

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

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

NOTICE OF FILING

To: Don Brown, Clerk
Illinois Pollution Control Board
100 West Randolph
Suite 11-500
Chicago, IL 60601

And Attached Service List

Please take note that on December 1, 2017, I filed electronically with the Office of the Clerk of the Illinois Pollution Control Board the attached Complainants' Response to Respondent, Midwest Generation, LLC's Objection and Appeal from Hearing Officer's Ruling to Admit Discovery Responses as Evidence, a copy of which is attached and served upon you.

Respectfully submitted,

/s/ Gregory E. Wannier
Gregory E. Wannier
Staff Attorney
Sierra Club Environmental Law Program
2101 Webster St., Ste 1300
Oakland, CA – 94612
(415) 977-546 | greg.wannier@sierraclub.org

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-2013-015
Complainants,	)	(Enforcement – Water)
)	
v.)	
)	
MIDWEST GENERATION, LLC,)	
)	
Respondents)	

**COMPLAINANTS' RESPONSE TO RESPONDENT, MIDWEST GENERATION, LLC'S
OBJECTION AND APPEAL FROM HEARING OFFICER'S RULING TO ADMIT
DISCOVERY RESPONSES AS EVIDENCE**

Sierra Club, Environmental Law and Policy Center, Prairie Rivers Network, and Citizens Against Ruining the Environment (“Complainants”) submit this Response in opposition to Midwest Generation LLC’s (“MWG’s” or “Respondent’s”) Objection and Appeal from the Hearing Officer’s Ruling to Admit Discovery Responses (“MWG Objection and Appeal”). MWG’s objection and appeal should be denied because Complainants’ Exhibits 5.5, 6 and 7 were properly admitted. They are relevant and material and were also admissible as statements by a party opponent or admissions. MWG also requested in the alternative that the Illinois Pollution Control Board (“Board” or “PCB”) rule that any use of or reliance on the Exhibits is limited to those portions of Complainants’ Exhibits 5.5, 6 and 7¹ that were discussed with the witness during the Hearing on October 23, 2017. This request should also be denied because Complainants were not on notice of this at the time of questioning the witness and would

¹ Provided below as attachments A, B, and C.

therefore be unfairly prejudiced by such a ruling after the fact.

I. Legal Standard

The standard for admissibility of evidence at a PCB hearing is as follows:

Section 101.626 Information Produced at Hearing

In accordance with Section 10-40 of the IAPA, the hearing officer will admit evidence that is admissible under the rules of evidence as applied in the civil courts of Illinois, except as otherwise provided in this Part.

- a) Evidence. The hearing officer may admit evidence that is material, relevant, and would be relied upon by prudent persons in the conduct of serious affairs, unless the evidence is privileged.

35 Ill. Adm. Code 101.626(a). This is a “relaxed standard.” People v. Atkinson Landfill Co., PCB No. 13-28, slip op. at 9 (Jan. 9, 2014). Further, the PCB has taken the approach that a very high bar must be met for it to find the admission of evidence to be reversible error. McHenry County Landfill, Inc. v. County Board of McHenry County PCB Nos. 85-56; 85-61; 85-63; 85-64; 85-66 (consolidated) (Sept. 20, 1985) 1985 Ill. ENV LEXIS 255, *12 (discussing the County Board of McHenry County’s refusal to allow testimony). “Only rarely will the Board find the acceptance of evidence to be reversible error whereas the refusal will be closely scrutinized. Testimony which is accepted can be disregarded, and the Board favors a liberal construction of admissible evidence.” *Id.*

The PCB rules do not discuss how admissions (or other discovery) may be used and, therefore, “... the rules of evidence as applied in civil cases shall be followed.” 5 ILCS 100/10-40. The Illinois Supreme Court Rules of Evidence discuss how discovery, including depositions and interrogatory responses, may be used. “Discovery depositions taken under the provisions of this rule may be used only . . . (2) as an admission made by a party or by an officer or agent of a party in the same manner and to the same extent as any other admission made by that

person; [or] (3) if otherwise admissible as an exception to the hearsay rule” Ill. S. Ct. R. Evid. 212(a). Similarly, the Rules also cover the admissibility of interrogatories as evidence: “Answers to interrogatories may be used in evidence to the same extent as a discovery deposition.” Ill. S. Ct. R. Evid. 213(h).

MWG points out, and Complainants agree, that “while hearsay evidence is generally inadmissible in an administrative hearing, the administrative procedure rules create an exception to the rule if the hearsay is reliable.” MWG Br. at 2-3 (citing Metro Utility v. Illinois Commerce Comm'n, 193 Ill. App. 3d 178, 185, 549 N.E.2d 1327, 1331, 140 Ill. Dec. 455 (1990)). Illinois Supreme Court Rules of Evidence discuss hearsay as applied to admissions. A “statement by [a] party opponent” that “is offered against a party and is (A) the party’s own statement, in either an individual or a representative capacity, or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject” is not considered to be hearsay. Ill. S.Ct. R. Evid. 801(d)(2). Therefore, admissions (or “statement[s] by a party opponent”) are admissible as hearsay exceptions.

II. Argument

Complainants’ Exhibit 5.5,² which contains MWG’s responses to Complainants’ Second Set of Requests for Admission (“responses to Requests for Admission”), is admissible.³ First,

² Complainants agree that it does not facilitate an expedient resolution of this case or benefit the Board to admit extraneous information into the record. To that end, Complainants have provided, as Attachments D and E, excerpted versions of Exhibits 5.5 and 6. There is no need to excerpt Exhibit 7 because that exhibit only contains a single interrogatory response as it is. Should the Board conclude that it expediency is best served by admitting the excerpted versions of Exhibits 5.5 and 6, Complainants have no objection to substituting excerpted versions.

³ These responses are also material and relevant to the issues in this case, and “would be relied upon by prudent persons in the conduct of serious affairs,” consistent with 35 Ill. Adm. Code 101.626(a). The questions Complainants asked in Attachments D and E relate to control over areas with groundwater contamination, and measures taken to evaluate and prevent groundwater contamination. MWG’s responses provide valuable insight as to the company’s own assessment of these questions. It would be prudent for the PCB to consider MWG’s previous statements on these questions when evaluating the claims in this case.

these are admissible over any hearsay objection as admissions or statements by a party opponent. “Party admissions are treated generously by the Rules. They are a product of the adversary process and therefore do not require the usual safeguards of reliability reflected by the hearsay rules. It has always been considered fair to use whatever an opposing party says against him at trial.” § 6.5. Admission by party-opponent (FRE 801(d)(2)), Mauet and Wolfson, Trial Evidence.⁴ The responses to the Requests for Admission are being offered by Complainants against MWG, and are therefore “offered against a party.” Ill. S.Ct. R. Evid. 801(d)(2). The responses to the Requests for Admission are also “the party’s own statement, in either an individual or a representative capacity.” Ill. S.Ct. R. Evid. 801(d)(2). The responses to the Requests for Admission fall within the scope of Rule 801(d)(2) and are admissible over a hearsay objection.

The responses to the Requests for Admission are also admissible over other objections and on other grounds. The benefit of admissions goes above and beyond other forms of discovery. Request for admission “responses may help to clarify and narrow issues for hearing, which is the purpose of requests for admission.” KCBX Terminals Co. v. IEPA, PCB 10-110, PCB 11-43, 2011 WL 2001933, at *10 (May 19, 2011) (citing P.R.S. International Inc. v. Shred Pax Corp., 184 Ill. 2d 224, 237, 703 N.E.2d 71 (1998) (denying motion to strike one hundred six

⁴ While this is referring to Federal Rule of Evidence 801(d)(2), Illinois Supreme Court Rule of Evidence 801(d)(2) and the Federal Rule are nearly the same:

(2) *An Opposing Party’s Statement.* The statement is offered against an opposing party and:

(A) was made by the party in an individual or representative capacity;

(B) is one the party manifested that it adopted or believed to be true;

(C) was made by a person whom the party authorized to make a statement on the subject;

* * *

Fed. R. Evid. 801(d)(2)

responses to request for admission). Requests for admission are utilized to avoid walking through witness testimony or other evidence at trial to establish the same facts. The “[p]urpose of a request to admit is not to discover facts but, rather, to establish some of the material facts in a case without the necessity of formal proof at trial.” Szczeblewski v. Gossett, App. 5 Dist.2003, 277 Ill. Dec. 1, 342 Ill. App.3d 344, 795 N.E.2d 368. An admission, in fact, substitutes for evidence at trial.

