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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that a true copy of the foregoing Notice of Filing and Midwest Generation LLC's Answer and Defenses to Second Complaint was filed electronically on April 20, 2015 with the following:

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and that true copies were mailed by First Class Mail, postage prepaid, on April 20, 2015 to the parties listed on the foregoing Service List.

/s/ Jennifer T. Nijman

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 2013-015 |
| Complainants, |) | (Enforcement – Water) |
| |) | |
| v. |) | |
| |) | |
| MIDWEST GENERATION, LLC, |) | |
| |) | |
| Respondent. |) | |

ANSWER AND DEFENSES TO SECOND COMPLAINT

Respondent, Midwest Generation, LLC (“MWG”), by its undersigned counsel, submits its Answer, Defenses and Affirmative Defenses to the Complaint as follows:

FACTUAL BACKGROUND

1. Midwest Generation, LLC (“MWG”) owns and operates the Joliet 29 Generating Station (“Joliet 29”) in Joliet, Illinois in Will and Kendall Counties, on the north side of the Des Plaines River. MWG has historically stored and disposed of coal ash and other coal combustion waste in repositories that include, but are not limited to, two or more landfills and three ash ponds (two HDPE-lined, one geocomposite-lined) on the same side of the river, and continues to dispose of coal ash and other coal combustion waste in these ponds or repositories..

ANSWER: Respondent admits that it operates the Joliet 29 Electric Generating Station (“Joliet 29”) in Joliet, Will County, Illinois. Respondent admits that Joliet 29 has three, high density polyethylene (“HDPE”) lined, ash ponds as a part of the wastewater treatment system permitted under Joliet 29’s NPDES permit. Respondent denies the remaining allegations contained in paragraph 1.

2. MWG installed eleven groundwater monitoring wells (MW-1 through MW-11) around the Joliet 29 ash ponds in 2010, as depicted in the well map included in MWG groundwater monitoring reports for Joliet 29, attached hereto as Exhibit A. Since monitoring

began in late 2010, groundwater monitoring results have shown levels of antimony, boron, chloride, iron, manganese, sulfate, and Total Dissolved Solids (“TDS”) which exceed Illinois Groundwater Quality Standards (“GQSs”). *See* violations of Class I and Class II GQSs and MWG groundwater monitoring data for Joliet 29, attached hereto as Exhibits B, C, and D, respectively.

ANSWER: Respondent admits that it installed eleven groundwater monitoring wells (MW-1 through MW-11) at Joliet 29 in 2010. Respondent is without sufficient information to admit or deny the allegations in Exhibits B, C, and D and therefore denies same. Respondent denies the remaining allegations contained in paragraph 2.

3. MWG owns and operates the Powerton Generating Station (“Powerton”) in Pekin, Illinois in Tazewell County. MWG has historically stored and disposed of coal ash and other coal combustion waste in repositories that include, but are not limited to three active ash ponds on the site, two of them lined; one less active ash pond on the site; up to two additional ponds or basins containing coal ash and other coal combustion waste; and a former slag dumping area. MWG continues to store or dispose of coal ash and other coal combustion waste in these ponds or repositories.

ANSWER: Respondent admits that it operates the Powerton Electric Generating Station (“Powerton”) in Pekin, Tazewell County, Illinois. Respondent admits that Powerton has three ash ponds, lined with HDPE-liners, as a part of the wastewater treatment system permitted under Powerton’s NPDES permit, and a metal cleaning basin lined with an HDPE liner. Respondent denies the remaining allegations contained in paragraph 3.

4. MWG monitors groundwater at Powerton with a network of 15 wells (MW-1 through MW-15, depicted in the well map included in MWG groundwater monitoring reports for Powerton, attached hereto as Exhibit E). Since monitoring began in late 2010, groundwater monitoring results have shown levels of antimony, arsenic, boron, chloride, iron, lead, manganese, nitrate, selenium, sulfate, thallium, and TDS which exceed Illinois GQS and/or open dumping standards. *See* violations of Class I and Class II GQSs and MWG groundwater monitoring data for Powerton, attached hereto as Exhibits B, C, and F, respectively.

ANSWER: Respondent admits that it installed fifteen groundwater monitoring wells (MW-1 through MW-15) at Powerton in 2010. Respondent is without sufficient information to admit or deny the allegations in Exhibits B, C, and F and therefore denies same. Respondent denies the remaining allegations contained in paragraph 4.

5. MWG owns and operates the Waukegan Generating Station (“Waukegan”) in Waukegan, Illinois in Lake County. There are two active HDPE-lined ponds at this site. MWG has stored and disposed of coal ash and other coal combustion waste in repositories that include, but are not limited to, these two ponds and one former ash landfill or disposal area and continues to do so.

ANSWER: Respondent admits that it owns and operates the Waukegan Electric Generating Station (“Waukegan”) in Waukegan, Lake County, Illinois. Respondent further admits that Waukegan has two ash ponds which are lined with HDPE-liners and states that the ash ponds are a part of the wastewater treatment system permitted by Waukegan’s NDPEs permit. Respondent denies the remaining allegations contained in paragraph 5.

6. MWG installed 5 wells (MW-1 through MW-5) around the Waukegan ash ponds in 2010, as depicted in the well map included in MWG groundwater monitoring reports for Waukegan, attached hereto as Exhibit G. Groundwater monitoring results from Waukegan show levels of antimony, arsenic, boron, chloride, iron, manganese, nitrate, selenium, pH, sulfate, and TDS which exceed Illinois GQS and/or open dumping standards. *See* violations of Class I and Class II GQSs and MWG groundwater monitoring data for Waukegan, attached hereto as Exhibits B, C, and H, respectively.

ANSWER: Respondent admits that it installed five groundwater monitoring wells (MW-1 through MW-5) at Waukegan. Respondent is without sufficient information to admit or deny the allegations in Exhibits B, C, and H and therefore denies same. Respondent denies the remaining allegations contained in paragraph 6.

7. MWG owns and operates the Will County Generating Station (“Will County”) in Romeoville, Illinois in Will County. MWG has stored and disposed of coal ash and other coal combustion waste at the site in repositories that include four geocomposite-lined ponds and two or more additional ponds. MWG continues to store and dispose of coal ash and other coal combustion waste in one or more of these ponds.

ANSWER: Respondent admits that it owns and operates the Will County Electric Generating Station (“Will County”) in Romeoville, Will County, Illinois. Respondent admits that Will County has two ash ponds, lined with HDPE-liners, which are a part of the wastewater treatment system and permitted by Will County’s NDPEs permit. Respondent further states that in 2013,

Respondent took two ash ponds at Will County out of service. Respondent denies the remaining allegations contained in paragraph 7.

8. MWG installed 10 wells around the Will County plant's ponds in 2010 (MW-1 through MW-10; *see* the well map included in MWG groundwater monitoring reports for Will County, attached hereto as Exhibit I.) Groundwater monitoring results from Will County show levels of antimony, arsenic, boron, chloride, manganese, pH, selenium, sulfate, and TDS which exceed Illinois GQS and/or open dumping standards. *See* violations of Class I and Class II GQSs and MWG groundwater monitoring data for Will County, attached hereto as Exhibits B, C, and J, respectively.

ANSWER: Respondent admits that it installed ten groundwater monitoring wells (MW-1 through MW-10) at Will County. Respondent is without sufficient information to admit or deny the allegations in Exhibits B, C, and J and therefore denies same. Respondent denies the remaining allegations contained in paragraph 8.

9. On June 11, 2012, the Illinois Environmental Protection Agency ("IEPA") sent MWG Violation Notices describing violations of Section 12 of the Illinois Environmental Protection Act, 415 ILCS 5/12, and Groundwater Quality regulations at Joliet 29, Powerton, Waukegan, and Will County. *See* Violation Notices for Powerton, Joliet 29, Waukegan, and Will County, attached hereto as Exhibits K–N. In the Violation Notices IEPA identified groundwater monitoring results that exceeded Illinois Class I GQS, which are found at 35 IAC 620.410.

ANSWER: Respondent admits that on June 11, 2012 the Illinois Environmental Protection Agency sent Violation Notices to Respondent and states that the Violation Notices speak for themselves. Respondent denies the remaining allegations contained in paragraph 9.

THE POLLUTANTS

10. As set forth in detail in Exhibit B, groundwater monitoring results at Joliet 29, Powerton, Waukegan, and/or Will County have exceeded Illinois Class I GQS, 35 Ill. Admin. Code § 620.410, for the following pollutants: Antimony, arsenic, boron, chloride, iron, lead, manganese, mercury, nitrate, selenium, sulfate, total dissolved solids, and thallium.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in Exhibit B, and therefore denies same. Respondent denies the remaining allegations contained in paragraph 10.

11. Many of the pollutants found at elevated concentrations in the groundwater monitoring results at Joliet 29, Powerton, Waukegan, and/or Will County are constituents of coal ash.¹

ANSWER: Respondent is without sufficient information to admit or deny the allegations in paragraph 11 and therefore denies same

12. As MWG recognizes, boron is a primary indicator of potential coal ash impacts to groundwater.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in paragraph 12 and therefore denies same.

13. The pollutants listed in this complaint, when present at the concentrations found in MWG's groundwater wells, make the groundwater unusable. Many of these pollutants are toxic and have been found at concentrations that present a human health risk. Others are dangerous to aquatic ecosystems; this is a significant concern to the extent that contaminated groundwater is migrating into adjacent surface water bodies.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in paragraph 13 and therefore denies same.

14. Antimony is associated with reduced lifespan, decreased blood glucose, and altered cholesterol in rodents, and with vomiting and cardiac and respiratory effects in humans.² To protect public health, the U.S. EPA has established a Maximum Contaminant Level (MCL) of 0.006 mg/L. The Illinois Class I GQS for antimony is also 0.006 mg/L. Even this level may be unsafe; the California EPA, for example, has proposed a much lower Public Health Goal of 0.0007 mg/L.³

ANSWER: Respondent is without sufficient information to admit or deny the allegations in paragraph 14 and therefore denies same.

