

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

**SIERRA CLUB**

**Complainant,**

**v.**

**ILLINOIS POWER GENERATING  
COMPANY, ILLINOIS POWER  
RESOURCES GENERATING, LLC,  
ELECTRIC ENERGY, INC. and VISTRA  
ENERGY CORP.**

**Respondents.**

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**PCB 19-078  
(Enforcement – Water)**

---

**NOTICE OF FILING**

To:

Don Brown, Clerk of the Board  
Illinois Pollution Control Board  
James R. Thompson Center  
Suite 11-500  
100 West Randolph  
Chicago, Illinois 60601

Faith E. Bugel  
1004 Mohawk  
Wilmette, IL 60091  
fbugel@gmail.com

Bradley P. Halloran, Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 60601  
brad.halloran@illinois.gov

Gregory E. Wannier  
Bridget M. Lee  
2101 Webster St., Ste. 1300  
Oakland, CA 94612  
greg.wannier@sierraclub.org  
bridget.lee@sierraclub.org

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board an **Answer to Complaint**, copies of which are hereby served upon you.

*/s/ Ryan C. Granholm*  
\_\_\_\_\_  
Ryan C. Granholm

Dated: April 15, 2019

SCHIFF HARDIN LLP

Daniel J. Deeb

Joshua R. More

Ryan C. Granholm

Caitlin M. Ajax

233 South Wacker Drive, Suite 7100

Chicago, Illinois 60606

Phone: 312-258-5633

Fax: 312-258-5600

rgranholm@schiffhardin.com

BALCH & BINGHAM LLP

P. Stephen Gidiere III

1901 Sixth Avenue North, Suite 1500

Birmingham, AL 35203-4642

(205) 226-8735

sgidiere@balch.com

GIBSON, DUNN & CRUTCHER LLP

Michael L. Raiff

2100 McKinney Avenue, Suite 1100

Dallas, TX 75201-6912

(214) 698-3350

mraiff@gibsondunn.com

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>In the Matter of:</b>	)	
	)	
<b>SIERRA CLUB,</b>	)	
	)	
	)	
<b>Complainant,</b>	)	
	)	<b>PCB 19-078</b>
<b>v.</b>	)	
	)	
<b>ILLINOIS POWER GENERATING</b>	)	
<b>COMPANY, ILLINOIS POWER</b>	)	
<b>RESOURCES GENERATING, LLC,</b>	)	
<b>ELECTRIC ENERGY, INC., and</b>	)	
<b>VISTRA ENERGY CORP.,</b>	)	
	)	
<b>Respondents.</b>	)	

**ANSWER TO COMPLAINT**

1. Illinois Power Generating Company, Illinois Power Resources Generating, LLC, and Electric Energy, Inc. (collectively, “Direct Owners”), are subsidiary companies of Vistra Energy Corporation (“Vistra”), each of which owns and operates one of three coal-fired power plants in Illinois (collectively, the “Power Plants”) where constituents of coal ash have contaminated, and continue to contaminate, groundwater.

**ANSWER:** Respondents admit that Illinois Power Generating Company (“IPGC”) and Illinois Power Resources Generating, LLC (“IPRG”) are subsidiaries of Illinois Power Resources, LLC (“IPR”), which in turn is a wholly owned subsidiary of IPH, LLC (“IPH”), which in turn is a wholly owned subsidiary of Vistra Operations Company LLC (“Vistra Operations”), which in turn is a wholly owned subsidiary of Vistra Intermediate Company LLC (“Vistra Intermediate”), which in turn is a wholly owned subsidiary of Vistra Energy Corp., a publicly held corporation (“Vistra”). IPGC owns an 80% interest in Electric Energy, Inc. (“EEI”). Respondents admit that IPGC, IPRG, and EEI are, respectively, owners and operators of Coffeen Power Station (“Coffeen”), E.D.

Edwards Power Station (“Edwards”), and Joppa Power Station (“Joppa”).<sup>1</sup> Respondents deny the remaining allegations in Paragraph 1.

2. Previously, the Direct Owners were subsidiary companies of Dynegy Inc. (“Dynegy”); on April 9, 2018, Dynegy formally merged with Vistra, and as a result of that merger, Dynegy has ceased to exist as a separate corporate entity.

**ANSWER:** Respondents admit that EEI, IPGC, and IPRG were formerly direct or indirect subsidiaries of Dynegy Inc. (“Dynegy”). Respondents further admit that Dynegy and Vistra merged on or about April 9, 2018, with Vistra continuing as the surviving entity. Respondents deny any remaining allegations in Paragraph 2.

3. The Power Plants were also all previously owned by Ameren Corp.; they were acquired by Dynegy in 2013, as part of a transaction in which Ameren sold off its entire merchant generation fleet in Illinois to Dynegy.

**ANSWER:** Respondents admit that EEI, IPGC, and IPRG were formerly direct or indirect subsidiaries of Ameren Corporation before a 2013 transaction with Dynegy. Respondents deny the assertion that Ameren “sold off its entire merchant generation fleet in Illinois to Dynegy” and therefore deny the remaining allegations in Paragraph 3.

4. Illinois Power Generating Company (“IPGC”), a wholly owned subsidiary of Vistra, owns and operates the Coffeen Power Station (“Coffeen”), a coal-burning power plant located just south of Coffeen, Illinois, in Montgomery County, on the banks of Coffeen Lake, and in the Coffeen Lake Watershed.

**ANSWER:** IPGC admits that it is a wholly owned subsidiary of IPR, which in turn is a wholly owned subsidiary of IPH, which in turn is a wholly owned subsidiary of Vistra Operations, which in turn is a wholly owned subsidiary of Vistra Intermediate, which in turn is a wholly owned subsidiary of Vistra. IPGC admits that it owns and operates Coffeen, which is located south of Coffeen, Illinois, in Montgomery County, near Coffeen Lake, in the Coffeen Lake Watershed.

---

<sup>1</sup> Respondents’ use of the defined terms “Edwards” and “Joppa” in this Answer incorporate the definitions provided in this paragraph, rather than the definitions of those terms provided in Sierra Club’s Complaint.

IPGC denies any remaining allegations in Paragraph 4. EEI and IPRG state that they lack sufficient information to respond to the allegations in Paragraph 4 and on that basis deny them. Vistra states that it has no information in its possession regarding the allegations in Paragraph 4 beyond that possessed by EEI, IPGC, and IPRG and therefore adopts their responses to Paragraph 4.

5. Since the mid-1960s, IPGC has stored and disposed of coal ash and other coal combustion waste in onsite repositories, including, but not limited to, two unlined ash ponds, a landfill, and two gypsum management facility ponds, and continues to store or dispose of coal ash and other coal combustion waste in these ponds and landfill.

**ANSWER:** IPGC admits that Coffeen includes two coal combustion residual (“CCR”) impoundments and two gypsum management facility ponds, which are part of the wastewater treatment system permitted under Coffeen’s NPDES permit. IPGC further admits that Coffeen also has a permit-exempt CCR landfill. IPGC denies the remaining allegations in Paragraph 5. EEI and IPRG state that they lack sufficient information to respond to the allegations in Paragraph 5 and on that basis deny them. Vistra states that it has no information in its possession regarding the allegations in Paragraph 5 beyond that possessed by EEI, IPGC, and IPRG and therefore adopts their responses to Paragraph 5.

