

ILLINOIS POLLUTION CONTROL BOARD
August 23, 2007

MIDWEST GENERATION, LLC, WILL)
COUNTY GENERATING STATION,)
)
Petitioner,)
)
v.) PCB 08-9
) (Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

On July 20, 2007, Midwest Generation, LLC, Will County Generating Station (Midwest Generation), filed a petition (Pet.) asking the Board to review a June 15, 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 with conditions for Midwest Generation’s electric generation facility located at Romeoville, Will County. Midwest Generation appeals on the grounds that the Agency has inappropriately included conditions. Midwest Generation also requested that the Board grant a partial stay of the construction permit by staying specified portions of eight conditions. In an order dated July 26, 2007, the Board accepted Midwest Generation petition for hearing but reserved ruling on the requested stay pending the Agency’s response.

In its request for a partial stay, Midwest Generation argues that, “[h]istorically, the Board has granted partial stays in permit appeals where a petitioner has so requested.” Pet. at 3-4 (citations omitted). Stressing the risk that it will suffer irreparable harm and that the environment will not benefit from improved pollution control, Midwest Generation asks “that the Board exercise its inherent discretionary authority to grant a partial stay of the construction permit” *Id.* at 4. Specifically, Midwest Generation seeks to stay specified portions of Conditions 2, 4(a)(ii), 6(b), 7(a), 8(a)(i), 8(c)(ii), 8(c)(vii), and 9, as indicated in Exhibit 3 filed with its petition. *Id.*; *see also id.*, Exh. 3.

Section 101.500(d) of the Board’s procedural rules provides that, “[w]ithin 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of the motion.” 35 Ill. Adm. Code 101.500(d). The Agency has filed no response to Midwest Generation’s request for a partial stay.

In Community Landfill Co. and City of Morris v. IEPA, PCB 01-48, 01-49, slip op. at 4 (Oct. 19, 2000), the Board found "that it has the authority to grant discretionary stays from

permit conditions." The Board noted it "has previously granted or denied discretionary stays in permit appeals, both when the Agency did and did not consent to such stays." *Id.* (citations omitted). The Board elaborated that "[t]he permit appeal system would be rendered meaningless in many cases, if the Board did not have the authority to stay permit conditions." *Id.*

The Board has reviewed Midwest Generation's Exhibit 3, entitled "Redlined Permit Reflecting Provisions Midwest Generation Requests Be Stayed." Pet., Exh. 3. The Board notes that Exhibit 3 strikes all or part of Conditions 2, 4(a)(ii), 6(b), 7(a), 8(a)(i), 8(c)(ii), 8(c)(vii), and 9 of Midwest Generation's construction permit. *See id.* On the basis of that review, and in the absence of any response to the request from the Agency, the Board grants Midwest Generation's request for a stay of the contested conditions in its construction permit, as those contested conditions are reflected in the edited permit filed as Exhibit 3 to Midwest Generation's petition for review and request for stay. The partial stay remains in effect until the Board takes final action on the construction permit appeal, or until the Board orders otherwise.

The edited permit filed as Exhibit 3 to Midwest Generation's petition for review and request for stay indicates the scope of the partial stay granted by the Board as plainly as any summary the Board might provide. Accordingly, the Board incorporates that document into this order. For the parties' convenience, that document is attached to this order below as Attachment A.

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 August 23, 2007, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board

Exhibit 3

**Redlined Permit Reflecting Provisions
Midwest Generation Requests Be Stayed**

Board Attachment A

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19506, SPRINGFIELD, ILLINOIS 62794-9S06 - (217) 782-2113

ROD R. BLAGOJEVICH, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

217/782-2113

CONSTRUCTION PERMIT

PERMITTEE

Midwest Generation EME, LLC
Attn: Andrea Crapisi
440 South LaSalle Street, Suite 3500
Chicago, Illinois 60605

Application No.: 07030069

I.D. No.: 197810AAK

Applicant's Designation:

Date Received: March 26, 2007

Subject: Soda Ash Handling and Application Systems

Date Issued: June 15, 2007

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

Permit is hereby granted to the above-designated Permittee to CONSTRUCT emission source(s) and/or air pollution control equipment consisting of a soda ash (sodium carbonate) handling system and a soda ash application system, as described in the above-referenced application. This Permit is subject to standard conditions attached hereto and the following special condition(s):

- 1a. This permit authorizes construction of a soda ash handling system, which includes a silo, feeder hopper and enclosed screw conveyors, (the affected handling system), and a soda ash application system, which will apply soda ash to the coal on the conveyor belt from the rail car dumper (the affected application system). This permit is issued based on the affected systems being an emission control project whose principle purpose is to enhance the performance of the electrostatic precipitators, which control particulate matter (PM) emissions from the existing coal-fired boilers at the source, by treating the coal supply to the boilers with soda ash. As such this project also facilitates use of coal from mines that do not or have not treated their coal with soda ash.
- b. Other than installation of the affected systems, this permit does not authorize changes to the boilers or existing coal handling operations at the source to handle coal that they are not currently capable of handling.
- c. This permit does not relax or otherwise revise any requirements and conditions that apply to the boilers and other existing operations at the source, including applicable monitoring, testing, recordkeeping, and reporting requirements pursuant to current operating permits issued for this source.

