

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, Clerk	Attached Service List
Illinois Pollution Control Board	
James R. Thompson Center	
100 West Randolph Street, Suite 11-500	
Chicago, IL 60601	

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board, Midwest Generation, LLC’s Motion *In Limine* to Exclude Evidence of the Need for a Remedy at the Former Slag and Bottom Ash Placement Area at Will County Station with Exhibits, a copy of which is hereby served upon you.

MIDWEST GENERATION, LLC

By: /s/ Jennifer T. Nijman

Dated: February 4, 2022

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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, Certificate of Service for Midwest Generation, LLC's Motion *In Limine* to Exclude Evidence of the Need for a Remedy at the Former Slag and Bottom Ash Placement Area at Will County Station with Exhibits, a copy of which is hereby served upon you was filed on February 4, 2022 with the following:

Don Brown, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

and that true copies of the Notice of Filing, Certificate of Service for Midwest Generation, LLC's Motion *In Limine* to Exclude Evidence of the Need for a Remedy at the Former Slag and Bottom Ash Placement Area at Will County Station with Exhibits were emailed on February 4, 2022 to the parties listed on the foregoing Service List.

/s/ Jennifer T. Nijman

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MIDWEST GENERATION, LLC’S MOTION *IN LIMINE* TO EXCLUDE EVIDENCE OF THE NEED FOR A REMEDY AT THE FORMER SLAG AND BOTTOM ASH PLACEMENT AREA AT WILL COUNTY STATION

Pursuant to 35 Ill. Adm. Code 101.500, 101.502 and 101.504, Respondent, Midwest Generation, LLC (“MWG”), submits this Motion *In Limine* requesting the Hearing Officer enter an order barring evidence relating to the need for a remedy, or remedy for the Former Slag and Bottom Ash Placement Area (“Former Placement Area”) at the Will County Station from because there is no evidence that the area is a source of contamination and because Section 21(r) of the Illinois Environmental Protection Act (“Act”) allows disposal of coal combustion waste that was generated by the site owner and disposed at the site.

In its 2019 Interim Order, the Illinois Pollution Control Board (“Board”) found there was one monitoring well installed in 1998. Interim Order, p. 57. The 1998 monitoring well showed no contamination from coal ash. Hearing Ex. 18D, Table 6, attached as Ex. 1. Further, testimony at the hearing showed that even though the former owner used the area to temporarily store ash, no other ash existed in the area. Ex. 2, 1/31/18 Tr. p.255-256. Accordingly, while the area may have temporarily had historic ash in the past, there is no groundwater data to show that the area is

causing contamination nor any data to show that there is any ash present. Because the groundwater data shows that the Former Placement Area is not a source, the record shows that the area does not contain ash, and because Complainants failed to develop evidence that the Former Placement Area is a source or still contains ash, the Board should exclude evidence regarding the need for a remedy or remedy for the area.

Additionally, the Board found that the ash in the historic fill areas was coal combustion *waste*, over MWG's objections. 2019 Order, p. 89. Pursuant to Section 21(r) of the Act, coal combustion *waste* may remain in place, further supporting the exclusion of evidence regarding the need for a remedy.

In support of its Motion, MWG states as follows:

A. Background

1. In October 2017 and continuing to January 2018, the parties participated in a lengthy and extensive hearing regarding Complainants' allegations that MWG violated the Illinois Environmental Protection Act ("Act").

2. On June 20, 2019, the Board entered an Interim Order and Opinion, which it reconsidered and revised on February 6, 2020. The Board found that the record lacked sufficient information to determine an appropriate remedy and directed the parties to proceed to hearing to determine the appropriate relief and whether a remedy is required, considering the Section 33(c) and 42(h) factors under the Act.

3. In its June 2019 Interim Order, the Board discussed the Former Placement Area located on the southeast corner of the Will County Station. Interim Order, pp. 56-57.

