

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PRAIRIE RIVERS NETWORK)	
)	
Complainant,)	
)	
v.)	PCB No. 19-093
)	(Enforcement – Water)
)	
DYNEGY MIDWEST GENERATION, LLC)	
)	
Respondent.)	
)	

NOTICE OF FILING

To:

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

Respectfully submitted,

/s/ Robert Middleton

Robert A.H. Middleton

Dated: July 6, 2021

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PRAIRIE RIVERS NETWORK,)	
)	
Complainant,)	
)	
v.)	PCB 19-93
)	(Enforcement - Water)
DYNEGY MIDWEST GENERATION, LLC,)	
)	
Respondent.)	

ANSWER TO COMPLAINT

Respondent, Dynegy Midwest Generation, LLC (“Dynegy”), by its attorneys, submits the following Answer to the Complaint filed by the Complainant, Prairie Rivers Network (“PRN”):

1. Respondent denies that it is a subsidiary of Vistra Energy Corporation. Respondent admits that it is a wholly owned subsidiary of Dynegy Coal HoldCo, LLC, which is, in turn, a wholly owned subsidiary of Vistra Operations Company LLC. Vistra Operations Company LLC is a wholly owned subsidiary of Vistra Intermediate Company LLC, a wholly owned subsidiary of Vistra Corp. (“Vistra”), formerly known as Vistra Energy Corp. Respondent admits the remaining allegations contained in Paragraph 1 of the Complaint.
2. Respondent admits the allegations contained in Paragraph 2 of the Complaint.
3. Respondent admits that a segment of the Middle Fork of the Vermilion River is a National Scenic River. Respondent is without information or knowledge sufficient to enable it to admit or deny the remaining allegations contained in Paragraph 3 of the Complaint and on that basis denies those allegations.
4. Respondent is without information or knowledge sufficient to enable it to admit or deny the allegations contained in Paragraph 4 of the Complaint and on that basis denies those allegations.
5. Respondent admits that the Vermilion Power Station (“Vermilion”) burned coal and generated coal combustion residuals, some of which were stored onsite in coal ash impoundments which have sometimes been referred to as the Old East Ash Pond, North Ash Pond, and New East Ash Pond (collectively, the “Impoundments”), which were constructed with engineered berms. The Old East Ash Pond and North Ash Pond, however, constitute a single impoundment. Respondent therefore denies that Vermilion entails three coal ash ponds. Respondent denies the remaining allegations contained in Paragraph 5 of the Complaint.

6. Respondent admits that Vermilion opened in 1955 and stored coal combustion residuals onsite in the Impoundments. Respondent denies the allegations contained in Paragraph 6 of the Complaint to the extent they refer to the “Old East Ash Pond” and the “North Ash Pond” as separate coal ash ponds. Respondent denies the remaining allegations contained in Paragraph 6 of the Complaint.
7. Respondent admits that the Impoundments continue to store coal ash residuals. Respondent denies the remaining allegations contained in Paragraph 7 of the Complaint.
8. Respondent admits that it owns the Impoundments. The remaining allegations contained in Paragraph 8 of the Complaint are legal conclusions and require no response. To the extent that these allegations require a response, Dynegy denies them.
9. The allegations contained in Paragraph 9 of the Complaint call for an expert opinion and, as such, Respondent is without information or knowledge sufficient to enable it to admit or deny the allegations contained in Paragraph 9 of the Complaint and on that basis denies those allegations.
10. The allegations contained in Paragraph 10 of the Complaint call for an expert opinion and, as such, Respondent is without information or knowledge sufficient to enable it to admit or deny the allegations contained in Paragraph 10 of the Complaint and on that basis denies those allegations.
11. The allegations contained in Paragraph 11 of the Complaint call for an expert opinion and, as such, Respondent is without information or knowledge sufficient to enable it to admit or deny the allegations contained in Paragraph 11 of the Complaint and on that basis denies those allegations.
12. The allegations contained in Paragraph 12 of the Complaint call for an expert opinion and, as such, Respondent is without information or knowledge sufficient to enable it to admit or deny the allegations contained in Paragraph 12 of the Complaint and on that basis denies those allegations.
13. The allegations contained in Paragraph 13 of the Complaint call for an expert opinion and, as such, Respondent is without information or knowledge sufficient to enable it to admit or deny the allegations contained in Paragraph 13 of the Complaint and on that basis denies those allegations.
14. The allegations contained in Paragraph 14 of the Complaint call for an expert opinion and, as such, Respondent is without information or knowledge sufficient to enable it to admit or deny the allegations contained in Paragraph 14 of the Complaint and on that basis denies those allegations.
15. The allegations contained in Paragraph 15 of the Complaint call for an expert opinion and, as such, Respondent is without information or knowledge sufficient to

enable it to admit or deny the allegations contained in Paragraph 15 of the Complaint and on that basis denies those allegations.

16. Respondent states that Exhibits 1 and 2 speak for themselves. Respondent admits that groundwater monitoring was conducted at Vermilion in 1992 through 1997, in 2011, and in 2017-2018. Respondent further admits that the locations of groundwater monitoring wells identified in Exhibits 1 and 2 are accurate. Respondent denies the allegations contained in Paragraph 16 of the Complaint to the extent they imply that the "Old East Ash Pond" and the "North Ash Pond" are separate coal ash ponds.
17. Respondent states that Exhibits 3 and 4 speak for themselves. Respondent admits that groundwater monitoring was conducted at Vermilion between 1992 and 2007. Paragraph 17 contains one or more legal conclusions to which no response is required. Respondent denies the remaining allegations contained in Paragraph 17 of the Complaint.
18. Respondent states that Exhibits 3 and 4 speak for themselves. Respondent admits that groundwater monitoring was conducted at Vermilion in 2011. Paragraph 18 contains one or more legal conclusions to which no response is required. Respondent denies the remaining allegations contained in Paragraph 18 of the Complaint.
19. Respondent states that Exhibits 1, 2, 3, and 4 speak for themselves. Respondent admits that groundwater monitoring was conducted at Vermilion in 2017 and 2018. Paragraph 19 contains one or more legal conclusions to which no response is required. Respondent denies the remaining allegations contained in Paragraph 19 of the Complaint.
20. Respondent admits that consultants to Dynegy and its predecessors have prepared reports on the basis of then existing information but notes that further expert opinion would be necessary to establish the current accuracy of those reports. Respondent states that Paragraph 20 contains one or more legal conclusions to which no response is required. Respondent is without information or knowledge sufficient to enable it to admit or deny the remaining allegations contained in Paragraph 20 of the Complaint and on that basis denies those allegations.
21. Respondent admits that consultants to Dynegy and its predecessors have prepared reports on the basis of then existing information but notes that further expert opinion would be necessary to establish the current accuracy of those reports. Respondent is without information or knowledge sufficient to enable it to admit or deny the remaining allegations contained in Paragraph 21 of the Complaint and on that basis denies those allegations.
22. Respondent states that Exhibit 5 speaks for itself. Respondent denies any remaining allegations in Paragraph 22.

