

ILLINOIS POLLUTION CONTROL BOARD
December 7, 2000

IN THE MATTER OF:)
)
PETITION OF MIDWEST) AS 96-9
GENERATION, LLC (formerly petition) (Adjusted Standard – Land)
of COMMONWEALTH EDISON)
COMPANY) FOR ADJUSTED)
STANDARD FROM 35 ILL. ADM.)
CODE 811.814)

ORDER OF THE BOARD (by R.C. Flemal):

On November 8, 2000, Commonwealth Edison Company (ComEd) and Midwest Generation, LLC (Midwest) filed a motion to reopen this docket, AS 96-9, and substitute Midwest as the petitioner and holder of the adjusted standard issued by the Board to ComEd on August 15, 1996.

ComEd and Midwest represent that the Environmental Protection Agency (Agency) has reviewed the motion and agrees that the August 15, 1996 order should be amended to identify Midwest as the named party on the order. Mot. at 8. Today's order reflects this caption change.

For the reasons set forth below, the Board grants the motion to reopen this docket and substitute the name of Midwest Generation, LLC, for Commonwealth Edison Company in its August 15, 1996 order.

The Board granted an adjusted standard to ComEd on August 15, 1996. *In re* Petition of Commonwealth Edison Company for an Adjusted Standard from 35 Ill. Adm. Code Parts 811 and 814 (August 15, 1996), AS 96-9. ComEd was the operator of the Joliet/Lincoln Quarry Ash Landfill (Lincoln Quarry). Lincoln Quarry is used exclusively for the disposal of bottom ash and slag produced by coal burning operation at the Midwest Generation Joliet generating stations. Mot. at 2.

On March 22, 1999, ComEd agreed to sell to Edison Mission Energy (EME), among other things, the lease for the operation of the Lincoln Quarry.¹ Mot. at 4. In the agreement, EME agreed to assume and be responsible for all obligations and liabilities related to, arising from, or associated with ownership, occupancy, use or operation of the acquired assets from and after the closing. Mot. at 4. Also pursuant to the agreement, EME had the right, before closing, to assign all of its rights in the agreement and any

¹ EME is the world's leading developer, owner and operator of independent power facilities. Mot. at 4.

related agreements to corporations, partnerships or limited liability companies in which all of the outstanding equity interests are owned or controlled by EME. Mot. at 5. On December 15, 1999, EME assigned its rights under the agreement to Midwest, which is a limited liability company indirectly owned by EME. Mot. at 5. Midwest is now the lessee and operator of the Lincoln Quarry and has assumed all the rights and obligations associated with the operation of the Lincoln Quarry, including the obligation to provide adequate financial assurance and to comply with all other applicable laws. Mot. at 5.

In December of 1999, ComEd and Midwest filed with the Agency an application to transfer the revised Lincoln Quarry permit from ComEd to Midwest. Mot. at 5. In September, 2000. The Agency approved the application to transfer the permit and issued a revised permit to Midwest, as the operator. Exh. 2.

ComEd and Midwest note that the permit transfer will not change the Lincoln Quarry operation. Mot. at 5. It will continue to be used solely for the disposal of bottom ash and slag generated by the operation of the Joliet generating stations. Mot. at 5-6. Additionally, Midwest has retained much of ComEd's workforce. Mot. at 6. Particularly, the employee involved in the recordkeeping and oversight responsibilities for the Lincoln Quarry has been retained. Mot. at 6. Furthermore, Midwest continues to employ the same engineering company used by ComEd for implementing the groundwater monitoring program. Mot. at 6.

The parties also argue that the relevant factors that justified the grant of the adjusted standard in 1996 did not involve the Lincoln Quarry operator's identity, but rather the physical characteristics related to the Lincoln Quarry. Mot. at 7. The transfer of the operations of the Lincoln Quarry to Midwest does not impact these factors. Mot. at 8. The parties also argue that the Board has previously granted similar relief in other matters. Mot. at 6-8; In re Petition of Envirite Corporation for Revised Adjusted Standard from 35 Ill. Adm. Code 721 Subpart D (November 7, 1996), AS 94-10; In re Petition of Commonwealth Edison Company for Adjusted Standard from 35 Ill. Adm. Code 302.211(d) and (e) (March 16, 2000), AS 96-10.

