Exhibit 11

MWG Response to Illinois EPA Violation Notice
for the Joliet #29 Generating Station, July 27, 2012

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July 27, 2012

VIA OVERNIGHT MAIL

Illinois EPA
Division of Public Water Supplies
Attn: Andrea Rhodes, CAS #19
P.O. Box 19276
Springfield, IL 62794-9276

Re: Violation Notice: Midwest Generation, LLC, Joliet #29 Generating Station
Identification No.: 6284
Violation Notice No.: W-2012-00059

Dear Ms. Rhodes:

In response to the above-referenced June 11, 2012 Violation Notice ("VN"), received on June 13, 2012, this written response is timely submitted on behalf of the Midwest Generation, LLC ("MWG"), Joliet #29 Generating Station ("Joliet #29"). MWG also requests a meeting with the Illinois Environmental Protection Agency ("Illinois EPA" or the "Agency") to discuss the VN and information provided in this response.

MWG regrets that the Illinois EPA decided to issue the VN because MWG has tried to work cooperatively with the Agency concerning the hydrogeologic assessment of the coal ash ponds at Joliet #29 even though it had significant concerns and objections to how the VN has proceeded in this matter.[1] Nevertheless, MWG complied with the Agency's request that it conduct a hydrogeologic assessment of the area around the coal ash ponds and followed its requirements and comments for how the hydrogeologic assessment should be conducted, even though it was under no legal obligation to do so.[2] At no time however did MWG agree that the scope and nature of the hydrological assessment the Agency required it to perform would

[1] *See, e.g.,* MWG (B. Constantelos) letter to Illinois EPA (A. Keller) dated July 15, 2009. MWG is also working cooperatively with the USEPA with regards to the Coal Combustion Residuals Proposed Rules, EPA-HQ-RCRA-2009-0640, and is trying to coordinate the responses and requirements of both Agencies. USEPA first issued the proposed rules on June 21, 2010, and requested additional comments and information on Oct. 12, 2011. The additional information comment period closed on November 14, 2011, and MWG is now waiting for the USEPA to issue the final rule.

[2] MWG continues to reserve its objection that the Illinois EPA did not have the legal authority to require the hydrological assessments of the ash ponds under Sections 4 or 12 of the Illinois Environmental Protection Act (the "Act") or the Groundwater Quality Regulations, 35 Ill. Adm. Code Part 620.

provide any basis for concluding that the ash ponds were impacting groundwater. The alleged violations in the VN are based solely on the results of the hydrogeologic assessment MWG performed at the Agency's request. The results of the hydrogeologic assessment do not show that the coal ash ponds at the Joliet #29 Station are impacting the groundwater and do not provide the necessary evidence to support the alleged violations contained in the VN.

Well prior to the issuance of this VN, MWG met with the Agency to discuss the groundwater monitoring results and to discuss cooperatively how to proceed based on those results, including what additional actions, if any, the Agency believed were necessary. The Agency told MWG that it had not yet decided how to proceed. The next development was the issuance of the VN. The VN itself provides no information concerning the basis for the Agency's apparent conclusion that the Joliet #29 ash ponds are the cause of the alleged groundwater impacts, other than the conclusory statement that "[o]perations at ash impoundments have resulted in violations of the Groundwater Quality Standards." The VN also provides no information concerning the nature or type of corrective action which the Agency may deem acceptable to address the alleged violations. The Agency is not pursuing this matter in a way that allows MWG to prepare an effective response or a Compliance Commitment Agreement.

This letter provides a detailed response to each of the alleged violations in Attachment A of the VN to the extent possible given the lack of information provided in the VN. It also advances MWG's general objection to the legal sufficiency of the notice of the alleged violations contained in the VN. MWG maintains that the Illinois EPA cannot prove the alleged violations in the VN, and does not, by submitting this response, make any admissions of fact or law, or waive any of its defenses to those alleged violations.

I. General Objection to the Legal Sufficiency of the Violation Notice

The VN does not comply with the requirements of Section 31 of the Act. Section 31(a)(1)(B) of the Act requires the Illinois EPA to provide a detailed explanation of the violations alleged. 415 ILCS 5/31(a)(1)(B). Under the Act, MWG is entitled to notice of the specific violation charged against it and notice of the specific conduct constituting the violation.[3] The VN fails to provide adequate notice to MWG of either the alleged violations or the activities which the Agency believes are necessary to address them. The VN states that "[o]perations at ash impoundments have resulted in violations of the Groundwater Quality Standards...." (Violation Notice, Attachment A, page 1, 1st paragraph) No further description of the alleged "ash impoundments" is provided in the VN. Three ash impoundments exist at the Joliet #29 Station. It is impossible to identify from the contents of the VN what operations or activities at the Joliet #29 Station the Agency is claiming are the cause of the alleged violations, including

[3] *Citizens Utilities Co., v. IPCB*, 9 Ill.App.3d 158, 164, 289 N.E.2d 642, 648 (2nd Dist., 1972) (a person is entitled to notice of the specific violation charged against it and notice of the specific conduct constituting the violation). *See also, City of Pekin v. Environmental Protection Agency*, 47 Ill.App.3d 187, 192, 361 N.E.2d 889, 893 (3rd Dist., 1977.

whether it is the Agency's position that each of the Station's ash ponds, or only certain ones, have caused the alleged violations. Absent an accurate or complete description of the activities or operations that the Agency is alleging caused the violations, it is also not possible to identify what action might be necessary to resolve them. Attachment A to the VN states: "Included with each type of violation is an explanation of the activities that the Illinois EPA believes may resolve the violation." However, no such explanation is provided in the VN. In sum, the VN fails to comply with the legal requirement that it include a detailed explanation of the violations alleged, does not inform MWG of the specific conduct constituting the alleged violations and provides no notice of what is necessary to resolve the alleged violations. The Section 31 process is based on fundamental principles of due process. MWG should not have to speculate about what activities it allegedly engaged in that caused the violations and how to address them to resolve the alleged violations. In the absence of this material, statutorily-required information, the Agency also has effectively denied MWG's statutory right to formulate an acceptable Compliance Commitment Agreement to submit for the Agency's approval.

The VN is also deficient regarding its explanation of what laws MWG has allegedly violated. The VN solely alleges that MWG violated "Section 12" of the Act. 415 ILCS 5/12. It does not provide any further specification as to which of the provisions of Section 12 MWG has allegedly violated. Sec. 12 of the Act has nine subsections, consecutively numbered (a) through (i). Each of these subsections describes a different and distinct water pollution prohibition. 415 ILCS 5/12(a)-(i). However, the VN issued to MWG does not identify which of the nine subsections the Agency is alleging MWG violated. Based on the contents of Section 12 of the Act, the Agency is taking the position that MWG violated each and every one of the provisions of Section 12. Based on the relevant facts, it is highly unlikely that this is the intent of the VN. Therefore, the VN's general reference to Section 12 of the Act, without any other explanation, is not a "detailed explanation of the violations." This is another example of how the VN fails to provide MWG with adequate notice as a matter of law and thereby violates MWG's due process rights.[4]

By failing to provide a detailed explanation of the violations and any explanation of the activities that the Illinois EPA believes may resolve the violations, , the Agency has effectively denied MWG the opportunity to properly and thoroughly respond to the alleged violations and to make an acceptable offer to resolve them. The VN's deficiencies conflict with the intent and purpose of Section 31 of the Act, which is to avoid unnecessary litigation. Therefore, MWG respectfully requests that Illinois EPA rescind the VN and suspend any further enforcement action unless and until it has taken the necessary actions to correct and cure the legal deficiencies in the notice of the alleged violations by following the statutory requirements under Section 31(a)(1)(B) of the Act. 415 ILCS 5/31(a)(1)(B).

[4] *See, e.g., Grigoleit Co. v. IEPA*, PCB 89-184, slip op at p. 11 (November 29, 1990) (Failure to notify permit applicant of alleged violations and provide an opportunity to provide information in response was a violation of applicant's due process rights)

II. Response to Alleged Violations in the VN

Subject to and without waiving its objections to the legal sufficiency of the VN, MWG has attempted to discern the legal basis for the alleged violations and to prepare this response in defense to those allegations based on various assumptions. MWG reserves the right to supplement this response, including by submitting a separate response should the Agency provide the legally required notice under Section 31 of the Act.

The VN alleges that the "[o]perations at ash impoundments" at MWG's Joliet #29 Station have resulted in violations of certain of the Groundwater Quality Standards at the respective monitoring wells identified in the VN. (Violation Notice at Attachment A) MWG believes the Agency's use of the term "ash impoundments" is intended to refer to the structures that the Joliet #29 Station commonly refers to as "ash ponds;" that is how they will be referred to here. The Agency further alleges that the alleged violations of the groundwater quality standards in 35 Ill. Admin. Code Part 620 also constitute violations of Section 12 of the Act and the underlying groundwater regulations in 35 Ill. Admin. Code Part § 620. It is undisputable that the Agency has the burden to prove these alleged violations both in proceedings before the Illinois Pollution Control Board ("Board") and in the courts.[5] However, the groundwater monitoring data on which the Agency primarily, if not solely relies, to assert these violations is not sufficient, legally or technically, to prove that any "ash impoundment" is the source of the alleged groundwater impacts. Further, based on the existing condition of the ash ponds, it is not likely that they are the source of the alleged impacts.

To support its defense to the alleged violations, MWG has set forth below a description of: (1) the condition and use of the ash ponds at Joliet #29; (2) the hydrogeologic assessment performed at the Joliet #29 Station; (3) the site hydrology; and (4) why the analytical data from the monitoring wells does not establish that the ash ponds are the source of the alleged exceedances of the groundwater standards.[6] In addition, for certain of the alleged exceedances, additional information not considered by the Agency shows that it is either more likely, or at least as likely, that the source of the alleged exceedance is something other than the ash ponds. In either case, the Agency cannot sustain its burden to prove the alleged violations.

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[5] Section 31(e) of the Act provides in relevant part: "In hearings before the Board under this Title, the burden shall be on the Agency...to show either that the respondent has caused or threatened to cause...water pollution or that the respondent has violated or threatens to violate any provision of this Act or any rule or regulation of the Board or permit or term or condition thereof." 415 ILCS 5/31(e); *Citizens Utilities v. IPCB*, 9 Ill. App. 3d 158, 164, 289 N.E.2d 642, 646 (1972) (the Agency has the burden of proof in enforcement actions).

[6] In preparing this response, MWG closely reviewed the groundwater monitoring reports previously submitted to the Agency for the monitoring wells which are identified in the VN. In the course of this review, some data transcription errors were found in the previously submitted data tables included in the groundwater monitoring reports. Copies of the corrected data tables are enclosed. The tables are annotated to identify the nature of the corrections made to the previously submitted reports. However, none of the transcription errors affected the values that are the subject of and reported in the VN.

A. The Condition of the Ash Ponds

For several reasons, the construction and operation of the Joliet #29 ash ponds makes it unlikely that they are the cause of the alleged violations. The construction and operation of the ponds minimizes the potential for leakage from the ash ponds to groundwater.

First, the Joliet #29 ash ponds, known as Ponds 1, 2 and 3, are not ash disposal sites. The ash that enters the ponds is routinely removed. Ponds 1 and 2 are used both intermittently and interchangeably with each other. Their use is intermittent because under normal station operations, the ash wastewater generated by Joliet #29 is conveyed mechanically directly to the on-site, permitted Lincoln Stone Quarry Landfill without entering any of the ash ponds. The Lincoln Stone Quarry Landfill is the disposal site, not the ash ponds. However, because there are temporary periods of time when the ash wastewater conveyance system is not operational, due to maintenance reasons, either Pond 1 or Pond 2 is temporarily used until the ash wastewater conveyance system is brought back on line. During those times when ash wastewater is entering Pond 1 or Pond 2, the wastewater exits one of those ponds and then enters Pond 3. Pond 3 provides additional settling time for any residual ash. However, as is evident from visually observing the influent to Ponds 1 and 2 versus the influent to Pond 3, most of the ash settles out in Pond 1 or Pond 2 before flowing to Pond 3. Thus, the amount of ash that accumulates in Pond 3 is minimal. As necessary, the ash that accumulates in the ash ponds is periodically removed. However, because the use and purpose of Pond 3 as an ash settling basin is so minimal, and the rate of ash accumulation is so slow, it has not been necessary to remove ash from Pond 3 during the years that MWG has operated Joliet #29.

Second, unlike many other ash ponds in Illinois, the three ash ponds at Joliet #29 are not simply earthen ponds with no protection against the migration of constituents into the land or groundwater. Each of the Joliet #29 ash ponds is lined to prevent releases to groundwater. Ponds 1 and 2 were relined in 2008 with a high-density polyethylene ("HDPE") liner, overlain by a 12-inch sand cushion layer and a 6-inch limestone warning layer. HDPE liners have a permeability of approximately 10^{-13} cm/sec. Notably, this is a greater degree of permeability than is required in the Illinois Pollution Control Board (the "Board") regulations for constructing a new solid waste landfill where, unlike the ash ponds, waste materials are disposed of on a permanent basis. *See* 35 Ill. Admin. Code § 811.306(d). Pond 3 is lined with a liner of two 6-inch lifts of Poz-o-Pac.[7] The permeability of the Poz-o-Pac liner is 10^{-7} cm/sec, the same degree of permeability that is required in the Board regulations for constructing a new landfill. *See* 35 Ill. Admin. Code § 811.306(d). All of the liners at Joliet #29 achieve or exceed the level of permeability which the Illinois regulations expressly recognize is sufficient to prevent the release of constituents to the environment. Accordingly, the facts regarding the liners in place for these three ash ponds support the conclusion that the ash ponds are not the source of the exceedances of groundwater standards alleged in the VN.

[7] Poz-o-Pac is an aggregate liner similar to concrete.

The VN contains no facts concerning the condition of the Joliet #29 ash ponds that would indicate that they are allowing ash constituents to escape from the ponds. For example, the Agency does not contend that there are any breaches in the integrity of the liners that are allowing ash constituents to be released to the groundwater. The Agency similarly does not claim that the liners are inadequate to prevent the migration of constituents. In the absence of such evidence, it is certainly far more likely than not that the existing ash ponds at the Joliet #29 Station are not the source of the groundwater impacts alleged in the VN.

B. Hydrogeologic Assessment and Site Hydrology

The VN is based on the flawed premise that the hydrologic assessment which the Agency directed MWG to perform in the vicinity of the ash ponds would be sufficient to identify the ash ponds as the source of any elevated levels of constituents in the groundwater. This is simply not the case. The results of the hydrogeologic assessment at best give rise to more questions about the source of the alleged groundwater impacts, and do not prove that the existing ash ponds are the source of those impacts.

The results of the hydrogeologic assessment show a relatively uniform groundwater flow system. Groundwater flows from north to south, consistent with the expected flow direction due to the proximity to the south of Joliet #29 of the Des Plaines River. There does appear to be some convergence of flow in the vicinity of wells MW-2 and MW-5. The elevation of the Des Plaines River correlates to the groundwater elevations, indicating that the River is in direct hydraulic connection with the shallow aquifer. Based upon this groundwater flow direction, groundwater wells MW-8, MW-10, and MW-11 are upgradient wells, and groundwater wells MW-1 through MW-7 and MW-9 are down-gradient wells.

A comparison of the monitoring results from the upgradient (MW-8, MW-10, and MW-11) and down-gradient (MW-1 – MW-7, MW-9) wells does not support the Agency's contention that the ash ponds are the source of the alleged groundwater impacts. The distribution and observation of parameter concentrations is not consistent with coal ash ponds being the source of the impacts identified in the VN. For most of the parameters cited in the alleged violations, the distribution and observation of parameter concentrations is random and inconsistent. As more fully explained below, there are isolated monitoring well results showing exceedances of a given parameter that are not seen in any of the other eleven monitoring wells (*e.g.,* boron, sulfate, total dissolved solids, antimony). These random and isolated detections are not consistent with the ash ponds being the source of the exceedances. Moreover, isolated exceedances occurring within a period of six, consecutive quarterly monitoring events do not confirm the existence of actual groundwater impacts above the applicable standards. For other parameters, such as iron and manganese, the monitoring results are far more consistent with the presence of a reducing environment in the area of groundwater where these elevated levels were detected. Finally, the alleged exceedances for chloride are more logically explained by road salt seeping into the groundwater from U.S. Route 6 to the north, than due to the operation of the ash ponds. Each of these points is discussed in further detail below.

While boron is a primary indicator of potential coal ash impacts to groundwater, there are only two alleged exceedances of boron in monitoring well MW-11. This well is an upgradient monitoring well. These alleged boron exceedances occurred during two consecutive quarterly sampling events, but the boron levels detected in the next three, consecutive quarterly sampling events were all below the boron groundwater standard. Further, when all boron concentrations reported for the remaining 10 monitoring wells are evaluated, there is no indication of elevated boron concentrations that exceed, or even approach exceeding, the boron groundwater standard. There also is no increase in the levels of boron from monitoring wells that are upgradient of the ash ponds to the downgradient monitoring wells. The boron monitoring results clearly fail to support the conclusion that the operation of the ash ponds is causing the alleged groundwater impacts. Absent this evidence, and given that these ponds are lined with HDPE, the evidence supports the conclusion that the ash ponds have not caused the alleged groundwater impacts.

The monitoring data's distribution of sulfate detections from upgradient to downgradient also does not support the allegation that the ash ponds are causing the alleged groundwater impacts. The sulfate levels detected in all of the monitoring wells, with the limited exception of MW-9, are not only low level concentrations but also are similar levels in both the upgradient and downgradient monitoring wells. Monitoring well MW-9 is the only monitoring well where any sulfate exceedances were reported and there are no elevated boron concentrations reported for that well. The isolated, elevated sulfate concentrations in MW-9 are not an indication that the source is the ash ponds. Moreover, there are various, other potential sources of elevated sulfate concentrations in groundwater, both natural and anthropogenic, that are wholly unrelated to coal ash that could be causing the alleged groundwater impacts. Similarly, the alleged exceedances of total dissolved solids ("TDS") also were only observed at MW-9 and not in any of the other monitoring well locations. Again, these geographically isolated exceedances, without the accompanying presence of typical coal ash impact indicators, are technically and legally insufficient to support the conclusion that the ash ponds are the source.

Monitoring well MW-9 also had exceedances of iron and manganese. Both of these constituents are naturally-occurring metals in the Joliet area due to geochemical conditions. The alleged exceedances for iron and manganese are more likely the result of chemical conditions in the groundwater at Joliet #29. The oxidation-reduction potential around MW-9 is consistently low, showing a strongly reducing environment.[8] The field parameter measurements at well MW-9 consistently indicate low dissolved oxygen (DO) and negative oxidation-reduction potential (ORP) which is indicative of a reducing environment. Typically in reducing environments, metals such as iron and manganese can be elevated depending on the associated mineralogy of the local sediments.[9] The oxidation-reduction potential (ORP) data collected in the field during the quarterly sampling is also consistent with the presence of a strongly reducing

[8] See attached Table 1: Field Parameter Data.

[9] Thomas, Mary Ann. The Association of Arsenic with Redox Conditions, Depth, and Ground-Water Age in the Glacial Aquifer System of the Northern United States. Scientific Investigations Report 2007-5036, U.S. Geological Survey, Reston, VA. 2007; "Technical Protocol for Evaluating Natural Attenuation of Chlorinated Solvents in Groundwater" EPA/600/R-98/128, September 1998. Table B.3.3.

environment. ORP levels at MW-9 are consistently the lowest levels found at the site. Therefore, the data shows that it is more likely than not that the elevated levels of these metals detected in the monitoring data are naturally occurring and unrelated to the operation of the ash ponds.

Manganese was also observed once in two other wells, MW-4 and MW-7, in the first quarterly sampling event. These manganese levels have not been seen in any of the subsequent five, consecutive sampling events. In fact, the subsequent MW-4 and MW-7 quarterly sampling results consistently indicate manganese concentrations approximately one order of magnitude or more lower than those detected in the first quarterly sampling event. The complete data set of manganese monitoring results from these wells strongly indicates that the two single manganese detections are not representative of actual groundwater conditions.

Turning to the antimony monitoring results, the alleged antimony exceedance identified in the VN occurred in monitoring well MW-2. There were also two antimony exceedances at well location MW-3 during the last two quarterly sampling events which were not included in the VN. As with other trace metals, there can be various potential sources of antimony, both natural and anthropogenic. In the absence of elevated concentrations of typical ash leachate parameters such as boron, exceedances of antimony cannot be ascribed to an ash source, much less to a release from the ash ponds.

Finally, the Agency's allegation that the ash ponds are the source of the elevated chloride levels detected in the groundwater is also unsubstantiated. A careful review of the chloride data shows that the source of the elevated chloride levels is unrelated to the ash ponds. The chloride exceedances are generally dispersed throughout the site at almost equivalent concentrations. U.S. Route 6 is adjacent to the north, upgradient of the ash ponds. Moreover, most of the exceedances of the chloride Class I groundwater standards occurred in the winter and spring sampling events.[10] It is well documented that both shallow groundwater and surface water commonly exhibit higher concentrations of chloride in the spring due to rain and snow melt transporting dissolved road salt.[11] The distribution in the groundwater monitoring wells clearly indicates that the ash ponds are not contributing to the chloride exceedances.

In sum, the construction of the ponds with low permeability liners, the lack of elevated boron concentrations across the site and the inconsistent pattern of the constituent concentrations clearly do not support the Agency's contention that the ash ponds are the source of these constituents. The data are more consistent with the opposite conclusion, namely that the ash ponds are not the source of the alleged exceedances.

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[10] Seventeen of the twenty-three chloride exceedances occurred during the December and March sampling events.
[11] Mullaney, John R., *et al*, Chloride in Groundwater and Surface Water in Areas Underlain by the Glacial Aquifer System, Northern United States, Scientific Investigations Report 2009-5089, U.S. Geological Survey, Reston, VA. 2009. Table 5.

C. The Joliet #29 Ash Ponds Are Not Causing Groundwater Exceedances

Because the Illinois EPA failed to specify which of the provisions of Section 12 of the Act MWG allegedly violated, MWG has had to speculate to identify the potential Section 12 violations this response needs to address. As stated above, MWG objects to the vagueness of, and legally deficient notice provided by, the VN and reserves its right to responds further when and if the Agency properly identifies the provisions of Section 12 on which it is relying.

For purposes of this response, based upon the regulations cited by the Agency in the VN, MWG has assumed that the Agency's alleged violations of Section 12 are limited to Sections 12(a), which prohibits causing or allowing water pollution, and to Section 12(d), which prohibits causing or allowing the creation of a water pollution hazard. 415 ILCS 5/12(a), (d). Based on these assumptions regarding the substance of the Agency's alleged violations, MWG submits that it cannot show that the ash ponds at Joliet #29 caused or allowed water pollution or created a water pollution hazard.

Overall, the analytical results show that there is no relationship between the ash ponds and the groundwater exceedances. The alleged exceedances of the Class 1 groundwater standards are not consistent with the ash ponds being the source. Boron, a primary indicator for coal ash constituents, is elevated above the groundwater standards at only one out of eleven monitoring wells. The most telling and persuasive data is the complete absence of any boron exceedances from any of the monitoring wells located downgradient of the ash ponds. Certain of the alleged exceedances for other constituents only occur at monitoring wells that are upgradient wells to the ash ponds. Still other alleged exceedances, such as for chloride, are more likely explained by other causes, such as the use of road salt. The monitoring data plainly does not support the Agency's contention that the operation of the "ash impoundments" has resulted in the alleged violations.

To show a violation of Section 12(a) and 12(d), there must be a showing not only of the presence of a potential source of contamination, but also that it is in sufficient quantity and concentration to render the waters harmful. *Bliss v. Illinois EPA,* 138 Ill. App. 3d 699, 704 (1985) ("mere presence of a potential source of water pollutants on the land does not necessarily constitute a water pollution hazard"). In other words, there must be a causal link between the potential source and the water or groundwater. The groundwater monitoring data on which the Agency relies does not establish this essential causal link between the ash ponds and the groundwater. Therefore, the Agency has failed to meet its burden to prove that the ash ponds are the cause of the alleged exceedances of the groundwater standards as required to prove a violation of Sections 12(a) or 12(d) of the Act. 415 ILCS 5/12(a), (d).

The Agency also alleges violations of the groundwater quality regulations based on exceedances of the groundwater quality standards in 35 Ill. Admin. Code § 620.401. There is no violation here of Section 620.401. Section 620.401 solely provides the legal criteria that groundwater must meet the standards appropriate to the groundwater's class. It is a foundational regulation, allowing for different classes of groundwater to meet different groundwater

standards. It is not a prohibition regulation. There is no conduct prohibited by this section of the regulations in which MWG is alleged to have engaged. MWG cannot and did not violate Section 620.401.

The remaining alleged groundwater regulation violations, Sections 620.115, 620.301, 620.405, and 620.410 of the Board Regulations, are all based on the Agency's contention that MWG's operation of the ash ponds has caused the exceedances of the groundwater standards detected in the monitoring data. To sustain these allegations, the Agency must show that MWG caused a discharge of the subject constituents from ash ponds which in turn caused the exceedances of the groundwater standards.[12] The relevant facts and circumstances do not support either conclusion.

The use and condition of the ash ponds does not support a finding that they are releasing constituents to the groundwater. They are not disposal sites. They are only operated intermittently, when the wastewater line that transports ash to the permitted Lincoln Quarry Landfill is unavailable. The ash that accumulates in Ponds 1 and 2 is periodically removed, and so little ash accumulates in Pond 3 that it has not been necessary to remove it since MWG started operating the Joliet #29 Station. The linings in all of the ponds are constructed of materials that provide sufficient permeability, meeting or exceeding accepted regulatory guidance for solid waste landfills, to prevent the release of constituents. Finally, pursuant to the terms of the Joliet #29 Station's NPDES Permit, these ash ponds are part of the flow-through wastewater treatment process at the station. MWG's operation of the ash ponds has been carried out in accordance with the terms and conditions of the NPDES Permit. Under Section 12(f) of the Act, compliance with the terms and conditions of any permit issued under Section 39(b) of the Act is deemed compliance with this subsection.

Similarly, the groundwater data on which the Agency relies does not provide a sufficient scientific or technical evidentiary basis on which to conclude that the ash ponds are causing the alleged groundwater exceedances. The essential "causal link" between the ash ponds and the elevated constituents in the groundwater is missing. The groundwater downgradient of the ash ponds does not show the anticipated constituents associated with a release, or any other indication that the ash ponds are causing the exceedance. For certain parameters, such as chloride, the data clearly point to other, unrelated causes.

Because the ash ponds have not been shown to have caused a release of any contaminants that are causing the groundwater exceedances, the Agency's VN does not support its claims that MWG has violated Sections 620.405 or 620.301 of the Board regulations. Accordingly, MWG also has not violated Section 620.115 of the Board regulations.

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[12] *See People of the State of Illinois v. ESG Watts, Inc.*, PCB 96-107 slip op. at p. 41 (February 5, 1998) (By finding the respondent caused a discharge of constituents into the groundwater causing a violation of the Class II Groundwater standards, the Board found the respondent also violated 35 IAC §§ 620.301 and 620.115)

III. Compliance Commitment Agreement

This VN should not have been issued. Given the absence of proof that the ash ponds are the cause of the alleged groundwater exceedances, the Agency's request for a Compliance Commitment Agreement (CCA) to address the ash ponds is an attempt to compel MWG to conduct unnecessary corrective action to resolve the alleged violations.

Moreover, with the pending federal regulatory process to enact regulations for the design and operation of ash ponds, it is prudent to await the outcome of the proposed federal regulations to determine whether any changes to the ash ponds construction or operation are required by those regulations. The Agency itself has previously advanced this position. In 2010, the Agency's Steven Nightingale testified before the Illinois Pollution Control Board that the Board should consider initiating a temporary moratorium on the closure of coal ash impoundments because of the U.S. EPA's intention to regulate them. (*See In the Matter of Ameren Ash Pond Closure Rules (Hutsonville Power Station): Proposed 35 Ill.Adm.Code Part 840.101 Through 840.152*, Docket R09-21 (October 7, 2010) at p. 64) On behalf of the Agency, Mr. Nightingale told the Board that if industry had to take action in the interim, it "could end up expending substantial money and resources only to find they are subject to additional and/or different closure requirements for those units." (*Id.*) The Agency's pursuit of this enforcement action, particularly given the deficiencies in its alleged evidence, also threatens to force MWG to take actions that may conflict with or otherwise differ from the requirements in the upcoming federal regulations.

As the hydrogeologic assessment of the Joliet #29 ash ponds showed, there is no threat to human health presented by the alleged exceedances of the groundwater standards. The hydrogeologic assessment investigated the presence of potable water sources within a 2,500-foot radius of the site. Seventeen groundwater wells are installed within 2,500 feet of the site. Two of the wells, which are owned by MWG, are located downgradient of the ash ponds. These wells are screened more than 1,500 feet deep, drawing water from a deep aquifer below the Maquoketa shale confining unit. The Maquoketa shale is an aquitard that separates the shallow groundwater in the unconsolidated units and the Silurian dolomite from the underlying aquifers.[13] Both of the MWG wells are regularly sampled for potable water constituents, and the sampling results have consistently been in compliance with potable water regulations.[14] Shallow groundwater at the site discharges to the Des Plaines River. The nearest downgradient water supply intake in the Des Plaines River, a headwater of the Illinois River, is located at Peoria, approximately 127 miles downstream. The Des Plaines River near the Joliet #29 Station is not used as a drinking water source. In the absence of any potable groundwater receptors or use, groundwater at the Joliet #29 site does not pose any risk to human health. Accordingly, awaiting the outcome of the federal regulatory proposal is clearly appropriate under these circumstances.

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[13] Visocky, Adrian P., *et al.* Geology, Hydrology, and Water Quality of the Cambrian and Ordovician System in Northern Illinois. Illinois State Geological Survey, Illinois State Water Survey. 1985. App. C.

[14] See previously submitted Hydrogeologic Assessment of Midwest Generation Electric Generation Stations: Will County Station, Waukegan Station, Joliet 29 Station, Crawford Station, Powerton Station.

Because MWG's preference is to cooperate with the Agency in this matter, MWG presents here a proposed CCA that should be acceptable based on the relevant facts and circumstances. The proposed CCA terms are as follows:

A. The ash ponds will not be used as permanent disposal sites and ash will continue to be removed from the ponds on a periodic basis.

B. The ash ponds will be maintained and operated in a manner which protects the integrity of the existing liners. During the removal of ash from the ponds, appropriate procedures will be followed to protect the integrity of the existing liners, including operating the ash removal equipment in a manner which minimizes the risk of any damage to the liner.

C. During the ash removal process, visual inspections of the ponds will be conducted to identify any signs of a breach in the integrity of the pond liners. In the event that a breach of the pond liners is detected, MWG will notify the Agency and will implement the correction action plan.

D. MWG will continue to monitor the groundwater through the existing eleven groundwater monitoring wells and report its findings to Illinois EPA. MWGen reserves the right to request the Agency's approval of a cessation of all or some of the monitoring requirements based on future monitoring results.

E. MWG will continue to monitor the development of the Coal Combustion Residuals Proposed Rules, EPA-HQ-RCRA-2009-0640. When the final rule is issued, MWG will promptly notify Illinois EPA how it will comply with the new Federal Rules.

This letter constitutes MWG's response to and proposed CCA for the Violation Notice W-2012-00059. MWG also reserves the right to raise additional defenses and mitigation arguments as may be necessary, in defense of the allegations listed in the Violation Notice in the event of any future enforcement. We look forward to discussing the above information further at the soon to be scheduled meeting with the Agency's representatives. Please contact me to schedule a mutually convenient date for the meeting.

