

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:)	
)	
SIERRA CLUB, ENVIRONMENTAL)	
LAW AND POLICY CENTER,)	
PRAIRIE RIVERS NETWORK, and)	
CITIZENS AGAINST RUINING THE)	
ENVIRONMENT,)	
)	PCB 2013-015
Complainants,)	(Enforcement – Water)
)	
v.)	
)	
MIDWEST GENERATION, LLC,)	
)	
Respondent.)	

NOTICE OF FILING

TO:	Don Brown	Bradley P. Halloran
	Clerk of the Board	Hearing Officer
	Illinois Pollution Control Board	Illinois Pollution Control Board
	100 W. Randolph Street, Suite 11-500	James R. Thompson Center, Suite 11-500
	Chicago, Illinois 60601	100 W. Randolph Street
	(VIA ELECTRONIC MAIL)	Chicago, Illinois 60601
		(VIA ELECTRONIC MAIL)

(SEE PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board **THE ASSOCIATIONS’ MOTION FOR LEAVE TO FILE REPLY TO COMPLAINANTS’ OPPOSITION TO MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF, THE ASSOCIATIONS’ REPLY TO COMPLAINANTS’ OPPOSITION TO MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF, THE ASSOCIATIONS’ RESPONSE TO COMPLAINANTS’ ALTERNATIVE MOTION TO STRIKE PORTIONS OF AMICUS CURIAE BRIEF, and THE ASSOCIATIONS’ RESPONSE TO COMPLAINANTS’ ALTERNATIVE MOTION FOR LEAVE TO RESPOND TO AMICUS CURIAE BRIEF**; a copy of which is herewith served upon you.

Respectfully submitted,

**ILLINOIS ENVIRONMENTAL
REGULATORY GROUP, ILLINOIS COAL
ASSOCIATION, and CHEMICAL
INDUSTRY COUNCIL OF ILLINOIS**

By: /s/ Melissa S. Brown
One of Its Attorneys

Jennifer M. Martin
Melissa S. Brown
Brian J.D. Dodds
HEPLERBROOM, LLC
4340 Acer Grove Drive
Springfield, Illinois 62711
Jennifer.Martin@HeplerBroom.com
Melissa.Brown@HeplerBroom.com
Brian.Dodds@HeplerBroom.com

**ILLINOIS CHAPTER OF THE
NATIONAL WASTE & RECYCLING
ASSOCIATION**

By: /s/ James M. Morphew
One of Its Attorneys

James M. Morphew, of counsel
SORLING NORTHRUP
1 North Old State Capitol Plaza, Suite 200
P.O. Box 5131
Springfield, Illinois 62705
jmmorphew@sorlinglaw.com

CERTIFICATE OF SERVICE

I, Melissa S. Brown the undersigned, on oath state the following:

That I have served the attached **THE ASSOCIATIONS' MOTION FOR LEAVE TO FILE REPLY TO COMPLAINANTS' OPPOSITION TO MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF, THE ASSOCIATIONS' REPLY TO COMPLAINANTS' OPPOSITION TO MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF, THE ASSOCIATIONS' RESPONSE TO COMPLAINANTS' ALTERNATIVE MOTION TO STRIKE PORTIONS OF *AMICUS CURIAE* BRIEF, and THE ASSOCIATIONS' RESPONSE TO COMPLAINANTS' ALTERNATIVE MOTION FOR LEAVE TO RESPOND TO *AMICUS CURIAE* BRIEF** via electronic mail upon:

Don Brown
Clerk of the Board
Illinois Pollution Control Board
100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60601
Don.Brown@illinois.gov

Jeffrey Hammons
Environmental Law and Policy Center
35 E. Wacker Drive, Suite 1600
Chicago, Illinois 60601
jhammons@elpc.org

Keith I. Harley
Chicago, Legal Clinic, Inc.
211 West Wacker Drive, Suite 750
Chicago, IL 60606
kharley@kentlaw.edu

Faith E. Bugel
1004 Mohawk
Wilmette, IL 60091
fbugel@gmail.com

Greg Wannier
Staff Attorney
Sierra Club Environmental Law Program
2101 Webster Street, Suite 1300
Oakland, CA 94612
Greg.wannier@sierraclub.org

Abel Russ
Environmental Integrity Project
1000 Vermont Avenue NW
Suite 1100
Washington, DC 20005
aruss@environmentalintegrity.org

Jennifer T. Nijamn
Susan M. Franzetti
Kristen Laughridge Gale
Kelly Emerson
10 South LaSalle Street, Suite 3600
Chicago, IL 60603
jn@nijmanfranzetti.com
sf@nijmanfranzetti.com
kg@nijmanfranzetti.com
ke@nijmanfranzetti.com

That my email address is Melissa.Brown@heplerbroom.com.

