

ILLINOIS POLLUTION CONTROL BOARD

January 7, 2010

IN THE MATTER OF:)
)
AMEREN ASH POND CLOSURE RULES) R09-21
(HUTSONVILLE POWER STATION):) (Rulemaking - Land)
PROPOSED 35 ILL. ADM. CODE PART)
840.101 THROUGH 840.144)

ORDER OF THE BOARD (by A.S. Moore):

On May 19, 2009, Ameren Energy Generating Company (Ameren) filed a site-specific rulemaking proposal. Ameren seeks adoption of a new subchapter in the Board's waste disposal regulations to address surface impoundments. Specifically, Ameren proposes regulations through which it can close Ash Pond D at its Hutsonville Power Station (Station) near Hutsonville, Crawford County.

The hearing in this proceeding took place on Tuesday, September 29, 2009, in Robinson, Crawford County, and the Board has received post-hearing comments from the Illinois Environmental Protection Agency (Agency), Ameren, and Prairie Rivers Network (PRN). Below, the Board addresses issues raised in those post-hearing comments and directs Ameren to submit specified additional information.

ABBREVIATED PROCEDURAL HISTORY

On May 19, 2009, Ameren filed its original proposal for site-specific regulation. In an order dated June 30, 2009, the hearing officer scheduled a hearing beginning September 29, 2009, in Robinson, Crawford County. Pursuant to that order, Ameren on August 18, 2009, pre-filed testimony of Mr. Michael F. Bollinger. Also on August, 18, 2009, the Agency pre-filed its proposed amendments to Ameren's proposed regulations and testimony by Mr. William E. Buscher, Mr. Lynn E. Dunaway, Mr. Richard P. Cobb, Mr. Christian J. Liebman, and Mr. Stephen F. Nightingale.

On September 1, 2009, PRN pre-filed questions addressed separately to Ameren, to Mr. Bollinger, to the Agency, and to Mr. Nightingale. Also on September 1, 2009, Ameren filed a motion for extension of time to pre-file questions and answers. In an order dated September 10, 2009, the hearing officer granted Ameren's motion, extending the deadline to pre-file questions to September 15, 2009, and the deadline to pre-file answers to September 22, 2009.

On September 22, 2009, the Agency and Ameren filed a statement in support a joint proposal to revise the Agency's proposed amendments (Joint Prop.). Also on September 22, 2009, the Board received from both the Agency and Ameren responses to the questions pre-filed by PRN.

The hearing took place as scheduled on September 29, 2009, and the Board received the transcript of the hearing on October 9, 2009.

On October 23, 2009, the Board received post-hearing comments from the Agency (PC 2). On October 30, 2009, the Board received post-hearing comments from PRN (PC 3) and from Ameren (PC 4). On November 10, 2009, Ameren filed a motion for leave to file additional comment, accompanied by its additional post-hearing comments (PC 5). In an order dated November 13, 2009, the hearing officer granted the motion for leave to file additional comment and set a deadline of November 30, 2009, for responding to comments or filing additional comments. On November 30, 2009, PRN filed additional comments (PC 6).

ISSUES RAISED IN POST HEARING COMMENTS

PRN filed post-hearing comments opposing Ameren's proposal. *See* PC 3, PC 6. PRN claims that the petitioner has failed to meet its burdens under the Illinois Administrative Code regarding description of affected areas, assessment of environmental impacts, and the technical and economic infeasibility of complying with existing regulations. PRN also claims that adoption of Ameren's proposal without consideration of the environmental impact of the proposed discharge of contaminated groundwater to the waters of the state would be inconsistent with federal law.

The Board has reviewed PRN's comments and Ameren's response, in conjunction with the record in this rulemaking. That review indicates that additional information pertaining to the impact of Ash Pond D on irrigation wells on adjacent property and an assessment of environmental impact of the proposed discharge of contaminated groundwater into the Wabash River would allow the Board to perform a fuller evaluation of Ameren's site-specific rulemaking proposal. Below, the Board briefly summarizes pertinent issues raised in post-hearing comments and directs Ameren to supply additional information pertaining to its proposed site-specific regulations.

Description of the Affected Area

PRN asserts that Ameren's proposal and supporting documentation fail to adequately characterize the past, current, and potential impacts of the ash pond on adjacent agricultural land owned by Mrs. Margaret DeMent and managed by Mr. Dwayne Wampler. PC 3 at 2. This agricultural land, which is located to the south of Ash Pond D, is irrigated with groundwater pumped from three onsite wells. PRN maintains that Ameren has not conducted a water quality assessment of the three actively pumped wells to determine whether they have been or may be impacted by Ash Pond D. *Id.* PRN states that, without groundwater quality data specifically sampled from Mrs. Dement's onsite wells, it is difficult to ascertain whether there should be any concern about using the groundwater to irrigate crops, both for direct impact to the plants and for potential bioaccumulation of metals in crops ultimately destined for consumption. *Id.*

In response, Ameren states that the proposal adequately describes the area affected by the proposed regulations. PC 5 at 4. Ameren states that the proposal documents the irrigation well closest to the Ameren property on various figures, including cross-sections and flow maps, in the

April 2009 closure alternatives analysis report. *Id.*, citing TSD at 31-48 (Chapter 5). Additionally, Ameren notes that it performed a search of the Illinois State Geological Survey (ISGS) IL WATER database, which identified six wells within one-half mile of Ash Pond D. PC 5 at 4. Two of the wells are plant production wells, and the other four are irrigation wells utilized by adjacent property owners. *Id.*, citing TSD at 200 (Chapter 6), 482-484 (Chapter 7). Thus, Ameren contends that the proposal adequately describes the area affected by the proposed rule. Responding, PRN reiterates its concern regarding the lack of water quality and pumpage volume data for the four irrigation wells utilized by the adjacent property owners. PC 6 at 1.

