

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.)	

NOTICE OF FILING

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

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board Respondent, Midwest Generation, LLC’s Response to Complainants’ Objection to and Appeal of Hearing Officer’s Admission of Midwest Generation, LLC’s Exhibit 649, a copy of which is hereby served upon you.

MIDWEST GENERATION, LLC

By: /s/ Jennifer T. Nijman

Dated: April 4, 2018

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that a true copy of the foregoing Notice of Filing, Certificate of Service and Respondent, Midwest Generation, LLC's Response to Complainants' Objection to and Appeal of Hearing Officer's Admission of Midwest Generation, LLC's Exhibit 649 was filed electronically on April 4, 2018 with the following:

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

and that true copies were emailed on April 4, 2018 to the parties listed on the foregoing Service List.

/s/ Jennifer T. Nijman

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In the Matter of:)	
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LAW AND POLICY CENTER,)	
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CITIZENS AGAINST RUINING THE)	
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Complainants,)	(Enforcement – Water)
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v.)	
)	
MIDWEST GENERATION, LLC,)	
)	
Respondent.)	

MIDWEST GENERATION, LLC’S RESPONSE TO COMPLAINANTS’ OBJECTION TO AND APPEAL OF HEARING OFFICER’S ADMISSION OF MIDWEST GENERATION LLC’S EXHIBIT 649

The Illinois Pollution Control Board (“Board”) should affirm the Hearing Officer’s ruling to admit Midwest Generation LLC’s (“MWG”) Exhibit 649. Complainants’ only objection to MWG Exhibit 649 is hearsay. Yet, MWG Exhibit 649 is admissible under the public record exception to hearsay, because it is also “IEPA Exhibit No. 64” filed by Illinois Environmental Protection Agency (“Illinois EPA”) on June 26, 2015 in Sierra Club’s appeal of the Waukegan NPDES permit in *Sierra Club et al. v. Illinois EPA and Midwest Generation, LLC*, PCB15-189. In the alternative, MWG Exhibit 649 is relevant and would be relied upon by a prudent person in the conduct of serious affairs, and thus is admissible under the Board’s Rules. 5 ILCS 100/10-40, 35 Ill. Adm. Code 101.626(a). Complainants’ appeal is another example of Complainants’ continued decisions to ignore both the transcript and Illinois Law. In their appeal, Complainants fail to account for Ms. Race’s testimony laying the foundation for the admission of MWG Exhibit 649.

A. Background

On January 30, 2018, during the direct examination of Ms. Maria Race, MWG presented MWG Exhibit 649, attached here as Attachment 1. MWG Exhibit 649 contains emails between Lynn Dunaway and Jaime Rabins, both of the Illinois EPA, dated January 6, 2015. On the top right corner of the document is a label identifying the document as “**IEPA EXHIBIT No. 64.**” The label reflects the fact that Illinois EPA filed the document on June 26, 2015 for a separate, public matter before the Board in *Sierra Club et al. v. Illinois EPA and Midwest Generation, LLC*, PCB15-189. That separate matter, PCB15-189, was Sierra Club’s appeal of the NPDES permit that Illinois EPA issued to MWG for MWG’s Waukegan Station. MWG Exhibit 649 is listed as “Illinois EPA Exhibit 64” in Illinois EPA’s Index to Permit Record filed by the Illinois EPA in the permit appeal. The Illinois EPA’s Index to Permit Record for PCB15-189 that was filed with the Board is attached as Attachment 2. The Illinois EPA emails in MWG Exhibit 649 show that during the NPDES permit hearing for the MWG Station at Waukegan, Illinois EPA specifically considered whether the ash ponds at the Station were a source of the constituents in the groundwater. Attachment 1. Illinois EPA concluded that the ash ponds were *not* a source of the constituents in groundwater. Attachment 1.

Prior to the hearing in the current case (PCB13-015), MWG provided Complainants with a list of MWG proposed exhibits. In MWG’s list of proposed exhibits, MWG clearly identified the document later identified as MWG Exhibit 649, as “2015 Illinois EPA email between Lynn Dunaway and Jaime Rabins, filed with IPCB as Illinois EPA Exhibit 64 in *Sierra Club et al. v. Illinois EPA and Midwest Generation, LLC*, PCB15-189, June 26, 2015”. See MWG’s Request for Complainants’ Pre-Hearing Agreement to Admit Witness Specific Exhibits (including Complainants’ Response) attached as Attachment 3, p. 9.

At the hearing in this case, Ms. Race testified that one of her responsibilities was the NPDES permitting of the Stations, and that included the ash impoundments at the Stations. PCB 13-15 Jan. 29, 2018 Hearing Transcript, pp. 159:20 – 160:9. When discussing MWG Exhibit 649, Ms. Race testified that the “ IEPA Exhibit No. 64” in the upper right of the document signified that it was an “an exhibit within [Illinois EPA’s] permit record” and was available through the Freedom of Information Act. PCB13-15 Jan. 30, 2018 Hearing Transcript, pp. 175:20-176:11. She further testified that she received the document from Illinois EPA shortly after the Waukegan permit hearings. PCB13-15 Jan. 30, 2018 Hearing Transcript, pp. 176:13-18. Complainants’ only objection was to the alleged hearsay of the document. PCB13-15 Jan. 30, 2018 Hearing Transcript, p. 176:22-23. Following Ms. Race’s testimony that MWG Exhibit 649 was from the publicly-available Illinois EPA permit record, and filed by Illinois EPA in a public proceeding, the Hearing Officer granted MWG’s motion to admit the exhibit. PCB13-15 Jan. 30, 2018 Hearing Transcript, pp. 176:24-177:1.

