does not provide for further extension of the time for appeal. Therefore, Dynegy has submitted this appeal, even though it expects to continue its discussions with the Agency regarding these permits during the pendency of this appeal.

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

7. Pursuant to Section 10-65(b) of the APA, 5 ILCS 100/10-65, and the holding in *Borg-Warner Corp*, the conditions of the construction permit issued by the Agency to Hennepin are 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, Dynegy Midwest Generation, Inc. (Hennepin Power Station) v. Illinois Environmental Protection Agency*, PCB 06-072 (February 26, 2006) (“Order 2”). Historically, however, the Board has granted partial stays in permit appeals where a petitioner has so requested. *See, e.g., 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).

8. Dynegy will suffer irreparable harm and the environment will not receive the benefit of the pollution control facilitated by the baghouse and activated carbon injection (“ACI”) systems if Dynegy is not allowed to construct and operate these systems at the Hennepin Power Station. Dynegy has chosen to install the baghouses to comply with the PM emissions limitation applicable to the Hennepin Power Station under the Consent Decree. While the baghouses are not *per se* required by the Consent Decree, their installation is directly related to compliance with terms of the Consent Decree. Dynegy’s request for stay of the contested language would provide the necessary and appropriate authorizations to install and operate these systems in a manner to protect the environment while allowing Dynegy to exercise its right to an appeal under Section 40(a) of the Act.

9. Dynegy requests in this instance that the Board exercise its inherent discretionary authority to grant a partial stay of the construction permit, staying only those conditions or portions of conditions indicated in Exhibit 2, *i.e.*, Conditions 1.1(a), 1.2(b), 1.3, 1.4(a) Notes, 1.5,

1.6(a)(i), 1.6(a)(i) Note, 1.6(a)(ii), 1.6(a)(ii) Note, 1.6(a)(iv), 1.7(a)(i), 1.7(b)(ii)(B), 1.7(c), 1.7(e)(v), 1.7(e)(viii), 1.7(e) Note, 1.8(a), 1.8(c), 1.8 Note, 1.9-1, 1.9-2, 1.9-3, 1.9-4, 1.10-1, and 1.10-2. In the alternative, if the Board believes that it must stay the entirety of an appealed condition rather than only the portions of the condition where so indicated in Exhibit 2, Dynegy requests that the Board stay the entirety of each of the conditions identified in Exhibit 2 except for Conditions 1.1(a) and 1.7(a)(i).

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

10. The issues raised in the conditions appealed herein fall into several categories. One category addresses the manner in which the Agency has addressed the requirements of the Consent Decree applicable to Dynegy. A second category of issues concerns the Agency's treatment of the mercury rule adopted by the Board at 35 Ill.Adm.Code Part 225. Additionally, the Agency has included unnecessary conditions and "notes" in the permit that should be deleted. Dynegy also appeals provisions that were appealed in the CAAPP appeal, PCB 06-072, or are otherwise CAAPP-related. Dynegy objects to certain testing, recordkeeping, and reporting provisions in the permit and has other general objections.

A. The Agency Has Inappropriately Referenced and/or Interpreted the Consent Decree – Conditions 1.2(b), 1.4(a)(ii), 1.4(a) Notes, 1.6(a)(i) Note, 1.6(a)(ii) Note, 1.6(a)(iii), 1.6(a)(iv), 1.9-2(a)(i), 1.9-2(a)(ii), 1.9-2(b), 1.9-4(a), and 1.10-2(a).

11. Applicable provisions in the Consent Decree must be reflected in permits issued to Dynegy. The Agency has referred to or paraphrased various provisions of the Consent Decree in the construction permit. Dynegy objects to the way in which the Agency has incorporated the Consent Decree. This was also an issue raised in the appeal of the CAAPP permit issued for the Hennepin Power Station, docketed at PCB 06-072. Additionally, some of the issues appealed in

PCB 06-072 relative to interpretations of the Consent Decree reappear in this permit and must be appealed here to preserve Dynegy's rights to appeal the CAAPP permit.

12. Specifically, Dynegy objects to the Agency providing interpretations of the Consent Decree in either conditions or "notes" in any permit, including this construction permit. The U.S. Environmental Protection Agency ("USEPA") is the entity with whom Dynegy interfaces regarding requirements in the Consent Decree. USEPA's interpretations of provisions in the Consent Decree prevail subject to the dispute resolution provisions of the Consent Decree, and the insertion of the Agency's interpretations adds confusion and unnecessary complexity to interpreting the Consent Decree. Despite inclusion of language in Condition 1.1(d) to the effect that where this construction permit and the Consent Decree differ, the Consent Decree prevails, the Agency's interpretations, nevertheless, present the potential for inconsistent interpretations of Consent Decree provisions as the Consent Decree is implemented through permits issued by the Agency. The dispute resolution provisions of the Consent Decree do not apply to the Agency's interpretations. As a result, Dynegy could be subjected to at least two and as many as five different governmental entities² interpreting the Consent Decree.

13. As referenced above, Condition 1.1(d) states that if there are inconsistencies between the construction permit and the Consent Decree, the Consent Decree will prevail. Presumably, this statement would address a situation where the Agency included, for example, one emissions limitation in the permit and referenced a paragraph in the Consent Decree, but that paragraph in the Consent Decree actually called for a different emissions limitation. Dynegy agrees that in such a situation, the Consent Decree should prevail. However, the statement in the

² USEPA, the Agency, the Illinois Attorney General as the Agency's representative in an enforcement matter, the federal District Court where the Consent Decree was entered, and the Board who would adjudicate an enforcement matter.

permit does not address inconsistent interpretations of the Consent Decree or reduce Dynegy's exposure to enforcement of the construction permit's limitations independent of the language in the Consent Decree. For these reasons, a number of the conditions in the construction permit are appealed herein because of the way in which the Agency has referenced or paraphrased the Consent Decree, and Dynegy requests that the Board order the Agency to merely reference the appropriate paragraph in the Consent Decree rather than add an explanation or description of the provisions of the paragraph, which *ipso facto* is the Agency's interpretation of the meaning of referenced paragraph.

14. Specifically, Conditions 1.2(b), 1.4(a) Notes, and 1.6(a)(i) Note are such interpretations. Their inclusion is arbitrary and capricious, and these conditions should be deleted from the permit. Dynegy requests that the Board stay the effectiveness of these conditions and Notes, as set forth in Exhibit 2, during the pendency of this appeal.

15. Condition 1.6(a)(iv) requires that Dynegy "operate and maintain the . . . boiler . . . and associated PM control equipment in accordance with the PM control plan maintained by the Permittee pursuant to Condition 1.9-2(b)(i)(A)." Condition 1.9-2(b)(i)(A) references Condition 1.6(a), which is appealed herein and which also contains a Note, appealed herein as well, that Dynegy believes is the source of a number of issues raised in this appeal. The Agency apparently interprets the Consent Decree to require a PM Control Plan, referred to in Condition 1.9-2(b)(i)(A) when referring back to Condition 1.6(a). Condition 1.9-4(a) requires recordkeeping related to the PM Control Plan. The Consent Decree does not, in fact, require such a PM Control Plan. Further, there is no other applicable requirement that Dynegy develop a PM Control Plan. Therefore, the requirement in Condition 1.6(a)(iv) that Dynegy operate the boiler and PM control equipment pursuant to this PM Control Plan, the requirement in

Conditions 1.9-2(b) and 1.9-4(a) that it keep records related to the PM Control Plan and submit them and correspondence with USEPA regarding the PM Control Plan, and the related reporting requirements of Condition 1.10-2(a) are beyond the scope of the Agency's authority to require, are arbitrary and capricious, and should be deleted from the permit. Additionally, Condition 1.9-2(a)(i) relies upon Condition 1.6(a) as the authority for its inclusion.³ Dynegy requests that the Board order the Agency to delete Conditions 1.6(a)(iv), 1.9-2(a)(i), 1.9-2(b), 1.9-4(a), and 1.10-2(a) from the permit. Further, Dynegy requests that the Board stay the effectiveness of Conditions 1.6(a)(iv), 1.9-2(a)(i), 1.9-2(b), 1.9-4(a), and 1.10-2(a), as set forth in Exhibit 2, during the pendency of this appeal.

16. Conditions 1.4(a)(ii) and 1.6(a)(iii) refer to an alternative PM emissions limitation as provided in Paragraph 88 of the Consent Decree. However, on May 11, 2006, the U.S. Department of Justice published notice in the *Federal Register* that Paragraph 88 was to be deleted from the Consent Decree in an amendment. *See* Exhibits 3 and 4, provided for the Board's convenience. Therefore, the alternative PM emissions limitations provided by Paragraph 88 are no longer available to Dynegy for the Hennepin Power Station. Conditions 1.4(a)(ii) and 1.6(a)(iii) should be deleted from the permits, as set forth in Exhibit 2.

B. The Agency Has Inappropriately Included Provisions Whose Only Purpose Is to Implement the Mercury Rule – Conditions 1.3(a)(ii), 1.8(a), 1.8(c), 1.9-1, 1.9-2(a)(ii)(A), and 1.9-4(b).

17. 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

³ Conditions that rely on conditions that are being appealed will also be appealed herein.

of Subpart B of Part 225. The initial compliance date for the mercury rule is July 1, 2009. 35 Ill. Adm. Code § 225.230(a)(1). If a company decides to opt in to the Multi-Pollutant Standard (“MPS”) provisions of Section 225.233, however, the initial compliance date for the mercury emissions limitation is January 1, 2015. 35 Ill. Adm. Code § 225.233(d)(1). A company is not required to notify the Agency of its intention to opt in prior to December 31, 2007. 35 Ill. Adm. Code § 225.233(b). If a company decides to opt in to the MPS set forth in Section 225.233, it must install and operate ACI systems on its EGUs by July 1, 2009, or December 31, 2009, as applicable. 35 Ill. Adm. Code § 225.233(c)(1)(A). Otherwise, the mercury rule does not require ACI systems. The mercury rule requires that Dynegy submit applications to revise its CAAPP permits to implement the mercury rule by December 31, 2008. 35 Ill. Adm. Code § 225.220(a)(2)(A).

