

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

DYNEGY MIDWEST GENERATION, INC.,)
)
Petitioner,)
)
v.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION Agency,)
)

PCB 09-48
Variance – Air

NOTICE OF FILING

To:

John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276

PLEASE TAKE NOTICE that we have today electronically filed with the Office of the Clerk of the Pollution Control Board **MOTION TO FILE AMENDED PETITION FOR VARIANCE, AMENDED PETITION FOR VARIANCE, and AFFIDAVIT OF ARIC D. DIERICX**, copies of which are herewith served upon you.



Kathleen C. Bassi

Dated: February 18, 2009

Kathleen C. Bassi
Stephen J. Bonebrake
SCHIFF HARDIN, LLP
6600 Sears Tower
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

DYNEGY MIDWEST GENERATION, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 09-048
)	Variance – Air
ILLINOIS ENVIRONMENTAL)	
PROTECTION Agency,)	
)	
Respondent.)	

MOTION TO FILE AMENDED PETITION FOR VARIANCE

NOW COMES Petitioner, DYNEGY MIDWEST GENERATION, INC. (“DMG” or “Petitioner”), by and through its attorneys, SCHIFF HARDIN LLP, and, pursuant to 35 Ill.Adm.Code §§ 104.226(a) 104.500 and the Board’s Order in this matter dated February 5, 2008 (“Order”), moves the Board to grant Petitioner leave to file an Amended Petition for Variance.¹ In support of its Motion to File Amended Petition for Variance, Petitioner states as follows:

1. On January 9, 2009, DMG filed a Petition for Variance, incorporated by reference in the Amended Petition for Variance.
2. On February 5, 2009, the Board issued the Order identifying “informational deficiencies” in the Petition for Variance and directed DMG to provide certain information. The

¹ Pursuant to the Order DMG has characterized the document it here seeks leave to file as an Amended Petition for Variance. As discussed in the accompanying Amended Petition for Variance and a Motion for Reconsideration filed at the same time as this Motion and the Amended Petition, DMG believes the Amended Petition would be more appropriately characterized as a supplement to its Petition for Variance or as a response to a request for information. By characterizing of the Amended Petition its Amended Petition for Variance, DMG does not waive any right to appeal the Board’s Order or any subsequent dismissal of the Petition or Amended Petition for Variance.

Board determined in the Order that this additional information would constitute an amended petition.

3. The Order granted DMG until March 9, 2009, to file an amended petition.

4. The Amended Petition for Variance accompanying this Motion for Leave to File Amended Petition for Variance is in response to the Board's Order.

5. DMG will suffer irreparable harm if the Board does not grant it leave to file its Amended Petition for Variance, because it would then lose the opportunity to obtain the relief sought in the Amended Petition for Variance.

WHEREFORE, for the reasons set forth above, Petitioner DYNEGY MIDWEST GENERATION, INC., respectfully requests that the Board grant it leave to file its Amended Petition for Variance.

Respectfully submitted,

DYNEGY MIDWEST GENERATION, INC.,

by:



One of Its Attorneys

Dated: February 18, 2009

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

DYNEGY MIDWEST GENERATION, INC.,)	
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Petitioner,)	
)	
v.)	PCB 09-048
)	Variance – Air
ILLINOIS ENVIRONMENTAL)	
PROTECTION Agency,)	
)	
Respondent.)	

AMENDED PETITION¹ FOR VARIANCE

NOW COMES Petitioner, DYNEGY MIDWEST GENERATION, INC., by and through its attorneys, SCHIFF HARDIN LLP, and, pursuant to the Board's Order, Sections 35 and 37 of the Environmental Protection Act ("Act"), 415 ILCS 4/34, 37, and 35 Ill. Adm. Code Part 104, Subpart B, respectfully requests that the Board grant the Petitioner a variance from certain provisions of the Illinois Multi-Pollutant Standard ("MPS"), 35 Ill. Adm. Code § 225.233, as applied to Unit 3 at the Baldwin Energy Complex for the limited period beginning July 1, 2009, and ending March 31, 2010. Specifically, DMG seeks a variance at Baldwin Unit 3 from the MPS requirements in 35 Ill. Adm. Code §§ 225.233(c)(1)(A) and 225.233(c)(2)² to inject,

¹ Pursuant to an Order issued by the Board on February 5, 2009 ("Order"), Dynegy Midwest Generation ("DMG" or "Petitioner") has characterized this document as an Amended Petition for Variance. DMG believes it would be more appropriately characterized as a supplement to its Petition for Variance or as a response to a request for information. By characterizing of this document as its Amended Petition for Variance, DMG does not waive any right to appeal the Board's Order or any subsequent dismissal of the Petition or Amended Petition for Variance.

