BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

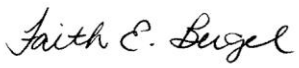
In the Matter of:	)	
	)	
SIERRA CLUB, ENVIRONMENTAL LAW AND POLICY CENTER, PRAIRIE RIVERS NETWORK, and CITIZENS AGAINST RUINING THE ENVIRONMENT	)	
	)	
Complainants,	)	
	)	
v.	)	PCB No-2013-015
	)	(Enforcement – Water)
MIDWEST GENERATION, LLC,	)	
	)	
Respondents	)	

NOTICE OF FILING

To: Attached Service List

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board the attached **MOTION FOR LEAVE TO FILE AMENDED COMPLAINT** and an **AMENDED COMPLAINT**, copies of which are served on you along with this notice.

Respectfully submitted,



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Faith E. Bugel
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ph (312) 795-3708

Dated: December 15, 2014

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:	)	
	)	
SIERRA CLUB, ENVIRONMENTAL LAW AND POLICY CENTER, PRAIRIE RIVERS NETWORK, and CITIZENS AGAINST RUINING THE ENVIRONMENT	)	
	)	
Complainants,	)	
	)	
v.	)	PCB No-2013-015
	)	(Enforcement – Water)
MIDWEST GENERATION, LLC,	)	
	)	
Respondents	)	

CITIZEN GROUPS' MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

NOW COME the Complainants, Sierra Club, Environmental Law and Policy Center (ELPC), Prairie Rivers Network, and Citizens Against Ruining the Environment (collectively, "Citizens Groups"), by and through counsel, and move the Illinois Pollution Control Board for leave to file the Amended Complaint attached hereto, and in support of their motion state as follows:

1. On October 3, 2012, Citizens Groups filed a complaint alleging that Midwest Generation, through coal ash ponds at the Joliet 29, Powerton, Waukegan, and Will County generating stations, had caused or contributed to groundwater contamination in violation of 415 ILCS 5/21(a) and had caused water pollution in violation of 415 ILCS 5/12(a) and (d), and 35 Ill. Admin. Code §§ 620.115, 620.301(a), and 620.405.

2. When Citizens Groups filed their complaint, they had reason to believe that the groundwater at each generating station had been affected by coal ash, and identified all known

repositories of coal ash. At the time, Citizens Groups were not aware of, and had no reason to be aware of, additional on-site coal ash repositories.

3. Since filing the complaint, through documents produced by Midwest Generation in discovery, Citizens Groups have become aware of additional coal ash storage, disposal, and/or fill areas at each site that may be contributing to the coal ash-related contamination alleged in the Complaint.

4. Citizens Groups now have reason to believe that Midwest Generation has caused or allowed coal ash to be kept in two or more landfills at the Joliet 29 site in addition to the three ash ponds named in the Complaint. *See, e.g.*, Exhibit A: ENSR Consulting, *Phase I Environmental Site Assessment of Commonwealth Edison Joliet #29 Generating Station*, at Fig. 2 (Oct. 1998) (showing two areas named "ash landfill.").

5. Citizens Groups now have reason to believe that Midwest Generation caused or allowed coal ash to be kept on land and in multiple impoundments at the Powerton site in addition to the four impoundments named in the Complaint. *See, e.g.,* Exhibit B: ENSR Consulting, *Phase I Environmental Site Assessment of the ComEd Powerton Generating Station*, at 2-6 (Oct. 1998) (describing a "former slag and dumping area.").

6. Citizens Groups now have reason to believe that Midwest Generation has caused or allowed coal ash to be kept in one or more areas at the Waukegan site in addition to the two ash ponds named in the Complaint. *See, e.g.*, Exhibit C: ENSR Consulting, *Phase I Environmental Site Assessment of the Commonwealth Edison Waukegan Generating Station*, at Figure 2 (Oct. 1998) (showing a "former slag/fly ash storage area.") *See also* Exhibit D: Patrick Engineering, *Draft Ash Pond Data Evaluation & Summary – Waukegan Station* (Jan. 2012)

(stating that "[t]he elevated concentrations of compounds of interest in MW-5 appear to be the result of the well being installed in a former ash disposal area.").

7. Citizens Groups now have reason to believe that Midwest Generation has caused or allowed coal ash to be kept in one or more areas at the Will County site in addition to the four ash ponds named in the complaint. *See, e.g.*, Exhibit E: ENSR Consulting, *Phase I Environmental Site Assessment of Commonwealth Edison Will Generating Station*, at Figure 2 (Oct. 1998) (showing a "slag, and bottom ash dumping area.").

8. The Amended Complaint is different from the Complaint in only three related and narrow respects:

- Where the original Complaint referred to "coal ash disposal ponds" or "coal ash ponds," the Amended Complaint refers to coal ash "repositories," including, but not limited to, the ash ponds named in the Complaint.
- Where the original Complaint referred to "disposal," the Amended Complaint refers to "storage and disposal."
- Where the original Complaint referred to "coal ash", the Amended Complaint refers to "coal ash and coal combustion waste" or "coal ash and other waste".