B. The Hearing Officer Correctly Admitted MWG Exhibit 649

The Hearing Officer was correct to admit MWG Exhibit 649, which contains Illinois EPA emails and is labeled as “IEPA EXHIBIT No. 64”, because it is admissible under the public records exception of the hearsay rule and is relevant under the Board’s rules of evidence.

a. MWG Exhibit 649 is a Public Record

MWG Exhibit 649 was admitted at the hearing as *public record*. Under the public records exception to hearsay, Illinois courts have held that, “The prerequisite for admission of a public record as an exception to the hearsay rule is that the record is made in the ordinary course of business and that it is authorized by statute, agency regulation, or is required by the nature of the public office.” *People v. Williams*, 143 Ill. App. 3d 658, 663 (1st Dist. 1986) (*citing, People v. Hester*, 88 Ill. App. 3d 391, 395 (2nd Dist. 1980).

The Board has held that copies of public documents, including police reports and Illinois EPA documents, are admissible as public records. *Village of Matteson v. World Music Theatre Jam Productions, Ltd and Discovery South Group, Ltd.* PCB90-146, 1993 Ill. ENV LEXIS 278 (March 25, 1993) (Board held that compiled police reports and letters from the City Manager were admissible under the public records exception to the hearsay rule). Recently, in another citizen suit brought by the Sierra Club, the Board concluded that an Illinois EPA document was admissible as a public record. *Sierra Club v. Ameren Energy Medina Valley Cogen, LLC and Futuregen Industrial Alliance, Inc.*, PCB 14-134, 2014 Ill. ENV. LEXIS 489, (Nov. 6, 2014). In the *Sierra Club v Ameren Energy* case, Sierra Club moved to strike the Illinois EPA's Responsiveness Summary that was attached to the respondents' motion for summary judgment, claiming that it was hearsay. *Id* at 4. The Board rejected Sierra Club's argument and held that the Responsiveness Summary met the public records exception to the rule against hearsay because the document was "prepared in the course of Illinois EPA required duties." *Id* at 5. Despite the Board's specific ruling against Sierra Club regarding a similar Illinois EPA-filed document, Sierra Club is again making the same hearsay argument in this case. As the Board held in *Ameren Energy*, MWG Exhibit 649 should be admitted because it was clearly prepared in the course of Illinois EPA required duties.

The Board came to a similar conclusion in *Castellari v. Prior*, PCB 86-79, 1987 WL 56063 (May 28, 1987), a case Complainants actually rely upon in the only paragraph of their appeal addressing public records. Complainants' Appeal, ¶19. Yet, that case supports the admission of MWG Exhibit 649. In *Castellairi*, the complainants introduced copies of Illinois EPA letters and reports at the hearing, and testified that they had copied the letters and reports from the original documents in the Illinois EPA's files located at the Illinois EPA office. *Id*. The Board found that the Illinois EPA letters and reports could "clearly be classified as the type of documents which could be admitted under the public records exception to the rule against hearsay rule (*sic*)." *Id* at

*14. The Board upheld the Hearing Officer's decision to admit the documents finding that they were public documents and that the "Board [had] no reason to doubt the authenticity of the exhibits..." *Id* at *15. The Board further noted that the respondent could have produced his own copies of the exhibits to challenge the complainants' copies. *Id*.

Here, there is no question that MWG Exhibit 649 is a public record and the Hearing Officer admitted it as such. As is shown on its face, MWG Exhibit 649 is Illinois EPA Exhibit No. 64 that Illinois EPA filed on June 26, 2015 as part of the Illinois EPA permit record in *Sierra Club et al. v. Illinois EPA and Midwest Generation, LLC*, PCB15-189. *See* Attachments 1 and 2. As stated on the first page of the permit record, the Illinois EPA prepared the permit record as part of Illinois EPA's duties under 35 Ill. Adm. Code 105.212 and 105.116. *See* Attachment 2, p. 4. Further, at the hearing, Ms. Race testified that MWG Exhibit 649 was an exhibit in the permit record for the Waukegan permit hearings, she received it from Illinois EPA at about the time of the Waukegan permit hearings, and it was available through FOIA. PCB13-15 January 30, 2018 Hearing Transcript, p. 175:20-176:18. After laying the foundation that MWG Exhibit 649 was from the public record in a public proceeding, the Hearing Officer admitted the exhibit. PCB13-15 January 30, 2018 Hearing Transcript, p. 176:19-177:1.

In Complainants' Response to MWG's Motion for Sanctions, Complainants appear to suggest that it was not clear at the hearing that MWG Exhibit 649 was admitted as a "public" record because the word "public" was not specified. *See* Complainants' Response to MWG's Motion for Sanctions, April 3, 2018, p. 12. Yet, Ms. Race clearly testified that MWG Exhibit 649 was "...an exhibit within [Illinois EPA's] **permit record** that is available through FOIA, Freedom of Information Act." PCB 13-15 Jan. 30, 2018 Hearing Transcript, p. 176:9-11 (emphasis added). Surely, Complainants cannot be suggesting that a permit record filed with Board by an Illinois governmental agency and available through FOIA is not a "public record." Nor can Complainants

be suggesting that the previous hearing where the IEPA exhibit No. 64 (now MWG Ex. 649) was first filed was not “public”. Based upon Complainants’ experience in filing permit appeals, they must realize by now that a permit hearing and permit record are public.

