

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MIDWEST GENERATION, LLC)
)
 Petitioner,) PCB 2021-108
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY)
)
 Respondents,)

NOTICE OF FILING

To: See attached service list

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 Post-Hearing Brief in Support of Its Petition for a Variance and Extension of Deadlines for Ponds 1N and 1S at Will County Station, a copy of which is herewith served upon you.

Dated: August 9, 2021

MIDWEST GENERATION, LLC

By: /s/Kristen L. Gale

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

SERVICE LIST

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

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

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that a true copy of the foregoing Notice of Filing, and Petitioner Midwest Generation, LLC's Post-Hearing Brief in Support of Its Petition for a Variance and Extension of Deadlines for Ponds 1N and 1S at Will County Station was electronically filed on August 9, 2021 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 copies were sent via e-mail on August 9, 2021 to the parties on the service list.

Dated: August 9, 2021

/s/Kristen L. Gale

Kristen L. Gale
Susan M. Franzetti
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10 S. LaSalle Street, Suite 3600
Chicago, IL 60603
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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Petitioner,)	PCB 2021-108
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PETITIONER MIDWEST GENERATION, LLC'S POST-HEARING BRIEF IN SUPPORT OF ITS PETITION FOR A VARIANCE AND EXTENSION OF DEADLINES FOR PONDS 1N AND 1S AT WILL COUNTY STATION

Midwest Generation, LLC (“MWG”) has met its burden under the Illinois Environmental Protection Act (the “Act”) and Illinois Pollution Control Board (“Board”) regulations to show that compliance with the deadlines in the Part 845 Rules for Ponds 1N and 1S at the Will County Station would impose an arbitrary and unreasonable hardship. 415 ILCS 5/37(a); 35 Ill. Adm Code 104.238(a). A hardship is “arbitrary and unreasonable” if it outweighs the injury caused by granting the variance. *Marathon Oil Co. v. Illinois EPA*, 242 Ill. App. 3d 200, 206 (5th Dist. 1993) (Board must weigh the hardship to the petitioner against any adverse environmental impact). In other words, if the hardship claimed by the petitioner outweighs any injury that may be caused by granting the variance, the variance should be granted. *Id.*

The evidence here shows that MWG will suffer unnecessary hardship without an extension of the deadlines for collection of the groundwater sampling data, an operating permit application, priority closure category designation, and if applicable, the Category 4 construction permit application for Ponds 1N and 1S at MWG’s Will County Station. These extensions have no adverse impact on MWG’s ultimate compliance with the technical requirements of the Illinois CCR Rule. Rather, opposite is true. The deadline extensions allow MWG to collect the data and proceed

efficiently through the permitting application process instead of submitting piecemeal information that will likely require modifications and duplicative submittals.

Illinois EPA has not identified any harm to public health or the environment arising from granting the variance. Thus, the balance of the hardships weighs strongly in favor of the Board granting a variance that includes the following:

- a. 35 Ill. Adm. Code 845.650(b)(1)(A): an extension until January 31, 2022 of the deadline to collect the eight independent samples from each background and downgradient well that determine the background levels.
- b. 35 Ill. Adm. Code 845.230(d)(1): an extension until March 31, 2022 of the deadline to submit an initial operating permit application.
- c. 35 Ill. Adm. Code 845.700(c): an extension until March 31, 2022 of the deadline to submit the category designation of the Ponds 1N and 1S closure prioritization categories under Section 845.700(g).
- d. 35 Ill. Adm. Code 845.700(g): an extension until December 1, 2022 of the deadline to submit the construction permit application if Ponds 1N and 1S are designated as a Category 4 CCR surface impoundment.

