

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

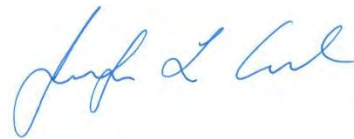
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**NOTICE OF FILING**

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

Attached Service List

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board *Citizens Groups' Motion for Partial Summary Judgment and Memorandum of Law in Support of Citizens Groups' Motion for Partial Summary Judgment*, copies of which are herewith served upon you. The *Memorandum of Law in Support* contains confidential information and confidential exhibits which were redacted for electronic filing. Unredacted copies of the *Memorandum of Law in Support* and the confidential exhibits were filed on paper with the Clerk of the Illinois Pollution Control Board.



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Chicago, IL 60601  
(312) 795-3726  
jcassel@elpc.org

Dated: June 1, 2016

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

In the Matter of:	)	
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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	)	

**CITIZENS GROUPS’ MOTION FOR PARTIAL SUMMARY JUDGMENT**

1. Pursuant to 35 Ill. Adm. 101.516 and as supported by the accompanying Memorandum of Law, Complainants Sierra Club, Inc., Environmental Law and Policy Center, Prairies Rivers Network and Citizens Against Ruining the Environment (collectively “Citizens Groups”) move for partial summary judgment and ask that the Illinois Pollution Control Board (“Board”): (i) declare Midwest Generation, LLC (“MWG”) liable for all violations set forth in Citizens Groups’ Second Amended Complaint<sup>1</sup>; (ii) pursuant to 415 ILCS 5/33, order MWG to cease and desist from allowing water pollution and open dumping by means of measures to be determined following a hearing on the portions of the claims not included in this Motion for Partial Summary Judgment (“Motion”); and (iii) following that hearing, impose appropriate civil penalties pursuant to 415 ILCS 5/42.

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<sup>1</sup> Citizens Groups’ Second Amended Complaint was filed with the Board on January 30, 2015, as an attachment to Citizens Groups’ Reply to MWG’s Response to Complainants’ Second Motion for Leave to File Amended Complaint. The Board granted Citizens Groups’ motion for leave to file that Reply on Feb. 19, 2015, accepting the Second Amended Complaint for hearing.

2. This Motion seeks summary judgment solely with regard to liability for violations of Sections 12(a) and 21(a) of the Illinois Environmental Protection Act (“the Act”) and implementing regulations that stem from Historic Coal Ash in Historic Ash Areas, as defined in the accompanying Memorandum of Law In Support of Citizens Groups’ Motion for Partial Summary Judgment. By limiting our request for summary judgment in that manner, Citizens Groups do not concede that other coal ash discussed in our Second Amended Complaint – including but not limited to coal ash in lined active coal ash impoundments at the four sites – is not also a source of the contaminants causing the violations we allege. Citizens Groups do not forfeit our ultimate request for judgment with regard to that remaining coal ash as well. Citizens Groups recognize that, by leaving the determination of liability with regard to the remaining coal ash to a later date, the question of what constitutes an appropriate remedy for MWG’s violations must also be tabled to a future proceeding.

3. As grounds for the motion and as discussed in the accompanying Memorandum of Law, Citizens Groups state as follows: a) that they have associational standing to seek the Board’s review of MWG’s compliance with the Illinois Environmental Protection Act (the “Act”), 415 ILCS 5/1 et seq., pursuant to Section 31(d)(1) of the Act and Article XI of the Illinois Constitution; b) that the undisputed facts demonstrate MWG had and has control over the premises where pollutants from coal ash were and are leaching into the groundwater; c) that the undisputed facts demonstrate MWG has not taken the necessary precautions to prevent contamination leaching into the groundwater from that ash; and (d) the undisputed facts show that coal ash placed in unpermitted areas at Waukegan, Will County, and Powerton is discharging contaminants into the groundwater at those sites.

4. As a result, Complainants seek summary judgment from the Board that MWG has violated the Act's and implementing regulations' prohibitions on allowing groundwater pollution at its Joliet 29, Powerton, Waukegan, and Will County plants, as detailed in Exhibit B to Citizens Groups' Second Amended Complaint, which is attached hereto for the Board's convenience as Ex. A.; and that MWG has violated the Act's prohibitions on open dumping at its Powerton, Waukegan, and Will County plants, as detailed in paragraphs 41 through 49 of the Second Amended Complaint.

WHEREFORE this Court should:

- a) Rule that MWG has violated the Act on all counts;
- b) Initiate proceedings to determine whether the remaining coal ash discussed in Citizens Groups' Second Amended Complaint, including but not limited to coal ash in lined, active ash impoundments at Waukegan, Powerton, Will County and Joliet 29, contributed to violations of 415 ILCS 5/12(a) and 21(a), and implementing regulations, at those plants; and
- c) Following those proceedings, determine the appropriate amount of civil penalties that MWG must pay and the mechanisms by which MWG must cease and desist its violations of the Act and implementing regulations.

Dated: June 1, 2016

Respectfully submitted,



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Jennifer L. Cassel  
Lindsay Dubin

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Attorney for CARE

Dated: June 1, 2016

**CERTIFICATE OF SERVICE**

The undersigned certifies that on June 1, 2016 a true copy of the foregoing *Notice of Filing, Citizens Groups' Motion for Partial Summary Judgment*, and *Memorandum of Law in Support of Citizens Groups' Motion for Partial Summary Judgment* [in redacted form] were filed electronically and the unredacted *Memorandum of Law in Support* and confidential exhibits were filed on paper, with the following:

John Therriault, Assistant Clerk  
Illinois Pollution Control Board  
100 West Randolph St  
Suite 11-500  
Chicago, IL 60601

And that a true copy of: *Notice of Filing, Citizens Groups' Motion for Partial Summary Judgment*, and *Memorandum of Law in Support of Citizens Groups' Motion for Partial Summary Judgment* [in both redacted and unredacted form] were served via electronic mail on June 1, 2016 on the parties listed on the following Service List. The exhibits to the *Memorandum of Law in Support of Citizens Groups' Motion for Partial Summary Judgment* [in both redacted and unredacted form] were served on a cd via USPS on the parties listed on the following Service List.



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Jennifer L. Cassel  
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Dated: May 20,  
2016jcassel@elpc.org

**PCB 2013-015 SERVICE LIST:**

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CT Corporation Systems  
Midwest Generation, LLC  
208 South LaSalle Street Suite 814  
Chicago, IL 60604

# **Exhibit A**

violation number	Plant	Well	Pollutant	Sample value (mg/L)	Class I GW standard (mg/L)	Collection date
1	Joliet 29	MW-1	chloride	210	200	5/23/2013
2	Joliet 29	MW-10	chloride	300	200	3/28/2011
3	Joliet 29	MW-10	chloride	290	200	6/19/2012
4	Joliet 29	MW-10	chloride	230	200	9/19/2012
5	Joliet 29	MW-10	chloride	210	200	3/5/2013
6	Joliet 29	MW-10	chloride	240	200	5/22/2013
7	Joliet 29	MW-10	chloride	210	200	7/23/2013
8	Joliet 29	MW-10	chloride	220	200	10/15/2013
9	Joliet 29	MW-10	chloride	240	200	2/17/2014
10	Joliet 29	MW-10	chloride	300	200	5/1/2014
11	Joliet 29	MW-11	boron	2.6	2.0	3/28/2011
12	Joliet 29	MW-11	boron	2.2	2.0	6/14/2011
13	Joliet 29	MW-11	chloride	270	200	3/28/2011
14	Joliet 29	MW-11	chloride	280	200	6/14/2011
15	Joliet 29	MW-11	chloride	240	200	3/15/2012
16	Joliet 29	MW-11	chloride	430	200	2/21/2014
17	Joliet 29	MW-11	chloride	340	200	5/1/2014
18	Joliet 29	MW-2	antimony	0.0120	0.0060	12/6/2010
19	Joliet 29	MW-2	chloride	230	200	6/14/2011
20	Joliet 29	MW-2	chloride	280	200	3/15/2012
21	Joliet 29	MW-2	chloride	260	200	3/5/2013
22	Joliet 29	MW-2	chloride	250	200	5/23/2013
23	Joliet 29	MW-2	chloride	310	200	7/22/2013
24	Joliet 29	MW-2	chloride	240	200	2/21/2014
25	Joliet 29	MW-2	chloride	350	200	5/2/2014
26	Joliet 29	MW-2	chloride	280	200	8/18/2014
27	Joliet 29	MW-3	antimony	0.0065	0.0060	9/14/2011
28	Joliet 29	MW-3	antimony	0.0160	0.0060	12/7/2011
29	Joliet 29	MW-3	antimony	0.0130	0.0060	3/15/2012
30	Joliet 29	MW-3	chloride	260	200	12/7/2010
31	Joliet 29	MW-3	chloride	240	200	3/28/2011
32	Joliet 29	MW-3	chloride	300	200	6/14/2011
33	Joliet 29	MW-3	chloride	260	200	12/7/2011
34	Joliet 29	MW-3	chloride	250	200	3/15/2012
35	Joliet 29	MW-3	chloride	260	200	6/19/2012
36	Joliet 29	MW-3	chloride	330	200	9/19/2012
37	Joliet 29	MW-3	chloride	290	200	12/20/2012
38	Joliet 29	MW-3	chloride	260	200	3/5/2013
39	Joliet 29	MW-3	chloride	380	200	5/22/2013
40	Joliet 29	MW-3	chloride	210	200	7/22/2013
41	Joliet 29	MW-3	chloride	250	200	10/15/2013
42	Joliet 29	MW-3	chloride	200	200	2/17/2014
43	Joliet 29	MW-3	chloride	300	200	5/2/2014
44	Joliet 29	MW-3	chloride	220	200	8/18/2014
45	Joliet 29	MW-3	TDS	1,300	1,200	5/22/2013
46	Joliet 29	MW-4	antimony	0.0067	0.0060	12/7/2011
47	Joliet 29	MW-4	antimony	0.0120	0.0060	5/22/2013
48	Joliet 29	MW-4	chloride	270	200	12/6/2010
49	Joliet 29	MW-4	chloride	270	200	3/28/2011



50	Joliet 29	MW-4	chloride	250	200	6/14/2011
51	Joliet 29	MW-4	chloride	210	200	3/15/2012
52	Joliet 29	MW-4	chloride	270	200	6/19/2012
53	Joliet 29	MW-4	chloride	260	200	9/19/2012
54	Joliet 29	MW-4	chloride	250	200	12/20/2012
55	Joliet 29	MW-4	chloride	230	200	3/5/2013
56	Joliet 29	MW-4	chloride	270	200	5/22/2013
57	Joliet 29	MW-4	chloride	210	200	10/16/2013
58	Joliet 29	MW-4	chloride	220	200	2/21/2014
59	Joliet 29	MW-4	chloride	270	200	5/1/2014
60	Joliet 29	MW-4	chloride	210	200	8/18/2014
61	Joliet 29	MW-4	manganese	0.330	0.150	12/6/2010
62	Joliet 29	MW-5	chloride	240	200	3/28/2011
63	Joliet 29	MW-5	chloride	220	200	6/14/2011
64	Joliet 29	MW-5	chloride	210	200	3/15/2012
65	Joliet 29	MW-5	chloride	220	200	6/19/2012
66	Joliet 29	MW-5	chloride	240	200	9/19/2012
67	Joliet 29	MW-5	chloride	210	200	12/20/2012
68	Joliet 29	MW-5	chloride	230	200	3/5/2013
69	Joliet 29	MW-5	chloride	240	200	2/21/2014
70	Joliet 29	MW-5	chloride	370	200	5/1/2014
71	Joliet 29	MW-6	chloride	270	200	3/28/2011
72	Joliet 29	MW-6	chloride	240	200	3/15/2012
73	Joliet 29	MW-6	chloride	210	200	6/19/2012
74	Joliet 29	MW-6	chloride	370	200	2/21/2014
75	Joliet 29	MW-6	chloride	340	200	5/2/2014
76	Joliet 29	MW-7	chloride	430	200	12/6/2010
77	Joliet 29	MW-7	chloride	320	200	3/28/2011
78	Joliet 29	MW-7	chloride	300	200	3/15/2012
79	Joliet 29	MW-7	chloride	470	200	2/21/2014
80	Joliet 29	MW-7	chloride	350	200	5/2/2014
81	Joliet 29	MW-7	manganese	0.290	0.150	12/6/2010
82	Joliet 29	MW-8	chloride	350	200	3/28/2011
83	Joliet 29	MW-8	chloride	410	200	3/15/2012
84	Joliet 29	MW-8	chloride	300	200	5/23/2013
85	Joliet 29	MW-8	chloride	210	200	7/22/2013
86	Joliet 29	MW-8	chloride	270	200	2/21/2014
87	Joliet 29	MW-8	chloride	780	200	5/1/2014
88	Joliet 29	MW-8	sulfate	460	400	5/1/2014
89	Joliet 29	MW-8	TDS	2,100	1,200	5/1/2014
90	Joliet 29	MW-9	chloride	230	200	3/28/2011
91	Joliet 29	MW-9	chloride	290	200	6/14/2011
92	Joliet 29	MW-9	chloride	250	200	6/19/2012
93	Joliet 29	MW-9	chloride	290	200	5/23/2013
94	Joliet 29	MW-9	chloride	280	200	7/22/2013
95	Joliet 29	MW-9	chloride	280	200	10/15/2013
96	Joliet 29	MW-9	chloride	270	200	2/17/2014
97	Joliet 29	MW-9	chloride	340	200	5/1/2014
98	Joliet 29	MW-9	chloride	270	200	8/18/2014
99	Joliet 29	MW-9	iron	7.3	5.0	6/14/2011
100	Joliet 29	MW-9	iron	5.5	5.0	3/15/2012
101	Joliet 29	MW-9	iron	8.0	5.0	6/19/2012

102	Joliet 29	MW-9	iron	13.0	5.0	12/20/2012
103	Joliet 29	MW-9	iron	15.0	5.0	3/5/2013
104	Joliet 29	MW-9	iron	160.0	5.0	5/23/2013
105	Joliet 29	MW-9	iron	50.0	5.0	7/22/2013
106	Joliet 29	MW-9	iron	25.0	5.0	10/15/2013
107	Joliet 29	MW-9	iron	12.0	5.0	2/17/2014
108	Joliet 29	MW-9	iron	8.4	5.0	5/1/2014
109	Joliet 29	MW-9	iron	130.0	5.0	8/18/2014
110	Joliet 29	MW-9	manganese	1.100	0.150	12/6/2010
111	Joliet 29	MW-9	manganese	1.600	0.150	3/28/2011
112	Joliet 29	MW-9	manganese	0.950	0.150	6/14/2011
113	Joliet 29	MW-9	manganese	0.820	0.150	9/14/2011
114	Joliet 29	MW-9	manganese	0.660	0.150	12/7/2011
115	Joliet 29	MW-9	manganese	1.300	0.150	3/15/2012
116	Joliet 29	MW-9	manganese	1.200	0.150	6/19/2012
117	Joliet 29	MW-9	manganese	0.680	0.150	9/19/2012
118	Joliet 29	MW-9	manganese	0.440	0.150	12/20/2012
119	Joliet 29	MW-9	manganese	0.430	0.150	3/5/2013
120	Joliet 29	MW-9	manganese	1.600	0.150	5/23/2013
121	Joliet 29	MW-9	manganese	0.810	0.150	7/22/2013
122	Joliet 29	MW-9	manganese	0.520	0.150	10/15/2013
123	Joliet 29	MW-9	manganese	0.340	0.150	2/17/2014
124	Joliet 29	MW-9	manganese	0.300	0.150	5/1/2014
125	Joliet 29	MW-9	manganese	0.720	0.150	8/18/2014
126	Joliet 29	MW-9	sulfate	1,600	400	12/6/2010
127	Joliet 29	MW-9	sulfate	1,100	400	3/28/2011
128	Joliet 29	MW-9	sulfate	580	400	6/14/2011
129	Joliet 29	MW-9	sulfate	750	400	9/14/2011
130	Joliet 29	MW-9	sulfate	1,600	400	3/15/2012
131	Joliet 29	MW-9	sulfate	1,500	400	6/19/2012
132	Joliet 29	MW-9	sulfate	1,600	400	9/19/2012
133	Joliet 29	MW-9	sulfate	1,100	400	12/20/2012
134	Joliet 29	MW-9	sulfate	700	400	3/5/2013
135	Joliet 29	MW-9	sulfate	1,300	400	5/23/2013
136	Joliet 29	MW-9	sulfate	1,000	400	7/22/2013
137	Joliet 29	MW-9	sulfate	680	400	10/15/2013
138	Joliet 29	MW-9	sulfate	560	400	2/17/2014
139	Joliet 29	MW-9	sulfate	560	400	5/1/2014
140	Joliet 29	MW-9	sulfate	880	400	8/18/2014
141	Joliet 29	MW-9	TDS	2,600	1,200	12/6/2010
142	Joliet 29	MW-9	TDS	2,400	1,200	3/28/2011
143	Joliet 29	MW-9	TDS	1,500	1,200	6/14/2011
144	Joliet 29	MW-9	TDS	1,700	1,200	9/14/2011
145	Joliet 29	MW-9	TDS	2,400	1,200	12/7/2011
146	Joliet 29	MW-9	TDS	2,600	1,200	3/15/2012
147	Joliet 29	MW-9	TDS	2,800	1,200	6/19/2012
148	Joliet 29	MW-9	TDS	2,900	1,200	9/19/2012
149	Joliet 29	MW-9	TDS	2,000	1,200	12/20/2012
150	Joliet 29	MW-9	TDS	1,700	1,200	3/5/2013
151	Joliet 29	MW-9	TDS	3,000	1,200	5/23/2013
152	Joliet 29	MW-9	TDS	2,300	1,200	7/22/2013
153	Joliet 29	MW-9	TDS	1,700	1,200	10/15/2013

154	Joliet 29	MW-9	TDS	1,600	1,200	2/17/2014
155	Joliet 29	MW-9	TDS	1,700	1,200	5/1/2014
156	Joliet 29	MW-9	TDS	2,100	1,200	8/18/2014
157	Powerton	MW-1	nitrate	11	10	9/20/2011
158	Powerton	MW-10	boron	2.10	2.0	3/6/2014
159	Powerton	MW-10	boron	3.20	2.0	5/30/2014
160	Powerton	MW-10	manganese	2.100	0.150	12/15/2010
161	Powerton	MW-10	manganese	2.800	0.150	3/25/2011
162	Powerton	MW-10	manganese	3.800	0.150	6/16/2011
163	Powerton	MW-10	manganese	2.300	0.150	9/20/2011
164	Powerton	MW-10	manganese	2.300	0.150	12/12/2011
165	Powerton	MW-10	manganese	2.300	0.150	3/19/2012
166	Powerton	MW-10	manganese	2.600	0.150	6/25/2012
167	Powerton	MW-10	manganese	2.500	0.150	9/18/2012
168	Powerton	MW-10	manganese	2.200	0.150	12/12/2012
169	Powerton	MW-10	manganese	1.900	0.150	2/27/2013
170	Powerton	MW-10	manganese	3.200	0.150	5/29/2013
171	Powerton	MW-10	manganese	1.500	0.150	7/31/2013
172	Powerton	MW-10	manganese	2.000	0.150	10/23/2013
173	Powerton	MW-10	manganese	3.100	0.150	3/6/2014
174	Powerton	MW-10	manganese	1.600	0.150	5/30/2014
175	Powerton	MW-10	manganese	2.100	0.150	8/28/2014
176	Powerton	MW-11	arsenic	0.0300	0.0100	12/12/2012
177	Powerton	MW-11	arsenic	0.0450	0.0100	2/27/2013
178	Powerton	MW-11	arsenic	0.0280	0.0100	5/30/2013
179	Powerton	MW-11	arsenic	0.0380	0.0100	7/30/2013
180	Powerton	MW-11	arsenic	0.0380	0.0100	10/22/2013
181	Powerton	MW-11	arsenic	0.0570	0.0100	3/4/2014
182	Powerton	MW-11	arsenic	0.0360	0.0100	5/29/2014
183	Powerton	MW-11	arsenic	0.0680	0.0100	8/26/2014
184	Powerton	MW-11	boron	2.30	2.0	3/19/2012
185	Powerton	MW-11	boron	2.60	2.0	9/18/2012
186	Powerton	MW-11	iron	5.80	5.0	3/4/2014
187	Powerton	MW-11	iron	5.50	5.0	8/26/2014
188	Powerton	MW-11	manganese	3.200	0.150	12/16/2010
189	Powerton	MW-11	manganese	3.600	0.150	2/15/2011
190	Powerton	MW-11	manganese	2.900	0.150	6/16/2011
191	Powerton	MW-11	manganese	2.200	0.150	9/19/2011
192	Powerton	MW-11	manganese	2.500	0.150	12/12/2011
193	Powerton	MW-11	manganese	2.900	0.150	3/19/2012
194	Powerton	MW-11	manganese	3.700	0.150	6/25/2012
195	Powerton	MW-11	manganese	4.700	0.150	9/18/2012
196	Powerton	MW-11	manganese	12.000	0.150	12/12/2012
197	Powerton	MW-11	manganese	11.000	0.150	2/27/2013
198	Powerton	MW-11	manganese	7.500	0.150	5/30/2013
199	Powerton	MW-11	manganese	8.000	0.150	7/30/2013
200	Powerton	MW-11	manganese	7.300	0.150	10/22/2013
201	Powerton	MW-11	manganese	7.900	0.150	3/4/2014
202	Powerton	MW-11	manganese	8.000	0.150	5/29/2014
203	Powerton	MW-11	manganese	8.400	0.150	8/26/2014
204	Powerton	MW-12	arsenic	0.0130	0.0100	2/15/2011
205	Powerton	MW-12	arsenic	0.0140	0.0100	6/25/2012

206	Powerton	MW-12	arsenic	0.0110	0.0100	9/18/2012
207	Powerton	MW-12	arsenic	0.0220	0.0100	12/12/2012
208	Powerton	MW-12	arsenic	0.0160	0.0100	7/29/2013
209	Powerton	MW-12	arsenic	0.0180	0.0100	10/22/2013
210	Powerton	MW-12	boron	3.70	2.0	5/30/2013
211	Powerton	MW-12	chloride	210	200	12/12/2011
212	Powerton	MW-12	chloride	210	200	12/12/2012
213	Powerton	MW-12	chloride	220	200	3/4/2014
214	Powerton	MW-12	chloride	220	200	5/29/2014
215	Powerton	MW-12	chloride	210	200	8/26/2014
216	Powerton	MW-12	iron	5.50	5.0	12/16/2010
217	Powerton	MW-12	iron	6.30	5.0	2/15/2011
218	Powerton	MW-12	iron	5.60	5.0	6/16/2011
219	Powerton	MW-12	iron	8.20	5.0	6/25/2012
220	Powerton	MW-12	iron	8.90	5.0	9/18/2012
221	Powerton	MW-12	iron	6.40	5.0	12/12/2012
222	Powerton	MW-12	iron	5.80	5.0	2/27/2013
223	Powerton	MW-12	iron	8.90	5.0	5/30/2013
224	Powerton	MW-12	manganese	0.320	0.150	12/16/2010
225	Powerton	MW-12	manganese	0.580	0.150	2/15/2011
226	Powerton	MW-12	manganese	0.260	0.150	6/16/2011
227	Powerton	MW-12	manganese	0.370	0.150	9/19/2011
228	Powerton	MW-12	manganese	0.250	0.150	12/12/2011
229	Powerton	MW-12	manganese	0.710	0.150	6/25/2012
230	Powerton	MW-12	manganese	0.640	0.150	9/18/2012
231	Powerton	MW-12	manganese	1.700	0.150	12/12/2012
232	Powerton	MW-12	manganese	0.380	0.150	2/27/2013
233	Powerton	MW-12	manganese	0.240	0.150	5/30/2013
234	Powerton	MW-12	manganese	1.300	0.150	7/29/2013
235	Powerton	MW-12	manganese	1.500	0.150	10/22/2013
236	Powerton	MW-12	manganese	0.230	0.150	3/4/2014
237	Powerton	MW-12	manganese	0.650	0.150	5/29/2014
238	Powerton	MW-12	manganese	1.200	0.150	8/26/2014
239	Powerton	MW-12	sulfate	430	400	6/25/2012
240	Powerton	MW-12	sulfate	410	400	5/30/2013
241	Powerton	MW-12	sulfate	420	400	7/29/2013
242	Powerton	MW-12	sulfate	530	400	3/4/2014
243	Powerton	MW-12	sulfate	560	400	5/29/2014
244	Powerton	MW-12	TDS	1,400	1,200	3/4/2014
245	Powerton	MW-12	TDS	1,300	1,200	5/29/2014
246	Powerton	MW-13	arsenic	0.0110	0.0100	12/15/2010
247	Powerton	MW-13	arsenic	0.0230	0.0100	12/12/2011
248	Powerton	MW-13	arsenic	0.0270	0.0100	4/10/2012
249	Powerton	MW-13	arsenic	0.0410	0.0100	12/14/2012
250	Powerton	MW-13	arsenic	0.0290	0.0100	2/28/2013
251	Powerton	MW-13	arsenic	0.0310	0.0100	5/30/2013
252	Powerton	MW-13	arsenic	0.0290	0.0100	7/30/2013
253	Powerton	MW-13	arsenic	0.0240	0.0100	10/22/2013
254	Powerton	MW-13	arsenic	0.0280	0.0100	3/4/2014
255	Powerton	MW-13	arsenic	0.0240	0.0100	5/28/2014
256	Powerton	MW-13	arsenic	0.0310	0.0100	8/27/2014
257	Powerton	MW-13	boron	3.90	2.0	12/15/2010