An admission pursuant to a request to admit operates as a judicial admission which is binding and is considered incontrovertible. (Rosbottom v. Hensley (1965), 61 Ill.App.2d 198, 215, 209 N.E.2d 655.) A judicial admission in turn is defined as “a formal act of the party or his attorney in court, dispensing with proof of a fact claimed to be true and is used as a substitute for legal evidence at the trial.” (Rosbottom, 61 Ill.App.2d at 215, 209 N.E.2d 655.) Brummet v. Farel (1991), 217 Ill.App.3d 264, 267, 160 Ill. Dec. 278, 576 N.E.2d 1232, quoting M. Graham, Evidence Text, Rules, Illustrations and Problems, at 146 (1983).

People v. Mindham, 253 Ill. App. 3d 792, 797, 625 N.E.2d 835, 839 (1993). Consequently, the responses to the Requests for Admission are not only admissible as statements by a party opponent but are admissible as judicial admissions and serve expediency by doing away with the need for evidence on the same points.

Similarly, MWG’s responses to Complainants’ interrogatories in Complainants’ Exhibits 6 and 7 are also admissible by the same logic. First, the Illinois Supreme Court Rules of Evidence indicate when responses to interrogatories may be used. “Answers to interrogatories may be used in evidence to the same extent as a discovery deposition.” Ill. S. Ct. R. Evid. 213(h). The Supreme Court Rules of Evidence indicate when discovery depositions may be used as evidence. “Discovery depositions taken under the provisions of this rule may be used only . . . (2) as an admission made by a party or by an officer or agent of a party in the same manner and to the same extent as any other admission made by that person; [or] (3) if otherwise admissible

as an exception to the hearsay rule” Ill. S. Ct. R. Evid. 212(a). See also Buehler v. Buehler, 2013 IL App (3d) 110681-U, ¶ 45 (admitting interrogatory response as an evidentiary admission over multiple objections). Consequently, answers to interrogatories may be admitted into evidence as admissions or if admissible as an exception to the hearsay rule. This in turn means that answers to interrogatories are admissible as “statement by [a] party opponent” that “is offered against a party and is (A) the party’s own statement, in either an individual or a representative capacity”. Ill. S.Ct. R. Evid. 801(d)(2).

Here, the interrogatory responses are statements by a party opponent. They are signed by Midwest Generation’s attorney, and also signed and certified by Maria Race, Midwest Generation’s representative. Comp. Ex. 6 at 5; Comp. Ex. 7 at 6-7. Therefore, the interrogatory responses are inarguably “the party’s own statement.” They are being offered against Midwest Generation by Complainants, MWG’s party opponents in this matter. The interrogatory responses could not fall more clearly within Rule 801(d)(2) as non-hearsay statements by party opponents, or admissions. As such, they fall within the provisions of Illinois Supreme Court Rules 212 and 213 that indicate that interrogatories may be admitted into evidence as admissions, in the same manner as depositions may be used.

MWG argues that “Part 101.626(f) provides that a prior statement under oath ‘may be admitted to impeach a witness if the statement is inconsistent with the witness’ testimony at hearing.’” *MWG Objection and Appeal* ¶ 6. However, MWG omitted a crucial part of that rule, which indicates that it does not apply to all prior statements under oath but only prior inconsistent statements:

f) Prior Inconsistent Statements. Prior statements made under oath may be admitted to impeach a witness if the statement is inconsistent with the witness' testimony at hearing.

35 Ill. Adm. Code 101.626(f). Since Complainants were not trying to use any of the statements as prior inconsistent statements or for impeachment purposes, Part 101.626(f) does not apply.

MWG argues that if Exhibits 5.5, 6, and 7 are deemed admitted, then only the information discussed during testimony should be admitted. This cannot properly be done after the fact because it would preclude significant use of the exhibit. No such limitation was imposed during the hearing, and Complainants therefore did not question the witness about the full scope of the relevant information in the admitted discovery responses. As such, any after-the-fact limitation placed on Complainants' use of the exhibits would inappropriately and unfairly prejudice Complainants. This explains why, where the Hearing Officer did limit the use of other exhibits in this matter, he acknowledged that it was necessary to do so at the time when the witness could still be questioned:

HEARING OFFICER HALLORAN: I grant that. Ms. Bugel, do you understand in your – in your hearing brief, your -- your briefing is limited to the questions you have asked of Ms. Race regarding these exhibits?

MS. BUGEL: Okay. Well, then I would like the opportunity to go back and ask additional questions.

HEARING OFFICER HALLORAN: That's why I reversed my position now while Ms. Race is still in front of me.

(PCB 13-15 Hearing Transcript Oct. 23, 2017, pp. 126:23-127:9). The Hearing Officer did not limit the use of Exhibits 5.5, 6 and 7 while the relevant witnesses were present, and it would be unfairly prejudicial to retroactively impose such a limitation now.

WHEREFORE, for the reasons stated above, Complainants respectfully request that the Board deny MWG's Objection and Appeal from Hearing Officer's Ruling to Admit Discovery Responses as Evidence, and deny MWG's request that any use of Complainants' Exhibits 5.5, 6, and 7 be limited to those portions of the Exhibits that were discussed with the witness at the Hearing.

Respectfully submitted,



Lindsay Dubin
Environmental Law & Policy Center
35 E. Wacker Dr., Suite 1600
Chicago, IL 60601
ldubin@elpc.org
(312) 795-3726
*Attorney for ELPC, Sierra Club and
Prairie Rivers Network*

Faith E. Bugel
1004 Mohawk
Wilmette, IL 60091
(312) 282-9119
fbugel@gmail.com

Gregory E. Wannier
2101 Webster St., Ste. 1300
Oakland, CA 94612
(415) 977-5646
Greg.wannier@sierraclub.org

Attorneys for Sierra Club

Abel Russ
Attorney
Environmental Integrity Project
1000 Vermont Avenue NW
Washington, DC 20005
aruss@environmentalintegrity.org
802-482-5379

Attorney for Prairie Rivers Network

Keith Harley
Chicago Legal Clinic, Inc.
211 W. Wacker, Suite 750
Chicago, IL 60606
kharley@kentlaw.iit.edu
312-726-2938 (phone)
312-726-5206 (fax)

Attorney for CARE

Dated: December 1, 2017

ATTACHMENT A

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	)	PCB No-2013-015
ENVIRONMENT	)	(Enforcement – Water)
)	
Complainants,)	
)	
v.)	
)	
MIDWEST GENERATION, LLC,)	
)	
Respondent.)	

MIDWEST GENERATION, LLC’S RESPONSE TO COMPLAINANTS’ FOURTH SET OF DOCUMENT REQUESTS, SECOND SET OF INTERROGATORIES, AND SECOND SET OF REQUESTS FOR ADMISSION TO RESPONDENTS

Respondent, Midwest Generation, LLC, (“Midwest Generation”), through its undersigned attorneys, responds to Complainants’ Fourth Set of Document Requests, Second Set of Interrogatories, and Second Set of Requests for Admission, (“Requests”), as follows:

GENERAL OBJECTIONS

Each of the Responses is made subject to and incorporates by reference the objections made in Midwest Generation’s Responses to Complainants’ First Set of Interrogatories, Requests for Documents and Request for Admission provided on September 2, 2014. Additionally, Midwest Generation makes the following objections:

1. Midwest Generation objects to the “Coal ash” definition to the extent that it includes other waste streams resulting from the operation of pollution controls.
2. Midwest Generation objects to the “Coal ash units” definition to the extent that it includes areas in which coal ash is not purposely directed to or placed on and to the extent it includes *de minimis* collections of coal ash due to the operations of the Station.

3. Midwest Generation objects to the "Joliet 29" definition to the extent it states that the Station is located in Kendall County.