I. The Agency Does Not Object to MWG’s Variance Request

The Agency has no objection to MWG’s requested extension for the submission of the groundwater data, operating permit application, and the priority closure category designation. The Agency agrees that:

- 1) collecting and analyzing eight independent samples around Ponds 1N and 1S within 180 days of April 21, 2021 “will not yield high quality background groundwater quality data” and allowing for more time between the groundwater sampling events provides “greater statistical power” and can “account for temporal variation such as seasonal variation in the data.” Agency Rec., ¶¶37, 39;
- 2) allowing an extension of time for submission of the operating permit application would yield a more complete and accurate operating permit application; Agency Rec., ¶46;
- 3) a closure category designation “will be more accurate if it considers established background groundwater quality,” and the delay in the submission of the category “will not ultimately affect the closure timeline.” Agency. Rec., ¶54; and
- 4) The Category 4 construction permit application deadline “will not be attainable” because MWG will not have time to complete the public notice and meeting requirements and the closure alternatives analysis. Agency Rec., ¶56, 57.

II. Neither the Public Health nor the Environment will be Adversely Impacted by Granting the Variance to Extend the Deadlines

There is no harm to the public or the environment if the Board grants MWG's Petition for Variance. MWG's request is merely for extensions of deadlines, not for any relief from substantive aspects of the Illinois CCR Rule. As Bradley Castle, the Will County Station's Operations Manager for the past five years,¹ and Sharene Shealey, Director of Environmental at NRG, that MWG intends to comply with the technical aspects of the rule and will close Ponds 1N and 1S pursuant to the requirements of the Illinois CCR Rule. Tr. 7/27/21, 24: 2-11; 67:13-24.

A. The Agency did not Identify Any Adverse Impacts to the Public or the Environment if the Extension of the Deadlines is Granted

The Agency does not contend that the requested variance will cause any harm. The Agency solely expressed its view that there is a public and environmental benefit to having pollution sources under enforceable operating permits. Agency Rec., ¶64. This variance will not impair that benefit. Considering the number and complexity of the operating permit applications the Agency will receive, the variance's extension of the deadlines will likely have no impact on permitting Ponds 1N and 1S. Darin LeCrone, the Permit Section Manager for the Agency's Division of Water Pollution Control, agreed that the operating permit applications will contain numerous technical reports that will take time to thoroughly review. 7/27/2021 Tr., p. 81:21-82:21. Mr. LeCrone also stated that the Agency will likely receive at least twenty operating permit applications on October 31, 2021, and at least eight construction permit applications three months later that will contain even more information. Petitioner's Hearing Exhibit V, 7/27/21 Tr., p. 81:2-16; 83:9-85:4. Mr. LeCrone testified that the Agency will review each application thoroughly and that the issuance of the permits is expected to take a significant amount of time. 7/27/21 Hearing Transcript 82:16-21;

¹ Mr. Castle left his position the Will County Station just 11 days prior to the Hearing on July 16, 2021, however appeared at the Hearing in support of the affidavit he signed certifying the facts in MWG's Petition for Variance for Will County Station. Tr. 10:21-11:2; Petition Ex. D.

85:5-8.² Notably, the Agency has no time constraints for its review of permit applications and no regulatory deadline to issue operating permits. *Id.* at 83:3-7; 85:9-13. In fact, Mr. LeCrone stated that it could take years to get a permit issued because of their complexity. *Id.* at 116:21-117:11; 118:24-119:15. Because the Agency will be busy reviewing the numerous operating and construction permit applications that will be timely submitted, there is no harm caused by allowing MWG additional time to submit the applications at a later date.

B. There is No Threat to Public Health or the Environment if the Deadlines are Extended

There would be no adverse impacts from Ponds 1N and 1S even if the longest requested deadline extension, a four-month extension of the construction permit application deadline to July 1, 2022, is granted. Mr. Castle testified that Ponds 1N and 1S have not been in service since 2010, and are engineered with a dewatering system so that they do not accumulate or store liquid. *Id.* at 13:24-14:12; 29:3-7. The dewatering system was designed specifically so that any rainwater that enters the pond quickly flows to a drain on the side of the pond near the bottom, and into an underground system where it enters the wastewater treatment system and is recycled or discharged according to the Station's NPDES Permit. *Id.* at 16:3-22; 18:13-19:2. Referring to the engineering drawings of the dewatering system in Ponds 1N and 1S attached to MWG's Petition as Exhibit F, Mr. Castle explained that the ponds' dewatering system does not allow accumulation of liquid because the inlet that drains liquid is at "low point" of the pond, and any rainwater "will naturally find its course to the lowest spot." Tr. 28:3-16, 17-20 ("Q: So it's your testimony that the inlet is located at the lowest spot of these CCR surface impoundments. A: That's the way it was

