

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF: )  
 ) AS 2021-002  
PETITION OF MIDWEST )  
GENERATION, LLC FOR AN )  
ADJUSTED STANDARD FROM 35 ILL. )  
ADMIN. CODE PARTS 811 AND 814 )

**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 Midwest Generation, LLC's Amended Petition for an Adjusted Standard and a Finding of Inapplicability for Powerton Station, a copy of which is herewith served upon you.

Dated: November 11, 2021

MIDWEST GENERATION, LLC

By:           /s/Kristen L. Gale          

Kristen L. Gale  
Susan M. Franzetti  
Molly Snittjer  
NIJMAN FRANZETTI LLP  
10 South LaSalle Street Suite 3600  
Chicago, IL 60603  
(312) 251-5590  
[kg@nijmanfranzetti.com](mailto:kg@nijmanfranzetti.com)  
[sf@nijmanfranzetti.com](mailto:sf@nijmanfranzetti.com)  
[ms@nijmanfranzetti.com](mailto:ms@nijmanfranzetti.com)

**SERVICE LIST**

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](mailto:don.brown@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](mailto:Christine.Zeivel@illinois.gov)  
[Clayton.Ankney@illinois.gov](mailto:Clayton.Ankney@illinois.gov)  
[Stefanie.Diers@illinois.gov](mailto:Stefanie.Diers@illinois.gov)

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that a true copy of the foregoing Notice of Filing, and Midwest Generation, LLC's Amended Petition for an Adjusted Standard and a Finding of Inapplicability for Powerton Station was electronically filed on November 11, 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](mailto:don.brown@illinois.gov)

and that copies were sent via e-mail on November 11, 2021 to the parties on the service list.

Dated: November 11, 2021

/s/Kristen L. Gale

Kristen L Gale  
Susan M. Franzetti  
Molly H. Snittjer  
Nijman Franzetti LLP  
10 S. LaSalle Street, Suite 3600  
Chicago, IL 60603  
(312) 251-5590  
[kg@nijmanfranzetti.com](mailto:kg@nijmanfranzetti.com)  
[sf@nijmanfranzetti.com](mailto:sf@nijmanfranzetti.com)  
[ms@nijmanfranzetti.com](mailto:ms@nijmanfranzetti.com)

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

**IN THE MATTER OF:**

**PETITION OF MIDWEST GENERATION  
FOR AN ADJUSTED STANDARD FROM  
845.740(a) AND FINDING OF  
INAPPLICABILITY OF PART 845**

**AS 21-2  
(Adjusted Standard)**

**MIDWEST GENERATION, LLC'S AMENDED PETITION FOR AN ADJUSTED  
STANDARD AND A FINDING OF INAPPLICABILITY FOR POWERTON STATION**

Midwest Generation, LLC ("MWG") is amending its Petition for an Adjusted Standard from the Part 845 Illinois Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments at 35 Ill. Adm. Code 845 ("Illinois CCR Rule") to withdraw its request for an adjusted standard to allow MWG to decontaminate and retain the existing liners of the Ash Surge Basin, Bypass Basin, and Metal Cleaning Basin at its Powerton Station. Since MWG filed its Petition for an Adjusted Standard ("Petition") on May 11, 2021, it has determined it is no longer necessary to close the Ash Surge Basin, Bypass Basin, and Metal Cleaning Basin and reuse their liners. Thus, MWG no longer needs an adjusted standard for the closure by removal requirements for these three ponds and its amended Petition removes this request.

MWG maintains its request for an adjusted standard finding that Part 845 of the Illinois Pollution Control Board ("Board") rules is inapplicable to the Powerton Service Water Basin. Because the Illinois Environmental Protection Agency ("Agency") recently submitted its recommendation to the Board stipulating that the Service Water Basin is not a CCR Surface Impoundment, MWG seeks to withdraw its request for a hearing on the Amended Petition. Assuming no other hearing request is received for MWG's request for an adjusted standard finding for the Service Water Basin, the Board may proceed to a decision on this Amended Petition.

Section 104.418(a) of the Board rules for adjusted standards allows a petitioner to amend its petition at any time and requires a re-notice of the amended petition if the amendment is a substantive change. 35 Ill. Adm. Code §104.418(a). Because MWG's withdrawal of the portion of its Petition requesting to decontaminate and reuse the liners for three ponds is a substantive change, MWG will re-notice the petition pursuant to Section 104.408. 35 Ill. Adm. Code §104.408. Section 104.418(d) of the Board rules states that written amendments to the petition "need not repeat the entire unchanged portion of the original filing provided that a sufficient portion of the original filing is repeated so that the context of the amendment is made clear." 35 Ill. Adm. Code §104.418(d). Here, MWG is only substantively amending its Petition for an adjusted standard to withdraw its request to allow decontamination and retention of liners of the Ash Surge Basin, Bypass Basin, and Metal Cleaning Basin. There is no substantive change to the portion of its Petition for an adjusted standard finding Part 845 of the Board rules inapplicable to the Service Water Basin. Accordingly, MWG is not changing nor repeating the following sections of its Petition, and incorporates these sections, and all Petition exhibits referenced therein, into this Amended Petition:

- 1) the following Background Sections in Section I of the Petition:
  - a. Illinois CCR Final Rule (Section I.B)
  - b. Powerton Station Background, The Service Water Basin is not a CCR Surface Impoundment (Section I.C.3)
  - c. Powerton Station Background, The Board has the Authority to Determine that Board Rules are Inapplicable (Section I.D)
- 2) all sections and discussions regarding the Service Water Basin, including but not limited to each of the petition content requirements in Section III of the Petition with the exception of Section III.j (request for a hearing).

