BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

IN THE MATTER OF:	)	
	)	
STANDARDS FOR THE DISPOSAL	)	
OF COAL COMBUSTION RESIDUALS	)	**R 20-19**
IN SURFACE IMPOUNDMENTS:	)	**(Rulemaking – Water)**
PROPOSED NEW 35 ILL. ADM. CODE	)	
PART 845	)	

NOTICE OF FILING

To: Don Brown, Clerk
Vanessa Horton, Hearing Officer
Illinois Pollution Control Board
100 West Randolph
Suite 11-500
Chicago, IL 60601

And Attached Service List

Please take notice that on October 30, 2020, I filed electronically with the Office of the Clerk of the Illinois Pollution Control Board the attached **Post-Hearing First Notice Comments of the City of Springfield, Office of Public Utilities d/b/a City Water, Light and Power**, a copy of which is attached and served upon you.

Respectfully submitted,

THE CITY OF SPRINGFIELD,
a municipal corporation

By *Deborah J. Williams*
One of its Attorneys

Dated: October 30, 2020

Deborah J. Williams
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Springfield, Illinois 62701
(217) 789-2116

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	)	

POST-HEARING FIRST NOTICE COMMENTS OF THE CITY OF SPRINGFIELD, OFFICE OF PUBLIC UTILITIES d/b/a CITY WATER, LIGHT AND POWER

Now comes the City of Springfield, Office of Public Utilities, d/b/a City Water, Light and Power ("CWLP"), by and through one of its attorneys and timely files these Post-Hearing First Notice Comments in the above-captioned rulemaking proceeding.

BACKGROUND

The City of Springfield owns and operates the municipal utility referred to as City Water, Light and Power ("CWLP"). CWLP is a small not-for-profit, municipally-owned electric generation and transmission utility that also serves as the water purification and distribution utility for approximately 150,000 residents of Springfield and surrounding communities. Power generation and water purification facilities are both located on the same Dallman Plant grounds. CWLP also owns and operates two surface impoundments (Lakeside Ash Pond and Dallman Ash Pond), that function as a single-multi-unit system and are currently regulated under the federal Coal Combustion Residuals ("CCR") regulations. *See* 40 C.F.R. Part 257. CWLP is likely the only facility in the nation that also utilizes an impoundment meeting the definition of a CCR surface impoundment to manage wastewater from its drinking water treatment plant. CWLP has also operated a permitted landfill that can manage CCR and lime sludge from the drinking water plant as a special waste under the municipal solid waste landfill program since 1995. As a vertically-integrated municipal utility providing electric power to approximately

68,000 customers, the ratepayer residents and commercial businesses of Springfield pay the costs for their electric power and as well as the accompanying environmental controls.

The City of Springfield was active in the negotiations led by Senator Bennett regarding SB 9 and ultimately removed opposition to that legislation after many changes were made from the bill as originally proposed. CWLP is generally supportive of the rulemaking proposal before the Pollution Control Board ("Board") in this docket and appreciates the Board's consideration of these comments on limited aspects of the Agency's proposed Part 845 outlined below. CWLP appreciates the opportunity to provide these comments because the outcome of this rulemaking proceeding is expected to be critical to CWLP and its citizen owners.

PROCEDURAL BACKGROUND

On March 30, 2020, the Illinois Environmental Protection Agency ("Agency" or "Illinois EPA") filed a rulemaking proposal with the Board that would create a new Part 845 and Subchapter j within Subtitle G of the Pollution Control Board regulations in Title 35 of the Illinois Administrative Code. Because these rules have an adoption deadline pursuant to P.A. 101-171, the Board issued a First Notice Opinion and Order in this matter on April 16, 2020 and the Secretary of State published the proposal in the Illinois Register on May 1, 2020. (44 Ill. Reg. 6696).

The Board held scheduled hearings for August 11, 12, and 13 for testimony from the Illinois EPA witnesses and continued the first set of hearings to August 25th to complete the Agency testimony. Testimony of eighteen witnesses was heard at the second round of hearings on September 29 and 30, 2020. The City of Springfield did not present testimony at the second round of hearings, but did submit pre-filed questions for witnesses at both rounds of hearings.

SUMMARY OF COMMENTS

CWLP appreciates the Board's efforts in expeditiously taking up this complex subject. These comments focus on a few relatively narrow issues or concerns with the proposed rule or

suggested changes to the proposal put forth by either the Agency or one of the parties to this proceeding. These comments argue in favor of remaining faithful to the language and intent of the legislature in adopting the statute mandating these regulations by not expanding the scope to include landfills or attempting to prohibit closure in place under any specified set of circumstances thereby eliminating a case-by-case analysis of alternatives. CWLP will also offer more detailed comments on frequency and type of additional monitoring requirements being proposed, public notice and publically available website requirements, environmental justice provisions, inspection requirements, reporting requirements and minor typographical comments.

I. The Board Should Not Entertain Inclusion of Landfills in this proceeding

Throughout the course of this proceeding, participants Prairie Rivers Network, Environmental Law and Policy Center, Little Village Environmental Justice Organization and Sierra Club ("environmental advocacy groups") have advocated to expand the scope of this rulemaking beyond the provisions of SB9 to include CCR within landfills or unconsolidated fill. Public Comment #4 at 8-10, Public Comment #3 at 5-8. As the Board has not directly ruled on the scope of this proceeding, CWLP is obligated to include opposition to this expanded scope as part of these comments.

CWLP believes strongly that it is inappropriate for the Board to make such a significant expansion to the scope of the proceeding during an expedited rulemaking with a statutory decision deadline mandate. The Board has broad rulemaking authority to consider such issues in appropriate dockets if it so chooses. However, the Board has been given a narrow window by the legislature to accomplish an already very significant and difficult task of establishing a comprehensive State permitting program for CCR surface impoundments. It would be inappropriate and reckless to rush through an expansion of the rule beyond areas that have been vetted by the legislature and the Agency stakeholder process in this rulemaking docket.

CWLP believes its position is clearly supported by the legislative history of Public Act 101-171. As indicated in the Answers to Pre-filed questions of Andrew Rehn, Amendment 1 to SB9 included language explicitly regulating CCR landfills that is not contained in the adopted version. For example, Amendment 1 provided that "Beginning 18 months after the effective date of this Act, no CCR generated in Illinois may be treated, stored, or disposed of in a CCR surface impoundment or unlined CCR landfill." *See*, SB 9, Amendment 1, Section 80.

By Senate Amendment 2, that mandatory language had been changed to the permissive language of "The Agency ***may*** draft and propose rules governing a CCR landfill, as defined under 40 CFR Part 257, that are at least as protective as the rules for a CCR landfill set forth in 40 CFR Part 257." *See*, SB 9, Senate Amendment 2, Section 25. Section 25 of Senate Amendment 2 entitled "Minimum Rule Requirements" mandated in over a dozen places rule topics that the Agency "shall" propose to the Board and the Board "shall" adopt. But only this reference to rules covering CCR landfills is phrased as permissive statutory authority.

Finally, in Amendment 3 and the final version of P.A. 101-171, even this permissive grant of authority for the Agency to propose rules for CCR landfills has been removed and no mention of the term landfill is contained in the final versions of the new legislative language. *See*, 101st General Assembly Senate Bill 9 Amendment 1, 2 and 3 and P.A. 101-171. This history leads the reader to the conclusion that in adopting the Coal Ash Pollution Prevention Act, the legislature explicitly chose not to grant rulemaking authority over CCR landfills in this proceeding and when it was faced with the option of amended language that made that authority permissive, it chose to remove it from the final amendment.

This interpretation of the statute is also supported by the Affidavit of Douglas A. Brown included as Attachment A to these comments. *See,* Attachment A at ¶¶ 7-9. The legislature clearly intended the Coal Ash Pollution Prevention Act to take expeditious action to regulate surface impoundments containing CCR material. It was the intent of the legislature to leave

landfills out of this proceeding and attempting to pull them in is counterproductive to the intent and goals of expeditiously regulating CCR impoundments.

