

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF:	)	
	)	AS 2021-004
Petition of Illinois Power Resources	)	(Adjusted Standard)
Generating, LLC for an Adjusted Standard from	)	
35 Ill. Adm. Code Part 845 or, in the alternative,	)	
s Finding of Inapplicability	)	
	)	

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 Pollution Control Board a RECOMMENDATION OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, a copy of which is herewith served upon you.

Respectfully submitted,

Dated: September 22, 2021

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Christine Zeivel, #6298033  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276  
(217) 782-5544  
Christine.Zeivel@Illinois.Gov

Respondent,

BY: /s/Christine Zeivel  
Christine Zeivel

**THIS FILING IS SUBMITTED ELECTRONICALLY**

**SERVICE LIST**

ILLINOIS POWER RESOURCES GENERATING, LLC

Joshua R. More

Robert Middleton

Sarah L. Lode

Schiff Hardin LLP

233 South Wacker Drive, Suite 6600

Chicago, IL 60606-6473

[jmore@schiffhardin.com](mailto:jmore@schiffhardin.com)

[rmiddleton@schiffhardin.com](mailto:rmiddleton@schiffhardin.com)

[slode@schiffhardin.com](mailto:slode@schiffhardin.com)

ILLINOIS POLLUTION CONTROL BOARD

Carol Webb, Hearing Officer

Don Brown, Clerk

James R. Thompson Center

100 W. Randolph, Suite 11-500

Chicago, IL 60601

[Carol.Webb@illinois.gov](mailto:Carol.Webb@illinois.gov)

[Don.Brown@illinois.gov](mailto:Don.Brown@illinois.gov)

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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**RECOMMENDATION OF THE  
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

The Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”), by one of its attorneys, hereby files its Recommendation to Illinois Power Resources Generating, LLC’s request for a finding of inapplicability of Part 845 to its Gypsum Management Facility (“GMF”) Recycle Basin at its Duck Creek Power Plant near Canton in Fulton County, Illinois, pursuant to Section 28.1 of the Illinois Environmental Protection Act (“Act”). 415 ILCS 5/28.1, 35 Ill. Adm. Code §104.416. For the reasons stated below, Illinois EPA stipulates that the GMF Recycle Pond is not a CCR surface impoundment under Part 845 and therefore does not object to the Board granting Petitioner relief, subject to the condition that the GMF Recycle Pond not be used to treat, store, or dispose of CCR in the future. In support of its Recommendation, Illinois EPA states as follows:

**I. INTRODUCTION**

1. On April 15, 2021, the Board adopted new regulations providing standards for disposal of CCR in surface impoundments at 35 Ill. Adm. Code 845 (“Part 845”). *See* Board Docket R2020-019. The Part 845 rules became effective on April 21, 2021. 45 Ill. Reg. 5884 (May 7, 2021).
2. On May 11, 2021, Illinois Power Resources Generating, LLC (“IPRG”) filed a petition for an adjusted standard from Part 845 or, in the alternative, a finding of inapplicability for certain

impoundments located at its Duck Creek power plant (“Petition”), in which it requests a hearing on its petition.

3. Illinois EPA must make a recommendation to the Board as to the disposition of the Petition within 45 days after the filing of the petition or at least 30 days before a hearing, unless otherwise ordered by the hearing officer or Board. 35 Ill. Adm. Code §104.416. On June 3, 2021, in response to a motion for extension of time filed by the Agency, the Board ordered the Agency to file its Recommendation by September 23, 2021.

## II. NOTICE AND ACCEPTANCE

4. A petitioner must “submit to the Board proof that, within 14 days after filing of the petition, it has published notice of the filing of the petition by advertisement in a newspaper of general circulation in the area likely to be affected by the petitioner’s activity that is the subject of the adjusted standard proceeding.” 415 ILCS 5/28.1; 35 Ill. Adm. Code §104.408(a).

5. On June 2, 2021, IPRG filed with the Board a certification of publication and a copy of the notice published on May 25, 2021, pursuant to 35 Ill. Adm. Code §§104.408(a), (b).

6. On June 3, 2021, the Board accepted IPRG’s petition.

## III. REQUEST FOR FINDING OF INAPPLICABILITY

7. IPRG alleges that the GMF Recycle Pond does not meet the definition of a CCR surface impoundment and therefore requests that the Board issue a finding of inapplicability, or, in the alternative, an adjusted standard exempting the GMF Recycle Pond from Part 845 requirements. *See* Petition, p. 2.

8. Several previous Board proceedings support of the Board’s authority to issue a finding that certain Board regulations are inapplicable to certain facilities, processes, and materials. *See In the Matter of: Petition of Apex Material Technologies, LLC for an Adjusted Standard from Portions*

*of 35 Ill. Adm. Code 807.104 and 810.103, or, in the Alternative, a Finding of Inapplicability, AS15-2, slip op. pp. 51-52 (June 18, 2015); In the Matter of: Petition of Westwood Lands, Inc. for and Adjusted Standard from Portions of 35 Ill. Adm. Code 807.104 and 35 Ill. Adm. Code 810.103 or, in the Alternative, a Finding of Inapplicability, AS09-3, slip- op at 16 (Oct. 7, 2010); In the Matter of: Petition of Jo'Lyn Corporation and Falcon Waste and Recycling for an Adjusted Standard from 35 Ill. Adm. Code Part 807 or, in the Alternative, a Finding of Inapplicability, AS 04-2, slip op. at 13-14 (Apr. 7, 2005).*

9. In both *Westwoods* and *Jo'Lyn*, where the Board determined its solid waste regulations inapplicable, it denied the requested adjusted standards as moot. *Westwoods* slip op. at 16, *Jo'Lyn* slip op. at 14. The Board focused its analysis on applying the facts to the definition of “waste” and did not address the factors required in an adjusted standard petition contained in 35 Ill. Adm. Code 104.406.

10. Accordingly, Illinois EPA will address Petitioner’s request for a finding of inapplicability first, separately from the request for an adjusted standard exempting the GMF Recycle Pond from Part 845.

11. In December 2019, Illinois EPA identified the GMF Recycle Pond as a CCR surface impoundment based on historic records on file. The Agency sent a fee invoice to MWG dated December 16, 2019. *See Ex. A.* IPRG did not agree that the GMF Recycle Pond was a CCR surface impoundment and began discussions with the Agency in response. IPRG did not pay the fees as invoiced by the due date of January 31, 2020. In its March 24, 2020 letter, Illinois EPA provided an allowance for IPRG to demonstrate that the GMF Recycle Pond does not contain CCR; however, the fees were still due at that time. *See Ex. B.* Illinois EPA issued IPRG a Violation Notice on July 28, 2020 (VN W-2020-00034) for failure to pay the initial fee. *See Pet. Ex. 7.* The

VN process yielded several meetings and written responses from IPRG on the matter of demonstrating that the GMF Recycle Pond is not a CCR surface impoundment.

12. A letter dated April 28, 2020 from IPRG proposed an investigation plan to determine the contents of the GMF Recycle Pond. *See* Ex. C. IPRG proposed a bathymetric survey because of concerns about damaging the liner with a more intrusive sampling approach. Illinois EPA requested IPRG's sampling plan in written form, and IPRG submitted a proposal for investigation in a letter dated September 14, 2020. *See* Pet. Ex. 8. The submittal stated that if the bathymetric survey indicated significant sediment in the bottom of the GMF Recycle Pond, then IPRG would conduct sampling.

13. IPRG reported the results and provided figures from the bathymetric survey in the documents dated December 9, 2020. *See* Pet. Ex. 3, p. 4 and Fig. 1-3; Pet. Ex. 9, ex. 1, p. 4 and Fig. 1-3. During a March 3, 2021 meeting, the Agency requested confirmation that the bathymetric survey contained in the December 9, 2021 submittal was compared to the as-built construction drawing of the GMF Recycle Pond. In response, IPRG submitted a document dated March 24, 2021 that contained a March 9, 2021 letter from IngenAE, the company that conducted the bathymetric survey, confirming that the bathymetric survey is compared to the as-built data. *See* Pet. Ex. 4 and Pet. Ex 10, ex. B (PDF p. 137).

14. IPRG represents that the GMF Recycle Pond had never been emptied since its construction. *See* Petition pp. 4, 10; Pet. Ex. 3 p. 3; Pet. Ex. 9 p. 1, ex. 1 p. 3. The bathymetric survey provides no indication of sediment accumulation or a delta-like alluvial structure in the basin. If CCR had been sluiced in, even incidentally, the Agency would expect to see some measurable accumulation of sediment and/or a delta-like alluvial structure in the GMF Recycle Pond. *See* Ex. D (Shaw Affidavit).

15. Per Illinois EPA's request, IPRG provided the margin of error for the bathymetric survey in its March 24, 2021 submittal. *See* Pet. Ex. 10, ex. B (Petition PDF p. 138)). The margin of error for the topographic ground survey was reported as horizontal variant of 8 mm and vertical variant of 15 mm. The accuracy of the bathymetric survey is 1 cm and the report indicates that environmental conditions were very favorable for accurate data collection.

16. In addition to the bathymetric survey, the Agency reviewed historic aerial photos of the GMF Recycle Pond taken between 2009 and 2017. *See* Ex. D (Shaw Affidavit). The GMF Recycle Pond does not change in appearance throughout the review period. There are no deltas present, nor visible changes in the unit, in almost ten years. In contrast, other known CCR surface impoundments at the Duck Creek Station had various changes in appearance, including deltas and removals, throughout the same time period.

17. As explained above, Illinois EPA agrees that Petitioner has provided sufficient information demonstrating that the GMF Recycle Pond is not a CCR surface impoundment subject to Part 845's requirements. Therefore, Petitioner's request for adjusted standard is moot and not evaluated in this Recommendation.

