

ILLINOIS POLLUTION CONTROL BOARD
May 21, 2020

MIDWEST GENERATION, LLC – FISK)
GENERATING STATION,)
)
Petitioner,)
) PCB 06-57
v.) (CAAPP Permit Appeal - Air)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by A. Palivos):

On September 29, 2005, the Illinois Environmental Protection Agency (IEPA) issued a Clean Air Act Permit Program (CAAPP) permit with conditions to Midwest Generation, LLC (MG) for its Fisk Generating Station. On November 2, 2005, MG timely filed a petition asking the Board to review IEPA’s determination to impose specified conditions. *See* 415 ILCS 5/40.2(a) (2005); 35 Ill. Adm. Code 105.302(e). In the alternative, MG requested that the Board stay the entire permit to protect MG’s right to appeal. *See* 35 Ill. Adm. Code 105.304(b).

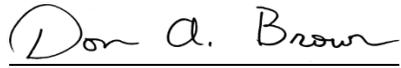
On February 16, 2006, the Board found that the Illinois Administrative Procedure Act’s automatic stay applied to MG’s CAAPP permit consistent with longstanding case law under the Act. *See Borg-Warner Corp v. Mauzy*, 100 Ill. App. 3d 862, 427 N.E.2d 415 (3rd Dist. 1981). Thus, the CAAPP permit was stayed as an operation of law.

On April 28, 2020, the parties filed a joint motion (Joint Mot.) requesting that the Board lift the stay of the uncontested conditions of the CAAPP permit at issue and remand the permit to IEPA while maintain jurisdiction of the appeal. Joint Mot. at 1. Once the modified version of the permit incorporating negotiated changes is issued, the Petitioner will file a motion to dismiss this matter. *Id.* at 2.

The Board grants the parties motion to partially lift the stay as to uncontested permit conditions and remands the uncontested permit conditions to the IEPA while maintaining jurisdiction of the appeal.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 21, 2020, by a vote of 4-0.

A handwritten signature in cursive script that reads "Don A. Brown". The signature is written in black ink and is positioned above a horizontal line.

Don A. Brown, Clerk
Illinois Pollution Control Board