

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the attached **ILLINOIS EPA MOTION TO CORRECT TRANSCRIPTS AND RESPONSE TO DYNEGY MOTIONS TO CORRECT TRANSCRIPTS**, a copy of which is herewith served upon you.

Respectfully submitted,

Dated: September 17, 2020

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Christine Zeivel
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
(217) 782-5544

Petitioner,

BY: /s/ Christine Zeivel
Christine Zeivel

THIS FILING IS SUBMITTED ELECTRONICALLY

SERVICE LIST

<p>ILLINOIS POLLUTION CONTROL BOARD Don Brown, Clerk Vanessa Horton, Hearing Officer James R. Thompson Center 100 W. Randolph, Suite 11-500 Chicago, IL 60601</p>	<p>ILLINOIS ENVIRONMENTAL PROTECTION AGENCY Christine Zeivel Stefanie Diers 1021 North Grand Avenue East Springfield, IL 62794-9276</p>
<p>ILLINOIS ATTORNEY GENERAL Matt Dunn, Division Chief Environmental Stephen Sylvester, Sr. Asst. Attorney General Kathryn A. Pamenter, Asst. Attorney General 69 W. Washington, Suite 1800 Chicago, IL 60602 Andrew Armstrong, Bureau Chief 500 South Second Street Springfield, Illinois 62706</p>	<p>ILLINOIS DEPARTMENT OF NATURAL RESOURCES Renee Snow, General Counsel Virginia I. Yang, Deputy Counsel Nick San Diego, Staff Attorney Robert G. Mool Paul Mauer – Senior Dam Safety Eng. One Natural Resources Way Springfield IL 62702-1271</p>
<p>PRAIRIE RIVERS NETWORK Kim Knowles Andrew Rehn 1902 Fox Dr., Ste. 6 Champaign, IL 61820</p>	<p>PRAIRIE POWER, INC Alisha Anker, Vice President Regulatory & Market Affairs 3130 Pleasant Runn Springfield, IL 62711</p>
<p>CITY OF SPRINGFIELD Deborah Williams, Regulatory Affairs Director Office of Utilities 800 E. Monroe, 4th Floor Municipal Building East</p>	<p>CHICAGO LEGAL CLINIC, INC. Keith Harley Daryl Grable 211 W. Wacker, Suite 750 Chicago, IL 60606</p>
<p>AMEREN Michael Smallwood 1901 Choteau Ave. St. Louis, MO 63103</p>	<p>MCDERMOTT, WILL & EMERY Mark A. Bilut 227 W. Monroe Street Chicago, IL 60606-5096</p>
<p>ENVIRONMENTAL INTEGRITY PROJECT Abel Russ, Attorney 1000 Vermont, Ave NW, Ste. 1100 Washington, DC 20005</p>	<p>NRG ENERGY, INC. Walter Stone, Vice President 8301 Professional Place, Suite 230 Landover, MD 20785</p>
<p>ILLINOIS ENVIRONMENTAL REGULATORY GROUP Alec M. Davis, Executive Director Kelly Thompson 215 E. Adams St. Springfield, IL 62701</p>	<p>NIJMAN FRANZETTI, LLP Susan M. Franzetti Kristen Laughridge Gale Vincent R. Angermeier 10 S. LaSalle St., Ste. 3600 Chicago, IL 60603</p>
<p>SIERRA CLUB Cynthia Skrukrud Jack Darin Christine Nannicelli 70 E. Lake Street, Ste. 1500</p>	<p>SCHIFF HARDIN, LLP Stephen J. Bonebrake Joshua R. More Ryan C. Granholm 233 S. Wacker Drive, Suite 7100</p>

Chicago, IL 60601-7447	Chicago, IL 60606-6473
HEPLERBROOM, LLC N. LaDonna Driver Jennifer M. Martin Melissa S. Brown 4340 Acer Grove Drive Springfield, IL 62711	ENVIRONMENTAL LAW & POLICY CENTER Jeffrey Hammons, Staff Attorney 1440 G. Street NW Washington DC, 20005 Kiana Courtney, Staff Attorney 35 E. Wacker Drive, Ste 1600 Chicago, IL 60601
EARTHJUSTICE Jennifer Cassel Thomas Cmar 311 South Wacker Drive, Suite 311 Chicago, IL 60606	BROWN, HAY, & STEPHENS, LLP Claire A. Manning Anthony D. Schuering 205 S. Fifth Street, Suite 700 Springfield, IL 62705
U.S. EPA, REGION 5 Chris Newman 77 West Jackson Blvd. Chicago, IL 60604-3590	SIERRA CLUB Faith Bugel, Attorney 1004 Mohawk Wilmette, IL 60091

