

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	R14-10
COAL COMBUSTION WASTE (CCW)	)	
SURFACE IMPOUNDMENTS AT POWER	)	(Rulemaking – Water)
GENERATING FACILITIES: PROPOSED	)	
NEW 35 ILL. ADM. CODE 841	)	

To: See attached service list.

NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the Illinois EPA's Recommendation to Dismiss R14-10 on behalf of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

Respectfully submitted,

Dated: August 16, 2019

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

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Petitioner,

BY: /s/Rex L. Gradeless
Rex L. Gradeless

THIS FILING IS SUBMITTED ELECTRONICALLY AND SERVED ON RECYCLED PAPER

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ILLINOIS EPA’S RECOMMENDATION TO DISMISS R14-10

NOW COMES the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, (“Illinois EPA”) by and through its counsel, and for its Recommendation to Dismiss R14-10, states as follows:

1. On May 30, 2019, the Illinois Pollution Control Board (hereafter “Board”) directed the Illinois EPA to comment by Tuesday, September 3, 2019, on the status of what was then generally known as “Senate Bill 9”. S.B. 0009, 101st Gen. Assem., Reg. Sess. (Ill. 2019).

2. On July 30, 2019, Governor JB Pritzker signed the Coal Ash Pollution Prevention Act prohibiting coal ash discharge in the environment and requiring owners and operators of coal combustion residual (hereafter “CCR”) surface impoundments (hereafter “impoundments”) to, *inter alia*, obtain Illinois EPA’s approval for permitting and closure of CCR impoundments. 2019 Ill. Legis. Serv. P.A. 101-171 (West) (hereafter “P.A. 101-171”).

3. Section 5/22.59(g) of the Illinois Environmental Protection Act (hereafter “Act”) now provides that not later than 8 months after the effective date (i.e. July 30, 2019) the Illinois EPA must propose, and not later than one year after receipt of the Agency’s proposal the Board must adopt, rules under the Act.

4. The rules proposed by the Illinois EPA, and adopted by the Board, must, at a minimum, include the following:

(A) be at least as protective and comprehensive as the federal regulations or

amendments thereto promulgated by the Administrator of the United States Environmental Protection Agency (“USEPA”) in Subpart D of 40 CFR 257 governing CCR impoundments;

(B) specify the minimum contents of CCR impoundment construction and operating permit applications, including the closure alternatives analysis required under 415 ILCS 5/22.59(d);

(C) specify which types of permits include requirements for closure, post-closure, remediation and all other requirements applicable to CCR impoundments;

(D) specify when permit applications for existing CCR impoundments must be submitted, taking into consideration whether the CCR impoundment must close under the Resource Conservation and Recovery Act (hereafter “RCRA”);

(E) specify standards for review and approval by the Illinois EPA of CCR impoundment permit applications;

(F) specify meaningful public participation procedures for the issuance of CCR surface impoundment construction and operating permits, including, but not limited to, public notice of the submission of permit applications, an opportunity for the submission of public comments, an opportunity for a public hearing prior to permit issuance, and a summary and response of the comments prepared by the Illinois EPA;

(G) prescribe the type and amount of the performance bonds or other securities required under 415 ILCS 5/22.59(f), and the conditions under which the State is entitled to collect moneys from such performance bonds or other securities;

(H) specify a procedure to identify areas of environmental justice concern in relation to CCR impoundments;

(I) specify a method to prioritize CCR impoundments required to close under RCRA if not otherwise specified by the USEPA, so that the CCR impoundments with the highest risk to public health and the environment, and areas of environmental justice concern are given first priority;

(J) define when complete removal of CCR is achieved and specify the standards for responsible removal of CCR from CCR impoundments, including, but not limited to, dust controls and the protection of adjacent surface water and groundwater; and

(K) describe the process and standards for identifying a specific alternative source of groundwater pollution when the owner or operator of the CCR impoundment believes that groundwater contamination on the site is not from the CCR impoundment.

5. Given the mandate of P.A. 101-171 for the Illinois EPA to propose specific rules for CCR impoundments in Illinois, and the mandate for the Board to adopt rules accomplishing the same, the Illinois EPA recommends that the Board close this docket, R14-10, in order for the Illinois EPA to submit a new proposal to Board, consistent with the Coal Ash Pollution Prevention Act, and to establish a clean record on CCR impoundment regulation in Illinois.

WHEREFORE, the Illinois EPA respectfully requests the Board dismiss this proceeding, R14-10, without prejudice.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Petitioner,

BY: /s/Rex L. Gradeless
Rex L. Gradeless

Dated: August 16, 2019

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CERTIFICATE OF SERVICE

I, the undersigned, on affirmation state the following:

That I have served the attached **ILLINOIS EPA'S RECOMMENDATION TO DISMISS R14-10** by e-mail upon Stephen Sylvester at the e-mail address of ssylvester@atg.state.il.us, Gabe Neibergall at the email address of Gabriel.Neibergall@illinois.gov, Joanne M. Olson at the email address of joanne.olson@illinois.gov, Mark A. Bilut at the email address of mbilut@mwe.com, Deborah J. Williams at the email address of Deborah.Williams@cwlp.com, Michael Smallwood at the email address of msmallwood@ameren.com, Eric Lohrenz at the email address of eric.lohrenz@illinois.gov, Jeffrey Hammons at the email address of jhammons@elpc.org, Kim Knowles at the email address of kknowles@prairierivers.org, Andrew Rehn at the email address of arehn@prairierivers.org, Jack Darin at the email address of Jack.Darin@sierraclub.org, Amy Antonioli at the email address of aantonioli@schiffhardin.com, Elizabeth Quirk at the email address of Elizabeth.quirk-hendry@nrenergy.com, Keith Schmidt at the email address of Keith.schmidt@nrenergy.com, Walter Stone at the email address of Water.stone@nrenergy.com, Faith Bugel at the email address of fbugel@gmail.com, Jennifer Cassel at the email address of jcassel@earthjustice.org, Paul Mauer at the email address of Paul.Mauer@illinois.gov, Robert G. Mool at the email address of Robert.Mool@illinois.gov, Susan M. Franzetti at the email address of sf@nijmanfranzetti.com, Vincent R. Angermeier at the email address of va@nijmanfranzetti.com, Abel Russ at the email address of aruss@environmentalintegrity.org, Jennifer M. Martin at the email address of Jennifer.Martin@heplerbroom.com, Katherine D. Hodge at the email address of Katherine.Hodge@heplerbroom.com, Stephen J. Bonebrake at the email address of sbonebrake@schiffhardin.com, Joshua R. More at the email address of jmore@schiffhardin.com, Ryan C. Granholm at the email address of rgranholm@schiffhardin.com, LaDonna Driver at the email address of LaDonna.Driver@heplerbroom.com, Mark Powell at the email address of Mark.Powell@Illinois.gov, Don Brown at the email address of don.brown@illinois.gov, and upon Hearing Officer Timothy J. Fox at the e-mail address of Tim.Fox@Illinois.gov.

That I have served the attached **ILLINOIS EPA'S RECOMMENDATION TO DISMISS R14-10** upon all other persons listed on the Service List, by placing a true copy in an envelope duly address bearing proper first-class postage in the United States mail at Springfield, Illinois on August 16, 2019.

That my e-mail address is Rex.Gradeless@Illinois.gov.

That the number of pages in the e-mail transmission is seven (7).

That the e-mail transmission took place before 5:00 p.m. on the date of August 16, 2019.

/s/Rex L. Gradeless
August 16, 2019