9. The fundamental contentions of the Complaint – that Midwest Generation waste disposal practices for its coal ash and other coal combustion wastes have contaminated groundwater – remains unchanged. The Amended Complaint does not add or remove any claims, but attempts to conform the pleadings to match the newly discovered facts of the case. The changes to the Complaint also do not require modification of the discovery schedule and, therefore, will not delay the resolution of this case in any way.

WHEREFORE, for all of the above-mentioned reasons, Citizens Groups respectfully request leave to file the attached Amended Complaint.

Respectfully submitted,

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Attorney for CARE

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:	)	
	)	
SIERRA CLUB, ENVIRONMENTAL LAW AND POLICY CENTER, PRAIRIE RIVERS NETWORK, and CITIZENS AGAINST RUINING THE ENVIRONMENT	)	
	)	PCB No-
Complainants,	)	
	)	
v.	)	
	)	
MIDWEST GENERATION, LLC,	)	
	)	
Respondents	)	

COMPLAINT

FACTUAL BACKGROUND

1. Midwest Generation, LLC ("MWG") owns and operates the Joliet #29 Generating Station ("Joliet 29") in Joliet, Illinois in Will and Kendall Counties, on the north side of the Des Plaines River. MWG has historically stored and disposed of coal ash and other waste in repositories that include, but are not limited to, two or more landfills and three ash ponds (two HDPE-lined, one geocomposite-lined) on the same side of the river, and continues to store or dispose of coal ash and other waste in these ponds or repositories.

2. MWG installed eleven groundwater monitoring wells (MW-1 through MW-11) around the Joliet 29 ash ponds in 2010, as depicted in the well map included in MWG groundwater monitoring reports for Joliet 29, attached hereto as Exhibit A. Since monitoring began in late 2010, groundwater monitoring results have shown levels of antimony, boron, chloride, iron, manganese, sulfate, and Total Dissolved Solids ("TDS") which exceed Illinois Groundwater Quality Standards ("GQSs"). *See* violations of Class I and Class II GQSs and

MWG groundwater monitoring data for Joliet 29, attached hereto as Exhibits B, C, and D, respectively.

3. MWG owns and operates the Powerton Generating Station ("Powerton") in Pekin, Illinois in Tazewell County. MWG has historically stored and disposed of coal ash and other waste in repositories that include, but are not limited to three active ash ponds on the site, two of them lined; one less active ash pond on the site; additional ponds or basins containing ash among other waste; and a former slag and dumping area. MWG continues to store or dispose of coal ash and other waste in these ponds or repositories.

4. MWG monitors groundwater at Powerton with a network of 15 wells (MW-1 through MW-15, depicted in the well map included in MWG groundwater monitoring reports for Powerton, attached hereto as Exhibit E). Since monitoring began in late 2010, groundwater monitoring results have shown levels of arsenic, boron, chloride, iron, lead, manganese, mercury, nitrate, selenium, sulfate, thallium, and TDS which exceed Illinois GQS and/or open dumping standards. *See* violations of Class I and Class II GQSs and MWG groundwater monitoring data for Powerton, attached hereto as Exhibits B, C, and F, respectively.

5. MWG owns and operates the Waukegan Generating Station ("Waukegan") in Waukegan, Illinois in Lake County. There are two active HDPE-lined ponds at this site. MWG has stored and disposed of coal ash and other waste in repositories that include, but are not limited to, these two ponds and one former ash disposal area, and continues to do so.

6. MWG installed 5 wells (MW-1 through MW-5) around the Waukegan ash ponds in 2010, as depicted in the well map included in MWG groundwater monitoring reports for Waukegan, attached hereto as Exhibit G. Groundwater monitoring results from Waukegan show levels of antimony, arsenic, boron, chloride, iron, manganese, pH, sulfate, and TDS which

exceed Illinois GQS and/or open dumping standards. *See* violations of Class I and Class II GQSs and MWG groundwater monitoring data for Waukegan, attached hereto as Exhibits B, C, and H, respectively.

7. MWG owns and operates the Will County Generating Station ("Will County") in Romeoville, Illinois in Will County. MWG has stored and disposed of coal ash and other waste at the site in repositories that include four geocomposite-lined ponds and one or more additional repositories. MWG continues to store and dispose of coal ash and other waste in one or more of these ponds.

8. MWG installed 10 wells around the Will County plant's ponds in 2010 (MW-1 through MW-10; *see* the well map included in MWG groundwater monitoring reports for Will County, attached hereto as Exhibit I.) Groundwater monitoring results from Will County show levels of antimony, boron, chloride, iron, manganese, pH, sulfate, and TDS which exceed Illinois GQS and/or open dumping standards. *See* violations of Class I and Class II GQSs and MWG groundwater monitoring data for Will County, attached hereto as Exhibits B, C, and J, respectively.