4. Midwest Generation objects to the "Uppermost aquifer" definition as vague, ambiguous and capable of varying interpretations. Additionally, Midwest Generation objects to the definition to the extent it depends upon a coal ash unit to identify any aquifer's location.

5. Midwest Generation objects to Instruction No. 6 as overly broad and unduly burdensome.

6. Midwest Generation objects to the Number of Requests to Admit as in excess of the number of requests allowed under the Ill. Sup. Ct. Rule 216(f) and the additional requests for admission agreed to in the Agreed Motion to Extend the Discovery Schedule and Modify the Discovery Order filed with the Board on February 4, 2015. Illinois Supreme Court Rule 216(f) allows each party to issue a maximum of 30 requests for admission, and each subpart counts as a separate request. Ill. Sup. Ct. Rule 216(f). On June 16, 2014, Complainants submitted to Midwest Generation three Requests for Admission of Genuineness of Documents, attaching fifty-eight documents. Each of the fifty eight documents is a subpart of the request for admission. On February 4, 2015, the parties agreed that each may propound 20 additional requests for admission. On March 2, 2015, Complainants propounded a total of forty requests to admit to Complainants in their Second and Third Set of Requests for Admission. Because the requests to admit are in excess of the agreed extension and the limits under Ill. Sup. Ct. Rule 216(f), Midwest Generation has answered twenty of the forty propounded requests for admission.

7. Respondent reserves the right to object to the admissibility of any of the documents produced pursuant to the Responses, in whole or in part, at hearing in this action on any grounds including but not limited to materiality, relevance, confidential business information and privilege.

REQUEST FOR PRODUCTION OF DOCUMENTS

1. Provide any Documents related to each refusal to admit any requests for admission herein.

ANSWER:

Without waiving its objections, responsive documents include Bates #MWG13-15_18824-19428, and Bates #MWG13-15_4-9, 69, 73, 77, 81, 85, 89, 93, 97 and 101.

2. Provide all Documents that evidence or relate to your Interrogatory responses.

ANSWER:

Midwest Generation incorporates and includes the objections stated in response to each Interrogatory Request. Without waiving its objections, responsive documents are set forth in the interrogatory answers and have already been provided or are attached.

3. Provide all maps that accurately show which portions of the Joliet 29 site are owned or operated by MWG.

ANSWER:

Without waiving its objections, responsive documents are available for review; see Bates No. MWG13-15_48403 - 48414.

4. Provide all maps that accurately show which portions of the Powerton site are owned or operated by MWG.

ANSWER:

Without waiving its objections, responsive documents are available for review; see Bates No. MWG13-15_4815 - 48426.

5. Provide all maps that accurately show which portions of the Waukegan site are owned by MWG.

ANSWER:

Without waiving its objections, responsive documents are available for review; see Bates No. MWG13-15_48427 - 48432.

6. Provide all maps that accurately show which portions of the Will County site are owned by MWG.

ANSWER:

Without waiving its objections, responsive documents are available for review; see Bates No. MWG13-15_48433-48438.

7. Provide all Documents pertaining to boron or borax use at the Tannery site.

ANSWER:

Midwest Generation objects to Document Request No. 7 as overly broad and unduly burdensome and seeks documents or information not within Midwest Generation's possession, custody or control. Without waiving its objections, responsive and non-privileged documents currently in Midwest Generation's control include Bates MWG13-15_43754-43862.

8. Provide all Documents pertaining to boron or borax use at the General Boiler site.

ANSWER:

See Answer to Document Request No. 7, incorporated by reference. .

9. Provide all Documents related to groundwater elevations at Waukegan Groundwater Monitoring Wells MW-8 and MW-9.

ANSWER:

Without waiving its objections, responsive documents are available for review; see Bates MWG13-15_48439.

10. Provide all Documents related to groundwater elevation at all monitoring wells at the former General Boiler site, including but not limited to monitoring wells GB-1 through GB-7.

ANSWER:

Midwest Generation objects to Document Request No. 10 as overly broad and unduly burdensome and seeks documents and information not within Midwest Generation's possession, custody or control. Without waiving its objections, Midwest Generation states that no responsive documents within its custody or control are currently available.

11. Provide all Documents related to groundwater elevation at monitoring wells 1 through 9 at the Tannery site.

ANSWER:

Midwest Generation objects to Document Request No. 11 as overly broad and unduly burdensome and seeks documents and information not within Midwest Generation's possession, custody or control. Without waiving its objections, Midwest Generation states that responsive documents were previously provided and include Bates #MWG13-15_46211-MWG13-15_48402.

12. Provide all groundwater quality data from all monitoring wells at the former General Boiler site, including but not limited to monitoring wells GB-1 through GB-7.

ANSWER:

See Answer to Document Request No. 10, incorporated by reference.

13. Provide all groundwater quality data from monitoring wells 1 through 9 at the Tannery site.

ANSWER:

See Answer to Document Request No. 11, incorporated by reference.

14. Provide all Documents evidencing or related to the contents of soil borings taken when ELUC wells MW-10, MW-11, MW-12, and MW-14 were drilled, including but not limited to boring logs.

ANSWER:

Midwest Generation objects to Document Request No. 14 as vague as to the “contents of soil borings.” Additionally, see Answer to Document Request No. 10, incorporated by reference.

15. Provide all Documents evidencing or related to the contents of soil borings taken when groundwater monitoring wells 1 through 14 at the Tannery site were drilled, including but not limited to boring logs.

ANSWER:

Midwest Generation objects to Document Request No. 15 as vague as to the “contents of soil borings.” Additionally, see Answer to Document Request No. 11, incorporated by reference.

16. Provide all Documents evidencing or related to the contents of soil borings taken when all monitoring wells at the former General Boiler site, including but limited to monitoring wells GB-1 through GB-7, were drilled, including but not limited to boring logs.

ANSWER:

See Answer to Document Request No. 14, incorporated by reference.

17. Provide any and all groundwater quality data from the first quarter of 2015 from all groundwater monitoring wells at Joliet 29, Will County, Powerton, and Waukegan, including but not limited to all Waukegan Groundwater Monitoring Wells, all monitoring wells at the Tannery Site, all monitoring wells at the General Boiler site, and ELUC wells MW-10, MW-11, MW-12, MW-14 and MW-15.

ANSWER:

Midwest Generation objects to Document Request No. 17 as overly broad and unduly burdensome and seeks documents and information not within Midwest Generation’s possession, custody or control. Without waiving its objections, Midwest Generation states that responsive documents are not currently available.

18. Provide a complete Phase II Environmental Site Assessment for Joliet 29, including all boring logs.

ANSWER:

Without waiving its objections, Midwest Generation states that responsive documents are included at Bates No. MWG13-15_48440-48492.

INTERROGATORIES

1. Identify any and all methods, other than visual inspection, that MWG uses to inspect ash pond liners for Damage, weakness or leaks at Joliet 29, Will County, Waukegan and Powerton, and state:
 - a. How each method of inspection identifies weakness or damage to liners;
 - b. When the use of each method of inspection began at each pond; and
 - c. The frequency with which each method of inspection is used at each pond.

ANSWER:

Midwest Generation objects to Interrogatory No. 1 because it is overly broad, unduly burdensome, and seeks material covered by the work product and attorney-client privilege.

Without waiving its objections, Midwest Generation states that the other method to inspect the liners for damage or leaks is the electrical leak location method. The electrical leak location method detects paths through the geomembrane caused by water or moisture in the leaks. The electrical leak location method has been used on HDPE liners since mid-2000s and takes place when HDPE lining is installed at impoundments.

2. State whether MWG has ever monitored groundwater at Joliet 29, Waukegan, Will County and Powerton aside from the monitoring it currently performs at groundwater monitoring wells installed on or after 2010. If MWG has conducted such monitoring, state:
 - a. The specific locations at each site where groundwater was monitored; and
 - b. Over what time period that monitoring took place.

