

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

| | | |
|-------------------------|---|---------------------------|
| MIDWEST GENERATION, LLC |) | |
| |) | PCB 25-3 |
| Petitioner, |) | Permit Appeal (Land, CCR) |
| v. |) | |
| |) | |
| ILLINOIS ENVIRONMENTAL |) | |
| PROTECTION AGENCY, |) | |
| |) | |
| Respondent |) | |

NOTICE OF FILING

To: See attached Service List

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Pollution Control Board Petitioner Midwest Generation, LLC's Appeal of CCR Surface Impoundment Retrofit Construction Permit and Request for Partial Stay, a copy of which is herewith served upon you.

Dated: November 5, 2024

MIDWEST GENERATION, LLC

By: /s/Kristen L. Gale

Kristen L. Gale
Susan M. Franzetti
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SERVICE LIST

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Illinois Pollution Control Board
60 E. Van Buren Street, Suite 630
Chicago, IL 60605
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Rebecca Strauss
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Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, IL 62794-9276
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charles.matoesian@illinois.gov
epa.dlc@illinois.gov

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that a true copy of the foregoing Notice of Filing and Petitioner Midwest Generation, LLC's Appeal of CCR Surface Impoundment Retrofit Construction Permit and Request for Partial Stay was electronically filed on November 5, 2024 with the following:

Don Brown, Clerk of the Board
Illinois Pollution Control Board
60 E. Van Buren Street, Suite 630
Chicago, IL 60605
don.brown@illinois.gov

and that copies were sent via e-mail on November 5, 2024 to the parties on the service list.

Dated: November 5, 2024

/s/Kristen L. Gale

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Susan M. Franzetti
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| PROTECTION AGENCY, |) | |
| |) | |
| Respondent |) | |

**APPEAL OF CCR SURFACE IMPOUNDMENT RETROFIT CONSTRUCTION
PERMIT AND REQUEST FOR PARTIAL STAY**

NOW COMES Petitioner, MIDWEST GENERATION, LLC, (“Midwest Generation” or “Petitioner”), pursuant to Section 40(a) of the Illinois Environmental Protection Act (“Act”) (415 ILCS 5/40(a)) and 35 Ill. Adm. Code 105.200 *et seq.*, and requests a hearing before the Board to contest permit conditions contained in the final Coal Combustion Residual (“CCR”) Surface Impoundment Retrofit Construction Permit issued by the Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”) for Midwest Generation’s Powerton Generating Station, served on Petitioner on July 3, 2024 (“Permit”). A copy of the Permit is attached as Exhibit A. Petitioner further requests that the Board stay contested conditions of the Permit during the pendency of this Petition for Review. In support of this Petition for Review, Petitioner states as follows:

I. BACKGROUND

1. Midwest Generation operates Powerton Generating Station, an electric generating station located at 13082 East Manito Road in Pekin, Illinois (Tazewell County).

2. The Ash Bypass Basin, the subject of the Permit, is a CCR surface impoundment at Powerton Station.¹ The Ash Bypass Basin was formerly used to receive ash while the Ash Surge Basin was being emptied. It is currently out of service for a retrofit construction project.

3. In a final decision on July 3, 2024, Illinois EPA issued to Midwest Generation Coal Combustion Residual (“CCR”) Surface Impoundment Retrofit Construction Permit No. 2024-CC-100030 authorizing the retrofit construction of the Ash Bypass Basin (W1798010008-04) in accordance with 35 Illinois Administrative Code Part 845 (“Permit”) (Exhibit A hereto).

4. On August 5, 2024, Petitioner and Illinois EPA timely filed a joint notice to extend the 35-day period within which Midwest Generation may appeal this July 3, 2024, determination of the Illinois EPA. On August 8, 2024, the Board issued an order so extending the appeal period until November 5, 2024, as requested by the parties.