18. In the meantime, Dynegy must take the actions necessary for it to comply with the emissions limitations by the applicable deadlines, including submittal of applications for construction permits. The permit appealed here falls into this bin. It does not comprise a notification to the Agency that Dynegy necessarily intends to opt in to the MPS, and it does not trigger any of the requirements of the mercury rule or the MPS prior to the dates included in the rules. Yet the Agency has imposed requirements in the construction permit that go far beyond Dynegy’s simple request to install and operate an ACI system. Some of these requirements imply that the Agency intends to implement the mercury rule at the Hennepin Power Station through this permit.

19. Conditions 1.3(a)(ii), 1.8(a), 1.8(c), 1.9-1, 1.9-2(a)(ii)(A), and 1.9-4(b) do not reflect any applicable requirements that come within the scope of what Dynegy has requested with respect to this permit absent such a statement. Inclusion of these conditions is arbitrary and

capricious and exceeds the scope of the Agency's authority. These conditions should be deleted from the permit.

20. Specifically, Condition 1.3(a)(ii) requires compliance with the mercury emissions limitations of Part 225; Condition 1.8(a) requires continuous monitoring equipment for the ACI system; Condition 1.8(c) requires compliance with "all applicable requirements of 35 IAC Part 225"; Condition 1.9-1 requires Dynegy to maintain records relative to the mercury content of the coal supply; Condition 1.9-2(a)(ii)(A) requires records regarding mercury emissions; and Condition 1.9-4(b) requires Dynegy to comply with "all applicable recordkeeping requirements . . . related to control of mercury emissions from the affected boiler." There are no applicable requirements relevant to this permit that authorize the Agency to include these conditions in this permit.

21. A purpose of this permit is to authorize the construction and operation of the ACI system and the related storage and handling system. While use of these systems will allow Dynegy to reduce its mercury emissions, use of an ACI system is not required by the mercury rule unless Dynegy chooses to opt in to the MPS. The applicability of the MPS is dependent upon Dynegy formally notifying the Agency that it intends to comply with the mercury limits pursuant to the MPS, which it has not done.

22. The installation and operation of the ACI system does not, in and of itself, require the imposition of mercury limitations. Therefore, the inclusion of mercury limitations in Condition 1.3(a)(ii) is inappropriate and arbitrary and capricious and should be deleted from the permit. Dynegy requests that Condition 1.3(a)(ii) be stayed, as set forth in Exhibit 2, during the pendency of this appeal.

23. Condition 1.8(a) requires continuous monitoring of the sorbent injection system, “i.e., rate of injection of sorbent.” First, if the Agency’s intent is that Condition 1.8(a) requires continuous monitoring of the rate of injection of sorbent, then rather than stating that in an “i.e.” phrase, the condition should just state that the Permittee must continuously monitor the injection rate of sorbent. Dynegy believes, however, that the requirement should be qualified by the phrase, “when sorbent is being injected.” The word *continuous* means “marked by uninterrupted extension in space, time, or sequence.” Merriam-Webster’s Collegiate Dictionary (10th ed.) Dynegy should not be required to monitor the injection rate of sorbent when it is not being injected. Second and more importantly, sorbent injection is required only if Dynegy chooses to opt in to the MPS. As discussed above, Dynegy has not yet formally notified the Agency of its intentions regarding the MPS. Therefore, a requirement for continuous monitoring of the injection rate of sorbent in this permit is premature absent a qualifying phrase in the condition that ties the monitoring to the compliance requirements of the MPS should Dynegy choose to opt in.

24. For these reasons, Condition 1.8(a) is arbitrary and capricious and beyond the scope of the Agency’s authority to require. Dynegy requests that the Board order the Agency either to delete the condition from the permit or to modify the condition to make it conform with applicable requirements. Dynegy requests that the Board stay the effectiveness of Condition 1.8(a), as set forth in Exhibit 2, during the pendency of this appeal.

25. Likewise, Condition 1.8(c) is an expansion of the scope of a simple construction permit authorizing the installation of an ACI system. From that request, the Agency leapt to requiring that Dynegy comply with all applicable requirements of Part 225 related to monitoring mercury. The construction and operation of an ACI system do not themselves subject a source to

the Part 225 mercury emissions monitoring requirements. Rather, that requirement is a function of implementation of the mercury rule, which the Agency has not identified as a purpose of this permit. Condition 1.8(c) is inappropriate and arbitrary and capricious and should be deleted from the permit. Dynegy requests that the Board stay the effectiveness of Condition 1.8(c), as set forth in Exhibit 2, during the pendency of this appeal.

26. Condition 1.9-1 exceeds the Agency's authority. Condition 1.9-1 requires the Permittee to maintain records regarding the amounts of mercury in its coal supply. The broad, general requirement stated in Condition 1.9-1 for Dynegy 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.

27. Condition 1.9-1 is arbitrary and capricious, exceeds the scope of the Agency's authority as monitoring the coal supply has no relationship to constructing and installing an ACI system, exceeds the scope of the Agency's authority under Section 225.230(a)(1), and should be deleted from the permit. Dynegy requests that the Board stay the effectiveness of Condition 1.9-1, as set forth in Exhibit 2, during the pendency of this appeal.

28. Condition 1.9-2(a)(ii)(A) requires Dynegy to maintain records regarding the sorbent being used, the settings for sorbent injection rate, and each period of time when both the boiler and sorbent injection were being used. Additionally, Condition 1.9-2(a)(ii)(A) requires Dynegy to document implementation of operating procedures as required by Condition 1.6(b).

29. As discussed above, the use of sorbent is required by the mercury rule only if Dynegy opts in to the MPS, and notification of its intentions in that regard are not due until the end of this year. To the extent that the MPS of the mercury rule is the applicable requirement underlying this condition, the provisions of this condition are premature absent qualifying language tying the requirements to the MPS. Dynegy understands and expects that the Agency would require records and reporting of sorbent use as they relate to emissions of PM. However, this condition is more specific than that by requiring the brand of sorbent used, which is a function of the MPS.

30. Dynegy does not understand why the Agency requires such a level of detail as the settings for the sorbent injection rate. The MPS requires a minimum sorbent injection rate. Requiring Dynegy to report the settings on its ACI system associated with the sorbent injection rate is micro-management. On the other hand, if Dynegy establishes the settings on its ACI system as its means of identifying the sorbent injection rate, *i.e.*, the settings are a surrogate for the rate, then recording and reporting the settings may be appropriate. However, the condition does not provide for the development of such a surrogate; rather, it requires the settings. This exceeds the scope of the Agency's authority and is arbitrary and capricious.

31. Condition 1.9-2(a)(ii)(A) refers to Condition 1.6(b) regarding certain conditions to be implemented regarding sorbent injection. However, Condition 1.6(b) is inapposite because Condition 1.6(b) precludes bypass ducts and has no apparent correlation with Condition 1.9-2(a)(ii)(A).

32. For these reasons, Condition 1.9-2(a)(ii)(A) is arbitrary and capricious and beyond the scope of the Agency's authority to require. Dynegy requests that the Board order the Agency to delete Condition 1.9-2(a)(ii)(A) from the permit. At the least, Dynegy requests that

the Board order the Agency to modify Condition 1.9-2(a)(ii)(A) in such a way as to limit its applicability to Dynegy's participation in the MPS and to require recordkeeping of the sorbent injection rate. Dynegy requests that the Board stay the effectiveness of Condition 1.9-2(a)(ii)(A) during the pendency of this appeal.

33. Condition 1.9-4(b)(i) requires maintenance of "all applicable recordkeeping required by 35 IAC Part 225 related to control of mercury emissions. . . ." As discussed above, construction and installation of an ACI system do not trigger a requirement to comply with the mercury rule. Moreover, there is no qualification included in this condition that reflects the compliance dates of the mercury rule. Rather, the recordkeeping requirements of Subpart B are required, according to this condition, immediately. Condition 1.9-4(b)(i) is arbitrary and capricious and should be deleted from the permit. Dynegy requests that the Board stay Condition 1.9-4(b)(i), as set forth in Exhibit 2, during the pendency of this appeal.

34. Condition 1.9-4(b)(ii) is particularly unacceptable. Here the Agency requires the Permittee to "maintain records of emission data for mercury 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." Condition 1.9-4(b)(ii). (Emphasis added.) There is no authority for the Agency to require such monitoring and recordkeeping. Requiring 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 1.9-4(b)(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 Dynegy requests that the Board

stay the effectiveness of Condition 1.9-4(b)(ii) , as set forth in Exhibit 2, during the pendency of this appeal.

C. The Agency Has Included Unnecessary Conditions and Notes in the Permit – Conditions 1.3(a)(i), 1.3(b), 1.4(a) Note, 1.5, 1.7(e) Note, 1.8(c) Note, 1.9-1 Note, 1.9-2 Note, 1.9-3 Note, 1.10-1(b) Note, and 1.10-2 Note.

35. Condition 1.1(b)(i) states, in part, that “the terms and conditions of the existing permits will continue to govern emissions and operation of the boilers except as specifically indicated.” The Agency then included conditions and “notes” throughout the permit either repeating already-applicable provisions covered in other permits and not superseded by this construction permit or reminding the reader that conditions in other permits are not affected by this permit. A second set of “notes” make obvious statements that do not add substance to the permit. This surplusage is arbitrary and capricious and should be deleted from the permit.

36. Specifically, Conditions 1.3(a)(i) addresses the applicability of 35 Ill.Adm.Code Chapter B, Chapter I, Subchapter 3, a fact that is already addressed by the general statement of Condition 1.1(b)(i). Condition 1.3(b) addresses the authorization to operate the boilers in violation of certain state emissions standards during startup, malfunction, or breakdown as authorized in existing permits. Condition 1.4(a) Note announces that the PM limit under the Consent Decree will be more stringent than the state standards. Condition 1.7(e) Note addresses testing requirements in other permits and the Consent Decree. Condition 1.8(c) Note addresses monitoring requirements in existing permits. Conditions 1.9-1 Note, 1.9-2 Note, and 1.9-3 Note address recordkeeping requirements in other permits. Condition 1.10-1(b) Note addresses reporting requirements in other permits; however, Condition 1.10-1 requires deviation reporting, which Dynegy is appealing elsewhere in this Petition. Condition 1.10-2 Note addresses quarterly

reporting; however, again, Dynegy is appealing this condition generally elsewhere in this Petition.