9. On June 11, 2012, the Illinois Environmental Protection Agency ("IEPA") sent MWG Violation Notices describing violations of Section 12 of the Illinois Environmental Protection Act, 415 ILCS 5/12, and Groundwater Quality regulations at Joliet 29, Powerton, Waukegan, and Will County. *See* Violation Notices for Powerton, Joliet 29, Waukegan, and Will County, attached hereto as Exhibits K–N. In the Violation Notices IEPA identified groundwater monitoring results that exceeded Illinois Class I GQS, which are found at 35 IAC 620.410.

10.

THE POLLUTANTS

11. As set forth in detail in Exhibit B, groundwater monitoring results at Joliet 29, Powerton, Waukegan, and/or Will County have exceeded Illinois Class I GQS, 35 Ill. Admin. Code § 620.410, for the following pollutants: Antimony, arsenic, boron, chloride, iron, lead, manganese, mercury, nitrate, selenium, sulfate, total dissolved solids, and thallium.

12. Many of the pollutants found at elevated concentrations in the groundwater monitoring results at Joliet 29, Powerton, Waukegan, and/or Will County are constituents of coal ash.[1]

13. As MWG recognizes, boron is a primary indicator of potential coal ash impacts to groundwater.

14. The pollutants listed in this complaint, when present at the concentrations found in MWG's groundwater wells, make the groundwater unusable. Many of these pollutants are toxic and have been found at concentrations that present a human health risk. Others are dangerous to aquatic ecosystems; this is a significant concern to the extent that contaminated groundwater is migrating into adjacent surface water bodies.

15. Antimony is associated with reduced lifespan, decreased blood glucose, and altered cholesterol in rodents, and with vomiting and cardiac and respiratory effects in humans.[2] To protect public health, the U.S. EPA has established a Maximum Contaminant Level (MCL) of 0.006 mg/L. The Illinois Class I GQS for antimony is also 0.006 mg/L. Even this level may be

[1] *See, e.g.*, U.S. EPA, Human and Ecological Risk Assessment of Coal Combustion Wastes at 2-4 (Draft, April 2000) (listing Coal Combustion Waste constituents), *available at* http://earthjustice.org/sites/default/files/library/reports/epa-coal-combustion-waste-risk-assessment.pdf (last visited October 2, 2012).

[2] *See, e.g.*, U.S. EPA, Integrated Risk Information System: Antimony, http://www.epa.gov/iris/subst/0006.htm; California EPA, Draft Public Health Goal for Antimony in Drinking Water (July 2009).

unsafe; the California EPA, for example, has proposed a much lower Public Health Goal of 0.0007 mg/L.[3]

16. Arsenic is known to cause multiple forms of cancer in humans and is also associated with non-cancer health effects of the skin and the nervous system.[4] Groundwater that exceeds Illinois GQSs for arsenic is highly toxic; based on current U.S. EPA risk estimates, the cancer risk associated with drinking water at 0.05 mg/L, the Illinois Class I GQS for arsenic, is greater than 2 in 1,000.[5] The risk at 0.2 mg/L, the Class II GQS, is 1 in 100.

17. Oral exposure to boron has led to developmental and reproductive toxicity in multiple species. Specific effects include testicular degeneration, reduced sperm count, reduced birth weight, and birth defects.[6] The EPA has established a child health advisory of 3 mg/L for boron, close to the Illinois Class I and Class II GQS of 2 mg/L.[7]

18. Chloride renders water unusable by imparting a salty taste; to prevent this the EPA has set a secondary drinking water regulation of 250 mg/L, close to the Illinois Class I and Class II GQS of 200 mg/L.[8]

19. Iron renders water unusable by imparting a rusty color and a metallic taste and causing sedimentation and staining; to prevent these effects the EPA has set a secondary drinking water regulation of 0.3 mg/L.[9] The Illinois Class I and II GQS for iron, at 5 mg/L, is much higher than the EPA secondary drinking water regulation, suggesting that violations of the GQS represent concentrations of iron far higher than what would be usable.

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[3] *See* California EPA, *supra* note 2.
[4] *See, e.g.*, U.S. EPA, Integrated Risk Information System: Arsenic, inorganic, http://www.epa.gov/iris/subst/0278.htm; U.S. Agency for Toxic Substances and Disease Registry (ATSDR), Toxicological Profile for Arsenic (Aug. 2007).
[5] Derived from the U.S. EPA drinking water unit risk of 5E-5 per ug/L. U.S. EPA, *supra* note 8.
[6] *See, e.g.*, U.S. EPA, Toxicological Profile of Boron and Compounds 60-61 (June 2004).
[7] U.S. EPA, 2012 Edition of the Drinking Water Standards and Health Advisories (April, 2012).
[8] U.S. EPA, Secondary Drinking Water Regulations: Guidance for Nuisance Chemicals, http://water.epa.gov/drink/contaminants/secondarystandards.cfm.
[9] *Id.*

20. Lead is known to be toxic to the nervous system, and is particularly associated with effects on childhood neurobehavioral development at very low doses. Lead is also classified by the EPA as a "probable human carcinogen."[10] The EPA Action Level for lead in drinking water is 0.015 mg/L.[11] This is unlikely to represent a "safe" level of exposure—the EPA has noted, for example, that there may be no threshold for lead toxicity.[12] Groundwater concentrations of lead above the Illinois Class I GQS, 0.0075 mg/L, are thus unsafe to drink.

