

ILLINOIS POLLUTION CONTROL BOARD

June 17, 2010

MIDWEST GENERATION, LLC,)	
WILL COUNTY GENERATING STATION)	
)	
Petitioner,)	
)	
v.)	PCB 10-98
)	(Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On May 19, 2010, Midwest Generation, LLC - Will County Generating Station (Midwest Generation) timely filed a petition (Pet.) asking the Board to review an April 14, 2010 determination of the Illinois Environmental Protection Agency (Agency). See 415 ILCS 5/40.2(a) (2008); 35 Ill. Admin. Code 101.300(b), 105.302(e). The Agency’s determination concerns a construction permit for Midwest Generation’s electric generating station located at 529 East 135th Road, Romeoville, Will County.

Midwest Generation received the construction permit on April 16th, 2010, and now asks the Board to stay four conditions of the permit. Midwest Generation argues that “the Agency is attempting to impose conditions through the construction permit that have been appealed in the context of the CAAPP [Clean Air Act Permit Program] permit appeal prior to the Board’s decision on these points or to impose CAAPP concepts prior to the effectiveness of the CAAPP permit.” Pet. at 6. Midwest Generation also claims that the Agency is “inappropriately requiring deviation reporting, which is a function of CAAPP permitting and is not appropriate for construction permits.” Pet. at 6. Midwest Generation asks the Board to stay the effectiveness of permit conditions 1.4(e)(ii), 1.7, 1.8 and 1.10(a). On June 3rd, 2010, the Board accepted the appeal for hearing, but reserved ruling on the motion to stay. Today the Board grants the stay for the reasons below.

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 filed no response to Midwest Generation’s request for a 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 that 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 “[the] 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 request for a stay and Midwest Generation’s Exhibit 1, which includes the Construction Permit granted by the Agency and the Standard Conditions for Construction/Development Permits issued by the Agency.

The Board grants the stay requested by Midwest Generation, and permit conditions 1.4(e)(ii), 1.7, 1.8 and 1.10(a) are accordingly stayed. The stay will remain in effect until the Board takes final action on the permit appeal or until the Board orders otherwise.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 17, 2010, by a vote of 5-0.

A handwritten signature in black ink, reading "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John Therriault, Assistant Clerk
Illinois Pollution Control Board