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July 27, 2012

VIA OVERNIGHT MAILIllinois EPA
Division of Public Water Supplies
Attn: Andrea Rhodes, CAS #19
P.O. Box 19276
Springfield, IL 62794-9276Re: Violation Notice: Midwest Generation, LLC, Waukegan Generating Station
Identification No.: 6281
Violation Notice No.: W-2012-00056

Dear Ms. Rhodes:

In response to the above-referenced June 11, 2012 Violation Notice ("VN"), received on June 13, 2012, this written response is timely submitted on behalf of the Midwest Generation, LLC (MWG), Waukegan Generating Station ("Waukegan"). MWG also requests a meeting with the Illinois Environmental Protection Agency ("Illinois EPA" or the "Agency") to discuss the VN and information provided in this response.

MWG regrets that the Illinois EPA decided to issue the VN because MWG has tried to work cooperatively with the Agency concerning the hydrogeologic assessment of the coal ash ponds at Waukegan even though it had significant concerns and objections to how the VN has proceeded in this matter.¹ Nevertheless, MWG complied with the Agency's request that it conduct a hydrogeologic assessment of the area around the coal ash ponds and followed its requirements and comments for how the hydrogeologic assessment should be conducted, even though it was under no legal obligation to do so.² At no time however did MWG agree that the

¹ See, e.g., MWG (B. Constantelos) letter to Illinois EPA (A. Keller) dated July 15, 2009. MWG is also working cooperatively with the USEPA with regards to the Coal Combustion Residuals Proposed Rules, EPA-HQ-RCRA-2009-0640, and is trying to coordinate the responses and requirements of both Agencies. USEPA first issued the proposed rules on June 21, 2010, and requested additional comments and information on Oct. 12, 2011. The additional information comment period closed on November 14, 2011, and MWG is now waiting for the USEPA to issue the final rule.

² MWG continues to reserve its objection that the Illinois EPA did not have the legal authority to require the hydrological assessments of the ash ponds under Sections 4 or 12 of the Illinois Environmental Protection Act (the "Act") or the Groundwater Quality Regulations, 35 Ill. Adm. Code Part 620.

scope and nature of the hydrological assessment the Agency required it to perform would provide any basis for concluding that the ash ponds were impacting groundwater. The alleged violations in the VN are based solely on the results of the hydrogeologic assessment MWG performed at the Agency's request. The results of the hydrogeologic assessment do not show that the coal ash ponds at the Waukegan Station are impacting the groundwater and do not provide the necessary evidence to support the alleged violations contained in the VN.

Well prior to the issuance of this VN, MWG met with the Agency to discuss the groundwater monitoring results and to discuss cooperatively how to proceed based on those results, including what additional actions, if any, the Agency believed were necessary. The Agency told MWG that it had not yet decided how to proceed. The next development was the issuance of the VN. The VN itself provides no information concerning the basis for the Agency's apparent conclusion that the ash impoundments are the cause of the alleged groundwater impacts, other than the conclusory statement that "[o]perations at ash impoundments [sic] have resulted in violations of the Groundwater Quality Standards." The VN also provides no information concerning the nature or type of corrective action which the Agency may deem acceptable to address the alleged violations. The Agency is not pursuing this matter in a way that allows MWG to prepare an effective response or a Compliance Commitment Agreement.

This letter provides a detailed response to each of the alleged violations in Attachment A of the VN to the extent possible given the lack of information provided in the VN. It also advances MWG's general objection to the legal sufficiency of the notice of the alleged violations contained in the VN. MWG maintains that the Illinois EPA cannot prove the alleged violations in the VN, and does not, by submitting this response, make any admissions of fact or law, or waive any of its defenses to those alleged violations.

I. General Objection to the Legal Sufficiency of the Violation Notice

The VN does not comply with the requirements of Section 31 of the Act. Section 31(a)(1)(B) of the Act requires the Illinois EPA to provide a detailed explanation of the violations alleged. 415 ILCS 5/31(a)(1)(B). Under the Act, MWG is entitled to notice of the specific violation charged against it and notice of the specific conduct constituting the violation.³ The VN fails to provide adequate notice to MWG of either the alleged violations or the activities which the Agency believes are necessary to address them. The VN states that "[o]perations at ash impoundments have resulted in violations of the Groundwater Quality Standards...." (Violation Notice, Attachment A, page 1, 1st paragraph) No further description of the alleged "ash impoundments" is provided in the VN. Two ash impoundments exist at the Waukegan Station. It is impossible to identify from the contents of the VN what operations or activities at the Waukegan Station the Agency is claiming are the cause of the alleged violations, including

³ *Citizens Utilities Co., v. IPCB*, 9 Ill.App.3d 158, 164, 289 N.E.2d 642, 648 (2nd Dist., 1972) (a person is entitled to notice of the specific violation charged against it and notice of the specific conduct constituting the violation). See also, *City of Pekin v. Environmental Protection Agency*, 47 Ill.App.3d 187, 192, 361 N.E.2d 889, 893 (3rd Dist., 1977).