Very truly yours,

Susan M. Franzetti
Counsel for Midwest Generation, LLC

Enclosures

cc: Maria L. Race, Midwest Generation, LCC

Table 3
Groundwater Analytical Results - AMENDED JULY 2012
Joliet Station #29, Illinois
Midwest Generation
21253.034

PATRICK ENGINEERING	Sample Analysis Method	Groundwater Quality Standard (mg/L)	MW-1 (mg/L)	MW-1 (mg/L)	MW-1 (mg/L)	MW-1 (mg/L)	MW-1 (mg/L)	MW-1 (mg/L)	MW-2 (mg/L)	MW-2 (mg/L)	MW-2 (mg/L)	MW-2 (mg/L)	MW-2 (mg/L)	MW-2 (mg/L)
Chemical Name		Class I*	12/6/10	3/23/11	6/14/11	9/14/11	12/7/11	3/15/12	12/6/10	3/23/11	6/14/11	9/14/11	12/7/11	3/15/12
Antimony	Metals 6020	0.006	0.0043	NS	ND	NS	NS	NS	**0.012**	NS	0.0042	0.0032	ND	ND
Arsenic	Metals 6020	0.05	0.0011	NS	0.0014	NS	NS	NS	ND	NS	ND	ND	ND	ND
Barium	Metals 6020	2.0	0.13	NS	0.14	NS	NS	NS	0.082	NS	0.081	0.1	0.12	0.12
Beryllium	Metals 6020	0.004	ND	NS	ND	NS	NS	NS	ND	NS	ND	ND	ND	ND
Cadmium	Metals 6020	0.005	ND	NS	ND	NS	NS	NS	ND	NS	ND	ND	ND	ND
Chromium	Metals 6020	0.1	ND	NS	ND	NS	NS	NS	ND	NS	ND	ND	ND	ND
Cobalt	Metals 6020	1.0	ND	NS	0.001	NS	NS	NS	ND	NS	ND	ND	ND	ND
Copper	Metals 6020	0.65	0.0032	NS	0.0025	NS	NS	NS	0.0032	NS	ND	ND	ND	ND
Cyanide	Dissolved 9014	0.2	ND	NS	ND	NS	NS	NS	ND	NS	ND	ND	ND	ND
Iron	Metals 6020	5.0	ND	NS	ND	NS	NS	NS	ND	NS	ND	ND	ND	ND
Lead	Metals 6020	0.0075	ND	NS	ND	NS	NS	NS	ND	NS	ND	ND	ND	ND
Manganese	Metals 6020	0.15	ND	NS	ND	NS	NS	NS	ND	NS	ND	0.0025	ND	ND
Mercury	Mercury 7470A	0.002	ND	NS	ND	NS	NS	NS	ND	NS	ND	ND	ND	ND
Nickel	Metals 6020	0.1	0.0034	NS	0.0029	NS	NS	NS	0.0033	NS	ND	0.0027	0.0023	ND
Selenium	Metals 6020	0.05	ND	NS	ND	NS	NS	NS	ND	NS	ND	0.0038	0.0055	0.0048
Silver	Metals 6020	0.05	ND	NS	ND	NS	NS	NS	ND	NS	ND	ND	ND	ND
Thallium	Metals 6020	0.002	ND	NS	ND	NS	NS	NS	ND	NS	ND	ND	ND	ND
Zinc	Metals 6020	5.0	ND	NS	ND	NS	NS	NS	ND	NS	ND	ND	ND	ND
Boron	Metals 6020	2	0.31	NS	0.29	NS	NS	NS	0.31	NS	0.35	0.44	0.74	0.22
Sulfate	Dissolved 9038	400	180	NS	81	NS	NS	NS	190	NS	67	110	150	110
Chloride	Dissolved 9251	200	140	NS	170	NS	NS	NS	140	NS	**230**	140	140	280
Nitrogen/Nitrate	Nitrogen By calc	10	19	NS	2.9	NS	NS	NS	3.1	NS	1.8	2.2	2.9	6.4
Total Dissolved Solids	Dissolved 2540C	1,200	590	NS	670	NS	NS	NS	600	NS	720	690	750	800
Flouride	Dissolved 4500 FC	4	0.45	NS	0.43	NS	NS	NS	0.62	NS	0.58	0.54	0.51	0.53
Nitrogen/Nitrite	Dissolved 4500 NO2	NA	ND	NS	ND	NS	NS	NS	ND	NS	ND	ND	ND	ND
Nitrogen/Nitrate/Nitrite	Dissolved 4500 NO3	NA	1.9	NS	2.9	NS	NS	NS	3.1	NS	1.8	2.2	2.9	6.4

Notes:
*Class I Groundwater Standards from 35 IAC Part 620
Bold values show exceedences of 35 IAC Part 620
ND-non detect
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mg/L- milligrams per liter

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Table 3
Groundwater Analytical Results - AMENDED JULY 2012
Joliet Station #29, Illinois
Midwest Generation
21253.034

PATRICK ENGINEERING	Sample Analysis Method	Groundwater Quality Standard (mg/L)	MW-3 (mg/L)	MW-3 (mg/L)	MW-3 (mg/L)	MW-3 (mg/L)	MW-3 (mg/L)	MW-3 (mg/L)	MW-4 (mg/L)	MW-4 (mg/L)	MW-4 (mg/L)	MW-4 (mg/L)	MW-4 (mg/L)	MW-4 (mg/L)
Chemical Name		Class I*	12/7/10	3/23/11	6/14/11	9/14/11	12/7/11	3/15/12	12/7/10	3/23/11	6/14/11	9/14/11	12/7/11	3/15/12
Antimony	Metals 6020	0.006	0.004	ND	ND	0.0065	**0.016**	**0.013**	ND	ND	ND	ND	0.0067	0.0057
Arsenic	Metals 6020	0.05	ND	0.0011	ND	0.0012	0.0016	0.0014	ND	ND	ND	ND	0.0011	ND
Barium	Metals 6020	2.0	0.089	0.085	0.092	0.081	0.084	0.081	0.065	0.067	0.059	0.06	0.069	0.07
Beryllium	Metals 6020	0.004	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Cadmium	Metals 6020	0.005	ND	ND	ND	ND	ND	0.00074	ND	ND	ND	ND	ND	ND
Chromium	Metals 6020	0.1	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Cobalt	Metals 6020	1.0	0.0013	0.0013	ND	ND	ND	ND	ND	ND	ND	0.0018	0.0028	0.0026
Copper	Metals 6020	0.65	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Cyanide	Dissolved 9014	0.2	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Iron	Metals 6020	5.0	ND	ND	ND	ND	ND	ND	ND	ND	ND	0.22	ND	ND
Lead	Metals 6020	0.0075	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Manganese	Metals 6020	0.15	0.1	0.048	ND	0.0076	0.008	0.0095	**0.33**	0.048	0.018	0.066	0.029	0.038
Mercury	Mercury 7470A	0.002	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Nickel	Metals 6020	0.1	0.011	0.0065	ND	0.0041	0.006	0.0046	0.0067	0.0037	ND	0.0029	0.0038	0.0037
Selenium	Metals 6020	0.05	ND	0.005	ND	ND	ND	ND	0.0025	ND	ND	ND	ND	ND
Silver	Metals 6020	0.05	ND	ND	ND	ND	0.00091	ND	ND	ND	ND	ND	ND	ND
Thallium	Metals 6020	0.002	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Zinc	Metals 6020	5.0	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Boron	Metals 6020	2	0.24	0.36	0.46	0.24	0.23	0.26	0.46	0.37	0.38	0.25	0.34	0.29
Sulfate	Dissolved 9038	400	120	160	120	120	160	190	300	140	84	74	170	210
Chloride	Dissolved 9251	200	**260**	**240**	**300**	160	**260**	**250**	**270**	**270**	**250**	150	200	**210**
Nitrogen/Nitrate	Nitrogen By calc	10	ND	1	2.1	1.1	0.79	ND	0.81	1.6	2.7	1.6	1.4	0.62
Total Dissolved Solids	Dissolved 2540C	1,200	930	1,100	1,000	930	1,100	1,000	1,100	1,000	890	770	970	930
Flouride	Dissolved 4500 FC	4	0.43	0.4	0.41	0.31	0.4	0.39	0.49	0.38	0.44	0.37	0.44	0.41
Nitrogen/Nitrite	Dissolved 4500 NO2	NA	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Nitrogen/Nitrate/Nitrite	Dissolved 4500 NO3	NA	ND	1	2.1	1.1	0.79	ND	0.81	1.6	2.7	1.6	1.4	0.62

Notes:
*Class I Groundwater Standards from 35 IAC Part 620
Bold values show exceedences of 35 IAC Part 620
ND-non detect
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Groundwater Analytical Results - AMENDED JULY 2012
Joliet Station #29, Illinois
Midwest Generation
21253.034

Chemical Name	Sample Analysis Method	Groundwater Quality Standard (mg/L) Class I*	MW-5 (mg/L) 12/7/10	MW-5 (mg/L) 3/23/11	MW-5 (mg/L) 6/14/11	MW-5 (mg/L) 9/14/11	MW-5 (mg/L) 12/7/11	MW-5 (mg/L) 3/15/12	MW-6 (mg/L) 12/7/10	MW-6 (mg/L) 3/23/11	MW-6 (mg/L) 6/14/11	MW-6 (mg/L) 9/14/11	MW-6 (mg/L) 12/7/11	MW-6 (mg/L) 3/15/12
Antimony	Metals 6020	0.006	ND	ND	ND	ND	0.004	0.0035	ND	ND	ND	ND	ND	ND
Arsenic	Metals 6020	0.05	ND	ND	ND	0.0011	0.0011	ND	ND	0.0015	ND	ND	0.0018	0.0016
Barium	Metals 6020	2.0	0.061	0.092	0.053	0.053	0.062	0.069	0.075	0.12	0.082	0.094	0.11	0.13
Beryllium	Metals 6020	0.004	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Cadmium	Metals 6020	0.005	ND	ND	ND	ND	ND	0.0016	ND	ND	ND	ND	ND	ND
Chromium	Metals 6020	0.1	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Cobalt	Metals 6020	1.0	ND	ND	ND	ND	ND	ND	ND	0.0019	ND	ND	ND	ND
Copper	Metals 6020	0.65	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Cyanide	Dissolved 9014	0.2	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Iron	Metals 6020	5.0	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Lead	Metals 6020	0.0075	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Manganese	Metals 6020	0.15	0.0065	ND	ND	ND	ND	ND	0.14	0.033	ND	0.036	0.024	0.015
Mercury	Mercury 7470A	0.002	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Nickel	Metals 6020	0.1	ND	ND	ND	0.0021	ND	ND	0.0056	0.0025	ND	ND	ND	ND
Selenium	Metals 6020	0.05	ND	0.0072	ND	ND	0.005	ND	0.0029	0.0034	ND	ND	0.0054	0.0051
Silver	Metals 6020	0.05	ND	ND	ND	ND	ND	ND	ND	0.00077	ND	ND	ND	ND
Thallium	Metals 6020	0.002	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Zinc	Metals 6020	5.0	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Boron	Metals 6020	2	0.42	0.52	0.47	0.57	0.49	0.54	0.32	0.44	0.32	0.27	0.3	0.25
Sulfate	Dissolved 9038	400	110	160	100	140	140	190	140	140	87	100	130	110
Chloride	Dissolved 9251	200	150	**240**	**220**	120	190	**210**	130	**270**	140	140	130	**240**
Nitrogen/Nitrate	Nitrogen By calc	10	ND	1.2	1.3	1.1	1.5	0.33	ND	1.3	0.91	0.31	0.36	ND
Total Dissolved Solids	Dissolved 2540C	1,200	750	990	850	800	900	930	650	1,000	650	620	710	800
Flouride	Dissolved 4500 FC	4	0.4	0.34	0.39	0.28	0.34	0.32	0.4	0.36	0.44	0.29	0.44	0.36
Nitrogen/Nitrite	Dissolved 4500 NO2	NA	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Nitrogen/Nitrate/Nitrite	Dissolved 4500 NO3	NA	ND	1.2	1.3	1.1	1.5	0.33	ND	1.3	0.91	0.31	0.36	ND

Notes:
*Class I Groundwater Standards from 35 IAC Part 620
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Joliet Station #29, Illinois
Midwest Generation
21253.034

Chemical Name	Sample Analysis Method	Groundwater Quality Standard (mg/L) Class I*	MW-7 (mg/L) 12/7/10	MW-7 (mg/L) 3/23/11	MW-7 (mg/L) 6/14/11	MW-7 (mg/L) 9/14/11	MW-7 (mg/L) 12/7/11	MW-7 (mg/L) 3/15/12	MW-8 (mg/L) 12/6/10	MW-8 (mg/L) 3/23/11	MW-8 (mg/L) 6/14/11	MW-8 (mg/L) 9/14/11	MW-8 (mg/L) 12/7/11	MW-8 (mg/L) 3/15/12
Antimony	Metals 6020	0.006	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Arsenic	Metals 6020	0.05	0.001	ND	ND	ND	0.0014	0.001	ND	ND	ND	ND	ND	ND
Barium	Metals 6020	2.0	0.13	0.11	0.072	0.092	0.11	0.13	0.054	0.055	0.026	0.048	0.057	0.049
Beryllium	Metals 6020	0.004	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Cadmium	Metals 6020	0.005	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Chromium	Metals 6020	0.1	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Cobalt	Metals 6020	1.0	ND	ND	ND	0.011	ND	ND	ND	ND	ND	ND	ND	ND
Copper	Metals 6020	0.65	ND	ND	ND	0.0025	ND	ND	ND	ND	ND	ND	ND	ND
Cyanide	Dissolved 9014	0.2	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Iron	Metals 6020	5.0	ND	ND	ND	3.8	ND	ND	ND	ND	ND	ND	ND	ND
Lead	Metals 6020	0.0075	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Manganese	Metals 6020	0.15	**0.29**	0.014	ND	0.08	0.0073	0.015	0.0051	0.0026	0.017	ND	ND	0.0042
Mercury	Mercury 7470A	0.002	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Nickel	Metals 6020	0.1	0.0045	ND	ND	0.014	ND	ND	0.0025	ND	ND	0.012	ND	ND
Selenium	Metals 6020	0.05	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Silver	Metals 6020	0.05	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Thallium	Metals 6020	0.002	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Zinc	Metals 6020	5.0	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Boron	Metals 6020	2	**0.51**	0.39	0.25	0.29	0.35	0.3	0.29	0.16	0.12	0.2	0.16	0.13
Sulfate	Dissolved 9038	400	250	120	85	110	160	140	210	87	52	120	170	130
Chloride	Dissolved 9251	200	**430**	**320**	140	99	140	**300**	130	**350**	150	79	120	**410**
Nitrogen/Nitrate	Nitrogen By calc	10	ND	1.2	0.76	0.27	0.6	ND	0.33	2.2	1.9	0.95	0.86	ND
Total Dissolved Solids	Dissolved 2540C	1,200	1,200	970	580	650	780	870	670	990	580	690	800	1000
Flouride	Dissolved 4500 FC	4	0.36	0.31	0.35	0.27	0.35	0.31	0.51	0.36	0.45	0.25	0.31	0.38
Nitrogen/Nitrite	Dissolved 4500 NO2	NA	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Nitrogen/Nitrate/Nitrite	Dissolved 4500 NO3	NA	ND	1.2	0.76	0.27	0.6	ND	0.33	2.2	1.9	0.95	0.86	ND

Notes:
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Joliet Station #29, Illinois
Midwest Generation
21253.034

PATRICK ENGINEERING	Sample Analysis Method	Groundwater Quality Standard (mg/L)	MW-9 (mg/L)	MW-9 (mg/L)	MW-9 (mg/L)	MW-9 (mg/L)	MW-9 (mg/L)	MW-9 (mg/L)	MW-10 (mg/L)	MW-10 (mg/L)	MW-10 (mg/L)	MW-10 (mg/L)	MW-10 (mg/L)	MW-10 (mg/L)
Chemical Name		Class I*	12/6/10	3/23/11	6/14/11	9/14/11	12/7/11	3/15/12	12/6/10	3/23/11	6/14/11	9/14/11	12/7/11	3/15/12
Antimony	Metals 6020	0.006	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Arsenic	Metals 6020	0.05	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	0.0012	ND
Barium	Metals 6020	2.0	0.031	0.029	0.032	0.029	0.03	0.021	0.05	0.051	0.039	0.039	0.036	0.04
Beryllium	Metals 6020	0.004	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Cadmium	Metals 6020	0.005	ND	ND	ND	ND	ND	0.00059	ND	ND	ND	ND	ND	ND
Chromium	Metals 6020	0.1	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Cobalt	Metals 6020	1.0	0.0047	0.0034	0.0062	0.011	0.0075	0.0021	ND	ND	ND	ND	ND	ND
Copper	Metals 6020	0.65	ND	ND	ND	0.0026	ND	ND	ND	ND	ND	ND	ND	ND
Cyanide	Dissolved 9014	0.2	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Iron	Metals 6020	5.0	ND	0.18	**7.3**	3.8	1.5	**5.5**	ND	ND	ND	ND	ND	ND
Lead	Metals 6020	0.0075	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Manganese	Metals 6020	0.15	**1.1**	**1.6**	**0.95**	**0.82**	**0.66**	**1.3**	0.12	0.0076	ND	ND	ND	ND
Mercury	Mercury 7470A	0.002	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Nickel	Metals 6020	0.1	0.0094	0.0072	0.013	0.014	0.011	0.0054	0.0052	0.0029	ND	0.0087	0.0024	ND
Selenium	Metals 6020	0.05	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Silver	Metals 6020	0.05	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Thallium	Metals 6020	0.002	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Zinc	Metals 6020	5.0	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Boron	Metals 6020	2	0.36	0.32	0.29	0.35	0.31	0.38	0.5	0.54	0.54	0.41	0.52	0.52
Sulfate	Dissolved 9038	400	**1,600**	**1,100**	**580**	**750**	130	**1,600**	130	130	89	100	190	250
Chloride	Dissolved 9251	200	140	**230**	**290**	190	190	170	200	**300**	7.1	170	180	180
Nitrogen/Nitrate	Nitrogen By calc	10	ND	ND	0.97	0.36	0.22	ND	0.39	2.3	2.7	2.6	1.4	ND
Total Dissolved Solids	Dissolved 2540C	1,200	**2,600**	**2,400**	**1,500**	**1,700**	**2,400**	**2,600**	860	1,100	980	730	890	890
Flouride	Dissolved 4500 FC	4	0.61	0.52	0.47	0.39	0.5	0.45	0.43	0.39	0.42	0.41	0.45	0.41
Nitrogen/Nitrite	Dissolved 4500 NO2	NA	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Nitrogen/Nitrate/Nitrite	Dissolved 4500 NO3	NA	ND	ND	0.97	0.36	0.22	ND	0.39	2.3	2.7	2.6	1.4	ND

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Midwest Generation
21253.034

PATRICK ENGINEERING	Sample Analysis Method	Groundwater Quality Standard (mg/L)	MW-11 (mg/L)	MW-11 (mg/L)	MW-11 (mg/L)	MW-11 (mg/L)	MW-11 (mg/L)	MW-11 (mg/L)
Chemical Name		Class I*	12/6/10	3/23/11	6/14/11	9/14/11	12/7/11	3/15/12
Antimony	Metals 6020	0.006	ND	ND	ND	ND	ND	ND
Arsenic	Metals 6020	0.05	0.0013	0.0016	ND	0.0016	0.0019	0.0017
Barium	Metals 6020	2.0	0.064	0.076	0.051	0.054	0.057	0.067
Beryllium	Metals 6020	0.004	ND	ND	ND	ND	ND	ND
Cadmium	Metals 6020	0.005	ND	ND	ND	ND	ND	ND
Chromium	Metals 6020	0.1	ND	ND	ND	ND	ND	ND
Cobalt	Metals 6020	1.0	ND	ND	ND	ND	ND	ND
Copper	Metals 6020	0.65	ND	ND	ND	ND	ND	ND
Cyanide	Dissolved 9014	0.2	ND	ND	ND	ND	ND	ND
Iron	Metals 6020	5.0	ND	ND	ND	ND	ND	ND
Lead	Metals 6020	0.0075	ND	ND	ND	ND	ND	ND
Manganese	Metals 6020	0.15	0.052	0.0047	ND	0.0053	0.0047	ND
Mercury	Mercury 7470A	0.002	ND	ND	ND	ND	ND	ND
Nickel	Metals 6020	0.1	0.0022	ND	ND	ND	ND	ND
Selenium	Metals 6020	0.05	ND	0.0054	ND	0.0026	0.0033	0.0043
Silver	Metals 6020	0.05	ND	ND	ND	ND	ND	ND
Thallium	Metals 6020	0.002	ND	ND	ND	ND	ND	ND
Zinc	Metals 6020	5.0	ND	ND	ND	ND	ND	ND
Boron	Metals 6020	2	0.47	**2.6**	**2.2**	1.1	1.2	1.4
Sulfate	Dissolved 9038	400	140	150	110	110	160	140
Chloride	Dissolved 9251	200	160	**270**	**280**	86	140	**240**
Nitrogen/Nitrate	Nitrogen By calc	10	0.39	1.1	0.92	0.31	0.6	0.3
Total Dissolved Solids	Dissolved 2540C	1,200	770	1,000	710	590	790	850
Flouride	Dissolved 4500 FC	4	0.34	0.31	0.36	0.32	0.31	0.3
Nitrogen/Nitrite	Dissolved 4500 NO2	NA	ND	ND	ND	ND	ND	ND
Nitrogen/Nitrate/Nitrite	Dissolved 4500 NO3	NA	0.39	1.1	0.92	0.31	0.6	0.3

Notes:
*Class I Groundwater Standards from 35 IAC Part 620
Bold values show exceedences of 35 IAC Part 620
ND-non detect
NS- not sampled
mg/L- milligrams per liter

AMENDMENTS
- Value amended from original Table 3 (May 11, 2012).
- Value has not changed; font has been changed from bold to normal.
- Value has not changed; font has been changed from normal to bold.

Table 1

Field Parameter Data

Joliet #29 Station, Joliet, Illinois

Midwest Generation

21253.034

PATRICK ENGINEERING	Field Parameter Data - Joliet #29 Station							
Monitoring Well	Date	Time	Temperature (°C)	Conductivity (ms/cm^c)	Turbidity (NTU)	pH	DO (mg/L)	ORP (mV)
MW-01	3/23/2011	--	--	--	--	--	--	--
MW-01	6/14/2011	12:08	14.71	1.36	13.26	7.80	6.61	190.0
	6/14/2011	12:10	14.26	1.33	13.33	7.42	3.95	186.1
	6/14/2011	12:12	14.02	1.31	13.12	7.35	3.89	201.1
	6/14/2011	12:14	13.96	1.29	13.29	7.32	3.88	208.8
	6/14/2011	12:16	13.83	1.29	13.24	7.28	3.89	210.7
	6/14/2011	12:18	13.92	1.28	13.11	7.25	4.19	210.6
MW-01	9/14/2011	--	--	--	--	--	--	--
MW-01	12/7/2011	--	--	--	--	--	--	--
MW-01	3/15/2012	--	--	--	--	--	--	--
MW-02	3/23/2011	--	--	--	--	--	--	--
MW-02	6/14/2011	11:32	16.11	1.35	8.31	7.57	6.75	157.7
	6/14/2011	11:34	15.75	1.31	8.40	7.35	6.44	187.9
	6/14/2011	11:36	15.55	1.30	8.26	7.25	6.45	208.1
	6/14/2011	11:38	15.68	1.30	8.17	7.25	6.42	218.0
	6/14/2011	11:40	15.63	1.30	8.12	7.29	6.43	222.6
	6/14/2011	11:42	15.57	1.30	8.99	7.30	6.45	2227.3
MW-02	9/14/2011	11:20	18.87	0.97	9.24	7.41	5.25	-38.0
	9/14/2011	11:22	18.83	0.98	5.90	7.39	5.20	-36.0
	9/14/2011	11:24	18.83	0.98	3.38	7.39	5.25	-37.0
	9/14/2011	11:26	18.81	0.98	2.37	7.37	5.20	-36.0
	9/14/2011	11:28	18.78	0.98	3.51	7.38	5.19	-37.0
	9/14/2011	11:30	18.72	0.98	2.53	7.37	5.21	-36.0
MW-02	12/7/2011	11:16	12.81	0.91	111.70	7.42	6.11	55.0
	12/7/2011	11:18	13.06	0.91	144.10	7.41	5.76	63.0
	12/7/2011	11:20	13.41	0.91	240.50	7.38	5.74	69.0
	12/7/2011	11:22	13.30	0.91	32.78	7.39	5.85	74.0
	12/7/2011	11:24	13.11	0.90	30.67	7.37	5.86	78.0
	12/7/2011	11:26	13.04	0.90	27.41	7.37	5.91	81.0
MW-02	3/15/2012	--	--	--	--	--	--	--
MW-03	3/23/2011	12:30	12.73	1.76	1283.80	7.26	4.73	179.1
MW-03	6/14/2011	9:50	13.04	1.74	1534.29	7.41	7.78	223.5
MW-03	9/14/2011	9:54	11.90	1.15	1884.00	7.37	6.03	-51.0
MW-03	12/7/2011	9:48	10.94	1.19	1276.00	7.48	6.07	145.0
MW-03	3/15/2012	10:48	13.73	1.21	906.90	7.34	6.07	193.0
MW-04	3/23/2011	11:55	12.13	1.76	1277.40	7.15	6.80	196.1
MW-04	6/14/2011	9:20	12.59	1.50	1104.60	7.48	8.20	217.5
MW-04	9/14/2011	9:22	11.78	0.94	2892.00	7.42	7.17	-43.0
MW-04	12/7/2011	9:09	9.67	1.04	1131.00	7.56	6.95	135.0
MW-04	3/15/2012	10:14	12.52	1.06	2549.00	7.40	6.95	177.0
MW-05	3/23/2011	13:05	13.41	1.65	514.90	7.19	6.96	197.8
MW-05	6/14/2011	8:03	13.37	1.38	707.90	7.44	7.16	210.0
MW-05	9/14/2011	8:18	12.15	0.92	125.20	7.25	6.43	-26.0
MW-05	12/7/2011	8:08	11.23	1.02	862.10	7.44	6.07	125.0
MW-05	3/15/2012	7:45	13.52	1.19	1081.00	7.30	6.24	228.0
MW-06	3/23/2011	13:38	12.90	1.65	1284.40	7.51	7.44	183.7
MW-06	6/14/2011	13:25	14.26	1.05	431.20	7.71	6.82	203.8
MW-06	9/14/2011	12:33	12.73	0.77	2785.00	7.53	6.74	-65.0
MW-06	12/7/2011	12:40	13.70	0.87	1700.00	7.71	7.05	113.0
MW-06	3/15/2012	11:20	14.45	1.06	2353.00	7.57	7.47	210.0

Field Parameter Data
Joliet #29 Station, Joliet, Illinois
Midwest Generation
21253.034

PATRICK ENGINEERING	Field Parameter Data - Joliet #29 Station							
Monitoring Well	Date	Time	Temperature (°C)	Conductivity (ms/cm^c)	Turbidity (NTU)	pH	DO (mg/L)	ORP (mV)
MW-07	3/23/2011	14:10	13.58	1.78	1292.20	7.50	7.02	183.2
MW-07	6/14/2011	13:50	12.92	1.02	1892.35	7.61	8.10	202.8
MW-07	9/14/2011	13:04	12.50	0.78	15.33	7.65	7.70	-82.0
MW-07	12/7/2011	13:08	13.07	0.89	1813.00	7.63	6.74	113.0
MW-07	3/15/2012	11:43	15.40	1.18	1164.00	7.53	7.23	175.0
MW-08	3/23/2011	9:55	13.06	1.80	1287.50	7.29	7.82	192.6
MW-08	6/14/2011	12:50	13.15	0.99	437.99	7.70	8.00	196.0
MW-08	9/14/2011	12:03	12.20	0.80	1485.00	7.32	6.06	-47.0
MW-08	12/7/2011	12:10	12.71	0.88	861.90	7.38	6.57	119.0
MW-08	3/15/2012	9:36	14.64	1.40	1275.00	7.49	7.68	130.0
MW-09	3/23/2011	11:10	12.78	3.30	214.00	7.19	7.49	102.2
MW-09	6/14/2011	10:55	16.53	2.57	14.22	7.15	1.12	-40.6
	6/14/2011	10:57	16.04	2.39	14.28	7.07	0.51	-42.3
	6/14/2011	10:59	16.00	2.32	14.14	7.03	0.49	-42.3
	6/14/2011	11:01	15.76	2.30	14.09	7.01	0.49	-29.3
	6/14/2011	11:03	15.78	2.28	13.73	7.01	0.47	-35.7
	6/14/2011	11:05	15.68	2.25	13.28	7.01	0.49	-43.5
MW-09	9/14/2011	10:42	16.36	1.99	46.97	6.87	0.34	-103.0
	9/14/2011	10:44	16.15	1.96	41.89	6.87	0.34	-108.0
	9/14/2011	10:46	16.06	1.94	46.33	6.87	0.34	-111.0
	9/14/2011	10:48	15.99	1.92	34.58	6.89	0.34	-111.0
	9/14/2011	10:50	15.96	1.90	40.02	6.89	0.34	-113.0
	9/14/2011	10:52	15.90	1.88	40.23	6.90	0.33	-114.0
MW-09	12/7/2011	10:30	11.66	1.62	200.50	7.29	1.14	-52.0
	12/7/2011	10:32	11.77	1.61	47.44	7.22	1.61	-43.0
	12/7/2011	10:34	12.35	1.60	96.37	7.21	0.38	-40.0
	12/7/2011	10:36	10.54	1.62	44.06	7.17	1.09	-36.0
	12/7/2011	10:38	11.49	1.58	36.28	7.16	0.72	-38.0
	12/7/2011	10:40	11.94	1.54	76.67	7.19	0.43	-40.0
MW-09	3/15/2012	8:45	14.29	2.31	1116.00	6.86	2.22	2.0
MW-10	3/23/2011	9:20	12.40	1.88	23.50	7.20	7.18	191.6
MW-10	6/14/2011	8:40	12.05	1.58	2312.96	7.40	8.70	210.0
MW-10	9/14/2011	8:48	11.23	0.98	2892.00	7.34	7.42	-37.0
MW-10	12/7/2011	8:40	11.26	0.99	1421.00	7.51	7.12	143.0
MW-10	3/15/2012	8:14	13.08	1.04	1362.00	7.35	7.08	210.0
MW-11	3/23/2011	8:46	13.49	1.69	1293.70	7.23	7.23	194.3
MW-11	6/14/2011	9:31	11.69	1.14	600.28	7.60	8.65	200.8
MW-11	9/14/2011	7:43	12.18	0.79	2426.00	7.38	6.28	-31.0
MW-11	12/7/2011	7:34	13.15	0.92	1751.00	7.46	6.74	136.0
MW-11	3/15/2012	7:08	14.22	1.12	1459.00	7.38	7.37	208.0

Notes:

°C	degrees Celcius
ms/cm^c	Microsiemens/Centimeters
NTU	Nephelometric Turbidity Units
mg/L	milligrams/Liter
mV	milliVolts

Exhibit 12

MWG Response to Illinois EPA Violation Notice
for the Waukegan Generating Station, July 27, 2012

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July 27, 2012

VIA OVERNIGHT MAIL

Illinois EPA
Division of Public Water Supplies
Attn: Andrea Rhodes, CAS #19
P.O. Box 19276
Springfield, IL 62794-9276

Re: Violation Notice: Midwest Generation, LLC, Waukegan Generating Station
Identification No.: 6281
Violation Notice No.: W-2012-00056

Dear Ms. Rhodes:

In response to the above-referenced June 11, 2012 Violation Notice ("VN"), received on June 13, 2012, this written response is timely submitted on behalf of the Midwest Generation, LLC (MWG), Waukegan Generating Station ("Waukegan"). MWG also requests a meeting with the Illinois Environmental Protection Agency ("Illinois EPA" or the "Agency") to discuss the VN and information provided in this response.

