



# ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782-3397  
PAT QUINN, GOVERNOR JOHN J. KIM, INTERIM DIRECTOR

217-785-0561

October 24, 2012

CERTIFIED MAIL # 7011 1150 0001 0859 0119  
RETURN RECEIPT REQUESTED

John Kennedy  
Senior Vice President, Generation  
235 Remington, Suite A  
Bolingbrook, IL 60440

**Re: Compliance Commitment Acceptance  
Violation Notice: W-2012-00057  
Midwest Generation, LLC, Powerton Generating Station; ID Number: 6282**

Dear Mr. Kennedy:

The Illinois Environmental Protection Agency ("Illinois EPA") has approved the Compliance Commitment Agreement ("CCA") for Midwest Generation, LLC, Powerton Generating Station. Please find enclosed an executed copy of the CCA for your records.

Failure to fully comply with the CCA may, at the sole discretion of the Illinois EPA, result in referral of this matter to the Office of the Attorney General, the State's Attorney or the United States Environmental Protection Agency.

The CCA does not constitute a waiver or modification of the terms and conditions of any license or permit issued by the Illinois EPA or any other unit or department of local, state or federal government or of any local, state or federal statute or regulatory requirement.

Questions regarding this matter should be directed to Andrea Rhodes at 217/785-0561. Written communications should be directed to the Illinois Environmental Protection Agency, Bureau of Water, CAS #19, P.O. Box 19276, Springfield, IL 62794-9276, and all communications shall include reference to your Violation Notice Number W-2012-00057.

Sincerely,

Michael Crumly  
Manager, Compliance Assurance Section  
Division of Public Water Supplies  
Bureau of Water

Attachments

cc: Basil G. Constantelos  
Maria Race  
Susan M. Franzetti

BOW ID: W1798010008 CASE ID: 2012-006  
4302 N. Main St., Rockford, IL 61103 (815)987-7760  
595 S. State, Elgin, IL 60123 (847)608-3131  
2125 S. First St., Champaign, IL 61820 (217)278-5800  
2009 Mall St., Collinsville, IL 62234 (618)346-5120



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9511 Harrison St., Des Plaines, IL 60016 (847)294-4000  
5407 N. University St., Arber 113, Peoria, IL 61614 (309)693-5462  
2309 W. Main St., Suite 116, Marion, IL 62959 (618)993-7200  
100 W. Randolph, Suite 11-300, Chicago, IL 60601 (312)814-6026

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF: )  
)  
MIDWEST GENERATION, LLC, )  
POWERTON GENERATING STATION )  
PEKIN, TAZEWELL COUNTY, IL )  
ID NUMBER: 6282 )  
)  
)  
)  
)

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**IEPA/CAS**

ILLINOIS EPA VN W-2012-00057  
BUREAU OF WATER

**COMPLIANCE COMMITMENT AGREEMENT**

**I. Jurisdiction**

1. This Compliance Commitment Agreement ("CCA") is entered into voluntarily by the Illinois Environmental Protection Agency ("Illinois EPA") and Midwest Generation, LLC, Powerton Generating Station ("Respondent") (collectively, the "Parties") under the authority vested in the Illinois EPA pursuant to Section 31(a)(7)(i) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(a)(7)(i).

**II. Allegation of Violations**

2. Respondent owns and operates Powerton Generating Station in Pekin, Tazewell County, Illinois ("Powerton").
3. Pursuant to Violation Notice ("VN") W-2012-00057 issued on June 11, 2012, the Illinois EPA contends that Respondent has violated the following provisions of the Act and Illinois Pollution Control Board ("Board") Regulations:
  - a) Operations at ash impoundments have resulted in violations of the Groundwater Quality Standards at monitoring wells MW-1, MW-2, MW-4, MW-5, MW-6, MW-7, MW-8, MW-9, MW-10, MW-11, MW-12, MW-13, MW-14, and MW-15. Section 12 of the Act, 415 ILCS 5/12, 35 Ill. Adm. Code 620.115, 620.301, 620.401, 620.405, and 620.410.