CWLP can think of at least one facility with CCR landfills that has not been involved in this proceeding, presumably because it does not utilize CCR surface impoundments. It would not be procedurally appropriate to make such a massive change in applicability that is not contemplated by the statute at Second Notice. If the Board was to consider making any aspects of this rulemaking applicable to landfills, it would only be appropriate to do so after returning to First Notice for additional public comment to make sure there is meaningful participation from all affected facilities.

II. Closure Alternatives Analysis Should Always be Site Specific and the Record Does Not Support the Prohibition of Closure in Place in Any Particular Set of Circumstances

Environmental advocacy groups have raised a second issue that would contradict the compromise reached by the legislature in adopting Public Act 101-171. That issue would be to require closure by removal in certain specified conditions such as for impoundments located in floodplains, wetlands or seismic areas or where ash remains in intermittent contact with water. PC #4 at 5-8. It is not entirely clear what circumstances the environmental advocacy groups will focus on in their final comments, but any attempt to mandate closure by removal in any specific set of circumstances would be contrary to the intent of the legislature and should not be part of the final rule. An important feature of the Coal Ash Pollution Prevention Act that led CWLP to remove opposition to the bill, was the guarantee of an opportunity to make a case-by-case demonstration of the adequacy of its selected closure plan after a thorough alternatives analysis. *See*, Affidavit of Douglas A. Brown, Attachment 1 at ¶¶ 5-9. The Agency's proposal includes the extensive protections contemplated by the statute to ensure that a selected alternative is protective of human health and the environment and has been subject to meaningful and transparent public involvement.

This interpretation is also supported by the testimony of Prairie Rivers Network expert witness Andrew Rehn in Response to Pre-filed Question #6 submitted by CWLP:

> **"Question 6**. Do you agree that the legislature intended to establish a requirement for a closure alternatives analysis that must be reviewed by the Illinois EPA on a case-by-case basis?
>
> **Response:** Yes, I agree that the intent of the legislature is to look at each individual site to evaluate whether the site meets, or does not meet, applicable standards and what the site must do to achieve those standards. This is why the alternatives analysis is so important – understanding the detailed options at each site and determining which of those options meets the standards."

There is ample evidence in the Record to support the position that each site must be reviewed individually as a whole using the factors established in the statute and regulations proposed by the Agency and adopted by the Board when an owner selects an appropriate closure method for the Agency to review and approve after public input and that no one site specific factor would mandate closure by complete removal in all cases.

III. The Record Does Not Support Amending the Agency Proposal to Require Additional or More Frequent Monitoring

A. Quarterly Groundwater Elevation Monitoring is Adequate based on the Evidence in the Record

In Section 845.650 of the Proposal, the Agency establishes the requirements for a Groundwater Monitoring Program. Many of these requirements, including the requirement to conduct monitoring at least quarterly, are similar to the federal CCR rule requirements and have been implemented at CWLP's existing surface impoundments for several years. Under the proposal, groundwater elevation monitoring is singled out in subsection 845.650(b)(2) for a frequency of monthly for the life of the groundwater monitoring program.

On page 11 of the Agency's Pre-filed testimony of Lynn Dunaway, the Agency stated generally in support of its language in Section 845.650 that "quarterly samples will reflect

seasonal variations in groundwater quality and four sampling events per year is not overly burdensome for owners and operators of CCR surface impoundments." Testimony of Lynn Dunaway at p. 11. However, in Response to CWLP's Pre-filed Question 6(a) "Explain why monthly monitoring of groundwater elevation is required by Section 845.650(b)(2)?" The Agency responded that:

> "[p]ublic comments received by the Agency suggested daily groundwater elevation monitoring. The Agency believes that frequency would result in unmanageably large data sets for reporting, while monthly monitoring significantly reduces the data burden, but provides additional groundwater flow direction data points between the quarterly analytical chemistry monitoring events**."**

When asked in CWLP Question 6(b) to justify why the monitoring frequency in the regulation was not overly burdensome or economically unreasonable, the Agency referenced only the use of quarterly monitoring in other programs and gave no basis for the reasonableness of a monthly frequency. At hearing, the Agency testified that groundwater elevation monitoring is useful in developing potentiometric surface maps, determining whether a compliance well is hydraulically down gradient from a background well and identifying seasonal fluctuations for use in creating and calibrating groundwater flow and transport models. *See*, August 13, 2020 transcript at Page 151, Line 10 to Page 156.

A review of the Record leads CWLP to the conclusion that a requirement for monthly groundwater elevation data from the adoption of these rules to the end of a post-closure care period is overly burdensome. Quarterly monitoring has proven sufficient and is appropriate. There is no basis to continue to take monthly elevations from each groundwater well for the over 30 year length of closure and post-closure care when no corresponding chemical sampling is occurring. The value of such data will decrease over time and the burdensomeness of maintaining a network and staff to take and manage these monthly samples will outweigh any potential benefit. See, testimony of Midwest Generation Witness Richard Gnat, September 30, 2020 transcript at pp. 95-96.

Environmental advocacy group panel witnesses Scott Payne and Ian Magruder have testified that ***daily*** groundwater elevation monitoring data should be required for the purpose of creating more scientifically defensible groundwater modeling. Payne/Magruder Pre-filed Testimony at pp. 19 -20 and 40. However, this recommendation would apply to surface impoundments that have been preparing to close and would carry throughout the post-closure care period with no technical basis for what such voluminous daily data would be used to evaluate over the long term. These recommendations clearly do not take into account real world practicalities and time lines that exist in 2020 and in the Agency's proposed rule. To accept these Witnesses' recommendations to gather 1 to 2 years of such data in advance of modelling would require the Board to delay timelines for closure in the final rules by 1 year to 18 months. This negative environmental result would outweigh any potential benefit to gathering such extensive data in advance of permitting a closure project. *See*, September 29, 2020 Transcript at 108-112.

If the Board determines that additional elevation monitoring is necessary for the purpose of developing and calibrating transient flow and transport models, CWLP would not object to a requirement for some additional or more frequent groundwater elevation monitoring for a period of time between adoption of these rules and submittal of site characterizations and permit applications for closure with the Agency. Monthly monitoring of ground water elevations over a 12 month period, for example, would be a reasonable alternative to requiring overly burdensome data that is not needed. Though based on the timelines in the current proposal, there will not even be enough time for 12 months of monitoring to occur between the date the rules are adopted and the date many permit applications will be due. CWLP encourages the Board to take these practical considerations in mind in developing the final rule.

B. Monitoring of Water Elevation Inside the Surface Impoundment Should Only be Required for Developing an Initial Site Characterization

In Pre-filed Question 21(a), the Board asked the Agency whether it was necessary to include language requiring submittal of data regarding elevation of water within CCR surface impoundments within Section 845.620. The Agency responded that it felt this information was addressed by the catch-all language in section 845.620(b)(18), but also proposed new language for the Board to consider if it felt additional language was necessary. The language provided by the Agency would require measurement of water elevation within the impoundment each time groundwater elevations are measured in Section 845.650(b)(2). If the Board adopts monthly monitoring of groundwater elevations as contained in the current proposal, this would require the information monthly and if it adopts quarterly monitoring or even daily monitoring as suggested by some prior commenters to the Agency, then that frequency would be the requirement for measurement of water elevation within the CCR surface impoundment as well. While CWLP agrees that quarterly information on this parameter may not be overly burdensome, since the frequency the Board might adopt is unclear, CWLP will stress that based on the Record, this requirement for new language on recurring monitoring of water elevations within a surface impoundment does not appear to be necessary or justified for the life of impoundment monitoring network.

When asked to explain the purpose of this information from the Agency's point of view, Amy Zimmer testified on behalf of the Agency as follows:

> "MS. WILLIAMS: Is it the case that you want to have this information for every impoundment in order -- that you need to have this information for every impoundment or that you need to have this information for every impoundment every time you have a sample of groundwater elevation? I probably should have used the word measurement of groundwater elevation instead of sample, but you understood.
>
> MS. ZIMMER: This is Amy Zimmer. It's necessary for the characterization of the impoundment for the hydrogeologic characterization. I don't think it would be necessary for every time you go out and -- and do a groundwater elevation sample for monitoring. I think that would be more than necessary."

