

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

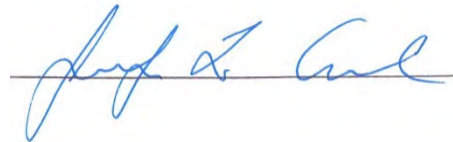
In the Matter of:)	
)	
SIERRA CLUB, ENVIRONMENTAL)	
LAW AND POLICY CENTER,)	
PRAIRIE RIVERS NETWORK, and)	
CITIZENS AGAINST RUINING THE)	
ENVIRONMENT)	
)	PCB No-2013-015
Complainants,)	(Enforcement – Water)
)	
v.)	
)	
MIDWEST GENERATION, LLC,)	
)	
Respondents)	

NOTICE OF ELECTRONIC FILING

To: Attached Service List

PLEASE TAKE NOTICE that on November 15, 2012, I electronically filed with the Clerk of the Illinois Pollution Control Board: **CITIZEN GROUPS’ MOTION FOR AN EXTENSION OF TIME TO RESPOND TO RESPONDENT’S MOTION TO DISMISS**, a copy of which is served on you along with this notice.

Respectfully submitted,



Jennifer L. Cassel
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Dated: Nov 15, 2012

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**CITIZEN GROUPS' MOTION FOR AN EXTENSION OF TIME TO RESPOND TO
RESPONDENT'S MOTION TO DISMISS**

NOW COME the Complainants, Sierra Club, Environmental Law and Policy Center (“ELPC”), Prairie Rivers Network, and Citizens Against Ruining the Environment (collectively, “Citizens Groups”), pursuant to 35 Ill. Adm. Code 101.500(d) and 101.522, and request that the Hearing Officer grant Citizens Groups an extension until December 28, 2012, to respond to Respondent Midwest Generation, LLC (“MWG”)’s Motion to Dismiss. In support of this unopposed motion, Citizens Groups state as follows:

1. By agreement and to avoid timing issues with any reply sought by MWG, Citizens Groups propose, and MWG does not oppose, an extension until December 28, 2012 to respond to MWG’s motion to dismiss.
2. A motion for an extension of time may be granted for good cause shown. 35 Ill. Adm. Code 101.522. The Board has “wide discretion in determining what constitutes good cause.” *People v. Env'tl. Health and Safety, Inc.*, PCB 05-51, 2006 Ill. ENV LEXIS 198, *6 (Apr.

6, 2006). In granting motions for an extension of time, the Board has previously found that time needed for information gathering constitutes good cause, *Silbrico Corp. v. Illinois EPA*, PCB 06-11, 2005 Ill. Env. Lexis 608, *2 (Oct. 20, 2005), and that time needed to collect information from a consulting expert constitutes good cause. *McDonough v. Gary Robke*, PCB 00-163, at 1 (July 11, 2002).

3. In June 2012, the Illinois Environmental Protection Agency (“IEPA”) issued Notices of Violation (“NOVs”) to MWG for numerous alleged violations of state groundwater standards at several of MWG’s coal-fired power plants, including Joliet 29, Waukegan, Will County and Powerton. (Mtn. to Dismiss at ¶¶ 2, 5, 8 and 11).

4. On October 3, 2012, Citizens Groups filed a complaint in this proceeding against MWG, alleging 37 violations of open dumping standards, 397 violations of Illinois Class I Groundwater Quality Standards, and 259 violations of Illinois Class II Groundwater Quality Standards at MWG’s Joliet 29, Waukegan, Will County and Powerton coal plants since monitoring began in late 2010. (Compl.)

5. Three weeks later, on October 24, 2012, MWG and IEPA entered into Compliance Commitment Agreements (“CCAs”) for the Joliet 29, Waukegan, Will County and Powerton coal plants concerning the violations alleged in IEPA’s June 2012 NOVs for those plants. (Mtn. To Dismiss at ¶¶ 3, 6, 9 and 12).

6. On November 5, 2012, MWG filed a motion to dismiss Citizen Groups’ complaint. In support of that motion, MWG argues, among other things, that Citizen Groups’ complaint should be dismissed as moot and duplicative because the CCAs “resolve” the allegations in Citizen Groups’ complaint and provide the relief that Citizen Groups request.

(Respondent's Memorandum in Support of its Motion to Dismiss ("Memo in Support") at 13-14, 21-22.)

7. Citizen Groups did not receive the final CCAs until Nov. 5, 2012, when IEPA responded to ELPC's FOIA request for those documents. (*see* Ex. A, email dated Nov. 5, 2012 from Sharon Dowson, IEPA, to Jennifer Cassel forwarding CCAs pursuant to FOIA request).

8. Each CCA involves multiple provisions, some of which direct MWG to install certain liners or cease using certain ash ponds. (Exs. 1-4 to Mtn. to Dismiss.)

9. In order to address MWG's assertions that the CCAs "resolve" Citizens Groups' allegations, Citizens Groups need to thoroughly evaluate the CCAs and the extent to which they resolve, if at all, the violations alleged in our complaint. Citizens Groups note that our analysis of the adequacy of the CCAs will necessarily be incomplete due to the many provisions of the CCAs which call for plans to be developed later (i.e., Groundwater Management Zones, Environmental Land Use Controls, and corrective action plans, among others), but even the incomplete analysis that Citizens Groups can perform of the more defined aspects of the CCAs requires in-depth review by an expert.

10. Citizen Groups have retained an expert to perform an in-depth evaluation of the four CCAs. The retained expert has a variety of competing demands on his time, and will not be able to thoroughly evaluate to what extent, if at all, the CCAs address or remedy Citizens Groups' allegations within the 14-day response period provided for in 35 Ill. Adm. Code 101.500(d).

11. Citizens Groups will be prejudiced if the requested extension is not granted because they will be unable to fully evaluate MWG's assertions and provide this Board with an informed response. Moreover, allowing Citizens Groups the time to supply the Board with a

thorough response to MWG's assertions in our response to the Motion to Dismiss will obviate the need for further briefing on this issue, preserving the Board's resources.

WHEREFORE, Petitioners request that the Hearing Officer grant Citizens Groups' unopposed request for an extension until December 28, 2012, to respond to MWG's Motion to Dismiss.

Respectfully submitted,



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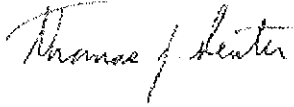
Attorney for CARE

Exhibit A:

Nov. 5, 2012 email from Sharon Dowson of IEPA to Jennifer Cassel

Thank you for your patience in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Thomas J. Reuter".

Thomas J. Reuter
FOIA Officer (Acting)
Illinois EPA
217.558.5101
www.epa.state.il.us/foia

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **CITIZEN GROUPS' MOTION FOR AN EXTENSION OF TIME TO RESPOND TO RESPONDENT'S MOTION TO DISMISS**

was served to all parties of record listed below by United States Mail, postage prepaid, on November 15, 2012.

/s/ Erin Morse
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