37. Condition 1.5 describes the Compliance Assurance Monitoring (“CAM”) requirement of 40 CFR § 64.5(a)(2) but does not require CAM, nor do the activities covered by the construction permit trigger the applicability of CAM. The condition appears to be included merely as informational or in error.

38. For the reasons set forth above, Dynegy requests that the Board order the Agency to delete Conditions 1.3(a)(i), 1.3(b), 1.4(a) Note, 1.5, 1.7(e) Note, 1.8(c) Note, 1.9-1 Note, 1.9-2 Note, 1.9-3 Note, 1.10-1(b) Note, and 1.10-2 Note from the permit as unnecessary to the permit and that the Board stay the effectiveness of these provisions, as set forth in Exhibit 2, during the pendency of this appeal.

D. The Agency Has Included Conditions That Either Were Appealed in PCB 06-072 or Are CAAPP Requirements and Not Part 201 Requirements – Conditions 1.7(b)(ii)(B), 1.7(e)(v), 1.7(e)(viii), and 1.10-1.

39. Condition 1.7(b)(ii)(B) requires PM testing to include testing for condensables pursuant to USEPA Method 202, and Conditions 1.7(e)(v) and 1.7(e)(viii) require reporting a number of other data during PM testing. Dynegy appealed these same requirements in its appeal of the CAAPP permit issued to the Hennepin Power Station. *See* Appeal of CAAPP Permit, ¶¶ 76-82 and 118, respectively, PCB 06-072 (November 3, 2005). The same reasons that Dynegy believes that Method 202 testing is not applicable to the Hennepin Power Station in its CAAPP Appeal apply to this construction permit. There is nothing in the provisions of 35 Ill. Adm. Code Part 212 that would alter the applicability of Method 202 to Hennepin because of the construction permit. Likewise, the same reasons that Dynegy objected to the inclusion of the requirement to report other data during PM testing continue to apply. The Agency’s inclusion of

Conditions 1.7(b)(ii)(B), 1.7(e)(v), and 1.7(e)(viii) undermines Dynegy's right to a hearing on the merits of this issue in PCB 06-072 and the Board's decision in Order 2 staying the effectiveness of the CAAPP permit. For these reasons, inclusion of Conditions 1.7(b)(ii)(B), 1.7(e)(v), and 1.7(e)(viii) is beyond the scope of the Agency's authority to require and arbitrary and capricious. Dynegy requests that the Board order the Agency to delete Conditions 1.7(b)(ii)(B), 1.7(e)(v) and 1.7(e)(viii) from the construction permit and that it stay the effectiveness of Conditions 1.7(b)(ii)(B), 1.7(e)(v), and 1.7(e)(viii), as set forth in Exhibit 2, during the pendency of this appeal.

40. Condition 1.10-1 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 Hennepin'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 pollution control systems authorized by the permit 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. Dynegy 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.

41. 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, Dynegy requests that the Board order the Agency to delete Condition 1.10-1 from the permit and that it stay the effectiveness of Condition 1.10-1, as set forth in Exhibit 2, during the pendency of this appeal.

E. The Agency Has Inappropriately Included Certain Testing Provisions – Conditions 1.7(b)(i), 1.7(c), 1.7(e)(v), and 1.7(e)(viii).

42. In addition to the testing requirements of Conditions 1.7(b)(ii)(B), 1.7(e)(v), and 1.7(e)(viii) discussed above in Section D of this petition, the Agency has included other objectionable testing provisions.

43. Condition 1.7(b)(i) requires that PM testing be performed “in the maximum operating range of the affected boiler. . . .” It is not clear from the structure of the permit whether the Agency intends that this condition apply to any testing that is required under the Consent Decree, though the permit could be read to mean that the requirement applies to testing required by the Consent Decree. However, the Consent Decree does not include such a requirement. Because of this inconsistency between the permit and the Consent Decree and because of the ambiguity created by the structure of the Conditions 1.7(a) and (b) in this regard and because the Agency has the authority to include in any request for testing that it might make pursuant to Condition 1.7(a)(ii) that the testing be performed at the maximum operating range of the boiler, Dynegy requests that the Board order the Agency to amend the condition by deleting language as set forth in Exhibit 2. Further, Dynegy requests that the Board stay Condition 1.7(b)(i), as set forth in Exhibit 2, during the pendency of this appeal.

44. Condition 1.7(c) requires the Permittee to “submit [a] test plan at least 60 days prior to the actual date of testing.” This in itself is not objectionable. Dynegy’s issue with the

condition is that it does not recognize the provisions of 35 Ill.Adm.Code § 283.220(d).

Specifically, Section 283.220(d) states as follows:

Notwithstanding subsections (a), (b), and (c) above, a test plan need not be submitted under the following circumstances:

- 1) Where the source intends to utilize a test plan previously submitted to the Agency. However, the source must submit a notice containing the following:
 - A) The purpose of the test;
 - B) Date the previously submitted test plan was submitted to the Agency; and
 - C) A statement that the source is relying on a previously submitted test plan.
- 2) Where the source intends to use a standard test method or procedure. However, the source must submit a notice containing the following:
 - A) The purpose of the test; and
 - B) The standard test method or procedure to be used.

35 Ill.Adm.Code § 283.220(d). Rather, the Agency, through this condition, is requiring Dynegey to submit a test plan every time that it tests contrary to the provisions of Section 283.220(d). No other reference to Part 283 in the condition suggests an interpretation to the contrary.

45. For these reasons, Dynegey requests that the Board order the Agency to amend the requirements of Condition 1.7(c) to reflect the provisions of 35 Ill.Adm.Code § 283.220(d) and to stay Condition 1.7(c), as set forth in Exhibit 2, during the pendency of this appeal.

46. In addition to Dynegey's objection to the inclusion of Conditions 1.7(e)(v) and 1.7(e)(viii) as discussed above in Section D, Dynegey objects to the provisions of these conditions specifically relative to this construction permit. Condition 1.7(e)(v) requires Dynegey to provide various operating data during PM testing. Condition 1.7(e)(viii) requires that Dynegey provide

SO_x, NO_x, O₂ or CO₂, and opacity data during PM testing. Operation of an electric generating station depends upon many variables – ambient air temperature, cooling water supply temperature, fuel supply, equipment variations, and so forth. Using operational and other emissions data during PM testing as some type of monitoring device or parametric compliance data, which appears to be the Agency's intent by including this provision in the permit, would be inappropriate. For these reasons, Conditions 1.7(e)(v) and 1.7(e)(viii) are arbitrary and capricious and should be deleted from the Permit. Dynegy requests that the Board stay the effectiveness of Conditions 1.7(e)(v) and 1.7(e)(viii), as set forth in Exhibit 2, during the pendency of this appeal.

F. Dynegy Objects to Other Conditions of the Permit – Conditions 1.1(a), 1.6(a)(i), 1.6(a)(ii), 1.6(b), 1.7(a)(i), 1.9-2, 1.9-3(a)(ii), and 1.9-3(a)(iii).

47. A number of conditions in the permit are ambiguous or are not based upon the application that Dynegy submitted for this permit or contain minor typographical errors. These conditions should be amended to provide necessary clarity or should be deleted.

48. Condition 1.1(a) contains a typographical error. The word *replaces* in the last sentence should be *replace*. This error has been corrected in Exhibit 2, and Dynegy requests that the Board grant this correction in a partial stay of the permit, as set forth in Exhibit 2, during the pendency of this appeal. However, if the Board determines that it is not appropriate for it to grant a stay of only portions of conditions in the permit and rather that it must stay the entirety of a condition, Dynegy requests that the Board not stay Condition 1.1(a).

49. Conditions 1.6(a)(i) and 1.6(a)(ii) require Dynegy to comply with the Consent Decree regarding the ESPs on Units 1 and 2. Inclusion of provisions covering the ESPs is inappropriate, because the ESPs are outside of the scope of the projects covered by this permit. Dynegy did not include any changes to the ESPs in its application. The Agency cannot use the

addition of a PM control device, the baghouse, or the addition of the ACI system to address requirements of the Consent Decree applicable to the ESPs. The Consent Decree required Dynegy to submit an application to the Agency to amend its CAAPP permit to incorporate certain provisions of the Consent Decree. Dynegy has complied with that requirement. That application, however, cannot be used to insert Consent Decree requirements not related to the scope of Dynegy's application for this construction permit into the construction permit. For these reasons, Dynegy requests that the Board order the Agency to delete Conditions 1.6(a)(i) and 1.6(a)(ii) from this permit and that the Board stay Conditions 1.6(a)(i) and 1.6(a)(ii), as set forth in Exhibit 2, during the pendency of this appeal.

50. Condition 1.6(b) prohibits Dynegy from including a bypass duct that would enable Dynegy to bypass the baghouse authorized by this permit. Dynegy's application to construct the baghouse at the Hennepin Power Station did not include a provision for there to be a bypass duct in the baghouse system. Dynegy understands that if it decides a bypass duct is appropriate during construction or later, it will need to either seek an amendment to this construction permit or obtain a new construction permit, respectively, at that time. There is no basis for the Agency to include this prohibition in this permit. It is totally beyond the scope of the application. For these reasons, Dynegy requests that the Board order the Agency to delete Condition 1.6(b) from this permit and that the Board stay the effectiveness of Condition 1.6(b), as set forth in Exhibit 2, during the pendency of this appeal.

51. Condition 1.7(a)(i) contains a typographical error. The word *bass* should be *basis*. Because Dynegy cannot add letters or language to the permit in its request for a partial stay of the permit during the pendency of this appeal, Dynegy does not request that Condition 1.7(a)(i) be stayed.

52. Dynegy objects to the requirement that it maintain logs for the baghouse and sorbent injection system at Condition 1.9-2. Dynegy does not object to recordkeeping. It objects to the requirement that it develop and maintain “logs,” *per se*, and believes that the recordkeeping systems that it has already developed and that can be readily adapted to include these new pollution control systems meet the Agency’s purposes and should suffice (*e.g.*, electronic recordkeeping). Therefore, Dynegy requests that the Board order the Agency to delete references to logs in Condition 1.9-2 and that it stay the effectiveness of Condition 1.9-2, as set forth in Exhibit 2, during the pendency of this appeal.