That the number of pages in the email transmission is 23 pages

That the email transmission took place before 5:00 p.m. on the date of November 12, 2019.

Date: November 12, 2019

/s/ Melissa S. Brown
Melissa S. Brown

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**THE ASSOCIATIONS’ MOTION FOR LEAVE TO
FILE REPLY TO COMPLAINANTS’ OPPOSITION TO MOTION FOR
LEAVE TO FILE AMICUS CURIAE BRIEF**

The Illinois Environmental Regulatory Group, the Illinois Coal Association, the Chemical Industry Council of Illinois, and the Illinois Chapter of the National Waste & Recycling Association (collectively, “the Associations”), pursuant to 35 Ill. Adm. Code 101.500(e), respectfully request leave to file, *instanter*, the attached Reply to Complainants’ Opposition to Motion for Leave to File *Amicus Curiae* Brief in Support of Midwest Generation, LLC’s Motion to Reconsider and Clarify the Interim Order (“Opposition Motion”). In support of this Motion for Leave, the Associations state as follows:

1. Complainants argue in their Opposition Motion that the Associations’ Motion for Leave to File Amicus Brief should not be granted because the Associations raise facts not in evidence and assert speculative statements. Opposition Motion at 1-3.

2. However, as demonstrated in the attached Reply, the Associations’ Motion for Leave and Amicus Brief are proper because the Associations have a legitimate interest in the

Illinois Pollution Control Board's ("Board") ruling, the Motion for Leave was timely filed, and the Amicus Brief raises new legal arguments illustrating the potential impacts resulting from the Interim Order if not reconsidered.

3. Section 101.500(e) of the Board's regulations states that a movant does not have the right to a reply, "except as the Board or hearing officer permits to prevent material prejudice." 35 Ill. Adm. Code 101.500(e). The Complainants mischaracterize the Associations' arguments as facts outside the record or speculative statements, and material prejudice would result if the Associations are not granted an opportunity to rectify such mischaracterizations. The Board has granted leave to respond in multiple instances where a movant alleges that the opposing party mischaracterizes or misstates the law or facts, as well as to allow a proper framing of the issues before the Board. *See e.g. Elmhurst Mem. Healthcare & Elmhurst Mem. Healthcare & Elmhurst Mem. Hosp.*, PCB 09-066, 2009 WL 6506666, *1-2 (Aug. 6, 2009) (granting leave to file reply where movant alleged material prejudice would result if it was not allowed to rectify the opposing party's misstatements of law and fact); *In the Matter of Ameren Ash Pond Closure Rules*, R09-21, 2009 WL 6650323, *2 (June 18, 2009) (allowing reply "to prevent material prejudice that would result if the Response was allowed to stand containing such misrepresentations"); *Indian Creek Devel. Co. v. Burlington Northern Santa Fe Railway Co.*, PCB 07-44, 2007 WL 928718, *4-5 (Mar. 15, 2007) (accepting reply brief to prevent material prejudice where the non-movant's response "paints a set of facts that are not true" and thus "fairness dictates that [movant] be given the opportunity to respond and set the record straight"); *In the Matter of Petition of The Metropolitan Water Reclamation Dist. of Greater Chi.*, AS 95-4, 1995 WL 314608, *1 (May 18, 1995) (finding reply was "necessary to fully delineate the issues before the Board in this proceeding").

4. Section 101.500(e) of the Board's rules requires a motion for leave to file a reply to be filed within 14 days after service of the response. 35 Ill. Adm. Code 101.500(e). Complainants failed to serve their three filings filed on October 28, 2019 on the Associations, notwithstanding that the Associations appear as "Interested Parties" in the Board's electronic service list and another "Interested Party" was in fact served with those filings. *See* Certificate of Service attached to Complainants' October 28, 2019 filings. Nevertheless, this Motion, as well as the Associations' Responses concurrently filed, are timely filed within 14 days of the filing of Complainants' October 28, 2019 filings as if the Associations were properly served on the date of filing.