² To provide some context for the level of review involved for each of these permit applications, Mr. Gnat of KPRG, who is leading the preparation of four of MWG's station's operating permit applications including nine CCR surface impoundments, testified that he expects the operating permit application for each CCR surface impoundment regulated under the federal CCR Rule to take approximately 600 hours to complete. For CCR surface impoundments not regulated by the federal CCR rule, such as Ponds 1N and 1S, a few hundred more hours would be added to that total. 7/27/21 Tr., p. 41:12-42:7.

designed”). Mr. Castle’s testimony also explicitly rejects the Agency’s incorrect claim that the dewatering system allows 12 inches of water to collect in the pond:

Mr. Rao: So you’re saying that there’s no – you’re not maintaining a one-foot head on the bottom of the pond, right?

Mr. Castle: Correct.

Mr. Rao: So as far as you know, if there’s any precipitation even, it just drains off, there’s no accumulation of rainwater.

Mr. Castle: Correct, I personally have never seen any water sitting/standing in the ponds, no.

Id. at 18:1-10.

MWG’s consultant Richard Gnat of KPRG evaluated whether there would be any imminent threat to human health and the environment from this requested extension, and found that “knowing that we don’t have any potable water wells downgradient of these units, no other receptors in the area, human receptors, then I do not see any harm [or adverse impact] there” 7/27/21 Tr. 58:21-59:2 (Testimony of Gnat).³ Mr. Gnat’s testimony dispelled the Agency’s speculations that based on incomplete available groundwater data, there may be groundwater impacts related to Ponds 1N or 1S for boron, chloride, sulfate, and total dissolved solids (“TDS”). The sampling data the Agency pointed to in its Recommendation is only analyzed for dissolved constituents which requires filtering the samples in the field, whereas the Illinois CCR Rule required total constituents which are not filtered samples. *Id.* at 46:10-16. Mr. Gnat stated, “they’re not the same. And not the same can be very important in statistics” *Id.* at 47:4-6. Thus, until there are eight rounds of independent samples that can be statistically analyzed, it cannot be determined

³ Melinda Shaw, an environmental protection geologist in Illinois EPA’s Bureau of Water, Groundwater Section, testified that she independently conducted potable well survey as part of the Agency’s investigation of MWG’s Petition, and confirmed that there were no potable wells downgradient of Ponds 1N and 1S, and the only potable wells identified were MWG’s own wells that are noncommunity water supply wells, and “due to the depth of the NTNCWS wells and the existence of a confining layer, the likelihood of impact from the Will County CCR surface impoundments is low” Agency Rec. Ex. D., M. Shaw Affidavit, ¶28; 7/27/21 Tr. 100:4-101:22.

“with any level of certainty” whether Ponds 1N and 1S are causing groundwater impacts. *Id.* at 50:12-17. Mr. Gnat also noted in his review of the quarterly sample data for the parameters identified by the Agency that there were exceedances in both the upgradient and downgradient wells, and in some cases the upgradient wells had higher impacts than the downgradient wells. *Id.* at 59:17-22. Additionally, for chloride, he noted that the data through the end of 2020 shows only a single exceedance since 2010 which was several years ago. *Id.* at 60:2-6. In sum, Mr. Gnat concluded that “relevant to the unit itself, I don’t think you can say that there’s an adverse effect or that there’s going to be any adverse issue associated with extending a deadline for at least a short-term for this particular site.” *Id.* at 60:14-18.

III. The Submission Requirements for the Initial Operating Permit Application Are Unclear

Although the Agency does not object to MWG’s request to extend the date for submission of the operating permit application, there is a dispute over the interpretation of the submission requirements. The Agency has not objected to MWG’s requested variance to complete the groundwater data collection required by Section 845.650(b)(1)(A) by January 31, 2022. Agency Rec. ¶39. However, the Agency contends the groundwater sampling data, statistical analysis, and selection of the statistical method do not need to be included with the operating permit application, rendering MWG’s request superfluous. *Id.*, ¶41.

