

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>In the Matter of:</b>	)	
	)	
<b>COAL COMBUSTION WASTE (CCW)</b>	)	<b>R14-10</b>
<b>ASH PONDS AND SURFACE</b>	)	<b>(Rulemaking – Water)</b>
<b>IMPOUNDMENTS AT POWER</b>	)	
<b>GENERATING FACILITIES: PROPOSED</b>	)	
<b>NEW 35 ILL. ADM. CODE 841</b>	)	

**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 ON BEHALF OF AMEREN MISSOURI AND AMERENENERGY MEDINA VALLEY COGEN, LLC**, copies of which are herewith served upon you.

  
\_\_\_\_\_  
Amy Antonioli

Dated: April 9, 2014

Amy Antonioli  
SCHIFF HARDIN LLP  
233 South Wacker Drive  
Suite 6600  
Chicago, Illinois 60606  
312-258-5500

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>In the Matter of:</b>	)	
	)	
<b>COAL COMBUSTION WASTE (CCW)</b>	)	<b>R14-10</b>
<b>ASH PONDS AND SURFACE</b>	)	<b>(Rulemaking – Water)</b>
<b>IMPOUNDMENTS AT POWER</b>	)	
<b>GENERATING FACILITIES: PROPOSED</b>	)	
<b>NEW 35 ILL. ADM. CODE 841</b>	)	

**PRE-FILED TESTIMONY OF GARY KING**  
**ON BEHALF OF AMEREN MISSOURI**  
**AND AMERENERGY MEDINA VALLEY COGEN, LLC**

**I. QUALIFICATIONS AND PURPOSE**

My name is Gary King. I am employed by the consulting firm ARCADIS. I have been employed with ARCADIS since February 2012. Prior to joining ARCADIS I was employed by the Illinois Environmental Protection Agency (“IEPA” or “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 IEPA site cleanup programs: the voluntary cleanup program (also known as the Site Remediation Program), federal and Superfund cleanup programs, the Department of Defense cleanup program and the Leaking Underground Storage Tank 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 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 Leaking Underground Storage Tank (“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 Juris Doctor degree from Valparaiso University and a Bachelor of Sciences degree in Civil Engineering, also from Valparaiso University. The purpose of my testimony is to provide comments and clarification regarding AmerenEnergy Medina Valley Cogen, LLC (“Medina Valley”) and Ameren Missouri (collectively, “Ameren”) facilities subject or potentially subject to the proposed new Part 841. Medina Valley owns Hutsonville and Meredosia Stations, and Ameren Missouri owns Venice Station.

## **II. UPDATE ON CLOSURE OF HUTSONVILLE POND D**

On January 20, 2011 the Board issued its final order in *In the Matter of Ameren Ashpond Closure Rules (Hutsonville Power Station): Proposed 35 Ill. Adm. Code 840.101 through 840.152*, R09-21 (Jan. 20, 2011). This proceeding established a site-specific rule for the closure of Pond D at Ameren’s Hutsonville station. My testimony provides a brief update on Ameren’s progress in closing Pond D pursuant to this site-specific rule. Ameren completed capping of the Hutsonville Pond D in January 2013 consistent with a closure plan approved by the Illinois Environmental Protection Agency on April 18, 2012 pursuant to the Part 840. Ameren submitted its first annual Post-Closure Care report in January 2014. The groundwater collection trench required under Part 840 and included in the approved Closure Plan has been constructed but has not yet been placed in service pending IEPA’s issuance of a National Pollutant Discharge Elimination System (“NPDES”) permit renewal authorizing the discharge to the Wabash River. A number of separate submittals have been made to IEPA’s Industrial Permits Section as required due to the change in ownership and changing, then ceasing, operations at the facility. Ameren is currently compiling an addendum to the NPDES renewal application.

### **III. COMMENTS**

#### **A. Applicability**

I do not believe that either IEPA or the citizens of Illinois benefit by including units that are closed, no longer operating, and currently subject to (or prior to the effective date of the proposed rules will be subject to) a closure plan approved by the Agency. For example, Ameren Missouri's Venice Plant Ash Ponds 2 and 3 were capped in 2012 in accordance with IEPA's May 6, 2011 approval of a closure plan and the associated Groundwater Management Zone. As the rule is currently written, these impoundments meet the applicability criteria set forth in Section 841.105(a)(2), and, in the event they do not fall within any of the other explicit exemptions in Section 841.105(b), would be subject to these rules. In the case of the Venice plant, it would be a waste of time and effort on the part of Ameren and the Agency to require the submittal of a closure plan under Part 841 when the Agency has already approved a closure plan, and associated Groundwater Management Zone, and the closure activities, in this case capping, have already been completed in accordance with the approved plan.

I believe it would be reasonable and appropriate to include a new Subsection 841.105(b)(6) stating "subject to a Closure Plan and Groundwater Management Zone approved by the Agency prior to the effective date of this Part."

#### **B. Recordkeeping**

If a facility with a closed impoundment is no longer operating as an electric generating plant, in a typical case it may have no operational staff and no place to store records. In such cases, this rule would require a company to build a structure just to store the records on-site. It would be more appropriate to provide an option to on-site storage in the rule. It would be reasonable and appropriate to revise Subsection 841.135(a) to add this text following "on-site": "or at another location accessible to the Agency."

**C. Hydrogeologic Site Characterization**

Language in Subsection 841.200(c), paragraphs 12, 13 and 14, could be understood to imply that such characterizations might require subsurface investigations (*i.e.* borings, sampling and testing) to a minimum of 100 feet. Default criterion such as this is not justified at locations where existing geologic strata are well known or where shallow bedrock is encountered (well above 100 feet in depth).

