

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:)
) AS 2021-003
Petition of Midwest Generation, LLC)
for Adjusted Standards from) (Adjusted Standard)
35 Ill. Admin. Code, Part 845)
(Waukegan Station))

NOTICE OF ELECTRONIC FILING

To: Attached Service List

PLEASE TAKE NOTICE that on June 7, 2021, I electronically filed with the Clerk of the Illinois Pollution Control Board (“Board”) the **ENVIRONMENTAL ORGANIZATIONS’ REQUEST FOR PUBLIC HEARING**, copies of which are served on you along with this notice.

Dated: June 7, 2021

Respectfully Submitted,

/s/ Jennifer Cassel
Jennifer Cassel (IL Bar No. 6296047)
Earthjustice
311 S. Wacker Dr., Suite 1400
Chicago, IL 60606
(312) 500-2198 (phone)
jcassel@earthjustice.org

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ENVIRONMENTAL ORGANIZATIONS' REQUEST FOR PUBLIC HEARING

Pursuant to 35 Ill. Adm. Code 140.420, Clean Power Lake County, Earthjustice, Environmental Law and Policy Center, Prairie Rivers Network, and Sierra Club (collectively, "Environmental Organizations") request a public hearing in the above-referenced matter. In support of that request, the Environmental Organizations state the following:

First, there is significant public interest in the proper clean-up of the area to the west of the Waukegan ash ponds. That area has been called multiple names: in PCB No. 2013-015, it is referred to as the Former Slag and Fly Ash Storage area;¹ Illinois EPA refers to it as the "Old Pond;" and Midwest Generation here misleadingly calls it the "Grassy Field."² Descriptions of the area make clear that it is one and the same,³ and for ease of understanding, Environmental Groups will here refer to it as the "Old Pond." During the rulemaking proceedings in R2020-019, numerous commenters referenced concerns with pollution from coal ash at the Waukegan coal plant,⁴ and some specifically raised concerns about pollution from historic ash areas at the Waukegan site.⁵

¹ The Former Slag and Fly Ash Storage area is described in the Board's Interim Order in *Sierra Club v. Midwest Generation, LLC*, as "immediately west of the West Pond...." *Sierra Club v. Midwest Generation, LLC*, PCB 13-15, Interim Board Order and Opinion at 66 (June 20, 2019) ("PCB 13-15, Interim Order").

² In its petition in this matter, Midwest Generation states that the so-called "Grassy Field" is located "to the west of the West Pond" and admits that it was formerly called the "Slag Field." *See Midwest Generation, LLC's Petition for an Adjusted Standard and a Finding of Inapplicability for Waukegan Station*, AS 2021-003 (May 11, 2021) ("Petition") at 10. Midwest Generation acknowledges that the "Grassy Field" is the same area that Illinois EPA refers to as the "Old Pond." *See id.* at 11 ("Illinois EPA confirmed to MWG that its designation of the 'Old Pond' referred to the Grassy Field.").

³ *See* PCB 13-15, Interim Order at 66; Petition at 10-11.

⁴ *See In the Matter of Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments: Proposed New 35 Ill. Adm. Code 845*, Public Comments, R2020-019, Tr. Aug. 12, 2020 at 15:24-16:24 (comments of Donna Hriljac), 21:11-23:23 (comments of Eliana Bernat), 29:22-32:16 (comments of John Katz-Mariani), 53:18-55:23 (comments of Leah Hartung), 67:16-70:11 (comments of Mary Matthews), 97:23-99:10 (comments of Cass O'Keefe); Public Comments, R2020-019, Tr. Oct. 1, 2020 at 5:12-6:14 (comments of Cathy Colton), 10:24-12:18 (comments of Yolanda Flores), 18:21-21:21 (comments of Dolores Pino), 40:12-42:12 (comments of Whitney Richardson).

⁵ *See In the Matter of Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments: Proposed New 35 Ill. Adm. Code 845*, Public Comments, R2020-019, Tr. Aug. 12, 2020

The Board recognizes the crucial role of robust public participation in protecting public health and the environment.⁶ Our own legislature made explicit in the 2019 Coal Ash Pollution Prevention Act that:

meaningful participation of State residents, especially vulnerable populations . . . is critical to ensure that environmental justice considerations are incorporated in the . . . decision-making related to, and implementation of environmental laws and rulemaking that protects and improves the well-being of communities in this State that bear disproportionate burdens imposed by environmental pollution.⁷

Waukegan is a clear example of a community that “bear[s] disproportionate burdens imposed by environmental pollution.”⁸ Accordingly, the public – including, but not limited to, members of the Environmental Organizations – should be granted the opportunity to weigh in on Midwest Generation’s request to fully exclude⁹ the Old Pond from the Board’s comprehensive regulations set out in Part 845.