August 13, 2020 hearing transcript at p. 85, line 23 – p. 86, line 14.

Based on these explanations from the Agency on the basis for the proposed requirement to take measurements of water elevation within the surface impoundment, and how that information will be used in site characterization, CWLP would propose an amendment to the language the Agency shared with the Board on page 2 of Attachment 2 to its First Post-Hearing Comments (PC #49):

> "(18) measurement of water elevation within the CCR surface impoundment, each time the groundwater elevations are measured pursuant to Section 845.650(b)(2) from the effective date of this Part until the hydrogeologic site classification is completed and submitted to the Agency;"

Reviewing the entirety of the Record, including testimony from witnesses for the environmental advocacy groups, demonstrates that the purpose of requiring measurements of surface impoundment water elevations is based on developing an appropriate hydrologic site characterization. Whether that frequency is monthly or quarterly, the need for such information will eventually cease when the hydrologic site characterizations have been completed and submitted to the Agency in support of Corrective Action or Closure Alternatives Analysis. There has been no evidence presented that this information will be necessary or useful once a site characterization has been completed and accepted and the impoundment has been dewatered.

In addition to the elevation monitoring referred to by the Agency, the environmental advocacy witnesses seem to be recommending additional monitoring of leachate concentrations within the surface impoundment using borings. See, Payne/Magruder Pre-filed testimony at pp. 13 – 16 and 39. As with groundwater elevations, the purpose of this data gathering recommendation is to improve groundwater models. Id at 16. Similarly, this additional data gathering would delay the development of information needed to begin the closure process and would require the Board to extend the rule deadlines to accommodate them. Payne/Magruder did not demonstrate through the examples they reviewed that the groundwater models did not accurately reflect groundwater constituent levels following closure. But, more importantly, they did not address serious practical and safety concerns with how these recommendations would

be implemented. In many cases, it would not be safe or feasible to install piezometers within active surface impoundments. Drilling companies would be hesitant to perform and warranty such installations. Drilling within an impoundment could result in new contamination pathways or cause damage to liners or covers. If the Agency feels additional data is needed from within a surface impoundment, CWLP believes there is authority in the proposed rules to request and require such data to be developed. But to attempt to require such monitoring in all cases is infeasible and unreasonable. See, September 29 hearing transcript at 89-92.

The final rules adopted by the Board must require the gathering and submittal of any information needed to support permitting and closure alternatives analysis. This includes site characterization. If this information is needed to be submitted with initial permitting documents then appropriate time must be provided to gather it. However, there is no reason to include a requirement to be conducted regularly for no less than 30 years post-closure care for impoundments closed in place if the information is only to be used at the site characterization and alternatives analysis stage. The Board must balance the need for additional data with the goal of achieving groundwater protection standards in an expeditious manner. In the case of a facility like CWLP's that has been collecting data for many years, any Board requirements that arbitrarily make that available data insufficient, will result in a delay in the process of gathering needed information to complete permit applications and closure alternatives analyses and will ultimately delay closure of surface impoundments.

C. Final Rule Should Allow Flexibility to Reduce Monitoring Frequency During Post-Closure Care When Groundwater Protection Standards

Dynegy witness Rudolph Bonaparte presented testimony regarding the technical basis for providing a pathway for a permittee to reduce the frequency of groundwater monitoring in certain circumstances. Pre-filed Testimony of Rudolph Bonaparte at p. 4 and 21-22 (Opinion 12). He provided further explanation of the appropriate circumstances under which such

reduction of frequency in monitoring would be appropriate in Response to the Board's Pre-Filed Question 28:

> *"RESPONSE: I propose the following language be added to 845.650:*
>
> *Any owner or operator conducting quarterly monitoring pursuant to Part 845.650(b)(1) may upon written approval from the Agency reduce the quarterly sampling to semi-annual sampling during the post-closure care period when:*
>
> *a. No monitored chemical constituent is detectable in downgradient wells for at least four consecutive quarters;*
>
> *b. No monitored chemical constituent has a concentration that differs to a statistically significant degree from the concentration detected in upgradient wells for four consecutive quarters; or*
>
> *c. After a minimum of five years with a demonstration that semi-annual monitoring does not reduce the statistical power for determination of a statistically significant result at an appropriate confidence level for each monitored parameter."*

CWLP has reviewed Dr. Bonaparte's testimony and agrees that the flexibility he is advocating for in the Board's rule is technically justified and sufficiently limited to ensure that monitoring frequency would only be reduced in conservative situations that would have no environmental impact. However, CWLP would also comment that it would be logical to apply this flexibility on an individual parameter basis where there is no detection or no detection above background levels of one the parameters that may be typically linked to CCR material pursuant to Part 845. CWLP encourages the Board to provide an option to reduce sampling frequency from quarterly to semi-annually when there are no down-gradient concentrations of a constituent or constituents that are required to be monitored pursuant to Part 845 above background levels for at least four consecutive quarters.

IV. The Record Demonstrates that Closure By Removal Should Not be Presumed to be the Environmentally Preferred Method of Closure

Implicit in proposals by the environmental advocacy groups and a common refrain in the public comments submitted as a result of their outreach to their members is an assumption that is not borne out by science and data – that closure of CCR impoundments by removal is generally preferable than closure in place. The science and the Record in this proceeding demonstrates that there are many site specific factors that impact what method of closure is preferable at a given site and no presumption should be made that closure by removal is preferable or more protective. CWLP believes that the Record supports its position that in certain situations, closure in place is the most environmentally responsible solution.

The Board received comments from a number of local officials in the State with CCR impoundments in their jurisdiction that stressed the possible negative environmental and societal impacts in their communities that closure by removal could bring. The issues stressed in these comments include increased truck traffic and safety risks, higher carbon emissions, unavoidable fugitive dust and wear and tear on local roads. *See*, Jasper County Board Resolution, PC #53; Ron Heltsley and Jason Warfel, Jasper County Board Chairman and Vice Chairman, PC #32; Randolph County Board Resolution, P.C. #33; Mayor of Newton, Mark Bolarnder, PC #10; Mayor of Bartonville, Leon Ricca, PC #11; and Mayor of Hennepin, Kevin Coleman, PC #12.

One of the most important factors to consider when evaluating whether closure in place is more protective than closure by removal is the fact that closure by removal takes much, much longer. There are many external factors that will impact how much longer closure by removal will take in any given site, but in nearly every case it will take longer. This means CCR material is left exposed to the elements (and therefore stormwater) for a longer period of time, potentially increasing significantly the leaching of contaminants to groundwater for that length of time and may, in some cases, substantially delay the time it will take for the facility to achieve groundwater protection standards. See, Pre-filed Testimony of David Hagen at p. 21. This is

not true for every site, but it is an important factor that the Coal Ash Pollution Prevention Act leaves to the alternatives analysis to evaluate.

Testimony from Dynegy witness Mark D. Rokoff, P.E. demonstrated the strong correlation between sites that are closing by removal and the regulatory structure (rate recovery) that allows those facilities to pass the additional costs directly and spread them out evenly among all electric customers in the State or Region. September 30, 2020 hearing transcript at pp. 32-33, Rokoff Pre-filed testimony at pp. 4, and 20-24 ("In summary, the ability of electricity generators to apply for and obtain rate recovery directly and profoundly influences closure decision on both a regulated state and regulated site level. Closure by removal is rarely selected when there is no ability to recover costs." Id. at 24.) Mr. Rokoff's testimony also demonstrated a not unrelated lack of correlation between selection of a closure alternative and the trigger method for the closure process. Id. at 16-19.