258	Powerton	MW-13	boron	3.10	2.0	2/15/2011
259	Powerton	MW-13	boron	2.60	2.0	4/25/2011
260	Powerton	MW-13	boron	3.00	2.0	6/16/2011
261	Powerton	MW-13	boron	2.70	2.0	8/9/2011
262	Powerton	MW-13	boron	3.00	2.0	10/13/2011
263	Powerton	MW-13	boron	4.10	2.0	12/12/2011
264	Powerton	MW-13	boron	4.00	2.0	4/10/2012
265	Powerton	MW-13	boron	3.60	2.0	12/14/2012
266	Powerton	MW-13	boron	4.20	2.0	2/28/2013
267	Powerton	MW-13	boron	3.80	2.0	7/30/2013
268	Powerton	MW-13	boron	3.50	2.0	10/22/2013
269	Powerton	MW-13	boron	2.90	2.0	3/4/2014
270	Powerton	MW-13	boron	3.50	2.0	5/28/2014
271	Powerton	MW-13	boron	3.00	2.0	8/27/2014
272	Powerton	MW-13	chloride	210	200	12/14/2012
273	Powerton	MW-13	manganese	5.000	0.150	12/15/2010
274	Powerton	MW-13	manganese	3.800	0.150	2/15/2011
275	Powerton	MW-13	manganese	2.700	0.150	4/25/2011
276	Powerton	MW-13	manganese	2.900	0.150	6/16/2011
277	Powerton	MW-13	manganese	2.600	0.150	8/9/2011
278	Powerton	MW-13	manganese	3.600	0.150	10/13/2011
279	Powerton	MW-13	manganese	3.500	0.150	12/12/2011
280	Powerton	MW-13	manganese	3.500	0.150	4/10/2012
281	Powerton	MW-13	manganese	3.700	0.150	12/14/2012
282	Powerton	MW-13	manganese	3.500	0.150	2/28/2013
283	Powerton	MW-13	manganese	3.800	0.150	5/30/2013
284	Powerton	MW-13	manganese	4.000	0.150	7/30/2013
285	Powerton	MW-13	manganese	2.800	0.150	10/22/2013
286	Powerton	MW-13	manganese	2.900	0.150	3/4/2014
287	Powerton	MW-13	manganese	3.400	0.150	5/28/2014
288	Powerton	MW-13	manganese	3.500	0.150	8/27/2014
289	Powerton	MW-13	sulfate	1,400	400	12/15/2010
290	Powerton	MW-13	sulfate	770	400	2/15/2011
291	Powerton	MW-13	sulfate	580	400	4/25/2011
292	Powerton	MW-13	sulfate	540	400	6/16/2011
293	Powerton	MW-13	sulfate	440	400	8/9/2011
294	Powerton	MW-13	sulfate	660	400	10/13/2011
295	Powerton	MW-13	sulfate	1,100	400	12/12/2011
296	Powerton	MW-13	sulfate	1,100	400	4/10/2012
297	Powerton	MW-13	sulfate	1,100	400	12/14/2012
298	Powerton	MW-13	sulfate	730	400	2/28/2013
299	Powerton	MW-13	sulfate	880	400	5/30/2013
300	Powerton	MW-13	sulfate	1,000	400	7/30/2013
301	Powerton	MW-13	sulfate	690	400	10/22/2013
302	Powerton	MW-13	sulfate	660	400	3/4/2014
303	Powerton	MW-13	sulfate	630	400	5/28/2014
304	Powerton	MW-13	sulfate	740	400	8/27/2014
305	Powerton	MW-13	TDS	2,600	1,200	12/15/2010
306	Powerton	MW-13	TDS	1,600	1,200	2/15/2011
307	Powerton	MW-13	TDS	1,400	1,200	4/25/2011
308	Powerton	MW-13	TDS	1,300	1,200	6/16/2011
309	Powerton	MW-13	TDS	1,500	1,200	10/13/2011

310	Powerton	MW-13	TDS	2,100	1,200	12/12/2011
311	Powerton	MW-13	TDS	2,300	1,200	4/10/2012
312	Powerton	MW-13	TDS	1,900	1,200	12/14/2012
313	Powerton	MW-13	TDS	1,600	1,200	2/28/2013
314	Powerton	MW-13	TDS	2,000	1,200	5/30/2013
315	Powerton	MW-13	TDS	2,000	1,200	7/30/2013
316	Powerton	MW-13	TDS	1,700	1,200	10/22/2013
317	Powerton	MW-13	TDS	1,900	1,200	3/4/2014
318	Powerton	MW-13	TDS	2,100	1,200	5/28/2014
319	Powerton	MW-13	TDS	2,300	1,200	8/27/2014
320	Powerton	MW-14	arsenic	0.0240	0.0100	12/15/2010
321	Powerton	MW-14	arsenic	0.0190	0.0100	2/15/2011
322	Powerton	MW-14	arsenic	0.0150	0.0100	10/13/2011
323	Powerton	MW-14	chloride	240	200	8/9/2011
324	Powerton	MW-14	chloride	220	200	3/4/2014
325	Powerton	MW-14	iron	12.00	5.0	12/14/2012
326	Powerton	MW-14	manganese	0.680	0.150	12/15/2010
327	Powerton	MW-14	manganese	0.810	0.150	2/15/2011
328	Powerton	MW-14	manganese	0.290	0.150	4/25/2011
329	Powerton	MW-14	manganese	0.360	0.150	6/16/2011
330	Powerton	MW-14	manganese	0.570	0.150	8/9/2011
331	Powerton	MW-14	manganese	0.840	0.150	10/13/2011
332	Powerton	MW-14	manganese	0.630	0.150	4/10/2012
333	Powerton	MW-14	manganese	0.720	0.150	5/30/2013
334	Powerton	MW-14	manganese	0.320	0.150	7/30/2013
335	Powerton	MW-14	manganese	1.200	0.150	10/23/2013
336	Powerton	MW-14	manganese	1.300	0.150	3/4/2014
337	Powerton	MW-14	manganese	0.340	0.150	5/28/2014
338	Powerton	MW-14	manganese	1.800	0.150	8/28/2014
339	Powerton	MW-14	selenium	0.065	0.050	4/25/2011
340	Powerton	MW-14	selenium	0.150	0.050	2/27/2013
341	Powerton	MW-14	sulfate	960	400	12/15/2010
342	Powerton	MW-14	sulfate	820	400	2/15/2011
343	Powerton	MW-14	sulfate	770	400	4/25/2011
344	Powerton	MW-14	sulfate	810	400	6/16/2011
345	Powerton	MW-14	sulfate	940	400	8/9/2011
346	Powerton	MW-14	sulfate	850	400	10/13/2011
347	Powerton	MW-14	sulfate	880	400	12/12/2011
348	Powerton	MW-14	sulfate	990	400	4/10/2012
349	Powerton	MW-14	sulfate	810	400	12/14/2012
350	Powerton	MW-14	sulfate	800	400	5/30/2013
351	Powerton	MW-14	sulfate	900	400	7/30/2013
352	Powerton	MW-14	sulfate	840	400	10/23/2013
353	Powerton	MW-14	sulfate	680	400	3/4/2014
354	Powerton	MW-14	sulfate	720	400	5/28/2014
355	Powerton	MW-14	sulfate	1,100	400	8/28/2014
356	Powerton	MW-14	TDS	1,800	1,200	12/15/2010
357	Powerton	MW-14	TDS	1,700	1,200	2/15/2011
358	Powerton	MW-14	TDS	1,800	1,200	4/25/2011
359	Powerton	MW-14	TDS	1,900	1,200	6/16/2011
360	Powerton	MW-14	TDS	2,000	1,200	8/9/2011
361	Powerton	MW-14	TDS	1,800	1,200	10/13/2011

362	Powerton	MW-14	TDS	1,800	1,200	12/12/2011
363	Powerton	MW-14	TDS	2,200	1,200	4/10/2012
364	Powerton	MW-14	TDS	1,700	1,200	12/14/2012
365	Powerton	MW-14	TDS	1,300	1,200	2/27/2013
366	Powerton	MW-14	TDS	2,000	1,200	5/30/2013
367	Powerton	MW-14	TDS	2,100	1,200	7/30/2013
368	Powerton	MW-14	TDS	2,100	1,200	10/23/2013
369	Powerton	MW-14	TDS	1,900	1,200	3/4/2014
370	Powerton	MW-14	TDS	1,700	1,200	5/28/2014
371	Powerton	MW-14	TDS	2,400	1,200	8/28/2014
372	Powerton	MW-14	thallium	0.004	0.002	4/25/2011
373	Powerton	MW-14	thallium	0.004	0.002	6/16/2011
374	Powerton	MW-14	thallium	0.003	0.002	8/9/2011
375	Powerton	MW-14	thallium	0.003	0.002	4/10/2012
376	Powerton	MW-14	thallium	0.003	0.002	12/14/2012
377	Powerton	MW-14	thallium	0.003	0.002	5/30/2013
378	Powerton	MW-14	thallium	0.004	0.002	7/30/2013
379	Powerton	MW-14	thallium	0.002	0.002	10/23/2013
380	Powerton	MW-14	thallium	0.002	0.002	3/4/2014
381	Powerton	MW-14	thallium	0.003	0.002	5/28/2014
382	Powerton	MW-14	thallium	0.002	0.002	8/28/2014
383	Powerton	MW-15	arsenic	0.0110	0.0100	10/13/2011
384	Powerton	MW-15	arsenic	0.0110	0.0100	12/14/2012
385	Powerton	MW-15	chloride	210	200	8/9/2011
386	Powerton	MW-15	chloride	220	200	12/14/2012
387	Powerton	MW-15	chloride	210	200	5/30/2013
388	Powerton	MW-15	chloride	220	200	7/30/2013
389	Powerton	MW-15	chloride	210	200	10/23/2013
390	Powerton	MW-15	chloride	240	200	3/6/2014
391	Powerton	MW-15	chloride	220	200	5/28/2014
392	Powerton	MW-15	chloride	240	200	8/27/2014
393	Powerton	MW-15	manganese	0.560	0.150	12/15/2010
394	Powerton	MW-15	manganese	0.420	0.150	2/15/2011
395	Powerton	MW-15	manganese	0.360	0.150	4/25/2011
396	Powerton	MW-15	manganese	0.600	0.150	6/16/2011
397	Powerton	MW-15	manganese	0.370	0.150	8/9/2011
398	Powerton	MW-15	manganese	0.480	0.150	10/13/2011
399	Powerton	MW-15	manganese	0.390	0.150	12/12/2011
400	Powerton	MW-15	manganese	0.250	0.150	4/10/2012
401	Powerton	MW-15	manganese	0.510	0.150	12/14/2012
402	Powerton	MW-15	manganese	0.350	0.150	2/28/2013
403	Powerton	MW-15	manganese	0.270	0.150	5/30/2013
404	Powerton	MW-15	manganese	0.300	0.150	7/30/2013
405	Powerton	MW-15	manganese	0.430	0.150	10/23/2013
406	Powerton	MW-15	manganese	0.590	0.150	3/6/2014
407	Powerton	MW-15	manganese	0.300	0.150	5/28/2014
408	Powerton	MW-15	manganese	0.950	0.150	8/27/2014
409	Powerton	MW-15	sulfate	650	400	6/16/2011
410	Powerton	MW-15	sulfate	570	400	5/30/2013
411	Powerton	MW-15	sulfate	460	400	7/30/2013
412	Powerton	MW-15	sulfate	420	400	10/23/2013
413	Powerton	MW-15	sulfate	620	400	8/27/2014



414	Powerton	MW-15	TDS	1,600	1,200	6/16/2011
415	Powerton	MW-15	TDS	1,700	1,200	5/30/2013
416	Powerton	MW-15	TDS	1,400	1,200	7/30/2013
417	Powerton	MW-15	TDS	1,400	1,200	10/23/2013
418	Powerton	MW-15	TDS	1,300	1,200	3/6/2014
419	Powerton	MW-15	TDS	1,300	1,200	5/28/2014
420	Powerton	MW-15	TDS	1,800	1,200	8/27/2014
421	Powerton	MW-16	chloride	230	200	3/3/2014
422	Powerton	MW-16	nitrate	18	10	12/12/2012
423	Powerton	MW-16	nitrate	23	10	2/28/2013
424	Powerton	MW-16	nitrate	20	10	5/29/2013
425	Powerton	MW-16	nitrate	13	10	7/29/2013
426	Powerton	MW-16	nitrate	19	10	10/22/2013
427	Powerton	MW-16	nitrate	16	10	3/3/2014
428	Powerton	MW-16	nitrate	21	10	5/30/2014
429	Powerton	MW-16	nitrate	22	10	8/26/2014
430	Powerton	MW-2	antimony	0.0150	0.0060	5/29/2013
431	Powerton	MW-2	boron	2.70	2.0	10/21/2013
432	Powerton	MW-4	manganese	0.680	0.150	3/25/2011
433	Powerton	MW-4	manganese	0.410	0.150	6/16/2011
434	Powerton	MW-4	manganese	0.690	0.150	9/20/2011
435	Powerton	MW-4	manganese	0.350	0.150	12/12/2011
436	Powerton	MW-4	manganese	0.260	0.150	6/25/2012
437	Powerton	MW-4	manganese	0.500	0.150	9/18/2012
438	Powerton	MW-4	manganese	0.270	0.150	10/21/2013
439	Powerton	MW-4	manganese	0.240	0.150	8/25/2014
440	Powerton	MW-5	manganese	0.510	0.150	12/15/2010
441	Powerton	MW-5	manganese	0.490	0.150	3/25/2011
442	Powerton	MW-5	manganese	0.480	0.150	6/16/2011
443	Powerton	MW-5	manganese	0.640	0.150	9/20/2011
444	Powerton	MW-5	manganese	0.500	0.150	12/12/2011
445	Powerton	MW-5	manganese	0.260	0.150	3/19/2012
446	Powerton	MW-5	manganese	0.410	0.150	6/25/2012
447	Powerton	MW-5	manganese	1.000	0.150	9/18/2012
448	Powerton	MW-5	manganese	0.590	0.150	12/12/2012
449	Powerton	MW-5	manganese	0.210	0.150	2/27/2013
450	Powerton	MW-5	manganese	0.670	0.150	5/29/2013
451	Powerton	MW-5	manganese	0.290	0.150	7/31/2013
452	Powerton	MW-5	manganese	0.620	0.150	10/21/2013
453	Powerton	MW-6	arsenic	0.2000	0.0100	5/29/2014
454	Powerton	MW-6	chloride	210	200	9/20/2011
455	Powerton	MW-6	chloride	240	200	12/12/2012
456	Powerton	MW-6	chloride	210	200	10/23/2013
457	Powerton	MW-6	chloride	230	200	3/6/2014
458	Powerton	MW-6	chloride	230	200	5/29/2014
459	Powerton	MW-6	chloride	230	200	8/27/2014
460	Powerton	MW-6	iron	22.00	5.0	5/29/2014
461	Powerton	MW-6	manganese	0.680	0.150	12/15/2010
462	Powerton	MW-6	manganese	0.680	0.150	3/25/2011
463	Powerton	MW-6	manganese	0.630	0.150	6/16/2011
464	Powerton	MW-6	manganese	0.660	0.150	9/20/2011
465	Powerton	MW-6	manganese	0.630	0.150	12/12/2011



466	Powerton	MW-6	manganese	0.610	0.150	3/19/2012
467	Powerton	MW-6	manganese	0.710	0.150	6/25/2012
468	Powerton	MW-6	manganese	0.640	0.150	9/18/2012
469	Powerton	MW-6	manganese	0.610	0.150	12/12/2012
470	Powerton	MW-6	manganese	0.500	0.150	2/27/2013
471	Powerton	MW-6	manganese	1.300	0.150	5/29/2013
472	Powerton	MW-6	manganese	0.700	0.150	7/31/2013
473	Powerton	MW-6	manganese	0.580	0.150	10/23/2013
474	Powerton	MW-6	manganese	0.680	0.150	3/6/2014
475	Powerton	MW-6	manganese	8.000	0.150	5/29/2014
476	Powerton	MW-6	manganese	0.710	0.150	8/27/2014
477	Powerton	MW-6	sulfate	450	400	6/25/2012
478	Powerton	MW-6	sulfate	440	400	12/12/2012
479	Powerton	MW-6	sulfate	560	400	5/29/2013
480	Powerton	MW-6	sulfate	440	400	7/31/2013
481	Powerton	MW-6	sulfate	410	400	3/6/2014
482	Powerton	MW-6	sulfate	530	400	5/29/2014
483	Powerton	MW-6	TDS	1,300	1,200	6/25/2012
484	Powerton	MW-6	TDS	1,400	1,200	5/29/2013
485	Powerton	MW-6	TDS	1,400	1,200	5/29/2014
486	Powerton	MW-6	TDS	1,300	1,200	8/27/2014
487	Powerton	MW-7	arsenic	0.0260	0.0100	12/6/2010
488	Powerton	MW-7	arsenic	0.0850	0.0100	3/25/2011
489	Powerton	MW-7	arsenic	0.1200	0.0100	6/16/2011
490	Powerton	MW-7	arsenic	0.1800	0.0100	9/20/2011
491	Powerton	MW-7	arsenic	0.2300	0.0100	12/12/2011
492	Powerton	MW-7	arsenic	0.2300	0.0100	3/19/2012
493	Powerton	MW-7	arsenic	0.1500	0.0100	6/25/2012
494	Powerton	MW-7	arsenic	0.1800	0.0100	9/18/2012
495	Powerton	MW-7	arsenic	0.2600	0.0100	12/12/2012
496	Powerton	MW-7	arsenic	0.1700	0.0100	2/27/2013
497	Powerton	MW-7	arsenic	0.1200	0.0100	5/31/2013
498	Powerton	MW-7	arsenic	0.2200	0.0100	7/31/2013
499	Powerton	MW-7	arsenic	0.2000	0.0100	10/23/2013
500	Powerton	MW-7	arsenic	0.1500	0.0100	3/5/2014
501	Powerton	MW-7	arsenic	0.1900	0.0100	8/27/2014
502	Powerton	MW-7	iron	8.00	5.0	12/6/2010
503	Powerton	MW-7	iron	7.50	5.0	3/25/2011
504	Powerton	MW-7	iron	10.00	5.0	6/16/2011
505	Powerton	MW-7	iron	22.00	5.0	9/20/2011
506	Powerton	MW-7	iron	26.00	5.0	12/12/2011
507	Powerton	MW-7	iron	31.00	5.0	3/19/2012
508	Powerton	MW-7	iron	10.00	5.0	6/25/2012
509	Powerton	MW-7	iron	21.00	5.0	9/18/2012
510	Powerton	MW-7	iron	18.00	5.0	12/12/2012
511	Powerton	MW-7	iron	27.00	5.0	2/27/2013
512	Powerton	MW-7	iron	15.00	5.0	5/31/2013
513	Powerton	MW-7	iron	30.00	5.0	7/31/2013
514	Powerton	MW-7	iron	20.00	5.0	10/23/2013
515	Powerton	MW-7	iron	17.00	5.0	3/5/2014
516	Powerton	MW-7	iron	14.00	5.0	8/27/2014
517	Powerton	MW-7	manganese	3.500	0.150	12/6/2010

518	Powerton	MW-7	manganese	5.900	0.150	3/25/2011
519	Powerton	MW-7	manganese	6.400	0.150	6/16/2011
520	Powerton	MW-7	manganese	12.000	0.150	9/20/2011
521	Powerton	MW-7	manganese	12.000	0.150	12/12/2011
522	Powerton	MW-7	manganese	11.000	0.150	3/19/2012
523	Powerton	MW-7	manganese	9.300	0.150	6/25/2012
524	Powerton	MW-7	manganese	8.000	0.150	9/18/2012
525	Powerton	MW-7	manganese	6.700	0.150	12/12/2012
526	Powerton	MW-7	manganese	9.500	0.150	2/27/2013
527	Powerton	MW-7	manganese	5.700	0.150	5/31/2013
528	Powerton	MW-7	manganese	11.000	0.150	7/31/2013
529	Powerton	MW-7	manganese	5.900	0.150	10/23/2013
530	Powerton	MW-7	manganese	5.800	0.150	3/5/2014
531	Powerton	MW-7	manganese	0.330	0.150	5/29/2014
532	Powerton	MW-7	manganese	6.600	0.150	8/27/2014
533	Powerton	MW-7	sulfate	530	400	5/29/2014
534	Powerton	MW-7	TDS	1,300	1,200	6/16/2011
535	Powerton	MW-7	TDS	1,300	1,200	9/20/2011
536	Powerton	MW-7	TDS	1,300	1,200	12/12/2011
537	Powerton	MW-7	TDS	1,400	1,200	3/19/2012
538	Powerton	MW-7	TDS	1,300	1,200	6/25/2012
539	Powerton	MW-7	TDS	1,300	1,200	9/18/2012
540	Powerton	MW-7	TDS	1,300	1,200	7/31/2013
541	Powerton	MW-7	TDS	1,400	1,200	5/29/2014
542	Powerton	MW-7	TDS	1,300	1,200	8/27/2014
543	Powerton	MW-8	chloride	210	200	3/25/2011
544	Powerton	MW-8	chloride	210	200	9/20/2011
545	Powerton	MW-8	chloride	210	200	9/18/2012
546	Powerton	MW-8	chloride	220	200	12/12/2012
547	Powerton	MW-8	chloride	230	200	5/30/2013
548	Powerton	MW-8	chloride	220	200	7/31/2013
549	Powerton	MW-8	chloride	260	200	10/23/2013
550	Powerton	MW-8	chloride	230	200	3/3/2014
551	Powerton	MW-8	chloride	340	200	5/28/2014
552	Powerton	MW-8	chloride	380	200	8/27/2014
553	Powerton	MW-8	iron	6.50	5.0	2/27/2013
554	Powerton	MW-8	iron	6.60	5.0	7/31/2013
555	Powerton	MW-8	manganese	0.270	0.150	3/25/2011
556	Powerton	MW-8	manganese	0.290	0.150	6/16/2011
557	Powerton	MW-8	manganese	0.180	0.150	9/20/2011
558	Powerton	MW-8	manganese	0.200	0.150	12/12/2011
559	Powerton	MW-8	manganese	0.270	0.150	3/19/2012
560	Powerton	MW-8	manganese	0.200	0.150	6/25/2012
561	Powerton	MW-8	manganese	0.200	0.150	9/18/2012
562	Powerton	MW-8	manganese	0.230	0.150	12/12/2012
563	Powerton	MW-8	manganese	0.430	0.150	2/27/2013
564	Powerton	MW-8	manganese	0.250	0.150	5/30/2013
565	Powerton	MW-8	manganese	0.480	0.150	7/31/2013
566	Powerton	MW-8	manganese	0.160	0.150	10/23/2013
567	Powerton	MW-8	manganese	0.200	0.150	3/3/2014
568	Powerton	MW-8	manganese	0.700	0.150	5/28/2014
569	Powerton	MW-8	manganese	0.170	0.150	8/27/2014

570	Powerton	MW-8	sulfate	440	400	6/25/2012
571	Powerton	MW-8	sulfate	460	400	5/30/2013
572	Powerton	MW-8	TDS	1,300	1,200	5/30/2013
573	Powerton	MW-8	TDS	1,300	1,200	7/31/2013
574	Powerton	MW-8	TDS	1,300	1,200	10/23/2013
575	Powerton	MW-8	TDS	1,400	1,200	5/28/2014
576	Powerton	MW-8	TDS	1,400	1,200	8/27/2014
577	Powerton	MW-9	boron	2.10	2.0	12/16/2010
578	Powerton	MW-9	boron	2.50	2.0	9/20/2011
579	Powerton	MW-9	boron	2.70	2.0	12/12/2011
580	Powerton	MW-9	boron	2.60	2.0	3/19/2012
581	Powerton	MW-9	boron	2.60	2.0	6/25/2012
582	Powerton	MW-9	boron	2.90	2.0	9/18/2012
583	Powerton	MW-9	boron	3.20	2.0	12/12/2012
584	Powerton	MW-9	boron	4.30	2.0	2/27/2013
585	Powerton	MW-9	boron	3.20	2.0	5/30/2013
586	Powerton	MW-9	boron	2.50	2.0	7/30/2013
587	Powerton	MW-9	boron	2.50	2.0	5/29/2014
588	Powerton	MW-9	boron	2.40	2.0	8/26/2014
589	Powerton	MW-9	iron	24.00	5.0	2/27/2013
590	Powerton	MW-9	manganese	0.230	0.150	12/16/2010
591	Powerton	MW-9	manganese	0.450	0.150	3/25/2011
592	Powerton	MW-9	manganese	0.480	0.150	6/16/2011
593	Powerton	MW-9	manganese	0.280	0.150	12/12/2011
594	Powerton	MW-9	manganese	0.220	0.150	3/19/2012
595	Powerton	MW-9	manganese	0.340	0.150	6/25/2012
596	Powerton	MW-9	manganese	0.190	0.150	2/27/2013
597	Powerton	MW-9	manganese	0.840	0.150	3/3/2014
598	Powerton	MW-9	manganese	0.360	0.150	5/29/2014
599	Powerton	MW-9	nitrate	12	10	2/27/2013
600	Powerton	MW-9	nitrate	11	10	5/30/2013
601	Powerton	MW-9	nitrate	11	10	5/29/2014
602	Waukegan	MW-1	arsenic	0.0540	0.0100	10/25/2010
603	Waukegan	MW-1	arsenic	0.1700	0.0100	6/13/2011
604	Waukegan	MW-1	arsenic	0.0770	0.0100	9/13/2011
605	Waukegan	MW-1	arsenic	0.0570	0.0100	12/6/2011
606	Waukegan	MW-1	arsenic	0.0780	0.0100	3/14/2012
607	Waukegan	MW-1	arsenic	0.0700	0.0100	6/18/2012
608	Waukegan	MW-1	arsenic	0.0700	0.0100	9/28/2012
609	Waukegan	MW-1	arsenic	0.0910	0.0100	12/19/2012
610	Waukegan	MW-1	arsenic	0.0980	0.0100	3/7/2013
611	Waukegan	MW-1	arsenic	0.0360	0.0100	6/7/13
612	Waukegan	MW-1	arsenic	0.0550	0.0100	7/25/2013
613	Waukegan	MW-1	arsenic	0.0460	0.0100	11/4/2013
614	Waukegan	MW-1	boron	2.60	2.0	10/25/2010
615	Waukegan	MW-1	boron	2.60	2.0	6/13/2011
616	Waukegan	MW-1	boron	2.50	2.0	9/13/2011
617	Waukegan	MW-1	boron	2.80	2.0	12/6/2011
618	Waukegan	MW-1	boron	2.50	2.0	3/14/2012
619	Waukegan	MW-1	boron	2.20	2.0	3/7/2013
620	Waukegan	MW-1	boron	2.20	2.0	6/7/13
621	Waukegan	MW-1	boron	2.30	2.0	7/25/2013

