

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 )  
ENVIRONMENT )  
)  
Complainants, ) PCB 2013-015  
) (Enforcement – Water)  
)  
v. )  
)  
MIDWEST GENERATION, LLC, )  
)  
Respondent. )

**RESPONDENT, MIDWEST GENERATION, LLC'S SUPPLEMENTAL RESPONSE TO  
COMPLAINANTS' FIRST SET OF INTERROGATORIES**

Respondent, Midwest Generation, LLC, ("Midwest Generation"), through its attorneys Nijman Franzetti, LLP, issues its supplemental response to Complainants', Sierra Club, Environmental Law and Policy Center, Prairie Rivers Network, and Citizens Against Ruining the Environment, First Set of Interrogatories, (the "Requests"), as follows:

**GENERAL OBJECTIONS**

Each of the Answers and Responses is made subject to and incorporates the following objections. 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 trial in this action on any grounds including but not limited to materiality, relevance, confidential business information and privilege.

1. Midwest Generation objects to the "Coal ash" definition to the extent it includes coal ash that is not stored or transferred to the Coal ash units at the Joliet 29, Powerton, Waukegan, and Will County Stations.

2. Midwest Generation objects to the Requests to the extent that they seek information that is subject to the attorney-client privilege or the work product privilege. To the extent that any privileged information is inadvertently provided in these responses or any documents produced, such provision shall not constitute waiver of the privilege or immunity as to any such information and Complainants shall return any such information upon request.

3. Midwest Generation objects to any Instruction that seeks to impose a duty or burden on Midwest Generation beyond that required by the Illinois Pollution Control Board ("Board") Rules, the Illinois Code of Civil Procedure.

### **ANSWERS TO INTERROGATORIES**

**INTERROGATORY NO. 7:** Identify all known Coal ash units, including but not limited to ponds, impoundments, or landfills, that have ever been used to store or dispose of Coal ash at each plant, including both active and inactive or abandoned coal ash units, and for each Coal ash unit:

- a. State whether the unit was or is lined, and if so, when the original liner and any replacement liners were installed and the type of the original and any replacement liners;
- b. State whether all Coal ash has been removed from that unit, and if so, when and by whom that removal was performed; and
- c. State whether MWG has ever become aware of any Breach of, or damage to, any liner, and if so, what actions were taken to address those breaches or damage.

**ANSWER:** Midwest Generation objects to Interrogatory No. 7 because it is overly broad, unduly burdensome, is not limited in time, and seeks material covered by the work product and attorney-client privilege. Additionally, Midwest Generation objects to this interrogatory as requesting information already provided in the responses to the document

requests and in the depositions. Without waiving its objections and subject to a protective order, Midwest Generation states the following:

Joliet 29 Station has three active ash ponds and, based on information and belief, there are two historical ash areas. The three active ash ponds, Ash Ponds 1, 2, and 3, are lined with a High Density Polyethylene (HDPE) liner. They were originally constructed in 1978 with a poz-o-pac liner. MWG installed HDPE liners in Ash Ponds 1 & 2 in 2008 and installed an HDPE liner in Ash Pond 3 in 2013. Coal ash is removed from Ash Ponds 1 & 2 approximately every one to two years. Ash Pond 3 is a finishing pond, and coal ash was removed from Pond 3 in 2013. Coal ash is removed from the ponds by Beemsterboer. A breach in the liner in Ash Pond 3 above the water line occurred in February 2015, and was repaired as soon as the weather allowed in 2015. MWG has no knowledge of lining under the historical ash areas, or if there is a breach or damage to any liner under the historical areas. Coal ash was removed from the historical area on the southwest side of the property by KPRG in 2005 and 2007. Other than the two removals in 2005 and 2007, MWG has no knowledge of any removals of coal ash from the historical areas.

Powerton Station has three active ash ponds (the Ash Surge Basin, the Ash Bypass Basin, and the Secondary Ash Settling Basin), and uses one basin as a temporary holding spot (the Metal Cleaning Basin). The three ash ponds, and the basin are lined with a HDPE liner. The Ash Surge Basin and the Metal Cleaning Basin were originally constructed in 1978 with a poz-o-pac and hypolon liner. MWG has no knowledge of the original construction date of the Ash Bypass Basin or the Secondary Ash Settling Basin. Both the Secondary Ash Settling Basin and the Ash Bypass Basin originally had a hypalon liner. In 2010, the Metal Clean Basin and the Ash Bypass Basin were relined with HDPE liners. In 2013, the Ash Surge Basin and the Secondary Ash Settling Basin were relined with HDPE liners. Coal ash is removed from the Ash Surge Basin,

