

IN THE CIRCUIT COURT FOR THE NINETEENTH JUDICIAL CIRCUIT  
LAKE COUNTY, ILLINOIS

FILED

SEP 27 2022

*Eva Carabogut Weinstein*  
CIRCUIT CLERK

PEOPLE OF THE STATE OF ILLINOIS, )  
*ex rel.* KWAME RAOUL, Attorney )  
General of the State of Illinois, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
MIDWEST GENERATION, LLC, a )  
Delaware limited liability company, )  
 )  
Defendant. )

No. 22CH113

**CONSENT ORDER**

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* KWAME RAOUL, Attorney General of the State of Illinois, the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), and Defendant, MIDWEST GENERATION, LLC, (collectively “Parties to the Consent Order”), have agreed to the making of this Consent Order and submit it to this Court for approval.

**I. INTRODUCTION**

This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Court’s entry of the Consent Order and issuance of any injunctive relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/1 *et seq.* (2020), federal regulations and permit conditions, alleged in the Complaint except as otherwise provided herein. It is the intent of the Parties to this Consent Order that it be a final judgment on the merits of this matter.

**A. Parties**

1. On April 18, 2022, a Complaint was filed on behalf of the People of the State of Illinois by Kwame Raoul, Attorney General of the State of Illinois, on his own motion and upon the request of the Illinois EPA, pursuant to Sections 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e) (2020), against Midwest Generation, LLC (“Defendant”).

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2020).

3. At all times relevant to the Complaint, Defendant was and is a Delaware limited liability company authorized to do business in the State of Illinois that has owned and operated since 1999, and continues to own and operate the oil peakers located at, the Waukegan Generating Station located at 401 Greenwood Avenue, Waukegan, Lake County, Illinois (the “Facility”).

4. At all times relevant to the Complaint, the Facility included two 300+ megawatt coal-fired steam generators, Unit 7 (aka BLR7) and Unit 8 (aka BLR8), which employed Activated Carbon Injection (“ACI”), a sorbent injection system, for control of mercury emissions at the Facility.

5. On May 31, 2022, Defendant retired and deactivated Unit 7 and Unit 8 at the Facility. As a result, Unit 7 and Unit 8 at the Facility are no longer operational.

6. As of the date of filing of this Complaint, the Facility is located in an area of Environmental Justice (“EJ”) concern as identified using Illinois EPA EJ Start.

**B. Allegations of Non-Compliance**

Plaintiff contends that Defendant violated the following:

Count I: Failure to Maintain and operate the ACI on Unit 7 in violation of Sections 9(b) and 9.1(d)(1) of the Act, 415 ILCS 5/9(b) and 9.1(d)(1) (2020), 40 CFR 63.10000(b), and Condition 2 of Construction Permit 07050007;

Count II: Failure to Maintain and Operate Monitoring Equipment in violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2020), and Condition 3.a. of Construction Permit 07050007; and

Count III: Causing or Allowing the Emission of Mercury into the Atmosphere in Excess of 1.2 lbs/Tbtu in violation of Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2020), and 40 CFR 63.9991.

**C. Non-Admission of Violations**

Defendant represents that it has entered into this Consent Order for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Consent Order and complying with its terms, Defendant does not affirmatively admit the allegations of violation within the Complaint and referenced above, and this Consent Order shall not be interpreted as including such admission.

**D. Compliance Activities**

Defendant contends that:

1. On September 24, 2019, Defendant was notified by a contracted certified laboratory that the mercury sorbent trap results for Unit 7 were uncharacteristically high. (Sorbent traps typically collect material from the unit exhaust over the course of one week or longer of operating time. The traps are then sent to a laboratory for analysis, and results are typically available within about one week.) Defendant promptly undertook an investigation and determined that the ACI system servicing Unit 7 had shifted into an abnormal operating mode, causing it to inject less ACI than typical for unit operations.

2. Defendant promptly corrected the operating mode. As a result, the daily average mercury emission levels returned to the expected range beginning September 25, 2019, just one

day after discovery of the malfunction. In total, the ACI system operated in the wrong mode for 16 days.

3. From September 25 to October 28, 2019, Defendant investigated the cause of the ACI system malfunction and implemented new procedures to ensure that the malfunction would not recur in the future. The first of those procedures (a new alarm system) was implemented on September 26, 2019, just two days after receiving notice of the uncharacteristically high mercury sorbent trap results.

4. On October 23, 2019, Defendant timely reported the malfunction and impact on emissions to Illinois EPA.

## **II. APPLICABILITY**

This Consent Order shall apply to and be binding upon the Parties to the Consent Order. Defendant waives as a defense to any enforcement action taken pursuant to this Consent Order the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Consent Order. This Consent Order may be used against Defendant in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2020).