5. The Associations hereby request that the Board grant this Motion for Leave to File, *instanter*, the attached Reply to Complainants' Opposition to Motion for Leave to File *Amicus Curiae* Brief. The Associations further request that the Board direct Complainants to serve any future filings related to the Amicus Brief on the Associations.

WHEREFORE, the Associations respectfully request that the Board grant them leave to file, *instanter*, the attached Reply to Complainants' Opposition to Motion for Leave to File *Amicus Curiae* Brief.

Date: November 12, 2019

Respectfully submitted,

**ILLINOIS ENVIRONMENTAL
REGULATORY GROUP, ILLINOIS COAL
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**ILLINOIS CHAPTER OF THE
NATIONAL WASTE & RECYCLING
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One of Its Attorneys

By: /s/ James M. Morphew
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SORLING NORTHRUP

Brian J.D. Dodds
HEPLERBROOM, LLC
4340 Acer Grove Drive
Springfield, Illinois 62711
Jennifer.Martin@HeplerBroom.com
Melissa.Brown@HeplerBroom.com
Brian.Dodds@HeplerBroom.com

1 North Old State Capitol Plaza, Suite 200
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THE ASSOCIATIONS’ REPLY TO COMPLAINANTS’ OPPOSITION TO MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

The Illinois Environmental Regulatory Group, the Illinois Coal Association, the Chemical Industry Council of Illinois, and the Illinois Chapter of the National Waste & Recycling Association (collectively, “the Associations”), pursuant to 35 Ill. Adm. Code 101.500(e), respectfully submit this Reply to Complainants’ Opposition to Motion for Leave to File *Amicus Curiae* Brief in Support of Midwest Generation, LLC’s Motion to Reconsider and Clarify the Interim Order (“Opposition Motion”). In Support of this Reply, the Associations state as follows:

1. Section 101.110(c) of the Illinois Pollution Control Board’s (“Board”) rules provides the requirements for filing *amicus curiae* briefs, stating:

Amicus curiae briefs may be filed in any adjudicatory proceeding by any interested person, if the Board grants permission. Response briefs will be allowed only with Board permission. The briefs must consist of argument only and must not raise facts that are not in evidence in the relevant proceeding. Amicus curiae briefs, and any responses, will be considered by the Board only as time allows. The briefs will not delay the Board’s decision-making. (See also Section 101.302(k).)

35 Ill. Adm. Code 101.110(c).

2. Complainants do not and cannot dispute that the Associations have a legitimate interest in the Board's rulings in this matter. In the Motion for Leave to File *Amicus Curiae* Brief, the Associations discuss in detail who they are and why they have an interest in the Board's ruling on Midwest Generation, LLC's ("MWG") Motion to Reconsider and Clarify the Interim Order ("Motion to Reconsider"). See Motion for Leave at 1-5; see *Amicus* Brief at 1-4. The Complainants also do not and cannot argue that the Associations' Motion for Leave was untimely since the motion was filed in conjunction with the parties' briefing schedule established by the Hearing Officer, being filed on Complainants' deadline to file a Response to the Motion to Reconsider. See Sept. 12, 2019 Hearing Officer Order.

3. "An *amicus curiae* is not a party to an action but rather is a 'friend' of the court." *In re J.W.*, 204 Ill. 2d 50, 73 (2003). "Consequently, the sole function of an *amicus* is to advise or make suggestions to the court ... tak[ing] the case as he finds it, with the issues as framed by the parties." *Id.*; see *Happel v. Wal-Mart Stores, Inc.*, 199 Ill. 2d 179, 185 (2002) (affirming denial of motion to strike *amicus* brief because "materials provided by the [amicus trade association were] relevant to standards of practice and care, and that such matters were raised in pleadings and depositions in this case"); *Indep. Tr. Corp. v. Kansas Bankers Sur. Co.*, 2016 IL App (1st) 143161, ¶ 35 (refusing to strike *amicus* brief "where it [did] not interfere with or preclude [the court's] review," but rather "addressed the matter currently before this court.")

