



**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF:	)	
	)	
	)	
STANDARDS FOR THE DISPOSAL	)	
OF COAL COMBUSTION RESIDUALS IN	)	R 2020-019
SURFACE IMPOUNDMENTS:	)	(Rulemaking - Water)
PROPOSED NEW 35 ILL. ADM. CODE	)	
845	)	
	)	
	)	
	)	
	)	

**MOTION TO SCHEDULE A PREHEARING CONFERENCE**

Pursuant to 35 Ill. Admin. Code. 101.502(a), Environmental Law & Policy Center, Little Village Environmental Justice Organization, Prairie Rivers Network, and Sierra Club (“Movants”) respectfully request that the Hearing Officer grant Movants’ Motion to Schedule a Prehearing Conference. In support of this Motion, Movants state as follows:

1. On Friday, April 24, 2020, the Hearing Officer issued an order in this matter scheduling hearings for July 21 and 22, 2020, continued to July 23, if necessary, and August 25 and 26, 2020, continued to August 27, if necessary. *In re Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments: Proposed New 35 Ill. Adm. Code 845, R2020-19, Hearing Officer Order (April 24, 2020).*

2. The April 24th order states that the July 21 hearing “will begin with IEPA’s testimony, and any other person that prefiles testimony will be allowed to testify. If time permits, at the conclusion of the prefiled testimony and questions, the Board will allow for testimony and public comments.” *Id.* at 3. The April 24th order does not clarify whether public comments will be allowed on July 21, after testimony; sometime on July 21-23, after all testimony is completed;

or sometime in either the July or August hearings dates, after all testimony is completed.

3. Movants are concerned that members of the public interested in offering public comments may be required to wait and sit through two to six days of testimony in order to offer comment. Most individuals do not have the time or flexibility, due to work, childcare, or many of life's other obligations, to sit through day after day of hearings to be able to offer public comments.

4. Strong interest has been shown in this rulemaking. Prior to proposing the rules at issue in this proceeding, Illinois EPA held "listening sessions" to hear the public's concerns and hopes for these rules in seven communities across the state. See <https://www2.illinois.gov/epa/topics/water-quality/watershed-management/ccr-surface-impoundments/Pages/default.aspx>.

Most of those sessions were well attended. Illinois residents' strong interest is further shown by the number of interested parties in the docket. See Service List, Notice List *In re Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments: Proposed New 35 Ill. Adm. Code 845*, R2020-19 (April 30, 2020).<sup>1</sup> Movants believe that the strong interest in this rulemaking will be reflected in a strong interest by individuals wanting to offer public comment.

5. In the Coal Ash Pollution Prevention Act, Public Act 101-171, the legislation authorizing this proceeding, the Illinois legislature recognized the importance of public participation in ensuring environmental justice and called for "meaningful public involvement" in the rulemaking. See 415 ILCS 5/22.59(a)(5) (finding that "meaningful participation of State residents, especially vulnerable populations who may be affected by regulatory actions, is critical to ensure that environmental justice considerations are incorporated in the *development*

<sup>1</sup> Available at <https://pcb.illinois.gov/Cases/GetCaseDetailsById?caseId=16858>.

*of...environmental laws and rulemaking* that protects and improves the well-being of communities in this State. . .”) (emphasis added); *id.* at (a) (“Therefore, the purpose of this Section is to promote . . . meaningful public involvement. . . so as to protect public health and prevent pollution of the environment of this State”). Movants believe that public comment is best facilitated by setting specific dates, times and procedures for public comment.

6. Due to the Covid-19 pandemic, the State of Illinois is currently under a Stay-at-Home order issued by Governor Pritzker. *Executive Order in Response to Covid-19*, No. 2020-18 (April 1, 2020). It is difficult for anyone to predict when the Stay-at-Home order will be lifted, let alone when the State can return to business-as-usual without social distancing restrictions. It is unclear whether all social distancing restrictions will be lifted by the July or August hearing dates in this matter. Even if all social distancing restrictions are lifted by this summer, it is reasonable to expect that some individuals, for instance older adults and people with compromised immune systems, may be concerned about attending public gatherings, including public hearings with a lot of people. For these reasons, public participation in the hearings in this matter would be best facilitated by offering options for virtual attendance, virtual testimony and questioning, and public comment by phone, video conference, or both.

