

ILLINOIS POLLUTION CONTROL BOARD  
June 9, 2022

IN THE MATTER OF: )  
)  
PETITION OF MIDWEST GENERATION, )  
LLC FOR AN ADJUSTED STANDARD )  
FROM 35 ILL. ADM. CODE 845.740(a) AND ) AS 21-1  
FINDING OF INAPPLICABILITY OF 35 ) (Adjusted Standard - Land)  
ILL. ADM. CODE 845 )

ORDER OF THE BOARD (by B. F. Currie):

On May 11, 2021, Midwest Generation, LLC (Midwest) filed a petition (Pet.) pursuant to Section 28.1 of the Environmental Protection Act (Act) and Part 104 of the Board’s procedural rules. *See* 415 ILCS 5/28.1 (2020); 35 Ill. Adm. Code 104 Subpart D. Midwest petitions the Board for an adjusted standard from Part 845 Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments. 35 Ill. Adm. Code 845. Specifically, Midwest seeks adjusted standards for three ponds, known as Pond 1, Pond 2 and Pond 3 at its Joliet 29 Station in Joliet, Will County. For Pond 2, Midwest petitions for an adjusted standard to retain its existing liner. For Ponds 1 and 3, Midwest petitions for an adjusted standard that would remove both ponds from the requirements of Part 845.

On September 22, 2021, the Illinois Environmental Protection Agency (IEPA) filed a recommendation as to Ponds 1 and 3 (Rec.). IEPA said that Midwest “has provided sufficient information demonstrating that Pond 1 and Pond 3 are not CCR surface impoundments subject to Part 845’s requirements. Accordingly, Petitioner’s request for adjusted standard is moot and not evaluated in this Recommendation.” Rec. at 9. IEPA requested, and the Board granted, an extension of time to file their recommendation for Pond 2.

On February 2, 2022, IEPA filed a recommendation as to Pond 2 (Second Rec.). IEPA recommended that the Board deny Midwest’s request for an adjusted standard from 35 Ill. Adm. Code 845.740(a). Second Rec. at 31. Midwest disputes this recommendation (Resp.). Resp. at 1-2.

In its initial petition, Midwest requested a hearing on the petition. Pet. at 25. A hearing is scheduled for June 28 and 29, 2022. On May 25, 2022, Midwest filed a motion to withdraw its request for hearing on its petition as to Ponds 1 and 3, leaving Pond 2 as the focus of the scheduled hearing (Mot.). Mot. at 1.

Section 104.420(b) of the Board’s rules:

- b) Where all parties and participants who have requested a hearing under this Subpart have withdrawn their requests for a hearing, the hearing will not be held unless the Board in its discretion deems it advisable. 35 Ill. Adm. Code 104.420(b)

In this matter, Midwest is the only participant that has requested a hearing. In its motion, Midwest says that IEPA does not object to withdrawing its request for a hearing on Ponds 1 and 3. Mot. at 3. Both Midwest and IEPA have provided the Board substantial information regarding Ponds 1 and 3 in the initial petition, recommendation, second recommendation and response. Pursuant to Section 104.420(b), the Board grants Midwest's motion to withdraw its request for hearing as to Ponds 1 and 3, leaving Pond 2 as the focus of the upcoming hearings in this adjusted standard.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 9, 2022, by a vote of 5-0.

A handwritten signature in cursive script that reads "Don A. Brown". The signature is written in black ink and is positioned above a solid horizontal line.

Don A. Brown, Clerk  
Illinois Pollution Control Board