It would be reasonable and appropriate to modify Section 841.200(c)(12)-(14) to provide that such information shall be provided “based on a review of existing site or regional information.”

**D. Determining Background Values**

The renumbered Subsection 841.220(c) may be interpreted to limit use of intrawell statistical methods to determine background only when up-gradient wells are potentially impacted by on-site activities. Ameren believes there may be circumstances when such methods are appropriate when up-gradient wells are impacted from off-site activities as well.

This Section should be modified either to delete “on-site” or add “or off-site” to clarify that this section does not exclude potential impacts to up-gradient wells from either location.

As written, this Section also requires that we determine background values without explaining how such values will be used. IEPA should clarify that closure objectives and compliance are not required to be based on achieving background concentrations down-gradient from a unit.

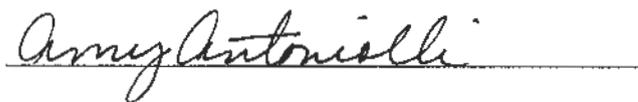
**E. Sampling Frequency**

In response to questions raised at the first hearing, the Agency proposed inclusion of a new Subsection 841.230(b)(2)(c) which prohibits a reduction in the monitoring frequency for any wells associated with units not meeting explicit liner requirements. This prohibition is

inappropriate for facilities that have closed or are proceeding towards closure under Agency approved closure plans prior to the effective date of this rule. For example, both the 840 regulations as well as approved closure plans for Hutsonville Pond D and Venice Ponds 2 and 3, allow for reductions based on specific criteria.

It would be reasonable and appropriate to insert the following text to the third sentence in paragraph 841.230(c): “Except for units where the Agency approved a Closure Plan prior to the effective date of this regulation,” before “[R]educed monitoring is prohibited . . .”.

Respectfully submitted,

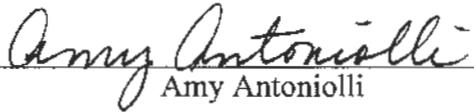
A handwritten signature in cursive script, reading "Amy Antonioli", is written over a horizontal line.

Amy Antonioli  
Schiff Hardin LLP  
233 South Wacker Drive  
Suite 6600  
Chicago, Illinois 60606  
312-258-5500  
aantonioli@schiffhardin.com

Dated: April 9, 2014

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on this 9<sup>th</sup> day of April, 2014, I have served the attached **PRE-FILED TESTIMONY OF GARY KING ON BEHALF OF AMEREN MISSOURI AND AMERENENERGY MEDINA VALLEY COGEN, LLC**, by first class mail, postage affixed, upon the persons in the attached service list.

  
\_\_\_\_\_  
Amy Antonioli

Amy Antonioli  
SCHIFF HARDIN LLP  
233 South Wacker Drive  
Suite 6600  
Chicago, Illinois 60606  
312-258-5500

<u>SERVICE LIST</u>	
<p>John Therriault, Clerk            Tim Fox, Hearing Officer            Illinois Pollution Control Board            James R. Thompson Center            100 West Randolph Street, Suite 11-500            Chicago, Illinois 60601  <a href="mailto:therriaj@ipcb.state.il.us">therriaj@ipcb.state.il.us</a></p>	<p>Joanne Olson            Division of Legal Counsel            Illinois Environmental Protection Agency            1021 North Grand Avenue, East            P.O. Box 19276            Springfield, Illinois 62794-9276</p>
<p>Office of Legal Services            Illinois Department of Natural Resources            One Natural Resources Way            Springfield IL 62702-1271</p>	<p>Stephen Sylvester            Division Chief of Environmental Enforcement            Office of the Attorney General            69 West Washington St., Suite 1800            Chicago IL 60601</p>
<p>Christine Zeman            City of Springfield            Office of Public Utilities            800 East Monroe, 4<sup>th</sup> Floor            Municipal Building East            Springfield, IL 62757</p>	<p>Andrew Armstrong            Faith E. Bugel            Jennifer L. Cassel            Jessica Dexter            Environmental Law and Policy Center            35 East Wacker Drive, Suite 1600            Chicago, IL 60601</p>
<p>Michael Smallwood            Ameren Services            One Ameren Plaza            P.O. Box 66149            St. Louis, MO 63166</p>	<p>Jack Darin            Sierra Club            70 East Lake Street, Suite 1500            Chicago, IL 60601</p>
<p>Exelon Law Department            10 South Dearborn, 49<sup>th</sup> Floor            Chicago, IL 60603</p>	<p>Jason McLaurin            Southern Illinois Power Cooperative            11543 Lake of Egypt Road            Marion, IL 62959</p>
<p>Alec Messina            IERG            215 E. Adams Street            Springfield, IL 62701</p>	<p>Traci Barkley            Prairie Rivers Network            1902 Fox Drive, Suite 6            Champaign, IL 61820</p>
<p>Abel Russ            Environmental Integrity Project            1000 Vermont Avenue NW            Suite 1100            Washington DC 20005</p>	<p>Rick Diericx            Dynegy Midwest Generation, Inc.            604 Pierce Blvd.            O'Fallon, IL 62269</p>

Dominion P.O. Box 260 Kincaid, 62540	Electric Energy, Inc. 2100 Portland Road P.O. Box 165 Joppa, IL 62953
Prairie State Generating Company 4190 County Highway 12 Marissa, IL 62257	Prairie Power, Inc. 2103 South Main Street P.O. Box 610 Jacksonville, IL 62651
Ameren Services One Ameren Plaza P.O. Box 66149 St. Louis, MO 63166	Much Shelist PC David Rieser Christina Archer Nicole Wallace 191 North Wacker Drive Suite 800 Chicago, IL 60606
McDermott, Will & Emery Mark Bilut 227 West Monroe Street Chicago, IL 60606	