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

**ILLINOIS EPA MOTION TO CORRECT TRANSCRIPTS AND
RESPONSE TO DYNEGY MOTIONS TO CORRECT TRANSCRIPTS**

NOW COMES the Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”), by and through one of its attorneys, and hereby submits its Motion to Correct Transcripts and Response to Dynegy’s Motions to Correct Transcripts.

1. The Illinois Pollution Control Board (“Board”) held the first public hearing on proposed new 35 Ill. Adm. Code 845: standards for the disposal of coal combustion residuals in surface impoundments on August 11, 12, 13 and 25, 2020.

2. Section 101.604 of the Board’s regulations states that “any party or witness may file a motion to correct the transcript within 21 days after the Board receives the transcript. If a party or witness fails to timely file a motion to correct the transcript, the party or witness waives the right to correct, unless material prejudice would result.”

3. Section 101.500 of the Board’s General Rules provides that a party may file a response to a motion within fourteen (14) days after service.

4. The transcripts for the August hearing dates were posted to the Board’s docket as follows:

- a. August 11, 2020 posted August 17, 2020 (+ 21 days = September 7, 2020)
- b. August 12, 2020 posted August 20, 2020 (+ 21 days = September 10, 2020)
- c. August 13, 2020 posted August 21, 2020 (+ 21 days = September 11, 2020)
- d. August 25, 2020 posted September 3, 2020 (+ 21 days = September 24, 2020)

5. On September 8, 2020, Dynegy filed a Motion to Correct Transcripts for the August 11 and August 12 hearing dates. On September 11, 2020, Dynegy filed a Motion to Correct Transcripts for August 13, 2020. (“Dynegy Motions,” collectively).

6. The Agency now files its Motion to Correct Transcripts for August 11, 12, 13 and 25, 2020, as well as its Response to Dynegy’s Motions.

7. As a response to Dynegy’s Motions, the Agency’s response is timely. Also, the Agency’s Motion as to correcting the August 25, 2020 transcript is timely. However, neither Dynegy’s Motion to Correct the August 11, 2020 transcript, nor the Agency’s Motion as to the transcript corrections for August 11, 12 and 13 are timely under 35 Ill. Adm. Code 101.604. However, due to the fast-track nature of the subject rulemaking and overlapping submission deadlines, denial of such motions would result in undue prejudice.

8. First, participants filed over 1000 pages of pre-filed testimony on August 28, 2020. All parties had two weeks to review all the testimony and file pre-filed questions by September 10, 2020. Second, having so many parties participating in the hearing via videoconference naturally makes it more difficult for the court reporter to accurately hear testimony, resulting in an increase in transcript errors. Finally, the length of the proposed rule, its highly technical and complex subject matter, and the short time allowed before closing of the Record in this rulemaking necessitates as accurate a record as possible for the Board’s consideration and reliance. To deny ample opportunity for review and correction of the hearing transcripts would unduly prejudice not

only the parties, but also the Board in creating an accurate record of the proceedings.

Illinois EPA Response to Dynegy’s Motions

9. Illinois EPA has reviewed Dynegy’s Motions and agrees with all suggested corrections, with the following exceptions:

Date	Page	Lines	Witness	Now reads	Dynegy Requested Correction	Agency Requested Correction
8/12	114	16-17	Dunaway	“... applied to the staff-wide order...”	“...applied to the site in the order...”	“...applied in the step-wise order...”
8/13	39	4	Dunaway	“...any rest for calcium...”	“...any reason to test for calcium...”	“... any risk for calcium...”
8/13	213	7-8	Zimmer	“...—water table fluctuates...”	“...— a water table fluctuates...”	“...— the water table fluctuates...”

10. Since all the disputed corrections are testimony attributed to Agency witnesses, Illinois EPA requests that the Board accept the Agency’s proposed corrections as outlined above.

Illinois EPA’s Requested Corrections to Transcripts

11. In addition to the undisputed corrections requested by Dynegy, the Agency requests the following corrections to the transcripts for August 11, 12 and 13.