15. Arsenic is known to cause multiple forms of cancer in humans and is also associated with non-cancer health effects of the skin and the nervous system.⁴ Groundwater that

¹ See, e.g., U.S. EPA, Human and Ecological Risk Assessment of Coal Combustion Wastes at 2-4 (Draft, April 2000) (listing Coal Combustion Waste constituents), available at <http://earthjustice.org/sites/default/files/library/reports/epa-coal-combustion-waste-risk-assessment.pdf> (last visited October 2, 2012).

² See, e.g., U.S. EPA, Integrated Risk Information System: Antimony, <http://www.epa.gov/iris/subst/0006.htm>; California EPA, Draft Public Health Goal for Antimony in Drinking Water (July 2009).

³ See California EPA, *supra* note 2.

⁴ See, e.g., U.S. EPA, Integrated Risk Information System: Arsenic, inorganic, <http://www.epa.gov/iris/subst/0278.htm>; U.S. Agency for Toxic Substances and Disease Registry (ATSDR), Toxicological Profile for Arsenic (Aug. 2007).

exceeds Illinois GQSs for arsenic is highly toxic; based on current U.S. EPA risk estimates, the cancer risk associated with drinking water at 0.05 mg/L, the Illinois Class I GQS for arsenic, is greater than 2 in 1,000.⁵ The risk at 0.2 mg/L, the Class II GQS, is 1 in 100.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in paragraph 15 and therefore denies same.

16. Oral exposure to boron has led to developmental and reproductive toxicity in multiple species. Specific effects include testicular degeneration, reduced sperm count, reduced birth weight, and birth defects.⁶ The EPA has established a child health advisory of 3 mg/L for boron, close to the Illinois Class I and Class II GQS of 2 mg/L.⁷

ANSWER: Respondent is without sufficient information to admit or deny the allegations in paragraph 16 and therefore denies same.

17. Chloride renders water unusable by imparting a salty taste; to prevent this the EPA has set a secondary drinking water regulation of 250 mg/L, close to the Illinois Class I and Class II GQS of 200 mg/L.⁸

ANSWER: Respondent is without sufficient information to admit or deny the allegations in paragraph 17 and therefore denies same.

18. Iron renders water unusable by imparting a rusty color and a metallic taste and causing sedimentation and staining; to prevent these effects the EPA has set a secondary drinking water regulation of 0.3 mg/L.⁹ The Illinois Class I and II GQS for iron, at 5 mg/L, is much higher than the EPA secondary drinking water regulation, suggesting that violations of the GQS represent concentrations of iron far higher than what would be usable.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in paragraph 18 and therefore denies same.

19. Lead is known to be toxic to the nervous system, and is particularly associated with effects on childhood neurobehavioral development at very low doses. Lead is also classified by the EPA as a “probable human carcinogen.”¹⁰ The EPA Action Level for lead in drinking water is 0.015 mg/L.¹¹ This is unlikely to represent a “safe” level of exposure—the

⁵ Derived from the U.S. EPA drinking water unit risk of 5E-5 per ug/L. U.S. EPA, *supra* note 8.

⁶ See, e.g., U.S. EPA, Toxicological Profile of Boron and Compounds 60-61 (June 2004).

⁷ U.S. EPA, 2012 Edition of the Drinking Water Standards and Health Advisories (April, 2012)

⁸ U.S. EPA, Secondary Drinking Water Regulations: Guidance for Nuisance Chemicals, <http://water.epa.gov/drink/contaminants/secondarystandards.cfm>.

⁹ *Id.*

¹⁰ U.S. EPA, Integrated Risk Information System: Lead and Compounds, <http://www.epa.gov/iris/subst/0277.htm>.

¹¹ U.S. EPA drinking water standards, *supra* note 7.

EPA has noted, for example, that there may be no threshold for lead toxicity.¹² Groundwater concentrations of lead above the Illinois Class I GQS, 0.0075 mg/L, are thus unsafe to drink.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in paragraph 19 and therefore denies same.

20. Manganese is also known to be toxic to the nervous system.¹³ The EPA has not updated its assessment of manganese toxicity in 16 years, so EPA standards and advisories may not reflect the latest scientific knowledge concerning effects on childhood neurological development,¹⁴ and the EPA Lifetime Health Advisory for manganese – 0.3 mg/L – may not be adequately health-protective. In any event, manganese concentrations greater than 0.05 mg/L render water unusable by discoloring the water, giving it a metallic taste, and causing black staining.¹⁵ Groundwater with manganese above the Illinois Class I GQS – 0.15 mg/L – is clearly not usable and is likely to be toxic.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in paragraph 20 and therefore denies same.

21. Inorganic mercury is toxic to the kidneys, and has also been associated with developmental toxicity.¹⁶ The California EPA Public Health Goal for inorganic mercury is 0.0012 mg/L; the U.S. EPA MCL, like the Illinois Class I GQS, is 0.002 mg/L.¹⁷

ANSWER: Respondent is without sufficient information to admit or deny the allegations in paragraph 21 and therefore denies same.

22. Nitrate is known to cause methemoglobinemia in infants, a condition that impairs oxygen delivery to tissues and can cause bluish skin coloration. The U.S. EPA MCL, the California EPA Public Health Goal, and the Illinois Class I and II GQSs are all 10 mg/L, a level at which infant methemoglobinemia is not expected to occur.¹⁸

ANSWER: Respondent is without sufficient information to admit or deny the allegations in paragraph 22 and therefore denies same.

¹² U.S. EPA, IRIS web page for lead, *supra* note 10.

¹³ *See, e.g.*, U.S. EPA, Integrated Risk Information System: Manganese, <http://www.epa.gov/iris/subst/0373.htm>.

¹⁴ *See, e.g.*, G.A. Wasserman et al., Water manganese exposure and children's intellectual function in araihar, Bangladesh. 114 ENVIRON. HEALTH PERSP. 124 (2006).

¹⁵ *See* U.S. EPA secondary drinking water regulations, *supra* note 8.

¹⁶ *See, e.g.*, California EPA, Public Health Goal for Inorganic Mercury in Drinking Water (Feb. 1999).

¹⁷ *Id.*; U.S. EPA drinking water standards, *supra* note 7.

¹⁸ *See* U.S. EPA, Integrated Risk Information System: Nitrate, <http://www.epa.gov/iris/subst/0076.htm>; California EPA, Public Health Goals for Nitrate and Nitrite (Dec. 1997).

23. Selenium is an essential element, but excess exposure can cause a chemical-specific condition known as selenosis, with symptoms that include hair and nail loss. Various agencies have derived health-protective values between 0.01 and 0.05 mg/L, but are in agreement that selenium concentrations above 0.05 mg/L, the Illinois Class I and II GQS, are unsafe to drink.¹⁹

ANSWER: Respondent is without sufficient information to admit or deny the allegations in paragraph 23 and therefore denies same.

24. High concentrations of sulfates in drinking water impart a salty taste and can cause diarrhea; to protect against these effects, the U.S. EPA has established a secondary MCL of 250 mg/L and a health-based advisory of 500 mg/L.²⁰ Groundwater with sulfate concentrations above the Illinois Class I and Class II GQS of 400 mg/L is therefore unusable and potentially unsafe.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in paragraph 24 and therefore denies same.

25. Total Dissolved Solids (TDS) is a measure of multiple dissolved chemicals, but because high TDS is generally associated with hardness, staining, salty taste, and deposits, the U.S. EPA has established a secondary MCL of 500 mg/L.²¹ Groundwater with TDS above the Illinois Class I and Class II GQS, 1,200 mg/L, is clearly unusable.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in paragraph 25 and therefore denies same.

26. Thallium is known to cause neurotoxicity, and is also associated with developmental and reproductive toxicity and other adverse health effects. The Illinois Class I GQS and the U.S. EPA MCL are both 0.002 mg/L.²²

ANSWER: Respondent is without sufficient information to admit or deny the allegations in paragraph 26 and therefore denies same.

27. Finally, many of the pollutants associated with coal ash, including but not limited to selenium, are known to bioaccumulate in aquatic ecosystems causing tissue damage and other effects in fish and amphibians. One review, for example, noted that “the combined effects of

¹⁹ See, e.g., California EPA, Public Health Goal for Selenium (Dec. 2010) (Setting a Public Health Goal of 0.03 mg/L); World Health Organization, Guidelines for Drinking Water Quality, 4th Ed., 413 (2011) (Setting a provisional guideline of 0.04 mg/L); U.S. EPA drinking water standards, *supra* note 11 (setting forth a MCL of 0.05 mg/L).

²⁰ U.S. EPA, Drinking Water Advisory: Consumer Acceptability Advice and Health Effects Analysis on Sulfate (Feb. 2003).

²¹ See U.S. EPA secondary drinking water regulations, *supra* note 8.

²² See U.S. EPA drinking water standards, *supra* note 7.

multiple accumulated elements may lead to numerous changes in individuals that could compromise individual fitness or health,” and provided several examples of coal ash-contaminated sites where the health of individuals and communities in aquatic ecosystems had been severely impaired.²³

ANSWER: Respondent is without sufficient information to admit or deny the allegations in paragraph 27 and therefore denies same.

PARTIES

28. Citizens Against Ruining the Environment (“CARE”) is located at 230 E. 6th Street, Lockport, IL 60441. CARE is an incorporated, not-for-profit community organization with members in the Lockport area, including Will County. CARE was organized for the purpose of preserving and protecting Illinois's land, air, water, and other natural resources, and protecting the organization's members and other residents of the state from threats of pollution.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in paragraph 28 and therefore denies same.

29. The Environmental Law and Policy Center (“ELPC”) is an Illinois not-for-profit corporation with its principal office located at 35 East Wacker Drive, Suite 1600, Chicago, IL 60601. ELPC's mission includes advocating for the protection of water quality, and protection of public health related to water quality, throughout the Midwest.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in paragraph 29 and therefore denies same.

