

ILLINOIS POLLUTION CONTROL BOARD  
September 6, 2001

MIDWEST GENERATION EME, LLC,            )  
  )  
    Petitioner,                                )  
  )  
    v.    )     PCB 02-28  
  )     (Provisional Variance - Water)  
ILLINOIS ENVIRONMENTAL                 )  
PROTECTION AGENCY,                     )  
  )  
    Respondent.                             )

ORDER OF THE BOARD (by C.A. Manning):

On September 4, 2001, the Illinois Environmental Protection Agency (Agency) recommended that the Board grant a 45-day provisional variance to Midwest Generation EME, LLC (Midwest Generation). The provisional variance from the total suspended solid effluent standards at 35 Ill. Adm. 304.124(a) would allow Midwest Generation to retire three existing intra-plant sluice water transport lines and to replace them with two new larger lines and associated valves at its generation station located in Joliet, Will County. The Agency states that failure to grant the provisional variance would impose an arbitrary or unreasonable hardship on Midwest Generation.

Section 35(b) of the Environmental Protection Act (415 ILCS 5/35(b) (2000)) provides:

The Board shall grant provisional variances, only upon notification from the Agency that compliance on a short term basis with any rule or regulation, requirement or order of the Board, or with any permit requirement would impose an arbitrary or unreasonable hardship. Such provisional variances shall be issued within 2 working days of notification from the Agency. 415 ILCS 5/35(b) (2000); *see also* 35 Ill. Adm. Code 104.302.

A provisional variance lasts for no more than 45 days, but the Board can extend the time period up to an additional 45 days on the Agency's recommendation. Provisional variances granted to one person cannot exceed a total of 90 days during any calendar year. 415 ILCS 5/36(c) (2000); 35 Ill. Adm. Code 104.308.

The Board grants Midwest Generation a provisional variance from 35 Ill. Adm. Code 304.124(a) subject to the following conditions:

1. The term of this provisional variance begins when Midwest Generation notifies the Agency that the construction has started and continues for a

period of 45 days from the date of notification or until completion of the construction, whichever occurs earlier.

2. During the provisional variance period, Midwest Generation must meet a total suspended solids limit of 50 mg/l monthly average and a sampling frequency of once per week using a 24-hour composite.
3. Midwest Generation shall notify Allen Anderson of the Agency's Des Plaines regional office at the start of construction and completion of construction concerning the replacement of the intra-plant discharge pipes by telephone at 847/294-4000. Written confirmation of each notice must be sent within five days to the following address:

Illinois Environmental Protection Agency  
Bureau of Water – Water Pollution Control  
Attention: Dan Ray  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276
4. Monitoring results of all testing and dates shall be tabulated and submitted to the Agency for the provisional variance period and sent to the address indicated above.
5. Midwest Generation must complete the permitted construction as expeditiously as possible. During the provisional variance period, Midwest Generation must operate the facility to produce the best effluent practicable and must provide full treatment to the maximum amount of flow as possible.
6. Petitioner must continue to monitor and maintain compliance with all other parameters and conditions specified in its National Pollutant Discharge Elimination System permit IL0002216.

IT IS SO ORDERED.

If Midwest Generation chooses to accept this provisional variance, it must execute a Certificate of Acceptance of all terms and conditions of this provisional variance and, within ten days after the date of the above order, forward the executed certificate to the Agency at the above address. The form of the certificate is as follows:

CERTIFICATE OF ACCEPTANCE

Midwest Generation accepts and agrees to be bound by all terms and conditions of the Pollution Control Board's September 6, 2001 order in PCB 02-28.

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Petitioner

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Authorized Agent

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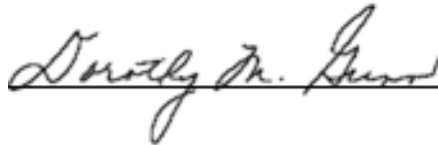
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Date

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2000); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 6, 2001, by a vote of 7-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board