

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MIDWEST GENERATION, LLC –)	
WILL COUNTY GENERATING STATION,)	
)	
Petitioner,)	
)	
v.)	PCB 10-_____
)	(Permit Appeal – Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

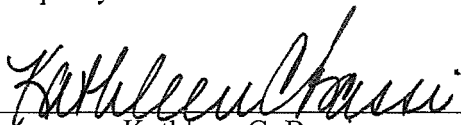
NOTICE OF FILING

To:

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

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

PLEASE TAKE NOTICE that we have today electronically filed with the Office of the Clerk of the Pollution Control Board **APPEAL OF CONSTRUCTION PERMIT FOR THE INSTALLATION OF ABOVE-GROUND GASOLINE STORAGE TANK AND REQUEST FOR PARTIAL STAY OF THE PERMIT** and **APPEARANCES OF KATHLEEN C. BASSI and STEPHEN J. BONEBRAKE**, copies of which are herewith served upon you.



 Kathleen C. Bassi

Dated: May 19, 2010

Kathleen C. Bassi
 Stephen J. Bonebrake
 SCHIFF HARDIN, LLP
 233 South Wacker Drive, Suite 6600
 Chicago, Illinois 60606
 312-258-5500

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MIDWEST GENERATION, LLC –)	
WILL COUNTY GENERATING STATION,)	
)	
Petitioner,)	
)	
v.)	PCB 10-_____
)	(Permit Appeal – Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

APPEARANCE

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



Kathleen C. Bassi
Schiff Hardin LLP
233 South Wacker Drive, Suite 6600
Chicago, Illinois 60606
312-258-5567
kbassi@schiffhardin.com

Dated: May 19, 2010

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MIDWEST GENERATION, LLC –)
WILL COUNTY GENERATING STATION,)

Petitioner,)

v.)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)

Respondent.)

PCB 10-_____
(Permit Appeal – Air)

APPEARANCE

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



Stephen J. Bonebrake
Schiff Hardin LLP
233 South Wacker Drive, Suite 6600
Chicago, Illinois 60606
312-258-5646
sbonebrake@schiffhardin.com

Dated: May 19, 2010

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MIDWEST GENERATION, LLC –)	
WILL COUNTY GENERATING STATION,)	
)	
Petitioner,)	
)	
v.)	PCB 10-_____
)	(Permit Appeal – Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

APPEAL OF CONSTRUCTION PERMIT FOR THE INSTALLATION OF ABOVE-GROUND GASOLINE STORAGE TANK AND REQUEST FOR PARTIAL STAY OF THE PERMIT

NOW COMES Petitioner, MIDWEST GENERATION, LLC – WILL COUNTY GENERATING STATION (“Petitioner” or “Midwest Generation”), pursuant to Section 40(a)(1) of the Illinois Environmental Protection Act (“Act”) (415 ILCS 5/40(a)(1)) and 35 Ill.Adm.Code § 105.200 *et seq.*, and requests a hearing before the Board to contest the decisions contained in the construction permit¹ issued to Petitioner on April 14, 2010, pursuant to Section 39(a) of the Act (415 ILCS 5/39(a)) and 35 Ill.Adm.Code § 201.142 (“the construction permit”) and attached hereto as Exhibit 1. 35 Ill.Adm.Code §§ 105.210(a) and (b). Midwest Generation received the construction permit on April 16, 2010. Pursuant to Section 39(a) of the Act and 35 Ill.Adm.Code § 105.206(a), this Petition is timely filed with the Board. In support of its Petition to appeal Conditions 1.4(e)(ii), 1.7, 1.8, and 1.10(a), Petitioner states as follows:

¹ Application No. 10030034.

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

1. The Will County Generating Station (“Will County” or the “Station”), Agency I.D. No. 197810AAK, is an electric generating station owned by Midwest Generation, LLC, and operated by Midwest Generation, LLC – Will County Generating Station. The Will County electrical generating units (“EGUs”) went online between 1955 and 1963. The Will County Generating Station is located at 529 East 135th Road, Romeoville, Will County, Illinois 60446-1538, within the Chicago ozone and PM_{2.5}² nonattainment areas. Will County is an intermediate load plant and can generate approximately 1,100 megawatts. Midwest Generation generally employs 190 people at the Will County Generating Station.

2. Will County is a major source subject to the Clean Air Act Permitting Program (“CAAPP”). 415 ILCS 5/39.5. The Illinois Environmental Protection Agency (“Agency”) issued a CAAPP permit to Midwest Generation for Will County on September 29, 2005. Subsequently, on November 2, 2005, Midwest Generation timely appealed the CAAPP permit for Will County at PCB 06-060. The Board accepted the appeal for hearing on November 17, 2005. On February 16, 2006, the Board found that, pursuant to Section 10-65(b) of the Administrative Procedure Act (5 ILCS 100/10-65(b)) (“APA”) and the holding in *Borg-Warner Corp. v. Mauzy*, 427 N.E. 2d 415 (Ill. App. Ct. 1981) (“*Borg-Warner*”), the CAAPP permit is stayed, upon appeal, as a matter of law. Order, *Midwest Generation, LLC, Will County Generating Station v. Illinois Environmental Protection Agency*, PCB 06-060 (February 16, 2006), p. 2.

² Particulate matter less than 2.5 microns in aerodynamic diameter.

3. Also pending before the Board is the appeal of the construction permit issued to the Will County Station for construction and operation of wet dust extractor control devices, docketed at PCB 06-156. The Board granted a partial stay of that permit on July 20, 2006.