30. Prairie Rivers Network, a nonprofit organization and a state affiliate of the National Wildlife Federation, is Illinois’ statewide leader in river protection, conservation, and restoration. Prairie Rivers Network has a membership of over 700 in Illinois.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in paragraph 30 and therefore denies same.

31. Sierra Club is the nation’s oldest and largest grassroots environmental organization. Sierra Club is an incorporated, not-for-profit organization with headquarters located at 85 Second Street, 2nd Floor, San Francisco, CA, 94105. Sierra Club’s Illinois Chapter office is located at 70 E. Lake St., Suite 1500, Chicago, IL, 60601. Sierra Club’s mission is to

²³ C.L. Rowe et al., Ecotoxicological implications of aquatic disposal of coal combustion residues in the United States: A review, 80 ENVTL. MONITORING AND ASSESSMENT 207, 242 (2002); see also A.D. Lemly and J.P. Skorupa, Wildlife and the coal waste policy debate: Proposed rules on coal waste disposal ignore lessons from 45 years of wildlife poisoning, 46 ENVTL. SCI. TECH. 46 (2012).

preserve, protect, and enhance the natural environment. Sierra Club has 641,000 members, including approximately 23,000 members in Illinois.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in paragraph 31 and therefore denies same.

32. Midwest Generation, LLC (MWG), is a Delaware Corporation doing business in Illinois with principal executive offices at 235 Remington Boulevard, Suite A, Bolingbrook, Illinois 60440. MWG's registered agent is C T Corporation System, 208 S. LaSalle St., Suite 814, Chicago, Illinois 60604. MWG is a subsidiary of Edison Mission Energy ("EME"), of Santa Ana, California. EME is a subsidiary of Edison International, 2244 Walnut Grove Avenue, (P.O. Box 976), Rosemead, California, 91770.

ANSWER: Respondent admits that it is a Delaware Corporation duly authorized and doing business in Illinois and its principal offices are located at 211 Carnegie Center in Princeton, New Jersey. Respondent further admits that its registered agent is C T Corporation System, 208 S. LaSalle St., Suite 814, Chicago, Illinois 60604. Respondent states that on December 17, 2012, Edison Mission Energy and certain of its subsidiaries and affiliates, including Respondent, filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Northern District of Illinois (the "Bankruptcy Court"). On March 11, 2014, the Bankruptcy Court approved the purchase of certain assets and operating companies of Edison Mission Energy, including Respondent, by NRG Energy, Inc.

LEGAL BACKGROUND: OPEN DUMPING

33. The Illinois Environmental Protection Act prohibits "the open dumping of any waste." 415 ILCS 5/21(a). "Open dumping" is defined 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. "Refuse" is defined as "waste." 415 ILCS 5/3.385. "Waste" is defined to include "any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations" at 415 ILCS 5/3.535. "Sanitary landfills" are defined as "facilit[ies] permitted by the Agency for the disposal waste on land meeting the requirements of the Resource Conservation and Recovery Act [42 USCA § 6901 et seq.]" 415 ILCS 5/3.445. The requirements of the Resource Conservation and Recovery Act include criteria for distinguishing between sanitary landfills and open dumps. 42 USCA § 6944(a). These criteria are found in federal regulations at 40 CFR

Part 257. According to 40 CFR § 257.1, facilities failing to meet, inter alia, the criterion at 40 CFR § 257.3-4 are considered prohibited open dumps.

ANSWER: Respondent admits that there are statutory provisions 415 ILCS §§ 5/21(a), 3.305, 3.385, 3.535, 3.445, 42 USCA § 6944(a), and 40 CFR Part 257 and states that the statutes and regulations speak for themselves. Respondent denies the allegations to the extent that they are inconsistent with the statutes and regulations as cited and to the extent a response is required.

34. 40 CFR § 257.3-4 establishes a criterion for identifying open dumps based on groundwater contamination. 40 CFR § 257.3-4 prohibits “contaminat[ion of] an underground drinking water source beyond the solid waste boundary or beyond an alternative compliance boundary.” The contamination must exist beyond either the perimeter of the solid waste disposal area or beyond an alternative boundary 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.

ANSWER: Respondent admits that there is a regulatory provision 40 CFR § 257.3-4 and states that the regulation speaks for itself. Respondent denies the allegations to the extent that they are inconsistent with the regulation as cited and to the extent a response is required.

35. 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”),²⁴ 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 this 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 |

²⁴ The open dumping MCLs in 40 CFR pt. 257 Appendix I are in some cases different from the most recent Maximum Contaminant Levels promulgated by the U.S. Environmental Protection Agency. For example, the Appendix I MCL for arsenic is 50 ug/L while the current MCL for arsenic is 10 ug/L. See U.S. EPA drinking water standards, *supra* note 7.

ANSWER: Respondent admits that there is a regulatory provision 40 C.F.R. Pt. 257, App. I and states that the regulation speaks for itself. Respondent denies the allegations to the extent that they are inconsistent with the regulation as cited and to the extent a response is required.

LEGAL BACKGROUND: WATER POLLUTION

36. The Illinois Environmental Protection Act prohibits “the discharge of any contaminants into the environment . . . so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources,” 415 ILCS 5/12(a), and prohibits the deposition of “any contaminants upon the land in such place and manner so as to create a water pollution hazard.” 415 ILCS 5/12(d). “Water pollution” is defined as the “alteration” or “discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or 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” of the State is defined to include “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.

ANSWER: Respondent admits that there are statutory provisions 415 ILCS §§ 5/12(a), 12(d), 3.545, 3.550 and states that the statutes speak for themselves. Respondent denies the allegations to the extent that they are inconsistent with the statutes as cited and to the extent a response is required.

37. 35 Ill. Admin. Code § 620.405 prohibits “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. The Illinois Administrative Code establishes different groundwater quality standards for Class I and Class II groundwater.

ANSWER: Respondent admits that there is a regulatory provision 35 Ill. Adm. Code §620.405 and states that the regulation speaks for itself. Respondent denies the allegations to the extent that they are inconsistent with the regulation as cited and to the extent a response is required.

38. 35 Ill. Admin. Code § 620.410 establishes Class I GQSs that cannot be exceeded in potable resource groundwater. “Potable resource groundwater” is defined as:

Groundwater located 10 feet or more below the land surface and within: (1) The minimum setback zone of a well which serves as a potable water supply and to the bottom of such well; (2) Unconsolidated sand, gravel or sand and gravel which is 5 feet or more in thickness and that contains 12 percent or less of fines . .

. ; (3) Sandstone which is 10 feet or more in thickness, or fractured carbonate which is 15 feet or more in thickness; or (4) Any geologic material which is capable of a: (A) sustained groundwater yield , from up to a 12 inch borehole, of 150 gallons per day or more from a thickness of 15 feet or less; or (B) Hydraulic conductivity of 1×10^{-4} cm/sec or greater using one of the following test methods or its equivalent: (i) Permeameter; (ii) Slug test; or (iii) Pump test. 35 Ill. Admin. Code § 620.210(a).

ANSWER: Respondent admits that there are regulatory provisions 35 Ill. Admin. Code

§§620.410, 620.210 and states that the regulations speaks for themselves. Respondent denies the allegations to the extent that they are inconsistent with the regulations as cited and to the extent a response is required.

39. The definition of Class I groundwater specifically excludes: Class III “special resource groundwater,” Class IV “other groundwater,” which includes groundwater in a zone of attenuation; and groundwater in a “groundwater management zone.” 35 Ill. Admin. Code § 620.210; *see also* 35 Ill. Admin. Code §§ 620.230, 620.240, 620.250. 35 Ill. Admin. Code § 620.115 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 § 620.301(a) 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.”

ANSWER: Respondent admits that there are regulatory provisions 35 Ill. Admin. Code

§§620.115, 620.210, 620.230, 620.240, 620.250, 620.301(a) and states that the regulations speak for themselves. Respondent denies the allegations to the extent that they are inconsistent with the regulations as cited and to the extent a response is required.

40. 35 Ill. Admin. Code § 620.420 establishes Class II GQSs that cannot be exceeded in general resource groundwater. “General resource groundwater” is defined as “groundwater which does not meet the provisions of . . . Class I . . . Class III . . . or . . . Class IV” and “groundwater which is found by the Board, pursuant to the petition procedures set forth in Section 620.260, to be capable of agricultural, industrial, recreational or other beneficial uses.” 35 Ill. Admin. Code § 620.220. Groundwater in a zone of attenuation must meet Class II GQSs. 35 Ill. Admin. Code § 620.440(b).

The Illinois Class I and Class II GQSs for pollutants identified in this report are as follows:

| Chemical | Class I GQS (mg/L) (35 Ill. Admin. Code § 620.410) | Class II GQS (mg/L) (35 IAC § 620.420) |
|------------------------|--|---|
| Antimony | 0.006 | 0.024 |
| Arsenic | 0.01 | 0.2 |
| Boron | 2 | 2 |
| Chloride | 200 | 200 |
| Iron | 5 | 5 |
| Lead | 0.0075 | 0.10 |
| Manganese | 0.15 | 10 |
| Mercury | 0.002 | 0.01 |
| Nitrate | 10 | 100 |
| pH | 6.5 – 9.0 | 6.5 – 9.0 |
| Selenium | 0.05 | 0.05 |
| Sulfate | 400 | 400 |
| Thallium | 0.002 | 0.020 |
| Total Dissolved Solids | 1,200 | 1,200 |

ANSWER: Respondent admits that there are regulatory provisions 35 Ill. Admin. Code

§§620.220, 620.410, 620.420, 620.440(b) and states that the regulations speak for themselves.

Respondent denies the allegations to the extent that they are inconsistent with the regulations as cited and to the extent a response is required.

COUNT I

OPEN DUMPING VIOLATIONS AT POWERTON

41. Paragraphs 1-40 are realleged and incorporated herein by reference.

ANSWER: Respondent incorporates herein, as if restated, its answers to paragraphs 1 through 40 of the Complaint.

