

ILLINOIS POLLUTION CONTROL BOARD
December 8, 2020

IN THE MATTER OF:)
)
STANDARDS FOR THE DISPOSAL OF) R20-19
COAL COMBUSTION RESIDUALS IN) (Rulemaking – Land)
SURFACE IMPOUNDMENTS: PROPOSED)
NEW 35 ILL. ADM. CODE 845)

HEARING OFFICER ORDER

On November 24, 2020, participants Environmental Law and Policy Center, Prairie River Network, Sierra Club, and Little Village Environmental Justice Organization (collectively, Environmental Groups) jointly filed “Supplemental Post-Hearing Comments” (PC 140). This public comment was untimely as the record had closed on November 6, 2020. *See* Hearing Officer Order, R20-19 (Oct. 20, 2020).

The Environmental Groups request that the Board consider their public comment, which concerns two developments from November 2020. *See* PC 140 at 2-3. The Environmental Groups address the two recent developments and attach related information. *Id.* at 1-2; *see also* PC 140, Attachments 1, 2. For their request, the Environmental Groups cite (PC 140 at 2) the Board’s procedural rule on late-filed public comments in rulemakings:

Comments that are not timely filed or properly served will not be considered, except as allowed by the hearing officer or the Board to prevent material prejudice. 35 Ill. Adm. Code 102.108(d).

The Environmental Groups state that one of the recent developments involves a decision of the Montana Department of Environmental Quality (MDEQ), announced on November 17, 2020, to require closure of coal ash ponds by removal at a power plant. *See* PC 140 at 1; *see also* PC 140, Attachment 1. The other recent development involves a November 4, 2020 letter from the External Civil Rights Compliance Office of the United States Environmental Protection Agency (USEPA) to the Texas Commission on Environmental Quality (TCEQ), enclosing an agreement between USEPA and TCEQ. *See* PC 140 at 1-2; *see also* PC 140, Attachment 2. The USEPA letter describes the resolution of a complaint against TCEQ concerning the lack of interpretation at public meetings and translation of public notices for people with limited English proficiency. *Id.* The Environmental Groups also note that in the Board’s rulemaking, they have addressed both closure by removal and incorporating language other than English into the permitting process. *See* PC 140 at 1-2 nn.2-3, 6.

The hearing officer construes the Environmental Groups’ request as a motion. *See* 35 Ill. Adm. Code 101.202 (“Motion’ means a request made to the Board or the hearing officer for obtaining a ruling or order directing or allowing some act to be done in favor of the movant.”). The Environmental Groups maintain that the MDEQ decision supports the proposition that “where regulators have taken a close look at CCR [coal combustion residual] surface

impoundments in contact with groundwater, they have often concluded that closure by removal is the only closure method that provides adequate protection for communities and the environment.” PC 140 at 1. In addition, the Environmental Groups assert that the agreement between USEPA and TCEO:

reveals important details of the civil rights obligations of agencies such as Illinois EPA and the Board with respect to residents with limited English proficiency, and strongly supports [the Environmental Groups’] recommendations for enhanced notice, interpretation, and other public participation opportunities relating to coal ash permits for limited English speaking communities in Illinois. PC 140 at 2.

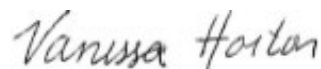
According to the Environmental Groups, these two recent developments constitute “critical information for the Board’s review as it finalizes these rules.” *Id.* at 2-3.

The hearing officer finds that Board consideration of the Environmental Groups’ public comment is warranted to prevent material prejudice. The hearing officer therefore grants the Environmental Groups’ motion. The grant, to avoid undue delay, precedes expiration of the 14-day period for responding to motions (35 Ill. Adm. Code 101.500(d)), given this rulemaking’s impending statutory deadline.

On November 30, 2020, participants Dynegy Midwest Generation, LLC; Electric Energy Inc.; Illinois Power Generating Company; Illinois Power Resources Generating, LLC; Kincaid Generation, LLC; and Midwest Generation, LLC filed a joint motion to strike the Environmental Groups’ public comment. As the Board will consider the Environmental Groups’ public comment to prevent material prejudice, the hearing officer denies the joint motion to strike.

In the interest of fairness, other participants may respond to the Environmental Groups’ public comment. Due to the expedited nature of this rulemaking, any responsive public comments must be filed by December 15, 2020.

IT IS SO ORDERED.



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