**IV. RECOMMENDATION**

WHEREFORE, for the above and foregoing reasons, Illinois EPA stipulates that the GMF Recycle Pond is not a CCR surface impoundment subject to Part 845 and therefore does not object to the Board granting Petitioner relief, subject to the condition that the GMF Recycle Pond not be used to treat, store, or dispose of CCR in the future.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Respondent,

Dated: September 22, 2021

BY: /s/ Christine Zeivel  
Christine Zeivel, #6298033  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276  
(217) 782-5544  
[Christine.Zeivel@Illinois.Gov](mailto:Christine.Zeivel@Illinois.Gov)

**THIS FILING IS SUBMITTED ELECTRONICALLY**

**CERTIFICATE OF SERVICE**

I, the undersigned, on affirmation certify the following:

That I have served the attached **RECOMMENDATION OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY** by e-mail upon the following:

Joshua R. More	<a href="mailto:jmore@schiffhardin.com">jmore@schiffhardin.com</a>
Robert Middleton	<a href="mailto:rmiddleton@schiffhardin.com">rmiddleton@schiffhardin.com</a>
Sarah L. Lode	<a href="mailto:slode@schiffhardin.com">slode@schiffhardin.com</a>
Carol Webb	<a href="mailto:Carol.Webb@illinois.gov">Carol.Webb@illinois.gov</a>
Don Brown	<a href="mailto:Don.Brown@illinois.gov">Don.Brown@illinois.gov</a>

That I have served the attached **RECOMMENDATION OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY** with supporting documents upon any other persons, if any, 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 September 22, 2021.

That my e-mail address is [Christine.Zeivel@Illinois.gov](mailto:Christine.Zeivel@Illinois.gov).

That the number of pages in the e-mail transmission is forty four (44).

That the e-mail transmission took place before 4:30 p.m. on the date of September 22, 2021.

/s/ Christine Zeivel  
September 23, 2021

# **Exhibit**

# **A**



Illinois Environmental Protection Agency  
 Division of Water Pollution Control  
 1021 North Grand Avenue East  
 Springfield, IL 62794-9276

Luminant  
 Attn: Phil Morris  
 1500 Eastport Plaza Drive,  
 Collinsville, IL 62334

Billing Date	Mon December 16, 2019
Due Date	Tue January 31, 2020
Account Number	W0578010001
Facility Name	Duck Creek Station

**Initial Invoice**

Pond ID	Pond Description	Amount
W0578010001-01	Ash Pond No.1	75,000.00
W0578010001-02	Ash Pond No.2	75,000.00
W0578010001-03	Bottom Ash Basin	75,000.00
W0578010001-04	GMF Pond	75,000.00
W0578010001-05	GMF Recycle Pond	75,000.00

**Amount Due \$375,000.00**

**Other Information/Messages**

**Questions.** Please direct any technical/permit questions to the Permit Section at (217) 782-0610. Questions about the amount of your fee should be emailed to: [EPA.AcctsReceivable@illinois.gov](mailto:EPA.AcctsReceivable@illinois.gov)

- See Reverse Side for Additional Important Information -

Payment

**Remittance Stub**

**Account Information**

Acct. Number W0578010001  
 Facility Name Duck Creek Station  
 IEPA Program COALIN  
 Billing Date Mon December 16, 2019

**Return bottom portion with a check made payable to Illinois EPA**

**Amount Due**

**Tue January 31, 2020 \$375,000.00**

**Amount Enclosed**

Please remit payment to:  
**Illinois Environmental Protection Agency**  
 Fiscal Services #2  
 P.O. Box 19276  
 Springfield, IL 62794-9276



Electronic Filing: Received, Clerk's Office 09/22/2021

Illinois Environmental Protection Agency

Division of Water Pollution Control

*1021 North Grand Avenue East*

*Springfield, IL 62794-9276*

## Other Information

**State Law Compliance.** The owner or operator of a CCR surface impoundment shall pay all fees pursuant to 415 ILCS 5/22.59(j). The owner or operator of a CCR surface impoundment is ultimately responsible and liable for determining an accurate number of CCR impoundments under its control and the fees owed to the Agency under 415 ILCS 5/22.59(j). The amount specified by the Agency within this invoice does not waive or modify the statutory requirement, per 415 ILCS 5/22.59(j) as added by Public Act 101-171, that the owner or operator accurately pay the required initial fee and annual fee for each CCR surface impoundment.

**Collection Notice.** Failure to submit the amount due by the due date constitutes a violation of Section 22.59 of the Illinois Environmental Protection Act, 415 ILCS 5/22.59(j). The Agency may utilize any available collection procedures to recover unpaid fees and all accumulated interest. These may include, but are not limited to, enforcement actions pursuant to Section 31 of the Illinois Environmental Protection Act, 415 ILCS 5/31, submittal of the unpaid amounts for Comptroller's Offset pursuant to 30 ILCS 210, or submittal of the unpaid fee to the Illinois Department of Revenue's Debt Collection Bureau pursuant to 30 ILCS 210.

# **Exhibit**

# **B**



217-782-1020

March 24, 2020

Luminant  
Attn: Phil Morris  
1500 Eastport Plaza Drive  
Collinsville, Illinois 62234

Re: Invoices for Baldwin Energy Center, Coffeen Station, Duck Creek Station, Havana Station, Hennepin Station and Vermilion Station.

Dear Mr. Morris:

Pursuant to Section 22.59(j) of the Illinois Environmental Protection Act ("Act"), the Illinois Environmental Protection Agency ("Illinois EPA") invoiced coal combustion residuals ("CCR") surface impoundments at an electrical generating facility operated by Dynegy/Luminant. These invoices provided a billing date of December 16, 2019, and a due date of January 31, 2020.

To date, Dynegy/Luminant has failed to timely remit payment to Illinois EPA for invoiced CCR surface impoundments. In a letter dated January 6, 2020, a meeting January 7, 2020 and a letter dated January 30, 2020, Dynegy/Luminant has disputed whether one or more of the invoiced CCR surface impoundments should be considered a CCR surface impoundment as defined in Section 3.143 of the Act (415 ILCS 5/3.143).

Illinois EPA provides the following preliminary analysis regarding the disputed CCR surface impoundments and maintains that fees are owing to Illinois EPA:

**Baldwin Energy Center W1578510001-02 East Fly Ash Pond**

- November 18, 2015 Cert. of Closure Plan and January 18, 2016 Cert. of dam inspection, East Fly Ash Pond identified separately.

Based on the above, the Illinois EPA does not consider the East Fly Ash Pond to have completed closure. The appropriate fee for a CCR surface impoundment that has not completed closure is \$75,000.00.

**Baldwin Energy Center W1578510001-03 West Fly Ash Pond**

- November 18, 2015 Cert. of Closure Plan and January 18, 2016 Cert. of dam inspection, West Fly Ash Pond identified separately.

Based on the above, the Illinois EPA does not consider the West Fly Ash Pond to have completed closure. The appropriate fee for a CCR surface impoundment that has not completed closure is \$75,000.00.

**Coffeen Station W1350150004-04 GMF Recycle Pond**

- January 7, 2020, Dynegy/Luminant staff stated that CCR had been placed in this Pond.

Based on the above, the Illinois EPA does not consider the GMF Recycle Pond to have completed closure. The appropriate fee for a CCR surface impoundment that has not completed closure is \$75,000.00.

**Duck Creek Station W0578010001-05 GMF Recycle Pond**

- In its January 6, 2020 letter Dynegy/Luminant states that because this pond is for recycling water, it contains no CCR.

Dynegy/Luminant may make a demonstration that the GMF Recycle Pond does not contain CCR and Illinois EPA will review such a demonstration. Dynegy/Luminant may submit an environmental media sampling plan of the bottom contents of this Pond for Illinois EPA review.

Based on the above, the Illinois EPA believes, without the demonstration, that the GMF Recycle Pond meets the definition of a CCR surface impoundment that has not completed closure. The appropriate fee for a CCR surface impoundment that has not completed closure is \$75,000.00.

**Joppa Station W1270100004-01 West Pond 1**

- The July 23, 2013 Phase I, Hydrogeologic Assessment Report identifies West Pond 1.
- A July 24, 2013 letter from Electric Energy discusses groundwater monitoring at West Pond 1.

Based on the above, the Illinois EPA does not consider the West Pond 1 to have completed closure. The appropriate fee for a CCR surface impoundment that has not completed closure is \$75,000.00.

**Havana Station**

Note: The Illinois EPA and Dynegy/Luminant have not numbered the Ponds the same. The Illinois EPA acknowledges that the Pond immediately North of East Pond Cell 1, (alternately called Cell 2 or Cell 4) is a polishing pond and did not consider it to meet the definition of a CCR surface impoundment, therefore, an invoice was never issued for this Pond. For this and future correspondence East Ash Pond Cell 1 is the southernmost CCR surface impoundment adjacent to Route 78, East Ash Pond Cell 2 is the northern most CCR surface impoundment adjacent to Route 78, East Ash Pond Cell 3 is the eastern most CCR surface impoundment and East Ash Pond Cell 4 is the polishing pond located along Route 78 and between the three CCR surface impoundments.

**Havana Station W125020004-02 East Ash Pond Cell 2**

- January 6, 2020 data submitted by Dynege/Luminant demonstrates East Pond Cell 1 and East Pond Cell 4 are in operation while East Pond Cell 2 is under construction.
- Permit #1997EN4002 Permits East Pond Cell 2 as individual pond.
- 40 CFR 257 allows the use of a single groundwater monitoring system for multiple CCR surface impoundments, but does not eliminate each as a CCR surface impoundment when a single groundwater monitoring system is used.

Based on the above, the Illinois EPA does not consider the East Fly Ash Pond to have completed closure. The appropriate fee for a CCR surface impoundment that has not completed closure is \$75,000.00.

**Havana Station W125020004-03 East Ash Pond Cell 3**

- January 6, 2020 data submitted by Dynege/Luminant demonstrates that construction of East Pond Cell 3 had not started while East Pond Cell 2 is under construction and East Ash Pond Cells 1 and 4 are operating.
- Permit #2002EN0487 Permits East Pond Cell 3 as individual pond.
- 40 CFR 257 allows the use of a single groundwater monitoring system for multiple CCR surface impoundments, but does not eliminate each as a CCR surface impoundment when a single groundwater monitoring system is used.

Based on the above, the Illinois EPA does not consider the East Fly Ash Pond to have completed closure. The appropriate fee for a CCR surface impoundment that has not completed closure is \$75,000.00.