42. MWG, through the coal ash disposal ponds, landfills, unconsolidated coal ash fill, and/or other coal ash and coal combustion waste repositories at Powerton, has caused or contributed to contamination of the groundwater beneath Powerton in violation of 415 ILCS 5/21(a), as shown in Table 1.

Table 1: Open dumping violations at Powerton.

| | Well | Pollutant | Sample value (mg/L) | Appendix I MCL (mg/L) | Collection date |
|--|------|-----------|------------------------|--------------------------|--------------------|
|--|------|-----------|------------------------|--------------------------|--------------------|

| | | | | | |
|----|-------|----------|----------------------|-------|----------|
| 1 | MW-1 | Nitrate | 11 | 10 | 9/20/11 |
| 2 | MW-4 | Selenium | 0.013 | 0.010 | 9/27/13 |
| 3 | MW-6 | Arsenic | 0.200 | 0.050 | 5/29/14 |
| 4 | MW-7 | Arsenic | 0.085 | 0.050 | 3/25/11 |
| 5 | MW-7 | Arsenic | 0.120 | 0.050 | 6/16/11 |
| 6 | MW-7 | Arsenic | 0.180 | 0.050 | 9/20/11 |
| 7 | MW-7 | Arsenic | 0.230 | 0.050 | 12/12/11 |
| 8 | MW-7 | Arsenic | 0.230 | 0.050 | 3/19/12 |
| 9 | MW-7 | Arsenic | 150 | 0.050 | 6/25/12 |
| 10 | MW-7 | Arsenic | 180 | 0.050 | 9/18/12 |
| 11 | MW-7 | Arsenic | 260 | 0.050 | 12/12/12 |
| 12 | MW-7 | Arsenic | 170 | 0.050 | 2/27/13 |
| 13 | MW-7 | Arsenic | 120 | 0.050 | 5/31/13 |
| 14 | MW-7 | Arsenic | 220 | 0.050 | 7/31/13 |
| 15 | MW-7 | Arsenic | 200 | 0.050 | 10/23/13 |
| 16 | MW-7 | Arsenic | 150 | 0.050 | 3/5/14 |
| 17 | MW-7 | Arsenic | 190 | 0.050 | 8/27/14 |
| 18 | MW-9 | Selenium | 0.072 ²⁵ | 0.010 | 3/25/11 |
| 19 | MW-9 | Selenium | 0.015 | 0.010 | 2/27/13 |
| 20 | MW-9 | Selenium | 0.016 | 0.010 | 5/30/13 |
| 21 | MW-9 | Selenium | 0.014 | 0.010 | 7/30/13 |
| 22 | MW-9 | Nitrate | 12 | 10 | 2/27/13 |
| 23 | MW-9 | Nitrate | 11 | 10 | 5/30/13 |
| 24 | MW-9 | Nitrate | 11 | 10 | 5/29/14 |
| 25 | MW-11 | Arsenic | 0.057 | 0.050 | 3/4/14 |
| 26 | MW-11 | Arsenic | 0.068 | 0.050 | 8/26/14 |
| 27 | MW-12 | Mercury | 0.0096 ²⁶ | 0.002 | 12/15/10 |
| 28 | MW-14 | Selenium | 0.065 | 0.010 | 4/25/11 |
| 29 | MW-14 | Selenium | 0.022 | 0.010 | 4/10/12 |
| 30 | MW-14 | Selenium | 0.150 | 0.010 | 2/27/13 |
| 31 | MW-14 | Selenium | 0.020 | 0.010 | 3/4/14 |
| 32 | MW-14 | Selenium | 0.014 | 0.010 | 5/28/14 |
| 33 | MW-15 | Selenium | 0.017 | 0.010 | 4/25/11 |
| 34 | MW-15 | Selenium | 0.025 | 0.010 | 4/10/12 |
| 35 | MW-15 | Selenium | 0.013 | 0.010 | 10/23/13 |
| 36 | MW-15 | Selenium | 0.033 | 0.010 | 5/28/14 |

ANSWER: Respondent denies the allegations in paragraph 42.

²⁵ This value was originally reported as 0.072 mg/L. *See* letter from Richard M. Frendt, Patrick Engineering, to IEPA, Attachment A (July 30, 2012) (transmitting amended groundwater monitoring report for Midwest generation's Powerton Generating Station). MidGen has since revised the value to 0.072 mg/L. *Id.* at Attachments B and C.

²⁶ This value was originally reported as 0.0096 ug/L. *Id.* at Attachment A. MidGen has since revised the value to nondetect. *Id.* at Attachments B and C.

43. Groundwater samples from nine different wells at Powerton have exceeded the Appendix I MCLs on the thirty-six occasions delineated in Table 1.

ANSWER: Respondent denies the allegations in paragraph 43.

COUNT 2

OPEN DUMPING VIOLATIONS AT WAUKEGAN

44. Paragraphs 1-43 are realleged and incorporated herein by reference.

ANSWER: Respondent incorporates herein, as if restated, its answers to paragraphs 1 through 43 of the Complaint.

45. MWG, through the coal ash disposal ponds, landfills, unconsolidated coal ash fill, and/or other coal ash and coal combustion waste repositories at Waukegan, has caused or contributed to contamination of the groundwater beneath Waukegan in violation of 415 ILCS 5/21(a), as shown in Table 2.

Table 2: Open dumping violations at Waukegan

| | Well | Pollutant | Sample value (mg/L) | Appendix I MCL (mg/L) | Collection date |
|----|------|-----------|---------------------|-----------------------|-----------------|
| 1 | MW-1 | Arsenic | 0.054 | 0.050 | 10/25/10 |
| 2 | MW-1 | Arsenic | 0.170 | 0.050 | 6/13/11 |
| 3 | MW-1 | Arsenic | 0.077 | 0.050 | 9/13/11 |
| 4 | MW-1 | Arsenic | 0.057 | 0.050 | 12/6/11 |
| 5 | MW-1 | Arsenic | 0.078 | 0.050 | 3/14/12 |
| 6 | MW-1 | Arsenic | 0.070 | 0.050 | 6/18/12 |
| 7 | MW-1 | Arsenic | 0.070 | 0.050 | 9/28/12 |
| 8 | MW-1 | Arsenic | 0.091 | 0.050 | 12/19/12 |
| 9 | MW-1 | Arsenic | 0.098 | 0.050 | 3/7/13 |
| 10 | MW-1 | Arsenic | 0.055 | 0.050 | 7/25/13 |
| 6 | MW-1 | Selenium | 0.031 | 0.010 | 10/25/10 |
| 7 | MW-1 | Selenium | 0.030 | 0.010 | 3/24/11 |
| 8 | MW-1 | Selenium | 0.016 | 0.010 | 6/13/11 |
| 9 | MW-1 | Selenium | 0.039 | 0.010 | 9/13/11 |
| 10 | MW-1 | Selenium | 0.032 | 0.010 | 12/6/11 |
| 11 | MW-1 | Selenium | 0.037 | 0.010 | 3/14/12 |
| 12 | MW-1 | Selenium | 0.013 | 0.010 | 6/18/12 |
| 13 | MW-1 | Selenium | 0.056 | 0.010 | 3/7/13 |
| 14 | MW-1 | Selenium | 0.043 | 0.010 | 6/7/13 |
| 15 | MW-1 | Selenium | 0.031 | 0.010 | 7/25/13 |
| 16 | MW-1 | Selenium | 0.013 | 0.010 | 11/4/13 |
| 17 | MW-2 | Selenium | 0.026 | 0.010 | 10/25/10 |

| | | | | | |
|----|------|----------|-------|-------|---------|
| 18 | MW-2 | Selenium | 0.028 | 0.010 | 6/13/11 |
| 19 | MW-2 | Selenium | 0.022 | 0.010 | 9/13/11 |
| 20 | MW-2 | Selenium | 0.015 | 0.010 | 7/25/13 |
| 21 | MW-3 | Selenium | 0.016 | 0.010 | 3/24/11 |
| 22 | MW-3 | Selenium | 0.030 | 0.010 | 6/13/11 |
| 23 | MW-3 | Selenium | 0.012 | 0.010 | 9/13/11 |
| 24 | MW-3 | Selenium | 0.011 | 0.010 | 12/6/11 |
| 25 | MW-3 | Selenium | 0.011 | 0.010 | 3/7/13 |
| 26 | MW-3 | Selenium | 0.067 | 0.010 | 6/7/13 |
| 27 | MW-3 | Nitrate | 13 | 10 | 6/7/13 |
| 28 | MW-4 | Selenium | 0.022 | 0.010 | 6/13/11 |
| 29 | MW-4 | Selenium | 0.025 | 0.010 | 9/13/11 |
| 30 | MW-4 | Selenium | 0.015 | 0.010 | 12/6/11 |
| 31 | MW-4 | Selenium | 0.028 | 0.010 | 6/6/13 |
| 32 | MW-4 | Selenium | 0.050 | 0.010 | 7/25/13 |
| 33 | MW-4 | Selenium | 0.011 | 0.010 | 11/4/13 |

ANSWER: Respondent denies the allegations in paragraph 45.

46. Groundwater samples at four of five wells monitored showed exceedances of the Appendix I MCLs on the thirty-three occasions delineated in Table 2.

ANSWER: Respondent denies the allegations in paragraph 46.

COUNT 3

OPEN DUMPING VIOLATIONS AT WILL COUNTY

47. Paragraphs 1-46 are realleged and incorporated herein by reference.

ANSWER: Respondent incorporates herein, as if restated, its answers to paragraphs 1 through 46 of the Complaint.

48. MWG, through coal ash disposal ponds, landfills, unconsolidated coal ash fill, and/or other coal ash and other coal combustion waste repositories at Will County, has caused or contributed to contamination of the groundwater beneath Will County in violation of 415 ILCS 5/21(a), as shown in Table 3.