5. Midwest Generation has raised with Illinois EPA a number of comments and concerns relating to the Permit as issued and conferred several times with Agency permit staff regarding these comments and concerns. While the parties were able to reach tentative concurrence on nearly all of the issues during these discussions, the parties have not yet been able to fully resolve the matters that are now the subject of this Appeal.

II. REQUEST FOR PARTIAL STAY OF THE PERMIT

6. Midwest Generation respectfully requests the Board stay the effectiveness of the following conditions pending a final decision of the Board: Special Conditions 3, 9, 10, and 11 and the permit identification information provided in the headers of each page of the Permit.

¹ Concurrently with the present Appeal, Midwest Generation has also filed an Appeal and Request for Partial Stay relating to a CCR Surface Impoundment Operating Permit pertaining to the Ash Bypass Basin and three other CCR surface impoundments at the Powerton Station (PCB-25-4).

7. The Board has discretionary authority to grant a partial stay of a challenged permit where a petitioner has so requested. *Community Landfill Company and City of Moses v. Illinois EPA*, PCB01-48, 01-49 (Oct. 19, 2000). The factors the Board may consider in determining whether a stay is appropriate are: (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. *Id.*, See also *Saint-Gobain Containers, Inc. v. IEPA*, PCB 04-47 (Nov. 6, 2003); *Bridgestone/Firestone Off-Road Tire Co. v. Illinois EPA*, PCB 02-31 (Nov. 1, 2001). Notably, the Board is not required to consider every one of the four factors in making the stay determination. *Bridgestone* at 3.

8. Midwest Generation will suffer irreparable harm if the Board does not issue a stay because it will be forced to operate in a state of noncompliance with the Permit and the law and will thus be at continual imminent risk of enforcement action. In contrast, neither the public nor the Agency will be harmed if a stay is granted, particularly since the Agency has already informally agreed in principle to all of Midwest Generation's requested changes regarding the conditions. Further, Midwest Generation's appeal of the identified permit conditions would be rendered moot if it had to comply with the contested conditions during the appeal, and Midwest Generation's right to appeal the permit conditions is a certain and ascertainable right that needs protection.

III. ISSUES ON APPEAL

9. Midwest Generation hereby petitions for review the Agency's inclusion in the Permit of the following identified terms and conditions and asks the Board to reverse and remand the Permit to the Agency specifically for the purpose of removing the conditions or revising the Permit as requested herein. This Petition for Review is timely filed in accordance with the Board's August 8, 2024, order extending the appeal period until November 5, 2024.

A. Permit Header

10. The permit number is incorrect in the headers of each page of the permit. 2021-CO-100029 is listed and should be changed to 2024-CC-100030.

B. Special Condition 3

11. The Permit Application Log No. is incorrect and should be changed to 2021-100030.

C. Special Condition 9

12. There is no requirement to complete an Annual Consolidated Report for a construction permit. The Annual Consolidated Report is included with the Operating Permit (2024-CO-100029); therefore, Petitioner requests that condition should be deleted from the Construction Permit.

D. Special Condition 10

13. This condition is inconsistent with Special Condition 11 of the Operating Permit (2024-CO-100029), which requires additional wells within 90 days. Because it is inconsistent, Petitioner requests that Special Condition 10 be deleted.

E. Special Condition 11

14. The requirement to submit one original and two copies of all documents required by the permit is unduly burdensome and unreasonable. Indeed, each of the documents are also required to be maintained on the Petitioner's publicly available website, which is also available to the Agency. Petitioner requests that Special Condition 11 be modified so that it must submit one copy of all certifications, logs, reports, and plan sheets.

WHEREFORE, Petitioner request that the Board:

1) Enter an Order staying the effectiveness of the contested conditions of the Permit as set forth above.

- 2) Conduct a hearing on the contested terms of the Permit; and
- 3) Reverse and remand the Permit to the Agency specifically for the purpose of removing the contested conditions or revising the Permit in accordance with Petitioner's objections and the Board's Order.