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2. For the affected systems, the Permittee shall comply with the applicable State rules that limit PM emissions, including 35 IAC Part 212, Sections 212.123, 212.301, 212.307, 212.313, and ~~212.321~~.
3. This permit is issued based on the affected systems not being subject to the federal New Source Performance Standards (NSPS) for Nonmetallic Mineral Processing Plants, 40 CFR 60, Subpart 000, because soda ash is not ground or crushed in the affected systems.
- 4a.
 - i. The emissions of PM from the affected handling system shall not exceed 0.3 lbs/hour and 1.4 tons/year.
 - ii. This permit is issued based on negligible PM emissions from the affected application system. ~~For this purpose emissions shall not exceed 0.1 lbs/hour and 0.44 tons/year.~~
 - iii. Compliance with annual limits shall be determined from a running total of 12 months of data.
- b. This permit is issued based on the application of soda ash with the affected systems not increasing emissions from the boilers and other existing operations at the source as coal that has been treated with soda ash at the mine is currently being used at the source.
- 5a. At all times, the Permittee shall, to the extent practicable, maintain and operate the affected systems, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing PM emissions.
- b. The Permittee shall implement and maintain control measures for PM emissions from the affected systems, such as a filter and enclosure, that minimize visible emissions of PM and provide assurance of compliance with the applicable emission standards, as addressed in Condition 2.
- 6a.
 - i. If the affected systems routinely apply soda ash to the coal supply for the boilers during a calendar quarter, the Permittee shall have the opacity of the emissions from the affected systems determined within 45 calendar days of a written request by the Illinois EPA or by the date agreed upon by the Illinois EPA, whichever is later, during representative weather and operating conditions by a qualified observer in accordance with USEPA Test Method 9, as further specified below.
 - ii. The duration of opacity observations shall be at least 30 minutes (five 6-minute averages) unless the average opacities for the first 12 minutes of observations (two six-minute averages) are both less than 10.0 percent.
 - iii. A. The Permittee shall notify the Illinois EPA at least 7 days in advance of the date and time of these observations, in order to allow the Illinois EPA to witness observation. This notification shall include the name(s) and employer(s) of the qualified observer(s).

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- B. The Permittee shall promptly notify the Illinois EPA of any changes in the time or date for observations.
- iv. The Permittee shall provide a copy of its observer's readings to the Illinois EPA at the time of observation, if Illinois EPA personnel are present.
- v. The Permittee shall submit a written report for these observations within 15 days of the date of observation. This report shall include:
 - A. Date and time of observations.
 - B. Name and employer of qualified observer.
 - C. Copy of current certification.
 - D. Description of observation condition, including recent weather.
 - E. Description of the operating conditions of the affected operations.
 - F. Raw data.
 - G. Opacity determinations.
 - H. Conclusions.
- ~~b. i. If the affected systems routinely apply soda ash to the coal supply for the boilers during a calendar year, within 90 days of a written request from the Illinois EPA, the Permittee shall have the PM emissions at the stack or vent of the affected handling system measured during representative operating conditions, as further specified below.~~
- ~~ii. A. Testing shall be conducted using appropriate USEPA Reference Test Methods, including Method 5 for PM emissions.~~
 - ~~B. Compliance may be determined from the average of three valid test runs, subject to the limitations and conditions contained in 35 IAC Part 283.~~
- ~~iii. The Permittee shall submit a test plan to the Illinois EPA at least 60 days prior to testing in accordance with 35 IAC Part 283.~~
- ~~iv. The Illinois EPA shall be notified prior to these tests to enable the Illinois EPA to observe these tests. Notification of the expected date of testing shall be submitted a minimum of 30 days prior to the expected date. Notification of the actual date and expected time of testing shall be submitted a minimum of 5 working days prior to the actual date of the test. The Illinois EPA may, at its discretion, accept notification with shorter advance notice provided that the Illinois EPA will not accept~~

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~~such notification if it interferes with the Illinois EPA's ability to observe the testing.~~

~~v. The Permittee shall expeditiously submit complete Final Report(s) for required emission testing to the Illinois EPA, no later than 90 days after the date of testing. These reports shall include the following information:~~