23. The reports cited in Paragraph 23 of the Complaint speak for themselves. Respondent admits that consultants to Dynegy and its predecessors have prepared reports on the basis of then existing information but that further expert opinion would be necessary to establish the accuracy of those reports on the basis of current conditions. Respondent is without information or knowledge sufficient to enable it to admit or deny the allegations contained in Paragraph 23 of the Complaint and on that basis denies those allegations.
24. Respondent states that Exhibits 6 and 7 speak for themselves. Paragraph 24 contains one or more legal conclusions to which no response is required. Respondent further states it is without information or knowledge sufficient to enable it to admit or deny the remaining allegations contained in Paragraph 24 of the Complaint and on that basis denies those allegations.
25. Respondent states that Exhibit 9 speaks for itself. Respondent is without information or knowledge sufficient to enable it to admit or deny the allegations contained in Paragraph 25 of the Complaint and on that basis denies those allegations.
26. Respondent states that Exhibit 8 speaks for itself. Respondent denies any remaining allegations in Paragraph 26.
27. Respondent is without information or knowledge sufficient to enable it to admit or deny the allegations contained in Paragraph 27 of the Complaint and on that basis denies those allegations.
28. Respondent denies that it is a subsidiary of Vistra Energy Corporation. Respondent admits that it is a Delaware LLC and a wholly owned subsidiary of Dynegy Coal HoldCo, LLC, which is, in turn, a wholly owned subsidiary of Vistra Operations Company LLC. Vistra Operations Company LLC is a wholly owned subsidiary of Vistra Intermediate Company LLC, a wholly owned subsidiary of Vistra. Respondent admits the remaining allegations contained in Paragraph 28 of the Complaint.
29. Respondent admits that Section 12 of the Illinois Environmental Protection Act states, in part, the text quoted in Paragraph 29 of the Complaint. Respondent further states that the statute speaks for itself. Respondent denies any remaining allegations in Paragraph 29 to the extent that they are inconsistent with the statute as cited and to the extent a response is required.
30. Respondent admits that 415 ILCS 5/3.545 defines "Water pollution," in part, as the text quoted in Paragraph 30 of the Complaint. Respondent further states that the statute speaks for itself. Respondent denies any remaining allegations in Paragraph 30 to the extent that they are inconsistent with the statute as cited and to the extent a response is required.
31. Respondent admits that 415 ILCS 5/3.550 defines "Waters," in part, as the text quoted in Paragraph 31 of the Complaint. Respondent further states that the statute

speaks for itself. Respondent denies any remaining allegations in Paragraph 31 to the extent that they are inconsistent with the statute as cited and to the extent a response is required.

32. Respondent admits that 415 ILCS 5/3.165 defines “Contaminant,” in part, as the text quoted in Paragraph 32 of the Complaint. Respondent further states that the statute speaks for itself. Respondent denies any remaining allegations in Paragraph 32 to the extent that they are inconsistent with the statute as cited and to the extent a response is required.
33. Respondent admits that Section 620.115 the Illinois Administrative Code states, in part, the text quoted in Paragraph 33 of the Complaint. Respondent further states that the regulation speaks for itself. Respondent denies any remaining allegations in Paragraph 33 to the extent that they are inconsistent with the regulation as cited and to the extent a response is required.
34. Respondent admits that Section 620.301(a) of the Illinois Administrative Code states, in part, the text quoted in Paragraph 34 of the Complaint. Respondent further states that the regulation speaks for itself. Respondent denies any remaining allegations in Paragraph 34 to the extent that they are inconsistent with the regulation as cited and to the extent a response is required.
35. Respondent admits that Section 620.405 of the Illinois Administrative Code states, in part, the text quoted in Paragraph 35 of the Complaint. Respondent further states that the regulation speaks for itself. Respondent denies any remaining allegations in Paragraph 35 to the extent that they are inconsistent with the regulation as cited and to the extent a response is required.
36. Respondent admits that the Illinois Administrative Code states groundwater quality standards for Class I and Class II groundwater. Respondent further states that the regulations speak for themselves. Respondent denies any remaining allegations in Paragraph 36 to the extent that they are inconsistent with the regulations as cited and to the extent a response is required.
37. Respondent admits that Section 620.410 of the Illinois Administrative Code includes Class I groundwater quality standards for potable resource groundwater. Respondent further admits that Section 620.210 of the Illinois Administrative Code defines “Potable resource groundwater,” in part, as the text quoted in Paragraph 37 of the Complaint. Respondent further states that the regulation speaks for itself. Respondent denies any remaining allegations in Paragraph 37 to the extent that they are inconsistent with the regulation as cited and to the extent a response is required.
38. Respondent admits that Section 620.420 of the Illinois Administrative Code includes Class II groundwater quality standards for general resource groundwater. Respondent further admits that Section 620.220 of the Illinois Administrative Code defines “General resource groundwater,” in part, as the text quoted in Paragraph 38

of the Complaint. Respondent further states that the regulations speak for themselves. Respondent denies any remaining allegations in Paragraph 38 to the extent that they are inconsistent with the regulation as cited and to the extent a response is required.

