

**PETITION REQUESTING THAT THE ADMINISTRATOR OBJECT TO ISSUANCE OF THE TITLE V OPERATING PERMIT FOR MIDWEST GENERATION EME, LLC WAUKEGAN**

Pursuant to Section 505(b)(2) of the Clean Air Act (the "Act"), 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d), the Lake County Conservation Alliance ("LCCA"), hereby petitions the Administrator ("the Administrator") of the United States Environmental Protection Agency ("EPA") to object to the issuance of the Title V Operating Permit or Clean Air Act Permit Program (CAAPP) permit issued to Midwest Generation Eme, LLC, Permit # 95090047, site ID # 097190AAC located at 10 Greenwood Avenue, Waukegan in Lake County, Illinois.

The draft Title V permit (the "Permit") was proposed to U.S. EPA by the Illinois Environmental Protection Agency ("IEPA") for EPA review on October 10, 2003. A copy is attached as exhibit 1.

This petition is filed within sixty days following the expiration of U.S. EPA's 45-day review period, as required by Section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2).

The Administrator must grant or deny this petition within sixty days after it is filed.

In compliance with Section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2), this petition is based on objections to the Midwest Generation EME, LLC Waukegan (the "Waukegan plant") permit that we raised during the public comment period provided by the Act.

Members of LCCA participated in the IEPA hearing on the Waukegan plant held on August 19, 2003.

LCCA timely submitted written comments. A copy of our comments on the Title V permit are attached as Exhibits 2 and are incorporated by reference into this petition. Our comments were submitted for the Waukegan plant in particular and all Title V permits issued to the Illinois coal fired power plants in general, to the extent that they applied.

IEPA did not respond to our comments.

No final permit has been issued to Midwest Generation Waukegan.  
No final permit has been issued to any of the other coal fired power plants.

## GROUNDINGS FOR OBJECTIONS

We request that the Administrator object to the Title V permit for Midwest Generation Waukegan because the permit is not in compliance with applicable requirements or requirements of 40 CFR part 70 as we outlined in detail in our comments on the draft permit.

In particular:

**1)The Administrator has to object to the proposed permit because the Waukegan plant is not in compliance with all applicable requirements and has to propose a compliance schedule that includes an enforceable sequence of measures as provided by Part 70.5(c)(8) that will result in full compliance.**

The proposed permit lacks compliance schedules to bring the Waukegan Plant into compliance with opacity standards.

In its compliance certification for the application for a title 5 permit, Midwest Generation Waukegan stated that they were in compliance with all applicable requirements except for " certain instances as described in the application, opacity from the plant *can exceed* 30% for limited periods of time."

A review of opacity exceedances reports submitted by Midwest Generation revealed that the plant *had exceeded* opacity limits hundreds of times in the 18 month prior to the issuance of the permit, the latest data available.

**2)The Administrator has to object to the proposed permit because the Waukegan plant may not receive a permit shield** for its title 5 permit because a permit shield is not available for noncompliance that occurred prior or continues after the submission of an application.

**3)The Administrator has to object to the proposed permit because applicable requirements were not carried over into the title 5 permit**

IEPA failed to include permit limits established from pre-existing permits that are applicable requirements for the Waukegan title V permit.

In particular, provisions found in permits # 73030831, #75030155 and #73030829 concerning boiler load, ESP malfunction, quarterly coal reports, additional stack test requirements, burning of fuels other than coal and associated testing requirements, prohibiting burning of boiler waste during startup or shutdown and all other deleted conditions identified in our comments on the draft permit were left out of the title 5 permit without explanation. Any of those pre-existing conditions were put in the state operating permit for a reason and according to the Illinois Environmental Protection Act, Section 39.5 (4)(g) the title 5 permit, once in effect, will supersede state operating

permits. Any omissions may result in an increase in emissions or in a decrease in monitoring and recordkeeping requirements.

Federally-enforceable conditions from permits issued pursuant to requirements approved into the SIP generally must be included in a title permit as they are applicable requirements per 40 CFR § 70.2 .40 CFR, it defines “applicable requirement ” to include the terms and conditions of preconstruction permits.

Construction and operating permits issued in the past, however, may contain requirements that are not “applicable requirements ” as defined in the title V program or that are obsolete and are no longer applicable to the facility .In that case, the permitting agency may delete inapplicable or obsolete permit conditions by following the modification procedures set forth in 40 CFR §§ 70.7(e)(4)and 70.7(h).

