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August 31, 2012

VIA E-MAIL AND OVERNIGHT MAILIllinois EPA
Division of Public Water Supplies
Attn: Andrea Rhodes, CAS #19
P.O. Box 19276
Springfield, IL 62794-9276Re: Violation Notice: Midwest Generation, LLC, Joliet #29 Generating Station
Identification No.: 6284
Violation Notice No.: W-2012-00059

Dear Ms. Rhodes:

This letter is a supplemental response to the above-referenced June 11, 2012 Violation Notice ("VN") following the meeting between the Illinois Environmental Protection Agency ("Illinois EPA or the "Agency") and Midwest Generation, LLC ("MWG") on August 14, 2012.¹ MWG appreciated the opportunity to discuss the VNs and the underlying allegations with the Agency. The extensive participation at the August 14th meeting by Interim Director John Kim and Agency personnel was productive and helped to clarify the key issues. As a result, MWG believes it now has a better understanding of the Agency's views regarding resolution of this matter.

The August 14th meeting also helped MWG both to identify issues that warranted further attention and explanation in this supplemental response and to revise its proposed Compliance Commitment Agreement ("CCA") for the MWG Joliet #29 Generation Station ("Joliet #29") for the Agency's consideration. Accordingly, this supplemental response does not repeat all of the information contained in MWG's July 27, 2012 response to the VN, but rather focuses on responding to the questions and concerns raised by the Agency during the meeting. It also includes a revised, proposed CCA which MWG submits should be acceptable to resolve the VN allegations based on the discussion at the aforementioned August 14th meeting.

¹ The August 14, 2012 meeting was held at the request of MWG, pursuant to Section 31(a)(4) of the Illinois Environmental Protection Act. 415 ILCS 5/31(a)(4).



A very significant revision has been made to the revised, proposed CCA to include a project to replace the existing liner in Pond 3 at the Joliet #29 Station. MWG made this decision based on Midwest Generation's understanding of Agency staff's concerns as expressed during the August 14th meeting, even though MWG continues to believe that groundwater monitoring well results do not indicate that Pond 3 is causing the alleged groundwater violations. These and other provisions of MWG's proposed CCA are summarized in Section II below.

By submitting this supplemental response, MWG does not waive any of its original objections to the VNs raised in our July 27th response. Moreover, MWG does not, by submitting this supplemental response, make any admissions of fact or law, or waive any of its defenses to those alleged violations.

I. Supplemental Response to Alleged Violations in the VN

To answer questions presented at the meeting and further explain why the ash ponds at Joliet #29 are not causing a release into the groundwater, MWG has set forth below additional information concerning: (1) the treatment purpose and function of the ash ponds; (2) the condition of the liners underlying the ash ponds; and (3) why the alleged groundwater exceedances are not the result of releases from the ash ponds. MWG believes the August 14th discussion provided important insights and clarifications by both parties concerning the relevant facts and issues raised by the VN. While we may not embrace the Agency's views on each of the issues discussed, the discussion provided MWG with information that enables us to present a revised CCA that we believe addresses the questions and concerns expressed by the Agency.

A. The Treatment Purpose and Function of the Ash Ponds

As stated in MWG's July 27, 2012 VN response, and discussed further during the August 14th meeting, the three ash ponds at Joliet #29 are not disposal sites, but are wastewater treatment ponds that remove ash from the ash wastewater. Ponds 1 and 2 are used intermittently and interchangeably with each other only when the regular method of ash wastewater treatment and disposal is unavailable.² When the treatment ponds are used, the ash wastewater enters either Pond 1 or 2 for settlement of suspended solids. Almost all of the ash settles out into one of these ponds and the effluent then flows into Pond 3 for additional treatment. Pond 3 acts as a finishing treatment for the wastewater by providing additional settling time for any residual ash solids in the wastewater. Consequently, because of the settling that occurs in Ponds 1 or 2, the amount of ash remaining in the effluent that settles out in Pond 3 is minimal. The treated effluent is

²Under normal station operations, the ash wastewater generated by Joliet #29 is conveyed mechanically directly to the on-site, permitted Lincoln Stone Quarry Landfill without entering any of the ash ponds. However, because there are temporary periods of time when the ash wastewater conveyance system is not operational, due to maintenance reasons, either Pond 1 or Pond 2 is temporarily used until the ash wastewater conveyance system is brought back on line.