CONCLUSION

Based on ComEd's and Midwest's representations that the Agency concurs in this request, operations at the Lincoln Quarry will not change, and upon the Board's previous finding of justification in its August 15, 1996 order, the Board officially reopens this docket and substitutes the name of Midwest Generation, LLC, for Commonwealth Edison Company in its August 15, 1996 order.

1. The Board hereby amends its August 15, 1996 order in this matter, and grants to Midwest Generation, LLC, an adjusted standard for the Joliet/Lincoln Quarry Site with respect to the following regulations: 35 Ill. Adm. Code 814.302(b)(1), 811.319(a)(2), 811.319(a)(3), 811.318(b)(5), 811.320(c), and 811.314.

2. The following Board regulations do not apply to the Joliet/Lincoln Quarry Site: 35 Ill. Adm. Code 811.105, 811.106, 811.107(a), 811.107(b), 811.107(i), 811.310, 811.311, 811.312, 811.313, 811.321, and 811.322.
3. Midwest Generation, LLC shall dispose only bottom ash and slag from the combustion of coal in the Main Quarry.
4. Midwest Generation, LLC shall operate a leachate collection and management system at the Joliet/Lincoln Quarry Site that assures compliance with effluent limitations contained in an NPDES permit duly issued by the Illinois Environmental Protection Agency. The leachate collection and management system shall consist of:
 - a) A gravity flow drainage system that:
 - i) Channels supernatant liquid from the Main Quarry into the North Quarry; and
 - ii) Assures that the water level in the Main Quarry is maintained below the natural water table level.
 - b) A permitted point source discharge from the North Quarry to the Des Plaines River.
5. Groundwater Sampling.
 - a) Midwest Generation, LLC shall analyze groundwater from the monitoring well system at the Joliet/Lincoln Quarry Site, in accordance with the requirements of 35 Ill. Adm. Code 811.319(a)(1), for the following constituents:

Ammonia	Fluoride	Selenium	Total Organic
Arsenic	Manganese	Sodium	Carbon
Boron	Molybdenum	Sulfate	Zinc
Cadmium	pH	Total Dissolved	
Chloride	Potassium	Solids	
 - b) Except for the constituents monitored in accordance with a), Midwest Generation, LLC shall sample its monitoring well system on an annual basis for all inorganic constituents for which the Board has established Class II groundwater standards under 35 Ill. Adm. Code 620.420(a).

- i) If Midwest Generation, LLC detects, and confirms through replicate sampling, a statistically significant increase above applicable groundwater standards for any constituent monitored under this paragraph, Midwest Generation, LLC shall monitor that constituent in accordance with the requirements of paragraph a).
- ii) If, after monitoring for five years in accordance with this paragraph, Midwest Generation, LLC does not detect a statistically significant increase above applicable groundwater standards for a constituent monitored under this paragraph ii), Midwest Generation, LLC may propose as a permit modification to discontinue monitoring for that constituent.

6. Waste Sampling.

- a) At least once annually, Midwest Generation, LLC shall determine the semi-volatile organic constituent content of a representative sample of waste bottom ash and slag to be disposed at the Joliet/Lincoln Quarry Site.
- b) The results of such sampling shall be submitted to the Agency within 30 days after Midwest Generation, LLC receives the analytical report.
- c) If Midwest Generation, LLC detects one of the semi-volatile organic constituents listed under 35 Ill. Adm. Code 811.319(a)(3) in its ash samples, then Midwest Generation, LLC shall conduct confirmatory sampling and analysis.
- d) If the sampling and analysis conducted under c) above confirms the presence of one or more of the listed semi-volatile organic constituents, then Midwest Generation, LLC shall monitor its groundwater monitoring well system for those constituents in accordance with the sampling and analysis plan contained in Volume II of the Application for Significant Permit Modification at Lincoln/Joliet Quarry Ash Landfill [IL 197809001] (May 1994).

7. Standards for Monitoring Well Locations.

- a) In consultation with Midwest Generation, LLC, the Agency shall establish a monitoring well network for the Lincoln Quarry Site that achieves the monitoring objectives of part 811. The Agency

shall not impose more stringent well location standards than the requirements in 35 Ill. Adm. Code 811.318(b).