**Hennepin Station**

Permit #1988EN1385 identifies Ponds 1 and 3 as separate CCR surface impoundments, along with the creation of the West Secondary CCR surface impoundment ("Polishing Pond"). Permit #1989EN3133 raised the outer berm of Ponds 1 and 3 and began their operation as a single CCR unit. However, the West Secondary Ash Pond continued to be operated, then later maintained independently as a CCR surface impoundment. These circumstances are confirmed by the separate November 18, 2015 Cert. of Closure Plans (with different methods of closure for each pond) and January 18, 2017 Cert. of dam inspections, for both the Old West Ash Pond and Old West Secondary Ash Pond submitted pursuant to 40 CFR 257. The Closure/Post-Closure Care Plan for the Old West Ash Pond and Old West Secondary Ash Pond approved by the Illinois EPA June 19,

2018, also proposes different types of closure. Photography provided by Dynegy/Luminant January 6, 2020, confirms that the Illinois EPA approved closure has been initiated.

**Hennepin Station W1550100002-01 West Pond 1 and W1550100002-02 West Pond 3**

- West Pond 1 and West Pond 3 were initially constructed and operated as two ponds, but subsequently had a common berm around the outside and were operated and are being closed as a single CCR surface impoundment.

Based on the above, the Illinois EPA concurs that both areas are a single pond, for which the appropriate fee has been paid.

**Hennepin Station W1550100002-03 West Secondary Ash Pond**

- In spite of this being a secondary or “polishing” pond, the Closure Plan certified for 40 CFR 257 estimates a volume of 25,000 cubic yards of CCR would be removed. This volume of CCR is significant.

Based on the above, the Illinois EPA does not consider the East Fly Ash Pond to have completed closure. The appropriate fee for a CCR surface impoundment that has not completed closure is \$75,000.00.

**Vermilion Station W1838000002-03 Old East Ash Pond**

- In 1973 the NPDES Permit for Vermilion Station discusses discharge from a single ash pond and contains a figure displaying the two celled Old East Ash Pond.
- Permit #1988EA1282 identifies a new North Ash Pond, as a unique impoundment.

Based on the above, the Illinois EPA does not consider the Old East Ash Pond to have completed closure. The appropriate fee for a CCR surface impoundment that has not completed closure is \$75,000.00.

**Total Fees Due to the Illinois EPA**

Baldwin Energy Center	
W1578510001-02 East Fly Ash Pond	\$75,000.00
W1578510001-03 West Fly Ash Pond	\$75,000.00
Coffeen Station	
W1350150004-04 GMF Recycle Pond	\$75,000.00
Duck Creek Station	
W0578010001-05 GMF Recycle Pond	\$75,000.00*
Joppa Station	
W1270100004-01 West Pond 1	\$75,000.00
Havana Station	
W1250200004-02 East Ash Pond Cell 2	\$75,000.00
W1250200004-03 East Ash Pond Cell 3	\$75,000.00
Hennepin Station	
W1550100002-01 West Pond 1	\$0.00
W1550100002-02 West Pond 3	#
W1550100002-03 West Secondary Ash Pond	\$75,000.00
Vermilion Station	
W1838000002-03 Old East Ash Pond	\$75,000.00
<b>Total</b>	<b>\$675,000.00</b>

\*The Illinois EPA is allowing Dynegy/Luminant to make a further demonstration that this pond does not meet the definition of a CCR surface impoundment, which could reduce the total by \$75,000.00.

#The Illinois EPA has determined that W1550100002-01 West Pond 1 and W1550100002-02 West Pond 3 are a single CCR surface impoundment, for which the fee has already been paid.

Given the above analyses, Illinois EPA requests that within 30 days Dynegy/Luminant either, submit the fees that are due, or arrange a meeting or conference call to discuss any surface impoundments still in dispute. Please note that the Illinois EPA may utilize any available collection procedures to recover unpaid fees.

Please submit all payments responsive to this notification to: Illinois EPA, Fiscal Services #2, P.O. Box 19276, Springfield, Illinois 62794-9276. If you have any questions concerning the information provided above, please call 217-782-1020.

Sincerely,

A handwritten signature in blue ink that reads "William E. Buscher".

William E. Buscher, P.G.  
Manager, Hydrogeology and Compliance Unit  
Division of Public Water Supplies  
Bureau of Water

cc: Darin LeCrone  
Rex Gradeless  
Ai Kindlon  
Records

# **Exhibit**

# **C**



**PHIL MORRIS**  
**Dynergy Midwest Generation, LLC**  
**Illinois Power Resources Generating, LLC**  
**Illinois Power Generating Company**  
**Kincaid Generation, L.L.C.**  
**Electric Energy, Inc**  
**Luminant**  
**1500 Eastport Plaza Drive**  
**Collinsville, IL 62234**

April 28, 2020

William E. Buscher, P.G.  
Manager, Hydrogeology and Compliance Unit  
Division of Public Water Supplies  
Bureau of Water  
Illinois Environmental Protection Agency

Dear Mr. Buscher:

I write in response to your March 24, 2020 letter, received on March 30, 2020, regarding invoices for coal combustion residuals ("CCR") surface impoundments operated by Dynergy Midwest Generation, LLC; Kincaid Generation, L.L.C.; Illinois Power Resources Generating, LLC; Illinois Power Generating Company; and Electric Energy, Inc. (collectively "Dynergy") ("IEPA's Letter"). Illinois EPA ("IEPA" or the "Agency") initially issued invoices for 30 separate CCR surface impoundments. On January 30, 2020, Dynergy provided a response letter ("Dynergy's Letter") and payment of \$75,000 each for 20 CCR surface impoundments, totaling \$1,500,000. Dynergy, however, contested the fees for the remaining ten impoundments (as identified by IEPA).

IEPA's Letter provides the Agency's "preliminary analysis" that no additional fees are required for one of the ten contested units, and requested a demonstration that another unit does not contain CCR. The only units for which IEPA accepted Dynergy's demonstration that the units are a single CCR surface impoundment were Hennepin West Ponds 1 and 3. IEPA agreed that those two units are a single CCR surface impoundment because they "had a common berm around the outside and were operated and are being closed as a single surface impoundment." For the reasons stated below, Dynergy continues to contest the Agency's invoices for the other units described in Dynergy's Letter and IEPA's Letter.

Throughout the process of developing the Part 845 rules and determining the fees appropriate under Section 22.59(j) of the Illinois Environmental Protection Act ("Act"), Dynergy has greatly appreciated the Agency's willingness to discuss and to consider additional technical and legal information. As suggested in IEPA's Letter, Dynergy therefore requests a meeting or conference call with the Agency to discuss the remaining surface impoundments that are still in dispute. Below, and in the meeting to come, Dynergy

will seek to clarify and provide additional information regarding the units discussed in IEPA's Letter. We hope that our ongoing communication with the Agency will continue to reduce the number of units that remain in dispute.

**Baldwin Energy Center:**

Dynegy's Letter explained that the East and West Fly Ash Ponds at the Baldwin Energy Center are a single unit. As demonstrated on the maps provided in Dynegy's Letter—and on the additional maps presented as Attachments 1-4 to this letter—originally, the Baldwin Ash Pond unit was constructed in 1967 as a single, 450 acre, impoundment. That original impoundment was built with a single outer berm on the east, south, and west sides of the unit, which surrounds what are known today as the East and the West Fly Ash portions of the unit. As shown on the Attachments, that original perimeter berm has been in the same location throughout the life of the unit. Over time, because the impoundment was so large, internal, surficial berms were used to efficiently manage water and ash within the impoundment. By 1981, separator berms were also added to separate the Fly Ash Pond System from the Bottom Ash Pond. As noted in Dynegy's Letter, the entire Baldwin Fly Ash Pond is being closed as a single impoundment, pursuant to a closure plan approved by IEPA on August 16, 2016.<sup>1</sup> Therefore, the Baldwin Fly Ash Pond should be treated consistently with Hennepin West Ponds 1 and 3, which the Agency agreed are a single impoundment, because they “had a common berm around the outside and were operated and are being closed as a single surface impoundment.”

IEPA's Letter does not address any of the facts regarding the construction, operation, and closure of the Baldwin Fly Ash Pond. Instead, it merely references two instances in which the West Fly Ash Pond and East Fly Ash Pond were separately identified. Due to the large size of the Baldwin Ash Pond, Dynegy has occasionally used a naming convention for ease of reference to track conditions and direct work within the unit. But merely referring to one area of a unit discretely does not change the facts on the ground—which demonstrate that the impoundment was constructed, operated, and is being closed, as a single treatment unit.

**Coffeen Power Station:**

Dynegy's Letter stated that the GMF Recycle Pond at the Coffeen Power Station is part of a single, continuous surface water treatment system with the GMF Pond, with a single NPDES permitted outfall and a single groundwater monitoring system. IEPA's Letter does not address any of these facts regarding this unit. Instead, IEPA's Letter merely states that “CCR had been placed in” the GMF Recycle Pond, which Dynegy does not contest. The GMF Pond and GMF Recycle Pond are therefore a single CCR surface impoundment, under the definition provided in the Act.

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<sup>1</sup> In fact, this approved closure plan states “The East Fly Ash Pond, the Old East Fly Ash Pond and the West Fly Ash Pond are three interconnected Coal Combustion Residuals (CCR) surface impoundments that are essentially three cells within one impoundment.” Closure and Post-Closure Care Plan for the Baldwin Fly Ash Pond System at ES-1 (April 7, 2016). Similarly, the GMZ Application for the facility also states that “[t]he three ponds comprising the Baldwin Fly Ash Pond System are interconnected and are essentially three cells within one large pond.” Groundwater Management Zone Application at 2-3 (Mar. 31, 2016).

**Duck Creek GMF Recycle Pond:**

Dynegy's Letter stated that the GMF Recycle Pond at the Duck Creek Power Station does not contain CCR waste. IEPA's Letter requests that Dynegy submit an "environmental media sampling plan of the bottom contents" of the Duck Creek GMF Recycle Pond to demonstrate that the unit does not contain CCR. While such a plan may be necessary if the Duck Creek GMF Recycle Pond were in fact a separate impoundment, Dynegy continues to contest IEPA's preliminary determination that it is in fact a separate impoundment. Like the Coffeen GMF Pond, the Duck Creek GMF Recycle is part of a single, continuous surface water treatment system subject to a single NPDES permitted outfall and a single groundwater monitoring system. IEPA's Letter does not address any of these facts regarding this unit.