discharged from Pond 3 to the Des Plaines River through Outfall 001g pursuant to the Station's NPDES permit (NPDES Permit #IL0064254).³

Apparently, because the ash ponds perform a wastewater treatment function and are not disposal sites, it was suggested by Agency personnel during the August 14th meeting that the ash ponds may be subject to the design criteria for treatment works set forth in Part 370 of the Illinois Pollution Control Board Regulations, referencing generally section 370.930 thereof entitled "Waste Stabilization Ponds and Aerated Lagoons," and more specifically, section 370.930(d)(2)(D) entitled "Pond Bottom" as the relevant criteria for the liners that should be installed in ash ponds. 35 Ill. Adm. Code § 370.930. As a practical matter, this is unnecessary given that the existing liners in two of the Joliet #29 ash ponds provide an equivalent level of protection to that specified in section 370.930(d)(2)(D) and the Pond 3 Poz-o-Pac liner provides adequate protection given its minimal use and the minimal amount of ash which collects in it. Further, Part 370 is not applicable to existing treatment works like the ash ponds at the Joliet #29 Station. Rather, the Part 370 regulations only apply to new construction of waste collection and treatment works. As stated in section 370.100, the purpose of these regulations is to "establish criteria for the design and preparation of plans and specifications for wastewater collection and treatment systems." 35 Ill. Adm. Code § 370.100 (emphasis supplied; see also § 370.200). There are no provisions or requirements in the Part 370 regulations that require existing treatment works to be modified or replaced to meet Part 370 criteria.

B. The Liners in the Ash Ponds are Preventing Releases to Groundwater

As MWG explained in its July 27th letter and during the August 14th meeting, the Joliet #29 ash ponds are different from other ash impoundments in Illinois. They are neither disposal sites nor abandoned ponds. They are relatively small, active, treatment ponds from which ash is routinely removed. Moreover, they are fully lined to prevent releases to groundwater. MWG previously relined Ponds 1 and 2, the ponds that collect the bulk of the ash from the ash wastewater, with a high-density polyethylene ("HDPE") liner, overlain by a 12-inch sand cushion layer and a 6-inch limestone "warning" layer (to warn operators to the location of the underlying liner in order to prevent liner damage during ash removal). HDPE liners have a permeability of approximately 10^{-13} cm/sec. Pond 3, the finishing pond which does not collect much ash, is lined with a liner of two 6-inch lifts of Poz-o-Pac. MWG disagrees with Illinois EPA's conclusion that Pond 3 is the cause of the alleged groundwater exceedances and does not believe the factual evidence -- the existence of the Poz-o-Pac liner, the limited use of Pond 3 and the minimal ash that collects in it -- supports the Agency's conclusion. Moreover, as described further below, the groundwater data does not point to Pond 3 as the source of these impacts.

C. The Ash Ponds are not causing a Release to Groundwater

As stated in MWG's July 27th VN Response, the groundwater monitoring well data does not support the contention that the ash ponds are a source of the alleged groundwater impacts.⁴

³ The effluent is subject to limits for pH and total suspended solids. To date, the limits have not been exceeded.

For most parameters, the distribution and observation of concentrations is random and inconsistent. The data does not demonstrate, and is inconsistent with, the ash ponds being the source of the groundwater impacts. At least with regard to the chloride exceedances, MWG's understanding of the August 14th meeting discussion is that the Agency agreed with the conclusion that the chloride exceedances are more likely from dissolved road salt runoff (*e.g.*, from nearby U.S. Route 6) than from the ash ponds.

During the August 14th meeting, the Illinois EPA explained why it believes that Pond 3 is a source of the groundwater impacts at MW-9 and needs to be relined with a HDPE liner or its equivalent. The Agency explained that manganese and sulfate are indicators of coal ash, even in the absence of elevated boron levels in MW-9. MWG respectfully submits that the Agency is not giving sufficient consideration to the fact that the oxidation-reduction potential around MW-9 is consistently low, showing a strongly reducing environment. Typically in reducing environments, metals such as manganese can be elevated depending on the associated mineralogy of the local sediments.⁵ Moreover, the sulfate exceedances, unaccompanied as they are here with an associated elevated boron concentration (let alone an exceedance), indicate that it is likely there are various, other potential sources, both natural and anthropogenic, that are wholly unrelated to coal ash. For these reasons, MWG maintains its position that the monitoring data does not provide an adequate, scientific basis on which to conclude that Pond 3 is causing the alleged violations. Nevertheless, in a good faith effort to resolve the VN, Midwest Generation is willing to agree to the Agency's request to reline Pond 3 with a HDPE liner or its equivalent.

