

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO.
)	(Enforcement)
)	
AMEREN ENERGY GENERATING COMPANY,)	
INC., an Illinois corporation,)	
)	
Respondent.)	

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on February 4, 2013, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, c/o John T. Therriault, Assistant Clerk, James R. Thompson Center, 100 W. Randolph St., Ste. 11-500, Chicago, IL 60601 a COMPLAINT and ENTRY OF APPEARANCE, copies of which are attached hereto and herewith served upon you. Failure to file an answer to this Complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in this Complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.

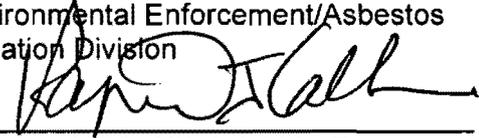
FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (2010), to correct the pollution alleged in the Complaint filed in this case.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

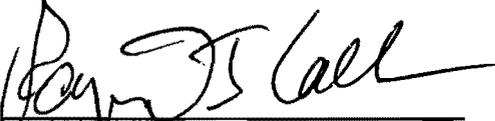
BY: 

RAYMOND J. CALLERY
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: February 4, 2013

CERTIFICATE OF SERVICE

I hereby certify that I did on February 4, 2013, cause to be served by Certified Mail, Return Receipt Requested, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING, COMPLAINT and ENTRY OF APPEARANCE upon the persons listed on the Service List.


RAYMOND J. CALLERY
Assistant Attorney General

This filing is submitted on recycled paper.

SERVICE LIST

Renee Cipriano
Schiff Hardin LLP
233 South Wacker Drive
Suite 6600
Chicago, IL 60606

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	PCB No.
)	(Enforcement)
AMEREN ENERGY GENERATING COMPANY,)	
INC., an Illinois corporation,)	
)	
Respondent.)	

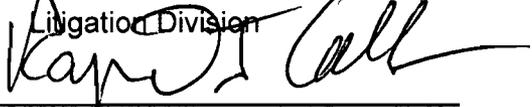
ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, RAYMOND J. CALLERY, Assistant Attorney General of the State of Illinois, hereby enters his appearance as attorney of record.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
LISA MADIGAN
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 

 RAYMOND J. CALLERY
 Environmental Bureau
 Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: February 4, 2013

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
-vs-)	PCB No.
)	
AMEREN ENERGY GENERATING)	
COMPANY, INC., an Illinois corporation,)	
)	
Respondent.)	
)	

COMPLAINT

The PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complain of the Respondent, AMEREN ENERGY GENERATING COMPANY, INC., an Illinois corporation, as follows:

COUNT I
OPEN DUMPING VIOLATION

1. This Complaint is brought by the Attorney General on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2010).
2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly under Section 4 of the Act, 415 ILCS 5/4 (2010), and which is charged, *inter alia*, with the duty of enforcing the Act.
3. This Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2010), after providing the Respondent with notice and the opportunity for a meeting with the Illinois EPA.
4. Respondent, AMEREN ENERGY GENERATING COMPANY, INC. ("AMEREN"),

is an Illinois corporation in good standing.

5. AMEREN is the owner of the Duck Creek Power Generating Station located at 17751 North Cilco Road, Canton, Fulton County, Illinois (the "Site").

6. By letter dated July 29, 2004, AMEREN informed Illinois EPA that it intended to use coal ash as fill material to construct a railroad embankment and a haul road at the Site.

7. On dates better known to AMEREN, approximately 180,000 tons of coal ash were transported to the Site from AMEREN's E. D. Edwards Power Generating Station located in Bartonville, Illinois, where it was generated.

8. Coal Combustion By-product ("CCB") as defined by Section 3.135 of the Act, 415 ILCS 5/3.135 (2010), excludes structural fill material that does not meet the Class I Groundwater Standards for metals found at 35 Ill. Adm. Code 620.410, unless a Beneficial Use Determination ("BUD") is obtained from Illinois EPA.

9. The analytical data submitted by AMEREN with the July 29, 2004 letter established that the coal ash fill material exceeded the Class I Groundwater Standards for antimony, boron and chromium when tested using test method ASTM D3987-85.

10. On August 8, 2006, Illinois EPA conducted an inspection of the Site. Illinois EPA observed an area of filled coal ash at the Site approximately three acres in size and approximately fifteen feet deep.

11. On September 1, 2006, Illinois EPA sent a Violation Notice ("VN") to AMEREN. AMEREN responded to the VN on September 22, 2006 and a meeting was held on October 10, 2006.

12. On November 2, 2006, AMEREN submitted a Compliance Commitment Agreement ("CCA") further expanding on its response. The CCA included analytical data from the analysis of additional samples of the coal ash. AMEREN also agreed to submit a request

for a BUD.

13. The analytical data submitted by AMEREN with the CCA established that the coal ash exceeded the Class I Groundwater Standards for antimony, boron and silver when tested using ASTM D3987-85.

14. Illinois EPA rejected the proposed CCA on November 27, 2006, because the additional samples of the coal ash from the fill area exceeded the Class I Groundwater Standards and because AMEREN did not agree to remove all coal ash from the fill area at the Site to an Illinois EPA permitted landfill or transfer station.

15. On September 30, 2008, Illinois EPA rejected that portion of the BUD request dealing with the previously filled area under the haul road and railroad spur at the Site because AMEREN failed to establish that the constituents exceeding the groundwater standards would not negatively impact groundwater quality.