Respectfully submitted,
Midwest Generation, LLC

By: /s/ Kristen Gale
One of Its Attorneys

Kristen L. Gale
Genevieve Essig
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EXHIBIT A



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782-3397

JB PRITZKER, GOVERNOR

JOHN J. KIM, DIRECTOR

217/782-0610

July 3, 2024

Midwest Generation, LLC
13082 East Manito Road
Pekin, Illinois 61554

Re: Midwest Generation, LLC
Powerton Generating Station
Coal Combustion Residual Surface Impoundment Permit No. 2024-CC-100030
Bureau ID: W1798010008

Dear Permittee:

Attached is the final Coal Combustion Residual Surface Impoundment Retrofit Construction Permit for your facility. The Permit as issued covers monitoring and related reporting requirements. Failure to meet any portion of the Permit could result in civil and/or criminal penalties. The Illinois Environmental Protection Agency is ready and willing to assist you in interpreting any of the conditions of the Permit as they relate specifically to your discharge. Since the public notice of your permit, the following changes have been made:

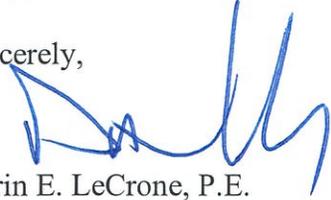
1. Special Condition 7 now notes that financial assurance information was submitted both in their initial application received October 21, 2021 and in a separate submission dated June 21, 2021.
2. Special Condition 9 now correctly references the Annual Consolidated Report in Special Condition 17.
3. Special Condition 13 now requires that the permittee shall notify the Agency within 7 days of construction being completed.
4. Reference to leachate monitoring data has been removed from Special Condition 11.
5. Special Condition 15 has been revised to not include CCR.
6. Various spelling and grammar mistakes have been corrected.

The attached Permit is effective as of the date indicated on the first page of the Permit. Until the effective date of any re-issued Permit, the limitations and conditions of the previously issued Permit remain in full effect. You have the right to appeal any condition of the Permit to the Illinois Pollution Control Board within a 35 day period following the issuance date.

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Should you have questions concerning the Permit, please contact Mark E. Liska at 217/782-0610.

Sincerely,



Darin E. LeCrone, P.E.
Manager, Permit Section
Division of Water Pollution Control

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Attachment: Final Permit

cc: Records
Compliance Assurance Section
Peoria Region
Billing
USEPA

Electronic Filing: Received, Clerk's Office 11/06/2024

Coal Combustion Residual Surface Impoundment Permit No. 2024-CC-100030

Illinois Environmental Protection Agency

Division of Water Pollution Control

1021 North Grand Avenue East

Post Office Box 19276

Springfield, Illinois 62794-9276

Coal Combustion Residual Surface Impoundment Retrofit Construction Permit

Expiration Date: June 30, 2029

Issue Date: July 3, 2024

Name and Address of Permittee:

Midwest Generation, LLC
13082 East Manito Rd.
Pekin, IL 61554

Name and Address of Facility:

Midwest Generation, LLC
Powerton Generating Station
13082 East Manito Rd.
Pekin, IL 61554
(Tazewell County)

CCR Impoundment:

W1798010008-04 Ash Bypass Basin

In compliance with the provisions of the Illinois Environmental Protection Act, Title 35 of Ill. Adm. Code, Subtitle C and/or Subtitle D, Chapter 1, and the Clean Water Act (CWA), the above-named permittee is hereby authorized to retrofit construct a coal combustion residual (CCR) surface impoundment, at the above location in accordance with the standard conditions and attachments herein.

Coal Combustion Residual Surface Impoundment Permit No. 2024-CC-100030 authorizes the retrofit construction of the Ash Bypass Basin in accordance with 35 Illinois Administrative Code Part 845 as described below.

Coal Combustion Residual Surface Impoundment Permit No. 2024-CC-100030 does not authorize the operation of the Ash Surge Basin, the Metal Cleaning Basin, the Ash Bypass Basin, or the Former Ash Basin.