622	Waukegan	MW-1	boron	3.10	2.0	11/4/2013
623	Waukegan	MW-1	selenium	0.056	0.050	3/7/2013
624	Waukegan	MW-2	antimony	0.0150	0.0060	10/25/2010
625	Waukegan	MW-2	arsenic	0.0250	0.0100	10/25/2010
626	Waukegan	MW-2	arsenic	0.0160	0.0100	3/24/2011
627	Waukegan	MW-2	arsenic	0.0110	0.0100	6/18/2012
628	Waukegan	MW-2	arsenic	0.0110	0.0100	9/28/2012
629	Waukegan	MW-2	arsenic	0.0120	0.0100	3/7/2013
630	Waukegan	MW-2	boron	2.20	2.0	10/25/2010
631	Waukegan	MW-2	boron	2.20	2.0	3/24/2011
632	Waukegan	MW-2	boron	2.60	2.0	6/18/2012
633	Waukegan	MW-2	boron	2.10	2.0	9/28/2012
634	Waukegan	MW-2	boron	2.20	2.0	3/7/2013
635	Waukegan	MW-2	boron	2.10	2.0	7/25/2013
636	Waukegan	MW-2	boron	2.20	2.0	11/4/2013
637	Waukegan	MW-3	arsenic	0.0110	0.0100	12/19/2012
638	Waukegan	MW-3	boron	2.20	2.0	3/24/2011
639	Waukegan	MW-3	boron	2.30	2.0	6/13/2011
640	Waukegan	MW-3	boron	2.50	2.0	6/7/2013
641	Waukegan	MW-3	nitrate	13	10	6/7/2013
642	Waukegan	MW-3	selenium	0.067	0.050	6/7/2013
643	Waukegan	MW-4	boron	2.10	2.0	3/24/2011
644	Waukegan	MW-4	boron	2.10	2.0	12/6/2011
645	Waukegan	MW-4	boron	2.20	2.0	3/14/2012
646	Waukegan	MW-4	boron	2.50	2.0	6/18/2012
647	Waukegan	MW-4	boron	2.20	2.0	9/28/2012
648	Waukegan	MW-4	boron	2.50	2.0	12/19/2012
649	Waukegan	MW-4	boron	2.40	2.0	3/7/2013
650	Waukegan	MW-4	boron	2.30	2.0	6/6/2013
651	Waukegan	MW-4	boron	2.50	2.0	7/25/2013
652	Waukegan	MW-4	boron	2.80	2.0	11/4/2013
653	Waukegan	MW-4	manganese	0.360	0.150	9/13/2011
654	Waukegan	MW-5	arsenic	0.0120	0.0100	9/28/2012
655	Waukegan	MW-5	arsenic	0.0110	0.0100	12/19/2012
656	Waukegan	MW-5	arsenic	0.0120	0.0100	3/7/2013
657	Waukegan	MW-5	boron	28.00	2.0	10/25/2010
658	Waukegan	MW-5	boron	33.00	2.0	3/24/2011
659	Waukegan	MW-5	boron	12.00	2.0	6/13/2011
660	Waukegan	MW-5	boron	30.00	2.0	9/13/2011
661	Waukegan	MW-5	boron	37.00	2.0	12/6/2011
662	Waukegan	MW-5	boron	44.00	2.0	3/14/2012
663	Waukegan	MW-5	boron	47.00	2.0	6/18/2012
664	Waukegan	MW-5	boron	41.00	2.0	9/28/2012
665	Waukegan	MW-5	boron	27.00	2.0	12/19/2012
666	Waukegan	MW-5	boron	33.00	2.0	3/7/2013
667	Waukegan	MW-5	boron	12.00	2.0	6/6/2013
668	Waukegan	MW-5	boron	29.00	2.0	7/25/2013
669	Waukegan	MW-5	boron	32.00	2.0	11/5/2013
670	Waukegan	MW-5	chloride	540	200	6/13/2011
671	Waukegan	MW-5	chloride	220	200	9/13/2011
672	Waukegan	MW-5	chloride	220	200	12/19/2012
673	Waukegan	MW-5	chloride	600	200	6/6/2013

674	Waukegan	MW-5	chloride	210	200	7/25/2013
675	Waukegan	MW-5	iron	5.60	5.0	12/6/2011
676	Waukegan	MW-5	iron	6.60	5.0	3/14/2012
677	Waukegan	MW-5	iron	5.90	5.0	6/18/2012
678	Waukegan	MW-5	iron	5.10	5.0	9/28/2012
679	Waukegan	MW-5	manganese	0.710	0.150	10/25/2010
680	Waukegan	MW-5	manganese	0.600	0.150	3/24/2011
681	Waukegan	MW-5	manganese	0.280	0.150	6/13/2011
682	Waukegan	MW-5	manganese	0.990	0.150	12/6/2011
683	Waukegan	MW-5	manganese	0.760	0.150	3/14/2012
684	Waukegan	MW-5	manganese	0.750	0.150	6/18/2012
685	Waukegan	MW-5	manganese	0.570	0.150	9/28/2012
686	Waukegan	MW-5	manganese	0.480	0.150	12/19/2012
687	Waukegan	MW-5	manganese	0.510	0.150	3/7/2013
688	Waukegan	MW-5	manganese	0.170	0.150	6/6/2013
689	Waukegan	MW-5	manganese	0.440	0.150	7/25/2013
690	Waukegan	MW-5	manganese	0.540	0.150	11/5/2013
691	Waukegan	MW-5	sulfate	920	400	10/25/2010
692	Waukegan	MW-5	sulfate	780	400	3/24/2011
693	Waukegan	MW-5	sulfate	1,100	400	6/13/2011
694	Waukegan	MW-5	sulfate	810	400	9/13/2011
695	Waukegan	MW-5	sulfate	1,100	400	12/6/2011
696	Waukegan	MW-5	sulfate	980	400	3/14/2012
697	Waukegan	MW-5	sulfate	800	400	6/18/2012
698	Waukegan	MW-5	sulfate	710	400	9/28/2012
699	Waukegan	MW-5	sulfate	550	400	12/19/2012
700	Waukegan	MW-5	sulfate	650	400	3/7/2013
701	Waukegan	MW-5	sulfate	1,200	400	6/6/2013
702	Waukegan	MW-5	sulfate	890	400	7/25/2013
703	Waukegan	MW-5	sulfate	870	400	11/5/2013
704	Waukegan	MW-5	TDS	1,500	1,200	10/25/2010
705	Waukegan	MW-5	TDS	1,800	1,200	3/24/2011
706	Waukegan	MW-5	TDS	3,300	1,200	6/13/2011
707	Waukegan	MW-5	TDS	2,300	1,200	9/13/2011
708	Waukegan	MW-5	TDS	2,300	1,200	12/6/2011
709	Waukegan	MW-5	TDS	2,000	1,200	3/14/2012
710	Waukegan	MW-5	TDS	2,000	1,200	6/18/2012
711	Waukegan	MW-5	TDS	1,900	1,200	9/28/2012
712	Waukegan	MW-5	TDS	1,800	1,200	12/19/2012
713	Waukegan	MW-5	TDS	1,600	1,200	3/7/2013
714	Waukegan	MW-5	TDS	3,500	1,200	6/6/2013
715	Waukegan	MW-5	TDS	2,000	1,200	7/25/2013
716	Waukegan	MW-5	TDS	1,600	1,200	11/5/2013
717	Waukegan	MW-6	boron	2.80	2.0	3/7/2013
718	Waukegan	MW-6	boron	6.70	2.0	6/6/2013
719	Waukegan	MW-6	boron	4.30	2.0	7/25/2013
720	Waukegan	MW-6	boron	2.40	2.0	11/5/2013
721	Waukegan	MW-6	iron	6.20	5.0	6/6/2013
722	Waukegan	MW-6	iron	16.00	5.0	7/25/2013
723	Waukegan	MW-6	manganese	0.210	0.150	12/19/2012
724	Waukegan	MW-6	manganese	0.360	0.150	3/7/2013
725	Waukegan	MW-6	manganese	0.750	0.150	6/6/2013

726	Waukegan	MW-6	manganese	0.720	0.150	7/25/2013
727	Waukegan	MW-6	manganese	0.440	0.150	11/5/2013
728	Waukegan	MW-7	arsenic	0.0120	0.0100	3/7/2013
729	Waukegan	MW-7	arsenic	0.0100	0.0100	6/6/2013
730	Waukegan	MW-7	arsenic	0.0110	0.0100	7/25/2013
731	Waukegan	MW-7	arsenic	0.0120	0.0100	11/4/2013
732	Waukegan	MW-7	boron	43.00	2.0	12/19/2012
733	Waukegan	MW-7	boron	49.00	2.0	3/7/2013
734	Waukegan	MW-7	boron	42.00	2.0	6/6/2013
735	Waukegan	MW-7	boron	44.00	2.0	7/25/2013
736	Waukegan	MW-7	boron	45.00	2.0	11/4/2013
737	Waukegan	MW-7	iron	12.00	5.0	12/19/2012
738	Waukegan	MW-7	iron	12.00	5.0	3/7/2013
739	Waukegan	MW-7	iron	13.00	5.0	6/6/2013
740	Waukegan	MW-7	iron	13.00	5.0	7/25/2013
741	Waukegan	MW-7	iron	13.00	5.0	11/4/2013
742	Waukegan	MW-7	manganese	0.460	0.150	12/19/2012
743	Waukegan	MW-7	manganese	0.490	0.150	3/7/2013
744	Waukegan	MW-7	manganese	0.480	0.150	6/6/2013
745	Waukegan	MW-7	manganese	0.460	0.150	7/25/2013
746	Waukegan	MW-7	manganese	0.460	0.150	11/4/2013
747	Waukegan	MW-7	sulfate	630	400	12/19/2012
748	Waukegan	MW-7	sulfate	710	400	3/7/2013
749	Waukegan	MW-7	sulfate	650	400	6/6/2013
750	Waukegan	MW-7	sulfate	860	400	7/25/2013
751	Waukegan	MW-7	sulfate	770	400	11/4/2013
752	Waukegan	MW-7	TDS	1,800	1,200	12/19/2012
753	Waukegan	MW-7	TDS	1,800	1,200	3/7/2013
754	Waukegan	MW-7	TDS	1,800	1,200	6/6/2013
755	Waukegan	MW-7	TDS	1,800	1,200	7/25/2013
756	Waukegan	MW-7	TDS	1,800	1,200	11/4/2013
757	Will County	MW-1	antimony	0.0063	0.0060	12/8/2011
758	Will County	MW-1	boron	2.10	2.0	6/20/2012
759	Will County	MW-1	boron	2.40	2.0	5/23/2013
760	Will County	MW-1	boron	2.30	2.0	8/14/2013
761	Will County	MW-1	boron	2.60	2.0	10/29/2013
762	Will County	MW-1	boron	2.40	2.0	2/20/2014
763	Will County	MW-1	boron	2.50	2.0	5/20/2014
764	Will County	MW-1	chloride	210	200	3/28/2011
765	Will County	MW-1	chloride	220	200	3/5/2013
766	Will County	MW-1	manganese	0.200	0.150	12/13/2010
767	Will County	MW-1	manganese	0.220	0.150	6/15/2011
768	Will County	MW-1	manganese	0.160	0.150	9/15/2011
769	Will County	MW-1	manganese	0.170	0.150	12/8/2011
770	Will County	MW-1	manganese	0.160	0.150	3/16/2012
771	Will County	MW-1	manganese	0.160	0.150	6/20/2012
772	Will County	MW-1	manganese	0.180	0.150	12/18/2012
773	Will County	MW-1	manganese	0.170	0.150	3/5/2013
774	Will County	MW-1	manganese	0.220	0.150	8/14/2013
775	Will County	MW-1	manganese	0.280	0.150	10/29/2013
776	Will County	MW-1	manganese	0.300	0.150	2/20/2014
777	Will County	MW-1	manganese	0.260	0.150	5/20/2014

778	Will County	MW-1	manganese	0.240	0.150	8/13/2014
779	Will County	MW-1	sulfate	530	400	12/13/2010
780	Will County	MW-1	sulfate	430	400	3/16/2012
781	Will County	MW-1	sulfate	460	400	5/23/2013
782	Will County	MW-1	sulfate	540	400	8/14/2013
783	Will County	MW-1	sulfate	430	400	10/29/2013
784	Will County	MW-1	TDS	1,300	1,200	8/14/2013
785	Will County	MW-1	TDS	1,300	1,200	10/29/2013
786	Will County	MW-1	TDS	1,300	1,200	2/20/2014
787	Will County	MW-10	arsenic	0.0120	0.0100	10/28/2013
788	Will County	MW-10	boron	2.10	2.0	12/13/2010
789	Will County	MW-10	boron	2.20	2.0	6/15/2011
790	Will County	MW-10	boron	2.80	2.0	9/15/2011
791	Will County	MW-10	boron	2.50	2.0	12/8/2011
792	Will County	MW-10	boron	2.10	2.0	3/16/2012
793	Will County	MW-10	boron	2.10	2.0	6/20/2012
794	Will County	MW-10	boron	3.20	2.0	9/24/2012
795	Will County	MW-10	boron	2.70	2.0	12/18/2012
796	Will County	MW-10	boron	2.70	2.0	3/5/2013
797	Will County	MW-10	boron	2.70	2.0	5/22/2013
798	Will County	MW-10	boron	2.30	2.0	8/15/2013
799	Will County	MW-10	boron	3.80	2.0	10/28/2013
800	Will County	MW-10	boron	2.50	2.0	2/20/2014
801	Will County	MW-10	manganese	0.250	0.150	12/13/2010
802	Will County	MW-10	manganese	0.220	0.150	3/28/2011
803	Will County	MW-10	manganese	0.250	0.150	6/15/2011
804	Will County	MW-10	manganese	0.270	0.150	9/15/2011
805	Will County	MW-10	manganese	0.290	0.150	12/8/2011
806	Will County	MW-10	manganese	0.250	0.150	3/16/2012
807	Will County	MW-10	manganese	0.260	0.150	6/20/2012
808	Will County	MW-10	manganese	0.230	0.150	9/24/2012
809	Will County	MW-10	manganese	0.290	0.150	12/18/2012
810	Will County	MW-10	manganese	0.290	0.150	3/5/2013
811	Will County	MW-10	manganese	0.240	0.150	5/22/2013
812	Will County	MW-10	manganese	0.220	0.150	10/28/2013
813	Will County	MW-10	manganese	0.180	0.150	2/20/2014
814	Will County	MW-10	sulfate	420	400	9/15/2011
815	Will County	MW-2	antimony	0.0073	0.0060	9/15/2011
816	Will County	MW-2	antimony	0.0170	0.0060	12/9/2011
817	Will County	MW-2	boron	2.30	2.0	6/15/2011
818	Will County	MW-2	boron	2.30	2.0	9/15/2011
819	Will County	MW-2	boron	2.20	2.0	9/24/2012
820	Will County	MW-2	boron	2.20	2.0	8/14/2013
821	Will County	MW-2	boron	2.40	2.0	10/28/2013
822	Will County	MW-2	boron	2.40	2.0	2/20/2014
823	Will County	MW-2	chloride	250	200	3/28/2011
824	Will County	MW-2	sulfate	430	400	12/13/2010
825	Will County	MW-3	boron	2.70	2.0	12/13/2010
826	Will County	MW-3	boron	2.40	2.0	3/28/2011
827	Will County	MW-3	boron	2.60	2.0	6/15/2011
828	Will County	MW-3	boron	3.30	2.0	9/15/2011
829	Will County	MW-3	boron	2.80	2.0	12/8/2011



830	Will County	MW-3	boron	2.70	2.0	3/16/2012
831	Will County	MW-3	boron	3.10	2.0	6/20/2012
832	Will County	MW-3	boron	3.90	2.0	9/24/2012
833	Will County	MW-3	boron	3.40	2.0	12/18/2012
834	Will County	MW-3	boron	3.20	2.0	3/5/2013
835	Will County	MW-3	boron	3.70	2.0	5/22/2013
836	Will County	MW-3	boron	3.60	2.0	8/14/2013
837	Will County	MW-3	boron	3.50	2.0	10/28/2013
838	Will County	MW-3	boron	3.20	2.0	2/13/2014
839	Will County	MW-3	chloride	250	200	3/28/2011
840	Will County	MW-3	manganese	0.340	0.150	12/13/2010
841	Will County	MW-3	manganese	0.310	0.150	3/28/2011
842	Will County	MW-3	manganese	0.340	0.150	6/15/2011
843	Will County	MW-3	manganese	0.260	0.150	9/15/2011
844	Will County	MW-3	manganese	0.290	0.150	12/8/2011
845	Will County	MW-3	manganese	0.270	0.150	3/16/2012
846	Will County	MW-3	manganese	0.370	0.150	6/20/2012
847	Will County	MW-3	manganese	0.240	0.150	9/24/2012
848	Will County	MW-3	manganese	0.250	0.150	12/18/2012
849	Will County	MW-3	manganese	0.290	0.150	3/5/2013
850	Will County	MW-3	manganese	0.220	0.150	5/22/2013
851	Will County	MW-3	manganese	0.190	0.150	8/14/2013
852	Will County	MW-3	manganese	0.160	0.150	10/28/2013
853	Will County	MW-3	manganese	0.450	0.150	2/13/2014
854	Will County	MW-3	sulfate	500	400	6/20/2012
855	Will County	MW-3	sulfate	440	400	9/24/2012
856	Will County	MW-3	sulfate	480	400	12/18/2012
857	Will County	MW-3	sulfate	610	400	5/22/2013
858	Will County	MW-3	sulfate	530	400	8/14/2013
859	Will County	MW-3	sulfate	540	400	10/28/2013
860	Will County	MW-3	sulfate	560	400	2/13/2014
861	Will County	MW-3	TDS	1,400	1,200	6/20/2012
862	Will County	MW-4	boron	3.70	2.0	12/13/2010
863	Will County	MW-4	boron	3.30	2.0	3/28/2011
864	Will County	MW-4	boron	3.60	2.0	6/15/2011
865	Will County	MW-4	boron	4.30	2.0	9/15/2011
866	Will County	MW-4	boron	3.00	2.0	12/8/2011
867	Will County	MW-4	boron	4.00	2.0	3/16/2012
868	Will County	MW-4	boron	5.30	2.0	6/20/2012
869	Will County	MW-4	boron	6.20	2.0	9/24/2012
870	Will County	MW-4	boron	5.20	2.0	12/18/2012
871	Will County	MW-4	boron	4.50	2.0	3/5/2013
872	Will County	MW-4	boron	3.80	2.0	5/22/2013
873	Will County	MW-4	boron	5.10	2.0	8/14/2013
874	Will County	MW-4	boron	5.60	2.0	10/28/2013
875	Will County	MW-4	boron	4.60	2.0	2/13/2014
876	Will County	MW-4	manganese	0.520	0.150	12/13/2010
877	Will County	MW-4	manganese	0.580	0.150	3/28/2011
878	Will County	MW-4	manganese	0.700	0.150	6/15/2011
879	Will County	MW-4	manganese	1.000	0.150	9/15/2011
880	Will County	MW-4	manganese	0.620	0.150	12/8/2011
881	Will County	MW-4	manganese	0.600	0.150	3/16/2012



882	Will County	MW-4	manganese	0.700	0.150	6/20/2012
883	Will County	MW-4	manganese	0.990	0.150	9/24/2012
884	Will County	MW-4	manganese	0.620	0.150	12/18/2012
885	Will County	MW-4	manganese	0.470	0.150	3/5/2013
886	Will County	MW-4	manganese	0.440	0.150	5/22/2013
887	Will County	MW-4	manganese	0.580	0.150	8/14/2013
888	Will County	MW-4	manganese	0.650	0.150	10/28/2013
889	Will County	MW-4	manganese	0.720	0.150	2/13/2014
890	Will County	MW-4	sulfate	1,500	400	12/13/2010
891	Will County	MW-4	sulfate	1,500	400	3/28/2011
892	Will County	MW-4	sulfate	1,600	400	6/15/2011
893	Will County	MW-4	sulfate	4,800	400	9/15/2011
894	Will County	MW-4	sulfate	1,600	400	12/8/2011
895	Will County	MW-4	sulfate	2,000	400	3/16/2012
896	Will County	MW-4	sulfate	2,800	400	6/20/2012
897	Will County	MW-4	sulfate	3,200	400	9/24/2012
898	Will County	MW-4	sulfate	2,200	400	12/18/2012
899	Will County	MW-4	sulfate	2,000	400	3/5/2013
900	Will County	MW-4	sulfate	1,500	400	5/22/2013
901	Will County	MW-4	sulfate	2,200	400	8/14/2013
902	Will County	MW-4	sulfate	1,300	400	10/28/2013
903	Will County	MW-4	sulfate	1,400	400	2/13/2014
904	Will County	MW-4	TDS	2,500	1,200	12/13/2010
905	Will County	MW-4	TDS	2,600	1,200	3/28/2011
906	Will County	MW-4	TDS	2,800	1,200	6/15/2011
907	Will County	MW-4	TDS	6,000	1,200	9/15/2011
908	Will County	MW-4	TDS	3,100	1,200	12/8/2011
909	Will County	MW-4	TDS	3,700	1,200	3/16/2012
910	Will County	MW-4	TDS	4,300	1,200	6/20/2012
911	Will County	MW-4	TDS	4,400	1,200	9/24/2012
912	Will County	MW-4	TDS	4,000	1,200	12/18/2012
913	Will County	MW-4	TDS	3,600	1,200	3/5/2013
914	Will County	MW-4	TDS	2,900	1,200	5/22/2013
915	Will County	MW-4	TDS	3,500	1,200	8/14/2013
916	Will County	MW-4	TDS	2,400	1,200	10/28/2013
917	Will County	MW-4	TDS	2,800	1,200	2/13/2014
918	Will County	MW-5	boron	2.60	2.0	12/13/2010
919	Will County	MW-5	boron	2.70	2.0	3/28/2011
920	Will County	MW-5	boron	3.20	2.0	6/15/2011
921	Will County	MW-5	boron	4.00	2.0	9/15/2011
922	Will County	MW-5	boron	3.20	2.0	12/8/2011
923	Will County	MW-5	boron	2.90	2.0	3/16/2012
924	Will County	MW-5	boron	2.30	2.0	6/20/2012
925	Will County	MW-5	boron	3.80	2.0	9/24/2012
926	Will County	MW-5	boron	2.50	2.0	12/18/2012
927	Will County	MW-5	boron	2.60	2.0	3/5/2013
928	Will County	MW-5	boron	3.60	2.0	6/5/2013
929	Will County	MW-5	boron	3.50	2.0	8/14/2013
930	Will County	MW-5	boron	4.10	2.0	10/28/2013
931	Will County	MW-5	boron	2.70	2.0	2/13/2014
932	Will County	MW-5	selenium	0.170	0.050	10/28/2013
933	Will County	MW-5	sulfate	580	400	12/13/2010