16. AMEREN did not obtain a permit or BUD from Illinois EPA before using the coal ash as fill material at the Site.

17. Section 3.140 of the Act, 415 ILCS 5/3.140 (2010) provides as follows:

"Coal combustion waste" means any fly ash, bottom ash, slag, or flue gas or fluid bed boiler desulfurization by-products generated as a result of the combustion of:

- (1) coal, or
- (2) coal in combination with: (i) fuel grade petroleum coke, (ii) other fossil fuel, or (iii) both fuel grade petroleum coke and other fossil fuel, or
- (3) coal (with or without: (i) fuel grade petroleum coke, (ii) other fossil fuel, or (iii) both fuel grade petroleum coke and other fossil fuel) in combination with no more than 20% of tire derived fuel or wood or other materials by weight of the materials combusted; provided that the coal is burned with other materials, the Agency has made a written determination that the storage or disposal of the resultant wastes in accordance with the provisions of item (r) of

Section 21 would result in no environmental impact greater than that of wastes generated as a result of the combustion of coal alone, and the storage disposal of the resultant wastes would not violate applicable federal law.

18. Section 3.305 of the Act, 415 ILCS 5/3.305 (2010), provides as follows:

"Open dumping" means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.

19. Section 3.385 of the Act, 415 ILCS 5/3.385 (2010) provides as follows:

"Refuse" means waste.

20. Section 3.445 of the Act, 415 ILCS 5/3.445 (2010) provides, in pertinent

part, as follows:

"Sanitary landfill" means a facility permitted by the Agency for the disposal of waste on land . . . without creating nuisances or hazards to public health or safety, by confining the refuse to the smallest practical volume and covering it with a layer of earth at the conclusion of each day's operation, or by such other methods and intervals as the Board may provide by regulations.

21. Section 3.535 of the Act, 415 ILCS 5/3.535 (2010) provides, in pertinent

part, as follows:

"Waste" means any garbage, . . . or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities . . .

22. Section 21 of the Act, 415 ILCS 5/21(2010) provides, in pertinent part, as

follows:

No person shall:

- (a) Cause or allow the open dumping of any waste.

* * *

(d) Conduct any waste-storage, waste-treatment, or waste-disposal operation:

1. Without a permit granted by the Agency or in violation of any conditions imposed by such permit . . . ;
2. In violation of any regulations or standards adopted by the Board under this Act; or

* * *

(e) Dispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.

* * *

(r) Cause or allow the storage or disposal of coal combustion waste unless:

- (1) such waste is stored or disposed of at a site or facility for which a permit has been obtained or is not otherwise required under subsection (d) of this Section; or . . .

* * *

23. Section 812.101(a) of the Land Pollution Regulations, 35 Ill. Adm. Code

812.101(a), provides, in pertinent part, as follows:

All persons, except those specifically exempted by Section 21(d) of the Act, shall submit to the Agency an application for a permit to develop and operate a landfill . . .

* * *

24. Respondent caused or allowed the open dumping of Coal Combustion Waste or "CCW", in violation of Section 21(a) of the Act, 415 ILCS 5/21(a) (2010).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully

request that the Board enter an order against the Respondent, AMEREN ENERGY GENERATING COMPANY, INC.:

A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

B. Finding the Respondent has violated the Act and the regulations as alleged herein;

C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2010) impose a civil penalty of not more than the statutory maximum; and

E. Granting such other relief as the Board may deem appropriate.

COUNT II
WASTE STORAGE AND WASTE DISPOSAL VIOLATIONS

1-23. Complainant realleges and incorporates herein by reference paragraphs 1 through 23 of Count I as paragraphs 1 through 23 of this Count II.

24. Respondent conducted a waste-storage and waste-disposal operation at the Site without a permit granted by Illinois EPA, in violation of Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2010).

25. Respondent conducted a waste-storage and waste-disposal operation at the Site without submitting an application for a permit to Illinois EPA, in violation of 35 Ill. Adm. Code 812.101(a) and Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2010).

26. Respondent conducted a waste-storage and waste-disposal operation at the Site that did not meet the requirements of the Act and regulations, in violation of Section 21(e) of the Act, 415 ILCS 5/21(e) (2010).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, AMEREN ENERGY GENERATING COMPANY, INC.:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding the Respondent has violated the Act and the regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2010) impose a civil penalty of not more than the statutory maximum; and
- E. Granting such other relief as the Board may deem appropriate.

COUNT III
COAL COMBUSTION WASTE DISPOSAL VIOLATION

1-23. Complainant realleges and incorporates herein by reference paragraphs 1 through 23 of Count I as paragraphs 1 through 23 of this Count III.

24. Respondent operated a CCW disposal site without a permit granted by Illinois EPA, in violation of Section 21(r) of the Act, 415 ILCS 5/21(r) (2010).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, AMEREN ENERGY GENERATING COMPANY, INC.:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding the Respondent has violated the Act and the regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2010) impose a civil penalty of not more than the statutory maximum; and
- E. Granting such other relief as the Board may deem appropriate.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
LISA MADIGAN,
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: _____

THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel:
RAYMOND J. CALLERY
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
217/557-0586

Dated: January 30, 2013