Illinois does not have rate recovery for investor owned utilities, but as a vertically integrated municipal utility our citizen ratepayers (68,000 customers) will pay the entire cost of the selected closure alternative for the Dallman and Lakeside Ash Pond. CWLP created a special fund years ago to prepare for these costs called our Environmental and Regulatory Incentive and Rebate Fund. But as shown in the testimony from Dynegy witness Rudolph Bonaparte and in our Chief Utility Engineer Douglas A. Brown's Affidavit, the difference in cost for closure by removal is generally an order of magnitude greater than closure in place. See, Attachment 1 at ¶6; Rudolph Bonaparte, Pre-filed testimony at p. 18 and Response to Pre-filed questions at pp. 7-9. Though CWLP understands that cost is not a factor that will be evaluated by the Agency in the selection of alternatives, Illinois has chosen a reasonable compromise to ensure that costs incurred for Illinois clean ups will have a correlation to the environmental benefit to be achieved. This method will also allow for consideration of the negative environmental consequences of closure by removal at a particular site including issues related

to fugitive dust impacts, worker safety, air pollution from transportation, road damage from enormous increase in truck traffic, impacts converting green space to a landfill if that is the available disposal method, impacts on communities where landfills are located, risk of overwhelming the currently permitted landfill space, the need to separate CCR wastes in separate cells of landfills from putrescible wastes, and impacts on municipalities who rely on the existing landfill space for safe disposal alternatives.

V. Area of Environmental Justice Concern Methodology

The Agency was directed to propose and the Board was directed to adopt by Section 22.59(g)(8) of the Act, a rule that shall at a minimum "specify a procedure to identify areas of environmental justice concern in relation to CCR surface impoundments…" The Agency fulfilled its obligation under this language by proposing Section 845.700(g)(6) and (7) which state as follows:

> "(6) For the purposes of this Part and only this Part, areas of environmental justice concern are identified as any area that meets either of the following:
>
> A) any area within one-mile of a census block group where the number of low-income persons is twice the statewide average, where low income means the number or percent of a census block group's population in households where the household income is less than or equal to twice the federal poverty level; or
>
> B) any area within one-mile of a census block group where the number of minority persons is twice the statewide average, where minority means the number or percent of individuals in a census block group who list their racial status as a race other than white alone or list their ethnicity as Hispanic or Latino.
>
> (7) For purposes of subsection (6), if any part of a facility falls within one-mile of the census block group, the entire facility, including all of its CCR surface impoundments, shall be considered an area of environmental justice concern."

The Agency has not defined any of the terms utilized in this Section including "area of environmental justice concern" or "census block group" or incorporated a particular tool or

document by reference in the rule. The Statement of Reasons did not contain substantive discussion of this language, however, the Pre-Filed testimony of Agency Environmental Justice Officer, Chris Presnall explains the Agency's definition of the term for internal purposes: "Within the Public Participation Policy, Illinois EPA defines 'area of EJ concern' as a census block group or areas within one mile of a census block group with income below poverty and/or minority population greater than twice the statewide average." Pre-Filed Testimony of Chris Pressnall at p. 2. Mr. Pressnall's testimony also goes on to explain how the Agency determines if the language of 845.700(g)(6) has been met:

> "In order to determine areas that meet the criteria of an area of EJ concern, the Illinois EPA has developed a Geographic Information System (GIS) mapping tool call EJ Start to identify census block groups and areas within one mile of census block groups meeting the EJ demographic screening criteria. EJ Start is publicly available and can be found on the Illinois EPA's EJ webpage (http://www.epa.illinois.gov/topics/environmental-justice/index). IEPA uses the same US Census/American Community Survey 5-year Estimates tables as those USEPA utilizes in its EJ Screen tool. The tables are joined to the US Census 2010 block groups.
>
> Each block group is given "EJ Minority", "EJ Low-Income" or "EJ Both" scores. The scores are determined by dividing the population from each minority population & low-Income population by the total population of each block group and then comparing these values to the statewide average for each EJ category. If the EJ scores are twice the Illinois average for either minority, low-income or both, the block group is assigned an EJ score of 1 for minority, 2 for low-income and 3 if it is both minority and low- income."

Pre-filed Testimony of Chris Pressnall at pp. 2-3. See also, August 25, 2020 Transcript at pp. 20-26.

By way of illustration, CWLP has attached four maps generated by the Agency's Environmental Justice tool as Attachment 2. The first two maps are the 2018 version of the census block groups identified as meeting the minority and low income criteria in the regulation in the Springfield area and those same groups with a 1 mile buffer drawn around them. These were the maps that were in effect at the time the Agency's proposal was filed with the Board.

The second two maps are the same maps for the year 2019 data which are the maps that are in effect today. These exhibits illustrate the changes that may occur from year to year as explained in the Agency testimony that the tool is updated regularly. See, August 25, 2020 transcript at p. 22-23. CWLP's expectation is that the applicable dataset to utilize for characterization of our site will be the 2020 data when it becomes available in the second half of 2021 for determining whether our facility qualifies as a Category 3 closure priority facility as being located in an area of environmental justice concern requiring submittal of a permit application containing a final closure plan or application to retrofit by January 1, 2022. *See*, proposed Section 845.700(g)(1)(C) and August 25, 2020 transcript at p. 26.

VI. Board Should Adopt Common Sense Language for Public Notice of Pre-Application Public Meetings

The language proposed for Section 845.240 Pre-Application Public Notification and Public Meeting is a unique feature of this rulemaking. The Agency has pointed to no other examples of rules that have set requirements for permittees to conduct public meetings prior to the submittal of a permit application. At the August 12, 2020 hearing in this matter, Agency witness Darin LeCrone responded to questions on this Section. See, August 12, 2020 hearing transcript at pages 11- 24. Following the public hearings, the Agency filed its First Post-Hearing Comments in this matter which included Attachments summarizing language changes the Agency had proposed in its answers to Pre-Filed questions. In many cases, the Agency was not advocating directly for a change in the language, but was offering optional language to the Board in response to a question they had raised.

As a result of the Agency's responses to CWLP's questions and those of the other parties at the hearings in this matter, CWLP is proposing some minor edits to this Section that should incorporate the intent expressed by the Agency in that testimony.

The most important aspect of the Agency's intent that these edits attempt to capture is that the Agency intended to require regulated facilities to utilize multiple methods of public notification to

catch as many members of the interested public as possible, with the understanding and expectation that no one method will ever be executed with the perfection required to guarantee every individual receives notice in that way.

The proposed edits also attempt to clarify the subject matter of the public meeting and provide the option of publication in a newspaper of general circulation as an additional available optional method of public notice. While the language below incorporates the suggestion made during the hearing process that owners be required to summarize the comments made and any changes made in response, CWLP has serious concerns about the impact this requirement will have on the feasibility of the time lines provided in the rule for completion of these tasks prior to the permit application deadlines and encourages the Board to consider whether any deadlines will need to be adjusted to incorporate its final language.

CWLP's proposed language currently retains the language proposed by the Agency that the permittee must hold two public meetings and one of these must be held after 5 p.m. CWLP is willing and prepared to hold two meetings, but encourages the Board to consider whether two meetings (rather than one evening meeting) will actually facilitate more meaningful public participation than a single meeting where all participants can hear the same information and comments from the community. Having multiple meetings (especially considering how many of these meetings are likely to be scheduled around the State in late 2021) may dilute the participation and educational value of the meetings overall. [1]

Section 845.240 Pre-Application Public Notification and Public Meeting

a) At least 30 days before the submission of a construction permit application, the owner or operator of the CCR surface impoundment must hold at least two public meetings to ~~discuss~~ solicit public comment on the new construction, corrective action or closure construction project that will require a permit from the Agency ~~the proposed construction~~, where at

[1] Underlined language reflects proposed or suggested edits by the Agency. Changes in double strike-through or double-underline are suggested edits proposed by CWLP.

least one meeting is held after 5:00 p.m. in the evening. Any public meeting held under this Section must be located at a venue that is accessible to persons with disabilities, and the owner or operator must provide reasonable accommodations upon request.

b) The owner or operator must prepare and circulate a notice explaining the proposed ~~construction~~ project requiring a construction permit from the Agency ~~and any related activities~~ and the time and place of the public meeting. Such notification must be mailed, delivered or posted at least 14 days prior to the public meeting. The owner or operator of the CCR surface impoundment must take all reasonable and good faith efforts to:

1) mail or hand-deliver the notice to the Agency and all addresses determined to be ~~residents~~ within a one- mile radius from the facility boundary using reasonably available tools and methods;

2) post the notice on ~~all of~~ the owner or operator's appropriate social media outlets; and

3) post the notice in conspicuous locations throughout villages, towns, or cities within 10 miles of the facility or publish in a newspaper of general circulation in such communities at least 14 days in advance of the public meeting, or use appropriate broadcast media (such as radio or television).