6. Between 2010 and 2017, IPGC sampled groundwater from a network of monitoring wells around the Coffeen ash disposal units. The locations of the groundwater monitoring wells sampled during that time period are depicted on maps included in IPGC groundwater monitoring reports for Coffeen, attached hereto as Exhibits A-1 through A-8.

**ANSWER:** IPGC admits that monitoring wells located at Coffeen were sampled between 2010 and 2017. IPGC states that Exhibits A-1 through A-8 speak for themselves. IPGC denies any remaining allegations in Paragraph 6. EEI and IPRG state that they lack sufficient information to respond to the allegations in Paragraph 6 and on that basis deny them. Vistra states that it has no information in its possession regarding the allegations in Paragraph 6 beyond that possessed by EEI, IPGC, and IPRG and therefore adopts their responses to Paragraph 6.

7. Results of the groundwater monitoring from 2010 through 2017<sup>1</sup> at Coffeen show concentrations of arsenic, beryllium, boron, cadmium, chloride, chromium, fluoride, iron, lead, manganese, sulfate, thallium, total dissolved solids (“TDS”), and zinc that exceed Illinois Class I groundwater quality standards (“GQSs”). *See* Violations of Illinois Class I Groundwater Quality Standards at Coffeen, attached hereto as Exhibit D.

**ANSWER:** IPGC admits that groundwater samples have been collected from monitoring wells located at Coffeen and that groundwater sampling at Coffeen is ongoing. IPGC lacks sufficient information to respond to the remaining allegations in Paragraph 7 and therefore denies those allegations. EEI and IPRG state that they lack sufficient information to respond to the allegations in Paragraph 7 and on that basis deny them. Vistra states that it has no information in its possession regarding the allegations in Paragraph 7 beyond that possessed by EEI, IPGC, and IPRG and therefore adopts their responses to Paragraph 7.

8. In addition, results of groundwater monitoring at Coffeen show concentrations of alkalinity, ammonia, calcium, magnesium, potassium, and sodium that exceed site-specific standards set by IEPA.

**ANSWER:** ESI, IPGC, and IPRG lack sufficient information to respond to the allegations in Paragraph 8 and therefore deny those allegations. Vistra states that it has no information in its possession regarding the allegations in Paragraph 8 beyond that possessed by EEI, IPGC, and IPRG and therefore adopts their responses to Paragraph 8.

9. A June 24, 2012 notice of violation from Illinois Environmental Protection Agency, attached hereto as Exhibit G, identifies the groundwater underlying the Coffeen site as meeting the definition of Class I, potable resource groundwater.

**ANSWER:** Respondents state that Exhibit G speaks for itself. Respondents deny any remaining allegations in Paragraph 9.

10. Illinois Power Resources Generating, LLC (“IPRG”), a wholly owned subsidiary of Vistra, owns and operates the E.D. Edwards Generation Plant (“Edwards”), a coal-burning power plant located in Hollis Township, Illinois, in Peoria County, on the western bank of the Illinois River, and in the Illinois River Watershed.

**ANSWER:** IPRG admits that it is a wholly owned subsidiary of IPR, which in turn is a wholly owned subsidiary of IPH, which in turn is a wholly owned subsidiary of Vistra Operations, which in turn is a wholly owned subsidiary of Vistra Intermediate, which in turn is a wholly owned subsidiary of Vistra. IPRG admits that it owns and operates Edwards, which is located in Hollis Township, Illinois, in Peoria County, near the western bank of the Illinois River, in the Illinois River Watershed. IPRG denies any remaining allegations in Paragraph 10. EEI and IPGC state that they lack sufficient information to respond to the allegations in Paragraph 10 and on that basis deny them. Vistra states that it has no information in its possession regarding the allegations in Paragraph 10 beyond that possessed by EEI, IPGC, and IPRG and therefore adopts their responses to Paragraph 10.

11. Since the early 1960s, IPRG has stored and disposed of coal ash and other coal combustion waste in onsite repositories, including, but not limited to, an unlined pond (the Edwards Ash Pond) containing more than 130 million cubic feet of waste,<sup>1]</sup> and continues to store or dispose of coal ash and other coal combustion waste at the site.

**ANSWER:** IPRG admits that Edwards includes a CCR impoundment, which is part of the wastewater treatment system permitted under Edwards' NPDES permit. IPRG states that the referenced report speaks for itself. IPRG denies the remaining allegations in Paragraph 11. EEI and IPGC state that they lack sufficient information to respond to the allegations in Paragraph 11 and on that basis deny them. Vistra states that it has no information in its possession regarding the allegations in Paragraph 11 beyond that possessed by EEI, IPGC, and IPRG and therefore adopts their responses to Paragraph 11.

12. Between 2010 and 2012, and then between 2015 and 2017, IPRG sampled groundwater from a network of monitoring wells around the Edwards Ash Pond. The locations of the groundwater monitoring wells sampled during those time periods are depicted on maps included in IPRG groundwater monitoring reports for Edwards, attached hereto as Exhibits B-1 and B-2.

**ANSWER:** IPRG admits that monitoring wells located at Edwards were sampled between 2010 and 2012 and then between 2015 and 2017. IPRG states that Exhibits B-1 and B-2 speak for themselves. IPRG denies any remaining allegations in Paragraph 12. EEI and IPGC state that they lack sufficient information to respond to the allegations in Paragraph 12 and on that basis deny them. Vistra states that it has no information in its possession regarding the allegations in Paragraph 12 beyond that possessed by EEI, IPGC, and IPRG and therefore adopts their responses to Paragraph 12.

13. Results of the groundwater monitoring from 2010 through 2012 and 2015 through 2017<sup>1</sup> at Edwards show concentrations of arsenic, barium, beryllium, boron, chloride, chromium, iron, lead, manganese, sulfate, thallium, and TDS that exceed Illinois Class I groundwater quality standards. *See* Violations of Illinois Class I Groundwater Quality Standards at Edwards, attached hereto as Exhibit E.

**ANSWER:** IPRG admits that groundwater samples have been collected from monitoring wells located at Edwards and that groundwater sampling is ongoing. IPRG lacks sufficient information to respond to the remaining allegations in Paragraph 13 and therefore denies those allegations. EEI and IPGC state that they lack sufficient information to respond to the allegations in Paragraph 13 and on that basis deny them. Vistra states that it has no information in its possession regarding the allegations in Paragraph 13 beyond that possessed by EEI, IPGC, and IPRG and therefore adopts their responses to Paragraph 13.

14. In addition, results of groundwater monitoring at Edwards show concentrations of calcium that exceed site-specific standards.

**ANSWER:** Respondents state that they lack sufficient information to respond to the allegations in Paragraph 14 and on that basis deny them.

15. A March 19, 2013 hydrogeological assessment<sup>1</sup> prepared for Ameren identifies the groundwater underlying the Edwards site as meeting the definition of Class I, potable resource groundwater.



**ANSWER:** IPRG states that the referenced report speaks for itself. IPRG denies any remaining allegations in Paragraph 15. IPGC and EEI state that they lack sufficient information to respond to the allegations in Paragraph 15 and on that basis deny them. Vistra states that it has no information in its possession regarding the allegations in Paragraph 15 beyond that possessed by EEI, IPGC, and IPRG and therefore adopts their responses to Paragraph 15.