The plain language of the CCR Rule states that the groundwater data is required to be submitted with the initial operating permit application. The operating permit application must include “a groundwater sampling and analysis program that includes selection of the statistical procedures to be used for evaluating groundwater monitoring data (see Section 845.640).” 35 Ill. Adm. Code 845.230(d)(2)(I)(iii). Section 845.640(f)(3) states that the operating permit application must include “[d]ocumentation of the statistical method chosen” which must be one of several

methods outlined in Section 845.640(g). Mr. Gnat testify that “you can’t decide which...actual method you’re going to use until you have that full data set. So you can have an idea of what the approach is that you’re going to use and have your decision tree all ready to use, but you can’t do it until you have all eight rounds of data.” 7/27/2021 Tr. 45:3-9. Thus, groundwater data must be complete to make a final selection of the statistical method, and the operating permit application requires this selection. *Id.* at 48:19-23. Also, nothing in the Illinois CCR Rule instructs owners or operators of CCR surface impoundments that they do not have to submit the groundwater data if it is not available, nor provides an alternative deadline or submission requirements for the groundwater data and statistical analysis if it is not contained within the operating permit application. Moreover, during the Illinois CCR Rulemaking, the Agency never indicated that an owner or operator may not submit the information if it were unavailable. In answer to the Board’s questions, the Agency accepted the Board’s premise that the detailed groundwater monitoring information must be submitted with the initial operating permit application, and did not correct the Board that the information was not required if it were not available. Pet. Hearing Ex. U.

At the very least, the Agency’s position on how the operating permit application requirements should be interpreted creates uncertainty, but it is MWG alone who bears the risk of non-compliance if it submits what could be construed as a “incomplete” permit application. While the Agency has indicated that it would not consider the application incomplete if MWG only includes a proposed groundwater monitoring program, MWG could be exposed to third party enforcement actions if the rule remains unclear. Accordingly, to ensure that it is in full compliance with the Illinois CCR Rule, MWG requests an extension of the deadline to submit a complete operating permit application.

IV. Conclusion

MWG has met its burden under the Act and Board Regulations to demonstrate that compliance with the deadlines in the rule constitutes an arbitrary and unreasonable hardship and that there is no adverse environmental impact to public health or the environment to grant the extension of the deadlines.⁴ The Board should grant MWG's Petition for Variance to authorize the following deadline extensions:

- a. 35 Ill. Adm. Code 845.650(b)(1)(A): an extension until January 31, 2022 of the deadline to collect the eight independent samples from each background and downgradient well that determine the background levels.
- b. 35 Ill. Adm. Code 845.230(d)(1): an extension until March 31, 2022 of the deadline to submit an initial operating permit application.
- c. 35 Ill. Adm. Code 845.700(c): an extension until March 31, 2022 of the deadline to submit the category designation of the Pond 1N and 1S closure prioritization categories under Section 845.700(g).
- d. 35 Ill. Adm. Code 845.700(h): an extension until July 1, 2022 of the deadline to submit the construction permit application, if Ponds 1N and 1S are designated as Category 4 CCR surface impoundments.

Respectfully Submitted,

Midwest Generation, LLC

By: /s/ Kristen L. Gale
One of its Attorneys

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

⁴ The Board also submitted questions to the Parties, which MWG answered during the hearing. To assist the Board in its review, MWG has attached an appendix to this brief that quotes the answer to each question from the hearing with the citation to the transcript.

APPENDIX

ILLINOIS POLLUTION CONTROL BOARD

MIDWEST GENERATION, LLC,)	
)	
Petitioner, v.)	
ILLINOIS ENVIRONMENTAL)	PCB 21-108
PROTECTION AGENCY,)	(Variance)
)	
Respondent.)	
)	
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)	

**MIDWEST GENERATION, LLC’S RESPONSE TO THE BOARD’S PRE-FILED
QUESTIONS FOR THE WILL COUNTY STATION
VARIANCE PETITION HEARING**

Midwest Generation, LLC (“MWG”) responded to the Illinois Pollution Control Board’s (“Board”) pre-filed questions via testimony at the July 27, 2021 hearing for the Will County Station’s Petition for Variance. MWG directs the Board to the following citations to the transcript of this proceeding for each response as follows:

1. Section 104.204(b)(1) requires the petitioner to provide the location of the facility and area affected. Midwest Generation (MWG) has provided the general location, but not an address for the Will County Station. Please provide the address of the Will County Station. Also, please describe the area impacted by the facility, including locations of any potable wells, surface waters and groundwater.