4. The Associations acknowledge that certain legal arguments based on the regulatory language are also contained in MWG's Motion to Reconsider. See, e.g., *Amicus Curiae* Brief at 5-6 (concerning 35 Ill. Adm. Code 620.250(a)) and 7-8 (concerning 35 Ill. Adm. Code 620.250(c)). However, the Associations, as *amicus curiae*, are bound to the issues as

framed by the parties. *In re J.W.*, 204 Ill. 2d at 73. The regulatory arguments made by MWG framed the new arguments asserted by the Associations – namely, the impacts of the Board’s ruling on entities outside of this proceeding.

5. Complainants’ assertion that the Associations have raised facts not in evidence is mistaken. The Associations have simply offered two uncontroversial factual points: (1) MWG is not the only entity operating under a groundwater management zone (“GMZ”), and (2) the Board’s construction of GMZs will have consequences beyond this proceeding. The remainder of the Associations’ brief concerns the proper construction of Board regulations and its natural effects on interested parties. See *Holcomb State Bank v. Fed. Deposit Ins. Corp.*, 180 Ill. App. 3d 840, 847–48 (1989) (rejecting contention that court relied on facts not in evidence because putative “facts” were “not facts but [were] legal conclusions” drawn from other, uncontested facts present in the record). The Associations have simply raised arguments and legal conclusions, which are the proper subjects of an *amicus curiae* filing and not impermissible speculative statements as Complainants contend. See 35 Ill. Adm. Code 101.110(c).

6. Additionally, there is evidence in the record concerning the benefits of GMZs and that MWG is not the only entity with a GMZ. In MWG’s Expert Report, MWG’s expert stated that it is his opinion that “[e]stablishment of administrative controls such as Groundwater Management Zones (GMZ) . . . are effective remedial approaches to reduce the exposure of potential groundwater impacts, are remediation industry-accepted approaches, and are approved State of Illinois methods. MWG Hearing Exh. 903, p. 4, 27 (MWG Expert Rpt.). MWG’s expert also stated that “. . . GMZs are used to eliminate groundwater exposure pathways by eliminating groundwater ingestion pathway and dermal contact pathways while corrective actions are underway.” *Id.* at 26. MWG’s expert further discussed that are a number of sites in

Illinois that have GMZs established by Illinois EPA, and that Illinois EPA has not reported any groundwater violations for the sites with GMZs. *Id.* at 27; *see also* Motion to Reconsider at 6 (MWG discussion of a GMZ at Hennepin Station).

7. There is also evidence already in the record concerning natural attenuation. MWG discussed in its Motion for Reconsideration that groundwater monitoring is ongoing to assess the process of natural attenuation. Motion for Reconsideration at 12-14 (citing Hearing Ex. 242, Part III, No. 4, 6, 10, Ex. 254, Part III, No. 4, 6, 10, Ex. 276, Part III, No. 4, 6, 10 (GMZ Applications); Hearing Exs. 244M-246M, 257O-260O, 279Q-281Q (Groundwater Monitoring Reports)). Also, as stated in the Motion for Reconsideration, “MWG’s GMZ applications specifically state that the selected remedies will result in compliance with the applicable groundwater standards due to the pond relining *and attenuation of the residual groundwater impacts through monitored conditions within the established GMZs.*” *Id.* at 13 (emphasis in original) (citing Hearing Ex. 242, Part III, Nos. 4, 6, Hearing Ex. 254, Part III, Nos. 4, 6, Hearing Ex. 276, Part III, Nos. 4, 6 (GMZ Applications)). MWG’s Expert Report also discussed the occurrence of natural attenuation at the stations, and MWG’s expert conducted a temporal trend analysis, concluding that concentrations of coal-related constituents in groundwater are decreasing at Joliet 29, and are stable at Powerton and Will County stations. *Id.* at 45; *Id.*, Appendix B, Surface Water Risk Characterization, at 6-7; Motion to Reconsider at 14 (citing 2/2/18 Tr. p. 29:5-16, 44:9-15, 123:4-124:11 (Seymour Test.); Hearing Ex. 906 (Temporal Trend Analysis), Hearing Ex. 901, p. 24-25, 42-43, 70-71 (MWG Expert Presentation)).

8. Moreover, the Board has previously granted permission to file amicus briefs and considered amicus briefs similar to the Associations’. In *Mahomet Valley Water Authority v. Clinton Landfill, Inc.*, PCB 13-22, the Board granted two motions for leave – one filed by the

National Solid Waste Management Association (“NSWMA”) and the other filed by the Village of Summit. *See* Board Order, *Mahomet Valley Water Authority, et al. v. Clinton Landfill, Inc.*, PCB 13-22, slip op. at 4 (Sep. 19, 2013).