4. Will County's appeal of the construction permit issued to it for the construction of a soda ash handling system is pending before the Board at PCB 08-009. The Board granted a partial stay of that permit on August 23, 2007.

5. Additionally, Midwest Generation's appeal of the construction permit issued to the Will County Station for the installation of activated carbon injection systems is currently pending and is docketed at PCB 08-022. The Board granted a partial stay of that permit on October 4, 2007.

6. Midwest Generation operates four coal-fired boilers at Will County and associated coal handling, coal processing, and ash handling activities. Relevant to this appeal, Will County currently has a 1,500-gallon underground gasoline storage tank, used to provide fuel for Station vehicles. The construction permit that Midwest Generation is appealing here was issued to permit the installation and operation of a new 2,000-gallon above-ground gasoline storage tank.

7. The Agency received Midwest Generation's application for the construction permit on March 10, 2010, and issued the construction permit on April 14, 2010. Despite Midwest Generation's comments alerting the Agency to the facts that the permit contains language or conditions that have been appealed in PCB 06-060 and that Midwest Generation has appealed similar language included in other construction permits issued since November 2005 (*see* PCB 06-156 and 08-022), the agency has included language or conditions that continue to require Midwest Generation to appeal the construction permit.

II. REQUEST FOR PARTIAL STAY

8. Historically, the Board has granted partial stays in permit appeals where a petitioner has so requested. *See, e.g., 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); *Midwest Generation, LLC, Will County Generating Station v. Illinois Environmental Protection Agency*, PCB 08-009 (August 23, 2007) (same); *Midwest Generation, LLC, Will County Generating Station v. Illinois Environmental Protection Agency*, PCB 08-022 (October 4, 2007) (same); *Dynegy Midwest Generation, Inc. (Baldwin Energy Complex) v. Illinois Environmental Protection Agency*, PCB 08-066 (May 15, 2008) (granted stay of the portions of the permit contested by Dynegy); *Dynegy Midwest Generation, Inc. (Havana Power Station) v. Illinois Environmental Protection Agency*, PCB 07-115 (October 4, 2007) (same); *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).

9. The Board has granted partial stays of permits during the pendency of appeals based on a consideration of the following standards: “(1) a certain and clearly ascertainable right needs protection; (2) irreparable injury will occur without the injunction; (3) no adequate remedy at law exists; and (4) there is a probability of success on the merits.” *Citgo Petroleum Corporation v. Illinois Environmental Protection Agency*, Order, PCB 07-10 (September 21, 2006), p. 1. (Internal citations omitted.) It is not necessary for the Board to determine that all

four factors exist in order for it to grant a discretionary, partial stay. *Citgo Petroleum*, PCB 07-10, p. 2.

10. As discussed below, the Agency has included in the construction permit language that Midwest Generation is appealing at PCB 06-060. Midwest Generation understands that the operating conditions included in the construction permit will roll into the CAAPP permit when it becomes effective. *See* Exhibit 1, Condition 1.11. Midwest Generation will suffer irreparable harm if the language contested in the appeal docketed at PCB 06-060 is allowed to remain in the construction permit for inclusion, ultimately, in the CAAPP permit if the Board finds, in PCB 06-060, that the language should be struck from the CAAPP permit. Moreover, Midwest Generation would suffer irreparable harm if it were required to comply now, through the construction permit, with conditions that the Board may determine, in PCB 06-060, are inappropriate. Inclusion of such language in the construction permit effectively denies Midwest Generation its statutory right to its appeal of the CAAPP permit unless the Board stays the contested language.

11. Midwest Generation requests in this instance that the Board exercise its inherent discretionary authority to grant a partial stay of the construction permit, staying only the contested conditions: Conditions 1.4(e)(ii), 1.7, 1.8, and 1.10(a). *See* Exhibit 2.

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

12. Midwest Generation appealed various conditions in the CAAPP permit, including actual language or concepts that are incorporated into this construction permit. The construction permit allows for operation of the new equipment until such time as an operating permit issued to Will County becomes effective. *See* Exhibit 1, Condition 1.11. In essence, then, the construction permit is also, at least temporarily, an operating permit. In issuing the construction

permit, the Agency is attempting to impose conditions through the construction permit that have been appealed in the context of the CAAPP permit appeal prior to the Board's decision on these points or to impose CAAPP concepts prior to the effectiveness of the CAAPP permit.

Additionally, the Agency is inappropriately requiring deviation reporting, which is a function of CAAPP permitting and is not appropriate for construction permits.

A. The Agency Has Inappropriately Imposed Language in the Construction Permit That Was Appealed in PCB 06-060 (Will County CAAPP Appeal) and Has Included Other Inappropriate Conditions in the Construction Permit.

13. In this situation where ultimately the operating permit will be the CAAPP permit,³ that the Agency included in the construction permit language appealed in the CAAPP permit in PCB 06-060 ignores Midwest Generation's right to challenge and have a fair hearing on the appropriateness of the language or concept in the CAAPP permit. The implication of the language is that the operating conditions identified in the construction permit will become the applicable operating conditions during operation pursuant to the construction permit and eventually in the CAAPP permit, even though that language or concept is currently being challenged in the CAAPP Appeal. Inclusion of such language forces Midwest Generation into this appeal in order to preserve the integrity of its appeal of the CAAPP permit, as well as to prevent the imposition of inappropriate conditions in the construction permit, what is effectively the `state operating permit, and ultimately the CAAPP permit.⁴ It undermines the Board's

³ Condition 1.11 provides that the construction permit will remain in effect "until an operating permit becomes effective that addresses operation of this affected facility with the new affected tank." Requirements for Will County's current underground gasoline storage tank are contained in Section 7.5 of the CAAPP permit, and the new above-ground storage tank will be specifically addressed by the CAAPP permit eventually.