IEPA stated it may engage in “permit hygiene” but it made no determination if the such streamlining resulting in omissions of conditions cause a significant change in existing monitoring permit terms or a relaxation of reporting or record keeping requirements.

IEPA offered no justification why conditions in the existing state operating permits that relate to air quality were no longer applicable.

Such discussion would have been expected to be in the statement of basis, but it is not. The public is no longer assured that the title 5 permit contains all monitoring required to assure compliance.

**4)The Administrator has to object to the proposed permit because the permit review process failed to comply with the public participation requirements of the Clean Air Act § 503(e), 42 U.S.C. § 7661b(e) and 40 C.F.R. § 70.7(h)(2).**

Although clearly required, no adequate public notice was given to indicate that IEPA intended to make changes to a permit from a SIP approved program. A copy of the public notice is included as exhibit 3.

The lack of proper notice and the lack of a discussion of omitted existing permit requirements severely hampered the public’s ability to understand the scope of IEPA’s actions.

**5) The Administrator has to object to the proposed permit because the statement of basis does not fulfill the requirements of 40 CFR 70.7(a)(5) and Section 39.5(8)(b) of the Act, which provide that a statement that has to set forth the legal and factual basis for the draft permit conditions.**

IEPA provided EPA and the public with a “project summary”, a copy is attached as exhibit 4.

The poor quality of this statement of basis impairs the ability of EPA and the public to understand what applicable requirements the facility is subject to, and what periodic monitoring decisions IEPA has made.

The summary contains little in the way of any legal or factual discussion and does not include enough information to allow meaningful review as to whether the permit is compliance with all requirements.

EPA has issued guidance on the minimum content of a statement of basis (SB) in its letter to Robert Handanbosi: “ The regulatory language is clear in that a SB must include a discussion of decision-making that went into the development of the Title V permit and to provide the permitting authority, the public, and the USEPA a record of the applicability and technical issues surrounding issuance of the permit.”

The letter continues to outline the need for a SB to contain information about applicability determinations and a discussion of such if they are complex, monitoring selected, operational flexibility, streamlining rationale, basis for exemptions from requirements, and the inclusion of any other factual information and reference of all supporting material relied upon in the permitting process.

For a review of this proposed permit, a meaningful statement of basis is particularly needed to understand the streamlining done by IEPA and to understand if the monitoring requirements are adequately assuring compliance with emission limits.

#### **6)The Permit Does Not Assure Compliance With All Applicable Requirements because Individual Permit Conditions and are not Practicably Enforceable**

Throughout our comments we pointed out conditions that were not practicably enforceable. IEPA did not respond to those comments.

Our comments are hereby incorporated by reference into this petition.

#### **7) this permit has conditions that lack adequate recordkeeping and recording requirements**

Throughout our comments we pointed out conditions that lack adequate recordkeeping and recording requirements..

IEPA did not respond to those comments.

Our comments are hereby incorporated by reference into this petition.

#### **8)The Administrator Must Object to the Proposed Permit Because it Violates 40 C.F.R. 70.6**

Each permit issued under part 70 has to include the following elements;

70.6.(a)(1)(i) “ The Permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon

which the term or condition was based.”

Throughout my comments I pointed out conditions that did not reference an origin and authority. IEPA did not respond to those comments.

My comments are hereby incorporated by reference into this petition.

Further:

While condition 7.1.9.(b), which covers recording requirements for control devices, the electrostatic precipitator (ESP) , cross references Section 39.7 of the Act as its origin or authority, it is unclear just which part of the section specifically applies to this condition. Section 39.7 cover the entire required permit content of a title 5 permit. Good recordkeeping requirements are an important part of any title5 permit because they can help assure that the source is in compliance with emission limits. The public has a right to know how regulations are applied to ensure compliance. Any ambiguity of record keeping requirements can result in practically unenforceable conditions and ultimately lead to compliance problems, please see comments on the ESP below.

The importance of appropriate recordkeeping requirements for ESP is clear:

The Waukegan Plant burn primarily coal in its three boilers and each boiler is equipped with an ESP to control PM emissions.