whether it is the Agency's position that each of the Station's ash ponds, or only one of them, have caused the alleged violations. Absent an accurate or complete description of the activities or operations that the Agency is alleging caused the violations, it is also not possible to identify what action might be necessary to resolve them. Attachment A to the VN states: "Included with each type of violation is an explanation of the activities that the Illinois EPA believes may resolve the violation." However, no such explanation is provided in the VN. In sum, the VN fails to comply with the legal requirement that it include a detailed explanation of the violations alleged, does not inform MWG of the specific conduct constituting the alleged violations and provides no notice of what is necessary to resolve the alleged violations. The Section 31 process is based on fundamental principles of due process. MWG should not have to speculate about what activities it allegedly engaged in that caused the violations and how to address them to resolve the alleged violations. In the absence of this material, statutorily-required information, the Agency also has effectively denied MWG's statutory right to formulate an acceptable Compliance Commitment Agreement to submit for the Agency's approval.

The VN is also deficient regarding its explanation of what laws MWG has allegedly violated. The VN solely alleges that MWG violated "Section 12" of the Act. 415 ILCS 5/12. It does not provide any further specification as to which of the provisions of Section 12 MWG has allegedly violated.

Sec. 12 of the Act has nine subsections, consecutively numbered (a) through (i). Each of these subsections describes a different and distinct water pollution prohibition. 415 ILCS 5/12(a)-(i). However, the VN issued to MWG does not identify which of the nine subsections the Agency is alleging MWG violated. Based on the contents of Section 12 of the Act, the Agency is taking the position that MWG violated each and every one of the provisions of Section 12. Based on the relevant facts, it is unlikely that this is the intent of the VN. Therefore, the VN's general reference to Section 12 of the Act, without any other explanation, is not a "detailed explanation of the violations." This is yet another example of how the VN fails to provide MWG with adequate notice as a matter of law and thereby violates MWG's due process rights.⁴

By failing to provide a detailed explanation of the violations and any explanation of the activities that the Illinois EPA believes may resolve the violations, the Illinois EPA has effectively denied MWG the opportunity to properly and thoroughly respond to the alleged violations and to make an acceptable offer to resolve them. The VN's deficiencies conflict with the intent and purpose of Section 31 of the Act, which is to avoid unnecessary litigation. Therefore, MWG respectfully requests that Illinois EPA rescind the VN and suspend any further enforcement action unless and until it has taken the necessary actions to correct and cure the legal deficiencies in the notice of the alleged violations by following the statutory requirements under Section 31(a)(1)(B) of the Act. 415 ILCS 5/31(a)(1)(B).

⁴ See, e.g., *Grigoleit Co. v. IEPA*, PCB 89-184, slip op at p. 11 (November 29, 1990) (Failure to notify permit applicant of alleged violations and provide an opportunity to provide information in response was a violation of applicant's due process rights).

II. Response to Alleged Violations in the VN

Subject to and without waiving its objections to the legal sufficiency of the VN, MWG nevertheless has attempted to discern the legal basis for the alleged violations and to prepare this response in defense to those allegations based on various assumptions. MWG reserves the right to supplement this response, including by submitting a separate response should the Agency provide the legally required notice under Section 31 of the Act.

The VN alleges that the “[o]perations at ash impoundments” at MWG’s Waukegan Station have resulted in violations of certain of the Groundwater Quality Standards at the respective monitoring wells identified in the VN. (Violation Notice at Attachment A) MWG believes the Agency’s use of the term “ash impoundments” is intended to refer to the structures, which the Waukegan Station commonly refers to as “ash ponds;” that is how they will be referred to here. The Agency further alleges that the alleged violations of the groundwater quality standards in 35 Ill. Admin. Code Part 620, also constitute violations of Section 12 of the Act and the underlying groundwater regulations in 35 Ill. Admin. Code Part 620. It is undisputable that the Agency has the burden to prove these alleged violations both in proceedings before the Illinois Pollution Control Board (“Board”) and in the courts.⁵ However, the groundwater monitoring data on which the Agency primarily, if not solely relies, to assert these violations is not sufficient, legally or technically, to prove that any “ash impoundment” is the source of the alleged groundwater impacts. Further, based on the existing condition of the ash ponds, it is not likely that they are the source of the alleged impacts.

To support its defense to the alleged violations, MWG has set forth below a description of: (1) the condition and use of the ash ponds at Waukegan; (2) the hydrogeologic assessment performed at the Waukegan Station; (3) the site hydrology; and (4) why the analytical data from the monitoring wells does not establish that the ash ponds are the source of the alleged exceedances of the groundwater standards.⁶ In addition, for certain of the alleged exceedances, additional information not considered by the Agency shows that it is either more likely, or at least as likely, that the source of the alleged exceedance is something other than the ash ponds. In either case, the Agency cannot sustain its burden to prove the alleged violations.

⁵ Section 31(e) of the Act provides in relevant part: “In hearings before the Board under this Title, the burden shall be on the Agency...to show either that the respondent has caused or threatened to cause...water pollution or that the respondent has violated or threatens to violate any provision of this Act or any rule or regulation of the Board or permit or term or condition thereof.” 415 ILCS 5/31(e); *Citizens Utilities v. IPCB*, 9 Ill. App. 3d 158, 164, 289 N.E.2d 642, 646 (1972) (the Agency has the burden of proof in enforcement actions).

