

ILLINOIS POLLUTION CONTROL BOARD
September 20, 2007

MIDWEST GENERATION, LLC, FISK)	
GENERATING STATION,)	
)	
Petitioner,)	
)	
v.)	PCB 08-18
)	(Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On August 23, 2007, Midwest Generation, LLC, Fisk Generating Station (Midwest Generation), filed a petition (Pet.) asking the Board to review a June 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 with conditions for Midwest Generation’s electric generation facility located at 1111 West Cermak Road, Chicago, Cook County. Midwest Generation appeals on the ground 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 September 3, 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 5 (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 5-6. Specifically, Midwest Generation seeks to stay specified portions of Conditions 1(b)(ii), 2(a), 2(a) Note, 4, 5(a), 5(b), 5(b)(i), 5(c), and 6, as indicated in Exhibit 2 filed with its petition. *Id.*; *see also id.*, Exh. 2.

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 2, entitled "Fisk Construction Permit, redlined to indicate the specific language Midwest Generation requests be stayed." Pet., Exh. 3. The Board notes that Exhibit 2 strikes all or part of Conditions 1(b)(ii), 2(a), 2(a) Note, 4, 5(a), 5(b), 5(b)(i), 5(c), and 6 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 2 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 2 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 September 20, 2007, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board

2a. ~~The Permittee shall comply with applicable emission standards and requirements related to mercury emissions for the affected boiler pursuant to 35 IAC Part 225, Subpart B and/or Subpart F, by the applicable dates specified by these rules.~~

~~Note: The Permittee expects that it will comply with certain provisions of 35 IAC Part 225, Subpart F, which is still proposed, as an alternative to compliance with 35 IAC Part 225, Subpart B. If the Permittee elects to comply with 35 IAC Part 225, Subpart F, certain provisions of subpart B would not be applicable, and the provisions of Subpart F would set the dates when certain other requirements do become applicable.~~

b. This permit does not affect the authorizations in existing operating permits for the affected boiler, pursuant to 35 IAC 201.149, 201.161 and 201.262, that allow the Permittee:

i. To operate an affected boiler in violation of certain state emission standards during startup of the boiler or the terms and conditions that accompanied such authorization.

ii. To continue to operate an affected boiler in violation of certain state emission standards during malfunction or breakdown of the boiler, including control devices and ancillary system, or the terms and conditions that accompanied such authorization.

3. At all times, the Permittee shall, to the extent practicable, maintain and operate the sorbent injection system including storage and handling of sorbent, in a manner consistent with good air pollution control practice for minimizing emissions from the existing coal-fired boiler and the source.

4a. ~~The Permittee shall comply with all applicable requirements of 35 IAC Part 225, by the dates specified in the rules, related to monitoring of mercury emissions from the affected boiler.~~

b. ~~If the sorbent injection system can be adjusted remotely by personnel in the control room, the Permittee shall install, operate, and maintain instrumentation for measuring rate of sorbent injection for the affected boiler with the status of the system.~~

5a. ~~The Permittee shall maintain following records for the coal supply for the affected boiler:~~

i. ~~Applicable records required by 35 IAC Part 225, by the dates specified in the rules, related to sampling and analysis of the coal supply to the affected boiler for its mercury content.~~

ii. ~~Records of mercury and heat content of the current coal supply to the affected boiler, with supporting data for the associated sampling and analysis methodology, so as to have representative data for the mercury content of the coal supply.~~

b. The Permittee shall maintain the following records for the sorbent injection system on affected boiler:

- ~~i. An operating log or other records for the system that, at a minimum, identify the sorbent that is being used, the setting(s) for sorbent injection rate and each period of time when an affected boiler was in operation without the system being operated with explanation, e.g., the boiler was being fired on natural gas.~~
- ~~ii. Maintenance and repair log or other records for the system that, at a minimum, list the activities performed, with date and description.~~
- ~~c. The Permittee shall maintain following records related to mercury emissions from the affected boiler:~~
 - ~~i. All applicable records required by 35 IAC Part 225, by the dates specified in the rules, related of monitoring mercury emissions.~~
 - ~~ii. During the period before the Permittee is required to conduct monitoring for the mercury emissions of the affected boiler pursuant to 35 IAC Part 225, the Permittee shall maintain records of any mercury emission data collected for the affected boiler, including emissions or control efficiency with identification and description of the mode of operation.~~
- d. The Permittee shall retain all records required by this permit at the source for at least 5 years from the date of entry and these records shall be readily accessible to the Illinois EPA for inspection and copying upon request.
6. ~~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.~~
7. The Permittee shall notify the Illinois EPA when sorbent injection system on affected boiler starts operating.
8. The Illinois EPA has determined that this project, as described in the application, will not constitute a modification of the boiler under the federal New Source Performance Standards, 40 CFR 60, as the project has the primary function of reducing emissions and therefore is not considered a modification pursuant to 40 CFR 60.14(e)(5).
9. Two copies of required reports and notifications shall be sent to the Illinois EPA's Compliance Section 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

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 a 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