⁴ Midwest Generation understands that the operating conditions included in the construction permit will roll into the CAAPP permit when it becomes effective. *See* Exhibit 1, Condition 1.11.

authority to determine whether challenged language or concepts are appropriate through the statutory process established in the Act by the General Assembly. If the Board determines that the challenged language or concept is appropriate, then the language or concept will become applicable to the equipment at the time that the CAAPP permit becomes effective, as the language or concept is already in the CAAPP permit. If the Board determines that the challenged language or concept is not appropriate, then the Agency will have undermined that decision by including the language or concept in this construction permit (unless it is appealed), which would be rolled into the CAAPP permit upon termination of the CAAPP Appeal process under PCB 06-060. Meanwhile, if Midwest Generation did not appeal the construction permit, the challenged language or concept would apply during the operation phase of the construction permit. The challenged language or concept has no more stature when included in the construction permit than it did in the CAAPP permit.

14. Regardless of one's perspective, the Agency's inclusion of the challenged language or concept during the pendency of the appeal of Will County's CAAPP permit is inappropriate, injurious to Midwest Generation's rights under Sections 39, 39.5, and 40.2 of the Act. Midwest Generation will suffer irreparable harm if this language or concept is allowed to remain in the construction permit for inclusion, ultimately, in the CAAPP permit if the Board finds in PCB 06-060 that the language or concept should be stricken from the CAAPP permit. Moreover, Midwest Generation would suffer irreparable harm if it were required to comply now, through the construction permit, with conditions that the Board may determine in PCB 06-060 are inappropriate.

(i) **Testing Requirements – Condition 1.7**

15. Condition 7.5.7(a) of the CAAPP permit issued to Midwest Generation for the Will County Generating Station contains testing requirements for the gasoline stored in Will County's storage tank. Both Condition 7.5.7(a) of the CAAPP permit and Condition 1.7 of the construction permit require Midwest Generation to determine compliance with 35 Ill. Adm. Code §§ 218.585(b) and (c) by using the sampling and testing methods set forth in 35 Ill. Adm. Code §§ 218.585(d), (e), and (f).⁵ These testing requirements were appealed in PCB No. 06-060 at paragraphs 142-143 of Midwest Generation's CAAPP Appeal, and Midwest Generation is compelled to appeal them again here with respect to the construction permit.

16. In addition to the apparent attempt to undermine the appeal process initiated for the CAAPP permit, the Agency again provides no basis for these requirements. There is nothing in 35 Ill. Adm. Code § 218.585 that requires dispensers or users (*i.e.*, consumers) to perform sampling and testing of the gasoline. Section 218.585 requires refiners and suppliers of gasoline to state that the gasoline that they supply complies with applicable requirements. They are the parties who are required to perform the requisite sampling pursuant to the standards and methods included in Section 218.585. Midwest Generation is not a "supplier" of gasoline as the term is used in Section 218.585; rather, Midwest Generation is a consumer of gasoline. While it is incumbent upon Midwest Generation to ensure that the gasoline in their storage tanks complies with applicable limitations, the proper statement from Midwest Generation's supplier of the gasoline's compliance is sufficient under Section 218.585 for compliance with this regulation. The regulation is not, strictly, an "applicable requirement" for Midwest Generation.

⁵ Condition 7.5.7 of the Will County CAAPP permit incorrectly cites to the subparts of 35 Ill. Adm. Code § 218.585; however, it is clear from the language of Condition 7.5.7 that the Agency intended to incorporate the sampling and testing requirements of subsections (d), (e), and (f) in order to determine compliance with subsections (b) and (c).

Recordkeeping requirements are sufficient to ensure compliance with the limitations in Section 218.585 that are applicable to a consumer such as Midwest Generation.

17. Condition 1.7 should be deleted from the permit, and Midwest Generation requests that the Board grant a stay of this condition during the pendency of this appeal.

(ii) Inspection Requirements – Condition 1.8

18. Condition 7.5.8(a) of the appealed CAAPP permit requires annual inspections of various components of the gasoline storage tank and their “ability to comply with the applicable requirements.” Midwest Generation appealed this requirement in the CAAPP Appeal (*see* paragraphs 144-145), yet the same language appears in Condition 1.8 of the construction permit. This is another example of the Agency’s attempt to undermine the CAAPP appeal process and to deny Petitioner its statutorily-granted right to an appeal.

19. The Board’s regulations for gasoline distribution are sufficient to assure compliance, and the Agency’s inclusion of these inspection requirements exceeds its authority to gapfill. Certainly, there is no regulatory basis for requiring any inspections within the two-month timeframe (March 1 through April 30) included in Condition 1.8.

20. For these reasons, Condition 1.8 should be deleted from the permit, and Midwest Generation requests that the Board stay this condition during the pendency of this permit appeal.

B. Midwest Generation Objects to the Inclusion of Deviation Reporting – Conditions 1.4(e)(ii) and 1.10(a).

21. Condition 1.10(a) requires that Midwest Generation report “deviations of the affected facility with permit requirements.” 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) nor 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 Will County's CAAPP permit, the construction permitting rules do not provide for deviation reporting prior to inclusion of the pertinent provisions in the CAAPP permit. This construction permit is not a CAAPP permit. It is not subject to any of the CAAPP requirements for permitting.