Complainants were fully aware of the source of MWG Exhibit 649 and that it was public because it is clearly labelled as an Illinois EPA exhibit and MWG described it as such before the hearing in its Request for Pre-hearing Agreement to Admit Exhibits. *See* Attachment 3. Considering that Sierra Club was the complainant in PCB15-189, they likely have a copy of the exhibit in their file. If Complainants actually doubted the authenticity of the exhibit, then as the Board stated in *Castellari v. Prior*, Sierra Club could have produced their own copy of the exhibit to challenge the MWG’s copy. *Castellari v. Prior*, at 15.

b. MWG Exhibit 649 is Admissible under the Board Rules

The Illinois EPA emails between Lynn Dunaway and Jaime Rabins labeled as “IEPA EXHIBIT No. 64”, now MWG Exhibit 649, are relevant to the issues in this matter and contain information a prudent person would rely upon. The Board rules provide that, in accordance with Section 10-40 of the Illinois Administrative Procedures Act, 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.” 35 Ill. Adm. Code 101.626. The Board’s procedural rules, Section 101.626(a), state that 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. 101.626(a). The Board has stated that it considers section 101.626(a) as a “relaxed standard,” *People v. Atkinson Landfill Co.*, PCB No. 13-28, slip op. at 9 (Jan. 9, 2014), and has stated that it “favors a liberal construction of admissible evidence.” *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. Thus, even if

there is a hearsay objection that is not overcome by the public records exception, the Board can admit hearsay evidence if the material falls within the Board's evidentiary standard.

MWG Exhibit 649 is directly relevant to the issues in this matter. Evidence is relevant "if it has any tendency to make the existence of any fact that is of consequence to the determination of an action either more or less probable than it would be without the evidence." *People v. Morgan*, 197 Ill. 2d 404, 455-56, 259 Ill. Dec. 405, 435, 758 N.E.2d 813, 843 (2001), citing *People v. Illgen*, 145 Ill. 2d 353, 364, 164 Ill. Dec. 599, 583 N.E.2d 515 (1991). In MWG Exhibit 649, Lynn Dunaway of the Illinois EPA explains to Jaime Rabins that the additional monitoring required by the Compliance Commitment Agreement ("CCA") conducted at the MWG Waukegan Station "indicated that the active ponds (for which the VN was issued) are **not** the likely source of contaminants in groundwater." See MWG Ex. 649, attached as Attachment 1 (emphasis added). Ms. Race also testified to that issue during the hearing stating that Mr. Dunaway explained that "...the active ponds are not the likely source of contaminants in the groundwater." PCB13-15 Jan. 30, 2018, p. 174:22-24. This is the very issue litigated by the Complainants, and their expert specifically opined that he believes the ash ponds at the Waukegan Station are a source of the constituents in the groundwater. PCB13-15 Oct. 27, 2017 Hearing Transcript, pp. 15:9-12, 26:4-9, Complainants' Exhibit 401, p. 25. It is not surprising that Complainants are attempting to keep MWG Exhibit 649 out of the record because it shows that Illinois EPA disagrees with a key premise of Complainants' case. MWG Exhibit 649 speaks directly to whether the Waukegan ash ponds are a source of the constituents in the groundwater and is relevant to this issues in this matter.

Further, under the Board Rules, MWG Exhibit 649 is admissible as a document that a prudent person would rely upon. 35 Ill. Adm. Code 101.626(a). Ms. Race testified that she obtained the document from Illinois EPA shortly after the Waukegan NPDES permit hearings. PCB 13-15 Jan. 30, 2018 Hearing Transcript, pp. 176:13-18. Earlier in the proceeding, Ms. Race testified that one

of her responsibilities was that she was the “NPDES permitting person” and that included the ash impoundments at the Stations. PCB 13-15 Jan. 29, 2018 Hearing Transcript, pp. 159:20-160:9. Considering that one of her responsibilities was the NPDES permitting process, Ms. Race would have relied upon the information filed in the NPDES permit appeal, including the exhibits filed as the permit record by Illinois EPA. Attachment 2. As the Hearing Officer stated on the first day of hearing: “I consider Ms. Race a reasonable and prudent person and she reviewed these documents and I don't think she would have reviewed them for a waste of time and, you know, that's all Section 101.626 requires.” Oct. 23, 2017 Transcript, p. 126:7-12. Thus, as Ms. Race reviewed and relied on the Illinois EPA emails between Lynn Dunaway and Jaime Rabins labeled as “IEPA EXHIBIT No. 64”, under Section 101.626, it is admissible.

c. MWG Exhibit 649 Was Not Admitted as a Business Record

Complainants’ basis for their appeal is that MWG Exhibit 649 does not overcome hearsay based upon the business record exception. (Complainants’ Appeal, ¶¶20-24). However, Complainants intentionally ignore the testimony showing the basis and foundation for the admission of MWG Exhibit 649. As was clear during the hearing and in the transcript, the Hearing Officer did not admit MWG Exhibit 649 as a business record, but admitted it as a public record. Ms. Race testified that the document was an exhibit as part of Illinois EPA’s permit record, was available through FOIA, and she received the document from the Illinois EPA after the Waukegan permit hearings. PCB13-15 Jan. 30, 2018 pp. 175:20 – 176:18. Following the testimony that Ms. Race received the document as a public record, the Hearing Officer admitted the document, not as a business record, but as a public record. PCB13-15 Jan. 30, 2018 pp. 176:19-177:1. Complainants’ basis for their appeal entirely disregards the transcript and is meritless.

For the foregoing reasons, MWG requests that the Board affirm the Hearing Officer's decision to admit MWG Exhibit 649.