Should the Agency continue to insist that the unit is not part of a larger single impoundment, Dynegy wishes to work with the Agency to determine a satisfactory method to confirm the lack of CCR in the Duck Creek GMF Recycle Pond. However, because the unit is lined, and it is the company's understanding that there is not an appreciable amount of sediment within the unit, Dynegy is concerned that physical sampling runs the risk of damaging the unit's liner. Additionally, physical sampling of small amounts of unconsolidated sediments within a unit is often impracticable. Instead, Dynegy proposes to use a bathymetric survey to determine the location and approximate quantity of any sediment present in the bottom of the Duck Creek GMF Recycle Pond. If the bathymetric survey demonstrates an appreciable amount of sediment in the unit, Dynegy would then propose a targeted physical sampling plan to determine the nature of that material.

**Havana Power Station:**

Dynegy's Letter stated that the four cells of the East Ash Pond at the Havana Power Station are a continuous surface water treatment system, with a single NPDES permitted outfall and a single groundwater monitoring system. IEPA's Letter does not address any of these facts regarding this unit. Instead, IEPA's Letter merely cites instances where each of the cells were individually permitted. Accordingly, the East Ash Pond is a single CCR surface impoundment, under the definition provided in the Act.

**Hennepin Power Station:**

Dynegy's Letter stated that the Hennepin West Ash Ponds 1, 3, and West Secondary Pond are part of the same CCR surface impoundment. While IEPA's Letter accepted Dynegy's conclusion that the Hennepin West Ponds 1 and 3 are a single CCR surface impoundment, it did not accept Dynegy's conclusion that the West Secondary Ash Pond is part of that same CCR surface impoundment. As explained in Dynegy's letter, the West Secondary Pond is part of the same, continuous water treatment system as West Ash Ponds 1 & 3, with a single NPDES permitted outfall. Given that these facts remain unrefuted, all three Hennepin West units—including the West Secondary Pond—are part of a single CCR surface impoundment, under the definition provided in the Act.

**Joppa Power Station:**

Dynegy's Letter states that the Joppa West Ash Pond is not a "CCR surface impoundment" because it is a closed unit, which is no longer capable of forming a hydraulic head and impounding water. IEPA's Letter does not address any of the facts or legal arguments Dynegy/ presented regarding this unit. Instead, IEPA's Letter merely cites two documents which discuss the West Ash Pond. Neither of these

documents, however, discuss whether the West Ash Pond is a “CCR surface impoundment.” In fact, each of those documents predate not only the adoption of that definition within the Act, but also the establishment of the identical definition within the federal CCR Rule. Further, neither document discusses the key facts at issue—whether the West Ash Pond continues to impound water and form a hydraulic head. Thus, the West Ash Pond is not a CCR surface impoundment, under the definition provided in the Act.

**Vermilion Power Station:**

Dynegy’s Letter states that the North Ash Pond and the Old East Ash Pond at the Vermilion Power Station are a single CCR surface impoundment. Aerial maps and boring logs provided with Dynegy’s Letter demonstrated that ash has been present within the footprint of both the current Old East Ash Pond *and* the current North Ash Pond since 1955. While these areas were later referred to as separate impoundments, they were never physically separated. As demonstrated by the boring logs provided in Dynegy’s Letter, throughout the life of the North Ash Pond and Old East Ash Pond there has been no separation between the units—they contain a single continuous deposit of ash and share a common outer berm. Therefore, the North and Old East Ash Ponds should be treated consistently with Hennepin West Ponds 1 and 3, which the Agency agreed are a single impoundment.

IEPA’s Letter does not address any of the facts provided regarding the physical properties of the Vermilion Old East and North Ash Pond system. Instead, IEPA’s Letter merely cites instances where each of the cells were individually permitted. These references do not contradict the basic physical properties of the Old East and North Ash Pond system. Therefore, the North and Old East Ash Ponds are a single CCR surface impoundment, under the definition provided in the Act.

**Process for Resolving any Remaining Disputes:**

Finally, Dynegy provides comments regarding the appropriate process for resolving any ongoing disputes regarding the proper interpretation of the Act’s definition of “CCR surface impoundment” and the fees required pursuant to Section 22.59(j). As an initial matter, because IEPA’s Letter purports to provide “preliminary analysis,” and requests a “meeting or conference call to discuss any surface impoundments still in dispute,” Dynegy/ does not interpret IEPA’s Letter as a final determination by the Agency.

In the event that the Agency does reach a final determination that is in conflict with the positions expressed in this letter, Dynegy would appreciate an opportunity to discuss the appropriate procedure for resolving any remaining disputes with the Agency.

One such procedure could be the Violation Notice process under Section 31 of the Act. Section 31 provides a well-known process that would provide certainty to all parties.<sup>2</sup> It would also allow the Agency and Dynegy to enter into formal negotiations to resolve any remaining disputes regarding the interpretation of Sections 3.143 and Section 22.59(j) of the Act. And, if necessary, Section 31 provides a

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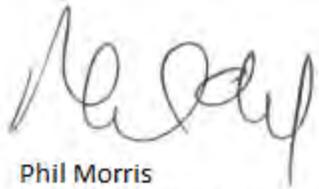
<sup>2</sup> Use of the Section 31 process to resolve fee disputes is consistent with Agency practice. For example, IEPA’s website suggests that enforcement action under the Act is required for disputes regarding NPDES fees.

mechanism for obtaining judicial determinations regarding the proper interpretation and implementation of the Act.<sup>3</sup>

**Conclusion:**

Dynegy appreciates the continued dialog with the Agency regarding these invoices. We look forward to discussing the remaining disputes. Please let us know when you would like to schedule that phone or video call and if there is any further information that would be useful in advance of that call.

Sincerely,

A handwritten signature in black ink, appearing to read "Phil Morris", is written over a light gray rectangular background.

Phil Morris  
Senior Director - Environmental

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<sup>3</sup> In contrast, any "collection procedures" besides those provided by Section 31 may create additional uncertainty and require unnecessary litigation to ensure that appeal rights and judicial review are preserved.

Enclosures.

Attachment 1. Baldwin Ash Pond Construction Drawings (Annotated)- 1967

Attachment 2. Baldwin USGS Quadrangle Maps (Annotated) – 1972

Attachment 3. Baldwin Aerial (Annotated) – 1981

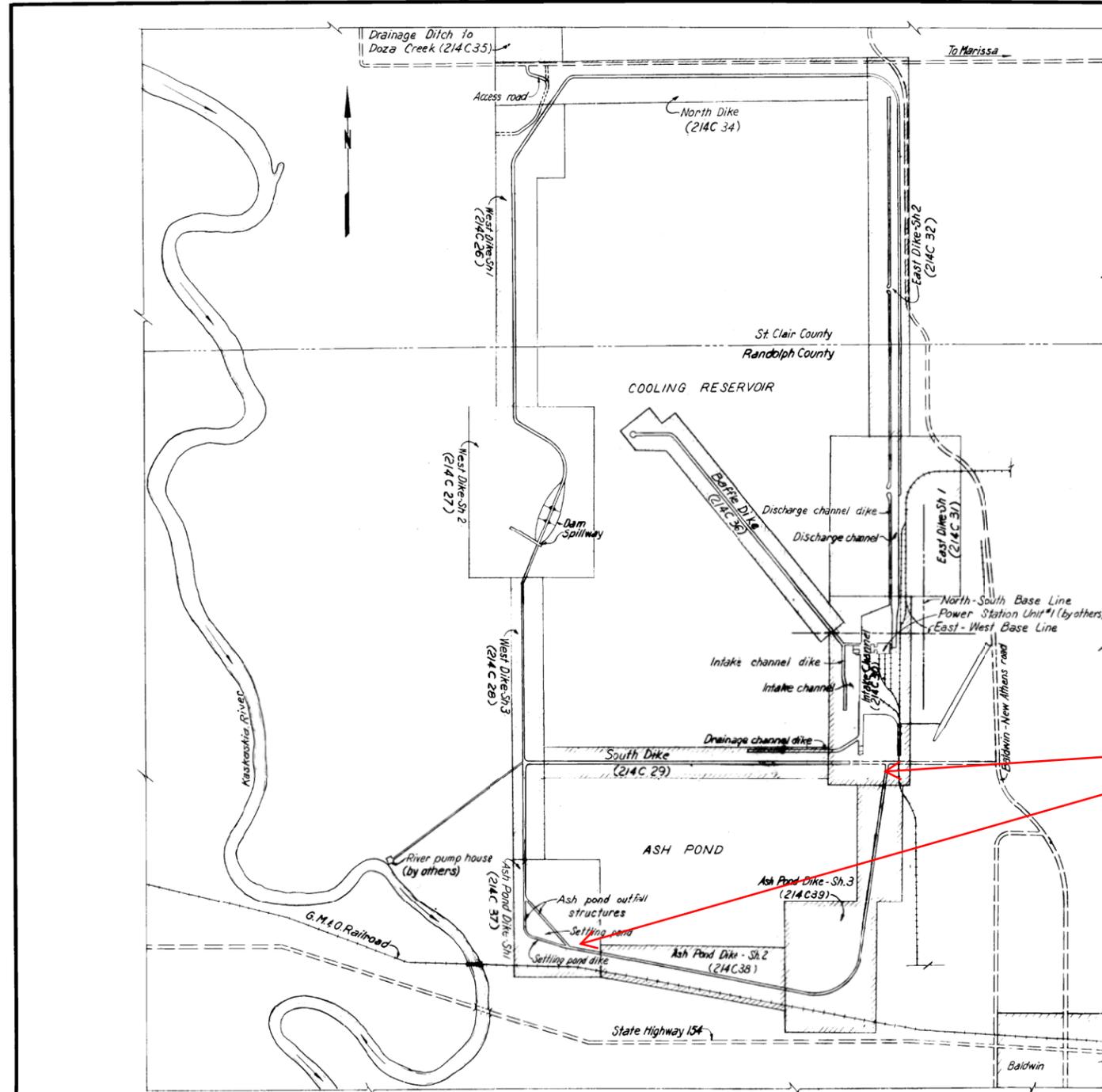
Attachment 4. Baldwin Aerial (Annotated) – 2015

Attachment 5. Baldwin Aerial (Annotated) – 2015  
Attachment 6. Baldwin Aerial (Annotated) – 2015  
Attachment 7. Baldwin Aerial (Annotated) – 2015  
Attachment 8. Baldwin Aerial (Annotated) – 2015  
Attachment 9. Baldwin Aerial (Annotated) – 2015  
Attachment 10. Baldwin Aerial (Annotated) – 2015  
Attachment 11. Baldwin Aerial (Annotated) – 2015  
Attachment 12. Baldwin Aerial (Annotated) – 2015

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Attachment 1.

