

ILLINOIS POLLUTION CONTROL BOARD
November 21, 2024

MIDWEST GENERATION, LLC,)	
)	
Petitioner,)	
)	
v.)	PCB 25-4
)	(Permit Appeal – Land, CCR)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J. A. Van Wie):

On August 8, 2024, at the parties’ request, the Board extended until November 5, 2024, the time period for Midwest Generation, LLC (MWG) to appeal a July 3, 2024 determination of the Illinois Environmental Protection Agency (Agency). The determination concerns MWG’s Powerton Generating Station located at 13082 East Manito Road in Pekin, Tazewell County. On November 6, 2024, MWG timely filed a petition (Pet.) asking the Board to review the Agency’s determination. *See* 415 ILCS 5/40(a)(1) (2022); 35 Ill. Adm. Code 101.300(b), 105.206, 105.208; *see also* 35 Ill. Adm. Code 101.300(b) (accounting for State legal holidays). For the reasons below, the Board accepts the petition for review.

Under the Environmental Protection Act (415 ILCS 5 (2022)), the Agency is the permitting authority, responsible for administering Illinois’ regulatory programs to protect the environment. If the Agency denies a permit or grants one with conditions, the permit applicant may appeal the Agency’s decision to the Board. *See* 415 ILCS 5/4, 5, 40(a)(1) (2022); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency issued MWG a coal combustion residual (CCR) surface impoundment operating permit with conditions for MWG’s Powerton Generating Station. MWG appeals on the grounds that the permit includes conditions that are incorrect, outdated, inconsistent with one another, unduly burdensome and unreasonable, and lack support. MWG’s petition meets the content requirements of 35 Ill. Adm. Code 105.210.

The Board accepts the petition for hearing. MWG has the burden of proof. 415 ILCS 5/40(a)(1) (2022); *see also* 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its permit decision. *See* 35 Ill. Adm. Code 105.214(a). Accordingly, though the Board hearing affords a permit applicant the opportunity to challenge the Agency’s reasons for denying or conditionally granting the permit, information developed after the Agency’s decision typically is not admitted at hearing or considered by the Board. *See* Alton Packaging Corp. v. PCB, 162 Ill. App. 3d 731, 738, 516 N.E.2d 275, 280 (5th Dist. 1987); Community Landfill Co. & City of Morris v. IEPA, PCB 01-170 (Dec. 6, 2001), *aff’d sub nom. Community Landfill Co. & City of Morris v. PCB & IEPA*, 331 Ill. App. 3d 1056, 772 N.E.2d 231 (3rd Dist. 2002).

Upon its own motion or the motion of any party, the Board or the hearing officer may order that the hearing be held by videoconference. In deciding whether to hold the hearing by videoconference, factors that the Board or the hearing officer will consider include cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties' preferences, and the proceeding's complexity and contentiousness. *See* 35 Ill. Adm. Code 101.600(b), 105.110.

Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2022)), which only MWG may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, MWG "may deem the permit issued." 415 ILCS 5/40(a)(2) (2022). Currently, the decision deadline is Thursday, March 6, 2025, which is the 120th day after the Board received the petition and a date on which the Board has scheduled a meeting. *See* 35 Ill. Adm. Code 105.114.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by Friday, December 6, 2024, which is 30 days after the Board received MWG's petition. *See* 35 Ill. Adm. Code 105.116(a), 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. *See* 35 Ill. Adm. Code 105.116(a). The record must comply with the Board's requirements for content, organization, and certification. *See* 35 Ill. Adm. Code 101.1030(g), 105.116(b), 105.212(b). In addition, the Agency must file the record electronically instead of in paper. Specifically, the record must be filed through the Clerk's Office On-Line (COOL) or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF. *See* 35 Ill. Adm. Code 101.302(h)(2)(A), 105.116(a).¹

MWG's petition requests that the Board stay the contested Special Conditions 6, 11, 14, 15, 16, 17, 19, 20, 21, 22, 25, 26, and 28 and "the permit identification information provided in the headers of page of the Permit" while its petition is pending. Pet. at 3. The Agency has not filed a response to this request for a partial stay, and the Board today reserves ruling on it.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 21, 2024, by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board

¹ Any questions about filing the record in an electronic format should be directed to the Clerk's Office at (312) 814-3620 or (312) 814-3461.