7. The Hearing Officer has the authority to schedule a pre-hearing conference. Under 35 Ill. Admin. Code § 101.610, “the hearing officer has the duty to manage proceedings assigned, to set hearings, to conduct a fair hearing, to take all necessary action to avoid delay, to maintain order, and to ensure development of a clear, complete, and concise record for timely transmission to the Board. The hearing officer has all powers necessary to these ends, including the authority to: . . . (j) Initiate, schedule, and conduct a pre-hearing conference. . .”.

8. One purpose of a pre-hearing conference is “to attempt to identify and limit the

issues of disagreement among participants to promote efficient use of time at hearing.” 35 Ill. Admin. Code § 101.202.

9. Movants request a pre-hearing conference to discuss mechanisms for public participation, including dates, times, procedures, and locations for public comment at and virtual participation in the hearings. Movants believe such discussions will resolve many participants’ questions and concerns from the outset of this proceeding, thereby promoting efficient use of time at hearing and facilitating agreement among the participants on procedural concerns.

10. Movants have communicated with counsel for the Illinois Environmental Protection Agency; the Illinois Attorney General’s Office; Midwest Generation, LLC; AmerenEnergy Medina Valley Cogen, LLC and Union Electric Company, d/b/a Ameren Missouri (Ameren); the Illinois Environmental Regulatory Group; and Dynegy Midwest Generation, LLC, Electric Energy Inc., Illinois Power Generating Company Illinois Power Resources Generating, LLC, and Kincaid Generation, LLC; and these parties do not oppose this motion.

WHEREFORE, Movants respectfully request that the Hearing Officer grant Movants’ Motion to Schedule a Prehearing Conference.

Dated: May 14, 2020

Respectfully submitted,

*/s/ Faith E. Bugel*  
Faith E. Bugel  
1004 Mohawk  
Wilmette, IL 60091  
(312) 282-9119  
[fbugel@gmail.com](mailto:fbugel@gmail.com)

*Attorney for Sierra Club*

Jeffrey Hammons  
Kiana Courtney  
Environmental Law & Policy Center  
35 E. Wacker Dr., Suite 1600  
Chicago, IL 60601  
(785) 217-5722  
(312) 795-3726  
[JHammons@elpc.org](mailto:JHammons@elpc.org)  
[KCourtney@elpc.org](mailto:KCourtney@elpc.org)

*Attorneys for Environmental Law & Policy  
Center*

Keith Harley  
Chicago Legal Clinic, Inc.  
211 W. Wacker, Suite 750  
Chicago, IL 60606  
(312) 726-2938  
[KHarley@kentlaw.iit.edu](mailto:KHarley@kentlaw.iit.edu)

*Attorney for Little Village Environmental  
Justice Organization*

Jennifer L. Cassel  
Thom Cmar  
Earthjustice  
311 S. Wacker Dr., Suite 311  
Chicago, IL 60606  
(312) 500-2198  
[jcassel@earthjustice.org](mailto:jcassel@earthjustice.org)

*Attorneys for Prairie Rivers Network*

**CERTIFICATE OF SERVICE**

The undersigned, Faith E. Bugel, an attorney, certifies that I have served by email the Clerk and by email the individuals with email addresses named on the Service List provided on the Board's website, available at <https://pcb.illinois.gov/Cases/GetCaseDetailsById?caseId=16858>, a true and correct copy of **MOTION TO SCHEDULE A PREHEARING CONFERENCE**, before 5 p.m. Central Time on May 14, 2020. The number of pages in the email transmission is 7 pages.

Respectfully submitted,  
/s/ Faith Bugel\_\_\_\_  
1004 Mohawk  
Wilmette, IL 60091  
(312) 282-9119  
[fbugel@gmail.com](mailto:fbugel@gmail.com)

*Attorney for Sierra Club*