⁶ In preparing this response, MWG closely reviewed the groundwater monitoring reports previously submitted to the Agency for the monitoring wells which are identified in the VN. In the course of this review, some data transcription errors were found in the previously submitted data tables included in the groundwater monitoring reports. Copies of the corrected data tables are enclosed. The tables are annotated to identify the nature of the corrections made to the previously submitted reports. Many of the values for monitoring wells MW-1 through MW-5 for the October 25, 2010 sampling event were inadvertently transposed. Where revised values show either that an alleged exceedance did not exist or that a new exceedance not previously identified was reported, this response expressly identifies such revisions.

A. The Condition of the Ash Ponds

For several reasons, the construction and operation of the Waukegan ash ponds makes it unlikely that they are the cause of the alleged violations. The current construction and use of the ash ponds minimizes the potential for leakage from the ash ponds to groundwater.

First, the Waukegan ash ponds are not a disposal site. The ash that enters the ponds is routinely removed. This operating condition limits the amount of ash accumulated over time which serves to minimize the potential for the release of ash constituents to the groundwater.

Second, unlike many other ash ponds in Illinois, the two ash ponds at Waukegan are not simply earthen ponds with no protection against the migration of constituents into the land or groundwater. Each of the Waukegan ash ponds is lined to prevent releases to groundwater. MWG constructed both ponds in 2002 with a high-density polyethylene ("HDPE") liner, replacing a previously existing HDPE liner, overlain by a 12-inch sand cushion layer and a 6-inch limestone warning layer. Both HDPE liners have a permeability of approximately 10^{-13} cm/sec. Notably, this is a greater degree of permeability than is required in the Illinois Pollution Control Board ("Board") Regulations for constructing a new solid waste landfill where, unlike the ash ponds, waste materials are to be disposed of on a permanent basis. *See* 35 IAC 811.306(d). The liners in the Waukegan ash ponds exceed the level of permeability which the Illinois regulations expressly recognize is sufficient to prevent the release of constituents from landfills to the environment. Hence, the facts regarding the liners for these ash ponds also support the conclusion that the ash ponds are not the source of the exceedances of groundwater standards alleged in the VN.

The VN contains no facts concerning the condition of the Waukegan ash ponds that would indicate it is allowing ash constituents to escape from the ponds. For example, the Agency does not contend that there are any breaches in the integrity of the liners that are allowing ash constituents to be released to the groundwater. The Agency similarly does not claim that the liners are inadequate to prevent the migration of constituents. In the absence of such evidence, it is certainly far more likely than not that the existing ash ponds at the Waukegan Station is not the source of the groundwater impacts alleged in the VN.

B. Hydrogeologic Assessment and Site Hydrology

The VN appears to be based on the flawed premise that the hydrogeologic assessment which the Agency directed MWG to perform in the vicinity of the ash ponds would be sufficient to identify the ash ponds as the source of any elevated levels of constituents in the groundwater. This is simply not the case. The results of the hydrogeologic assessment at best give rise to more questions about the source of the alleged groundwater impacts, and do not prove that the existing ash ponds are the source of those impacts.

The results of the hydrogeologic assessment show a relatively uniform groundwater flow system. Groundwater flows from west to east, consistent with the expected flow direction due to

the proximity to Lake Michigan to the east. Based upon this groundwater flow direction, groundwater well MW-5 is an upgradient well, and groundwater wells MW-1 through MW-4 are downgradient wells.

A comparison of the monitoring results from the upgradient (MW-5) and downgradient (MW-1 – MW-4) wells does not support the Agency's contention that the ash ponds are the source of the alleged groundwater impacts. The distribution and observation of parameter concentrations is not consistent with the ash ponds being the source of the impacts identified in the VN. In fact, the more defensible conclusion is that the ponds are not the source of these impacts.

The highest concentrations and greatest number of exceedances of the groundwater standards were detected in the upgradient well, MW-5. Four parameters, iron, sulfate, total dissolved solids ("TDS"), and chloride exceeded the Class I groundwater standards only in this well. None of these parameters were observed above the groundwater standards in any of the downgradient wells. If the ash ponds were the source of these exceedances, then the upgradient well would not regularly have groundwater exceedances of the Class I groundwater standards; and the downgradient wells likely would. The absence of any exceedances of these constituents in the downgradient wells is strong evidence that the ash ponds are not the source of the groundwater impacts for these parameters at well MW-5.

Moreover, there were more exceedances of the boron Class 1 groundwater standard in MW-5 than in the downgradient wells.⁷ Boron is generally considered a primary indicator compound of ash impacts to groundwater. The concentration range of boron in upgradient well MW-5 is substantially greater than the range of boron detections in all the downgradient monitoring wells combined. The boron concentration range in well MW-5 is 12 mg/l to 44 mg/l. The combined range of boron detections in all downgradient wells combined is 1.5 mg/l to 2.8 mg/l. The data does not support the conclusion that the ash ponds are the cause of the alleged groundwater impacts.