22. Moreover, the substantive rules applicable to the above-ground storage tank do not require deviation reporting, yet they were adopted after the effective date of the Clean Air Act Amendments of 1990 that first provided for deviation reporting. The lack of deviation reporting in those rules suggests that the Agency and Board determined that deviation reporting was not necessary for the activity regulated.

23. Will County appealed similar conditions in its construction permit for the wet dust extractor control devices (PCB 06-156 at ¶ 28) and its construction permit for the activated carbon injection systems (PCB 08-022 at ¶¶ 38-39).

24. Condition 1.4(e)(ii) states that a failure "to meet the criterion for exemption from 35 IAC 218.586 . . . shall be treated as a deviation." Condition 1.4(e)(ii) refers to Condition 1.10 as requiring reporting of a such a deviation.

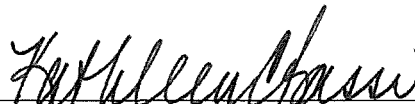
25. The Agency has exceeded the scope of its authority under the Act and the applicable regulations by requiring deviation reporting in this construction permit. Inclusions of deviation reporting requirements in the construction permit is arbitrary and capricious and contrary to law. For these reasons, Midwest Generation requests that Conditions 1.4(e)(ii) and 1.10(a) be deleted from the permit and that the Board stay the effectiveness of Conditions 1.4(e)(ii) and 1.10(a), as set forth in Exhibit 2, during the pendency of this appeal.

WHEREFORE, for the reasons set forth above, Midwest Generation appeals Conditions 1.4(e)(ii), 1.7, 1.8, and 1.10(a) of the construction permit issued April 14, 2010, for the Will County Generating Station. Additionally, Midwest Generation requests that the Board stay Conditions 1.4(e)(ii), 1.7, 1.8, and 1.10(a) as set forth in Exhibit 2 during the pendency of this appeal.

Respectfully submitted,

MIDWEST GENERATION, LLC –
WILL COUNTY GENERATING STATION

by:



One of Its Attorneys

Dated: May 19, 2010

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

EXHIBIT LIST

Exhibit No.

- 1 Construction Permit issued to the Will County Generating Station April 14, 2010
- 2 Will County Construction Permit, redlined to indicate the specific language
Midwest Generation requests be stayed



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

PAT QUINN, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

RECEIVED
APR 16 2010

217/782-2113

ENVIRONMENTAL SERVICES
MIDWEST GENERATION EME, LLC

CONSTRUCTION PERMIT

PERMITTEE

Midwest Generation EME, LLC
c/o: Will County Generating Station
Attn: Scott B. Miller
235 Remington Blvd., Suite A
Bolingbrook, Illinois 60440



Application No.: 10030034

I.D. No.: 197810AAK

Applicant's Designation:

Date Received: March 10, 2010

Subject: Gasoline Storage Tank

Date Issued: April 14, 2010

Location: 529 East 135th Street, Romeoville, Will County

Permit is hereby granted to the above-designated Permittee to CONSTRUCT emission source(s) and/or air pollution control equipment consisting of a new gasoline storage tank as described in the above referenced application. This Permit is subject to standard conditions attached hereto and the following special conditions:

1.1 Description

One new 2,000 gallon above ground gasoline storage tank will be installed in the gasoline dispensing facility, which serves plant vehicles. The new tank will replace an underground 1,500 gallon gasoline storage tank. The new storage tank will be equipped with a submerged loading pipe.

1.2 List of Emission Units

Emission Unit	Description	Emission Control Equipment
Gasoline Tank TK19	2,000 Gallon Gasoline Storage Tank	Submerged Fill

1.3 Applicability Provisions and Emission Standards

- a. i. The "affected tank" for the purpose of these unit-specific conditions is the new gasoline tank described in Conditions 1.1 and 1.2.
- ii. The "affected facility" for the purpose of these unit-specific conditions is the gasoline dispensing facility that includes the affected tank.
- b. The affected tank is subject to the following standards:

Page 2

- i. No person shall cause or allow the loading of any organic material into any stationary tank having a storage capacity of greater than 946 liters (250 gallons), unless such tank is equipped with a permanent submerged loading pipe or an equivalent device approved by the Illinois EPA according to the provisions of 35 IAC 201, or unless such tank is a pressure tank as described in 35 IAC 218.121(a) or is fitted with a recovery system as described in 35 IAC 218.121(b)(2). [35 IAC 218.122(b)]

Note: The exception to this standard at 35 IAC 218.122(c) is not applicable because the vapor pressure of gasoline is greater than 17.24 kPa (2.5 psia) at 294.3°K (70°F).

- ii. No person shall cause or allow the transfer of gasoline from any delivery vessel into any stationary storage tank at a gasoline dispensing operation unless the tank is equipped with a submerged loading pipe. [35 IAC 218.583(a)(1)]

- c. The affected facility is subject to 35 IAC 218.583(a), which provides that:

- i. No person shall cause or allow the transfer of gasoline from any delivery vessel into a stationary storage tank at a gasoline dispensing facility unless the vapors displaced from the storage tank during filling are processed by a vapor control system that includes a vapor collection system that meets the requirements of 35 IAC 218.583(d)(4) and the delivery vessel displays the appropriate sticker pursuant to the requirements of 35 IAC 218.584(b) or (d). [35 IAC 218.583(a)(2)]
- ii. All tank vent pipes shall be equipped with pressure/vacuum relief valves set to resist a pressure of at least 3.5 inches water column and to resist a vacuum of no less than 6.0 inches water column. [35 IAC 218.583(a)(3)]

