

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:)

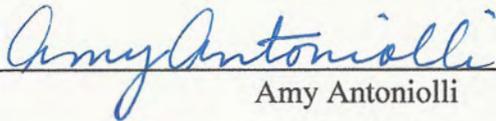
SITE-SPECIFIC RULE FOR THE)
CLOSURE OF AMEREN ENERGY)
RESOURCES ASH PONDS:)
PROPOSED NEW 35 ILL. ADM.)
CODE 840, SUBPART B)

R13-19
(Rulemaking – Land)

NOTICE OF FILING

To: ALL PARTIES ON THE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board the **PRE-FILED TESTIMONY OF GARY KING**, copies of which are herewith served upon you.


Amy Antonioli

Dated: April 10, 2013

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(R13-19)

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:)	
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SITE-SPECIFIC RULE FOR THE)	R13-
CLOSURE OF AMEREN COMPANY)	(Rulemaking – Land)
ASH PONDS: PROPOSED NEW 35)	
ILL. ADM. CODE 840, SUBPART B)	

PRE-FILED TESTIMONY OF GARY KING

I. Qualifications

My name is Gary King. I am employed by the environmental consulting firm ARCADIS U.S., Inc. I have been employed with ARCADIS since February 2012. Prior to joining ARCADIS I was employed by the Illinois Environmental Protection Agency as the Manager of the Division of Remediation Management for the Bureau of Land. From 1990 through 2011, I was the senior manager for the Illinois EPA site cleanup programs: the voluntary cleanup program (also known as the Site Remediation Program), State and Federal Superfund cleanup programs, the Department of Defense cleanup program and the Leaking Underground Storage Tank cleanup program. I lead the development of multiple regulatory programs concerning the cleanup and closure of sites. I have testified in numerous regulatory proceedings before the Board.

I lead the development of the original 35 Ill. Adm. Code Part 742; Tiered Approach to Corrective Action Objectives, or TACO. I testified during the original hearings and at all the subsequent Board rulemakings on TACO. I testified in R08-18 with regards to interaction between Part 620 and TACO. Most recently I lead the development of, and testified at the

Board's hearings with regards to, the adoption of amendments to TACO to incorporate the Indoor Inhalation (Vapor Intrusion) pathway.

I lead the development of regulations establishing the Board rules for the LUST program contained 35 Ill. Adm. Code 732 and 734. I testified at all the Board regulatory hearings on the LUST Program from 1994 -2011. I lead the development of the Site Remediation Program rules in Part 740 and testified before the Board in support of those rules. Prior to 1990 I managed the Illinois EPA land enforcement programs.

I am an attorney licensed to practice law in Illinois. I received a J.D degree from Valparaiso University and a B.S. degree in Civil Engineering, also from Valparaiso University.

II. Testimonial Statement

I will be testifying in support of the proposed adoption of 35 Ill. Adm. Code 840, Subpart B. I will present an overview of the proposed rule, its relation to Part 840, Subpart A, the differences from Subpart A, and the methodology for prioritizing the closure of facility ash ponds.

III. Relationship to Part 840, Subpart A

This regulatory proposal builds on the very successful Board rulemaking in R09-21. In that proceeding the Board adopted rules creating a new subchapter j to apply to Coal Combustion Waste Impoundments and placed in Part 840 as Subpart A a site specific rule applicable to Pond D at the Ameren Hutsonville Power Station. The Board showed considerable foresight in organizing its rules in this manner.

This rulemaking, in addition to building on the Board's regulation in Part 840, Subpart A, furthers the goals and strategies set forth by Illinois EPA in its most current *Ash Impoundment*

Progress Strategy Report (October 2011). This report is available at the Illinois EPA website at <http://www.epa.state.il.us/water/ash-impoundment/>.

In this proceeding the Ameren Companies (Ameren Energy Generating Company, AmerenEnergy Resources Generating, and Electric Energy Inc.) propose that the Board adopt a new Subpart B that builds on Subpart A by using the format for closure and post-closure that the Board established in Subpart A. In this case, however, the Ameren Companies are looking to apply the Subpart A approach, not to one pond at one generating station, but at up to 16 ash ponds at up to 8 electric generating stations. This rulemaking is site-specific because it identifies specific facilities where it applies. But because of its system-wide impact, it is more generic in its impact to electric generating stations in Illinois.