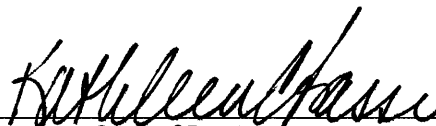
53. It appears that the inclusion of the comma following the word *control* in Condition 1.9-3(a)(ii) is a typographical error and should be deleted. It further appears that Conditions 1.9-3(a)(ii) and (iii) are supposed to be read and applied together; that is, Condition 1.9-3(a)(ii) applies to performance evaluations while Condition 1.9-3(a)(iii) applies to other periods when the continuous monitoring systems required by Condition 1.8 are inoperative. However, the language of these two subconditions is inconsistent. For example, Condition 1.9-3(a)(iii) identifies “routine quality assurance” “as addressed above,” presumably in Condition 1.9-3(a)(ii), but Condition 1.9-3(a)(ii) says nothing about routine quality assurance. Moreover, Condition 1.9-3(a)(ii) refers to “quality assurance/control,” but Condition 1.9-3(a)(iii) refers only to “quality assurance.” Dynegy believes it understands the intent of the condition, but the language is ambiguous enough to potentially result in differences in interpretation. Therefore, Dynegy requests that the Board order the Agency to clarify the language in these Conditions. Dynegy further requests that the Board stay Conditions 1.9-3(a)(ii) and (iii), as set forth in Exhibit 2, during the pendency of this appeal.

WHEREFORE, for the reasons set forth above, Dynegy appeals Conditions 1.1(a), 1.2(b), 1.3, 1.4(a)(ii), 1.4(a) Notes, 1.5, 1.6 including Notes, 1.7(a)(i), 1.7(b)(i), 1.7(b)(ii)(B), 1.7(c), 1.7(e)(v), 1.7(e)(viii), 1.7(e) Note, 1.8(a), 1.8(c), 1.8(c) Note, 1.9-1, 1.9-2, 1.9-3(a)(ii), 1.9-3(a)(iii), 1.9-3(a)(iv), 1.9-3(a) Note, 1.9-4, 1.10-1, and 1.10-2 of the construction permit issued May 29, 2007, for the Hennepin Power Station. Additionally, Dynegy requests that the Board stay all or the portions of the Conditions appealed above except for Condition 1.7(a)(i), and, if the Board determines that it cannot grant a stay of only a portion of a condition but must instead stay the entirety of a condition, except for Condition 1.1(a), as set forth in Exhibit 2. Dynegy will extend its current practices of recordkeeping and reporting to the new pollution control systems and will, of course, comply with all applicable regulatory requirements and all requirements of the Consent Decree applicable to these new pollution control systems, if any, during the pendency of this appeal.

Respectfully submitted,

DYNEGY MIDWEST GENERATION, INC.
(HENNEPIN POWER STATION)

by:



One of Its Attorneys

Dated: October 4, 2007

SCHIFF HARDIN, LLP
Kathleen C. Bassi
Stephen J. Bonebrake
Sheldon A. Zabel
6600 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
312-258-5500
Fax: 312-258-5600
kbassi@schiffhardin.com

Exhibit List

- | | |
|-----------|--|
| Exhibit 1 | Construction permit issued to Dynegy Midwest Generation, Inc. for the Hennepin Power Station, Application No. 07020036 |
| Exhibit 2 | Redlined version of construction permit identifying provisions that Dynegy requests that the Board stay during the pendency of this appeal |
| Exhibit 3 | “Notice of Lodging of Proposed Modification of the Consent Decree Entered in; [SIC] <i>United States et al. v. Illinois Power Company and Dynegy Midwest Generation</i> ,” 71 Fed.Reg. 27516 (May 11, 2006) (oval marking pertinent information added) |
| Exhibit 4 | Order, <i>United States et al. v. Illinois Power Company and Dynegy Midwest Generation</i> , Civil Action No. 99-833-MJR (August 9, 2006) (amendment to the Consent Decree amending paragraph 86 and deleting paragraph 88 as they relate to the Hennepin Power Station) |

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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

ROD R. BLAGOJEVICH, GOVERNOR

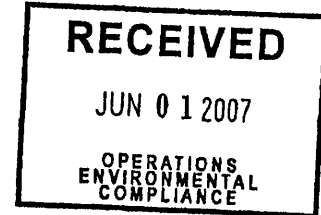
DOUGLAS P. SCOTT, DIRECTOR

217/782-2113

CONSTRUCTION PERMIT

PERMITTEE

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

Application No.: 07020036I.D. No.: 155010AAAApplicant's Designation:Date Received: February 14, 2007Subject: Baghouses and Sorbent Injection Systems for Units 1 and 2Date Issued: May 29, 2007Location: Hennepin Power Station, 13498 East 800 Street, Hennepin

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

1.1 Introduction

- a. This Permit authorizes the construction of two baghouses and two sorbent injection systems (one baghouse and sorbent injection system for each of the two existing boilers), to supplement the existing emission control system on each boiler. The new baghouse systems and sorbent injection systems would further process the flue gas from each of the two existing coal-fired boilers, which are both equipped with electrostatic precipitators (ESP). This permit also authorizes installation of new induced draft fans on each boiler (one for Unit 1 and two for Unit 2) to overcome the additional pressure drop from these new control systems and associated ductwork, which fans will replace the existing induced draft fans on each 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 particulate matter (PM) and mercury from the existing boilers and which will not 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 the receiving, storage and handling of sorbent for the new sorbent injection systems qualifying as an insignificant activity, with annual emissions of PM in the absence of control equipment that would be no more than 0.44 tons, so that this activity need not be addressed by this permit. This does affect the

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Permittee's obligation to comply with all applicable requirements that apply to the receiving, storage and handling of sorbent.

- c. This permit does not authorize any modifications to the existing boilers or generating units, which would increase capacity or potential emissions.
- d. This permit does not affect requirements for the affected boilers established by the Consent Decree in *United States of America and the State of Illinois, American Bottom Conservancy, Health and Environmental Justice-St. Louis, Inc., Illinois Stewardship Alliance, and Prairie Rivers Network, v. Illinois Power Company and Dynegy Midwest Generation Inc.*, Civil Action No. 99-833-MJR, U.S. District Court, Southern District of Illinois (Decree), certain provisions of which are referenced by this permit. In addition, as the provisions of the Decree are referenced in certain conditions of this permit, in the event of inconsistency between a permit condition and the provision of the Decree or if a provision of the Decree is revised, the actual provision of the Decree shall govern.

1.2 Applicability Provisions

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

1.3 Applicable Emission Standards for the Affected Boilers

- a.
 - i. The affected boilers shall comply with applicable emission standards under Title 35, Subtitle B, Chapter I, Subchapter c of the Illinois Administrative Code, as addressed in existing permits for the affected boilers.
 - ii. The affected boilers shall comply with applicable emission standards and requirements related to mercury emission pursuant to 35 IAC Part 225, by the applicable dates specified by these rules.
- 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:

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- i. To operate an affected boiler in violation of certain state emission standards during startup of the boiler or the terms and conditions that accompanied such authorization.
- ii. To continue to operate an affected boiler in violation of certain state emission standards during malfunction or breakdown of the boiler, including control devices and ancillary systems, or the terms and conditions that accompanied such authorization.

1.4 Future Applicable Emission Rate under the Consent Decree

- a. The PM emission rate of each affected boiler shall be no greater than:
 - i. The limit specified in Paragraph 86 of the Decree, i.e., 0.030 lb/mmBtu, by no later than December 31, 2008; or
 - ii. The limit set in accordance with Paragraph 88 of the Decree by the applicable date set under Paragraph 88.

Note: The PM emission rate for the affected boilers pursuant to the Decree, when it takes effect, will be more stringent than the applicable state emission standard(s) for PM. Emission testing conducted to determine compliance with these limits shall use methods and procedures as specified in Paragraph 90 of the Decree.

Paragraph 88 of the Decree provides for a PM limit higher than 0.030 lb/mmBtu to be set for a Unit pursuant to a Pollution Control Upgrade Analysis that is prepared and completed by the Permittee and approved by USEPA and other parties to the Decree)

1.5 Compliance Assurance Monitoring for PM

As provided by 40 CFR 64.5(a)(2), if the Permittee applies for a significant modification of the CAAPP Permit for the source to include the new control systems for the affected boilers, the Permittee shall submit a compliance assurance monitoring (CAM) plan in accordance with 40 CFR Part 64, Compliance Assurance Monitoring for the boilers, to the extent that it would be a pollutant-specific emissions unit for which the proposed permit revision is applicable.

1.6 Work Practices and Operational Requirements

- a. i. The Permittee shall operate and maintain each PM control device on each affected boiler in accordance with Paragraphs 83 and 87 of the Decree:

Note: Paragraphs 83 and 87 of the Decree generally require that PM control devices be operated to maximize PM emission reductions at all times when Unit(s) are in operation to the extent reasonably practicable and specify certain minimum operating and maintenance practices that the Permittee must implement for this purpose.

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- ii. The Permittee shall operate and maintain the ESP on each affected boiler in accordance with Paragraph 84 of the Decree.

Note: Paragraph 84 of the Decree requires that the Permittee implement the practices recommended by the PM Emission Control Optimization Studies performed in accordance with Paragraph 84 of the Decree or other alternative actions approved by USEPA in accordance with Paragraph 84 of the Decree, unless the criterion in Paragraph 87 of the Decree that lift this requirement have been satisfied.

- iii. If an affected boiler is subject to a limit for PM set pursuant to Paragraph 88 of the Decree, as addressed in Condition 1.4(a)(ii), the Permittee shall operate the affected boiler and associated PM control equipment in accordance with Paragraph 88(c) of the Decree.
 - iv. The Permittee shall operate and maintain each affected boiler and Unit, and associated PM control equipment in accordance with the PM control plan maintained by the Permittee pursuant to Condition 1.9-2(b)(i)(A).
- b. The ductwork for the affected boilers shall not include "bypass ducts" that would enable the flue gas from the boiler to bypass the baghouse system.