The Board notes that site-specific rulemaking proposal content requirements provide that, “[w]here relevant to the Board’s consideration, the proposal must also include information pertaining to *existing physical conditions, the character of the area involved, including the character of surrounding land uses, zoning classifications, and the nature of the existing air quality or receiving body of water* [415 ILCS 5/27(a)].” 35 Ill. Adm. Code 102.210(b). Although Ameren has submitted substantial information to address the requirements of Section 102.210, the record does not contain any water quality data for the irrigation wells located on the property adjacent to the southern edge of Ash Pond D (Dement Wells, Nos. 60, 61 and 64, and Wampler-Well No. 66). *See* TSD at 482-484 (Chapter 7). Ameren maintains that irrigation wells are not impacted by Ash Pond D because they are completed in the deep sand and gravel aquifer.

Ameren notes that groundwater quality in monitoring well MW-7D, which is a relatively deep well, indicates very little vertical migration to the deep sand and gravel aquifer in which the irrigation wells are completed. TSD at 209 (Chapter 6). However, the Board notes that MW-7D is not located along the southern property line of the ash pond. *E.g.*, TSD at 213. Further, it appears that there are no other deep monitoring wells located along the southern edge of Ash Pond D. In light of this, the Board believes that additional groundwater quality information concerning the irrigation wells would be helpful for further evaluation of Ameren’s proposal. The record does not clearly demonstrate whether these data from the irrigation wells are available. If recent water quality data from the irrigation wells are available, the Board directs Ameren to submit such data to the Board. If not, the Board directs Ameren to sample the irrigation wells for the same parameters of concern considered in Ameren’s hydrogeologic assessment and submit the sampling results. *See* TSD at 205 (Chapter 6). Alternatively, Ameren may install a deep monitoring well to sample the deep sand and gravel aquifer along the southern edge of Ash Pond D and supply the Board with sampling results from the new monitoring well.

Assessment of Environmental Impact

PRN states that Ameren’s proposal fails to recognize the potential risks to fish and wildlife populations as a result of the closure plan. Specifically, PRN argues that the proposal allows groundwater collected in the groundwater collection trench to be managed in accordance with a National Pollutant Discharge Elimination System (NPDES) permit or another option as approved by the Agency in the closure plan or post-closure care plan. This provision, PRN asserts, creates ambiguity regarding the ultimate destination of contaminated groundwater and does not meet the requirements of 35 Ill. Adm. Code 102.208(d). PC 3 at 3. Additionally, PRN states that neither the closure plan nor the post-closure care plan are open for public notice and comment and therefore do not allow potentially impacted parties to voice concern or share

relevant information regarding environmental impacts. *Id.* PRN states that a thorough assessment of the final plans for the contaminated groundwater must be conducted and evaluated prior to adoption of this regulation by the Board.

Ameren's response notes that it will seek a modification of its existing NPDES permit to discharge the groundwater collected from the proposed groundwater trench. Ameren maintains that proposed modification of an NPDES permit re-opens the permit, allowing for public participation and IEPA performance of appropriate antidegradation analysis. PC 5 at 5. PRN responds that "an antidegradation analysis will only be meaningful if conducted now, before costly capital investments have been made into the project." PC 6 at 1.

Ameren's proposal anticipates that contaminated groundwater from the proposed groundwater trench would be discharged to the Wabash River in accordance with an NPDES permit. *See* TSD at 21 (Chapter 5), Joint Prop. at 17 (proposed Section 840.120). As noted by PRN, Ameren's proposal does not include an assessment of the environmental impacts of the proposed discharge of contaminated groundwater to Wabash River. Ameren's position is that any issues concerning the impact of the groundwater trench discharge on the receiving stream would be addressed as a part of the antidegradation analysis during the permit modification process. While the Board recognizes that the environmental impact of the groundwater trench discharge to the Wabash River would be assessed in the context of NPDES permit modification, the Board agrees with PRN that such an assessment would be helpful in evaluating the alternative options for the management of contaminated groundwater, particularly due to the site-specific nature of the proposed rulemaking. *See* 415 ILCS 5/27(a) (2008), 35 Ill. Adm. Code 102.210(b).

In this regard, the Board notes that the informational requirements for site-specific regulations require the proposal to include a detailed assessment of the environmental impact of the proposed change. 35 Ill. Adm. Code 102.210(d). In light of this, the Board directs Ameren to submit to the Board an assessment of the environmental impact of discharging contaminated groundwater into the Wabash River.

CONCLUSION

As noted more specifically above and for the reasons stated, the Board directs Ameren, as the original proponent of this site-specific regulation, to submit groundwater quality monitoring data and an environmental impact assessment of the proposed discharge into the Wabash River.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 7, 2010, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board