4) include in the notice the owner or operator's contact information, the internet address where the information in Section 845.240(e) will be posted, and he date on which the information will be posted to the site.[2]

c) When a proposed project requiring a construction permit from the Agency ~~construction project or any related activity~~ is located in an area with a significant proportion of non-English speaking residents, the notification must be circulated, or broadcast, in both English and the appropriate non-English language, and the owner or operator must provide translation services ~~during the public meetings required by Section 845.240(a)~~, if requested by non-English speaking residents~~speakers~~.

d) The owner or operator of the CCR surface impoundment must prepare documentation recording the public meeting and place the documentation in the facility's operating record, as required by Section 845.800(d)(2).

e) At least 14 days prior to a public meeting, the owner or operator of the CCR surface impoundment must make all reasonable, good faith efforts to post on the owner or operator's publicly accessible internet site all available

[2] Subsection (b)(4) has been updated to reflect the Agency's October 28, 2020 draft. CWLP found this language clearer than the version presented in the Agency's First Post-Hearing Comments at Attachment 2, p. 3.

documentation the owner or operator intends to submit in support of the project requiring a permit from the Agency~~relied upon in making their tentative construction permit application~~.

f) At the public meeting, the owner or operator of the CCR surface impoundment must outline its decision-making process for the construction permit application, including, where applicable, the corrective action alternatives and the closure alternatives considered.

g) ~~Fourteen (14) days following the public meetings required pursuant to Section 845.240, the~~ The owner or operator shall post on its publically available website ~~distribute~~ a general summary of the issues raised by the public that are relevant to the selection of alternatives for the project, as well as a response to those relevant ~~issues or~~ comments~~ raised the public~~. If these comments resulted in a revision, change in a decision, or other such considerations or determination, a summary of these revisions, changes, and considerations shall be included in the summary. Such a summary shall be distributed by email to any attendee who requests a copy by providing an email address at the public meeting. The response to comments required by this subsection must be made available no less than 14 days prior to submittal of the final construction permit application to the Agency.

h) This Section does not apply to applications for minor modifications as described in Section 845.280(d).

VII. Board should not Adopt Agency's Suggestion that Owner's Create a Separate "Illinois" CCR Public Website

In the Agency's initial rulemaking proposal, the language in Section 845.810 did not specify whether owners were to create a new, separate publically available internet webpage for purposes of the Part 845 rules or whether facilities could make use of the existing, well-known sites that were established to comply with 40 C.F.R. Part 257. In response to questions raised at hearings, the Agency proposed to add the word "Illinois" to this Section settle the question. If accepted by the Board, the new language would read "The owner or operator's website must be titled 'Illinois CCR Rule Compliance Data and Information'". In attempting to explain the basis for its interpretation it appears the Agency's consideration was what would make it easier for the

Agency to filter and locate information. See, August 11, 2020 transcript at pp. 33-34 and August 25, 2020 transcript at pp. 132-133. However, the purpose of the publically available website is to make information easier to obtain by citizens generally. It would run counter to that goal and potentially create confusion for the public to mandate that separate sites be maintained without additional justification.

VIII. Board Should Adopt Agency's Recommended Clarification to Section 845.260(c)

In response to CWLP's question 11 regarding the difference between Section 845.260(c)(3) and (5), the Agency responded as follows:

> **Response:** Subsection (c)(3) only addresses comments received within the 30-day comment period. Subsection (c)(5) requires the Agency to consider all timely submitted comments, which could include comments received during an extension of time granted by the Agency in (c)(4). Since differentiation is not necessary and the Agency would treat all timely submitted comments the same in terms of retention and consideration, the Agency supports deletion of (c)(5) and revision of (c)(3) to say: "The Agency shall retain all timely submitted comments and consider them in the formulation of its final determination with respect to the permit application."

See also, Illinois EPA's First Post-Hearing Comments, Attachment 2 at page 4.

CWLP supports this change by the Agency and encourages the Board to adopt the change to (c)(3) as proposed by the Agency and delete Section (c)(5) as provided in the Agency's response and Attachment 2.

IX. Agency's revised suggested language for Section 845.540(a)(1)(E) is preferable but unnecessary

The Board posed questions of Agency witnesses on the clarity of language regarding the inspection requirements in Section 845.540. The proposed language simply required "Inspections by a qualified person….at intervals not exceeding seven days and after each 25-year, 24, hour storm." In response to the question from the Board as to whether this language

was sufficiently clear or specific, the Agency suggested the following more specific new language for Section 845.540(a)(1)(E):

> "If the 25-year, 24-hour storm occurs more than 48 hours before the scheduled weekly inspection, an additional inspection within 24 hours of the end of the storm event must be conducted in addition to the scheduled seven-day inspection."

CWLP raised questions at the hearings about the practicality of this language. See, August 12, 2020 hearing transcript at pages 214-217. In its First Post Hearing Comments, the Agency has proposed replacement language to this proposed language "To address the Board's initial question and the concerns raised at hearing":

> 845.450(a)(1)(E): If a 25-year, 24-hour storm is identified more than 48 hours before the next scheduled weekly inspection, an additional inspection shall be conducted within 24 hours of the end of the identified storm event, prior to the scheduled seven-day inspection.

See, Agency's First Post Hearing Comment, Attachment 3 at p. 5.

While CWLP finds this replacement language preferable to the initial amendment to its proposal submitted by the Agency, CWLP does not agree that additional language on this point is needed and will only unnecessarily complicate the clear intent of the original proposal, which is simply to ensure an inspection is conducted at least once a week, and more frequently if a large storm event occurs between inspections. See, August 12, 2020 Transcript at p. 214-217.

X. Certain Reports Required More Frequently than the Federal CCR Rule are Unnecessary

In the Agency's proposed rules, Section 845.450 (Structural Stability Assessment), Section 845.460 (Safety Factor Assessment) and Section 845.440 (Hazard Potential Classification) require these assessment reports to be conducted annually, although under Federal CCR rule these reports are prepared initially and every five years. 40 C.F.R. §257.73(a)(2), (d), (e) and (f). Each of these reports must also be certified by a qualified

professional engineer. Section 845.510 of the Agency's proposal requires inflow flood control system plans to be conducted initially, annually and amended whenever there is a change. While under the federal rule, the comparable requirement in 40 C.F.R. §257.82(c) requires the initial plan to be updated every five years or if there is a substantial change.

The plans in these four sections are required infrequently by U.S. EPA because they are documenting conditions that are unlikely to change from year to year. The Agency has indicated that this requirement is not overly burdensome because a facility may simply recycle its previous year's plan if there have been no changes. Though this may be true, there is still a burden and cost of engaging a qualified professional engineer to do so and the Agency has not demonstrated the need for these plans to be submitted so frequently to justify such a burden, especially in the case of a requirement in Section 845.510 where the plan also must be amended if there is a significant change in conditions.

When asked to explain the rationale at hearing the Agency provided the following justification:

> "MS. WILLIAMS: Deborah Williams, City of Springfield. Just very briefly. In Section A2, the annual consolidated report requires submittal of several documents that are required on a one-time basis under the federal rule, but are being required annually under the state rule.
>
> I would just like some clarification from the Agency that given that these annual reports must be submitted well into the future into closure and post closure care, what does the Agency envision the effort on the part of the permittee to be to do these type of reports once a unit is closed?
>
> MR. DUNAWAY: Lynn Dunaway. The expectation would be that if these reports had not changed that go into the annual report that they could be resubmitted. The Agency's issue is that when we're reviewing an annual report we don't want to have to go back and find a report that may already have been sent the records and have to dig that out if we need it for our review.
>
> MS. WILLIAMS: So would you say the Agency's view in this section was that they would get the latest report?
>
> MR. DUNAWAY: Lynn Dunaway. Yes, as long as those reports have not changed such that they should be updated."