21. Manganese is also known to be toxic to the nervous system.[13] The EPA has not updated its assessment of manganese toxicity in 16 years, so EPA standards and advisories may not reflect the latest scientific knowledge concerning effects on childhood neurological development,[14] and the EPA Lifetime Health Advisory for manganese – 0.3 mg/L – may not be adequately health-protective. In any event, manganese concentrations greater than 0.05 mg/L render water unusable by discoloring the water, giving it a metallic taste, and causing black staining.[15] Groundwater with manganese above the Illinois Class I GQS – 0.15 mg/L – is clearly not usable and is likely to be toxic.

22. Inorganic mercury is toxic to the kidneys, and has also been associated with developmental toxicity.[16] The California EPA Public Health Goal for ionorganic mercury is 0.0012 mg/L; the U.S. EPA MCL, like the Illinois Class I GQS, is 0.002 mg/L.[17]

23. Nitrate is known to cause methemoglobinemia in infants, a condition that impairs oxygen delivery to tissues and can cause bluish skin coloration. The U.S. EPA MCL, the

[10] U.S. EPA, Integrated Risk Information System: Lead and Compounds, http://www.epa.gov/iris/subst/0277.htm.
[11] U.S. EPA drinking water standards, *supra* note 7.
[12] U.S. EPA, IRIS web page for lead, *supra* note 10.
[13] *See, e.g.*, U.S. EPA, Integrated Risk Information System: Manganese, http://www.epa.gov/iris/subst/0373.htm.
[14] *See, e.g.*, G.A. Wasserman et al., Water manganese exposure and children's intellectual function in araihazar, Bangladesh. 114 ENVIRON. HEALTH PERSP. 124 (2006).
[15] *See* U.S. EPA secondary drinking water regulations, *supra* note 8.
[16] *See*, e.g., California EPA, Public Health Goal for Inorganic Mercury in Drinking Water (Feb. 1999).
[17] Id.; U.S. EPA drinking water standards, *supra* note 7.

California EPA Public Health Goal, and the Illinois Class I and II GQSs are all 10 mg/L, a level at which infant methemoglobinemia is not expected to occur.[18]

24. Selenium is an essential element, but excess exposure can cause a chemical-specific condition known as selenosis, with symptoms that include hair and nail loss. Various agencies have derived health-protective values between 0.01 and 0.05 mg/L, but are in agreement that selenium concentrations above 0.05 mg/L, the Illinois Class I and II GQS, are unsafe to drink.[19]

25. High concentrations of sulfates in drinking water impart a salty taste and can cause diarrhea; to protect against these effects, the U.S. EPA has established a secondary MCL of 250 mg/L and a health-based advisory of 500 mg/L.[20] Groundwater with sulfate concentrations above the Illinois Cass I and Class II GQS of 400 mg/L is therefore unusable and potentially unsafe.

26. Total Dissolved Solids (TDS) is a measure of multiple dissolved chemicals, but because high TDS is generally associated with hardness, staining, salty taste, and deposits, the U.S. EPA has established a secondary MCL of 500 mg/L.[21] Groundwater with TDS above the Illinois Class I and Class II GQS, 1,200 mg/L, is clearly unusable.

[18] *See* U.S. EPA, Integrated Risk Information System: Nitrate, http://www.epa.gov/iris/subst/0076.htm.; California EPA, Public Health Goals for Nitrate and Nitrite (Dec. 1997).
[19] *See, e.g.*, California EPA, Public Health Goal for Selenium (Dec. 2010) (Setting a Public Health Goal of 0.03 mg/L); World Health Organization, Guidelines for Drinking Water Quality, 4th Ed., 413 (2011) (Setting a provisional guideline of 0.04 mg/L); U.S. EPA drinking water standards, *supra* note 11 (setting forth a MCL of 0.05 mg/L).
[20] U.S. EPA, Drinking Water Advisory: Consumer Acceptability Advice and Health Effects Analysis on Sulfate (Feb. 2003).
[21] *See* U.S. EPA secondary drinking water regulations, *supra* note 8.