16. Electric Energy, Inc. (“EEI”), an 80 percent-owned subsidiary of Vistra, owns and operates the Joppa Steam Plant (“Joppa”), a coal-burning power plant located in Joppa, Illinois, in Massac County, on the northern bank of the Ohio River, and in the Bayou Creek-Ohio River Watershed.

**ANSWER:** EEI admits that IPGC owns an 80% interest in EEI. IPGC is a wholly owned subsidiary of IPR, which in turn is a wholly owned subsidiary of IPH, which in turn is a wholly owned subsidiary of Vistra Operations, which in turn is a wholly owned subsidiary of Vistra Intermediate, which in turn is a wholly owned subsidiary of Vistra. EEI admits that it owns and operates Joppa, which is located in Joppa, Illinois, in Massac County, near the northern bank of the Ohio River, and in the Bayou Creek-Ohio River Watershed. EEI denies any remaining allegations in Paragraph 16. IPGC and IPRG state that they lack sufficient information to respond to the allegations in Paragraph 16 and on that basis deny them. Vistra states that it has no information in its possession regarding the allegations in Paragraph 16 beyond that possessed by EEI, IPGC, and IPRG and therefore adopts their responses to Paragraph 16.

17. Since the 1970s, IPG has stored and disposed of coal ash and other coal combustion waste in onsite repositories, including, but not limited to, an unlined pond containing more than 120 million cubic feet of waste<sup>1</sup> and a dry landfill, and continues to store or dispose of coal ash and other coal combustion waste in these units.

**ANSWER:** Respondents lack sufficient information to respond to the allegations in Paragraph 17 and therefore deny those allegations.<sup>2</sup>

---

<sup>2</sup> “IPG” is not a defined term in the Complaint.

18. Between 2011 and 2013, and then between 2015 and 2017, EEI sampled groundwater from a network of monitoring wells around the Joppa ash disposal units. The locations of the groundwater monitoring wells sampled during those time periods are depicted on maps included in EEI groundwater monitoring reports for Joppa, attached hereto as Exhibits C-1, C-2, and C-3.

**ANSWER:** EEI admits that monitoring wells located at Joppa were sampled between 2011 and 2013 and then between 2015 and 2017. EEI states that Exhibits C-1 through C-3 speak for themselves. EEI denies any remaining allegations in Paragraph 18. IPGC and IPRG state that they lack sufficient information to respond to the allegations in Paragraph 18 and on that basis deny them. Vistra states that it has no information in its possession regarding the allegations in Paragraph 18 beyond that possessed by EEI, IPGC, and IPRG and therefore adopts their responses to Paragraph 18.

19. Results of groundwater monitoring at Joppa from 2011 through 2013 and 2015 through 2017<sup>1</sup> show concentrations of arsenic, boron, iron, lead, and sulfate that exceed Illinois Class I and Class II groundwater quality standards, and concentrations of beryllium, chromium, and manganese that exceed Class I standards only. *See* Violations of Illinois Class I Groundwater Quality Standards at Joppa and Violations of Illinois Class II Groundwater Quality Standards at Joppa, attached hereto as Exhibits F-1 and F-2.

**ANSWER:** EEI admits that groundwater samples have been collected from monitoring wells located at Joppa and that groundwater sampling is ongoing. EEI lacks sufficient information to respond to the remaining allegations in Paragraph 19 and on that basis denies them. IPGC and IPRG state that they lack sufficient information to respond to the allegations in Paragraph 19 and on that basis deny them. Vistra states that it has no information in its possession regarding the allegations in Paragraph 19 beyond that possessed by EEI, IPGC, and IPRG and therefore adopts their responses to Paragraph 19.

20. In addition, results of groundwater monitoring at Joppa show concentrations of calcium that exceed site-specific standards.

**ANSWER:** Respondents state that they lack sufficient information to respond to the allegations in Paragraph 20 and on that basis deny them.

21. A July 23, 2013 hydrogeological assessment<sup>□</sup> prepared for EEI and Ameren identifies the groundwater underlying the Joppa site as meeting the definition of Class II groundwater.

**ANSWER:** EEI states that the referenced report speaks for itself. EEI denies any remaining allegations in Paragraph 21. IPGC and IPRG state that they lack sufficient information to respond to the allegations in Paragraph 21 and on that basis deny them. Vistra states that it has no information in its possession regarding the allegations in Paragraph 21 beyond that possessed by EEI, IPGC, and IPRG and therefore adopts their responses to Paragraph 21.

22. The results of groundwater monitoring conducted at the Power Plants, reveal exceedances of Illinois Class I Groundwater Quality Standards, 35 Ill. Admin. Code § 620.410, for: arsenic, beryllium, boron, chromium, iron, lead, manganese, and sulfate. *See Exhibits D, E, and F-1.*

**ANSWER:** Respondents lack sufficient information to respond to the allegations in Paragraph 22 and therefore deny those allegations.

23. The results of groundwater monitoring conducted at Joppa reveal exceedances of Illinois Class II Groundwater Quality Standards, 35 Ill. Admin. Code § 620.420, for: arsenic, boron, iron, lead and sulfate. *See Exhibit F-2.*

**ANSWER:** Respondents lack sufficient information to respond to the allegations in Paragraph 23 and therefore deny those allegations.

24. In addition, exceedances of site-specific groundwater standards for alkalinity, ammonia, calcium, magnesium, potassium, and sodium were revealed through monitoring at the Power Plants.

**ANSWER:** Respondents lack sufficient information to respond to the allegations in Paragraph 24 and therefore deny those allegations.

25. Many of the contaminants found at elevated concentrations in the groundwater beneath the Power Plants are recognized constituents of coal ash.<sup>□</sup> Boron, calcium, fluoride, sulfate, and TDS are primary indicators of coal ash impacts to groundwater.<sup>□</sup>

**ANSWER:** Respondents lack sufficient knowledge or information to respond to the allegations in Paragraph 25 and therefore deny those allegations.

26. The pollutants listed in this complaint, when present at the concentrations found in Respondents' groundwater wells at the Power Plants, make the groundwater unusable. Many of these contaminants are toxic and have been found at concentrations that present a human health risk. They are also dangerous to aquatic ecosystems, which is a significant concern to the extent that contaminated groundwater is migrating into adjacent surface water bodies.

**ANSWER:** Respondents lack sufficient knowledge or information to respond to the allegations in Paragraph 26 and therefore deny those allegations.

27. Antimony is listed as a toxic pollutant, 40 C.F.R. § 401.15, and is associated with reduced lifespan, decreased blood glucose, and altered cholesterol in rodents, and with vomiting and cardiac and respiratory effects in humans.<sup>1</sup>

**ANSWER:** Paragraph 27 contains one or more legal conclusions to which no response is required. To the extent a response is required, Respondents admit that there is a regulatory provision 40 C.F.R. § 401.15 and state that the regulation speaks for itself. Respondents further state that they lack sufficient knowledge or information to respond to the remaining allegations in Paragraph 27 and therefore deny those allegations.

28. Arsenic is known to cause multiple forms of cancer in humans and is also associated with non-cancer health effects of the skin and the nervous system.<sup>1</sup> Groundwater that exceeds Illinois GQSs for arsenic is highly toxic; based on current U.S. EPA risk estimates, the cancer risk associated with drinking water at 0.05 mg/L, the Illinois Class I GQS for arsenic, is greater than 2 in 1,000. The risk at 0.2 mg/L, the Class II GQS, is 1 in 100.<sup>1</sup>

**ANSWER:** Paragraph 28 contains one or more legal conclusions to which no response is required. Respondents further state that they lack sufficient knowledge or information to respond to the remaining allegations in Paragraph 28 and therefore deny those allegations.