Second, Midwest Generation’s attempt to exclude the Old Pond from the Part 845 regulations warrants a public hearing because there is extensive evidence – including evidence that the Board has already weighed in a separate proceeding – showing that the Old Pond is polluting groundwater.¹⁰ We ask that the Board grant Environmental Organizations’ request so that we and other members of the public may show that Midwest Generation does not meet the factors required to obtain an adjusted standard under Section 28.1 of the Illinois Environmental Protection Act, in particular, the requirement that the “requested standard will not result in

at 15:24-16:24 (comments of Donna Hriljac), 21:11-23:23 (comments of Eliana Bernat), 53:18-55:23 (comments of Leah Hartung).

⁶ See, e.g., *In re: Review of Existing Regulations, Rule 602 of Chapter 3: Water Pollution Combined Sewer Overflow*, PCB R. No. 81-17, 1982 WL 28541 at *10 (Apr. 1, 1982) (recognizing public participation as “essential” and approving an procedure in part because it maintains public participation).

⁷ 415 ILCS 5/22.59(a)(5).

⁸ *Id.*; see, e.g., *In the Matter of Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments: Proposed New 35 Ill. Adm. Code 845*, R2020-019, Tr. Oct. 1, 2020 (Public comments) at 18:21-21:21 (comments of Dolores Pino); *In the Matter of Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments: Proposed New 35 Ill. Adm. Code 845*, Illinois EPA’s Pre-Filed Answers (Aug. 3, 2020) at 182 (showing that, in Illinois EPA’s analysis, the Old Pond at Waukegan is in an Area of Environmental Justice Concern).

⁹ See Petition at 1, 28.

¹⁰ See PCB 13-15, Interim Order at 68 (“Weighing the facts presented, the Board finds that Environmental Groups have proven that it is more likely than not that the historic areas [including the Former Slag/Fly Ash Storage area] and coal ash in the fill areas at the [Waukegan] Station are causing or contributing to GQS exceedances at the Station”); *id.* at 69 (“[T]he 163 exceedances downgradient of the Former Slag and Fly Ash Storage area, along with higher concentrations of indicator constituents, show that the Former Slag and Fly Ash Storage area is contributing to the exceedances in wells MW-1 through 7”); *id.* at 75 (“The Board finds that the groundwater monitoring results indicate the Former Slag and Fly Ash Storage area is the likely source of boron exceedances at Waukegan Station in the wells downgradient of the area as well as the ash ponds”); *id.* at 76 (“[T]he Board finds that the likely source of the 57 exceedances of sulfate and 63 exceedances of TDS in the downgradient monitoring wells MW-5, 7, 8, and 9 at Waukegan is the Former Slag and Fly Ash Storage area located west of the ash ponds”).

environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the rule of general applicability.”¹¹

Thank you for your consideration of our request.

Respectfully Submitted,

Celeste Flores
Dulce Ortiz
Clean Power Lake County

Jennifer Cassel
Mychal Ozaeta
Earthjustice

Jeffrey Hammons
Kiana Courtney
Environmental Law & Policy
Center

Andrew Rehn
Prairie Rivers Network

Faith Bugel
On behalf of Sierra Club

¹¹ 415 ILCS 5/28.1(c)(3).

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CERTIFICATE OF SERVICE

The undersigned, Jennifer Cassel, an attorney, certifies that I have served by email the Clerk and by email the individuals with email addresses named on the Service List provided on the Board's website, *available at* <https://pcb.illinois.gov/Cases/GetCaseDetailsById?caseId=17032>, a true and correct copy of the **ENVIRONMENTAL ORGANIZATIONS' REQUEST FOR PUBLIC HEARING**, before 5 p.m. Central Time on June 7, 2021. The number of pages in the email transmission is 6 pages.

Dated: June 7, 2021

Respectfully Submitted,

/s/ Jennifer Cassel_____

Jennifer Cassel (IL Bar No. 6296047)
Earthjustice
311 S. Wacker Dr., Suite 1400
Chicago, IL 60606
(312) 500-2198 (phone)
jcassel@earthjustice.org

SERVICE LIST

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

Christine M. Zeivel
Christine.Zeivel@illinois.gov
Stefanie Diers
Stefanie.Diers@illinois.gov
Clayton Ankney
Clayton.Ankney@illinois.gov
Illinois Environmental
Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Susan M. Franzetti
Sf@nijmanfranzetti.com
Kristen Laughridge Gale
kg@nijmanfranzetti.com
Molly H. Snittner
[ms@nijmanfranzetti.co](mailto:ms@nijmanfranzetti.com)
[m](#)
Nijman Franzetti LLP
10 S. LaSalle St., Ste. 3600
Chicago, IL 60603