Electronic Filing: Received, Clerk's Office 09/17/2020

Date	Page	Lines	Now reads	Requested Correction
8/11	44	14	"... impoundments or any CCR..."	"...impoundments are any CCR..."
8/11	48	5	"...those state entities..."	"...those same entities..."
8/11	55	1	"...the second date of the act."	"...the effective date of the act."
8/11	55	23	"...still be liquids or CCR..."	"...still be liquids and CCR..."
8/11	69	24	"...Section 5005 of the act..."	"...Section 4005 of the act..."
8/11	104	18	"CCR, meets fly ash..."	"CCR, means fly ash..."
8/11	122	9	"Ms. Castle will be..."	"Ms. Cassel will be..."
8/11	153	21	"Modeling required, precipitation data..."	"Modeling requires precipitation data..."
8/11	154	9	"MS. ZEIVEL:"	"MS. ZIMMER :"
8/11	158	21	"...the BT value..."	"...the BTU value..."
8/11	169	12	"...a motion plan..."	"...a closure plan..."
8/11	203	10	"...to rebid permit..."	"...to review permit..."
8/11	212	1-2	"Darryl Lecrone"	" Darin Lecrone"
8/12	64	3 & 8	"Part (b)(2)(b)(2)"	"Part (D)(2)(b)(ii) "
8/12	68	1	"...opposed to precluding a..."	"...opposed to including a..."
8/12	81	15	"MR. BUSCHER:"	"MR. LECRONE :"
8/12	81	21	"... to a commentor before..."	"... to a commenter before..."
8/12	110	18	"This is Darryl Lecrone..."	"This is Darin Lecrone..."
8/12	160	16	"...a side-by-side basis..."	"...a site-by-site basis..."
8/12	213	5-6	"So that may in a site for site basis..."	"So that may on a site by site basis..."
8/12	217	1-2	"...that your Board could also..."	"...that the Board could also..."
8/13	14	7-8	"...core surface water..."	"... towards surface water..."
8/13	31	7	"620 means far more..."	"620 contains far more..."
8/13	31	14-15	"...a section stated the more..."	"...a section that stated the more..."
8/13	45	7	"...failure or CCR materials..."	"... failure where CCR materials..."
8/13	46	6	"...place within the rule that is identified."	"...place within the plume that it's identified."
8/13	56	5	"Even as a catastrophic release..."	"Even a catastrophic release..."
8/13	74	5	"...radiance and flow than..."	"... radial flow than..."
8/13	78	10	"...and the last permeable unit."	"...and the least permeable unit."
8/13	84	9	"...water level and the..."	"...water level in the..."
8/13	117	13-14	"... doesn't mean that it will."	"... doesn't mean that it never will."
8/13	123	6	"With the exception of chloride, which..."	"With the exception of fluoride , which..."
8/13	146	21	"... all those tiered systems..."	"...all those tiered constituents ..."
8/13	147	2	"...wouldn't exist in 620."	"... already exist in 620."
8/13	147	7	"There is now more time..."	"There is no more time..."
8/13	151	20	"...before – have a..."	"...before— you have a..."
8/13	167	15	"...missing or lifted or short..."	"...missing or left out or short..."
8/13	174	12	"So it would really be..."	"So it wouldn't really be..."
8/13	177	17	"a surface impoundments embankments."	"a surface impoundment's embankments."
8/13	219-220	24-1	"Generally, the safe transport..."	"Generally, to show transport..."

12. Illinois EPA also requests the following corrections to the transcript for August 25.

Page	Line	Now Reads	Suggested Correction
9	13	"...extremely changing for..."	"...extremely challenging for..."
11	22-23	"...now, online impoundments..."	"...now, unlined impoundments..."
12	9-10	"...rule, online impoundments..."	"...rule, unlined impoundments..."
15	6	"...could only be capacity..."	"...could always be capacity..."
62	15	"...angle proposed or it..."	"...angle repose or it..."
83	15	"...storage files during..."	"...storage piles during..."
91	12	"...worked and forms these..."	"...worked informs these..."