ANSWER:

Midwest Generation objects to Interrogatory No. 2 as overly broad and unduly burdensome and seeks documents or information not within Midwest Generation's possession, custody or control. Midwest Generation further objects to Interrogatory No. 2 to the extent it seeks materials that are

not relevant to the subject matter involved in the pending action or not reasonably calculated to lead to relevant, discoverable evidence. Finally, Midwest Generation further objects to this interrogatory as overly broad and limits its answer to monitoring for coal ash constituents. Without waiving its objections, Midwest Generation states that it provided all relevant groundwater monitoring results to Complainants in response to Document Request No. 8 of Complainants First Set of Document Requests, including Bates Nos. 2,459-6,822, 34716-36799, 43695-43862, 43871-44121, 44983-45769, and the documents provided at the offices of Nijman Franzetti. Additionally, see Midwest Generation response to Interrogatory No. 8 in Complainant's first Set of Interrogatories.

3. State whether MWG has ever removed Coal ash from any part of the Powerton site aside from the active ash ponds and, if MWG has done so, identify where the Coal ash were removed from and when that removal took place.

ANSWER:

Midwest Generation objects to Interrogatory No. 3 as overly broad and unduly burdensome and seeks documents or information not within Midwest Generation's possession, custody or control. Additionally, Midwest Generation objects to this interrogatory as requesting information already provided in the document requests and in the deposition of Mr. Mark Kelly. Without waiving its objections, Midwest Generation states that coal ash is removed from the silos and various ducts at the Station work during cleanouts. The coal ash is temporarily stored in the metal cleaning basin, until Midwest Generation removes the coal ash and hauls it offsite. The coal ash is removed from the metal cleaning basin approximately two to three times per year. Also, historically the limestone basin and areas around the coal piles were used for temporary placement of coal ash before off site removal. The coal ash was removed from these locations on a periodic basis before 2012.

REQUESTS FOR ADMISSION

1. Admit that Ash Landfill SW is within the current property boundaries of the portion of the Joliet 29 site that is operated by MWG.

ANSWER:

Midwest Generation objects to this request as calling for a legal conclusion. Without waiving its objections, Midwest Generation admits that it leases the Joliet 29 Station which includes the area defined here as the Ash Landfill SW.

2. Admit that Ash Landfill NE is within the current property boundaries of the portion of the Joliet 29 site that is operated by MWG.

ANSWER:

Midwest Generation objects to this request as calling for a legal conclusion. Without waiving its objections, Midwest Generation admits that it leases the Joliet 29 Station which includes the area defined here as the Ash Landfill NE.

3. Admit that, prior to approval of the Joliet 29 Groundwater Monitoring Zone ("GMZ"), all of the groundwater underlying Joliet 29 was classified as Class I: Potable Resource Groundwater pursuant to 35 Ill. Adm. Code Part 620.

ANSWER:

Midwest Generation objects to this request as calling for a legal conclusion. Midwest Generation further objects to this request pursuant to its sixth General Objection set forth above, that this request is in excess of the number of requests allowed under Ill. Sup. Ct. Rule 216(f) and the additional requests for admission agreed to in the Agreed Motion to Extend the Discovery Schedule and Modify the Discovery Order filed with the Board on February 4, 2015.

4. Admit that, prior to approval of the Will County Groundwater Monitoring Zone ("GMZ"), all of the groundwater underlying Will County was classified as Class I: Potable Resource Groundwater pursuant to 35 Ill. Adm. Code Part 620.

ANSWER:

See Answer to Request No. 3, incorporated by reference.

5. Admit that, prior to approval of the Powerton Groundwater Monitoring Zone (“GMZ”), all of the groundwater underlying Powerton was classified as Class I: Potable Resource Groundwater pursuant to 35 Ill. Adm. Code Part 620.

ANSWER:

See Answer to Request No. 3, incorporated by reference.

6. Admit that the groundwater underlying Waukegan is classified as Class I: Potable Resource Groundwater pursuant to 35 Ill. Adm. Code Part 620.

ANSWER:

See Answer to Request No. 3, incorporated by reference.

7. Admit that Ash Landfill NE at Joliet 29 is not lined.

ANSWER:

Midwest Generation objects to this request on the grounds that the term “lined” is vague, ambiguous, and capable of varying interpretations. Subject to its objection, Midwest Generation states that after reasonable inquiry, the information known or readily obtainable is insufficient to allow Midwest Generation to admit or deny the request.

8. Admit that Ash Landfill NE has not been lined or relined since MWG began operating Joliet 29.

ANSWER:

Midwest Generation objects to this request on the grounds that the terms “lined” and “relined” are vague, ambiguous, and capable of varying interpretations. Midwest Generation further objects to this request pursuant to its sixth General Objection set forth above, that this request is in excess of the number of requests allowed under Ill. Sup. Ct. Rule 216(f) and the

additional requests for admission agreed to in the Agreed Motion to Extend the Discovery Schedule and Modify the Discovery Order filed with the Board on February 4, 2015.

9. Admit that there is Coal ash in the ground within the boundary of the Ash Landfill NE at Joliet 29.

ANSWER:

Midwest Generation objects to this request on the grounds that the phrase “Coal ash in the ground” is vague, ambiguous, and capable of varying interpretations. Subject to its objection, Midwest Generation states that after reasonable inquiry, the information known or readily obtainable is insufficient to allow Midwest Generation to admit or deny the request.

10. Admit that MWG has not removed Coal ash from Ash Landfill NE at Joliet 29.

ANSWER:

See Answer to Request No. 8, incorporated by reference.

11. Admit that there is no impermeable cap over Ash Landfill NE at Joliet 29.

ANSWER:

Midwest Generation objects to this request on the grounds that the term “impermeable cap” is vague, ambiguous, and capable of varying interpretations. Subject to its objection, Midwest Generation admits the request.

12. Admit that Ash Landfill SW at Joliet 29 is not lined.

ANSWER:

Midwest Generation objects to this request on the grounds that the term “lined” is vague, ambiguous, and capable of varying interpretations. Subject to its objection, Midwest Generation

states that after reasonable inquiry, the information known or readily obtainable is insufficient to allow Midwest Generation to admit or deny the request. .

13. Admit that Ash Landfill SW has not been lined or relined since MWG began operating Joliet 29.

ANSWER:

See Answer to Request No. 8, incorporated by reference.

14. Admit that there is Coal ash in the ground within the boundary of the Ash Landfill SW at Joliet 29.

ANSWER:

Midwest Generation objects to this request on the grounds that the phrase “Coal ash in the ground” is vague, ambiguous, and capable of varying interpretations. Midwest Generation further objects to this request pursuant to its sixth General Objection set forth above, that this request is in excess of the number of requests allowed under Ill. Sup. Ct. Rule 216(f) and the additional requests for admission agreed to in the Agreed Motion to Extend the Discovery Schedule and Modify the Discovery Order filed with the Board on February 4, 2015.

15. Admit that MWG has not removed Coal ash from Ash Landfill SW at Joliet 29.

ANSWER:

Denied.

16. Admit that there is no impermeable cap over Ash Landfill SW at Joliet 29.

ANSWER:

Midwest Generation objects to this request on the grounds that the term “impermeable cap” is vague, ambiguous, and capable of varying interpretations. Midwest Generation further

objects to this request pursuant to its sixth General Objection set forth above, that this request is in excess of the number of requests allowed under Ill. Sup. Ct. Rule 216(f) and the additional requests for admission agreed to in the Agreed Motion to Extend the Discovery Schedule and Modify the Discovery Order filed with the Board on February 4, 2015.

17. Admit that the Former Slag/Fly Ash Storage Area at Waukegan is not lined.

ANSWER:

Midwest Generation objects to this request on the grounds that the term “lined” is vague, ambiguous, and capable of varying interpretations. Subject to its objection, Midwest Generation states that after reasonable inquiry, the information known or readily obtainable is insufficient to allow Midwest Generation to admit or deny the request.

18. Admit that the Former Slag/Fly Ash Storage Area at Waukegan has not been lined or relined since MWG began operating Waukegan.

ANSWER:

See Answer to Request No. 8, incorporated by reference.

19. Admit that there is Coal ash in the ground within the boundary of the Former Slag/Fly Ash Storage Area at Waukegan.

ANSWER:

See Answer to Request No. 14, incorporated by reference.