## **I. Brief Background**

On May 11, 2021, MWG filed its Petition seeking an adjusted standard from the closure by removal requirements in Section 845.740 of the Illinois CCR Rule to allow the reuse of the liners

in the Ash Surge Basin, Bypass Basin, and Metal Cleaning Basin, and an adjusted standard seeking a finding of inapplicability of Part 845 to the Service Water Basin. The Board accepted the Petition on June 3, 2021 and granted the Agency's Motion to extend the deadline to file its recommendation under 35 Ill. Adm. Code §104.416 until August 24, 2021. Board Order, June 3, 2021. On August 19, 2021, the Hearing Officer further extended the date to file the recommendation to November 22, 2021. H.O. Order, June 19, 2021.

The Agency filed a partial recommendation on September 22, 2021, which addressed MWG's request for an adjusted standard finding that Part 845 was inapplicable to the Service Water Basin. In its Recommendation, the Agency advised it "agrees that Petitioner has provided sufficient information demonstrating that the Service Water Basin is not a CCR surface impoundment subject to Part 845's requirements." Rec. at ¶26. The Agency concluded that it "stipulates that the Service Water Basin is not a CCR surface impoundment to subject to Part 845..." and advises that it "does not object to the Board granting Petitioner relief[.]" Rec. at Part IV. The Agency stated that it intended to file separately a recommendation for the request to decontaminate and reuse the liners in the Ash Surge Basin, Metal Cleaning Basin, and Bypass Basin. Rec. at ¶6.

Since MWG filed its Petition, the plans for the Ash Surge Basin, Metal Cleaning Basin, and Bypass Basin have changed. MWG is not closing the three basins by removal, and no longer needs to reuse the liners. Accordingly, MWG no longer needs an adjusted standard to reuse the basin liners and equipment.

## **II. Application of Automatic Stay**

MWG filed its petition within 20 days of the effective date of the Illinois CCR Rule, so the operation of the Illinois CCR Rule is stayed. 415 ILCS 5/28.1(e). This amendment to the Petition is not a new petition, and does not impact the stay of the operation of the Illinois CCR Rule as applied to MWG's Service Water Basin.

**III. Analysis and Petition Content Requirements**

The Board requires that certain information be included in each petition for an adjusted standard. 35 Ill. Adm. Code §104.406. Because MWG is withdrawing its request for an adjusted standard for the Ash Surge Basin, Metal Cleaning Basin, and Bypass Basin, each of the petition content requirements in Section III of the Petition are withdrawn as to the discussion regarding those three basins. As there is no substantive change to the request for an adjusted standard for the Service Water Basin, MWG incorporates each of the petition content requirements in Section III of the Petition, including the exhibits cited therein, by reference into this Amended Petition, except that MWG amends Section III.j as follows:

**j) Hearing on the Petition.**

Because the Agency has stipulated that the Service Water Basin is not a CCR surface impoundment and does not object to the Board granting its requested relief, no hearing is requested.

Additionally, in accordance with the requirements in 35 Ill. Adm. Code §§104.406(k) and (l), MWG affirms that for any new information in this Amended Petition, it has provided the citations to relevant supporting documents and legal authorities and the required information applicable to its request for the Board's finding of inapplicability for the Service Water Basin.

In accordance with this Amended Petition, MWG only seeks an adjusted standard finding that the Service Water Basin is not a CCR surface impoundment and is not subject to Part 845, Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments. MWG asks that the Board enter an order granting the Adjusted Standard using the following proposed language as stated in Section III.f of the original Petition:

Part 845 of the Illinois Pollution Control Board Regulations does not apply to the Service Water Basin, located at the MWG Powerton Generating Station, 13082 East Manito Road, Pekin, Tazewell County, IL 61554.

**IV. Conclusion**

For the reasons stated, MWG amends its original Petition for an Adjusted Standard and Finding of Inapplicability as to the Powerton Station to withdraw its request for an adjusted standard to decontaminate and reuse the liners at Ash Surge Basin, Metal Cleaning Basin, and Bypass Basin. MWG's Petition for Adjusted Standard and Finding of Inapplicability otherwise remains unchanged except that its request for a hearing is withdrawn. Thus, MWG requests that the Board enter an order finding that the Service Water Basin is not a CCR surface impoundment and is not subject to Part 845, Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments with the proposed language stated above.

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](mailto:kg@nijmanfranzetti.com)  
[sf@nijmanfranzetti.com](mailto:sf@nijmanfranzetti.com)  
[ms@nijmanfranzetti.com](mailto:ms@nijmanfranzetti.com)