934	Will County	MW-5	sulfate	570	400	3/28/2011
935	Will County	MW-5	sulfate	540	400	6/15/2011
936	Will County	MW-5	sulfate	690	400	9/15/2011
937	Will County	MW-5	sulfate	500	400	12/8/2011
938	Will County	MW-5	sulfate	410	400	6/20/2012
939	Will County	MW-5	sulfate	540	400	9/24/2012
940	Will County	MW-5	sulfate	650	400	6/5/2013
941	Will County	MW-5	sulfate	500	400	8/14/2013
942	Will County	MW-5	sulfate	560	400	10/28/2013
943	Will County	MW-5	sulfate	690	400	2/13/2014
944	Will County	MW-5	TDS	1,300	1,200	3/28/2011
945	Will County	MW-5	TDS	1,400	1,200	6/15/2011
946	Will County	MW-5	TDS	1,500	1,200	9/15/2011
947	Will County	MW-5	TDS	1,600	1,200	6/5/2013
948	Will County	MW-5	TDS	1,300	1,200	10/28/2013
949	Will County	MW-5	TDS	1,400	1,200	2/13/2014
950	Will County	MW-6	boron	2.70	2.0	12/13/2010
951	Will County	MW-6	boron	2.50	2.0	3/28/2011
952	Will County	MW-6	boron	2.40	2.0	6/15/2011
953	Will County	MW-6	boron	3.00	2.0	9/15/2011
954	Will County	MW-6	boron	2.50	2.0	12/8/2011
955	Will County	MW-6	boron	2.50	2.0	3/16/2012
956	Will County	MW-6	boron	2.90	2.0	6/20/2012
957	Will County	MW-6	boron	3.00	2.0	9/24/2012
958	Will County	MW-6	boron	3.00	2.0	12/18/2012
959	Will County	MW-6	boron	2.70	2.0	3/5/2013
960	Will County	MW-6	boron	2.80	2.0	5/22/2013
961	Will County	MW-6	boron	2.90	2.0	8/14/2013
962	Will County	MW-6	boron	3.70	2.0	10/28/2013
963	Will County	MW-6	boron	3.00	2.0	2/13/2014
964	Will County	MW-6	chloride	210	200	3/28/2011
965	Will County	MW-6	sulfate	500	400	12/13/2010
966	Will County	MW-6	sulfate	540	400	3/28/2011
967	Will County	MW-6	sulfate	570	400	6/15/2011
968	Will County	MW-6	sulfate	420	400	9/15/2011
969	Will County	MW-6	sulfate	440	400	12/8/2011
970	Will County	MW-6	sulfate	450	400	6/20/2012
971	Will County	MW-6	sulfate	550	400	9/24/2012
972	Will County	MW-7	boron	4.70	2.0	12/13/2010
973	Will County	MW-7	boron	5.00	2.0	3/28/2011
974	Will County	MW-7	boron	5.70	2.0	6/15/2011
975	Will County	MW-7	boron	3.40	2.0	9/15/2011
976	Will County	MW-7	boron	5.00	2.0	12/8/2011
977	Will County	MW-7	boron	5.10	2.0	3/16/2012
978	Will County	MW-7	boron	5.60	2.0	6/20/2012
979	Will County	MW-7	boron	5.50	2.0	9/24/2012
980	Will County	MW-7	boron	5.10	2.0	12/18/2012
981	Will County	MW-7	boron	4.30	2.0	3/5/2013
982	Will County	MW-7	boron	2.60	2.0	5/22/2013
983	Will County	MW-7	boron	3.50	2.0	8/15/2013
984	Will County	MW-7	boron	3.00	2.0	10/29/2013
985	Will County	MW-7	boron	4.00	2.0	2/20/2014

986	Will County	MW-7	chloride	210	200	2/20/2014
987	Will County	MW-7	manganese	0.180	0.150	9/15/2011
988	Will County	MW-7	manganese	0.200	0.150	12/8/2011
989	Will County	MW-7	manganese	0.200	0.150	3/16/2012
990	Will County	MW-7	manganese	0.190	0.150	6/20/2012
991	Will County	MW-7	manganese	0.190	0.150	9/24/2012
992	Will County	MW-7	manganese	0.190	0.150	12/18/2012
993	Will County	MW-7	manganese	0.160	0.150	2/20/2014
994	Will County	MW-7	sulfate	610	400	12/13/2010
995	Will County	MW-7	sulfate	650	400	3/28/2011
996	Will County	MW-7	sulfate	1,000	400	6/15/2011
997	Will County	MW-7	sulfate	710	400	9/15/2011
998	Will County	MW-7	sulfate	710	400	12/8/2011
999	Will County	MW-7	sulfate	770	400	3/16/2012
1000	Will County	MW-7	sulfate	670	400	6/20/2012
1001	Will County	MW-7	sulfate	600	400	9/24/2012
1002	Will County	MW-7	sulfate	480	400	12/18/2012
1003	Will County	MW-7	sulfate	460	400	8/15/2013
1004	Will County	MW-7	sulfate	530	400	10/29/2013
1005	Will County	MW-7	TDS	1,300	1,200	12/13/2010
1006	Will County	MW-7	TDS	1,500	1,200	3/28/2011
1007	Will County	MW-7	TDS	1,600	1,200	6/15/2011
1008	Will County	MW-7	TDS	1,400	1,200	9/15/2011
1009	Will County	MW-7	TDS	1,300	1,200	12/8/2011
1010	Will County	MW-7	TDS	1,400	1,200	3/16/2012
1011	Will County	MW-7	TDS	1,300	1,200	6/20/2012
1012	Will County	MW-7	TDS	1,300	1,200	2/20/2014
1013	Will County	MW-8	arsenic	0.0140	0.0100	9/15/2011
1014	Will County	MW-8	arsenic	0.0120	0.0100	12/8/2011
1015	Will County	MW-8	arsenic	0.0130	0.0100	6/20/2012
1016	Will County	MW-8	arsenic	0.0180	0.0100	9/24/2012
1017	Will County	MW-8	arsenic	0.0160	0.0100	8/15/2013
1018	Will County	MW-8	boron	2.30	2.0	9/15/2011
1019	Will County	MW-8	boron	2.60	2.0	9/24/2012
1020	Will County	MW-8	boron	2.10	2.0	12/18/2012
1021	Will County	MW-8	boron	2.40	2.0	8/15/2013
1022	Will County	MW-8	boron	3.20	2.0	10/28/2013
1023	Will County	MW-8	chloride	270	200	3/29/2011
1024	Will County	MW-8	manganese	0.330	0.150	12/13/2010
1025	Will County	MW-8	manganese	0.440	0.150	3/29/2011
1026	Will County	MW-8	manganese	0.470	0.150	6/15/2011
1027	Will County	MW-8	manganese	0.450	0.150	9/15/2011
1028	Will County	MW-8	manganese	0.400	0.150	12/8/2011
1029	Will County	MW-8	manganese	0.360	0.150	6/20/2012
1030	Will County	MW-8	manganese	0.410	0.150	9/24/2012
1031	Will County	MW-8	manganese	0.430	0.150	12/18/2012
1032	Will County	MW-8	manganese	0.330	0.150	3/5/2013
1033	Will County	MW-8	manganese	0.470	0.150	5/23/2013
1034	Will County	MW-8	manganese	0.310	0.150	8/15/2013
1035	Will County	MW-8	manganese	0.420	0.150	10/28/2013
1036	Will County	MW-8	manganese	0.390	0.150	2/20/2014
1037	Will County	MW-8	sulfate	440	400	12/13/2010

1038	Will County	MW-8	sulfate	440	400	3/29/2011
1039	Will County	MW-8	sulfate	420	400	6/15/2011
1040	Will County	MW-8	sulfate	600	400	9/15/2011
1041	Will County	MW-8	sulfate	630	400	9/24/2012
1042	Will County	MW-8	sulfate	440	400	8/15/2013
1043	Will County	MW-8	sulfate	650	400	10/28/2013
1044	Will County	MW-8	TDS	1,300	1,200	9/15/2011
1045	Will County	MW-8	TDS	1,600	1,200	10/28/2013
1046	Will County	MW-8	TDS	1,300	1,200	2/20/2014
1047	Will County	MW-9	boron	2.20	2.0	12/13/2010
1048	Will County	MW-9	boron	2.20	2.0	10/29/2013
1049	Will County	MW-9	chloride	280	200	3/28/2011
1050	Will County	MW-9	chloride	230	200	6/15/2011
1051	Will County	MW-9	chloride	270	200	2/13/2014
1052	Will County	MW-9	sulfate	410	400	12/13/2010
1053	Will County	MW-9	sulfate	410	400	6/15/2011

**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	)	

**MEMORANDUM OF LAW IN SUPPORT OF CITIZENS GROUPS’ MOTION FOR PARTIAL SUMMARY JUDGMENT**

Complainants Sierra Club, Environmental Law and Policy Center, Prairie Rivers Network and Citizens Against Ruining the Environment (collectively, “Citizens Groups”) submit this memorandum of law in support of our Motion for Partial<sup>1</sup> Summary Judgment (“Motion”). There is no genuine issue of material fact, and Citizens Groups are entitled to partial judgment as a matter of law as to all Counts of their Second Amended Complaint.

**SUMMARY OF THE ARGUMENT**

Summary judgment is appropriate where there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. Here, as discussed in further detail below, the material undisputed facts include:

- MWG owns the Waukegan and Will County power plants and operates the Joliet 29 and Powerton power plants. *Infra* Statement of Facts (hereinafter “SOF”) ¶ 1, attached in part hereto as Ex. L.

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<sup>1</sup> As explained in the Motion, we request partial summary judgment, even though we seek judgment on all counts, because we are excluding from the Motion the allegations in the Second Amended Complaint that coal ash in active coal ash impoundments at the Waukegan, Will County, Joliet 29 and Powerton plants caused groundwater contamination and violated open dumping prohibitions. The Motion seeks summary judgment solely with regard to the Historic Coal Ash and Historic Ash Areas, as defined herein, at those four plants.

- The groundwater at Waukegan was classified as Class I, Potable Resource groundwater, throughout the entire period of violations asserted in the Second Amended Complaint, and continues to be classified as Class I groundwater. *Infra* SOF ¶¶ 44 – 45.
- The groundwater at Will County, Joliet 29, and Powerton was classified as Class I, Potable Resource Groundwater, prior to IEPA’s approval of Groundwater Management Zones (“GMZs”) at those plants in 2013. *Infra* SOF ¶¶ 46 – 48.
- Documents in MWG’s possession reveal that coal ash<sup>2</sup> is located in various places at Waukegan, Will County, Joliet 29 and Powerton, including areas outside of the ash ponds at those plants. The coal ash for which we are seeking partial summary judgment includes coal ash in and on the ground or in unlined repositories, collectively referred to as “Historic Coal Ash” or “Historic Ash Areas.”<sup>3</sup> *Infra* SOF ¶¶ 4 – 8, 10 – 11.

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<sup>2</sup> In the Motion and this Memo in Support, “coal ash” refers to the materials defined by Illinois Environmental Protection Act as “coal combustion waste,” including “fly ash, bottom ash, slag, or flue gas or fluid bed boiler desulfurization by-products generated as a result of the combustion of [coal].” 415 ILCS 5/3.140. Coal ash is described in the soil boring logs cited herein as “ash” and “cinders” in addition to the terms used above. Kelly Dep. 10:16, Jan. 23, 2015, attached hereto as Ex. E1 (“Boiler slag is] just another form of bottom ash.”); *id.* at 10:21 (“Coal cinders is bottom ash also.”).

<sup>3</sup> “Historic Coal Ash” at Waukegan means coal ash in or on the ground or in unlined repositories at Waukegan, but does not include coal ash in the West Ash Pond or the East Ash Pond, as depicted in Exhibit A1, two site maps derived from (a) NRG Energy, *Annual and Quarterly Groundwater Monitoring Report—Waukegan Generating Station* Bates MWG13-15\_56439 (Jan. 22, 2016) and (b) ENSR, *Phase II Environmental Site Assessment—Waukegan Generating Station* Bates MWG13-15\_45814 (Nov. 1998) [site maps hereinafter referred to collectively as *Waukegan Site Maps*]. “Historic Ash Areas at Waukegan” means those areas at Waukegan containing Historic Coal Ash.

“Historic Coal Ash” at Will County means coal ash in or on the ground or in unlined repositories at Will County, but does not include coal ash in Ash Ponds 1-N, 1-S, 2-S, or 3-S, as depicted in Ex. B1, two site maps derived from (a) NRG Energy, *Annual and Quarterly Groundwater Monitoring Report—Will County Generating Station* Bates MWG13-15\_56529 (Jan. 22, 2016) and (b) ENSR, *Will County Phase II Environmental Site Assessment – Will County Generating Station* Bates MWG13-15\_5739 (Dec. 7, 1998) [site maps hereinafter referred to collectively as *Will County Site Maps*]. “Historic Coal Ash” at Will County also does not include coal ash in the boiler slag stockpile located near the retention basin depicted in Ex. B1; Maddox Dep. 39:17-40:16, Dec. 2, 2014, attached hereto as Ex. E2; KPRG and Associates, Inc., *Will County CCB Determination Support, Midwest Generation Will County Station* Bates MWG13-15\_49565, 49569 (Sep. 8, 2015) [hereinafter KPRG, *CCB Determination Report*], attached hereto as Ex. B2; Resp’t Supp. Resp. to Compl.’s First Set of Interrogs. at 5 (June 10, 2015), attached hereto as Ex. F. “Historic Ash Areas at Will County” means those areas at Will County containing Historic Coal Ash.

“Historic Coal Ash” at Joliet 29 means coal ash in or on the ground or in unlined repositories at the Joliet 29 site, but does not include coal ash in Ash Ponds 1, 2, and 3, as depicted in Exhibit C1, two site maps derived from (a) NRG Energy, *Annual and Quarterly Groundwater Monitoring Report—Joliet #29 Generating Station* Bates MWG13-15\_56342 (Jan. 22, 2016) and (b) ENSR, *Phase II Environmental Site Assessment – Joliet 29 Generating Station* Bates MWG13-15\_23339 (Dec. 7, 1998) [site maps hereinafter referred to collectively as *Joliet 29 Site Maps*]. “Historic Coal Ash” at Joliet 29 also does not include the area referred to by MWG consultant KPRG and Associates, Inc. as the “former ash placement area” in the western portion of the site. Gnat Dep. 46:10-15, Dec. 18, 2014, attached hereto as Ex. E3; Race Dep. 59:20-60:3, Nov. 12, 2014, attached hereto as Ex. 4; KPRG and Associates, Inc., *CCB Determination Support, Joliet, Illinois* Bates MWG13-15\_19486 (Jul. 25, 2005) [hereinafter KPRG, *Joliet CCB Determination Report*], attached hereto as Ex. C2; Seymour Dep. 145:14-148:1, Mar. 1, 2016, attached hereto as Ex. E5. “Historic Ash Areas at Joliet 29” means those areas at Joliet 29 containing Historic Coal Ash.

“Historic Coal Ash” at Powerton means coal ash in or on the ground or in unlined repositories at Powerton, but does not include the Secondary Ash Settling Basin (also known as the “Ash Settling Basin”), the Ash Surge

- The coal ash at all four plants has resulted from the burning of coal to generate electricity. *Infra* SOF ¶¶ 2 – 3.
- There is no evidence in the record of Illinois EPA permits allowing Historic Coal Ash to be used as fill or construction material in Historic Ash Areas. *Infra* SOF ¶ 13.
- MWG has not removed all of the coal ash, installed liners beneath the coal ash, or placed impermeable caps over the coal ash in the Historic Ash Areas. *Infra* SOF ¶¶ 68 – 73, 78, 82 – 87, 93 – 97, 99, 106 – 112.
- Quarterly tests of groundwater monitoring wells show groundwater contaminated with coal ash constituents, including boron, sulfate and manganese, in excess of Class I: Potable Resource Groundwater quality standards at all four plants, and in excess of Maximum Contaminant Levels contained in federal open dumping regulations at Waukegan, Will County and Powerton. *Infra* SOF ¶¶ 39, 40, 53 – 56, 67.
- Historic Ash Areas are causing coal ash indicator constituents to leach into the groundwater at all four plants. *Infra* SOF ¶¶ 24 – 34, 57 – 60.

The undisputed facts show that MWG had and has control over the premises where constituents of coal ash were and are leaching into the groundwater, but has not taken precautions – much less “extensive” precautions - to prevent leachate from that ash from contaminating groundwater. Accordingly, MWG has violated the Act’s and implementing regulations’ prohibitions on allowing groundwater pollution at its Waukegan, Will County, Joliet 29, and Powerton plants on the thousands of occasions set forth in the Second Amended Complaint, and on dozens of occasions has violated the Act’s prohibitions on open dumping at

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Basin, the Ash Bypass Basin, the East Yard Runoff Basin, the Metal Cleaning Basin, or the Limestone Runoff Basin (also known as the “Slag Overflow Basin”), as depicted in Exhibit D1, two site maps derived from (a) *Annual and Quarterly Groundwater Monitoring Report—Powerton Generating Station* Bates MWG13-15\_56201 (Jan. 22, 2016) and (b) ENSR, *Phase II Environmental Site Assessment – Powerton Generating Station* Bates MWG13-15\_3294 (Dec. 7, 1998) [site maps hereinafter referred to collectively as *Powerton Site Maps*]. “Historic Ash Areas at Powerton” means those areas at Powerton containing Historic Coal Ash.

“Historic Ash Areas” without a station or location specified means Historic Ash Areas at Waukegan, Will County, Joliet 29, and Powerton stations collectively.

“Historic Coal Ash” does not include certain coal ash repositories that were subject to corrective action under Compliance Commitment Agreements with Illinois EPA or repositories for which MWG’s expert cited leach test data. Citizens’ Groups do not concede that these excluded areas did not cause groundwater contamination, but have chosen to exclude them from this Motion.

its Waukegan, Will County and Powerton plants.<sup>4</sup> MWG continues to violate those prohibitions to date. Therefore, Citizens' Groups ask the Board to grant the Motion.

**STATEMENT OF UNDISPUTED FACTS**

**Midwest Generation owns or operates all four plants.**

1. MWG owns and operates both the Waukegan Electric Generating Station ("Waukegan") in Waukegan, Lake County, Illinois, and the Will County Electric Generating Station ("Will County") in Romeoville, Will County, Illinois. MWG operates both the Joliet 29 Electric Generating Station ("Joliet 29") in Joliet, in Will County, Illinois, and the Powerton Electric Generating Station ("Powerton") in Pekin, Tazewell County, Illinois. Resp't Answer and Defenses to Second Compl., ¶¶ 1, 3, 5, 7. MWG has operated each of these four plants since 1999. John Seymour, P.E., *Expert Report of John Seymour, P.E.* 6 (Nov. 2, 2015) [hereinafter *Seymour Report*], attached hereto as Ex. G. Two depictions of each site, one current and one from 1998, are extracted from documents cited below and compiled as Exhibits A1, B1, C1, and D1.

2. During the period of violations alleged in the Second Amended Complaint and prior to that period, Waukegan, Will County, Joliet 29 and Powerton were all coal-fired power plants that burned coal to generate electricity. *See, e.g.* Ex. F, *Seymour Report*, at 13, 16, 18, and 21.

3. Historic Coal Ash at the four plants resulted from the burning of coal. *See, e.g.*, Ex. C2, KPRG, *Joliet CCB Determination Report*, at Bates MWG13-15\_19486 (referring to "ash and slag resulting from the combustion of coal.").

**There is Historic Coal Ash at All Four Plants.**

4. Historic Coal Ash at Waukegan includes coal ash in the following repositories:
- A "Former Slag/Fly Ash Storage Area" directly west of the two ash ponds at Waukegan. ENSR, *Phase II Environmental Site Assessment—Waukegan Generating Station Bates MWG13-15\_45814* (Dec. 7, 1998) [hereinafter *Waukegan Phase II ESA*], attached hereto as Ex. A2.
  - In fill in the far north center-west portion of the Waukegan site, where soil boring B-11 was installed, as indicated by the presence of slag in the boring log for that boring. *Id.* at Bates MWG13-15\_45821-45842.

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<sup>4</sup> The 80 occasions in which MWG violated the Act's open dumping prohibitions are set out in the Tables contained in paragraphs 42, 45 and 48 of the Second Amended Complaint.



- In the area east of the ash ponds where groundwater monitoring wells MW-1 through MW-4 were installed, and between the ash ponds and the Former Slag/Fly Ash Storage Area, where monitoring well MW-5 was installed, as indicated by the presence of ash in the boring logs for these wells. Patrick Engineering Inc., *Hydrogeological Assessment Report, Waukegan Generating Station* Bates MWG13-15\_7167-7175 (Feb. 2011) [hereinafter Patrick, *Waukegan Hydrogeological Assessment Report*], attached hereto as Ex. A3.
- In the areas immediately northwest and north of the Slag/Fly Ash Storage Area, where (a) groundwater monitoring wells MW-8 and MW-9 were installed, as indicated by the presence of ash in the boring logs for these wells; (KPRG, *Geologic Logs for MW-8 and MW-9* Bates MWG13-15\_45648-45649 (Apr. 2014), attached hereto as Ex. A4), and (b) ENSR soil borings B-16 and B-22 were completed, as indicated by the presence of ash or slag in those borings. See Ex. A2, ENSR, *Waukegan Phase II ESA* at Bates MWG13-15\_45817-45842.

5. Historic Coal Ash at Will County includes coal ash in the following repositories:

- The areas immediately east of, but outside of, ash ponds 1-N, 1-S, 2-S, and 3-S, as indicated by the presence of “coal ash” and “coal cinders” in the soil borings for groundwater monitoring wells MW-1 through MW-4 and MW-6. See Patrick Engineering Inc., *Hydrogeological Assessment Report, Will County Generating Station* Bates MWG13-15\_7251-7256 (Feb. 2011) [hereinafter Patrick, *Will County Hydrogeological Assessment Report*], attached hereto as Ex. B3.
- A Slag and Bottom Ash Dumping Area in the southeast corner of the site and a Slag Dumping Area next to the “Switchyard” in the middle of the site. ENSR, *Will County Phase II Environmental Site Assessment – Will County Generating Station* Bates MWG13-15\_5739 (Dec. 7, 1998) [hereinafter ENSR *Will County Phase II ESA*], attached hereto as Ex. B4.
- Coal ash fill in various areas around the Will County plant, as indicated by the presence of “coal ash” or “ash” in soil borings B-1 through B-7. *Id.* at Bates MWG13-15\_5747-5753.

- [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] Veenbaas Dep. 20:22-21:4, Feb. 20, 2015, attached hereto as E6.

6. [REDACTED]  
[REDACTED]  
[REDACTED] Ex. B2, KPRG, *Will County CCB Determination Report* Bates MWG13-15\_49566; Ex. F, Resp't Supp. Resp. to Compl.'s First Set of Interrogs. at 5.
7. Historic Coal Ash at Joliet 29 includes coal ash in the following repositories:
- Ash in two ash landfills, one at the northeast end of the property and a second on the southwest end of the property. ENSR, *Phase II Environmental Site Assessment – Joliet 29 Generating Station* Bates MWG13-15\_23339-23343 (Dec. 7, 1998) [hereinafter *Joliet 29 Phase II ESA*], attached hereto as Ex. C3; KPRG, Inc., *Inspection Summary Letter, Joliet #29 Former Ash Burial Area Runoff Inspection 2009* Bates MWG13-15\_19442-19444 (Aug. 27, 2009), attached hereto as Exhibit C4.
  - Ash in fill near the center of the Joliet site. See KPRG, *Geotechnical Analysis of Soil Surrounding Settling Basins/Ponds* Bates MWG13-15\_24264, 24289-24297 (Oct. 13, 2005) [hereinafter KPRG, *Geotechnical Analysis*], attached hereto as Ex. I; KPRG and Associates, Inc., *Re-Issuance of Figure 4-1 for Geotechnical Summary Report* Bates MWG13-15\_24387-24392 (Oct. 23, 2005) [hereinafter KPRG, *Geotechnical Analysis Joliet Map*], attached hereto as Ex. J.
8. There is also coal ash at Joliet 29 in a former ash area, which is referred to by MWG consultant KPRG as the “former ash placement area,” in the western portion of the site. Ex. E3, Gnat Dep. 46:10-15; Ex. E4, Race Dep. 59:20-60; Ex. C2, KPRG, *Joliet CCB Determination Report* Bates MWG13-15\_19495, 19499-19517; Ex. E5, Seymour Dep. 145:14-148:1.
9. Both the northwest and southwest ash landfills at Joliet 29 are on property that MWG leases. MWG’s Resp. to Compl.’s Fourth Set of Doc. Reqs., Second Set of Interrogs., and Second Set of Reqs. for Admis. to Resp’t. at 9 (Mar. 31, 2015), attached hereto as Ex. K.
10. Historic Coal Ash at Powerton includes coal ash in the following repositories:
- The “former ash basin” (variously described as “former ash pond” and “old ash pond”) in the northeastern part of the site contains large volumes of ash, as indicated by a series of soil borings that found ash "up to around 10 feet thick in places." See E-mail from Richard Frendt, Patrick Engineering Inc., to Maria Race, MWG, Bates MWG13-15\_14227-14251, 14267 (Aug. 9, 2012, 5:14pm CST) [hereinafter Patrick, *Powerton Former Ash Basin Borings*], attached hereto as Ex. D2 (showing ash (“cinders”), mixed with other materials, up to 30 feet deep).

- Fill outside of named ash disposal areas, including fill surrounding the ash ponds, and west of the ash ponds but east of the onsite coal pile. *See* ENSR, *Phase II Environmental Site Assessment – Powerton Generating Station* Bates MWG13-15\_3309-3315 (Dec. 7, 1998) [hereinafter ENSR, *Powerton Phase II ESA*], attached hereto as Ex. D3; Patrick Engineering, *Hydrogeological Assessment Report for Powerton Generating Station* Bates MWG13-15\_7111-7121 (Feb. 2011) [hereinafter Patrick, *Powerton Hydrogeological Assessment Report*], attached hereto as Exhibit D4. Patrick Engineering Inc., *Quarterly Groundwater Monitoring Results – Bypass Cleaning Basin* Bates MWG13-15\_40019-40022 (Oct. 21, 2011), attached hereto as Ex. D5; Patrick Engineering Inc., *Bimonthly Groundwater Monitoring Results—April 2011. Powerton Station—Metal Cleaning Basin* Bates MWG13-15\_44762-4767 (Aug. 1, 2011), attached hereto as Ex. D6; Ex. I, KPRG, *Geotechnical Analysis* at Bates MWG13-15 24306-24310. Soil borings and groundwater monitoring well borings surrounding the ash ponds show ash (“cinders”) up to 24 feet beneath the surface. *Id.* Additional borings west of the ash ponds, but east of the onsite coal pile, showed ash up to 12 feet deep. Ex. D3, ENSR, *Powerton Phase II ESA* at Bates MWG13-15\_3320 – 3324.