the Ash Bypass Basin and the Secondary Ash Settling Basin approximately every six to eight years. Coal Ash is removed from the Metal Cleaning Basin approximately annually. The Coal Ash is removed by Harsco Minerals, Capital Minerals and the Station. There were periodic tears at the top of the hypalon liners, above the water line, in the Ash Settling Basin Ash Bypass Basin, Metal Cleaning Basin, all of which were promptly repaired. On information and belief, the Powerton Station also has three areas that historically contained ash: the limestone basin, an area south of the ash bypass basin, and the former ash pond. The limestone basin is lined on the bottom with a poz-o-pac liner and a hypolan liner on the sides. Coal ash was temporarily stored in the limestone basin in the past, and it is not presently used for storage of coal ash. On information and belief, ash was removed from the limestone basin in 2004, but MWG been unable to locate information regarding the removal. On information and belief, there were breaches at the top of the hypalon liner on the sides of the limestone basin. On one occasion, between approximately 2002 and 2004, MWG installed temporary plastic lining in the limestone basin. Coal ash was also temporarily stored in an area south of the ash bypass basin in the winter of 2001, but has not been stored at that location since and no ash is at that location now. On information and belief, in 2001 Reed Minerals removed the ash in that area for beneficial use. Additionally, MWG has no knowledge of the lining under the area south of the ash bypass basin or if there was a breach any lining underneath the area. On information and belief, the former ash pond area is a historical ash area and there is no liner below the former ash pond. MWG has no knowledge if there is a breach or damage to any liner under the former ash pond, or if ash has been removed from the former ash pond.

Waukegan Station has two active ash ponds, both of which are lined with a HDPE liner, and, based on information and belief, a historical ash area. The ash ponds were originally

constructed in 1978 and lined with a hypalon liner. In 2003, the East Pond was relined with an HDPE liner, and in 2005, the West Pond was relined with an HDPE liner. Coal ash is removed approximately annually from the ash ponds by Lafarge North America. Minor breaches in the upper portions of the liners, due to equipment use above the water line, have occurred and have been promptly repaired. Recently, there was a tear in the top of the East Ash Pond in 2013 and a tear in the East and West Ponds in 2014. On information and belief, both tears were promptly repaired as soon as weather allowed. MWG has no knowledge of the lining under the historical ash area, whether coal ash was removed from the historical ash area, or if there is a breach or damage to any liner in the historical ash area.

Will County Station has two active ash ponds (Ponds 2S and 3S) and two inactive ash ponds (Ponds 1N and 1S). All four ash ponds were originally constructed in 1977 with a poz-o-pac liner. In 2009, Pond 3S was relined with an HDPE liner, and in 2013, Pond 2S was relined with an HDPE liner. Coal ash is removed from the ash ponds by Lafarge North America approximately annually. MWG is aware of a tear in the HDPE liner in 3S in 2012, which was promptly repaired in 2012, and there was also a crack in the second layer of poz-o-pac under Pond 3S in 2009. The Retention Basin, a concrete basin, also historically contained ash, and on information and belief the ash was removed approximately daily. The Retention Basin is no longer used for any processes related to ash, and no longer contains any ash. There is also a historical slag stockpile near the Retention Basin. In 2015, MWG removed approximately 1,800 tons of slag from the stockpile. Currently, the area contains an ash pile. A 1999 Phase II Report, conducted for a previous site owner, identified historic areas including a slag and bottom ash dumping area and a slag dumping area. MWG has no knowledge whether such areas were lined,

whether coal ash was removed from the areas, or if there is a breach or damage to any liner in the areas.

Responsive documents are also at Bates MWG13-15\_1 -176, MWG13-15\_8415-11492, MWG13-15\_11493-13421, MWG13-15\_17637-17973, MWG13-15\_18823-MWG13-15\_18990, MWG13-15\_16770-18938, MWG13-15\_28404-29796, MWG13-15\_45621, MWG13-15\_44770, MWG-13-15\_48636-48639; M. Kelly deposition, pp. 26, 28, 31 40, 41, 42, 53, 54, 59, 77, 75 94, 112; J.DiCola Deposition, pp. 44, 103, 105, 106, 108, 109; C. Lux Deposition, p. 20; R.Maddox Deposition, pp. 90-93, 120-121.

Dated: June 10, 2015

Respectfully submitted,

Midwest Generation, LLC.

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

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in the Midwest Generation, LLP Responses to Complainants' Interrogatories and Requests to Admit dated September 2, 2014 and March 31, 2015 and supplemented on June 10, 2015, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that it verily believes the same to be true.

I have personal knowledge of the facts stated herein.

**FURTHER AFFIANT SAYETH NOT.**

A handwritten signature in black ink, appearing to read "Maria Race", written over a horizontal line.

Maria Race