- b) If any of the wells in the monitoring network established by the Agency fails or is rendered unusable, Midwest Generation, LLC shall request permission from the Illinois Environmental Protection Agency to replace the well with another well, located as close as practicable to the non-functioning well and sampling the same aquifer.

8. Zone of Attenuation.

- a) For purposes of this paragraph f), the zone of attenuation at the Joliet/Lincoln Quarry Site shall be defined as the volume bounded by a vertical plane extending from the ground surface to the bottom of the uppermost aquifer, excluding the waste, and located:
 - i) 100 feet from the edge of Lincoln Quarry on the upgradient side with respect to groundwater flow; and,
 - ii) At the property boundary on the downgradient side with respect to groundwater flow. If the property boundary extends beyond the annual high water mark of the Des Plaines River at any location, the zone of attenuation at that location will be reduced to satisfy the requirements of 35 Ill. Adm. Code 811.320(c)(2).

This zone of attenuation is depicted on [Figure SAP-5, Volume II of the Application for Significant Permit Modification, attached to the petition for site specific relief.]

- b) Groundwater quality at or beyond the zone of attenuation for the Joliet/Lincoln Quarry Site shall be maintained at each constituent's background concentration.
- c) Nothing herein shall be construed to prohibit Midwest Generation, LLC from petitioning the Board for an adjustment of the groundwater quality standards applicable to the Site, in accordance with the procedures established in 35 Ill. Adm. Code 811.320(b).
- d) Compliance Determination.

Any statistically significant increase above an applicable groundwater quality standard that is attributable to the facility and

which occurs at or beyond the zone of attenuation within 100 years after closure of the last unit accepting waste within such a facility shall constitute a violation.

9. Final Cover.

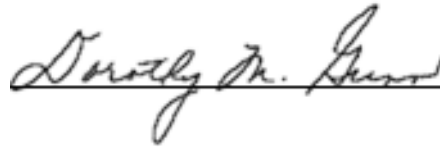
- a) For purposes of b) and c) below, “maximum adjusted seasonal water table level” means the maximum predicted water table level in the vicinity of the Joliet/Lincoln Quarry Site, determined at the time of closure, plus sufficient elevation to ensure the integrity of a cap.
- b) Closure Below Water Table.
 - i) If, at the time of closure, the level of settled ash in Lincoln Quarry is at or below the maximum adjusted seasonal water table level, no final cover is required for the Quarry and the Quarry shall be maintained as an impoundment.
 - ii) Water levels in the Quarry shall be maintained at or below a maximum elevation of 570 feet above sea level.
 - ii) A chain link fence no less than eight (8) feet in height, topped by a no less than three (3) strands of barbed wire, shall be installed around the Joliet/Lincoln Quarry Site to prevent access and shall be maintained in good condition at all times.
- c) Closure Above Water Table.
 - i) If, at the time of closure, the level of settled ash in Lincoln Quarry is above the maximum adjusted seasonal water table level, Midwest Generation, LLC shall install a two-stage cover system, which shall consist of a compacted clay layer that performs equivalently to a 2 foot layer of compacted soil having a hydraulic conductivity of 1×10^{-7} cm/sec, overlain by at least four inches of topsoil. The cap shall be graded at no less than 2% grade and shall drain to a collection area located on the cap. Stormwater collecting on the cap shall be pumped to the North Quarry for settling prior to discharge pursuant to the facility’s NPDES permit. The cap shall be seeded to prevent erosion.
 - ii) Water levels in the Main Quarry shall be maintained at no more than 570 feet above sea level through use of a gravel

drainage blanket underlying the stormwater collection area. Water collecting in the drainage blanket shall drain by gravity to the North Quarry for settling prior to discharge pursuant to the facility's NPDES permit.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1998)) provides for the appeal of final Board orders within 35 days of the date of service of this order. The Rules of the Supreme Court of Illinois establish filing requirements. See also 35 Ill. Adm. Code 101.246 "Motions for Reconsideration".

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 7th day of December 2000 by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", is written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board