² Hereinafter, references to the Board's rules will be indicated merely by section number rather than by their full citation.

beginning July 1, 2009, halogenated activated carbon³ at a minimum injection rate of 5.0 pounds per million actual cubic feet (“lbs/macf”) exhaust gas flow and from related monitoring, recordkeeping, and reporting provisions at Sections 225.210(b) and (d) and 225.233(c)(5). DMG will suffer arbitrary or unreasonable hardship if the Board does not grant this requested variance.

Pursuant to the Order and Section 104.226(c), DMG incorporates by reference its Petition for Variance filed January 9, 2009 (“Petition for Variance”), in this matter. Further, DMG provides the following additional information in response to the Order and in support of its request for variance:

I. PERTINENT BACKGROUND AND PETITION FOR VARIANCE

1. On January 9, 2009, DMG filed a Petition for Variance.
2. On February 5, 2009, the Board issued an order identifying “informational deficiencies” in the Petition for Variance and directed DMG to provide certain information. The Board determined that this additional information would constitute an amended petition and that, pursuant to Section 104.226(c), DMG was not required to repeat its Petition for Variance.
3. On February 11, 2009, the Clerk of the Board posted a notice on the Board’s website under the docket for this matter indicating that John J. Kim, attorney for the Illinois Environmental Protection Agency (“Agency”) had filed his appearance and that the Agency had filed its certification of publication in this matter.
4. All other elements and statements contained in the Petition for Variance remain true, correct, and pertinent, and DMG requests that the Petition for Variance be incorporated herewith, pursuant to Section 104.226(c).

³ The terms “halogenated activated carbon” and “sor bent” are used interchangeably in this Amended Petition.

II. ADDITIONAL INFORMATION REQUIRED BY THE BOARD THROUGH ITS ORDER

5. In the paragraphs below, DMG identifies and addresses each of the four informational items that the Board identified in its Order. As stated in the Motion for Reconsideration that was filed at the same time as this Amended Petition, DMG asserts that the Petition for Variance was sufficient and does not, by submitting this additional information, admit that the Petition for Variance was in any way insufficient nor does it waive any rights to appeal it may have by filing this Amended Petition.

Item 1: Dynegy provided a map as Exhibit 1 to the petition from the Agency's "Illinois Annual Air Quality Report 2006" with the superimposed locations of Dynegy's power stations. Would Dynegy please indicate the nearest monitoring station as well as the nearest downwind monitoring station maintained by the Agency that are used for monitoring mercury emissions for each of Dynegy's power stations and identify the specific stations by name and location? See 35 Ill. Adm. Code 104.204(b)(2).

6. In response to this request for information, please see Exhibit 1 to this Amended Petition, which identifies by name and street address the air monitoring stations located nearest to each of DMG's power plants and could at some times be downwind of DMG's power plants. The information for each of these monitoring stations was taken from *2007 Illinois Annual Air Quality Report*, pages 29 through 41.⁴ There is only one air monitoring station that monitors ambient mercury concentrations maintained by the Agency in Illinois. That single monitoring station is generally downwind of DMG's power plants. This station is located at the Northbrook Water Plant in Northbrook, Illinois, in the Chicago area. Attached as Exhibit 2 to this Amended Petition is the Agency's map visually showing the locations of its air monitoring stations with

⁴ Though the 2007 air quality report is dated December 2008, DMG became aware of its availability only after the Petition for Variance was filed. The *2007 Illinois Annual Air Quality Report* is located on the Agency's website at < <http://www.epa.state.il.us/air/air-quality-report/2007/index.html> >.

the locations of DMG's power plants superimposed. It appears that several air monitoring stations were dropped from the Agency's network in 2007, thus DMG has included the updated information.

Item 2: **The petition on page 3 states, "SO₂ is currently generally controlled through the use of low sulfur coal." If possible, would you please quantify the amount and type of coal used at each power station (Baldwin Unit 3, Havana Unit 6, and Hennepin Unit 2) and indicate if that amount and type is expected to change during the proposed variance period. See 35 Ill. Adm. Code 104.204(b)(6).**

7. The Board provided no timeframes regarding the amount of coal "used" at each Baldwin Unit 3, Havana Unit 6, and Hennepin Unit 2 in Item 2 quoted above. In order to identify the amount of coal used, there must be a time during which that amount can be quantified. Therefore, DMG made certain assumptions in order to provide this information. Along with the assumptions are certain caveats that must be explained.