Respectfully submitted,
Midwest Generation, LLC

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

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ATTACHMENT 1

W0971900021

Document 17

Rabins, Jaime

From: Dunaway, Lynn
Sent: Tuesday, January 06, 2015 12:07 PM
To: Rabins, Jaime
Cc: Buscher, Bill
Subject: RE: Coal Ash

IEPA EXHIBIT

No. 64

The Agency was working on regulations that would be applicable to coal ash impoundments when the hearing was held. Since that time, as I'm sure you're aware, the feds did finalize their coal combustion residuals rules that they had been working on for a long time. I'm not sure where that leaves the rule that we were working on. Technically the answer to the first question is that IEPA was developing rules regulating coal ash ponds. The rules that regulate coal ash pollution are the same that apply to every other type of pollution in the State. The Act and (with regard to groundwater) Part 620. Those regulations and rules aren't changing. Under 620 the only way IEPA can "change" the standard is with a GMZ, which would have to include an approved remediation. The CCA that IEPA approved for Waukegan, didn't include a corrective action (hence no GMZ), because the additional monitoring that was required by the CCA indicated that the active ponds (for which the VN was issued) are not the likely source of contaminants in groundwater. IEPA would have to issue a new VN for some unspecified source in order to take further action. So the answer to the second question is no Midwest Gen has not approached the IEPA to change standards.

From: Rabins, Jaime
Sent: Tuesday, January 06, 2015 11:51 AM
To: Dunaway, Lynn
Subject: RE: Coal Ash

I have a question from the Waukegan Generating Station RS concerning Coal Ash. Provide any assistance you can.

4. I understand the USEPA is currently revising their rules as far as coal ash pollution, the pollutant runoff from the ash ponds. Is that correct? Have they asked the Illinois EPA to try to look at changing their standards?

From: Dunaway, Lynn
Sent: Tuesday, January 06, 2015 11:39 AM
To: Rabins, Jaime
Subject: RE: Coal Ash

To some extent, but so does your group since they'd be issuing the permits for any new impoundments.

From: Rabins, Jaime
Sent: Tuesday, January 06, 2015 11:28 AM
To: Dunaway, Lynn
Subject: Coal Ash

Lynn,

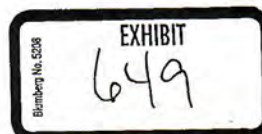
Does your group deal with the new Coal Ash Regulations?

Jaime Rabins, P.E.
Environmental Protection Engineer, Industrial Unit
Permit Section

IEPA-DIVISION OF RECORDS MANAGEMENT
EXEMPT

JAN 27 2015

REVIEWER: EMI



ATTACHMENT 2

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SIERRA CLUB, NATURAL RESOURCES,)
RESOURCES DEFENSE COUNCIL,)
PRAIRIE RIVERS NETWORK, and)
ENVIRONMENTAL LAW & POLICY)
CENTER)

Petitioner,)

v.)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY)

Respondent.)

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CLERK'S OFFICE

JUN 26 2015

STATE OF ILLINOIS
Pollution Control Board

PCB No. 2015-189
(Third Party NPDES Appeal)



ORIGINAL

NOTICE OF FILING

PLEASE TAKE NOTICE that on Friday, the 26th day of June 2015, I filed with the Clerk of the Illinois Pollution Control Board the Administrative Record containing pages (0001-1114) and Index to the Administrative Record on behalf of Respondent, Illinois Environmental Protection Agency. The Administrative Record and Index are attached hereto and hereby served upon persons listed in the Service List.

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

By: 

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Robert W. Petti
Assistant Attorneys General
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Chicago, IL 60602
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Dated: June 26, 2015

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CLERK'S OFFICE

JUN 26 2015

STATE OF ILLINOIS
Pollution Control Board

SERVICE LIST

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Council*

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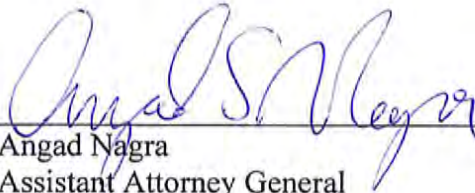
RECEIVED
CLERK'S OFFICE

JUN 26 2015

STATE OF ILLINOIS
Pollution Control Board

CERTIFICATE OF SERVICE

I, Angad Nagra, an Assistant Attorney General, certify that on the 26th day of June, 2015, I caused to be served by U.S. Mail, the foregoing Notice of Filing and Administrative Record, to the parties listed above, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.



Angad Nagra
Assistant Attorney General
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SIERRA CLUB, NATURAL)
 RESOURCES DEFENSE COUNCIL,)
 PRAIRIE RIVERS NETWORK, and)
 ENVIRONMENTAL LAW & POLICY)
 CENTER,)
)
 Petitions,)
)
 v.)
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY and)
 MIDWEST GENERATION, LLC)
)
 Respondents.)

PCB 15-189
 (Third Party NPDES Appeal)

RECEIVED
 CLERK'S OFFICE
 JUN 26 2015
 STATE OF ILLINOIS
 Pollution Control Board

 ORIGINAL

RECORD

Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), in accordance with the procedural rules of the Illinois Pollution Control Board ("Illinois PCB") as set forth in 35 Ill. Adm. Code 105.212 and 105.116, files as its Record in this cause the Illinois EPA's record of National Pollutant Discharge System ("NPDES") Permit number IL0002259, issued to Midwest Generation, LLC ("Midwest Generation") on March 25, 2015, which is attached and consists of the following documents:

Permit File Documents

1. IN THE MATTER OF: PROPOSED DETERMINATION OF THERMAL STANDARDS FOR ZION AND WAUKEGAN GENERATING STATIONS (PCB 77-82, August 3, 1978). (pp. 1-3)
2. Letter dated October 18, 2004, from Fred McCluskey, Vice President Technical Services, Midwest Generation, to Blaine Kinsley, Illinois EPA, Bureau of Water, Industrial Permits. (pp. 4-5)
3. Letter dated November 22, 2004, from Julia Wozniak, Senior Biologist, Midwest Generation, to Alan Keller, Manager, Bureau of Water, Permit Section. (pp. 6-24)

