

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MIDWEST GENERATION, LLC	)	
& INEOS JOLIET, LLC,	)	
Petitioners,	)	
v.	)	PCB 16-19 (Midwest Generation)
	)	PCB 16-24 (INEOS)
ILLINOIS ENVIRONMENTAL	)	(Time-Limited Water Quality Standard)
PROTECTION AGENCY	)	(Consolidated)
Respondent.	)	

**NOTICE OF FILING**

To:

Don Brown, Clerk of the Board Illinois Pollution Control Board 60 E. Van Buren Street Suite 630 Chicago, IL 60605 <a href="mailto:don.brown@illinois.gov">don.brown@illinois.gov</a>	Bradley P. Halloran Hearing Officer Illinois Pollution Control Board 60 E. Van Buren Street Suite 630 Chicago, IL 60605 <a href="mailto:Brad.Halloran@illinois.gov">Brad.Halloran@illinois.gov</a>
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**(SEE PERSONS ON ATTACHED SERVICE LIST)**

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board Midwest Generation, LLC's Motion for Voluntary Dismissal, a copy of which is herewith served upon you.

Respectfully submitted,

Dated: September 8, 2023

MIDWEST GENERATION, LLC

By: /s/ Vincent R. Angermeier

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**CERTIFICATE OF SERVICE**

I, the undersigned, certify that I have served the attached Midwest Generation, LCC's Motion for Voluntary Dismissal, via electronic mailing to the following:

<p>Sara Terranova Illinois Environmental Protection Agency 1021 N. Grand Avenue East P.O. Box 19276 Springfield, IL 62794-9276 <a href="mailto:sara.terranova@illinois.gov">sara.terranova@illinois.gov</a></p>	<p>Albert Ettinger Law Firm of Albert Ettinger 53 W. Jackson, Suite 1664 Chicago, IL 60604 <a href="mailto:ettinger.albert@gmail.com">ettinger.albert@gmail.com</a></p>
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Dated: September 8, 2023

/s/ Vincent R. Angermeier

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PROTECTION AGENCY	)	(Consolidated)
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**MOTION FOR VOLUNTARY DISMISSAL**

Pursuant to 35 Ill. Adm. Code 101.514, Midwest Generation, LLC (MWGen), by one of its attorneys, Vincent R. Angermeier, hereby moves the Illinois Pollution Control Board (“Board”) to dismiss the above-captioned proceeding.

In support of this motion, the MWGen states as follows:

1. On July 1, 2015, MWGen filed a Petition for Variance for the WCGS and the Joliet Stations, pursuant to Section 35 of the Illinois Environmental Protection Act (the Act).

2. On February 24, 2017, the variance petition was automatically converted to a Petition for a Time-Limited Water Quality Standard (TLWQS) by operation of 415 ILCS 5/38.5(c), 40 C.F.R. § 131.14.

3. On June 27, 2018, MWGen filed an amended TLWQS petition (the “TLWQS Petition”). The TLWQS Petition sought TLWQS variances connected to two segments of the Upper Illinois Waterway: (1) The Brandon Pool & Chicago Sanitary and Shipping Canal, both thermally affected by the WCGS; and (2) the Upper Dresden Island Pool (UDIP), the receiving water for the Joliet Stations.

4. On July 25th, 2019, the Board consolidated the MWGen TLWQS proceeding with PCB 16-14, which concerns a TLWQS petition filed by INEOS on July 21, 2015, and amended on July 26, 2018 (the “Consolidated TLWQS Proceeding”).

5. On November 7th, 2019, the Board granted the petition for ATEL relief for the WCGS. (PCB 18-58).

6. On November 27th, 2019, MWGen, INEOS, and the Illinois Environmental Protection Agency (the “Agency”) moved that the Board stay the Consolidated TLWQS Proceeding.

7. The joint motion argued that MWGen planned on seeking ATEL relief for each of the Joliet Stations. If granted, MWGen’s TLWQS petition would be mooted by the combined effect of those ATELS and the already-existing WCGS ATEL.

8. On December 5th, 2019, the Board granted the motion to stay proceedings. The Order states that: “The Board has reviewed the joint motion and agrees that it would now be more efficient to use the parties’ and the Board’s resources to review [MWGen]’s expected petition for alternative thermal effluent limitations than to proceed with IEPA’s recommendation on and the Board’s consideration of the TLWQS petitions.”

9. The Board’s order states further that the stay would last until the Board “reaches a final decision on [MWGen]’s petition for alternative limitations for the Joliet Stations.” PCB 16-19, *Order Granting Stay*, at p. 2 (Dec. 5, 2019).