The distribution of sulfate detections from upgradient to downgradient groundwater monitoring wells also does not support the allegation that the ash ponds are the cause of the alleged groundwater impacts. Elevated sulfate concentration, when coupled with elevated boron concentration, is an indicator of potential coal ash impacts to groundwater. A review of the sulfate data provides the same trend as explained above for boron. The range of sulfate detections in upgradient well MW-5 is from 780 mg/l to 1,100 mg/l. The range of sulfate detections in all combined downgradient monitoring wells is 97 mg/l to 390 mg/l. All of the upgradient detections exceed the Class I groundwater standard for sulfate. None of the downgradient detections of sulfate exceed the Class I groundwater standard. Again, the data does not support the conclusion that the ash ponds are the cause of the alleged groundwater impacts.

⁷ The corrected, enclosed table shows there is an additional boron exceedance reported for well locations MW-2 and MW-5.

For the remaining parameters identified in the VN, the data also shows that the levels detected in the upgradient and downgradient wells are not consistent with the conclusion that the ash ponds are the source of these impacts. First, all but one of the manganese exceedances was observed in the upgradient well, MW-5. The only downgradient exceedance of manganese occurred in only one sampling event (*i.e.*, Monitoring Well MW-4, 9/13/11) and has not been replicated since.⁸ Also, there was only one exceedance of antimony at MW-2 in the initial sampling event, which has not been replicated since.⁹ A single, isolated exceedance that is not reproducible over subsequent, consecutive quarters of sampling is not representative of actual groundwater quality conditions, and hence, is insufficient to prove the alleged violation.

There were several exceedances of arsenic noted at downgradient monitoring well location MW-1. The alleged exceedances for arsenic are more likely the result of chemical conditions in the groundwater at Waukegan. A review of the oxidation-reduction (ORP) field parameter data for the wells indicates that at monitoring well location MW-1, there is consistently a low dissolved oxygen (DO) level coupled with negative ORP readings. This is indicative of a reducing environment in the vicinity of this well. The DO and ORP data for wells MW-2 through MW-4 show some variability in these field parameter readings between sampling events. Generally, any negative ORP measurements tend to be less in these wells than at location MW-1. There were no elevated detections of arsenic in any of the other three downgradient monitoring wells (MW-2 through MW-4). If the subject ash ponds were the cause of the noted arsenic exceedances, then one would expect to see similarly elevated levels of this constituent in the other downgradient monitoring wells, which is not the case here.

High pH levels were sporadically seen in three groundwater wells. An exceedance of the pH groundwater standard was observed in three sampling events in monitoring well MW-1. There were single, non-reproducible pH exceedances at monitoring well locations MW-2 and MW-3. Because pH is a field parameter, these alleged pH exceedances need to be considered in the context of the other detected parameters before drawing any conclusions as to their cause. When the alleged pH exceedances are viewed in their proper context, the data does not support a conclusion that the ash ponds are the source of the elevated pH levels.

In sum, the pattern of the constituent concentrations in groundwater from all of the monitoring wells, including repeatedly observing higher concentrations of constituents in the upgradient well, clearly does not support the contention that the ash ponds are the source of the alleged groundwater standards exceedances. The data are more consistent with the opposite conclusion, namely that the ash ponds are not the source of the alleged exceedances.

⁸ The corrected, enclosed table shows there was an additional exceedance of manganese reported for MW-5.

⁹ The corrected, enclosed table shows there was not an exceedance of antimony in MW-1, but there was an exceedance of antimony reported for MW-2.

C. The Waukegan Ash Ponds Are Not Causing Groundwater Exceedances

Because the Illinois EPA failed to specify which of the provisions of Section 12 of the Act MWG allegedly violated, MWG has had to speculate to identify the potential Section 12 violations this response needs to address. As stated above, MWG objects to the vagueness of, and legally deficient notice provided by, the VN and reserves its right to respond further when and if the Agency properly identifies the provisions of Section 12 on which it is relying.

For purposes of this response, based upon the regulations cited by the Agency in the VN, MWG has assumed that the Illinois EPA's alleged violations of Section 12 are limited to sections 12(a), which prohibits causing or allowing water pollution, and to Section 12(d), which prohibits causing or allowing the creation of a water pollution hazard. 415 ILCS 5/12(a), (d). Based on these assumptions regarding the substance of the Illinois EPA's alleged violations, MWG submits that Agency cannot show that the ash ponds at Waukegan caused or allowed water pollution or created a water pollution hazard.

Overall the analytical results show that there is no relationship between the ash ponds and the groundwater exceedances. The pattern of the constituent concentrations in groundwater from monitoring wells across the site, including repeatedly observing higher concentrations in the upgradient well, clearly does not support the Agency's contention that the ash ponds are the source of these impacts. The data are more consistent with the opposite conclusion, namely that the ash ponds are not the source of the alleged exceedances.