1.7 Testing Requirements

- a. i. The Permittee shall have testing conducted to measure PM emissions from each affected boiler on a periodic basis consistent with the requirements of Paragraph 89 and 119 of the Decree with respect to the timing of PM emission tests.
- ii. The Permittee shall also have PM measurements conducted for the PM emissions from the affected boiler(s) within 90 days (or such later date set by the Illinois EPA) following a request by the Illinois EPA for such measurements.
- b. i. These PM measurements shall be performed in the maximum operating range of the affected boiler and otherwise under representative operating conditions.
- ii. A. The methods and procedures used for PM testing to determine compliance with the applicable PM emission standards and limitation shall be in accordance with Paragraph 90 of the Decree.
- B. In conjunction with such measurements, measurements of condensable PM shall also be conducted by USEPA Method 202 (40 CFR Part 51, Appendix M) or other established test method approved by the Illinois EPA.
- c. Except for minor deviations in test methods, as defined by 35 IAC 283.130, PM emission testing shall be conducted in accordance with a test plan prepared by the testing service or the Permittee

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and submitted to the Illinois EPA for review prior to testing, and the conditions, if any, imposed by the Illinois EPA as part of its review and approval of the test plan, pursuant to 35 IAC 283.220 and 283.230. The Permittee shall submit this test plan at least 60 days prior to the actual date of testing.

- d. The Permittee shall notify the Illinois EPA prior to conducting PM emission tests to enable the Illinois EPA to observe testing. Notification for the expected test date shall be submitted a minimum of 30 days prior to the expected date of testing. Notification of the actual date and expected time of testing shall be submitted a minimum of 5 working days prior to the actual test date. The Illinois EPA may on a case-by case basis accept shorter advance notice if it would not interfere with the Illinois EPA's ability to observe testing.
- e. The Permittee shall submit the Final Report(s) for this PM emission testing to the Illinois EPA within 45 days of completion of testing, which report(s) shall include the following information:
 - i. The name and identification of the affected unit and the results of the tests.
 - ii. The name of the company that performed the tests.
 - iii. The name of any relevant observers present including the testing company's representatives, any Illinois EPA or USEPA representatives, and the representatives of the Permittee.
 - iv. Description of test method(s), including description of sampling points, sampling train, analysis equipment, and test schedule, including a description of any minor deviations from the test plan, as provided by 35 IAC 283.230(a).
 - v. Detailed description of operating conditions during testing, including:
 - A. Operating information for the affected boiler, i.e., firing rate of each boiler (million Btu/hr) and composition of fuel as burned (ash, sulfur and heat content).
 - B. Combustion system information, i.e., settings for distribution of primary and secondary combustion air, settings for O₂ concentration in the boiler, and levels of CO in the flue gas, if determined by any diagnostic measurements.
 - C. Control equipment information, i.e., equipment condition and operating parameters during testing, including any use of the flue gas conditioning system.
 - D. Load during testing (megawatt output).

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- vii. Data and calculations, including copies of all raw data sheets and records of laboratory analyses, sample calculations, and data on equipment calibration.
- viii. The SO₂, NO_x, O₂ or CO₂, (hourly averages) and opacity data (6-minute averages) measured during testing.

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

1.8 Monitoring Requirements.

- a. The Permittee shall install, operate, and maintain continuous monitoring equipment for operation of each sorbent injection system, i.e., rate of injection of sorbent.
- b. The Permittee shall install, operate and maintain continuous monitoring equipment to measure the following operating parameters of each baghouse system:
 - i. The temperature of the flue gas at the inlet of the system (hourly average).
 - ii. The pressure drop across the system (hourly average).
- c. The Permittee shall comply with all applicable requirements of 35 IAC Part 225 related to monitoring of mercury emissions from the affected boilers.

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

1.9-1 Recordkeeping Requirements for the Coal Supply for the Affected Boilers

- a. The Permittee shall comply with all applicable requirements of 35 IAC Part 225 related to sampling and analysis of the coal supply to the affected boilers for its mercury content.
- b. The Permittee shall keep records of the mercury and heat content of the 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 to the boilers to accompany mercury emission data collected for the boilers. The analysis of the coal for mercury content shall be conducted using appropriate ASTM Methods as specified in 35 IAC Part 225.

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

1.9-2 Records for Control Devices and Control Equipment

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

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- a. i. Logs for the Baghouse Systems
 - A. An operating log or other records for each baghouse system that, at a minimum: (1) Identifies the trigger for bag cleaning, e.g., manual, timer, or pressure drop; (2) Identifies each period when the Unit was in operation and the baghouse was not being operated or was not operating effectively; (3) Identifies each period when any baghouse module(s) have been taken out of regular service, with identification of the module(s) and explanation; and (4) Specifically documents the implementation of the operating procedures related to the baghouse that are required to be or are otherwise implemented pursuant to Condition 1.6(a).
 - B. Maintenance and repair log or other records for each baghouse system that, at a minimum: (1) List the activities performed, with date and description, and (2) Specifically document the maintenance and repair activities related to the baghouse that are required to be or are otherwise performed pursuant to Condition 1.6(a).
- ii. Logs for the Sorbent Injection System
 - A. An operating log or other records for each system that, at a minimum: (1) identify the sorbent that is being used, the setting(s) for sorbent injection rate and each period of time when the affected boiler was in operation and the system was also being operated, and (2) specifically documents the implementation of the operating procedures related to the sorbent injection that are required to be or are otherwise implemented pursuant to Condition 1.6(b)..
 - B. Maintenance and repair log or other records for each system that, at a minimum, list the activities performed, with date and description.
- b. PM Emission Control Planning
 - i. The following records related to the procedures and practices for control of PM emissions from the affected boilers:
 - A. A record, which shall be kept up to date, identifying the specific operating procedures and maintenance practices (including procedures and practices specifically related to startups and malfunction/breakdown incidents) currently being implemented by the Permittee for each affected boiler and Unit and associated PM control equipment to satisfy Condition 1.6(a). These procedures and practices are referred to as the "PM Control Plan" in this permit.

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

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

c. Specific Records for the Sorbent Injection Systems

During the period before recordkeeping is required for usage of sorbent pursuant to 35 IAC Part 225, the usage of sorbent (lbs) and average sorbent injection rate of each system (lbs/operating hour), on a monthly basis.

Note: This permit does not affect the recordkeeping requirements for the existing control systems that are contained in the existing permits for the source.

1.9-3 Records for Continuous Monitoring Systems

- a. The Permittee shall maintain operating records for the continuous monitoring systems required by Condition 1.8 that, at a minimum, include:
 - i. Measured data.
 - ii. Performance evaluations and other quality assurance/control activities, including calibration checks and maintenance and adjustment performed.
 - iii. Periods other than performance of routine quality assurance, calibration, and maintenance, as addressed above, when the monitor was inoperative, with reason.
 - iv. Quarterly reports submitted in accordance with Condition 1.1.10-2(a).

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

1.9-4 Other Recordkeeping Requirements

a. Summary Records Related to the PM Control Plan

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

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- i. The date of the incident.
 - ii. A description of the incident, including the required action(s) that were not taken; other actions or mitigation measures that were taken, if any; and the likely consequences of the incidents as related to emissions.
 - iii. The time at and means by which the incident was identified.
 - iv. The length of time after the incident was identified before required action(s) were taken or were no longer required and an explanation why this time was not shorter, including a discussion of the timing of any mitigation measures that were taken for the incident.
 - v. The estimated total duration of the incident, i.e., the total length of time that the affected boiler ran without the required action(s) being taken.
 - vi. A discussion of the probable cause of the incident and any preventative measures taken.
 - vii. A discussion whether any applicable PM emission standards or limits, as listed in Conditions 1.3, 1.4 or 1.6, may have been violated, either during or as a result of the incident, with supporting explanation.
- b. Records Related to Mercury Emissions
- i. The Permittee shall comply with all applicable recordkeeping requirements of 35 IAC Part 225 related to control of mercury emissions from the affected boilers.
 - 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 emission data for mercury collected for the affected boilers by the Permittee, including emissions (micrograms per cubic meter, pounds per hour, or pounds per million Btu) and control efficiency for different modes of operation of the boilers and sorbent injection system, with identification and description of the mode of operations.

1.10-1 Reporting Requirements - Reporting of Deviations

a. Prompt Reporting of Deviations

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

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- i. Immediate notification for a deviation from requirements related to PM emissions if the deviation is accompanied by the failure of two or more compartments in the baghouse system.
- ii. Notification with the quarterly reports required by Condition 1.10-2(a) for deviations not addressed above, including deviations from other applicable requirements, e.g., work practice requirements, required operating procedures, required maintenance practices, and recordkeeping requirements.

b. Periodic Reporting of Deviations

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

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

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

1.10-2 Reporting Requirements - Periodic Reporting

a. Quarterly Reports

The Permittee shall submit quarterly reports to the Illinois EPA.

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

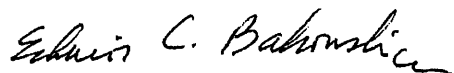
Note: This permit does not affect the requirements for quarterly reporting contained in the existing permits for the source.

1.11 Authorization for Operation

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

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



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

ECB:CPR:KMP:

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 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.

