

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:)	
SIERRA CLUB, ENVIRONMENTAL)	
LAW AND POLICY CENTER,)	
PRAIRIE RIVERS NETWORK, and)	
CITIZENS AGAINST RUINING THE)	PCB No-2013-015
ENVIRONMENT)	(Enforcement – Water)
)	
Complainants,)	
)	
v.)	
)	
MIDWEST GENERATION, LLC,)	
)	
Respondent.)	

MIDWEST GENERATION, LLC’S RESPONSE TO COMPLAINANTS’ FOURTH SET OF DOCUMENT REQUESTS, SECOND SET OF INTERROGATORIES, AND SECOND SET OF REQUESTS FOR ADMISSION TO RESPONDENTS

Respondent, Midwest Generation, LLC, (“Midwest Generation”), through its undersigned attorneys, responds to Complainants’ Fourth Set of Document Requests, Second Set of Interrogatories, and Second Set of Requests for Admission, (“Requests”), as follows:

GENERAL OBJECTIONS

Each of the Responses is made subject to and incorporates by reference the objections made in Midwest Generation’s Responses to Complainants’ First Set of Interrogatories, Requests for Documents and Request for Admission provided on September 2, 2014. Additionally, Midwest Generation makes the following objections:

1. Midwest Generation objects to the “Coal ash” definition to the extent that it includes other waste streams resulting from the operation of pollution controls.

2. Midwest Generation objects to the “Coal ash units” definition to the extent that it includes areas in which coal ash is not purposely directed to or placed on and to the extent it includes *de minimis* collections of coal ash due to the operations of the Station.

3. Midwest Generation objects to the “Joliet 29” definition to the extent it states that the Station is located in Kendall County.

4. Midwest Generation objects to the “Uppermost aquifer” definition as vague, ambiguous and capable of varying interpretations. Additionally, Midwest Generation objects to the definition to the extent it depends upon a coal ash unit to identify any aquifer’s location.

5. Midwest Generation objects to Instruction No. 6 as overly broad and unduly burdensome.

6. Midwest Generation objects to the Number of Requests to Admit as in excess of the number of requests allowed under the Ill. Sup. Ct. Rule 216(f) and the additional requests for admission agreed to in the Agreed Motion to Extend the Discovery Schedule and Modify the Discovery Order filed with the Board on February 4, 2015. Illinois Supreme Court Rule 216(f) allows each party to issue a maximum of 30 requests for admission, and each subpart counts as a separate request. Ill. Sup. Ct. Rule 216(f). On June 16, 2014, Complainants submitted to Midwest Generation three Requests for Admission of Genuineness of Documents, attaching fifty-eight documents. Each of the fifty eight documents is a subpart of the request for admission. On February 4, 2015, the parties agreed that each may propound 20 additional requests for admission. On March 2, 2015, Complainants propounded a total of forty requests to admit to Complainants in their Second and Third Set of Requests for Admission. Because the requests to admit are in excess of the agreed extension and the limits under Ill. Sup. Ct. Rule 216(f), Midwest Generation has answered twenty of the forty propounded requests for admission.

7. Respondent reserves the right to object to the admissibility of any of the documents produced pursuant to the Responses, in whole or in part, at hearing in this action on any grounds including but not limited to materiality, relevance, confidential business information and privilege.

REQUEST FOR PRODUCTION OF DOCUMENTS

1. Provide any Documents related to each refusal to admit any requests for admission herein.

ANSWER:

Without waiving its objections, responsive documents include Bates #MWG13-15_18824-19428, and Bates #MWG13-15_4-9, 69, 73, 77, 81, 85, 89, 93, 97 and 101.

2. Provide all Documents that evidence or relate to your Interrogatory responses.

ANSWER:

Midwest Generation incorporates and includes the objections stated in response to each Interrogatory Request. Without waiving its objections, responsive documents are set forth in the interrogatory answers and have already been provided or are attached.

3. Provide all maps that accurately show which portions of the Joliet 29 site are owned or operated by MWG.

ANSWER:

Without waiving its objections, responsive documents are available for review; see Bates No. MWG13-15_48403 - 48414.

4. Provide all maps that accurately show which portions of the Powerton site are owned or operated by MWG.

ANSWER:

Without waiving its objections, responsive documents are available for review; see Bates No. MWG13-15_4815 - 48426.

5. Provide all maps that accurately show which portions of the Waukegan site are owned by MWG.

ANSWER:

Without waiving its objections, responsive documents are available for review; see Bates No. MWG13-15_48427 - 48432.