Subpart B in addition to the breadth of its impact also has differences of note from Subpart A. I will discuss these differences more fully in this testimony, but for now I summarize the key differences:

Section 840.204 Scope and Applicability. This Section defines what ash ponds this rule will apply to.

Section 840.206 Definitions. This Section includes a definition of the “Ameren surface impoundments” stating the electric generating stations subject to this rule.

Section 840.208 Site Closure Categories. This Section provides a methodology for establishing a priority order to the closing of the Ameren surface impoundments based on the potential of risk to human health and the environment. This type of methodology was immaterial to Subpart A since it only dealt with one ash pond. It is imperative in this proceeding because of the significant amounts of resources that must be applied to close

these impoundments in accordance with the procedures in Part B. Another witness will speak to the cost implications of this rule.

Section 840.209 Voluntary Closures. This provision provides an avenue for addressing sites that fall out of the applicability criteria.

Section 840.214 Hydrogeologic Site Investigation. This Section adds a provision requiring an assessment of the impact to surface water bodies, including ecological resources.

Section 840.218 Groundwater Monitoring Program. This Section requires that a Groundwater Monitoring Program (GMP) be submitted to the Agency for approval. The next Section (840.219) provides the required contents for the GMP.

Section 840.226 Final Cover System. This Section provides an option to demonstrate the efficacy of a non-soil final cover.

Section 840.248 Review, Approval, and Modification of Groundwater Monitoring Program, Closure Plan and Post-Closure Care Plan. This Section provides an Agency process for review and approval of GMPs.

IV. Progress at Hutsonville Pond D

Although this proposed rule does not apply to Hutsonville Pond D, I think it is appropriate to give a brief report to the Board in this proceeding summarizing the work at Pond D since the Board's adoption of Part 840 Subpart A:

- Construction of the cap and groundwater collection system is complete.
 - Start of Construction: March 2012
 - Construction Complete: October 2012

- Construction Quality Assurance Closure Report and Certification submitted to IEPA on January 30, 2013.
- Notice of Termination for Construction Site Activity Storm Water General Permit issued by IEPA on March 7, 2013.
- Awaiting approval of the NPDES permit modification from IEPA Division of Water Pollution Control as authorization to place the groundwater collection system in service.
 - Draft Permit, Public Notice/Fact Sheet from IEPA received February 5, 2013.
- First Post-Closure Care Plan cap inspection scheduled for April 2013.

V. Overview of Proposed Part 840, Subpart B

Applicability (Sections 840.200, 840.204, 840.206 and 840.209)

The applicability of Subpart A was very straight forward. It applied to one ash pond at one electric generating station. Subpart B applies to a corporate system of stations, each of which has its own operational and regulatory history. The definition section (840.206) and the purpose section (840.200) make it clear that Subpart B is focused on surface impoundments at eight listed Ameren generating stations, some of which are no longer operational. A definition of “surface impoundment” is included which reiterates, as the Board has already determined, that a surface impoundment that contains coal combustion waste, is not a landfill. The definition also clarifies that Subpart B is not addressing impacts from releases authorized by NPDES permits or exceedances due to natural causes or other sources.

Section 840.200 also makes it clear that the applicability of this rule to an impoundment at one of the eight listed generating stations is not dependent on the impoundment continuing to be owned or operated by the Ameren companies. The applicability of Subpart B will apply to any new owner or operator in the event the generating station is transferred.

Section 840.204(a) provides a description of the general universe of surface impoundments to which Subpart B applies in terms of ownership, contents, age and regulatory status. Within this universe of impoundments, there are categories of impoundments where this Subpart should not apply:

- Impoundments that have liners meeting specified performance criteria
- Impoundments subject to landfill permits
- Pond D at Hutsonville (subject to Subpart A)
- Impoundments with an approved GMZ in place
- Impoundments where there are not exceedances of applicable groundwater standards attributable to the impoundment
- Impoundments subject to a compliance program under a court order.