August 13 Transcript at p. 8 line 16 – p. 9 line 19.

CWLP does not believe the Agency has demonstrated a need for these reports to be conducted annually, but would support a rule that requires the most recent version of each report to be submitted with the Consolidated Annual report to assist the Agency in its document reviews. It is not technically reasonable to require reports to be updated frequently that are designed to document a condition that is not expected to change frequently, but to require the reports to be amended every five years and to resubmit the most updated report with the consolidated annual report to assist the Agency in its review is a reasonable method of accomplishing the Agency's goal.

There is also expert testimony in the Record that these reports are not appropriate or logical to require to be updated on an annual basis during the post-closure period as surface impoundments during closure behave more like a landfill than an impoundment and these reports are not generally required by landfill regulations. *See*, Testimony of Rudolph Bonaparte at p. 4 and pp. 20-21. (Opinion 11).

XI. Non-Substantive Typographical Comments

The proposed rule contains a combined definition of the terms "sand and gravel pit" or "quarry" in proposed Section 845.120. However, neither of these defined terms appears to be used anywhere in the rest of the rule and therefore can be deleted.

In Section 845.110 "Applicability of Other Regulations," the Agency lists additional regulations that are applicable to CCR impoundments beyond the language of the Part 845 proposal. In subsection (b)(2) the proposal identifies "Illinois Endangered Species Protection Act, 520 ILCS 10, and 40 CFR 257.3-2" as one of these requirements. But in Section (b)(1), instead of citing to the comparable provision in Part 257.3-1, the proposal quotes the language

in its entirety without a citation. CWLP suggests including the citation at the end of the subsection as follows:

> (b) Any CCR surface impoundment or lateral expansion of a CCR surface impoundment continues to be subject to the following requirements:
>
> 1) Floodplains:
>
> A) Facilities or practices in floodplains shall not restrict the flow of the base flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste, so as to pose a hazard to human life, wildlife, or land or water resources.
>
> B) As used in this subsection:
>
> i) Base flood means a flood that has a 1 percent or greater chance of recurring in any year or a flood of a magnitude equaled or exceeded once In 100 years on average over a significantly long period.
>
> ii) Floodplain means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, which are inundated by the base flood.
>
> iii) Washout means the carrying away of solid waste by waters of the base flood. [40 C.F.R. §257.3-1, 44 FR 54708, Sept. 21, 1979].

Inclusion of citation to 257.3-1 in this definition of floodplain in Part 845 will better enable the Agency and regulated community to trace the meaning and intended interpretation of this language that is derived from a provision in 40 C.F.R. Part 257 that predates the federal CCR rule and is distinguished from other language related to location of impoundments that is derived from the federal CCR rule.

CONCLUSION

The City of Springfield appreciates the opportunity to participate in this proceeding and the chance to make these comments on what is overall an excellent rulemaking proposal by the Illinois EPA. While CWLP recognizes there may be limitations in 40 C.F.R. Part 257 and the Coal Ash Pollution Prevention Act on the ability of the Board or the Agency to consider costs, the Board should ensure that its rules to not unintentionally require owners to implement much

costlier closure methods without an environmental benefit. The rules proposed by the Agency have generally done a good job of including all necessary provisions to ensure that proposed closures are guaranteed to accomplish all environmental performance measures necessary to protect public health and the environment. For the Board to adopt any amendments to the proposal, that may inhibit an owner from proposing the least-cost alternative that will meet all of the requirements would have negative socio-economic consequences for the City of Springfield and the State of Illinois as a whole.

Respectfully submitted,

THE CITY OF SPRINGFIELD,
a municipal corporation

By *Deborah J. Williams*
One of its Attorneys

Dated: October 30, 2020

Deborah J. Williams
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Springfield, Illinois 62701
Email: deborah.williams@cwlp.com

(217) 789-2116

Attachment 1

AFFIDAVIT

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

Affiant, Douglas A. Brown, being first duly sworn on oath states the following:

I am over the age of 18 and am a resident of the State of Illinois. I have personal knowledge of the facts herein, and, if called as a witness could testify competently to:

1. My name is Douglas A. Brown. I am the Chief Utility Engineer and Acting General Manager for the City of Springfield, Office of Public Utilities. Also known as City Water, Light and Power ("CWLP"). As Chief Utility Engineer, I am responsible for overseeing all aspects of the utility, including the Electric Division, Water Division, Finance Division and Regulatory Affairs.

2. Prior to serving in this role, I previously served as the Major Projects Development Director for City Water, Light & Power for nearly seven years, during which time I oversaw multiple projects, including the construction of Dallman Unit 4, the Water Works Improvement Project, and the Dallman 33 Scrubber upgrade. I have worked for the utility since 1994, beginning as an Electrical Engineer.

3. I have degrees from the University of Illinois at Urbana-Champaign of a B.S. in electrical engineering and a Masters Degree in Business Administration. I am also a Licensed Professional Engineer in the State of Illinois.

4. As part of my policy-making role at CWLP, I actively participated in the stakeholder engagement process spear-headed by Senator Scott Bennett that resulted in the passage of Senate Bill 9 or the Coal Ash Pollution Prevention Act [P.A. 101-171] which was signed by Governor Pritzker on July 31, 2019.

5. At the onset of negotiations, CWLP was strenuously opposed to the legislation as introduced. In particular, CWLP expressed concerns with 1) applying financial assurance requirements to units of local government that are not at risk of refusing to take responsibility for their sites and 2) requiring closure by removal in situations where CWLP believed closure in place could be shown to be the more environmentally protective option.

6. In support of our concerns over mandating closure by removal, CWLP presented the sponsor and other legislators with estimates of the cost differential between closure in place and closure by removal options at our site. Those estimates ranged from $21 - 25 million dollars for closure in place, to $154 – 189 million *just for the transportation and disposal portion* of the

costs for closure by removal. CWLP has no reliable engineering estimates of the total costs of closure by removal, but in my experience it is reasonable to conclude they would be expected to be in excess of $200 million. Such costs would be borne entirely by our customers, the citizen ratepayers of Springfield, Illinois and neighboring communities.

7. CWLP also raised concerns during the legislative stakeholder process about the other negative impacts of requiring closure by removal in all cases. These included: the air pollution impacts from dust and diesel emissions of the estimated additional 200,000 truckloads of material that CWLP would be required to transport to an off-site landfill; the impact of this truck traffic on roads and neighborhoods they pass through; the impact on available landfill space; the impact of constrictions of landfill space on communities across the State of Illinois who must compete with coal combustion residual waste for the limited landfill space; potential worker safety and community nuisance impacts; and delays in achieving groundwater protection goals. CWLP also specifically raised the concern in its fact sheet for legislators of the impacts of Senate Bill 9 as originally drafted on its on-site, permitted, lined landfill.

8. Ultimately, at the close of negotiations, CWLP agreed to remove its opposition to SB9 based on a number of significant changes that were made in the bill. These changes included: removal of language applicable to landfills; exemption for municipalities from financial assurance, a federally enforceable state CCR permitting program that would provide protection from third party litigation and eliminate compliance risks from a self-implementing program; and most importantly, the provision of a site-specific closure alternatives analysis where CWLP would have the opportunity to make the case that closure in place is a more environmentally and socially responsible method of closure than closure by removal at our facility.

9. Had these changes not been made to the final Bill, CWLP would have continued to oppose the legislation. It is clear to me that these issues and concerns were considered by the legislation sponsors in reaching the final version.

Under penalties of perjury provided by Illinois law, the undersigned certifies that the statements set forth in this instrument are true and correct.

Executed this 23 day of October, 2020, in Springfield, Illinois.

