

Dynegy Operating Company
604 Pierce Boulevard
O'Fallon, IL 62269
618.206.5905

Received
9/26/2012

VIA CERTIFIED MAIL

September 25, 2012

Illinois EPA - Division of Public Water Supplies
Attn: Andrea Rhodes, CAS #19
P.O. Box 19276
Springfield, IL 62794-9276



**Re: Violation Notice No. W-2012-00071
Response to September 5, 2012 Meeting with IEPA
Vermilion Site, ID: 6293**

IEPA - DIVISION OF RECORDS MANAGEMENT
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REVIEWER EAV

Dear Ms. Rhodes:

Dynegy Midwest Generation, LLC (DMG) appreciates the opportunity to meet with you and other representatives of the Illinois Environmental Protection Agency (Agency) on September 5, 2012 to discuss the referenced Violation Notice (VN) and DMG's proposed Compliance Commitment Agreement (CCA) as submitted on August 21, 2012. In accordance with the Agency's September 6, 2012 meeting held letter¹ and Section (31)(a)(5) of the Environmental Protection Act, 415 ILCS 5/31(a)(5), DMG submits this meeting response letter.

DMG elects not to waive the Section 31 enforcement process for this VN and hereby requests a written response to its proposed CCA. DMG's willingness to participate in the Section 31 enforcement process and enter into a CCA is not and should not be construed as an admission of liability. DMG expressly reserves its rights and defenses that are now or may hereafter be available to it and does not in any way admit that it is liable for any of the alleged violations.

Response to the Alleged Violations

DMG continues to raise three issues concerning the VN that were initially raised in its August 21, 2012 response.²

First, DMG disputes the allegation that the iron concentrations observed in the data for MW-34 are the result of operations at ash impoundments at the Vermilion site. As

¹ IEPA letter from Michael Crumly, Manager, Compliance Assurance Section, Division of Public Water Supplies, Bureau of Water, to Rick Dierix, Dynegy Operating Company. As indicated in the Agency's September 6th letter, DMG's meeting response is due on or before September 26, 2012.

² DMG also again notes that the "Violation Description" for the alleged exceedances at MW-05 (VN Attachment A, page no. 2 of 3) incorrectly identifies the "Collection Date" of two alleged exceedances as "03/08/2011". The correct date is 03/09/2011.

explained in the hydrogeologic study submitted for each of the north and old east ash ponds at Vermilion (see page 37)³, the elevated concentrations of iron at this downgradient, lower groundwater unit (in Layer 6; see page 20 and Table 2) are a result of naturally occurring geochemical conditions, specifically sulfate reducing conditions of the groundwater, and are not related to coal ash management at Vermilion. Consequently, the alleged violations of the iron groundwater standard at MW-34 are baseless and the Agency should remove these allegations from the VN.

Second, DMG believes the alleged violations of the manganese groundwater standard at monitoring wells MW-04, MW-05, and MW-08R at Vermilion can be attributed in part to naturally-occurring manganese. For example, elevated manganese concentrations in background monitoring well MW-06R (Layer 2b, Unit 1; alluvial deposits) indicate relatively high natural concentrations of manganese present in groundwater in the vicinity of the ash ponds. In the context of the MW-06R observed background concentrations, the alleged manganese violations at MW-04, MW-05, and MW-08R should not be attributed to the ash pond system. These alleged violations should be removed from the VN.

Third, DMG believes the alleged violations identified in the VN concern only the north and old east pond systems at Vermilion, and do not involve the new east ash pond system. The new east ash pond system is lined and has been subject to groundwater monitoring since it began operation. None of the groundwater information collected since that time provides any evidence to conclude that the groundwater standard exceedances alleged in the VN are attributable to the new east ash pond system.

DMG believes that at the September 5th meeting the Agency indicated its general agreement with DMG's position that the alleged violations disputed above (i.e., iron concentrations at MW-34 and manganese concentrations at MW-04, MW-05, and MW-08R) should not have been included in the VN and that the VN was not intended to cover the new east ash pond. We request the Agency's written confirmation that the alleged iron exceedance at MW-34 and alleged manganese exceedances at MW-04, MW-05, and MW-08R are no longer part of the VN and that the VN does not implicate the new east ash pond. As stated in the September 5th meeting, DMG believes it must first reach an agreement with the Agency on the precise identity of the alleged violations (i.e., the parameters of concern and the affected groundwater monitoring wells) before corrective actions are pursued or an enforceable CCA is entered.

Additional Rebuttal Information

At the September 5th meeting, the Agency stated that it would not grant a CCA beyond 12 months in duration. DMG fails to understand the rationale for the Agency's unwillingness to grant a CCA beyond 12 months. Section 31 of the Act does not by its

³ "Hydrogeology and Groundwater Quality of the North Ash Pond System, Vermilion Power Station Oakwood, Illinois" (Mar. 15, 2012) and "Hydrogeology and Groundwater Quality of the North Ash Pond System, Vermilion Power Station Oakwood, Illinois" (Mar. 15, 2012), both reports prepared by Kelron Environmental.

plain language limit CCAs to 12 months in duration, nor is there any IPCB rule limiting CCAs to 12 months in duration. DMG believes the 12-month limitation is simply a remnant of a policy that the Agency adopted before CCAs became enforceable, legally-binding agreements. While limiting CCAs as a matter of policy to no longer than 12 months in all instances may have been appropriate at one time, that is no longer the case because CCAs are now enforceable documents. See Public Act 97-519 (enacted Aug. 23, 2011).

