

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MIDWEST GENERATION LLC,)	
)	PCB 2016-019
)	
Petitioner,)	(Variance -Water)
)	
v.)	
)	
ILLINOIS ENVIRONMENTAL PROTECTION)	
AGENCY,)	
)	
Respondent.		

NOTICE OF FILING

To: Don Brown, Clerk of the Board
 Illinois Pollution Control Board
 James R. Thompson Center
 100 West Randolph, Suite 11-500
 Chicago, Illinois 60601
Via Electronic Mail

Brad Halloran, Hearing Officer
 Illinois Pollution Control Board
 James R. Thompson Center
 100 West Randolph, Suite 11-500
 Chicago, Illinois 60601
Via Electronic Mail

See attached Service List

PLEASE TAKE NOTICE that I have today filed with the Office of the Pollution Control Board a RESPONSE TO THE VARIANCE PETITION for the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Stefanie Diers
 Stefanie Diers
 Assistant Counsel
 Division of Legal Counsel

DATED: March 16, 2017
 1021 N. Grand Ave. East
 P.O. Box 19276
 Springfield, IL 62794-9276
 (217) 782-5544

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MIDWEST GENERATION LLC,)
)
) PCB 2016-019
)
) Petitioner,) (Variance -Water)
)
) v.)
)
) ILLINOIS ENVIRONMENTAL PROTECTION)
) AGENCY,)
)
) Respondent.)

ILLINOIS EPA’S RESPONSE TO THE VARIANCE PETITION

The Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”), by and through its attorney, hereby submits its Response to the Variance Petition pursuant to 415 ILCS 5/38.5(e)(1-4). In support thereof, the Illinois EPA states as follows:

1. On July 21, 2015, the Petitioner filed its Variance Petition from the temperature water quality standards recently adopted by the Illinois Pollution Control Board (“Board”) in *In the Matter of: Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System and Lower Des Plaines River: Proposed Amendments to 301, 302 and 304, R-08-09* (Subdocket D)(June 18, 2015).

2. Since the filing of the Petition, legislative changes have been made with respect to water quality standard variances. On February 24, 2017, P.A. 99-937 was signed into law. This legislation creates a new Section 5/38 of the Illinois Environmental Protection Act, which gives the Illinois Pollution Control Board (“Board”) the authority to adopt time-limited water quality standards.

3. Under Section 38.5(e), the Agency is required to submit a response to the Petition that identifies the discharger or classes of dischargers, identifies the watershed, water bodies, or

waterbody segments affected, identifies the appropriate type of time-limited water quality standard, and recommends prompt deadlines. 415 ILCS 5/38.5

4. The Agency identifies the discharger or classes of dischargers affected by the water quality standard from which relief is being sought as:

The original petition was filed as an individual variance for Midwest Gen (Will County, Joliet 9, and Joliet 29) under 415 ILCS 5/35(a) and (b). Flint Hills filed an individual variance as well. (PCB 16-24). These petitions were atomically converted to petition for a time limited water quality standards on the effective date if P.A. 99-937. If the time-limited water quality standards are amended as individual variances, then the stay pursuant to Section 38(b) of the Illinois Environmental Protection Act, only affects Midwest Gen (Will County, Joliet 9, and Joliet 29) and Flint Hills.

Based on the Agency’s understanding and the review of initial data , the requested time-limited water quality standards relief by Midwest Gen and Flint Hills will affect Stepan Chemical and possibly, but not likely, Exxon Mobil, both of which are located further downstream from the Midwest Gen and Flint Hills discharges. Until additional and sufficient data is collected and evaluated, the Agency suggests including Exxon Mobil.

If the discussions between the petitioners, USEPA, and the Agency determine that and multi-discharge variance or waterbody segment are appropriate, the stay would affect Midwest Gen (Will County, Joliet 9, and Joliet 29), Flint Hills, as well as potentially Stepan, and Exxon Mobil.

The class of discharger is for dischargers of heated effluent.

5. The Agency identifies the watershed, water bodies, or waterbody segments affected by the water quality standard from which relief is sought as:

Midwest Gen – Will County discharges to the Chicago Sanitary and Ship Canal. Midwest Gen (Joliet 9 and Joliet 29), Flint Hills, Stepan Chemical, and Exxon Mobil discharge to the Upper Dresden Island Pool.

The petitioner(s) should provide a map with their petition(s) identifying the outfalls and impacted segment(s).

6. The Agency identifies the appropriate type of time-limited water quality standard, based on factors, such as the nature of the pollutant, the conditions of the affected water body, and the number of and type of dischargers:

The Agency suggests that the relief could be an individual, waterbody segment, or multi-discharger time-limited water quality standard. The Agency or Midwest Gen will update the Board once a decision is reached as to what the appropriate relief should be.

7. The Agency recommends, for purposes of 415 ILCS 5/38.5(h), prompt deadlines for the classes of dischargers to file a substantially compliant petition as:

The Agency suggests that an amended petition should be filed with Board no later than 90 days after the adoption of the rules the Agency will be proposing pursuant to 415 ILCS 5/38.5(k).

WHEREFORE, the Agency respectfully submits its Response.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

By: s/Stefanie N. Diers
Stefanie N. Diers
Assistance Counsel
Division of Legal Counsel

DATED: March 16, 2017

1021 N. Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276
(217) 782-5544

CERTIFICATE OF SERVICE

I, the undersigned, an attorney, state that I have served the attached the NOTICE OF FILING and a RESPONSE TO THE VARIANCE PETITION for the Illinois Environmental Protection Agency upon the person to whom it is directed by electronic email to the following persons:

Don Brown, Clerk of the Board
Brad Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601-3218

Susan M. Franzetti
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Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Stefanie Diers
Stefanie Diers
Assistant Counsel
Division of Legal Counsel

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