39. Respondent admits that the Illinois Administrative Code states groundwater quality standards for Class I and Class II groundwater. Respondent further states that the regulation speaks for itself. Respondent denies any remaining allegations in Paragraph 39 to the extent that they are inconsistent with the regulation as cited and to the extent a response is required.
40. Respondent admits that Section 304.106 of the Illinois Administrative Code states, in part, the text quoted in Paragraph 40 of the Complaint. Respondent further admits that Section 301.275 of the Illinois Administrative Code defines “effluent,” in part, as the text quoted in Paragraph 40 of the Complaint but notes that the definition goes on to specifically exclude “nonpoint source discharges.” Respondent further states that the regulations speak for themselves. Respondent denies any remaining allegations in Paragraph 40 to the extent that they are inconsistent with the regulations as cited and to the extent a response is required.
41. Respondent admits that Section 304.124 of the Illinois Administrative Code states, in part, the text quoted in Paragraph 41 of the Complaint. Respondent further states that the statute speaks for itself. Respondent denies any remaining allegations in Paragraph 41 to the extent that they are inconsistent with the statute as cited and to the extent a response is required.
42. Respondent admits that Section 304.124 of the Illinois Administrative Code includes effluent limits. Respondent further states that the statute speaks for itself. Respondent denies any remaining allegations in Paragraph 42 to the extent that they are inconsistent with the statute as cited and to the extent a response is required.
43. Respondent admits that Section 304.104 of the Illinois Administrative Code states, in part, the text quoted in Paragraph 43 of the Complaint. Respondent further states that the statute speaks for itself. Respondent denies any remaining allegations in Paragraph 43 to the extent that they are inconsistent with the statute as cited and to the extent a response is required.
44. Respondent admits that Section 302.203 of the Illinois Administrative Code states, in part, the text quoted in Paragraph 44 of the Complaint. Respondent further states that the statute speaks for itself. Respondent denies any remaining allegations in Paragraph 44 to the extent that they are inconsistent with the statute as cited and to the extent a response is required.
45. Respondent incorporates its responses to Paragraphs 1-44 as though fully restated herein.
46. Respondent denies the allegations contained in Paragraph 46 of the Complaint.

47. Respondent denies the allegations contained in Paragraph 47 of the Complaint.
48. Respondent denies the allegations contained in Paragraph 48 of the Complaint.
49. Respondent incorporates its responses to Paragraphs 1-48 as though fully restated herein.
50. Respondent denies the allegations contained in Paragraph 50 of the Complaint.
51. Respondent denies the allegations contained in Paragraph 51 of the Complaint.
52. Respondent denies the allegations contained in Paragraph 52 of the Complaint.
53. Respondent incorporates its responses to Paragraphs 1-52 as though fully restated herein.
54. Respondent denies the allegations contained in Paragraph 54 of the Complaint.
55. Respondent incorporates its responses to Paragraphs 1-54 as though fully restated herein.
56. Respondent denies the allegations contained in Paragraph 56 to the Complaint.
57. Respondent is without information or knowledge sufficient to enable it to admit or deny the allegations contained in Paragraph 57 of the Complaint and on that basis denies those allegations.
58. Respondent denies that its discharges have or are causing a bright orange-red color in violation of 35 Ill. Admin. Code § 304.106. Respondent is without information or knowledge sufficient to enable it to admit or deny the remaining allegations contained in Paragraph 58 of the Complaint and on that basis denies those allegations.
59. Respondent incorporates its responses to Paragraphs 1-59 as though fully restated herein.
60. Respondent denies that its discharges have or are causing discoloration in violation of 35 Ill. Admin. Code § 302.203. Respondent is without information or knowledge sufficient to enable it to admit or deny the remaining allegations contained in Paragraph 60 of the Complaint and on that basis denies those allegations.

AFFIRMATIVE DEFENSES

I. PRN Cannot Obtain Injunctive Relief from the Board.

61. Paragraphs 1-60 are re-alleged and incorporated by reference.

62. In determining whether relief is injunctive in nature, Illinois courts look to the substance – not the form – of an order. *In re A Minor*, 127 Ill. 2d 247, 260 (Ill. 1989). In Illinois, injunctive relief is defined 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).

63. PRN requests that the Board issue a mandatory injunction ordering Respondent to take two specific affirmative actions: “[m]odify its coal ash and coal combustion residual waste disposal and storage practices so as to avoid future water contamination” and “[r]emediate the contaminated groundwater and surface water so that it meets applicable Illinois Groundwater Quality Standards and Illinois Water Quality Standards[.]” Compl. at p. 15.

64. PRN’s request for relief exceeds a mere “cease and desist,” which PRN also requests. Compl. at p. 15. Instead, the requested relief asks the Board to order a specific affirmative injunction. *See* Black’s Law Dictionary (10th ed. 2014).

65. The Illinois Environmental Protection Act (the “Act”) authorizes plaintiffs to seek mandatory injunctive relief from Illinois Courts, but it does not permit plaintiffs to seek such relief from the Board. Indeed, the complainants to the Board are authorized to seek only three types of relief: orders to “cease and desist from violations,” civil penalties, and revocation of permits. 415 ILCS 5/33(b).

66. The Board, state courts, and federal courts have held that the Act does not authorize plaintiffs to seek mandatory injunctive relief from 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)).

67. PRN has requested relief that the Act does not authorize it to seek from the Board, so those elements of PRN’s requested relief seeking mandatory injunctions cannot be granted.

II. PRN Cannot Obtain Injunctive Relief for Violations of 415 ILCS 5/12(d).

68. Paragraphs 1-67 are re-alleged and incorporated herein by reference.

69. PRN’s Complaint alleges that Respondent has violated 415 ILCS 5/12(d), which prohibits “*deposit[ing]* any contaminants upon the in such place and manner so as to create a water pollution hazard.” Compl. ¶¶ 63, 66, 69; 415 ILCS 5/12(d) (emphasis added).

70. 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).

71. Section 12(d) relates *only* to the depositing of contaminants on the land, not the maintenance of such contaminants on the land, so 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 Vermilion.

III. Relief Sought by PRN is Improper for Wholly Past Violations.

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

73. PRN alleges past exceedances of Part 620 and Subtitle C. (Comp. ¶¶ 40-60.)

74. Some or all of those alleged exceedances are wholly past. PRN has not demonstrated, and will not be able to demonstrate, that all of its alleged Part 620 or Subtitle C exceedances are ongoing.