4. In discussing the Former Placement Area, the Board found that the area was identified in the 1998 Phase II Environmental Site Assessment, and that there was a monitoring well (MW-1) in the area in 1998. Interim Order, p. 57.

5. Pursuant to the Board's Interim Order, the Parties engaged in additional discovery to develop information to determine the appropriate relief. An additional approximately 60,000 pages of documents were exchanged, and eleven witnesses were deposed including six expert witnesses.

6. Despite being allowed under Illinois Supreme Court Rule 214, Complainants did not conduct any investigation of the Former Placement Area at the Will County Station during discovery to determine whether it is a current source of groundwater contamination knowing that it was not when sampled in 1998. Il. S. C. R. 214(a) (a party may have access "to real estate for the purpose of making surface or subsurface inspections...").

B. There is no Evidence to Support the Need for a Remedy for the Former Placement Area at Will County

7. It is the Complainants' duty and responsibility to prove their case. *Northern Illinois Anglers' Assoc. v. Kankakee Water Co., Inc.*, PCB 81-127, 1981 WL 21931 (September 24, 1981), *1. Here, Complainants made no attempt to prove that Former Placement Area is a source of contamination, and it is certainly not MWG's duty to disprove the allegations.

8. While the Board noted that there was a monitoring well installed near the Former Placement Area (MW-1), the Board did not include in the Interim Order the results from the sampling of the well. Table 6 of the 1998 Phase II Report is the groundwater analytical results. Hearing Ex. 18D, Table 6 (MWG13-15_5736), attached here as Exhibit 1. Table 6 shows that the

groundwater in MW-1 showed no coal ash constituents. *Id.* In fact, all of the constituents analyzed were not detected. *Id.*¹

9. Additionally, Frederick Veenbaas, who worked at the Will County Station from 1999 to 2012 (1/31/18 Tr. p. 222:2-8) reviewed the Phase II Report and testified that he had never heard of a slag and bottom ash dumping area when he worked at Will County. 1/31/18 Tr. p. 255:13-15, 256:10-14, attached here as Ex. 2. He specifically testified that when he worked at the Will County Station the southeast corner of the property – the same area as the Former Placement Area – was not a slag and bottom ash dumping area. *Id.*, p. 256:10-14. He stated “it was an open field. It was away from the primary processes of the plant. It was basically a road where the ash trucks went by and went to the ash site.” *Id.* p. 256:16-19. He further stated that there was no pathway or mechanism for ash to get to the southeast area. *Id.* p. 256:20-22.

10. Thus, even if that area was a storage area for ash long before MWG began operating the site, any ash was gone by at least 1999 when Mr. Veenbaas began working at the Station.

11. Because there is no evidence that shows the Former Placement Area is a source, and because the only evidence in the record shows that it is not a source and that there is no ash in the area, the Board should exclude all evidence concerning that area.

12. In addition, samples of historic ash at other locations on the Will County Station show that the leachate from historical ash in fill materials is not adversely impacting the groundwater. Hearing Ex. 903, pp. 48, attached as Ex. 3. The leaching data from the historic ash at Will County found nothing in the historic ash was above the groundwater Class I quality criteria. MWG Ex. 901, p. 9, attached as Ex. 4. In its 2019 Interim Order, the Board agreed that the coal ash at each of the MWG Stations possessed similar constituents. 2019 Order, p. 20. Here, the

¹ The Hearing Officer entered Exhibit 18D over MWG’s objection. 10/23/2017 Tr., p. 112:4-5, 126:6-14. MWG continues to object to the admission of the ENSR reports.

record contains samples from one of the historic coal ash areas at Will County which shows the historic ash is not a source and analysis of the groundwater at the Former Placement Area shows there is no contamination there. In short, there is no evidence that the Former Placement Area is a potential source of contamination, and the totality of the evidence demonstrates that it is not.