MWG regrets that the Illinois EPA decided to issue the VN because MWG has tried to work cooperatively with the Agency concerning the hydrogeologic assessment of the coal ash ponds at Waukegan even though it had significant concerns and objections to how the VN has proceeded in this matter.[1] Nevertheless, MWG complied with the Agency's request that it conduct a hydrogeologic assessment of the area around the coal ash ponds and followed its requirements and comments for how the hydrogeologic assessment should be conducted, even though it was under no legal obligation to do so.[2] At no time however did MWG agree that the

[1] *See, e.g.*, MWG (B. Constantelos) letter to Illinois EPA (A. Keller) dated July 15, 2009. MWG is also working cooperatively with the USEPA with regards to the Coal Combustion Residuals Proposed Rules, EPA-HQ-RCRA-2009-0640, and is trying to coordinate the responses and requirements of both Agencies. USEPA first issued the proposed rules on June 21, 2010, and requested additional comments and information on Oct. 12, 2011. The additional information comment period closed on November 14, 2011, and MWG is now waiting for the USEPA to issue the final rule.

[2] MWG continues to reserve its objection that the Illinois EPA did not have the legal authority to require the hydrological assessments of the ash ponds under Sections 4 or 12 of the Illinois Environmental Protection Act (the "Act") or the Groundwater Quality Regulations, 35 Ill. Adm. Code Part 620.

scope and nature of the hydrological assessment the Agency required it to perform would provide any basis for concluding that the ash ponds were impacting groundwater. The alleged violations in the VN are based solely on the results of the hydrogeologic assessment MWG performed at the Agency's request. The results of the hydrogeologic assessment do not show that the coal ash ponds at the Waukegan Station are impacting the groundwater and do not provide the necessary evidence to support the alleged violations contained in the VN.

Well prior to the issuance of this VN, MWG met with the Agency to discuss the groundwater monitoring results and to discuss cooperatively how to proceed based on those results, including what additional actions, if any, the Agency believed were necessary. The Agency told MWG that it had not yet decided how to proceed. The next development was the issuance of the VN. The VN itself provides no information concerning the basis for the Agency's apparent conclusion that the ash impoundments are the cause of the alleged groundwater impacts, other than the conclusory statement that "[o]perations at ash impoundments [sic] have resulted in violations of the Groundwater Quality Standards." The VN also provides no information concerning the nature or type of corrective action which the Agency may deem acceptable to address the alleged violations. The Agency is not pursuing this matter in a way that allows MWG to prepare an effective response or a Compliance Commitment Agreement.

This letter provides a detailed response to each of the alleged violations in Attachment A of the VN to the extent possible given the lack of information provided in the VN. It also advances MWG's general objection to the legal sufficiency of the notice of the alleged violations contained in the VN. MWG maintains that the Illinois EPA cannot prove the alleged violations in the VN, and does not, by submitting this response, make any admissions of fact or law, or waive any of its defenses to those alleged violations.

I. General Objection to the Legal Sufficiency of the Violation Notice

The VN does not comply with the requirements of Section 31 of the Act. Section 31(a)(1)(B) of the Act requires the Illinois EPA to provide a detailed explanation of the violations alleged. 415 ILCS 5/31(a)(1)(B). Under the Act, MWG is entitled to notice of the specific violation charged against it and notice of the specific conduct constituting the violation.[3] The VN fails to provide adequate notice to MWG of either the alleged violations or the activities which the Agency believes are necessary to address them. The VN states that "[o]perations at ash impoundments have resulted in violations of the Groundwater Quality Standards...." (Violation Notice, Attachment A, page 1, 1st paragraph) No further description of the alleged "ash impoundments" is provided in the VN. Two ash impoundments exist at the Waukegan Station. It is impossible to identify from the contents of the VN what operations or activities at the Waukegan Station the Agency is claiming are the cause of the alleged violations, including

[3] *Citizens Utilities Co., v. IPCB*, 9 Ill.App.3d 158, 164, 289 N.E.2d 642, 648 (2nd Dist., 1972) (a person is entitled to notice of the specific violation charged against it and notice of the specific conduct constituting the violation). *See also, City of Pekin v. Environmental Protection Agency*, 47 Ill.App.3d 187, 192, 361 N.E.2d 889, 893 (3rd Dist., 1977.

whether it is the Agency's position that each of the Station's ash ponds, or only one of them, have caused the alleged violations. Absent an accurate or complete description of the activities or operations that the Agency is alleging caused the violations, it is also not possible to identify what action might be necessary to resolve them. Attachment A to the VN states: "Included with each type of violation is an explanation of the activities that the Illinois EPA believes may resolve the violation." However, no such explanation is provided in the VN. In sum, the VN fails to comply with the legal requirement that it include a detailed explanation of the violations alleged, does not inform MWG of the specific conduct constituting the alleged violations and provides no notice of what is necessary to resolve the alleged violations. The Section 31 process is based on fundamental principles of due process. MWG should not have to speculate about what activities it allegedly engaged in that caused the violations and how to address them to resolve the alleged violations. In the absence of this material, statutorily-required information, the Agency also has effectively denied MWG's statutory right to formulate an acceptable Compliance Commitment Agreement to submit for the Agency's approval.

The VN is also deficient regarding its explanation of what laws MWG has allegedly violated. The VN solely alleges that MWG violated "Section 12" of the Act. 415 ILCS 5/12. It does not provide any further specification as to which of the provisions of Section 12 MWG has allegedly violated.

Sec. 12 of the Act has nine subsections, consecutively numbered (a) through (i). Each of these subsections describes a different and distinct water pollution prohibition. 415 ILCS 5/12(a)-(i). However, the VN issued to MWG does not identify which of the nine subsections the Agency is alleging MWG violated. Based on the contents of Section 12 of the Act, the Agency is taking the position that MWG violated each and every one of the provisions of Section 12. Based on the relevant facts, it is unlikely that this is the intent of the VN. Therefore, the VN's general reference to Section 12 of the Act, without any other explanation, is not a "detailed explanation of the violations." This is yet another example of how the VN fails to provide MWG with adequate notice as a matter of law and thereby violates MWG's due process rights.[4]

By failing to provide a detailed explanation of the violations and any explanation of the activities that the Illinois EPA believes may resolve the violations, the Illinois EPA has effectively denied MWG the opportunity to properly and thoroughly respond to the alleged violations and to make an acceptable offer to resolve them. The VN's deficiencies conflict with the intent and purpose of Section 31 of the Act, which is to avoid unnecessary litigation. Therefore, MWG respectfully requests that Illinois EPA rescind the VN and suspend any further enforcement action unless and until it has taken the necessary actions to correct and cure the legal deficiencies in the notice of the alleged violations by following the statutory requirements under Section 31(a)(1)(B) of the Act. 415 ILCS 5/31(a)(1)(B).

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[4] *See, e.g., Grigoleit Co. v. IEPA*, PCB 89-184, slip op at p. 11 (November 29, 1990) (Failure to notify permit applicant of alleged violations and provide an opportunity to provide information in response was a violation of applicant's due process rights).

II. Response to Alleged Violations in the VN

Subject to and without waiving its objections to the legal sufficiency of the VN, MWG nevertheless has attempted to discern the legal basis for the alleged violations and to prepare this response in defense to those allegations based on various assumptions. MWG reserves the right to supplement this response, including by submitting a separate response should the Agency provide the legally required notice under Section 31 of the Act.

The VN alleges that the "[o]perations at ash impoundments" at MWG's Waukegan Station have resulted in violations of certain of the Groundwater Quality Standards at the respective monitoring wells identified in the VN. (Violation Notice at Attachment A) MWG believes the Agency's use of the term "ash impoundments" is intended to refer to the structures, which the Waukegan Station commonly refers to as "ash ponds;" that is how they will be referred to here. The Agency further alleges that the alleged violations of the groundwater quality standards in 35 Ill. Admin. Code Part 620, also constitute violations of Section 12 of the Act and the underlying groundwater regulations in 35 Ill. Admin. Code Part 620. It is undisputable that the Agency has the burden to prove these alleged violations both in proceedings before the Illinois Pollution Control Board ("Board") and in the courts.[5] However, the groundwater monitoring data on which the Agency primarily, if not solely relies, to assert these violations is not sufficient, legally or technically, to prove that any "ash impoundment" is the source of the alleged groundwater impacts. Further, based on the existing condition of the ash ponds, it is not likely that they are the source of the alleged impacts.

To support its defense to the alleged violations, MWG has set forth below a description of: (1) the condition and use of the ash ponds at Waukegan; (2) the hydrogeologic assessment performed at the Waukegan Station; (3) the site hydrology; and (4) why the analytical data from the monitoring wells does not establish that the ash ponds are the source of the alleged exceedances of the groundwater standards.[6] In addition, for certain of the alleged exceedances, additional information not considered by the Agency shows that it is either more likely, or at least as likely, that the source of the alleged exceedance is something other than the ash ponds. In either case, the Agency cannot sustain its burden to prove the alleged violations.

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[5] Section 31(e) of the Act provides in relevant part: "In hearings before the Board under this Title, the burden shall be on the Agency...to show either that the respondent has caused or threatened to cause...water pollution or that the respondent has violated or threatens to violate any provision of this Act or any rule or regulation of the Board or permit or term or condition thereof." 415 ILCS 5/31(e); *Citizens Utilities v. IPCB*, 9 Ill. App. 3d 158, 164, 289 N.E.2d 642, 646 (1972) (the Agency has the burden of proof in enforcement actions).

[6] In preparing this response, MWG closely reviewed the groundwater monitoring reports previously submitted to the Agency for the monitoring wells which are identified in the VN. In the course of this review, some data transcription errors were found in the previously submitted data tables included in the groundwater monitoring reports. Copies of the corrected data tables are enclosed. The tables are annotated to identify the nature of the corrections made to the previously submitted reports. Many of the values for monitoring wells MW-1 through MW-5 for the October 25, 2010 sampling event were inadvertently transposed. Where revised values show either that an alleged exceedance did not exist or that a new exceedance not previously identified was reported, this response expressly identifies such revisions.

A. The Condition of the Ash Ponds

For several reasons, the construction and operation of the Waukegan ash ponds makes it unlikely that they are the cause of the alleged violations. The current construction and use of the ash ponds minimizes the potential for leakage from the ash ponds to groundwater.

First, the Waukegan ash ponds are not a disposal site. The ash that enters the ponds is routinely removed. This operating condition limits the amount of ash accumulated over time which serves to minimize the potential for the release of ash constituents to the groundwater.

Second, unlike many other ash ponds in Illinois, the two ash ponds at Waukegan are not simply earthen ponds with no protection against the migration of constituents into the land or groundwater. Each of the Waukegan ash ponds is lined to prevent releases to groundwater. MWG constructed both ponds in 2002 with a high-density polyethylene ("HDPE") liner, replacing a previously existing HDPE liner, overlain by a 12-inch sand cushion layer and a 6-inch limestone warning layer. Both HDPE liners have a permeability of approximately 10^{-13} cm/sec. Notably, this is a greater degree of permeability than is required in the Illinois Pollution Control Board ("Board") Regulations for constructing a new solid waste landfill where, unlike the ash ponds, waste materials are to be disposed of on a permanent basis. *See* 35 IAC 811.306(d). The liners in the Waukegan ash ponds exceed the level of permeability which the Illinois regulations expressly recognize is sufficient to prevent the release of constituents from landfills to the environment. Hence, the facts regarding the liners for these ash ponds also support the conclusion that the ash ponds are not the source of the exceedances of groundwater standards alleged in the VN.

The VN contains no facts concerning the condition of the Waukegan ash ponds that would indicate it is allowing ash constituents to escape from the ponds. For example, the Agency does not contend that there are any breaches in the integrity of the liners that are allowing ash constituents to be released to the groundwater. The Agency similarly does not claim that the liners are inadequate to prevent the migration of constituents. In the absence of such evidence, it is certainly far more likely than not that the existing ash ponds at the Waukegan Station is not the source of the groundwater impacts alleged in the VN.

B. Hydrogeologic Assessment and Site Hydrology

The VN appears to be based on the flawed premise that the hydrogeologic assessment which the Agency directed MWG to perform in the vicinity of the ash ponds would be sufficient to identify the ash ponds as the source of any elevated levels of constituents in the groundwater. This is simply not the case. The results of the hydrogeologic assessment at best give rise to more questions about the source of the alleged groundwater impacts, and do not prove that the existing ash ponds are the source of those impacts.

The results of the hydrogeologic assessment show a relatively uniform groundwater flow system. Groundwater flows from west to east, consistent with the expected flow direction due to

the proximity to Lake Michigan to the east. Based upon this groundwater flow direction, groundwater well MW-5 is an upgradient well, and groundwater wells MW-1 through MW-4 are downgradient wells.

A comparison of the monitoring results from the upgradient (MW-5) and downgradient (MW-1 – MW-4) wells does not support the Agency's contention that the ash ponds are the source of the alleged groundwater impacts. The distribution and observation of parameter concentrations is not consistent with the ash ponds being the source of the impacts identified in the VN. In fact, the more defensible conclusion is that the ponds are not the source of these impacts.

The highest concentrations and greatest number of exceedances of the groundwater standards were detected in the upgradient well, MW-5. Four parameters, iron, sulfate, total dissolved solids ("TDS"), and chloride exceeded the Class I groundwater standards only in this well. None of these parameters were observed above the groundwater standards in any of the downgradient wells. If the ash ponds were the source of these exceedances, then the upgradient well would not regularly have groundwater exceedances of the Class I groundwater standards; and the downgradient wells likely would. The absence of any exceedances of these constituents in the downgradient wells is strong evidence that the ash ponds are not the source of the groundwater impacts for these parameters at well MW-5.

Moreover, there were more exceedances of the boron Class 1 groundwater standard in MW-5 than in the downgradient wells.[7] Boron is generally considered a primary indicator compound of ash impacts to groundwater. The concentration range of boron in upgradient well MW-5 is substantially greater than the range of boron detections in all the downgradient monitoring wells combined. The boron concentration range in well MW-5 is 12 mg/l to 44 mg/l. The combined range of boron detections in all downgradient wells combined is 1.5 mg/l to 2.8 mg/l. The data does not support the conclusion that the ash ponds are the cause of the alleged groundwater impacts.

The distribution of sulfate detections from upgradient to downgradient groundwater monitoring wells also does not support the allegation that the ash ponds are the cause of the alleged groundwater impacts. Elevated sulfate concentration, when coupled with elevated boron concentration, is an indicator of potential coal ash impacts to groundwater. A review of the sulfate data provides the same trend as explained above for boron. The range of sulfate detections in upgradient well MW-5 is from 780 mg/l to 1,100 mg/l. The range of sulfate detections in all combined downgradient monitoring wells is 97 mg/l to 390 mg/l. All of the upgradient detections exceed the Class I groundwater standard for sulfate. None of the downgradient detections of sulfate exceed the Class I groundwater standard. Again, the data does not support the conclusion that the ash ponds are the cause of the alleged groundwater impacts.

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[7] The corrected, enclosed table shows there is an additional boron exceedance reported for well locations MW-2 and MW-5.

For the remaining parameters identified in the VN, the data also shows that the levels detected in the upgradient and downgradient wells are not consistent with the conclusion that the ash ponds are the source of these impacts. First, all but one of the manganese exceedances was observed in the upgradient well, MW-5. The only downgradient exceedance of manganese occurred in only one sampling event (*i.e.,* Monitoring Well MW-4, 9/13/11and has not been replicated since.[8] Also, there was only one exceedance of antimony at MW-2 in the initial sampling event, which has not been replicated since.[9] A single, isolated exceedance that is not reproducible over subsequent, consecutive quarters of sampling is not representative of actual groundwater quality conditions, and hence, is insufficient to prove the alleged violation.

There were several exceedances of arsenic noted at downgradient monitoring well location MW-1. The alleged exceedances for arsenic are more likely the result of chemical conditions in the groundwater at Waukegan. A review of the oxidation-reduction (ORP) field parameter data for the wells indicates that at monitoring well location MW-1, there is consistently a low dissolved oxygen (DO) level coupled with negative ORP readings. This is indicative of a reducing environment in the vicinity of this well. The DO and ORP data for wells MW-2 through MW-4 show some variability in these field parameter readings between sampling events. Generally, any negative ORP measurements tend to be less in these wells than at location MW-1. There were no elevated detections of arsenic in any of the other three downgradient monitoring wells (MW-2 through MW-4). If the subject ash ponds were the cause of the noted arsenic exceedances, then one would expect to see similarly elevated levels of this constituent in the other downgradient monitoring wells, which is not the case here.

High pH levels were sporadically seen in three groundwater wells. An exceedance of the pH groundwater standard was observed in three sampling events in monitoring well MW-1. There were single, non-reproducible pH exceedances at monitoring well locations MW-2 and MW-3. Because pH is a field parameter, these alleged pH exceedances need to be considered in the context of the other detected parameters before drawing any conclusions as to their cause. When the alleged pH exceedances are viewed in their proper context, the data does not support a conclusion that the ash ponds are the source of the elevated pH levels.

In sum, the pattern of the constituent concentrations in groundwater from all of the monitoring wells, including repeatedly observing higher concentrations of constituents in the upgradient well, clearly does not support the contention that the ash ponds are the source of the alleged groundwater standards exceedances. The data are more consistent with the opposite conclusion, namely that the ash ponds are not the source of the alleged exceedances.

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[8] The corrected, enclosed table shows there was an additional exceedance of manganese reported for MW-5.
[9] The corrected, enclosed table shows there was not an exceedance of antimony in MW-1, but there was an exceedance of antimony reported for MW-2.

C. The Waukegan Ash Ponds Are Not Causing Groundwater Exceedances

Because the Illinois EPA failed to specify which of the provisions of Section 12 of the Act MWG allegedly violated, MWG has had to speculate to identify the potential Section 12 violations this response needs to address. As stated above, MWG objects to the vagueness of, and legally deficient notice provided by, the VN and reserves its right to responds further when and if the Agency properly identifies the provisions of Section 12 on which it is relying.

For purposes of this response, based upon the regulations cited by the Agency in the VN, MWG has assumed that the Illinois EPA's alleged violations of Section 12 are limited to sections 12(a), which prohibits causing or allowing water pollution, and to Section 12(d), which prohibits causing or allowing the creation of a water pollution hazard. 415 ILCS 5/12(a), (d). Based on these assumptions regarding the substance of the Illinois EPA's alleged violations, MWG submits that Agency cannot show that the ash ponds at Waukegan caused or allowed water pollution or created a water pollution hazard.

Overall the analytical results show that there is no relationship between the ash ponds and the groundwater exceedances. The pattern of the constituent concentrations in groundwater from monitoring wells across the site, including repeatedly observing higher concentrations in the upgradient well, clearly does not support the Agency's contention that the ash ponds are the source of these impacts. The data are more consistent with the opposite conclusion, namely that the ash ponds are not the source of the alleged exceedances.

To show a violation of Section 12(a) and 12(d), there must be a showing not only of the presence of a potential source of contamination, but also that it is in sufficient quantity and concentration to render the waters harmful. *Bliss v. Illinois EPA,* 138 Ill. App. 3d 699, 704 (1985) ("mere presence of a potential source of water pollutants on the land does not necessarily constitute a water pollution hazard"). In other words, there must be a causal link between the potential source and the water or groundwater. The groundwater monitoring data on which the Agency relies does not establish this essential causal link between the ash ponds and the groundwater. Therefore, the Agency has failed to meet its burden to prove that the ash ponds are the cause of the alleged exceedances of the groundwater standards as required to prove a violation of Sections 12(a) or 12(d) of the Act. 415 ILCS 5/12(a), (d).

The Agency also alleges violations of the groundwater quality regulations based on exceedances of the groundwater quality standards in 35 Ill. Admin. Code § 620.401. There is no violation here of Section 620.401. Section 620.401 solely provides the legal criteria that groundwater must meet the standards appropriate to the groundwater's class. It is a foundational regulation, allowing for different classes of groundwater to meet different groundwater standards. It is not a prohibition regulation. There is no conduct prohibited by this section of the regulations in which MWG is alleged to have engaged. MWG cannot and did not violate Section 620.401.

The remaining alleged groundwater regulation violations, Sections 620.115, 620.301, 620.405, and 620.410 of the Board Regulations, are all based on the Agency's contention that MWG's operation of the ash ponds has caused the exceedances of the groundwater standards detected in the monitoring data. To sustain these allegations, the Agency must show that MWG caused a discharge of the subject constituents from ash ponds which in turn caused the exceedances of the groundwater standards.[10] The relevant facts and circumstances do not support either conclusion.

The use and condition of the ash ponds does not support a finding that they are releasing constituents to the groundwater. They are not disposal sites. The ash is regularly removed from the ponds by MWG. The linings in all of the ash ponds are of sufficient low permeability, exceeding accepted regulatory guidance to prevent the release of constituents. Finally, pursuant to the terms of the Waukegan Station's NPDES Permit, these ash ponds are part of the flow-through wastewater treatment process at the station. MWG's operation of the ash ponds has been carried out in accordance with the terms and conditions of the NPDES Permit. Under Section 12(f) of the Act, compliance with the terms and conditions of any permit issued under Section 39(b) of the Act is deemed compliance with this subsection.

Similarly, the groundwater data on which the Agency relies does not provide a sufficient scientific or technical evidentiary basis on which to conclude that the ash ponds are causing the alleged groundwater exceedances. The essential "causal link" between the ash ponds and the elevated constituents in the groundwater is missing. The groundwater impacts in the upgradient well are consistently greater than in the wells downgradient of the ash ponds. The distribution of the impacts is not consistent with the ash ponds being the source of the exceedances. As a whole, the data is at best inconclusive on this issue, while certain data results clearly point to other, unrelated causes.

Because the ash ponds have not been shown to have caused a release of any contaminants that is causing the groundwater exceedances, the Agency's VN does not support its claims that MWG has violated Sections 620.405 or 620.301 of the Board regulations. Accordingly, MWG also has not violated Section 620.115 of the Board regulations.

III. Compliance Commitment Agreement

This VN should not have been issued. Given the absence of proof that the ash ponds are the cause of the alleged groundwater exceedances, the Agency's request for a Compliance Commitment Agreement (CCA) to address the ash ponds is an attempt to compel MWG to conduct unnecessary corrective action to resolve the alleged violations.

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[10] *See People of the State of Illinois v. ESG Watts, Inc.*, PCB 96-107 slip op. at p. 41 (February 5, 1998) (By finding the respondent caused a discharge of constituents into the groundwater causing a violation of the Class II Groundwater standards, the Board found the respondent also violated 35 IAC §§ 620.301 and 620.115)

Moreover, with the pending federal regulatory process to enact regulations for the design and operation of ash ponds, it is prudent to await the outcome of the proposed federal regulations to determine whether any changes to the ash ponds construction or operation are required by those regulations. The Agency itself has previously advanced this position. In 2010, the Agency's Steven Nightingale testified before the Illinois Pollution Control Board that the Board should consider initiating a temporary moratorium on the closure of coal ash impoundments because of the U.S. EPA's intention to regulate them. (*See In the Matter of Ameren Ash Pond Closure Rules (Hutsonville Power Station): Proposed 35 Ill.Adm.Code Part 840.101 Through 840.152*, Docket R09-21 (October 7, 2010) at p. 64) On behalf of the Agency, Mr. Nightingale told the Board that if industry had to take action in the interim, it "could end up expending substantial money and resources only to find they are subject to additional and/or different closure requirements for those units." (*Id.*) The Agency's pursuit of this enforcement action, particularly given the deficiencies in its alleged evidence, also threatens to force MWG to take actions that may conflict with or otherwise differ from the requirements in the upcoming federal regulations.

As the hydrogeologic assessment showed, there is no threat to human health presented by the alleged exceedances of the groundwater standards. The hydrogeologic assessment investigated the presence of potable water sources within a 2,500-foot radius of the site. Eight groundwater wells are installed within 2,500 feet of the site, all east and upgradient of the site. Shallow groundwater at the site discharges to Lake Michigan. Although Lake Michigan is used as a drinking water source, the nearest intake location is too far away to be impacted by the alleged groundwater exceedances. In the absence of any potable groundwater receptors or use, groundwater at the Waukegan site does not pose any risk to human health. Accordingly, awaiting the outcome of the federal regulatory proposal is appropriate under these circumstances. Because MWG's preference is to cooperate with the Agency in this matter, MWG presents here a proposed CCA that should be acceptable based on the relevant facts and circumstances. The proposed CCA terms are as follows:

Because MWG's preference is to cooperate with the Agency in this matter, MWG presents here a proposed CCA that should be acceptable based on the relevant facts and circumstances. The proposed CCA terms are as follows:

A. The ash ponds will not be used as permanent disposal sites and ash will continue to be removed from the ponds on a periodic basis.

B. The ash ponds will be maintained and operated in a manner which protects the integrity of the existing liners. During the removal of ash from the ponds, appropriate procedures will be followed to protect the integrity of the existing liners, including operating the ash removal equipment in a manner which minimizes the risk of any damage to the liner.

C. During the ash removal process, visual inspections of the ponds will be conducted to identify any signs of a breach in the integrity of the pond liners. In the event that a

breach of the pond liners is detected, MWG will notify the Agency and will submit a corrective action plan for repair or replacement, as necessary, of the liner. Upon the Agency's approval, and the issuance of any necessary construction permit, MWG will implement the correction action plan.

D. Institutional controls will be evaluated for addressing the alleged exceedances of the groundwater standards. There are already Environmental Land Use Controls (ELUCs) in place at a portion of the Waukegan Station.

E. MWG will continue to monitor the groundwater through the existing five groundwater monitoring wells and report its findings to Illinois EPA. MWG reserves the right to request the Agency's approval of a cessation of all or some of the monitoring requirements based on future monitoring results.

F. MWG will continue to monitor the development of the Coal Combustion Residuals Proposed Rules, EPA-HQ-RCRA-2009-0640. When the final rule is issued, MWG will promptly notify Illinois EPA how it will comply with the new Federal Rules.

This letter constitutes our response to and proposed CCA for the Violation Notice W-2012-00056. MWG also reserves the right to raise additional defenses and mitigation arguments as may be necessary, in defense of the allegations listed in the Violation Notice in the event of any future enforcement. We look forward to discussing the above information further at the soon to be scheduled meeting with the Agency's representatives. Please contact me to schedule a mutually convenient date for the meeting.

Very truly yours,

Susan M. Franzetti
Counsel for Midwest Generation, LLC

Enclosures

cc: Maria L. Race, Midwest Generation, LLC

Table 3

GROUNDWATER ANALYTICAL RESULTS - AMENDED JULY 2012

Waukegan Station

Waukegan, Illinois

Midwest Generation

21153.033

PATRICK ENGINEERING	Sample Analysis Method	Groundwater Quality Standard (mg/L)	MW-1 (mg/L)	MW-1 (mg/L)	MW-1 (mg/L)	MW-1 (mg/L)	MW-1 (mg/L)	MW-1 (mg/L)	MW-2 (mg/L)	MW-2 (mg/L)	MW-2 (mg/L)	MW-2 (mg/L)	MW-2 (mg/L)	MW-2 (mg/L)
Chemical Name		Class 1*	10/25/10	3/24/11	6/13/11	9/13/11	12/6/11	3/14/12	10/25/10	3/24/11	6/13/11	9/13/11	12/6/11	3/14/12
Antimony	Metals 6020	0.006	0.0052	ND	ND	ND	ND	ND	0.015	ND	ND	ND	ND	ND
Arsenic	Metals 6020	0.05	**0.054**	0.04	**0.17**	**0.077**	**0.057**	**0.078**	0.025	0.016	0.012	0.0087	0.0094	0.0094
Barium	Metals 6020	2.0	0.023	0.022	0.02	0.038	0.051	0.034	0.0091	0.014	0.024	0.02	0.023	0.017
Beryllium	Metals 6020	0.004	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Cadmium	Metals 6020	0.005	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Chromium	Metals 6020	0.1	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Cobalt	Metals 6020	1.0	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Copper	Metals 6020	0.65	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Cyanide	Dissolved 9014	0.2	ND	ND	0.02	0.013	ND	ND	ND	ND	0.014	0.019	ND	ND
Iron	Metals 6020	5.0	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Lead	Metals 6020	0.0075	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Manganese	Metals 6020	0.15	ND	0.0027	0.0086	0.02	0.011	0.0052	0.0034	0.018	0.032	0.038	0.035	0.028
Mercury	Mercury 7470A	0.002	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Nickel	Metals 6020	0.1	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Selenium	Metals 6020	0.05	0.031	0.03	0.016	0.039	0.032	0.037	0.026	0.0085	0.028	0.022	0.0086	0.0046
Silver	Metals 6020	0.05	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Thallium	Metals 6020	0.002	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Zinc	Metals 6020	5.0	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Boron	Metals 6020	2	**2.6**	2	**2.6**	**2.5**	**2.8**	**2.5**	**2.2**	**2.2**	2	1.7	1.9	2
Sulfate	Dissolved 9038	400	350	230	260	280	330	390	230	160	150	200	180	200
Chloride	Dissolved 9251	200	39	48	52	41	32	47	42	45	46	45	50	53
Nitrogen/Nitrate	Nitrogen By calc	10	ND	ND	ND	0.52	0.3	ND	ND	ND	0.23	0.12	ND	ND
Total Dissolved Solids	Dissolved 2540C	1,200	460	470	460	570	750	630	410	400	410	460	490	400
Fluoride	Dissolved 4500 FC	4	0.45	0.59	0.71	0.33	0.46	0.46	0.35	0.53	0.8	0.56	0.67	0.88
Nitrogen/Nitrite	Dissolved 4500 NO2	NA	ND	ND	ND	ND	0.021	0.1	ND	ND	ND	ND	ND	ND
Nitrogen/Nitrate/Nitrite	Dissolved 4500 NO3	NA	ND	ND	ND	0.52	0.32	ND	ND	ND	0.23	0.12	ND	ND

Notes:

*Class 1 Groundwater Standards from 35 IAC Part 620

Bold values show exceedences of 35 IAC Part 620

NA - upgradient value not calculated due to non-detection in upgradient wells

ND-non detect

mg/L-milligrams per liter

AMENDMENTS

- Value amended from original Table 3 (May 11, 2012).
- Value has not changed; font has been changed from bold to normal.