Table 3: Open dumping violations at Will County

| | Well | Pollutant | Sample value (mg/L) | Appendix I MCL (mg/L) | Collection date |
|----|------|-----------|---------------------|-----------------------|-----------------|
| 1 | MW-4 | Selenium | 0.015 | 0.010 | 3/5/13 |
| 2 | MW-5 | Selenium | 0.017 | 0.010 | 12/13/10 |
| 3 | MW-5 | Selenium | 0.014 | 0.010 | 3/28/11 |
| 4 | MW-5 | Selenium | 0.016 | 0.010 | 6/15/11 |
| 5 | MW-5 | Selenium | 0.017 | 0.010 | 9/24/12 |
| 6 | MW-5 | Selenium | 0.026 | 0.010 | 6/5/13 |
| 7 | MW-5 | Selenium | 0.170 | 0.010 | 10/28/13 |
| 8 | MW-5 | Selenium | 0.024 | 0.010 | 2/13/14 |
| 9 | MW-6 | Selenium | 0.011 | 0.010 | 9/15/11 |
| 10 | MW-6 | Selenium | 0.014 | 0.010 | 9/24/12 |
| 11 | MW-8 | Selenium | 0.015 | 0.010 | 10/28/13 |

ANSWER: Respondent denies the allegations in paragraph 48.

49. As Table 3 shows, there have been eleven exceedances of the open dumping MCL for selenium since monitoring began in late 2010.

ANSWER: Respondent denies the allegations in paragraph 49.

COUNT 4

WATER POLLUTION AT JOLIET 29

50. Paragraphs 1-49 are realleged and incorporated herein by reference.

ANSWER: Respondent incorporates herein, as if restated, its answers to paragraphs 1 through 49 of the Complaint.

51. MWG, through the coal ash disposal ponds, landfills, unconsolidated coal ash fill, and/or other coal ash and coal combustion waste repositories at Joliet 29, has discharged contaminants into the environment at Joliet 29 and thereby caused water pollution in violation of 415 ILCS 5/12(a) and (d), and 35 Ill. Admin. Code §§ 620.115, 620.301(a), and 620.405. As shown in Exhibits B, C, and D, there have been at least 156 violations of Illinois Class I Groundwater Quality Standards and at least 132 violations of Illinois Class II Groundwater Quality Standards since monitoring began in late 2010.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in Exhibits B, C, and D and therefore denies same. Respondent denies the remaining allegations contained in paragraph 51.

52. Since 2010, the groundwater at Joliet 29 has exceeded the Class I GQSs for antimony, boron, chloride, iron, manganese, sulfate, and TDS, and the Class II GQSs for boron, chloride, iron, sulfate, and TDS. *See* Exhibits B, C, and D.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in Exhibits B, C, and D and therefore denies same. Respondent denies the remaining allegations contained in paragraph 52.

COUNT 5

WATER POLLUTION AT POWERTON

53. Paragraphs 1-52 are realleged and incorporated herein by reference.

ANSWER: Respondent incorporates herein, as if restated, its answers to paragraphs 1 through 52 of the Complaint.

54. MWG, through the coal ash disposal ponds, landfills, unconsolidated coal ash fill, and/or other coal ash and coal combustion waste repositories at Powerton, has discharged contaminants into the environment at Powerton and thereby caused water pollution in violation of 415 ILCS 5/12(a) and (d), and 35 Ill. Admin. Code §§ 620.115, 620.301(a), and 620.405. As shown in Exhibits B, C, and F, there have been at least 445 violations of Illinois Class I Groundwater Quality Standards and at least 216 violations of Illinois Class II Groundwater Quality Standards since monitoring began in late 2010.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in Exhibits B, C, and F and therefore denies same. Respondent denies the remaining allegations contained in paragraph 54.

55. Since 2010, the groundwater at Powerton has exceeded the Class I GQSs for antimony, arsenic, boron, chloride, iron, manganese, nitrate, selenium, sulfate, thallium, and TDS, and the Class II GQSs for arsenic, boron, chloride, iron, manganese, selenium, sulfate, and TDS. *See* Exhibits B, C, and F.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in Exhibits B, C, and F and therefore denies same. Respondent denies the remaining allegations contained in paragraph 55.

COUNT 6

WATER POLLUTION AT WAUKEGAN

56. Paragraphs 1-55 are realleged and incorporated herein by reference.

ANSWER: Respondent incorporates herein, as if restated, its answers to paragraphs 1 through 55 of the Complaint.

57. MWG, through the coal ash disposal ponds, landfills, unconsolidated coal ash fill, and/or other coal ash and coal combustion waste repositories at Waukegan, has discharged contaminants into the environment at Waukegan and thereby caused water pollution in violation of 415 ILCS 5/12(a) and (d), and 35 Ill. Admin. Code §§ 620.115, 620.301(a), and 620.405. As shown in Exhibits B, C, and H, there have been at least 155 violations of Illinois Class I Groundwater Quality Standards and 105 violations of Illinois Class II Groundwater Quality Standards since monitoring began in late 2010.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in Exhibits B, C, and H and therefore denies same. Respondent denies the remaining allegations contained in paragraph 57.

58. Since 2010, the groundwater at Waukegan has exceeded the Class I GQSs for antimony, arsenic, boron, chloride, iron, manganese, nitrate, selenium, pH, sulfate, and TDS, and the Class II GQSs for boron, chloride, iron, pH, selenium, sulfate, and TDS. *See* Exhibits B, C, and H.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in Exhibits B, C, and H and therefore denies same. Respondent denies the remaining allegations contained in paragraph 58.

COUNT 7

WATER POLLUTION AT WILL COUNTY

59. Paragraphs 1-58 are realleged and incorporated herein by reference.

ANSWER: Respondent incorporates herein, as if restated, its answers to paragraphs 1 through 59 of the Complaint.

60. MWG, through the coal ash disposal ponds, landfills, unconsolidated coal ash fill, and/or other coal ash and coal combustion waste repositories at Will County, has discharged contaminants into the environment at Will County and thereby caused water pollution in

violation of 415 ILCS 5/12(a) and (d), and 35 Ill. Admin. Code §§ 620.115, 620.301(a), and 620.405. As shown in Exhibits B, C, and J, there have been at least 297 violations of Illinois Class I Groundwater Quality Standards and at least 214 violations of Illinois Class II Groundwater Quality Standards since monitoring began in late 2010.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in Exhibits B, C, and J and therefore denies same. Respondent denies the remaining allegations contained in paragraph 60.

61. Since 2010, the groundwater at Will County has exceeded the Class I GQSs for antimony, arsenic, boron, chloride, manganese, pH, sulfate, and TDS, and the Class II GQSs for boron, chloride, pH, selenium, sulfate, and TDS. *See* Exhibits B, C, and J.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in Exhibits B, C, and J and therefore denies same. Respondent denies the remaining allegations contained in paragraph 61.

MIDWEST GENERATION, L.L.C.'S DEFENSES TO THE COMPLAINT

Respondent, Midwest Generation, L.L.C. (“MWG”) asserts the following defenses without waiving Complainants’ obligation to meet its burden of proof and without assuming any burden of proof not otherwise imposed by law.

I. MWG DID NOT CAUSE OR ALLOW OPEN DUMPING

62. The ash ponds at the Joliet 29 Station, the Powerton Station, the Waukegan Station, and the Will County Station (collectively “the Stations”) are surface impoundments and operate as a part of each Stations’ wastewater treatment plants pursuant to the Stations’ respective NDPEs permits.

63. The active ash ponds at the Stations are lined with HDPE liners, a synthetic liner designed to prevent releases to the soil and groundwater.

64. MWG routinely removes the ash from the ash ponds.

65. Because the ash ponds are classified as surface impoundments, which are permitted and regulated as water pollution treatment units, and because MWG routinely removes the ash from the ponds, the ash ponds are not disposal sites.

66. Complainants also allege other “landfills” and “coal ash and coal combustion waste repositories” may contain coal ash at the Stations.

67. Any other locations at the Stations that may contain historical coal ash combustion debris were not created by MWG, nor used or filled with any coal combustion material, or any other material, by MWG.

68. MWG did not cause or allow open dumping because the ash ponds are not disposal sites and the historical areas were not created, filled, or used by MWG for any storage or disposal or any coal combustion material, or any other material.

II. MWG DID NOT CAUSE OR ALLOW WATER POLLUTION

69. Paragraphs 62-68 are realleged and incorporated herein by reference.

70. In 2010, MWG voluntarily agreed to the Illinois Environmental Protection Agency’s (“Illinois EPA’s”) request to perform a hydrogeological assessment around the ash ponds at the Stations.

71. On June 11, 2012, Illinois EPA issued Violation Notices (“VNs”) to MWG alleging violations of groundwater quality standards purportedly caused by the ash ponds at the Stations. (Complaint ¶9).

72. In response to the hydrogeological assessments and the VNs, MWG evaluated the distribution of the sample results as it relates to the ash ponds at each Station.

73. The alleged exceedances in the groundwater underlying the Stations, including the ash ponds, are random, inconsistent, historic and do not show a connection to the MWG Stations or ash ponds.

74. Because there is no connection between the alleged groundwater exceedances and MWG Stations or the ash ponds, MWG has not caused or allowed the discharge of contaminants into the groundwater.

III. COMPLAINANTS MAY NOT BE GRANTED INJUNCTIVE RELIEF

75. Paragraphs 62-74 are realleged and incorporated herein by reference.

76. Complainants request that the Board order MWG to "... modify its coal ash disposal practices so as to avoid future groundwater contamination and remediate the contaminated groundwater so that it meets applicable Illinois groundwater standards." (Complainant, Relief Requested, ¶3).

77. As a creature of statute, the Illinois Pollution Control Board may only operate within the bounds of its powers set out by the statute by which it was created. *County of Knox ex rel. Masterson v. Highlands, L.L.C.*, 188 Ill.2d 546, 554, 723 N.E.2d 256, 262 (1999).