75. By way of example, as explained at ¶¶ 130-33, *infra*, many or all of the Part 620 standards alleged by PRN are no longer applicable due to the Board's adoption of GWPS of Part 845.

76. While the Board has the discretion to impose civil penalties for wholly past conduct, the other relief sought by the Complaint is inappropriate to address wholly past exceedances. In a matter involving a requests for a cease and desist order and civil penalty, the Board allowed only civil penalties with respect to wholly past conduct. *Modine Mfg. Co. v. Pollution Control Bd.*, 193 Ill. App. 3d 643, 646, 549 N.E.2d 1379, 1381 (1990). *See also Tonne v. Leamingham Food*, PCB 93-44, 1994 WL 163956 (Apr. 21, 1994) and *Blouin v. TNT Logistics North America*, PCB 05-217, 2007 WL 872192 (Mar. 15, 2007) (each denying a plaintiff's request for orders to cease and desist where the alleged violation were wholly past).

IV. The State Litigation Moots PRN's Requested Relief.

77. Paragraphs 1-76 are re-alleged and incorporated by reference.

78. To the extent any injunctive relief were permissible in this case, any potential injunctive relief is moot, and PRN cannot obtain the relief it seeks.

79. A case is moot “where events occur that make it impossible for the court to grant effectual relief.” *Wheatley v. Bd. of Educ. of Twp. High Sch. Dist. 205*, 99 Ill. 2d 481, 484–85, 459 N.E.2d 1364, 1366 (1984). This can take many forms, including where a plaintiff is “granted the essential relief demanded.” *Id.*

80. On June 22, 2021, the Illinois Attorney General filed *People of the State of Illinois v. Dynegy Midwest Generation, LLC* in the Circuit Court of Vermilion County, Illinois (“State Litigation”). A copy of the filed complaint is attached as Exhibit 1. The State Litigation alleges violations at Vermilion of many of the very same Board rules that PRN has alleged here – 35 Ill. Admin. Code §§ 620.115, 620.401, 620.405, 620.410(a), 620.301(a), and 302.203.

81. Concurrent to the filing of the State Litigation on June 22, 2021, the Attorney General filled a motion asking the Circuit Court of Vermilion County to enter an Agreed Interim Order (“Agreed Order”) which has been fully executed by Dynegy, the Attorney General, the Illinois EPA, and the State’s Attorney of Vermilion County. The Circuit Court of Vermilion County granted that motion and entered the Agreed Order on June, 30, 2021. A copy of the entered Agreed Order is attached as Exhibit 2.

82. Pursuant to the Agreed Order, Dynegy will take interim corrective action measures including the installation of a groundwater collection trench, the dewatering of the Impoundments, and monthly riverbank inspections. These corrective action measures are designed to prevent groundwater from seeping into the Middle Fork, collect groundwater migrating from the Impoundments, and monitor changes to the riverbank caused by the eroding and meandering nature of the Vermilion. Exhibit 2 at 5-6.

83. Because the corrective action measures Dynegy will perform in the State Litigation pursuant to the Agreed Order will cease any violations of Board rules alleged by the Complaint

and prevent any future violations of those rules, PRN's primary requested relief – a cease and desist and an order enjoining Dynegy to avoid future violations – is moot. Accordingly, PRN has requested relief that cannot be granted.

V. Part 845 Moots PRN's Requested Relief.

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

85. Effective April 21, 2021, the Pollution Control Board adopted 35 Ill. Admin. Code § 845 ("Part 845"). Part 845 establishes the criteria and process for corrective action for coal ash impoundments. Because the Impoundments are subject to Part 845, any necessary corrective action will be done pursuant to the criteria, process, and procedures delineated in Part 845 and adopted by the Board. Any remedial relief that PRN requests would conflict with the pre-existing timetables and corrective action requirements of Part 845.

VI. PRN's Complaint is an Impermissible Collateral Attack on Part 845.

86. Paragraphs 1-85 are re-alleged and incorporated herein by reference.

87. Following the notice and comment rulemaking process, effective April 21, 2021, the Pollution Control Board adopted Part 845. Part 845 establishes the criteria and process for corrective action for coal ash impoundments, including the Impoundments.

88. Section 29(a) of the Act identifies that Section 41 of the Act outlines the process by which an adversely affected party can seek judicial review of a Board rule. 415 ILCS 5/29(a).

89. Section 29(b) "specifically provides that Action by the Board in adopting any regulation for which judicial review could have been obtained under Section 41 of this Act shall not be subject to review regarding the regulation's validity or application in any subsequent proceeding under Title VIII, Title IX or Section 40 of this Act. 415 ILCS 5/29(a) (2006)."

People of the State of Illinois v. Community Landfill Company, Inc. and the City of Morris, PCB 03-191, 2009 WL 1747988, at *23 (June 18, 2009).

90. This action, brought under the Act's Title VIII enforcement provisions, seeks to challenge the closure, post-closure, and corrective action criteria, process, and procedures governed by Part 845.

91. The Impoundments are subject to Part 845, and Respondent has begun the extensive and costly process of complying with Part 845's closure, post-closure, and corrective action requirements. Respondent has paid applicable Part 845 fees; submitted cost estimates for closure, post-closure, and corrective action activities to IEPA; and submitted financial assurances to IEPA. Part 845 delineates the closure, post-closure, and corrective action activities for the Vermilion Impoundments.

92. Rather than permit Respondent to continue to comply with Part 845, the Complaint brings a collateral attack on the rule, requesting that the Board order Respondent to "[m]odify its coal ash and coal combustion residual waste disposal and storage practices so as to avoid future water contamination," and "[r]emediate the contaminated groundwater and surface water so that it meets applicable Illinois Groundwater Quality Standards and Illinois Water Quality Standards[.]" Compl. at p. 15. In effect, Complainant seeks to impose its own closure, post-closure, and corrective action requirements as opposed to those delineated in Part 845.