Table 3

GROUNDWATER ANALYTICAL RESULTS - AMENDED JULY 2012

Waukegan Station
Waukegan, Illinois
Midwest Generation
21153.033

PATRICK ENGINEERING	Sample Analysis Method	Groundwater Quality Standard (mg/L)	MW-3 (mg/L)	MW-3 (mg/L)	MW-3 (mg/L)	MW-3 (mg/L)	MW-3 (mg/L)	MW-3 (mg/L)	MW-4 (mg/L)	MW-4 (mg/L)	MW-4 (mg/L)	MW-4 (mg/L)	MW-4 (mg/L)	MW-4 (mg/L)
Chemical Name		Class I*	10/25/10	3/24/11	6/13/11	9/13/11	12/6/11	3/14/12	10/25/10	3/24/11	6/13/11	9/13/11	12/6/11	3/14/12
Antimony	Metals 6020	0.006	0.0051	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Arsenic	Metals 6020	0.05	0.0043	0.0041	0.0049	0.0077	0.0049	0.0071	0.006	0.0077	0.0059	0.0058	0.0065	0.0068
Barium	Metals 6020	2.0	0.0057	0.0086	0.018	0.0044	0.0058	0.0049	0.026	0.025	0.034	0.039	0.036	0.038
Beryllium	Metals 6020	0.004	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Cadmium	Metals 6020	0.005	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Chromium	Metals 6020	0.1	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Cobalt	Metals 6020	1.0	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Copper	Metals 6020	0.65	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Cyanide	Dissolved 9014	0.2	ND	ND	ND	0.03	ND	ND	ND	ND	ND	ND	ND	ND
Iron	Metals 6020	5.0	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Lead	Metals 6020	0.0075	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Manganese	Metals 6020	0.15	ND	0.0059	0.0044	ND	0.0054	0.0036	0.058	0.035	0.028	**0.36**	0.025	0.038
Mercury	Mercury 7470A	0.002	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Nickel	Metals 6020	0.1	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Selenium	Metals 6020	0.05	0.0094	0.016	0.03	0.012	0.011	0.0064	0.0039	ND	0.022	0.025	0.015	0.0091
Silver	Metals 6020	0.05	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Thallium	Metals 6020	0.002	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Zinc	Metals 6020	5.0	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Boron	Metals 6020	2	1.7	**2.2**	**2.3**	1.6	1.6	1.5	2	**2.1**	2	1.8	**2.1**	**2.2**
Sulfate	Dissolved 9038	400	120	130	130	97	110	140	250	170	160	160	160	280
Chloride	Dissolved 9251	200	53	49	53	49	51	52	39	47	45	59	60	71
Nitrogen/Nitrate	Nitrogen By calc	10	ND	ND	0.29	ND	ND	ND	ND	ND	0.18	0.14	ND	ND
Total Dissolved Solids	Dissolved 2540C	1,200	280	350	340	300	380	340	430	400	380	470	480	490
Fluoride	Dissolved 4500 FC	4	0.27	0.47	0.39	0.24	0.67	0.64	0.6	0.84	0.97	0.67	0.82	0.73
Nitrogen/Nitrite	Dissolved 4500 NO2	NA	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Nitrogen/Nitrate/Nitrite	Dissolved 4500 NO3	NA	ND	ND	0.29	ND	ND	ND	ND	ND	0.18	0.14	ND	ND

Notes:
*Class I Groundwater Standards from 35 IAC Part 620
Bold values show exceedences of 35 IAC Part 620
NA - upgradient value not calculated due to non-detection in upgradient wells
ND-non detect
mg/L-milligrams per liter

AMENDMENTS
Value - Value amended from original Table 3 (May 11, 2012).
Value - Value has not changed; font has been changed from bold to normal.

Table 3

GROUNDWATER ANALYTICAL RESULTS - AMENDED JULY 2012

Waukegan Station
Waukegan, Illinois
Midwest Generation
21153.033

PATRICK ENGINEERING	Sample Analysis Method	Groundwater Quality Standard (mg/L)	MW-5 (mg/L)	MW-5 (mg/L)	MW-5 (mg/L)	MW-5 (mg/L)	MW-5 (mg/L)	MW-5 (mg/L)
Chemical Name		Class I*	10/25/10	3/24/11	6/13/11	9/13/11	12/6/11	3/14/12
Antimony	Metals 6020	0.006	ND	ND	ND	ND	ND	ND
Arsenic	Metals 6020	0.05	0.0076	0.0082	0.0013	ND	0.01	0.01
Barium	Metals 6020	2.0	0.06	0.066	0.057	0.041	0.073	0.063
Beryllium	Metals 6020	0.004	ND	ND	ND	ND	ND	ND
Cadmium	Metals 6020	0.005	ND	ND	ND	ND	ND	ND
Chromium	Metals 6020	0.1	ND	ND	ND	ND	ND	ND
Cobalt	Metals 6020	1.0	ND	ND	ND	ND	ND	ND
Copper	Metals 6020	0.65	ND	ND	ND	ND	ND	ND
Cyanide	Dissolved 9014	0.2	ND	ND	ND	ND	ND	ND
Iron	Metals 6020	5.0	3.5	2.8	0.95	0.42	**5.6**	**6.6**
Lead	Metals 6020	0.0075	ND	ND	ND	ND	ND	ND
Manganese	Metals 6020	0.15	0.71	**0.6**	**0.28**	0.03	**0.99**	**0.76**
Mercury	Mercury 7470A	0.002	ND	ND	ND	ND	ND	ND
Nickel	Metals 6020	0.1	ND	ND	0.0026	ND	ND	ND
Selenium	Metals 6020	0.05	0.0028	ND	0.0094	ND	ND	ND
Silver	Metals 6020	0.05	ND	ND	ND	ND	ND	ND
Thallium	Metals 6020	0.002	ND	ND	ND	ND	ND	ND
Zinc	Metals 6020	5.0	ND	ND	ND	ND	ND	ND
Boron	Metals 6020	2	28	33	12	30	37	44
Sulfate	Dissolved 9038	400	**920**	**780**	**1,100**	**810**	**1,100**	**980**
Chloride	Dissolved 9251	200	100	120	**540**	**220**	110	50
Nitrogen/Nitrate	Nitrogen By calc	10	ND	0.27	0.2	ND	ND	ND
Total Dissolved Solids	Dissolved 2540C	1,200	**1,500**	**1,800**	**3,300**	**2,300**	**2,300**	**2,000**
Fluoride	Dissolved 4500 FC	4	0.29	0.34	0.24	0.18	0.29	0.29
Nitrogen/Nitrite	Dissolved 4500 NO2	NA	ND	ND	ND	ND	ND	ND
Nitrogen/Nitrate/Nitrite	Dissolved 4500 NO3	NA	ND	0.27	0.2	ND	ND	ND

Notes:
*Class I Groundwater Standards from 35 IAC Part 620
Bold values show exceedences of 35 IAC Part 620
NA - upgradient value not calculated due to non-detection in upgradient wells
ND-non detect
mg/L-milligrams per liter

AMENDMENTS
- Value amended from original Table 3 (May 11, 2012).
- Value has not changed; font has been changed from bold to normal.

Exhibit 13

MWG Supplemental Response to Illinois EPA Violation Notice
for the Powerton Generating Station, September 4, 2012

NIJMAN · FRANZETTI LLP
10 South LaSalle Street · Suite 3600 · Chicago, Illinois 60603
312.251.5250 · fax 312.251.4610 · www.nijmanfranzetti.com

Jennifer T. Nijman
jn@nijmanfranzetti.com

Susan M. Franzetti
sf@nijmanfranzetti.com

September 4, 2012

VIA E-MAIL AND OVERNIGHT MAIL

Illinois EPA
Division of Public Water Supplies
Attn: Andrea Rhodes, CAS #19
P.O. Box 19276
Springfield, IL 62794-9276

Re: Violation Notice: Midwest Generation, LLC, Powerton Generating Station
Identification No.: 6282
Violation Notice No.: W-2012-00057

Dear Ms. Rhodes:

This letter is a supplemental response to the above-referenced June 11, 2012 Violation Notice ("VN") following the meeting between the Illinois Environmental Protection Agency ("Illinois EPA or the "Agency") and Midwest Generation, LLC ("MWG") on August 14, 2012.[1] MWG appreciated the opportunity to discuss the VNs and the underlying allegations with the Agency. The extensive participation at the August 14th meeting by Interim Director John Kim and Agency personnel was productive and helped to clarify the key issues. As a result, MWG believes it now has a better understanding of the Agency's views regarding resolution of this matter.

The August 14th meeting also helped MWG both to identify issues that warrant further attention and explanation in this supplemental response and to revise its proposed Compliance Commitment Agreement ("CCA") for the MWG Powerton Generation Station ("Powerton") for the Agency's consideration. Accordingly, this supplemental response does not repeat all of the information contained in MWG's July 27, 2012 response to the VN, but rather focuses on responding to the questions and concerns raised by the Agency during the meeting. It also includes a revised, proposed CCA which MWG submits should be acceptable to resolve the VN allegations based on discussion at the aforementioned August 14th meeting.

[1] The August 14, 2012 meeting was held at the request of MWG, pursuant to Section 31(a)(4) of the Illinois Environmental Protection Act. 415 ILCS 5/31(a)(4).

Central to the revised, proposed CCA and based largely on MWG's understanding of Agency staff's concerns as expressed during the August 14th meeting, MWG proposes to establish a Groundwater Monitoring Zone ("GMZ") for the ash ponds pursuant to section 620.250 of the Board's regulations. 35 Ill. Adm. Code §620.250. MWG will install an additional groundwater monitoring well and conduct additional groundwater monitoring to assist in establishing the three dimensional boundaries of the GMZ. In addition, and reflective of concerns expressed by the Agency staff during the August 14th meeting, MWG proposes to enter into an Environmental Land Use Control ("ELUC") Agreement to incorporate the restrictions that are applicable to the GMZ and the continued groundwater monitoring program for the existing and new monitoring wells. These and other provisions of MWG's proposed CCA are summarized in Section II below.

By submitting this supplemental response and revised, proposed CCA, MWG does not waive any of its original objections to the VNs raised in our July 27th response. Moreover, MWG does not, by submitting this supplemental response, make any admissions of fact or law, or waive any of its defenses to those alleged violations.

I. Supplemental Response to Alleged Violations in the VN

To answer questions presented at the August 14th meeting and further explain why the ash ponds at Powerton are not causing a release into the groundwater, MWG has set forth below additional information concerning: (1) the treatment purpose and function of the ash ponds; (2) the condition of the liners underlying the ash ponds; and (3) why the alleged groundwater exceedances are not the result of releases from the ash ponds. While we may not embrace the Agency's views on each of the issues discussed, the discussion provided MWG with information that enables us to present a revised CCA that we believe addresses the questions and concerns expressed by the Agency.

A. The Treatment Purpose and Function of the Ash Ponds

As stated in MWG's July 27, 2012 VN Response, and discussed further during the August 14th meeting, the three operating ash ponds at Powerton are different from other ash impoundments in Illinois.[2] They are neither disposal sites nor abandoned ponds. They are relatively small, active, wastewater treatment ponds that remove ash from the ash wastewater. The precipitated ash is routinely removed from the ponds.

Depending upon operations at the station, bottom ash wastewater is discharged to either the Ash Bypass Basin or the Ash Surge Pond for settlement of suspended solids. The effluent from the Ash Bypass Basin or the Ash Surge Pond, as applicable, is then conveyed to the Secondary Ash Settling Basin for additional, "finishing" treatment by settlement. Thus, only the

[2] The fourth ash pond is not used as part of the Station's day-to-day operations. Its use is limited to providing emergency overflow capacity. There were no alleged exceedances of groundwater standards detected in the wells downgradient of this ash pond.

minimal, remaining ash solids that did not already settle out of the wastewater in either the Ash Bypass Basin or Ash Surge Pond may settle out of the wastewater after entering the Secondary Ash Settling Basin. The resulting Secondary Ash Settling Basin effluent discharges to the Illinois River through Outfall 001. This is a permitted effluent under the station's NPDES Permit (NPDES #0002232), specifically described therein as the "ash treatment system effluent."[3]

Apparently, because the ash ponds perform a wastewater treatment function and are not disposal sites, it was suggested by Agency personnel during the August 14th meeting that the ash ponds may be subject to the design criteria for treatment works set forth in Part 370 of the Illinois Pollution Control Board Regulations, referencing generally section 370.930 thereof entitled "Waste Stabilization Ponds and Aerated Lagoons," and more specifically, section 370.930(d)(2)(D) entitled "Pond Bottom" as the relevant criteria for the liners that should be installed in ash ponds. 35 Ill. Adm. Code § 370.930. Part 370 is not applicable to existing treatment works like the ash ponds at the Powerton station. Rather, Part 370 regulations only apply to new construction of waste collection and treatment works. As stated in section 370.100, the purpose of these regulations is to "establish criteria for the design and preparation of plans and specifications for wastewater collection and treatment systems." 35 Ill. Adm. Code § 370.100 (emphasis supplied; see also § 370.200). There are no provisions or requirements in the Part 370 regulations that require existing treatment works to be modified or replaced to meet Part 370 criteria. Moreover, with respect to the high-density polypropylene ("HDPE") liner that is in place in the Ash Bypass Basin, one of the ponds at issue here, this liner already provides an equivalent level of protection to that specified in section 370.930(d)(2)(D).

B. Replacement or New Liners are not necessary to Protect against Groundwater Violations.

The Ash Bypass Basin and Ash Surge Pond are fully lined to prevent releases to groundwater. Based on the August 14th meeting discussion, it is MWG's understanding that the Agency is satisfied with the adequacy of the Ash Bypass Basin's 2010 HDPE liner. The Ash Surge Pond bottom is lined with two, six-inch lifts of Poz-o-Pac with a bituminous coating and the sides are lined with a hypalon membrane liner over compacted fill. MWG has presented further information regarding the nature and condition of its Poz-o-Pac liners in its Supplemental VN Response for the Will County Station, which information is incorporated here by reference. The Secondary Ash Settling Basin, where the "finishing" step in the ash settlement process occurs, is lined with compacted fill and hypalon all the way across. As MWG explained during the August 14th meeting, installing a new liner in the Secondary Ash Settling Basin is simply not necessary given the minimal amount of ash that precipitates out of the wastewater which enters this pond. Further, the fact that boron and sulfate, which when combined are the primary ash leachate indicator parameters, were not detected at elevated levels downgradient of the Secondary Ash Settling Basin also confirms that it is not causing a release of constituents in violation of applicable groundwater standards.

[3] The effluent is subject to limits for pH and total suspended solids. To date, the limits have not been exceeded.

C. The Ash Ponds are not causing a Release to Groundwater.

As stated in the July 27th VN Response, the monitoring well results do not support the contention that any of the ash ponds are a source of the alleged groundwater impacts.[4] The July 27th response thoroughly evaluated the groundwater monitoring data on a parameter-by-parameter basis and in relation to the location of the ash ponds. The parameter-by-parameter evaluation showed that the monitoring data does not support the conclusion that the operation of the ash ponds has caused the alleged exceedances. Many of the results were isolated, unassociated with the ash ponds, and not repeated in subsequent sampling events. Moreover, the presence of other parameters in the groundwater is better explained by a significantly reducing environment in the groundwater rather than any particular source.

Particularly with respect to the Ash Surge Pond, the July 27th response showed that boron, a parameter closely associated with leachate from coal ash, was not detected at elevated concentrations in the monitoring well immediately downgradient (MW-08) of this pond. Further, the wells upgradient to the Ash Surge Pond had higher concentrations of parameters, including boron, than the wells downgradient to the pond.

As to the Secondary Ash Settling Pond, there are no groundwater exceedances of the primary coal ash constituents of boron or sulfate downgradient of this pond. The concentrations of these two primary ash leachate indicator parameters were not elevated in these wells. Moreover, the wells upgradient of the Ash Settling Pond had either similar or higher concentrations, particularly for boron and sulfate, than the wells downgradient.

For all of the above reasons, the groundwater monitoring data simply does not support the conclusion that the existing condition of the ash ponds is allowing ash constituents to be released that are causing the alleged groundwater exceedances.

II. Supplemental Compliance Commitment Agreement

Based on and in response to the August 14th meeting discussion, MWG has revised its proposed Compliance Commitment Agreement ("CCA") terms which were submitted in its July 27, 2012 VN Response.

The revised CCA terms are set forth below and a draft CCA is enclosed for the Agency's review.

MWG believes this revised CCA should be an acceptable resolution to the VN issued to the Powerton Station. As stated in the July 27th VN Response, there is no threat to human health presented by the alleged exceedances of the groundwater standards. Six water wells are located within the 2,500-foot radius of the site; however none of the wells are downgradient of the ash ponds. In fact, two of the wells supply the Powerton Station with water, and are regularly

[4] MWG incorporates by reference all of its discussion and explanation of the groundwater monitoring results in the original VN Response.

sampled for potable water constituents. The sampling results have consistently been in compliance with potable water regulations.[5] In the absence of any potable groundwater receptors or use, groundwater at the Powerton site does not pose any risk to human health.

The modified CCA terms are as follows:

A. The ash ponds will not be used as permanent disposal sites and will continue to function as treatment ponds to precipitate ash. Ash will continue to be removed from the ponds on a periodic basis.

B. The treatment ponds will be maintained and operated in a manner which protects the integrity of the existing liners. During the removal of ash from these ponds, appropriate procedures will be followed to protect the integrity of the existing liners, including operating the ash removal equipment in a manner which minimizes the risk of any damage to the liner.

C. During the ash removal process, visual inspections of the lined ponds will be conducted to identify any signs of a breach in the integrity of the pond liners. In the event that a breach of the pond liners is detected, MWG will notify the Agency and will submit a corrective action plan for repair or replacement, as necessary, of the liner. Upon the Agency's approval, and the issuance of any necessary construction permit, MWG will implement the correction action plan.

D. MWG proposes to establish a Groundwater Management Zone ("GMZ") pursuant to section 620.250 of the Board's regulations. 35 Ill. Admin. Code § 620.250. An aerial map of the Powerton Station showing the proposed extent of the GMZ is enclosed as Attachment A for the Agency's review and reference in considering the proposed GMZ boundaries. To complete the definition of the southern boundary of the GMZ, as further described below, MWG will install an additional groundwater monitoring well.

   a. The proposed boundaries of the three dimensional GMZ are defined as follows:

      i. The northern boundary is defined by the portion of the shoreline of the Illinois River which borders the Powerton Station Property.

      ii. The eastern boundary is defined by monitoring wells MW-02 and MW-03.[6]

[5] See previously submitted Hydrogeologic Assessment of Midwest Generation Electric Generation Stations: Will County Station, Waukegan Station, Joliet 29 Station, Crawford Station, Powerton Station.

iii. The southern boundary is defined by the MWG property boundary that runs from the southwest to the northeast south of both MW-09 and a new, additional monitoring well to be installed approximately 900 feet southwest of MW-09.

iv. The western boundary is defined by the existing canal/intake channel west of MW-07.

v. The vertical extent is defined as the top of the Carbondale Formation which is estimated, based on other site boring logs, to be approximately 70 feet below ground surface.

b. MWG shall install the additional groundwater monitoring well, at a location approximately 900 feet southwest of MW-09, within 60 days of the effective date of the CCA.

c. The new monitoring well shall be sampled twice. The sampling protocol and analytical parameters for the new monitoring well shall be the same as for the existing groundwater monitoring wells. The first sampling event shall be conducted not later than 90 days from the effective date of the CCA. The second sampling event shall coincide with the next quarterly monitoring of the existing groundwater monitoring wells and shall be separated by an interval of at least 60 days from the first sampling event.

d. MWG shall submit a summary report to the Illinois EPA defining the GMZ (the "GMZ Report") within 45 days of receipt of all analytical data from the second round of sampling of the new monitoring well and the existing monitoring wells.

E. As an institutional control to accompany the GMZ, MWG will enter into an ELUC to cover the area of the Powerton Station property which is contained within the GMZ. MWG will submit a proposed, draft ELUC to the Illinois EPA for review and comment within 90 days of the effective date of the CCA. A final proposed ELUC, incorporating the completed delineation of the GMZ boundaries, will be presented to the Agency for review and approval with the GMZ Report.

F. MWG will continue to monitor the groundwater through the existing five groundwater monitoring wells and the additional proposed groundwater monitoring well and report its findings to IEPA. The continuing groundwater monitoring requirements will be included in the requirements of the ELUC described in sub-paragraph E above. The ELUC terms will include a provision

[6] Both MW-02 and MW-03 showed no elevated concentrations of the parameters. The one, non-reproducible pH exceedance cited in the VN for MW-02 was the result of a faulty pH meter, as discussed in the July 27, 2012 VN Response. .

which allows MWG the right to request the Agency's approval of a cessation of all or some of the monitoring requirements based on future monitoring results.

This letter constitutes our supplemental response to, and modified CCA for, the Violation Notice W-2012-00057. MWG also reserves the right to raise additional defenses and mitigation arguments as may be necessary, in defense of the allegations listed in the Violation Notice in the event of any future enforcement. We believe that this supplemental response is responsive to all of the Agency's comments and concerns expressed in our meeting, and represents an appropriate resolution to the VN. Should you have any additional questions or concerns, please do not hesitate to contact me.

Very truly yours,

Susan M. Franzetti
Counsel for Midwest Generation, LLC

Enclosure

cc: Maria L. Race, Midwest Generation, LLC

Attachment A

NOTE:
BACKGROUND MAP RETRIEVED FROM GOOGLE MAPS 2012

0 550'
APPROXIMATE SCALE

N

ENVIRONMENTAL CONSULTATION & REMEDIATION

KPRG and Associates, Inc.

414 Plaza Drive, Suite 106 Westmont, Illinois 60559 Telephone 630-325-1300 Facsimile 630-325-1593

14665 West Lisbon Road, Suite 2B Brookfield, Wisconsin 53005 Telephone 262-781-0475 Facsimile 262-781-0478

PROPOSED GROUNDWATER MANAGEMENT ZONE EXTENT

POWERTON STATION
PEKIN, ILLINOIS

Scale: 1" = 550' | Date: August 30, 2012

KPRG Project No. 18311.2 | FIGURE 1

W:\c-pdp\projects\midwest generation\powerton station.dwg

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:	)	
	)	
Midwest Generation, LLC	)	
Powerton Generating Station	)	
Pekin, Tazewell County, Illinois	)	
IEPA ID #170000151243	)	
	)	
	)	**ILLINOIS EPA VN W-2012-00057**
	)	**BUREAU OF WATER**
	)	

COMPLIANCE COMMITMENT AGREEMENT

I. Jurisdiction

1. This Compliance Commitment Agreement ("CCA") is entered into voluntarily by the Illinois Environmental Protection Agency ("Illinois EPA") and Midwest Generation, LLC, Powerton Generating Station ("Respondent") (collectively, the "Parties") under the authority vested in the Illinois EPA pursuant to Section 31(a)(7)(i) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(a)(7)(i).

II. Allegation of Violations

2. Respondent owns and operates a coal-fired electrical generating station at 13082 East Mantino Road in Pekin, Tazewell County, IL.

3. Pursuant to Violation Notice ("VN") W-2012-00057, issued on June 11, 2012, the Illinois EPA contends that Respondent has violated the following provisions of the Act and Illinois Pollution Control Board ("Board") Regulations:

   a) Section 12 of the Illinois Environmental Protection Act, 415 ILCS 5/12

   b) 35 Ill. Adm. Code 620.115, 620.301, 620.401, 620.405, and 620.410

III. Compliance Activities

4. On July 27, 2012, the Illinois EPA received Respondent's response to VN W-2012-00057, which included proposed terms for a CCA. On August 14, 2011, the Parties met at the Illinois EPA offices to discuss the violation notice and the July 27th response. On _____ __, 2012, the Illinois EPA received Respondent's supplemental reply to the VN in response to Illinois EPA's comments at the meeting. The Illinois EPA has reviewed Respondent's proposed CCA terms, as well as considered whether any

additional terms and conditions are necessary to attain compliance with the alleged violations cited in the VN.

5. Respondent agrees to undertake and complete the following actions, which the Illinois EPA has determined are necessary to attain compliance with the allegations contained in VN W-2012-00057:

a) The ash ponds will not be used as permanent disposal sites and will continue to function as treatment ponds to precipitate ash. Ash will continue to be removed from the ponds on a periodic basis.

b) The ash treatment ponds will be maintained and operated in a manner which protects the integrity of the existing liners. During the removal of ash from the ponds, appropriate procedures will be followed to protect the integrity of the existing liners, including operating the ash removal equipment in a manner which minimizes the risk of any damage to the liner.

c) During the ash removal process, visual inspections of the ponds will be conducted to identify any signs of a breach in the integrity of existing pond liners. In the event that a breach of the pond liners is detected, MWG will notify the Agency and will submit a corrective action plan for repair or replacement, as necessary, of the liner. Upon the Agency's approval, and the issuance of any necessary construction permit, MWG will implement the correction action plan.

d) A Groundwater Management Zone ("GMZ") pursuant to section 620.250 of the Illinois groundwater regulations. 35 Ill. Admin. Code § 620.250 shall be established. To complete the definition of the southern boundary of the GMZ, as further described below, MWG will install an additional groundwater monitoring well.

(1) The boundaries of the three dimensional GMZ are defined as follows:

i. The northern boundary is defined by the portion of the shoreline of the Illinois River which borders the Powerton Station Property.

ii. The eastern boundary is defined by monitoring wells MW-02 and MW-03.

iii. The southern boundary is defined by the MWG property boundary that runs from the southwest to the northeast south of both MW-09 and a new, additional monitoring well to be installed approximately 900 feet southwest of MW-09.

iv. The western boundary is defined by the existing canal/intake channel west of MW-07.

v. The vertical extent is defined as the top of the Carbondale Formation which is estimated, based on other site boring logs, to be approximately 70 feet below ground surface.

(2) Within 60 days of the effective date of the CCA, MWG shall install an additional groundwater monitoring well at a location approximately 900 feet southwest of MW-09.

(3) The new monitoring well shall be sampled twice. The sampling protocol and analytical parameters for the new monitoring well shall be the same as for the existing groundwater monitoring wells. The first sampling event shall be conducted not later than 90 days from the effective date of the CCA. The second sampling event shall coincide with the next quarterly monitoring of the existing groundwater monitoring wells and shall be separated by an interval of at least 60 days from the first sampling event.

(4) MWG shall submit a summary report to the Illinois EPA defining the GMZ (the "GMZ Report") within 45 days of receipt of all analytical data from the second round of sampling of the new monitoring well and the existing monitoring wells.

e) As an institutional control to accompany the GMZ, MWG will enter into an ELUC to cover the area of the Powerton Station property which is contained within the GMZ. MWG will submit a proposed, draft ELUC to the Illinois EPA for review and comment within 90 days of the effective date of the CCA. A final proposed ELUC, incorporating the completed delineation of the GMZ boundaries, will be presented to the Agency for review and approval with the GMZ Report.

f) MWG will continue to monitor the groundwater through the existing five groundwater monitoring wells and the additional proposed groundwater monitoring well and report its findings to IEPA. The continuing groundwater monitoring requirements will be included in the requirements of the ELUC described in sub-paragraph E above. The ELUC terms will include a provision which allows MWG the right to request the Agency's approval of a cessation of all or some of the monitoring requirements based on future monitoring results.

IV. Terms and Conditions

6. Respondent shall comply with all provisions of this CCA, including, but not limited to, any appendices to this CCA and all documents incorporated by reference into this CCA. Pursuant to Section 31(a)(10) of the Act, 415 ILCS 5/31(a)(10), if Respondent complies with the terms of this CCA, the Illinois EPA shall not refer the alleged violations that are the subject of this CCA, as described in Section II above, to the Office of the Illinois Attorney General or the State's Attorney of the county in which the alleged violations occurred. Successful completion of this CCA or an amended CCA shall be a factor to

be weighed, in favor of the Respondent, by the Office of the Illinois Attorney General in determining whether to file a complaint on its own motion for the violations cited in VN W-2012-00057.

7. This CCA is solely intended to address the violations alleged in Illinois EPA VN W-2012-00057. The Illinois EPA reserves, and this CCA is without prejudice to, all rights of the Illinois EPA against Respondent with respect to noncompliance with any term of this CCA, as well as to all other matters. Nothing in this CCA is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the Illinois EPA may have against Respondent, or any other person as defined by Section 3.315 of the Act, 415 ILCS 5/3.315. This CCA in no way affects the responsibilities of Respondent to comply with any other federal, state or local laws or regulations, including but not limited to the Act, and the Board Regulations.

8. Respondent represents that it has entered into this CCA for the purpose of settling and compromising the alleged violations in VN W-2012-00057. By entering into this CCA and complying with its terms, Respondent does not admit the allegations of violation within VN W-2012-00057 and this CCA shall not be interpreted as including such admission.

9. Pursuant to Section 42(k) of the Act, 415 ILCS 5/42(k), in addition to any other remedy or penalty that may apply, whether civil or criminal, Respondent shall be liable for an additional civil penalty of $2,000 for violation of any of the terms or conditions of this CCA.

10. This CCA shall apply to and be binding upon the Illinois EPA, and on Respondent and Respondent's officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, and upon all persons, including but not limited to contractors and consultants, acting on behalf of Respondent, as well as upon subsequent purchasers of Respondent's facility.

11. In any action by the Illinois EPA to enforce the terms of this CCA, Respondent consents to and agrees not to contest the authority or jurisdiction of the Illinois EPA to enter into or enforce this CCA, and agrees not to contest the validity of this CCA or its terms and conditions.

12. This CCA shall only become effective:

    a) If, within 30 days of receipt, Respondent executes this CCA and submits it, via certified mail, to Andrea Rhodes, CAS, CAS #19, Illinois EPA, Division of Public Water Supplies, P.O. Box 19276, Springfield, IL 62794-9276. If Respondent fails to execute and submit this CCA within 30 days of receipt, via certified mail, this CCA shall be deemed rejected by operation of law; and

    b) Upon execution by all Parties.

13. Pursuant to Section 31(a)(7.5) of the Act, 415 ILCS 5/31(a)(7.5), this CCA shall not be amended or modified prior to execution by the Parties. Any amendment or modification to this CCA by Respondent prior to execution by all Parties shall be considered a rejection of the CCA by operation of law. This CCA may only be amended subsequent to its effective date, in writing, and by mutual agreement between the Illinois EPA and Respondent's signatory to this CCA, Respondent's legal representative, or Respondent's agent.

AGREED:

FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY:

BY: _____ DATE: _____

Mike Crumly
Manager, Compliance Assurance Section
Division of Public Water Supplies
Bureau of Water

FOR RESPONDENT:

BY: _____ DATE: _____

Susan M. Franzetti
Counsel for Midwest Generation, LLC

Exhibit 14

MWG Supplemental Response to Illinois EPA Violation Notice
for the Will County Generating Station, September 4, 2012

NIJMAN · FRANZETTI LLP
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Jennifer T. Nijman
jn@nijmanfranzetti.com

Susan M. Franzetti
sf@nijmanfranzetti.com

September 4, 2012

VIA E-MAIL AND OVERNIGHT MAIL

Illinois EPA
Division of Public Water Supplies
Attn: Andrea Rhodes, CAS #19
P.O. Box 19276
Springfield, IL 62794-9276

Re: Violation Notice: Midwest Generation, LLC, Will County Generating Station
Identification No.: 6283
Violation Notice No.: W-2012-00058

Dear Ms. Rhodes:

This letter is a supplemental response to the above-referenced June 11, 2012 Violation Notice ("VN") following the meeting between the Illinois Environmental Protection Agency ("Illinois EPA or the "Agency") and Midwest Generation, LLC ("MWG") on August 14, 2012.[1] MWG appreciated the opportunity to discuss the VNs and the underlying allegations with the Agency. The extensive participation at the August 14th meeting by Interim Director John Kim and Agency personnel was productive and helped to clarify the key issues. As a result, MWG believes it now has a better understanding of the Agency's views regarding resolution of this matter.

The August 14th meeting also helped MWG both to identify issues that warranted further attention and explanation in this supplemental response and to revise its proposed Compliance Commitment Agreement ("CCA") for the MWG Will County Generation Station ("Will County") for the Agency's consideration. Accordingly, this supplemental response does not repeat all of the information contained in MWG's July 27, 2012 response to the VN, but rather focuses on responding to the questions and concerns raised by the Agency during the meeting. It also includes a revised, proposed CCA which MWG submits should be acceptable to resolve the VN allegations based on the aforementioned August 14th meeting.