11.

██████████ ██████████ ██████████  
██████████  
██████████ Andrews Env'tl. Engineering Inc., *Draft Sampling Plan Report Prepared for Midwest Generation, Powerton Generating Station* Bates MWG13-15 11305-11311 (June 2004) [hereinafter Andrews Env'tl. Engineering, *Draft Sampling Plan Report*], attached hereto as Exhibit D7.

12. The coal ash located in Historic Ash Areas is not “coal combustion byproducts” as defined by 415 ILCS 5/3.135. That definition sets out ten circumstances in which coal combustion waste constitutes CCB. These are:

- (1) The extraction or recovery of material compounds contained within CCB.
- (2) The use of CCB as a raw ingredient or mineral filler in the manufacture of the following commercial products: cement; concrete and concrete mortars; cementious products including block, pipe and precast/prestressed components; asphalt or cementious roofing products; plastic products including pipes and fittings; paints and metal alloys; kiln fired products including bricks, blocks, and tiles; abrasive media; gypsum wallboard; asphaltic concrete, or asphalt based paving material.
- (3) CCB used (A) in accordance with the Illinois Department of Transportation ("IDOT") standard specifications and subsection (a-5) of this Section or (B) under the approval of the Department of Transportation for IDOT projects.
- (4) Bottom ash used as antiskid material, athletic tracks, or foot paths.
- (5) Use in the stabilization or modification of soils providing the CCB meets the IDOT specifications for soil modifiers.

(6) CCB used as a functionally equivalent substitute for agricultural lime as a soil conditioner.

(6.5) CCB that is a synthetic gypsum.

(7) Bottom ash used in non-IDOT pavement sub-base or base, pipe bedding, or foundation backfill.

(8) Structural fill, designed and constructed according to ASTM standard E2277-03 or Illinois Department of Transportation specifications, when used in an engineered application or combined with cement, sand, or water to produce a controlled strength fill material and covered with 12 inches of soil unless infiltration is prevented by the material itself or other cover material.

(9) Mine subsidence, mine fire control, mine sealing, and mine reclamation.

415 ILCS 5/3.135(a). There is no evidence in the record that the coal ash discussed herein has been used for any of these purposes. Even if some of the coal ash was originally used as “structural fill” in a general sense, it would not comply with section 3.135(a)(8) because there is no evidence in the record that the structural fill was designed and constructed according to the above-cited standards, and there are numerous instances in the record of coal ash being covered by less than 12 inches of soil.<sup>5</sup> Moreover, coal ash used as “structural fill” according to section 3.135(a)(8) is subject to additional requirements found in section 3.135(a-5), including notification to the Illinois Environmental Protection Agency of the intention to use coal ash as CCB. 415 ILCS 5/3.135(a-5). There is no evidence in the record showing that these requirements have been met.

13. There is no evidence in the record of Illinois EPA permits allowing Historic Coal Ash to be used as fill or construction material in Historic Ash Areas.

**The type of coal ash varies both between and within the four plant sites.**

14. There are different types of coal ash, including but not limited to “fly ash” and “bottom ash.” Ex. E5, Seymour Dep. 225:23-24, 226:2-10. “Slag” and “cinders” are both forms of bottom ash. Ex. E1, Kelly Dep. 10:16, 10:21.

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<sup>5</sup> See, e.g., Ex. I, KPRG, *Geotechnical Analysis* at Bates MW13-15\_24285-24287, 24292-24294, 24297, 24304, 24307 (presenting soil borings in which coal ash was observed in the top foot of soil at the Will County, Joliet 29, and Powerton sites); see also Ex. A3 Patrick, *Waukegan Hydrogeological Assessment Report* at Bates MWG\_7167-7176 (showing coal ash in the top foot of soil in the borings for groundwater monitoring wells MW-1 through MW-5).

15. The ash in the ground at all four plants is not uniform. Ex. E5, Seymour Dep. 226:11-17 (“I’m not saying it’s only bottom ash. It’s lots of different things if you look at the boring logs.”). The type of coal ash varies both from site to site and in different areas within each site, as detailed in the following paragraphs.

16. At Waukegan, coal ash at different areas of the site is described as slag, cinders, and fly ash. There is:

- Slag on the far north-center portion of the site, and coal/slag northwest of the Former Slag/Fly Ash Storage Area. Ex. A2, ENSR, *Waukegan Phase II ESA*, at Bates MWG13-15\_45817, 45830, 45835 and 45841.
- Coal mixed with gray coal ash immediately north of the Former Slag/Fly Ash Storage Area. *Id.* at Bates MWG13-15\_45817, 45841.
- Black coal cinders mixed with other materials in boring logs taken from the land running along the eastern perimeter of the east ash pond, in some places extending from the surface to 20 feet deep. Ex. A3, Patrick, *Waukegan Hydrogeological Assessment Report* at Bates MWG13-15\_7166-7176. Just to the west of the west ash pond, a boring log shows a mixture of black coal cinders and other materials, which in this location is over 16 feet thick. *Id.* at Bates MWG13-15\_7175-76.
- Both fly ash and slag in the Former Slag/Fly Ash Storage area. Ex. A2, ENSR *Waukegan Phase II ESA* at Bates MWG13-15\_45817.; Ex. E6, Veenbaas Dep. 72:9-21, 73:17 – 74:5.

17. At Will County, ash in different areas of the site is described as bottom ash, slag, coal cinders and fly ash. There is:

- Slag and bottom ash in fill in the northern portion of the site, as well as just south of the 1-North ash pond and just east of the 1-South ash pond. Ex. I, KPRG, *Geotechnical Analysis* at Bates MWG13-15\_24282-24286.
- Bottom ash in fill just southwest of the 2-South ash pond. *Id.* at Bates MWG13-15\_24287.
- Black coal cinders immediately to the east and southeast of ash pond 1-North and immediately to the east of the 3-South ash pond. Ex. B3, Patrick, *Will County Hydrogeological Assessment Report* at Bates MWG13-15\_7250-7252, 7256.

- [REDACTED]

- [REDACTED]
- Bottom ash and slag in the boiler slag stockpile. Ex. B2, KPRG and Associates, Inc., *CCB Determination Report* at Bates MWG13-15\_49568 (“The ash deposits are consistent and homogenous consisting [sic] bottom ash/slag from the coal combustion process”). Although much of that bottom ash and slag was removed in 2015, some slag remains there. Ex. F, Resp’t Supp. Resp. to Compl.’s First Set of Interrogs at 5 (6/10/15).

18. At Joliet 29, ash in different areas of the site is described as bottom ash, slag and fly ash. There is:

- Bottom ash, slag and fly ash in the “former ash placement area” in the western portion of the site. Ex. C2, KPRG, *Joliet CCB Determination Report* at Bates MWG13-15\_19499-19517; Ex. E5, Seymour Dep. 145:14-148:1. Logs from borings completed in 2005 in the former ash placement area show that ash there consists primarily, though not entirely, of bottom ash. Ex. C2, KPRG, *Joliet CCB Determination Report* at Bates MWG13-15\_19499-19517. They show as much as 18 feet of bottom ash and slag in places. *See, e.g., id.* at Bates MWG13-15\_19507. Of the nineteen borings taken, sixteen contained bottom ash, one boring contained fly ash, three borings contained slag, and three borings contained no ash. *Id.* at Bates MWG13-15\_19499-19517.
- Bottom ash and, to a lesser extent, slag in the ash fill from around the center of the Joliet 29 site. Ex. I, KPRG, *Geotechnical Analysis* at Bates MWG13-15\_24292-24297. Three boring logs in the area identify bottom ash and a fourth shows slag. *Id.*

19. The record contains no evidence showing what types of ash are contained in the northeast or southwest ash landfills at Joliet 29.

20. At Powerton, ash in different areas of the site is described as coal cinders, bottom ash, slag, and fly ash. There is:

- Bottom ash, boiler slag and coal cinders – up to ten feet thick – in the Former Ash Pond, also called the “Old Ash Basin.” Ex. D2, Patrick, *Powerton Former Ash Basin Borings* at Bates MWG13-15\_14225-14269; [REDACTED]
- [REDACTED] Ex. D7, Andrews Env’tl. Engineering, *Draft Sampling Plan Report* at Bates MWG13-15\_11305-11311.

- Slag, bottom ash, and coal cinders at various areas around the Powerton site (other than the Limestone Runoff Basin and the Former Ash Pond). Ex. D3, ENSR, *Powerton Phase II ESA* at Bates MWG13-15\_3307-3342; Ex. I, KPRG, *Geotechnical Analysis* at Bates MWG13-15\_24301-24310; Ex. D4, Patrick, *Powerton Hydrogeological Assessment Report* at 7111-7121; Patrick Engineering Inc., *Quarterly Groundwater Monitoring Results, First Quarter 2012, Powerton Generating Station –Bypass Cleaning Basin* Bates MWG-13-15\_4059-4064 (May 17, 2012), attached hereto as Ex. D8; Patrick Engineering Inc., *Quarterly Groundwater Monitoring Results, Third Quarter 2011, Powerton Generating Station –Bypass Cleaning Basin* Bates MWG-13-15\_4100-4105 (Oct. 2011), attached hereto as Ex. D22. Some of those borings documented ash 16-18.5 feet thick in places. *Id.* at Bates 4100-4105.

21. Different types of ash leach differently. Ex. E5, Seymour Dep 226:2-10.
22. Particles of fly ash differ in size from those of bottom ash. *Id.*
23. Wherever the particle size of coal ash varies from one area to another, the leachability of that ash will also vary from area to area. See *id.* However, any coal ash – including ash that has existed since before 1998 – can and does leach if it comes into contact with water. Ex. E5, Seymour Dep. 69:18-20; *id.* at 224:14-21.

**There is no evidence that Historic Coal Ash is not causing or contributing to groundwater contamination.**

24. There is no leach test of any Historic Ash Areas at Waukegan. Ex. G, *Seymour Report* at 46-48. There is no evidence in the record that the Historic Ash Areas at Waukegan are not contributing to groundwater contamination at Waukegan.

25. There are no leach tests of Historic Ash Areas at Will County.

26. The 2015 leach test at the Boiler Slag Stockpile cited by Seymour, *Id.* at 48, is not representative of the Historic Coal Ash at Will County because other areas of Will County contain different types of ash and different types of ash leach differently. As discussed above, at the time the leach tests were taken the Boiler Slag Stockpile contained bottom ash and slag. ■

■ The areas to the immediate east and southeast of ash pond 1-North, and to the east of ash pond 3-South, contain coal cinders. *Supra* ¶ 17. ■

27. There are no leach tests of the northeast or southwest ash landfills at Joliet 29.

28. There was a leach test at the “former ash placement area” at Joliet 29. Ex. G, *Seymour Report* at 46-47. Ex. E5, Seymour Dep. 145:14-148:1; Ex. C2, KPRG, *Joliet CCB Determination Report* at Bates MWG13-15\_19495.

29. The leach test done at the “former ash placement area” is not representative of the Historic Ash Areas at the Joliet 29 site because other areas of Joliet 29 contain different types of ash and different types of ash leach differently. *Supra*, ¶¶ 18, 21-23. As discussed above, the former ash area at Joliet contains bottom ash, slag and fly ash. *Supra*, ¶ 18. In contrast, the ash fill near the center of the site contains solely bottom ash and slag. *Id.* There are no soil borings or other evidence establishing the type of ash contained in the northeast and southwest ash landfills at Joliet. Ex. C2, KPRG, *Joliet CCB Determination Report* at Bates MWG13-15\_19499-19517; Ex. E5, Seymour Dep. 39:21—40:14.

30. The only evidence in the record regarding sampling of the northeast ash landfill at Joliet 29 states that, “In 1992, the abandoned ash landfill area located east of Joliet 29 was identified as a possible storm water discharge point, primarily due to exposed ash products. Subsequent sample collection taken during the storm water permitting process indicated that there was, indeed, moderate contamination of the runoff caused by contact with this exposed ash.” Memorandum from B.A. Renwick to J.P. Smith re: The Abandoned Ash Landfill Area, Bates MWG13-15\_25370-25371 (Apr. 4, 1995), attached hereto as Ex. C12.

31. There are no leach tests of the Former Ash Pond at Powerton or of the ash fill located around the Powerton site.

32. Leach testing was conducted at the Limestone Runoff Basin. Ex. D7, Andrews Env'tl. Engineering, *Draft Sampling Plan Report* at Bates MWG13-15\_11302-11305.

33. Some coal ash in the Limestone Runoff Basin failed the leach test to determine whether it could be re-used as a coal combustion byproduct. *Id.* at MWG13-15\_11302.

34. The leach test from the Limestone Runoff Basin is not representative of the Historic Ash Areas at the Powerton site because other areas of Powerton contain different types of ash and different types of ash leach differently. *Supra*, ¶¶ 20-23. Eight ash samples were collected from test pits in the Limestone Runoff Basin. Ex. G, *Seymour Rep.* at 47. The test pits in the limestone runoff basin had materials that were described as fly ash, bottom ash, or both in combination with other materials that were presumed to be something other than coal ash. Ex. D7, Andrews Env'tl. Engineering, *Draft Sampling Plan Report* at Bates MWG13-15\_11305-11311. Neither the Former Ash Basin nor the ash fill around Powerton contains fly ash, and Historic Ash Areas around the Powerton site contain “slag” and “cinders,” which were not identified in the Limestone Runoff Basin. *Supra*, ¶ 20. Mr. Seymour conceded in his deposition that he had merely assumed that the material in the limestone runoff basin was “consistent with” coal ash located in other areas. Ex. E5, Seymour Dep. 151:11-152:21.



**Groundwater contamination at the sites has the characteristics of coal ash contamination.**

35. As MWG's own expert concedes, the constituents found in the groundwater at MWG's plants are representative of coal ash. Ex. E5, Seymour Dep. 46:17-46:18 ("The inorganics that are in the groundwater are characteristic of coal ash materials.").

36. Boron is a good coal ash indicator. Letter from Susan M. Franzetti, Counsel for Midwest Generation, LLC, to Andrea Rhodes, Illinois EPA, Re: Violation Notice 6282 at Bates MWG13-15\_389 (July 27, 2012) [hereinafter *MWG response to Powerton NOV*] attached hereto as Ex. D9, at 6 ("[B]oron is generally considered a reliable tracer of potential ash leachate impacts."); Patrick Engineering Inc., *Proposal for Ash Pond Investigation* Bates MWG13-15\_10763 (Aug. 18, 2010) attached hereto as Ex. D10; Ex. E5, Seymour Dep. 89:5-89:17 ("The Witness. In general, boron is a good indicator. Q. Why do you say 'boron is a good indicator'? A. Well, it's a characteristic of ash and it is often found in ash areas, and it's shown by studies to be mobile in the environment.").

37. Sulfate is an indicator of coal ash. Ex. D9, *MWG response to Powerton NOV* at Bates MWG13-15\_389 ("Boron and sulfate are constituents known to be associated with coal ash."); Ex. E5, Seymour Dep 88:5-88:14; Ex. D10, Patrick Engineering Inc., *Proposal for Ash Pond Investigation* at Bates MWG13-15\_10763.

38. Manganese is an indicator of coal ash. *Id.*; Ex. G, *Seymour Report* at 40, 42.

39. As shown in MWG's expert's report, boron and sulfate have been detected in every single well at all four plants at issue in this litigation. Ex. *Id.* at Tbl.5-4.

**Illinois EPA issued Violation Notices to MWG Concerning Exceedances of Groundwater Quality Standards at all Four Sites, and Entered into Compliance Commitment Agreements with MWG Concerning those Exceedances.**

40. In June 2012, IEPA issued Violation Notices to MWG alleging exceedances of Class 1 groundwater quality standards at all four plants. IEPA, *Violation Notice: Midwest Generation, LLC, Waukegan Generating Station* Bates MWG13-15\_328-332 (June 11, 2012), attached hereto as Ex. B5; IEPA, *Violation Notice: Midwest Generation, LLC, Will County Generating Station* Bates MWG13-15\_333-34 (June 11, 2012), attached hereto as Ex. B5; IEPA, *Violation Notice: Midwest Generation, LLC, Joliet #29 Generating Station* Bates MWG13-15\_342-347 (June 11, 2012), attached hereto as Ex. C5; IEPA, *Violation Notice: Midwest Generation, LLC, Powerton Generating Station* Bates MWG13-15\_348-358 (June 11, 2012), attached hereto as Ex. D11.

41. MWG and the agency entered into site-specific Compliance Commitment Agreements (“CCAs”) for all four plants on October 14, 2012. IEPA & MWG, *Waukegan Compliance Commitment Agreement* Bates MWG13-15\_565-570 (Oct. 24 2012) [hereinafter *Waukegan CCA*], attached hereto as Ex. A6; IEPA & MWG, *Will County Compliance Commitment Agreement* Bates MWG13-15\_559-564 (Oct. 24 2012) [hereinafter *Will County CCA*], attached hereto as Ex. B6; IEPA & MWG, *Joliet #29 Compliance Commitment Agreement* Bates MWG13-15\_571-576 (Oct. 24 2012) [hereinafter *Joliet CCA*], attached hereto as Ex. C6; IEPA & MWG, *Powerton Compliance Commitment Agreement* Bates MWG13-15\_552-558 (Oct. 24 2012) [hereinafter *Powerton CCA*], attached hereto as Ex. D12.

42. Pursuant to the CCAs, Groundwater Management Zones were established at Will County, Joliet 29, and Powerton. MWG applied for the GMZs for each of these three sites on January 18, 2013. MWG, *Compliance Commitment Agreement—Groundwater Management Zone Application—Will County Generating Station* Bates MWG13-15\_622-666 (Jan. 18. 2013), attached hereto as Ex. B7; MWG, *Compliance Commitment Agreement—Groundwater Management Zone Application—Joliet #29 Generating Station* Bates MWG13-15\_17185-17229 (Jan. 18. 2013), attached hereto as Ex. C7; MWG, *Compliance Commitment Agreement—Groundwater Management Zone Application—Powerton Generating Station* Bates MWG13-15\_724-775 (Jan. 18. 2013), attached hereto as Ex. D13.

43. IEPA approved Will County’s GMZ on July 2, 2013. Letter from William E. Buscher, Manager, Hydrogeology and Compliance Unit, Groundwater Section, Bureau of Water, IEPA to John Kennedy, Senior Vice President, Generation, MWG at Bates MWG13-15\_16564 (Jul. 2, 2013) [hereinafter *Will County GMZ Approval Letter*], attached hereto as Ex. B8; IEPA approved MWG’s Joliet 29 GMZ on August 8, 2013. Letter from William E. Buscher, Manager, Hydrogeology and Compliance Unit, Groundwater Section, Bureau of Water, IEPA to Amy Hanrahan, Senior Environmental Manager, MWG at Bates MWG13-15\_17183 (Aug. 8, 2013) [hereinafter *Joliet GMZ Approval Letter*], attached hereto as Ex. C8. IEPA approved Powerton’s GMZ October 3, 2013. Letter from William E. Buscher, Manager, Hydrogeology and Compliance Unit, Groundwater Section, Bureau of Water, IEPA to John Kennedy, Senior Vice President, Generation, MWG at Bates MWG13-15\_23977 (Oct. 3, 2013) [hereinafter *Powerton GMZ Approval Letter*], attached hereto as Ex. D14.

44. No GMZ was established at Waukegan. Ex. L, Resp’t Answer and Defenses to Second Compl. ¶ 85.

45. Class I groundwater quality standards have been and remain in effect at Waukegan throughout the entire period of alleged violations in the Second Amended Complaint. Ex. B5, IEPA, *Violation Notice: Midwest Generation, LLC, Waukegan Generating Station* Bates MWG13-15\_328-332 (June 11, 2012).
46. Class I standards were in effect at Will County until Illinois EPA's approval of the GMZ for that site on July 2, 2013. Ex. B8, *Will County GMZ Approval Letter* at Bates MWG13-15\_16564; Ex. B5, IEPA, *Violation Notice: Midwest Generation, LLC, Will County Generating Station* Bates MWG13-15\_333-34 (June 11, 2012).
47. Class I standards were in effect at Joliet 29 until Illinois EPA's approval of a GMZ for that site on August 8, 2013. Ex. C8, *Joliet GMZ Approval Letter* at Bates MWG13-15\_17183; Ex. C5, IEPA, *Violation Notice: Midwest Generation, LLC, Joliet #29 Generating Station* Bates MWG13-15\_342-347 (June 11, 2012).
48. Class I standards were in effect at Powerton until Illinois EPA's approval of a GMZ for that site on October 3, 2013. Ex. D14, *Powerton GMZ Approval Letter* at Bates MWG13-15\_23977; Ex. D11, IEPA, *Violation Notice: Midwest Generation, LLC, Powerton Generating Station* Bates MWG13-15\_348-358 (June 11, 2012).
49. Pursuant to the CCAs, Environmental Land Use Controls ("ELUC") were established at Waukegan, Will County, and Powerton. MWG applied for GMZs for each of these sites on January 18, 2013. MWG, *Compliance Commitment Agreement—ELUC, Midwest Generation, LLC, Waukegan Station; ID No. 6281* Bates MWG13-15\_599-610 (Jan. 18, 2013) [hereinafter *Waukegan ELUC Application*], attached hereto as Ex. A7; MWG, *Compliance Commitment Agreement—ELUC, Midwest Generation, LLC, Will County Station; ID No. 6283* Bates MWG13-15\_611-621 (Jan. 18, 2013) [hereinafter *Will County ELUC Application*], attached hereto as Ex. B9; MWG, *Compliance Commitment Agreement—ELUC, Midwest Generation, LLC, Powerton Station; ID No. 6282* Bates MWG13-15\_712-723 (Jan. 18, 2013) [hereinafter *Powerton ELUC Application*], attached hereto as Ex. D15.
50. The ELUC at Waukegan was approved on August 26, 2013; the ELUC at Will County was approved on September 26, 2013; and the ELUC at Powerton was approved on August 26, 2013. Exhibits I, K, and H, respectively, of Resp't Mem. in Supp. of Mot. to Stay, attached hereto as Ex. A8, Ex. B10 Ex. D23.
51. These ELUCs all state that "[t]he reason for an ELUC is to ensure protection of human health and the environment. The limitations and requirements contained herein are necessary in order to protect against exposure to contaminated groundwater that may be present on the property...." Ex. A7, *Waukegan ELUC Application* at Bates MWG13-15\_601, Ex. B9, *Will County ELUC Application* at Bates MWG13-15\_613; Ex. D15, *Powerton ELUC Application* at Bates MWG13-15\_714;

52. These three ELUCs also state that an ELUC “shall not be released until the IEPA, upon written request, issues a no further remediation determination approving modification or removal of the limitation(s) or requirement(s); and until a release or modification of the land use limitation or requirement is filed on the chain of title for the Property.” Ex. A7, *Waukegan ELUC Application* at Bates MWG13-15 602, Section Four; Ex. B9, *Will County ELUC Application* at Bates MWG13-15 614, Section Four. Ex. D15, *Powerton ELUC Application* at Bates MWG13-15\_715, Section Four.