13. Complainants cannot assert that MWG either should have sampled or should be required to sample the area as part of an investigation.² To date, there has been no regulatory requirement to sample and no Illinois EPA order. A party is not required to simply investigate its property when there is no apparent reason or requirement to do so. Additionally, MWG has a groundwater sample showing that there was no contamination in the groundwater in the Former Placement Area. A party cannot be forced to develop additional evidence to *disprove* allegations against them, particularly when they already have evidence that does just that. If a party were so required, then all litigation would be turned on its head. A complainant would be able to make blind factual statements, without any proof or support, that a certain area is a source of contamination, and demand the respondent investigate and present proof to deny or disprove the alleged facts. That is simply not how environmental enforcement in Illinois works. When Illinois EPA suspects a site might be a source of environmental contamination, it does not rush to the Board or a Court to force the owner/operator conduct an investigation to determine whether it is a source. Instead, it conducts an investigation, prepares a report, and if its investigation results in evidence that there is contamination, the Illinois EPA pursues enforcement.³ That the Agency gets

² The pending regulations in PCB20-19 Subdocket A may ultimately require MWG to investigate the historic fill areas to confirm that they are not a source of contamination. If the Board passes the regulations, then MWG will comply.

³ For example, In *N.Ill. Serv. Co. v. Ill. EPA*, 2016 IL App (2d) 150172 (2nd Dist. 2916), Illinois EPA conducted an inspection, and pursued enforcement against the owner following the inspection. Similarly, in *People of the State of Illinois v. D'Angelo Enterprises, Inc.*, PCB97-66, 2002 Ill.ENV LEXIS 533, the Illinois EPA conducted an inspection of a facility that contained waste, and prepared an inspection report identifying alleged violations of the Act. *18-19. Relying upon the results of the inspection, the People of the State of Illinois brought an enforcement action. *Id.**4. See also *James Reichert Ltd. Family P'ship v. Ill. Pollution Control Bd.*, 2018 IL App (5th) 160533-U, (published under

its authority to conduct the investigations under Section 4(d) of the Act makes no difference. 415 ILCS 5/4(d). Here, Illinois Supreme Court Rule 214 allows a private party in litigation to enter and even sample property to present evidence to prove their allegations.

14. In fact, in this case, the Agency *asked* MWG to voluntarily undertake sampling at its Stations, specifically identifying the CCR impoundments (and not the known ash fill areas) as possible sources. MWG elected to voluntarily perform that sampling, which resulted in the violation notices that started this case.

15. Complainants cannot be allowed to put the cart before the horse. Just as it is Complainants' burden to prove the liability portion of their case, it is similarly their burden to prove that a remedy is required. The Board's finding that MWG "allowed" groundwater contamination at its Stations does not equate to forcing a remedy in those locations where there is no proof of a source, and in this case proof of the absence of a source.⁴

16. Without evidence that the Former Placement Area is a source and with evidence that it is *not* a source, any evidence of the purported need for a remedy for area should be excluded. Complainants cannot be permitted to demand that a respondent must go out and find the evidence (that Complainants should have presented) that might, or might not, lead to a remedy.

C. Section 21(r) of the Act Allows Disposal of Coal Combustion Waste Onsite Negating Any Remedy Requirement

17. Subsection 21(r) of the Act, coupled with Section 21(d), allows disposal of coal combustion waste on a person's property that was generated by a person's own activities. Thus, no remedy is required.

Rule 23(e)) (Illinois EPA conducted an inspection of a property following review of overhead satellite image of site that showed potential violations, and pursued enforcement following the inspection.)

⁴ See MWG's Response to Complainants' Post-Hearing Brief (Aug. 30, 2018), p. 9 and MWG's Memorandum in Support of its Motion to Reconsider (Sept. 9, 2019), p. 25.