10. On December 30th, 2019, MWGen filed ATEL petitions for each of the Joliet Stations. The proceedings were docketed at PCB 20-28 and PCB 20-39, and the Board consolidated those proceedings on February 6th, 2020.

11. In support of the ATELS requested in the petitions, MWGen filed Thermal Demonstration Reports (prepared pursuant to 35 Ill. Admin. Code 106.1120) showing that those

limits would assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in the UDIP.

12. The Thermal Demonstration Reports accounted for the fact that the UDIP receives additional thermal loading from a downstream discharger, Flint Hills Resources (INEOS's predecessor-in-interest). The report found that, so long as INEOS continues discharging heat at historical levels, no adverse ecological impact would be created by granting alternative thermal effluent relief to the Joliet Stations.

13. On July 8th, 2021, the Board granted ATEL relief for the Joliet Stations but did not extend that relief to the downstream dischargers as suggested by the Illinois Environmental Protection Agency (the "Agency").

14. No person filed an appeal challenging the Board's July 8, 2021 Order.

15. On August 3, 2021, MWGen and INEOS filed a Second Joint Motion to Extend Stay of Proceedings, noting that the stay protections remained necessary, because the ATEL relief would be of unclear effect until incorporated into each Station's NPDES permit.

16. On August 17, 2021, the Hearing Officer granted the Second Joint Motion, but directed that the stay of proceedings would expire on January 1, 2022.

17. On November 17, 2021, the Agency reissued the NPDES permit for the WCGS. (IL0002208). The permit incorporates the alternative thermal effluent limitations established by the Board.

18. On December 9, 2021, MWGen filed a Third Motion to Extend Stay of Proceedings, noting that the stay protections remained necessary, because the ATEL relief for the Joliet Stations would be of unclear effect until incorporated into each Station's NPDES permit.

19. On December 21, 2021, the Hearing Officer granted the Motion and extended the stay of proceedings to May 1, 2022.

20. On April 25th, 2022, MWGen filed a Fourth Motion to Extend Stay of Proceedings, noting that the stay protections remained necessary, because the ATEL relief for the Joliet Stations would be of unclear effect until incorporated into each Station's NPDES permit.

21. On June 24, 2022, the Hearing Officer granted the Motion and extended the stay of proceedings to September 1, 2022.

22. On August 17, 2022, MWGen filed a Fifth Motion to Extend Stay of Proceedings, noting that the stay protections remained necessary, because the ATEL relief for the Joliet Stations would be of unclear effect until incorporated into each Station's NPDES permit.

23. On August 22, 2022, the Hearing Officer granted the motion and extended the stay of proceedings to December 1, 2022.

24. On January 23, 2023, MWGen filed a Sixth Motion to Extend Stay of Proceedings, noting that the stay protections remained necessary, because the ATEL relief for the Joliet Stations would be of unclear effect until incorporated into each Station's NPDES permit.

25. On January 25, 2023, the Hearing Officer granted the motion and extended the stay of proceedings to March 1, 2023.

26. On March 6, 2023, MWGen filed a Seventh Motion to Extend Stay of Proceedings, noting that the stay protections remained necessary, because the ATEL relief for the Joliet Stations would be of unclear effect until incorporated into each Station's NPDES permit.

27. On June 27, 2023, the Hearing Officer granted the motion and extended the stay of proceedings to September 12, 2023.

28. On August 9, 2023, the Agency issued a draft NPDES permit for the Joliet 9 Station, beginning a public comment period that will end September 8, 2023.

29. Although the Agency has not yet issued a draft NPDES permit for the Joliet 29 Station, MWGen believes that a draft permit for public review will be released in the near future.

30. This proceeding has been stayed multiple times because of MWGen's longstanding uncertainty over the legal effect of Board's July 8, 2021 Order granting the ATELS. If the ATELS have no legal impact until incorporated into the respective NPDES permits for the two Joliet Stations, then without this TLWQS proceeding, MWGen would be subject to thermal water quality standards that the Board has determined to be more stringent than necessary to assure the protection and propagation of the waterbody's balanced, indigenous population of shellfish, fish and wildlife.

31. Because of the Agency's progress in reissuing the NPDES permits and other developments, MWGen no longer believes that the temporary stay of the effectiveness of the underlying water quality standards granted by Section 38.5(h)(2) of the Act is necessary.

32. Therefore, MWGen requests that the Board dismiss this proceeding and close the docket.

33. Counsel for the Agency does not object to this motion.

34. Counsel for INEOS does not object to this motion.

WHEREFORE, Midwest Generation, LLC, respectfully requests respectfully requests that the Illinois Pollution Control Board dismiss this proceeding and close the docket.

Respectfully submitted,

Midwest Generation, LLC

By: /s/Vincent R. Angermeier  
One of Its Attorneys

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