Baldwin Ash Pond Construction Drawings (Annotated) - 1967



KEY TO DIKE DRAWINGS

DRAWING LIST

- B-57 DRAINAGE STRUCTURE TO DOZA CREEK
- B-60 ASH POND OUTFALL - STRUCTURES
- C21 BORING LOGS - SHEET 7
- C22 TEST PITS & TRENCHES - SHEET 1
- C23 TEST PITS & TRENCHES - SHEET 2
- C24 LABORATORY DATA - SHEET 1
- C25 LABORATORY DATA - SHEET 2
- C26 WEST DIKE - SHEET 1
- C27 WEST DIKE - SHEET 2
- C28 WEST DIKE - SHEET 3
- C29 SOUTH DIKE
- C30 INTAKE CHANNEL
- C31 EAST DIKE - SHEET 1
- C32 EAST DIKE - SHEET 2
- C33 EAST DIKE - SHEET 3
- C34 NORTH DIKE
- C35 DRAINAGE DITCH TO DOZA CREEK
- C36 BAFFLE DIKE
- C37 ASH POND DIKE - SHEET 1
- C38 ASH POND DIKE - SHEET 2
- C39 ASH POND DIKE - SHEET 3
- C40 ASH POND DIKE - SHEET 4
- C41 DAM - PLAN
- C42 DAM - SECTIONS & DETAILS
- C43 DAM & SPILLWAY EXCAVATION
- C44 SPILLWAY - PLAN & SECTIONS
- C45 SPILLWAY - SECTIONS
- C46 SPILLWAY - DETAILS
- C47 SPILLWAY - REINFORCEMENT - SHEET 1
- C48 SPILLWAY - REINFORCEMENT - SHEET 2
- C19 BORING LOGS - SHEET 5
- C20 BORING LOGS - SHEET 6
- C18 BORING LOGS - SHEET 4
- C17 BORING LOGS - SHEET 3
- C16 BORING LOGS - SHEET 2
- C15 BORING LOGS - SHEET 1
- C14 LOCATION OF EXPLORATION, BORROW & GRADING
- C13 DAM & DIKE ALIGNMENT
- C12 LOCATION & PROJECT PLAN
- C11 INDEX

original perimeter berm limits

DATE	NO	DISTRIBUTION		
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PRINTS				
BY	DATE	CHKD. DATE		
OSW	8/28/67	8/28/67		
OSW	8/28/67	8/28/67		
OSW	8/28/67	8/28/67		
DEPT. GROUP SECT. DEPT. LEADER HEAD HEAD HEAD				
CIVIL	OSW	WFA	WFA	WFA
MECH.				
ELECT.				
PLAN.				
STAFF	WFA	WFA	OSW	OSW



Scale 500 0 2000 Feet

ILLINOIS POWER COMPANY  
DECATUR, ILLINOIS

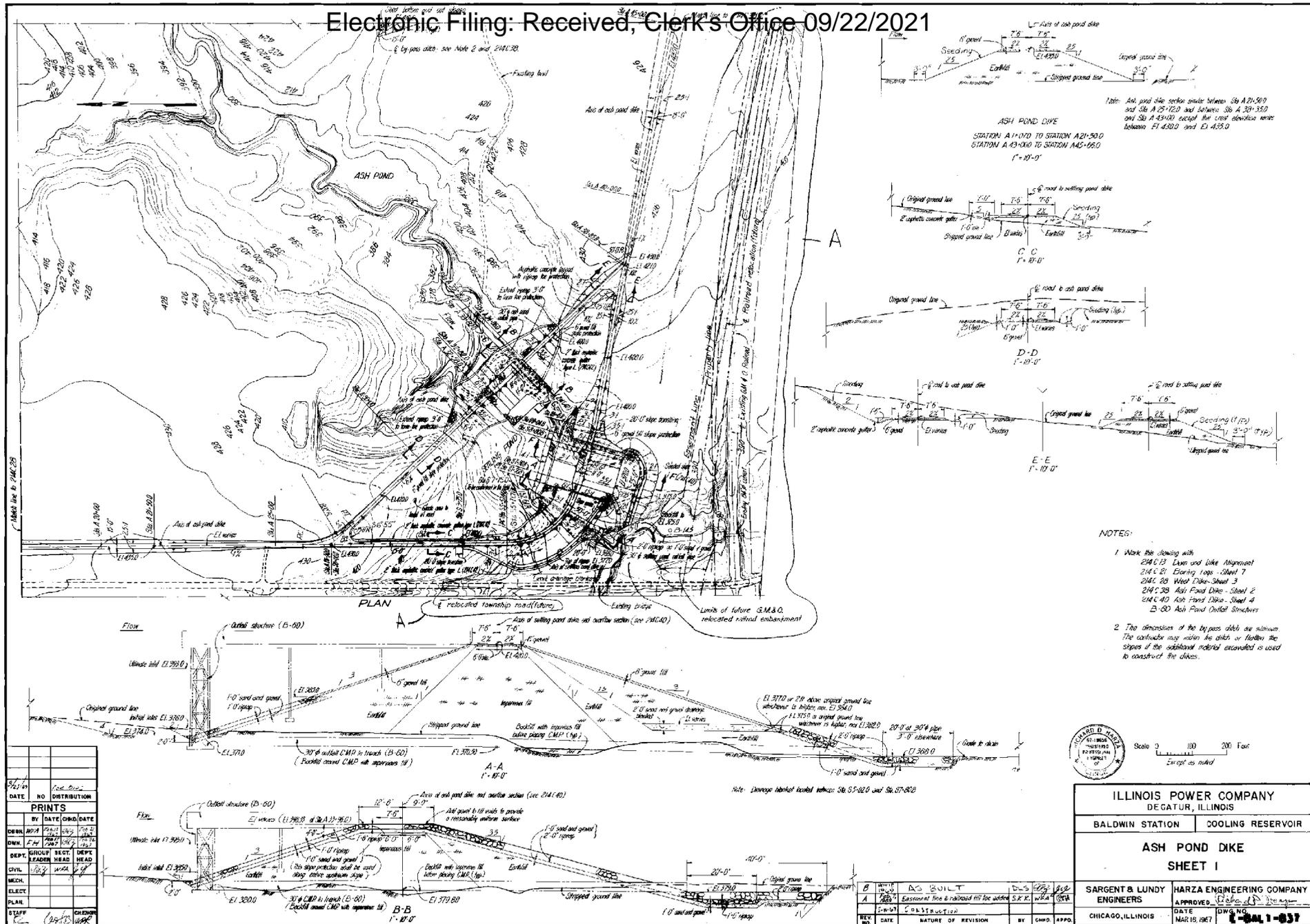
BALDWIN STATION | COOLING RESERVOIR

INDEX

SARGENT & LUNDY ENGINEERS  
CHICAGO, ILLINOIS

HARZA ENGINEERING COMPANY  
APPROVED: [Signature]  
DATE: MAR 16, 1967  
E-BAL1-B11

REV. NO.	DATE	NATURE OF REVISION	BY	CHKD.	APPD.
1	Nov 18 1969	AS BUILT	DLS	OSW	OSW
2	5-10-67	CONSTRUCTION			



ASH POND DIKE  
STATION A+00 TO STATION A21+50  
STATION A+43+00 TO STATION A45+00  
1" = 10'-0"

Note: Ash pond dike section under between Sta A21+50 and Sta A+25+00 and between Sta A+30+350 and Sta A+43+00 except the crest elevations near between E1+420.0 and E1+435.0

- NOTES:
1. Mark this drawing with:  
214C13 Linn and Lake Alignment  
214C18 Daring Taps - Sheet 7  
214C20 West Dike - Sheet 3  
214C28 Ash Pond Dike - Sheet 2  
214C40 Ash Pond Dike - Sheet 4  
B-00 Ash Pond Outlet Structures
  2. The dimension of the bypass dike as minimum. The contractor may widen the ditch or flatten the slopes of the additional material excavated is used to construct the dike.



Scale 0 100 200 Feet  
Except as noted

DATE	NO	DISTRIBUTION
3/21/64		For Dist.
<b>PRINTS</b>		
BY	DATE	CHKD/DATE
DRAWN	WPA	WPA
CHKD	WPA	WPA
DESIGNED	WPA	WPA
CHECKED	WPA	WPA
APPROVED	WPA	WPA
DATE	NO	DISTRIBUTION

NO.	DATE	BY	REVISION
1	3/21/64	WPA	AS BUILT
2	3/21/64	WPA	EXAMINATION OF RAILROAD FILE FOR ADJUST. S.K.Z.
3	3/21/64	WPA	CONSTRUCTION