4. Letter dated January 21, 2005, from Maria Race, Senior Environmental Engineer, Midwest Generation, to Division of Water Pollution Control ("DWPC"), Permit Section, with attached Forms 1 and 2C of NPDES permit renewal application. (pp. 25-110)
5. Phase II Existing Facility Intake Performance Standards Proposal for Information Collection pages 1, 20, and Appendix A Figure 1, June 2005. (pp. 109-111)
6. Email on August 8, 2006, from Julia Wozniak to Jaime Rabins, DWPC, Permit Section. (pp. 112-113)
7. Engineer review notes dated August 16, 2006, prepared by Jaime Rabins. (pp. 114-119)
8. Facility review dated January 19, 2007, dated January 19, 2007. (pp. 120-125)
9. Memorandum and letters dated February 23, 2007, from Blaine Kinsley to Manager, DWPC/Field Operations Section ("FOS"); Army Corps of Engineers, Chicago District; Midwest Generation; and U.S. EPA Region V, with attached draft permit and public notice/fact sheet. (pp. 126-143)
10. Memorandum dated March 20, 2007, from Benjamin Grumbles, Assistant Administrator, U.S. EPA, to Regional Administrators. (p. 144)
11. Emails on April 9, 2007, between Maria Race and Jaime Rabins. (pp. 145-146)
12. Email on April 18, 2007, from Maria Race to Jaime Rabins. (p. 147)
13. Emails on May 7, 2007, from Julia Wozniak to Blaine Kinsley and Jaime Rabins, with attached March 20, 2007 memorandum. (pp. 148-151)
14. Letter dated January 3, 2008, from Maria Race to Jaime Rabins. (p. 152)
15. Letter dated September 2, 2009, from Maria Race, stating address change. (p. 153)
16. Emails on September 2 and 24, 2009, between Maria Race and Jaime Rabins, and on September 29, 2009, between Gina Hamlin and Jaime Rabins. (pp. 154-155)
17. Address correction form received on August 27, 2010. (p. 156)
18. Letter dated September 29, 2011, from Robert Mosher, BOW, Water Quality Standards, to Amy Hanrahan, Midwest Generation. (p. 157)
19. Email dated October 21, 2011, from Darin LeCrone, Manager, Industrial Unity, DWPC, to Leslie Lowry, Jaime Rabins, Shu-Mei Tsai, Brian Cox, and Mark Liska, all DWPC/Permit Section. (p. 158)
20. Email on November 9, 2011, from Jaime Rabins to Amy Hanrahan. (p. 159)

21. Letter dated November 17, 2011, from Amy Hanrahan to Robert Mosher. (p. 160)
22. 15-day notice review notes dated November 23, 2011, prepared by Jaime Rabins. (pp. 161-162)
23. Public notice material for December 2, 2011 posting. (pp. 163-167)
24. Letters dated November 30, 2011, from Darin LeCrone to Municipal Clerk, Waukegan, Illinois; Midwest Generation; and Edward Karecki, U.S. Fish & Wildlife Service, Chicago Field Office. (pp. 168-191)
25. E-mails between Jaime Rabins and Ann Alexander, Senior Attorney, Midwest Program, Natural Resources Defense Council, and Amy Hanrahan, with attached letter dated December 27, 2011, from Ann Alexander to Jaime Rabins. (pp. 192-196)
26. Email on December 28, 2011, from Darin LeCrone to Alan Keller. (pp. 197-198)
27. Letter dated January 12, 2012, from Amy Hanrahan to Darin LeCrone, with attachments. (pp. 199-238)
28. Emails on July 13, 2012, from Susan Franzetti of Nijman Franzetti LLP to Deborah Williams, Illinois EPA, Division of Legal Counsel, and July 17, 2012, from Deborah Williams to Jaime Rabins, with attached letter dated June 14, 1974, from Commonwealth Edison to A. H. Manzardo, Chief, Permit Branch, Region V, U.S. EPA. (pp. 239-244)
29. Draft Special Condition language, w/o email on August 14, 2012, from Deborah Williams to Alan Keller, Sanjay Sofat, Darin LeCrone, Jaime Rabins, and Marcia Willhite (pp. 245-247)
30. Letters dated February 6, 2013, from Darin LeCrone to Edward Karecki, Municipal Clerk of Waukegan, Illinois, and Midwest Generation, with attached draft permit and public notice/fact sheet. (pp. 248-270)
31. 30-day notice review notes dated October 5, 2013, prepared by Jaime Rabins. (pp. 271-275)
32. Letter dated November 2, 2012, from Julia Wozniak to Darin LeCrone, with attachments. (276-361)
33. 15-day notice review notes dated November 8, 2012, prepared by Jaime Rabins. (pp. 362-364)
34. Emails on February 1, 2013, among Mark Joseph, Darin LeCrone and Jaime Rabins. (pp. 365-366)

