

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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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	)	

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**NOTICE OF FILING**

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

Attached Service List

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board *Citizens Groups' Motion to Strike Appendix A to Respondent's Response to Complainant's Motion for Partial Summary Judgment*, copies of which are herewith served upon you.



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Jennifer L. Cassel  
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(312) 795-3726  
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Dated: August 2, 2016

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**CITIZEN GROUPS’ MOTION TO STRIKE APPENDIX A TO RESPONDENT’S  
RESPONSE TO COMPLAINANTS’ MOTION FOR PARTIAL SUMMARY JUDGMENT**

Complainants Sierra Club, Inc., Environmental Law and Policy Center, Prairies Rivers Network and Citizens Against Ruining the Environment (collectively, “Citizen Groups” or “Complainants”) respectfully request that the Illinois Pollution Control Board (“Board”) strike the nearly 50-page “Appendix A” to Respondent Midwest Generation, LLC’s (“MWG” or “Respondent”) Response to Complainants’ Motion for Partial Summary Judgment. In support of this motion, Citizen Groups state as follows.

1. Board Rule 101.302(k) provides that “No motion, brief in support of motion, or brief may exceed 50 pages... without prior approval of the Board or hearing officer. These limits do not include appendices containing relevant material.” Board Rule 101.302(k) contains no exception for briefs in opposition to summary judgment motions.

2. On June 1, 2016, Citizen Groups filed a Motion for Partial Summary Judgment (“Motion”).

3. On July 19, 2016, MWG filed its Response to Complainants' Motion for Partial Summary Judgment ("Response"). The Response consists of a 48-page brief, a table of attachments, a 49-page Response to Complainants' Statement of Undisputed Facts (filed as "Appendix A") and exhibits. MWG's Response totals 101 pages.

4. Statements of facts and responses thereto are essential components of summary judgment and belong in the brief supporting or opposing it. Under Section 101.202 of the Board rules, "Summary Judgment" is defined as "the disposition of an adjudicatory proceeding without hearing when the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is *no genuine issue of material fact*, and that the moving party is entitled to judgment as a matter of law" (emphasis added). The Board cannot, therefore, evaluate the propriety of a motion for summary judgment without determining whether there are any "genuine issues" of material fact in the case. Here, that means the Board cannot evaluate the propriety of summary judgment without reviewing all 101 pages of the Response submitted by MWG in opposition to Citizens Groups' Motion.

5. The Board has made well-reasoned decisions to limit the length of briefs. As far back as 1989, in a similar rulemaking, the Board explained that it "has become increasingly burdened with excessively lengthy pleadings." *In the Matter Of: Procedural Rules Revision 35 Ill. Adm. Code 101, 106 (Subpart G) and 107, R.88-5*, slip op. at 6 (June 8, 1989). If Illinois lawmakers or the Board had wanted to exclude Statements of Fact or responses thereto from the 50 page limit for briefs, it had several models it could have followed. For example, Local Rule 7.1(D)(5) of the United States District Court for the Central District of Illinois provides that page limitations apply solely to the argument section of briefs, not the sections setting out facts. Moreover, as MWG points out in its Objection to Complainants Motion for Leave to Reply,

Local Rule 56.1 of the Federal District Courts for the Northern District of Illinois requires responses to Statements to Facts to be contained in Appendices. Neither Illinois lawmakers nor the Board have chosen to follow those examples.

6. The Board has determined what “relevant material” consists of and statements of facts and responses thereto do not qualify as the type of material that may be attached in an appendix under Rule 101.302(k). See *In the Matter Of: Procedural Rules Revision 35 Ill. Adm. Code 101, 106 (Subpart G) and 107*, R.88-5, slip op. at 6 (June 8, 1989). As noted above, discussion of the facts in a summary judgment motion is not just “relevant,” but essential to the Board’s evaluation of the motion. Further, where the Board has elaborated on what it means by “relevant material,” the examples it uses are “regulations” and “cases,” not language drafted by a party to argue an essential component – the lack, or presence, of a “genuine issue” of fact – of the decision. *Id.* (“The page limits do not include appendixes containing regulations, cases, and other relevant material.”).

7. MWG did not seek, and the Board or Hearing Officer did not grant, leave for MWG to file a brief in excess of 50 pages.

8. Citizen Groups would be prejudiced if the Board allows MWG to file a brief more than double the length allowed under the Board’s rules. Citizen Groups’ memo in support of their Motion complied with the Board’s formatting requirements, so Citizen Groups had to fit both their Statement of Facts as well as their argument into 50 pages. Citizen Groups did not have the benefit of a full 50 pages for argument, which is essentially what MWG attempts here.

WHEREFORE, for the above-listed reasons, Citizen Groups’ respectfully request that the Board grant Citizen Groups’ Motion to Strike Appendix A to Respondent’s Response to Complainants’ Motion for Partial Summary Judgment.

Dated: August 2, 2016

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

The undersigned certifies that on August 2, 2016 a true copy of the foregoing *Notice of Filing* and Board *Citizens Groups' Motion to Strike Appendix A to Respondent's Response to Complainant's Motion for Partial Summary Judgment* with the Clerk of the Illinois Pollution Control Board:

John Therriault, Assistant Clerk  
Illinois Pollution Control Board  
100 West Randolph St  
Suite 11-500  
Chicago, IL 60601

And that a true copy of the *Notice of Filing* and Board *Citizens Groups' Motion to strike Appendix A to respondent's response to complainant's motion for partial summary judgment* were served via electronic mail on August 2, 2016 on the parties listed on the following Service List.



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Dated: August 2, 2016

**PCB 2013-015 SERVICE LIST:**

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