78. Under Section 33(b) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/33(b), the Board is limited to:

...a direction to cease and desist from violations of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order, and/or the imposition by the Board of civil penalties in accord with Section 42 of this Act." 415 ILCS 5/33(b)

79. The Board has no enforcement power, *People of the State of Illinois v. NL Industries, et al*, 152 Ill.2d 82, 99, 604 N.E.2d 349, 356 (1992), and does not have the authority to grant injunctive relief. *Janson v. Illinois Pollution Control Bd.*, 69 Ill.App.3d 324, 328, 387

N.E.2d 404, 408 (3rd Dist., 1979), *Clean the Uniform Company-Highland v. Aramark Uniform & Career Apparel, Inc.*, PCB 03-21, Nov. 7, 2002 slip op. at 1 & 3.

80. Complainants' requests that the Board order MWG to "modify its coal ash disposal practice" and to "remediate the contaminated groundwater so that it meets applicable Illinois groundwater standards" are demands for mandatory injunctive relief.

81. As the Board does not have the authority to order mandatory injunctive relief, Complainant's request for such relief cannot be granted.

MWG'S AFFIRMATIVE DEFENSES TO THE COMPLAINT

Respondent, MWG asserts the following affirmative defenses without waiving Complainants' obligation to meet its burden of proof and without assuming any burden of proof not otherwise imposed by law.

I. **RESPONDENT IS NOT IN VIOLATION OF THE GROUNDWATER STANDARDS BECAUSE THE GROUNDWATER UNDERLYING THE STATIONS IS WITHIN A GROUNDWATER MANAGEMENT ZONE**

82. Paragraphs 62-81 are realleged and incorporated herein by reference.

83. On October 24, 2012, MWG resolved the violations alleged in the VNs by entering into a Compliance Commitment Agreement ("CCA") for the ash ponds at the Stations. (Illinois EPA CCAs for the Stations, attached as Exs. 1-4)

84. From the date the CCAs were issued, MWG executed and completed all the terms of the CCAs. In October 2013, MWG submitted Completion Statements for the Stations certifying that the corrective actions in the CCAs were completed. (Illinois EPA Compliance Statements for the Stations, attached as Exs. 5-8).

85. Pursuant to the CCAs, MWG established a Groundwater Management Zone (“GMZ”) for the areas underneath the Joliet 29 Station, Powerton Station, and the Will County Station.

86. Upon establishment of a GMZ, the standards specified in 35 Ill. Adm. Code §§620.410, 620.420, 620.430, and 620.440 are not applicable. 35 Ill. Adm. Code 620.450(a)(3).

87. Upon the establishment of the GMZs, the Joliet 29 Station, Powerton Station, and the Will County Station are not in violation of the groundwater standards alleged in the Complaint.

88. As Respondent is not in violation of the groundwater standards, Respondent is not in violation of 35 Ill. Adm. Code 620.301(a) and 620.405.

II. RESPONDENT DID NOT CAUSE WATER POLLUTION BECAUSE THERE IS NO RISK TO PUBLIC HEALTH AND NO RISK OF ENVIRONMENTAL HARM

89. Paragraphs 62-88 are realleged and incorporated herein by reference.

90. Pursuant to the CCAs, MWG entered into Environmental Land Use Controls (“ELUCs”) for the areas of the Powerton Station, Waukegan Station, and the Will County Station.

91. MWG did not enter into an ELUC at the Joliet 29 Station because Illinois EPA determined that there were no potential groundwater receptors in the area.

92. An ELUC is an institutional control that is used to impose land use limitations, and prevent the use or consumption of the groundwater. 35 Ill. Adm. Code 742.1010.

93. By establishing an ELUC at the Stations and the absence of groundwater receptors, there is no risk or harm to public health.

94. Pursuant to the CCAs, MWG has instituted corrective actions that address any alleged environmental harms.

95. In addition to the previously stated corrective actions taken, including lining the ash ponds with HDPE liners (Complaint ¶¶5, Answer ¶¶1, 3, and 7), establishing GMZs (¶82), and establishing ELUCs (¶¶87, 88), MWG is conducting ongoing groundwater monitoring at the ash ponds on a quarterly basis.

96. MWG did not fill or place coal ash in historic landfilled areas at or near the Stations.

97. Based on the low levels of constituents in the groundwater and the absence of human and environmental receptors, there is no nuisance, harm or injury to public health, safety or welfare at or around the Stations.

WHEREFORE, Respondent, Midwest Generation, LLC, respectfully requests that the Board dismiss Complainants' Complaint with prejudice and issue such further relief as the Board deems just and proper.

Respectfully submitted,

Midwest Generation, LLC

By: /s/ Jennifer T. Nijman
One of Its Attorneys

Jennifer T. Nijman
Susan M. Franzetti
Kristen L. Gale
NIJMAN FRANZETTI LLP
10 South LaSalle Street, Suite 3600
Chicago, IL 60603
312-251-5255

SIERRA CLUB, ET AL. V. MIDWEST GENERATION, LLC PCB 13-15
RESPONDENT'S ANSWER AND DEFENSES TO SECOND COMPLAINT

EXHIBIT 1

**COMPLIANCE COMMITMENT AGREEMENT FOR
THE JOLIET 29 STATION**



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 0072
RETURN RECEIPT REQUESTED

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

**Re: Compliance Commitment Acceptance
Violation Notice: W-2012-00059
Midwest Generation, LLC, Joliet #29 Generating Station; ID Number: 6284**

Dear Mr. Kennedy:

The Illinois Environmental Protection Agency ("Illinois EPA") has approved the Compliance Commitment Agreement ("CCA") for Midwest Generation, LLC, Joliet #29 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-2012-00059.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Crumly".

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: W1970450047 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

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

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

RECEIVED

OCT 17 2012

IEPA/CAS

IN THE MATTER OF:)
)
 MIDWEST GENERATION, LLC,)
 JOLIET #29 GENERATING STATION)
 JOLIET, WILL COUNTY, IL)
 ID NUMBER: 6284)
)
)
)
)

ILLINOIS EPA VN W-2012-00059
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, Joliet 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 Joliet #29 a power generating station in Joliet, Will County, Illinois ("Joliet #29").
3. Pursuant to Violation Notice ("VN") W-2012-00059 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-2, MW-3, MW-4, MW-5, MW-6, MW-7, MW-8, MW-9, MW-10, and MW-11.
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 August 31, 2012, the Illinois EPA received Respondent's response to VN W-2012-00059, 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-2012-00059:
 - a) The ash ponds at Joliet #29 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 continue quarterly monitoring of the existing eleven groundwater monitoring wells for constituents in 35 Ill. Adm. Code 620.410(a), 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) Midwest Generation shall submit an application for a construction permit to re-line Pond #3 with a high density polyethylene ("HDPE") liner within 90 days of the effective date of the CCA. A groundwater monitoring schedule shall be included in the construction permit.
 - f) Midwest Generation shall submit an application to establish a Groundwater Management Zone ("GMZ") pursuant to 35 Ill. Adm. Code Part 620.250 within 90 days of the effective date of the CCA.

- g) 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.
- h) Once Pond #3 has been re-lined with a HDPE liner and a GMZ has been established, 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.

IV. Terms and Conditions

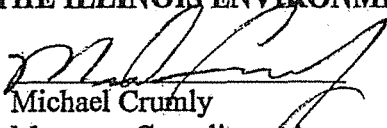
- 6. Respondent shall comply with all provisions of this CCA, including, but not limited to, any appendices to this CCA and all documents incorporated by reference into this CCA. Pursuant to Section 31(a)(10) of the Act, 415 ILCS 5/31(a)(10), if Respondent complies with the terms of this CCA, the Illinois 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-2012-00059.
- 7. This CCA is solely intended to address the violations alleged in Illinois EPA VN W-2012-00059. 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 Joliet #29 in Joliet, Will 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:

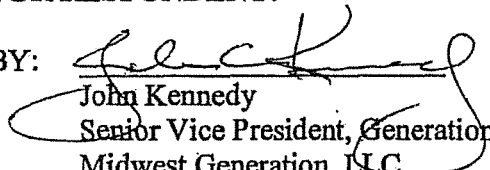

Michael Crumly
Manager, Compliance Assurance Section
Division of Public Water Supplies
Bureau of Water

DATE:

10/24/12

FOR RESPONDENT:

BY:


John Kennedy
Senior Vice President, Generation
Midwest Generation, LLC

DATE:

Oct 15, 2012

Illinois EPA Compliance Statement

The owner of the facility must acknowledge that all compliance commitment agreement (CCA) measures have been successfully completed.

Please complete, sign, and return.

I _____ (*print name*), hereby certify that all violations addressed in Violation Notice (VN) number _____ have been addressed and that all CCA measures were completed on _____ (*date*).

Signature

Title

Telephone Number

Date

Be sure to retain copies of this document for your files. Should you need additional notification forms, please contact this office at (217)785-0561. Return this completed form to:

Illinois Environmental Protection Agency
Compliance Assurance Section #19
Bureau of Water
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

"Any person who knowingly makes a false, fictitious, or fraudulent material statement, orally or in writing, to the Agency,related to or required by this Act, a regulation adopted under this Act, any federal law or regulation for which the Agency has responsibility, or any permit, term, or condition thereof, commits a Class 4 felony..." (415 ILCS 5/44(h) (8))

SIERRA CLUB, ET AL. V. MIDWEST GENERATION, LLC PCB 13-15
RESPONDENT'S ANSWER AND DEFENSES TO SECOND COMPLAINT

EXHIBIT 2

**COMPLIANCE COMMITMENT AGREEMENT FOR
THE POWERTON STATION**



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,

A handwritten signature in black ink, appearing to read "Michael Crumly".