29. Barium can cause gastrointestinal disturbances and muscular weakness. Ingesting large amounts, dissolved in water, can change heart rhythm and can cause paralysis and possibly death. Barium can also cause increased blood pressure.<sup>1</sup>

**ANSWER:** Respondents lack sufficient knowledge or information to respond to the allegations in Paragraph 29 and therefore deny those allegations.

30. Drinking water containing beryllium in excess of the maximum contaminant level of 4 parts per billion can lead to intestinal lesions, according to EPA. Beryllium in drinking water may also pose a cancer risk in humans.<sup>1</sup> Beryllium is a toxic pollutant, 40 C.F.R. § 401.15.

**ANSWER:** Paragraph 30 contains one or more legal conclusions to which no response is required. To the extent a response is required, Respondents admit that there is a regulatory provision 40 C.F.R. § 401.15 and state that the regulation speaks for itself. Respondents further state that they lack sufficient knowledge or information to respond to the remaining allegations in Paragraph 30 and therefore deny those allegations.

31. Oral exposure to boron has led to developmental and reproductive toxicity in multiple species. Specific effects include testicular degeneration, reduced sperm count, reduced birth weight, and birth defects.<sup>1</sup> The EPA has established a child health advisory of 3 mg/L for boron, close to the Illinois Class I and Class II GQS of 2 mg/L.<sup>1</sup>

**ANSWER:** Paragraph 31 contains one or more legal conclusions to which no response is required. Respondents further state that they lack sufficient knowledge or information to respond to the remaining allegations in Paragraph 31 and therefore deny those allegations.

32. Chronic exposure to cadmium, a toxic pollutant, 40 C.F.R. § 401.15, can result in kidney disease and obstructive lung diseases such as emphysema. Cadmium may also be related to increased blood pressure (hypertension) and is a possible lung carcinogen. Cadmium affects calcium metabolism and can result in bone mineral loss and associated bone loss, osteoporosis, and bone fractures.<sup>1</sup>

**ANSWER:** Paragraph 32 contains one or more legal conclusions to which no response is required. To the extent a response is required, Respondents admit that there is a regulatory provision 40 C.F.R. § 401.15 and state that the regulation speaks for itself. Respondents further state that they lack sufficient knowledge or information to respond to the remaining allegations in Paragraph 32 and therefore deny those allegations.

33. Chloride renders water unusable by imparting a salty taste; to prevent this the EPA has set a secondary drinking water regulation of 250 mg/L, close to the Illinois Class I and Class II GQS of 200 mg/L.<sup>1</sup>

**ANSWER:** Paragraph 33 contains one or more legal conclusions to which no response is required. Respondents further state that they lack sufficient knowledge or information to respond to the remaining allegations in Paragraph 33 and therefore deny those allegations.

34. Chromium is an odorless and tasteless metallic element, and most commonly comes in two forms: trivalent chromium, and hexavalent chromium.<sup>□</sup> Although some trivalent chromium is an important dietary element, hexavalent chromium is a known human carcinogen, and high levels of exposure through drinking water can cause oral ulcers, diarrhea, vomiting, and other signs of agitation.<sup>□</sup> Since 1991, the U.S. EPA has enforced a federal drinking water standard of 0.1 mg/l, which is the same as the Illinois Class I standard. U.S. EPA also determined that chromium should be regulated based on total chromium, including trivalent chromium, because the two forms of chromium can convert back and forth depending on conditions in the water or even inside the human body.<sup>□</sup>

**ANSWER:** Paragraph 34 contains one or more legal conclusions to which no response is required. Respondents further state that they lack sufficient knowledge or information to respond to the remaining allegations in Paragraph 34 and therefore deny those allegations.

35. Cobalt is possibly carcinogenic to humans. Short-term exposure of rats to high levels of cobalt in the food or drinking water resulted in effects on the blood, liver, kidneys, and heart. Longer-term exposure of rats, mice, and guinea pigs to lower levels of cobalt in the food or drinking water results in effects on the same tissues (heart, liver, kidneys, and blood) as well as the testes, and also caused effects on behavior. Sores were seen on the skin of guinea pigs following skin contact with cobalt for 18 days.<sup>□</sup>

**ANSWER:** Respondents lack sufficient knowledge or information to respond to the allegations in Paragraph 35 and therefore deny those allegations.

36. Exposure to fluoride has been linked to tooth discoloration and skeletal problems when ingested.<sup>□</sup>

**ANSWER:** Respondents lack sufficient knowledge or information to respond to the remaining allegations in Paragraph 36 and therefore deny those allegations.

37. Iron renders water unusable by imparting a rusty color and a metallic taste and causing sedimentation and staining; to prevent these effects the EPA has set a secondary drinking water regulation of 0.3 mg/L.<sup>□</sup>

**ANSWER:** Paragraph 37 contains one or more legal conclusions to which no response is required. Respondents further state that they lack sufficient knowledge or information to respond to the remaining allegations in Paragraph 37 and therefore deny those allegations.

38. Lead is known to be toxic to the nervous system, and is particularly associated with effects on childhood neurobehavioral development at very low doses. Lead is also classified by the EPA as a “probable human carcinogen.”<sup>□</sup> The EPA Action Level for lead in drinking water is

0.015 mg/L.<sup>□</sup> This is unlikely to represent a “safe” level of exposure—the EPA has noted, for example, that there may be no threshold for lead toxicity.<sup>□</sup> Groundwater concentrations of lead above the Illinois Class I GQS, 0.0075 mg/L, are unsafe in drinking water.

**ANSWER:** Paragraph 38 contains one or more legal conclusions to which no response is required. Respondents further state that they lack sufficient knowledge or information to respond to the remaining allegations in Paragraph 38 and therefore deny those allegations.

39. Manganese is also known to be toxic to the nervous system.<sup>□</sup> The EPA has not updated its assessment of manganese toxicity in 16 years, so EPA standards and advisories may not reflect the latest scientific knowledge concerning effects on childhood neurological development,<sup>□</sup> and the EPA Lifetime Health Advisory for manganese—0.3 mg/L—may not be adequately health-protective. In any event, manganese concentrations greater than 0.05 mg/L render water non-potable by discoloring the water, giving it a metallic taste, and causing black staining.<sup>□</sup> Groundwater with manganese above the Illinois Class I GQS—0.15 mg/L—is unfit for human consumption and is potentially toxic.

**ANSWER:** Paragraph 39 contains one or more legal conclusions to which no response is required. Respondents further state that they lack sufficient knowledge or information to respond to the remaining allegations in Paragraph 39 and therefore deny those allegations.

40. Selenium is an essential element, but it is also a toxic pollutant, 40 C.F.R. § 401.15, and excess exposure can cause a chemical-specific condition known as selenosis, with symptoms that include hair and nail loss.<sup>□</sup>

**ANSWER:** Paragraph 40 contains one or more legal conclusions to which no response is required. To the extent a response is required, Respondents admit that there is a regulatory provision 40 C.F.R. § 401.15 and state that the regulation speaks for itself. Respondents further state that they lack sufficient knowledge or information to respond to the remaining allegations in Paragraph 40 and therefore deny those allegations.