These categories are identified in Section 840.204(b). Subsection (b)(5) covers the potential for use impairment under the nondegradation provisions of Section 620.301(a), as well as the numerical criteria in Part 620, Subpart D. The application of the potential for use impairment provision is discussed below (Section 840.208(g)).

Subpart B also recognizes in Section 840.209 that there may be situations where, even if an impoundment is not causing exceedances of groundwater standards, it may make sense for the owner or operator to close the impoundment. Illinois EPA developed an entire program, established by Board rule in 35 Ill. Adm. Code 740, around the concept that property owners voluntarily choose to remediate contaminated sites. If an owner or operator decides to move forward with the closure of an impoundment on a voluntary basis, there should be a procedure for that closure. Section 840.209 authorizes proceeding with closure using the procedures of Subpart B in these cases.

Site Categorization (Sections 840.202 and 840.208)

Subpart B includes a methodology that establishes a set of priorities for an orderly approach to closure of the Ameren surface impoundments with releases to groundwater that exceed applicable, groundwater quality standards in 35 Ill. Adm. Code Part 620. This methodology provides assurance that the most significant risks to human health and the environment will be addressed first. The priorities are contained in four categories set forth in Section 840.208. These categories address the key elements of exposure routes, contaminants of concern, land use and water use. This methodology includes a consideration of human exposure pathways and an assessment of the groundwater and surface water impacts at each site to determine the order and expediency of closure.

This type of orderly approach is merited because of the resources required to systematically close up to 16 impoundments at the eight identified generating stations and the generally low toxicity and incomplete pathways to receptors. Other witnesses will provide information on the significant resources necessary to proceed with closure and the conceptual site model addressing contaminant toxicity and pathways.

Section 840.208 orders the categories based on potential risks to human health and the environment. The four categories are:

- Category 1: Impact to Existing Potable Water Supply
- Category 2: Impact to Off-Site Water Supply Resources in Use as a Potable Water Supply
- Category 3: Impact to Off-Site Water Supply Resources Not Currently in Use as a Potable Water Supply
- Category 4: Impact Only to On-Site Water

For each of these categories the rule specifies a time frame for the owner or operator to submit a closure plan to the Agency. Closure will be completed in accordance with Section 840.234. As discussed below, Section 840.214 requires the owner or operator to perform hydrogeologic investigations to determine the nature and extent of contaminants attributable to the Ameren surface impoundments. These investigations will provide information on the potential groundwater and surface water impacts from releases from the impoundments to groundwater and will provide a baseline of information to categorize the impoundments. Discharges to surface water under NPDES permits are not included in these investigations since such discharges are separately authorized and permitted.

Section 840.208(e) requires that the owner or operator submit a determination relative to each impoundment by no later than 120 days after the effective date of the rule. Section 840.208(f) provides that if the owner or operator obtains information demonstrating that an impoundment should be placed in a different category, then the owner or operator is required to notify the Agency and proceed with closure as applicable for that category. In addition, Section 840.218(h) requires the owner or operator to annually re-evaluate the category for a surface impoundment based on the results of groundwater monitoring.

The structure of Section 840.208 is such that if an impoundment could fall into more than one category, then the category requiring more immediate action applies.

Category 1: Impact to Existing Potable Water Supply (Section 840.208(a))

Category 1 addresses the situation where contaminants attributable to an impoundment are above Class I groundwater levels within the setback of an existing supply well or are above Part 302 surface water standards for water supplies at the point of withdrawal for treatment and distribution. This category does not make a distinction based on whether a well is on-site or off-

site or whether it is a municipal, public, private, or individual water supply. If contaminants attributable to an impoundment are above Class I within the setback of any existing well then immediate steps must be taken to mitigate the impact. (Section 840.208(a)(2)). The same is also true if a surface water supply is being impacted at the point of withdrawal. Either of these situations indicates a direct risk to human health. Any impoundment in this category will need to submit a closure plan within six months.

Ameren has prepared preliminary hydrogeological investigations relative to the eight generating stations. These investigations are not fully compliant with Section 840.214 at this point. They are instructive, however, as to whether there is information that is immediately available showing an impact to an existing water supply, as delineated in this Category 1. In reviewing available information for each of the eight generating stations, none of the surface impoundments fall into Category 1. Nonetheless, Category 1 remains important because information may come to light, for instance through the groundwater monitoring program, that demonstrates that an impoundment should be re-categorized to Category 1 and immediate action taken.

