

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 FOR)
THE WAUKEGAN STATION)

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

Dated: February 7, 2024

MIDWEST GENERATION, LLC

By: /s/Kristen L. Gale

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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 Third Amended Petition for an Adjusted Standard and a Finding of Inapplicability for Waukegan Station was electronically filed on February 7, 2024 with the following:

Don Brown, Clerk of the Board
Illinois Pollution Control Board
60 E. Van Buren Street, Suite 630
Chicago, IL 60605
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and that copies were sent via e-mail on February 7, 2024 to the parties on the service list.

Dated: February 7, 2024

/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 THIRD AMENDED PETITION FOR AN ADJUSTED STANDARD AND A FINDING OF INAPPLICABILITY FOR WAUKEGAN STATION

Midwest Generation, LLC (“MWG”) is amending its 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 propose additional conditions for the area west of the West Pond called the “Grassy Field.” 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

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 the additional conditions are a substantive change to the petition, 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 add conditions to the proposed adjusted standard that it also has proposed

to the Board in *Sierra Club v. Midwest Generation, LLC*, PCB13-15. There is no other substantive change to 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, the Amended Petition, and Second Amended Petition, and incorporates these sections, and all exhibits referenced therein, into this Third 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 Original Petition and Section III of the Second Amended Petition filed on July 28, 2023. 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 its pond to hold low-volume wastewater and stormwater, and an adjusted standard seeking a finding of inapplicability of Part 845 to the Grassy Field. Since filing the original petition, MWG withdrew its request to reuse the HDPE liner.

The Grassy Field is also the subject of an enforcement matter, *Sierra Club et al v. Midwest Generation, LLC*, PCB13-15. In that matter, on January 18, 2024, MWG proposed the following to the Board for the Grassy Field (a/k/a FS Area):

In the event the federal proposed rules for CCRMUs are not passed by April 2025, or twelve months after the Board's final order in this matter (whichever is later), coordinate with IEPA to discuss installing an engineered cap over the FS Area at the Waukegan Station, or taking other appropriate action as deemed necessary, taking into consideration the status of the federal CCR management unit rule and/or the Board's subdocket in PCB20-19(A).

Sierra Club et al v. Midwest Generation, LLC, PCB13-15, Midwest Generation LLC's Post Hearing Brief, p. 85 (Jan. 18, 2024). To be consistent with this matter, MWG is proposing to add to its proposed adjusted standard for the Grassy Field virtually the same language as proposed in *Sierra Club v. Midwest Generation, LLC*.

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. As there is no substantive change to the information supporting the request for an adjusted standard and finding of inapplicability for the Grassy Field, MWG incorporates each of the petition content requirements in Section III of the Original Petition, Amended Petition, and Second Amended Petition relating to the Grassy Field, including the exhibits cited therein. 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 Third 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 this Third Amended Petition, MWG continues to seek 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 is proposing to add to the proposed adjusted standard only the additional conditions proposed in *Sierra Club v. Midwest Generation, LLC*, PCB13-15 concerning the Grassy Field. MWG asks that the Board enter an order granting the Adjusted Standard using the following amended proposed language:

Proposed Amended Adjusted Standard

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 (a/k/a FS Area) 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

Additionally, in the event the federal proposed rules for CCRMUs are not passed by April 2025, or twelve months after the Board's final order in *Sierra Club et al. v. Midwest Generation, LLC*, PCB13-15, coordinate with IEPA to discuss installing an engineered cap over the FS Area at the Waukegan Station, or taking other appropriate action as deemed necessary, taking into consideration the status of the federal CCR management unit rule and/or the Board's subdocket in PCB20-19(A).

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 amend and add to its proposed adjusted

standard for the Grassy Field. MWG's Third Amended Petition for Adjusted Standard and Finding of Inapplicability otherwise remains unchanged from the Original and Second Amended Petition.

Respectfully submitted,

MIDWEST GENERATION, LLC

Petitioner,

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

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