Central to the revised, proposed CCA and based largely on MWG's understanding of Agency staff's concerns as expressed during the August 14th meeting, MWG proposes to

[1] The August 14, 2012 meeting was held at the request of MWG, pursuant to Section 31(a)(4) of the Illinois Environmental Protection Act. 415 ILCS 5/31(a)(4).

establish a Groundwater Monitoring Zone ("GMZ") for the ash ponds pursuant to section 620.250 of the Illinois groundwater regulations. 35 Ill. Adm. Code §620.250. MWG will install two additional groundwater monitoring wells and conduct additional groundwater monitoring to assist in establishing the three dimensional boundaries of the GMZ. In addition, and reflective of concerns expressed by the Agency staff during the August 14th meeting, MWG proposes to enter into an Environmental Land Use Control ("ELUC") Agreement to incorporate the restrictions that are applicable to the GMZ and the continued groundwater monitoring program for the existing and new monitoring wells. These and other provisions of MWG's proposed CCA are summarized in Section II below.

By submitting this supplemental response, MWG does not waive any of its original objections to the VNs raised in our July 27th VN Response. Moreover, MWG does not, by submitting this supplemental response, make any admissions of fact or law, or waive any of its defenses to those alleged violations.

I. Supplemental Response to Alleged Violations in the VN

To answer questions presented at the August 14th meeting and further explain why the ash ponds at Will County Station are not causing a release into the groundwater, MWG has set forth below additional information concerning:: (1) the treatment purpose and function of the ash ponds; (2) the condition of the liners underlying the ash ponds; and (3) why the alleged groundwater exceedances are not the result of releases from the ash ponds. While we may not embrace the Agency's views on each of the issues discussed, the discussion provided MWG with information that enables us to present a revised CCA that we believe addresses the questions and concerns expressed by the Agency.

A. The Treatment Purpose and Function of the Ash Ponds

As stated in MWG's July 27, 2012 VN Response, and discussed further during the August 14th meeting, the four ash ponds at Will County are not disposal sites, but are treatment ponds that remove ash from the ash wastewater. They are part of the Station's wastewater treatment system. As a primary treatment step in the wastewater treatment system, bottom ash wastewater is discharged to the ash ponds for settlement of suspended solids. The effluent from the ash treatment ponds (which is described as "bottom ash sluice water" in the Station's NPDES Permit #IL0002208) is then conveyed to the wastewater treatment plant for further treatment prior to discharge. The wastewater treatment system is permitted, pursuant to the Station's NPDES Permit. The treated final effluent is discharged to the Chicago Sanitary and Ship Canal (the "Canal") via Outfall 002 pursuant to the Station's NPDES permit (NPDES Permit #IL0002208).

Apparently, because the ash ponds perform a wastewater treatment function and are not disposal sites, it was suggested by Agency personnel during the August 14th meeting that the ash ponds may be subject to the design criteria for treatment works set forth in Part 370 of the Illinois Pollution Control Board Regulations, referencing generally section 370.930 thereof

entitled "Waste Stabilization Ponds and Aerated Lagoons," and more specifically, section 370.930(d)(2)(D) entitled "Pond Bottom" as the relevant criteria for the liners that should be installed in ash ponds. 35 Ill. Adm. Code § 370.930. Part 370 is not applicable to existing treatment works like the ash ponds at the Will County Station. The Part 370 regulations only apply to new construction of waste collection and treatment works. As stated in section 370.100, the purpose of these regulations is to "establish criteria for the design and preparation of plans and specifications for wastewater collection and treatment systems." 35 Ill. Adm. Code § 370.100 (see also § 370.200). There are no provisions or requirements in the Part 370 regulations that require existing treatment works to be modified or replaced to meet Part 370 criteria. As discussed below, there is no indication that the condition of the existing Poz-0-Pac liners in the ash ponds is causing any adverse impacts to the groundwater in the vicinity of the ponds. With respect to the high-density polypropylene ("HDPE") liner that is in place in Pond 3S, this liner already provides an equivalent level of protection to that specified in section 370.930(d)(2)(D).

B. The Liners in the Ash Ponds are Preventing Releases to Groundwater

As MWG explained in its July 27th letter and August 14th meeting, the Will County ash ponds are different from other ash impoundments in Illinois. They are neither disposal sites nor abandoned ponds. They are relatively small, active, treatment ponds from which ash is routinely removed. Moreover, they are fully lined to prevent releases to groundwater. The liners underlying the ash ponds at Will County are in excellent condition. MWG previously instituted a program to evaluate its ash ponds. Pond 3S at Will County Station was the first pond to have its liner replaced under this program. Prior to the replacement of the Pond 3S liner, all of the liners on the Will County Station ash ponds were constructed at the same time and using the same material, which consisted of two 6-inch layers of compacted Poz-o-Pac, followed by 12 inches of 90% compacted fill with an additional two 6-inch layers of compacted Poz-o-Pac and a bituminous coating on top. When MWG started the Pond 3S liner replacement project, it found that the existing liner was intact and in almost perfect condition. A core sample of the Pond 3S liner was retained by the station and a photograph of it is attached as Attachment A. As can be seen in the photograph, the core is solid without any cracks, seams, or other signs of distress. The Pond 3S Poz-o-Pac/bituminous material liner was in such good condition and thicker than expected that it was a significant challenge to remove it from Pond 3S so that the new liner could be installed. Because the Pond 3S new liner project showed that the condition and integrity of its Poz-o-Pac/bituminous liner was excellent, and the other three ash ponds were similarly constructed, the other ash ponds' liners were not replaced. Therefore, the remaining three ponds continue to have liners (both sides and bottoms) consisting of two 6-inch layers of compacted Poz-o-Pac, followed by 12 inches of 90% compacted fill with an additional two 6-inch layers of compacted Poz-o-Pac and a bituminous coating on top.

Because the work to replace the Pond 3S liner had commenced by the time the excellent condition of the existing Poz-o-Pac liner was discovered, the work proceeded and a new HDPE liner was installed in Pond 3S. The existing Poz-o-Pac liner on the sides of Pond 3S remained in

place, with the new HDPE liner placed on top of it, providing even greater protection against the release of ash constituents.

In sum, the evidence from the Pond 3S HDPE relining project demonstrates that the previously existing Poz-o-Pac liner in Pond 3S was in excellent condition at the time of its replacement. The fact that all of the other ash pond liners were constructed of the same material, in the same manner, and at the same time supports the conclusion that the ash ponds are not the cause of the alleged groundwater impacts.

C. The Ash Ponds are not causing a Release to Groundwater

As stated in MWG's July 27th VN Response, the groundwater monitoring well data does not support the contention that the ash ponds are a source of the alleged groundwater impacts.[2] For most parameters, the distribution and observation of concentrations is random and inconsistent. Generally, the parameters detected in downgradient monitoring wells (relative to the respective ash ponds) are at equivalent or lower concentrations of constituents than in the associated upgradient well for a given ash pond. Moreover, there are more exceedances of the groundwater standards in these upgradient wells than in the downgradient wells. Based on the August 14th meeting discussion, MWG understood that the Agency acknowledged that the data does not conclusively show that the ash ponds are the cause of the groundwater exceedances. For these reasons, MWG maintains its position that the monitoring data does not provide an adequate, scientific basis on which to conclude that the Will County ash ponds are causing the alleged violations.

II. Supplemental Compliance Commitment Agreement

Based on and in response to the August 14th meeting discussion, MWG has revised its proposed Compliance Commitment Agreement ("CCA") terms which were submitted in its July 27, 2012 VN Response.

The revised CCA terms are set forth below and a draft CCA is enclosed for the Agency's review. The revised CCA terms include the establishment of a Groundwater Management Zone ("GMZ") and an Environmental Land Use Control ("ELUC") Agreement on the relevant portion of the Will County Station property. An aerial map of the Will County Station showing the proposed extent of the GMZ is enclosed as Attachment B for the Agency's review and reference in considering the proposed GMZ boundaries. As shown on the aerial map's depiction of the GMZ area, there is a portion of the proposed GMZ area which is designated as "ComEd Retained Tract." It is MWG's understanding that ComEd is the current owner of this area of the proposed GMZ. MWG recognizes that the approval of this portion of the GMZ by ComEd is a necessary step before the Agency can approve the proposed boundaries of the GMZ. MWG will use its best efforts to obtain ComEd's approval of this portion of the GMZ. With regard to the

[2] MWG incorporates by reference all of its discussion and explanation of the groundwater monitoring results in the July 27, 2012 VN Response.

proposed ELUC, MWG is proposing that the ELUC apply only to the portion of the GMZ owned by MWG. This will still allow the continuing groundwater monitoring obligations to be incorporated into the terms of the ELUC, while avoiding the need to obtain a second, separate ELUC agreement from ComEd for the small portion of the GMZ over which it retains ownership. MWG is willing to discuss its proposed approach to the GMZ and ELUC further with the Agency to get its insights and to work through these issues cooperatively.

MWG believes this revised CCA should be an acceptable resolution to the VN issued to the Will County Station. As stated in the July 27th VN Response, there is no threat to human health presented by the alleged exceedances of the groundwater standards. There are no potable water wells within the 2,500 foot radius of the Site in the shallow aquifer, and the shallow groundwater discharges to either the Des Plaines River or the Canal. Neither the Des Plaines River nor the Canal is used as a drinking water source near the station. The production water wells that are located on-site are deep wells screened in the Cambro-Ordivician sandstones below the Maquoketa Shale which is a regional aquitard separating the deeper aquifers from the shallow groundwater which is the subject of the VN. In the absence of any potable groundwater receptors or use, groundwater at the Will County site does not pose any risk to human health.

The modified CCA terms are as follows:

A. The ash ponds will not be used as permanent disposal sites and will continue to function as treatment ponds to precipitate ash. Ash will continue to be removed from the ponds on a periodic basis.

B. The ash treatment ponds will be maintained and operated in a manner which protects the integrity of the existing liners. During the removal of ash from the ponds, appropriate procedures will be followed to protect the integrity of the existing liners, including operating the ash removal equipment in a manner which minimizes the risk of any damage to the liner.

C. During the ash removal process, visual inspections of the ponds will be conducted to identify any signs of a breach in the integrity of the pond liners. In the event that a breach of the pond liners is detected, MWG will notify the Agency and will implement the correction action plan.

D. MWG proposes to establish a Groundwater Management Zone ("GMZ") pursuant to section 620.250 of the Illinois groundwater regulations. 35 Ill. Admin. Code § 620.250. MWG will use its best efforts to obtain the timely approval of the portion of the proposed GMZ which is owned by Commonwealth Edison ("ComEd") from the owner.

    a. The proposed eastern, western and vertical boundaries of the three dimensional GMZ are defined as follows:

i. The eastern GMZ boundary is defined by the portion of the shoreline of the Chicago Sanitary and Ship Canal which borders the Waukegan Station Property.

ii. The western boundary is defined is defined by the portion of the shoreline of the Des Plaines River which borders the Waukegan Station Property.

iii. The vertical boundary of the GMZ is the top of the Maquoketa Shale, which is estimated in the MWG Hydrogeologic Assessment Report to be approximately 140 feet below ground surface.

b. To define the northern and southern boundaries of the GMZ, MWG will install two additional groundwater monitoring wells within 60 days of the effective date of the CCA. The northern boundary well will be installed approximately 300 feet north of monitoring well MW-01. The southern boundary well will be installed approximately 300 feet to the south/southeast of monitoring well MW-06.

c. The two new monitoring wells shall be sampled twice. The sampling protocol and analytical parameters for the two new monitoring wells shall be the same as for the existing groundwater monitoring wells. The first sampling event shall be conducted not later than 90 days from the effective date of the CCA. The second sampling event shall coincide with the next quarterly monitoring of the existing groundwater monitoring wells and shall be separated by an interval of at least 60 days from the first sampling event.

d. MWG shall submit a summary report to the Illinois EPA defining the GMZ (the "GMZ Report") within 45 days of receipt of all analytical data from the second round of sampling of the two new monitoring wells and the existing monitoring wells. The GMZ Report also will contain a report on the status of MWG's efforts to obtain approval of the portion of the GMZ owned by ComEd.

E. As an institutional control to accompany the GMZ, MWG will enter into an ELUC to cover the area of the Will County Station property which is contained within the GMZ, except for that portion of the GMZ area which is owned by ComEd. MWG will submit a proposed, draft ELUC to the Illinois EPA for review and comment within 90 days of the effective date of the CCA. A final proposed ELUC, incorporating the completed delineation of the GMZ boundaries, will be presented to the Agency for review and approval with the GMZ Report.

F. MWG will continue to monitor the groundwater through the existing five groundwater monitoring wells and the new, additional proposed groundwater monitoring well and report its findings to IEPA. The continuing groundwater monitoring requirements will be included in the requirements of the ELUC described in sub-paragraph E above. The ELUC terms will include a provision which allows MWG the right to request the Agency's approval of a cessation of all or some of the monitoring requirements based on future monitoring results.

This letter constitutes our supplemental response to, and modified CCA for, the Violation Notice W-2012-00058. MWG also reserves the right to raise additional defenses and mitigation arguments as may be necessary, in defense of the allegations listed in the Violation Notice in the event of any future enforcement. We believe that this supplemental response is responsive to all of the Agency's comments and concerns expressed in our meeting, and represents an appropriate resolution to the VN. Should you have any additional questions or concerns, please do not hesitate to contact me.

Very truly yours,

Susan M. Franzetti
Counsel for Midwest Generation, LLC

Enclosure

cc: Maria L. Race, Midwest Generation, LLC

Attachment A

Attachment B

NOTE:
BACKGROUND MAP RETRIEVED FROM GOOGLE MAPS 2012

0 300'
APPROXIMATE SCALE

N

ENVIRONMENTAL CONSULTATION & REMEDIATION

KPRG and Associates, Inc.

414 Plaza Drive, Suite 106 Westmont, Illinois 60559 Telephone 630-325-1388 Facsimile 630-325-1998

14665 West Lisbon Road, Suite 2B Brookfield, Wisconsin 53005 Telephone 262-781-0475 Facsimile 262-781-0478

PROPOSED GROUNDWATER MANAGEMENT ZONE EXTENT

WILL COUNTY STATION
ROMEOVILLE, ILLINOIS

Scale: 1" = 300' | Date: August 31, 2012

KPRG Project No. 18311.4 | FIGURE 1

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:	)	
	)	
Midwest Generation, LLC	)	
Will County Generating Station	)	
Romeoville, Will County, Illinois	)	
IEPA ID #170001464029	)	
	)	
	)	**ILLINOIS EPA VN W-2012-00058**
	)	**BUREAU OF WATER**
	)	

COMPLIANCE COMMITMENT AGREEMENT

I. Jurisdiction

1. This Compliance Commitment Agreement ("CCA") is entered into voluntarily by the Illinois Environmental Protection Agency ("Illinois EPA") and Midwest Generation, LLC, Will County Generating Station ("Respondent") (collectively, the "Parties") under the authority vested in the Illinois EPA pursuant to Section 31(a)(7)(i) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(a)(7)(i).

II. Allegation of Violations

2. Respondent owns and operates a coal-fired electrical generating station at 529 East Romeo Road in Romeoville, Will County, IL.

3. Pursuant to Violation Notice ("VN") W-2012-00058, issued on June 11, 2012, the Illinois EPA contends that Respondent has violated the following provisions of the Act and Illinois Pollution Control Board ("Board") Regulations:

   a) Section 12 of the Illinois Environmental Protection Act, 415 ILCS 5/12

   b) 35 Ill. Adm. Code 620.115, 620.301, 620.401, 620.405, and 620.410

III. Compliance Activities

4. On July 27, 2012, the Illinois EPA received Respondent's response to VN W-2012-00058, which included proposed terms for a CCA. On August 14, 2011, the Parties met at the Illinois EPA offices to discuss the violation notice and July 27th response. On _____ __, 2012, the Illinois EPA received Respondent's supplemental reply to the VN in response to Illinois EPA's comments at the meeting. The Illinois EPA has reviewed Respondent's proposed CCA terms, as well as considered whether any

additional terms and conditions are necessary to attain compliance with the alleged violations cited in the VN.

5. Respondent agrees to undertake and complete the following actions, which the Illinois EPA has determined are necessary to attain compliance with the allegations contained in VN W-2012-00058:

a) The ash ponds will not be used as permanent disposal sites and will continue to function as treatment ponds to precipitate ash. Ash will continue to be removed from the ponds on a periodic basis.

b) The ash treatment ponds will be maintained and operated in a manner which protects the integrity of the existing liners. During the removal of ash from the ponds, appropriate procedures will be followed to protect the integrity of the existing liners, including operating the ash removal equipment in a manner which minimizes the risk of any damage to the liner.

c) During the ash removal process, visual inspections of the ponds will be conducted to identify any signs of a breach in the integrity of the pond liners. In the event that a breach of the pond liners is detected, MWG will notify the Agency and will implement a correction action plan.

d) A Groundwater Management Zone ("GMZ") pursuant to section 620.250 of the Illinois groundwater regulations, 35 Ill. Admin. Code § 620.250, shall be established as follows.

(1) The eastern, western and vertical boundaries of the three dimensional GMZ are defined as:

i. Eastern boundary: the portion of the shoreline of the Chicago Sanitary and Ship Canal which borders the Waukegan Station Property.

ii. Western boundary: the portion of the shoreline of the Des Plaines River which borders the Waukegan Station Property.

iii. Vertical boundary: the top of the Maquoketa Shale, which is estimated to be approximately 140 feet below ground surface.

(2) To define the northern and southern boundaries of the GMZ, MWG will install two additional groundwater monitoring wells within 60 days of the effective date of the CCA. The northern boundary well will be installed approximately 300 feet north of monitoring well MW-01. The southern boundary well will be installed approximately 300 feet to the south/southeast of monitoring well MW-06.

(3) The two new monitoring wells shall be sampled twice. The sampling protocol and analytical parameters for the two new monitoring wells

shall be the same as for the existing groundwater monitoring wells. The first sampling event shall be conducted not later than 90 days from the effective date of the CCA. The second sampling event shall coincide with the next quarterly monitoring of the existing groundwater monitoring wells and shall be separated by an interval of at least 60 days from the first sampling event.

(4) MWG shall submit a summary report to the Illinois EPA defining the GMZ (the "GMZ Report") within 45 days of receipt of all analytical data from the second round of sampling of the two new monitoring wells and the existing monitoring wells.

e) As an institutional control to accompany the GMZ, MWG will enter into an ELUC to cover the area of the Will County Station property which is contained within the GMZ. MWG will submit a proposed, draft ELUC to the Illinois EPA for review and comment within 90 days of the effective date of the CCA. A final proposed ELUC, incorporating the completed delineation of the GMZ boundaries, will be presented to the Agency for review and approval with the GMZ Report.

f) MWG will continue to monitor the groundwater through the existing groundwater monitoring wells and the two new groundwater monitoring wells and report its findings to IEPA. The continuing groundwater monitoring requirements will be included in the requirements of the ELUC described in sub-paragraph (e) above. The ELUC terms will include a provision which allows MWG the right to request the Agency's approval of a cessation of all or some of the monitoring requirements based on future monitoring results.

IV. Terms and Conditions

6. Respondent shall comply with all provisions of this CCA, including, but not limited to, any appendices to this CCA and all documents incorporated by reference into this CCA. Pursuant to Section 31(a)(10) of the Act, 415 ILCS 5/31(a)(10), if Respondent complies with the terms of this CCA, the Illinois EPA shall not refer the alleged violations that are the subject of this CCA, as described in Section II above, to the Office of the Illinois Attorney General or the State's Attorney of the county in which the alleged violations occurred. Successful completion of this CCA or an amended CCA shall be a factor to be weighed, in favor of the Respondent, by the Office of the Illinois Attorney General in determining whether to file a complaint on its own motion for the violations cited in VN W-2012-00058.

7. This CCA is solely intended to address the violations alleged in Illinois EPA VN W-2012-00058. The Illinois EPA reserves, and this CCA is without prejudice to, all rights of the Illinois EPA against Respondent with respect to noncompliance with any term of this CCA, as well as to all other matters. Nothing in this CCA is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the

Illinois EPA may have against Respondent, or any other person as defined by Section 3.315 of the Act, 415 ILCS 5/3.315. This CCA in no way affects the responsibilities of Respondent to comply with any other federal, state or local laws or regulations, including but not limited to the Act, and the Board Regulations.

8. Respondent represents that it has entered into this CCA for the purpose of settling and compromising the alleged violations in VN W-2012-00058. By entering into this CCA and complying with its terms, Respondent does not admit the allegations of violation within VN W-2012-00058 and this CCA shall not be interpreted as including such admission.

9. Pursuant to Section 42(k) of the Act, 415 ILCS 5/42(k), in addition to any other remedy or penalty that may apply, whether civil or criminal, Respondent shall be liable for an additional civil penalty of $2,000 for violation of any of the terms or conditions of this CCA.

10. This CCA shall apply to and be binding upon the Illinois EPA, and on Respondent and Respondent's officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, and upon all persons, including but not limited to contractors and consultants, acting on behalf of Respondent, as well as upon subsequent purchasers of Respondent's facility.

11. In any action by the Illinois EPA to enforce the terms of this CCA, Respondent consents to and agrees not to contest the authority or jurisdiction of the Illinois EPA to enter into or enforce this CCA, and agrees not to contest the validity of this CCA or its terms and conditions.

12. This CCA shall only become effective:

    a) If, within 30 days of receipt, Respondent executes this CCA and submits it, via certified mail, to Andrea Rhodes, CAS, CAS #19, Illinois EPA, Division of Public Water Supplies, P.O. Box 19276, Springfield, IL 62794-9276. If Respondent fails to execute and submit this CCA within 30 days of receipt, via certified mail, this CCA shall be deemed rejected by operation of law; and

    b) Upon execution by all Parties.

13. Pursuant to Section 31(a)(7.5) of the Act, 415 ILCS 5/31(a)(7.5), this CCA shall not be amended or modified prior to execution by the Parties. Any amendment or modification to this CCA by Respondent prior to execution by all Parties shall be considered a rejection of the CCA by operation of law. This CCA may only be amended subsequent to its effective date, in writing, and by mutual agreement between the Illinois EPA and Respondent's signatory to this CCA, Respondent's legal representative, or Respondent's agent.

AGREED:

FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY:

BY: _____ DATE: _____

Mike Crumly
Manager, Compliance Assurance Section
Division of Public Water Supplies
Bureau of Water

FOR RESPONDENT:

BY: _____ DATE: _____

Susan M. Franzetti
Counsel for Midwest Generation, LLC

Exhibit 15

MWG Supplemental Response to Illinois EPA Violation Notice
for the Joliet #29 Generating Station, August 31, 2012

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Susan M. Franzetti
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August 31, 2012

VIA E-MAIL AND OVERNIGHT MAIL

Illinois EPA
Division of Public Water Supplies
Attn: Andrea Rhodes, CAS #19
P.O. Box 19276
Springfield, IL 62794-9276

Re: Violation Notice: Midwest Generation, LLC, Joliet #29 Generating Station
Identification No.: 6284
Violation Notice No.: W-2012-00059

Dear Ms. Rhodes:

This letter is a supplemental response to the above-referenced June 11, 2012 Violation Notice ("VN") following the meeting between the Illinois Environmental Protection Agency ("Illinois EPA or the "Agency") and Midwest Generation, LLC ("MWG") on August 14, 2012.[1] MWG appreciated the opportunity to discuss the VNs and the underlying allegations with the Agency. The extensive participation at the August 14th meeting by Interim Director John Kim and Agency personnel was productive and helped to clarify the key issues. As a result, MWG believes it now has a better understanding of the Agency's views regarding resolution of this matter.

The August 14th meeting also helped MWG both to identify issues that warranted further attention and explanation in this supplemental response and to revise its proposed Compliance Commitment Agreement ("CCA") for the MWG Joliet #29 Generation Station ("Joliet #29") for the Agency's consideration. Accordingly, this supplemental response does not repeat all of the information contained in MWG's July 27, 2012 response to the VN, but rather focuses on responding to the questions and concerns raised by the Agency during the meeting. It also includes a revised, proposed CCA which MWG submits should be acceptable to resolve the VN allegations based on the discussion at the aforementioned August 14th meeting.

[1] The August 14, 2012 meeting was held at the request of MWG, pursuant to Section 31(a)(4) of the Illinois Environmental Protection Act. 415 ILCS 5/31(a)(4).

A very significant revision has been made to the revised, proposed CCA to include a project to replace the existing liner in Pond 3 at the Joliet #29 Station. MWG made this decision based on Midwest Generation's understanding of Agency staff's concerns as expressed during the August 14th meeting, even though MWG continues to believe that groundwater monitoring well results do not indicate that Pond 3 is causing the alleged groundwater violations. These and other provisions of MWG's proposed CCA are summarized in Section II below.

By submitting this supplemental response, MWG does not waive any of its original objections to the VNs raised in our July 27th response. Moreover, MWG does not, by submitting this supplemental response, make any admissions of fact or law, or waive any of its defenses to those alleged violations.

I. Supplemental Response to Alleged Violations in the VN

To answer questions presented at the meeting and further explain why the ash ponds at Joliet #29 are not causing a release into the groundwater, MWG has set forth below additional information concerning: (1) the treatment purpose and function of the ash ponds; (2) the condition of the liners underlying the ash ponds; and (3) why the alleged groundwater exceedances are not the result of releases from the ash ponds. MWG believes the August 14th discussion provided important insights and clarifications by both parties concerning the relevant facts and issues raised by the VN. While we may not embrace the Agency's views on each of the issues discussed, the discussion provided MWG with information that enables us to present a revised CCA that we believe addresses the questions and concerns expressed by the Agency.

A. The Treatment Purpose and Function of the Ash Ponds

As stated in MWG's July 27, 2012 VN response, and discussed further during the August 14th meeting, the three ash ponds at Joliet #29 are not disposal sites, but are wastewater treatment ponds that remove ash from the ash wastewater. Ponds 1 and 2 are used intermittently and interchangeably with each other only when the regular method of ash wastewater treatment and disposal is unavailable.[2] When the treatment ponds are used, the ash wastewater enters either Pond 1 or 2 for settlement of suspended solids. Almost all of the ash settles out into one of these ponds and the effluent then flows into Pond 3 for additional treatment. Pond 3 acts as a finishing treatment for the wastewater by providing additional settling time for any residual ash solids in the wastewater. Consequently, because of the settling that occurs in Ponds 1 or 2, the amount of ash remaining in the effluent that settles out in Pond 3 is minimal. The treated effluent is

[2]Under normal station operations, the ash wastewater generated by Joliet #29 is conveyed mechanically directly to the on-site, permitted Lincoln Stone Quarry Landfill without entering any of the ash ponds. However, because there are temporary periods of time when the ash wastewater conveyance system is not operational, due to maintenance reasons, either Pond 1 or Pond 2 is temporarily used until the ash wastewater conveyance system is brought back on line.

discharged from Pond 3 to the Des Plaines River through Outfall 001g pursuant to the Station's NPDES permit (NPDES Permit #IL0064254).[3]

Apparently, because the ash ponds perform a wastewater treatment function and are not disposal sites, it was suggested by Agency personnel during the August 14th meeting that the ash ponds may be subject to the design criteria for treatment works set forth in Part 370 of the Illinois Pollution Control Board Regulations, referencing generally section 370.930 thereof entitled "Waste Stabilization Ponds and Aerated Lagoons," and more specifically, section 370.930(d)(2)(D) entitled "Pond Bottom" as the relevant criteria for the liners that should be installed in ash ponds. 35 Ill. Adm. Code § 370.930. As a practical matter, this is unnecessary given that the existing liners in two of the Joliet #29 ash ponds provide an equivalent level of protection to that specified in section 370.930(d)(2)(D) and the Pond 3 Poz-o-Pac liner provides adequate protection given its minimal use and the minimal amount of ash which collects in it. Further, Part 370 is not applicable to existing treatment works like the ash ponds at the Joliet #29 Station. Rather, the Part 370 regulations only apply to new construction of waste collection and treatment works. As stated in section 370.100, the purpose of these regulations is to "establish criteria for the design and preparation of plans and specifications for wastewater collection and treatment systems." 35 Ill. Adm. Code § 370.100 (emphasis supplied; see also § 370.200). There are no provisions or requirements in the Part 370 regulations that require existing treatment works to be modified or replaced to meet Part 370 criteria.

B. The Liners in the Ash Ponds are Preventing Releases to Groundwater

As MWG explained in its July 27th letter and during the August 14th meeting, the Joliet #29 ash ponds are different from other ash impoundments in Illinois. They are neither disposal sites nor abandoned ponds. They are relatively small, active, treatment ponds from which ash is routinely removed. Moreover, they are fully lined to prevent releases to groundwater. MWG previously relined Ponds 1 and 2, the ponds that collect the bulk of the ash from the ash wastewater, with a high-density polyethylene ("HDPE") liner, overlain by a 12-inch sand cushion layer and a 6-inch limestone "warning" layer (to warn operators to the location of the underlying liner in order to prevent liner damage during ash removal). HDPE liners have a permeability of approximately 10^{-13} cm/sec. Pond 3, the finishing pond which does not collect much ash, is lined with a liner of two 6-inch lifts of Poz-o-Pac. MWG disagrees with Illinois EPA's conclusion that Pond 3 is the cause of the alleged groundwater exceedances and does not believe the factual evidence -- the existence of the Poz-o-Pac liner, the limited use of Pond 3 and the minimal ash that collects in it -- supports the Agency's conclusion. Moreover, as described further below, the groundwater data does not point to Pond 3 as the source of these impacts.

C. The Ash Ponds are not causing a Release to Groundwater

As stated in MWG's July 27th VN Response, the groundwater monitoring well data does not support the contention that the ash ponds are a source of the alleged groundwater impacts.[4]

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[3] The effluent is subject to limits for pH and total suspended solids. To date, the limits have not been exceeded.

For most parameters, the distribution and observation of concentrations is random and inconsistent. The data does not demonstrate, and is inconsistent with, the ash ponds being the source of the groundwater impacts. At least with regard to the chloride exceedances, MWG's understanding of the August 14th meeting discussion is that the Agency agreed with the conclusion that the chloride exceedances are more likely from dissolved road salt runoff (*e.g.*, from nearby U.S. Route 6) than from the ash ponds.

During the August 14th meeting, the Illinois EPA explained why it believes that Pond 3 is a source of the groundwater impacts at MW-9 and needs to be relined with a HDPE liner or its equivalent. The Agency explained that manganese and sulfate are indicators of coal ash, even in the absence of elevated boron levels in MW-9. MWG respectfully submits that the Agency is not giving sufficient consideration to the fact that the oxidation-reduction potential around MW-9 is consistently low, showing a strongly reducing environment. Typically in reducing environments, metals such as manganese can be elevated depending on the associated mineralogy of the local sediments.[5] Moreover, the sulfate exceedances, unaccompanied as they are here with an associated elevated boron concentration (let alone an exceedance), indicate that it is likely there are various, other potential sources, both natural and anthropogenic, that are wholly unrelated to coal ash. For these reasons, MWG maintains its position that the monitoring data does not provide an adequate, scientific basis on which to conclude that Pond 3 is causing the alleged violations. Nevertheless, in a good faith effort to resolve the VN, Midwest Generation is willing to agree to the Agency's request to reline Pond 3 with a HDPE liner or its equivalent.

II. Supplemental Compliance Commitment Agreement

Based on and in response to the August 14th meeting discussion, MWG has revised its proposed Compliance Commitment Agreement ("CCA") terms which were submitted in its July 27, 2012 VN response.

The revised CCA terms are set forth below and a draft CCA is enclosed for the Agency's review.