27. Thallium is known to cause neurotoxicity, and is also associated with developmental and reproductive toxicity and other adverse health effects. The Illinois Class I GQS and the U.S. EPA MCL are both 0.002 mg/L.[22]

28. Finally, many of the pollutants associated with coal ash, including but not limited to selenium, are known to bioaccumulate in aquatic ecosystems causing tissue damage and other effects in fish and amphibians. One review, for example, noted that "the combined effects of multiple accumulated elements may lead to numerous changes in individuals that could compromise individual fitness or health," and provided several examples of coal ash-contaminated sites where the health of individuals and communities in aquatic ecosystems had been severely impaired.[23]

PARTIES

29. Citizens Against Ruining the Environment ("CARE") is located at 230 E. 6th Street, Lockport, IL 60441. CARE is an incorporated, not-for-profit community organization with members in the Lockport area, including Will County. CARE was organized for the purpose of preserving and protecting Illinois's land, air, water, and other natural resources, and protecting the organization's members and other residents of the state from threats of pollution.

30. The Environmental Law and Policy Center ("ELPC") is an Illinois not-for-profit corporation with its principal office located at 35 East Wacker Drive, Suite 1600, Chicago, IL 60601. ELPC's mission includes advocating for the protection of water quality, and protection of public health related to water quality, throughout the Midwest.

[22] *See* U.S. EPA drinking water standards, *supra* note 7.
[23] C.L. Rowe et al., Ecotoxicological implications of aquatic disposal of coal combustion residues in the United States: A review, 80 ENVTL. MONITORING AND ASSESSMENT 207, 242 (2002); see also A.D. Lemly and J.P. Skorupa, Wildlife and the coal waste policy debate: Proposed rules or coal waste disposal ignore lessons from 45 years of wildlife poisoning, 46 ENVTL. SCI. TECH. 46 (2012).

31. Prairie Rivers Network, a nonprofit organization and a state affiliate of the National Wildlife Federation, is Illinois' statewide leader in river protection, conservation, and restoration. Prairie Rivers Network has a membership of over 700 in Illinois.

32. Sierra Club is the nation's oldest and largest grassroots environmental organization. Sierra Club is an incorporated, not-for-profit organization with headquarters located at 85 Second Street, 2nd Floor, San Francisco, CA, 94105. Sierra Club's Illinois Chapter office is located at 70 E. Lake St., Suite 1500, Chicago, IL, 60601. Sierra Club's mission is to preserve, protect, and enhance the natural environment. Sierra Club has 641,000 members, including approximately 23,000 members in Illinois.

33. Midwest Generation, LLC (MWG), is a Delaware Corporation doing business in Illinois with principal executive offices at 235 Remington Boulevard, Suite A, Bolingbrook, Illinois 60440. MWG's registered agent is C T Corporation System, 208 S. LaSalle St., Suite 814, Chicago, Illinois 60604. MWG is a subsidiary of Edison Mission Energy ("EME"), of Santa Ana, California. EME is a subsidiary of Edison International, 2244 Walnut Grove Avenue, (P.O. Box 976), Rosemead, California, 91770.

LEGAL BACKGROUND: OPEN DUMPING

34. The Illinois Environmental Protection Act prohibits "the open dumping of any waste." 415 ILCS 5/21(a). "Open dumping" is defined as "the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill." 415 ILCS 5/3.305. "Refuse" is defined as "waste." 415 ILCS 5/3.385. "Waste" is defined to include "any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural

operations" at 415 ILCS 5/3.535. "Sanitary landfills" are defined as "facilit[ies] permitted by the Agency for the disposal waste on land meeting the requirements of the Resource Conservation and Recovery Act [42 USCA § 6901 et seq.]." 415 ILCS 5/3.445. The requirements of the Resource Conservation and Recovery Act include criteria for distinguishing between sanitary landfills and open dumps. 42 USCA § 6944(a). These criteria are found in federal regulations at 40 CFR Part 257. According to 40 CFR § 257.1, facilities failing to meet, inter alia, the criterion at 40 CFR § 257.3-4 are considered prohibited open dumps.

35. 40 CFR § 257.3-4 establishes a criterion for identifying open dumps based on groundwater contamination. 40 CFR § 257.3-4 prohibits "contaminat[ion of] an underground drinking water source beyond the solid waste boundary or beyond an alternative compliance boundary." The contamination must exist beyond either the perimeter of the solid waste disposal area or beyond an alternative boundary established by the state or the courts after finding that establishing such a boundary will not result in the contamination of groundwater that may be used for drinking. 40 C.F.R. § 257.3-4.

36. Groundwater contamination for purposes of RCRA open dumping is demonstrated by an exceedance of one of the Maximum Contaminant Levels (MCLs) set forth in 40 CFR pt. 257 Appendix I (hereinafter "Appendix I MCLs"),[24] in either an actual drinking water source, or in an aquifer with less than 10,000 mg/L total dissolved solids. 40 CFR § 257.3-4. The Appendix I MCLs for the pollutants identified in this complaint are as follows:

[24] The open dumping MCLs in 40 CFR pt. 257 Appendix I are in some cases different from the most recent Maximum Contaminant Levels promulgated by the U.S. Environmental Protection Agency. For example, the Appendix I MCL for arsenic is 50 ug/L while the current MCL for arsenic is 10 ug/L. *See* U.S. EPA drinking water standards, *supra* note 7.