To show a violation of Section 12(a) and 12(d), there must be a showing not only of the presence of a potential source of contamination, but also that it is in sufficient quantity and concentration to render the waters harmful. *Bliss v. Illinois EPA*, 138 Ill. App. 3d 699, 704 (1985) ("mere presence of a potential source of water pollutants on the land does not necessarily constitute a water pollution hazard"). In other words, there must be a causal link between the potential source and the water or groundwater. The groundwater monitoring data on which the Agency relies does not establish this essential causal link between the ash ponds and the groundwater. Therefore, the Agency has failed to meet its burden to prove that the ash ponds are the cause of the alleged exceedances of the groundwater standards as required to prove a violation of Sections 12(a) or 12(d) of the Act. 415 ILCS 5/12(a), (d).

The Agency also alleges violations of the groundwater quality regulations based on exceedances of the groundwater quality standards in 35 Ill. Admin. Code § 620.401. There is no violation here of Section 620.401: Section 620.401 solely provides the legal criteria that groundwater must meet the standards appropriate to the groundwater's class. It is a foundational regulation, allowing for different classes of groundwater to meet different groundwater standards. It is not a prohibition regulation. There is no conduct prohibited by this section of the regulations in which MWG is alleged to have engaged. MWG cannot and did not violate Section 620.401.

The remaining alleged groundwater regulation violations, Sections 620.115, 620.301, 620.405, and 620.410 of the Board Regulations, are all based on the Agency's contention that MWG's operation of the ash ponds has caused the exceedances of the groundwater standards detected in the monitoring data. To sustain these allegations, the Agency must show that MWG caused a discharge of the subject constituents from ash ponds which in turn caused the exceedances of the groundwater standards.¹⁰ The relevant facts and circumstances do not support either conclusion.

The use and condition of the ash ponds does not support a finding that they are releasing constituents to the groundwater. They are not disposal sites. The ash is regularly removed from the ponds by MWG. The linings in all of the ash ponds are of sufficient low permeability, exceeding accepted regulatory guidance to prevent the release of constituents. Finally, pursuant to the terms of the Waukegan Station's NPDES Permit, these ash ponds are part of the flow-through wastewater treatment process at the station. MWG's operation of the ash ponds has been carried out in accordance with the terms and conditions of the NPDES Permit. Under Section 12(f) of the Act, compliance with the terms and conditions of any permit issued under Section 39(b) of the Act is deemed compliance with this subsection.

Similarly, the groundwater data on which the Agency relies does not provide a sufficient scientific or technical evidentiary basis on which to conclude that the ash ponds are causing the alleged groundwater exceedances. The essential "causal link" between the ash ponds and the elevated constituents in the groundwater is missing. The groundwater impacts in the upgradient well are consistently greater than in the wells downgradient of the ash ponds. The distribution of the impacts is not consistent with the ash ponds being the source of the exceedances. As a whole, the data is at best inconclusive on this issue, while certain data results clearly point to other, unrelated causes.

Because the ash ponds have not been shown to have caused a release of any contaminants that is causing the groundwater exceedances, the Agency's VN does not support its claims that MWG has violated Sections 620.405 or 620.301 of the Board regulations. Accordingly, MWG also has not violated Section 620.115 of the Board regulations.

III. Compliance Commitment Agreement

This VN should not have been issued. Given the absence of proof that the ash ponds are the cause of the alleged groundwater exceedances, the Agency's request for a Compliance Commitment Agreement (CCA) to address the ash ponds is an attempt to compel MWG to conduct unnecessary corrective action to resolve the alleged violations.

¹⁰ See *People of the State of Illinois v. ESG Watts, Inc.*, PCB 96-107 slip op. at p. 41 (February 5, 1998) (By finding the respondent caused a discharge of constituents into the groundwater causing a violation of the Class II Groundwater standards, the Board found the respondent also violated 35 IAC §§ 620.301 and 620.115)

Moreover, with the pending federal regulatory process to enact regulations for the design and operation of ash ponds, it is prudent to await the outcome of the proposed federal regulations to determine whether any changes to the ash ponds construction or operation are required by those regulations. The Agency itself has previously advanced this position. In 2010, the Agency's Steven Nightingale testified before the Illinois Pollution Control Board that the Board should consider initiating a temporary moratorium on the closure of coal ash impoundments because of the U.S. EPA's intention to regulate them. (*See In the Matter of Ameren Ash Pond Closure Rules (Hutsonville Power Station): Proposed 35 Ill. Adm. Code Part 840.101 Through 840.152*, Docket R09-21 (October 7, 2010) at p. 64) On behalf of the Agency, Mr. Nightingale told the Board that if industry had to take action in the interim, it "could end up expending substantial money and resources only to find they are subject to additional and/or different closure requirements for those units." (*Id.*) The Agency's pursuit of this enforcement action, particularly given the deficiencies in its alleged evidence, also threatens to force MWG to take actions that may conflict with or otherwise differ from the requirements in the upcoming federal regulations.