DIRECTORY
ENVIRONMENTAL PROTECTION AGENCY
BUREAU OF AIR

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

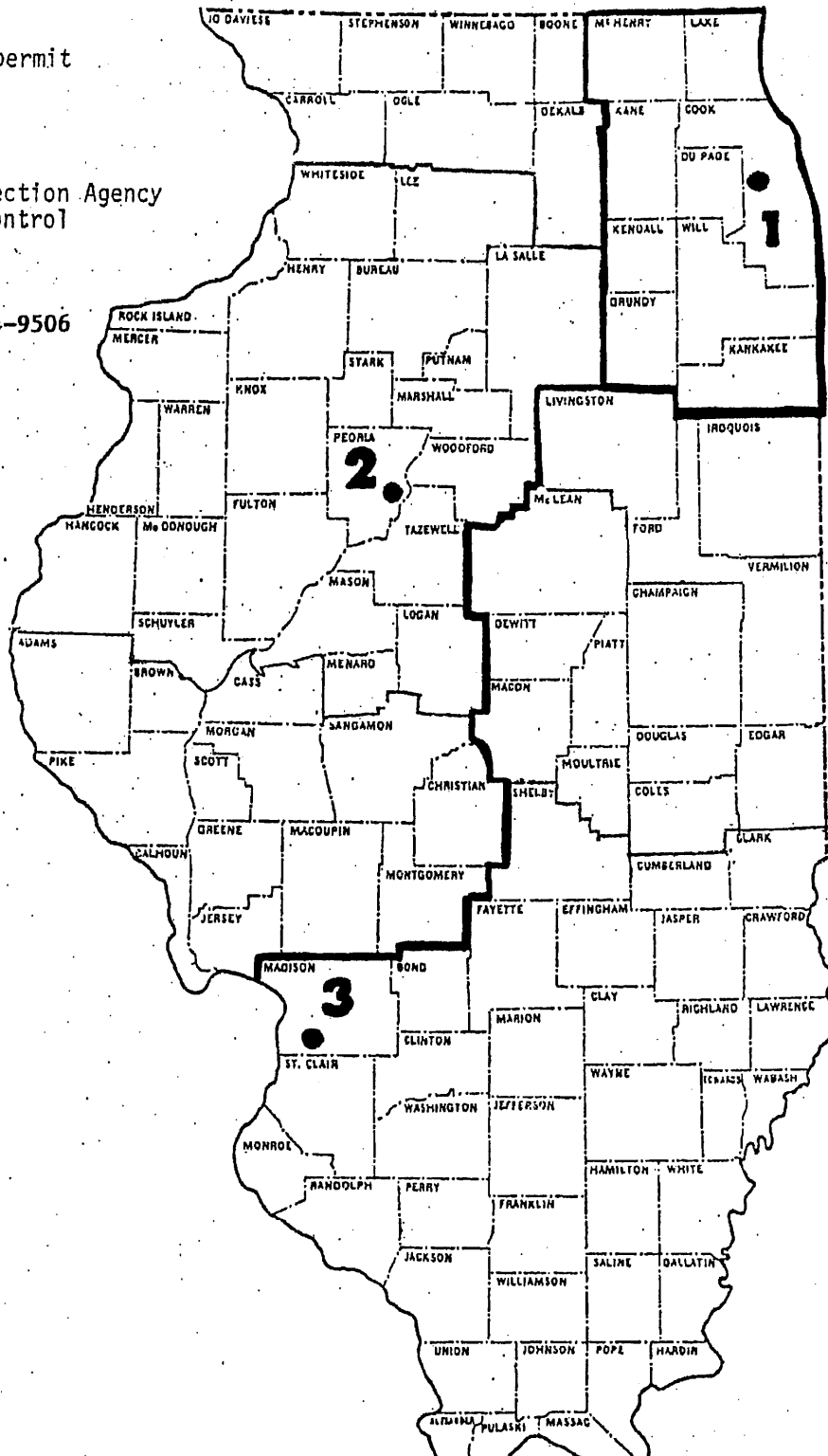
Illinois Environmental Protection Agency
Division of Air Pollution Control
Permit Section
1021 N. Grand Ave E.
P.O. Box 19506
Springfield, Illinois 62794-9506

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





ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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

ROD R. BLAGOJEVICH, GOVERNOR DOUGLAS P. SCOTT, DIRECTOR

217/782-2113

CONSTRUCTION PERMIT

PERMITTEE

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

Application No.: 07020036

I.D. No.: 155010AAA

Applicant's Designation:

Date Received: February 14, 2007

Subject: Baghouses and Sorbent Injection Systems for Units 1 and 2

Date Issued: May 29, 2007

Location: Hennepin Power Station, 13498 East 800 Street, Hennepin

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

1.1 Introduction

- a. This Permit authorizes the construction of two baghouses and two sorbent injection systems (one baghouse and sorbent injection system for each of the two existing boilers), to supplement the existing emission control system on each boiler. The new baghouse systems and sorbent injection systems would further process the flue gas from each of the two existing coal-fired boilers, which are both equipped with electrostatic precipitators (ESP). This permit also authorizes installation of new induced draft fans on each boiler (one for Unit 1 and two for Unit 2) to overcome the additional pressure drop from these new control systems and associated ductwork, which fans will replace the existing induced draft fans on each 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 particulate matter (PM) and mercury from the existing boilers and which will not 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 the receiving, storage and handling of sorbent for the new sorbent injection systems qualifying as an insignificant activity, with annual

emissions of PM in the absence of control equipment that would be no more than 0.44 tons, so that this activity need not be addressed by this permit. This does affect the Permittee's obligation to comply with all applicable requirements that apply to the receiving, storage and handling of sorbent.

- c. This permit does not authorize any modifications to the existing boilers or generating units, which would increase capacity or potential emissions.
- d. This permit does not affect requirements for the affected boilers established by the Consent Decree in *United States of America and the State of Illinois, American Bottom Conservancy, Health and Environmental Justice-St. Louis, Inc., Illinois Stewardship Alliance, and Prairie Rivers Network, v. Illinois Power Company and Dynegy Midwest Generation Inc.*, Civil Action No. 99-833-MJR, U.S. District Court, Southern District of Illinois (Decree), certain provisions of which are referenced by this permit. In addition, as the provisions of the Decree are referenced in certain conditions of this permit, in the event of inconsistency between a permit condition and the provision of the Decree or if a provision of the Decree is revised, the actual provision of the Decree shall govern.

1.2 Applicability Provisions

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

1.3 Applicable Emission Standards for the Affected Boilers

- a.
 - i. ~~The affected boilers shall comply with applicable emission standards under Title 35, Subtitle B, Chapter I, Subchapter e of the Illinois Administrative Code, as addressed in existing permits for the affected boilers.~~
 - ii. ~~The affected boilers shall comply with applicable emission standards and requirements related to mercury emission pursuant to 35 IAC Part 225, by the applicable dates specified by theses rules.~~
- 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.~~

1.4 Future Applicable Emission Rate under the Consent Decree

- a. The PM emission rate of each affected boiler shall be no greater than:
 - i. The limit specified in Paragraph 86 of the Decree, i.e., 0.030 lb/mmBtu, by no later than December 31, 2008; ~~or~~
 - ii. ~~The limit set in accordance with Paragraph 88 of the Decree by the applicable date set under Paragraph 88.~~

~~Note: The PM emission rate for the affected boilers pursuant to the Decree, when it takes effect, will be more stringent than the applicable state emission standard(s) for PM. Emission testing conducted to determine compliance with these limits shall use methods and procedures as specified in Paragraph 90 of the Decree.~~

~~Paragraph 88 of the Decree provides for a PM limit higher than 0.030 lb/mmBtu to be set for a Unit pursuant to a Pollution Control Upgrade Analysis that is prepared and completed by the Permittee and approved by USEPA and other parties to the Decree)~~

1.5 Compliance Assurance Monitoring for PM

~~As provided by 40 CFR 64.5(a)(2), if the Permittee applies for a significant modification of the CAAPP Permit for the source to include the new control systems for the affected boilers, the Permittee shall submit a compliance assurance monitoring (CAM) plan in accordance with 40 CFR Part 64, Compliance Assurance Monitoring for the boilers, to the extent that it would be a pollutant-specific emissions unit for which the proposed permit revision is applicable.~~

1.6 Work Practices and Operational Requirements

- a. i. ~~The Permittee shall operate and maintain each PM control device on each affected boiler in accordance with Paragraphs 83 and 87 of the Decree:~~

~~Note: Paragraphs 83 and 87 of the Decree generally require that PM control devices be operated to maximize PM emission reductions at all times when Unit(s) are in operation to the extent reasonably practicable and specify certain minimum operating and maintenance practices that the Permittee must implement for this purpose.~~

- ii. ~~The Permittee shall operate and maintain the ESP on each affected boiler in accordance with Paragraph 84 of the Decree.~~

~~Note: Paragraph 84 of the Decree requires that the Permittee implement the practices recommended by the PM Emission Control Optimization Studies performed in accordance with Paragraph 84 of the Decree or other alternative actions approved by USEPA in accordance with Paragraph 84 of the Decree, unless the criterion in Paragraph 87 of the Decree that lift this requirement have been satisfied.~~

- iii. ~~If an affected boiler is subject to a limit for PM set pursuant to Paragraph 88 of the Decree, as addressed in Condition 1.4(a)(ii), the Permittee shall operate the affected boiler and associated PM control equipment in accordance with Paragraph 88(c) of the Decree.~~

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

- b. ~~The ductwork for the affected boilers shall not include "bypass ducts" that would enable the flue gas from the boiler to bypass the baghouse system.~~

1.7 Testing Requirements

- a.
 - i. The Permittee shall have testing conducted to measure PM emissions from each affected boiler on a periodic basis consistent with the requirements of Paragraph 89 and 119 of the Decree with respect to the timing of PM emission tests.
 - ii. The Permittee shall also have PM measurements conducted for the PM emissions from the affected boiler(s) within 90 days (or such later date set by the Illinois EPA) following a request by the Illinois EPA for such measurements.
- b.
 - i. These PM measurements shall be performed ~~in the maximum operating range of the affected boiler and otherwise under representative operating conditions.~~
 - ii.
 - A. The methods and procedures used for PM testing to determine compliance with the applicable PM emission standards and limitation shall be in accordance with Paragraph 90 of the Decree.
 - B. ~~In conjunction with such measurements, measurements of condensable PM shall also be conducted by USEPA Method 202 (40 CFR Part 51, Appendix M) or other established test method approved by the Illinois EPA.~~
- c. Except for minor deviations in test methods, as defined by 35 IAC 283.130, PM emission testing shall be conducted in accordance with a test plan prepared by the testing service or the Permittee and submitted to the Illinois EPA for review prior to testing,

and the conditions, if any, imposed by the Illinois EPA as part of its review and approval of the test plan, pursuant to 35 IAC 283.220 and 283.230. ~~The Permittee shall submit this test plan at least 60 days prior to the actual date of testing.~~

- d. The Permittee shall notify the Illinois EPA prior to conducting PM emission tests to enable the Illinois EPA to observe testing. Notification for the expected test date shall be submitted a minimum of 30 days prior to the expected date of testing. Notification of the actual date and expected time of testing shall be submitted a minimum of 5 working days prior to the actual test date. The Illinois EPA may on a case-by case basis accept shorter advance notice if it would not interfere with the Illinois EPA's ability to observe testing.
- e. The Permittee shall submit the Final Report(s) for this PM emission testing to the Illinois EPA within 45 days of completion of testing, which report(s) shall include the following information:
 - i. The name and identification of the affected unit and the results of the tests.
 - ii. The name of the company that performed the tests.
 - iii. The name of any relevant observers present including the testing company's representatives, any Illinois EPA or USEPA representatives, and the representatives of the Permittee.
 - iv. Description of test method(s), including description of sampling points, sampling train, analysis equipment, and test schedule, including a description of any minor deviations from the test plan, as provided by 35 IAC 283.230(a).
 - v. ~~Detailed description of operating conditions during testing, including:~~
 - A. ~~Operating information for the affected boiler, i.e., firing rate of each boiler (million Btu/hr) and composition of fuel as burned (ash, sulfur and heat content).~~
 - B. ~~Combustion system information, i.e., settings for distribution of primary and secondary combustion air, settings for O₂ concentration in the boiler, and levels of CO in the flue gas, if determined by any diagnostic measurements.~~
 - C. ~~Control equipment information, i.e., equipment condition and operating parameters during testing, including any use of the flue gas conditioning system.~~
 - D. ~~Load during testing (megawatt output).~~

vii. Data and calculations, including copies of all raw data sheets and records of laboratory analyses, sample calculations, and data on equipment calibration.