Chemical	Appendix I MCL (40 C.F.R. Pt. 257, App. I)
Arsenic	0.05 mg/L
Mercury	0.002 mg/L
Nitrate	10 mg/L
Selenium	0.01 mg/L

LEGAL BACKGROUND: WATER POLLUTION

37. The Illinois Environmental Protection Act prohibits "the discharge of any contaminants into the environment . . . so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources," 415 ILCS 5/12(a), and prohibits the deposition of "any contaminants upon the land in such place and manner so as to create a water pollution hazard." 415 ILCS 5/12(d). "Water pollution" is defined as the "alteration" or "discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life." 415 ILCS 5/3.545. "Waters" of the State is defined to include "all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State." 415 ILCS 5/3.550.

38. 35 Ill. Admin. Code § 620.405 prohibits "the release of any contaminant to groundwater so as to cause a groundwater quality standard set forth in this Subpart to be exceeded." 35 Ill. Admin. Code § 620.405. The Illinois Administrative Code establishes different groundwater quality standards for Class I and Class II groundwater.

39. 35 Ill. Admin. Code § 620.410 establishes Class I GQSs that cannot be exceeded in potable resource groundwater. "Potable resource groundwater" is defined as:

> Groundwater located 10 feet or more below the land surface and within: (1) The minimum setback zone of a well which serves as a potable water supply and to the bottom of such well; (2) Unconsolidated sand, gravel or sand and gravel which is 5 feet or more in thickness and that contains 12 percent or less of fines . . . ; (3) Sandstone which is 10 feet or more in thickness, or fractured carbonate which is 15 feet or more in thickness; or (4) Any geologic material which is capable of a: (A) sustained groundwater yield , from up to a 12 inch borehole, of 150 gallons per day or more from a thickness of 15 feet or less; or (B) Hydraulic conductivity of 1 x 10(-4) cm/sec or greater using one of the following test methods or its equivalent: (i) Permeameter; (ii) Slug test; or (iii) Pump test. 35 Ill. Admin. Code § 620.210(a).

40. The definition of Class I groundwater specifically excludes: Class III "special resource groundwater," Class IV "other groundwater," which includes groundwater in a zone of attenuation; and groundwater in a "groundwater management zone." 35 Ill. Admin. Code § 620.210; *see also* 35 Ill. Admin. Code §§ 620.230, 620.240, 620.250.35 Ill. Admin. Code § 620.115 provides that "No person shall cause, threaten or allow a violation of the Act, the [Illinois Groundwater Protection Act] or regulations adopted by the Board thereunder, including but not limited to this part."35 Ill. Admin. Code § 620.301(a) provides that "No person shall cause, threaten or allow the release of any contaminant to a resource groundwater such that: 1) Treatment or additional treatment is necessary to continue an existing use or to assure a potential use of such groundwater; or 2) An existing or potential use of such groundwater is precluded."

41. 35 Ill. Admin. Code § 620.420 establishes Class II GQSs that cannot be exceeded in general resource groundwater. "General resource groundwater" is defined as "groundwater which does not meet the provisions of . . . Class I . . . Class III . . . or . . . Class IV" and "groundwater which is found by the Board, pursuant to the petition procedures set forth in

Section 620.260, to be capable of agricultural, industrial, recreational or other beneficial uses." 35 Ill. Admin. Code § 620.220. Groundwater in a zone of attenuation must meet Class II GQSs. 35 Ill. Admin. Code § 620.440(b).

The Illinois Class I and Class II GQSs for pollutants identified in this report are as follows:Chemical	Class I GQS (35 Ill. Admin. Code § 620.410)	Class II GQS (35 IAC § 620.420)
Antimony	0.006	0.024
Arsenic	0.05	0.2
Boron	2	2
Chloride	200	200
Iron	5	5
Lead	7.5	100
Manganese	0.15	10
Mercury	0.002	0.01
Nitrate	10	100
pH	6.5 – 9.0	6.5 – 9.0
Selenium	0.05	0.05
Sulfate	400	400
Thallium	2	20
Total Dissolved Solids	1,200	1,200

COUNT I

OPEN DUMPING VIOLATIONS AT POWERTON

42. Paragraphs 1-41 are realleged and incorporated herein by reference.

43. MWG, through coal ash disposal ponds, landfills, unconsolidated coal ash fill, and/or other coal ash and coal combustion waste repositories at Powerton, has caused or contributed to contamination of the groundwater beneath Powerton in violation of 415 ILCS 5/21(a) and 40 C.F.R. §§ 257.1 and 257.3-4, as shown in Table 1.

Table 1: Open dumping violations at Powerton.