## **III. JUDGMENT ORDER**

This Court has jurisdiction of the subject matter herein and of the Parties to the Consent Order and, having considered the stipulated facts and being advised in the premises, finds the following relief appropriate:

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

**A. Civil Penalty**

1. Defendant shall pay a civil penalty of One Hundred and Twenty-Five Thousand Dollars (\$125,000.00). Payment shall be tendered at time of entry of the Consent Order.

2. The civil penalty payment shall be made by certified or cashier's check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF").

3. The case name and case number shall appear on the face of the certified check or money order.

**B. Future Compliance**

1. The Illinois EPA, its employees and representatives, and the Attorney General, his employees and representatives, shall have the right of entry into and upon Defendant's Facility which is the subject of this Consent Order, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, his employees and representatives, may take photographs and samples, and collect information, as they deem necessary.

2. This Consent Order in no way affects the responsibilities of Defendant to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Illinois Pollution Control Board's regulations.

3. Defendant shall cease and desist from future violations of the Act, federal regulations, and permit conditions that were the subject matter of the Complaint.

**C. Enforcement of Consent Order**

This Consent Order is a binding and enforceable order of this Court. This Court shall retain jurisdiction of this matter and shall consider any motion by any party for the purposes of interpreting and enforcing the terms and conditions of this Consent Order. Defendant agrees that notice of any subsequent proceeding to enforce this Consent Order may be made by mail and waives any requirement of service of process.

**D. Release from Liability**

In consideration of Defendant's payment of a \$125,000.00 penalty, and its commitment to cease and desist as contained in Section III.B.3. above, the Plaintiff releases, waives and discharges Defendant from any further liability or penalties for the violations of the Act, the Code of Federal Regulations and Defendant's construction permit that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Plaintiff's Complaint filed on April 18, 2022. The Plaintiff reserves, and this Consent Order is without prejudice to, all rights of the State of Illinois against Defendant with respect to all other matters, including but not limited to the following:

- a. criminal liability;
- b. liability for future violations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. Defendant's failure to satisfy the requirements of this Consent Order.

Nothing in this Consent Order is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, other than Defendant.

**E. Execution and Entry of Consent Order**

This Order shall become effective only when executed by all Parties to the Consent Order and the Court. This Order may be executed by the parties in one or more counterparts, all of which taken together shall constitute one and the same instrument. The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Consent Order and to legally bind them to it.

*[Remainder of Page Blank; Text Continues on Page 8]*

WHEREFORE, the parties, by their representatives, enter into this Consent Order and submit it to this Court that it may be approved and entered.

AGREED:


FOR THE PLAINTIFF:


PEOPLE OF THE STATE OF ILLINOIS  
*ex rel.* KWAME RAOUL, Attorney General  
of the State of Illinois

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

MATTHEW J. DUNN, Chief  
Environmental Enforcement/  
Asbestos Litigation Division

JOHN J. KIM, Director  
Illinois Environmental Protection Agency

BY:   
STEPHEN J. SYLVESTER, Chief  
Assistant Attorney General  
Environmental Bureau

BY:   
CHARLES W. GUNNARSON  
Chief Legal Counsel

DATE: 9/20/22

DATE: 9/20/22

FOR DEFENDANT:

MIDWEST GENERATION, LLC

BY: \_\_\_\_\_

Its: \_\_\_\_\_

DATE: \_\_\_\_\_

ENTERED:

\_\_\_\_\_  
JUDGE

DATE: \_\_\_\_\_



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*ex rel.* KWAME RAOUL, Attorney General  
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JOHN J. KIM, Director  
Illinois Environmental Protection Agency

BY: \_\_\_\_\_  
STEPHEN J. SYLVESTER, Chief  
Assistant Attorney General  
Environmental Bureau

BY: \_\_\_\_\_  
CHARLES W. GUNNARSON  
Chief Legal Counsel

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

FOR DEFENDANT:

MIDWEST GENERATION, LLC

BY: Bradley King  
Its: VP Midwest Generation, LLC

DATE: 09/20/2022

ENTERED:

[Signature]  
JUDGE  
DATE: \_\_\_\_\_

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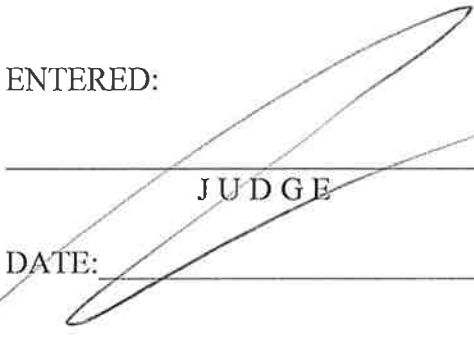
**AGREED ORDER**

This cause coming on to be heard, due notice having been given, the Court having entered the Consent Order contemporaneously herewith, and the Court being otherwise duly advised in the premises:

IT IS HEREBY ORDERED THAT:

- 1. The status hearing scheduled on October 5, 2022 at 9:00am is hereby cancelled and stricken.

ENTERED:

  
\_\_\_\_\_  
JUDGE

DATE:

\_\_\_\_\_

Order Prepared By:  
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