viii. ~~The SO₂, NO_x, O₂ or CO₂ (hourly averages) and opacity data (6-minute averages) measured during testing.~~

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

1.8 Monitoring Requirements,

a. ~~The Permittee shall install, operate, and maintain continuous monitoring equipment for operation of each sorbent injection system, i.e., rate of injection of sorbent.~~

b. The Permittee shall install, operate and maintain continuous monitoring equipment to measure the following operating parameters of each baghouse system:

i. The temperature of the flue gas at the inlet of the system (hourly average).

ii. The pressure drop across the system (hourly average).

c. ~~The Permittee shall comply with all applicable requirements of 35 IAC Part 225 related to monitoring of mercury emissions from the affected boilers.~~

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

1.9-1 ~~Recordkeeping Requirements for the Coal Supply for the Affected Boilers~~

a. ~~The Permittee shall comply with all applicable requirements of 35 IAC Part 225 related to sampling and analysis of the coal supply to the affected boilers for its mercury content.~~

b. ~~The Permittee shall keep records of the mercury and heat content of the 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 to the boilers to accompany mercury emission data collected for the boilers. The analysis of the coal for mercury content shall be conducted using appropriate ASTM Methods as specified in 35 IAC Part 225.~~

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

1.9-2 Records for Control Devices and Control Equipment

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

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

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

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

- A. ~~An operating log or other records for each system that, at a minimum: (1) identify the sorbent that is being used, the setting(s) for sorbent injection rate and each period of time when the affected boiler was in operation and the system was also being operated, and (2) specifically documents the implementation of the operating procedures related to the sorbent injection that are required to be or are otherwise implemented pursuant to Condition 1.6(b).~~
- B. ~~Maintenance and repair log or other records for each system that, at a minimum, list the activities performed, with date and description.~~

b. ~~PM Emission Control Planning~~

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

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

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

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

c. ~~Specific Records for the Sorbent Injection Systems~~

~~During the period before recordkeeping is required for usage of sorbent pursuant to 35 IAC Part 225, the usage of sorbent (lbs) and average sorbent injection rate of each system (lbs/operating hour), on a monthly basis.~~

~~Note: This permit does not affect the recordkeeping requirements for the existing control systems that are contained in the existing permits for the source.~~

1.9-3 Records for Continuous Monitoring Systems

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

i. Measured data.

ii. ~~Performance evaluations and other quality assurance/control activities, including calibration checks and maintenance and adjustment performed.~~

iii. ~~Periods other than performance of routine quality assurance, calibration, and maintenance, as addressed above, when the monitor was inoperative, with reason.~~

iv. ~~Quarterly reports submitted in accordance with Condition 1.1.10-2(a).~~

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

1.9-4 Other Recordkeeping Requirements

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

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

- i. ~~The date of the incident.~~
- ii. ~~A description of the incident, including the required action(s) that were not taken; other actions or mitigation measures that were taken, if any; and the likely consequences of the incidents as related to emissions.~~
- iii. ~~The time at and means by which the incident was identified.~~
- iv. ~~The length of time after the incident was identified before required action(s) were taken or were no longer required and an explanation why this time was not shorter, including a discussion of the timing of any mitigation measures that were taken for the incident.~~
- v. ~~The estimated total duration of the incident, i.e., the total length of time that the affected boiler ran without the required action(s) being taken.~~
- vi. ~~A discussion of the probable cause of the incident and any preventative measures taken.~~
- vii. ~~A discussion whether any applicable PM emission standards or limits, as listed in Conditions 1.3, 1.4 or 1.6, may have been violated, either during or as a result of the incident, with supporting explanation.~~

b. ~~Records Related to Mercury Emissions~~

- i. ~~The Permittee shall comply with all applicable recordkeeping requirements of 35 IAC Part 225 related to control of mercury emissions from the affected boilers.~~
- 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 emission data for mercury collected for the affected boilers by the Permittee, including emissions (micrograms per cubic meter, pounds per hour, or pounds per million Btu) and control efficiency for different modes of operation of the boilers and sorbent injection system, with identification and description of the mode of operations.~~

1.10-1 ~~Reporting Requirements — Reporting of Deviations~~

a. ~~Prompt Reporting of Deviations~~

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

- i. ~~Immediate notification for a deviation from requirements related to PM emissions if the deviation is accompanied by~~

~~the failure of two or more compartments in the baghouse system.~~

- ~~ii. Notification with the quarterly reports required by Condition 1.10-2(a) for deviations not addressed above, including deviations from other applicable requirements, e.g., work practice requirements, required operating procedures, required maintenance practices, and recordkeeping requirements.~~

b. ~~Periodic Reporting of Deviations~~

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

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

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

1.10-2 Reporting Requirements - Periodic Reporting

a. ~~Quarterly Reports~~

~~The Permittee shall submit quarterly reports to the Illinois EPA.~~

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

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

1.11 Authorization for Operation

The Permittee may operate each affected boiler with the new baghouse system and sorbent injection system under this construction permit until such time as final action is taken to address these systems in

Electronic Filing, Received, Clerk's Office, October 4, 2007

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the CAAPP permit for the source provided that the Permittee submits an appropriate application for CAAPP permit, which incorporates new requirements established by this permit within one year (365 days) of beginning operations of the affected boiler with these systems.

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

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

ECB:CPR:KMP:

CC: Region 2 .

CH2\ 2075743.1

CH2\ 2076814.4

Cement Clinker from Japan)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before May 31, 2006.)

5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: May 9, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 06-4488 Filed 5-9-06; 3:01 pm]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on April 25, 2006, a proposed Consent Decree in *United States v. General Electric Company*, Civil Action No. 03CV4668 (HAA), was lodged with the United States District Court for the District of New Jersey. In that action, the United States seeks to recover from General Electric Company ("General Electric") response costs incurred in connection with the Grand Street Mercury Superfund Site, located in Hoboken, New Jersey ("the Site"), pursuant to section 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607. A number of other lawsuits have been filed and consolidated in connection with the release of mercury at the Site.

As part of the settlement, General Electric has placed \$3 million into an interest-bearing court registry account. The consent decree provides that the United States will receive \$2,805,000 plus interest accrued on that amount, and that the State of New Jersey will receive \$195,000 plus interest accrued on that amount. General Electric further agrees to file motions to withdraw its opposition to a consent decree that the United States and the State of New Jersey lodged in 2003 with other parties in Civil Action No. 96-3775 (HAA) and consolidated cases, and its opposition to aspects of other private settlements. General Electric further agrees to give up its claims for costs that it incurred in performing remediation at the Site and to withdraw its Petition to EPA

under CERCLA section 106(b)(2), 42 U.S.C. 9606(b)(2), for reimbursement of such costs. In exchange, the Plaintiffs covenant not to sue General Electric for their past costs at the Site and provide contribution protection for all response costs and response actions at the Site.

The Department of Justice will receive comments relating to this Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, Attention: Nancy Flickinger, and should refer to *United States v. General Electric Co.*, DOJ #90-11-3-1769.

The Consent Decree may be examined at the Office of the United States Attorney for the District of New Jersey, 970 Broad Street, 7th Floor, Newark, NJ 07102, and at U.S. EPA Region II's Office, 290 Broadway, New York, NY 10007-1866. During the public comment period, the consent decree may also be examined on the following Department of Justice Web site, <http://www.usdoj.gov/enrd/open.html>. A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mail a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$11.00 (25 cents per page reproduction cost) for a full copy of the consent decree, payable to the U.S. Treasury.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 06-4372 Filed 5-10-06; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Modification of the Consent Decree Entered in; *United States et al. v. Illinois Power Company and Dynegy Midwest Generation*

Notice is hereby given that on March 20, 2006, the United States lodged a Proposed Consent Decree Modification in the United States District Court for the Southern District of Illinois in the matter captioned *United States et al. v. Illinois Power Company and Dynegy Midwest Generation, Inc.*, (Civil Action

No. 99-833-MJR). This proposed Modifications was jointly agreed by the United States, the State of Illinois, the four citizen groups co-plaintiffs—the American Bottom Conservancy, Health and Environmental Justice—St. Louis, Inc., Illinois Stewardship Alliance, and the Prairie Rivers Network—and Dynegy Midwest Generation.

The proposed modification affects Section VI of the Consent Decree, *PM Emission Reductions and Controls*, which establishes a variety of requirements for Dynegy Midwest Generation, Inc. ("DMG") concerning particulate matter emissions at identified units in the DMG System. Under the Consent Decree, DMG is required to operate certain electric generating units so as to achieve and maintain an emissions rate of "not greater than 0.030 lb/mmBTU" or to undertake an alternative procedure defined in the Decree as a "Pollution Control Equipment Upgrade Analysis." Consent Decree ¶ 86. According to the proposed modification, the deadline for each of the two Hennepin Units set forth in Paragraph 86 will be changed to December 31, 2008, and the language in Paragraph 86 following the table, as well as Paragraph 88 in its entirety, will be deleted. By this change, among other things, rather than requiring the first Hennepin unit to meet the specified emission rate in 2006 and the second Hennepin unit to meet that rate in 2010, the Consent Decree will instead require DMG to ensure that both Hennepin units meet 0.030 lbs/mmBTU emissions rate by December 31, 2008.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the above-described Proposed Consent Decree Modification. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. Illinois Power Company and Dynegy Midwest Generation, Inc.*, D.J. Ref. No. 90-5-2-1-06837.