	Well	Pollutant	Sample value (mg/L)	Appendix I MCL (mg/L)	Collection date
1	MW-1	Nitrate	0.011	0.010	9/20/11
2	MW-7	Arsenic	0.085	0.050	3/25/11
3	MW-7	Arsenic	0.120	0.050	6/16/11
4	MW-7	Arsenic	0.180	0.050	9/20/11
5	MW-7	Arsenic	0.230	0.050	12/12/11
6	MW-7	Arsenic	0.230	0.050	3/19/12
7	MW-9	Selenium	0.072[25]	0.010	3/25/11
8	MW-12	Mercury	0.0096[26]	0.002	12/15/10
9	MW-14	Selenium	0.065	0.010	4/25/11
10	MW-14	Selenium	0.022	0.010	4/10/12
11	MW-15	Selenium	0.017	0.010	4/25/11
12	MW-15	Selenium	0.025	0.010	4/10/12

44. Groundwater samples from seven different wells at Powerton have violated the Appendix I MCLs on the twelve occasions delineated in Table 1.

COUNT 2

OPEN DUMPING VIOLATIONS AT WAUKEGAN

45. Paragraphs 1-44 are realleged and incorporated herein by reference.

46. MWG, through coal ash disposal ponds, landfills, unconsolidated coal ash fill, and/or other coal ash and coal combustion waste repositories at Waukegan, has caused or contributed to contamination of the groundwater beneath Waukegan in violation of 415 ILCS 5/21(a), and 40 C.F.R. §§ 257.1 and 257.3-4 as shown in Table 2.

[25] This value was originally reported as 0.072 mg/L. *See* letter from Richard M. Frendt, Patrick Engineering, to IEPA, Attachment A (July 30, 2012) (transmitting amended groundwater monitoring report for Midwest Generation's Powerton Generating Station). MWG has since revised the value to 0.072 mg/L. *Id*. at Attachments B and C.

[26] This value was originally reported as 0.0096 ug/L. *Id*. at Attachment A. MWG has since revised the value to nondetect. *Id*. at Attachments B and C.

Table 2: Open dumping violations at Waukegan.

	Well	Pollutant	Sample value (mg/L)	Appendix I MCL (mg/L)	Collection date
1	MW-1	Arsenic	0.054	0.050	10/25/10
2	MW-1	Arsenic	0.170	0.050	6/13/11
3	MW-1	Arsenic	0.077	0.050	9/13/11
4	MW-1	Arsenic	0.057	0.050	12/6/11
5	MW-1	Arsenic	0.078	0.050	3/14/12
6	MW-1	Selenium	0.031	0.010	10/25/10
7	MW-1	Selenium	0.030	0.010	3/24/11
8	MW-1	Selenium	0.016	0.010	6/13/11
9	MW-1	Selenium	0.039	0.010	9/13/11
10	MW-1	Selenium	0.032	0.010	12/6/11
11	MW-1	Selenium	0.037	0.010	3/14/12
12	MW-2	Selenium	0.026	0.010	10/25/10
13	MW-2	Selenium	0.028	0.010	6/13/11
14	MW-2	Selenium	0.022	0.010	9/13/11
15	MW-3	Selenium	0.016	0.010	3/24/11
16	MW-3	Selenium	0.030	0.010	6/13/11
17	MW-3	Selenium	0.012	0.010	9/13/11
18	MW-3	Selenium	0.011	0.010	12/6/11
19	MW-4	Selenium	0.022	0.010	6/13/11
20	MW-4	Selenium	0.025	0.010	9/13/11
21	MW-4	Selenium	0.015	0.010	12/6/11

47. Groundwater samples at three of five wells monitored showed violations of the Appendix I MCLs on the twenty-one occasions delineated in Table 2.

COUNT 3

OPEN DUMPING VIOLATIONS AT WILL COUNTY

48. Paragraphs 1-47 are realleged and incorporated herein by reference.

49. MWG, through coal ash disposal ponds, landfills, unconsolidated coal ash fill, and/or other coal ash and other coal combustion waste repositories at Will County, has caused or contributed to contamination of the groundwater beneath Will County in violation of 415 ILCS 5/21(a), and 40 C.F.R. §§ 257.1 and 257.3-4, as shown in Table 3.

Table 3: Open dumping violations at Will County

	Well	Pollutant	Sample value (mg/L)	Appendix I MCL (mg/L)	Collection date
1	MW-5	Selenium	0.017	0.010	12/13/10
2	MW-5	Selenium	0.014	0.010	3/28/11
3	MW-5	Selenium	0.016	0.010	6/15/11
4	MW-6	Selenium	0.011	0.010	9/15/11

50. As Table 3 shows, there have been four violations of the open dumping MCL for selenium since monitoring began in late 2010.

COUNT 4

WATER POLLUTION AT JOLIET 29

51. Paragraphs 1-50 are realleged and incorporated herein by reference.

52. MWG, through coal ash disposal ponds, landfills, unconsolidated coal ash fill, and/or other coal ash and coal combustion waste repositories at Joliet 29, has discharged contaminants into the environment at Joliet 29 and thereby caused water pollution in violation of 415 ILCS 5/12(a) and (d), and 35 Ill. Admin. Code §§ 620.115, 620.301(a), and 620.405. As shown in Exhibits B, C, and D, there have been 55 violations of Illinois Class I Groundwater Quality Standards and 42 violations of Illinois Class II Groundwater Quality Standards since monitoring began in late 2010.