35. Public notice material for February 8, 2013 posting. (pp. 367-370)
36. Letter dated March 11, 2013, from Julia Wozniak to Darin LeCrone, with attachments. (pp. 371-470)
37. Email on March 11, 2013, from Erin Morse, Legal Assistant, Environmental Law and Policy Center, to Jaime Rabins, with attachments. (pp. 471-507)
38. Emails on June 25, 2013, from Charles Parnell, Vice President, Public Affairs, Midwest Generation, to Ken Page, Environmental Justice Office and Barb Lieberoff, Community Relations, Illinois EPA, with attachments, and forwarded by Ken Page to Jaime Rabins, Sanjay Sofat, Alan Keller, and Darin LeCrone. (pp. 508-510)
39. Letter dated July 22, 2013, from Julia Wozniak to Jaime Rabins, with attachment. (pp. 511-515)
40. Emails on July 10, 19 and 23, 2013, between Jaime Rabins and Julia Wozniak. (pp. 516-517)
41. Email on July 24, 2013, from Maria Race to Jaime Rabins, with attachments. (pp. 518-575)
42. Emails on July 25, 2013, between Roy Smogor, DWPC, and Jaime Rabins, and among Jaime Rabins, Roy Smogor, and Scott Twait, Water Quality Standards, DWPC. (pp. 576-577)
43. Email on July 26, 2013, from Julia Wozniak to Jaime Rabins. (pp. 578-580)
44. Announcement for NPDES hearing on July 31, 2013. (p. 581)
45. Memorandum dated November 20, 2013, from Scott Twait to Jaime Rabins. (pp. 582-583)
46. Emails on May 16 and 19, 2014, between Jaime Rabins and Julia Wozniak. (pp. 584-586)
47. Address correction form dated June 23, 2014. (pp. 587-588)
48. Emails on July 19 and 22, 2011, January 29 and 30, 2013, and May 16, 2014, between Jaime Rabins and Brian Koch, on May 19, 2014 from Brian Koch to Scott Twait, and on May 20, 2014 from Scott Twait to Jaime Rabins. (pp. 589-591)
49. Emails on August 6 and 9, 2014, between Jaime Rabins and Julia Wozniak. (pp. 592-593)
50. Email on August 18, 2014, from Darin LeCrone to Sean Ramach and Patrick Kuefler, U.S. EPA, with attached proposed NPDES permit. (pp. 594-606)

51. Emails on August 26, 2014, between Jaime Rabins and Julia Wozniak. (p. 607)
52. Emails on August 28, 2014, between Jaime Rabins and Julia Wozniak. (pp. 608-610)
53. Emails on August 28 and 29, and September 3, 2014, between Jaime Rabins and Julia Wozniak. (pp. 611-614)
54. Emails on September 3, 2014, between Jaime Rabins and Julia Wozniak. (p. 615)
55. Emails on September 5, 8 and 9, 2014, between Jaime Rabins and Julia Wozniak. (pp. 616-617)
56. Emails on September 23, 2014, between Jaime Rabins and Scott Twait. (p. 618)
57. Emails on September 26, 2014, between Jaime Rabins and Julia Wozniak. (p. 619)
58. Letter dated November 25, 2014, from Kevin Pierard, Chief, NPDES Programs Branch, U.S. EPA, Region 5, to Alan Keller. (pp. 620-623)
59. Emails on December 2, 2014, from Darin LeCrone to Jaime Rabins, from Jaime Rabins to Darin LeCrone and Scott Twait, and from Scott Twait to Jaime Rabins and Darin LeCrone, and on December 3, 2014, from Darin LeCrone to Scott Twait and Jaime Rabins and from Scott Twait to Darin LeCrone and Jaime Rabins. (pp. 624-626)
60. Emails on December 3, 2014, from Darin LeCrone to Scott Twait and Jaime Rabins, from Jaime Rabins to Darin LeCrone, and from Scott Twait to Jaime Rabins and Darin LeCrone. (pp. 627-630)
61. Emails on December 2, 3 and 5, 2014, between Jaime Rabins and Julia Wozniak. (pp. 631-633)
62. 30-day notice review notes dated December 9, 2014, prepared by Jaime Rabins. (pp. 634-638)
63. Fact Sheet: Final Rule on Coal Combustion Residuals Generated by Electric Utilities, December 2014. (pp. 639-642)
64. Emails on January 6, 2015, between Jaime Rabins and Lynn Dunaway, Groundwater Section. (pp. 643-644)
65. Email on January 27, 2015, from Julia Wozniak to Roger Callaway, with attachment. (pp. 645-654)
66. Engineer note dated February 25, 2015, prepared by Jaime Rabins. (p. 655)

67. Responsiveness Summary, March 25, 2015. (pp. 656-682)
68. Letter dated March 25, 2015, from Alan Keller to Midwest Generation. (p. 683)
69. Letter dated March 25, 2015, from Alan Keller to U.S. EPA Region 5. (p. 684)
70. Letter dated March 25, 2015, from Alan Keller to Midwest Generation, with attached renewed NPDES Permit No. IL0002259. (pp. 685-703)

Hearing File Documents

71. Transcript of informational public hearing held July 31, 2013. (pp. 704-872)
72. Hearing exhibits list, with attached exhibits. (pp. 873-1104)

Respectfully Submitted,

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

By: 

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Dated: June 26, 2015

ATTACHMENT 3

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

**MWG’S REQUEST FOR COMPLAINANTS’ PRE-HEARING AGREEMENT TO
ADMIT WITNESS-SPECIFIC EXHIBITS¹**

RICHARD GNAT

	DOCUMENT NO.	DESCRIPTION	WITNESS	COMP. AGREE TO ADMIT
1.	MWG13-15 12809-12820	KPRG and Associates, Inc. 2004, Waukegan	Gnat	Yes
2.	MWG13-15 18823-19015	KPRG Joliet 29 Ash removal report	Gnat	Yes
3.	MWG13-15_19430-19441	KPRG, Joliet #29 Former Ash Burial Area Runoff Erosion Repair Documentation, (Sept. 26, 2009)	Gnat	Yes
4.	MWG13-15_19461- 19468	KPRG, Joliet #29 Former Ash Burial Area Runoff Erosion Repair Documentation, (Sept. 26, 2010)	Gnat	Yes
5.	MWG13-15_19474-19481	KPRG, Joliet #29 Former Ash Burial Area Runoff Erosion Repair, (Sept. 26, 2012)	Gnat	Yes

¹ This list contains exhibits that Complainants previously agreed are authentic. *See* Complainants’ Response to Midwest Generation LLC’s Witness Specific Exhibit List, Oct. 18, 2017, p.4. Thus, it is not a complete list of MWG’s proposed exhibits and MWG reserves the right to add exhibits as the hearing proceeds.