DMG also believes it is unnecessary and inappropriate for the Agency to refer this matter to the Office of the Illinois Attorney General simply on the basis that the proposed CCA would take longer than 12 months to complete. The Agency indicated in our September 5th meeting that it was satisfied with the technical aspects of DMG's proposed CCA for Vermilion. Furthermore, in the context of the Vermilion site -- a retired facility for which corrective action plans (CAPs) have been previously submitted to the Agency and would result in closure of ash ponds that have been out of service for over 20 years and where there is no indication of contamination or threat of contamination to any nearby potable water well -- the nature and seriousness of the alleged violations do not warrant referral of this matter for further enforcement. DMG is prepared and willing to move forward with taking all of corrective measures set forth in the proposed CCA, which comply with the Board's groundwater management zone provisions and the closure requirements set forth in 35 Illinois Administrative Code 840. The CCA also is consistent with, if not more stringent than, U.S. EPA's proposed ash impoundment closure requirements.

DMG is committed to moving forward in a cooperative manner and continues to await the Agency's written approval of the CAPs set forth in the CCA. But DMG cannot complete those corrective action activities within 12 months. DMG requests that the Agency accept the sequence of events and project term proposed in the CAPs for closure of the north and old east pond systems at Vermilion as set forth in the proposed CCA.

Proposed Compliance Commitment Agreement and Schedule

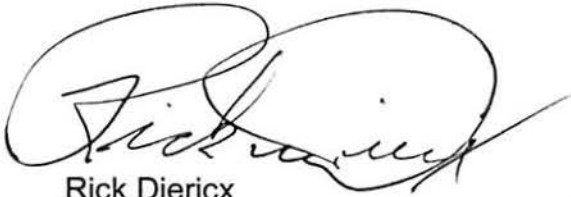
As in our August 21, 2012 initial response, DMG again states its desire to enter into a CCA with the Agency, without admitting to any of the alleged violations identified in the VN or waiving any legal or factual defenses to those alleged violations.

As terms for the CCA, DMG proposes the CAPs for the north and old east ash ponds as well as its GMZ application, all of which were submitted to the Agency on April 2, 2012 and incorporated by reference in DMG's initial response (and are, again, incorporated in this response). In those CAPs, DMG identifies specific measures, based upon 35 Illinois Administrative Code 840, that it is willing to perform related to the closure of the north and old east ash ponds. The CAPs also include an estimated implementation schedule for the steps to be taken to achieve compliance, including the submission of a Closure Plan, construction, closure, and post-closure care.

DMG believes the CAPs and GMZ application provide the basis for the terms of an appropriate CCA, but because the Agency has not yet approved the CAPs or GMZ, certain provisions, including the estimated implementation schedule dates, may need to be revised for purposes of finalizing the CCA.

Thank you for considering this response letter to our September 5, 2012 meeting. Please contact me (tel. no. 618-206-5912) if you would like to discuss DMG's response. We would look forward to meeting with you again to discuss the proposed CCA resolution of these issues if you believe such a meeting would be helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Dierix", with a large, stylized flourish at the end.

Rick Dierix
Sr. Director – Environmental Compliance
Dynergy Operating Company, as agent for DMG



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

September 6, 2012

CERTIFIED MAIL # 7010 2780 0002 1163 4833
RETURN RECEIPT REQUESTED

Mr. Rick Diericx, Sr. Director, Environmental Compliance
Dynergy Operating Company
604 Pierce Boulevard
O' Fallon, IL 62269

**Re: Dynergy Midwest Generation LLC; Vermilion Power Station - Meeting Held
ID No: 6293
Violation Notice No.: W-2012-00071**

Dear Mr. Diericx:

The Illinois Environmental Protection Agency ("Illinois EPA") wishes to acknowledge that you requested a meeting and confirm that the meeting was held on September 5, 2012. A party that meets with the Illinois EPA is given 21 days after the meeting to submit proposed terms for a Compliance Commitment Agreement ("CCA") pursuant to Section (31)(a)(5) of the Environmental Protection Act, 415 ILCS 5/31(a)(5). Your meeting response is due on or before September 26, 2012.

The Illinois EPA will make its decision regarding issuance of a proposed CCA within 30 days of receipt of the meeting response. See Section 31(a)(7).

Questions regarding this matter should be directed to Andrea Rhodes at 217/785-0561. Written communications should be directed to Andrea Rhodes at the Illinois Environmental Protection Agency, Bureau of Water, CAS #19, P.O. Box 19276, Springfield, Illinois 62794-9726 and all communications shall include reference to your Violation Notice number, W-2012-00071.

Sincerely,

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

CASE ID: 2012-009

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