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

9511 Harrison St., Des Plaines, IL 60016 (847)294-4000
5407 N. University St., Arbor 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)
)
)
)
)

RECEIVED

OCT 17 2012

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

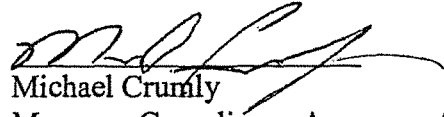
- 6. Respondent shall comply with all provisions of this CCA, including, but not limited to, any appendices to this CCA and all documents incorporated by reference into this CCA. Pursuant to Section 31(a)(10) of the Act, 415 ILCS 5/31(a)(10), if Respondent complies with the terms of this CCA, the Illinois 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:

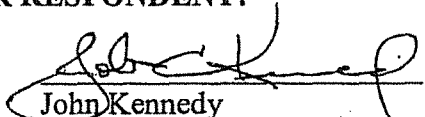

Michael Crumly
Manager, Compliance Assurance Section
Division of Public Water Supplies
Bureau of Water

DATE:

10/24/12

FOR RESPONDENT:

BY:


John Kennedy
Senior Vice President, Generation
Midwest Generation, LLC

DATE:

Oct 15, 2012

Illinois EPA Compliance Statement

The owner of the facility must acknowledge that all compliance commitment agreement (CCA) measures have been successfully completed.

Please complete, sign, and return.

I _____ (*print name*), hereby certify that all violations addressed in Violation Notice (VN) number _____ have been addressed and that all CCA measures were completed on _____ (*date*).

Signature

Title

Telephone Number

Date

Be sure to retain copies of this document for your files. Should you need additional notification forms, please contact this office at (217)785-0561. Return this completed form to:

Illinois Environmental Protection Agency
Compliance Assurance Section #19
Bureau of Water
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

"Any person who knowingly makes a false, fictitious, or fraudulent material statement, orally or in writing, to the Agency,related to or required by this Act, a regulation adopted under this Act, any federal law or regulation for which the Agency has responsibility, or any permit, term, or condition thereof, commits a Class 4 felony..." (415 ILCS 5/44(h) (8))

SIERRA CLUB, ET AL. V. MIDWEST GENERATION, LLC PCB 13-15

RESPONDENT'S ANSWER AND DEFENSES TO SECOND COMPLAINT

EXHIBIT 3

**COMPLIANCE COMMITMENT AGREEMENT FOR
THE WAUKEGAN STATION**



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 0102
RETURN RECEIPT REQUESTED

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

**Re: Compliance Commitment Acceptance
Violation Notice: W-2012-00056
Midwest Generation, LLC, Waukegan Generating Station; ID Number: 6281**

Dear Mr. Kennedy:


The Illinois Environmental Protection Agency ("Illinois EPA") has approved the Compliance Commitment Agreement ("CCA") for Midwest Generation, LLC, Waukegan 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-2012-00056.

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: W0971900021 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

9511 Harrison St., Des Plaines, IL 60016 (847)294-4000
5407 N. University St., Arbor 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

RECEIVED

OCT 17 2012

IEPA/CAS

IN THE MATTER OF:)
)
MIDWEST GENERATION, LLC,)
WAUKEGAN GENERATING STATION)
WAUKEGAN, LAKE COUNTY, IL)
ID NUMBER: 6281)
)
)
)
)

ILLINOIS EPA VN W-2012-00056
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, Waukegan 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 Waukegan Generating Station in Waukegan, Lake County, Illinois ("Waukegan Station").
3. Pursuant to Violation Notice ("VN") W-2012-00056 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-3, MW-4, and MW-5. 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-2012-00056, 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-2012-00056:
 - a) The ash ponds at Waukegan Station 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 install two additional groundwater monitoring wells on the Waukegan Station property, at locations approved by the Illinois EPA, within 90 days of the effective date of the CCA.
 - e) Midwest Generation shall monitor the two new wells and the existing five 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.
 - f) Midwest Generation shall enter into an Environmental Land Use Control (ELUC) to cover the remaining Waukegan Station property to the east that is not already included in the existing ComEd Former Tannery Site ELUC. Midwest Generation shall submit a proposed ELUC to the Illinois EPA for review and approval within 90 days of the effective date of the CCA.

- g) Midwest Generation shall record the ELUC within 30 days of approval of the ELUC by the Illinois EPA.
- i) Once the new monitoring wells have been installed and the ELUC has been approved 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.

IV. Terms and Conditions

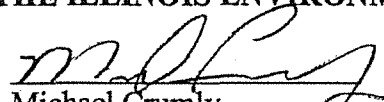
- 6. Respondent shall comply with all provisions of this CCA, including, but not limited to, any appendices to this CCA and all documents incorporated by reference into this CCA. Pursuant to Section 31(a)(10) of the Act, 415 ILCS 5/31(a)(10), if Respondent complies with the terms of this CCA, the Illinois 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-2012-00056.
- 7. This CCA is solely intended to address the violations alleged in Illinois EPA VN W-2012-00056. 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 Waukegan Station in Waukegan, Lake 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:

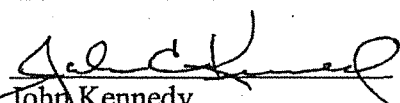

Michael Crumly
Manager, Compliance Assurance Section
Division of Public Water Supplies
Bureau of Water

DATE:

10/24/12

FOR RESPONDENT:

BY:


John Kennedy
Senior Vice President, Generation
Midwest Generation, LLC

DATE:

Oct 15, 2012

Illinois EPA Compliance Statement

The owner of the facility must acknowledge that all compliance commitment agreement (CCA) measures have been successfully completed.

Please complete, sign, and return.

I _____ (*print name*), hereby certify that all violations addressed in Violation Notice (VN) number _____ have been addressed and that all CCA measures were completed on _____ (*date*).

Signature

Title

Telephone Number

Date

Be sure to retain copies of this document for your files. Should you need additional notification forms, please contact this office at (217)785-0561. Return this completed form to:

Illinois Environmental Protection Agency
Compliance Assurance Section #19
Bureau of Water
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

"Any person who knowingly makes a false, fictitious, or fraudulent material statement, orally or in writing, to the Agency,related to or required by this Act, a regulation adopted under this Act, any federal law or regulation for which the Agency has responsibility, or any permit, term, or condition thereof, commits a Class 4 felony..." (415 ILCS 5/44(h) (8))

SIERRA CLUB, ET AL. V. MIDWEST GENERATION, LLC PCB 13-15
RESPONDENT'S ANSWER AND DEFENSES TO SECOND COMPLAINT

EXHIBIT 4

**COMPLIANCE COMMITMENT AGREEMENT FOR
THE WILL COUNTY STATION**



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 0096
RETURN RECEIPT REQUESTED

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

**Re: Compliance Commitment Acceptance
Violation Notice: W-2012-00058
Midwest Generation, LLC, Will County Generating Station; ID Number: 6283**

Dear Mr. Kennedy:

The Illinois Environmental Protection Agency ("Illinois EPA") has approved the Compliance Commitment Agreement ("CCA") for Midwest Generation, LLC, Will County 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-2012-00058.

Sincerely,

A handwritten signature in black ink, appearing to read "m. crumly".

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: W1978100011 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

9511 Harrison St., Des Plaines, IL 60016 (847)294-4000
5407 N. University St., Arbor 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,)
WILL COUNTY GENERATING STATION))
ROMEOVILLE, WILL COUNTY, IL)
ID NUMBER: 6283)
)
)
)
)
)

RECEIVED

OCT 17 2012

IEPA/CAS

ILLINOIS EPA VN W-2012-00058
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, Will County 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 Will County Generating Station in Romeoville, Will County, Illinois ("Will County Station").
3. Pursuant to Violation Notice ("VN") W-2012-00058 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-3, MW-4, MW-5, MW-6, MW-7, MW-8, MW-9, and MW-10.
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, and September 27, 2012, the Illinois EPA received Respondent's response and supplemental e-mail response to VN W-2012-00058, 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-2012-00058:
 - a) The ash ponds at Will County Station 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 continue quarterly monitoring of the existing ten groundwater monitoring wells 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) Ponds 1 North (1N) and 1 South (1S) shall be removed from service at Will County Station. All process water shall be diverted from ponds 1N and 1S to existing ponds 2 South (2S) and 3 South (3S). A dewatering system shall be developed and implemented which will not allow water to exceed a depth of one foot above the bottom of Ponds 1N and 1S.
 - f) Within 90 days of the effective date of the CCA, Midwest Generation shall submit an application for a construction permit to re-line pond 2S at Will County Station with a 60 mil thickness high density polyethylene ("HDPE") liner or an Illinois EPA approved equivalent material.

- g) Midwest Generation shall submit an application to establish a Groundwater Management Zone (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 Will County Station property which is contained within the GMZ, except for that portion of the GMZ area which is owned by ComEd. 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 establish a GMZ pursuant to 35 Ill. Adm. Code Part 620.250 and submit a final proposed ELUC, incorporating the completed delineation of the GMZ boundaries, within one year of the effective date of the CCA.
- j) Once ponds 1N and 1S have been taken out of service, a dewatering system has been implemented, pond 2S has been relined with a HDPE liner, and a GMZ and ELUC have been established, 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.

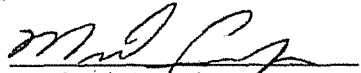
IV. Terms and Conditions

- 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-2012-00058.
- 7. This CCA is solely intended to address the violations alleged in Illinois EPA VN W-2012-00058. 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 Will County Station in Romeoville, Will 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.

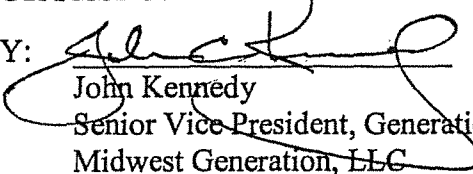
AGREED:

FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY:

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

DATE: 12/24/13

FOR RESPONDENT:

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

DATE: Oct 15, 2012

Illinois EPA Compliance Statement

The owner of the facility must acknowledge that all compliance commitment agreement (CCA) measures have been successfully completed.

Please complete, sign, and return.