"OFFICIAL SEAL"
MARY MICHELLE CARLISLE
Notary Public, State of Illinois
My Commission Expires 3/16/2021

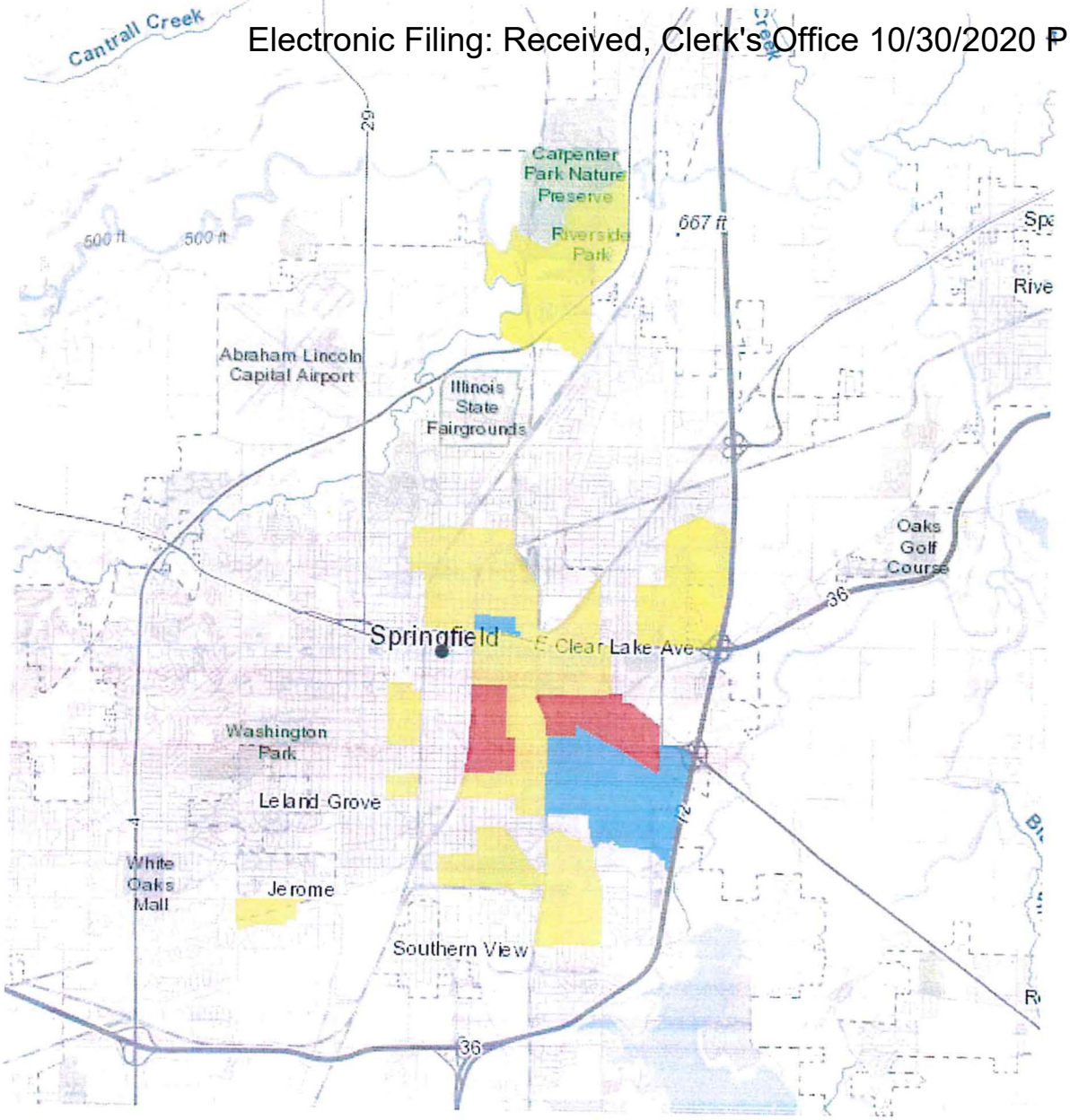
Douglas A. Brown, P.E.

Subscribed and sworn to before me this 23rd day of October, 2020, 2020.