93. The Board cannot permit collateral attacks on Board rules or Agency decisions via enforcement actions, and has repeatedly refused to do so. *See Sierra Club v. Ameren Energy Medina Valley Cogen, LLC and Futuregen Industrial Alliance Inc.*, PCB 14-134, 2014 WL 5834316, at *22 (Nov. 6, 2014) (Refusing to review a permit decision in the context of an enforcement proceeding); *see also People of the State of Illinois v. Community Landfill*

Company, Inc. and the City of Morris, PCB 03-191, 2009 WL 1747988, at *23 (June 18, 2009) (rejecting a request to modify landfill permitting and financial assurance rules via enforcement action as a collateral attack on those rules).

94. The Board should reject PRN's Complaint as a collateral attack on Part 845.

VII. This Action is Not Ripe for Adjudication.

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

96. A claim must be ripe before the Board can adjudicate it. This principle is meant to “prevent the courts [or the Board], through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.” *Fiatallis North American, Inc. v. Illinois Environmental Protection Agency*, PCB 93-108, 1993 WL 444602, at *6 (Oct. 21, 1993).

97. The requirement for ripeness “arises out of the courts' reluctance to apply declaratory judgment and injunctive remedies unless administrative determinations arise in context of a controversy ripe for judicial resolution, [and] to prevent courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to *protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties*, and court is required to evaluate both fitness of issues for judicial decision and hardship to parties of withholding court consideration.” *Benton Fire Department v. Illinois Environmental Protection Agency*, PCB 17-001, 2018 WL 1605255, at *2 (Mar. 28, 2018) (internal citations removed) (emphasis added).

98. By requesting relief outside of the Part 845 process, the Complaint inherently attacks the Part 845 closure, post-closure, and corrective action requirements as insufficient to address alleged exceedances. Rather than wait to provide public comments on Respondent's closure, post-closure, and corrective action activities under Part 845 as contemplated by the Board, PRN requests that the Board order Respondent to “[m]odify its coal ash and coal combustion residual waste disposal and storage practices so as to avoid future water contamination,” and “[r]emediate the contaminated groundwater and surface water so that it meets applicable Illinois Groundwater Quality Standards and Illinois Water Quality Standards[.]” Compl. at p. 15.

99. Part 845 requires Respondent to submit closure plans concerning the Impoundments to IEPA by February 1, 2022 and corrective action plans concerning the Impoundments to IEPA within one year of completing a corrective action assessment. 35 Ill. Admin. Code §§ 845.700(h), 845.670(b). Respondent has not yet submitted those plans to IEPA (but will do so timely), and IEPA has not yet issued any decision on those plans. Those processes are forthcoming. As such, PRN's Complaint is effectively an attack on the sufficiency of future submissions and IEPA decisions regarding Part 845's closure, post-closure, and corrective action requirements for the Impoundments. The PCB has rejected similar attempts for an advisory opinion on future work requiring a permitting process by IEPA. *The Rutland Environmental Protection Association, An Unincorporated Association, and Everett G. McLean, Its President and Everett G. McLean v. the Board of Supervisors of Kane County, Illinois*, PCB 74-83, 1974 WL 5988, at *1 (Apr. 18, 1974) (rejecting an enforcement action as not ripe where respondent had an upcoming permitting process, during which complainant would have the opportunity to raise objections to permit conditions).

100. Any relief the Board could grant to PRN to “avoid future water contamination” or “[r]emediate the contaminated groundwater” would prematurely interfere in the Part 845 permitting process for the Impoundments by prejudging the future permits issued by IEPA for corrective action and closure of the Impoundments. When Respondent applies for permits under Part 845, PRN will have the opportunity to engage in the public comment process and raise any objections it has at that time.

VIII. The General Assembly’s Enactment of Section 22.59 of the Act Precludes PRN’s Claims Under Section 12(a) and (d) of the Act.

101. Paragraphs 1-100 are re-alleged and incorporated by reference.

102. Section 22.59 of the Act (entitled “Surface Impoundments”) was enacted by the Illinois General Assembly and signed by Governor Pritzker on July 30, 2019 explicitly to address groundwater and other environmental impacts associated with coal ash impoundments. See 415 ILCS 5/22.59(a). Section 22.59(b) specifically “prohibits the discharge of contaminants from a CCR surface impoundment into the environment and the placement of CCR on the land so as to cause a violation of Section 22.59 or the Board’s Rules.” Statement of Reasons, R2020-19, p. 7 (Mar. 30, 2020) (emphasis added); *see also* 415 ILCS 5/22.59(b). Section 22.59 does not posit that a CCR surface impoundment would also be subject to actions under the general water pollution provisions of the Act, Sections 12(a) or 12(d).

103. Illinois courts have well-established that “where there are two statutory provisions, one of which is general and designed to apply to cases generally, and the other is particular and relates to only one subject, the particular provision must prevail.” *CB Constr. & Design, LLC v. Atlas Brookview, LLC*, 2021 IL App (1st) 200924, ¶ 32 (citing *Hernon v. E.W. Corrigan Construction Co.*, 149 Ill. 2d 190, 195, 172 Ill.Dec. 200, 595 N.E.2d 561 (1992)); *see also* *People v. Sharp*, 2021 IL App (5th) 190190, ¶ 19 (“A fundamental rule of statutory construction

is that ‘where there exists a general statutory provision and a specific statutory provision, either in the same or in another act, both relating to the same subject, the specific provision controls and should be applied.’ ” *citing Mattis v. State Universities Retirement System*, 212 Ill. 2d 58, 77, 287 Ill.Dec. 541, 816 N.E.2d 303 (2004) (quoting *Knolls Condominium Ass'n v. Harms*, 202 Ill. 2d 450, 459, 269 Ill.Dec. 464, 781 N.E.2d 261 (2002)).

104. Because Section 22.59 specifically concerns groundwater from CCR surface impoundments (like the Impoundments), the Impoundments are subject to Section 22.59 rather than the general prohibitions of Sections 12(a) and 12(d). The Complaint’s 12(a) and 12(d) claims must thus fail.

IX. The Statute of Limitation Bars Some or All of PRN’s Claims.

105. Paragraphs 1-104 are re-alleged and incorporated herein by reference.

106. PRN’s Complaint alleges that coal ash located at Vermilion, which was first deposited as early as 1955, has contaminated groundwater. Compl. ¶¶ 16-22.