### **9)The Permit Does Not Assure Compliance With All Applicable Requirements Because Individual Permit Conditions Lack Adequate Monitoring**

The Waukegan permit suffers from the same monitoring inadequacies for Particulate Matter (PM) as the Dunkirk and Huntley Generating stations. It also contains permit conditions that do not have sufficient monitoring to assure compliance with the periodic monitoring requirement imposed to assure compliance with the PM emission limits.

In his recent decisions on the petitions by NYPIRG to object to the issuance of title 5 permits for the Dunkirk and Huntley generating stations, the Administrator remands the permits back to the permitting agency because the permit “ fails to include proper operating ranges for each of the ESP parameters ,and therefore, fails to provide the means to determine ESP compliance.”

The Waukegan permit parallels the shortcomings of the Huntley and Dunkirk permits on the following issues.

The permit fails to 1)establish parametric monitoring; 2)provide data that supports the link between compliance and the parameter(s)being monitored; 3)include a clear and enforceable indicator range for each parameter;4) require updated stack testing, the permit allows for the delay of any PM testing until “prior to April 1, 2006”. ( permit condition 7.1.7.(A)

Condition 7.1.4 (a) establishes emission limits for PM for boiler 6 and 7 at 0.10 lbs/mmBTU/hr and for boiler 7 at 0.12 lbs/mmBTU/hr.

NOTE: the underlying regulation, 35 Illinois Administrative Code, Section 212.203, is not cited

correctly in the permit. The PM limits are hourly emission limits.

The monitoring requirements of condition 7.1.8 states that the continuous opacity monitors (COMs) are the primary basis for the reporting of exceedances of condition 5.5.2(b) and 7.1.4(a). There are no monitoring requirements for the ESP.

The reporting requirements for PM in condition 7.1.9.(3) require the source to report exceedances of PM limits, yet the permit is silent how such PM emission limit exceedances would be discovered.

The Administrator found in the Dunkirk decision that ;”Since the amount of PM that exhausts through the stack is affected by the amount of PM controlled by the ESP, proper operation of the ESP is important in assuring compliance with the PM limit. Improper operation of the ESP increases the amount of uncontrolled PM emissions exhausting through the stacks. Once the proper operating ranges for the ESP parameters are established, ESP performance can easily be monitored.”

The Waukegan permit fails to establish a link between the COM readings and the PM limits because it does not establish proper operating ranges for the operating parameters of the ESP that would serve as parametric monitoring for PM emissions , the appropriate ranges, correlated with emissions, are necessary to determine proper ESP operation and measure compliance.

The Administrator found in his decision on the Dunkirk permit “Once the operating ranges have been established for the ESP operating parameters, operating the ESP outside of any of these ranges would constitute a violation of the title V permit. Since parametric monitoring of the ESP helps assure compliance with the PM standards ,the proper operating ranges for these parameters must be incorporated into Dunkirk ’s title V permit. Therefore, EPA grants the petition on the issue of inadequate monitoring to assure compliance with the PM limit. DEC is ordered to establish the proper operating ranges for the ESP operating parameters if it determines that monitoring of the ESP parameters together with the stack testing requirement is an appropriate way for assuring compliance with the PM limit.”

The same would be true for the Waukegan permit. I ask that the Administrator remand the permit back to IEPA in incorporate the needed changes that will ensure compliance with PM emissions.

**10. The Administrator has to object to the permit because the compliance certification does not fulfill the requirements of 40 CFR 70(c)(5)(iii)(D).**

Condition 9.8 of the Waukegan permit, and the regulations it is based on, Section 39.5(7)(p)(v)(C)(1-4) of the Act, do not require the source to submit ”such other facts as the permitting source as the permitting authority may require to determine the compliance status of the source” as required by Section 70.

The compliance certification is one of the most important tools for the public to conclude if a source is in compliance with all permit requirements. The compliance certification cannot allow

the source to omit any information it has outside the required testing, monitoring, recordkeeping and reporting requirements that would show that it is in compliance or in violation of its permit.

**Closing:**

We believe that our comments show that a deficient permit has been issued.

We raised substantive issues over permit conditions that violate section 70 provisions. We ask that the Administrator object to the issuance of the permit for the reasons outlined above and for all other reasons we stated in our comments on the proposed permit.

Thank you for your interest,

Sincerely,

Verena Owen  
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421 Ravine Drive  
Winthrop Harbor, IL 60096

dated: January 21, 2004