

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF: )  
 ) AS 2021-003  
PETITION OF MIDWEST )  
GENERATION, LLC FOR AN )  
ADJUSTED STANDARD FROM ) (Adjusted Standard)  
845.740(a) AND FINDING OF )  
INAPPLICABILITY OF PART 845 )

**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 Second Amended Petition for an Adjusted Standard and a Finding of Inapplicability for Waukegan Station, a copy of which is herewith served upon you.

Dated: July 28, 2023

MIDWEST GENERATION, LLC

By:           /s/Kristen L. Gale          

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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
)  
Petition of Midwest Generation, LLC )  
for an Adjusted Standard from 845.740(a) )  
and Finding of Inapplicability of Part 845 ) PCB AS 2021-003  
for the Waukegan Station )  
)  
)

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

Midwest Generation, LLC ("MWG") is amending its Amended Petition for an Adjusted Standard and a Finding of Inapplicability for Waukegan Station with respect to 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 liner of the West Pond at its Waukegan Station. Since MWG filed its Petition for an Adjusted Standard and a Finding of Inapplicability for Waukegan Station ("Original Petition") on May 11, 2021, and its Amended Petition for an Adjusted Standard and a Finding of Inapplicability for Waukegan Station ("Amended Petition") on September 17, 2021, it has determined it is no longer necessary to reuse the liner in the West Pond. No other changes to the Amended Petition are proposed, and MWG maintains its request for an adjusted standard finding that Part 845 of the Illinois Pollution Control Board ("Board") rules is inapplicable to the Grassy Field.

Given the present amendment, MWG's Response to the Illinois Environmental Protection Agency's ("IEPA" or "Agency") Recommendation with respect to MWG's petition ("Recommendation"), which MWG is filing with the Board today concurrently with this Second

Amended Petition, addresses only the portions of the Agency's Recommendation relating to the Grassy Field and does not address the portions of the Agency's Recommendation relating to reuse of the West Pond liner.

MWG is also filing today a Motion to Stay the present proceeding to avoid a situation in which the adjusted standard would be inconsistent with new federal rules proposed by the U.S. Environmental Protection Agency ("EPA") on May 18, 2023, at 88 Fed. Reg. 31982, "Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Legacy CCR Surface Impoundments."

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 liner for the West Pond 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 the liner of the West Pond. 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 Grassy Field. Accordingly, MWG is not changing nor repeating the following sections of its Original Petition, incorporated into the Amended Petition by reference, and incorporates these sections, and all Original Petition and Amended Petition exhibits referenced therein, into this Second Amended Petition by reference:

- 1) the Background Sections in Section I of the Original Petition, specifically:
  - a. Illinois CCR Final Rule (Section I.B.)
  - b. Waukegan Station Background (Section I.C.)
  - c. The Board has the Authority to Determine that the CCR Rule is Inapplicable to the Grassy Field (Section I.D)
- 2) all sections and discussions regarding the Grassy Field, including but not limited to each of the relevant petition content requirements in Section III of the Petition. MWG is not amending or withdrawing its request for an adjusted standard and finding of inapplicability for the Grassy Field.

MWG continues to seek an adjusted standard finding that Part 845 of the Board rules is inapplicable to the Grassy Field, because there is an existing dispute with the Agency about its proper regulatory status.

MWG continues to rely on the affidavit of Christopher Lux and the documents attached in support of the Original Petition, as relevant to the portion of MWG's petition regarding the Grassy Field.

## **I. BRIEF BACKGROUND**

On May 11, 2021, MWG filed its Original 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 HDPE liner in the East Pond to hold low-volume wastewater and stormwater, and an adjusted standard seeking a finding of inapplicability of Part 845 to the Grassy Field. On September 17, 2021, following MWG's announcement on June 17, 2021, that it would cease burning coal to generate electricity at the Waukegan Station in June 2022, Petition Ex. 24, Lux Aff., ¶4,<sup>1</sup> MWG amended its Original Petition to indicate that it planned to close both the East Pond and the West

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<sup>1</sup> To avoid confusion, in its Amended Petition MWG continued the sequential numbering of exhibits from its Original Petition. Therefore, in this Second Amended Petition, all such exhibits are referred to as "Petition" exhibits.

Pond<sup>2</sup> and wished to reuse the liner on the West Pond instead of the liner of the East Pond for its planned low-volume wastewater and stormwater basin.

At the time of the Amended Petition, because the West Pond had an HDPE liner in good condition that could be decontaminated, MWG planned to reuse the HDPE liner as part of its reuse of that pond for non-CCR purposes instead of removing and replacing it. However, since MWG filed its Amended Petition, MWG's plans for the Station have changed and it is now unnecessary to convert the West Pond to a low-volume wastewater pond and reuse its liner. Accordingly, MWG no longer needs an adjusted standard to reuse the West Pond basin liner 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 on MWG's Grassy Field.

## **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 relating to the West Pond, the petition content requirements in Section III of the Amended Petition relating to the petition for an adjusted standard for the West Pond are withdrawn. As there is no substantive change to the request for an adjusted standard for the Grassy Field, MWG incorporates each of the petition content requirements in Section III of the Original Petition and/or Amended Petition relating to the Grassy Field, including the exhibits cited therein, except that

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<sup>2</sup> As the Station would not continue to burn coal, the Station would no longer need settling ponds to manage the generation of CCR.

MWG amends Section III.i (Reasons the Board may Grant the Proposed Adjusted Standard Consistent with Federal Law) to add the following:

On May 18, 2023, U.S. EPA issued a proposed rule entitled “Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Legacy CCR Surface Impoundments,” 88 Fed. Reg. 31982, in which EPA stated that historic areas of unconsolidated CCR fill such as and including the Waukegan Station “Old Pond” and “Historic Fill” are not regulated under the CCRSI framework but would be under EPA’s new proposed CCR management unit (“CCRMU”) framework. The proposed rule is set to be finalized by early 2024.

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 Second 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 Grassy Field.

In accordance with this Second Amended Petition, MWG only seeks an adjusted standard finding that the Grassy Field 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 10-acre area west of the West Pond known as the Grassy Field located at the MWG Waukegan Generating Station, 401 East Greenwood Ave, Waukegan, IL 60087 because it is an unconsolidated fill area. MWG will continue to conduct quarterly groundwater monitoring of each monitoring well at the Waukegan Station for the constituents listed in 35 Ill. Adm. Code 620.410(a), with the exception of perchlorate, in the addition of field pH and static water elevation. MWG will report the analytical results and field measurements to the Agency quarterly. Two copies of the quarterly reports shall be submitted to:

Groundwater Section

Illinois Environmental Protection Agency Division of Public Water  
Supplies MC #13 1021 North Grand Avenue East Springfield, IL  
62794-9276

**IV. CONCLUSION**

For the reasons stated, MWG amends its Amended Petition for an Adjusted Standard and Finding of Inapplicability as to the Waukegan Station to withdraw its request for an adjusted standard to decontaminate and reuse the liner at the Station's West Pond. MWG's Second Amended Petition for Adjusted Standard and Finding of Inapplicability otherwise remains unchanged.

Respectfully submitted,

MIDWEST GENERATION, LLC

Petitioner,

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

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**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that a true copy of the foregoing Notice of Filing, and Midwest Generation, LLC's Second Amended Petition for an Adjusted Standard and a Finding of Inapplicability for Waukegan Station, a copy of which is herewith served upon you. was electronically filed on July 28, 2023 with the following:

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and that copies were sent via e-mail on July 28, 2023 to the parties on the service list.

Dated: July 28, 2023

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