8. There will be no change in the hourly rate of coal use for any of DMG's units as a result of the variance.

9. Baldwin Unit 3 consumed 1,607,118 tons of Powder River Basin ("PRB") coal from July 2007 through March 2008. This nine-calendar month time period (July through March) corresponds to the most recent and complete time for which DMG seeks the variance for Baldwin Unit 3, albeit it two years earlier. DMG chose this timeframe for the comparison requested by the Board because it does not yet know the amount of coal it will use through March 2009; thus, there is currently no historic data regarding the amount of coal for July 2008 through March 2009 to serve as a comparison. Based on the table that is part of Exhibit 6 to the Petition for Variance, DMG projects that it will use 1,887,338 tons of the same type of coal from July 2009 through March 2010, an increase of 280,220 tons. This increase in the amount of coal projected to be used at Baldwin Unit 3 reflects no planned outages during the proposed variance

period for that unit and reflects that there was there was an extended outage at Baldwin Unit 3 in October and November of 2007.

10. Havana Unit 6 used 1,023,128 tons of PRB coal from July through December 2008, the period that is a year prior to the period identified in the Petition for Variance that DMG would inject sorbent at Havana Unit 6 to offset mercury emissions at Baldwin Unit 3. Based on information provided in Exhibit 6 to the Petition for Variance, DMG projects that Havana Unit 6 will burn 1,067,522 tons from July through December 2009. The increase of 44,394 tons of coal projected for the period in 2009 is minimal and assumes no outages of any kind. Further, the increase in projected coal use is not related to the proposed variance.

11. Hennepin Unit 2 used 268,955 tons of PRB coal from July through December 2008. Based on information provided in Exhibit 6 to the Petition for Variance, DMG projects that it will use 494,063 tons from July through December 2009. The extended outage taken from October to December 2008 to install the new baghouse at Hennepin Unit 2 caused the July through December 2008 coal use to be unusually low. The projected coal use for July through December 2009 reflects normal operation, and the incremental 268,955 tons of PRB coal is not an increase related to the proposed variance.

12. DMG does not expect to use coal at Baldwin Unit 3, Havana Unit 6, and Hennepin Unit 2 that is any different in type during the proposed variance period than it has historically used and that was used at these three units during the timeframes identified here between July 2007 and December 2008 (*i.e.*, PRB coal).

Item 3: The "End Date" in the Sargent & Lundy calculations is March 6, 2010. Pet. Exh. 6. The proposed ending date for the variance is March 31, 2010. Would Dynegy please indicate an estimate for how many days the multi-day outage would last for the installation of the ACI system, dry scrubber, and new fabric filter system at Baldwin Unit 3. If it is less than 15 days, would you please calculate the additional potential mercury contribution to the 126.83-pound figure in Exh. 6 for the additional days Baldwin Unit 3 would be operating without the ACI system. See 35 Ill. Adm. Code 104.204(c).

13. The outage at Baldwin Unit 3 in the spring of 2010 will be a major outage. That is, the outage will last approximately 12 weeks. Baldwin Unit 3 will not be operating commencing March 6, 2010, the date reflected in Exhibit 6 to the Petition for Variance. Therefore, there will be no additional amount of mercury emitted by Baldwin Unit 3 beyond March 6 through the end of the proposed variance period (*i.e.*, March 31, 2010).

14. DMG requested that the variance extend through March 31, 2010, so that it would not be required to submit reports for the period between the commencement of the outage and the end of the first quarter of 2010. As the Board will recall, the Petition for Variance includes the monitoring, recordkeeping, and reporting requirements related to the requirement to inject sorbent. Though DMG's report would state that it injected no sorbent from March 6 through March 31, 2010, it would still have to file the report if the variance did not also cover the reporting requirement or ended prior to the end of the quarter.

Item 4: Dynege estimates Baldwin Unit 3 would need 4 million pounds of sorbent at \$1 per pound for the time period from July 1, 2009 through March 31, 2010. Pet. at 12-13. Under the proposed alternative, Dynege estimates Havana Unit 6 and Hennepin Unit 2 would use 2.5 million fewer pounds of sorbent than at Baldwin. Pet at 15. Adding on the cost saved from not dismantling and relocating the ACI system as well as not losing revenue from a multi-day outage in 2009, how much over \$2.5 million would Dynege estimate the total expected savings might be under the proposed variance? See 35 Ill. Adm. Code 104.204(d).