107. PRN alleges that data from groundwater monitoring at Vermilion dating back as far as 1992 shows exceedances of applicable groundwater standards. Compl. ¶¶ 47-48.

108. 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.

109. The statute of limitations bars PRN’s claims as to (1) any coal combustion residuals that were deposited; (2) any alleged groundwater contamination that was discovered; and (3) any sampling results predating the Complaint by more than five years.

X. The Complaint Is Duplicative of the State Litigation.

110. Paragraphs 1-109 are re-alleged and incorporated herein by reference.

111. Like the Complaint, the State Litigation concerns alleged subsurface discharges from the Impoundments under Sections 12(a) and (d) of the Act, Part 620, and Subtitle C and seeks (i) a finding of the alleged violation of Sections 12(a) and 12(b) of the Act and Subtitle C, (ii) an order enjoining further violations, (iii) an order requiring abatement of violations, and (iv) civil penalties. Indeed, the State Litigation alleges substantively identical violations at Vermilion as the Complaint – 35 Ill. Admin. Code §§ 620.115, 620.401, 620.405, 620.410(a), 620.301(a), and 302.203. (Ex. 1 ¶¶ 27, 28, 29, 30, 43, 46, 47, 52, 53, 54, 55, and 56.) The Act and the Board rules direct the Board to dismiss a complaint if it is “duplicative.” 415 ILCS 5/31(d)(1); 35 Ill. Admin. Code § 103.212(a). A complaint is duplicative if it is “identical or substantially similar to one brought before the Board or another forum.” 35 Ill. Admin Code § 101.202.

112. Because the Complaint concerns the identical subject matter and relief and substantially similar claims as the State Complaint, it is duplicative.

XI. Count 4 Fails Because the Alleged Subsurface Discharges are Not Effluent.

113. Paragraphs 1-112 are re-alleged and incorporated herein by reference.

114. Count 4 of the Complaint is frivolous. It alleges violations of “Illinois effluent standards” of Section 304.106 and Section 304.124. Compl. ¶¶ 55-58. PRN specifically identifies the pathway of alleged discharge from the impoundments as “groundwater flow[ing] laterally through the ash” (Compl. ¶ 21) and “groundwater seeps discharging to the river.” Compl. ¶ 24. But the Board’s rules define “effluent” as “any wastewater discharged, directly or indirectly, to the waters of the state or to any sewer ... **but does not otherwise include nonpoint source discharges...**” 35 Ill. Admin. Code § 301.275 (emphasis added). The Board has held that subsurface leachate from unlined impoundments at another Illinois coal-fired generating station was “a classic nonpoint source of pollution” under Illinois law because leachate “emanates from the entire pond area and radiates out...” *Central Ill. Pub. Serv. Co. v. IEPA*,

PCB 84-105, 1984 WL 37567, Opinion and Order of the Board, at *3 (Nov. 8, 1984). The Board further found that its own rulemaking history demonstrates that it “did not intend [Part 304 standards] to apply to nonpoint subsurface leachate.” *Id*; see also *EPA v. Cabot Corp.*, PCB 81-27, Opinion and Order of the Board, at 7 (Jan. 9, 1986) (finding that the release of chemicals following the collapse of a storage tank was not “effluent.”).

115. Count 4 ignores Board precedent and alleges that pollutants “leach[]” from the Impoundment, “mix[] with the groundwater,” and then discharge into the Middle Fork of the Vermilion River via multiple “seeps.” Compl. ¶¶ 21, 23, 24. Because PRN alleges discharges from a nonpoint source, these alleged discharges are not “effluent” and therefore not subject to 35 Ill. Admin. Code § 304.106 and 304.124. Count 4 therefore “fails to state a cause of action upon which the Board can grant relief” and PRN cannot obtain relief on this claim. 35 Ill. Admin. Code § 101.202.

116. In denying Dynegy’s Motion to Stay or Dismiss, the Board made no final determination on Dynegy’s claim that PRN’s claim is frivolous because discharges from nonpoint sources are not effluent. PCB 19-93, slip op. at 9 (May 6, 2021). Instead, the Board held that “[w]hether or not the discharge is effluent or a nonpoint discharge is a question of both law and fact that the record *now before the Board* does not resolve.” *Id.* at 10 (emphasis added). As the record develops in this matter, the facts will demonstrate that PRN’s claims are frivolous because subsurface discharges from the Impoundments are not effluent.

XII. Counts 1 and 2 Fail Because the Subsurface Discharges alleged by the Complaint Have Not Created a Water Pollution Hazard.

117. Paragraphs 1-116 are re-alleged and incorporated herein by reference.

118. Counts 1 and 2 respectively allege that subsurface discharges from the Impoundments have created a “water pollution” hazard in violation of Sections 12(a) and 12(d) of the Act. Compl. ¶¶ 29, 46, 50.

119. “Water pollution” is defined at 415 ILCS 5/3.545 to refer to a discharge which “will or is likely to create a nuisance” or renders “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.”

120. The Complaint fails to demonstrate, and as the facts of this case develop, PRN will remain unable to demonstrate, that the subsurface discharges alleged by the Complaint have created a water pollution hazard. Such discharges have not, and are not likely to, create a nuisance or cause harm, detriment or injury to (i) public health, safety or welfare, (ii) any domestic, commercial, industrial, agricultural, recreational, or other legitimate use, or (iii) livestock, wild animals, birds, fish, or other aquatic life of a waters of the State.

XIII. PRN Relies on Invalid Wells and Samples to Calculate the Exceedances of Groundwater Quality Standards Alleged by Counts 1, 2 and 3.

121. Paragraphs 1-120 are re-alleged and incorporated herein by reference.

122. In calculating the exceedances alleged in Counts 1, 2, and 3, PRN utilized data that cannot be relied upon for determining compliance with GWQS.