Category 2: Impact to Off-Site Water Supply Resources in Use as a Potable Water Supply
(Section 840.208(b))

Category 2 addresses the situation where an off-site water supply resource, groundwater or surface water, is in use as a potable water supply, but unlike Category 1, there is no identified impact to an existing water supply.

There are two situations in which Category 2 would apply. The first situation focuses on groundwater; the second focuses on surface water. With regards to groundwater, Section 840.208(b)(1)(A) looks at three pieces of information: (1) whether the off-site groundwater is Class 1; (2) whether the release from the impoundment exceeds Class 1 standards; and (3)

whether there is a potential migration pathway to a potable well that is in use. Determining the applicability of Category 2 thus will require knowledge as to whether an existing well off-site is actually being used for potable purposes. If there is an off-site down gradient well being used for non-potable purposes only, Category 2 would not apply.

The second situation focuses on the potential impact to off-site surface waters. For Category 1 the surface water focus was on whether contaminants attributable to the impoundment impact a water supply at the point of withdrawal. With Category 2, the focus is on whether the contaminants from the surface impoundment exceed surface water standards outside of a mixing zone within the receiving water. This provision will allow one or more sampling points within the surface water in addition to sampling groundwater before it enters the surface water. Sampling within the surface water should give a more complete identification of the impact to surface water.

Section 302.102 provides procedures for establishing mixing zones in receiving waters. Section 302.102 was specifically developed to address mixing zones related to point source discharges. It does not directly apply to groundwater discharging into surface waters. Nonetheless, the mixing zone principles delineated for effluent discharges in Section 302.102 could be adapted on a site-specific basis to groundwater discharging into surface water. If contaminant levels exceed the Part 302 standards outside of the mixing zone, then Category 2 would apply.

If an impoundment falls into Category 2, then the owner or operator must take immediate steps to assess the potential for impact to users of the water supply, groundwater or surface water, and take steps if necessary to mitigate the impact or restrict the use of any potable water supply. If Category 2 applies, then a closure plan must be submitted within three years.

Category 3: Impact to Off-Site Water Supply Resources Not Currently in Use as a Potable Water Supply (Section 840.208(c))

Category 3 addresses the situation where there is an off-site water supply resource, but the resource, either groundwater or surface water, is not currently in use as a potable water supply.

Similar to Category 2, there are two situations where Category 3 would apply. The first situation focuses on groundwater; the second focuses on surface water. For groundwater Section 840.208(c)(1)(A) looks first at (1) whether an offsite groundwater is classified as Class 1; and (2) whether there are off-site concentrations attributable to the impoundment exceeding Class I standards. If both of these conditions are met then Category 3 will apply if either there is a current use, but no existing pathway to the point of use or there is no current use of the resource as a potable water supply. Even if there is no current use or currently effective pathway, there may be in the future. Based on the potential that the off-site resource could become actively used, Category 3 would apply.

The second situation focuses on the impact to surface waters. For surface waters, Category 3 is the same as Category 2. If Category 3 applies, then a closure plan is required to be submitted within six years.

Category 4: Impact Only to On-Site Water (Section 840.208(d))

Category 4 covers the situation where the only impact is to on-site water, either groundwater or surface water. By the definition of “on-site”, a surface water body that is entirely within the contiguous boundaries of one of the electric generating power stations would be an on-site water. If an existing on-site potable water supply groundwater well or surface water intake is impacted by contaminants from a surface impoundment, then that impoundment would be Category 1, and not Category 4.

Like Categories 1, 2, and 3, Category 4 also looks at groundwater and surface water, but only where there is only an on-site impact. In the case of groundwater, Category 4 applies if there is an exceedance of applicable groundwater standards in an on-site groundwater attributable to a surface impoundment. This category would include a site that has only Class IV groundwater.

Category 4 applies if there is an exceedance of Part 302 surface water standards outside of the mixing zone attributable to a release of contaminants from a surface impoundment. If Category 4 applies, then a closure plan must be submitted within eight years.