As the hydrogeologic assessment showed, there is no threat to human health presented by the alleged exceedances of the groundwater standards. The hydrogeologic assessment investigated the presence of potable water sources within a 2,500-foot radius of the site. Eight groundwater wells are installed within 2,500 feet of the site, all east and upgradient of the site. Shallow groundwater at the site discharges to Lake Michigan. Although Lake Michigan is used as a drinking water source, the nearest intake location is too far away to be impacted by the alleged groundwater exceedances. In the absence of any potable groundwater receptors or use, groundwater at the Waukegan site does not pose any risk to human health. Accordingly, awaiting the outcome of the federal regulatory proposal is appropriate under these circumstances. Because MWG's preference is to cooperate with the Agency in this matter, MWG presents here a proposed CCA that should be acceptable based on the relevant facts and circumstances. The proposed CCA terms are as follows:

Because MWG's preference is to cooperate with the Agency in this matter, MWG presents here a proposed CCA that should be acceptable based on the relevant facts and circumstances. The proposed CCA terms are as follows:

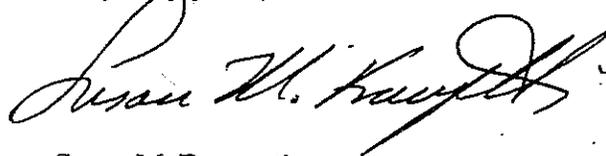
- A. The ash ponds will not be used as permanent disposal sites and ash will continue to be removed from the ponds on a periodic basis.
- B. The ash ponds will be maintained and operated in a manner which protects the integrity of the existing liners. During the removal of ash from the ponds, appropriate procedures will be followed to protect the integrity of the existing liners, including operating the ash removal equipment in a manner which minimizes the risk of any damage to the liner.
- C. During the ash removal process, visual inspections of the ponds will be conducted to identify any signs of a breach in the integrity of the pond liners. In the event that a

breach of the pond liners is detected, MWG will notify the Agency and will submit a corrective action plan for repair or replacement, as necessary, of the liner. Upon the Agency's approval, and the issuance of any necessary construction permit, MWG will implement the correction action plan.

- D. Institutional controls will be evaluated for addressing the alleged exceedances of the groundwater standards. There are already Environmental Land Use Controls (ELUCs) in place at a portion of the Waukegan Station.
- E. MWG will continue to monitor the groundwater through the existing five groundwater monitoring wells and report its findings to Illinois EPA. MWG reserves the right to request the Agency's approval of a cessation of all or some of the monitoring requirements based on future monitoring results.
- F. MWG will continue to monitor the development of the Coal Combustion Residuals Proposed Rules, EPA-HQ-RCRA-2009-0640. When the final rule is issued, MWG will promptly notify Illinois EPA how it will comply with the new Federal Rules.

This letter constitutes our response to and proposed CCA for the Violation Notice W-2012-00056. MWG also reserves the right to raise additional defenses and mitigation arguments as may be necessary, in defense of the allegations listed in the Violation Notice in the event of any future enforcement. We look forward to discussing the above information further at the soon to be scheduled meeting with the Agency's representatives. Please contact me to schedule a mutually convenient date for the meeting.

Very truly yours,



Susan M. Franzetti
Counsel for Midwest Generation, LLC

Enclosures

cc: Maria L. Race, Midwest Generation, LLC

Table 3
 GROUNDWATER ANALYTICAL RESULTS - AMENDED JULY 2012
 Waukegan Station
 Waukegan, Illinois
 Midwest Generation
 21153.033

PATRICK ENGINEERING	Sample Analysis Method	Groundwater Quality Standard (mg/L)	MW-1	MW-1	MW-1	MW-1	MW-1	MW-1	MW-2	MW-2	MW-2	MW-2	MW-2	MW-2
			(mg/L)	(mg/L)	(mg/L)	(mg/L)	(mg/L)	(mg/L)	(mg/L)	(mg/L)	(mg/L)	(mg/L)	(mg/L)	(mg/L)
Chemical Name		Class 1	10/25/10	3/24/11	6/13/11	9/15/11	12/6/11	3/14/12	0/25/10	3/24/11	6/13/11	9/13/11	12/6/11	3/14/12
Antimony	Metals 6020	0.006	0.0052	ND	ND	ND	ND	ND	0.015	ND	ND	ND	ND	ND
Arsenic	Metals 6020	0.05	0.054	0.04	0.17	0.077	0.057	0.078	0.025	0.016	0.012	0.0087	0.0094	0.0094
Barium	Metals 6020	2.0	0.023	0.022	0.02	0.038	0.051	0.034	0.0091	0.014	0.024	0.02	0.023	0.017
Beryllium	Metals 6020	0.004	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Cadmium	Metals 6020	0.005	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Chromium	Metals 6020	0.1	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Cobalt	Metals 6020	1.0	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Copper	Metals 6020	0.65	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Cyanide	Dissolved 9014	0.2	ND	ND	0.02	0.013	ND	ND	ND	ND	0.019	0.019	ND	ND
Iron	Metals 6020	5.0	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Lead	Metals 6020	0.0075	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Manganese	Metals 6020	0.15	ND	0.0027	0.0086	0.02	0.011	0.0052	0.0034	0.018	0.032	0.038	0.035	0.028
Mercury	Mercury 7470A	0.002	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Nickel	Metals 6020	0.1	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Selenium	Metals 6020	0.05	0.031	0.03	0.016	0.039	0.032	0.037	0.025	0.0085	0.028	0.022	0.0086	0.0046
Silver	Metals 6020	0.05	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Thallium	Metals 6020	0.002	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Zinc	Metals 6020	5.0	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Boron	Metals 6020	2	2.6	2	2.6	2.5	2.8	2.5	2.2	2.2	2	1.7	1.9	2
Sulfate	Dissolved 9038	400	350	230	260	280	330	390	230	160	150	200	180	200
Chloride	Dissolved 9251	200	39	48	52	41	32	47	42	45	46	45	50	53
Nitrogen/Nitrate	Nitrogen By calc	10	ND	ND	ND	0.52	0.53	ND	ND	ND	0.23	0.12	ND	ND
Total Dissolved Solids	Dissolved 2540C	1,200	460	470	460	570	750	630	410	400	410	460	490	400
Fluoride	Dissolved 4500 FC	4	0.45	0.59	0.71	0.33	0.46	0.46	0.35	0.53	0.8	0.56	0.67	0.88
Nitrogen/Nitrite	Dissolved 4500 NO2	NA	ND	ND	ND	ND	0.021	0.1	ND	ND	ND	ND	ND	ND
Nitrogen/Nitrate/Nitrite	Dissolved 4500 NO3	NA	ND	ND	ND	ND	0.032	ND	ND	ND	0.23	0.12	ND	ND

