

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

NATURAL RESOURCES DEFENSE COUNCIL )  
PRAIRIE RIVERS NETWORK, and )  
SIERRA CLUB, )

Petitioners, )

v. )

PCB 13-017  
(APPEAL FROM IEPA  
DECISION GRANTING  
NPDES PERMIT)

ILLINOIS ENVIRONMENTAL PROTECTION )  
AGENCY and DYNEGY MIDWEST )  
GENERATION, INC., )

PCB 2013-065  
(PETITION TO MODIFY,  
SUSPEND, OR REVOKE  
NPDES PERMIT)

Respondents )

To:

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

Persons on the attached service list

Please take notice that today I filed with the office of the Clerk of the Pollution Control Board my **Motion to Consolidate** on behalf of the Natural Resources Defense Council, Prairie Rivers Network, and Sierra Club, a copy of which is hereby served on you.

By: Ann Alexander  
Ann Alexander, Natural Resources Defense Council

Dated: May 15, 2013

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**PCB 13-  
(PETITION TO MODIFY,  
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**MOTION TO CONSOLIDATE**

Pursuant to 35 Ill.Admin.Code § 101.406, Petitioners Natural Resources Defense Council (“NRDC”), Prairie Rivers Network (“PRN”), and the Sierra Club (collectively, “Petitioners”) hereby move the Board for consolidation of the instant permit appeal, PCB 13-017, *Natural Resources Defense Council et al. v. IEPA et al* (“Permit Appeal”), with Petitioners’ related matter concerning the same permit, PCB PCB 2013-065, *Natural Resources Defense Council v. IEPA*, filed May 15 , which is a Petition to Modify, Suspend, or Revoke pursuant to 35 Ill. Adm. Code § 309.182 (“Petition to Modify”). In support of their motion, Petitioners state as follows:

1. The Permit Appeal is a third-party appeal from the grant of a National Pollution Discharge Elimination System (“NPDES”) permit (“Permit”) issued by the Illinois Environmental Protection Agency (“IEPA”) (Permit No. IL0001571) to Dynegy Midwest Generation, Inc.’s (“Dynegy”) Havana Power Station (“Facility”) for the discharge of pollutants from one of its coal ash ponds into the Illinois River. The Permit Appeal is grounded in allegations that IEPA made an unfounded assumption that discharge of mercury from the Facility

would not be sufficient in magnitude to warrant further analysis and establishment of numeric limits on mercury discharge. Specifically, the Permit Appeal alleges that IEPA failed to perform required analysis to establish that the Facility's effluent had a reasonable potential to contribute to a violation of the water quality standard for mercury in the receiving waterbody, the Illinois River, of 12 µg/L; and to establish a water quality based effluent limit ("WQBEL") on that basis. The Permit Appeal also alleges that IEPA failed to conduct adequate antidegradation analysis or to establish technology-based numeric permit limits. The Permit Appeal is now pending before Hearing Officer Carol Webb.

2. The Petition to Modify was brought based on discharge monitoring reports ("DMRs") submitted by Dynege following issuance of the Permit. This Petition alleges that IEPA's faulty assumption that the quantity of mercury discharged from the Facility would be insufficient to warrant further analysis was definitively demonstrated to be incorrect by the DMRs filed after the issuance of the permit and the filing of the appeal, which show mercury concentration levels in the Facility's effluent that exceed the applicable water quality standard.

3. Consolidation of the Permit Appeal and the Petition to Modify is in the interest of convenient, expeditious, and complete determination of claims in both matters. The two actions are grounded in the identical set of facts, with the only difference being that the Petition to Modify is additionally grounded in claims based on the DMRs submitted after the Permit was issued. It would be inefficient, and serve no purpose, to consider the two closely related actions separately; and doing so would risk conflicting outcomes.

4. Consolidation of the two matters under 35 Ill.Admin.Code § 101.406 is additionally appropriate because it will not cause prejudice to any party; and because the burden

of proof in both matters is expressly on the Petitioners. *See* 415 ILCS 5/40(e)(3)(ii), 35 Ill. Adm. Code § 309.182(b).

5. For the foregoing reasons, Petitioners respectfully request that the Board consolidate the Permit Appeal with the Petition to Modify for purposes of hearing and decision.

Respectfully submitted this 15<sup>th</sup> day of May, 2013 by:



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*Attorneys for Petitioners NRDC, Sierra Club, and PRN*



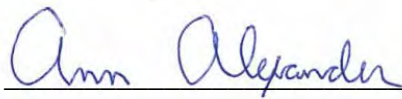
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*Attorney for the Sierra Club*

CERTIFICATE OF SERVICE

I, Ann Alexander, the undersigned attorney, hereby certify that I have served via electronic mail the attached **Petition to Modify, Suspend, or Revoke a Permit Issued by the Illinois Environmental Protection Agency** upon the persons listed in the foregoing Notice of Filing, by depositing said documents in the United States Mail, postage prepaid, from 2 N. Riverside Plaza, Suite 2250, Chicago, IL 60606, before the hour of 5:00 p.m., on this 15th day of May, 2013.

A handwritten signature in blue ink that reads "Ann Alexander". The signature is written in a cursive style and is positioned above a horizontal line.

Ann Alexander, Natural Resources Defense Council