18. Subsection 21(r) states, in relevant part:

No person shall:

* * *

(r) Cause or allow the storage or disposal of coal combustion waste unless:

(1) such waste is stored or disposed of at a site or facility for which a permit has been obtained or is not otherwise required under subsection (d) of this Section; (emphasis added)

415 ILCS 5/21(r)(1)

19. Subsection 21(d) of the Act, as referenced in Section 21(r) above, states, in relevant part:

No person shall:

* * *

(d) Conduct any waste-storage, waste-treatment, or waste-disposal operation:

(1) without a permit granted by the Agency or in violation of any conditions imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder; provided, however, that, except for municipal solid waste landfill units that receive waste on or after October 9, 1993, no permit shall be required for (i) any person conducting a waste-storage, waste-treatment, or waste-disposal operation for wastes generated by such person's own activities which are stored, treated, or disposed within the site where such wastes are generated, . . .

415 ILCS 5/21(d) (emphasis added).

20. The Phase II Report states that the former owner of the Station used the Former Placement Area as a temporary storage area before the ash was transported offsite. Ex. 1, Hearing Ex. 18D, p. 6. While MWG asserted that the CCR was not “waste”, the Board specifically found that the coal ash at the Stations was “coal combustion waste” as defined in 415 ILCS 5/3.140. *Id.* at pp. 87-88. (Board stated that while MWG may send some coal ash to be used beneficially by third parties, that is not the case for historic areas).

21. Section 21(r) of the Act is specific to coal combustion waste (“CCW”), which the Board concluded was at issue in the historic areas (among other areas). As such, Section 21(r) is the provision that is applicable to the Former Placement Area, not Section 21(a) of the Act. “It is

...a fundamental rule of statutory construction that where there exists a general statutory provision and a specific statutory provision...both relating to the same subject the specific provision controls and should be applied.” *Knolls Condo. Ass’n v. Harms*, 202 Ill. 2d 450, 459 (2002).

22. Section 21(r) allows the storage or disposal of CCW outside of a permitted landfill. These are protections that the General Assembly intended for generators of CCW to have. *People ex rel. Madigan v. Wildermuth*, 2017 IL 120763, ¶17. (“When construing a statute, [a] court’s fundamental objective is to ascertain and give effect to the intent of the legislature.”).

23. In this case, the prior owner conducted “a waste-storage...operation for wastes generated by” its own activities, and “stored” the waste “within the site where such wastes are generated.” Section 21(d) allowed the prior owner to do so without a permit, and under the plain text of Section 21(r), this was an acceptable practice. To the extent that MWG can be said to have “allowed” the storage or disposal of CCW at the Former Placement Area (even though the record shows that it no longer contains coal ash), it was in compliance with Section 21(r) of the Act. Accordingly, because the CCW in the Former Placement Area is in compliance with the Act, any evidence of a remedy for those areas should be excluded.⁵

WHEREFORE, for the reasons stated above, MWG requests that the Hearing Officer grant this Motion *In Limine* and enter an order barring evidence relating to the need for, or remedy for, the Former Placement Area at the Will County Station.

Respectfully submitted,

Midwest Generation, LLC

By: /s/ Jennifer T. Nijman
One of Its Attorneys

⁵ MWG further reserves the right to claim that the other areas of historic ash are in compliance with Section 21(r) of the Act, and thus not in violation of the Act.

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EXHIBIT 1

COMMONWEALTH EDISON COMPANY

PHASE II ENVIRONMENTAL SITE ASSESSMENT

**Will County Generating Station
529 East Romeo Road
Romeoville, Illinois**

**ENSR
Consulting * Engineering * Remediation**

**December 1998
File Number 1801-023-710**

2.0 INVESTIGATION METHODS

Prior to initiation of field investigations, a site reconnaissance was performed during the Phase I ESA to define the study area. Field investigation activities were subsequently conducted to obtain site specific information and data pertaining to site geology and hydrogeology, groundwater quality, soil properties, and potential contaminant source(s).

The sampling locations were recommended based on the preliminary Phase I ESA findings. A sampling location summary listing is presented in **Table 1**. A summary of the identified potential areas of concern is presented below.