**Groundwater at the Four Sites has Exceeded, and Continues to Exceed, Class I: Potable Resource Groundwater Quality Standards, and at Waukegan, Will County and Powerton, Exceeded Appendix I MCLs Indicating Open Dumping.**

53. Concentrations of coal ash constituents in the groundwater at Waukegan have been detected at levels exceeding Class I groundwater quality standards on hundreds of occasions and exceeding the Appendix I Maximum Contaminant Levels (“MCLs”) indicating open dumping. Ex. G, *Seymour Report* at 21 and Tbls.B-4-1; Patrick Engineering, *Quarterly Groundwater Monitoring Results—Annual Report 2011—Waukegan Generating Station- Ash Impoundment* Bates MWG13-15\_41687-41690 (Mar. 5, 2012) [hereinafter *2011 Waukegan Annual Report*], attached hereto as Ex. A9; KPRG and Associates, Inc., *Fourth Quarter and Annual Groundwater Monitoring Report—Waukegan Generating Station* Bates MWG13-15\_20468-20473 (Jan. 21, 2014) [hereinafter *2013 Waukegan Annual Report*], attached hereto as Ex. A10; NRG Energy, *Annual and Quarterly Groundwater Monitoring Report—Waukegan Generating Station* Bates MWG13-15\_45344 (Jan. 22, 2015) [hereinafter *2014 Waukegan Annual Report*], attached hereto as Ex. A11 at; NRG Energy, *Annual and Quarterly Groundwater Monitoring Report—Waukegan Generating Station* Bates MWG13-15\_56444-46450 (Jan. 22, 2016) [hereinafter *2015 Waukegan Annual Report*], attached hereto as Ex. A12; *DRAFT—Groundwater Analytical Results, Midwest Generation, LLC, Waukegan Station, Waukegan, IL* at Bates MWG13-15\_56632-56638, attached hereto as Ex. A13. Boron has exceeded Class I standards dozens of times at Waukegan since 2010. *Id.*

54. Concentrations of coal ash constituents in the groundwater at Will County have been detected at levels exceeding Class I standards on hundreds of occasions and exceeding the Appendix I MCLs indicating open dumping. Ex. G, *Seymour Report* at 23 and Tbls.B-5-1; Patrick Engineering, *Quarterly Groundwater Monitoring Results—Annual Report 2011—Will County Generating Station- Ash Impoundment* Bates MWG13-15\_42724-42729 (Mar. 5, 2012) [hereinafter *2011 Will County Annual Report*], attached hereto as Ex. B10; KPRG and Associates, Inc., *Fourth Quarter and Annual Groundwater Monitoring Report—Will County Generating Station* Bates MWG13-15\_26415-26424 (Jan. 21, 2014) [hereinafter *2013 Will County Annual Report*], attached hereto as Ex. B11; NRG Energy, *Annual and Quarterly Groundwater Monitoring Report—Will County Generating Station* Bates MWG13-15\_56525, 56536-56545 (Jan. 22, 2016) [hereinafter *2015 Will County Annual Report*], attached hereto as Ex. B12. Boron has exceeded Class I standards more than 100 times at Will County since 2010. *Id.*

55. Concentrations of coal ash constituents in the groundwater at Joliet 29 have been detected at levels exceeding Class I standards on more than one hundred occasions. Ex. G, *Seymour Report* at 15 and Tbls.B-2-1; Patrick Engineering Inc, *Quarterly Groundwater Monitoring Results—Annual Report 2011—Joliet #29 Generating Station- Ash Impoundment* Bates MWG13-15\_38538-38544 (Mar. 5, 2012) [hereinafter *2011 Joliet 29 Annual Report*], attached hereto as Ex. C9; KPRG and Associates, Inc., *Fourth Quarter and Annual Groundwater Monitoring Report—Joliet #29 Generating Station* Bates MWG13-15\_17358-17368 (Jan. 21, 2014) [hereinafter *2013 Joliet 29 Annual Report*], attached hereto as Ex. C10; NRG Energy, *Annual and Quarterly Groundwater Monitoring Report—Joliet #29 Generating Station* Bates MWG13-15\_56349-56359 (Jan. 22, 2016) [hereinafter *2015 Joliet 29 Annual Report*], attached hereto as Ex. C11. Boron has exceeded Class I standards at Joliet #29 since 2010. *Id.*

56. Concentrations of coal ash constituents in the groundwater at Powerton have been detected at levels exceeding Class I standards on hundreds of occasions and exceeding the Appendix I MCLs indicating open dumping. Ex. G, *Seymour Report* at 18 and Tbls.B-3-1; Patrick Engineering, *Quarterly Groundwater Monitoring Results—Annual Report 2011—Powerton Generating Station- Ash Impoundment* Bates MWG13-15\_39724-39729 (Mar. 5, 2012) [hereinafter *2011 Powerton Annual Report*], attached hereto as Ex. D16; KPRG and Associates, Inc., *Fourth Quarter and Annual Groundwater Monitoring Report—Powerton Generating Station* Bates MWG13-15\_19821-19836 (Jan. 21, 2014) [hereinafter *2013 Powerton Annual Report*], attached hereto as Ex. D17; NRG Energy, *Annual and Quarterly Groundwater Monitoring Report—Powerton Generating Station* Bates MWG13-15\_56210-56225 (Jan. 22, 2016) [attached hereto *2015 Powerton Annual Report*], attached hereto as Ex. D18. Boron has exceeded Class I standards dozens of times at Powerton since 2010. *Id.*

**Historic Ash Areas at the four plants have contaminated the groundwater at those plants.**

57. Historic Ash Areas at Waukegan have contributed to groundwater contamination at that plant. Seymour testified, “I believe there are some historical uses at these properties that have caused some old releases.” Ex. E5, Seymour Dep. 59:11-13; *see also id.* at 58:13-59:3; *id.* at 59:11-13 (“[T]here are other characteristics of coal ash that aren’t characteristic of a tannery.”). Senior Environmental Program Manager from MWG consultant Patrick Engineering states that “The elevated concentrations of compounds of interest in MW-5 appear to be the result of the well being installed in a former ash disposal area.” Email from Richard Frendt, P.E., Patrick Engineering, Inc. to Maria Race, MWG at Bates MWG13-15\_14167 (Feb. 10, 2012 11:21am) [hereinafter Patrick, *Ash Pond Data Evaluation & Summary*], attached hereto as Exhibit M. (attaching January 2012 *Ash Pond Data Evaluation & Summary* reports for each plant)

58. Historic Ash Areas at Will County have contributed to groundwater contamination at that plant. Seymour indicated that the contamination at Will County was from “historical sources,” specifically from an “old power plant.” Ex. E5, Seymour Dep. 53:13-14. Seymour further testified that the sources contributing to the groundwater constituents at Will County were “the same as Powerton” about which he stated “there’s uncontained waste that historically caused some impacts.” *Id.* at 54:24-55:3; *infra* SOF ¶ 60.

59. Historic Ash Areas at Joliet 29 have contributed to groundwater contamination at that plant. Ex. E5, Seymour Dep. 38:2-4 (“there are many historic uses at the site that may have caused the impacts that we’re seeing, and they may be related to coal ash from historic uses.”); *Id.* at 38:13 (“I know there are historic uses of ash that they’ve used that may be causing these – contamination to exist.”).

60. Historic Ash Areas at Powerton have contributed to groundwater contamination at that plant. “Historically, the way power plants operated 50, 60, 100 years ago is the waste was not contained as it is now. So there’s uncontained waste that historically caused some impacts, but what we’ve sampled recently does not appear to be contributing.” Ex. E5, Seymour Dep. 48:3-20; *see also* Letter from Richard R. Gnat, P.G., Principal, KPRG and Associates, Inc. to Lynn Dunaway, Illinois Environmental Protection Agency at Bates MWG13-15\_9644-9645 (Sept. 11, 2013), attached hereto as Ex. D19 (noting that monitoring wells installed in 2010, specifically MW-1, MW-9, and MW-10, are potentially affected by past ash management practices and fall “within an area of impacted groundwater from historical ash-related handling activities.”); Ex. D4, Patrick, *Powerton Hydrogeological Assessment Report* at Bates MWG13-15\_7081; Ex. E5, Seymour Dep. 46:11 (“The inorganics that are in the groundwater are characteristic of coal ash materials.”).

**MWG had Notice of the Historic Ash Areas and Failed to Take the Necessary Precautions to Prevent Contamination of those Areas.**

**MWG had Notice of the Historic Ash Areas at Waukegan:**

61. The 1998 Phase II Environmental Site Assessment for Waukegan identifies the Former Slag/Fly Ash Storage Area and the Former Slag Field, and contains multiple boring logs showing slag and ash at the site. Ex. A2 ENSR, *Waukegan Phase II ESA* at Bates MWG13-15\_45814, 817, 821-842;

62. Additional soil borings reveal coal ash beneath the surface at various places around the Waukegan site. Ex. I, KPRG, *Geotechnical Analysis* at Bates MWG13-15\_24264-24392 (providing a geotechnical analysis of soil surrounding the ponds at Joliet, Powerton, Waukegan, and Will County); Ex. A4, KPRG, *Geologic Logs for MW-8 and MW-9* at Bates MWG13-15\_45648-45649.

63. MWG’s current Director of Asset Management and former Director of Environmental Services, Maria Race, testified that she had seen ash borings from Former Slag/Fly Ash Storage Area near where MW-5 is located. Ex. E4 Race Dep. at 89:12-13.

64. In addition, ash boring logs for MW-5 that were done as part of the Waukegan Hydrogeological Assessment Report reveal black coal cinders (intermixed with other materials such as sand and silt) from 0.5 feet depth to 17 feet. Ex. A3, Patrick, *Waukegan Hydrogeological Assessment Report* at Bates MWG13-15\_7175.

65. Richard Frenndt of Patrick Engineering—the consultants responsible for the initial hydrogeological assessment, *Id.* at 7148-7229—advised Midwest Generation that the monitoring well located in the Former Fly Ash /Slag Storage Area appeared to be showing contamination caused by the ash in that area. Ex. M, Patrick, *Ash Pond Data Evaluation & Summary* at Bates MWG13-15\_14167.

66. Groundwater monitoring wells MW-5, MW-6, MW-7, MW-8 and MW-9 are located near the Former Slag/Fly Ash Area. See Ex. A1, *Waukegan Site Maps*.

67. Groundwater monitoring reports at Waukegan revealed that coal ash constituents including boron, manganese, and sulfate continued to exceed Class I standards at MW-5 every quarter from 2012-2015. *2013 Waukegan Annual Report* at Bates MWG13-15\_20472; *2015 Waukegan Annual Report* at Bates MWG13-15\_56448.

MWG Failed to Take the Necessary Precautions to Prevent Contamination from the Historic Ash Areas at Waukegan:

68. MWG never installed a liner at the Former Slag/Fly Ash Storage Area. Ex. K, Resp't Resp. to Compl.'s Fourth and Fifth Set of Interrogatories and Document Requests, Answer to RFA 17, at 13 (March 31, 2015).

69. There is no evidence in the record that the Fly Ash/Slag Storage Area has a liner. The boring log for MW-5 contains no record of encountering a liner. Ex. A3, *Waukegan Hydrogeological Assessment Report* at Bates MWG 13-15\_7175-7176.

70. MWG never installed an impermeable cap over the Former Slag/Fly Ash Storage Area. Ex. K, MWGen Resp. to Compl.'s Fourth and Fifth Set of Interrogatories and Document Requests, Answer to RFA #21, at 14 (March 31, 2015).

71. There is no evidence on the record that the ash has been removed from the Former Slag/Fly Ash Storage Area at Waukegan.

72. There is no evidence in the record that MWG has capped, lined, or removed the ash contained in the fill immediately to the east of the east ash pond at Waukegan, shown by boring logs for MW-1 through MW-4. Ex. A3, Patrick, *Waukegan Hydrogeological Assessment Report*, at Bates MWG13-15\_7166-7176.

73. The CCA for Waukegan did not address inspecting, lining, capping or removing ash from the historic ash areas at the site. Ex. A6, *Waukegan CCA* at Bates MWG13-15\_552-558.

MWG had Notice of the Historic Ash Areas at Will County:

74. The 1998 Phase II Environmental Site Assessment for Will County labels the slag dumping area and the slag and bottom ash dumping area on the site plan, and contains a boring log for boring B1 that shows 3 feet of coal ash in the slag and bottom ash dumping area at the site. Ex. B4, ENSR, *Will County Phase II ESA* at Bates MWG13-15\_5699, 5739.

75. [REDACTED]  
[REDACTED]  
[REDACTED] Ex. E2, Maddox Dep. at 27:21-28:4 and 34:20-24.

76. Additional soil borings reveal coal ash beneath the surface at various places around the Will County site. Ex. I, KPRG, *Geotechnical Analysis* at Bates MWG13-15\_24264-24392 (providing a geotechnical analysis of soil surrounding the ponds at Joliet, Powerton, Waukegan, and Will County); Ex. B3, Will County Hydrogeological Assessment Report at Bates MWG13-15\_7252-7260.

77. MWG has suspected a possible underground leak between the Spent Slurry Pond and the river, but MWG did not do anything to investigate that possible leak. Ex. E6, Veenbaas Dep. at 20:18-22:2 and 26:7 – 27:22.

MWG Failed to Take the Necessary Precautions to Prevent Contamination from the Historic Ash Areas at Will County:

78. [REDACTED]  
[REDACTED]



79. MWG has not installed any monitoring wells around the Spent Slurry Pond, the South Area Runoff Basin, or the Slag and Bottom Ash Dumping Area. *See* Ex. B3, Patrick, *Will County Hydrogeological Assessment Report* at Bates MWG13-15\_7250.

80. The only monitoring wells to monitor groundwater for coal ash constituents at Will County were monitoring wells located around ash ponds 1N, 1S, 2S, and 3S. *See Id.*; Ex. E2, Maddox Dep. 102-103 (testifying that there were only two monitoring wells installed before 2010 at Will County which were north of the main parking lot and unrelated to the ponds.)

81. MWG failed to inspect the Spent Slurry Pond and the South Area Runoff Basin at Will County between 1999 and 2012. Ex. E6, Veenbaas Dep. Tr. at 28:2-6 and 32:23-33:8 (testifying that the Spent Slurry Pond and South Area Runoff Basin were never inspected while he was at Will County); *id.* at 7:18-9:18 (stating that Veenbaas worked at Will County from 1999 to 2012).

82. MWG never installed an impermeable cap over the Spent Slurry Pond or South Area Runoff Basin. [REDACTED] Ex. E6, Veenbaas Dep. 28:21-29:2.

83. There is no evidence in the record of either the Spent Slurry Pond or the South Area Runoff Basin being closed and capped.

84. The ash from the Spent Slurry Pond has not been removed. Ex. B14, Email from Rebecca Maddox, Environmental Specialist, MWG to Yvonne Dedrickson, Bates MWG 13-15\_48566 (Sept. 1 2010, 4:52pm) (noting that the Spent Slurry pond has never been dredged and, as of 2010, the wastewater it contained was “not getting pumped anywhere. It just sits in the pond.” There is no evidence in the record of ash being removed subsequent to 2010.

85. [REDACTED]

86. There is no evidence in the record showing the capping, lining or complete removal of ash in fill at Will County, specifically the slag and bottom ash shown in boring logs from 2005 (Ex. I, KPRG, *Geotechnical Analysis* at Bates MWG13-15\_24282 – 24287) and the black coal cinders shown in boring logs in Ex. B3, Patrick, *Will County Hydrological Assessment Report* at Bates MWG13-15\_7250-7252, 7256.

87. The CCA for Will County did not address inspecting, lining, capping or removing ash from the Historic Ash Areas at the site. Ex. B6, *Will County CCA* at Bates MWG13-15\_559-564.

MWG had Notice of the Historic Ash Areas at Joliet 29:

88. The 1998 Phase II Environmental Site Assessment for Joliet 29 labels the Northeast and Southwest Ash Landfills each as an “ash landfill” and contains one boring log, out of a total of five boring logs, that shows slag at the site. Ex. C3, ENSR, *Joliet Phase II ESA* at Bates MWG13-15\_23342, 23345-23349.

89. A 1995 document discussing the northeast landfill at Joliet 29, states that sampling Northeast Ash Landfill showed “moderate contamination of the runoff caused by contact with this exposed ash” and “highly acidic runoff that has historically occurred when precipitation is exposed to ash in this area (e.g. pH = 2.38 when measured in 1992).” Memorandum from Dave Cohn to Elsie Briette, *Abandoned Ash Landfill Area*, Bates MWG13-15\_25369 (Apr. 20, 1995), attached hereto as Ex. C13; Ex. C12, Memorandum from B.A. Renwick to J.P. Smith, *The Abandoned Ash Landfill Area*, (April 4, 1995) Bates MWG13-15\_25371-25372, at Bates MWG13-15\_25370.

90. KPRG’s 2005 borings from around the center of the site document bottom ash and slag outside of the ponds. Ex. I, KPRG, *Geotechnical Analysis* at Bates MWG13-15\_24292-24297.

MWG Failed to Take the Necessary Precautions to Prevent Contamination from the Historic Ash Areas at Joliet 29:

91. MWG has not installed any monitoring wells around the northeast ash landfill or the southwest ash landfill at Joliet 29. Ex. E3, Gnat Dep. 52:13-53:2; Ex. E4, Race Dep. 55:8-11, 56:13-57:17 (stating that she had no knowledge of wells aside from monitoring wells around the ash ponds).

92. The only monitoring wells at Joliet 29 were installed around the ash ponds pursuant to the Hydrogeological Assessment Plan in 2010. *Id.*; Patrick Engineering Inc., *Hydrogeological Assessment Plan, Joliet Generating Station No. 29* Bates MWG13-15\_13875 (July 2010), attached hereto as Ex. C14; Deposition Transcript of Richard Frenndt, attached hereto as Exhibit E7, at 43; Patrick Engineering Inc., *Hydrogeological Assessment Report, Joliet Generating Station No. 29* Bates MWG13-15\_6981 (February 2011) [hereinafter Patrick, *Hydrogeological Assessment Report*], attached hereto as Exhibit C15.

93. MWG did not install an impermeable cap over the Northeast Ash Landfill at Joliet 29. Ex. K, MWG Resp. to Compl.’s Fourth and Fifth Set of Interrogs. and Doc. Reqs., Answer to Request for Admission 11, at 11 (March 31 , 2015).

94. There is no evidence in the record that there has ever been any impermeable cap over the Northeast Ash Landfill.

95. There is no evidence in the record that there has ever been any impermeable cap over the Southwest Ash Landfill at Joliet 29.

96. There is no evidence in the record that there has ever been any impermeable cap over the ash fill outside the ponds near the center of the site at Joliet 29.

97. There is no evidence in the record that there has ever been a liner beneath the ash at the Northeast Ash Landfill, Southwest Ash Landfill, nor in areas with ash fill outside of the ponds near the center of the site at Joliet 29.

98. MWG did not make any determination as to whether the Northeast Ash Landfill was lined. Ex. *Id.*, MWG Resp. to Compl.'s Fourth and Fifth Set of Interrogs. and Doc. Reqs., Answer to Interrogatory 7, at 10 (March 31 , 2015).

99. There is no evidence in the record that MWG has ever completely removed the ash from the Northeast Ash Landfill, Southwest Ash Landfill, or the areas with ash fill outside the ponds near the center of the site at Joliet 29.

MWG had Notice of the Historic Ash Areas at Powerton:

100. The 1998 Phase II ESA for Powerton shows that there were coal ash constituents exceeding IEPA standards in both surface and subsurface soils at Powerton, and that there was slag in borings logs for areas outside of ponds at the Powerton site. Ex. D3, ENSR, *Powerton Phase II ESA* at Bates MWG13-15\_3269-3275, 3307-3342.

101. Monitoring well completion reports from 2010 note that bore holes for wells 6, 7, 8, 9, 11, 12, 13, 14 and 15 all pass through “cinders.” Patrick Engineering, *Monitoring Well Completion Reports for Powerton Ash Pond Assessments* Bates MWG13-15\_10640-10658 (October 20, 2010) attached hereto as Ex. D20; see also Ex. D4, Patrick, *Powerton Hydrogeological Assessment Report for Powerton Generating Station* MWG13-15\_7111-7120 (February 2011); Ex. D8, Patrick Engineering Inc., *Quarterly Groundwater Monitoring Results, Third Quarter 2011, Powerton Generating Station –Bypass Cleaning Basin* at MWG13-15\_4100-4164.

102. Borings in and around the Former Ash Basin revealed coal ash deposits “up to around ten feet thick.” Ex. D2, Patrick, *Powerton Former Ash Basin Borings* at Bates MWG13-15\_14225-14269.

103. Additional soil borings reveal coal ash beneath the surface at various places around the Powerton site. Ex. I, KPRG, *Geotechnical Analysis* at Bates MWG13-15\_24299-24310 (providing a geotechnical analysis of soil surrounding the ponds at Joliet, Powerton, Waukegan, and Will County).

104. On September 11, 2013, MWG sent a letter to IEPA noting that monitoring wells installed in 2010 are potentially affected by past ash management practices and fall “within an area of impacted groundwater from historical ash-related handling activities.” Ex. D19, Letter from Richard R. Gnat, P.G., Principal, KPRG and Associates, Inc. to Lynn Dunaway, Illinois Environmental Protection Agency at Bates MWG13-15\_9644-9645 (Sept. 11, 2013).

MWG Failed to Take the Necessary Precautions to Prevent Contamination from the Historic Ash Areas at Powerton:

105. Groundwater monitoring wells MW-1, MW-2, MW-5, MW-10 and MW-9 are located near the Former Ash Pond, and MWs 9 and 11 through 15 are located in areas of ash fill at Powerton. See Ex. D1, *Powerton Site Maps*; Ex. D19, *Letter from Richard R. Gnat, P.G., Principal, KPRG and Associates, Inc. to Lynn Dunaway, Illinois Environmental Protection Agency* at Bates MWG13-15\_9644-9645 (Sept. 11, 2013).

106. [REDACTED]

107. [REDACTED]

108. There is no evidence in the record of a liner beneath the ash fill outside of the basins and ponds in various areas at Powerton Station.

109. MWG has not installed an impermeable cap over the Former Ash Basin at Powerton. *Id.* (indicating that Former Ash Basin was active); *Notification of Intent to Initiate Closure of the Former Ash Basin* at Bates Comp. 053740 (Dec. 17, 2015), attached hereto as Ex. D21.

110. There is no evidence in the record of an impermeable cap over the ash fill outside of the basins and ponds in various areas at Powerton Station.

111. MWG has not completely removed the ash from the Former Ash Basin. Ex. K, MWG Resp. to Compl.'s Fourth and Fifth Set of Interrogs. and Doc. Reqs., Answer to Interrog. 3 (March 31, 2015) at 8.

112. There is no evidence in the record that MWG has completely removed the ash fill outside of the basins and ponds in various areas at Powerton Station.

**Groundwater Rises Into the Historic Ash Areas at the Plants**

Waukegan:

113. Groundwater has come into contact with coal ash at Waukegan Station. Groundwater elevations at Waukegan fluctuate between 579.27 and 584.56 feet above mean sea level. Ex. G, *Seymour Report*, at Tbl.4-5. Coal ash is buried at elevations as low as 582 feet above mean sea level. Ex. A4, KPRG, *Geologic Logs for MW-8 and MW-9* at Bates MWG13-15\_45648-45649.

114. In monitoring well MW-05, ash in the form of black coal cinders are found as deep as 17 feet below the ground elevation of 601.526 feet—thus, at a depth of 584.526 feet above MSL. Ex. A3, Patrick, *Waukegan Hydrogeological Assessment Report* at Bates MWG13-15\_7175. At the same well, groundwater was recorded as high as 584.55 feet on June 13, 2011. Ex. G, *Seymour Report*, Table 4-5.

115. The boring log for the boring, B-1, next to monitoring well MW-11 shows a depth of ash up to 4 feet. *ENSR Phase II Environmental Site Assessment—Waukegan Generating Station* (November 1998), at Bates MWG13-15\_45817, 45821. The groundwater elevation chart in the same ESA shows that groundwater in MW-11 as shallow as 3.04 feet. *Id.* at Bates MWG13-15\_46054.

116. The boring log for the boring, B-15, next to monitoring well MW-12 shows a depth of ash up to 4 feet. Ex. A2, ENSR, *Waukegan Phase II ESA* at Bates MWG13-15\_45817, 45834. The groundwater elevation chart in the same ESA shows that groundwater in MW-12 as shallow as 3.47 feet. *Id.* at Bates MWG13-15\_46054.

Will County:

117. Groundwater has come into contact with coal ash at Will County Station. Groundwater elevations at Will County fluctuate between 579.13 and 583.87 feet above mean sea level. Ex. G, *Seymour Report*, at Tbl.4-7. Coal ash is buried at elevations as low as 578.6 feet above mean sea level. Ex. B3, Patrick, *Will County Hydrogeological Assessment Report* at Bates MWG13-15\_7252.

118. At Will County, in monitoring well MW-2, ash in the form of wet black coal cinders are found as deep as 578.6 feet. *Id.* At the same well, groundwater was recorded as high as 580.6 feet in the same boring log, *id.*, and at 581.76 feet on June 15, 2011. Ex. G, *Seymour Report*, Tbl.4-7. At MW-03, ash is found at 583.0 feet, Ex. B3, *Will County Hydrogeological Assessment*, at Bates MWG13-15\_7253, with groundwater in the same well never below 581.79 feet and as high as 583.76 feet. Ex. G, *Seymour Report*, Tbl.4-7. At MW-06, ash is found at 581.8 feet, Ex. B3, *Will County Hydrogeological Assessment*, at Bates Comp. 3806, with groundwater in the same well as high as 582.45 feet. Ex. G, *Seymour Report*, Tbl.4-7.

Powerton:

119. Groundwater has come into contact with coal ash at Powerton Station. Groundwater elevations at Powerton fluctuate between 429.94 and 451.84 feet above mean sea level. Ex. G, *Seymour Report*, at Tbl.4-3. Coal ash is buried at elevations as low as 443.2 feet above mean sea level. Ex. D4, Patrick, *Powerton Hydrogeological Assessment Report*, at Bates MWG13-15\_7113.

120. At Powerton, in monitoring well MW-5, ash in the form of trace black coal cinders is found as deep as 443.3 feet above mean sea level (MSL).<sup>6</sup> *Id.* at Bates MWG13-15\_7111. At the same well, groundwater was recorded as high as 444.11 feet above MSL on May 29, 2013. Ex. G, *Seymour Report* at Tbl.4-3. At MW-6, ash is found at 443.2 feet, Ex. D4, Patrick, *Powerton Hydrogeological Assessment*, at Bates MWG13-15\_7113, with groundwater in the same boring log at 444.2 feet, *id.*, and groundwater in the same well measured at 449.46—449.65 feet. Ex. G, *Seymour Report*, Tbl.4-3. At MW-7, ash is found at 446.1 feet, Ex. D4, Patrick, *Powerton Hydrogeological Assessment*, at Bates MWG13-15\_7115, with groundwater in the same well measured at 449.93. Ex. G, *Seymour Report*, Tbl.4-3. At MW-8, ash—in the form of “saturated” black cinders—is found at 444.2 feet, Ex. D4, Patrick, *Powerton Hydrogeological Assessment*, at Bates MWG13-15\_7119, with groundwater in the same well measured at 448.53. Ex. G, *Seymour Report*, Tbl.4-3. At MW-9, ash—in the form of “moist” black cinders—is found at 449.2 feet, Ex. D4, Patrick, *Powerton Hydrogeological Assessment*, at Bates MWG13-15\_7120, with groundwater in the same well measured at 449.35. Ex. G, *Seymour Report*, Tbl.4-3.

