

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
 PETITION OF MIDWEST) AS 19-1
 GENERATION, LLC FOR AN) (Adjusted Standard – RCRA)
 ADJUSTED STANDARD FROM 35 ILL.)
 ADM. CODE PARTS 811 AND 814)

NOTICE OF FILING


To:

Don Brown, Clerk of the Board Illinois Pollution Control Board James R. Thompson Center, Suite 11-500 100 W. Randolph Street Chicago, IL 60601 don.brown@illinois.gov	Michelle M. Ryan, Assistant Counsel Illinois Environmental Protection Agency 1021 N. Grand Avenue East P.O. Box 19276 Springfield, IL 62794 michelle.ryan@illinois.gov
Bradley P. Halloran, Hearing Officer Illinois Pollution Control Board 100 West Randolph Street Suite 11-500 Chicago, IL 60601 brad.halloran@illinois.gov	Jennifer Cassel Earthjustice 1010 Lake Street, Suite 200 Oak Park, IL 60301 jcassel@earthjustice.org

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Pollution Control Board Petitioner, Midwest Generation, LLC’s Response to the Supplemental Public Comments by Citizens Against Ruining the Environment et al. on the Petition for Adjusted Standard, a copy of which is herewith served upon you.

Dated: July 1, 2019

MIDWEST GENERATION, LLC



By: _____

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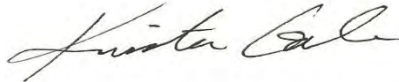
CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that a true copy of the foregoing Notice of Filing and Petitioner, Midwest Generation, LLC's Response to the Supplemental Public Comments by Citizens Against Ruining the Environment et al. on the Petition for Adjusted Standard was electronically filed on July 1, 2019 with the following:

Don Brown, Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, IL 60601
don.brown@illinois.gov

and that a true copy was emailed on July 1, 2019 to the parties listed on the above foregoing Service List.

Dated: July 1, 2019



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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
PETITION OF MIDWEST GENERATION,)	
LLC FOR AN ADJUSTED STANDARD)	AS 19-1
FROM 35 ILL. ADM. CODE PARTS 811)	(Adjusted Standard)
and 814)	

MIDWEST GENERATION, LLC’S RESPONSE TO THE SUPPLEMENTAL PUBLIC COMMENTS BY CITIZENS AGAINST RUINING THE ENVIRONMENT ET AL. ON THE PETITION FOR ADJUSTED STANDARD

Midwest Generation, LLC (“MWGen”), by its undersigned counsel, hereby responds to the Citizens Against Ruining the Environment, Earthjustice, Environmental Law & Policy Center, Prairie Rivers Network, and Sierra Club (collectively, the “Environmental Groups”) Supplemental Public Comments on MWGen’s Petition for an Adjusted Standard (“supplemental comments”). The Environmental Groups’ supplemental comments are unrelated to MWGen’s Petition for an Adjusted Standard (“Petition”) which seeks a straight forward, minor modification to Condition 7(c) of its adjusted standard for the Lincoln Stone Quarry (“LSQ”). Because the Environmental Groups’ supplemental comments do not address the requested modification, they are not relevant to the Board’s consideration of the limited scope of relief requested in the Adjusted Standard Petition.

The Environmental Groups comments on issues unrelated to the adjusted standard relief requested by MWGen should not delay the Board’s decision. Time is of the essence here to secure the closure of the LSQ pursuant to the recently passed amendment to the Illinois Environmental Protection Act (“Act”). That amendment provides an opportunity to close the LSQ within two years. But MWGen cannot move forward with the LSQ’s closure until it knows whether the Board will approve the requested modification to the LSQ Closure Plan that would allow the use of more

advanced technology for the landfill cover system that was not available when the original adjusted standard petition was granted. The Environmental Groups' comments on matters not raised by this modification threaten to unjustly prejudice MWGen's efforts to move forward diligently with its previously approved LSQ Closure Plan.

Moreover, this is simply and plainly not the proper forum for litigating the Environmental Groups' unsupported interpretation of other, unrelated aspects of the Federal Coal Combustion Rule ("Federal CCR Rule"). As explained in MWGen's Response to the Environmental Groups' Comments, MWGen is confident that the proposed closure of the LSQ is compliant with the closure requirements in the Federal CCR Rule.

I. The New Illinois Coal Ash Amendment Allows the LSQ to Close Within Two Years

The Environmental Groups are correct that the Illinois General Assembly recently passed Senate Bill 9, an amendment to the Act. Specifically, Senate Bill 9 created a new section in the Act (415 ILCS 5/22.59) for coal ash impoundments, entitled "CCR surface impoundments" that provides a new statutory regime for the storage and disposal of coal ash, including a new permitting program. Because it will take over a year for the adoption of regulations implementing new section 22.59, and then additional time to secure the newly created permits, the Illinois General Assembly expressly provided in Section 22.59(e) of the Act that if an owner/operator of a CCR unit had already submitted a closure plan to Illinois EPA before May 1, 2019 and the owner/operator closes the CCR unit within two years of the enactment of Senate Bill 9, then the owner/operator may complete the closure per its previously submitted closure plan. Otherwise, the owner/operator must wait for the promulgation of new regulations under Section 22.59, and then also wait for Illinois EPA to implement the new permitting system created by those regulations. An excerpt of Senate Bill 9 showing Section 22.59(e) of the Act is attached as Exhibit 1.