1. **Ash Disposal Areas.** Three ash disposal areas are located on the southern portion of the facility. These areas are used to store ash prior to having it transported off-site. Two soil borings (B-1 and B-2) were advanced and one monitoring well (MW-1) was installed in the southeastern ash disposal area. Two soil borings were (B-3 and B-4) were advanced in the southwestern ash disposal area. One surface soil sample (S-1) was collected in the western ash disposal area by the Ash Settling Ponds.
2. **Stormwater Runoff Ponds.** There are 3 ponds at the facility which collect surface stormwater runoff. The ponds are located to the south of the main building and construction offices. One sediment sample (X-6) was collected from the pond located to the southwest of the construction offices. One sediment sample (X-7) was collected from the pond located to the south of the construction offices. One sediment sample (X-13) was collected from the pond located to the west of the construction offices.
3. **Ash Settling Ponds.** There are 4 ponds at the facility which are used to collect ash wastewater. The ponds are located on the western portion of the facility. One sediment sample (X-3) was collected from the southern pond, and one sediment sample (X-4) was collected from the pond directly north of the southern pond. In addition, one soil boring (B-5) was advanced and one monitoring well (MW-2) was installed between these two southern ponds. One sediment sample (X-5) was collected from the northern pond. One sediment sample (X-8) was collected from the pond located to the north of the Sluice Water Pump Building.
4. **Former Sulfur Dioxide Scrubber Ponds.** A former sulfur dioxide scrubber system was previously located in the southwestern corner of the facility. Two ponds associated with this former system are located to the south of the Ash Settling Ponds. One sediment sample (X-1) was collected from the western pond, and one sediment sample (X-2) was collected from the eastern pond.
5. **Sluice Water Pumping Area.** A Sluice Water Pump Building and Sluice Water Retention Pond, which are used to recycle sluice water back into the system, are located to the north of the southern Ash Settling Ponds. One surface soil sample (S-24) was collected on the west side of the building, and one sediment sample (X-14) was collected

Table 5
Groundwater Sampling
Groundwater Analytical Results in Milligrams per Liter (mg/l)
Commonwealth Edison Company - Will County Generating Station
529 East Romeo Road
Romeoville, Illinois

