

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:)	
)	AS 2021-003
Petition of Midwest Generation, LLC)	
for Adjusted Standards from)	(Adjusted Standard)
35 Ill. Admin. Code, Part 845)	
(Waukegan Station))	


NOTICE OF ELECTRONIC FILING

To: Attached Service List

PLEASE TAKE NOTICE that on October 18, 2021, I electronically filed with the Clerk of the Illinois Pollution Control Board ("Board") the **ENVIRONMENTAL ORGANIZATIONS' RENEWED REQUEST FOR PUBLIC HEARING**, copies of which are served on you along with this notice.

Dated: October 18, 2021

Respectfully Submitted,



Jennifer Cassel (IL Bar No. 6296047)
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ENVIRONMENTAL ORGANIZATIONS' RENEWED REQUEST FOR PUBLIC HEARING

Pursuant to 35 Ill. Adm. Code 104.420(a), Clean Power Lake County, Earthjustice, Environmental Law and Policy Center, Prairie Rivers Network, and Sierra Club (collectively, "Environmental Organizations) renew our request for a public hearing in the above-referenced matter. In support of that request, the Environmental Organizations incorporate as if fully set out herein their previously-submitted request for hearing, filed on June 7, 2021, in this matter, and ask that a hearing be held on Midwest Generation, LLC's Amended Petition for an Adjusted Standard And A Finding of Inapplicability For Waukegan Station, filed on September 17, 2021, for the reasons expressed in our June 7, 2021 request for hearing.

In addition, because the COVID pandemic continues to pose a danger for Illinois residents¹ and the need to travel to either Chicago or Springfield could, for some staff or members of our organizations, limit their ability to participate in the hearing (whether due to the inability to travel or limits on travel associated with COVID risks), we request that the hearing be held in a hybrid manner similar to the public hearings held in R2020-19. If a full hybrid hearing is not possible, we request that the portion of the hearing dedicated to oral public comment be conducted in a hybrid manner.

Finally, we request that the Board act to ensure that the delay of the recommendations required for this adjusted standard petition to move forward is kept to a minimum. We understand that, notwithstanding the Board's extension of Illinois EPA's recommendation deadline for this Adjusted Standard petition to Nov. 22, 2021, Illinois EPA has informed Waukegan leaders that it does not plan to submit until **January 31, 2022** its recommendation on Midwest Generation's request to exclude the leaking Old Pond from Part 845. See attached presentation by Illinois EPA. The Coal Ash Pollution Prevention Act requires prioritization of the closure of CCR surface impoundments in areas of environmental justice concern, such as Waukegan. Consistent with that mandate, this adjusted standard proceeding should be concluded as soon as possible to ensure prompt, safe closure of leaking coal ash impoundments at the site.

Thank you for your consideration of this request.

¹ All but three counties in Illinois are currently classified by the Illinois Department of Public Health as "high transmission" counties, with the remaining three classified as "substantial transmission." See <https://www.dph.illinois.gov/covid19> (viewed October 7, 2021).

Respectfully Submitted,

Dulce Ortiz
Clean Power Lake County

Jennifer Cassel
Mychal Ozaeta
Earthjustice

Kiana Courtney
Environmental Law & Policy Center

Andrew Rehn
Prairie Rivers Network

Faith Bugel
On behalf of Sierra Club



BUREAU OF WATER WAUKEGAN POWER STATION: PART 845 - CCR SURFACE IMPOUNDMENTS

Darin LeCrone, P.E.

Manager, Permit Section

Division of Water Pollution Control

CCR STATUTE AND REGULATIONS

- On July 30, 2019, Governor Pritzker signed Public Act 101-171 which directed the Illinois Pollution Control Board (IPCB) to adopt rules for a coal combustion residuals (CCR) surface impoundment permitting program. This amendment to the Act requires additional protections and closure requirements for CCR Surface Impoundments (also known as coal ash ponds) at electric utilities and independent power producers.
- Final Rule – 35 Ill. Adm. Code 845 - adopted by the Board in April 2021.
- There are 23 site locations - the Illinois EPA recognizes 72 CCR surface impoundments at power generating facilities, based on best available information.

CCR PERMITTING TIMELINE

- The rule requires all facilities to submit **initial operating permit** applications to the Illinois EPA by **October 31, 2021**.
- **Closure construction permit** applications in EJ areas are due **February 2022**.