**STANDING**

Pursuant to Section 31(d)(1) of the Act and Article XI of the Illinois Constitution, Citizens’ Groups have associational standing to seek the Board’s review of MWG’s compliance with the Act or any rule or regulation adopted under the Act. Associational standing is conferred directly by Section 31(d)(1) of the Act, which authorizes any person to file a complaint with the Board against any person allegedly violating the Act, any rule or regulation adopted under the Act, or any permit or term or condition thereof. 415 ILCS 5/31(d)(1) (2010). The Act defines a “person” to include an “association.” 415 ILCS 5/3.315 (2010). Therefore, standing for Citizens’ Groups is established by the statute underlying the cause of action.

The Board has acknowledged that, where a petitioner has demonstrated statutory standing under the Environmental Protection Act, “consideration of constitutional standing is not necessary.” *Sierra Club, et al. v. Ill. Env’tl. Prot. Agency, et al.*, PCB 15-189, at 9 (Apr. 7, 2016). Nonetheless, Citizens’ Groups also can demonstrate constitutional standing to bring this enforcement action Article XI of the 1970 Illinois constitution provides, “Each person has the

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<sup>6</sup> All elevations at Powerton and Will County are provided in feet above mean sea level.

right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law.” ILL. CONST. art. XI, § 2. This constitutional right eliminates the need for plaintiffs to demonstrate personalized injuries in actions seeking to protect a healthful environment. *See Glisson v. City of Marion*, 188 Ill. 2d 211, 228 (Ill. 1999) (“It was the intent of the committee to broaden the law of standing by eliminating the traditional special injury prerequisite for standing to bring an environmental action.”).

### **ARGUMENT**

Summary judgment is appropriate when there is no genuine issue of material fact and the record before the Board, including the pleadings, exhibits, discovery documents, and affidavits, demonstrates a clear right to judgment as a matter of law. 35 Ill. Adm. Code § 101.516(b); *Clayton Chemical Acquisition L.L.C. v. IEPA*, PCB 98-113 at 2 (March 1, 2001) (citing *Outboard Marine Corp. v. Liberty Mut. Ins. Co.*, 154 Ill. 2d 90, 180 Ill. Dec. 691 (1992)). Any opposition to summary judgment must “clearly identify disputed issues of fact,” and “the opponent cannot sit quietly by but is required to raise any defenses and produce evidence tending to show a question of fact exists.” *City of Quincy v. IEPA*, PCB 08-86 at 23 (June 17, 2010) (citing *Sexton Env'tl. Sys., Inc. v. IEPA*, PCB 91-4, slip op. at 1 (Feb. 28, 1991) and *Warren v. Darnell*, 164 Ill. App. 3d 273, 283, 517 N.E.2d 636, 643 (Ill. App. Ct. 5th 1987)). The Board has observed that the text of 35 Ill. Adm. Code § 101.516(b) makes summary judgment mandatory where there are no genuine issues of material fact. *City of Quincy*, PCB 08-86 at 26-27.

Here, the facts are clear that coal ash in Historic Ash Areas at Waukegan, Will County, Joliet 29 and Powerton is contaminating the groundwater at those sites. MWG has therefore violated §§ 12(a) and 21(a) of the Act, and Citizens’ Groups are entitled to judgment as a matter of law.

#### **I. MWG Violated the Act’s Prohibition on Groundwater Pollution**

##### **a. MWG Violated the Act and Implementing Regulations By Allowing Water Pollution at the Four Plants**

###### **i. MWG Allowed the Discharge of Contaminants into the Environment**

Section 12(a) of the Illinois Environmental Protection Act (“Act”) provides that “No person shall... [c]ause or threaten or allow the discharge of any contaminants into the

environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources....” The Act defines, “water pollution as:

such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to... render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

415 ILCS 5/3.545. “Waters,” in turn, is defined as “all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.” 415 ILCS 5/3.550 (emphasis added). Waters of the state includes water in wells. *Tri-County Landfill Co. v. Illinois Pollution Control Board*, 41 Ill. App. 3d 249, 253-54, 353 N.E.2d 316, 320-21 (1976); *People ex rel. Ryan v. Stonehedge, Inc.*, 288 Ill. App. 3d 318, 321-22, 680 N.E.2d 497, 500 (1997); *see also People v. John Chalmers*, PCB 96-111 7 (Jan. 6, 2000).

To determine whether a party has “cause[d] or threaten[ed] or allow[ed] the discharge of any contaminants” into a waters of the State, Illinois courts and the Board focus on two factors: first and primarily, whether the party has the “capability of control” over the water pollutants or the premises where the water pollution occurred, and second, whether the party has taken “extensive precautions” to prevent pollution from occurring. *See, e.g., Gonzalez v. Pollution Control Bd.*, 960 N.E.2d 772 (Ill. App. First Dist. 2011) (“Property owners are responsible for the pollution on their land unless the facts establish the owners either lacked the capability to control the source or had undertaken extensive precautions to prevent vandalism or other intervening causes”) (internal quotations omitted); *People v. A.J. Davinroy Contractors*, 249 Ill. App. 3d 788, 794 (1993) (defendant liable when it “neither lacked the capability to control the source of the pollution nor undertook any precautions to prevent the pollution”); *Perkinson v. Ill. Pollution Control Bd.*, 187 Ill. App. 3d 689, 694-95, 543 N.E.2d 901, 904 (1989) (Illinois has a “long line of precedent... which holds that the owner of the source of the pollution causes or allows the pollution... and is responsible for that pollution unless... the owner either lacked the capability to control the source... or had undertaken extensive precautions to prevent vandalism or other intervening causes”).



When a party owns the premises where pollution occurs, Illinois courts and the Board presume that party has control over those premises. *See, e.g., People v. Inverse Investments*, PCB 11-79, 2012 Ill. Env. Lexis 92, \*25 (PCB Feb. 16, 2012) (denying motion to dismiss when complaint alleged that defendant owned site “that contained contamination that is migrating offsite and polluting groundwater”); *Meadowlark Farms, Inc. v. Ill. Pollution Control Bd.*, 17 Ill. App. 3d 851, 861 (petitioner allowed water pollution in violation of Section 12(a) of the Act when it owned the premises on which the pollution occurred as well as the source of pollution); *Freeman Coal Mining Corp. v. Ill. Pollution Control Bd.*, 21 Ill. App. 3d 157, 163 (1974) (finding liability for mine owner even when rain, “a natural force beyond the control of the Petitioner,” was the immediate cause of the discharge from the mine refuse piles).

Parties who operate the premises or the source of pollution likewise exercise control over those premises or pollution sources. *See A.J. Davinroy Contractors*, 249 Ill. App. 3d at 794 (contractor operating bypass system had capability of control over pumps it was contractually obligated to maintain); *People v. Michel Grain*, PCB No. 96-143, 2002 Ill. Env. Lexis 489 at \*7-\*9 (PCB Aug. 22, 2002) (denying lessee’s motion to dismiss when “a respondent with control over a site” may violate Act); *see also Allaert Rendering, Inc. v. Ill. Pollution Control Bd.*, 91 Ill. App. 3d 153, 155-56 (Ill. App. Ct. Third Dist. 1980) (holding plant operator liable under § 12(a) for threatening to discharge contaminants into surface water when the plant’s wastewater system held contaminated water in a lagoon that had previously flooded twice).

Longstanding Board precedent makes clear that a party with control over the pollution or the premises where that pollution occurs may be liable for allowing water pollution in violation of § 12(a) even if that party did not place the contaminants at issue in the ground or water. *See Inverse Investments*, PCB 11-79, 2012 Ill. Env. Lexis 92 at \*25 (denying motion to dismiss because “the current owner may be responsible for contamination even if the current owner did not actively dispose of the contamination”); *Michel Grain*, 2002 Ill. Env. Lexis 489, at \*7 (“a respondent with control over a site may be found in violation even if the respondent did not actively dispose of contaminants at the site”); *Illinois v. State Oil Co.*, PCB 97-103, Order, April 4, 2002, at 12-16 (contaminants already in the ground at the time the current owners/operators took control of the site gave rise to liability under § 12(a) because those contaminants caused water pollution during the ownership and control period of the current owners); *Meadowlark Farms*, 17 Ill. App. 3d at 860-61, 308 N.E.2d at 836-37.

Board precedent is also clear that a party with control over the premises or source of pollution cannot avoid liability unless that party has taken “extensive precautions” to prevent the pollution. *See, e.g., Gonzalez*, 960 N.E.2d at 779; *Perkinson*, 187 Ill. App. 3d at 694-95. When a party is aware of a source of contamination on its property but does not remove that source, it has not taken sufficient precautions to prevent pollution. *Gonzalez*, 960 N.E. 2d at 779 (Petitioners violated the Act when they “were aware of the preexisting fly-dumped waste at the time of the purchase but failed to remove it for over 14 months”). When a material that is likely to leach is present, and the party controlling the source of pollution fails to install liners to retain leachate or monitoring wells “built to track” contamination, the party has not taken sufficient precautions to avoid liability under § 12(a) of the Act. *Wasteland, Inc. v. Pollution Control Bd.*, 118 Ill. App. 3d 1041, 1049 (Ill. App. 3<sup>rd</sup> 1983) (upholding the Board’s holding that § 12(a) of the Act was violated in light of “the presence of unpermitted material, likely to create leachate problems, and the lack of natural or required safeguards against water pollution...”).

Notably, a party may be liable for contamination even if another source is partially responsible for that contamination. 415 ILCS 5/12(a); *Inverse Investments*, PCB 11-79, 2012 Ill. Env. Lexis 92, at \*27 (“The People have alleged that Inverse is the owner of a Site containing contamination that is migrating offsite and polluting groundwater. That others might also be liable does not defeat the People’s allegations in this complaint.”). Liability is likewise not defeated if the party did not “intend” to cause, threaten or allow the pollution. The party’s intent, or lack thereof, has no bearing on liability. *People v. Fiorini*, 143 Ill. 2d 318, 346, 574 N.E.2d 612, 623 (1991) (“[I]ntent is not an element to be proven for a violation under Illinois Environmental Protection Act.”).

In this case, MWG allowed the discharge of water pollution in violation of Section 12(a) because it has control over the plant sites and failed to take extensive precautions to prevent groundwater pollution from the coal ash in Historic Ash Areas. *See, e.g., A.J. Davinroy Contractors*, 249 Ill. App. 3d at 794. First, MWG has control over the premises where the pollution occurred. MWG owns Will County and Waukegan and operates the Powerton and Joliet plants. *Supra* SOF ¶ 1. MWG’s ownership of Will County and Waukegan and operation of the Powerton and Joliet sites suffices to establish that MWG had control over the premises where pollution occurred at all four plants. *See People v. State Oil Co.*, PCB No. 97-103, 2003 Ill. Env.

Lexis at \*56; *Meadowlark Farms*, 17 Ill. App. 3d at 860-61; *Freeman Coal Mining Corp.*, 21 Ill. App. 3d at 163.

Second, MWG failed to take anything close to “extensive precautions” to prevent the groundwater contamination at Waukegan, Will County, Joliet 29 and Powerton. The facts show that, by means of Environmental Site Assessments completed in 1998 at all four plants, MWG was aware of coal ash located in Historic Ash Areas at each plant. *Supra* SOF ¶¶ 4, 5, 7, 10, 61, 74, 88, 100. MWG received additional information about coal ash located in Historic Ash Areas at the plants in 2005, and again when it began installing monitoring wells at the plants beginning in 2010. *Supra* SOF ¶¶ 62, 64, 76, 86, 90, 101, 103. Even though the leachability of coal ash, including coal ash that has existed since before 1998, is undisputed, *supra* SOF ¶ 23, and liquids - including precipitation and groundwater - are coming in contact with the Historic Coal Ash, MWG neither installed an impermeable cap over the Historic Ash Areas, nor removed the ash, nor placed any liners underneath it. *Supra* SOF ¶¶ 68 – 73, 78, 82 – 87, 93 – 97, 99, 106 – 120.

Moreover, for most of the Historic Ash Areas, MWG never installed groundwater monitoring wells for the purpose of investigating whether the coal ash in those areas had leached into groundwater. *Supra* SOF ¶¶ 66, 79 – 80, 91 – 92, 105. Where MWG did install groundwater monitoring wells near Historic Ash Areas, such as MWs 5, 6, 7, 8 and 9 near the Former Slag/Fly Ash Storage Area at Waukegan, or MWs 2, 5, and 10 near the Former Ash Pond at Powerton, or MWs 9 and 11 through 15 in areas of ash fill at Powerton, and those wells showed groundwater contaminated with coal ash indicators, *Supra* SOF ¶¶, MWG still did not take any action to contain or remove that ash. In short, MWG has long been on notice of the ash in Historic Ash Areas at Waukegan, Will County, Joliet 29 and Powerton, and – even though its own expert, John Seymour, readily admits that historic ash at those plants has leached into groundwater – MWG has nevertheless failed to take extensive precautions to stop that contamination from continuing. *Supra* SOF ¶¶ 4, 5, 7, 10, 57 – 62, 64, 66, 68 – 74, 76, 78 – 80, 82 – 88, 90 – 97, 99 – 101, 103, 105 – 120. By failing to take those precautions to prevent contamination, MWG has allowed the discharge of contaminants into the groundwater. *See Gonzalez*, 960 N.E. 2d at 779.

**b. The Contaminants Discharged Into the Groundwater Caused, and Continue to Cause, Water Pollution in Illinois.**

The contaminants that MWG allowed to enter the groundwater caused, and continue to cause, water pollution. Under § 12(a), once the Board determines that a party “cause[d], threaten[ed] or allow[ed] the discharge of any contaminants into the environment,” the Board must then determine whether that discharge “cause[d] or tend[ed] to cause water pollution in Illinois, either alone or in combination with matter from other sources....” The Act defines “water pollution” as:

such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to... render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

415 ILCS § 5/3.545. “Waters,” in turn, is defined as “all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.” § 415 ILCS 5/3.550 (emphasis added). Waters of the state includes water in wells. *Tri-County Landfill Co.*, 41 Ill. App. 3d at 253-54, *People ex rel. Ryan*, 288 Ill. App. 3d at 321-22.

The Board has made clear that water pollution exists when contaminants are present in excess of the groundwater quality standards adopted by the Board. *See Int’l Union v. Caterpillar*, PCB No. 94-240, 1996 Ill. Env. Lexis 579, at \*88-\*89 (PCB Aug. 1, 1996) (finding violation of § 12(a) of the Act and holding that “exceedences of the Part 620 standards... constitutes degradation of one of the State’s water resources and indicates the presence of water pollution...”); *Inverse Investments*, PCB 11-79, 2012 Ill. Env. Lexis 92, at \*2, \*25-\*26 (denying motion to dismiss when defendants alleged to have caused or allowed migration of contaminants into the groundwater causing violations of Class I groundwater standards, which “created, or threatened to create a nuisance and rendered the groundwater harmful to human health and the environment”); *see also People v. Hicks Oil & Hicks Gas, Inc*, PCB No. 10-12, 2009 Ill. Env. Lexis 308, \*1-\*2 (Aug. 6, 2009) (accepting complaint for hearing when People allege that respondent violated § 12(a) of the Act “by causing or allowing the discharge of contaminants to groundwater so as to exceed the Board's Groundwater Quality Standards for a Class I resource

groundwater, and to thereby render such water harmful or detrimental or injurious to public health, safety or welfare...” (emphasis added).

The same principle – that groundwater contamination in excess of the Board’s Class I standards constitutes water pollution – holds true even when those standards are not in effect, as is the case when a Groundwater Management Zone (“GMZ”) has been approved for a site for a given pollutant. *See* 35 Ill. Adm. Code §§ 620.250(e), 740.530 (d) As noted above, water pollution is present when a discharge of any contaminant into the groundwater “will or is likely to...render such waters harmful or detrimental or injurious to public health, safety or welfare....” 415 ILCS § 5/3.545. When the Board adopted the groundwater quality standards in 1991, it noted that the Class I: Potable Resource Groundwater quality standards were being set at levels “equal to the USEPA’s Maximum Concentration Levels,” which are health-based standards intended to be protective of human health, Safe Drinking Water Act § 1412(b)(4)(A)-(B), 42 USC § 300g-1(b)(4)(A)-(B), and were intended to fulfill “the principle that groundwaters that are naturally potable should be available for drinking water supply without treatment.” IPCB R89-14(B), Nov. 7, 1991, Final Order at 18.

Regardless of whether the standards are in effect, contamination in excess of those standards leaves the affected groundwater “harmful or detrimental or injurious to public health, safety or welfare” under § 415 ILCS 5/3.545. In short, when standards are set to prevent harm to health, it stands to reason that exceedances of those standards in a water body constitute water pollution, even if the standards are not in effect. The Board effectively held as much in its 2003 decision in *People v. Texaco Refining and Marketing, Inc.* In that case, as an affirmative defense to the People’s allegations that it violated § 12(a) of the Act, Texaco asserted that it had complied with the Board’s regulatory provisions, including by entering into a GMZ. PCB No. 02-03, 2003 Ill. Env. Lexis 665 at \*21 (PCB Nov. 6, 2003). The Board granted the People’s motion to strike that affirmative defense, explaining that “Section 12(a) of the Act provides no exemption from liability for parties that comply with another regulatory program.” *Id.* at \*22. Other Board cases similarly support the principle that contamination in excess of health-based standards constitutes water pollution. *See Caterpillar*, PCB No. 94-240, 1996 Ill. Env. Lexis 579 at \*88-\*89 (finding that “exceedances of the Part 620 standards... constitutes degradation of one of the State’s water resources and indicates the presence of water pollution caused by respondent”); *People v. CSX Transp., Inc.*, PCB No. 07-16, 2007 Ill. Env. Lexis 296, \*44-\*45

(PCB July 12, 2007) (finding § 12(a) violation based on violations of Tiered Approach to Corrective Action Objectives, when rulemaking establishing those Objectives made clear that “exposure above the remediation objective levels would be hazardous to human health”).

The premise that exceedances of the Board’s groundwater quality standards constitute water pollution, regardless of whether those standards are in effect, is also mandated by the Illinois Supreme Court’s decision in *Central Illinois Public Service Co. v. Pollution Control Board*, 116 Ill. 2d 397, 409-10 (1987) (“*CIPSCO*”). In that case, respondent sought site-specific groundwater standards for its Hutsonville power plant and acknowledged that the standards it requested would have “deleterious effects,” including discomfort to humans if the water were drunk. *Id.* at 408. The Board denied CIPSCO’s request, reasoning that, because the Act treats water as a resource, water pollution is present not only when actual harm has occurred or will occur, but rather whenever “harm *would* occur if the contaminated water were to be used.” *Id.* at 409 (emphasis in original). The Illinois Supreme Court upheld the Board’s decision, explicitly agreeing with the Board’s interpretation that “any contamination which prevents the State’s water resources from being usable ... constitute[s] pollution,” *id.* at 409-10.

In this case, there is no question that contaminants were present in excess of the Board’s Class I groundwater quality standards over a thousand times in total at Powerton, Waukegan, Will County and Joliet 29, with exceedances in almost every groundwater monitoring well at each of the four plant sites. *Supra* SOF ¶¶ 53-56; Exs. A9 – A13, B10 – B12, C9 – C11, D16 – D18. In many cases, the same constituents exceeded Class I groundwater standards in the same wells during every quarterly monitoring event for years. *See, e.g.*, Ex. B13, 2015 Will County Annual Report at Bates MWG13-15\_56538 (showing boron in excess of Class I standards in every quarter since Oct. 28, 2013, in Will County MW-3); Ex. A12, 2015 Waukegan Annual Report, at Bates MWG13-15\_56448 (showing boron in excess of Class I standards in every quarter since Nov. 5, 2013, in Waukegan MW-5); and Ex. D18, 2015 Powerton Annual Report, at Bates MWG13-15\_56219 (showing manganese in excess of Class I standards in every quarter since Oct. 23, 2013, in Powerton MW-10).

There is likewise no question that Historic Coal Ash at each site is a source of coal ash contaminants. *Supra* SOF ¶¶ 57 – 60; Ex. E5, Seymour Depo Tr. at 38:2-13, 46:11 - 48:20, 53:13 – 55:3, and 58:13 – 59: 13; Ex. M, Frendt 2012 Waukegan ash pond summaries at Bates MWG13-15\_14167 (stating that “the elevated concentrations of compounds of interest in MW-5

appear to be the result of the well being installed in a former ash disposal area....”); Ex. D19, Patrick 2013 letter to IEPA, Bates MWG13-15\_9644-9645 (noting that monitoring wells installed in 2010 are potentially affected by past ash management practices and fall “within an area of impacted groundwater from historical ash-related handling activities.”). Indeed, boron, which MWG expert Seymour admits is a “good” coal ash indicator, *Supra* SOF ¶ 36, appears in every monitoring well at all four plants in this litigation, and boron concentrations exceeded Class 1 standards at all four plants. *Supra* SOF ¶¶ 53-56.

The groundwater quality monitoring reports signed and submitted to IEPA by MWG personnel, together with Mr. Seymour’s admissions, the Frendt 2012 Waukegan ash pond summaries and the Patrick 2013 letter to IEPA, leave no doubt that the coal ash contaminants that MWG has allowed to leach continuously into the groundwater have caused, and continue to cause, water pollution at the four MWG plant sites.<sup>7</sup> Accordingly, in over one thousand instances,<sup>8</sup> MWG has allowed the discharge of contaminants into the groundwater “so as to cause or tend to cause water pollution in Illinois,” in violation of § 12(a) of the Act.

**II. MWG Violated the Act’s Implementing Regulations by Causing Exceedances of the Class I Groundwater Quality Standards Set Forth at Ill. Admin. Code Section 620.410 at the Four Plants.**

By exceeding § 12(a) of the Act at the four plants and allowing exceedances of the groundwater quality standards set forth at 35 Ill. Admin. Code 620.210, MWG has also violated

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<sup>7</sup> The Environmental Land Use Controls (“ELUCs”) approved for Powerton, Waukegan and Will County do not change that conclusion. The ELUCs themselves make clear that an ELUC is only put into place because use of the affected groundwater would likely harm human health. *See Supra* SOF ¶ 51; Ex. A7, Waukegan ELUC Application, at Bates MWG13-15\_601 (“The reason for an ELUC is to ensure protection of human health and the environment. The limitations and requirements contained herein are necessary in order to protect against exposure to contaminated groundwater that may be present on the property....”); Ex. D15, Powerton ELUC Application [Bates MWG13-15\_712-723], at Bates MWG13-15\_714 (same) and Ex. B9, Will County ELUC application [Bates MWG13-15\_611-621] at Bates MWG13-15\_613 (same). In *CIPSCO*, the Illinois Supreme Court held that water pollution is present if harm *would* occur upon using contaminated water, not solely if harm does occur. *CIPSCO*, 116 Ill. 2d 397, 409-10. Thus, because harm would occur if the contaminated groundwater at the plants were consumed, that contamination constitutes water pollution. *Id.*

<sup>8</sup> If the Board were to hold that exceedances of Class I groundwater quality standards constitute water pollution only when those standards were in effect, for the reasons discussed herein, MWG still would have allowed the discharge of contaminants causing water pollution on hundreds of occasions collectively at the four plants. *See* Exhibit B of Pet. Amend. Comp. Ex. 2. Class I groundwater standards were, and continue to be, in effect at Waukegan for the entirety of the period of allegations included in the Second Amended Complaint. *Supra* SOF ¶¶ 44 – 45. Class I groundwater standards were in effect at Will County until the GMZ was approved for that site on July 2, 2013. *Supra* SOF ¶¶ 43, 46. Class I groundwater standards were in effect at Joliet 29 until the GMZ was approved for that site on August 8, 2013. *Supra* SOF ¶¶ 43, 47. And Class I groundwater standards were in effect at Powerton from the beginning of the period of until the Groundwater Management Zone (“GMZ”) for that site was approved on Oct. 3, 2013. *Supra* SOF ¶¶ 43, 48.

several Board regulations concerning the protection of groundwater, namely, 35 Ill. Admin. Code §§ 620.115, 620.301(a), and 620.405. The number of violations varies by regulatory provision. Specifically, a GMZ likely provides a defense to liability under sections 620.301(a) and 620.405 of the Illinois Administrative Code. *See Texaco Refining and Marketing, Inc.*, PCB No. 02-03, 2003 Ill. Env. Lexis 665 at \*22-\*24 (declining to strike defendant's affirmative defense that it was not liable for violation of Section 620.405 of the Illinois Admin Code due to a GMZ, and stating that "Compliance with a permitted GMZ would provide Texaco immunity from violating the Part 620 standards"). Thus, violations of Sections 620.301(a) and 620.405 are limited to the exceedances at Waukegan, where no GMZ was put into place, and exceedances at Will County, Joliet 29 and Powerton that took place prior to approval of the GMZs at those plants. *Id.* In contrast, Section 620.115 is violated when the Act is violated, and therefore a GMZ does not function as a defense to liability under that provision. *See id.* at \*21-\*22.

Section 620.115 of the Illinois Administrative Code provides that: "No person shall cause, threaten or allow a violation of the Act, the [Illinois Groundwater Protection Act] or regulations adopted by the Board thereunder, including but not limited to this part." 35 Ill. Admin. Code § 620.115 For the reasons explained herein, MWG has violated the Act as well as groundwater protection regulations adopted by the Board, and therefore has violated 35 Ill. Admin. Code § 620.115.

