

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
COAL COMBUSTION WASTE (CCW) ASH) R14-10
PONDS AND SURFACE IMPOUNDMENTS) (Rulemaking - Water)
AT POWER GENERATING FACILITIES:)
PROPOSED NEW 35 ILL. ADM. CODE 841)

NOTICE OF FILING

To: John Therriault, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

Persons included on the attached
SERVICE LIST

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board the attached **Environmental Groups' Response to Illinois Environmental Protection Agency's Motion to Extend Stay** copies of which are served on you along with this notice.

Respectfully submitted,



Jessica Dexter
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Dated: August 19, 2015

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Environmental Groups' Response to Illinois Environmental Protection Agency's Motion to Extend Stay

Pursuant to 35 Ill. Adm. Code Part 101 Sec. 101.500(d), Prairie Rivers Network, Sierra Club, and the Environmental Law & Policy Center ("Environmental Groups") submit this response to Illinois Environmental Protection Agency's ("Agency") August 5, 2015 motion to stay the Illinois Pollution Control Board ("Board") rulemaking In the Matter of Coal Combustion Waste (CCW) Surface Impoundments at Power Generating Facilities: Proposed New 35 Ill. Admin. Code 841, R14-10.

Environmental Groups strongly urge the Board not to stay this proceeding. We have developed an approach to harmonize the new federal Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments promulgated at 40 CFR 257.50-257.107 ("federal coal ash rules") with the rules being considered in this docket. We intend to submit our proposal to the Board within a month, after some further refining. We do not believe the Agency has articulated a compelling reason to stay the case. On the other hand, there are several important reasons to adopt state rules in this matter as soon as possible.

The Board will recall that at the time the Agency proposed this rulemaking, there was much less certainty about what the federal coal ash rules would look like. USEPA was considering substantially different Subtitle C and Subtitle D regulatory approaches under RCRA,

both of which would be subject to unpredictable changes in the Office of Management and Budget. Today the federal coal ash rules are clear, legally effective, and in force.

While there is a fair amount of subject matter overlap between the federal rules and the state rules, the federal coal ash rules do not address compliance with Illinois groundwater or surface water quality standards. This means that the unworkable ad hoc process that brought the Agency to this rulemaking in the first place will persist. In the interest of efficiency, the Board should adopt state coal ash rules as soon as possible, to help ensure that when an owner or operator undertakes corrective action or closure of a coal ash impoundment, it does not risk duplicating either planning efforts or the remediation work itself in order to comply with state groundwater or surface water quality standards.

The proposed state rules also provide important protections that the federal rules do not. For example, the federal rules do not govern coal ash impoundments located at now-shuttered power generating facilities. Illinois waters are threatened by several of these "legacy" coal ash pits, and the state rules would provide a roadmap to address those problems. The state rule is also an important opportunity to include financial assurances, as recommended by the Illinois Attorney General's office, to ensure the state isn't left to cover cleanup and closure costs.

The Agency argues that this rulemaking should be stayed because of challenges to the newly-adopted federal coal ash rules. However, the federal coal ash rules are now legally effective and in force, and provide as much certainty as one can ever have about another jurisdiction's regulations. The threat of legislation is ever-present on any of the issues the Pollution Control Board deals with, and cannot be used as an excuse to shy away from necessary rulemaking. Even actual litigation challenges to the federal rule do not mean that Illinois cannot proceed with its own state rules. The proposal we intend to file with the Board harmonizes the

two rule systems for the sake of efficiency, but does not make the state rule dependent upon the federal rule. In other words, even if the federal rule is changed (or rescinded altogether), that will not affect the administration of the state rule as we envision it.

Accordingly, we ask that the Board decline to stay this proceeding, at least until Environmental Groups have an opportunity to present the solution we have developed.

Respectfully,



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Dated: August 19, 2015

CERTIFICATE OF SERVICE

I, Jessica Dexter, hereby certify that a true copy of the foregoing attached **Environmental Groups' Response to Illinois Environmental Protection Agency's Motion to Extend Stay** was served via United States Mail, postage prepaid, in Chicago, Illinois on August 19, 2015 upon the service list below.



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Dated: August 19, 2015

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