### **III. Compliance Activities**

4. On September 4, 2012, the Illinois EPA received Respondent's response to VN W-2012-00057, which included proposed terms for a CCA. The Illinois EPA has reviewed Respondent's proposed CCA terms, as well as considered whether any additional terms and conditions are necessary to attain compliance with the alleged violations cited in the VN.
5. Respondent agrees to undertake and complete the following actions, which the Illinois EPA has determined are necessary to attain compliance with the allegations contained in VN W-2012-00057:
  - a) The ash ponds at Powerton shall not be used as permanent disposal sites and shall continue to function as treatment ponds to precipitate ash. Ash shall continue to be removed from the ponds on a periodic basis.
  - b) The ash treatment ponds shall be maintained and operated in a manner which protects the integrity of the existing liners. During the removal of ash from the ponds, appropriate procedures shall be followed to protect the integrity of the existing liners, including operating the ash removal equipment in a manner which minimizes the risk of any damage to the liner.
  - c) During the ash removal process, visual inspections of the ponds shall be conducted to identify any signs of a breach in the integrity of the pond liners. In the event that a breach of the pond liners is detected, Midwest Generation shall promptly notify the Illinois EPA and shall implement a corrective action plan for repair or replacement as necessary, of the liner. Upon the Illinois EPA's approval, and the issuance of any necessary construction permit, Midwest Generation will implement the corrective action plan.
  - d) Midwest Generation shall monitor the new well as described in 5(f) below and the existing fifteen groundwater monitoring wells quarterly for constituents in 35 Ill. Adm. Code 620.410(a) and (d), with the exception of radium 226 and 228, and report its findings to the Illinois EPA within 30 days of the end of each quarter. In addition, Midwest Generation shall record and report groundwater elevation and submit a potentiometric surface map with the above quarterly groundwater monitoring report.
  - e) Within 90 days of the effective date of the CCA, Midwest Generation shall submit an application for a construction permit to re-line the Ash Surge Basin and the Secondary Ash Settling Basin at Powerton with a 60 mil thickness high density polyethylene ("HDPE") liner or an Illinois EPA approved equivalent material.
  - f) Midwest Generation shall install an additional groundwater monitoring well south of monitor well 9, in a location approved by the Illinois EPA, to better define up gradient groundwater quality, within 60 days of the effective date of the CCA.

- g) Midwest Generation shall submit an application to establish a GMZ pursuant to 35 Ill. Adm. Code Part 620.250 within 90 days of the effective date of the CCA.
- h) Midwest Generation shall enter into an Environmental Land Use Control (ELUC) to cover the area of the Powerton Station property which is contained within the GMZ. Midwest Generation shall submit a proposed draft ELUC to the Illinois EPA for review and comment within 90 days of the effective date of the CCA.
- i) Midwest Generation shall record the ELUC within 30 days of approval of the ELUC by the Illinois EPA.
- j) Midwest Generation shall establish a GMZ pursuant to 35 Ill. Adm. Code Part 620.250 within one year of the effective date of the CCA.
- k) Once the Ash Surge Basin and the Secondary Ash Settling Basin have been lined and a GMZ and ELUC have been established at Powerton, Midwest Generation shall submit a certification (or a statement) of compliance. Midwest Generation may submit either the attached "Illinois EPA Compliance Statement" or another similar writing to satisfy the statement of compliance within one year of the effective date of the CCA.
- l) Midwest Generation shall not allow the East Yard Run-off Basin to be part of the ash sluicing flow system. Further, Midwest Generation shall submit monitoring results from water contained in the East Yard Run-off Basin proximate to outfall monitoring point 003 within 60 days of the effective date of the CCA. Quarterly monitoring of the East Yard Run-off Basin shall be for the constituents listed in 35 Ill. Adm. Code 620.410(a) and (d) with the exception of radium 226 and radium 228. At the end of four (4) quarters of monitoring, Midwest Generation may request cessation of water monitoring from the East Yard Run-off Basin.
- m) Midwest Generation shall not use any unlined areas for permanent or temporary ash storage or ash handling.

