

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MIDWEST GENERATION, LLC)	
& INEOS JOLIET, LLC,)	
Petitioners,)	
v.)	PCB 16-19 (Midwest Generation)
)	PCB 16-24 (INEOS)
ILLINOIS ENVIRONMENTAL)	(Time-Limited Water Quality Standard)
PROTECTION AGENCY)	(Consolidated)
Respondent.)	

NOTICE OF FILING

To:

Don Brown, Clerk of the Board Illinois Pollution Control Board James R. Thompson Center, Suite 11-500 100 W. Randolph Street Chicago, IL 60601 don.brown@illinois.gov	Bradley P. Halloran Hearing Officer Illinois Pollution Control Board James R. Thompson Center, Suite 11-500 100 W. Randolph Street Chicago, IL 60601 Brad.Halloran@illinois.gov
--	---

(SEE PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board a Second Joint Motion to Stay of Proceedings, a copy of which is herewith served upon you.

Respectfully submitted,

Dated: August 3, 2021

MIDWEST GENERATION, LLC

By: /s/ Vincent R. Angermeier

Susan M. Franzetti
Vincent R. Angermeier
NIJMAN FRANZETTI LLP
10 South LaSalle Street Suite 3600
Chicago, IL 60603
(312) 251-5590

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached Second Joint Motion to Stay of Proceedings, via electronic mailing to the following:

<p>Sara Terranova Illinois Environmental Protection Agency 1021 N. Grand Avenue East P.O. Box 19276 Springfield, IL 62794-9276 sara.terranova@illinois.gov</p>	<p>Albert Ettinger Law Firm of Albert Ettinger 53 W. Jackson, Suite 1664 Chicago, IL 60604 ettinger.albert@gmail.com</p>
<p>Bradley P. Halloran Hearing Officer Illinois Pollution Control Board James R. Thompson Center, Suite 11-500 100 W. Randolph Street Chicago, IL 60601 Brad.Halloran@illinois.gov</p>	<p>Michael P. Murphy Heplerbroom, LLC 4340 Acer Grove Drive Springfield, IL 62711 Michael.Murphy@heplerbroom.com</p>
<p>Stacy Meyers Senior Counsel Openlands 25 E. Washington Street, Suite 1650 Chicago, IL 60602 smeyers@openlands.org</p>	<p>Dave Pfeifer USEPA – WQ16J 77W. Jackson Chicago, IL 60604 Pfeifer.david@epa.gov</p>

Dated: August 3, 2021

/s/ Vincent R. Angermeier

Susan M. Franzetti
Vincent R. Angermeier
Nijman Franzetti LLP
10 S. LaSalle Street, Suite 3600
Chicago, IL 60603
(312) 251-5590

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MIDWEST GENERATION, LLC)	
& INEOS JOLIET, LLC,)	
Petitioners,)	
v.)	PCB 16-19 (Midwest Generation)
)	PCB 16-24 (INEOS)
ILLINOIS ENVIRONMENTAL)	(Time-Limited Water Quality Standard)
PROTECTION AGENCY)	(Consolidated)
Respondent.)	

SECOND JOINT MOTION TO STAY PROCEEDINGS

Pursuant to 35 Ill. Adm. Code 101.514, Midwest Generation, LLC (MWGen), by one of its attorneys, Vincent R. Angermeier, and INEOS Joliet, LLC (INEOS), by one of its attorneys, Michael P. Murphy (collectively, the Movants), respectfully request that the Board, by and through the Hearing Officer, enter an order staying these consolidated proceedings while the Alternative Thermal Effluent Limitations (ATELs) for Joliet Generating Station 9 and Joliet Generating Station 29 (collectively, “the Stations”) are incorporated into each Station’s NPDES Permit. MWGen would provide quarterly reports to the Board while this procedural stay is in effect.

In support of this motion, the Movants state as follows:

1. On July 1, 2015, MWGen filed a Petition for Variance for the Will County Generating Station (WCGS) and the Joliet Stations, pursuant to Section 35 of the Illinois Environmental Protection Act (the Act).

2. On February 24, 2017, the variance petition was automatically converted to a Petition for a Time-Limited Water Quality Standard (TLWQS) by operation of 415 ILCS 5/38.5(c), 40 C.F.R. § 131.14.

3. On June 27, 2018, MWGen filed an amended TLWQS petition (the “TLWQS Petition”). The TLWQS Petition sought TLWQS variances connected to two segments of the Upper Illinois

Waterway: (1) The Brandon Pool & Chicago Sanitary and Shipping Canal, both thermally affected by the WCGS; and (2) the Upper Dresden Island Pool (UDIP), the receiving water for the Joliet Stations.

4. On July 25th, 2019, the Board consolidated the MWGen TLWQS proceeding with PCB 16-14, which concerns a TLWQS petition filed by INEOS filed on July 21, 2015, and amended on July 26, 2018 (the “Consolidated TLWQS Proceeding”).

5. On November 7th, 2019, the Board granted the petition for ATEL relief for the WCGS.

6. On November 27th, 2019, MWGen, INEOS, and the Illinois Environmental Protection Agency (the “Agency”) moved that the Board stay the Consolidated TLWQS Proceeding.

