

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
AMEREN ASH POND CLOSURE RULES) R09-21
(HUTSONVILLE POWER STATION) :) (Rulemaking – Land)
PROPOSED 35 ILL. ADM. CODE 840.100)
THROUGH 840.144)

NOTICE

John T. Therriault, Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 W. Randolph
Chicago, Illinois 60601

Mitchell Cohen
General Counsel
Illinois Dept. of Natural Resources
One Natural Resources Way
Springfield, Illinois 62702-1271

Matthew J. Dunn, Chief
Environmental Enforcement/Asbestos
Litigation Division
Illinois Attorney General's Office
69 West Washington Street, 18th Floor
Chicago, IL 60602

Tim Fox, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 W. Randolph
Chicago, Illinois 60601

Attached Service List

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the Illinois Environmental Protection Agency's First Notice Comments, copies of which are herewith served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: Mark Wight
Mark Wight
Assistant Counsel
Division of Legal Counsel

DATE: December 3, 2010

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P.O. Box 19276
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AMEREN ASH POND CLOSURE RULES) R09-21
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PROPOSED 35 ILL. ADM. CODE 840.100)
THROUGH 840.152)

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S FIRST NOTICE COMMENTS

The Illinois Environmental Protection Agency ("Agency") respectfully submits its First Notice comments in the above-titled matter to the Illinois Pollution Control Board ("Board") pursuant to 35 Ill. Adm. Code 102.604 and the direction of the Board in its First Notice Opinion and Order issued on October 7, 2010.

I. OVERVIEW

On May 19, 2009, the Ameren Energy Generating Company ("Ameren") filed its Petition with the Board seeking amendment of the Board's waste rules by adding a new Part 840 for the site-specific closure of certain surface impoundments for coal combustion waste ("CCW"). In particular, Ameren proposed 35 Ill. Adm. Code 840.Subpart A to govern the closure of the unlined ash impoundment designated as "Pond D" at Ameren's Hutsonville Power Station in Crawford County, Illinois. Ameren's proposal included requirements for a final cover system for the impoundment, a groundwater monitoring system and program, and a groundwater collection trench to address contaminant migration and off-site impacts. On August 18, 2009, the Agency filed proposed revisions to Ameren's proposal that expanded upon several of Ameren's proposed requirements, revised off-site groundwater corrective action objectives and compliance points,

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and added requirements and procedures for direct Agency oversight throughout the closure process.

Shortly after the filing of the Agency's proposed amendments, Ameren initiated contact with the Agency to explore the resolution of outstanding differences. Following several discussions over a period of approximately four weeks, Ameren and the Agency were able to reach agreement on revisions to the Agency's proposed amendments to Ameren's original proposal. The jointly proposed revisions were filed with the Board on September 22, 2009. On September 29, 2009, the Board held a hearing on the matter in Robinson, Crawford County, Illinois attended by Ameren, the Agency and other interested parties including the Prairie Rivers Network ("PRN"). Approximately 100 pages of testimony were gathered, and eight exhibits were admitted to the record.

In response to the hearing officer order of October 9, 2010, the Agency, Ameren and PRN submitted the initial round of post-hearing comments by the October 30, 2009, deadline. By order of the hearing officer, a second round of comments was authorized with Ameren and PRN submitting comments by the November 30, 2009, deadline. On January 7, 2010, the Board issued an order addressing issues raised in the post-hearing comments and directing Ameren to submit additional information. Ameren filed its responses on February 22 and 26, 2010. On March 9, 2010, the Agency filed a motion for leave to file a response to the Board's order of January 7th accompanied by a comment providing the Agency's perspective on the issues identified by the Board and addressed in the additional information provided by Ameren. On July 28, 2010, Ameren filed a motion urging the Board to adopt the proposal for first notice. The Board's First Notice Opinion and Order, including revisions to the joint proposal, was issued on

October 7, 2010.

II. AGENCY'S COMMENTS

In its October 7th opinion, the Board identified and explained several revisions to the joint proposal:

1. On page 71 of the October 7th opinion, the Board notes a clarification it has made to the applicability provision of Section 840.102 limiting the scope of Subpart A exclusively to the closure and post-closure of the Hutsonville Power Station. The Agency supports this revision.
2. On pages 78, 98 and 99-100, the Board discusses a revision proposed at Section 840.130(f) to include a requirement to submit a maintenance plan for the groundwater monitoring system (Section 840.112) along with the closure plan. The Board notes this issue was raised at hearing by the Board and appropriate language was submitted by the Agency in post-hearing comments, which the Board has adopted. The Agency affirms its support for this revision.
3. On pages 81-82, the Board noted a revision to Section 840.114(a) concerning quarterly groundwater monitoring. By revising the language in the joint proposal to use the previously defined term "statistically significant," the Agency agrees that the Board has improved the clarity and consistency of the provision.
4. On page 91, the Board notes two revisions to Section 840.122 pertaining to the groundwater collection system. During the hearing, the Board had suggested that Section 840.122 be reorganized from a single lengthy paragraph into separate subsections. Ameren and the Agency proposed an appropriate reorganization in post-hearing comments, which the Board has adopted. The Agency agrees this revision improves comprehensibility of the Section. In

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addition, the Agency suggested a revision in its response to the Board's January 7th, 2010, order that would further clarify that discharge of groundwater from the collection trench, whether to the Wabash River or another option, would be allowed only as approved by the Agency subject to applicable laws. The Agency appreciates that the Board has adopted this proposed clarification.