WAUKEGAN POWER STATION – COAL ASH PONDS

- IEPA recognizes 3 CCR Surface Impoundments subject to Part 845: East Pond, West Pond & Old Pond.
- NRG acknowledges East Pond & West Pond are subject to 40 CFR Part 257 and Ill. Adm. Code Part 845.
- NRG disputes that Old Pond is subject to Part 845.

WAUKEGAN POWER STATION – GROUNDWATER STANDARDS

- In 2012, IEPA issued a violation notice (VN) to NRG Waukegan for exceedances of Class I groundwater standards. Continued groundwater monitoring indicated a source other than East or West Ponds.
- Additional groundwater monitoring conducted indicates exceedances of Groundwater Protection Standards.
- IEPA will evaluate the adequacy of the facility's groundwater monitoring system and data during the review of the application for the Initial Operating Permit.
- Exceedances of groundwater protection standards under Part 845 requires an Alternative Source Demonstration or corrective action.

PERMITTING - PUBLIC PARTICIPATION

- **Initial Operating Permit:** Requires a 45-day public notice period with opportunity to submit written comments and request a public hearing.
- **Construction Permit:** Requires a 45-day public notice period with opportunity to submit written comments and request a public hearing. Facility will be required to hold 2 public meetings to outline their chosen closure method and discuss closure alternatives. The meetings must be held at least 30 days prior to submittal of a construction permit application.
- At least 30 days prior to the public meetings, the applicant must post on their publicly available website, all documentation relied upon in making their tentative application.
- If located in an area with significant non-English speaking residents, the notifications must be made in both English and the appropriate non-English language, and translation services must be provided at the meetings.
- Within 14 days after the public meetings, the applicant must distribute a general summary of the issues raised by the public, as well as a response to those issues.

WAUKEGAN POWER STATION – AGENCY DECISION

- The Agency will provide notice of its final permitting decision, along with responses to comments received during the public notice, and public hearing (if applicable).
- Notice of the final decision will be made to the applicant, to any person who provides comments or an email address to the Agency during the public notice or hearing process, and to any person on the Agency's listserv for the facility.
- Such a notice will briefly describe any significant changes or revisions made to the permit.

WAUKEGAN POWER STATION – NRG ADJUSTED STANDARD REQUESTS

- NRG filed an adjusted standard (AS) petition with Illinois Pollution Control Board on 5/11/21
- Petition was filed timely resulting in an automatic stay of Part 845 provisions for which relief sought
- NRG seeks inapplicability of Part 845 relative to Old Pond
- Initial petition sought reuse of existing HDPE liner in East Pond for low volume waste streams unrelated to coal ash

WAUKEGAN POWER STATION – NRG ADJUSTED STANDARD REQUESTS CONT.

- NRG filed an amended adjusted standard petition with the Board on 9/17/21
- The amended petition still seeks inapplicability of Part 845 relative to Old Pond
- Amended petition seeks reuse of existing HDPE liner in West Pond for low volume waste streams (not ash related)
- Amended petition states that East Pond will be closed in place

WAUKEGAN POWER STATION – NRG ADJUSTED STANDARD REQUESTS CONT.

- The Agency intends to file Adjusted Standard recommendation with the Board for the Old Pond applicability petition by 1/31/22
- The Agency intends to file the Adjusted Standard recommendation with the Board for the West Pond liner petition as a separate recommendation
- The Adjusted Standard petitions will not affect the due date of the initial operating permit application.
- Depending on the Board's final decisions on the adjusted standard petition, the date of closure construction permit applications may be changed
- Station closure scheduled for June 2022

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CERTIFICATE OF SERVICE

The undersigned, Jennifer Cassel, an attorney, certifies that I have served by email the Clerk and by email the individuals with email addresses named on the Service List provided on the Board's website, available at <https://pcb.illinois.gov/Cases/GetCaseDetailsById?caseId=17032>, a true and correct copy of the **ENVIRONMENTAL ORGANIZATIONS' RENEWED REQUEST FOR PUBLIC HEARING**, before 5 p.m. Central Time on October 18, 2021. The number of pages in the email transmission is 15 pages.

Dated: October 18, 2021

Respectfully Submitted,

/s/ Jennifer Cassel

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