20. Admit that Coal ash has not been removed from the Former Slag/Fly Ash Storage Area at Waukegan since MWG began operating Waukegan.

ANSWER:

Midwest Generation objects to this request pursuant to its sixth General Objection set forth above, that this request is in excess of the number of requests allowed under Ill. Sup. Ct. Rule

216(f) and the additional requests for admission agreed to in the Agreed Motion to Extend the Discovery Schedule and Modify the Discovery Order filed with the Board on February 4, 2015.

21. Admit that there is no impermeable cap over the Former Slag/Fly Ash Storage Area at Waukegan.

ANSWER:

Midwest Generation objects to this request on the grounds that the term “impermeable cap” is vague, ambiguous, and capable of varying interpretations. Subject to its objection, Midwest Generation admits the request.

22. Admit that, other than any borings taken when drilling Waukegan Groundwater Monitoring Wells MW-1 through MW-5 at Waukegan, MWG has not removed any Coal ash from the ground in the vicinity of Waukegan Groundwater Monitoring Wells MW-1 through MW-4.

ANSWER:

Midwest Generation objects to this request on the grounds that the term “vicinity” and the phrase “Coal ash from the ground” are vague, ambiguous, and capable of varying interpretations. Midwest Generation further objects to this request on the grounds that it is vague because it presumes that there is Coal ash on or in the soil in the vicinity of the Waukegan Groundwater Monitoring Wells MW-1 through MW-4. Subject to its objection, Midwest Generation denies this request.

23. Admit that, other than any borings taken when drilling Waukegan Groundwater Monitoring Wells MW-7 through MW-9, MWG has not removed any Coal ash from the ground in the vicinity of Waukegan Groundwater Monitoring Wells MW-7 through MW- 9 at Waukegan.

ANSWER:

Midwest Generation objects to this request on the grounds that the term “vicinity” and the phrase “Coal ash from the ground” are vague, ambiguous, and capable of varying interpretations. Midwest Generation further objects to this request as vague because it presumes that there is Coal

ash on or in the ground in the vicinity of the Waukegan Groundwater Monitoring Wells MW-7 through MW-9. Subject to its objection, Midwest Generation denies this request.

24. Admit that the Retention Basin at Will County is not lined.

ANSWER:

Midwest Generation objects to this request on the grounds that the term “lined” is vague, ambiguous, and capable of varying interpretations. Without waiving its objection, Midwest Generation denies this request.

25. Admit that the Retention Basin at Will County has not been lined or relined since MWG began operating Waukegan.

ANSWER:

Midwest Generation objects to this request on the grounds that the terms “lined” and “relined” are vague, ambiguous, and capable of varying interpretations. Midwest Generation further objects that this request is vague because operations at Will County did not depend upon operations at Waukegan. Without waiving its objection, Midwest Generation denies this request.

26. Admit that the Retention Basin at Will County currently contains Coal ash.

ANSWER:

Midwest Generation objects to this request on the grounds that the term “contains” is vague, ambiguous, and capable of varying interpretations because it does not account for *de minimis* amounts that may inadvertently land in the Retention Basin due to the nature of the operations at the Will County Station. Without waiving its objections, Midwest Generation denies this request.

27. Admit that Coal ash has not been removed from the Retention Basin at Will County since MWG began operating Will County.

ANSWER:

Denied.

28. Admit that there is no impermeable cap over the Retention Basin at Will County.

ANSWER:

Midwest Generation objects to this request on the grounds that the term “impermeable cap” is vague, ambiguous, and capable of varying interpretations. Without waiving its objection, Midwest Generation admits this request.

29. Admit that the Standby Pond at Will County is not lined.

ANSWER:

Midwest Generation objects to this request on the grounds that the term “lined” is vague, ambiguous, and capable of varying interpretations. See Answer to request No. 8, incorporated by reference.

30. Admit that the Standby Pond at Will County has not been lined or relined since MWG began operating Waukegan.

ANSWER:

See Answer to request No. 8, incorporated by reference.

31. Admit that Coal ash has not been removed from the Standby Pond at Will County since MWG began operating Will County.

ANSWER:

See Answer to request No. 20, incorporated by reference.

32. Admit that there is no impermeable cap over the Standby Pond at Will County.

ANSWER:

Midwest Generation objects to this request on the grounds that the term “impermeable cap” is vague, ambiguous, and capable of varying interpretations. Without waiving its objection, Midwest Generation admits this request.

33. Please admit you have no information that boron was used at the General Boiler site.

ANSWER:

See Answer to request No. 20, incorporated by reference.

34. Please admit you have no information that anything containing boron was used at the General Boiler site.

ANSWER:

See Answer to request No. 20, incorporated by reference.

Respectfully submitted,

Midwest Generation, LLC

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

March 31, 2015

Jennifer T. Nijman
Susan M. Franzetti
Kristen L. Gale
NIJMAN FRANZETTI LLP
10 South LaSalle Street, Suite 3600
Chicago, IL 60603
312-251-5255

ATTACHMENT B

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	)	PCB No-2013-015
ENVIRONMENT	)	(Enforcement – Water)
)	
Complainants,)	
)	
v.)	
)	
MIDWEST GENERATION, LLC,)	
)	
Respondent.)	

**MIDWEST GENERATION, LLC’S SUPPLEMENTAL RESPONSE TO
COMPLAINANTS’ SECOND SET OF INTERROGATORIES**

Respondent, Midwest Generation, LLC, (“Midwest Generation”), through its undersigned attorneys, issues its supplemental response to Complainants’ Second Set of Interrogatories, (“Requests”), as follows:

GENERAL OBJECTIONS

Each of the Responses is made subject to and incorporates by reference the objections made in Midwest Generation’s Responses to Complainants’ First Set of Interrogatories, Requests for Documents and Request for Admission provided on September 2, 2014. Additionally, Midwest Generation makes the following objections:

1. Midwest Generation objects to the “Coal ash” definition to the extent that it includes other waste streams resulting from the operation of pollution controls.
2. Midwest Generation objects to the “Coal ash units” definition to the extent that it includes areas in which coal ash is not purposely directed to or placed on and to the extent it includes *de*

minimis collections of coal ash due to the operations of the Station.

3. Midwest Generation objects to the “Joliet 29” definition to the extent it states that the Station is located in Kendall County.

4. Midwest Generation objects to the “Uppermost aquifer” definition as vague, ambiguous and capable of varying interpretations. Additionally, Midwest Generation objects to the definition to the extent it depends upon a coal ash unit to identify any aquifer’s location.

5. Midwest Generation objects to Instruction No. 6 as overly broad and unduly burdensome.

6. Respondent reserves the right to object to the admissibility of any of the documents produced pursuant to the Responses, in whole or in part, at hearing in this action on any grounds including but not limited to materiality, relevance, confidential business information and privilege.

INTERROGATORIES

1. Identify any and all methods, other than visual inspection, that MWG uses to inspect ash pond liners for Damage, weakness or leaks at Joliet 29, Will County, Waukegan and Powerton, and state:

- a. How each method of inspection identifies weakness or damage to liners;
- b. When the use of each method of inspection began at each pond; and
- c. The frequency with which each method of inspection is used at each pond.