WHEREFORE, the Illinois Environmental Protection Agency respectfully requests the Board grant Illinois EPA's Motion and allow the corrections requested by the Agency for the August 11, 12, 13 and 25, 2020 hearing transcripts, as well as those unopposed corrections requested in the Dynegy Motions.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Petitioner,

BY: /s/ Christine Zeivel
Christine Zeivel

Dated: September 17, 2020

Christine Zeivel
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
(217) 782-5544

THIS FILING IS SUBMITTED ELECTRONICALLY

CERTIFICATE OF SERVICE

I, the undersigned, on affirmation state the following:

That I have served the attached **NOTICE OF FILING** and **ILLINOIS EPA MOTION TO CORRECT TRANSCRIPTS AND RESPONSE TO DYNEGY MOTIONS TO CORRECT TRANSCRIPTS** by e-mail upon Don Brown at the e-mail address of don.brown@illinois.gov, upon Renee Snow at the e-mail address of Renee.Snow@Illinois.Gov, upon Matt Dunn at the e-mail address of mdunn@atg.state.il.us, upon Stephen Sylvester at the e-mail address of ssylvester@atg.state.il.us, upon Andrew Armstrong at the e-mail address of aarmstrong@atg.state.il.us, upon Kathryn A. Pamenter at the e-mail address of KPamenter@atg.state.il.us, upon Virginia I. Yang at the e-mail address of virginia.yang@illinois.gov, upon Nick San Diego at the e-mail address of nick.sandiego@illinois.gov, upon Robert G. Mool at the e-mail address of bob.mool@illinois.gov, upon Vanessa Horton at the e-mail address of Vanessa.Horton@Illinois.gov, upon Paul Mauer at the e-mail address of Paul.Mauer@illinois.gov, upon Deborah Williams at the e-mail address of Deborah.Williams@cwlp.com, upon Kim Knowles at the e-mail address of Kknowles@prairierivers.org, upon Andrew Rehn at the e-mail address of Arehn@prairierivers.org, upon Faith Bugel at the e-mail address of fbugel@gmail.com, upon Jeffrey Hammons at the e-mail address of Jhammons@elpc.org, upon Keith Harley at the e-mail address of kharley@kentlaw.edu, upon Daryl Grable at the e-mail address of dgrable@clclaw.org, upon Michael Smallwood at the e-mail address of Msmallwood@ameren.com, upon Mark A. Bilut at the e-mail address of Mbilut@mwe.com, upon Abel Russ at the e-mail address of aruss@environmentalintegrity.org, upon Susan M. Franzetti at the e-mail address of Sf@nijmanfranzetti.com, upon Kristen Laughridge Gale at the e-mail address of kg@nijmanfranzetti.com, upon Vincent R. Angermeier at the e-mail address of va@nijmanfranzetti.com, upon Alec M. Davis at the e-mail address of adavis@ierg.org, upon Jennifer M. Martin at the e-mail address of Jmartin@heplerbroom.com, upon Kelly Thompson at the e-mail address of kthompson@ierg.org, upon Walter Stone at the e-mail address of Water.stone@nrgenergy.com, upon Cynthia Skrukrud at the e-mail address of Cynthia.Skrukrud@sierraclub.org, upon Jack Darin at the e-mail address of Jack.Darin@sierraclub.org, upon Christine Nannicelli at the e-mail address of christine.nannicelli@sierraclub.org, upon Stephen J. Bonebrake at the e-mail address of bonebrake@schiffhardin.com, upon Joshua R. More at the e-mail address of jmore@schiffhardin.com, upon Ryan C. Granholm at the e-mail address of rgranholm@schiffhardin.com, upon N. LaDonna Driver at the e-mail address of LaDonna.Driver@heplerbroom.com, upon Alisha Anker at the e-mail address of aanker@ppi.coop, upon Chris Newman at the e-mail address of newman.christopherm@epa.gov, upon Claire A. Manning at the e-mail address of cmanning@bhslaw.com, upon Anthony D. Schuering at the e-mail address of aschuering@bhslaw.com, upon Jennifer Cassel at the e-mail address of jcassel@earthjustice.org, upon Melissa Brown at the e-mail address of Melissa.Brown@heplerbroom.com, upon Thomas Cmar at the e-mail address of tcmar@earthjustice.org, and upon Kiana Courtney at the e-mail address of KCourtney@elpc.org.

That my e-mail address is Christine.Zeivel@illinois.gov

That the e-mail transmission took place before 4:30 p.m. on the date of September 17, 2020.

/s/ Christine Zeivel
September 17, 2020