6. Provide all maps that accurately show which portions of the Will County site are owned by MWG.

ANSWER:

Without waiving its objections, responsive documents are available for review; see Bates No. MWG13-15_48433-48438.

7. Provide all Documents pertaining to boron or borax use at the Tannery site.

ANSWER:

Midwest Generation objects to Document Request No. 7 as overly broad and unduly burdensome and seeks documents or information not within Midwest Generation's possession, custody or control. Without waiving its objections, responsive and non-privileged documents currently in Midwest Generation's control include Bates MWG13-15_43754-43862.

8. Provide all Documents pertaining to boron or borax use at the General Boiler site.

ANSWER:

See Answer to Document Request No. 7, incorporated by reference. .

9. Provide all Documents related to groundwater elevations at Waukegan Groundwater Monitoring Wells MW-8 and MW-9.

ANSWER:

Without waiving its objections, responsive documents are available for review; see Bates MWG13-15_48439.

10. Provide all Documents related to groundwater elevation at all monitoring wells at the former General Boiler site, including but not limited to monitoring wells GB-1 through GB-7.

ANSWER:

Midwest Generation objects to Document Request No. 10 as overly broad and unduly burdensome and seeks documents and information not within Midwest Generation's possession, custody or control. Without waiving its objections, Midwest Generation states that no responsive documents within its custody or control are currently available.

11. Provide all Documents related to groundwater elevation at monitoring wells 1 through 9 at the Tannery site.

ANSWER:

Midwest Generation objects to Document Request No. 11 as overly broad and unduly burdensome and seeks documents and information not within Midwest Generation's possession, custody or control. Without waiving its objections, Midwest Generation states that responsive documents were previously provided and include Bates #MWG13-15_46211-MWG13-15_48402.

12. Provide all groundwater quality data from all monitoring wells at the former General Boiler site, including but not limited to monitoring wells GB-1 through GB-7.

ANSWER:

See Answer to Document Request No. 10, incorporated by reference.

13. Provide all groundwater quality data from monitoring wells 1 through 9 at the Tannery site.

ANSWER:

See Answer to Document Request No. 11, incorporated by reference.

14. Provide all Documents evidencing or related to the contents of soil borings taken when ELUC wells MW-10, MW-11, MW-12, and MW-14 were drilled, including but not limited to boring logs.

ANSWER:

Midwest Generation objects to Document Request No. 14 as vague as to the “contents of soil borings.” Additionally, see Answer to Document Request No. 10, incorporated by reference.

15. Provide all Documents evidencing or related to the contents of soil borings taken when groundwater monitoring wells 1 through 14 at the Tannery site were drilled, including but not limited to boring logs.

ANSWER:

Midwest Generation objects to Document Request No. 15 as vague as to the “contents of soil borings.” Additionally, see Answer to Document Request No. 11, incorporated by reference.

16. Provide all Documents evidencing or related to the contents of soil borings taken when all monitoring wells at the former General Boiler site, including but limited to monitoring wells GB-1 through GB-7, were drilled, including but not limited to boring logs.

ANSWER:

See Answer to Document Request No. 14, incorporated by reference.

17. Provide any and all groundwater quality data from the first quarter of 2015 from all groundwater monitoring wells at Joliet 29, Will County, Powerton, and Waukegan, including but not limited to all Waukegan Groundwater Monitoring Wells, all monitoring wells at the Tannery Site, all monitoring wells at the General Boiler site, and ELUC wells MW-10, MW-11, MW-12, MW-14 and MW-15.

ANSWER:

Midwest Generation objects to Document Request No. 17 as overly broad and unduly burdensome and seeks documents and information not within Midwest Generation’s possession, custody or control. Without waiving its objections, Midwest Generation states that responsive documents are not currently available.

18. Provide a complete Phase II Environmental Site Assessment for Joliet 29, including all boring logs.

ANSWER:

Without waiving its objections, Midwest Generation states that responsive documents are included at Bates No. MWG13-15_48440-48492.

INTERROGATORIES

1. Identify any and all methods, other than visual inspection, that MWG uses to inspect ash pond liners for Damage, weakness or leaks at Joliet 29, Will County, Waukegan and Powerton, and state:
 - a. How each method of inspection identifies weakness or damage to liners;
 - b. When the use of each method of inspection began at each pond; and
 - c. The frequency with which each method of inspection is used at each pond.

ANSWER:

Midwest Generation objects to Interrogatory No. 1 because it is overly broad, unduly burdensome, and seeks material covered by the work product and attorney-client privilege.

