

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PETITION OF MIDWEST) AS 19-1
GENERATION, LLC FOR AN) (Adjusted Standard – RCRA)
ADJUSTED STANDARD FROM 35 ILL.)
ADM. CODE PARTS 811 AND 814)

NOTICE OF FILING

To:

Don Brown, Clerk of the Board Illinois Pollution Control Board James R. Thompson Center, Suite 11-500 100 W. Randolph Street Chicago, IL 60601 don.brown@illinois.gov	Michelle M. Ryan, Assistant Counsel Illinois Environmental Protection Agency 1021 N. Grand Avenue East P.O. Box 19276 Springfield, IL 62794 michelle.ryan@illinois.gov
Bradley P. Halloran, Hearing Officer Illinois Pollution Control Board 100 West Randolph Street Suite 11-500 Chicago, IL 60601 brad.halloran@illinois.gov	

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Pollution Control Board Petitioner, Midwest Generation, LLC's Response to Recommendation of the Illinois EPA to Petition for Adjusted Standard, a copy of which is herewith served upon you.

Dated: April 8, 2019

MIDWEST GENERATION, LLC



By: _____

Kristen L. Gale
Susan M. Franzetti
NIJMAN FRANZETTI LLP
10 South LaSalle Street Suite 3600
Chicago, IL 60603
(312) 251-5255

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that a true copy of the foregoing Notice of Filing and Petitioner, Midwest Generation, LLC's Response to Recommendation of the Illinois EPA to Petition for Adjusted Standard was electronically filed on April 8, 2019 with the following:

Don Brown, Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, IL 60601
don.brown@illinois.gov

and that a true copy was mailed on April 8, 2019 to the parties listed on the above foregoing Service List.



Dated: April 8, 2019

Kristen L. Gale
Susan M. Franzetti
Nijman Franzetti LLP
10 S. LaSalle Street, Suite 3600
Chicago, IL 60603
(312) 251-5255

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

**PETITION OF MIDWEST GENERATION
FOR AN ADJUSTED
STANDARD FROM 35 ILL. ADM. CODE
PARTS 811 and 814**

**AS 19-1
(Adjusted Standard)**

**MIDWEST GENERATION, LLC'S RESPONSE TO RECOMMENDATION OF THE
ILLINOIS EPA TO PETITION FOR ADJUSTED STANDARD**

Midwest Generation, LLC ("MWGen"), by its undersigned counsel, and for its response to Illinois EPA's Recommendation to Petition for Adjusted Standard ("Recommendation"), states as follows:

1. Because the Illinois EPA clearly recommends that the Board grant MWGen's Petition for Adjusted Standard ("Petition") (See Recommendation, pp. 2 and 5), MWGen requests the Board accept Illinois EPA's recommendation and grant MWGen the relief requested on its Petition.
2. Illinois EPA notes that the Petition did not include the effective date of the regulation of general applicability. This response corrects that omission. The first effective date of Section 811.314 was September 18, 1990. Section 811.314 has been amended numerous times since. The most recent amendment to Section 811.314 was effective on November 19, 2018.
3. Illinois EPA also states that it does not agree that 811.314 is federally required. This issue depends on whether more than just subparagraph (c) of Section 811.314 is at issue here. According to Appendix B in 35 Ill. Adm. Code 811, Section 811.314 is based on 40 CFR 258.60 which regulates New Landfills. Lincoln Quarry is not a "New Landfill." The Board Note at the end of Section 811.314 states:

BOARD NOTE: Subsection (b)(4) is derived from 40 CFR 258.60(a) (2017). Subsection (d) is derived from 40 CFR 258.60(b)(3) (2017). Those segments of subsection (a) that relate to RD&D permits are derived from 40 CFR 258.4(b) (2017).
35 Ill. Adm. Code 811.314

The Board Note does not state that Section 811.314 applies only to New Landfills but it also does not specifically mention subsection (c). Accordingly, some parts of Section 811.314 seem to be derived from federal rules that implement RCRA. Because the Petition seeks an adjusted standard based on Section 811.314, but seeks to change the existing adjusted standard only with respect to Section 811.314(c), it is not clear whether the Petition is correctly characterized as seeking relief from a federally required rule. In the broader sense, it is. In the narrower application of Section 811.314(c), it is not.

4. MWGen consulted with Illinois EPA, regarding its response. Illinois EPA informed MWGen that it considers MWG's Petition as a request for an adjusted standard from Section 811.314(c), and that specific Section is not promulgated to implement RCRA. MWGen does not take issue with Illinois EPA's position.

WHEREFORE, Midwest Generation LLC requests that the Board grant its Petition for Adjusted Standard to revise Condition 7(c) of its adjusted standard AS-96-9.

Respectfully submitted,
Midwest Generation, LLC



By: _____
One of its Attorneys

Kristen L. Gale
Susan M. Franzetti
Nijman Franzetti LLP
10 S. LaSalle St, Suite 3600
Chicago, Illinois 60603
(312) 262-5524
kg@nijmanfranzetti.com
sf@nijmanfranzetti.com