9. In NSWMA’s amicus brief, NSWMA requested that the case be dismissed because “the complaint would undermine the Act by ‘opening up the Agency’s permits to perpetual review based on purported deficiencies in siting approvals or on the Agency’s decision not to require local siting approval.’” *See* Amicus Curiae Brief, *Mahomet Valley Water Authority, et al. v. Clinton Landfill, Inc.*, PCB 13-22, slip op. at 2 (Mar. 1, 2013). NSWMA further contended in its brief that, “if the validity of an Agency-issued permit were open to attack, ‘no developer would dare to propose the construction of a new pollution control facility,’” and that if the complaint was not dismissed, “anyone could file a complaint with the Board claiming any permit or permit modification issued to any new pollution control facility . . . is inconsistent with the siting for such facility, at any time.” *See id.* at 6

10. The Village of Summit also argued in its motion for leave and amicus brief that the complaint should be dismissed. *See* Motion for Leave to File Amicus Brief, *Mahomet Valley Water Authority, et al. v. Clinton Landfill, Inc.*, PCB 13-22 (Mar. 6, 2013). In its motion for leave, the Village focused on the potential effects on a separate site – the Midwest Metallica Superfund Site – that was not the subject of the proceeding, if the Complaint was not dismissed. *See id.* The Village’s motion, and exhibits attached, provided arguments and information concerning the Midwest Metallica Superfund Site to illustrate the potential effects to that site if the Complaint was not dismissed. *See id.* The Board granted NSWMA’s and the Village’s motion for leave and considered their amicus briefs when ruling. *Mahomet Valley Water Authority.*, PCB 13-22, slip op. at 4.

11. Like the amicus filings filed in the *Mahomet Valley Water Authority* case, the Associations' Motion for Leave and Amicus Brief focus on the potential effect of the Board's ruling on parties outside the litigation.

12. Furthermore, in their Amicus Brief, the Associations discuss and attach a letter from the Illinois Environmental Protection Agency ("Illinois EPA") to Hennepin Station to show how Illinois EPA has previously addressed the issue of GMZ expiration, which Complainants argue are facts outside the record. Amicus Brief at 8-9; Attachment 1 to Amicus Brief; Opposition Motion at 2. However, MWG first raised discussions concerning the corrective action and a GMZ at the Hennepin Station in its Motion to Reconsider. Brief in Support of Motion to Reconsider at 6.

13. The Associations' arguments in their Amicus Brief were directly related to matters already in the record. *See Happel v. Wal-Mart Stores, Inc.*, 199 Ill. 2d 179, 185 (2002) (affirming denial of motion to strike amicus brief because "materials provided by the [amicus trade association were] relevant to standards of practice and care, and that such matters were raised in pleadings and depositions in this case.")

14. Also, there was no adequate record about GMZs to predicate the Board's *sua sponte* ruling, as the Associations and MWG have argued. Amicus Brief at 12-13; Motion to Reconsider ¶ 2; Memorandum at 4-7. Prior to the Board's Interim Order, parties and interested parties did not have the opportunity to introduce evidence into the record regarding GMZ expiration because GMZ expiration was not at issue in the proceeding.

15. For the above reasons, the Associations respectfully request that the Board deny Complainants' Opposition Motion, and grant the Associations' Motion for Leave to File *Amicus Curiae* Brief.

WHEREFORE, the Associations respectfully request that the Board deny the relief requested by Complainants, and grant the Associations' Motion for Leave to File *Amicus Curiae* Brief.