- d. The affected facility is subject to 35 IAC 218.585, which provides that:

- i. No person shall sell, offer for sale, dispense, supply, offer for supply, or transport for use in Illinois gasoline whose Reid vapor pressure exceeds the applicable limitations set forth in 35 IAC 218.585(b) and (c) during the regulatory control periods of May 1 to September 15. [35 IAC 218.585(a)]
- ii. The Reid vapor pressure of gasoline, a measure of its volatility, shall not exceed 9.0 psi (62.07 kPa) during the regulatory control period. [35 IAC 218.585(b)]

Page 3

- iii. The Reid vapor pressure of ethanol blend gasolines shall not exceed the limitations for gasoline set forth in 35 IAC 218.585(b) by more than 1.0 psi (6.9 kPa). [35 IAC 218.585(c)]

1.4 Non-Applicability Provisions

- a. This permit is issued based on the affected facility not being subject to the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Category: Gasoline Dispensing Facilities, 40 CFR 63, Subpart CCCCCC, because this standard only applies to "area sources" and the affected facility is located at a source that is a major source for emissions of hazardous air pollutants.
- b. This permit is issued based on the affected tank not being subject to the New Source Performance Standards (NSPS) for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels), 40 CFR Part 60, Subpart Kb, because the capacity of the affected tank is less than 40 cubic meters (10,566 gallons).
- c. The affected tank is not subject to the limitations of 35 IAC 218.120, Control Requirements for Storage Containers of VOL, pursuant to 35 IAC 218.119, because the affected tank is used to store a petroleum liquid and its capacity is less than 151 cubic meters (40,000 gallons).
- d. The affected tank is not subject to 35 IAC 218.121 or 218.122(a) because the capacity of the affected tank is less than 40,000 gallons and the throughput of the affected facility is less than 40,000 gallons/day.
- e.
 - i. This permit is issued based on the affected facility not being subject to the requirements of 35 IAC 218.586, Gasoline Dispensing Operations - Motor Vehicle Fueling Operations, pursuant to 35 IAC 218.586(b), which exempts any gasoline dispensing operation which dispenses an average monthly volume of less than 10,000 gallons of motor vehicle fuel per month, based on the monthly average for the most recent twelve calendar months, including only those months when the operation was operating.
 - ii. If the affected facility ever fails to meet the criterion for exemption from 35 IAC 218.586, this shall be treated as a deviation, which the Permittee shall report to the Illinois EPA in accordance with Condition 1.10.

1.5 Control Requirements and Work Practices

- a. At all times the Permittee shall, to the extent practicable, maintain and operate the affected facility in a manner consistent with good air pollution control practices for minimizing emissions.

Page 4

- b. Pursuant to 35 IAC 218.583(a)(2), (c), and (d) the affected tank shall be equipped, operated and maintained with a vapor control/collection system that:
 - i. A. Is operated to prevent leaks of vapor to the atmosphere, that is, a loss of vapor to the atmosphere that equals or exceeds 100 percent of the lower explosive limit (measured as propane), as determined by the procedure specified in 35 IAC 218.583(d)(4)(A). [35 IAC 218.583(d)(4)]
 - B. Is repaired and retested within 15 business days of the discovery of such a leak of vapor by the Permittee or the Illinois EPA. [35 IAC 218.583(d)(5)]
 - ii. Is operated to prevent avoidable leaks of liquid during the filling of the affected tank. [35 IAC 218.583(d)(4)(B)]
 - iii. Is operated in accordance with written instructions prepared and maintained by the Permittee. [35 IAC 218.583(d)(1)]
 - iv. Is maintained and repaired in accordance with written procedures prepared and maintained by the Permittee, which procedures provide for repair, replacement or modification of any worn out or malfunctioning component and maintenance of gauges, meters and other specified testing devices to keep them in proper working order. [35 IAC 218.583(c)(1), (c)(3), (d)(1), and (d)(3)]

1.6 Production and Emission Limitations

- a.
 - i. The capacity of the affected tank shall not exceed 2,000 gallons.
 - ii. The annual throughput of the affected tank shall not exceed 28,000 gallons of gasoline per year.
 - iii. The Permittee shall, upon request by the Illinois EPA, demonstrate that the average monthly gasoline throughput of the affected facility is less than the 10,000-gallon.
- b. This permit is issued based on minimal emissions of VOM from the affected facility. For this purpose emissions of VOM from the affected facility shall not exceed 1.1 ton/year.

1.7 Testing Requirements

- a. Upon written request by the Illinois EPA, the Permittee shall have made measurements to determine compliance with 35 IAC 218.585(b) and (c) (Conditions 1.3(d)(ii) and (iii))

Page 5

using the methods specified by 35 IAC 218.585(d), (e) and (f). The Permittee shall expeditiously submit report(s) for these measurements to the Illinois EPA.

1.8 Inspection Requirements

On an annual basis, in the period between March 1 and April 30 of each year, the Permittee shall conduct an inspection of the affected facility to review its physical condition and ability to comply with the applicable requirements. The Permittee shall keep a record documenting its performance of these inspections.