MWG believes this revised CCA should be an acceptable resolution to the VN issued to the Joliet #29 Station. As stated in the original VN response, there is no threat to human health presented by the alleged exceedances of the groundwater standards. Of the seventeen wells installed within 2,500 feet of the site, there are no downgradient wells. The two nearest wells are both wells owned by MWG and are located west and northeast of the main facility building, away from the location of the subject ash pond system. In addition, these wells are screened more than 1,500 feet deep, drawing from an aquifer below the Maquoketa shale confining unit.

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[4] MWG incorporates by reference all of its discussion and explanation of the groundwater monitoring results in its July 27, 2012 VN response.

[5] "Technical Protocol for Evaluating Natural Attenuation of Chlorinated Solvents in Groundwater" EPA/600/R-98/128, September 1998. Table B.3.3.

The MWG wells are regularly sampled for potable water constituents, and the sampling results have consistently been in compliance with potable water regulations.[6] Shallow groundwater at the site discharges to the Des Plaines River, but the Des Plaines River is not used as a drinking water source near the station. In the absence of any potable groundwater receptors or use, groundwater at the Joliet #29 site does not pose any risk to human health.

The revised CCA terms are as follows:

A. The ash ponds will not be used as permanent disposal sites and will continue to function as treatment ponds to precipitate ash. Ash will continue to be removed from the ponds on a periodic basis.

B. The ash treatment ponds will be maintained and operated in a manner which protects the integrity of the existing liners. During the removal of ash from the ponds, appropriate procedures will be followed to protect the integrity of the existing liners, including operating the ash removal equipment in a manner which minimizes the risk of any damage to the liner.

C. During the ash removal process, visual inspections of the ponds will be conducted to identify any signs of a breach in the integrity of the pond liners. In the event that a breach of the pond liners is detected, MWG will notify the Agency and will implement a corrective action plan for repair or replacement, as necessary, of the liner. Upon the Agency's approval, and the issuance of any necessary construction permit, MWG will implement the correction action plan

D. MWG will continue to monitor the groundwater through the existing eleven groundwater monitoring wells and report its findings to Illinois EPA.

E. MWG will apply for a construction permit to reline Pond 3 with a high-density polyethylene ("HDPE") liner within 6 months of the effective date of the CCA. A groundwater monitoring schedule will be included in the construction permit.

F. MWG will complete the work to reline Pond 3 with a high-density polyethylene ("HDPE") liner within 6 months of the receipt of the construction permit.

G. MWG reserves the right to request the Agency's approval of a cessation of all or some of the groundwater monitoring requirements based on future monitoring results.

This letter constitutes our supplemental response to, and modified CCA for, the Violation Notice W-2012-00059. MWG also reserves the right to raise additional defenses and mitigation arguments as may be necessary, in defense of the allegations listed in the Violation Notice in the

[6] See previously submitted Hydrogeologic Assessment of Midwest Generation Electric Generation Stations: Will County Station, Waukegan Station, Joliet 29 Station, Crawford Station, Powerton Station.

event of any future enforcement. We believe that this supplemental response is responsive to all of the Agency's comments and concerns expressed in our meeting, and represents an appropriate resolution to the VN. Should you have any additional questions or concerns, please do not hesitate to contact me.

Very truly yours,

Susan M. Franzetti

Susan M. Franzetti
Counsel for Midwest Generation, LLC

Enclosure

cc: Maria L. Race, Midwest Generation, LLC

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:	)	
	)	
Midwest Generation, LLC	)	
Joliet #29 Generating Station	)	
Joliet, Will County, Illinois	)	
IEPA ID #170000162525	)	
	)	
	)	**ILLINOIS EPA VN W-2012-00059**
	)	**BUREAU OF WATER**
	)	

COMPLIANCE COMMITMENT AGREEMENT

I. Jurisdiction

1. This Compliance Commitment Agreement ("CCA") is entered into voluntarily by the Illinois Environmental Protection Agency ("Illinois EPA") and Midwest Generation, LLC, Joliet #29 Generating Station ("Respondent") (collectively, the "Parties") under the authority vested in the Illinois EPA pursuant to Section 31(a)(7)(i) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(a)(7)(i).

II. Allegation of Violations

2. Respondent owns and operates a coal-fired electrical generating station at 1800 Channahon Road in Joliet, Will County, IL.

3. Pursuant to Violation Notice ("VN") W-2012-00059, issued on June 11, 2012, the Illinois EPA contends that Respondent has violated the following provisions of the Act and Illinois Pollution Control Board ("Board") Regulations:

   a) Section 12 of the Illinois Environmental Protection Act, 415 ILCS 5/12

   b) 35 Ill. Adm. Code 620.115, 620.301, 620.401, 620.405, and 620.410

III. Compliance Activities

4. On July 27, 2012, the Illinois EPA received Respondent's response to VN W-2012-00059, which included proposed terms for a CCA. On August 14, 2011, the Parties met at the Illinois EPA offices to discuss the violation notice and the July 27th response. On _____, 2012, the Illinois EPA received Respondent's supplemental reply to the VN in response to Illinois EPA's comments at the meeting. The Illinois EPA has reviewed Respondent's proposed CCA terms, as well as considered whether any

additional terms and conditions are necessary to attain compliance with the alleged violations cited in the VN.

5. Respondent agrees to undertake and complete the following actions, which the Illinois EPA has determined are necessary to attain compliance with the allegations contained in VN W-2012-00059:

   a) The ash ponds will not be used as permanent disposal sites and will continue to function as treatment ponds to precipitate ash. Ash will continue to be removed from the ponds on a periodic basis.

   b) The ash treatment ponds will be maintained and operated in a manner which protects the integrity of the existing liners. During the removal of ash from the ponds, appropriate procedures will be followed to protect the integrity of the existing liners, including operating the ash removal equipment in a manner which minimizes the risk of any damage to the liner.

   c) During the ash removal process, visual inspections of the ponds will be conducted to identify any signs of a breach in the integrity of the pond liners. In the event that a breach of the pond liners is detected, MWG will notify the Agency and will submit a corrective action plan for repair or replacement, as necessary, of the liner. Upon the Agency's approval, and the issuance of any necessary construction permit, MWG will implement the correction action plan.

   d) MWG will continue to monitor the groundwater through the existing eleven groundwater monitoring wells and report its findings to Illinois EPA.

   e) MWG will apply for a construction permit to reline Pond 3 with a high-density polyethylene ("HDPE") liner within 6 months of the effective date of the CCA. A groundwater monitoring schedule will be included in the construction permit.

   f) MWG will complete the work to reline Pond 3 with a high-density polyethylene ("HDPE") liner within 6 months of the receipt of the construction permit.

   g) MWG reserves the right to request the Agency's approval of a cessation of all or some of the groundwater monitoring requirements based on future monitoring results.

IV. Terms and Conditions

6. Respondent shall comply with all provisions of this CCA, including, but not limited to, any appendices to this CCA and all documents incorporated by reference into this CCA. Pursuant to Section 31(a)(10) of the Act, 415 ILCS 5/31(a)(10), if Respondent complies with the terms of this CCA, the Illinois EPA shall not refer the alleged violations that are the subject of this CCA, as described in Section II above, to the Office of the Illinois Attorney General or the State's Attorney of the county in which the alleged violations occurred. Successful completion of this CCA or an amended CCA shall be a factor to be weighed, in favor of the Respondent, by the Office of the Illinois Attorney General in

determining whether to file a complaint on its own motion for the violations cited in VN W-2012-00059.

7. This CCA is solely intended to address the violations alleged in Illinois EPA VN W-2012-00059. The Illinois EPA reserves, and this CCA is without prejudice to, all rights of the Illinois EPA against Respondent with respect to noncompliance with any term of this CCA, as well as to all other matters. Nothing in this CCA is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the Illinois EPA may have against Respondent, or any other person as defined by Section 3.315 of the Act, 415 ILCS 5/3.315. This CCA in no way affects the responsibilities of Respondent to comply with any other federal, state or local laws or regulations, including but not limited to the Act, and the Board Regulations.

8. Respondent represents that it has entered into this CCA for the purpose of settling and compromising the alleged violations in VN W-2012-00059. By entering into this CCA and complying with its terms, Respondent does not admit the allegations of violation within VN W-2012-00059 and this CCA shall not be interpreted as including such admission.

9. Pursuant to Section 42(k) of the Act, 415 ILCS 5/42(k), in addition to any other remedy or penalty that may apply, whether civil or criminal, Respondent shall be liable for an additional civil penalty of $2,000 for violation of any of the terms or conditions of this CCA.

10. This CCA shall apply to and be binding upon the Illinois EPA, and on Respondent and Respondent's officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, and upon all persons, including but not limited to contractors and consultants, acting on behalf of Respondent, as well as upon subsequent purchasers of Respondent's facility.

11. In any action by the Illinois EPA to enforce the terms of this CCA, Respondent consents to and agrees not to contest the authority or jurisdiction of the Illinois EPA to enter into or enforce this CCA, and agrees not to contest the validity of this CCA or its terms and conditions.

12. This CCA shall only become effective:

    a) If, within 30 days of receipt, Respondent executes this CCA and submits it, via certified mail, to Andrea Rhodes, CAS, CAS #19, Illinois EPA, Division of Public Water Supplies, P.O. Box 19276, Springfield, IL 62794-9276. If Respondent fails to execute and submit this CCA within 30 days of receipt, via certified mail, this CCA shall be deemed rejected by operation of law; and

    b) Upon execution by all Parties.

13. Pursuant to Section 31(a)(7.5) of the Act, 415 ILCS 5/31(a)(7.5), this CCA shall not be amended or modified prior to execution by the Parties. Any amendment or modification

to this CCA by Respondent prior to execution by all Parties shall be considered a rejection of the CCA by operation of law. This CCA may only be amended subsequent to its effective date, in writing, and by mutual agreement between the Illinois EPA and Respondent's signatory to this CCA, Respondent's legal representative, or Respondent's agent.

AGREED:

FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY:

BY: _____ DATE: _____

Mike Crumly
Manager, Compliance Assurance Section
Division of Public Water Supplies
Bureau of Water

FOR RESPONDENT:

BY: _____ DATE: _____

Susan M. Franzetti
Counsel for Midwest Generation, LLC

Exhibit 16

MWG Supplemental Response to Illinois EPA Violation Notice
for the Waukegan Generating Station, September 4, 2012

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Susan M. Franzetti
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September 4, 2012

VIA E-MAIL AND OVERNIGHT MAIL

Illinois EPA
Division of Public Water Supplies
Attn: Andrea Rhodes, CAS #19
P.O. Box 19276
Springfield, IL 62794-9276

Re: Violation Notice: Midwest Generation, LLC, Waukegan Generating Station
Identification No.: 6281
Violation Notice No.: W-2012-00056

Dear Ms. Rhodes:

This letter is a supplemental response to the above-referenced June 11, 2012 Violation Notice ("VN") following the meeting between the Illinois Environmental Protection Agency ("Illinois EPA or the "Agency") and Midwest Generation, LLC ("MWG") on August 14, 2012.[1] MWG appreciated the opportunity to discuss the VNs and the underlying allegations with the Agency. The extensive participation at the August 14th meeting by Interim Director John Kim and Agency personnel was productive and helped to clarify the key issues. As a result, MWG believes it now has a better understanding of the Agency's views regarding resolution of this matter.

The August 14th meeting also helped MWG both to identify issues that warrant further attention and explanation in this supplemental response and to revise its proposed Compliance Commitment Agreement ("CCA") for the MWG Waukegan Generation Station ("Waukegan") for the Agency's consideration. Accordingly, this supplemental response does not repeat all of the information contained in MWG's July 27, 2012 response to the VN, but rather focuses on responding to the questions and concerns raised by the Agency during the meeting. It also includes a revised, proposed CCA which MWG submits should be acceptable to resolve the VN allegations based on discussion at the aforementioned August 14th meeting.

[1] The August 14, 2012 meeting was held at the request of MWG, pursuant to Section 31(a)(4) of the Illinois Environmental Protection Act. 415 ILCS 5/31(a)(4).

Central to the revised, proposed CCA and based largely on MWG's understanding of Agency staff's concerns as expressed during the August 14th meeting, MWG proposes to enter into an Environmental Land Use Control ("ELUC") Agreement to cover station property not already included in an existing ComEd Former Tannery Site ELUC (as described further below). MWG will submit a proposed ELUC to the Illinois EPA for review and approval within 90 days of the effective date of the CCA. Upon the approval of the ELUC by the Agency, MWG will record the ELUC within 30 days

In addition, and again reflective of concerns expressed by Agency staff during the August 14th meeting, MWG will install an additional groundwater monitoring well between the Waukegan Station and the North Shore Sanitary District within three months of the effective date of the CCA.

These and other provisions of MWG's proposed CCA are summarized in Section II below.

By submitting this supplemental response and revised, proposed CCA, MWG does not waive any of its original objections to the VNs raised in our July 27th response. Moreover, MWG does not, by submitting this supplemental response, make any admissions of fact or law, or waive any of its defenses to those alleged violations.

I. Supplemental Response to Alleged Violations in the VN

To answer questions presented at the August 14th meeting and further explain why the ash ponds at Waukegan are not causing a release into the groundwater, MWG has set forth below additional information concerning: (1) the treatment purpose and function of the ash ponds; (2) the condition of the liners underlying the ash ponds; (3) why the alleged the groundwater exceedances are not the result of releases from the ash ponds; and (4) other potential sources of groundwater impacts. MWG believes the August 14th discussion provided important insights and clarifications by both parties concerning the relevant facts and issues raised by the VN. While we may not embrace the Agency's views on each of the issues discussed, the discussion provided MWG with information that enables us to present a revised CCA that we believe addresses the questions and concerns expressed by the Agency.

A. The Treatment Purpose and Function of the Ash Ponds

As stated in MWG's July 27, 2012 VN response, and discussed further during the August 14th meeting, the Waukegan ash ponds are not disposal sites. They are part of the Station's wastewater treatment system. As a primary treatment step in the wastewater treatment system, bottom ash wastewater (called "ash transport water" in the Station's NPDES Permit #IL0002259) is discharged to the ash ponds for settlement of suspended solids. The effluent from the ash treatment ponds is then either recycled or conveyed to the wastewater treatment plant for further treatment prior to discharge. The wastewater treatment system, including the ash ponds, is permitted pursuant to the Station's NPDES Permit #IL0002259. Under the NPDES

Permit, the ash ponds' "ash transport water" effluent is authorized to be discharged through internal Outfall C01 and then to Lake Michigan via Outfall 001.

Apparently, because the ash ponds perform a wastewater treatment function and are not disposal sites, it was suggested by Agency personnel during the August 14th meeting that the ash ponds may be subject to the design criteria for treatment works set forth in Part 370 of the Illinois Pollution Control Board Regulations, referencing generally section 370.930 thereof entitled "Waste Stabilization Ponds and Aerated Lagoons," and more specifically, section 370.930(d)(2)(D) entitled "Pond Bottom" as the relevant criteria for the liners that should be installed in ash ponds. 35 Ill. Adm. Code § 370.930. As a practical matter, this is unnecessary given that the existing liners in the Waukegan ash ponds provide an equivalent level of protection to that specified in section 370.930(d)(2)(D). Further, Part 370 is not applicable to existing treatment works like the ash ponds at the Waukegan station. Rather, Part 370 regulations only apply to new construction of waste collection and treatment works. As stated in section 370.100, the purpose of these regulations is to "establish criteria for the design and preparation of plans and specifications for wastewater collection and treatment systems." 35 Ill. Adm. Code § 370.100 (emphasis supplied; see also § 370.200). There are no provisions or requirements in the Part 370 regulations that require existing treatment works to be modified or replaced to meet Part 370 criteria.

B. The Condition of the Liners in the Ash Ponds

As MWG explained in its July 27th response to the VN and during the August 14th meeting, the Waukegan ash ponds are fully lined to prevent releases to groundwater. Even before the 2002 liner replacement work performed by MWG, the liners in Ponds 1 and 2 were high-density polyethylene ("HDPE") liners. MWG replaced the HDPE liners in both ponds in 2002 with another HDPE liner, overlain by a 12-inch sand cushion layer and a 6-inch limestone warning layer. The HDPE liners in both ash ponds have a permeability of approximately 10^{-13} cm/sec. Based on this history and the quality of the HDPE liners that have been in place in each of the Waukegan ash ponds, it is simply improbable that the ash ponds are the cause of the groundwater exceedances alleged in the VN.

At the August 14th meeting, Illinois EPA questioned whether the ash ponds were causing a "mounding" condition in the surrounding groundwater. Illinois EPA based this question on the recorded existence of water levels in the ash ponds that are consistently higher than water levels recorded in the surrounding groundwater monitoring wells. As KPRG's Richard Gnat explained during the meeting, the most probable explanation of why the water levels in the ash ponds are higher than in the monitoring wells is because the HDPE liners are effectively containing or holding the water within the ash ponds. In other words, the HDPE liners are doing a good job of preventing any release to groundwater. There are no "mounding" conditions occurring at the site. The existing water level data for both the ponds and the adjoining monitoring wells do not support the existence of mounding conditions. Based on the outcome of the August 14th meeting discussion, it is MWG's understanding that IEPA staff recognize that the data do not support the existence of mounding conditions at this site.

C. Lack of Data Showing the Ash Ponds are Causing a Release

As stated in the original VN Response, the monitoring well results do not support the contention that the ash ponds are a source of the alleged groundwater impacts.[2] The highest concentrations, including boron which is a primary ash impact tracer, and greatest number of exceedances of the Class I groundwater standards were detected in the upgradient well, MW-5. Four parameters exceeded the groundwater standards only in this well, and not in any of the downgradient wells. The data simply does not support the conclusion that the ash ponds are causing the alleged groundwater exceedances.

D. Other Potential Causes of Groundwater Impacts

There are two adjacent properties to the Waukegan Station that are known release sites, both of which have been enrolled in the Illinois Site Remediation Program ("SRP"). They are known as the "ComEd Former Tannery Site" and the "General Boiler Site." They are both shown on the attached "Site Location Map," dated July 8, 2002, prepared by Retec for ComEd. (See Attachment A) Either or both of these sites may be a contributing cause to the alleged groundwater exceedances. The information presented below is based on information that either was already within MWG's possession or was available on the Agency's website and/or the internet. MWG would welcome the Agency's voluntary production of any investigative and/or remedial action reports on these properties from its files to allow MWG and its consultants the opportunity to further evaluate their potential contributions to the groundwater impacts.

1. ComEd Former Tannery Site

This site is located at the northeast corner of Sand (also known as "Pershing") and Dahringer Roads, immediately to the west (upgradient) of the Waukegan Station. The tannery was built in 1917 and operated as a leather tanning facility from 1918 through early 1973. During this approximately sixty-five year period, tannery wastes were placed in unlined wastewater treatment ponds in the northeastern corner of the site resulting in contamination of soil and groundwater. ComEd acquired the property in 1973. Multiple investigations of soil and groundwater conditions on the property were performed from 1989 to 2000. A number of contaminants were identified, including arsenic. Concentrations of arsenic in groundwater on the tannery site in the area of the former wastewater treatment ponds were greater than 2 mg/L (2,000 ug/L).[3]

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[2] MWG incorporates by reference all of its discussion and explanation of the groundwater monitoring results in the original VN response.

[3] Source: Figure 3-2 from the Remedial Options Report and Table 4-1 from the 1995 Phase II Remedial Investigation Report prepared for ComEd for the Former Tannery Site. Lower arsenic concentrations (<50 ug/L) were reported for a deep monitoring well (MW1A) nested with the well with the highest arsenic concentrations on the tannery site; however, this well was screened in a soil interval identified as having a higher silt content than overlying soils. The silt is expected to result in lower hydraulic conductivity than the overlying coarse sands; therefore, the silt may limit vertical migration at that specific monitoring location. Deep borings identified high soil

A groundwater investigation conducted in the late 1990's found that elevated arsenic levels above Tier 1 screening values for groundwater conditions had migrated to the eastern edge of the Former Tannery property boundary -- the boundary shared with the Waukegan Station. Thereafter, four additional monitoring wells were installed on the Waukegan Station property downgradient of the ComEd Former Tannery Site. Based on sampling from these monitoring wells, it was concluded that arsenic exceeding 50 ug/L had migrated approximately 400 feet from the ComEd Former Tannery Site onto the Waukegan Station property.[4] MWG does not know the details regarding how this approximate determination of the extent of the arsenic impacts on groundwater was made.[5]

Based on the above-described findings, ComEd requested, and MWG agreed, to enter into an Environmental Land Use Control Agreement (the "ComEd ELUC"). The boundaries of the ComEd ELUC are shown on the enclosed Figure 1. (See Attachment B)

To explain why the ComEd Former Tannery Site may be contributing to the alleged arsenic exceedances at well location MW-01 in the VN, the arsenic and boron groundwater monitoring results obtained from the monitoring wells around the ash ponds need to be considered. The arsenic distribution in the ash pond wells is different than the boron distribution. A maximum concentration of 170 ug/L was observed in MW-01 near the northeast portion of the ash pond system (See enclosed Figure 1 in Attachment B). The next highest concentration was observed in MW-02, which is immediately south of MW-01, while the other three ash pond monitoring wells had trace arsenic concentrations of 10 ug/L or less. If the boron source is also the arsenic source, then the distribution of these two constituents in groundwater is expected to be similar. However, the boron concentration distribution is not similar to arsenic. The highest boron concentration was in upgradient well MW-05, while downgradient wells MW-01 through MW-04 had boron concentrations that were similar to each other and much lower than at MW-05. (*Id.*)

The ComEd Former Tannery Site may be a source of the elevated arsenic that has been detected only in MW-01 of the ash ponds monitoring wells. Groundwater flow is eastward from the Former Tannery Site toward the Waukegan Station and Lake Michigan, at a velocity of up to 215 ft/yr based on slug tests performed on ash pond monitoring wells.[6] Waukegan Station

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arsenic concentrations (>1000 mg/kg) over most of the former wastewater treatment pond area, indicating the potential for arsenic at depth as well as at the surface in this area.

[4] Because prior sampling on the Former Tannery Site had not indicated the presence of any organic compounds, only metals sampling was conducted on the Waukegan Station property. However, page 2-1 of the 1994 Phase 1 Remedial Investigation Report for the ComEd Former Tannery Site identifies borax as a mineral used at the tannery. Borax is a boron mineral, and is therefore a potential source of boron release to the environment. However, no boron analytical data were identified during review of the ComEd Former Tannery Site reports to allow this potential boron source to be further evaluated.

[5] The conclusion concerning the extent of the arsenic impacts onto the Waukegan Station property was presented in Section 2.4.5 of the 2002 Remedial Options Report prepared for ComEd. Section 2.4.5 summarized the principal conclusion of the Phase IIB site investigation, but MWG does not have a copy of the Phase IIB site investigation report.

[6] Hydrogeologic Assessment Report – Waukegan Station. Patrick Engineering, February 2011

monitoring well MW-01 is about 2,500 feet east of the Former Tannery Site. Assuming no attenuation, it would take 90 years for groundwater to flow to MW-01 at the lower velocity and 17 years at the higher velocity, either of which are feasible because the tannery began operation 94 years ago. While arsenic is subject to attenuation, arsenic attenuation rates are highly site specific, and tend to be lowest (*i.e.,* have the least impact on arsenic concentrations) in chemically reduced, sand-rich groundwater flow systems such as the system present at the Waukegan Station.[7]

The enclosed Figure 2 (see Attachment B) shows the distribution of observed maximum arsenic concentrations in groundwater at both the Former Tannery Site and the Waukegan Station ash pond monitoring wells. It shows that concentrations in intermediate-distance wells (MW-12 and MW-05) are lower than in MW-01. However, all of the monitoring wells are screened at the water table. They may be too shallow to monitor arsenic that may be migrating from the Former Tannery Site at a greater depth than the existing monitoring well screened intervals within the 30-foot thick sand unit. If groundwater recharge east of the Former Tannery site is pushing the arsenic plume toward the bottom of the 30-foot thick sand and gravel formation, then other conditions are present which would allow the arsenic plume to migrate at depth to monitoring well MW-01 while being mostly undetected by the intermediate-distance, shallow water table monitoring wells.[8] While monitoring well MW-01 is also a water table monitoring well, it is close to Lake Michigan -- the regional point for groundwater discharge -- where upward vertical gradients (upwelling of groundwater from the deeper portion of the aquifer), are expected.

Arsenic concentrations in ELUC monitoring wells MW-10 and MW-12 also indicate that the Former Tannery Site may be impacting groundwater at MW-01. These ELUC wells lie on a line approximately parallel to groundwater flow and upgradient of MW-01 (see Figure 2 in Attachment B). In both of them, four arsenic concentration peaks have been detected (in 2002, 2005, 2009, 2011) and each peak occurred on the same sample date for both wells (see Figure 3 in Attachment B). It is unlikely that all four arsenic concentration peaks are a result of natural variability because such peaks would occur randomly (*i.e.,* would not be expected to occur on the same four sample events). Laboratory or sample effects also are not plausible explanations because of the magnitude of the concentrations and the fact that other wells would have been affected. Therefore, the short term upwelling of a plume at depth in the aquifer is a plausible explanation.

Based on the above analysis of the ComEd Former Tannery Site information and data, MWG submits that the elevated arsenic concentrations detected at MW-01 on the Waukegan Station property may be due to the former operations on the adjacent Tannery Site.

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[7] Chemically reducing conditions are inferred because iron and manganese concentrations in groundwater are high in most monitoring locations (although not at MW-01), which occurs when groundwater is chemically reduced.
[8] These conditions include: 1) the reduced chemical condition of the aquifer; 2) the eastward groundwater flow direction; and 3) the reported hydraulic gradient and conductivities in the vicinity of the site.

2. General Boiler Site

The General Boiler Site has been the subject of a Leaking Underground Storage Tank ("LUST") reported release and was subsequently entered into the Illinois SRP to address other contamination present on the property. The Site is believed to be owned by ComEd. MWG's information concerning the General Boiler Site is limited to information that was available on the Agency's website and on the internet. Relevant information concerning this Site is contained in the documents enclosed as Attachment C.

The General Boiler Company formerly operated on this 19-acre parcel, located at 184 Dahringer Road, immediately to the west of the southern portion of the Waukegan Station property. (See aerial map with a "blue dot" depicting the location of the site in Attachment A) The historical uses of this site include the forming of steel boilers, the construction of pre-formed concrete posts, and the production of Styrofoam products. Prior site investigations found numerous contaminants present at the General Boiler Site, including arsenic, lead and PCBs. A fly ash fill area was detected in the northern section of the Site during investigations performed in 1998 and 1999. (See Attachment C, Taskforce on Waukegan Neighborhoods, "Lakefront Redevelopment Report" at p. 3) Groundwater sampling on the northwest corner of the site contained arsenic which reports indicate likely "migrated from the [ComEd Former Tannery Site]." (*Id.*)

The LUST release from a five-hundred gallon underground storage tank was reported to the Agency in 2000. A "No Further Remediation" ("NFR") Letter, dated October 23, 2000, has been recorded for the property. The NFR Letter imposed industrial/commercial land use restrictions on the property and a groundwater prohibition against using groundwater as a potable water supply. (See Attachment D, October 23, 2000 NFR Letter at p. 2, paragraphs 1 and 2) Neither the October 23, 2000 NFR Letter nor the information available on the Agency's website contained information identifying the contaminants that were the basis for these use restrictions on the property.

The General Boiler Site also was entered into the SRP. It received a NFR Letter in 2005. The Agency's website indicates that the 2005 NFR Letter, like the 2000 NFR Letter, also included a groundwater use restriction. No additional information regarding the nature and extent of the soil and groundwater contamination present on the General Boiler Site is currently available. However, based on the limited information that MWG has obtained to date, the General Boiler Site is also a potential source of the groundwater impacts alleged in the VN.

II. Supplemental Compliance Commitment Agreement

Based on and in response to the August 14th meeting discussion, MWG has revised its proposed Compliance Commitment Agreement ("CCA") terms which were submitted in its July 27, 2012 VN response.

The revised CCA terms are set forth below and a draft CCA is enclosed for the Agency's review.

MWG believes its revised CCA should be an acceptable resolution to the VN issued to the Waukegan station. As stated in the original VN response, there is no threat to human health presented by the alleged exceedances of the groundwater standards. The groundwater wells installed within 2,500 feet of the site are all east and upgradient of the site. Shallow groundwater at the site discharges to Lake Michigan. Although Lake Michigan is used as a drinking water source, the nearest intake location is too far away to be impacted by the alleged groundwater exceedances. In the absence of any potable groundwater receptors or use, groundwater at the Waukegan site does not pose any risk to human health.

The revised CCA terms are as follows:

A. The ash ponds will not be used as permanent disposal sites and will continue to function as treatment ponds to precipitate ash. Ash will continue to be removed from the ponds on a periodic basis.

B. The ash treatment ponds will be maintained and operated in a manner which protects the integrity of the existing liners. During the removal of ash from the ponds, appropriate procedures will be followed to protect the integrity of the existing liners, including operating the ash removal equipment in a manner which minimizes the risk of any damage to the liner.

C. During the ash removal process, visual inspections of the ponds will be conducted to identify any signs of a breach in the integrity of the pond liners. In the event that a breach of the pond liners is detected, MWG will notify the Agency and will submit a corrective action plan for repair or replacement, as necessary, of the liner. Upon the Agency's approval, and the issuance of any necessary construction permit, MWG will implement the correction action plan.

D. MWG will enter into an ELUC to cover the remaining Waukegan Station property to the east that is not already included in the existing ComEd Former Tannery Site ELUC. MWG will submit a proposed ELUC to the Illinois EPA for review and approval within 90 days of the effective date of the CCA. Upon the approval of the ELUC by the Agency, MWG will record the ELUC within 30 days.

E. MWG will also install an additional groundwater monitoring well on the Waukegan Station property in the area approximately 500 feet south of existing monitoring well MW-05. MWG will install the monitoring well within 3 months of the effective date of the CCA. The new monitoring well shall be sampled twice. The sampling protocol and analytical parameters for the new monitoring well shall be the same as for the existing groundwater monitoring wells. The first sampling event shall be conducted not later than 90 days from the effective date

of the CCA. The second sampling event shall coincide with the next quarterly monitoring of the existing groundwater monitoring wells and shall be separated by an interval of at least 60 days from the first sampling event. The sampling protocol for the new monitoring well shall be the same as for the existing monitoring wells. The analytical parameters shall also be the same as for the current groundwater monitoring program, except that radium isotopes will be excluded.

F. MWG will continue to monitor the groundwater through the existing five groundwater monitoring wells and the additional proposed groundwater monitoring well and report its findings to IEPA. The continuing groundwater monitoring requirements will be included in the requirements of the ELUC described in subparagraph D above. The ELUC terms will include a provision which allows MWG the right to request the Agency's approval of a cessation of all or some of the monitoring requirements based on future monitoring results.

This letter constitutes our supplemental response to, and modified CCA for, the Violation Notice W-2012-00056. MWG also reserves the right to raise additional defenses and mitigation arguments as may be necessary, in defense of the allegations listed in the Violation Notice in the event of any future enforcement. We believe that this supplemental response is responsive to all of the Agency's comments and concerns expressed in our meeting, and represents an appropriate resolution to the VN. Should you have any additional questions or concerns, please do not hesitate to contact me.