Parameters	Sample I.D.	MW-1 (B-2)	MW-2 (B-5)	MW-3 (B-8)	MW-4 (B-13)	MW-5 (B-10)	IEPA Groundwater (Class I) Cleanup Objectives
	Lab I.D.	Sample Date	Sample Date	Sample Date	Sample Date	Sample Date	
BTEX	499952	10/26/98	499953	499954	499955	499956	
Benzene		< 0.001	< 0.001	< 0.001	< 0.001	0.031	0.005
Toluene		< 0.001	< 0.001	< 0.001	< 0.001	0.037	1.0
Ethyl Benzene		< 0.001	< 0.001	0.0016	< 0.001	0.066	0.7
Total Xylenes		< 0.001	< 0.001		< 0.001	0.058	10.0
PNAs							
Acenaphthene		< 0.0005	< 0.0005	< 0.0005	< 0.0005	< 0.051	0.42
Acenaphthylene		< 0.0005	< 0.0005	< 0.0005	< 0.0005	< 0.0020	NA ⁽¹⁾
Anthracene		< 0.0005	< 0.0005	< 0.0013	< 0.0005	< 0.17	2.1
Benzo(a)anthracene		< 0.0013	< 0.0013	< 0.0013	< 0.0013	< 0.020	0.00013
Benzo(a)pyrene		< 0.0023	< 0.0023	< 0.0023	< 0.0023	< 0.00023	0.0002
Benzo(b)fluoranthene		< 0.0018	< 0.0018	< 0.0018	< 0.0018	< 0.0022	0.00018
Benzo(g,h,i)perylene		< 0.0076	< 0.0076	< 0.0076	< 0.0076	< 0.00076	NA
Benzo(k)fluoranthene		< 0.0017	< 0.0017	< 0.0017	< 0.0017	< 0.00017	0.00017
Chrysene		< 0.0005	< 0.0005	< 0.0005	< 0.0005	< 0.013	0.0015
Dibenzo(a,h)anthracene		< 0.0030	< 0.0030	< 0.0030	< 0.0030	< 0.00030	0.0003
Fluoranthene		< 0.0005	< 0.0005	< 0.0007	< 0.0005	< 0.17	0.28
Fluorene		< 0.0005	< 0.0005	< 0.0005	< 0.0005	0.19	0.28
Indeno(1,2,3-c,d)pyrene		< 0.0043	< 0.0043	< 0.0043	< 0.0043	< 0.00043	0.00043
Naphthalene		< 0.0005	< 0.0005	< 0.0020	< 0.0005	0.46	0.025
Phenanthrene		< 0.0010	< 0.0010	< 0.0010	< 0.0010	< 0.30	NA
Pyrene		< 0.0005	< 0.0005	< 0.0005	< 0.0005	< 0.28	0.21
RCRA Metals							
Arsenic		< 0.0050	0.0054	< 0.0050	< 0.0050	< 0.0050	0.05
Barium		0.059	0.379	0.137	0.069	0.157	2.0
Cadmium		< 0.010	< 0.010	< 0.010	< 0.010	< 0.010	0.005
Chromium		< 0.040	< 0.040	< 0.040	< 0.040	< 0.040	0.1
Lead		< 0.0050	0.0148	< 0.0050	< 0.0050	< 0.0050	0.0075
Mercury		< 0.0002	< 0.0002	< 0.0002	< 0.0002	< 0.0002	0.002
Selenium		< 0.0050	< 0.0050	< 0.0050	0.0102	< 0.0050	0.05
Silver		< 0.040	< 0.040	< 0.040	< 0.040	< 0.040	0.05
Total PCBs		< 0.0005	< 0.0005	< 0.0005	< 0.0005	< 0.0005	0.0005
pH		6.87	7.80	7.09	7.34	6.62	NA
Specific Conductivity (mol)		150.7	96.0	0.235	103.1	144.4	NA
Temperature (C)		18.3	19.4	17.2	18.3	20.0	NA

Notes:
 Cleanup objectives were derived from Illinois Environmental Protection Agency Section 742 Appendix B-Table E: Tier 1 Groundwater Remediation Objectives for the Groundwater Component of the Groundwater Ingestion Route.
⁽¹⁾ NA indicates not applicable, cleanup objectives have not been established for these parameters.

EXHIBIT 2

ILLINOIS POLLUTION CONTROL BOARD
August 31, 2017

SIERRA CLUB, ENVIRONMENTAL)
LAW & POLICY CENTER,)
PRAIRIE RIVERS NETWORK AND)
CITIZENS AGAINST RUINING)
THE ENVIRONMENT,) No. PCB 13-15
))
Complainants,)
))
vs)
))
MIDWEST GENERATION, LLC,)
))
Respondent.)

REPORT OF THE PROCEEDINGS had at the hearing on a motion of the above-entitled cause before the Honorable BRADLEY HALLORAN, Hearing Officer of said Court, Room 9-040, The Thompson Center, Chicago, Illinois, on the 31st day of January, 2018, at the hour of 9:00 a.m.

1 Waukegan?

2 A. I arrived late in 2012. I've been
3 there since then.

4 Q. And did you work at a Midwest
5 Generation station before then?

6 A. Yes, I worked at Will County station
7 between December of '99 to when I went to
8 Waukegan.

9 Q. And what was your position at Will
10 County?

11 A. I was a chemistry systems specialist
12 there.

13 Q. What did you do when you were at
14 Will County?

15 A. I -- I was the -- I was the
16 certified wastewater operator. I also handled the
17 process chemistry and the water treatment area.