	DOCUMENT NO.	DESCRIPTION	WITNESS	COMP. AGREE TO ADMIT
6.	MWG13-15 19483-19483	KPRG, Joliet #29 Former Ash Burial Area Runoff Inspection 2013, (Aug. 21, 2013)	Gnat	Yes
7.	MWG13-15 43868-43869	Richard Gnat CV	Gnat	Yes
8.	MWG13-15 44147-44147	Letter from Richard Gnat to Peter O'Day, Ash Burial Runoff Inspection (Aug. 28, 2014)	Gnat	Yes
9.	MWG13-15_44148-44152	Letter from Richard Gnat to James DiCola, Erosion Repair Documentation (Sept. 22, 2011)	Gnat	Yes
10.	MWG13-15 48644	Aerial of Waukegan Station	Gnat	No
11.	Demonstrative	Poz o pac core sample, taken by R Gnat, for Will County	Gnat	No
12.	Demonstrative	Groundwater summary results table updated to 2017, prepared by R Gnat	Gnat	Cannot determine (See Note)

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

MARK KELLY

	DOCUMENT NO.	DESCRIPTION	WITNESS	COMP. AGREE TO ADMIT
1.	MWG13-15_9583-9643	Application for Construction Permit to reline the Ash Surge Basin, Powerton	Kelly	Yes
2.	MWG13-15 9670-9731	Application for Construction Permit to reline the Secondary Ash Basin, Powerton	Kelly	Yes
3.	MWG13-15_9783-9840	Construction Permit application for the Bypass Basin, Powerton	Kelly	Yes
4.	MWG13-15_10209-10212	Powerton Metal Cleaning Basin Construction Permit, 2009	Kelly	Yes
5.	MWG13-15 10236-10310	Construction Permit application for Metal Cleaning Basin at Powerton	Kelly	Yes
6.	MWG13-15_10812 to 10815	Powerton Construction permit for the Ash Surge Basin (2013)	Kelly	Yes
7.	MWG13-15_10926 to 10947	Powerton Water Treatment Manuals	Kelly	No
8.	MWG13-15 10948-10966	Powerton Bottom Ash Analytical Report, 2007	Kelly	No
9.	MWG13-15_10977-10978	Powerton ash treatment system outfall, 2004	Kelly	No
10.	MWG13-15 30421- 30424	Powerton Bypass Basin Construction Permit	Kelly	Yes

	DOCUMENT NO.	DESCRIPTION	WITNESS	COMP. AGREE TO ADMIT
11.	MWG13-15_30429-30432	Powerton Secondary Ash Basin Construction Permit	Kelly	Yes
12.	MWG13-15_33998-34157	Construction documentation for the Ash Surge basin at Powerton	Kelly	Yes
13.	MWG13-15_34158-34267	Construction documentation and for the Secondary Ash basin, Powerton	Kelly	Yes
14.	MWG13-15_44124	Mark Kelly CV	Kelly	Yes
15.	MWG13-15_49099-49256	Construction documentation for the Metal Cleaning Basin and Bypass Basin	Kelly	Yes
16.	MWG13-15_50093-50094	July 30, 2015 Illinois EPA letter to Powerton regarding CCA modification	Kelly	Yes

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

FRED VEENBAAS

	DOCUMENT NO.	DESCRIPTION	WITNESS	COMP. AGREE TO ADMIT
1.	MWG13-15 44629-44630	Fred Veenbaas CV	Veenbaas	Yes
2.	MWG13-15_49268-49269	Waukegan construction documentation, 1977	Veenbaas	No
3.	Demonstrative	Sample of Bottom ash, taken by F Veenbaas	Veenbaas	Cannot determine (See Note)

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

MARIA RACE

	DOCUMENT NO.	DESCRIPTION	WITNESS	COMP. AGREE TO ADMIT
1.	MWG13-15 36-65	LaFarge hauling information	Race	No
2.	MWG13-15_142	Chart of Ash Pond relining	Race	No
3.	MWG13-15_201-209	Caterpillar request for an ELUC at Joliet 29	Race	No
4.	MWG13-15_293-305	July 15, 2009 Letter from Midwest Generation to Illinois Environmental Protection Agency (“Illinois EPA”)	Race	Yes
5.	MWG13-15_442	Joliet 29 Supplemental Response to the Violation Notice	Race	Yes
6.	MWG13-15_452-491	Waukegan Supplemental Response to the Violation Notice	Race	Yes
7.	MWG13-15_492-505	Powerton Supplemental Response to the Violation Notice	Race	Yes
8.	MWG13-15_506-521	Will County Supplemental Response to the Violation Notice	Race	Yes
9.	MWG13-15_552-558	Compliance Commitment Agreement (“CCA”) acceptance for Powerton	Race	Yes
10.	MWG13-15_559-564	The CCA acceptance for Will County	Race	Yes
11.	MWG13-15_565-570	The CCA acceptance for Waukegan	Race	Yes