1.9 Recordkeeping Requirements

The Permittee shall maintain records of the following items for the affected facility:

- a. A file for the affected storage tank that contains the following information, which shall be kept current:
 - i. Design information for the capacity of the tank and the presence of a permanent submerged loading pipe.
 - ii. Design information for the vapor control/collection system for the tank.
 - iii. Design information for the presence of pressure and vacuum relief valves on the vent pipes of each tank, including documentation for the pressure and vacuum settings of the relief valves (inches water column).
 - iv. The Permittee's instructions for the operation of the vapor control/collection system on the tank.
 - v. Maintenance and repair records for the tank, including records related to the repair or replacement of the loading pipe.
- b. Records for either the throughput of the affected facility or the amount of gasoline delivered to the affected facility, gallons/month and gallons/year.
- c. All records required by this permit shall be retained on site for a period of at least five years and shall be readily available for inspection and copying by the Illinois EPA upon request. Any record retained in an electronic format (e.g., computer) shall be capable of being retrieved and printed on paper during normal source office hours so as to be able to respond to an Illinois EPA request for records during the course of a source inspection.

1.10 Reporting Requirements

- a. The Permittee shall notify the Illinois EPA of deviations of the affected facility with permit requirements within 30 days or as

Page 6

otherwise provided by the CAAPP permit for the source. Reports shall describe the deviations, the probable cause of such deviations, the corrective actions taken, and any preventive measures taken.

b. Two copies of all required notifications shall be sent to:

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

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

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

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

Telephone: 847/294-4000 Fax: 847/294-4018

1.11 Authorization to Operate

The affected facility may be operated with the new affected tank pursuant to this construction permit until an operating permit becomes effective that addresses operation of this affected facility with the new affected tank.

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

Edwin C. Bakowski

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

Date Signed: *April 14, 2010*

ECB:MNP:jws

cc: FOS - Region 1, Illinois EPA
CAAPP Permit File - 95090080, Illinois EPA



***** PCB 2010-098 *****

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

532-0226

- 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.

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

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

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

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

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

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

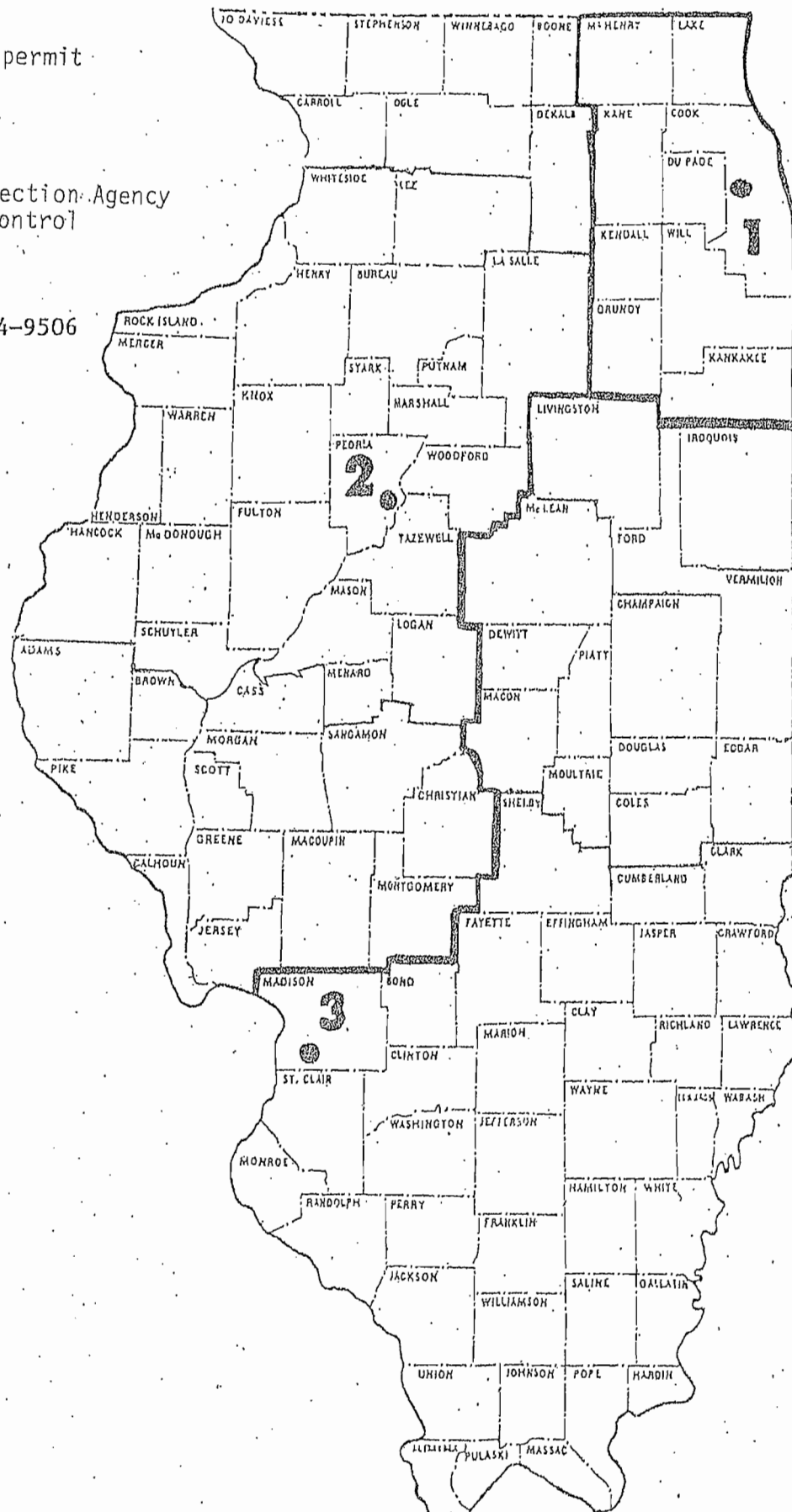


Exhibit 2

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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