18 Q. I'm going to put the aerial of
19 Waukegan station on the screen, please. Do you
20 recognize what is shown on the screen?

21 A. Yes, that's an aerial of Waukegan
22 station.

23 Q. And, to your knowledge, can you
24 generally describe the area around the Waukegan

1 Q. When it was one north receiving
2 water, was it receiving ash?

3 A. No, it was not.

4 MS. GALE: I didn't think we'd get
5 this far. Can we go off the record for just a
6 moment?

7 (Whereupon, a break was taken
8 after which the following
9 proceedings were had.)

10 HEARING OFFICER HALLORAN: We're
11 back on the record.

12 BY MS. GALE:

13 Q. When you were at Will County, had
14 you ever heard of a slag dumping area?

15 A. No.

16 Q. Okay. Can you please look at
17 Exhibit 18-D, look at page 5739. Are you there?

18 A. Yes.

19 Q. In the center of this map next to
20 the switch yard, when you were at Will County, was
21 that a slag dumping area?

22 A. No, it was not.

23 Q. What was in that area?

24 A. Gravel. It was just a way -- piping

1 was there, but there was some gravel between the
2 road and the switch yard.

3 Q. Was there a pathway or mechanism for
4 ash to get to that area?

5 A. No.

6 Q. Okay. Staying on the same page.
7 When you were at Will County, had you ever heard
8 of a slag and bottom ash dumping area?

9 A. No.

10 Q. Looking at the same page on the
11 bottom right of the map at the southeast corner of
12 the property, when you were at Will County, was
13 that a slag and bottom ash dumping area?

14 A. No.

15 Q. What was in that area?

16 A. It was an open field. It was away
17 from the primary processes of the plant. It was
18 basically a road where the ash trucks went by and
19 went to the ash site.

20 Q. And was there a pathway or mechanism
21 for ash to get to that area?

22 A. No.

23 Q. You can put that down. Thank you.

24 When you were at Will County, was deicing material

EXHIBIT 3

Expert Report of John Seymour, P.E.

I have prepared this Expert Report on behalf of Midwest Generation, LLC (MWG) to present my opinions and to address the two expert reports issued by M. James R. Kunkel in the Matter of:

SIERRA CLUB, ENVIRONMENTAL LAW AND POLICY CENTER, PRAIRIE RIVERS NETWORK,
and CITIZENS AGAINST RUINING THE ENVIRONMENT

Complainants,

v

MIDWEST GENERATION, LLC,

Respondent

PCB 2013-0015

Section 1: INTRODUCTION

1.1. Background

Since 1999, MWG has operated four electric generating stations at issue in this matter: the Joliet #29 Generating Station ("Joliet #29") located in Joliet, Will County, Illinois; the Powerton Generating Station ("Powerton") located in Pekin, Tazewell County, Illinois; the Waukegan Generating Station ("Waukegan") located in Waukegan, Lake County, Illinois; and the Will County Generating Station ("Will County") located in Romeoville, Will County, Illinois. Prior to 1999, the stations were operated by other entities and pre-1999 documents identify historic areas where ash was placed.¹

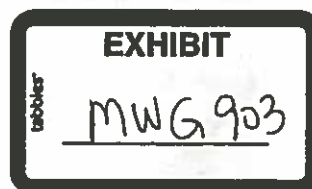
Each of the generating stations includes active ash ponds as an integral part of the generating stations' wastewater treatment systems (MWG Facility NPDES Permits).² All of the ash ponds are permitted pursuant to MWG's NPDES permits (IL0064254, IL0002232, IL0002259, and IL0002208) and operate pursuant to the limits, terms, and conditions of the permits. All of the active ash ponds at the MWG facilities are fully lined with 60 mil-thick high density polyethylene (HDPE) liners.