**ILLINOIS POWER COMPANY**  
DECATUR, ILLINOIS

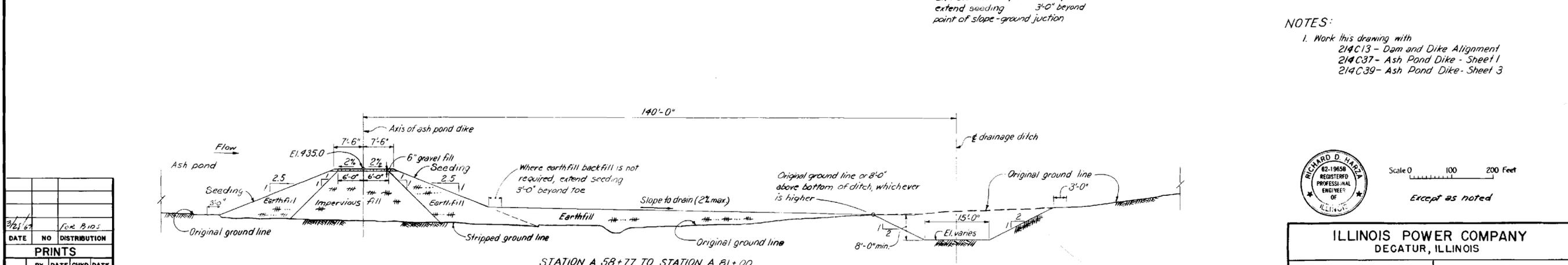
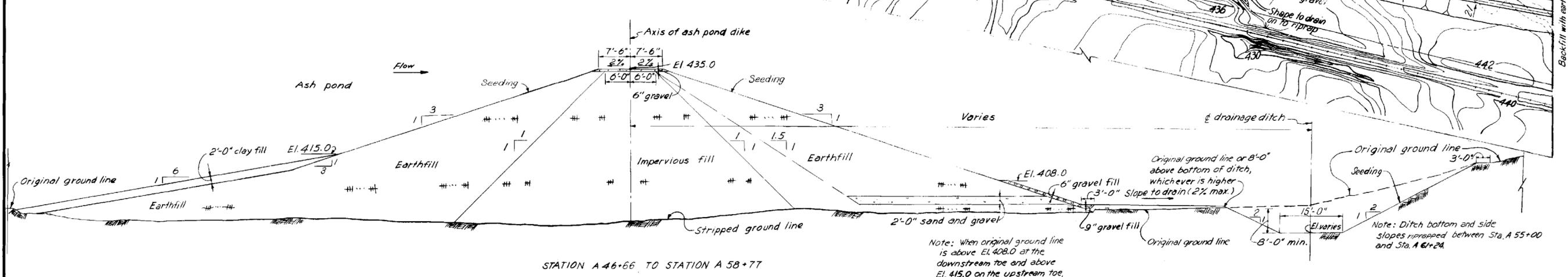
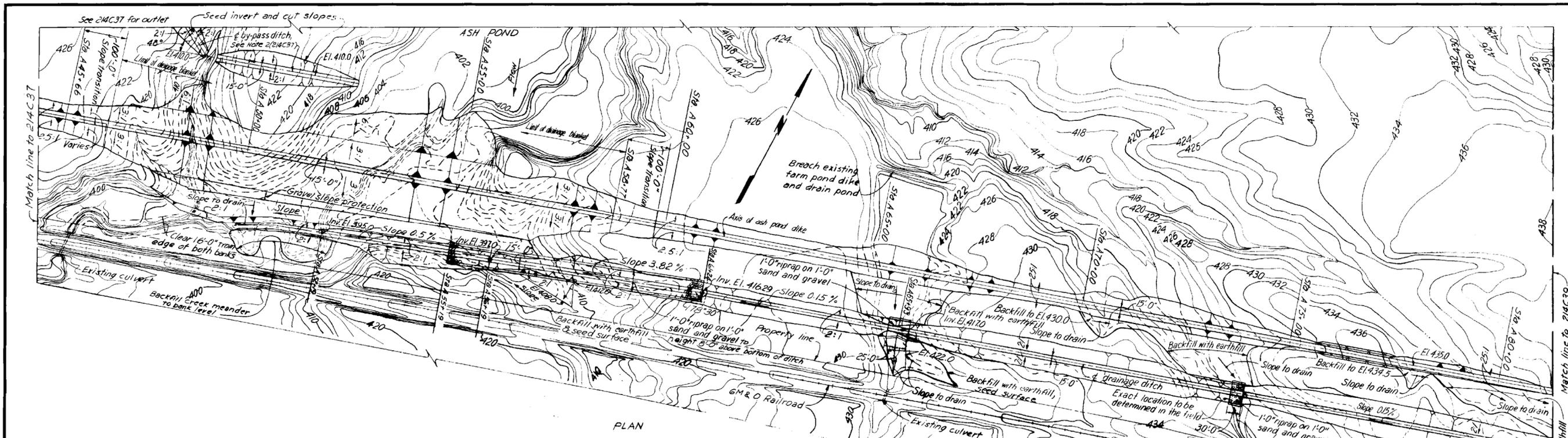
**BALDWIN STATION**      **COOLING RESERVOIR**

**ASH POND DIKE**  
**SHEET 1**

**SARGENT & LUNDY ENGINEERS**  
CHICAGO, ILLINOIS

**HARZA ENGINEERING COMPANY**  
APPROVED: *[Signature]*  
DATE: MAR 18 1967  
DRAWN BY: S.L.B. 1-1037

S & L B-37      HEC 24C37



Note: When original ground line is above El. 408.0 at the downstream toe and above El. 415.0 on the upstream toe, extend seeding 3'-0" beyond point of slope-ground junction

- NOTES:
- Work this drawing with 214C13 - Dam and Dike Alignment, 214C37 - Ash Pond Dike - Sheet 1, 214C39 - Ash Pond Dike - Sheet 3

DATE	NO.	DISTRIBUTION
3/2/67		FOR BIDS

BY	DATE	CHKD.	DATE
DBSN	2/21/67	WJA	2/23/67
DWN.	2/21/67	WJA	2/23/67

DEPT.	GROUP LEADER	SECT. HEAD	DEPT. HEAD
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MECH.			
ELECT.			
PLAN.			
STAFF	WJA	CHENOR	WJA

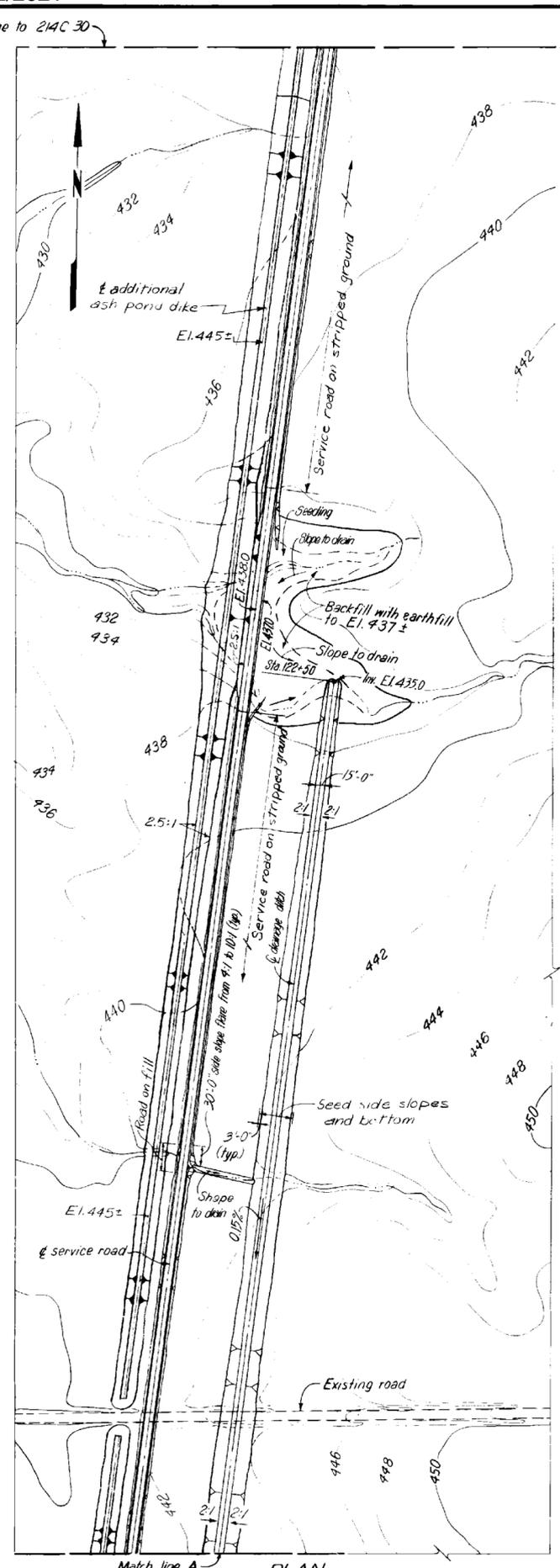
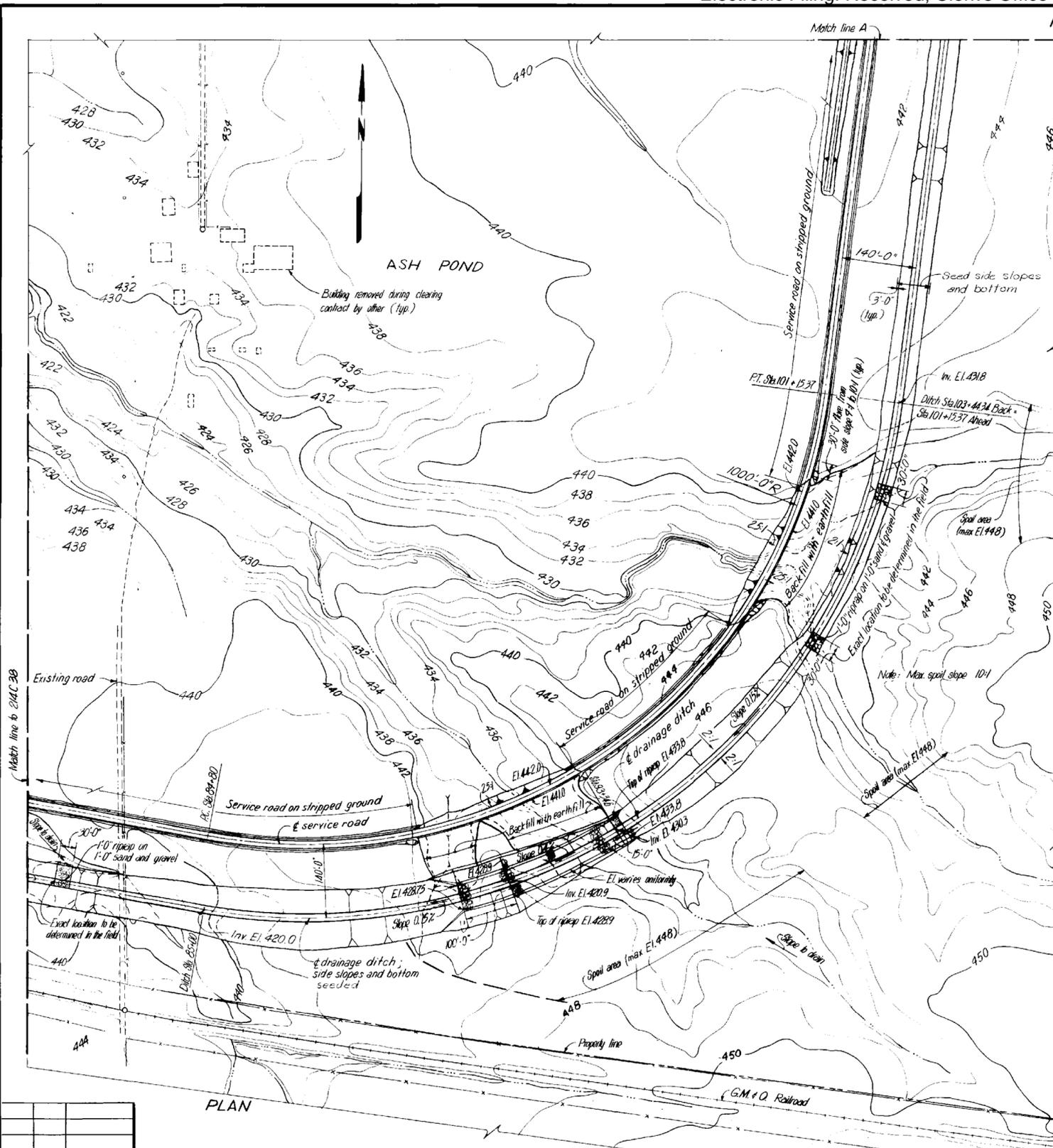