MWG ANSWER TO QUESTION 1:

- Will County Station Address: 7/27/21 Tr., p. 12:17-20 (Testimony of B. Castle)

Q. [MS. SNITTJER]... the address of the Will County Station is 529 East Romeo Road in Romeoville, Illinois, correct?

A. Correct.

- Location of Potable Wells: 7/27/21 Tr. p. 35:6-36:17 (Testimony of R. Gnat); 100:4-101:22 (Testimony of M. Shaw).

Q. [MS. GALE]. And regarding the potable wells, where are the potable wells in relation to the Will County Station [on Page 13 of Petitioner's Ex. T (2009 Hydrogeological Report)]?

A. There are some wells. The yellow dots on this figure -- and it doesn't come out quite well here -- there are some yellow dots on the figure, and those are the potable water wells. And there are several dots within the radius here and there are two within the station area, one to the east -- I'm sorry -- one to the north of where the ponds are, kind of by Romeo Road, and then one to the south, some to the south of the ponds there.

There are a couple other dots on here, too, and I believe those were -- I did not put together but having read the document -- sometimes from the databases you plot a well based on the coordinates that are provided in the database, but you really got to field-truth them a little bit as well. There are some coordinates that plop in the middle of the river or whatnot, and those tend to be incorrectly within the database itself, incorrectly located. So you got to do some field-truthing.

And my understanding is that we really have two potable water wells within this area, one to the north of the impoundments, one to the south of the -- I'm sorry -- to the east of the impoundments. Both of those are production wells owned by Midwest Generation, and the construction on those is approximately 1500 feet deep.

Q. Right. So there is a yellow dot to the south of pond 3S, and your understanding is there's not actually a potable well there, correct?

A. No. That's correct. That's actually a surface impoundment there, so there's certainly no well. Those are surface impoundments.

(Cross-Examination of Agency Witness Melinda Shaw)

Q. [MS. GALE]. So you conducted a potable well survey, correct?

A. Based on the Source Water Protection Program website.

Q. Right. It says -- you wrote, "I conducted a potable well survey." Correct? The first sentence, "I conducted a potable well survey using the Source Water Assessment Protection Program." Right?

A. Yes.

Q. And according to that, there's no potable wells downgradient of the -- in the downgradient direction, and I presume you mean of the Ponds 1N and 1S, correct?

A. Yes.

Q. And you agree that the pond -- the potable wells identified by Midwest Generation are noncommunity water supply wells, right?

A. Yes.

Q. And you also state that, "Due to the depth of" -- now you say NTNCWS wells, those are the wells on Midwest Generation ponds, right?

A. Yes.

Q. And you say, "Due to the depth of the NTNCWS wells and the existence of a confining layer." By "confining layer," do you mean there's an aquifer -- excuse me -- a layer of geological material that separates the lower groundwaters and the upper groundwater, right?...

A. Of course. That is what it means, and according to Midwest Generation's information submitted in their petition, that is where that information came from.

Q. And you have no reason to think that's wrong, right?

A. No.

Q. And so you state [in ¶28 of your affidavit (Agency Rec. Exhibit D)], "Due to the depth and the this confining layer the likelihood of impact from the Will County CCR surface impoundments is low." Right?

A. Yes.

- Nearby Surface Waters: 7/27/21 Tr. p. 36:19- 37:4 (Testimony of R. Gnat).

Q. [MS. GALE]. And looking at the same figure, what are the surface waters nearby?

A. You've got the Chicago Sanitary and Ship Canal which borders the station to the east and then the Des Plaines River, which borders the station to the west.