PAT QUINN, Governor

DOUGLAS P. SCOTT, Director

217/782-2113

CONSTRUCTION PERMIT

PERMITTEE

Midwest Generation EME, LLC
c/o: Will County Generating Station
Attn: Scott B. Miller
235 Remington Blvd., Suite A
Bolingbrook, Illinois 60990

Application No.: 10030034

I.D. No.: 197810AAK

Applicant's Designation:
10, 2010

Date Received: March

Subject: Gasoline Storage Tank

Date Issued: April 19, 2010

Location: 529 East 135th Street, Romeoville, Will County

Permit is hereby granted to the above-designated Permittee to CONSTRUCT emission source(s) and/or air pollution control equipment consisting of a new gasoline storage tank as described in the above referenced application. This Permit, is subject to standard conditions attached hereto and the following special conditions:

1.1 Description

One new 2,000 gallon above ground gasoline storage tank will be installed in the gasoline dispensing facility, which serves plant vehicles. The new tank will replace an underground 1,500 gallon gasoline storage tank. The new storage tank will be equipped with a submerged loading pipe.

1.2 List of Emission Units

Emission Unit	Description	Emission Control Equipment
Gasoline Tank T.19	2,000 Gallon Gasoline Storage Tank	Submerged Fill

1.3 Applicability Provisions and Emission Standards

- a.
 - i. The "affected tank" for the purpose of these unit-specific conditions is the new gasoline tank described in Conditions 1.1 and 1.2.
 - ii. The "affected facility" for the purpose of these unit-specific conditions is the gasoline dispensing facility that includes the affected tank.

- b. The affected tank is subject to the following standards:
- i. No person shall cause or allow the loading of any organic material into any stationary tank having a storage capacity of greater than 946 liters (250 gallons), unless such tank is equipped with a permanent submerged loading pipe or an equivalent device approved by the Illinois EPA according to the provisions of 35 IAC 201, or unless such tank is a pressure tank as described in 35 IAC 218.121(a) or is fitted with a recovery system as described in 35 IAC 218.121(b) (2). [35 IAC 218.122(b)]

Note: The exception to this standard at 35 IAC 218.122(c) is not applicable because the vapor pressure of gasoline is greater than 17.24 kPa (2.5 psia) at 294.3°K (70°F).

- ii. No person shall cause or allow the transfer of gasoline from any delivery vessel into any stationary storage tank at a gasoline dispensing operation unless the tank is equipped with a submerged loading pipe. [35 IAC 218.583 (a) (1)]

- c. The affected facility is subject to 35 IAC 218.583(a), which provides that:

- i. No person shall cause or allow the transfer of gasoline from any delivery vessel into a stationary storage tank at a gasoline dispensing facility unless the vapors displaced from the storage tank during filling are processed by a vapor control system that includes a vapor collection system that meets the requirements of 35 IAC 218.583(d) (4) and the delivery vessel displays the appropriate sticker pursuant to the requirements of 35 IAC 218.584(b) or (d). [35 IAC 218.583(a) (2)]
- ii. All tank vent pipes shall be equipped with pressure/vacuum relief valves set to resist a pressure of at least 3.5 inches water column and to resist a vacuum of no less than 6.0 inches water column. [35 IAC 218.583(a) (3)]

- d. The affected facility is subject to 35 IAC 218.585, which provides that:

- i. No person shall sell, offer for sale, dispense, supply, offer for supply, or transport for use in Illinois gasoline whose Reid vapor pressure exceeds the applicable limitations set forth in 35 IAC 218.585(b) and (c) during the regulatory control periods of May 1 to September 15. [35 IAC 218.585(a)]
- ii. The Reid vapor pressure of gasoline, a measure of its volatility, shall not exceed 9.0 psi (62.07 kPa) during the regulatory control period. [35 IAC 218.585(b)]
- iii. The Reid vapor pressure of ethanol blend gasolines shall not exceed the limitations for gasoline set forth in 35 IAC

218.585(b) by more than 1.0 psi (6.9 kPa). [35 IAC
218.585(c)]

1.4 Non-Applicability Provisions

- a. This permit is issued based on the affected facility not being subject to the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Category: Gasoline Dispensing Facilities, 40 CFR 63, Subpart CCCCCC, because this standard only applies to "area sources" and the affected facility is located at a source that is a major source for emissions of hazardous air pollutants.
- b. This permit is issued based on the affected tank not being subject to the New Source Performance Standards (NSPS) for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels), 40 CFR Part 60, Subpart Kb, because the capacity of the affected tank is less than 40 cubic meters (10,566 gallons).
- c. The affected tank is not subject to the limitations of 35 IAC 218.120, Control Requirements for Storage Containers of VOL, pursuant to 35 IAC 218.119, because the affected tank is used to store a petroleum liquid and its capacity is less than 151 cubic meters (40,000 gallons).
- d. The affected tank is not subject to 35 IAC 218.121 or 218.122(a) because the capacity of the affected tank is less than 40,000 gallons and the through-put of the affected facility is less than 40,000 gallons/day.
- e.
 - i. This permit is issued based on the affected facility not being subject to the requirements of 35 IAC 218.586, Gasoline Dispensing Operations - Motor Vehicle Fueling Operations, pursuant to 35 IAC 218.586(b), which exempts any gasoline dispensing operation which dispenses an average monthly volume of less than 10,000 gallons of motor vehicle fuel per month, based on the monthly average for the most recent twelve calendar months, including only those months when the operation was operating.
 - ii. ~~If the affected facility ever fails to meet the criterion for exemption from 35 IAC 218.586, this shall be treated as a deviation, which the Permittee shall report to the Illinois EPA in accordance with Condition 1.10.~~

