

ILLINOIS POLLUTION CONTROL BOARD
February 6, 2020

MIDWEST GENERATION, LLC,)	
)	
Petitioner,)	
)	
v.)	PCB 20-38
)	PCB 20-39
ILLINOIS ENVIRONMENTAL)	(Thermal Demonstration)
PROTECTION AGENCY,)	(Consolidated)
)	
Respondent.)	

ORDER OF THE BOARD (by C.M. Santos):

On December 30, 2019, Midwest Generation, LLC (MG) filed two petitions. The first requests alternative thermal effluent limitations for discharges from its Joliet 9 Generating Station in Will County to the Upper Dresden Island Pool of the Lower Des Plaines River, and the second seeks the same relief for discharges to the same body of water from its Joliet 29 Generating Station. MG filed the petitions under Section 316(a) of the Clean Water Act (33 U.S.C. § 1326(a)), Section 304.141(c) of the Board’s water pollution regulations (35 Ill. Adm. Code 304.141(c)), and Part 106, Subpart K of the Board’s procedural rules (35 Ill. Adm. Code 106.1100 – 106.1180). MG requests that the alternative thermal effluent limitations apply instead of those imposed by the Board’s water quality standards for temperature (35 Ill. Adm. Code 302.408 (c)-(f), (i)).

“Within 14 days after the filing of the petition, the petitioner must publish notice of the filing of the petition by advertisement in a newspaper of general circulation in the county where the facility is located.” 35 Ill. Adm. Code 106.1135(a). The notice must state that “[a]ny person may cause a public hearing to be held in the above-described proceeding by filing a hearing request with the Illinois Pollution Control Board within 21 days after the date of the publication of this notice.” 35 Ill. Adm. Code 106.1135(b). “Within 30 days after the filing of the petition, the petitioner must file a certificate of publication with the Clerk of the Board.” 35 Ill. Adm. Code 106.1140. On January 23, 2020, MG filed two certificates of publication stating that the *The Herald-News* of Joliet published notices of filing the petitions on January 9, 2020. The Board finds that MG provided timely and sufficient notice. Any request that the Board hold a hearing was due by Thursday, January 30, 2020. 35 Ill. Adm. Code 106.1150. The Board did not receive a request to hold a hearing.

“Unless otherwise ordered by the hearing officer or the Board, the [Illinois Environmental Protection] Agency must file with the Board a recommendation within 45 days after the filing of a petition . . . for an alternative thermal effluent limitation. . . .” 35 Ill. Adm. Code 106.1145(a). The Agency’s recommendation, which must include specified elements (35 Ill. Adm. Code 106.1145(b)), is due on or before February 13, 2020. Any response to the

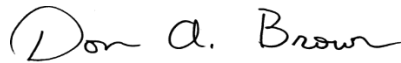
Agency's recommendation is due within 21 days after the Agency files its recommendation. 35 Ill. Adm. Code 106.1145(c).

The Board accepts MG's petitions. The Board notes that the petitions rely on the same demonstration to seek the same regulatory relief for discharges to the same body of water. The petitions also state that the MG has the same burden of proof. *See* 35 Ill. Adm. Code 101.406, 106.1160. On this record, the Board finds that consolidating these two proceedings serves "the interest of convenient, expeditious, and complete determination of claims" and will not result in material prejudice to any party. 35 Ill. Adm. Code 104.406; *see Gautschy's Corner v. IEPA*, PCB 18-56, 18-60 (cons.) (Feb. 8, 2018). On its own motion, the Board consolidates these two proceedings for hearing.

The Board has not determined whether the contents of the petition are sufficient or whether it will hold a hearing. *See* 35 Ill. Adm. Code 106.1155(a). The Board may submit questions to MG through a Board or hearing officer order.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 6, 2020 by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board