Q. And the station's permitted outfall goes to the Chicago Sanitary and Ship Canal? Say that four times. Right?

A. I believe that's correct, yes.

- Groundwater Flow: 7/27/21 Tr. p. 37:6-11 (Testimony of R. Gnat).

Q. [MS. GALE]. And the groundwater flow at the station, can you, at least around the ponds -- we certainly don't have the entire station -- can you generally describe the groundwater flow around the ponds?

A. Sure. The vicinity of -- the groundwater flow in the vicinity of the ponds is to the west.

2. Section 104.204(b)(2) requires the location of the nearest air monitoring station. The Agency notes that this requirement is not applicable in this matter. Please comment on whether location of air monitoring station has any bearing on measuring the impact of fugitive dust emissions from the facility.

MWG ANSWER TO QUESTION 2: 7/27/21 Tr, p. 22:13-22 (Testimony of B. Castle).

Q. [MS. SNITTJER]. And according to [Petitioner's Hearing Exhibit S - Illinois Ambient Air Monitoring Network Plan for 2022], where is the closest air monitoring station to Will County Station?

A. Joliet, at an elementary school.

Q. Is it a PM2.5 monitor?

A. Yes.

Q. And can Illinois EPA's air monitoring station in Joliet detect fugitive dust from the Will County Station?

A. No. Fugitive dust, we keep it from leaving the property.

3. Section 104.204(b)(8) requires the nature and amount of emissions, discharges, or releases of the constituent in question currently generated by the petitioner's activity. MWG states that dewatering systems have been installed at both Ponds 1N and 1S to prevent the ponds from accumulating liquids exceeding a depth of one foot above the bottom of the ponds. Pet. at 8. Please provide the volume of liquids held in the ponds based on the 1-foot depth. Also provide the annual amounts of liquids drained from the ponds to the Station's wastewater treatment plant.

MWG ANSWER QUESTION 3: 7/27/21 Tr, p. 16:11-17:18; 17:21-18:10 (Testimony of B. Castle).

Q. [MS. SNITTJER]: So the water drains out of the bottom of the pond, correct?

A. Any water would, yes, gravity-feed drain out the bottom, go through the rip rock, into the culvert. Yes.

Q. And then it drains into the wastewater treatment plant, correct?

A. It enters into that system, yes.

Q. So if there's no water flowing into these ponds, why do they need a dewatering system?

A. It was strictly put in for potential rainwater.

Q. Is that because the ponds are open-air ponds?

A. They're open to the atmosphere, yes

Q. But neither of these ponds would hold or retain 12 inches of water, correct?

A. No. I've never seen any water in these ponds since they've installed these systems. Operations makes rounds daily.

Q. Does Midwest Generation measure the amount of water that -- rainwater that flows out of the pond?

A. We do not.

Q. So Midwest Generation does not know how much liquid is drained out from these ponds into the wastewater treatment plant on an annual basis?

A. Correct. We have no idea.

Q. And why don't we know that?

A. It's not required by the permit, to my knowledge.

MR. RAO: Just to clarify, in the petition it was stated that the drainage system has been installed to prevent accumulation of a liquid beyond one foot on the bottom of the ponds. So you're saying that there's no -- you're not maintaining a one-foot head pond, right?

THE WITNESS: Correct.

MR. RAO: So as far as you know, if there's any precipitation even, it just drains off, there's no accumulation of rainwater

THE WITNESS: Correct. I personally have never seen any water sitting/standing in the ponds, no.

4. IEPA states that it “considers Petitioner’s requested time extension to submit the initial operating permit application to be unnecessary based on its interpretation of 35 Ill. Adm. Code §845.230(d)(1) and §845.230(d)(2).” Rec. at 13-14. In response, MWG disagrees noting “Section 845.230(d)(2)(I)(iii) requires a groundwater sampling and analysis program that includes selection of the statistical procedures for evaluating the groundwater monitoring data under Section 845.640.” MWG Resp. at 2.
 - a. Please clarify whether statistical procedures for evaluating groundwater data is selected only after data collection is completed.

MWG ANSWER TO QUESTION 4A:

7/27/21 Tr., p. 44:17-45:9 (Testimony of Gnat).