Coal Combustion Residual Surface Impoundment Permit No. 2024-CC-100030 does not authorize the closure of the Ash Bypass Basin, corrective action for the Ash Bypass Basin, or any construction activities associated with the closure of the Ash Bypass Basin.

Coal Combustion Residual Surface Impoundment Permit No. 2024-CC-100030 does not authorize the closure, corrective action, or any construction for the Ash Surge Basin, the Former Ash Basin, or the Metal Cleaning Basin.

Coal Combustion Residual Surface Impoundment Permit No. 2024-CC-100030 does not authorize the discharge of any wastewater to waters of the United States. NPDES Permit No. IL0002232 authorizes this facility to discharge wastewater to waters of the United States.

Coal combustion residuals, consisting of bottom ash discharged from the station's dewatering bins and other process waste streams related to electric power-generating operations when the Ash Surge Basin was being cleaned. The Ash Bypass Basin covers approximately 0.83 acres and has a storage capacity of approximately 6,700 cubic yards.

Permit is hereby granted to the above designated permittee(s) to construct facilities described as follows:

The retrofit construction of the Ash Bypass Basin including the removal of the gravel warning and sand cushion layers over the existing

geomembrane liner, decontaminating the basin's existing geomembrane liner for re-use as a supplemental liner, decontaminating the basin's appurtenant structures, installing a new basin floor and slopes, installing a composite liner system consisting of a 60-mil HDPE geomembrane over a geosynthetic clay liner, installing a leachate collection and removal system consisting of a drainage geocomposite, leachate collection pipe, and submersible sump pump, installing a sand filter layer over the leachate collection and removal system, and installing a protective warning layer over the sand filter layer. Retrofit construction includes all pipes, pumps, and appurtenances as specified in the Application for Retrofit Construction Permit application dated July 15, 2022 and the Amended Written Retrofit Plan Revision 1 dated March 5, 2024.

Permittee is not authorized to operate after the above expiration date. In order to receive authorization to operate beyond the expiration date, the permittee shall submit the proper application as required by the Illinois Environmental Protection Agency (IEPA) not later than 180 days prior to the expiration date.



Darin E. LeCrone P.E.
Manager, Permit Section
Division of Water Pollution Control

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CCR Impoundment Permit No. 2021-CO-100029

Special Conditions

SPECIAL CONDITION 1: This permit does not relieve the Permittee of the responsibility of complying with the provisions of the State of Illinois Rules and Regulations, 35 Ill. Adm. Code Subtitle B, Air Pollution Control, Chapter 1 and 35 Ill. Adm. Code Subtitle G, Land Pollution Control, Chapter 1. The Permittee may be required to file reports and/or obtain applicable permits through the Illinois EPA's Bureau of Air (BOA) - Division of Air Pollution Control (DAPC) and/or Illinois EPA's Bureau of Land (BOL) – Division of Land Pollution Control (DLPC).

SPECIAL CONDITION 2: This construction permit is for Retrofitting of the Ash Bypass Basin and does not cover any closure construction or post-closure care of the Ash Bypass Basin. This permit does not authorize any construction activities necessary for closure and/or corrective action of the Ash Bypass Basin.

SPECIAL CONDITION 3: The operator shall implement methods for controlling dust, including the Fugitive Dust Control Plan included in Application Log No. 2021-100029, so as to prevent wind dispersal of particulate matter off-site.

SPECIAL CONDITION 4: A permanent sign shall be maintained at each CCR impoundment that contains the information required under 35 IAC, Section 845.130.

SPECIAL CONDITION 5: The written Emergency Action Plan (EAP), shall be maintained by the facility. The EAP and all amendments must be placed in the facility's operating record. Upon activation of the EAP, the facility must notify Illinois EPA in writing within 30 days of activation and place all corresponding documentation in the facility operating record. The permittee may amend the EAP at any time but must amend the EAP when there is a change in conditions that would substantially affect the EAP.