41. High concentrations of sulfates in drinking water impart a salty taste and can cause diarrhea; to protect against these effects, the U.S. EPA has established a health-based advisory of 500 mg/L.<sup>□</sup> Groundwater with sulfate concentrations above the Illinois Class I and Class II GQS of 400 mg/L is therefore unsuitable for human consumption.

**ANSWER:** Paragraph 41 contains one or more legal conclusions to which no response is required. Respondents further state that they lack sufficient knowledge or information to respond to the remaining allegations in Paragraph 41 and therefore deny those allegations.

42. Thallium is known to cause neurotoxicity, and is also associated with developmental and reproductive toxicity and other adverse health effects.<sup>□</sup> The Illinois Class I GQS and the U.S. EPA MCL are both 0.002 mg/L.<sup>□</sup>

**ANSWER:** Paragraph 42 contains one or more legal conclusions to which no response is required. Respondents further state that they lack sufficient knowledge or information to respond to the remaining allegations in Paragraph 42 and therefore deny those allegations.

43. Total dissolved solids (TDS) is a measure of multiple dissolved chemicals, and high TDS is generally associated with hardness, staining, salty taste, and deposits.<sup>□</sup> Groundwater with TDS above the Illinois Class I and Class II GQS, 1,200 mg/L, is unsafe as drinking water.

**ANSWER:** Paragraph 43 contains one or more legal conclusions to which no response is required. Respondents further state that they lack sufficient knowledge or information to respond to the remaining allegations in Paragraph 43 and therefore deny those allegations.

44. Zinc is a toxic pollutant, 40 C.F.R. § 401.15, and according to the U.S. Agency for Toxic Substances and Disease Registry, ingesting high levels of zinc may cause stomach cramps, nausea, and vomiting. Ingesting high levels of zinc for several months may cause anemia, damage the pancreas, and decrease levels of high-density lipoprotein cholesterol.<sup>□</sup>

**ANSWER:** Paragraph 44 contains one or more legal conclusions to which no response is required. To the extent a response is required, Respondents admit that there is a regulatory provision 40 C.F.R. § 401.15 and states that the regulation speaks for itself. Respondents further state that they lack sufficient knowledge or information to respond to the remaining allegations in Paragraph 44 and therefore deny those allegations.

45. Finally, many of the contaminants associated with coal ash are known to bioaccumulate in aquatic ecosystems causing tissue damage and other effects in fish and amphibians. One review, for example, noted that “the combined effects of multiple accumulated elements may lead to numerous changes in individuals that could compromise individual fitness or health,” and provided several examples of coal ash-contaminated sites where the health of individuals and communities in aquatic ecosystems has been severely impaired.<sup>□</sup>



**ANSWER:** Respondents lack sufficient knowledge or information to respond to the allegations in Paragraph 45 and therefore deny those allegations.

46. Sierra Club is the nation's oldest and largest grassroots environmental organization. Sierra Club is an incorporated, not-for-profit organization with headquarters located at 2101 Webster Street, Suite 1300, Oakland, CA 94612. Sierra Club's Illinois Chapter office is located at 70 East Lake Street, Suite 1500, Chicago, IL 60601. Sierra Club's mission is to preserve, protect, and enhance the natural environment. Sierra Club has more than 782,000 members, including approximately 30,000 members in Illinois.

**ANSWER:** Respondents lack sufficient knowledge or information to respond to the allegations in Paragraph 46 and therefore deny those allegations.

47. Upon information and belief, Illinois Power Generating Company ("IPGC") is a wholly owned subsidiary of Vistra (through intermediaries) that owns and operates three coal plants in Illinois, including Coffeen. Upon information and belief, IPGC is based in Houston, Texas.

**ANSWER:** Respondents admit that IPGC is a wholly owned subsidiary of IPR, which in turn is a wholly owned subsidiary of IPH, which in turn is a wholly owned subsidiary of Vistra Operations, which in turn is a wholly owned subsidiary of Vistra Intermediate, which in turn is a wholly owned subsidiary of Vistra. IPGC denies that it "owns and operates three coal plants in Illinois." Respondents deny any remaining allegations in Paragraph 47.

48. Upon information and belief, Illinois Power Resources Generating ("IPRG") is a wholly owned subsidiary of Vistra (through intermediaries), which owns and operates multiple coal plants in Illinois, including Edwards. IPRG is based in Houston, Texas.

**ANSWER:** Respondents admit that IPRG is a wholly owned subsidiary of IPR, which in turn is a wholly owned subsidiary of IPH, which in turn is a wholly owned subsidiary of Vistra Operations, which in turn is a wholly owned subsidiary of Vistra Intermediate, which in turn is a wholly owned subsidiary of Vistra. IPRG admits that it owns and operates multiple coal-fired electric generating units in Illinois, including those located at Edwards. Respondents deny any remaining allegations in Paragraph 48.

49. Upon information and belief, Electric Energy, Inc. (“EEI”) is an eighty-percent owned subsidiary of Vistra (through intermediaries) that owns and operates the Joppa coal plant in southern Illinois. EEI is based in Joppa, Illinois.

**ANSWER:** Respondents admit that EEI owns and operates Joppa and that IPGC owns an 80% interest in EEI. Respondents also admit that IPGC is a wholly owned subsidiary of IPR, which in turn is a wholly owned subsidiary of IPH, which in turn is a wholly owned subsidiary of Vistra Operations, which in turn is a wholly owned subsidiary of Vistra Intermediate, which in turn is a wholly owned subsidiary of Vistra. Respondents deny any remaining allegations in Paragraph 49.

50. Vistra Energy Corporation (“Vistra”) is a multi-million dollar energy company based in Dallas, Texas, that is the ultimate corporate parent for IPGC, IPRG, and EEI.

**ANSWER:** Vistra admits that it is an integrated power company headquartered in Irving, Texas. Respondents admit that IPGC owns an 80% interest in EEI, and that that IPGC and IPRG are wholly owned subsidiaries of IPR, which in turn is a wholly owned subsidiary of IPH, which in turn is a wholly owned subsidiary of Vistra Operations, which in turn is a wholly owned subsidiary of Vistra Intermediate, which in turn is a wholly owned subsidiary Vistra. Respondents deny any remaining allegations in Paragraph 50.

51. The Illinois Environmental Protection Act prohibits “the discharge of any contaminants into the environment . . . so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources,” 415 ILCS 5/12(a), and prohibits the deposition of “any contaminants upon the land in such place and manner so as to create a water pollution hazard.” 415 ILCS 5/12(d).

**ANSWER:** Paragraph 51 contains one or more legal conclusions to which no response is required. To the extent a response is required, Respondents admit that there are statutory provisions 415 ILCS 5/12(a) & (d) and state that the statute speaks for itself. Respondents deny any remaining allegations in Paragraph 51 to the extent that they are inconsistent with the statute, as cited, and to the extent a response is required.

52. “Water pollution” is defined as the “alteration” or “discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.” 415 ILCS 5/3.545.

**ANSWER:** Paragraph 52 contains one or more legal conclusions to which no response is required. To the extent a response is required, Respondents admit that there is a statutory provision 415 ILCS 5/3.545 and state that the statute speaks for itself. Respondents deny any remaining allegations in Paragraph 52 to the extent that they are inconsistent with the statute, as cited, and to the extent a response is required.