53. Since 2010, the groundwater at Joliet 29 has exceeded the Class I GQSs for antimony, boron, chloride, iron, manganese, sulfate, and TDS, and the Class II GQSs for boron, chloride, iron, sulfate, and TDS. *See* Exhibits B, C, and D.

COUNT 5

WATER POLLUTION AT POWERTON

54. Paragraphs 1-53 are realleged and incorporated herein by reference.

55. MWG, through coal ash disposal ponds, landfills, unconsolidated coal ash fill, and/or other coal ash and coal combustion waste repositories at Powerton, has discharged contaminants into the environment at Powerton and thereby caused water pollution in violation of 415 ILCS 5/12(a) and (d), and 35 Ill. Admin. Code §§ 620.115, 620.301(a), and 620.405. As shown in Exhibits B, C, and F, there have been 152 violations of Illinois Class I Groundwater Quality Standards and 73 violations of Illinois Class II Groundwater Quality Standards since monitoring began in late 2010.

56. Since 2010, the groundwater at Powerton has exceeded the Class I GQSs for arsenic, boron, chloride, iron, lead, manganese, mercury, nitrate, selenium, sulfate, thallium, and TDS, and the Class II GQSs for arsenic, boron, chloride, iron, manganese, selenium, sulfate, and TDS. *See* Exhibits B, C, and F.

COUNT 6

WATER POLLUTION AT WAUKEGAN

57. Paragraphs 1-56 are realleged and incorporated herein by reference.

58. MWG, through coal ash disposal ponds, landfills, unconsolidated coal ash fill, and/or other coal ash and coal combustion waste repositories at Waukegan, has discharged contaminants into the environment at Waukegan and thereby caused water pollution in violation of 415 ILCS 5/12(a) and (d), and 35 Ill. Admin. Code §§ 620.115, 620.301(a), and 620.405. As shown in Exhibits B, C, and H, there have been 51 violations of Illinois Class I Groundwater Quality Standards and 39 violations of Illinois Class II Groundwater Quality Standards since monitoring began in late 2010.

59. Since 2010, the groundwater at Waukegan has exceeded the Class I GQSs for antimony, arsenic, boron, chloride, iron, manganese, pH, sulfate, and TDS, and the Class II GQSs for boron, chloride, iron, pH, sulfate, and TDS. *See* Exhibits B, C, and H.

COUNT 7

WATER POLLUTION AT WILL COUNTY

60. Paragraphs 1-59 are realleged and incorporated herein by reference.

61. MWG, through coal ash disposal ponds, landfills, unconsolidated coal ash fill, and/or other coal ash and coal combustion waste repositories at Will County, has discharged contaminants into the environment at Will County and thereby caused water pollution in violation of 415 ILCS 5/12(a) and (d), and 35 Ill. Admin. Code §§ 620.115, 620.301(a), and 620.405. As shown in Exhibits B, C, and J, there have been 139 violations of Illinois Class I Groundwater Quality Standards and 105 violations of Illinois Class II Groundwater Quality Standards since monitoring began in late 2010.

62. Since 2010, the groundwater at Will County has exceeded the Class I GQSs for antimony, boron, chloride, iron, manganese, pH, sulfate, and TDS, and the Class II GQSs for boron, chloride, iron, pH, sulfate, and TDS. *See* Exhibits B, C, and J.

RELIEF REQUESTED

WHEREFORE, Petitioners request that this Board:

1. Declare that Respondent, Midwest Generation, LLC has violated the Illinois Environmental Protection Act's prohibitions on open dumping and groundwater pollution at its Joliet 29, Powerton, Waukegan, and Will County sites.
2. Impose civil penalties under 415 ILCS 5/42.
3. Order Respondent, under 415 ILCS 5/33, to:

- Cease and desist from open dumping of coal ash and coal combustion waste and from causing or threatening to cause water pollution,
- Modify its coal ash and coal combustion waste disposal and storage practices so as to avoid future groundwater contamination,
- Remediate the contaminated groundwater so that it meets applicable Illinois groundwater standards; and

4. Grant such other relief as the Board deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion for Leave to File Amended Complaint and Amended Complaint were served to all parties of record listed below by electronic mail. A copy was hand delivered to Nijman Franzetti LLP at 10 South LaSalle Street, Suite 3600 Chicago, IL 60603 on December 15, 2014. A copy was sent via United States Mail, postage prepaid, on December 15, 2014 to CT Corporate systems at 208 South LaSalle Street, Suite 814 Chicago, IL 60603 and to The Illinois Pollution Control Board at 100 West Randolph St Suite 11-500 Chicago, IL 60601.

Respectfully submitted,

Faith E. Bugel

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