

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF: )  
) R 20-19(A)  
STANDARDS FOR THE DISPOSAL )  
OF COAL COMBUSTION RESIDUALS ) (Rulemaking - Water)  
IN SURFACE IMPOUNDMENTS: )  
PROPOSED NEW 35 ILL. ADM. )  
CODE 845 )

**NOTICE OF FILING**

To: Mr. Don A. Brown Vanessa Horton  
Clerk of the Board Hearing Officer  
Illinois Pollution Control Board Illinois Pollution Control Board  
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**(SEE PERSONS ON 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 Response to Comments in the Illinois Coal Combustion Residual Rulemaking Subdocket, a copy of which is herewith served upon you.

Dated: August 2, 2022

MIDWEST GENERATION, LLC

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**CERTIFICATE OF SERVICE**

I, the undersigned, on oath state the following:

That I have served the attached MIDWEST GENERATION, LLC'S RESPONSE IN THE ILLINOIS COAL COMBUSTION RESIDUAL RULEMAKING SUBDOCKET via electronic mail upon:

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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

**IN THE MATTER OF:** )  
 )  
**STANDARDS FOR THE DISPOSAL OF** )  
**COAL COMBUSTION RESIDUALS IN** ) **R20-19 (A)**  
**SURFACE IMPOUNDMENTS: PROPOSED** ) **(Rulemaking – Water)**  
**35 ILL.ADM. CODE PART 845** )  
 )

**MIDWEST GENERATION, LLC’S RESPONSE TO COMMENTS IN THE ILLINOIS  
COAL COMBUSTION RESIDUAL RULEMAKING SUBDOCKET**

Midwest Generation, LLC (“MWG”) appreciates the opportunity to respond to the comments submitted in the Illinois Coal Combustion Residual Rulemaking Subdocket A. This response addresses the supplemental comments submitted by the Environmental Law & Policy Center, Little Village Environmental Justice Organization, Prairie River Network, and Sierra Club (the “Environmental Groups”) in support of their Proposal (“Environmental Groups’ Supplemental Comment”) (P.C. #20). Also included are general responses to comments by other participants.

**I. The Environmental Groups’ Supplemental Comment Fails to Cure the Legal Deficiencies in their Proposal.**

The Environmental Groups’ Supplemental Comment does not cure the statutory and regulatory deficiencies in their Proposal. As MWG’s prior Comment (P.C. #18) explained, their original Proposal (P.C. #10), failed to include information on how their proposed rules are technically justified, technically feasible, and economically reasonable. Their Supplemental Comment similarly fails to provide this required information.

Rather than cure these legal deficiencies, the Supplemental Comment proceeds to add even more of them. The Environmental Groups propose additional regulations omitted from their Proposal without providing information to satisfy any of the statutory or regulatory rulemaking requirements for regulatory proposals. For example, they provide no technical justification for

their newly proposed regulatory deadlines, including the requirement to conduct a site characterization within four months of the Illinois Environmental Protection Agency (“Illinois EPA”) approval of the CCR Fill Characterization Plan. Nor is any technical justification offered for the new requirement that the Illinois EPA must issue an expediated construction permit at the behest of the Illinois Pollution Control Board (“Board”). There also is no description of how these proposed short deadlines are technically feasible to achieve for an owner or operator of a power station, or for the Illinois EPA. The other proposed additional regulations in their Supplemental Comment similarly do not have a technical justification or description of whether the proposals are technically feasible.

Similarly, the Environmental Groups’ Supplemental Comment does not provide an economic justification for the proposed rule to regulate historic coal ash at power-generating stations, nor the additional regulation of coal ash piles or fugitive dust from CCR. 415 ILCS 5/27; 35 Ill. Adm. Code 102.202(b). There also is no demonstration provided of the economic reasonableness of these proposed rules - - which is another essential requirement of any rule proposal. Their Supplemental Comment is completely devoid of any cost estimates for the additional proposed regulations.

The Environment Groups’ Supplemental Comment contains none of the requirements under the Board Rules to propose a new rule or modify a rule, including requirements to identify the universe of the affected sources, the economic impact of the proposed rule, a synopsis of the testimony to be presented, a petition in support of the proposed rule, a justification for the inapplicability or unavailability of the required information, and for the amendments to Part 845, a written certification that the proposal amends the most recent version. 35 Ill. Adm. Code 102.202(b), (c), (g), (j), and (k).

Because the Environmental Groups persist, after repeated opportunity, to ignore the applicable rulemaking requirements under the Illinois Environmental Protection Act (the “Act”) and Board Rules, the Environmental Groups’ Proposal should be dismissed. *In the Matter of: Proposal of Amerock Corporation, Rockford Facility, for Site-Specific Rulemaking Proposal for Amendment to 35 Ill. Adm. Code 304.303*, PCB R01-15 (Jan. 18, 2001) (Board dismissed petition for rulemaking because petitioner failed to submit a complete synopsis of all testimony and to justify the unavailability or inapplicability of the information).

## **II. MWG’s Support Of Other Parties’ Comments**

MWG supports the comments filed by Dynegey, Southern Illinois Power Cooperative, the Illinois Environmental Regulatory Group, and the Illinois EPA. Like MWG’s comments, each identified the many deficiencies in the Environmental Groups’ Proposal, including their failure to comply with the Act or the Board Rules for a new or modified Board rule, and the lack of any technical or economic justification for the Proposal.

Illinois EPA’s comment on the Environmental Groups’ Proposal explains in persuasive detail why the Environmental Groups’ Proposal is legally inadequate and unnecessary. Illinois EPA correctly explains why the proposed Part 846 to regulate CCR fill areas exceeds the scope of the authority granted the Board under Sec. 22.59 of the Act. Section 22.59 does not authorize the Board to adopt rules regarding CCR in areas outside of CCR surface impoundments. Also, like MWG, the Illinois EPA noted that the Environmental Groups’ proposed Part 846 conflicts with the Illinois EPA’s Site Remediation Program under Title XVII of the Act. 415 ILCS 5/Tit. XVII. As the Illinois EPA aptly stated, the Environmental Groups’ proposed modifications to the fugitive dust program is an “unworkable regulatory framework” and their proposed Environmental Justice Screening Tools do not identify any additional power stations that are not already included in the

definition in Part 845. Hence, these proposed screening tools add nothing of any substance while further increasing the Illinois EPA's administrative burden. Finally, MWG agrees with the Illinois EPA's comment that the Environmental Groups' proposed modifications to the coal pile regulation are vague, unenforceable and impose arbitrary limits on CCR pile size.

**III. There is No Factual or Legal Basis to Continue With this Subdocket.**

MWG appreciates the Board seeking additional information on issues raised during the accelerated rulemaking process to promulgate Part 845. However, after review of the comments submitted by participants in this Subdocket, there is no factual or legal basis that warrants proceeding further. No one has submitted a proposal for regulation of CCR fill areas, nor modifications to Part 845, that complies with the statutory and regulatory rulemaking requirements under the Act and Board regulations. Additionally, no one has submitted a factual basis for regulating CCR fill areas or to support the modifications to Part 845, including a technical and economic justification, or a showing of technical feasibility. Accordingly, MWG requests that the Board proceed to close Subdocket A.

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Midwest Generation, LLC

By: /s/ Kristen L. Gale  
Kristen L. Gale

Dated: August 2, 2022

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