53. “Waters” of the State is defined to include “all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.” 415 ILCS 5/3.550.

**ANSWER:** Paragraph 53 contains one or more legal conclusions to which no response is required. To the extent a response is required, Respondents admit that there is a statutory provision 415 ILCS 5/3.550 and state that the statute speaks for itself. Respondents deny any remaining allegations in Paragraph 53 to the extent that they are inconsistent with the statute, as cited, and to the extent a response is required.

54. Section 620.115 provides that “No person shall cause, threaten or allow a violation of the [Environmental Protection Act], the [Illinois Groundwater Protection Act] or regulations adopted by the Board thereunder, including but not limited to this part.” 35 Ill. Admin. Code § 620.115.

**ANSWER:** Paragraph 54 contains one or more legal conclusions to which no response is required. To the extent a response is required, Respondents admit that there is a regulatory provision 35 Ill. Admin. Code § 620.115 and state that the regulation speaks for itself. Respondents deny any remaining allegations in Paragraph 54 to the extent that they are inconsistent with the regulations, as cited, and to the extent a response is required.

55. Section 620.301(a) provides that “No person shall cause, threaten or allow the release of any contaminant to a resource groundwater such that: 1) Treatment or additional

treatment is necessary to continue an existing use or to assure a potential use of such groundwater; or 2) An existing or potential use of such groundwater is precluded.” 35 Ill. Admin. Code § 620.301.

**ANSWER:** Paragraph 55 contains one or more legal conclusions to which no response is required. To the extent a response is required, Respondents admit that there is a regulatory provision 35 Ill. Admin. Code § 620.301 and state that the regulation speaks for itself. Respondents deny any remaining allegations in Paragraph 55 to the extent that they are inconsistent with the regulations, as cited, and to the extent a response is required.

56. Section 620.405 prohibits “the release of any contaminant to groundwater so as to cause a groundwater quality standard set forth in this Subpart to be exceeded.” 35 Ill. Admin. Code § 620.405.

**ANSWER:** Paragraph 56 contains one or more legal conclusions to which no response is required. To the extent a response is required, Respondents admit that there is a regulatory provision 35 Ill. Admin. Code § 620.405 and state that the regulation speaks for itself. Respondents deny any remaining allegations in Paragraph 56 to the extent that they are inconsistent with the regulations, as cited, and to the extent a response is required.

57. The Illinois Administrative Code establishes different groundwater quality standards for Class I and Class II groundwater. 35 Ill. Admin. Code § 620.410, 620.420.

**ANSWER:** Paragraph 57 contains one or more legal conclusions to which no response is required. To the extent a response is required, Respondents admit that there are regulatory provisions 35 Ill. Admin. Code §§ 620.410 & 620.420 and state that the regulations speak for themselves. Respondents deny any remaining allegations in Paragraph 57 to the extent that they are inconsistent with the regulations, as cited, and to the extent a response is required.

58. Section 620.410 establishes Class I GQSs that cannot be exceeded in potable resource groundwater. 35 Ill. Admin. Code § 620.410. “Potable resource groundwater” is defined as:

Groundwater located 10 feet or more below the land surface and within: (1)  
The minimum setback zone of a well which serves as a potable water supply

and to the bottom of such well; (2) Unconsolidated sand, gravel or sand and gravel which is 5 feet or more in thickness and that contains 12 percent or less of fines . . . ; (3) Sandstone which is 10 feet or more in thickness, or fractured carbonate which is 15 feet or more in thickness; or (4) Any geologic material which is capable of a: (A) sustained groundwater yield, from up to a 12 inch borehole, of 150 gallons per day or more from a thickness of 15 feet or less; or (B) Hydraulic conductivity of  $1 \times 10^{-4}$  cm/sec or greater using one of the following test methods or its equivalent: (i) Permeameter; (ii) Slug test; or (iii) Pump test.

**ANSWER:** Paragraph 58 contains one or more legal conclusions to which no response is required. To the extent a response is required, Respondents admit that there is a regulatory provision 35 Ill. Admin. Code § 620.410 and state that the regulation speaks for itself. Respondents deny any remaining allegations in Paragraph 58 to the extent that they are inconsistent with the regulations, as cited, and to the extent a response is required.

59. 35 Ill. Admin. Code § 620.210(a). The definition of Class I groundwater specifically excludes: Class III “special resource groundwater,” Class IV “other groundwater,” which includes groundwater in a zone of attenuation; and groundwater in a “groundwater management zone.” 35 Ill. Admin. Code § 620.210; *see also* 35 Ill. Admin. Code §§ 620.230, 620.240, 620.250.

**ANSWER:** Paragraph 59 contains one or more legal conclusions to which no response is required. To the extent a response is required, Respondents admit that there are regulatory provisions 35 Ill. Admin. Code §§ 620.210, 620.230, 620.240, 620.250 and states that the regulations speak for themselves. Respondents deny any remaining allegations in Paragraph 59 to the extent that they are inconsistent with the regulations, as cited, and to the extent a response is required.

60. Section 620.420 establishes Class II GQSs that cannot be exceeded in general resource groundwater. 35 Ill. Admin. Code § 620.420. “General resource groundwater” is defined as “groundwater which does not meet the provisions of . . . Class I . . . Class III . . . or . . . Class IV” and “groundwater which is found by the Board, pursuant to the petition procedures set forth in Section 620.260, to be capable of agricultural, industrial, recreational or other beneficial uses.” 35 Ill. Admin. Code § 620.220. Groundwater in a zone of attenuation must meet Class II GQSs. 35 Ill. Admin. Code § 620.440(b).

**ANSWER:** Paragraph 60 contains one or more legal conclusions to which no response is required. To the extent a response is required, Respondents admit that there are regulatory provisions 35 Ill. Admin. Code §§ 620.220, 620.260, 620.420, 620.440 and states that the regulations speak for themselves. Respondents deny any remaining allegations in Paragraph 60 to the extent that they are inconsistent with the regulations, as cited, and to the extent a response is required.

61. The Illinois Class I and Class II GQSs for contaminants identified in this complaint are as follows:

Chemical	Class I GQS (mg/L) (35 Ill. Admin. Code § 620.410)	Class II GQS (mg/L) (35 Ill. Admin. Code § 620.420)
Antimony	0.006	0.024
Arsenic	0.01	0.2
Barium	2	2
Beryllium	0.004	0.5
Boron	2	2
Cadmium	0.005	0.05
Chloride	200	200
Chromium	0.1	1.0
Cobalt	1	1
Fluoride	4	4
Iron	5	5
Lead	0.0075	0.10
Manganese	0.15	10
Selenium	0.05	0.05
Sulfate	400	400
Thallium	0.002	0.02
Total Dissolved Solids (TDS)	1,200	1,200
Zinc	5	10

**ANSWER:** Paragraph 61 contains one or more legal conclusions to which no response is required. To the extent a response is required, Respondents admit that there are regulatory provisions 35 Ill. Admin. Code §§ 620.410 & 620.420 and state that the regulations speak for themselves. Respondents deny any remaining allegations in Paragraph 61 to the extent that they are inconsistent with the regulations, as cited, and to the extent a response is required.