Notes:

*Class 1 Groundwater Standards from 35 IAC Part 620

Bold values show exceedences of 35 IAC Part 620

NA - upgradient value not calculated due to non-detection in upgradient wells

ND-non detect

mg/L-milligrams per liter

AMENDMENTS

0.0052 - Value amended from original Table 3 (May 11, 2012).

0.025 - Value has not changed; font has been changed from bold to normal.

Table 3
GROUNDWATER ANALYTICAL RESULTS - AMENDED JULY 2012

Waukegan Station
Waukegan, Illinois
Midwest Generation
21153.033

PATRICK ENGINEERING	Sample Analysis Method	Groundwater Quality Standard (mg/L)	MW-3	MW-3	MW-3	MW-3	MW-3	MW-3	MW-3	MW-4	MW-4	MW-4	MW-4	MW-4	MW-4
			(mg/L)	(mg/L)	(mg/L)	(mg/L)	(mg/L)	(mg/L)	(mg/L)	(mg/L)	(mg/L)	(mg/L)	(mg/L)	(mg/L)	(mg/L)
Chemical Name	Class 1*	Class 1*	10/25/10	3/24/11	6/13/11	9/13/11	12/6/11	3/14/12	10/25/10	3/24/11	6/13/11	9/13/11	12/6/11	3/14/12	
Antimony	Metals 6020	0.006	0.0051	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Arsenic	Metals 6020	0.05	0.0043	0.0041	0.0049	0.0077	0.0049	0.0071	0.0066	0.0077	0.0059	0.0058	0.0065	0.0068	
Barium	Metals 6020	2.0	0.0057	0.0086	0.018	0.0044	0.0058	0.0049	0.0026	0.025	0.034	0.039	0.036	0.038	
Beryllium	Metals 6020	0.004	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	
Cadmium	Metals 6020	0.005	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	
Chromium	Metals 6020	0.1	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	
Cobalt	Metals 6020	1.0	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	
Copper	Metals 6020	0.65	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	
Cyanide	Dissolved 9014	0.2	ND	ND	ND	0.03	ND	ND	ND	ND	ND	ND	ND	ND	
Iron	Metals 6020	5.0	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	
Lead	Metals 6020	0.0075	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	
Manganese	Metals 6020	0.15	ND	0.0059	0.0044	ND	0.0054	0.0036	0.0058	0.035	0.028	0.36	0.025	0.038	
Mercury	Mercury 7470A	0.002	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	
Nickel	Metals 6020	0.1	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	
Selenium	Metals 6020	0.05	0.0094	0.016	0.03	0.012	0.011	0.0064	0.0039	ND	0.022	0.025	0.015	0.0091	
Silver	Metals 6020	0.05	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	
Thallium	Metals 6020	0.002	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	
Zinc	Metals 6020	5.0	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	
Boron	Metals 6020	2	1.07	2.2	2.3	1.6	1.6	1.5	2	2.1	2	1.8	2.1	2.2	
Sulfate	Dissolved 9038	400	120	130	130	97	110	140	250	170	160	160	160	280	
Chloride	Dissolved 9251	200	53	49	53	49	51	52	39	47	45	59	60	71	
Nitrogen/Nitrate	Nitrogen By calc	10	ND	ND	0.29	ND	ND	ND	ND	ND	0.18	0.14	ND	ND	
Total Dissolved Solids	Dissolved 2540C	1,200	280	350	340	300	380	340	430	400	380	470	480	490	
Fluoride	Dissolved 4500 FC	4	0.27	0.47	0.39	0.24	0.67	0.64	0.6	0.84	0.97	0.67	0.82	0.73	
Nitrogen/Nitrite	Dissolved 4500 NO2	NA	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	
Nitrogen/Nitrate/Nitrite	Dissolved 4500 NO3	NA	ND	ND	0.29	ND	ND	ND	ND	ND	0.18	0.14	ND	ND	

Notes:

*Class 1 Groundwater Standards from 35 IAC Part 620

Bold values show exceedences of 35 IAC Part 620

NA - upgradient value not calculated due to non-detection in upgradient wells

ND-non detect

mg/L-milligrams per liter

AMENDMENTS

0.0066 - Value amended from original Table 3 (May 11, 2012).