~~A. A summary of results.~~

~~B. Detailed description of test method(s), including description of sampling points, sampling train, analysis equipment, and test schedule.~~

~~C. Detailed description of the operating conditions of the affected system during testing, including operating rate (tons/hour) and the control measures being used.~~

~~D. The date and time of the sampling or measurements.~~

~~E. The date any analyses were performed.~~

~~F. The name of the company that performed the tests and/or analyses.~~

~~G. The detailed results of the tests including raw data, and/or analyses including sample calculations, and~~

~~H. The name of any relevant observers present including the testing company's representatives, any Illinois EPA or USEPA representatives, and the representatives of the source.~~

7a. If the affected systems routinely apply soda ash to the coal supply for the boilers during a calendar month, the Permittee shall perform inspections of the affected systems during the month while the systems are operating to verify compliance with the requirements of this permit. ~~These inspections shall be performed with supervisory personnel or other personnel not directly involved in the day-to-day operation of the affected systems.~~

b. The Permittee shall maintain records of the following for the above inspections:

i. Date and time the inspection was performed and name(s) of inspection personnel.

ii. The observed condition of PM control measures, including the presence of any visible emissions.

iii. A description of any maintenance or repair associated with the PM control measures that is recommended as a result of the inspection and a review of outstanding recommendations for maintenance or repair from previous inspection(s), i.e., whether recommended action has been taken, is yet to be performed or no longer appears to be required.

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- iv. A summary of the observed implementation or status of actual PM control measures as compared to the customary PM control measures.
8. The Permittee shall maintain following records for the affected systems:
 - a. File(s) containing the following data, with supporting information, which file(s) shall be kept up to date:
 - i. ~~For the filter for the affected handling system: The design PM control efficiency or performance specification for PM emissions, gr/dscf.~~
 - ii. For each affected system: 1) The applicable PM emission factor normally used by the Permittee to calculate actual PM emissions, if a factor other than the standard emission rate is normally used; and 2) A determination of the maximum hourly emission rate of the system (pounds/hour) during normal operation.
 - b. Records for the amount of soda ash handled, operating hours, or other measure for the activity of the systems on a monthly and annual basis, which data is in the terms normally used by the Permittee to calculate actual emissions of the affected systems.
 - c. Records of the following for each incident when a system operates without the customary control measures:
 - i. The date of the incident.
 - ii. A description of the incident, including the customary control measures that were not present or implemented; the customary control measures that were present, if any; other control measures or mitigation measures that were implemented, if any, ~~and the magnitude of PM emissions during the incident.~~
 - iii. The time at and means by which the incident was identified, e.g., scheduled inspection or observation by operating personnel.
 - iv. The length of time after the incident was identified that the affected system continued to operate before customary control measures were in place or the system was shutdown (to resume operation only after customary control measures were in place) and, if this time was more than one hour, an explanation why this time was not shorter, including a description of any mitigation measures that were implemented during the incident.
 - v. The estimated total duration of the incident, i.e., the total length of time that the affected system ran without customary control measures and the estimated amount of soda ash handled or applied during the incident.

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- vi. A discussion of the probable cause of the incident and any preventative measures taken.
 - ~~vii. A discussion whether an applicable emission standard (as listed in Condition 2) may have been violated during the incident, with an estimate of the amount of any additional or excess PM emissions (pounds) from the incident, with supporting explanation.~~
 - d. Records of PM emissions (tons/month and tons/year) from each affected system, based on the above records, with supporting calculations.
 - e. Maintenance and repair log(s) or other records for the systems that, at a minimum, list the activities performed, with date and description.
- ~~9. If there is any deviation from the requirements of this permit, the Permittee shall submit a report to the Illinois EPA within 30 days after the deviation or such other time period specified in the current CAAPP permit issued for the source. The report shall include a description of the deviation, a copy of relevant records, and measures to reduce emissions and future occurrences.~~
10. Two copies of required reports and notifications shall be sent to the Illinois EPA at the following address unless otherwise indicated:
- Illinois Environmental Protection Agency
Division of Air Pollution Control
Compliance Section (#40)
P.O. Box 19276
Springfield, Illinois 62794-9276
- and one copy 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 Office
9511 West Harrison
Des Plaines, Illinois 60016
- Telephone: 847/294-4000 Facsimile: 847/294-4018
11. The Permittee may operate the affected systems under this construct permit until a CAAPP permit is issued that addresses them, provided that the Permittee submits a timely and complete application for such CAAPP permit.

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

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

ECB:CPR:KMP:psj

cc: Region 1

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STATE OF ILLINOIS
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 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