**COUNT I: WATER POLLUTION AT COFFEEN**

62. Paragraphs 1 to 61 are realleged and incorporated herein by reference.

**ANSWER:** Respondents incorporate their responses to Paragraphs 1 to 61 as though fully restated herein.

63. IPGC, through its disposal and storage of coal ash at Coffeen, has discharged contaminants into the environment and thereby caused water pollution in violation of 415 ILCS 5/12(a) and (d), and 35 Ill. Admin. Code §§ 620.115, 620.301(a), and 620.405.

**ANSWER:** IPGC denies the allegations in Paragraph 63. EEI and IPRG state that they lack sufficient information to respond to the allegations in Paragraph 63 and on that basis deny them. Vistra states that it has no information in its possession regarding the allegations in Paragraph 63 beyond that possessed by EEI, IPGC, and IPRG and therefore adopts their responses to Paragraph 63.

64. Specifically, between 2010 and 2017, contamination from IPGC's coal ash disposal and storage at Coffeen caused at least 411 exceedances of Illinois Class I Groundwater Quality Standards for arsenic, beryllium, boron, cadmium, chloride, chromium, fluoride, iron, lead, manganese, sulfate, thallium, TDS, and zinc. *See* Exhibit D; 35 Ill. Admin. Code § 620.410.

**ANSWER:** Respondents state that they lack sufficient information to respond to the allegations in Paragraph 64 and on that basis deny them.

**COUNT II: WATER POLLUTION AT EDWARDS**

65. Paragraphs 1 to 61 are realleged and incorporated herein by reference.

**ANSWER:** Respondents incorporate their responses to Paragraphs 1 to 61 as though fully restated herein.

66. IPRG, through its disposal and storage of coal ash at Edwards has discharged contaminants into the environment and thereby caused water pollution in violation of 415 ILCS 5/12(a) and (d), and 35 Ill. Admin. Code §§ 620.115, 620.301(a), and 620.405.

**ANSWER:** IPRG denies the allegations in Paragraph 66. EEI and IPGC state that they lack sufficient information to respond to the allegations in Paragraph 66 and on that basis deny

them. Vistra states that it has no information in its possession regarding the allegations in Paragraph 66 beyond that possessed by EEI, IPGC, and IPRG and therefore adopts their responses to Paragraph 66.

67. Specifically, between 2010 and 2012, and between 2015 and 2017, contamination from IPRG's disposal and storage of coal ash at Edwards caused at least 124 violations of Illinois Class I Groundwater Quality Standards for arsenic, barium, beryllium, boron, chloride, chromium, iron, lead, manganese, sulfate, thallium, and TDS. *See* Exhibit E; 35 Ill. Admin. Code § 620.410.

**ANSWER:** Respondents state that they lack sufficient information to respond to the allegations in Paragraph 67 and on that basis deny them.

### **COUNT III: WATER POLLUTION AT JOPPA**

68. Paragraphs 1 to 61 are realleged and incorporated herein by reference.

**ANSWER:** Respondents incorporate their responses to Paragraphs 1 to 61 as though fully restated herein.

69. EEI, through its disposal and storage of coal ash at Joppa, has discharged contaminants into the environment and thereby caused water pollution in violation of 415 ILCS 5/12(a) and (d), and 35 Ill. Admin. Code §§ 620.115, 620.301(a), and 620.405.

**ANSWER:** EEI denies the allegations in Paragraph 69. IPGC and IPRG state that they lack sufficient information to respond to the allegations in Paragraph 69 and on that basis deny them. Vistra states that it has no information in its possession regarding the allegations in Paragraph 69 beyond that possessed by EEI, IPGC, and IPRG and therefore adopts their responses to Paragraph 69.

70. Specifically, between 2011 and 2013, and between 2015 and 2017, contamination from EEI's disposal and storage of coal ash at Joppa caused at least 94 exceedances of Illinois Class I Groundwater Quality Standards for arsenic, beryllium, boron, chromium, iron, lead, manganese, and sulfate. *See* Exhibit F-1; 35 Ill. Admin. Code § 620.410.

**ANSWER:** Respondents state that they lack sufficient information to respond to the allegations in Paragraph 70 and on that basis deny them.



71. In the alternative, between 2011 and 2013, and between 2015 and 2017, contamination from EEI's disposal and storage of coal ash at Joppa caused at least 28 exceedances of Illinois Class II Groundwater Quality Standards for arsenic, boron, iron, lead and sulfate. *See* Exhibit F-2; 35 Ill. Admin. Code § 620.420.

**ANSWER:** Respondents state that they lack sufficient information to respond to the allegations in Paragraph 71 and on that basis deny them.

### **AFFIRMATIVE DEFENSES**

#### **I. Sierra Club May Not Obtain Injunctive Relief from the Board.**

72. Paragraphs 1-71 are re-alleged and incorporated herein by reference.

73. Illinois courts look to the substance, not the form, of an order to determine whether relief is injunctive. *In re A Minor*, 127 Ill. 2d 247, 260 (Ill. 1989). The Illinois Supreme Court has defined injunctive relief as a “judicial process operating in personam and requiring [a] person to whom it is directed to do or refrain from doing a particular thing.” *Id.* at 261 (quoting Black's Law Dictionary 705 (5th ed. 1983)) (alteration in original); *Santella v. Kolton*, 393 Ill. App. 3d 889, 901-02 (Ill. App. Ct., 1st Dist., 2009). Black's Law Dictionary defines a number of types of injunctions, including “mandatory injunctions,” which “orders an affirmative act or mandates a specified course of conduct.” (10th ed. 2014).

74. Sierra Club requests that the Board issue a mandatory injunction ordering Respondents to take two specific affirmative actions: “[m]odify their . . . disposal and storage practices so as to avoid future groundwater contamination[;] and [r]emediate the contaminated groundwater so that it meets applicable Illinois Groundwater Quality Standards.” Compl. at p. 18.

75. These elements of Sierra Club's requested relief exceed a mere “cease and desist” order (which Sierra Club requests in Relief Requested (c)(i), Compl. at p. 17). Instead, these

elements of the requested relief ask the board to order a specific affirmative act, *i.e.* a mandatory injunction. *See* Black's Law Dictionary (10th ed. 2014).

76. While plaintiffs are authorized by the Illinois Environmental Protection Agency to seek mandatory injunctive relief from the Illinois courts, they may not obtain that relief from the Board. Instead, complainants before the Board are authorized to seek only three specific types of relief: orders to "cease and desist from violations," civil penalties, and revocation of permits. 415 ILCS 5/33(b).

77. The Board, and state and federal courts have held on numerous occasions that the Act does not authorize plaintiffs to seek mandatory injunctive relief before the Board. *See, e.g., Clean the Uniform Co.-Highland vs. Aramark Uniform & Career Apparel, Inc.*, PCB 03-21, Order of the Board, at 2 (Nov. 7, 2002) ("The Board is not authorized to grant injunctive relief . . . and that portion of the complaint is stricken."); *Krempel v. Martin Oil Marketing, Inc.*, No. 95-c-1348, 1995 WL 733439, at \*3 (N.D. Ill., Dec. 8, 1995) ("The plain language of the statute prohibits a suit for injunctive relief until a ruling from the PCB is obtained."); *People v. NL Indus.*, 152 Ill. 2d 82, 99–100 (Ill. 1992), *opinion modified on denial of reh'g* (Nov. 30, 1992) ("The Board has no enforcement powers. . . . Section 42 allows for the institution of a *civil* action to obtain an injunction." (emphasis in original)).