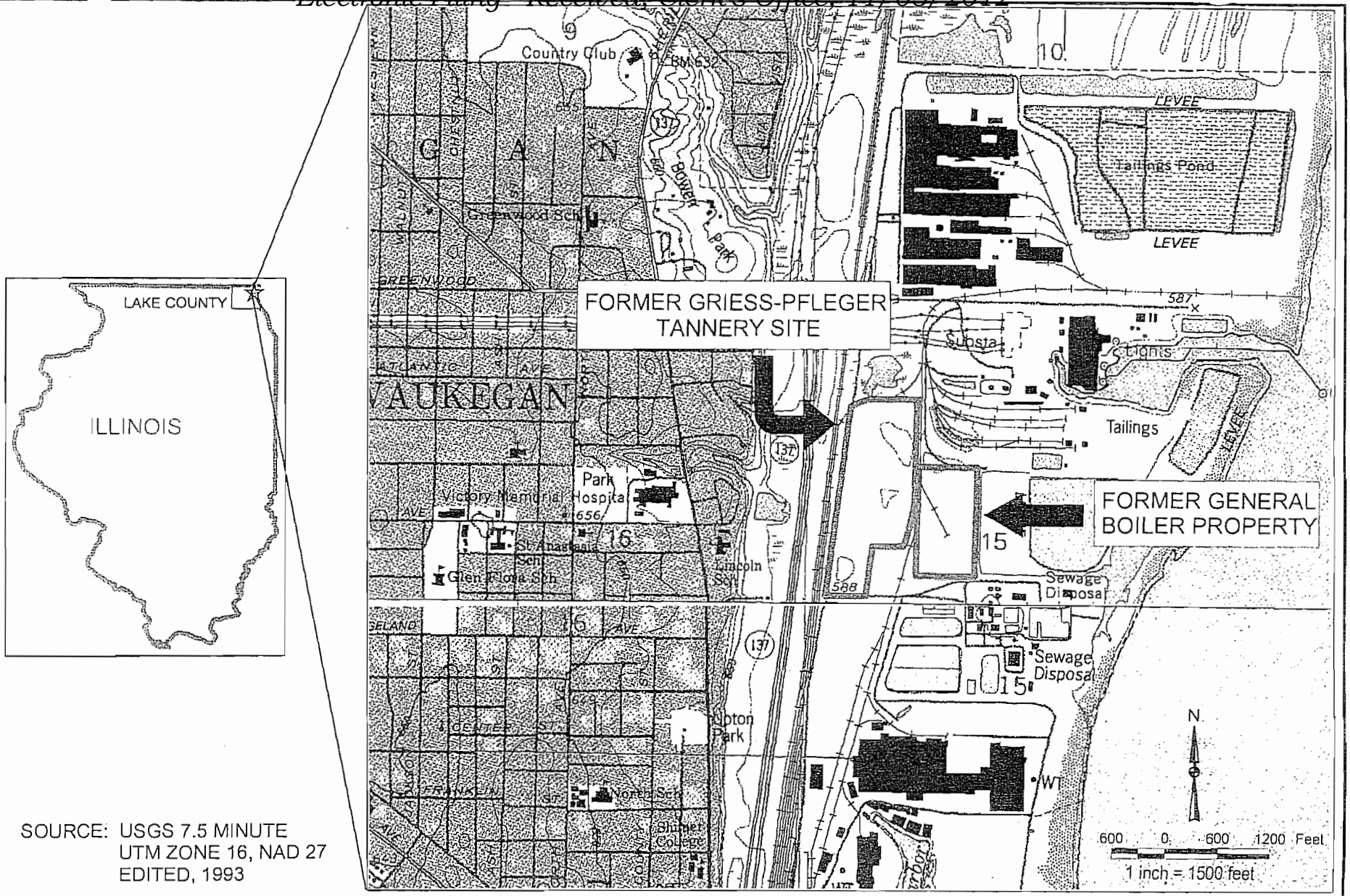
Very truly yours,

Susan M. Franzetti
Counsel for Midwest Generation, LLC

Enclosure

cc: Maria L. Race, Midwest Generation, LLC

Attachment A



SOURCE: USGS 7.5 MINUTE
UTM ZONE 16, NAD 27
EDITED, 1993

RETEC

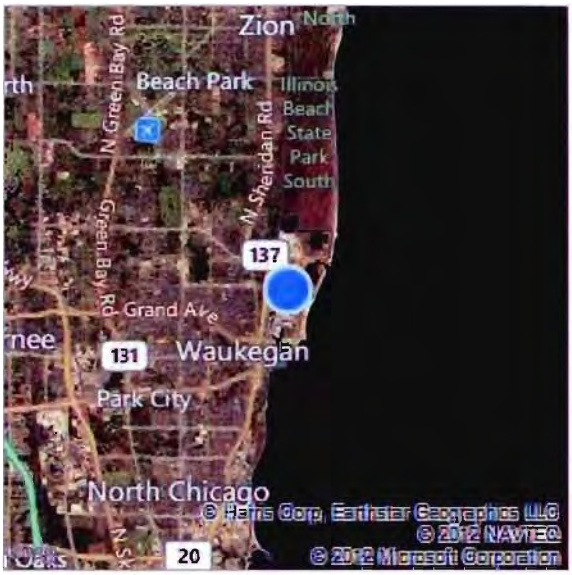
COMMONWEALTH EDISON FORMER GRIESS-PFLEGER TANNERY SITE CED14-15159-000			SITE LOCATION MAP WAUKEGAN, ILLINOIS
DATE: 7/8/02	KBL/ftc	FILE: w:\commed\tannery\gis\projects\gw6_26_02.apr (Location)	FIGURE: 2-1

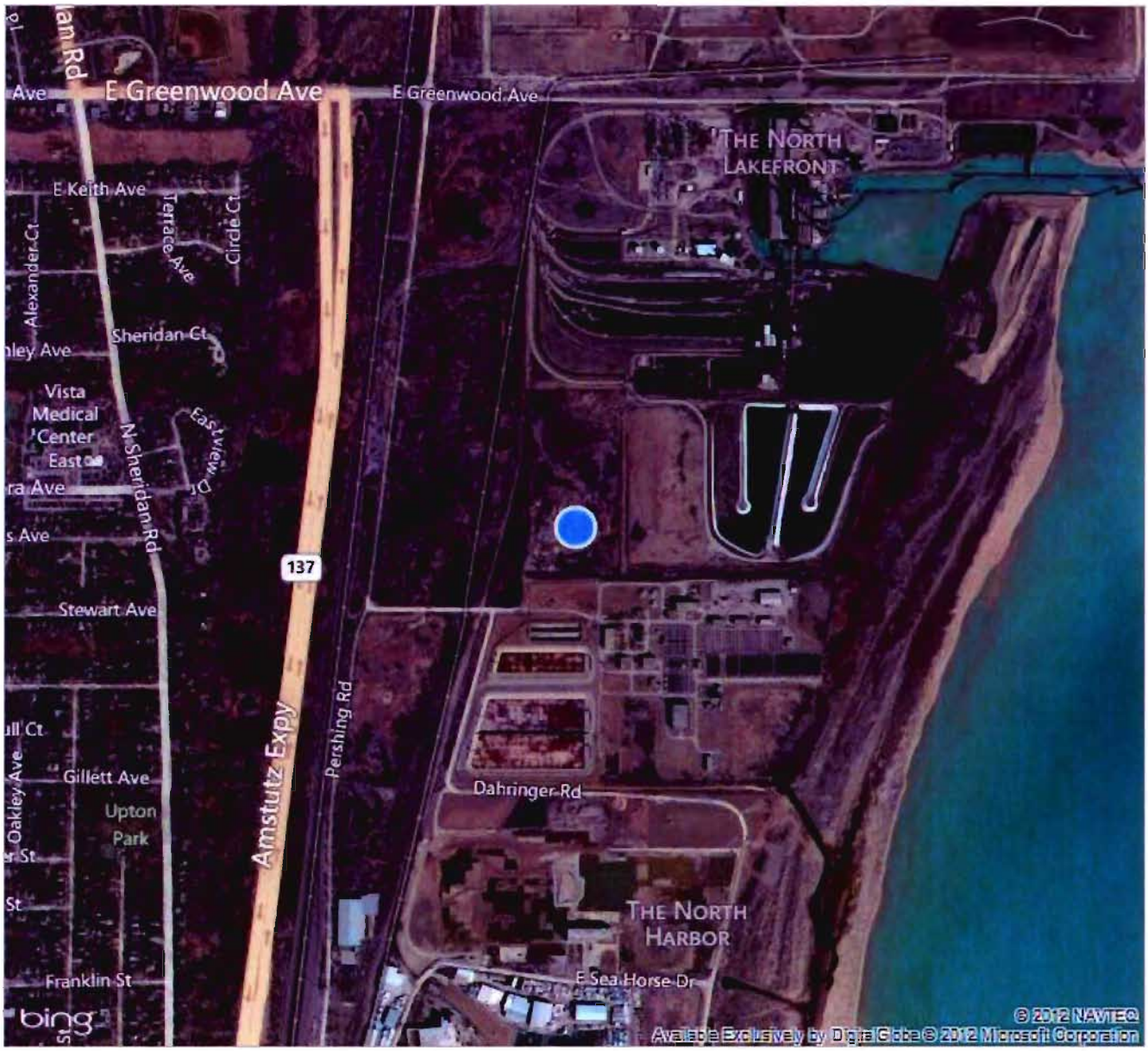
bing Maps

184 Dahringer Rd, Waukegan, IL 60085

My Notes

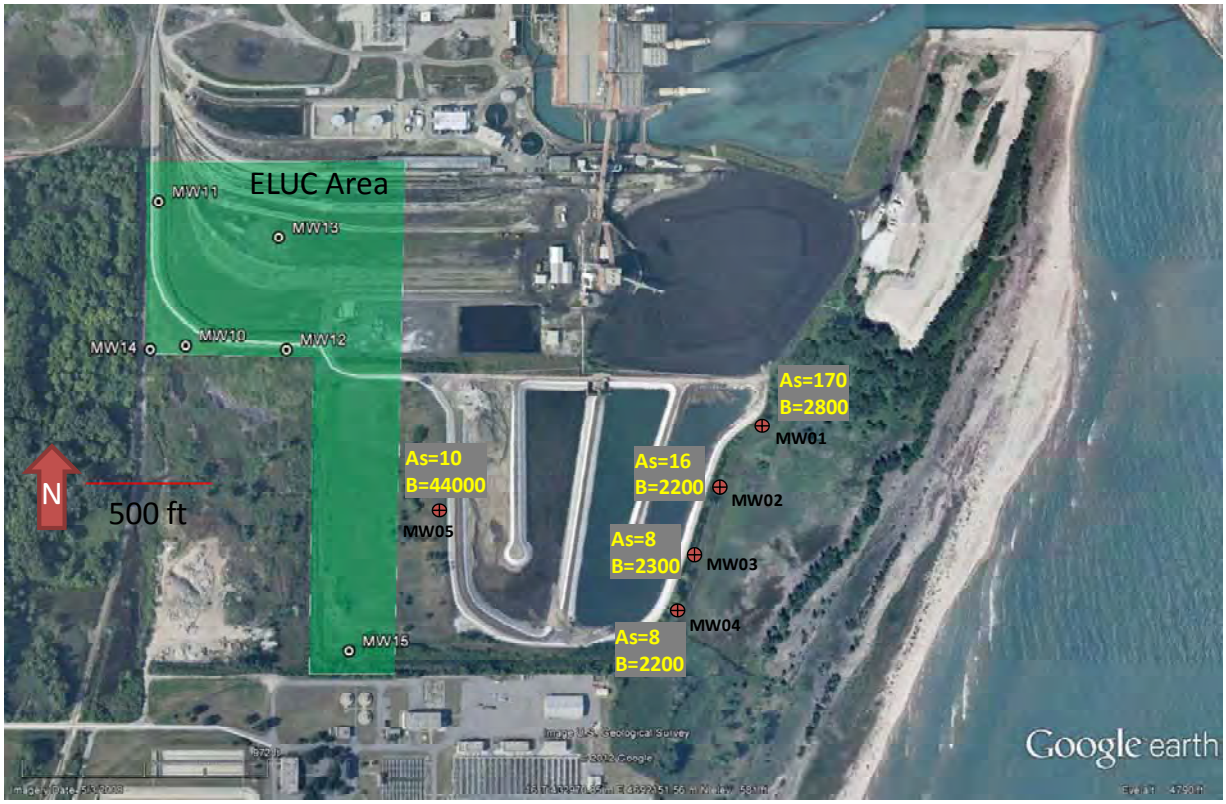
On the go? Use **m.bing.com** to find maps, directions, businesses, and more





Attachment B

Figure 1, As & B Maximum Concentrations

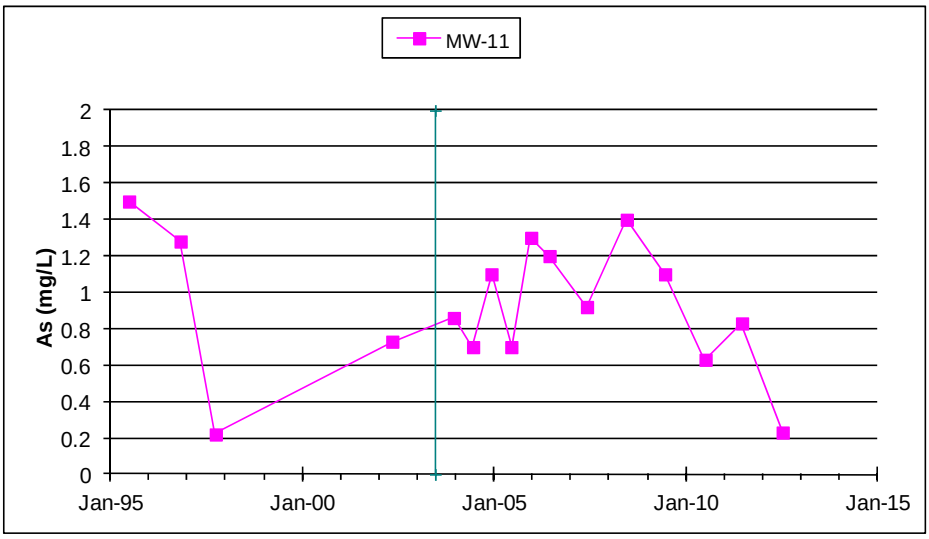


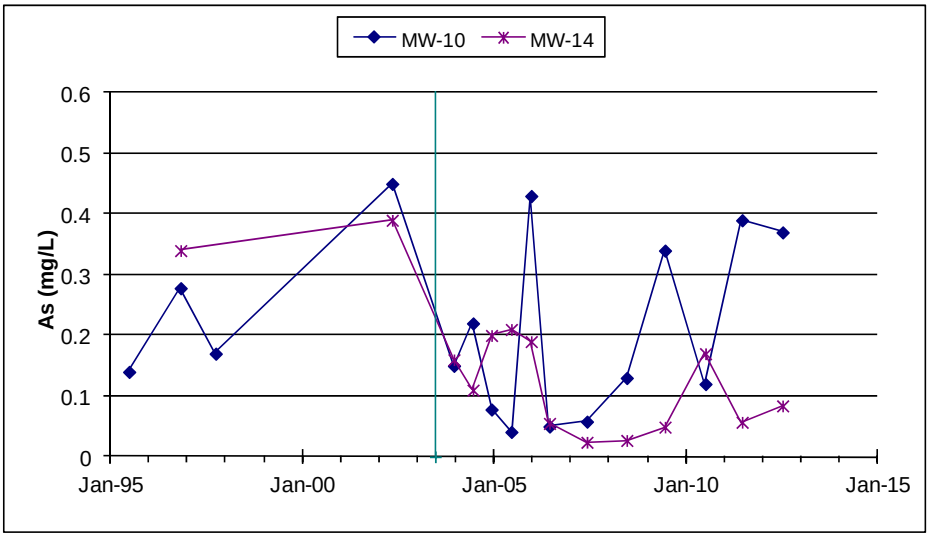
Concentrations in ug/L based on samples collected from October 2010 to March 2012

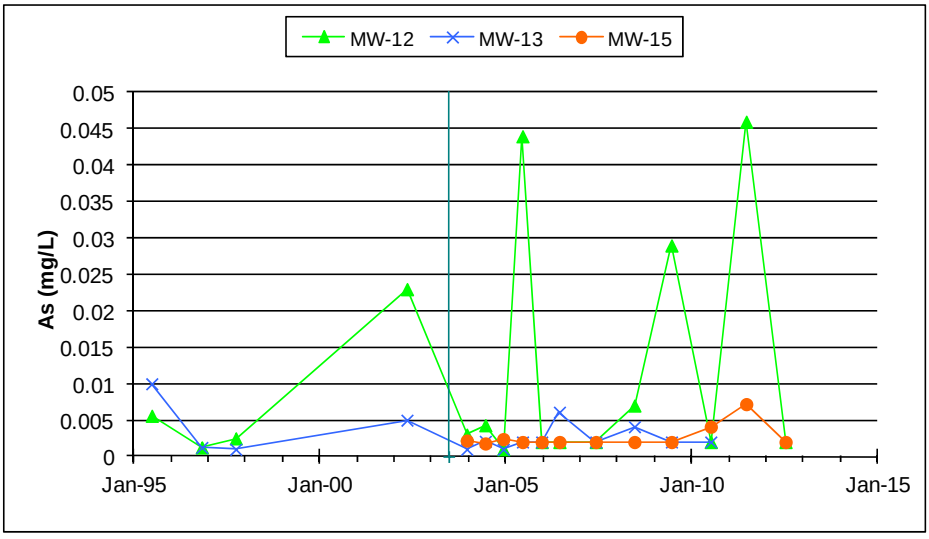
Figure 2, Maximum Arsenic Concentrations

Concentrations in ug/L, based on samples collected from October 2010 to March 2012 for MW01 through MW05, and on samples collected from 2003 to 2012 in wells MW10 through MW15

Figure 3, arsenic concentration time series plots for ELUC monitoring wells







Attachment C

Illinois Environmental Protection Agency

State of Illinois

Inventory Search Page

Follow the links or buttons presented below for more information about this Facility. The address listed or Geographic position (Lat/Lon - if available) will attempt to render a map from Bing Maps which are not part of the Illinois EPA data systems.

BOL ID #	Facility Name	Street	City	Lat/Lon
0971905333	Com Ed-general Boiler	184 E Dahringer Rd	Waukegan	42.376792/-87.819968

Underground Storage Tank Data
Site Remediation Program Data

USEPAID	Tie File	Revision Date	Interest Type
	170000103689	7/3/2003	BOL

Affiliation Type: LOCATION CONT.
Name: Com Ed-general Boiler
Address: 184 E Dahringer Rd
Waukegan, IL. 60085
Phone: 312-394-4470
Contact: Peter Mccauley
Entry Date: 9/21/1998
Revision Date: 7/3/2003

Affiliation Type: OWNER
Name: Com Ed Environmental Svcs
Address: 130 S Jefferson 4th Fl
Chicago, IL. 60661
Phone: 312-394-4464
Contact: Judy Freitag
Entry Date: 9/21/1998
Revision Date: 7/3/2003

Affiliation Type: OPERATOR
Name: Commonwealth Edison
Address: 10 S Dearborn
Chicago, IL. 60603
Phone: 312-394-4470
Contact: Peter Mccauley
Entry Date: 9/21/1998
Revision Date: 7/3/2003

ALT-ID #	NAICS CODE	SIC CODE
No industry codes found!		

2 Recorded NFR Image(s) available
Recorded NFR(s) were found and are available to the public as electronic images. To view this electronic version of the recorded NFR, please click on the link above for display/retrieval.

Illinois Environmental Protection Agency

State of Illinois

Site Remediation

The following conditions apply to the No Further Remediation Letter for this site:

SRP Site Name: General Boiler

LPC#: 0971905333
NFR Letter Issued: 11/21/2005 Recorded: 1/3/2006
Land Use Approved: Industrial/Commercial
Comprehensive/Focused: Comprehensive
Institutional Control: Groundwater use restriction
Engineered Barrier:
Worker Caution: No
Size: 10.7 acres

Illinois Environmental Protection Agency

www.epa.state.il.us

State of Illinois

Site Remediation

SRP Site Name: General Boiler

Active: No
LPC#: 0971905333 USEPA ID: _
Address: 184 East Dahringer Road
Waukegan, IL 60087- Lake County
Date Enrolled: 9/15/1998

Map this site with bing

Remediation Applicant:	**Commonwealth Edison Company**
Point of Contact:	**Peter McCauley**
Address:	**25000 Governors Highway** **University Park, IL 60466-**
Phone:	**(708) 235-2605**

Consultant:	**The RETEC Group, Inc.**
Point of Contact:	**David Meiri**
Address:	**8605 West Bryn Mawr Avenue Suite 301** **Chicago, IL 60631-**
Phone:	**(773) 714-9900**

Section 4(y) Letter:
No Further Remediation Letter: 11/21/2005
Project Manager: Murphy

To the north along the lakefront is the site of the former General Boiler Company, a nineteen-acre parcel on Dahringer Road between the Midwest Generation Power Plant and the North Shore Sanitary District facility. A portion of this site is currently leased by a local contractor to recycle concrete and asphalt and to store construction materials. Its prior uses include the forming of steel boilers, the construction of pre-formed concrete posts, and the production of Styrofoam products. A 1993 Preliminary Environmental Property Assessment collected soil and groundwater samples showing elevated levels of several contaminants, including lead, barium, arsenic, and select polyaromatic hydrocarbons, and more testing was called for to fully characterize the presence of these and other pollutants.

In 1998 and 1999, further environmental analyses were performed on portions of this property, and it was confirmed that the northern section contained arsenic above remediation benchmarks in a fly ash fill area. Because "the remedial objectives and/or remedial action for the fly ash area (had) yet to be developed," the cleanup possibilities for this area could not be determined. It was also observed that a groundwater sample on the northwest corner of the site contained arsenic, which likely "migrated from the (Griess-Pfleger) Tannery site, " and thus could not be remediated without addressing that adjoining parcel. Concentrations of numerous pollutants in surface soils exceeded remediation objectives for industrial and commercial properties, being "stained black" with contamination from PCB's and PNA's including benzoanthracene, benzofluoranthene, benzopyrene, and dibenzoanthracene. A five-hundred gallon underground storage tank was also discovered on the General Boiler site that had leaked benzene and naphthalene into the groundwater, which also contained contamination from ethylbenzene and styrene.

Turning to potential health threats, the reports concluded that "the exposure pathway of concern is particulate inhalation/ingestion of surface soils" (breathing toxic dust), and "based on existing data, the impacted soil presents a potential risk to public health and the environment as well as a long term liability." Setting aside the fly ash and groundwater issues, a remedial action plan was proposed to reduce the pollution in certain areas of soils to levels below health-risk benchmarks and remediation objectives. The PCB and PNA-impacted soils would be excavated in six-inch lifts and disposed of in appropriate landfills until the contamination was sufficiently reduced or groundwater was encountered. A covering would then be applied to seal off the surface, to be followed by a backfill of clean soil. The underground storage tank would be drained and removed from the ground, along with all

piping and appurtenant structures. Soils in the vicinity of the tank that contained volatile organic compounds or other toxins would also be excavated and sealed.

While this remediation plan was only a partial solution, it pointed in a positive direction, but there is no evidence in the environmental records that any implementation has occurred since the plan was formulated in 1999. Even had the remediation plan been fully implemented, portions of this site would only have reached a suitable level for industrial or commercial use as a best case scenario, and additional approaches would still have been needed to deal with the fly ash and groundwater contamination. Despite the questions that remain about the full extent of potentially dangerous pollution and the degrees of remediation that are feasible, the SOM redevelopment plan proposes that we use the General Boiler site as part of a moorland, a place of public recreation. Granted, this is somewhat less of a disconnect than putting residences on the OMC/Coke Plant parcel, but even recreational development would seem to be a substantial stretch until further testing and more comprehensive remediation plans show that open public access to this site, with complete safety for intended users like families and children, can become a viable option. The same can be said of the nearby North Shore Gas coal gas plant site (aka Tar Pits), south of Dahringer Road, upon which a litany of toxins has been identified, running the alphabet from arsenic to xylene. The EPA has called for restricted public access to this site, but SOM includes it as an additional component of the recreational moorland.

Previous Next

LAKEFRONT DATA SUMMARY

Parcel Name: General Boiler Site
Map Number: 3 (19 acres)
Current Use: Storage of raw materials and equipment, as well as asphalt and concrete crushing (recycling)
Prior Use: Prior to 1920, unknown. After early 1920 a variety of industrial uses such as the forming of steel boilers (early 1920s), construction of preformed concrete posts(1960s), production of Styrofoam products (1980s)

Have any environmental studies been done? Yes
March 1993 - preliminary environmental property assessment
1998 - January 1999 - Phase II and IIA by Metcalf and Eddy (site investigation)

Was contamination tested for? Yes
Phase II and IIA - soil, groundwater

List of contaminants found to date:
Lead, Barium, Select Polyaromatic Hydrocarbons, Arsenic; Polychlorinated Biphenyl (PCBs, i.e., Aroclor 1248); Polynuclear Aromatic Hydrocarbon(PNAs, i.e., Benzo(a) Anthracene, Benzo(b)Fluoranthene, Benzo(a)Pyrene, Dibenzo(a,h)Anthracene); Ethylbenzene, Benzene; Naphthalene, Styrene

Do some or all of these contaminants exceed health or environmental protection standards? Yes

Is more testing necessary to determine the full extent of pollution, additional health risks, or restrictions on future use? Yes
Restriction applied prohibiting the installation of wells for potable purposes.

Proposed use:
Moorland/Recreational

Previous Next

Discuss this on the TOWN Forums!

Attachment D

ComEd

Commonwealth Edison Company
130 South Jefferson
Chicago, IL 60661

www.exeloncorp.com

An Exelon Company

January 3, 2001

Illinois Environmental Protection Agency
Bureau of Land - #24
LUST Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

Subject: LPC #0971905333 --- Lake County
Former General Boiler Site --- Commonwealth Edison
184 East Dahringer Road
LUST Incident No. 20000300
Tech

Dear Sir/Madam:

Attached is a recorded copy of the No Further Remediation Letter for the subject site and LUST incident.

Should you have any questions, please contact me at 312/394-4470.

Sincerely,

Peter B. McCauley
Environmental Project Manager
Environmental Services Department

4615143

Filed for Record in:
LAKE COUNTY, IL
MARY ELLEN VANDERVENTER - RECORDER
On Nov 29 2000
At 11:37am
Receipt #: 261398
Doc/Type : LET
Deputy - Cashier #1

Illinois Environmental Protection Agency
October 23, 2000
Waukegan/Commonwealth Edison-Former General Boiler Site
Corrective Action Completion Report Addendum

AFTER RECORDING
RETURN TO:
COMED
% REAL ESTATE SERVICES DEPARTMENT
11th FLOOR/UCO
P.O. BOX 767
CHICAGO, ILLINOIS 60690

PREPARED BY:

Name: Pete McCauley
Commonwealth Edison

Address: 184 East Dahringer Road
Waukegan, Illinois 60185

RETURN TO:

Name: Pete McCauley
Commonwealth Edison

Address: 130 South Jefferson Street, 4th Floor
Chicago, Illinois 60661

THE ABOVE SPACE FOR RECORDER'S OFFICE

LEAKING UNDERGROUND STORAGE TANK ENVIRONMENTAL NOTICE

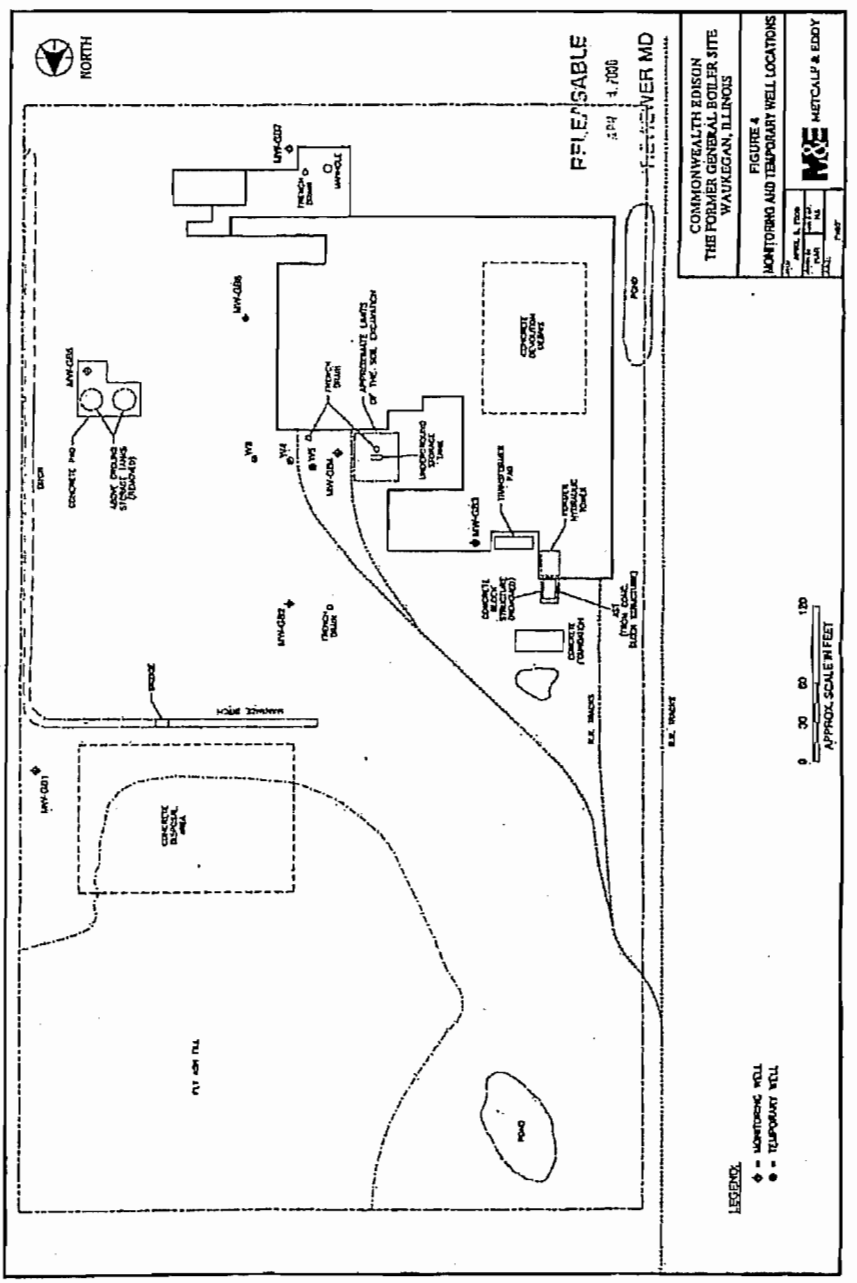
THE OWNER AND/OR OPERATOR OF THE LEAKING UNDERGROUND STORAGE TANK(S) ASSOCIATED WITH THE RELEASE REFERENCED BELOW, WITHIN 45 DAYS OF RECEIVING THE NO FURTHER REMEDIATION LETTER CONTAINING THIS NOTICE, MUST SUBMIT THIS NOTICE AND THE REMAINDER OF THE NO FURTHER REMEDIATION LETTER TO THE OFFICE OF THE RECORDER OR REGISTRAR OF TITLES OF LAKE COUNTY IN WHICH THE SITE DESCRIBED BELOW IS LOCATED.

Illinois EPA Number: 0971905333
LUST Incident No.: 20000300
Commonwealth Edison, the owner and operator of the leaking underground storage tank(s) associated with the above-referenced incident, whose address is 130 South Jefferson Street, 4th Floor, Chicago, Illinois, has performed investigative and/or remedial activities for the site as shown on the attached site map and identified as follows:

1. Legal description or Reference to a Plat Showing the Boundaries: The Southwest ¼ of the Southeast ¼ of the Northwest ¼ and the North 600 Feet of the Northwest ¼ of the Northeast ¼ of the Southwest ¼ of Section 15, Township 45 North, Range 12, East of the Third Principal Meridian, in Lake County, IL
2. Common Address: 184 East Dahringer Road, Waukegan, Illinois
3. Real Estate Tax Index/Parcel Index Number: 08-15-100-007
4. Site Owner: Commonwealth Edison
5. Land Use Limitation: Industrial/Commercial. The groundwater under the site shall not be used as a potable water supply.
6. See the attached No Further Remediation Letter for other terms.