SPECIAL CONDITION 6: The Safety and Health Plan and accompanying certification has been submitted as part of Permit Application Log No. 2021-100029 and must be maintained by the facility. The plan must be updated annually and on an as needed basis. The Safety and Health Plan and all amendments must be placed in the facility operating record.

SPECIAL CONDITION 7: The permittee submitted financial assurance in accordance with Part 845 Subpart I in their application and in a separate submission dated June 21, 2021. The permittee shall provide and maintain financial assurance in accordance with Part 845 Subpart I.

SPECIAL CONDITION 8: All CCR impoundments and any lateral expansion of a CCR surface impoundment must be inspected by a qualified person on a weekly basis and after each 25-year, 24-hour storm event. All CCR surface impoundment instrumentation must be inspected at least every 30 days. A report for each inspection shall be generated and placed into the facility operating record.

SPECIAL CONDITION 9: Each CCR Surface impoundment must be inspected on an annual basis by a qualified Professional Engineer, in accordance with 35 IAC 845.540. An inspection report must be completed and included with the Annual Consolidated Report, as specified in Special Condition 17.

SPECIAL CONDITION 10: Within 60 days of the effective date of this construction permit, the facility must install and begin to monitor at least two additional down gradient wells in the Silty Clay/Silt Unit, two piezometers in the fill unit, and two staff gages in the intermittent stream and standing water within the wetlands north of the service road splitting up the Former Ash Basin.

SPECIAL CONDITION 11: All certifications, logs, reports, plan sheets, notices, and groundwater monitoring data required to be submitted to the Illinois EPA by the permittee shall be mailed to the following address:

Illinois Environmental Protection Agency
Compliance Assurance Section
Bureau of Water
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

Information submittals transmitted by FedEx or UPS shall be mailed to the following address:

Illinois Environmental Protection Agency
Compliance Assurance Section
Bureau of Water
1021 North Grand Avenue East
Springfield, Illinois 62702

CCR Impoundment Permit No. 2021-CO-100029

Special Conditions

Electronic groundwater monitoring data shall be emailed to Illinois EPA at the following email address:
EPA.BOW.GWS.CCR@illinois.gov

Except for electronic groundwater, the operator shall provide the Illinois EPA with the original and two (2) copies of all certifications, logs, reports, and plan sheets required by this permit.

SPECIAL CONDITION 12: The permittee will commence construction in accordance with the specifications listed in the Application for Retrofit Construction Permit application dated July 15, 2022 and the Amended Written Retrofit Plan Revision 1 dated March 5, 2024. Any changes made to the construction plans must be approved by the Agency.

SPECIAL CONDITION 13: The permittee shall notify the Agency within 7 days of construction being completed.

SPECIAL CONDITION 14: Issuance of this permit does not release the Permittees from any liability for prior violations of the Act or Rules and Regulations promulgated thereunder.

SPECIAL CONDITION 15: All sludges not considered Coal Combustion Residual as defined under 35 Ill. Adm. Code Part 845, if generated, shall be disposed of at a site and in a manner acceptable to the Agency, including obtaining required state construction and/or operating permits from the Agency.

SPECIAL CONDITION 16: All discharges to a Water of the United States shall be governed by NPDES Permit No. IL0002232.

SPECIAL CONDITION 17: All certifications, logs, reports, plan sheets, notices, and groundwater monitoring data generated as a part of the construction quality assurance program must be reported in the retrofit construction completion report in accordance with 35 IAC 845.770(g) and is required to be submitted to the Illinois EPA prior to termination of the retrofit construction permit by the permittee. The permittee shall mail the retrofit construction completion report to the following address:

Illinois Environmental Protection Agency
Compliance Assurance Section
Bureau of Water
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

Information submittals transmitted by FedEx or UPS shall be mailed to the following address:

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Compliance Assurance Section
Bureau of Water
1021 North Grand Avenue East
Springfield, Illinois 62702