Section 620.301(a) of the Illinois Administrative Code provides that "No person shall cause, threaten or allow the release of any contaminant to a resource groundwater such that 1) Treatment or additional treatment is necessary to continue an existing use or to assure a potential use of such groundwater; or 2) An existing or potential use of such groundwater is precluded." 35 Ill. Admin. Code § 620.301(a). Groundwater at all four plants was "resource" groundwater for at least a portion of the period of the violations alleged in the Second Amended Complaint. Specifically, groundwater at Powerton was classified as Class I groundwater until Oct.3, 2013, when IEPA approved the GMZ for that site. *Supra* SOF ¶¶ 43, 48. Groundwater at Will County was classified as Class I groundwater until July 2, 2013, when IEPA approved the GMZ for that site. *Supra* SOF ¶¶ 43, 46. Groundwater at Joliet 29 was classified as Class I groundwater until August 8, 2013, when IEPA approved the GMZ for that site. *Supra* SOF ¶¶ 43, 47. Finally, groundwater at Waukegan was classified as Class I groundwater throughout the entire period of



the violations alleged in the Second Amended Complaint, and continues to be classified as Class I groundwater. *Supra* SOF ¶ 45.

During the time periods in which the groundwater at those plants was classified as Class I groundwater, the Class I groundwater quality standards were exceeded on hundreds of instances at Powerton, on hundreds of instances at Will County, on more than a hundred instances at Joliet 29, and on more than a hundred instances at Waukegan. *Supra* SOF ¶¶ 53 – 56. As MWG admits, historic ash at all four plants caused or contributed to those exceedances. *Supra* SOF ¶¶ 57-60; Ex. E5, Seymour Dep., *e.g.*, 48:3-6 (“Q: Do you allege that the contamination in the groundwater at Powerton is resulting from historical uses at the site? A. Yes.”) and 46:17-18 (admitting that “the inorganics that are in the groundwater are characteristic of coal ash materials....”). When those exceedances occurred, a potential use of that resource groundwater – i.e., as drinking water – was precluded. *See CIPSCO*, 116 Ill. 2d at 409-10. As such, MWG violated 35 Ill. Admin. Code § 620.301(a) on hundreds of occasions collectively at all four plants.

Finally, Section 620.405 of the Illinois Administrative Code provides that “No person shall cause, threaten or allow the release of any contaminant to groundwater so as to cause a groundwater quality standard set forth in this Subpart to be exceeded.” 35 Ill. Admin. Code § 620.405. As discussed herein, MWG allowed the release of contaminants to the groundwater so as to cause hundreds of exceedances of the groundwater quality standards collectively at all four plants. Accordingly, MWG violated 35 Ill. Admin. Code § 620.405 on hundreds of occasions. *Id.*

### **III. MWG Violated the Open Dumping Prohibitions Set Forth in Section 21(a) of the Act at Powerton, Waukegan and Will County.**

In addition to contravening the Act’s prohibitions on water pollution, MWG also violated, and continues to violate, the open dumping prohibitions set forth in the Act at its Powerton, Waukegan and Will County coal plants. The Act provides that “[n]o person shall cause or allow the open dumping of any waste,” 415 ILCS 5/21(a), and defines “open dumping” as “the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.” 415 ILCS 5/3.305. Here, MWG has allowed ash in Historic Ash Areas at Powerton, Waukegan and Will County to contaminate the groundwater at those sites. Accordingly, as further explained below, MWG has violated Section 21(a) of the Act by allowing open dumping at those sites.

**a. Open Dumping Has Taken Place at Powerton, Will County and Waukegan In Violation of Section 21(a) of the Act.**

Coal ash in Historic Ash Areas at Powerton, Waukegan and Will County is “refuse” for the purposes of 415 ILCS 5/3.305. As noted above, “open dumping” is “the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.” 415 ILCS 5/3.305. “Refuse” is defined as “waste.” 415 ILCS 5/3.385. “Waste” is defined in relevant part as “any garbage... or other discarded material, including solid, liquid, semi-solid... material resulting from industrial, commercial... operations....” 415 ILCS 5/3.535. Coal ash in Historic Ash Areas at Powerton, Waukegan and Will County is “waste” because it is a discarded material resulting from an industrial operation – the burning of coal to generate electricity. *Supra* SOF ¶¶ 3, 58, 60; 415 ILCS 5/3.535 and 3.385. Indeed, the Act specifically identifies coal ash as “coal combustion waste.” 415 ILCS 5/3.140 (defining “coal combustion waste” as “any fly ash, bottom ash, slag, or flue gas or fluid bed boiler desulfurization by-products generated as a result of the combustion of: (1) coal, or (2) coal in combination with...other fossil fuel...”). Accordingly, historic coal ash in Historic Ash Areas at Powerton, Waukegan and Will County constitutes refuse which, pursuant to 415 ILCS 5/3.3.5, may not be left at a disposal site not meeting the requirements of a sanitary landfill.<sup>9</sup>

The Historic Ash Areas at Powerton, Waukegan and Will County are “disposal site[s].” Under the Act, a “waste disposal site” is a “site on which solid waste is disposed,” 415 ILCS 5/3.540, and “disposal” means “the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, *including ground waters.*” 415 ILCS 5/3.185 (emphasis added). As the Board explained earlier in the present case, “an area on which waste is deposited can be a ‘disposal site’ if the waste deposition is conducted in a manner that allows waste material to enter the environment, including groundwater.” *Sierra Club et al v. Midwest Generation, LLC*, PCB No. 2013-015, 2013 Ill. Env. Lexis 294, at \*78 (Oct. 3, 2013). Here, coal ash is located in Historic Ash Areas at Powerton, Waukegan and Will County without any cap

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<sup>9</sup> Although the Act excludes “coal combustion byproducts” (“CCB”) from its definition of “waste,” 415 ILCS 5/3.535, MWG has offered no evidence that coal ash in the Historic Ash Areas at each plant meets the definition of CCB. *Supra* SOF ¶¶ 12-13.

above, or liner below, that would have prevented rain, snow, groundwater or other liquid from draining through that ash into the groundwater. *Supra* SOF ¶¶ 68-70, 78, 82, 93-98, 106-110. Coal ash is not impermeable: water can migrate through it, leaching coal ash constituents, *Supra* SOF ¶ 23, and – as MWG expert Seymour acknowledged – did so at each of these sites. In Seymour’s words, “[t]he inorganics that are in the groundwater are characteristic of coal ash materials....,” Ex. E5, Seymour Depo Tr. at 48:17-18. Because the coal ash at issue here was placed on the land at the MWG plants in a manner that allowed constituents of that waste, including but not limited to boron, sulfate and manganese, to leach into groundwater, *Supra* SOF ¶ 67, the Historic Ash Areas in which that coal ash was placed are “disposal sites” under the Act.

Finally, the Historic Ash Areas at Powerton, Waukegan and Will County do not “fulfill the requirements of a sanitary landfill.” The Act defines “sanitary landfills” as “facilit[ies] permitted by the Agency for the disposal of waste on land meeting the requirements of the Resource Conservation and Recovery Act [42 USCA § 6901 et seq.] and regulations thereunder....” 415 ILCS 5/3.445. As an initial matter, there is no evidence that Powerton, Waukegan and Will County ever received a permit from IEPA for the disposal of the coal ash in the Historic Ash Areas. *Supra* SOF ¶ 13. Without such a permit, they cannot qualify as “sanitary landfills.” 415 ILCS 5/3.445.

However, even were there evidence of such permitting, the ground areas where the ash was buried at Powerton, Waukegan and Will County cannot qualify as sanitary landfills because they do not “meet the requirements of the Resource Conservation and Recovery Act and regulations thereunder,” which is a necessary component of a sanitary landfill as defined at 415 ILCS 5/3.445. The Resource Conservation and Recovery Act (“RCRA”)’s implementing regulations set forth specific criteria to distinguish between sanitary landfills and prohibited open dumps. These regulations are found at 40 CFR Part 257. During the period in which the violations alleged in the Second Amended Complaint took place, the applicable regulations were those set forth at 40 CFR Part 257, Subpart A.<sup>10</sup> Under 40 CFR § 257.1(a)(1), “[f]acilities<sup>11</sup>

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<sup>10</sup> Modifications to the RCRA regulations referenced in Section 21(a) of the Act went into effect on Oct. 19, 2015, and now provide that coal ash landfills and impoundments are governed by regulations codified at 40 CFR Part 257, Subpart D. *See* “Technical Amendments to the Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals From Electric Utilities—Correction of the Effective Date, 80 FR 37988-01 (July 2, 2015).” However, during the period of time when the Open Dumping violations alleged herein occurred, the governing regulations were those set forth at 40 CFR Part 257, Subpart A. *See* Environmental Protection Agency, 40 CFR Parts 257 and 261, Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals From Electric Utilities; Final Rule (April 17, 2015), 80 F.R. 21,302, 21,339. The Subpart A provisions therefore govern

failing to satisfy *any* of the criteria in §§ 257.1 through 257.4 or §§ 257.5 through 257.30 or §§ 257.50 through 257.107 are considered [prohibited] open dumps....” (emphasis added).

None of the Historic Ash Areas at issue in this case satisfy the criterion laid out in 40 CFR § 257.3-4, which provides that sanitary landfills cannot cause “contaminat[ion of] an underground drinking water source beyond the solid waste boundary or beyond an alternative compliance boundary.” “Solid waste boundary” means “the outermost perimeter of the solid waste (projected in the horizontal plane) as it would exist at completion of the disposal activity.” 40 C.F.R. § 257.3-4(c)(5). Any alternative boundary would be established by the state or the courts after finding that establishing such a boundary will not result in the contamination of groundwater that may be used for drinking. 40 C.F.R. § 257.3-4.

Groundwater contamination for purposes of RCRA open dumping is demonstrated by an exceedance of one of the Maximum Contaminant Levels (MCLs) set forth in 40 CFR pt. 257 Appendix I (hereinafter “Appendix I MCLs”), in either an actual drinking water source, or in an aquifer with less than 10,000 mg/L total dissolved solids. 40 CFR § 257.3-4. The Appendix I MCLs for the pollutants identified in the complaint are as follows:

Chemical	Appendix I MCL (40 C.F.R. Pt. 257, App. I)
Arsenic	0.05 mg/L
Mercury	0.002 mg/L
Nitrate	10 mg/L
Selenium	0.01 mg/L

Here, for at least a portion of the violations alleged in the Second Amended Complaint, the historic ash in Historic Ash Areas at Powerton, Waukegan and Will County created: “[1] contaminat[ion of] [(2)] an underground drinking water source, [3)] beyond the solid waste boundary or beyond an alternative compliance boundary.” As such, the Historic Ash Areas at those plants did not meet the definition of “sanitary landfill” set forth in RCRA’s implementing regulations. Each of these three conclusions is explained in detail below.

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whether the disposal sites for the coal ash met the requirements of RCRA. *See McGee v. Snyder*, 326 Ill. App. 3d 343, 348, 760 N.E.2d 982, 260 Ill. Dec. 209 (2001) (“Quite simply, the law in effect at the time of the offense governs.”).

<sup>11</sup> Under 40 CFR § 257.2, “facility” means “all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste.”

i. Historic Ash at Powerton, Waukegan and Will County Contaminated the Groundwater at those Plants.

First, the groundwater at Powerton, Waukegan and Will County was contaminated: Appendix 1 MCLs were exceeded on dozens of occasions at those three plants for a variety of constituents. *Supra* SOF ¶¶ 53-56. It is undisputed that historic coal ash at Powerton, Will County, and Waukegan is a source of the coal ash contaminants at those sites. *Supra* SOF ¶¶ 57-60; *See, e.g.*, Ex. E5, Seymour Depo Tr. at 48:17-18 (“[t]he inorganics that are in the groundwater are characteristic of coal ash materials...”) and 59:11-13 (Seymour notes that, in the groundwater at Waukegan, “there are other characteristics of coal ash that aren’t characteristic of a tannery.”)

ii. The Groundwater at Powerton, Waukegan and Will County Was an Underground Drinking Water Source For At Least Part of the Period of Violations Alleged in the Second Amended Complaint.

Second, the groundwater at Powerton, Waukegan and Will County was, for at least a portion of the time during which violations are alleged, “an underground drinking water source.” First of all, under the applicable RCRA regulations, groundwater qualifies as an “underground drinking water,” even if not being consumed at the time, if it contains less than 10,000 mg/L of total dissolved solids (“TDS”). 40 CFR § 257.3-4(d)(4). All the groundwater at all four plants contains less than 10,000 mg/L of TDS. *See* A9 – A13, B10 – B12, C9 – C11, D16 – D18 (groundwater monitoring reports for all four plants).

Moreover, as noted above, Illinois EPA approved Groundwater Management Zones (“GMZs”) for Powerton on Oct. 3, 2013, and for Will County on July 2, 2013. *Supra* SOF ¶ 43. Prior to those approvals, the groundwater at both those plants and at Waukegan was classified as Class 1 groundwater. *Supra* SOF ¶¶ 46, 48. Groundwater at Waukegan remains Class I groundwater, and was so throughout the period of violations alleged in the Second Amended Complaint. *Supra* SOF ¶ 45.

Under Illinois law, Class I groundwater is treated as a drinking water source even if it is not currently being used as drinking water. *See* 415 ILCS 5/3.430 (defining “Resource Groundwater” as “groundwater that is presently being, or in the future is capable of being, put to beneficial use by reason of being of suitable quality...”); 35 Ill. Adm. Code § 620.110 (same); 35

Ill. Adm. Code § 620.210 (classifying Class I groundwater as “Potable Resource” groundwater defined, among other things, as groundwater “determined by the Board...to be capable of potable use”); *see also CIPSCO*, 116 Ill.2d at 409 (adopting position of the Board that “the [Illinois Environmental Protection] Act treats water as a resource, and that pollution occurs whenever contamination is likely to render water unusable”). Further, for purposes of 40 C.F.R. § 257.3-4, water with <10,000 mg/L TDS qualifies as a drinking water source, whether it’s being used as drinking water or not. Thus, the groundwater at Powerton was an “underground drinking water source” until at least October 3, 2013; the groundwater at Will County was an “underground drinking water source” until at least July 2, 2013; and the groundwater at Waukegan was and is an “underground drinking water source” for the entire period of violations alleged in the Second Amended Complaint.<sup>12</sup>

The ELUCs approved by Illinois EPA for the Powerton, Waukegan and Will County plants do not change that conclusion. The ELUC at Powerton was approved on August 26, 2013, the ELUC at Waukegan was approved on August 26, 2013, and the ELUC at Will County was approved on September 26, 2013. *Supra* SOF ¶ 50 [MWG Memo in Support of Motion to Stay, 2.19.2014, at 7-8 and Exhibits G (Powerton), I (Waukegan), and K (Will County)]. The ELUCs for those plants do not disqualify the groundwater at those sites as “underground drinking water source[s]” because the ELUC may be released by IEPA, and therefore the groundwater at those sites may become drinking water at some point in the future. *Supra* SOF ¶ 52; Ex. A7, Jan. 18, 2013 letter from MWG to IEPA re CCA-ELUC, Waukegan, Bates MWG13-15\_599 – 610, at Bates MWG13-15\_602, Section 4. Because water is considered a “resource” under Illinois law, *CIPSCO*, 116 Ill.2d at 409, the fact that the groundwater under Powerton, Waukegan and Will County may at some point be used as drinking water means that that water remains “an underground drinking water source,” notwithstanding the ELUCs at those sites.<sup>13</sup>

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<sup>12</sup> If the Board were to hold that the Act’s open dumping prohibitions were violated at Powerton and Will County solely prior to when GMZs were approved at those sites, the number of open dumping violations at Powerton would be 25 (all those violations that took place prior to Oct. 3, 2013) and the number of open dumping violations at Will County would be 8 (all those violations that took place prior to July 2, 2013). *See* Second Amended Complaint at 13-17.

<sup>13</sup> If the Board were to hold that the Act’s open dumping provisions were violated at Powerton, Waukegan and Will County solely prior to when ELUCs were approved at those sites, the number of open dumping violations at Powerton would be 25, the number of open dumping violations at Waukegan would be 31, and the number of open dumping violations at Will County would be 8.

iii. Contamination of the Groundwater at Powerton, Waukegan and Will County Extended “Beyond the Solid Waste Boundary” at Those Plants.

Third, the contaminated groundwater at those sites was “beyond the solid waste boundary.” As noted above, the RCRA regulations define “solid waste boundary” as “the outermost perimeter of the solid waste (projected in the horizontal plane) as it would exist at completion of the disposal activity.” 40 C.F.R. § 257.3-4(c)(5). This definition appears to contemplate circumscribed, limited areas that a party has identified in advance as specified areas for waste disposal – areas such as coal ash impoundments –not simply anywhere on a site where ash happens to be discarded. The alternative--allowing the operator to determine the boundary simply by dumping solid waste anywhere and everywhere on a site--would indeed be an absurd outcome. The ash at issue in the Motion is well outside the circumscribed impoundments at the sites, buried in old ash landfills or simply as fill or piles scattered around the sites. *Supra* SOF ¶¶ 4-11. The monitoring wells showing groundwater contamination are likewise located around – but not within – those impoundments, revealing that the contaminated water extends far outside of the “solid waste boundary” of the impoundments.

Even if the Board were to interpret the “solid waste boundary” as encompassing the scattered areas where ash is buried at Powerton, Waukegan and Will County, the groundwater contamination at those plants is present all around the sites, not just where buried ash has been identified. For example, although MW- 5 at Will County does not contain ash, selenium exceeded Appendix 1 MCLs at that well on five occasions prior to approval of the Will County GMZ. *Supra* SOF ¶ 54; Ex. B10 Patrick Engineering, *Quarterly Groundwater Monitoring Results—Annual Report 2011—Will County Generating Station- Ash Impoundment* Bates MWG13-15\_42706, 42724-42729 (Mar. 5, 2012); Ex. B12 KPRG and Associates, Inc., *Fourth Quarter and Annual Groundwater Monitoring Report—Will County Generating Station* Bates MWG13-15\_26405, 26415-26424 (Jan. 21, 2014). And at Powerton, even though neither MW-1 or MW-4 contain ash, Appendix 1 MCLs were exceeded at both those wells. *Supra* SOF ¶ 56. In short, groundwater contamination at the plants exists “beyond the solid waste boundary,” and therefore the ground areas where ash is buried at those plants do not meet RCRA’s requirements for disposal of waste. They are, accordingly, not “sanitary landfills” under the Act. 415 ILCS 5/3.445.

In summary, because (i) coal ash in Historic Ash Areas at Powerton, Waukegan and Will County is “refuse;” (ii) the Historic Ash Areas at Powerton, Waukegan and Will County are “disposal site[s];” and (iii) the Historic Ash Areas at Powerton, Waukegan and Will County do not “fulfill the requirements of a sanitary landfill,” open dumping has taken place at Powerton, Waukegan and Will County. 415 ILCS 5/3.305.

**b. MWG Has Allowed the Open Dumping at Powerton, Waukegan and Will County, in Violation of Section 21(a) of the Act.**

MWG has violated 415 ILCS 5/21(a) because it has allowed that open dumping to take place. As the Board explained in its Order denying MWG’s Motion to Dismiss, “[t]o ‘cause or allow’ open dumping, the alleged polluter must have the ‘capability of control over the pollution’ or ‘control of the premises where the pollution occurred.’” [Cite Board Order Denying Motion to Dismiss or Motion to Stay]. As noted above, ownership of premises suffices to establish control over those premises. *See People v. State Oil Co.*, PCB No. 97-103, 2003 Ill. Env. Lexis 148, \*56 (“As owners of the Site, the [owners] had adequate nominal control of the Site to require them to respond to the open dumping of waste.”); *Freeman Coal Mining Corp.*, 21 Ill. App. 3d 163 (finding liability for mine owner even when rain, “a natural force beyond the control of the Petitioner,” was the immediate cause of the discharge from the mine refuse piles); *see also Meadowlark Farms, Inc.*, 17 Ill. App. 3d at 861 (holding that petitioner allowed water pollution when it owned the premises on which the pollution occurred as well as the source of contamination).

Parties who operate premises or the source of pollution likewise exercise control over those premises or pollution sources. *See A.J. Davinroy Contractors*, 249 Ill. App. 3d 794, (contractor operating bypass system had capability of control over pumps it was contractually obligated to maintain); *Michel Grain*, PCB No. 96-143, 2002 Ill. Env. Lexis 489 at \*7-\*9 (denying lessee’s motion to dismiss when “a respondent with control over a site” may violate Act); *Wasteland, Inc.*, 118 Ill. App. 3d at 1049 (holding operator of landfill liable for violating Section 12(a) of the Act when it placed unpermitted waste into landfill not designed for that waste which lacked adequate barriers to prevent leachate).

A party may be liable for violating the Act’s open dumping prohibitions even if the party did not place the contaminating material at issue on the land or in the water. *See, e.g., People v. State Oil*, PCB 97-103, 2003 Ill. Env. Lexis at \*55-56 (holding owners liable for open dumping



when, even though they did not place leaking underground storage tank on the land, they “knew of the pollution and allowed it to persist”); *Illinois EPA v. Rawe*, AC 92-5, 1992 Ill. Env. Lexis 763, \*9-12 (PCB Oct. 16, 1992) (holding son liable for allowing open dumping when his father placed abandoned cars on the site and son did not remove them); *see also Illinois EPA v. Coleman*, AC 04-46, 2004 Ill. Env. Lexis 611, \*19-21 (PCB Nov. 4, 2004) (holding current owner liable for open dumping of litter when current owner failed to remove gravel and barrel on site even though prior owner had placed those materials there). In the Board’s words, “[p]resent inaction on the part of the landowner to remedy the disposal of waste that was previously placed on the site, constitutes ‘allowing’ [dumping] in that the owner allows the illegal situation to continue.” *Rawe*, 1992 Ill. Env. Lexis at \*11.

Here, as explained above, MWG has control over the premises where the pollution occurred. MWG owns the Will County and Waukegan sites and operates the Powerton plant. *Supra* SOF ¶ 1. MWG’s ownership of the Will County and Waukegan sites and operation of the Powerton site suffices to establish that it had control over the premises where pollution occurred at all three plants. *See People v. State Oil Co.*, PCB No. 97-103, 2003 Ill. Env. Lexis at \*56; *Freeman Coal Mining Corp.*, 21 Ill. App. 3d at 163; *Michel Grain*, PCB No. 96-143, 2002 Ill. Env. Lexis 489 at \*7-\*9. Notably, MWG’s control of those premises renders it liable for open dumping even though ash was already in the Historic Ash Areas when MWG purchased or leased the plants in 1999. *Supra* SOF ¶¶ 4-11; *People v. State Oil Co.*, PCB No. 97-103, 2003 Ill. Env. Lexis at \*55-56; *Rawe*, AC 92-5, 1992 Ill. Env. Lexis at \*9-12. Further, MWG’s control of the sites and the historic ash on the sites renders it liable for open dumping even if MWG cannot control the rain, snow, other precipitation, or groundwater that leaches through the ash at the sites. *See Supra* SOF ¶¶ 4-11; ¶¶ 113-120; *See Freeman Coal Mining Corp.*, 313 N.E. 2d at 619; *Meadowlark Farms, Inc.*, 308 N.E.2d at 836.

As also discussed above, MWG did not take extensive precautions to prevent the ash in the Historic Ash Areas at Powerton, Waukegan and Will County from contaminating groundwater. *See Rawe*, 1992 Ill. Env. Lexis at \*11. MWG was on notice of some of the historic ash at those plants by virtue of the 1998 ESAs. *Supra* SOF ¶¶ 61, 74, 88, 100. MWG was notified of additional historic ash on the sites in 2005, when soil borings were taken at the sites, and in 2010 when the groundwater monitoring wells were installed and Patrick provided the Hydrogeological Assessment Reports for the sites. *Supra* SOF ¶¶ 62, 64, 76, 86, 90, 101 - 103.

Even though the leachability of coal ash is undisputed, *Supra* SOF ¶ 23, MWG did not fully monitor the groundwater at all of the Historic Ash Areas to determine if leachate was causing contamination. *Supra* SOF ¶¶ 79-81, 91-92. Further, MWG did not install impermeable caps over the historic ash areas, remove the ash, or place any liner underneath the Historic Ash Areas. *Supra* SOF ¶¶ 68-70, 78, 82, 93-98, 106-110. Where MWG did install groundwater monitoring wells near old ash areas, and those wells showed groundwater contaminated with coal ash indicators, MWG still did not take extensive precautions (and has not done so, to date) to stop the contamination. *Supra* SOF ¶¶ 61-112.

Accordingly, under *Freeman Coal Mining Corp., State Oil, Ill. EPA v. Rawe*, and *Ill. EPA v. Coleman*, MWG is liable for allowing open dumping at Powerton, Waukegan and Will County in violation of Section 21(a) of the Act.

### **CONCLUSION**

Citizens Groups are entitled to partial summary judgment on all counts of their Second Amended Complaint as to the Historic Ash Areas at the Joliet 29, Powerton, Waukegan and Will County plants. The facts are clear that historic coal ash in Historic Ash Areas at Joliet 29, Powerton, Waukegan and Will County is contaminating the groundwater at those sites. MWG has therefore violated Sections 12(a) and 21(a) of the Act, and Citizens' Groups are entitled to judgment as a matter of law.

WHEREFORE, Citizens Groups respectfully request the Board to grant the Motion for Partial Summary Judgment.

Dated: June 1, 2016

Respectfully submitted,



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