

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>In the Matter of:</b>	)	
	)	
<b>SIERRA CLUB, ENVIRONMENTAL</b>	)	
<b>LAW AND POLICY CENTER,</b>	)	
<b>PRAIRIE RIVERS NETWORK, and</b>	)	
<b>CITIZENS AGAINST RUINING THE</b>	)	
<b>ENVIRONMENT</b>	)	
	)	<b>PCB 2013-015</b>
<b>Complainants,</b>	)	<b>(Enforcement – Water)</b>
	)	
<b>v.</b>	)	
	)	
<b>MIDWEST GENERATION, LLC,</b>	)	
	)	
<b>Respondent.</b>	)	

**NOTICE OF FILING**

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

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board Midwest Generation LLC’s Response to Complainants’ Motion for Leave to File Amended Complaint, a copy of which is herewith served upon you.

MIDWEST GENERATION, LLC

By:       /s/ Jennifer T. Nijman      

Dated: December 29, 2014

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Kristen L. Gale  
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**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that a true copy of the foregoing Notice of Filing and Midwest Generation LLC's Response to Complainants' Motion for Leave to File Amended Complaint was filed electronically on December 29, 2014 with the following:

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

and that true copies were mailed by First Class Mail, postage prepaid, on December 29, 2014 to the parties listed on the foregoing Service List.

/s/ Jennifer T. Nijman

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<b>Complainants,</b>	)	<b>(Enforcement – Water)</b>
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	)	
<b>MIDWEST GENERATION, LLC,</b>	)	
	)	
<b>Respondent.</b>	)	

**MIDWEST GENERATION LLC’S RESPONSE TO COMPLAINANTS’ MOTION  
FOR LEAVE TO FILE AMENDED COMPLAINT**

Pursuant to 35 Ill. Adm. Code 101.500(d), Respondent, Midwest Generation, LLC (“MWG”), by its undersigned counsel, respectfully submits this Response to Complainants’ Motion for Leave to File Amended Complaint. Although MWG does not conceptually object to Complainants’ Motion, MWG disagrees with Complainants’ assertion concerning the discovery schedule, and MWG objects to specific statements alleged in the proposed Amended Complaint. In support of its Response, MWG states as follows:

- 1) On December 15, 2014, Complainants filed a Motion for Leave to File Amended Complaint. Attached to the Motion was a proposed Amended Complaint and exhibits.
- 2) Complainants state that since filing of the original Complaint, they “have become aware of additional coal ash storage, disposal, and/or fill areas at each site” (Motion for Leave, ¶3).
- 3) By their Motion, Complainants are requesting to amend the Complaint by alleging that “coal ash and other waste” is “stored and disposed of” in “ponds or repositories” at the Joliet #29 Generating Station (“Joliet 29”), Powerton Generating Station (“Powerton”), Waukegan Generating Station (“Waukegan”), and Will County Generating Station (“Will County”) (proposed Amended Complaint, ¶¶ 1, 3, 5, and 7).

4) Additionally, Complainants state that their proposed changes to the Complaint do not require modification of the discovery schedule (Motion for Leave, ¶9).

5) MWG disagrees with Complainants' statement that the discovery schedule does not need to be modified, and objects to specific statements in the proposed Amended Complaint.

6) Due to Complainants' expansion of the Complaint, MWG expects to submit additional written discovery to investigate the bases and support for Complainants' additional allegations. Moreover, MWG seeks time to investigate and answer (or otherwise respond to) the allegations of any Amended Complaint. Accordingly, MWG requests that the Board modify the discovery schedule to allow MWG to serve additional written discovery upon Complainants regarding the new allegations and to respond to the Amended Complaint.

7) Additionally, MWG objects to the proposed Amended Complaint as written. On October 3, 2013, the Illinois Pollution Control Board ("Board") found that counts 1-3 were frivolous "to the extent that they allege violation of federal RCRA regulations" and dismissed counts 1-3 "to the extent that the complaint alleges MWG violated 40 C.F.R. §§257.1 and 257.3-4." (*Sierra Club et al v. Midwest Generation, LLC*, Order of the Board, October 3, 2013, p. 27).

8) Complainants' proposed Amended Complaint retains allegations of violations of the federal RCRA regulations 40 C.F.R. §§257.1 and 257.3-4 (proposed Amended Complaint, ¶¶ 42, 45, 48).

9) MWG requests that in granting Complainants' Motion, the Board direct Complainants to re-file an Amended Complaint in which the allegations of violations of the federal RCRA regulations are stricken.

10) Further, MWG objects to Complainants' use of the term "or other waste" in paragraphs 1, 3, 5 and 7 of the proposed amended complaint as overbroad and beyond the scope of the case. Complainants' Motion states that they intend to amend the Complaint to reference "coal combustion waste" and, in fact, later paragraphs refer to "coal combustion waste" (proposed Amended Complaint, ¶¶ 42, 45, 48, 51, 54, 57, 60). The overbroad reference to "other waste" in paragraphs 1, 3, 5 and 7 could result in an unintended expansion of the scope of this case.

11) MWG requests that the Board direct Complainants to specify “coal ash or coal combustion waste” in lieu of “other waste” to avoid confusion and over-breath.

WHEREFORE, in the event this Board grants Complainants’ Motion for Leave, that the Board further grant MWG’s requests as follows:

- (a) Grant Midwest Generation, LLC’s request for a 60 day extension of the discovery schedule for the sole purpose of allowing MWG to serve written discovery and to answer or otherwise respond to the Amended Complaint;
- (b) Order Complainants to strike the portions of its Amended Complaint consistent with the Board’s prior Order of October 3, 2013; and,
- (c) Order Complainants to strike the term “other waste” from the Amended Complaint.

Respectfully submitted,

Midwest Generation, LLC

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

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