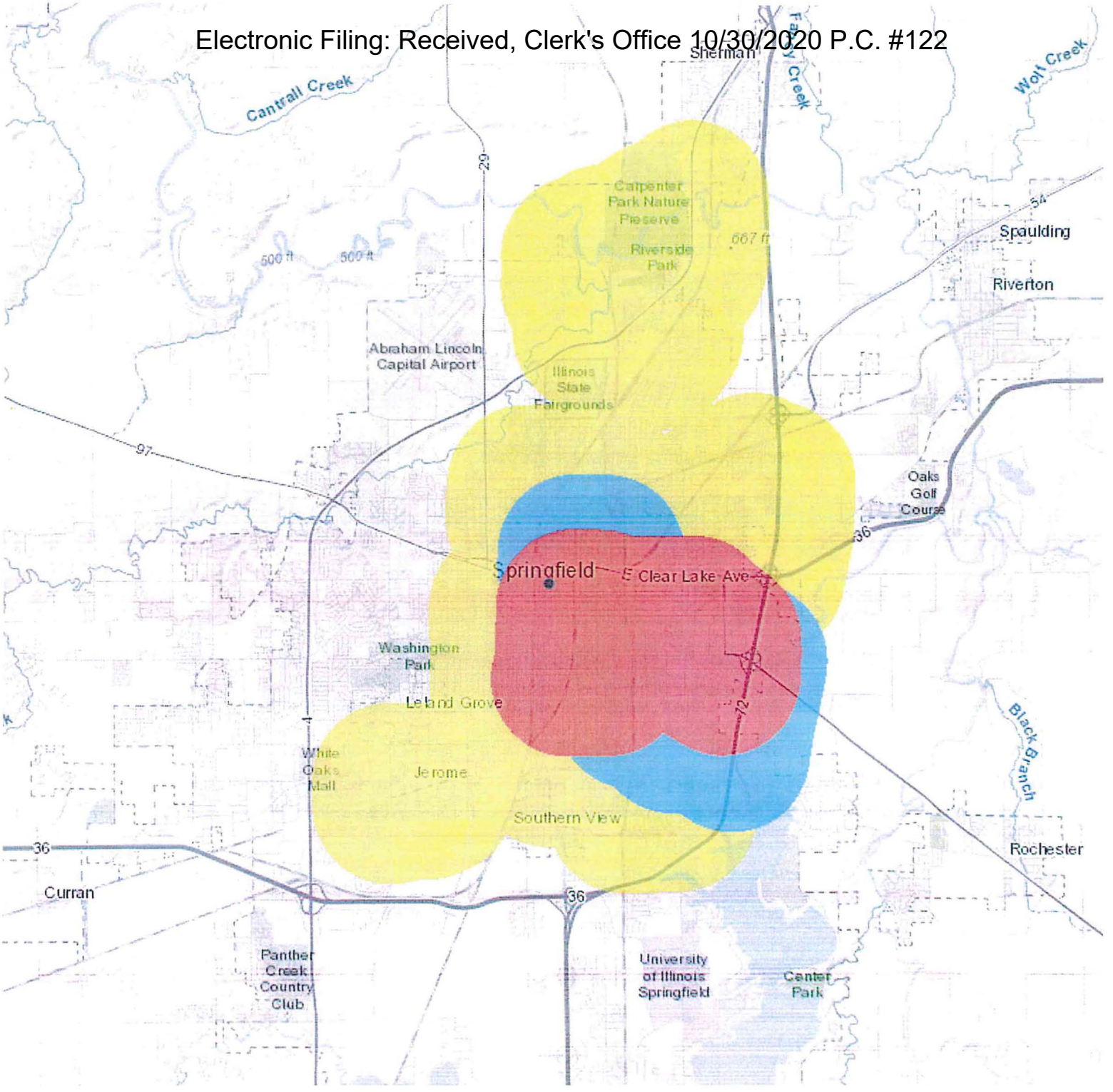
Notary Public

Attachment 2

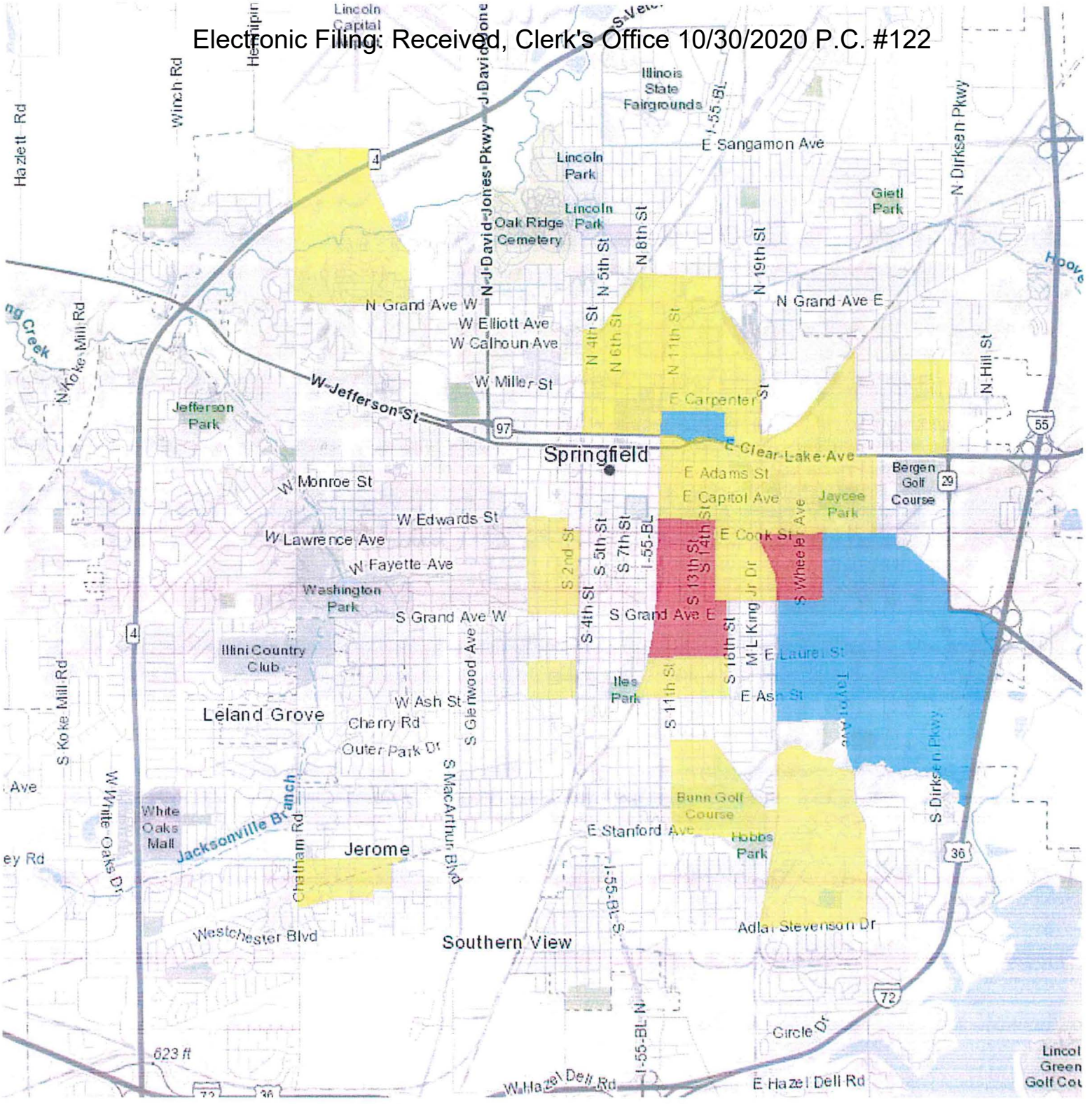
Springfield Areas of Potential Environmental Justice Concern Maps



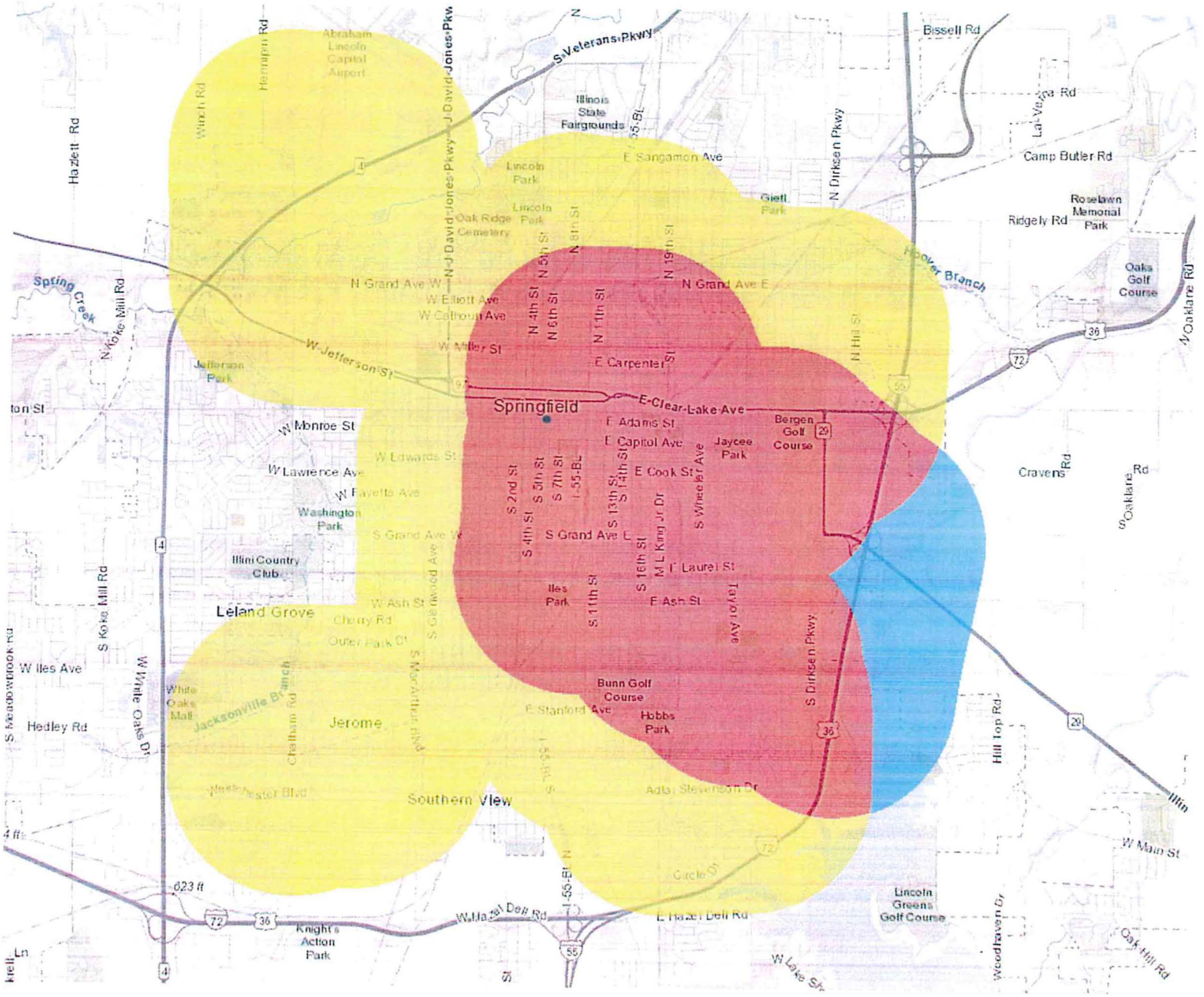
2018 Springfield minority and low income census block groups



2018 Springfield minority and low income census block groups with 1 mile buffer



2019 Springfield minority and low income census block groups



2019 Springfield minority and low income census block groups with 1 mile buffer

CERTIFICATE OF SERVICE

The undersigned, Deborah J. Williams, an attorney, certifies that I have served upon the individuals named on the attached Service List a true and correct copy of the **NOTICE OF FILING** and **POST-HEARING FIRST NOTICE COMMENTS OF THE CITY OF SPRINGFIELD, OFFICE OF PUBLIC UTILITIES d/b/a/ CITY WATER, LIGHT AND POWER**, from the email address deborah.williams@cwlp.com of this 39 page document before 5:00 p.m. on October 30, 2020 to the email address provided on the attached Service List.

Deborah J. Williams

SERVICE LIST R20-19

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