0.0058 - Value has not changed; font has been changed from bold to normal.

Table 3
GROUNDWATER ANALYTICAL RESULTS - AMENDED JULY 2012
 Waukegan Station
 Waukegan, Illinois
 Midwest Generation
 21153.033

Chemical Name	Sample Analysis Method	Groundwater Quality Standard	MWIS (mg/L)											
			07/25/10	07/24/11	01/19/11	01/19/11	01/19/11	01/19/11	01/19/11	01/19/11	01/19/11	01/19/11		
Antimony	Metals 6020	0.006	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Arsenic	Metals 6020	0.05	0.0076	0.0082	0.0013	0.0082	0.0013	0.0082	0.0013	0.0082	0.0013	0.0082	0.0013	0.0082
Barium	Metals 6020	2.0	0.006	0.066	0.057	0.041	0.057	0.041	0.057	0.041	0.057	0.041	0.057	0.041
Beryllium	Metals 6020	0.004	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Cadmium	Metals 6020	0.005	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Chromium	Metals 6020	0.1	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Cobalt	Metals 6020	1.0	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Copper	Metals 6020	0.65	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Cyanide	Disolved 9014	0.2	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Iron	Metals 6020	5.0	3.5	2.8	0.95	0.42	0.95	0.42	0.95	0.42	0.95	0.42	0.95	0.42
Lead	Metals 6020	0.0075	0.071	0.6	0.28	0.03	0.28	0.03	0.28	0.03	0.28	0.03	0.28	0.03
Manganese	Metals 6020	0.15	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Mercury	Mercury 7470A	0.002	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Nickel	Metals 6020	0.1	0.0028	0.0028	0.0094	0.0094	0.0094	0.0094	0.0094	0.0094	0.0094	0.0094	0.0094	0.0094
Selenium	Metals 6020	0.05	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Silver	Metals 6020	0.05	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Thallium	Metals 6020	0.002	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Zinc	Metals 6020	5.0	23	33	12	30	37	44	37	44	37	44	37	44
Boron	Metals 6020	2	928	780	1,100	810	1,100	810	1,100	810	1,100	810	1,100	810
Sulfate	Disolved 9038	400	100	120	540	220	110	50	220	110	50	220	110	50
Chloride	Disolved 9251	200	100	120	540	220	110	50	220	110	50	220	110	50
Nitrogen/Nitrate	Nitrogen By calc	10	ND	ND	0.27	0.2	ND	ND	ND	ND	ND	ND	ND	ND
Total Dissolved Solids	Disolved 2540C	1,200	1,500	1,800	3,300	2,300	2,300	2,300	2,300	2,300	2,300	2,300	2,300	2,000
Fluoride	Disolved 4500 FC	4	0.20	0.34	0.24	0.18	0.29	0.18	0.29	0.18	0.29	0.18	0.29	0.18
Nitrogen/Nitrite	Disolved 4500 NO2	NA	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Nitrogen/Nitrate/Nitrite	Disolved 4500 NO3	NA	ND	ND	0.27	0.2	ND	ND	ND	ND	ND	ND	ND	ND

Notes:
 *Class I Groundwater Standards from 35 IAC Part 620
 Bold values show exceedence of 35 IAC Part 620
 NA - upgradient value not calculated due to non-detection in upgradient wells
 ND - non-detect
 mg/L-milligrams per liter

AMENDMENTS
 - Value amended from original Table 3 (May 11, 2012).
 - Value has not changed; font has been changed from bold to normal.



Christopher
Lux/Waukegan/EMG/EIX
03/27/2013 03:55 PM

To William Gaynor/Powerton/EMG/EIX@EME
Amy Hanrahan/Bolingbrook/EMG/EIX@EME, Jeffrey
cc Kickert/Powerton/EMG/EIX@EME, John
Roark/RoarkandAssociates/Powerton/EMG/EIX@EME,

bcc

Subject

Bill-

We had ground water issues at Waukegan during our ash pond liner replacements and had to install drain tile (basically vacuum hose will holes in it) covered in small trenches feeding back to a main sump location where the pump was located. This kept floor of pond dry enough to grade, install liner over the top of drain tile, working the way back to sump location and pumping water entire time until ready to pull out pump out and seal up liner in sump location. I believe we even had install most of our sand cover over the liner before we pulled sump out to help hold down liner when the pumping stopped. I will look for some pictures tomorrow just for reference and send if I can find.

Regarding the east slope, perhaps you will find that the liner bulged/rolled that way because you lost your slope soil under the liner and the sludge pushed the liner back/under forming the bulge we see in the pictures. Once the remaining sludge is removed you may find the liner is still there tied into the floor liner.

Chris Lux
Maintenance Manager
Waukegan Station
(847) 599-2214

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