I _____ (*print name*), hereby certify that all violations addressed in Violation Notice (VN) number _____ have been addressed and that all CCA measures were completed on _____ (*date*).

Signature

Title

Telephone Number

Date

Be sure to retain copies of this document for your files. Should you need additional notification forms, please contact this office at (217)785-0561. Return this completed form to:

Illinois Environmental Protection Agency
Compliance Assurance Section #19
Bureau of Water
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

"Any person who knowingly makes a false, fictitious, or fraudulent material statement, orally or in writing, to the Agency,.....related to or required by this Act, a regulation adopted under this Act, any federal law or regulation for which the Agency has responsibility, or any permit, term, or condition thereof, commits a Class 4 felony..." (415 ILCS 5/44(h) (8))

SIERRA CLUB, ET AL. V. MIDWEST GENERATION, LLC PCB 13-15
RESPONDENT'S ANSWER AND DEFENSES TO SECOND COMPLAINT

EXHIBIT 5

**ILLINOIS EPA COMPLIANCE STATEMENT
FOR THE JOLIET 29 STATION**



MIDWEST
GENERATION EME, LLC

An EDISON INTERNATIONAL® Company

Maria L. Race
Director
Environmental Services

October 9, 2013

Illinois Environmental Protection Agency
Compliance Assurance Section #19
Bureau of Water
1021 North Grand Avenue East
Springfield, IL 62702

RE: Violation Notice W-2012-00059 - Joliet 29

To Whom It May Concern:

Enclosed please find the signed Compliance Statement for Joliet 29 which acknowledges that all Compliance Commitment Agreement (CCA) measures have been successfully completed.

Please call me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Maria Race".

Maria Race
Director
Environmental Services

Enclosure

cc: Christopher Foley
Peter O'Day - Joliet Station
Susan Franzetti - Nijman and Franzetti Law

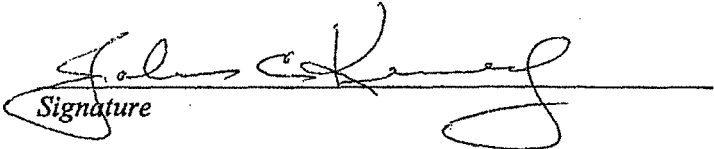
235 Remington Blvd.
Suite A
Bolingbrook, IL 60440
Tel: 630 771 7862
Fax: 312 788 5526
mrace@mwgen.com

Illinois EPA Compliance Statement

The owner of the facility must acknowledge that all compliance commitment agreement (CCA) measures have been successfully completed.

Please complete, sign, and return.

I John Kennedy (print name), hereby certify that all violations addressed in Violation Notice (VN) number W-2012-00059 have been addressed and that all CCA measures were completed on 10/09/13 (date).


Signature

Sr. Vice President, Generation
Title

630 771 7800
Telephone Number

10/09/13
Date

Be sure to retain copies of this document for your files. Should you need additional notification forms, please contact this office at (217)785-0561. Return this completed form to:

Illinois Environmental Protection Agency
Compliance Assurance Section #19
Bureau of Water
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

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SIERRA CLUB, ET AL. V. MIDWEST GENERATION, LLC PCB 13-15
RESPONDENT'S ANSWER AND DEFENSES TO SECOND COMPLAINT

EXHIBIT 6

**ILLINOIS EPA COMPLIANCE STATEMENT
FOR THE POWERTON STATION**



MIDWEST
GENERATION EME, LLC

An EDISON INTERNATIONAL® Company

Maria L. Race
Director
Environmental Services

October 17, 2013

Illinois Environmental Protection Agency
Compliance Assurance Section #19
Bureau of Water
1021 North Grand Avenue East
Springfield, IL 62702

RE: Violation Notice W-2012-00057 - Powerton

To Whom It May Concern:

Enclosed please find the signed Compliance Statement for Powerton which acknowledges that all Compliance Commitment Agreement (CCA) measures have been successfully completed.

Please call me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Race".

Maria Race
Director
Environmental Services

Enclosure

cc: Christopher Foley
Bill Gaynor - Powerton Station
Susan Franzetti - Nijman and Franzetti Law

235 Remington Blvd.
Suite A
Bolingbrook, IL 60440
Tel: 630 771 7862
Fax: 312 788 5526
mrace@mwgen.com

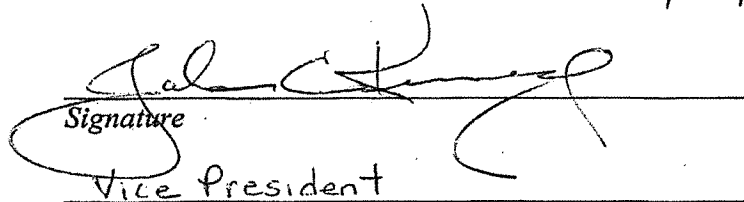
Powerton

Illinois EPA Compliance Statement

The owner of the facility must acknowledge that all compliance commitment agreement (CCA) measures have been successfully completed.

Please complete, sign, and return.

I, John Kennedy (print name), hereby certify that all violations addressed in Violation Notice (VN) number W-2012-00057 have been addressed and that all CCA measures were completed on 10/17/2013 (date).


Signature

Vice President
Title

630-771-7800
Telephone Number

OCTOBER 17, 2013
Date

Be sure to retain copies of this document for your files. Should you need additional notification forms, please contact this office at (217)785-0561. Return this completed form to:

Illinois Environmental Protection Agency
Compliance Assurance Section #19
Bureau of Water
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

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SIERRA CLUB, ET AL. V. MIDWEST GENERATION, LLC PCB 13-15
RESPONDENT'S ANSWER AND DEFENSES TO SECOND COMPLAINT

EXHIBIT 7

**ILLINOIS EPA COMPLIANCE STATEMENT
FOR THE WAUKEGAN STATION**



October 22, 2013

Illinois Environmental Protection Agency
Compliance Assurance Section #19
Bureau of Water
1021 North Grand Avenue East
Springfield, IL 62702

RE: Violation Notice W-2012-00056 – Waukegan Station

To Whom It May Concern:

Enclosed please find the signed Compliance Statement for Waukegan Station which acknowledges that all Compliance Commitment Agreement (CCA) measures have been successfully completed.

Please call me with any questions.

Sincerely,

Maria Race
Director
Environmental Services

Enclosure

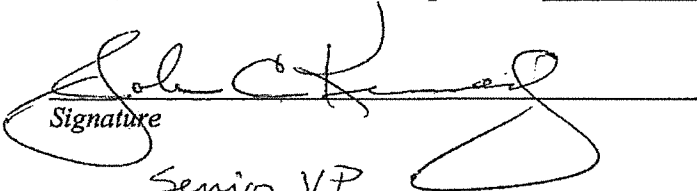
cc: Christopher Foley
Fred Veenbaas – Waukegan Station
Susan Franzetti - Nijman and Franzetti Law

Illinois EPA Compliance Statement

The owner of the facility must acknowledge that all compliance commitment agreement (CCA) measures have been successfully completed.

Please complete, sign, and return.

I John C. Kennedy (print name), hereby certify that all violations addressed in Violation Notice (VN) number W-2012-00056 have been addressed and that all CCA measures were completed on OCTOBER 21, 2013 (date).


Signature

Senior VP
Title

630-771-7800
Telephone Number

OCTOBER 21, 2013
Date

Be sure to retain copies of this document for your files. Should you need additional notification forms, please contact this office at (217)785-0561. Return this completed form to:

Illinois Environmental Protection Agency
Compliance Assurance Section #19
Bureau of Water
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

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SIERRA CLUB, ET AL. V. MIDWEST GENERATION, LLC PCB 13-15
RESPONDENT'S ANSWER AND DEFENSES TO SECOND COMPLAINT

EXHIBIT 8

**ILLINOIS EPA COMPLIANCE STATEMENT
FOR THE WILL COUNTY STATION**



MIDWEST
GENERATION EME, LLC

An EDISON INTERNATIONAL® Company

Maria L. Race
Director
Environmental Services

October 17, 2013

Illinois Environmental Protection Agency
Compliance Assurance Section #19
Bureau of Water
1021 North Grand Avenue East
Springfield, IL 62702

RE: Violation Notice W-2012-00058 – Will County

To Whom It May Concern:

Enclosed please find the signed Compliance Statement for Will County which acknowledges that all Compliance Commitment Agreement (CCA) measures have been successfully completed.

Please call me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Race".

Maria Race
Director
Environmental Services

Enclosure

cc: Christopher Foley
Beckie Maddox – Will County Station
Susan Franzetti - Nijman and Franzetti Law

235 Remington Blvd.
Suite A
Bolingbrook, IL 60440
Tel: 630 771 7862
Fax: 512 788 5526
mrace@mwgen.com

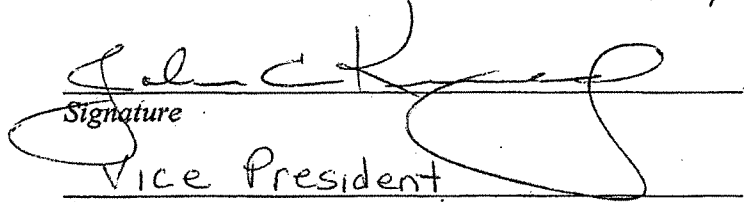
Will County

Illinois EPA Compliance Statement

The owner of the facility must acknowledge that all compliance commitment agreement (CCA) measures have been successfully completed.

Please complete, sign, and return.

I John Kennedy (print name), hereby certify that all violations addressed in Violation Notice (VN) number W-2012-00058 have been addressed and that all CCA measures were completed on 10/17/2013 (date).


Signature

Vice President
Title

630-771-7800
Telephone Number

OCTOBER 17, 2013
Date

Be sure to retain copies of this document for your files. Should you need additional notification forms, please contact this office at (217)785-0561. Return this completed form to:

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Bureau of Water
1021 North Grand Avenue East
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