Without waiving its objections, Midwest Generation states that the other method to inspect the liners for damage or leaks is the electrical leak location method. The electrical leak location method detects paths through the geomembrane caused by water or moisture in the leaks. The electrical leak location method has been used on HDPE liners since mid-2000s and takes place when HDPE lining is installed at impoundments.

2. State whether MWG has ever monitored groundwater at Joliet 29, Waukegan, Will County and Powerton aside from the monitoring it currently performs at groundwater monitoring wells installed on or after 2010. If MWG has conducted such monitoring, state:
 - a. The specific locations at each site where groundwater was monitored; and
 - b. Over what time period that monitoring took place.

ANSWER:

Midwest Generation objects to Interrogatory No. 2 as overly broad and unduly burdensome and seeks documents or information not within Midwest Generation's possession, custody or control. Midwest Generation further objects to Interrogatory No. 2 to the extent it seeks materials that are

not relevant to the subject matter involved in the pending action or not reasonably calculated to lead to relevant, discoverable evidence. Finally, Midwest Generation further objects to this interrogatory as overly broad and limits its answer to monitoring for coal ash constituents. Without waiving its objections, Midwest Generation states that it provided all relevant groundwater monitoring results to Complainants in response to Document Request No. 8 of Complainants First Set of Document Requests, including Bates Nos. 2,459-6,822, 34716-36799, 43695-43862, 43871-44121, 44983-45769, and the documents provided at the offices of Nijman Franzetti. Additionally, see Midwest Generation response to Interrogatory No. 8 in Complainant's first Set of Interrogatories.

3. State whether MWG has ever removed Coal ash from any part of the Powerton site aside from the active ash ponds and, if MWG has done so, identify where the Coal ash were removed from and when that removal took place.

ANSWER:

Midwest Generation objects to Interrogatory No. 3 as overly broad and unduly burdensome and seeks documents or information not within Midwest Generation's possession, custody or control. Additionally, Midwest Generation objects to this interrogatory as requesting information already provided in the document requests and in the deposition of Mr. Mark Kelly. Without waiving its objections, Midwest Generation states that coal ash is removed from the silos and various ducts at the Station work during cleanouts. The coal ash is temporarily stored in the metal cleaning basin, until Midwest Generation removes the coal ash and hauls it offsite. The coal ash is removed from the metal cleaning basin approximately two to three times per year. Also, historically the limestone basin and areas around the coal piles were used for temporary placement of coal ash before off site removal. The coal ash was removed from these locations on a periodic basis before 2012.

REQUESTS FOR ADMISSION

1. Admit that Ash Landfill SW is within the current property boundaries of the portion of the Joliet 29 site that is operated by MWG.

ANSWER:

Midwest Generation objects to this request as calling for a legal conclusion. Without waiving its objections, Midwest Generation admits that it leases the Joliet 29 Station which includes the area defined here as the Ash Landfill SW.

2. Admit that Ash Landfill NE is within the current property boundaries of the portion of the Joliet 29 site that is operated by MWG.

ANSWER:

Midwest Generation objects to this request as calling for a legal conclusion. Without waiving its objections, Midwest Generation admits that it leases the Joliet 29 Station which includes the area defined here as the Ash Landfill NE.

3. Admit that, prior to approval of the Joliet 29 Groundwater Monitoring Zone ("GMZ"), all of the groundwater underlying Joliet 29 was classified as Class I: Potable Resource Groundwater pursuant to 35 Ill. Adm. Code Part 620.

ANSWER:

Midwest Generation objects to this request as calling for a legal conclusion. Midwest Generation further objects to this request pursuant to its sixth General Objection set forth above, that this request is in excess of the number of requests allowed under Ill. Sup. Ct. Rule 216(f) and the additional requests for admission agreed to in the Agreed Motion to Extend the Discovery Schedule and Modify the Discovery Order filed with the Board on February 4, 2015.

4. Admit that, prior to approval of the Will County Groundwater Monitoring Zone ("GMZ"), all of the groundwater underlying Will County was classified as Class I: Potable Resource Groundwater pursuant to 35 Ill. Adm. Code Part 620.

ANSWER:

See Answer to Request No. 3, incorporated by reference.

5. Admit that, prior to approval of the Powerton Groundwater Monitoring Zone (“GMZ”), all of the groundwater underlying Powerton was classified as Class I: Potable Resource Groundwater pursuant to 35 Ill. Adm. Code Part 620.

ANSWER:

See Answer to Request No. 3, incorporated by reference.

6. Admit that the groundwater underlying Waukegan is classified as Class I: Potable Resource Groundwater pursuant to 35 Ill. Adm. Code Part 620.

ANSWER:

See Answer to Request No. 3, incorporated by reference.