5. On page 94, the Board discusses a revision to Section 840.124(d)(2), which addresses the placement of additional coal combustion waste for establishing the final grade and slope for the Ash Pond D cover system. The Agency agrees the Board's proposed revision clarifies that the intent of the provision is to limit the surface on which CCW may be placed and not to limit placement of clean soil or other clean material that might be used to establish the grade and slope.

6. On page 108 of the October 7th opinion, the Board invites comment on a change to Section 840.146, which provides for a construction quality assurance ("CQA") program for construction of major components of the proposed closure requirements. The proposed requirements include the preparation of a weekly summary report certified by the CQA officer during construction of the final cover system. The Board has added language requiring the owner/operator to retain all such reports until the completion of the post-closure care period and to make them available at reasonable times for inspection and copying by the Agency. The Agency notes that retention and inspection language should have been included with the original proposal and agrees with the Board's correction of this oversight.

7. On page 113, the Board notes that it has corrected a typographical error in the citation to the public law adopting the Resource Conservation and Recovery Act of 1976. The Agency thanks the Board for making this correction.

III. CONCLUSION

The Agency notes, with certain limited exceptions discussed immediately above, that the Board has adopted the joint proposal of Ameren and the Agency in its entirety. The Agency fully supports the Board's action. The proposal provides a technical and legal framework for addressing the closure of the Hutsonville facility's Ash Pond D and associated groundwater contamination. The coal combustion waste will be capped by a final cover system consistent with landfill design and construction standards. Groundwater contamination will be mitigated using the collection trench to intercept additional contamination migrating off-site to the south and to capture contamination already off-site. Discharge of groundwater from the collection trench will be in accordance with applicable laws. These components will combine to effectively remediate the upper zone of the underlying aquifer and remove future contaminant recharge from the lower zone of the aquifer thereby restoring off-site groundwater for existing and future beneficial uses without negatively impacting surface water.

The Agency thanks the Board for its efforts to date and urges the Board to proceed to Second Notice with this proposal as expeditiously as possible. The Agency also wishes to thank Ameren for its cooperation throughout this proceeding and to thank PRN for its participation. Although the Agency did not always agree with the apparent thrust of some of PRN's questions and conclusions, PRN's involvement expanded the boundaries of the discussion and resulted in helpful clarifications to the record.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL

PROTECTION AGENCY

By: Mark Wight
Mark Wight
Assistant Counsel

Date: December 3, 2010

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached Illinois Environmental Protection Agency's First Notice Comments upon the persons to whom they are directed by procedures specified by the Illinois Pollution Control Board or by placing copies in envelopes addressed to:

John T. Therriault, Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 W. Randolph
Chicago, Illinois 60601
(Electronic Filing)

Mitchell Cohen
General Counsel
Illinois Dept. of Natural Resources
One Natural Resources Way
Springfield, Illinois 62702-1271
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Matthew J. Dunn, Chief
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Tim Fox, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 W. Randolph
Chicago, Illinois 60601
(First Class Mail)

(Attached Service List – **First Class Mail**)

and sending or mailing them, as applicable, from Springfield, Illinois on December 3, 2010, and with sufficient postage affixed as indicated above.

Mark Wight
Meredith Kelly

SUBSCRIBED AND SWORN TO BEFORE ME

This 3rd day of December, 2010.

Brenda Boehner
Notary Public



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Service List

| Party Name | Address | City/State/Zip | Phone/Fax |
|---|---|------------------------------|------------------------------|
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| Office of the Attorney General Interested Party <ul style="list-style-type: none"> • Matthew J. Dunn - Chief | Environmental Bureau North 69 West Washington Street, Suite 1800 | Chicago IL 60602 | 312/814-2550 312/814-2347 |
| Schiff Hardin, LLP Petitioner <ul style="list-style-type: none"> • Kathleen C. Bassi • Joshua R. More • Amy Antonioli | 6600 Willis Tower 233 South Wacker Drive | Chicago IL 60606-6473 | 312/258-5500 312/258-5600 |
| Illinois Department of Natural Resources Interested Party <ul style="list-style-type: none"> • Virginia Yang | One Natural Resources Way | Springfield IL 62702 | |
| Prairie Rivers Network Interested Person <ul style="list-style-type: none"> • Tracy Barkley | 1902 Fox Drive, Suite G | Champaign IL 61820 | 217/344-2371 217/344-2381 |