15. The gross margin for a generating unit is generally the difference between its market revenue and the cost of operating the unit (*e.g.*, the cost of fuel and chemicals). The market revenue depends on the timing of an outage.⁵ DMG would be required to take a two-day outage in order to install the sorbent injection system lances at Baldwin Unit 3 if no other unplanned outages occurred within the next several months. Typically, DMG would take this outage over a weekend when demand is less. As a result, the lost gross margin would also be less. The time of year that the outage occurs also affects the gross margin as the market price of electricity varies. The actual projected lost gross margin for any specific weekend is confidential business information. If the Board requires the confidential lost gross margin, DMG would be happy to provide it under the appropriate protections. However, it does not appear to DMG that the confidential projected lost gross margins are necessary for the Board's decision, and so DMG is providing the average of the projected lost gross margins for the weekends during the range of months that DMG would take an outage at Baldwin Unit 3 to install the sorbent injection system lances.

⁵ As discussed in the Motion for Reconsideration, DMG does not agree with the Board's characterization of the injection of sorbent at Havana Unit 6 and Hennepin Unit 2 as "alternative" means of compliance. Rather, injecting sorbent at these two units is offered to offset any environmental harm that could accrue through not injecting sorbent at Baldwin Unit 3.

16. That average is approximately \$435,000 in lost gross margin. Even though gross margin is not the same as profit (*i.e.*, it does not exclude interest, taxes, and other expenses), it can be added to the potential \$2.5 million that may be saved from using less sorbent at Havana Unit 6 and Hennepin Unit 2 during the variance period and to the \$100,000 cost of having to install the sorbent injection lances to estimate DMG's total savings resulting from the granting of this variance. This savings estimate is approximately \$3,035,000 – if the Board grants the variance before an unplanned unit outage is taken. The savings estimate is approximately \$2,500,000 if the Board grants the variance after the sorbent injection lances are installed.

17. Because of the lead times necessary for DMG to arrange for the installation of the sorbent injection system lances and to have sorbent on site in order for it to comply with the July 1, 2009, deadline for injecting sorbent at Baldwin Unit 3, DMG will experience the two-day outage at Baldwin Unit 3 regardless of the Board's decision if the decision comes after May 7, 2009, and barring any other relief that may be available, such as a provisional variance to bridge the time gap. If the Board's decision is delayed after its May 7th meeting, the only savings would be the difference in sorbent cost, as indicated above.

WHEREFORE, for the reasons set forth above and in the Petition for Variance, DYNEGY MIDWEST GENERATION, INC. respectfully requests that the Board grant DMG a variance from the MPS requirement that Baldwin unit 3 inject sorbent during the period from

July 1, 2009, through March 31, 2010, and from the related monitoring, recordkeeping, and reporting requirements.

Respectfully submitted,

DYNEGY MIDWEST GENERATION, INC.,

by:



One of Its Attorneys

Dated: February 18, 2009

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Exhibit 1

Summary of Nearest IEPA Air Monitoring Locations

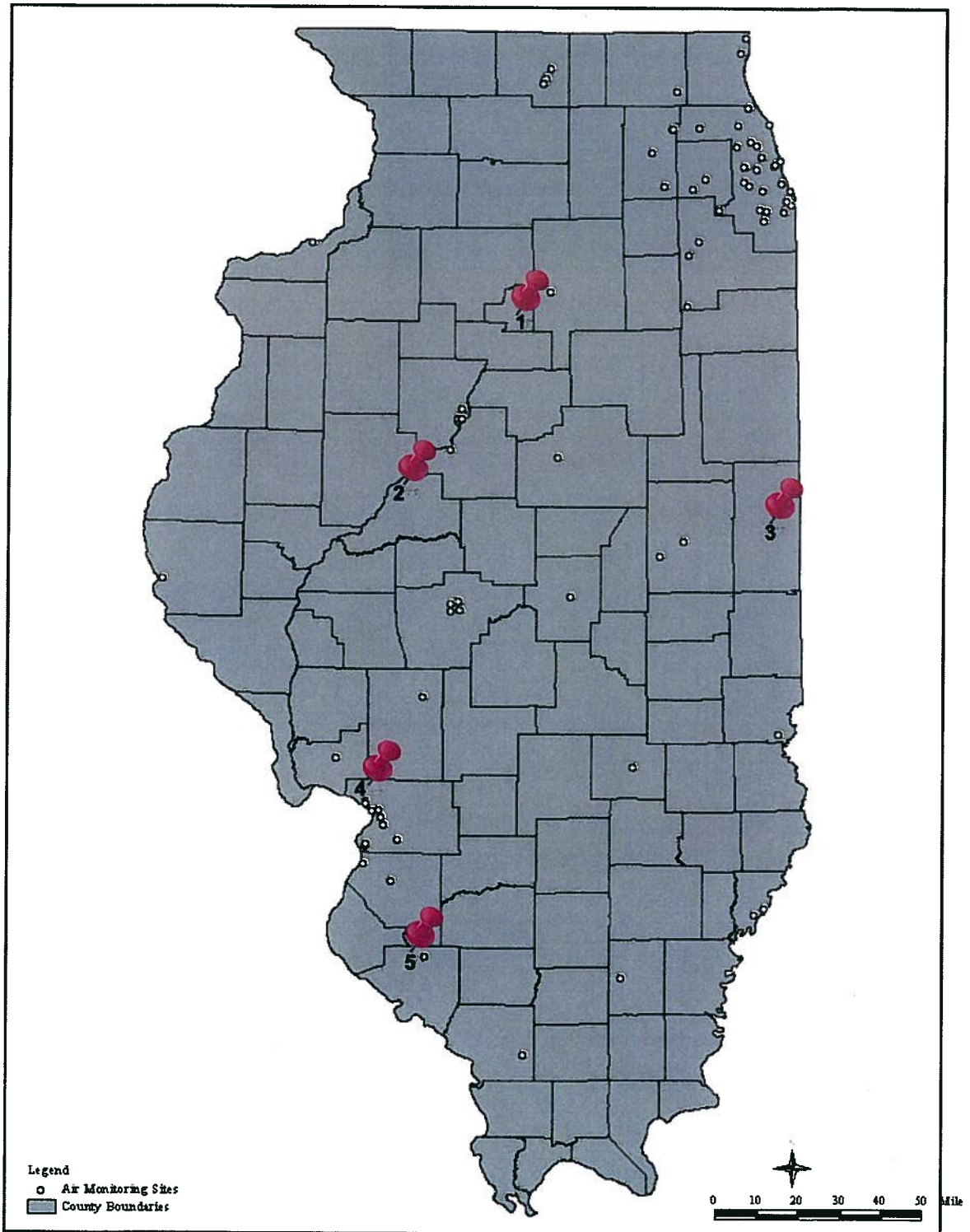
SUMMARY OF NEAREST IEPA AIR MONITORING LOCATIONS						
	Name	AIRS Code	Address	Equipment		
Dynegy Power Station						
Baldwin Energy Complex	IEPA Trailer	11500001	Hickory Grove & Fallview, Houston	NAMS - PM10; SLAMS PM2.5		
Havana Power Station	Fire Station #3	17900004	272, Derby, Pekin	NAMS - SO2		
Hennepin Power Station				SLAMS - PM10, PM2.5, SO2; SPMS - WSWMD, PM2.5		
	Booker T. Washington Elem. Sch	9900007	308 Portland Ave., Oglesby			
Vermilion Power Station		0190004	606 E. Grove Road, Champaign	SLAMS - O3, PM2.5		
Wood River Power Station	Clara Barton Elem	1190008	409 Main Street, Alton	SLAMS - O3		
	SIU Dental Clinic	1192009	1700 Annex. St. Alton	SLAMS - PM2.5 Spec.		
	VIM Test Station	1193009	1710 Vaughn Road, Wood River	SLAMS - SO2		
SUMMARY OF NEAREST IEPA MERCURY MONITORING LOCATIONS						
Baldwin Energy Complex	Northbrook Water Plant	0314201	750 Dundee Road, Northbrook	SPMS - Hg, TOX, TSP		
Havana Power Station	Northbrook Water Plant	0314201	750 Dundee Road, Northbrook	SPMS - Hg, TOX, TSP		
Hennepin Power Station	Northbrook Water Plant	0314201	750 Dundee Road, Northbrook	SPMS - Hg, TOX, TSP		
Vermilion Power Station	Northbrook Water Plant	0314201	750 Dundee Road, Northbrook	SPMS - Hg, TOX, TSP		
Wood River Power Station	Northbrook Water Plant	0314201	750 Dundee Road, Northbrook	SPMS - Hg, TOX, TSP		

Exhibit 2

Statewide Map of Air Monitoring Locations with the Locations of DMG's Power Stations Superimposed

- 1 – Hennepin
- 2 – Havana
- 3 – Vermilion
- 4 – Wood River
- 5 – Baldwin

Statewide Map of Air Monitoring Locations



CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 18th day of February, 2009, I have served electronically the attached **MOTION TO FILE AMENDED PETITION FOR VARIANCE, AMENDED PETITION FOR VARIANCE, and AFFIDAVIT OF ARIC D. DIERICX** upon the following persons:

John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

and by first class mail, postage affixed, upon:

John J. Kim, Managing Attorney
Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue, East
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