HAA:SJ:jk000744.DOC

Site Map
Commonwealth Edison--Former General Boiler Site
LPC #0971905333--Lake County
LUST Incident No. 20000300

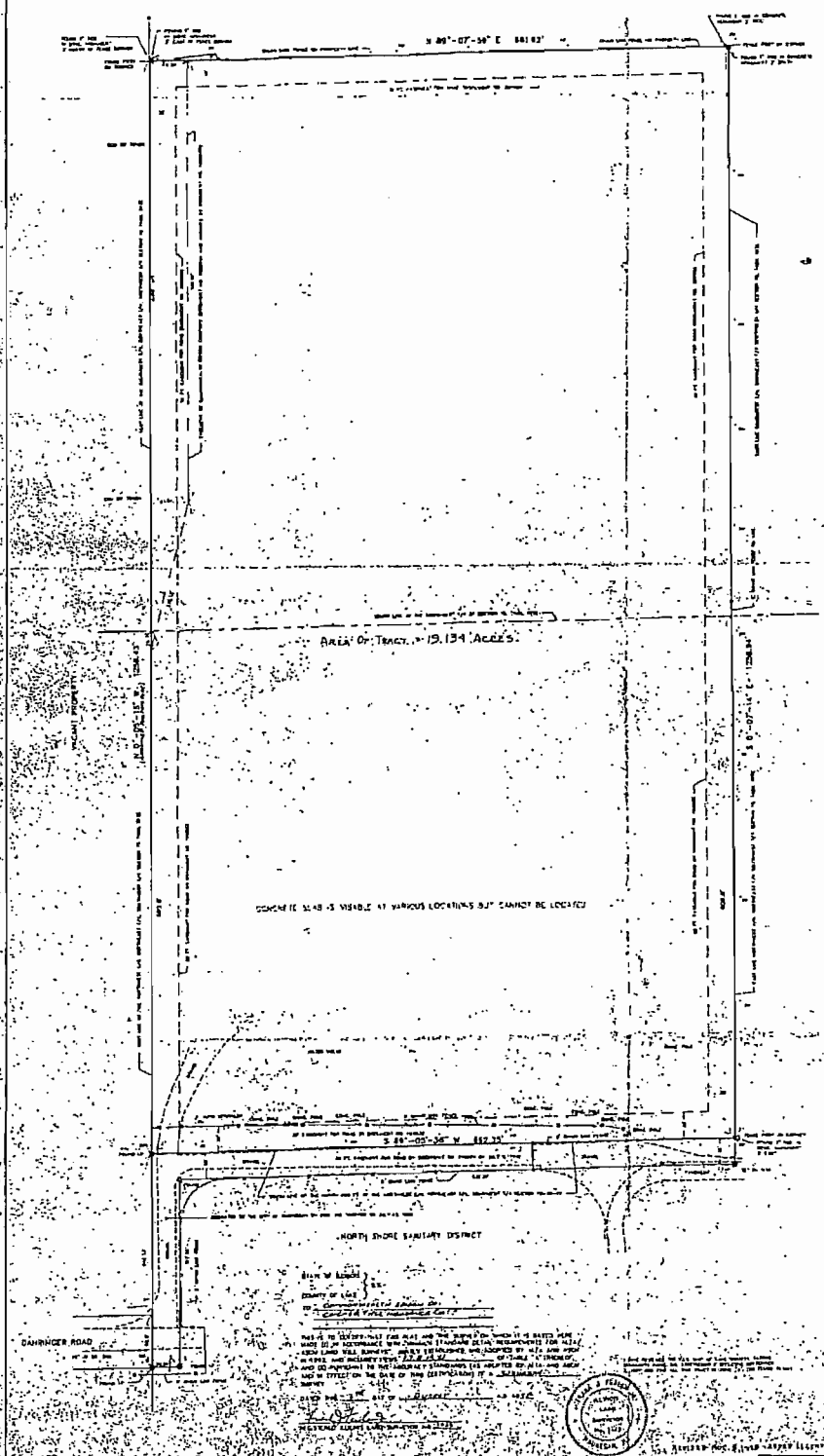


4615143

PLAT OF SURVEY

OF

THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER AND THE NORTH 300 FEET OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 43 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN IN LAKE COUNTY, ILLINOIS.



SCALE: 1" = 80'

COMMONWEALTH EDISON COMPANY

LEGEND

- ⊕ P.P. INDICATES POWER POLE
- INDICATES STEEL TOWER
- INDICATES WATER SHUT-OFF VALVE
- INDICATES FIRE HYDRANT
- INDICATES VARIOUS TYPES OF CONCRETE POLE BASES (SEE NOTE #2)
- INDICATES POST VALVE FOR SHUT-OFF OF AUTOMATIC SPRINKLERS.
- INDICATES FENCE TYPE (NOTED)
- INDICATES TRANSITE STORM SEWER
- INDICATES CATCH BASIN

NOTE:

1. ATHER TRACKS REFERRED TO IN EXCEPTION 11 HAVE BEEN REMOVED
2. SANITARY FORCE MAIN, SANITARY SEWER AND WATER MAIN REFERRED TO IN EXCEPTIONS 14 ARE NOT VISABLE AND ARE NOT SHOWN ON CITY'S UTILITY PLANS AND CANNOT BE PLOTTED
3. THE TEN INCH FIRE LINE REFERRED TO IN EXCEPTION 15 IS NOT VISABLE AND CANNOT BE PLOTTED

4615143

JOB NO: 10728

Northern Illinois Survey Inc.

3333 Grand Avenue Suite
Waukegan, Illinois 60085
Phone: 847-662-4664 Fax: 847-662-4666

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276

THOMAS V. SKINNER, DIRECTOR

217/782-6762

OCT 2 3 2000

CERTIFIED MAIL
0001 1273 2042

Commonwealth Edison
Attention: Pete McCauley
130 South Jefferson Street, 4th Floor
Chicago, Illinois 60661

Re: LPC #0971905333 -- Lake County
Waukegan/Commonwealth Edison - Former General Boiler Site
184 East Dahringer Road
LUST Incident No. 20000300
LUST Technical File

Dear Mr. McCauley:

The Illinois Environmental Protection Agency ("Illinois EPA") has reviewed the Corrective Action Completion Report Addendum submitted for the above-referenced incident. This information is dated August 8, 2000; was received by the Illinois EPA August 9, 2000; and was prepared by Metcalf & Eddy, Inc. Citations in this letter are from the Environmental Protection Act ("Act") and 35 Illinois Administrative Code ("35 IAC").

The Corrective Action Completion Report and the Professional Engineer Certification submitted pursuant to 35 IAC Section 732.300(b)(1) and Section 732.409(b) indicate the remediation objectives set forth in 35 IAC Section 732.408 have been met.

Based upon the certification by Henry Adamiak, a Registered Professional Engineer of Illinois, and pursuant to Section 57.10 of the Act (415 ILCS 5/57.10), your request for a no further remediation determination is granted under the conditions and terms specified in this letter.

Issuance of this No Further Remediation Letter ("Letter"), based on the certification of the Registered Professional Engineer, signifies that: (1) all statutory and regulatory corrective action requirements applicable to the occurrence have been complied with; (2) all corrective action concerning the occurrence has been completed; and (3) no further remediation concerning the occurrence is necessary for the protection of human health, safety and the environment. Pursuant to Section 57.10(d) of the Act, this Letter shall apply in favor of the following persons:

1. Commonwealth Edison;

2. The owner and operator of the UST(s);

3. Any parent corporation or subsidiary of the owner or operator of the UST(s);

4. Any co-owner or co-operator, either by joint-tenancy, right of survivorship, or any other party sharing a legal relationship with the owner or operator to whom the letter is issued;

5. Any holder of a beneficial interest of a land trust or inter vivos trust, whether revocable or irrevocable;

6. Any mortgagee or trustee of a deed of trust of the owner of the site or any assignee, transferee, or any successor-in-interest of the owner of the site;

7. Any successor-in-interest of such owner or operator;

8. Any transferee of such owner or operator whether the transfer was by sale, bankruptcy proceeding, partition, dissolution of marriage, settlement or adjudication of any civil action, charitable gift, or bequest; or

9. Any heir or devisee of such owner or operator.

This Letter, and all attachments, including but not limited to the Leaking Underground Storage Tank Environmental Notice, must be filed within 45 days of its receipt as a single instrument with the Office of the Recorder or Registrar of Titles in the County where the above-referenced site is located. This Letter shall not be effective until officially recorded by the Office of the Recorder or Registrar of Titles of the applicable County in accordance with Illinois law so it forms a permanent part of the chain of title for the above-referenced property. Within 30 days of this Letter being recorded, a certified copy of this Letter, as recorded, shall be obtained and submitted to the Illinois EPA. For recording purposes, it is recommended that the Leaking Underground Storage Tank Environmental Notice of this Letter be the first page of the instrument filed.

CONDITIONS AND TERMS OF APPROVAL

LEVEL OF REMEDIATION AND LAND USE LIMITATIONS

1. The remediation objectives have been established in accordance with an industrial/commercial land use limitation. The remediation objectives for the above-referenced site, more particularly described in the Leaking Underground Storage Tank Environmental Notice of this Letter, were established in accordance with the requirements of the Tiered Approach to Corrective Action Objectives (35 IAC Part 742) rules.

2. As a result of the release from the underground storage tank(s) associated with the above-referenced incident, the above-referenced site, more particularly described in the attached Leaking Underground Storage Tank Environmental Notice of this Letter, shall not be used in a manner inconsistent with the following land use limitation: Industrial/Commercial. The groundwater under the site shall not be used as a potable water supply.

3. The land use limitation specified in this Letter may be revised if:

   a) Further investigation or remedial action has been conducted that documents the attainment of objectives appropriate for the new land use; and

b) A new Letter is obtained and recorded in accordance with Title XVII of the Act and regulations adopted thereunder.

PREVENTIVE, ENGINEERING, AND INSTITUTIONAL CONTROLS

4. Preventive: None.

Engineering: None.

Institutional: This Letter shall be recorded as a permanent part of the chain of title for the above-referenced site, more particularly described in the attached Leaking Underground Storage Tank Environmental Notice of this letter.

5. Failure to establish, operate, and maintain controls in full compliance with the Act, applicable regulations, and the approved corrective action plan may result in voidance of this Letter.

OTHER TERMS

6. Any contaminated soil or groundwater removed, or excavated from, or disturbed at the above-referenced site, more particularly described in the Leaking Underground Storage Tank Environmental Notice of this Letter, must be handled in accordance with all applicable laws and regulations.

7. Further information regarding the above-referenced site can be obtained through a written request under the Freedom of Information Act (5 ILCS 140) to:

Illinois Environmental Protection Agency
Attention: Freedom of Information Act Officer
Bureau of Land - #24
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

8. Pursuant to Section 57.10(e) of the Act (415 ILCS 5/57.10(e)), should the Illinois EPA seek to void this Letter, the Illinois EPA shall provide notice to the owner or operator of the leaking underground storage tank(s) associated with the above referenced incident and the current title holder of the real estate on which the tanks were located, at their last known addresses. The notice shall specify the cause for the voidance, explain the provisions for appeal, and describe the facts in support of the voidance. Specific acts or omissions that may result in the voidance of this Letter include, but shall not be limited to:

a) Any violation of institutional controls or industrial/commercial land use restrictions;

b) The failure to operate and maintain preventive or engineering controls or to comply with any applicable groundwater monitoring plan;

c) The disturbance or removal of contamination that has been left in-place in accordance with the Corrective Action Plan or Completion Report;

d) The failure to comply with the recording requirements for the Letter;

e) Obtaining the Letter by fraud or misrepresentation; or

f) Subsequent discovery of contaminants, not identified as part of the investigative or remedial activities upon which the issuance of the Letter was based, that pose a threat to human health or the environment.

Within 35 days after the date of mailing of this final decision, the owner or operator may petition for a hearing before the Illinois Pollution Control Board ("Board") to contest the decision of the Illinois EPA. (For information regarding the filing of an appeal, please contact the Board at 312/814-3620.) However, the 35-day period for petitioning for a hearing may be extended for a period of time not to exceed 90 days by written notice provided to the Board from the owner or operator and the Illinois EPA within the 35-day initial appeal period. (For information regarding the filing of an extension, please contact the Illinois EPA's Division of Legal Counsel at 217/782-5544.)

Submit the certified copy of this letter, as recorded, to:

Illinois Environmental Protection Agency
Bureau of Land - #24
LUST Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

If you have any questions or need further assistance, please contact the Illinois EPA project manager, Steve Jones, at 217/524-1253.

Sincerely,

Hernando A. Albarracin
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

HAA:SJ:jk000744.DOC

Attachments: Leaking Underground Storage Tank Environmental Notice
Site Map

cc: Metcalf & Eddy, Inc.
Division File

4615143

60

TRUSTEE'S DEED
(INDIVIDUAL)

FOR THE PROTECTION OF OWNER, THIS INSTRUMENT SHALL BE RECORDED WITH THE RECORDER OF DEEDS.

9807058 8m
60 66664 NB

BANK OF WAUKEGAN
1601 North Lewis Avenue
Waukegan, Illinois 60085
Telephone (847) 244-6000

4193726

Filed for Record in:
LAKE COUNTY, IL
MARY ELLEN VANDERVENTER - RECORDER
On Aug 25 1998
At 9:53am
Receipt #: 125428
Doc/Type : TRU
Deputy - Cashier #6

The above space is for the recorder's use only

The Grantor, **BANK OF WAUKEGAN**, a corporation in the State of Illinois, and duly authorized to accept and execute trusts within the State of Illinois, not personally, but solely as Trustee under the provisions of a Deed or Deeds in Trust duly recorded and delivered to said Grantor in pursuance of a certain Trust Agreement dated the 12th day of May, 19 83, and known as Trust Number 1455, for and in consideration of Ten and No/100th Dollars ($10.00), and other good and valuable considerations in hand paid, conveys and quit claims to COMMONWEALTH EDISON COMPANY, an Illinois Corporation

of (Address of Grantee) 130 South Jefferson Street
Chicago, IL 60661, Attn: Real Estate Services

the following described real estate situated in the County of LAKE in the State of Illinois, to wit:

THE SOUTHWEST 1/4 OF THE SOUTH EAST 1/4 OF THE NORTHWEST 1/4 AND THE NORTH 600 FEET OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 15, TOWNSHIP 45 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN LAKE COUNTY, IL.

(NOTE: If additional space is required for legal, attach on a separate 8½" x 11" sheet.)
together with all the appurtenances and privileges thereunto belonging or appertaining.
Permanent Index Number(s) 08-15-100-007

This deed is executed pursuant to and in the exercise of the power and authority granted to and vested in said trustee by the terms of said deed or deeds in trust delivered to said trustee in pursuance of the trust agreement above mentioned. This deed is made subject to the lien of every trust deed or mortgage (if any there be) of record in said county given to secure the payment of money, and remaining unreleased at the date of the delivery hereof.

IN WITNESS WHEREOF, Grantor has caused its corporate seal to be hereunto affixed, and name to be signed by its Trust Officer and attested by its Vice President, this 7th day of August, 19 98.

BANK OF WAUKEGAN
as Trustee aforesaid, and not personally.

BY: Barbara Richter
TRUST OFFICER

ATTEST: Nancy K. Young
~~VICE PRESIDENT~~ TRUST OFFICER

CHICAGO TITLE INSURANCE CO

(3)
1

STATE OF ILLINOIS)
) SS,
COUNTY OF LAKE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that the above named Trust Officer and Vice President of BANK OF WAUKEGAN, Grantor, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such, Trust Officer and Vice President respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts, and as the free and voluntary act of said Bank, for the uses and purposes, therein set forth and the said Vice President then and there acknowledged that said Vice President as custodian of the corporate seal of said Bank caused the corporate seal of said Bank to be affixed to said instrument as said Vice President's own free and voluntary act, and as the free and voluntary act of said Bank for the uses and purposes therein set forth.

Given under my hand and notarial seal this 7th day of August, 19 98.

Helen V. Levick
Notary Public
My Commission Expires: 8/4/98

"OFFICIAL SEAL"
HELEN V. LEVICK
Notary Public, State of Illinois
My Commission Expires 04/13/00

ADDRESS OF PROPERTY
184 Dahringer

Waukegan, IL

The above address is for information only and is not part of this deed.

This instrument was prepared by:
(Name) Bank of Waukegan - Trust Dept.
(Address) 1601 N. Lewis Ave.
Waukegan, IL 60085

Mail ~~subsequent tax bills~~ to:
(Name) Commonwealth Edison Co.
(Address) 130 S. Jefferson St.
Chicago, IL 60661

TXS Commonwealth Edison
Property Tax Services
227 W Monroe 9th Floor
Chicago IL 60606

STATE OF ILLINOIS
REAL ESTATE TRANSFER TAX
AUG 17 '98
★ ★ ★
DEPT OF REVENUE
695.00

695.00

STATE OF ILLINOIS
REAL ESTATE TRANSFER TAX
AUG 17 '98
REV. 10153
★ ★ ★
DEPT OF REVENUE
105.00

105.00

COUNTY OF LA
Real Estate Transfer Tax
$ 400.00 PAID

4193726

PLAT ACT AFFIDAVIT

STATE OF ILLINOIS }
COUNTY OF LAKE } SS.

Emanuel Winston, being duly sworn on oath, states that he resides at 1448 Old Skokie Road, Highland Park, Illinois 60035. That the attached deed is not in violation of 765 ILCS 205/1 for one of the following reasons:

1. Said Act is not applicable as the grantors own no adjoining property to the premises described in said deed;

- OR -

the conveyance falls in one of the following exemptions as shown by Amended Act which became effective July 17, 1959.

2. The division or subdivision of the land into parcels or tracts of five acres or more in size which does not involve any new streets or easements of access.

3. The divisions of lots or blocks of less than one acre in any recorded subdivision which does not involve any new streets or easements of access.

4. The sale or exchange of parcels of land between owners of adjoining and contiguous land.

5. The conveyance of parcels of land or interests therein for use as right of way for railroads or other public utility facilities, which does not involve any new streets or easement of access.

6. The conveyance of land owned by a railroad or other public utility which does not involve any new streets or easements of access.

7. The conveyance of land for highway or other public purposes or grants or conveyances relating to the dedication of land for public use or instruments relating to the vacation of land impressed with a public use.

8. Conveyances made to correct descriptions in prior conveyances.

9. The sale or exchange of parcels or tracts of land existing on the date of the amendatory Act into no more than two parts and not involving any new streets or easements of access.

CIRCLE NUMBER ABOVE WHICH IS APPLICABLE TO ATTACHED DEED.

Affiant further states that he makes this affidavit for the purpose of inducing the Recorder of Deeds of Lake County, Illinois, to accept the attached deed for recording.

SUBSCRIBED and SWORN to before me
this 5th day of August, 1998.

Diana Piotrowski
Notary Public

"OFFICIAL SEAL"
DIANA PIOTROWSKI
Notary Public, State of Illinois
My Commission Expires 06/24/01

4193726

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:	)	
	)	
Midwest Generation, LLC	)	
Waukegan Generating Station	)	
Waukegan, Lake County, Illinois	)	
IEPA ID #170001453834	)	
	)	
	)	**ILLINOIS EPA VN W-2012-00056**
	)	**BUREAU OF WATER**
	)	

COMPLIANCE COMMITMENT AGREEMENT

I. Jurisdiction

1. This Compliance Commitment Agreement ("CCA") is entered into voluntarily by the Illinois Environmental Protection Agency ("Illinois EPA") and Midwest Generation, LLC, Waukegan Generating Station ("Respondent") (collectively, the "Parties") under the authority vested in the Illinois EPA pursuant to Section 31(a)(7)(i) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(a)(7)(i).

II. Allegation of Violations

2. Respondent owns and operates a coal-fired electrical generating station at 401 East Greenwood Avenue in Waukegan, Lake County, IL.

3. Pursuant to Violation Notice ("VN") W-2012-00056, issued on June 11, 2012, the Illinois EPA contends that Respondent has violated the following provisions of the Act and Illinois Pollution Control Board ("Board") Regulations:

   a) Section 12 of the Illinois Environmental Protection Act, 415 ILCS 5/12

   b) 35 Ill. Adm. Code 620.115, 620.301, 620.401, 620.405, and 620.410

III. Compliance Activities

4. On July 27, 2012, the Illinois EPA received Respondent's response to VN W-2012-00056, which included proposed terms for a CCA. On August 14, 2011, the Parties met at the Illinois EPA offices to discuss the violation notice and the July 27th response. On _____ __, 2012, the Illinois EPA received Respondent's supplemental reply to the VN in response to Illinois EPA's comments at the meeting. The Illinois EPA has reviewed Respondent's proposed CCA terms, as well as considered whether any

additional terms and conditions are necessary to attain compliance with the alleged violations cited in the VN.

5. Respondent agrees to undertake and complete the following actions, which the Illinois EPA has determined are necessary to attain compliance with the allegations contained in VN W-2012-00056:

a) The ash ponds will not be used as permanent disposal sites and will continue to function as treatment ponds to precipitate ash. Ash will continue to be removed from the ponds on a periodic basis.

b) The ash treatment ponds will be maintained and operated in a manner which protects the integrity of the existing liners. During the removal of ash from the ponds, appropriate procedures will be followed to protect the integrity of the existing liners, including operating the ash removal equipment in a manner which minimizes the risk of any damage to the liner.

c) During the ash removal process, visual inspections of the ponds will be conducted to identify any signs of a breach in the integrity of the pond liners. In the event that a breach of the pond liners is detected, MWG will notify the Agency and will submit a corrective action plan for repair or replacement, as necessary, of the liner. Upon the Agency's approval, and the issuance of any necessary construction permit, MWG will implement the correction action plan.

d) There is an existing, recorded ELUC on a portion of the Waukegan Station property for the ComEd Former Tannery Site. MWG will implement an ELUC to cover the remaining Waukegan Station property not already subject to the ComEd Former Tannery Site ELUC. MWG will submit a proposed ELUC to the Illinois EPA for review within 90 days of the effective date of the CCA. The ELUC will include a groundwater use prohibition and a commercial/industrial use restriction. Upon the approval of the ELUC by the Agency, MWG will record the ELUC within 30 days

e) MWG will continue to monitor the groundwater through the existing five groundwater monitoring wells and report its findings to IEPA. Within 3 months of the effective date of the CCA, MWG will also install an additional groundwater monitoring well on the Waukegan Station property in the area approximately 500 feet south of existing monitoring well MW-05.

f) A schedule for the continued groundwater monitoring of existing and new monitoring wells will be included in the ELUC for the Waukegan Station. The ELUC terms will include a provision which allows MWG the right to request the Agency's approval of a cessation of all or some of the monitoring requirements based on future monitoring results.

IV. Terms and Conditions

6. Respondent shall comply with all provisions of this CCA, including, but not limited to, any appendices to this CCA and all documents incorporated by reference into this CCA. Pursuant to Section 31(a)(10) of the Act, 415 ILCS 5/31(a)(10), if Respondent complies with the terms of this CCA, the Illinois EPA shall not refer the alleged violations that are the subject of this CCA, as described in Section II above, to the Office of the Illinois Attorney General or the State's Attorney of the county in which the alleged violations occurred. Successful completion of this CCA or an amended CCA shall be a factor to be weighed, in favor of the Respondent, by the Office of the Illinois Attorney General in determining whether to file a complaint on its own motion for the violations cited in VN W-2012-00056.

7. This CCA is solely intended to address the violations alleged in Illinois EPA VN W-2012-00056. The Illinois EPA reserves, and this CCA is without prejudice to, all rights of the Illinois EPA against Respondent with respect to noncompliance with any term of this CCA, as well as to all other matters. Nothing in this CCA is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the Illinois EPA may have against Respondent, or any other person as defined by Section 3.315 of the Act, 415 ILCS 5/3.315. This CCA in no way affects the responsibilities of Respondent to comply with any other federal, state or local laws or regulations, including but not limited to the Act, and the Board Regulations.

8. Respondent represents that it has entered into this CCA for the purpose of settling and compromising the alleged violations in VN W-2012-00056. By entering into this CCA and complying with its terms, Respondent does not admit the allegations of violation within VN W-2012-00056 and this CCA shall not be interpreted as including such admission.

9. Pursuant to Section 42(k) of the Act, 415 ILCS 5/42(k), in addition to any other remedy or penalty that may apply, whether civil or criminal, Respondent shall be liable for an additional civil penalty of $2,000 for violation of any of the terms or conditions of this CCA.

10. This CCA shall apply to and be binding upon the Illinois EPA, and on Respondent and Respondent's officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, and upon all persons, including but not limited to contractors and consultants, acting on behalf of Respondent, as well as upon subsequent purchasers of Respondent's facility.

11. In any action by the Illinois EPA to enforce the terms of this CCA, Respondent consents to and agrees not to contest the authority or jurisdiction of the Illinois EPA to enter into or enforce this CCA, and agrees not to contest the validity of this CCA or its terms and conditions.

12. This CCA shall only become effective:

a) If, within 30 days of receipt, Respondent executes this CCA and submits it, via certified mail, to Andrea Rhodes, CAS, CAS #19, Illinois EPA, Division of Public Water Supplies, P.O. Box 19276, Springfield, IL 62794-9276. If Respondent fails to execute and submit this CCA within 30 days of receipt, via certified mail, this CCA shall be deemed rejected by operation of law; and

b) Upon execution by all Parties.

13. Pursuant to Section 31(a)(7.5) of the Act, 415 ILCS 5/31(a)(7.5), this CCA shall not be amended or modified prior to execution by the Parties. Any amendment or modification to this CCA by Respondent prior to execution by all Parties shall be considered a rejection of the CCA by operation of law. This CCA may only be amended subsequent to its effective date, in writing, and by mutual agreement between the Illinois EPA and Respondent's signatory to this CCA, Respondent's legal representative, or Respondent's agent.

AGREED:

FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY:

BY: _____ DATE: _____

Mike Crumly
Manager, Compliance Assurance Section
Division of Public Water Supplies
Bureau of Water

FOR RESPONDENT:

BY: _____ DATE: _____

Susan M. Franzetti
Counsel for Midwest Generation, LLC

Exhibit 17

Illinois EPA Compliance Commitment Agreement webpage,
www.epa.state.il.us/enforcement/compliance-commitment

Enforceable Compliance Commitment Agreement

What is a Compliance Commitment Agreement?

The Illinois Environmental Protection Act (Act) authorizes the Illinois Environmental Protection Agency (EPA) to resolve alleged violations of environmental laws without the involvement of prosecutorial authorities, such as the Office of the Illinois Attorney General, a county state's attorney or U.S. EPA, through the use of a Compliance Commitment Agreement (CCA).

Pursuant to Section 31 of the Act, an entity that receives a Violation Notice from the Illinois EPA may voluntarily enter into a CCA in order to resolve the alleged violations. A CCA is a written document that contains specific activities that an entity must take in order to address alleged violations of environmental laws, regulations or permits, as well as timelines for returning to compliance with the Act and correcting any environmental harm. The Illinois EPA will not refer alleged violations that are the subject of a successfully-completed CCA to prosecutorial authorities.

The Illinois EPA has discretionary authority to enter into CCAs and will generally deny the use of CCAs and pursue formal enforcement if the nature and seriousness of the alleged violations warrant such action.

Recent Changes to CCAs

In the past, an entity that violated the terms of a CCA could be referred to the Office of the Illinois Attorney General, a county state's attorney or U.S. EPA for the underlying violations only. The CCA itself was not an enforceable document.

On August 23, 2011, Governor Quinn signed into law Public Act 97-519, which amended the Act to authorize the Illinois EPA to enter into a CCA that is an enforceable document.

How does Public Act 97-519 change the CCA process?

- A CCA is now a formal document that must be signed by both the violator and the Illinois EPA. (A sample CCA can be found here.)
- Any violation of a term or condition of a CCA will now be considered an additional violation of the Illinois Environmental Protection Act, beyond any underlying alleged violations contained in the Violation Notice.
- Any violation of a term or condition of a CCA will automatically subject the violator to an additional civil penalty of $2,000, which will be assessed by a prosecutorial authority beyond any other civil or criminal penalty that may apply.
- The Office of the Illinois Attorney General, when determining whether to file a complaint on its own motion for alleged violations contained in a Violation Notice, must consider the successful completion of a CCA as a weighted factor in the violator's favor.
- Utilization of a formal CCA document will provide greater certainty to the regulated community regarding the full and final resolution of alleged violations contained in a Violation Notice.

If I receive a Violation Notice from the Illinois EPA, what steps must I take to enter into a CCA?

1. You must submit proposed terms for a CCA, via certified mail, to the Illinois EPA within 45 days after receipt of a Violation Notice, or if a meeting is requested regarding the Violation Notice, within 21 days after the meeting is held. Proposed CCA terms must include specific detailed steps

that will be taken to achieve compliance, as well as the necessary dates for completion of these steps.

2. Within 30 days after receiving your proposed CCA terms, the Illinois EPA will accept or modify them and issue a proposed formal CCA containing the terms necessary to achieve compliance. Alternatively, the Illinois EPA may elect to send you a letter indicating that no CCA will be issued for the alleged violations and the reasons for the non-issuance.
3. If the Illinois EPA issues a proposed formal CCA and you agree to its terms and conditions, you must sign the CCA and send it via certified mail to the Illinois EPA within 30 days of receipt. Upon receipt of a signed and timely submitted CCA, the Illinois EPA will sign it and return the fully-executed CCA to you. Alternatively, you may elect to reject the Illinois EPA's proposed CCA.

The CCA is not effective until the Illinois EPA signs it. Amendments or modifications to the proposed formal CCA that is issued by the Illinois EPA may be made by mutual agreement of both parties only after it has been fully executed.

Who do I contact if I have questions regarding the new CCA process?

Please contact the following individuals if you have questions regarding CCAs:

Bureau of Air: David Bloomberg, 217-524-4949
Bureau of Land: Brian White, 217.782.9887
Bureau of Water: Roger Callaway, 217.782.9852
Emergency Response: Yeric Yarrington, 217-524-1008

Exhibit 18

97th Ill. Gen. Assembly, House Proceedings,
April 13, 2011, p. 90 (Statement of Senator Wilhelmi)

Senator, is there anything that the Attorney General doesn't do in Illinois? I mean, it's becoming apparent to me that she's -- or, whoever is there is going to be a very busy person. They're in charge of regulating utilities, they're in charge of seniors. I mean, it's coming close to the -- the -- Governor -- Office of the Governor. Do you think this is really an appropriate time to expand a statewide constitutional office when we've really kind of cut back on those kind of dollars?

PRESIDING OFFICER: (SENATOR SULLIVAN)

Senator Wilhelmi.

SENATOR WILHELMI:

Senator, under current law, the Attorney General's Office has jurisdiction on this issue and on these alleged violations. So, under current law, if a CCA is negotiated and entered into between the Illinois Environmental Protection Agency and the -- and the employer, the alleged violator, she is -- the Office of the Attorney General is not involved in those negotiations, currently. So what this does is it modifies the Act so that CCAs are actually more meaningful, so that they have more of an impact. It sends the right message to the US EPA, which is also a concern for our State. And -- and so, at the end of the day, I don't believe that this is expanding the -- the authority or the powers of the Attorney General's Office. And, in fact, with that last provision that I mentioned, that the Office must take into consideration compliance with these agreements as a factor, is something that the regulated community favors.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Further discussion? Senator Pankau.

SENATOR PANKAU: