

ILLINOIS POLLUTION CONTROL BOARD
September 6, 2007

MIDWEST GENERATION, LLC,)	
WAUKEGAN GENERATING STATION,)	
)	
Petitioner,)	
)	
v.)	PCB 08-20
)	(Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On August 27, 2007, Midwest Generation, LLC, Waukegan Generating Station (Midwest Generation) timely filed a petition asking the Board to review a July 19, 2007 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 105.206(a). The Agency issued a construction permit containing conditions regarding Midwest Generation's electric generation facility at 401 East Greenwood Avenue, Waukegan, Lake County. Midwest Generation appeals on the grounds that it believes the construction permit contains conditions that are incomplete, exceed the Agency's authority, or are otherwise inappropriate. Midwest Generation's petition meets the content requirements of 35 Ill. Adm. Code 105.210. The Board accepts the petition for hearing.

Midwest Generation has the burden of proof. 415 ILCS 5/40(a)(1) (2006); *see also* 35 Ill. Adm. Code 105.112(a). Hearings "will be based exclusively on the record before the Agency at the time the permit or decision was issued." 35 Ill. Adm. Code 105.214(a). Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2006)), which only Midwest Generation may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Midwest Generation "may deem the permit issued" absent the contested conditions. 415 ILCS 5/40(a)(2) (2006). Currently, the decision deadline is December 26, 2007, the first business day following the 120th day after August 27, 2007. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for December 20, 2007.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by September 26, 2007, which is 30 days after Midwest Generation filed the petition. 35 Ill. Adm. Code 105.212(a). If the Agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed. 35 Ill. Adm. Code 105.116. The record must comply with the content requirements of 35 Ill. Adm. Code 105.212(b).

With its petition, Midwest Generation requested that the Board stay the effectiveness of various permit conditions until the Board renders its decision in this matter. The Agency has not yet responded to this request. *See* 35 Ill. Adm. Code 101.500(d). The Board today reserves ruling on the issues relating to the requested stay pending the Agency's response.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 6, 2007, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board