MWGen wants to avail itself of the opportunity which the Illinois legislature has provided to avoid significantly delaying the closure of the LSQ and intends to complete closure within two years of enactment of the amendment. The Illinois EPA has already approved the LSQ Closure Plan. But for the fact that MWGen's proposed modification to the final cover system affected a portion of the Closure Plan for which the Board had previously granted an adjusted standard, this limited adjusted standard petition would not have been necessary because the Illinois EPA would have had the authority to approve that modification. In its response to the Petition, the Agency already has informed the Board that it supports the requested modification. Implementing the approved LSQ Closure Plan will take most of the time in the two-year window the Act allows.

While the Environmental Groups may not agree with the Illinois General Assembly's decision to allow previously submitted closure plans to proceed, they should not be allowed to thwart the Legislature's clear intent by seeking to embroil this proceeding in issues that are not before the Board or which inappropriately urge the Board to interpret the Federal CCR Rule. MWGen requests that the Board grant its Petition so that MWGen is not improperly denied the opportunity provided by the new Section 22.59(e) of the Act to complete closure within two years and, in doing so, to have the option of using a more advanced, technically sound and cost-effective final cover system.

II. MWGen's LSQ Closure Plan is Compliant with the Self-Implementing Federal CCR Rule

The Federal CCR Rule is self-implementing, meaning that an owner or operator of a CCR unit is required to follow the rule, without the review or approval of the U.S.EPA or a state environmental agency. The rule places the burden on MWGen to conduct the closure of the LSQ consistent with the Federal CCR Rule's requirements. If it does not do so, MWGen would be assuming the risks of any such noncompliance. This self-implementing federal program is simply

not a matter that the Environmental Groups may compel the Board to review, which is what they inappropriately seek to achieve by their comments. MWGen is confident that its IEPA-approved LSQ Closure Plan is compliant with the Federal CCR Rule, including its preparation for the LSQ's eventual closure as required under 40 C.F.R. 257.102. Accordingly, MWGen requests that the Board not be misled by the Environmental Groups' comments that are not properly reviewable in this forum.

III. Conclusion

Pursuant to new Section 22.59(e) of the Act, MWGen may close the LSQ according to its approved closure plan within the next two years. The Board's granting of MWGen's simple request to use a new state-of-the-art cover system that will be an impermeable cap on the LSQ is integral to MWGen's objective to close the LSQ. The Environmental Groups should not be allowed to deprive MWGen of its right to close the LSQ by derailing this proceeding with unsupported contentions of what the Federal CCR Rule requires, particularly when those contentions are not properly before the Board. For these reasons, and consistent with the Illinois EPA's recommendation to the Board, MWGen requests that the Board grant MWGen's Petition.

Respectfully submitted,
Midwest Generation, LLC



By: _____

One of its Attorneys

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EXHIBIT 1

SB0009 Enrolled

LRB101 06168 JWD 51190 b

1 AN ACT concerning coal ash.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Environmental Protection Act is amended by
5 changing Sections 3.140, 21, 39, and 40 and by adding Sections
6 3.142, 3.143, and 22.59 as follows:

7 (415 ILCS 5/3.140) (was 415 ILCS 5/3.76)

8 Sec. 3.140. Coal combustion waste. "Coal combustion waste"
9 means any CCR or any fly ash, bottom ash, slag, or flue gas or
10 fluid bed boiler desulfurization by-products generated as a
11 result of the combustion of:

12 (1) coal, or

13 (2) coal in combination with: (i) fuel grade petroleum
14 coke, (ii) other fossil fuel, or (iii) both fuel grade
15 petroleum coke and other fossil fuel, or

16 (3) coal (with or without: (i) fuel grade petroleum coke,
17 (ii) other fossil fuel, or (iii) both fuel grade petroleum coke
18 and other fossil fuel) in combination with no more than 20% of
19 tire derived fuel or wood or other materials by weight of the
20 materials combusted; provided that the coal is burned with
21 other materials, the Agency has made a written determination
22 that the storage or disposal of the resultant wastes in
23 accordance with the provisions of item (r) of Section 21 would

SB0009 Enrolled

- 23 -

LRB101 06168 JWD 51190 b

1 requirements adopted by the Board under this Act. Complete
2 removal of CCR, as specified by the Board's rules, from the CCR
3 surface impoundment must be considered and analyzed. Section
4 3.405 does not apply to the Board's rules specifying complete
5 removal of CCR. The selected closure method must ensure
6 compliance with regulations adopted by the Board pursuant to
7 this Section.

8 (e) Owners or operators of CCR surface impoundments who
9 have submitted a closure plan to the Agency before May 1, 2019,
10 and who have completed closure prior to 24 months after the
11 effective date of this amendatory Act of the 101st General
12 Assembly shall not be required to obtain a construction permit
13 for the surface impoundment closure under this Section.

14 (f) Except for the State, its agencies and institutions, a
15 unit of local government, or not-for-profit electric
16 cooperative as defined in Section 3.4 of the Electric Supplier
17 Act, any person who owns or operates a CCR surface impoundment
18 in this State shall post with the Agency a performance bond or
19 other security for the purpose of: (i) ensuring closure of the
20 CCR surface impoundment and post-closure care in accordance
21 with this Act and its rules; and (ii) insuring remediation of
22 releases from the CCR surface impoundment. The only acceptable
23 forms of financial assurance are: a trust fund, a surety bond
24 guaranteeing payment, a surety bond guaranteeing performance,
25 or an irrevocable letter of credit.

26 (1) The cost estimate for the post-closure care of a