ANSWER:

Midwest Generation objects to Interrogatory No. 1 because it is overly broad, unduly burdensome, and seeks material covered by the work product and attorney-client privilege. Additionally, Midwest Generation objects to this interrogatory as requesting information already provided in the responses to the document requests and in the depositions. Without waiving its objections, Midwest Generation states the following:

- a) Joliet 29: The other method to inspect the liners for damage or leaks is the electrical leak location method. The electrical leak location method detects paths through the

geomembrane caused by water or moisture in the leaks. The electrical leak location method was used on the HDPE liners in Ash Ponds 1 & 2 in 2008 and used on the Ash Pond 3 liner in 2013. The electrical leak location method was used when the HDPE lining was installed at Joliet 29 impoundments.

b) Powerton: The other method to inspect the liners at Powerton for damage or leaks is the electrical leak location method. The electrical leak location method detects paths through the geomembrane caused by water or moisture in the leaks. The electrical leak location method was used on the HDPE liner in the Metal Cleaning Basin in 2010 and 2011. The electrical leak location method was used on the HDPE liner in the Ash Bypass Basin in 2010. The electrical leak location method was used on the HDPE liners in the Ash Surge Basin and the Secondary Ash Settling Basin in 2013. The electrical leak location method was used when the HDPE lining was installed at Powerton impoundments.

c) Will County: The other method to inspect the liners at Will County for damage or leaks is the electrical leak location method. The electrical leak location method detects paths through the geomembrane caused by water or moisture in the leaks. The electrical leak location method was used on the HDPE liner in the Ash Pond 3S in 2009. The electrical leak location method was used on the HDPE liner in the Ash Pond 2S in 2013. The electrical leak location method was used when the HDPE lining was installed at Will County impoundments.

d) Waukegan: The other method to inspect the liners at Waukegan for damage or leaks is the electrical leak location method. The electrical leak location method detects paths through the geomembrane caused by water or moisture in the leaks. The electrical leak location method was used on the HDPE liner in the East Basin in 2003 and on the West Basin in 2005. The

electrical leak location method was used when the HDPE lining was installed at Waukegan impoundments.

Additional information can be found at Bates MWG13-15_8155, MWG13-15_8233, MWG13-15_8262, MWG13-15_29832-29837, MWG13-15_29903, MWG13-15_33987, MWG13-15_48645 and pp. 100-101 of the Chris Lux deposition.

2. State whether MWG has ever monitored groundwater at Joliet 29, Waukegan, Will County and Powerton aside from the monitoring it currently performs at groundwater monitoring wells installed on or after 2010. If MWG has conducted such monitoring, state:

- a. The specific locations at each site where groundwater was monitored; and
- b. Over what time period that monitoring took place.

ANSWER:

Midwest Generation objects to Interrogatory No. 2 as overly broad and unduly burdensome and seeks documents or information not within Midwest Generation's possession, custody or control. Midwest Generation further objects to Interrogatory No. 2 to the extent it seeks materials that are not relevant to the subject matter involved in the pending action or not reasonably calculated to lead to relevant, discoverable evidence. Finally, Midwest Generation further objects to this interrogatory as overly broad and limits its answer to monitoring for coal ash constituents. Without waiving its objections, Midwest Generation states that it provided all relevant groundwater monitoring results to Complainants in response to Document Request No. 8 of Complainants First Set of Document Requests, including Bates Nos. 2,459-6,822, 34716-36799, 43695-43862, 43871-44121, 44983-45769, and the documents provided at the offices of Nijman Franzetti. Additionally, see Midwest Generation response to Interrogatory No. 8 in Complainant's first Set of Interrogatories, and the enclosed First Quarter 2015 Groundwater Monitoring results located at Bates MWG13-15_48646-MWG13-15_48958. Midwest Generation

has no knowledge of any other groundwater monitoring responsive to Interrogatory #2 at the Stations related to coal ash constituents.

Respectfully submitted,

Midwest Generation, LLC

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

June 10, 2015

Jennifer T. Nijman
Susan M. Franzetti
Kristen L. Gale
NIJMAN FRANZETTI LLP
10 South LaSalle Street, Suite 3600
Chicago, IL 60603
312-251-5255

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in the Midwest Generation, LLP Responses to Complainants' Interrogatories and Requests to Admit dated September 2, 2014 and March 31, 2015 and supplemented on June 10, 2015, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that it verily believes the same to be true.

I have personal knowledge of the facts stated herein.

FURTHER AFFIANT SAYETH NOT.



Maria Race

ATTACHMENT C

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 2013-015
Complainants,	)	(Enforcement – Water)
)	
v.)	
)	
MIDWEST GENERATION, LLC,)	
)	
Respondent.)	

**RESPONDENT, MIDWEST GENERATION, LLC'S SUPPLEMENTAL RESPONSE TO
COMPLAINANTS' FIRST SET OF INTERROGATORIES**

Respondent, Midwest Generation, LLC, ("Midwest Generation"), through its attorneys Nijman Franzetti, LLP, issues its supplemental response to Complainants', Sierra Club, Environmental Law and Policy Center, Prairie Rivers Network, and Citizens Against Ruining the Environment, First Set of Interrogatories, (the "Requests"), as follows:

GENERAL OBJECTIONS

Each of the Answers and Responses is made subject to and incorporates the following objections. Respondent reserves the right to object to the admissibility of any of the documents produced pursuant to the Responses, in whole or in part, at trial in this action on any grounds including but not limited to materiality, relevance, confidential business information and privilege.

1. Midwest Generation objects to the “Coal ash” definition to the extent it includes coal ash that is not stored or transferred to the Coal ash units at the Joliet 29, Powerton, Waukegan, and Will County Stations.

2. Midwest Generation objects to the Requests to the extent that they seek information that is subject to the attorney-client privilege or the work product privilege. To the extent that any privileged information is inadvertently provided in these responses or any documents produced, such provision shall not constitute waiver of the privilege or immunity as to any such information and Complainants shall return any such information upon request.

3. Midwest Generation objects to any Instruction that seeks to impose a duty or burden on Midwest Generation beyond that required by the Illinois Pollution Control Board (“Board”) Rules, the Illinois Code of Civil Procedure.

ANSWERS TO INTERROGATORIES

INTERROGATORY NO. 7: Identify all known Coal ash units, including but not limited to ponds, impoundments, or landfills, that have ever been used to store or dispose of Coal ash at each plant, including both active and inactive or abandoned coal ash units, and for each Coal ash unit:

- a. State whether the unit was or is lined, and if so, when the original liner and any replacement liners were installed and the type of the original and any replacement liners;
- b. State whether all Coal ash has been removed from that unit, and if so, when and by whom that removal was performed; and
- c. State whether MWG has ever become aware of any Breach of, or damage to, any liner, and if so, what actions were taken to address those breaches or damage.

ANSWER: Midwest Generation objects to Interrogatory No. 7 because it is overly broad, unduly burdensome, is not limited in time, and seeks material covered by the work product and attorney-client privilege. Additionally, Midwest Generation objects to this interrogatory as requesting information already provided in the responses to the document

requests and in the depositions. Without waiving its objections and subject to a protective order, Midwest Generation states the following:

Joliet 29 Station has three active ash ponds and, based on information and belief, there are two historical ash areas. The three active ash ponds, Ash Ponds 1, 2, and 3, are lined with a High Density Polyethylene (HDPE) liner. They were originally constructed in 1978 with a poz-o-pac liner. MWG installed HDPE liners in Ash Ponds 1 & 2 in 2008 and installed an HDPE liner in Ash Pond 3 in 2013. Coal ash is removed from Ash Ponds 1 & 2 approximately every one to two years. Ash Pond 3 is a finishing pond, and coal ash was removed from Pond 3 in 2013. Coal ash is removed from the ponds by Beemsterboer. A breach in the liner in Ash Pond 3 above the water line occurred in February 2015, and was repaired as soon as the weather allowed in 2015. MWG has no knowledge of lining under the historical ash areas, or if there is a breach or damage to any liner under the historical areas. Coal ash was removed from the historical area on the southwest side of the property by KPRG in 2005 and 2007. Other than the two removals in 2005 and 2007, MWG has no knowledge of any removals of coal ash from the historical areas.