	DOCUMENT NO.	DESCRIPTION	WITNESS	COMP. AGREE TO ADMIT
12.	MWG13-15_571-576	The CCA acceptance for Joliet 29	Race	Yes
13.	MWG13-15_611-621	The Will County ELUC application	Race	Yes
14.	MWG13-15_791	Illinois EPA's approval of Will County ELUC	Race	Yes
15.	MWG13-15_795-796	Will County Compliance Statement	Race	Yes
16.	MWG13-15_797-798	Powerton Compliance Statement	Race	Yes
17.	MWG13-15_801-802	Joliet 29 Compliance Statement	Race	Yes
18.	MWG13-15_805-806	Waukegan Compliance Statement	Race	Yes
19.	MWG13-15_813	Illinois EPA approval of the Will County Hydrogeologic Plan	Race	Yes
20.	MWG13-15_814	Illinois EPA approval of the Joliet 29 Hydrogeologic Plan	Race	Yes
21.	MWG13-15_815	Illinois EPA approval of the Waukegan Hydrogeologic Plan	Race	Yes
22.	MWG13-15_816-817	Illinois EPA approval of the Powerton Hydrogeologic Plan	Race	Yes
23.	MWG13-15_11302-11492	2004 Andrews Environmental Report	Race	Yes
24.	MWG13-15_12713 to 12738	Tannery ELUC at Waukegan	Race	Yes
25.	MWG13-15_16564	Illinois EPA's approval of the Will County GMZ	Race	Yes
26.	MWG13-15_18053-18054	Joliet 29 Construction Permit for Ponds 1 and 2	Race	Yes
27.	MWG13-15_18115 to 18131	Commonwealth Edison Company Joliet 29 Construction Documentation, 1978	Race	No
28.	MWG13-15_18133 to 18189	Joliet 29, Pond 1 and 2 Construction Permit application	Race	Yes
29.	MWG13-15_23618-23629	NRT, Technical Memorandum No. 3, Impoundment Liner Upgrade Priority, and Liner System Options and Cost (Oct. 13, 2006).	Race	Yes
30.	MWG13-15_23630-23641	NRT Nov. 22, 2006 impoundment assessment	Race	Yes
31.	MWG13-15_23856-23866	Powerton 2013 ELUC	Race	Yes

	DOCUMENT NO.	DESCRIPTION	WITNESS	COMP. AGREE TO ADMIT
32.	MWG13-15_23974-75	Illinois EPA's approval for the Powerton ELUC	Race	Yes
33.	MWG13-15_23977	Illinois EPA's approval of the GMZ for Powerton	Race	Yes
34.	MWG13-15 24052	Illinois EPA's approval of Waukegan's ELUC	Race	Yes
35.	MWG13-15_29936, 29975 - 29976	July 13, 2013 Waukegan NPDES permit filed testimony (excerpt)	Race	Yes
36.	MWG13-15_30588-30591	Will County Pond 2S Permit for Relining, 2013	Race	Yes
37.	MWG13-15_33867-33997	Construction Documentation for Pond 3 at Joliet 29	Race	Yes
38.	MWG13-15_39445-39461	Powerton Hydrogeologic Assessment Plan	Race	Yes
39.	MWG13-15_39462-39478	Waukegan Hydrogeologic Assessment Plan	Race	Yes
40.	MWG13-15_39479-39495	Will County Hydrogeologic Assessment Plan	Race	Yes
41.	MWG13-15_39496-39512	Joliet 29 Hydrogeologic Assessment Plan	Race	Yes
42.	MWG13-15_43863-43864	Maria Race CV	Race	Yes
43.	MWG13-15 44275 - MWG13-15_44278	Joliet 29 Ash Pond 3 Construction Permit	Race	Yes
44.	MWG13-15_46211- 46594	Retec Remediation Objectives Report for the Former Griess-Pfleger Tannery Site, 2002 Waukegan	Race	No
45.	MWG13-15_46595 – 46711	Phase II Remedial Investigation Report at the Former Griess-Pfleger Tannery Site	Race	No
46.	MWG13-15_46712- 46926	Appendices to the Tannery Phase II	Race	No
47.	MWG13-15_46927 – 47075	Appendices to the Tannery Phase II	Race	No
48.	MWG13-15_47076 - 47291	Remedial Investigation Report – Phase I for the Former Griess-Pfleger Tannery Site, V. 1 of 3	Race	No
49.	MWG13-15 47292 – 47492	Remedial Investigation Report – Phase I for the Former Griess-Pfleger Tannery Site, V. 2 of 3	Race	No

	DOCUMENT NO.	DESCRIPTION	WITNESS	COMP. AGREE TO ADMIT
50.	MWG13-15_47493- 47711	Remedial Investigation Report – Phase I for the Former Griess-Pfleger Tannery Site, V. 3 of 3	Race	No
51.	MWG13-15_47712- 48402	Remedial Investigation Report for the Former Griess-Pfleger Tannery Site, Data	Race	No
52.	MWG13-15_48403-48438	Survey maps of the Stations	Race	No
53.	MWG13-15_49257-49267	Will County soil removal records	Race	No
54.	MWG13-15_49293-49298	September 14, 2010 NRT email and supporting calculations	Race	Yes
55.	MWG13-15_49362- 49507	Joliet 29 Pond 1 and 2 Construction documentation	Race	Yes
56.	MWG13-15_49742-49753	Joliet 29 Pond 3 effluent results	Race	No
57.	MWG13-15_50550	2015 Illinois EPA email between Lynn Dunaway and Jaime Rabins, filed with IPCB as Illinois EPA Exhibit 64 in <i>Sierra Club et al. v. Illinois EPA and Midwest Generation, LLC</i> , PCB15-189, June 26, 2015	Race	No
58.	MWG13-15_57517 – 57533	Joliet 29 boring logs, ENSR Phase II	Race	No
59.		MWG's NPDES permit IL0002208	Race	No
60.		MWG's NPDES permit IL0002259	Race	No
61.		MWG's NPDES permit IL0002232	Race	No
62.		MWG's NPDES permit IL0064254	Race	No