Scale 0 100 200 Feet  
Except as noted

ILLINOIS POWER COMPANY DECATUR, ILLINOIS	
BALDWIN STATION	COOLING RESERVOIR
ASH POND DIKE SHEET 2	
SARGENT & LUNDY ENGINEERS CHICAGO, ILLINOIS	HARZA ENGINEERING COMPANY APPROVED: <i>Richard D. Harza</i> DATE: MAR 16, 1967 DWG. NO. E-BAL 1-B38
S&L B-38	HEC 24C38

REV. NO.	DATE	NATURE OF REVISION	BY	CHKD.	APPD.
A	NOV 18 1969	AS BUILT	DLS	WJA	WJA
	5-10-67	CONSTRUCTION			

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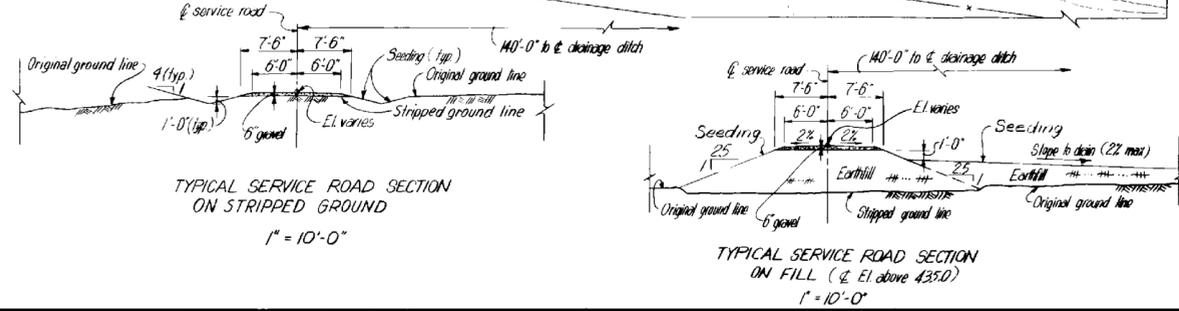
NOTES:  
 1. Work this drawing with:  
 214C13 Dam and Dike Alignment  
 214C30 Intake  
 214C38 Ash Pond Dike - Sheet 2



Scale 0 100 200 Feet  
 Except as noted

ILLINOIS POWER COMPANY DECATUR, ILLINOIS	
BALDWIN STATION	COOLING RESERVOIR
<b>ASH POND DIKE SHEET 3</b>	
SARGENT & LUNDY ENGINEERS	HARZA ENGINEERING COMPANY
CHICAGO, ILLINOIS	APPROVED: <i>Richard D. Harza</i>
DATE: MAR 16, 1967	DWG. NO. E-BAL1-B39
S&I. B-39	HFC 214C39

DATE	NO	DISTRIBUTION
PRINTS		
BY	DATE	CHKD. DATE
DSM	FEB 18 1967	WFB
DWN	FEB 23 1967	WFB
DEPT. GROUP SECT. DEPT.	LEADER HEAD HEAD	
CIVIL	WFB	WFB
MECH.		
ELECT.		
PLAN.		
STAFF	WFB	CHENOR



REV. NO.	DATE	NATURE OF REVISION	BY	CHKD.	APPD.
1	5-18-67	CONSTRUCTION			
2	1-13-69	AS BUILT	D.S.	WFB	

31



Attachment 2.

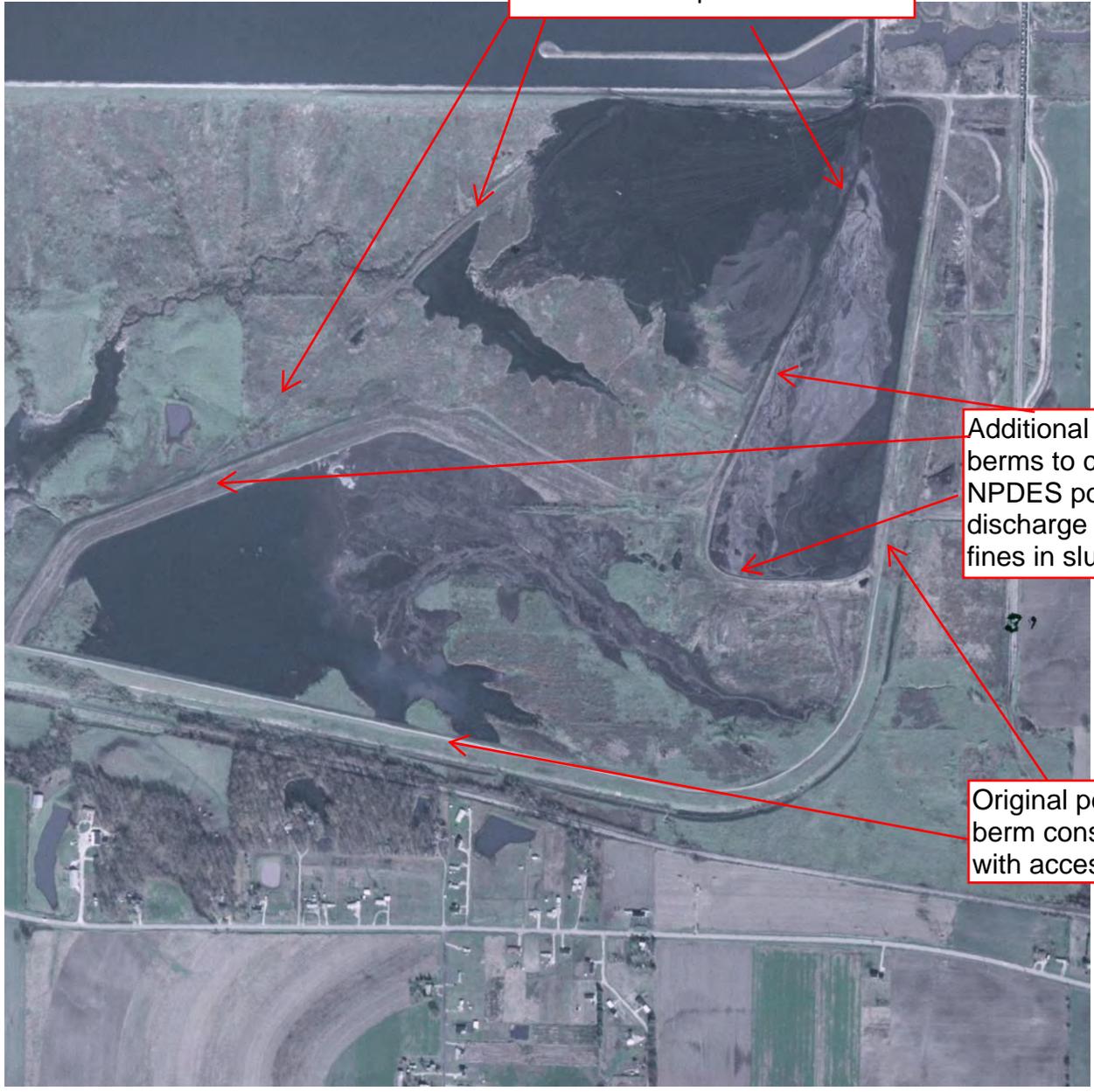
Baldwin USGS Quadrangle Maps (Annotated) – 1972



Attachment 3.

Baldwin Aerial (Annotated) - 1981

Surficial berms as shown on  
1972 Quad map



Additional surficial  
berms to control  
NPDES point source  
discharge and control  
fines in sluicing

Original perimeter  
berm construction  
with access road

Attachment 4.