A. *Data Relied Upon by PRN is from Wells that cannot be used to determine compliance with Part 620 GWQS.*

123. Groundwater samples cannot trigger a violation of the GWQS of Part 620 where:

- a. The sample was taken from a monitoring well that is “[l]ess than 15 feet in total depth from the land surface[.]” 35 Ill. Admin. Code § 620.505(a)(6)(A)(i).

b. The sample was taken from “a water well with water quality problems due to damaged well construction materials or poorly-designed well construction[.]” 35 Ill. Admin. Code § 620.505(a)(6)(B).

c. The sample was taken from an upgradient well because Section 12(a) of the Act prohibits “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, or so as to **violate regulations or standards** adopted by the [Board] under this Act.” 415 ILCS 5/12(a) (emphasis added).

124. The sampling data relied upon by PRN to establish one or more of alleged exceedances of GWQS at Counts 1, 2 and 3 are from one or more wells which (i) are less than 15 feet from the land surface, (ii) have water quality problems due to damaged construction materials or poor design, and/or (iii) are upgradient.

B. *Data Relied Upon by PRN is from Samples that cannot be used to determine compliance with Part 620 GWQS.*

125. Groundwater samples cannot trigger violations of a Class I, II, or III GWQS where:

a. The sample was taken within 25 feet of a surface impoundment, in which case Class IV groundwater quality standards apply. R14-10, Hearing Transcript at 110:5-23; 112:25-113:6 (Feb. 26, 2014) (Testimony of L. Dunaway) (testifying that, consistent with IEPA’s written answers, that groundwater within 25 feet from an impoundment is Class IV).

b. The sample is taken from a previously mined area, in which case Class IV groundwater quality standards apply. 35 Ill. Admin. Code § 620.440(c).

c. The sample was taken within the zone of attenuation – “a volume bounded by a vertical plane at the property boundary or 100 feet from the edge of the unit, whichever is

less” – concentrations of constituents in leachate discharged from the unit may exceed the applicable groundwater quality standard[.]” 35 Ill. Admin. Code § 811.320(c); 35 Ill. Admin. Code § 620.440(b).

126. The data relied upon by PRN to establish one or more alleged exceedances of Part 620 GWQS at Counts 1, 2 and 3 are from one or more samples taken (i) within 25 feet of the Impoundments, (ii) within a previously mined area, and/or (iii) within a zone of attenuation. Accordingly, said data fails to demonstrate the exceedances alleged by PRN.

XIV. Any Exceedances of Part 620 Were Due to Natural Causes.

127. Paragraphs 1-126 are re-alleged and incorporated by reference.

128. Groundwater sampling data cannot trigger violations of Class I or II groundwater quality standards of Part 620 where the chemical concentrations are due to natural causes or, with respect to alleged violations of 620.420(a), as provided in Section 620.420(a)(3) or 620.420(e). 35 Ill. Admin. Code §§ 620.410(a), 602.420(a).

129. Facts to be developed in this matter will demonstrate that one or more of any Part 620 exceedances was due to natural causes.

XV. Counts 1, 2 and 3 Fail Because the Alleged Groundwater Discharges Are Subject to Part 845 and not Part 620.

130. Paragraphs 1-129 are re-alleged and incorporated by reference.

131. Counts 1, 2 and 3 respectively allege continuing violations of Section 12(a) of the Act, Section 12(d), and Part 620. Compl.¶¶ 45-54.

132. Counts 1, 2 and 3 also allege 540 exceedances of Part 620 groundwater quality standards (“GWQS”) for Class I groundwater for arsenic, beryllium, boron, iron, manganese, pH, sulfate, and total dissolved solids. Compl.¶¶ 45-54. Counts 1 and 2 further alternatively allege 476 exceedances of GWQS for Class II groundwater for those same chemical parameters. *Id.*

Part 845 includes groundwater protection standards (“GWPS”) for each of those parameters, except iron.¹ 35 Ill. Admin. Code § 845.600. The groundwater quality standards of Part 620 do not apply during the active life of an impoundment where there are corresponding GWPS of Part 845. *See* PCB R20-19, IEPA Supplemental Answers to Prefiled Questions, p. 46 (Aug. 5, 2020) (IEPA clarifying that “Part 620 groundwater quality standards will remain in effect for constituents without a GWPS in Part 845,” and that Part 620 standards are applicable only for constituents not regulated by Part 845”); *see also* PCB R20-19, IEPA Answers to Prefiled Questions, p. 167-68 (Aug. 3, 2020) (Responding to a question about whether CCR surface impoundments subject to Part 845 would be subject to Part 620 standards, IEPA clarified that Part 620 standards only apply for constituents “which has no GWPS, and after the active life of a CCR surface impoundment”); *see also* PCB R20-19, Prefiled Testimony of Lynn Dunaway, p. 6-7 (June 2, 2020) (Testifying that, during the active life of a coal ash impoundment subject to Part 845, Part 620 groundwater quality standards apply for “any constituent with a Part 620 GWQS that is not subject to proposed Part 845”); PCB R20-19, Hrg. Transcript 29:4-33:8 (Aug. 13, 2020) (IEPA discussing Part 845.600(c) and testifying that the Part 620 groundwater quality standards for boron do not apply to an impoundment during its active life because there are corresponding groundwater protections standards under Part 845).

133. While GWPS may not apply retroactively before the effective date of Part 845, it they do unquestionably apply beginning on that effective date. PRN’s claims for continuing violations of Part 620 standards thus fail to the extent Part 845 provides a corresponding GWPS.

¹ Only 10 of the 540 alleged exceedances of Class I GWQS, and 10 of the 476 alternatively alleged exceedances of Class II GWQS concern iron.

XVI. Counts 4 and 5 Fail because the Alleged Discharges of Groundwater do not Violate Illinois Surface Water Standards.

134. Paragraphs 1-133 are re-alleged and incorporated herein by reference.

135. The Board Rules establish separate standards and regulatory regimes for surface water (35 Ill. Adm. Code §§ 301.101-399.140 (“Subtitle C”) – “Water Pollution”) and groundwater (Part 620). – “Groundwater Quality”).

136. PRN ignores the clear distinction between these separate regimes and argues that both the groundwater quality standards Part 620 *and* the surface water quality standards and effluent standards of 35 Ill. Admin. Code §§ 302 and 304 somehow apply to the groundwater associated with the Impoundments.