During the public comment period, the proposed modification to the Consent Decree may also be examined on the following Department of Justice Web site, <http://www.usdoj.gov/enrd/open.html>. A copy of the proposed modifications may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In

Aug 9, 2006

requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$1.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Thomas A. Mariani, Jr.,

Assistant Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 06-4371 Filed 5-10-06; 8:45am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States v. Jay James Jackson et al.*, Civil Action No. 8:0404cv64, was lodged on April 27, 2006 with the United States District Court for the District of Nebraska. This consent decree requires the defendants to reimburse EPA \$700,000 for past response costs and to implement institutional controls.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, P.O. Box 7611, U.S. Department of *States v. Jay James Jackson et al.*, DOJ Ref. 90-11-2-07430.

The proposed consent decree may be examined at the office of the United States Attorney, 1620 Dodge Street, Suite 1400, Omaha, NE 68102-1506 and at U.S. EPA Region 7, 901 N. 5th Street, Kansas City, KS 66101. During the comment period, the consent decree may be examined on the following Department of Justice Web site, <http://www.usdoj.gov/enrd/open.html>. Copies of the consent decree also may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy, please enclose a check in the amount of \$6.25 (without attachments) or \$8.75 (with attachments) for *United States v. Jay James Jackson, et al.*, (25

cents per page reproduction cost) payable to the U.S. Treasury.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section.

[FR Doc. 06-4375 Filed 5-10-06; 8:45am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act Between the United States, the State of North Dakota, Minnkota Power Cooperative, Inc., and Square Butte Electric Cooperative

In accordance with 28 CFR 50.7, notice is hereby given that on April 25, 2006, a proposed consent decree ("Consent Decree") between the United States, the State of North Dakota, Minnkota Power Cooperative, Inc., ("Minnkota") and Square Butte Electric Cooperative ("Square Butte") was lodged with the United States District Court for the District of North Dakota in Civil Action No. 1:06-CV-034.

The Consent Decree would resolve the civil claims asserted by the United States against Minnkota and Square Butte pursuant to sections 113(b) and 167 of the Clean Air Act, 42 U.S.C. 7413(b) and 7477, for injunctive relief and the assessment of civil penalties for violations of the Prevention of Significant Deterioration provisions of the Act, 42 U.S.C. 7470-92, Title V of the Act, 42 U.S.C. 7661 *et seq.*, and the federally approved and enforceable North Dakota State Implementation Plan (the "SIP").

The United States and the State of North Dakota also filed with the Consent Decree a complaint which alleges, among other things, that Minnkota and Square Butte modified and thereafter operated two coal-fired electricity generating units at the Milton R. Young electricity generating station in Center, North Dakota, without first obtaining a PSD permit authorizing the construction and without installing the best available technology to control emissions of sulfur dioxide (SO₂), nitrogen oxides (NO_x), and particulate matter (PM), as required by the Act, applicable federal regulations, and the SIP.

Under the terms of the proposed Consent Decree, Minnkota and Square Butte will install or upgrade pollution controls for SO₂, NO_x, and PM for the two electricity generating units at the Milton R. Young facility, at an estimated cost of over \$100 million. Minnkota and Square Butte will also pay \$850,000 in

civil penalties and undertake \$5 million in additional injunctive relief.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Deputy Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. Minnkota Power Cooperative, Inc.*, DOJ Case Number 90-5-2-1-07717.

The proposed Consent Decree may be examined at the office of the United States Attorney for the District of North Dakota, 220 East Rosser Avenue, Suite 372, Bismark, ND 58501, and at U.S. EPA Region VIII, 999 18th Street, Denver, CO 80202. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, <http://www.usdoj.gov/enrd/open.html>. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy of the Consent Decree, please reference *United States v. Minnkota Power Cooperative, Inc.*, DOJ Case Number 90-5-2-1-07717, and enclose a check in the amount of \$17.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Thomas Mariani,

Assistant Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 06-4374 Filed 5-10-06; 8:45am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States of America v. County of Sacramento*, Case Number 2:06-CV-00908 GEB-GGH, was lodged with the United States District Court for the Eastern District of California on April 26, 2006.

This proposed Consent Decree concerns a complaint filed by the United States against the County of Sacramento, pursuant to 33 U.S.C. 1311(a) and 1344, to obtain injunctive



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,

Plaintiff,

and

THE STATE OF ILLINOIS, AMERICAN
BOTTOM CONSERVANCY, HEALTH AND
ENVIRONMENTAL JUSTICE – ST. LOUIS,
INC., ILLINOIS STEWARDSHIP ALLIANCE,
and PRAIRIE RIVERS NETWORK

Plaintiff-Intervenors

v.

ILLINOIS POWER COMPANY and
DYNEGY MIDWEST GENERATION, INC.,

Defendants.

Civil Action No. 99-833-MJR

ORDER

THIS MATTER comes before the Court upon the “United States’ Motion to Enter Proposed Consent Decree Modifications” (Doc. 703) which includes the parties’ “Joint Stipulation to Modify Consent Decree.” Therein, the parties seek to modify particular provisions of the Consent Decree entered in this matter on May 27, 2005 (Doc. 695).

With respect to Section VI of the Consent Decree, concerning particulate matter (“PM”) emission reduction and control requirements, the United States lodged proposed modifications with the Court on March 20, 2006 (Doc. 702), pending publication of a notice in the Federal Register and an opportunity for public comment on the proposed modifications. Thereafter, the United States published such notice at 71 Fed. Reg. 27516 (May 11, 2006), and represents that it

received no public comments concerning the proposed modifications during the 30-day period following publication of the notice.

The proposed modifications to the PM provisions are (1) to delete entirely the provisions that provide Dynegy Midwest Generation, Inc. ("DMG") with the option to perform a Pollution Control Equipment Upgrade Analysis in lieu of meeting the default emissions rate of 0.030 lbs/mmBTU for any of the seven units named in the Decree; instead, each of these seven units would be required to meet the rate of 0.030 lb/mmBTU by the dates specified, and (2) to set the same December 31, 2008 deadline for the two Hennepin units to be in compliance with the 0.030 lbs/mmBTU emission limit under the Consent Decree instead of permitting DMG to comply with this emission rate at one Hennepin unit by December 31, 2006 and at the other Hennepin unit by December 31, 2010. The United States explains that this modification will result in sooner overall PM emission reductions than would the original provisions if DMG had exercised its option under the Consent Decree's original terms to control the smaller Hennepin unit by the earlier date and the larger unit by the later date.

With respect to the requirement in Appendix A to the Consent Decree concerning the deadline for DMG to convey the Middle Fork/Vermilion Property ("Property") to the State of Illinois Department of Natural Resources ("IDNR"), the Court previously entered the parties' joint request to extend this date to June 30, 2006. Doc. 699. The parties now seek a modification to Appendix A to provide for an additional extension until September 30, 2006 due to numerous difficulties DMG has encountered during the land survey process, including easements and encroachments on the property.

Upon careful consideration of the United States' Motion to Enter Proposed Consent Decree Modifications, the Court is satisfied that the proposed modifications are justified and in

the public interest. All parties support entry of these modifications, and no public comments were submitted in opposition. Therefore, IT IS HEREBY ORDERED, ADJUDGED and DECREED that, pursuant to the parties' Joint Stipulation to Modify Consent Decree, the Consent Decree entered in this matter on May 27, 2005, is amended as provided below:

1. Paragraph 86 of the Consent Decree is modified as follows:

“86. At each unit listed below, no later than the dates specified, and continuing thereafter, DMG shall operate ESPs or alternative PM control equipment at the following Units to achieve and maintain a PM emissions rate of not greater than 0.030 lb/mmBTU:

Unit	Date
Havana Unit 6	December 31, 2005
1 st Wood River Unit (i.e., either of Wood River Units 4 or 5)	December 31, 2005
2 nd Wood River Unit (i.e., the remaining Wood River Unit)	December 31, 2007
1 st Hennepin Unit (i.e., either of Hennepin Units 1 or 2)	December 31, 2006 <u>December 31, 2008</u>
2 nd Hennepin Unit (i.e., the remaining Hennepin Unit)	December 31, 2010 <u>December 31, 2008</u>
1 st Vermilion Unit (i.e., either of Vermilion Units 1 or 2)	December 31, 2010
2 nd Vermilion Unit (i.e., the remaining Vermilion Unit)	December 31, 2010

[Remainder of Paragraph deleted.]”

2. Paragraph 88 is deleted in its entirety, and replaced with a paragraph placeholder, as follows:

“88. [Omitted.]”

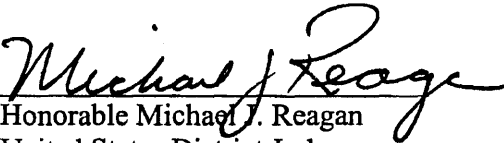
3. Appendix A, Subsection II, Paragraph C, is modified as follows:

Performance – Upon approval of plan by the Plaintiffs, DMG shall complete the mitigation project according to the approved plan and schedule, and convey such Property no later than ~~June 30, 2006~~ September 30, 2006.

4. All provisions of the Consent Decree unaffected by the foregoing modifications shall operate in conjunction with these new provisions in the same manner and to the same extent as did the substituted language in the original Consent Decree; and

5. Except as specifically provided in this Order, all other terms and conditions of the Consent Decree will remain unchanged and in full effect.

DONE and ORDERED this 9th day of August, 2006.

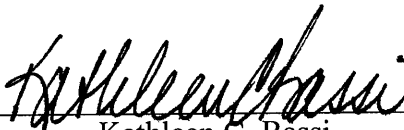

Honorable Michael J. Reagan
United States District Judge

CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 4th day of October, 2007, I have served electronically the attached **APPEAL OF CONSTRUCTION PERMIT FOR THE INSTALLATION OF BAGHOUSE, SORBENT INJECTION SYSTEM, AND INDUCED DRAFT FANS**, 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 the persons listed in the attached **SERVICE LIST**.


Kathleen C. Bassi

Kathleen C. Bassi
Stephen J. Bonebrake
Andrew N. Sawula
Sheldon A. Zabel
SCHIFF HARDIN, LLP
6600 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
312-258-5500
FAX: 312-258-5600
kbassi@schiffhardin.com

SERVICE LIST

(PCB 07-123)

Mr. Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601
hallorab@ipcb.state.il.us

Sally Carter
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
sally.carter@illinois.gov