A. ...So what can be done prior to getting a full set of [groundwater monitoring] data, and I think perhaps that the word "procedure" is where some of the confusion becomes. We can lay out -- as part of our operating permits, we're going to lay out or provide what our proposed statistical approach is. This is kind of the procedure we're going to use as a company to evaluate this data. And this lays out a whole series of steps and kind of decision tree as to, depending on how your data looks, which way you may go, which method you may use. But you can't decide which path you're going to take or which actual method you're going to use until you have that full dataset. So you can have an idea of what the approach is that you're going to use and have your decision tree all ready to use, but you can't do it until you eight rounds of data.

- b. Please comment on whether the statistical procedures could be chosen on the basis of existing groundwater monitoring data.

MWG ANSWER TO QUESTION 4B: 7/27/21 Tr., p. 46:23-47:12 (Testimony of R. Gnat).

Q. [MS. GALE]. -- can [statistical] procedures be chosen with [existing groundwater monitoring] data?

A. No. Again, that data, the CCA data is dissolved constituents, and even though in other work that we've done in looking at the dissolved and the totals, they are pretty similar but they're not the same. And not the same can be very important in statistics.

So you can get an idea and it helps you perhaps choose or develop that decision tree that I was talking about. But to make the actual determination as to how you're going to evaluate this specific dataset, statistically you have to wait for the eight rounds of total analyses.

- c. Please provide citation to IEPA’s CCR rulemaking testimony stating that the groundwater monitoring data and statistical procedures must be submitted with the operating permit.

MWG ANSWER TO QUESTION 4C: See Petitioner's Hearing Exhibit U.

5. While noting that Ponds 1N and 1S may be contributing to groundwater contamination IEPA states, "choosing the higher Category 4 and respective construction permit application submission date would be conservative, but appropriately protective, especially considering the location of the CCR surface impoundments within the groundwater table." IEPA Rec. at 19. In response, MWG states, "until sufficient groundwater data is collected, the ponds cannot be categorized as either Category 4 (inactive ponds with groundwater exceedances) or Category 6 (inactive ponds without groundwater exceedances). MWG Rep. at 4.
 - a. If the Ponds 1N and 1S are initially designated as Category 4, as recommended by IEPA, please comment on whether the CCR rules under Part 845 would allow MWG to redesignate the ponds as Category 6 if new data supports such redesignation at later date.

MWG ANSWER TO QUESTION 5A: 7/27/21 Tr., p. 71:6-8 (Statement of K. Gale).

MS. GALE. [T]he rule may allow Midwest Generation to re-designate the ponds as Category 6, if new data supports that[.]

- b. If so, comment on any adverse implications of such redesignation would have on the closure of the MCB as well as on MWG.

MWG ANSWER TO QUESTION 5B: 7/27/21 Tr., p. 71:8-73:11 (Statement of K. Gale).

MS. GALE: ...[I]t is unreasonable to require Midwest Generation to make a designation of Category 4 before we have CCR groundwater data.

A designation of Category 4, now, would have significant adverse effect on Midwest Generation with little benefit to the environment and would not hasten the closure of the ponds.

As Mr. Gnat testified, Midwest Generation is currently preparing five operating permit applications for nine CCR surface impoundments, for submittal by October 31, 2020.

At the same time, Midwest Generation is also preparing construction permit applications for four CCR surface impoundments so that they are ready, at the latest, by December 1, 2021.

We heard from Mr. Gnat that preparing the construction permit applications is a large endeavor and it really is an iterative or domino effect. It's an exercise that builds upon itself. You have the groundwater data, which establishes the background data and the groundwater protection standards; then you create a groundwater model based upon that data; and upon having that groundwater model, you conduct an alternatives closure analysis which include an evaluation of the best closure method, in part, based upon the model and the inputs put into that model.

Finally, after you've conducted the alternatives closure analysis, you prepare a closure plan and a post-closure plan.

If Ponds 1N and 1S are designated as Category 4 now, before we have any information, Midwest Generation would have to begin working on the construction permit application now with incomplete information, meaning Midwest Generation would likely create data and information that would have to be revised later or even duplicated. One change in the groundwater information will affect modeling, which could affect the alternatives analysis, which could ultimately affect what kind of closure we're talking about here.