7. Admit that Ash Landfill NE at Joliet 29 is not lined.

ANSWER:

Midwest Generation objects to this request on the grounds that the term “lined” is vague, ambiguous, and capable of varying interpretations. Subject to its objection, Midwest Generation states that after reasonable inquiry, the information known or readily obtainable is insufficient to allow Midwest Generation to admit or deny the request.

8. Admit that Ash Landfill NE has not been lined or relined since MWG began operating Joliet 29.

ANSWER:

Midwest Generation objects to this request on the grounds that the terms “lined” and “relined” are vague, ambiguous, and capable of varying interpretations. Midwest Generation further objects to this request pursuant to its sixth General Objection set forth above, that this request is in excess of the number of requests allowed under Ill. Sup. Ct. Rule 216(f) and the

additional requests for admission agreed to in the Agreed Motion to Extend the Discovery Schedule and Modify the Discovery Order filed with the Board on February 4, 2015.

9. Admit that there is Coal ash in the ground within the boundary of the Ash Landfill NE at Joliet 29.

ANSWER:

Midwest Generation objects to this request on the grounds that the phrase “Coal ash in the ground” is vague, ambiguous, and capable of varying interpretations. Subject to its objection, Midwest Generation states that after reasonable inquiry, the information known or readily obtainable is insufficient to allow Midwest Generation to admit or deny the request.

10. Admit that MWG has not removed Coal ash from Ash Landfill NE at Joliet 29.

ANSWER:

See Answer to Request No. 8, incorporated by reference.

11. Admit that there is no impermeable cap over Ash Landfill NE at Joliet 29.

ANSWER:

Midwest Generation objects to this request on the grounds that the term “impermeable cap” is vague, ambiguous, and capable of varying interpretations. Subject to its objection, Midwest Generation admits the request.

12. Admit that Ash Landfill SW at Joliet 29 is not lined.

ANSWER:

Midwest Generation objects to this request on the grounds that the term “lined” is vague, ambiguous, and capable of varying interpretations. Subject to its objection, Midwest Generation

states that after reasonable inquiry, the information known or readily obtainable is insufficient to allow Midwest Generation to admit or deny the request. .

13. Admit that Ash Landfill SW has not been lined or relined since MWG began operating Joliet 29.

ANSWER:

See Answer to Request No. 8, incorporated by reference.

14. Admit that there is Coal ash in the ground within the boundary of the Ash Landfill SW at Joliet 29.

ANSWER:

Midwest Generation objects to this request on the grounds that the phrase “Coal ash in the ground” is vague, ambiguous, and capable of varying interpretations. Midwest Generation further objects to this request pursuant to its sixth General Objection set forth above, that this request is in excess of the number of requests allowed under Ill. Sup. Ct. Rule 216(f) and the additional requests for admission agreed to in the Agreed Motion to Extend the Discovery Schedule and Modify the Discovery Order filed with the Board on February 4, 2015.

15. Admit that MWG has not removed Coal ash from Ash Landfill SW at Joliet 29.

ANSWER:

Denied.

16. Admit that there is no impermeable cap over Ash Landfill SW at Joliet 29.

ANSWER:

Midwest Generation objects to this request on the grounds that the term “impermeable cap” is vague, ambiguous, and capable of varying interpretations. Midwest Generation further

objects to this request pursuant to its sixth General Objection set forth above, that this request is in excess of the number of requests allowed under Ill. Sup. Ct. Rule 216(f) and the additional requests for admission agreed to in the Agreed Motion to Extend the Discovery Schedule and Modify the Discovery Order filed with the Board on February 4, 2015.

17. Admit that the Former Slag/Fly Ash Storage Area at Waukegan is not lined.

ANSWER:

Midwest Generation objects to this request on the grounds that the term “lined” is vague, ambiguous, and capable of varying interpretations. Subject to its objection, Midwest Generation states that after reasonable inquiry, the information known or readily obtainable is insufficient to allow Midwest Generation to admit or deny the request.

18. Admit that the Former Slag/Fly Ash Storage Area at Waukegan has not been lined or relined since MWG began operating Waukegan.

ANSWER:

See Answer to Request No. 8, incorporated by reference.

19. Admit that there is Coal ash in the ground within the boundary of the Former Slag/Fly Ash Storage Area at Waukegan.

ANSWER:

See Answer to Request No. 14, incorporated by reference.

20. Admit that Coal ash has not been removed from the Former Slag/Fly Ash Storage Area at Waukegan since MWG began operating Waukegan.