7. The joint motion argued that MWGen planned on seeking ATEL relief for each of the Joliet Stations. If granted, the TLWQS petition would be mooted by the combined effect of those ATELS and the already-existing WCGS ATEL.

8. On December 5th, 2019, the Board granted the motion to stay proceedings. The Order states that: “The Board has reviewed the joint motion and agrees that it would now be more efficient to use the parties’ and the Board’s resources to review [MWGen]’s expected petition for alternative thermal effluent limitations than to proceed with IEPA’s recommendation on and the Board’s consideration of the TLWQS petitions.”

9. The Board’s order states further that the stay would last until the Board “reaches a final decision on [MWGen]’s petition for alternative limitations for the Joliet Stations.” Dkt. 16-19, *Order Granting Stay*, at p. 2 (Dec. 5, 2019).

10. On December 30th, 2019, MWGen filed ATEL petitions for each of the Joliet Stations. The proceedings were docketed at PCB 20-28 and PCB 20-39, and the Board consolidated those proceedings on February 6th, 2020.

11. In support of the ATELS requested in the petitions, MWGen filed a Thermal Demonstration report (prepared pursuant to 35 Ill. Admin. Code 106.1120) showing that those limits would assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in the UDIP.

12. The Thermal Demonstration accounted for the fact that the UDIP receives additional thermal loading from a downstream discharger, Flint Hills Resources (INEOS's predecessor-in-interest). The report found that, so long as INEOS continues discharging heat at historical levels, no adverse ecological impact would be created by granting alternative thermal effluent relief to the Joliet Stations.

13. On July 8th, 2021, the Board granted ATEL relief for the Joliet Stations but did not extend that relief to the downstream dischargers as suggested by the Illinois Environmental Protection Agency (the "Agency"). It is not currently known whether any of the downstream dischargers intend to appeal this portion of the Board's order by the August 12, 2021 appeal deadline provided under Section 29 of the Act. In addition, INEOS is considering the filing of its own separate petition for ATELS.

14. Until the ATELS granted by the Board's July 8, 2021 Order are incorporated into the respective NPDES permits for the two Joliet Stations, it is not clear whether the Board-approved ATELS eliminate the applicability of the existing thermal water quality standards that could otherwise apply in the absence of the ATELS. Although the Board ordered the Agency to "expeditiously" incorporate the ATELS into the Joliet Stations' NPDES Permits, it is unknown how quickly the Agency will act to do so.

15. The stay of the applicability of the existing thermal water quality standards to the MWGen Joliet Stations continues while the TLWQS petition remains pending. Because there is

some uncertainty as to when the Agency will be able to incorporate the Joliet Stations' ATELS into their NPDES permits and, until that is accomplished, whether the Movants are subject to the thermal limits in 35 Ill. Admin. Code 302.408, the Movants are requesting that the TLWQS petitions remain pending but stayed.

16. Plus, now that the Board has approved ATELS for the Joliet Stations, continued work on the TLWQS petitions is even less likely to be a productive use of the Board's and parties' resources. *See State v. Bd. of Trustees of U. of Ill.*, PCB Nos. 13-35; 13-36, slip op. at 13 (PCB 2013) (granting stay where doing so would "help to avoid the potentially unnecessary expenditure of resources by the parties and the Board").

17. Similarly, although the Board disfavors "indefinite stays" (*see, e.g., Site-Specific Rule for the Closure of Ameren Energy Resources Ash Ponds: Proposed New 35 Ill. Adm. Code 840, Subpart B, R13-19, slip op. at 2 (PCB 2013)*), the incorporation of the ATELS into the NPDES permits is reasonably expected to not take a significant amount of time, particularly since the Board has already directed the Agency to modify the permits "expeditiously."

18. Given that the Board already granted the initial stay of these proceedings, this Second Joint Motion to Stay Proceedings is directed to the Hearing Officer pursuant to Section 101.514(b), which states that "[a]dditional requests for stay of the proceedings must be directed to the hearing officer." 35 Ill. Adm. Code 101.514(b).

19. MWGen plans on seeking dismissal of its TLWQS petition once the appeal rights expire and the NPDES permits incorporating the ATELS are final. INEOS may either pursuing a separate petition for ATELS (in which case it would request a further stay of the TLWQS proceeding during the pendency of the ATEL matter) or pursue the TLWQS. Because the Board does not favor indefinite stays, the Movants are seeking a stay of the TLWQS petitions until

January 1, 2022, based on the expectation that the reissued NPDES permits incorporating the ATELS will be final by then. If not, the Movants may seek an extension of the requested stay.

WHEREFORE, the Movants—Midwest Generation, LLC, and INEOS Joliet, LLC—respectfully request the Illinois Pollution Control Board stay proceedings in this matter until January 1, 2022. Counsel for MWGen has spoken with Agency counsel, who confirms that the Agency does not object to extension of the stay.

Respectfully submitted,

Midwest Generation, LLC

By: /s/Vincent R. Angermeier
One of Its Attorneys

Susan M. Franzetti
Vincent R. Angermeier
NIJMAN FRANZETTI LLP
10 South LaSalle Street, Suite 3600
Chicago, IL 60603
312-251-5255