Powerton Station has three active ash ponds (the Ash Surge Basin, the Ash Bypass Basin, and the Secondary Ash Settling Basin), and uses one basin as a temporary holding spot (the Metal Cleaning Basin). The three ash ponds, and the basin are lined with a HDPE liner. The Ash Surge Basin and the Metal Cleaning Basin were originally constructed in 1978 with a poz-o-pac and hypolon liner. MWG has no knowledge of the original construction date of the Ash Bypass Basin or the Secondary Ash Settling Basin. Both the Secondary Ash Settling Basin and the Ash Bypass Basin originally had a hypalon liner. In 2010, the Metal Clean Basin and the Ash Bypass Basin were relined with HDPE liners. In 2013, the Ash Surge Basin and the Secondary Ash Settling Basin were relined with HDPE liners. Coal ash is removed from the Ash Surge Basin,

the Ash Bypass Basin and the Secondary Ash Settling Basin approximately every six to eight years. Coal Ash is removed from the Metal Cleaning Basin approximately annually. The Coal Ash is removed by Harsco Minerals, Capital Minerals and the Station. There were periodic tears at the top of the hypalon liners, above the water line, in the Ash Settling Basin Ash Bypass Basin, Metal Cleaning Basin, all of which were promptly repaired. On information and belief, the Powerton Station also has three areas that historically contained ash: the limestone basin, an area south of the ash bypass basin, and the former ash pond. The limestone basin is lined on the bottom with a poz-o-pac liner and a hypolan liner on the sides. Coal ash was temporarily stored in the limestone basin in the past, and it is not presently used for storage of coal ash. On information and belief, ash was removed from the limestone basin in 2004, but MWG been unable to locate information regarding the removal. On information and belief, there were breaches at the top of the hypalon liner on the sides of the limestone basin. On one occasion, between approximately 2002 and 2004, MWG installed temporary plastic lining in the limestone basin. Coal ash was also temporarily stored in an area south of the ash bypass basin in the winter of 2001, but has not been stored at that location since and no ash is at that location now. On information and belief, in 2001 Reed Minerals removed the ash in that area for beneficial use. Additionally, MWG has no knowledge of the lining under the area south of the ash bypass basin or if there was a breach any lining underneath the area. On information and belief, the former ash pond area is a historical ash area and there is no liner below the former ash pond. MWG has no knowledge if there is a breach or damage to any liner under the former ash pond, or if ash has been removed from the former ash pond.

Waukegan Station has two active ash ponds, both of which are lined with a HDPE liner, and, based on information and belief, a historical ash area. The ash ponds were originally

constructed in 1978 and lined with a hypalon liner. In 2003, the East Pond was relined with an HDPE liner, and in 2005, the West Pond was relined with an HDPE liner. Coal ash is removed approximately annually from the ash ponds by Lafarge North America. Minor breaches in the upper portions of the liners, due to equipment use above the water line, have occurred and have been promptly repaired. Recently, there was a tear in the top of the East Ash Pond in 2013 and a tear in the East and West Ponds in 2014. On information and belief, both tears were promptly repaired as soon as weather allowed. MWG has no knowledge of the lining under the historical ash area, whether coal ash was removed from the historical ash area, or if there is a breach or damage to any liner in the historical ash area.

Will County Station has two active ash ponds (Ponds 2S and 3S) and two inactive ash ponds (Ponds 1N and 1S). All four ash ponds were originally constructed in 1977 with a poz-o-pac liner. In 2009, Pond 3S was relined with an HDPE liner, and in 2013, Pond 2S was relined with an HDPE liner. Coal ash is removed from the ash ponds by Lafarge North America approximately annually. MWG is aware of a tear in the HDPE liner in 3S in 2012, which was promptly repaired in 2012, and there was also a crack in the second layer of poz-o-pac under Pond 3S in 2009. The Retention Basin, a concrete basin, also historically contained ash, and on information and belief the ash was removed approximately daily. The Retention Basin is no longer used for any processes related to ash, and no longer contains any ash. There is also a historical slag stockpile near the Retention Basin. In 2015, MWG removed approximately 1,800 tons of slag from the stockpile. Currently, the area contains an ash pile. A 1999 Phase II Report, conducted for a previous site owner, identified historic areas including a slag and bottom ash dumping area and a slag dumping area. MWG has no knowledge whether such areas were lined,

whether coal ash was removed from the areas, or if there is a breach or damage to any liner in the areas.

Responsive documents are also at Bates MWG13-15_1 -176, MWG13-15_8415-11492, MWG13-15_11493-13421, MWG13-15_17637-17973, MWG13-15_18823-MWG13-15_18990, MWG13-15_16770-18938, MWG13-15_28404-29796, MWG13-15_45621, MWG13-15_44770, MWG-13-15_48636-48639; M. Kelly deposition, pp. 26, 28, 31 40, 41, 42, 53, 54, 59, 77, 75 94, 112; J.DiCola Deposition, pp. 44, 103, 105, 106, 108, 109; C. Lux Deposition, p. 20; R.Maddox Deposition, pp. 90-93, 120-121.

Dated: June 10, 2015

Respectfully submitted,

Midwest Generation, LLC.

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

Jennifer T. Nijman
Kristen L. Gale
Susan M. Franzetti
Nijman Franzetti LLP
10 S. LaSalle Street, Suite 3600
Chicago, IL 60603
(312) 251-5255

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in the Midwest Generation, LLP Responses to Complainants' Interrogatories and Requests to Admit dated September 2, 2014 and March 31, 2015 and supplemented on June 10, 2015, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that it verily believes the same to be true.

I have personal knowledge of the facts stated herein.

FURTHER AFFIANT SAYETH NOT.

A handwritten signature in black ink, appearing to read "Maria Race", written over a horizontal line.

Maria Race

ATTACHMENT D

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	)	PCB No-2013-015
ENVIRONMENT	)	(Enforcement – Water)
)	
Complainants,)	
)	
v.)	
)	
MIDWEST GENERATION, LLC,)	
)	
Respondent.)	

MIDWEST GENERATION, LLC'S RESPONSE TO COMPLAINANTS' FOURTH SET OF DOCUMENT REQUESTS, SECOND SET OF INTERROGATORIES, AND SECOND SET OF REQUESTS FOR ADMISSION TO RESPONDENTS

Respondent, Midwest Generation, LLC, ("Midwest Generation"), through its undersigned attorneys, responds to Complainants' Fourth Set of Document Requests, Second Set of Interrogatories, and Second Set of Requests for Admission, ("Requests"), as follows:

GENERAL OBJECTIONS

Each of the Responses is made subject to and incorporates by reference the objections made in Midwest Generation's Responses to Complainants' First Set of Interrogatories, Requests for Documents and Request for Admission provided on September 2, 2014. Additionally, Midwest Generation makes the following objections:

1. Midwest Generation objects to the "Coal ash" definition to the extent that it includes other waste streams resulting from the operation of pollution controls.
2. Midwest Generation objects to the "Coal ash units" definition to the extent that it includes areas in which coal ash is not purposely directed to or placed on and to the extent it includes *de minimis* collections of coal ash due to the operations of the Station.

3. Midwest Generation objects to the "Joliet 29" definition to the extent it states that the Station is located in Kendall County.

4. Midwest Generation objects to the "Uppermost aquifer" definition as vague, ambiguous and capable of varying interpretations. Additionally, Midwest Generation objects to the definition to the extent it depends upon a coal ash unit to identify any aquifer's location.

5. Midwest Generation objects to Instruction No. 6 as overly broad and unduly burdensome.

6. Midwest Generation objects to the Number of Requests to Admit as in excess of the number of requests allowed under the Ill. Sup. Ct. Rule 216(f) and the additional requests for admission agreed to in the Agreed Motion to Extend the Discovery Schedule and Modify the Discovery Order filed with the Board on February 4, 2015. Illinois Supreme Court Rule 216(f) allows each party to issue a maximum of 30 requests for admission, and each subpart counts as a separate request. Ill. Sup. Ct. Rule 216(f). On June 16, 2014, Complainants submitted to Midwest Generation three Requests for Admission of Genuineness of Documents, attaching fifty-eight documents. Each of the fifty eight documents is a subpart of the request for admission. On February 4, 2015, the parties agreed that each may propound 20 additional requests for admission. On March 2, 2015, Complainants propounded a total of forty requests to admit to Complainants in their Second and Third Set of Requests for Admission. Because the requests to admit are in excess of the agreed extension and the limits under Ill. Sup. Ct. Rule 216(f), Midwest Generation has answered twenty of the forty propounded requests for admission.

7. Respondent reserves the right to object to the admissibility of any of the documents produced pursuant to the Responses, in whole or in part, at hearing in this action on any grounds including but not limited to materiality, relevance, confidential business information and privilege.

REQUESTS FOR ADMISSION

1. Admit that Ash Landfill SW is within the current property boundaries of the portion of the Joliet 29 site that is operated by MWG.

