

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF: )  
)  
WATER QUALITY STANDARDS AND )  
EFFLUENT LIMITATIONS FOR THE ) R08-09 Subdocket D  
CHICAGO AREA WATERWAY SYSTEM ) (Rulemaking - Water)  
AND THE LOWER DES PLAINES RIVER: )  
PROPOSED AMENDMENTS TO 35 Ill. )  
Adm. Code Parts 301, 302, 303 and 304 )

NOTICE OF FILING

TO: John Therriault, 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 today filed with the Illinois Pollution Control Board, Midwest Generation L.L.C.'s Comments to Illinois Pollution Control Board's Second Notice Opinion and Order R08-09 (Subdocket D) Proposed Thermal Water Quality Standards, a copy of which is herewith served upon you.

Dated: June 1, 2015

MIDWEST GENERATION, L.L.C.

By: /s/ Susan M. Franzetti  
One of Its Attorneys

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**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that a true copy of the foregoing Notice of Filing and Midwest Generation L.L.C.'s Comments to Illinois Pollution Control Board Second Notice Opinion and Order R08-09 (Subdocket D) Proposed Thermal Water Quality Standards were filed electronically on June 1, 2015 with the following:

John Therriault, 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 mailed by First Class Mail, postage prepaid, on June 1, 2015 to the parties listed on the foregoing Service List.

/s/ Susan M. Franzetti



**MIDWEST GENERATION LLC COMMENTS TO ILLINOIS POLLUTION CONTROL BOARD  
SECOND NOTICE OPINION AND ORDER R08-09 (SUBDOCKET D)  
PROPOSED THERMAL WATER QUALITY STANDARDS**

June 1, 2015

**SUMMARY**

If finalized in its current form, the Illinois Pollution Control Board's (the "Board") proposed thermal water quality standard for the Chicago Sanitary and Ship Canal and Lower Des Plaines River would, without special and uncertain thermal variance relief, result in the closure of certain industrial facilities along the Chicago Sanitary and Ship Canal and the Lower Des Plaines River. Midwest Generation LLC ("MWG") operates three electric generating stations with thermal discharges that would be affected by the proposed rule. The three electric generation stations would not be able to comply with the proposed General Use thermal water quality standards. The IPCB's proposed three-year extension of the effective date of these standards would not solve the problem because three years is not enough time to develop the appropriate thermal standards for these thermal discharges. MWG supports a six-year extension of the thermal water quality standards for existing sources to allow enough time to (1) design and obtain concurrence from regulators on which studies should be performed, (2) conduct the biological and thermal studies, (3) consult with regulators on the studies' results and proposed variance terms; (4) prepare a thermal variance petition for filing with the Board and (5) allow adequate time for both the Board variance proceeding and subsequent U.S. EPA review of any Board-approved thermal variance(as well as possible legal challenges).

**TIME TO OBTAIN CONCURRENCE AND PROCESS SITE-SPECIFIC VARIANCES**

The Board's Second Notice Opinion proposes revised thermal water quality standards for the Chicago Area Waterway System (CAWS) and the Lower Des Plaines River (LDPR) that are significantly more stringent than existing thermal water quality standards, particularly for thermal discharges to the Aquatic Life Use B (ALU B) and the Upper Dresden Island Pool (UDIP) water segments at issue in the UAA Subdocket D. ALU B waters include the Chicago Sanitary and Ship Canal (CSSC) and the Brandon Pool, which is located immediately downstream of the CSSC. The UDIP use designation includes solely the stretch of the LDPR located from the I-55 Bridge upstream to the Brandon Pool. The Board's Second Notice Opinion and Order proposes to adopt the existing General Use thermal water quality standards as the new thermal water quality standards for the ALU B and UDIP water segments, as well as for other waterbodies in the CAWS previously classified as Aquatic Life Use A (ALU A) waters in the prior UAA R08-09 (Subdocket C) rulemaking. The ALU A, ALU B and UDIP use designations apply to waters that do not fully attain the Clean Water Act's fishable goals for aquatic life. By regulatory definition, these three use designations are lower quality waters than those Illinois waters classified as General Use waters. Nevertheless, the Board's Second Notice Opinion and Order proposes to adopt the General Use thermal water quality standards for the ALU A, ALU B and UDIP use waters. The General Use thermal water quality standards are the strictest of the existing thermal water quality standards under Illinois law. As the Subdocket D First Notice Opinion and Order provides, the IPCB has selected the proposed General Use thermal water quality standards for these waters "by default" because the IPCB did not find acceptable any of the alternative standards proposed by the rulemaking participants. The IPCB expressly acknowledges that existing thermal dischargers who participated in the rulemaking may not be able to comply with the proposed General Use thermal standards and may need to seek alternative relief. The Board proposes to address the existing thermal dischargers' inability to comply by extending the effective date of the thermal standards by three years.



Page 2

MWG operates three electric generating stations with thermal discharges that would be affected by the proposed rule. The Will County Station discharges to the CSSC (a Use B water). The two Joliet Stations discharge to the UDIP Use waters, located downstream of the CSSC. The three electric generation stations would not be able to comply with the proposed General Use thermal water quality standards. The IPCB's proposed three-year extension of the effective date of these standards would not provide adequate regulatory relief to ensure that appropriate thermal standards for these thermal discharges will be applied before the expiration of the proposed extension.

### **The Proposed Three-Year Extension is Insufficient**

In proposing a three-year extension of the General Use thermal standards, the IPCB expressed a preference that any revision of the existing thermal water quality standards for these waters should instead start with a rulemaking to update the General Use standards using current science and consistent methods which would then be followed by a second rulemaking to develop new thermal standards for lower use waters like the CAWS and UDIP. (Second Notice Order at pp. 71, 78-79) It is unreasonable to expect that these two sequential rulemakings could be initiated and completed within a three-year period. Moreover, it is unreasonable to enact "temporary" thermal standards for these waters which threaten to cause the shutdown of MWG's electric-generating stations and the concomitant loss of jobs. Further, given the multi-year effort behind the thermal standards proposal, it is highly improbable that the Illinois Environmental Protection Agency and the IPCB will complete the process of two thermal standards rulemakings within a three-year period.

The Board's proposed three-year extension of the proposed General Use thermal standards' effective date would not provide an adequate amount of time for individual thermal dischargers to seek and obtain alternative thermal standards relief. The IPCB's Second Notice Order (at p. 15) indicates that before seeking such relief, MWG needs to collect additional "more recent" biological data on these waterways, which necessitates the design and implementation of future in-stream biological studies to collect such additional data. Such in-stream studies usually require a minimum of two years to collect such data and the warmer summer months need to be included in the study period. Because there is not an adequate amount of time to design and begin implementing such studies during the summer of 2015, the earliest that such studies could begin collecting such warm weather data is in the summer of 2016. Upon completion of the studies, additional time is then needed to evaluate the new data, consult with regulators regarding the studies' findings and the proposed thermal variance terms, and to initiate the process for obtaining alternative thermal standards relief. All of this could not be accomplished in three years.

For these reasons, the adoption of section 302.408 of the proposed Second Notice Order rules should be amended to provide for a six-year extension for existing thermal dischargers in the effective date of the General Use Thermal Standards.

Sincerely,

A handwritten signature in blue ink that reads "Jonathan Baylor". The signature is written in a cursive style with a large, sweeping flourish at the end.

Jonathan Baylor  
Vice President, Asset Management