1.5 Control Requirements and Work Practices

- a. At all times the Permittee shall, to the extent practicable, maintain and operate the affected facility in a manner consistent with good air pollution control practices for minimizing emissions.
- b. Pursuant to 35 IAC 218.583(a)(2), (c), and (d) the affected tank shall be equipped, operated and maintained with a vapor control/collection system that:

- i. A. Is operated to prevent leaks of vapor to the atmosphere, that is, a loss of vapor to the atmosphere that equals or exceeds 100 percent of the lower explosive limit (measured as propane), as determined by the procedure specified in 35 IAC 218.583(d)(4)(A). [35 IAC 218.583(d)(4)]
- B. Is repaired and retested within 15 business days of the discovery of such a leak of vapor by the Permittee or the Illinois EPA. [35 IAC 218.583(d)(5)]
- ii. Is operated to prevent avoidable leaks of liquid during the filling of the affected tank. [35 IAC 218.583(d)(4)(B)]
- iii. Is operated in accordance with written instructions prepared and maintained by the Permittee. [35 IAC 218.583(d)(1)]
- iv. Is maintained and repaired in accordance with written procedures prepared and maintained by the Permittee, which procedures provide for repair, replacement or modification of any worn out or malfunctioning component and maintenance of gauges, meters and other specified testing devices to keep them in proper working order. [35 IAC 218.583(c)(1), (c)(3), (d)(1), and (d)(3)]

1.6 Production and Emission Limitations

- a. i. The capacity of the affected tank shall not exceed 2,000 gallons.
- ii. The annual throughput of the affected tank shall not exceed 28,000 gallons of gasoline per year.
- iii. The Permittee shall, upon request by the Illinois EPA, demonstrate that the average monthly gasoline throughput of the affected facility is less than the 10,000-gallon.
- b. This permit is issued based on minimal emissions of VOM from the affected facility. For this purpose emissions of VOM from the affected facility shall not exceed 1.1 ton/year.

~~1.7 Testing Requirements~~

- ~~a. Upon written request by the Illinois EPA, the Permittee shall have made measurements to determine compliance with 35 IAC 218.585(b) and (c) (Conditions 1.3(d)(ii) and (iii)) using the methods specified by 35 IAC 218.585(d), (e) and (f). The Permittee shall expeditiously submit report(s) for these measurements to the Illinois EPA.~~

~~1.8 Inspection Requirements~~

~~On an annual basis, in the period between March 1 and April 30 of each year, the Permittee shall conduct an inspection of the affected~~

~~facility to review its physical condition and ability to comply with the applicable requirements. The Permittee shall keep a record documenting its performance of these inspections.~~

1.9 Recordkeeping Requirements

The Permittee shall maintain records of the following items for the affected facility:

- a. A file for the affected storage tank that contains the following information, which shall be kept current:
 - i. Design information for the capacity of the tank and the presence of a permanent submerged loading pipe.
 - ii. Design information for the vapor control/collection system for the tank.
 - iii. Design information for the presence of pressure and vacuum relief valves on the vent pipes of each tank, including documentation for the pressure and vacuum settings of the relief valves (inches water column).
 - iv. The Permittee's instructions for the operation of the vapor control/collection system on the tank.
 - v. Maintenance and repair records for the tank, including records related to the repair or replacement of the loading pipe.
- b. Records for either the throughput of the affected facility or the amount of gasoline delivered to the affected facility, gallons/month and gallons/year.
- c. All records required by this permit shall be retained on site for a period of at least five years and shall be readily available for inspection and copying by the Illinois EPA upon request. Any record retained in an electronic format (e.g., computer) shall be capable of being retrieved and printed on paper during normal source office hours so as to be able to respond to an Illinois EPA request for records during the course of a source inspection.

1.10 Reporting Requirements

- a. ~~The Permittee shall notify the Illinois EPA of deviations of the affected facility with permit requirements within 30 days or as otherwise provided by the CAAPP permit for the source. Reports shall describe the deviations, the probable cause of such deviations, the corrective actions taken, and any preventive measures taken.~~
- b. Two copies of all required notifications shall be sent to:

Illinois Environmental Protection Agency
Division of Air Pollution Control
Compliance Section (#40)

P.O. Box 19276
Springfield, Illinois 62794-9276

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

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

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

Telephone: 847/294-4000 Fax: 847/294-4018

1.11 Authorization to Operate

The affected facility may be operated with the new affected tank pursuant to this construction permit until an operating permit becomes effective that addresses operation of this affected facility with the new affected tank.

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

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

Date Signed: April 14, 2010

ECB:MNP:jws

CC: FOS - Region 1, Illinois EPA
CAAPP Permit File - 95090080, Illinois EPA

CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 19th day of May, 2010, I have served electronically the attached **APPEAL OF CONSTRUCTION PERMIT FOR THE INSTALLATION OF ABOVE-GROUND GASOLINE STORAGE TANK AND REQUEST FOR PARTIAL STAY OF THE PERMIT** and **APPEARANCES OF KATHLEEN C. BASSI and STEPHEN J. BONEBRAKE**, upon the following persons:

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

and by first class mail, postage affixed, upon:

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


Kathleen C. Bassi

Kathleen C. Bassi
Stephen J. Bonebrake
SCHIFF HARDIN, LLP
233 South Wacker Drive, Suite 6600
Chicago, Illinois 60606
312-258-5500
kbassi@schiffhardin.com