Date: November 12, 2019

Respectfully submitted,

**ILLINOIS ENVIRONMENTAL
REGULATORY GROUP, ILLINOIS COAL
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THE ASSOCIATIONS' RESPONSE TO COMPLAINANTS' ALTERNATIVE MOTION TO STRIKE PORTIONS OF *AMICUS CURIAE* BRIEF

The Illinois Environmental Regulatory Group, the Illinois Coal Association, the Chemical Industry Council of Illinois, and the Illinois Chapter of the National Waste & Recycling Association (collectively, “the Associations”), pursuant to 35 Ill. Adm. Code 101.500(d), respectfully submit this Response to Complainants’ Alternative Motion to Strike Portions of *Amicus Curiae* Brief in Support of Midwest Generation, LLC’s Motion to Reconsider and Clarify the Interim Order (“Motion to Strike”). In Support of this Response, the Associations state as follows:

1. “An *amicus curiae* is not a party to an action but rather is a ‘friend’ of the court.” *In re J.W.*, 204 Ill. 2d 50, 73 (2003). “Consequently, the sole function of an *amicus* is to advise or make suggestions to the court ... tak[ing] the case as he finds it, with the issues as framed by the parties.” *Id.*; see *Happel v. Wal-Mart Stores, Inc.*, 199 Ill. 2d 179, 185 (2002) (affirming denial of motion to strike amicus brief because “materials provided by the [amicus trade association were] relevant to standards of practice and care, and that such matters were raised in

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Illinois that have GMZs established by Illinois EPA, and that Illinois EPA has not reported any groundwater violations for the sites with GMZs. *Id.* at 27; *see also* Motion to Reconsider at 6 (MWG discussion of a GMZ at Hennepin Station).

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5. Moreover, the Board has previously granted permission to file amicus briefs and considered amicus briefs similar to the Associations’. In *Mahomet Valley Water Authority v. Clinton Landfill, Inc.*, PCB 13-22, the Board granted two motions for leave – one filed by the

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7. The Village of Summit also argued in its motion for leave and amicus brief that the complaint should be dismissed. *See* Motion for Leave to File Amicus Brief, *Mahomet Valley Water Authority, et al. v. Clinton Landfill, Inc.*, PCB 13-22 (Mar. 6, 2013). In its motion for leave, the Village focused on the potential effects on a separate site – the Midwest Metallica Superfund Site – that was not the subject of the proceeding, if the Complaint was not dismissed. *See id.* The Village’s motion, and exhibits attached, provided arguments and information concerning the Midwest Metallica Superfund Site to illustrate the potential effects to that site if the Complaint was not dismissed. *See id.* The Board granted NSWMA’s and the Village’s motion for leave and considered their amicus briefs when ruling. *Mahomet Valley Water Authority.*, PCB 13-22, slip op. at 4.

8. Like the amicus filings filed in the *Mahomet Valley Water Authority* case, the Associations' Motion for Leave and Amicus Brief focus on the potential effect of the Board's ruling on parties outside the litigation.

9. Furthermore, in their Amicus Brief, the Associations discuss and attach a letter from the Illinois Environmental Protection Agency ("Illinois EPA") to Hennepin Station to show how Illinois EPA has previously addressed the issue of GMZ expiration, which Complainants argue are facts outside the record. Amicus Brief at 8-9; Attachment 1 to Amicus Brief; Opposition Motion at 2. However, MWG first raised discussions concerning the corrective action and a GMZ at the Hennepin Station in its Motion to Reconsider. Brief in Support of Motion to Reconsider at 6.

10. The Associations' arguments in their Amicus Brief were directly related to matters already in the record. *See Happel v. Wal-Mart Stores, Inc.*, 199 Ill. 2d 179, 185 (2002) (affirming denial of motion to strike amicus brief because "materials provided by the [amicus trade association were] relevant to standards of practice and care, and that such matters were raised in pleadings and depositions in this case").

11. Also, there was no adequate record about GMZs to predicate the Board's *sua sponte* ruling, as the Associations and MWG have argued. Amicus Brief at 12-13; Motion to Reconsider ¶ 2; Memorandum at 4-7. Prior to the Board's Interim Order, parties and interested parties did not have the opportunity to introduce evidence into the record regarding GMZ expiration because GMZ expiration was not at issue in the proceeding.

12. For the above reasons, the Associations respectfully request that the Board deny Complainants' Motion to Strike.

WHEREFORE, the Associations respectfully request that the Board deny the relief requested by Complainants, and grant the Associations' Motion for Leave to File *Amicus Curiae* Brief.