Midwest Generation, again, we said this before, we're going to say it again, is not asking for relief from any technical requirements or any technical evaluation. In fact, Midwest Generation is already working at 110 percent to comply with the various requirements of this brand new rule for all of its CCR surface impoundments.

All Midwest Generation is asking for is a little more time, and Midwest Generation contends that the better way is to allow the data to develop so that we can submit an accurate Category designation.

6. In response to IEPA's statements regarding designation of Ponds 1N and 1S noted above, MWG states, "there is no harm caused by waiting a mere five months to collect the requisite data to accurately identify the Category designation for the basins. MWG Resp. at 5.
 - a. Please clarify whether causation of "harm" in the above statement refers to any adverse environmental impact due to extension of the deadline to designate the closure priority category of the ponds.

MWG ANSWER TO QUESTION 6A: 7/27/21 Tr., p. 58:17-59:2 (Testimony of R. Gnat).

Q. [MS. GALE]. ...Mr. Gnat, can you clarify whether causation of "harm" in [the Board's Question 6] refers to adverse environmental impact; Can you tell us whether there's an adverse environmental impact to the extension of the deadlines to designate the closure prioritization?

A. Well, when I hear that, in terms of the harm causation, I usually think of that as "Is this particular unit causing an immediate threat to human health and the environment?" And knowing that we don't have any potable water wells downgradient of these units, no other receptors in the area, human receptors, then I do not see any harm there.

Q. Any adverse impact?

A. Any adverse impact.

- b. IEPA's recommendation indicates exceedances of Class I groundwater quality standards for boron, chloride sulfate and TDS in certain monitoring wells downgradient of the ponds. Rec. at 10. Please comment on any implications of extending the deadline for submitting construction permit application on mitigating potential groundwater impacts.

MWG ANSWER TO QUESTION 6B: 7/27/21 Tr., p. 59:12-60:18 (Testimony of Gnat).

Q. [MS. GALE]: ...Can you just comment on any implications of extending the deadline for submitting the construction permit application for those potentially migrating groundwater constituents?

A. Sure. When I looked at that question, I quickly looked back at the data, and the data that I'd imagine that was being looked at is the CCA data for resolved metals. Like I said, obviously they're very similar to totals but not exactly the same.

But I took a look at those particular constituents as well, and the one thing to note is that the upgradient wells had exceedances of those parameters as well as downgradient wells and in some cases the upgradient wells had higher impacts than the downgradient wells.

There was one I believe, chloride, that was identified was one of them that I scratched my head on a little bit in that the downgradient well 7, which is downgradient to Pond 1S, I looked through the data through the end of 2020, so fourth quarter 2010 to the end of 2020, quarterly sampling for chloride had only one exceedance above what the standard was for chloride, and that was just a couple years ago. Chloride is also -- could be seasonal depending on salting and so on.

Some of the other parameters is why I didn't quite take a look at all of the different things. But, again, there are some impacts, absolutely. But, like I said, upgradient wells are impacted as well as downgradient wells.

So relative to the unit itself, I don't think you can say that there's an adverse effect or that there's going to be any adverse issue associated with extending a deadline for at least a short-term on this particular site.

7. In response to IEPA's concerns regarding the completion of the location restriction demonstration by October 30, 2021 in compliance with Section 845.230 and Subpart C, MWG states, "First, there is no evidence that MWG will not do so. Second, in its variance petition, MWG is not requesting any relief from the substantive location restriction requirements and hence, this issue is not relevant to the requested variance." MWG Resp. at 5.

- a. Please clarify if MWG plans to submit the location restriction demonstration along with the initial operating permit application on the proposed deadline of March 31, 2022.

MWG ANSWER TO QUESTION 7A: 7/27/21 Tr., p. 58:2-4 (Testimony of R. Gnat).

Q. [MS. GALE]. So Midwest Generation will submit the location demonstration on March 31, 2022, right?

A. Yes.

- b. If not, please comment on whether additional relief from Section 845.700(d)(1) would be necessary.

MWG ANSWER TO QUESTION 7B: N/A.