ANSWER:

Midwest Generation objects to this request pursuant to its sixth General Objection set forth above, that this request is in excess of the number of requests allowed under Ill. Sup. Ct. Rule

216(f) and the additional requests for admission agreed to in the Agreed Motion to Extend the Discovery Schedule and Modify the Discovery Order filed with the Board on February 4, 2015.

21. Admit that there is no impermeable cap over the Former Slag/Fly Ash Storage Area at Waukegan.

ANSWER:

Midwest Generation objects to this request on the grounds that the term “impermeable cap” is vague, ambiguous, and capable of varying interpretations. Subject to its objection, Midwest Generation admits the request.

22. Admit that, other than any borings taken when drilling Waukegan Groundwater Monitoring Wells MW-1 through MW-5 at Waukegan, MWG has not removed any Coal ash from the ground in the vicinity of Waukegan Groundwater Monitoring Wells MW-1 through MW-4.

ANSWER:

Midwest Generation objects to this request on the grounds that the term “vicinity” and the phrase “Coal ash from the ground” are vague, ambiguous, and capable of varying interpretations. Midwest Generation further objects to this request on the grounds that it is vague because it presumes that there is Coal ash on or in the soil in the vicinity of the Waukegan Groundwater Monitoring Wells MW-1 through MW-4. Subject to its objection, Midwest Generation denies this request.

23. Admit that, other than any borings taken when drilling Waukegan Groundwater Monitoring Wells MW-7 through MW-9, MWG has not removed any Coal ash from the ground in the vicinity of Waukegan Groundwater Monitoring Wells MW-7 through MW- 9 at Waukegan.

ANSWER:

Midwest Generation objects to this request on the grounds that the term “vicinity” and the phrase “Coal ash from the ground” are vague, ambiguous, and capable of varying interpretations. Midwest Generation further objects to this request as vague because it presumes that there is Coal

ash on or in the ground in the vicinity of the Waukegan Groundwater Monitoring Wells MW-7 through MW-9. Subject to its objection, Midwest Generation denies this request.

24. Admit that the Retention Basin at Will County is not lined.

ANSWER:

Midwest Generation objects to this request on the grounds that the term “lined” is vague, ambiguous, and capable of varying interpretations. Without waiving its objection, Midwest Generation denies this request.

25. Admit that the Retention Basin at Will County has not been lined or relined since MWG began operating Waukegan.

ANSWER:

Midwest Generation objects to this request on the grounds that the terms “lined” and “relined” are vague, ambiguous, and capable of varying interpretations. Midwest Generation further objects that this request is vague because operations at Will County did not depend upon operations at Waukegan. Without waiving its objection, Midwest Generation denies this request.

26. Admit that the Retention Basin at Will County currently contains Coal ash.

ANSWER:

Midwest Generation objects to this request on the grounds that the term “contains” is vague, ambiguous, and capable of varying interpretations because it does not account for *de minimis* amounts that may inadvertently land in the Retention Basin due to the nature of the operations at the Will County Station. Without waiving its objections, Midwest Generation denies this request.

27. Admit that Coal ash has not been removed from the Retention Basin at Will County since MWG began operating Will County.

ANSWER:

Denied.

28. Admit that there is no impermeable cap over the Retention Basin at Will County.

ANSWER:

Midwest Generation objects to this request on the grounds that the term “impermeable cap” is vague, ambiguous, and capable of varying interpretations. Without waiving its objection, Midwest Generation admits this request.

29. Admit that the Standby Pond at Will County is not lined.

ANSWER:

Midwest Generation objects to this request on the grounds that the term “lined” is vague, ambiguous, and capable of varying interpretations. See Answer to request No. 8, incorporated by reference.

30. Admit that the Standby Pond at Will County has not been lined or relined since MWG began operating Waukegan.

ANSWER:

See Answer to request No. 8, incorporated by reference.

31. Admit that Coal ash has not been removed from the Standby Pond at Will County since MWG began operating Will County.

ANSWER:

See Answer to request No. 20, incorporated by reference.

32. Admit that there is no impermeable cap over the Standby Pond at Will County.

ANSWER:

Midwest Generation objects to this request on the grounds that the term “impermeable cap” is vague, ambiguous, and capable of varying interpretations. Without waiving its objection, Midwest Generation admits this request.

33. Please admit you have no information that boron was used at the General Boiler site.

ANSWER:

See Answer to request No. 20, incorporated by reference.

34. Please admit you have no information that anything containing boron was used at the General Boiler site.

ANSWER:

See Answer to request No. 20, incorporated by reference.

Respectfully submitted,

Midwest Generation, LLC

By: /s/ Jennifer T. Nijman
One of Its Attorneys

March 31, 2015

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