ANSWER:

Midwest Generation objects to this request as calling for a legal conclusion. Without waiving its objections, Midwest Generation admits that it leases the Joliet 29 Station which includes the area defined here as the Ash Landfill SW.

2. Admit that Ash Landfill NE is within the current property boundaries of the portion of the Joliet 29 site that is operated by MWG.

ANSWER:

Midwest Generation objects to this request as calling for a legal conclusion. Without waiving its objections, Midwest Generation admits that it leases the Joliet 29 Station which includes the area defined here as the Ash Landfill NE.

21. Admit that there is no impermeable cap over the Former Slag/Fly Ash Storage Area at Waukegan.

ANSWER:

Midwest Generation objects to this request on the grounds that the term “impermeable cap” is vague, ambiguous, and capable of varying interpretations. Subject to its objection, Midwest Generation admits the request.

Respectfully submitted,

Midwest Generation, LLC

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

March 31, 2015

Jennifer T. Nijman
Susan M. Franzetti
Kristen L. Gale
NIJMAN FRANZETTI LLP
10 South LaSalle Street, Suite 3600
Chicago, IL 60603
312-251-5255

ATTACHMENT E

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	)	PCB No-2013-015
ENVIRONMENT	)	(Enforcement – Water)
)	
Complainants,)	
)	
v.)	
)	
MIDWEST GENERATION, LLC,)	
)	
Respondent.)	

**MIDWEST GENERATION, LLC'S SUPPLEMENTAL RESPONSE TO
COMPLAINANTS' SECOND SET OF INTERROGATORIES**

Respondent, Midwest Generation, LLC, ("Midwest Generation"), through its undersigned attorneys, issues its supplemental response to Complainants' Second Set of Interrogatories, ("Requests"), as follows:

GENERAL OBJECTIONS

Each of the Responses is made subject to and incorporates by reference the objections made in Midwest Generation's Responses to Complainants' First Set of Interrogatories, Requests for Documents and Request for Admission provided on September 2, 2014. Additionally, Midwest Generation makes the following objections:

1. Midwest Generation objects to the "Coal ash" definition to the extent that it includes other waste streams resulting from the operation of pollution controls.
2. Midwest Generation objects to the "Coal ash units" definition to the extent that it includes areas in which coal ash is not purposely directed to or placed on and to the extent it includes *de*

minimis collections of coal ash due to the operations of the Station.

3. Midwest Generation objects to the "Joliet 29" definition to the extent it states that the Station is located in Kendall County.

4. Midwest Generation objects to the "Uppermost aquifer" definition as vague, ambiguous and capable of varying interpretations. Additionally, Midwest Generation objects to the definition to the extent it depends upon a coal ash unit to identify any aquifer's location.

5. Midwest Generation objects to Instruction No. 6 as overly broad and unduly burdensome.

6. Respondent reserves the right to object to the admissibility of any of the documents produced pursuant to the Responses, in whole or in part, at hearing in this action on any grounds including but not limited to materiality, relevance, confidential business information and privilege.

INTERROGATORIES

1. Identify any and all methods, other than visual inspection, that MWG uses to inspect ash pond liners for Damage, weakness or leaks at Joliet 29, Will County, Waukegan and Powerton, and state:

- a. How each method of inspection identifies weakness or damage to liners;
- b. When the use of each method of inspection began at each pond; and
- c. The frequency with which each method of inspection is used at each pond.

ANSWER:

Midwest Generation objects to Interrogatory No. 1 because it is overly broad, unduly burdensome, and seeks material covered by the work product and attorney-client privilege. Additionally, Midwest Generation objects to this interrogatory as requesting information already provided in the responses to the document requests and in the depositions. Without waiving its objections, Midwest Generation states the following:

a) Joliet 29: The other method to inspect the liners for damage or leaks is the electrical leak location method. The electrical leak location method detects paths through the

geomembrane caused by water or moisture in the leaks. The electrical leak location method was used on the HDPE liners in Ash Ponds 1 & 2 in 2008 and used on the Ash Pond 3 liner in 2013. The electrical leak location method was used when the HDPE lining was installed at Joliet 29 impoundments.

b) Powerton: The other method to inspect the liners at Powerton for damage or leaks is the electrical leak location method. The electrical leak location method detects paths through the geomembrane caused by water or moisture in the leaks. The electrical leak location method was used on the HDPE liner in the Metal Cleaning Basin in 2010 and 2011. The electrical leak location method was used on the HDPE liner in the Ash Bypass Basin in 2010. The electrical leak location method was used on the HDPE liners in the Ash Surge Basin and the Secondary Ash Settling Basin in 2013. The electrical leak location method was used when the HDPE lining was installed at Powerton impoundments.

c) Will County: The other method to inspect the liners at Will County for damage or leaks is the electrical leak location method. The electrical leak location method detects paths through the geomembrane caused by water or moisture in the leaks. The electrical leak location method was used on the HDPE liner in the Ash Pond 3S in 2009. The electrical leak location method was used on the HDPE liner in the Ash Pond 2S in 2013. The electrical leak location method was used when the HDPE lining was installed at Will County impoundments.

d) Waukegan: The other method to inspect the liners at Waukegan for damage or leaks is the electrical leak location method. The electrical leak location method detects paths through the geomembrane caused by water or moisture in the leaks. The electrical leak location method was used on the HDPE liner in the East Basin in 2003 and on the West Basin in 2005. The

electrical leak location method was used when the HDPE lining was installed at Waukegan impoundments.

Additional information can be found at Bates MWG13-15_8155, MWG13-15_8233, MWG13-15_8262, MWG13-15_29832-29837, MWG13-15_29903, MWG13-15_33987, MWG13-15_48645 and pp. 100-101 of the Chris Lux deposition.

Respectfully submitted,

Midwest Generation, LLC

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

June 10, 2015

Jennifer T. Nijman
Susan M. Franzetti
Kristen L. Gale
NIJMAN FRANZETTI LLP
10 South LaSalle Street, Suite 3600
Chicago, IL 60603
312-251-5255

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in the Midwest Generation, LLP Responses to Complainants' Interrogatories and Requests to Admit dated September 2, 2014 and March 31, 2015 and supplemented on June 10, 2015, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that it verily believes the same to be true.

I have personal knowledge of the facts stated herein.

FURTHER AFFIANT SAYETH NOT.



Maria Race

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ELECTRONIC FILING** and **COMPLAINANTS' RESPONSE TO RESPONDENT, MIDWEST GENERATION, LLC'S OBJECTION AND APPEAL FROM HEARING OFFICER'S RULING TO ADMIT DISCOVERY RESPONSES AS EVIDENCE** were electronically filed on December 1, 2017 and copies were served on all parties of record listed below by email on December 1, 2017.

/s/ Lauren Hogrewe _____
Lauren Hogrewe
Legal Assistant
Sierra Club Environmental Law Program
2101 Webster St., Ste 1300
Oakland, CA – 94612
(415) 977-5789 |
lauren.hogrewe@sierraclub.org

SERVICE LIST
PCB No-2013-015

Jennifer T. Nijman
Susan M. Franzetti
Kristen L. Gale
NIJMAN FRANZETTI LLP
10 South LaSalle Street, Suite 3600
Chicago, IL 60603

Abel Russ
Attorney
Environmental Integrity Project
1000 Vermont Avenue NW
Washington, DC 20005
aruss@environmentalintegrity.org
(802) 662-7800 (phone)
(202) 296-8822 (fax)

Bradley P. Halloran,
Hearing Officer
Illinois Pollution Control Board
100 West Randolph St., Suite 11-500
Chicago, IL 60601

Faith E. Bugel
1004 Mohawk Wilmette, IL 60091
fbugel@gmail.com
(312) 282-9119 (phone)

Keith Harley
Chicago Legal Clinic, Inc.
211 W. Wacker, Suite 750
Chicago, IL 60606
kharley@kentlaw.iit.edu
312-726-2938 (phone)
312-726-5206 (fax)

Gregory E. Wannier
2101 Webster St., Ste. 1300
Oakland, CA 94612 (415) 977-5646
Greg.wannier@sierraclub.org