II. Supplemental Compliance Commitment Agreement

Based on and in response to the August 14th meeting discussion, MWG has revised its proposed Compliance Commitment Agreement ("CCA") terms which were submitted in its July 27, 2012 VN response.

The revised CCA terms are set forth below and a draft CCA is enclosed for the Agency's review.

MWG believes this revised CCA should be an acceptable resolution to the VN issued to the Joliet #29 Station. As stated in the original VN response, there is no threat to human health presented by the alleged exceedances of the groundwater standards. Of the seventeen wells installed within 2,500 feet of the site, there are no downgradient wells. The two nearest wells are both wells owned by MWG and are located west and northeast of the main facility building, away from the location of the subject ash pond system. In addition, these wells are screened more than 1,500 feet deep, drawing from an aquifer below the Maquoketa shale confining unit.

⁴ MWG incorporates by reference all of its discussion and explanation of the groundwater monitoring results in its July 27, 2012 VN response.

⁵ "Technical Protocol for Evaluating Natural Attenuation of Chlorinated Solvents in Groundwater" EPA/600/R-98/128, September 1998. Table B.3.3.

The MWG wells are regularly sampled for potable water constituents, and the sampling results have consistently been in compliance with potable water regulations.⁶ Shallow groundwater at the site discharges to the Des Plaines River, but the Des Plaines River is not used as a drinking water source near the station. In the absence of any potable groundwater receptors or use, groundwater at the Joliet #29 site does not pose any risk to human health.

The revised CCA terms are as follows:

- A. The ash ponds will not be used as permanent disposal sites and will continue to function as treatment ponds to precipitate ash. Ash will continue to be removed from the ponds on a periodic basis.
- B. The ash treatment ponds will be maintained and operated in a manner which protects the integrity of the existing liners. During the removal of ash from the ponds, appropriate procedures will be followed to protect the integrity of the existing liners, including operating the ash removal equipment in a manner which minimizes the risk of any damage to the liner.
- C. During the ash removal process, visual inspections of the ponds will be conducted to identify any signs of a breach in the integrity of the pond liners. In the event that a breach of the pond liners is detected, MWG will notify the Agency and will implement a corrective action plan for repair or replacement, as necessary, of the liner. Upon the Agency's approval, and the issuance of any necessary construction permit, MWG will implement the correction action plan.
- D. MWG will continue to monitor the groundwater through the existing eleven groundwater monitoring wells and report its findings to Illinois EPA.
- E. MWG will apply for a construction permit to reline Pond 3 with a high-density polyethylene ("HDPE") liner within 6 months of the effective date of the CCA. A groundwater monitoring schedule will be included in the construction permit.
- F. MWG will complete the work to reline Pond 3 with a high-density polyethylene ("HDPE") liner within 6 months of the receipt of the construction permit.
- G. MWG reserves the right to request the Agency's approval of a cessation of all or some of the groundwater monitoring requirements based on future monitoring results.

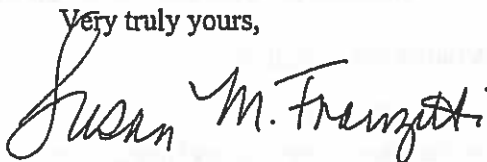
This letter constitutes our supplemental response to, and modified CCA for, the Violation Notice W-2012-00059. MWG also reserves the right to raise additional defenses and mitigation arguments as may be necessary, in defense of the allegations listed in the Violation Notice in the

⁶ See previously submitted Hydrogeologic Assessment of Midwest Generation Electric Generation Stations: Will County Station, Waukegan Station, Joliet 29 Station, Crawford Station, Powerton Station.

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event of any future enforcement. We believe that this supplemental response is responsive to all of the Agency's comments and concerns expressed in our meeting, and represents an appropriate resolution to the VN. Should you have any additional questions or concerns, please do not hesitate to contact me.

Very truly yours,



Susan M. Franzetti
Counsel for Midwest Generation, LLC

Enclosure

cc: Maria L. Race, Midwest Generation, LLC