In 2010, MWG voluntarily agreed to Illinois EPA's request to perform hydrogeological assessments around the ash ponds at its generating stations.³ On June 11, 2012, based on the results of the hydrogeological assessments, Illinois EPA issued Violation Notices (VN) to MWG alleging violations of

¹ MWG13-15_8502-8536, MWG13-15_11966-12040, MWG13-15_29502-29532, MWG13-15_25139-25167

² MWG's Answer and Defenses to Second Complaint, Answers to Complaint ¶¶ 1, 3, 5, 7

³ MWG13-15_364; MWG13-15_384; MWG13-15_407; MWG13-15_421



quarterly groundwater monitoring in 2014 were all below IEPA Class I groundwater standards, indicating no impacts of selenium or chromium. Thus, it is my opinion based on this analysis, that leachate from historical ash in fill materials at Powerton is not adversely impacting the groundwater.

5.7.2.3. *Will County Investigation*

On behalf of MWG, KPRG performed an investigation in June and August 2015 of historical ash in fill materials at Will County.¹⁴⁶ This investigation included the collection of 20 historical ash samples from 20 soil borings at the Will County site. Historical ash samples were analyzed using a neutral leachable procedure (NLET) for metals. KPRG's report documented the following conclusions:

- "The ash deposits are consistent and homogenous consisting bottom ash/slag from the coal combustion process."
- "There were no outlier samples, and all samples collected were used in the calculations."
- "The NLET metals data from the 20 sample locations indicate with a high degree of statistical certainty that the criteria established in 415 ILCS 5/3.135 (formerly 415 ILCS 5/3.94) a-5(B) are met and that the material may be considered CCB relative to this criterion for engineering/beneficial reuse."
- "The data set is sufficiently large to support the statistical evaluations based on the variance and specific regulatory threshold relationships."

Thus, it is my opinion that leachate from historical ash in fill materials at Will County is not adversely impacting the groundwater.

5.8. *Bottom Ash in Inactive Ponds is Not a Source of Groundwater Concentrations*

Data obtained from recent samples of bottom ash accumulated in ash ponds from multiple sites show that leachate from the bottom ash meets IEPA Class I standards based on leaching from the pond environment (NLET) (see Section 5.5.1.1). Based on these data, it is reasonable to conclude that bottom ash accumulated in inactive ash ponds are not a source of groundwater concentrations.¹⁴⁷

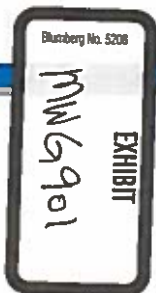
¹⁴⁶ KPRG, 2015

¹⁴⁷ The Will County inactive ash ponds 1N and 1S have been modified to prevent more than one foot of standing water. This pond modification will reduce the volume of potential leachate at the Will County inactive ash ponds.

EXHIBIT 4

*Sierra Club Environmental, et al. v.
Midwest Generation, LLC.*

Respondent Expert John Seymour



Potential Leaching Characteristics of Historical Ash in Fill Materials

Generating station:	Joliet #29	Powerton	Will County
Sample Date:	July 2005 KPRG	May 2004 Andrews Engineering	June/August 2015 KPRG
Sample location:	15 soil borings from former ash placement area	8 ash samples from test pits in the Limestone Runoff Basin	20 soil borings at the Will County site
Findings:	-high degree of statistical certainty that the criteria established in 415 ILCS 5/3.135 (formerly 415 ILCS 5/3.94) a-5(B) are met and that the material may be considered CCB for engineering/ beneficial reuse	Metals were less than the IEPA Class I groundwater standards except selenium and chromium (2 wells); no impacts of selenium or chromium above groundwater standards	High degree of statistical certainty that the criteria established in 415 ILCS 5/3.135 (formerly 415 ILCS 5/3.94) a-5(B) are met and that the material may be considered CCB for engineering/ beneficial reuse
Sources:	MWG13-15_19486-668	MWG13-15_11302-492	MWG13-15_49565-649