78. Because Sierra Club has requested relief that the Act does not authorize it to seek from the Board, those elements of Sierra Club's requested relief cannot be granted.

## **II. Sierra Club May Not Obtain Injunctive Relief for Violations of 415 ILCS 5/12(d).**

79. Paragraphs 1-78 are re-alleged and incorporated herein by reference.

80. Sierra Club's Complaint alleges that IPGC, IPRG, and EEI have violated 415 ILCS 5/12(d), which prohibits "*deposit[ing]* any contaminants upon the land in such place and

manner so as to create a water pollution hazard.” Compl. ¶¶ 63, 66, 69; 415 ILCS 5/12(d) (emphasis added).

81. The Illinois Supreme Court has held that “the plain language of the Act prohibits depositing contaminants on the land so as to create a water pollution hazard; it does not prohibit the mere existence of a water pollution hazard.” *People v. Agpro, Inc.*, 214 Ill. 2d 222, 233 (Ill. 2005) (internal quotation omitted).

82. Because Section 12(d) relates only to the depositing of contaminants on the land, not the maintenance of such contaminants on the land, injunctive relief is not available under Section 12(d) to correct any alleged violations of the Act or the Board’s rules that relate to existing coal combustion residuals at Coffeen, Edwards, or Joppa.

### **III. Sierra Club has Failed to State a Claim Against Vistra.**

83. Paragraphs 1-82 are re-alleged and incorporated herein by reference.

84. The Board’s rules require complainants to clearly identify the regulatory or statutory provisions that they allege a respondent has violated and the specific conduct that they allege constitute violations. 35 Ill. Admin. Code § 103.204(c)(1)&(2).

85. Sierra Club names the three “Direct Owners” of the plants, which it alleges are “subsidiary companies of Vistra Energy Corporation,” and Vistra itself as the respondents. Compl. ¶ 1. The Complaint alleges that the “Direct Owners” own and operate the plants at issue and admits that there are multiple corporate “intermediaries” between Vistra and each of the “Direct Owners.” *Id.* ¶¶ 47-49.

86. Beyond alleging that Vistra is the ultimate corporate parent of the “Direct Owners,” Sierra Club includes no specific factual or legal allegations against Vistra whatsoever. Instead, Counts I-III allege violations of the Act and the Board’s rules by IPGC, IPRG, and EEI,

respectively – the owners and operators of the plants at issue. Compl. ¶¶ 62-71. But no count alleges any violations of the Act or the Board’s rules by Vistra itself.

87. Nevertheless, the Complaint requests that the Board declare that all “Respondents,” including Vistra, be found in violation of the Act and be subject to penalties, a cease and desist order, and injunctive relief. Compl. at p. 17-18.

88. Because Sierra Club has failed to allege any violations of the Act or the Board’s rules by Vistra, it has not satisfied the pleading requirements contained in the Board’s rules. 35 Ill. Admin. Code § 103.204(c)(1)&(2); *Elmhurst Memorial Healthcare v. Chevron U.S.A.*, PCB 09-66, Order of the Board, at 14 (Dec. 16, 2010) (“[T]he pleader [must] set out the ultimate facts which support his cause of action.”) (internal quotation omitted). For that reason, Sierra Club may not obtain relief against Vistra.

**IV. IPGC is Not in Violation of the Act or the Board’s Rules Because the Groundwater Underlying Coffeen is Subject to a Groundwater Management Zone.**

89. Paragraphs 1-88 are re-alleged and incorporated herein by reference.

90. Sierra Club alleges that groundwater conditions at Coffeen violate 35 Ill. Admin. Code § 620.410. Compl. ¶ 64.

91. Pursuant to the Board’s Rules, a Groundwater Management Zone (“GMZ”) was established for groundwater underlying portions of Coffeen on January 30, 2018.

92. Upon establishment of a GMZ, the standards specified in 35 Ill. Admin. Code §§ 620.410, 620.420, 620.430, and 620.440 are not applicable. 35 Ill. Adm. Code 620.450(a)(3).

93. IPGC is not in violation of 35 Ill. Admin. Code § 620.410 for any exceedances of groundwater standards measured within Coffeen’s GMZ that occurred after the GMZ was established.

**V. The Statute of Limitations Bars Some or All of Sierra Club's Claims.**

94. Paragraphs 1-93 are re-alleged and incorporated herein by reference.

95. Sierra Club's Complaint alleges that CCR located at Coffeen, Edwards, and Joppa, which were first deposited as early as the 1960s, have contaminated groundwater. Compl. ¶¶ 5, 11, 17.

96. Sierra Club alleges that data from groundwater monitoring at Coffeen, Edwards, and Joppa dating back as far as 2010 shows exceedances of applicable groundwater standards. Compl. ¶¶ 7, 13, 19.

97. The Act does not contain a specific statute of limitations, but Illinois law provides a general, catch-all five-year statute of limitations applicable to "all civil actions not otherwise provided for." 735 ILCS 5/13-205.

98. The statute of limitations bars Sierra Club's claims as to (1) any coal combustion residuals that were deposited; and (2) any groundwater contamination that was discovered, more than five years before the date of Sierra Club's Complaint.

Respectfully Submitted,

*/s/ Daniel J. Deeb*

---

Daniel J. Deeb

Dated: April 15, 2019

SCHIFF HARDIN LLP  
Daniel J. Deeb  
Joshua R. More  
Ryan C. Granholm  
Caitlin M. Ajax  
233 South Wacker Drive, Suite  
7100  
Chicago, Illinois 60606  
Phone: 312-258-5633  
Fax: 312-258-5600  
rgranholm@schiffhardin.com

BALCH & BINGHAM LLP  
P. Stephen Gidiere III  
1901 Sixth Avenue North, Suite  
1500  
Birmingham, AL 35203-4642  
(205) 226-8735  
sgidiere@balch.com

GIBSON, DUNN & CRUTCHER  
Michael L. Raiff  
LLP  
2100 McKinney Avenue, Suite  
1100  
Dallas, TX 75201-6912  
(214) 698-3350  
mraiff@gibsondunn.com

*Attorneys for Respondents*

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on this 15th day of April, 2019, I have served electronically the attached **Answer to Complaint**, upon the following persons by e-mail at the email addresses indicated below:

Bradley P. Halloran, Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 60601  
brad.halloran@illinois.gov

Gregory E. Wannier  
Bridget M. Lee  
2101 Webster St., Ste. 1300  
Oakland, CA 94612  
greg.wannier@sierraclub.org  
bridget.lee@sierraclub.org

Faith E. Bugel  
1004 Mohawk  
Wilmette, IL 60091  
fbugel@gmail.com

I further certify that my email address is [rgranholm@schiffhardin.com](mailto:rgranholm@schiffhardin.com); the number of pages in the email transmission is 31; and the email transmission took place today before 5:00 p.m.

*/s/ Ryan C. Granholm*

---

Ryan C. Granholm

SCHIFF HARDIN LLP  
Daniel J. Deeb  
Joshua R. More  
Ryan C. Granholm  
Caitlin M. Ajax  
233 South Wacker Drive, Suite 7100  
Chicago, Illinois 60606  
Phone: 312-258-5633  
Fax: 312-258-5600  
[rgranholm@schiffhardin.com](mailto:rgranholm@schiffhardin.com)

*Attorneys for Respondents*