Dates for Closure

The closure of large sites, like the Ameren surface impoundments, is an expensive and time consuming process, and not undertaken without sufficient resources and capability. In some cases, particularly with sites in Category 4, it could be between 11 and 12 years before those sites complete closure. The Board should not consider that time excessive. Remediation projects are difficult and the time is lengthy.

An excellent example of this is the process under which Ameren Illinois Utilities (AIC), an affiliate of AER, and the Agency have been working cooperatively to address manufactured gas plant sites across Illinois. These remediation efforts have been ongoing for over 20 years. Although AIC's efforts began under an initial Agency threat of enforcement, AIC has proceeded to proactively address these difficult, but much physically smaller sites (as compared to surface impoundments), without legal action or a consent order in place. AIC identified 44 MGP sites in Illinois with potential liability for the company and has been systematically remediating these sites over the last 20 years. Of these 44 sites, 16 have received NFR letters from the Agency and 6 have completed corrective action and have requests for NFR letters pending with the Agency.

Of the remaining 22 sites, 10 sites have corrective action in progress and 12 sites are in the cleanup planning phase. On an annual basis, AIC and the Agency review progress, completed and planned, on the MGP sites. The Agency has consistently agreed that AIC's prioritization of its remediation work has been protective of human health and the environment and its schedule and progress have been reasonable.

With respect to surface impoundments, twelve years is a very reasonable period to complete a remediation program of the magnitude that AER is proposing in this proceeding, particularly since the impoundments are integral to current and ongoing operations.

Potential Use Impairment (Section 840.208(g))

Part 620 is not just a set of numerical criteria in Subpart D; it also includes nondegradation criteria in Section 620.301(a). The proposed Part 840, Subpart B recognizes, and addresses, the potential for use impairment, even where there are no exceedances of the numerical criteria in Part 620, Subpart D.

The proposal breaks down Section 620.301(a) into its component parts as they would apply in the context of the Ameren surface impoundments. The draft applies three scenarios: (1) the need for treatment or additional treatment by an existing potable water supply; (2) the need for treatment by a new water supply; and (3) situations where the use of groundwater would not be feasible due to contaminant levels even if treatment or additional treatment is installed. The proposal specifies that groundwater information collected under Section 840.218 will be used to perform trend analysis to determine if there is a potential for use impairment.

Since the potential for use impairment cannot be as clearly determined as exceedances of numerical criteria, it is not feasible to set a fixed date for submission of a closure plan. Instead

the proposed rule provides an open time frame based on the potential for use impairment to really occur.

Hydrogeologic Site Investigation (Section 840.214)

Section 840.214 is similar to Section 840.110 in Subpart A, but the language has been modified to recognize the importance of its use in determining the priority category of surface impoundments under Section 840.208. In Subpart A, the hydrogeologic investigation provided information in three areas:

- Defining hydrogeology and assessing groundwater impacts;
- Modeling to assess groundwater impacts; and
- Establishing a groundwater monitoring system.

These three areas are included in Section 840.214. Section 840.214(d) adds a fourth area to be covered: providing information on the extent of impact to surface waters, in terms of impacts to potable water resources and designated beneficial uses.

Groundwater Monitoring (Sections 840.216, 840.218, 840.219 and 840.248)

Section 840.216 is identical in substance to Section 840.112 in Subpart A. Section 840.218 is identical in substance to Section 840.114 in Subpart A, except for four items.

First, Section 840.218 adds a requirement that groundwater monitoring programs (GMPs) be submitted to the Agency for approval for Ameren surface impoundments. These GMPs must be submitted to the Agency within six months from the effective date of the rule.

Second, Section 840.218(a) adds a provision that wells in Class IV groundwater should be monitored using the constituents applicable to Class IV groundwater.

Third, Section 840.218(a) deletes iron and manganese from the list of contaminants that can never be removed from the monitoring program. It may be appropriate to remove iron or

manganese from the list if their presence is demonstrated to be naturally occurring rather than being indicative of a release attributable to an impoundment.

Fourth, Section 840.218(h) adds a requirement that on an annual basis the owner or operator must evaluate the results of the groundwater monitoring program to see if the site needs to be re-categorized as provided in Section 840.208(f). In addition this evaluation will also address whether, even in the absence of exceedances of applicable numerical groundwater standards, a statistically significant increasing trend that can be attributed to the surface impoundment demonstrates a potential for use impairment as provided in Section 840.208(g)(1).

