

ILLINOIS POLLUTION CONTROL BOARD  
February 1, 2017

SIERRA CLUB, ENVIRONMENTAL LAW )	
AND POLICY CENTER, PRAIRIE RIVERS )	
NETWORK, and CITIZENS AGAINST )	
RUINING THE ENVIRONMENT, )	
	)
Complainants, )	PCB 13-15
	)
v. )	(Citizen's Enforcement – Water)
	)
MIDWEST GENERATION, LLC., )	
	)
Respondent. )	

**HEARING OFFICER ORDER**

On October 6, 2014, and as noted in my February 11, 2015, Hearing Officer Order, respondent filed a “Motion for Entry of Agreed Protective Order for Non-Disclosable Information”. The parties’ agreed protective order, applies only to the exchange of information between the parties in discovery. *See* 35 Ill. Adm. Code 101.616(d). The filing of information claimed to be non-disclosable is subject to different procedures that the protective order does not meet. Part 130 of the Board’s procedural rules (35 Ill. Adm. Code 130) “establishes procedures to identify and protect trade secrets and other non-disclosable information.” 35 Ill. Adm. Code 130.100(b). Those procedures vary depending on whether the information is claimed to be a trade secret or other non-disclosable information. For trade secrets, the article must be marked as required by Section 103.302 and accompanied by a claim letter. *Id.* at 130.200(b)(1). For other non-disclosable information, the article, marked as required by Section 130.404, must be accompanied by an application for non-disclosure. *Id.* at 130.404(a). Information submitted to the Board that is not subject to a valid claim of protection under Section 7(a) of the Environmental Protection Act is open to public inspection. 415 ILCS 5/7(a) (2014); *see also* 35 Ill. Adm. Code 130.100(a).

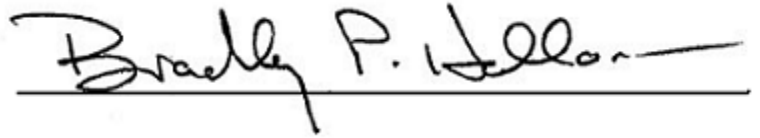
The parties in this case, apparently following their agreed protective order, have filed a number of public (redacted) and non-public (unredacted) versions of various documents. For example, the public versions of complainants’ motion to exclude expert testimony of David Callen, supporting memorandum, and related filings are heavily redacted, in all but one instance with no marking indicating the basis for the claimed protection (*e.g.*, trade secret). Moreover, neither these nor any other redacted filings were accompanied by a claim letter or application for non-disclosure, as Part 130 requires. While this approach may comport with the protective order, as noted above, that order does not govern the filing of non-disclosable articles. These filing deficiencies must be remedied by the party claiming trade secret or other protection as to each redacted document filed with the Board.

Accordingly, I direct the party invoking protection in each instance to file within 14 days

a claim letter, application for non-disclosure, or both, in accordance with the provisions of Part 130.

The parties or their legal representatives are directed to participate in a telephonic status conference with the hearing officer on February 9, 2017, at 10:30 a.m. The telephonic status conference must be initiated by the complainants, but each party is nonetheless responsible for its own appearance. At the conference, the parties must be prepared to discuss the status of the above-captioned matter and their readiness for hearing.

IT IS SO ORDERED.

A handwritten signature in black ink that reads "Bradley P. Halloran" with a horizontal line underneath it.

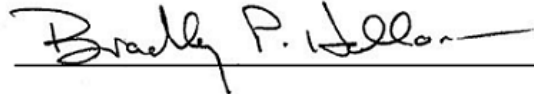
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CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were e-mailed on February 1, 2017, to each of the persons on the service list below.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on February 1, 2017:

Don Brown  
Illinois Pollution Control Board  
James R. Thompson Center  
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Chicago, Illinois 60601

A handwritten signature in black ink that reads "Bradley P. Halloran" with a horizontal line underneath.

Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
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@ Consents to electronic service

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