Baldwin Aerial (Annotated) - 2015

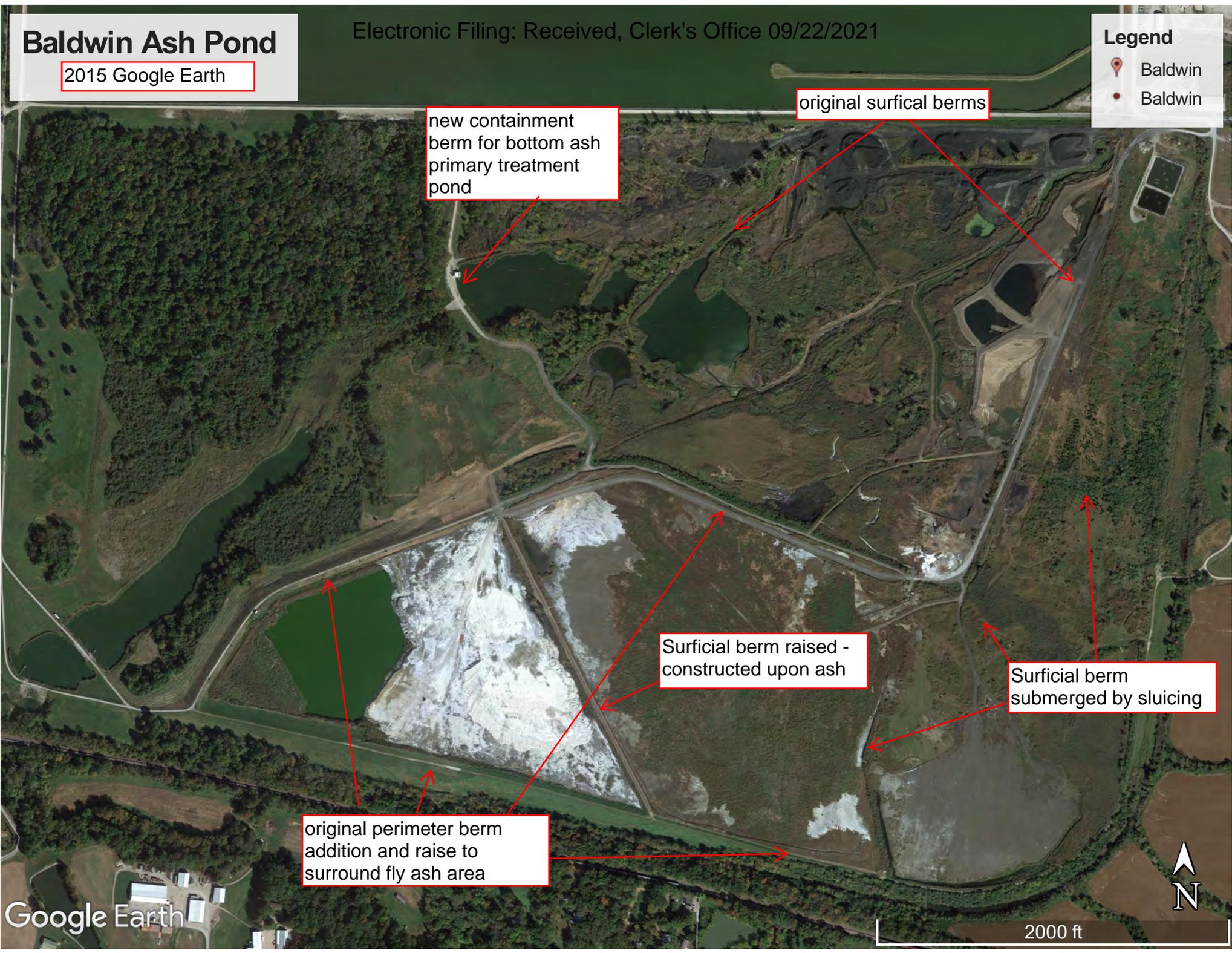
# Baldwin Ash Pond

Electronic Filing: Received, Clerk's Office 09/22/2021

2015 Google Earth

## Legend

-  Baldwin
-  Baldwin



new containment berm for bottom ash primary treatment pond

original surficial berms

Surficial berm raised - constructed upon ash

Surficial berm submerged by sluicing

original perimeter berm addition and raise to surround fly ash area

Google Earth



2000 ft

# **Exhibit**

# **D**

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
 ) AS 2021-004  
Petition of Illinois Power Resources ) (Adjusted Standard)  
Generating, LLC for an Adjusted Standard from )  
35 Ill. Adm. Code Part 845 or, in the alternative, )  
s Finding of Inapplicability )  
 )

**AFFIDAVIT OF MELINDA K. SHAW**

I, Melinda K. Shaw, certify under penalty of perjury pursuant to Section 1-109 of the Illinois Code of Civil Procedure, 735 ILCS 5/1-109, that the statements set forth in this affidavit are true and correct, and further state that if called upon to testify in this matter, I would competently testify as follows:

1. I am an Environmental Protection Geologist employed by the Illinois Environmental Protection Agency (the "Illinois EPA") in the Bureau of Water, Groundwater Section, Hydrogeology and Compliance Unit (HCU), and I am located in Springfield, Illinois. Cumulatively, I have worked for the Illinois EPA for approximately eight years in various remediation programs.

2. As an Environmental Protection Geologist in the HCU, my duties include, but are not limited to, working on the development and implementation of rules and regulations related protecting, monitoring, and restoring groundwater in Illinois, and providing technical expertise to the Bureau of Water Permit Section on groundwater issues. As part of these duties, I served as a witness on behalf of the Groundwater Section in support of Illinois EPA's proposed Part 845 throughout the Illinois Pollution Control Board's rulemaking proceedings in R2020-019.

3. I have reviewed the Petition for an Adjusted Standard from 35 Ill. Adm. Code Part 845 or, in the alternative, a Finding of Inapplicability as to the GMF Recycle Pond located at the Duck Creek Station ("Petition") filed by Illinois Power Resources Generating, LLC ("IPRG").

4. I have personal knowledge of the facts set forth in Illinois EPA's Recommendation to the Board as to Petitioner's request for a finding that Part 845 does not apply to the GMF Recycle Pond located at the Powerton Station.

5. Attached to the Recommendation as Exhibit A ("Rec. Ex. A") is an Illinois EPA Division of Water Pollution Control invoice related to Duck Creek Station, dated December 16, 2019. This invoice is kept by the Illinois EPA in the regular course of business, and it is the regular course of business of the Illinois EPA to transmit the information thereof to be included in such a record. Illinois EPA Division of Water Pollution Control invoice related to the Duck Creek Station, dated December 16, 2019, and attached to the Recommendation as Exhibit A, is an exact duplicate of the original.

6. Attached to the Recommendation as Exhibit B ("Rec. Ex. B") is a March 24, 2020 Illinois EPA letter to Luminant, parent company of IPRG. The March 24, 2020 letter is kept by the Illinois EPA in the regular course of business, and it is the regular course of business of the Illinois EPA to transmit the information thereof to be included in this record. The March 24, 2020 letter, attached to the Recommendation as Exhibit B, is an exact duplicate of the original.

7. Attached to the Recommendation as Exhibit C ("Rec. Ex. C") is an April 28, 2020 Luminant letter to Illinois EPA, provided in response to Rec. Ex. A. This letter was submitted to Illinois EPA in the regular course of business, and it is the regular course of business of the Illinois EPA to transmit the information thereof to be included in this record. The April 28, 2020 letter attached to the Recommendation as Exhibit C, is an exact duplicate of the original.

8. In December 2019, Illinois EPA identified the GMF Recycle Pond as a CCR surface impoundment based on historic records on file. The Agency sent a fee invoice to MWG dated December 16, 2019. *See* Rec. Ex. A. IPRG did not agree that the GMF Recycle Pond was a

CCR surface impoundment and began discussions with the Agency in response. IPRG did not pay the fees as invoiced by the due date of January 31, 2020. In its March 24, 2020 letter, Illinois EPA provided an allowance for IPRG to demonstrate that the GMF Recycle Pond does not contain CCR; however, the fees were still due at that time. *See* Rec. Ex. B.

9. Illinois EPA issued IPRG a Violation Notice on July 28, 2020 (VN W-2020-00034) for failure to pay the initial fee. *See* Pet. Ex. 7. The VN process yielded several meetings in which I participated, as well as written responses from IPRG on the matter of demonstrating that the GMF Recycle Pond is not a CCR surface impoundment.

10. A letter dated April 28, 2020 from IPRG proposed an investigation plan to determine the contents of the GMF Recycle Pond. *See* Rec. Ex. C. IPRG proposed a bathymetric survey because of concerns about damaging the liner with a more intrusive sampling approach. Illinois EPA requested IPRG's sampling plan in written form, and IPRG submitted a proposal for investigation in a letter dated September 14, 2020. *See* Pet. Ex. 8. The submittal stated that if the bathymetric survey indicated significant sediment in the bottom of the GMF Recycle Pond, then IPRG would conduct sampling.

11. IPRG reported the results and provided figures from the bathymetric survey in the documents dated December 9, 2020. *See* Pet. Ex. 3, p. 4 and Fig. 1-3; Pet. Ex. 9, ex. 1, p. 4 and Fig. 1-3. During a March 3, 2021 meeting, the Agency requested confirmation that the bathymetric survey contained in the December 9, 2021 submittal was compared to the as-built construction drawing of the GMF Recycle Pond. In response, IPRG submitted a document dated March 24, 2021 that contained a March 9, 2021 letter from IngenAE, the company that conducted the bathymetric survey, confirming that the bathymetric survey is compared to the as-built data. *See* Pet. Ex. 4 and Pet. Ex 10, ex. B (PDF p. 137).

12. I have reviewed the Agency's Recommendation, as well as the submittals and information upon which the Recommendation is based, and further state the following in support.

13. The bathymetric survey provides no indication of sediment accumulation or a delta-like alluvial structure in the basin. Based on my knowledge and experience, if CCR had been sluiced in, even incidentally, the Agency would expect to see some measurable accumulation of sediment and/or a delta-like alluvial structure in the GMF Recycle Pond.

14. Per Illinois EPA's request, IPRG provided the margin of error for the bathymetric survey in its March 24, 2021 submittal. *See* Pet. Ex. 10, ex. B (PDF p. 138)). The margin of error for the topographic ground survey was reported as horizontal variant of 8 mm and vertical variant of 15 mm. The accuracy of the bathymetric survey is 1 cm and the report indicates that environmental conditions were very favorable for accurate data collection.

15. In addition to the bathymetric survey, I reviewed historic aerial photos of the GMF Recycle Pond taken between 2009 and 2017. The GMF Recycle Pond does not change in appearance throughout the review period. There are no deltas present, nor visible changes in the unit, in almost ten years. In contrast, other known CCR surface impoundments at the Duck Creek Station had various changes in appearance, including deltas and removals, throughout the same time period.

FURTHER AFFIANT SAYETH NOT



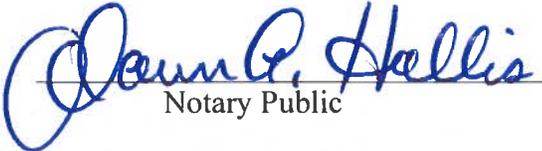
MELINDA K. SHAW

9/22/21

DATE

State of Illinois  
County of Sangamon

Subscribed and Sworn to before  
me this 22<sup>nd</sup> day of September 2021.

  
Notary Public