Section 840.219 has been added to describe the required contents of GMPs because of the new requirement to submit GMPs to the Agency. Section 840.248 includes provisions establishing review criteria for the Agency when a GMP is submitted.

Standards and Compliance (Sections 840.220 and 840.222)

Sections 840.220 and 840.222 are identical in substance to the provisions in Subpart A relative to groundwater quality standards and determination of compliance, except for two items. First, Section 840.220(a) and (b) reference the standards applicable to the class of groundwater, rather than just Class I: Potable Resource Groundwater. This change is necessary because at least one of the generating stations is located in an area where the ground water is Class IV. Second, Section 840.222(a)(2)(A) does not distinguish between upper and lower aquifers in terms of determining compliance. Section 840.222(a)(2)(A)(i) requires a demonstration that no statistically significant increasing trend is attributable to the impoundment.

Cover System (Sections 840.224 and 840.226)

Subpart A required the installation of a groundwater collection trench as a mandatory requirement for Hutsonville Pond D. Subpart B does not mandate the installation of a

groundwater collection trench for each site. Subpart B mandates as a presumptive remedy the installation of a multi-layer cap and cover system. If additional closure technologies need to be applied, they can be managed through the development and approval of the closure plan.

Subpart B adjusts three provisions from Subpart A with the intention of creating additional flexibility with regards to the cover system. These changes have been made to provide the owner or operator with the option to prove to the Agency that an engineered material, other than a soil material, could be effectively used to achieve or exceed the long term performance capability of a soil cover. These changes are described in the introductory paragraph of Section 840.226, Section 840.224(d)(3) and Section 840.226(b)(3).

IEPA, for instance, approved use of a geomembrane cover with embedded solar panel technology at the Roxana Landfill in southwest Illinois. This was permitted as a single membrane technology. The cap has not been installed, probably because the landfill is not yet at a closure stage. IEPA permitted this single layer system as an interim cover because the landfill regulations require a two layer system for final closure.

Closure and Post-Closure Plans (Sections 840.228-840.246)

These Sections are identical in substance to Sections 840.128-840.146 in Subpart A, with a few exceptions. Sections 840.128, 840.132, 840.134 and 840.138 included fixed dates for specified activities following adoption of Subpart A. In Subpart B the trigger for submission of a closure plan is not a fixed date, but is based on the site category as described in Section 840.208. The time frames then follow the trigger event. Section 840.234 uses 36 months as the presumptive time frame to complete closure once the closure plan is approved. Subpart A used a time frame of 18 months. Although 18 months is a workable time frame for Hutsonville Pond D, it is not a workable time frame for all of the impoundments to which this rule will apply. Several

of the impoundments are significantly larger than Hutsonville Pond D and their closure will require considerably more movement of coal combustion residues and cover materials to achieve necessary grades for effective closure under these rules.

Section 840.246(b)(2) makes a small change to the Construction Quality Assurance (CQA) Program requirements used in Subpart A which is more consistent with CQA practice. Section 840.246 (b)(2) provides that the CQA officer must “review and approve” the weekly report rather than “certify” it.

Agency Review (Sections 840.248 and 840.250)

Section 840.248 and 840.250 provide procedures for Agency review, modification and approval of plans and reports submitted to the Agency. These Sections are identical in substance to Sections 840.148 and 840.150 in Subpart A, with one exception. As noted earlier, Section 840.248 includes procedures for review of GMPs, which was not a separate approval in Subpart A.

RCRA (Section 840.252)

Section 840.252 provides that if any RCRA requirement adopted in the future is more stringent than Subpart B, the RCRA requirement controls.

This concludes my testimony.

CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 10th day of April, 2013, I have electronically served the attached **PRE-FILED TESTIMONY OF GARY KING**, upon the following persons:

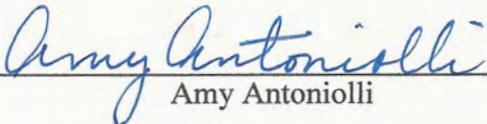
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