Date: November 12, 2019

Respectfully submitted,

**ILLINOIS ENVIRONMENTAL
REGULATORY GROUP, ILLINOIS COAL
ASSOCIATION, and CHEMICAL
INDUSTRY COUNCIL OF ILLINOIS**

**ILLINOIS CHAPTER OF THE
NATIONAL WASTE & RECYCLING
ASSOCIATION**

By: /s Melissa S. Brown
One of Their Attorneys

By: /s James M. Morphew
One of Its Attorneys

Jennifer M. Martin
Melissa S. Brown
Brian J.D. Dodds
HEPLERBROOM, LLC
4340 Acer Grove Drive
Springfield, Illinois 62711
Jennifer.Martin@HeplerBroom.com
Melissa.Brown@HeplerBroom.com
Brian.Dodds@HeplerBroom.com

James M. Morphew, of counsel
SORLING NORTHRUP
1 North Old State Capitol Plaza, Suite 200
P.O. Box 5131
Springfield, Illinois 62705
jmmorphew@sorlinglaw.com

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:)	
)	
SIERRA CLUB, ENVIRONMENTAL)	
LAW AND POLICY CENTER,)	
PRAIRIE RIVERS NETWORK, and)	
CITIZENS AGAINST RUINING THE)	
ENVIRONMENT,)	
)	PCB 2013-015
Complainants,)	(Enforcement – Water)
)	
v.)	
)	
MIDWEST GENERATION, LLC,)	
)	
Respondent.)	

THE ASSOCIATIONS’ RESPONSE TO COMPLAINANTS’ ALTERNATIVE MOTION FOR LEAVE TO RESPOND TO AMICUS CURIAE BRIEF

The Illinois Environmental Regulatory Group, the Illinois Coal Association, the Chemical Industry Council of Illinois, and the Illinois Chapter of the National Waste & Recycling Association (collectively, “the Associations”), pursuant to 35 Ill. Adm. Code 101.500(d), respectfully submit this Response to Complainants’ Alternative Motion for Leave to Respond to *Amicus Curiae* Brief in Support of Midwest Generation, LLC’s Motion to Reconsider and Clarify the Interim Order (“Complainants’ Motion for Leave”). In Support of this Response, the Associations state as follows:

1. In Complainants’ Opposition to Motion for Leave to File *Amicus Curiae* Brief in Support of Midwest Generation, LLC’s Motion to Reconsider and Clarify the Interim Order (“Opposition Motion”), Complainants argue that “all legal arguments raised in the Amicus Brief have already been raised by Midwest Generation, LLC (“MWG”) so the Amicus Brief does not add any value to this proceeding.” Opposition Motion at 1. If this is indeed Complainants’ position, then Complainants have already fully addressed such arguments when filing their

Response to MWG's Motion to Reconsider and Clarify the Interim Order on October 14, 2019 ("Motion to Reconsider").

2. As such, affording Complainants another opportunity to address the allegedly repetitive arguments would not result in any new arguments for the Illinois Pollution Control Board ("Board") to consider when making its decision; rather, it would simply delay this proceeding in contravention of the Board's rules. *See* 35 Ill. Adm. Code 101.110(c). Therefore, Complainants' Motion for Leave should be denied.

3. Alternatively, if the Board grants Complainants' Motion for Leave, the Associations request that the Complainants' response be limited to only new issues raised in the Amicus Brief, and that the Associations be granted leave to file a reply to Complainants' response.

WHEREFORE, the Associations respectfully request that the Board deny the relief requested by Complainants, or in the alternative, limit Complainants' response to new issues raised in the Associations' *Amicus Curiae* Brief and grant the Associations leave to file a reply.

Date: November 12, 2019

**ILLINOIS ENVIRONMENTAL
REGULATORY GROUP, ILLINOIS COAL
ASSOCIATION, and CHEMICAL
INDUSTRY COUNCIL OF ILLINOIS**

By: /s/ Melissa S. Brown
One of Their Attorneys

Jennifer M. Martin
Melissa S. Brown
Brian J.D. Dodds
HEPLERBROOM, LLC
4340 Acer Grove Drive
Springfield, Illinois 62711
Jennifer.Martin@HeplerBroom.com
Melissa.Brown@HeplerBroom.com
Brian.Dodds@HeplerBroom.com

Respectfully submitted,

**ILLINOIS CHAPTER OF THE
NATIONAL WASTE & RECYCLING
ASSOCIATION**

By: /s/ James M. Morpew
One of Its Attorneys

James M. Morpew, of counsel
SORLING NORTHRUP
1 North Old State Capitol Plaza, Suite 200
P.O. Box 5131
Springfield, Illinois 62705
jmmorpew@sorlinglaw.com