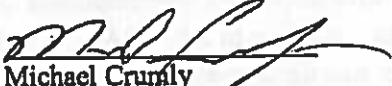
#### **IV. Terms and Conditions**

- 6. Respondent shall comply with all provisions of this CCA, including, but not limited to, any appendices to this CCA and all documents incorporated by reference into this CCA. Pursuant to Section 31(a)(10) of the Act, 415 ILCS 5/31(a)(10), if Respondent complies with the terms of this CCA, the Illinois EPA shall not refer the alleged violations that are the subject of this CCA, as described in Section II above, to the Office of the Illinois Attorney General or the State's Attorney of the county in which the alleged violations occurred. Successful completion of this CCA or an amended CCA shall be a factor to be weighed, in favor of the Respondent, by the Office of the Illinois Attorney General in determining whether to file a complaint on its own motion for the violations cited in VN W-2012-00057.

7. This CCA is solely intended to address the violations alleged in Illinois EPA VN W-2012-00057. The Illinois EPA reserves and this CCA is without prejudice to, all rights of the Illinois EPA against Respondent with respect to noncompliance with any term of this CCA, as well as to all other matters. Nothing in this CCA is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the Illinois EPA may have against Respondent, or any other person as defined by Section 3.315 of the Act, 415 ILCS 5/3.315. This CCA in no way affects the responsibilities of Respondent to comply with any other federal, state or local laws or regulations, including but not limited to the Act, and the Board Regulations [and Permit, if applicable].
8. Pursuant to Section 42(k) of the Act, 415 ILCS 5/42(k), in addition to any other remedy or penalty that may apply, whether civil or criminal, Respondent shall be liable for an additional civil penalty of \$2,000 for violation of any of the terms or conditions of this CCA.
9. This CCA shall apply to and be binding upon the Illinois EPA, and on Respondent and Respondent's officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, and upon all persons, including but not limited to contractors and consultants, acting on behalf of Respondent, as well as upon subsequent purchasers of Respondent's Powerton in Pekin, Tazewell County, Illinois.
10. In any action by the Illinois EPA to enforce the terms of this CCA, Respondent consents to and agrees not to contest the authority or jurisdiction of the Illinois EPA to enter into or enforce this CCA, and agrees not to contest the validity of this CCA or its terms and conditions.
11. This CCA shall only become effective:
  - a) If, within 30 days of receipt, Respondent executes this CCA and submits it, via certified mail, to Illinois EPA, Bureau of Water, Andrea Rhodes, MC #19, 1021 North Grand Ave East, Springfield, IL 62702. If Respondent fails to execute and submit this CCA within 30 days of receipt, via certified mail, this CCA shall be deemed rejected by operation of law; and
  - b) Upon execution by all Parties.
12. Pursuant to Section 31(a)(7.5) of the Act, 415 ILCS 5/31(a)(7.5), this CCA shall not be amended or modified prior to execution by the Parties. Any amendment or modification to this CCA by Respondent prior to execution by all Parties shall be considered a rejection of the CCA by operation of law. This CCA may only be amended subsequent to its effective date, in writing, and by mutual agreement between the Illinois EPA and Respondent's signatory to this CCA, Respondent's legal representative, or Respondent's agent.

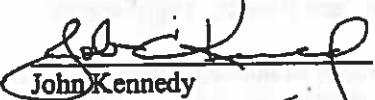
**AGREED:**

**FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY:**

BY:   
Michael Crumly  
Manager, Compliance Assurance Section  
Division of Public Water Supplies  
Bureau of Water

DATE: 10/24/12

**FOR RESPONDENT:**

BY:   
John Kennedy  
Senior Vice President, Generation  
Midwest Generation, LLC

DATE: Oct 15, 2012