A. *Groundwater Regulated by Part 620 Is Not Also Subject to Surface Water Quality Standards.*

137. To the extent any groundwater associated with the Impoundments is subject to the groundwater quality standards of Part 620,² it cannot be also subject to the surface water quality standards of Subtitle C. 35 Ill. Admin. Code § 620.130.

B. *Any Discoloration is Below Obvious Levels.*

138. To the extent that the surface water quality standards of 35 Ill. Admin. Code § 302 somehow apply to the alleged discharges from the Impoundments as asserted by the Complaint, any discoloration associated with those alleged discharges is of natural origin and thus “below obvious levels.” 35 Ill. Admin. Code § 304.106.

C. *Any Bright Orange-Red Color is of Natural Origin.*

² As noted in Paragraph 132 above, whenever a GWPS of Part 845 applies, the GWQS of Part 620 do not. Also, as noted in Paragraphs 113-116 above, the discharges alleged by the Complaint are not effluent and thus are not regulated by the effluent standards of 35 Ill. Admin. Code § 304.

139. To the extent that the effluent standards of 35 Ill. Admin. Code § 304 somehow apply to alleged discharges from the Impoundments as asserted by the Complaint, any bright orange-red color associated with alleged discharges is of natural origin. 35 Ill. Admin. Code § 304.106.

D. *PRN's Testing Failed to Use Proper Technical Methods.*

140. To the extent that the effluent standards of 35 Ill. Admin. Code § 304 somehow apply to alleged discharges from the Impoundments as asserted by the Complaint, PRN cannot establish any non-compliance of those standards. PRN's sampling data as alleged in Paragraph 24 of the Complaint failed to utilize proper methods of sample collection, preservation, and analysis necessary to demonstrate a violation of 35 Ill. Admin. Code § 304. 35 Ill. Admin. Code § 301.104.

E. *Any Exceedance of An Effluent Standard Was Due to Influent Contamination, Evaporation, and/or the Incidental Addition of Trace Materials From a Different Source.*

141. To the extent that the effluent standards of 35 Ill. Admin. Code § 304 somehow apply to alleged discharges from the Impoundments as asserted by the Complaint, the alleged non-compliance with the those effluent standards "result[s] entirely from influent contamination, evaporation, and/or the incidental addition of traces of materials not utilized or produced in the activity that is the source of the waste." 35 Ill. Admin. Code § 304.103.

F. *Groundwater Regulated by Part 845 is Not Subject to Subtitle C.*

142. Section 845.110(b) of Part 845 delineates state and federal laws which will continue to apply to coal ash impoundments regardless of Part 845. With respect to surface waters, Section 845.110(b) identifies specific provisions of the Federal Clean Water Act and the Ill. Admin Code which will continue to be applicable in addition to Part 845. 35 Ill. Admin.

Code. § 845.110(b). Although Subtitle C was originally identified by Section 845.110(b), the listing of Subtitle C was specifically stricken from the final version of Part 845. Statement of Reasons, R2020-19, p. 5 (Mar. 30, 2020).

143. The Board's intentional omission of the reference to Subtitle C demonstrates that groundwater discharges subject to Part 845 is not also subject to Subtitle C.

144. Although Section 845.110(a) generally provides that Part 845 does not affect the need to comply with other applicable law, cannons of construction require Section 845.110(b) to apply with respect to Subtitle C. To read Section 845.110(a) to broadly apply to law specifically omitted from Section 845.110(b) would render the latter provision meaningless.

145. To the extent groundwater discharges from the Impoundment is regulated by Part 845, it cannot also be subject to Subtitle C or claims of Counts 4 and 5.

WHEREFORE, Dynegy respectfully prays for judgment as follows:

1. Dismissal with prejudice in favor of Dynegy and against PRN; and
2. Any further relief as the Board deems just and necessary.

Dated this 6th day of July, 2021.

/s/ Daniel J. Deeb

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LLC*

EXHIBIT 1

**IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
VERMILION COUNTY, ILLINOIS
CHANCERY DIVISION**

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. KWAME RAOUL, Attorney)
General of the State of Illinois, and)
ex rel. JACQUELINE M. LACY, State’s)
Attorney of Vermilion County, Illinois,)
)
Plaintiff,)
)
v.)
)
DYNEGY MIDWEST GENERATION, LLC, a)
Delaware limited liability company,)
)
Defendant.)

No. 2021CH000024

COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* KWAME RAOUL, Attorney General of the State of Illinois, and *ex rel.* JACQUELINE M. LACY, State’s Attorney of Vermilion County, Illinois, on their own motion and at the request of the Illinois Environmental Protection Agency, complains of Defendant, DYNEGY MIDWEST GENERATION, LLC, a Delaware limited liability company, as follows:

COUNT I

WATER POLLUTION VIOLATIONS OF CLASS I GROUNDWATER STANDARDS

1. This Count is brought on behalf of the People of the State of Illinois by Kwame Raoul, Attorney General of the State of Illinois, and Jacqueline M. Lacy, State’s Attorney of Vermilion County, Illinois, on their own motion and at the request of the Illinois Environmental Protection Agency (the “Illinois EPA”), pursuant to the terms and provisions of Section 42 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/42 (2020).

2. Illinois EPA is an administrative agency of the State of Illinois, established by

Section 4 of the Act, 415 ILCS 5/4 (2020), and is charged, *inter alia*, with the duty of enforcing the Act.

3. At all times relevant to this Complaint, Dynegy Midwest Generation, LLC (“Dynegy”) was and is a Delaware limited liability company authorized to do business in the State of Illinois.

4. Dynegy is a wholly-owned subsidiary of Vistra Energy Corp., a Delaware corporation.

A. BACKGROUND.

5. At all times relevant to this Complaint, Dynegy has owned, and continues to own, the real property located at 10188 East 2150 North, Oakwood, Vermilion County, Illinois (the “Site”), at which a coal-fired electric generating facility known as the Vermilion Power Station was operated.

6. Prior to ceasing operations on or about November 17, 2011, Dynegy combusted coal at the Site as part of its electric generating operations. As a result of its combustion of coal, Dynegy generated coal combustion ash (a/k/a coal ash).

7. Coal ash may include, among other materials: (a) fly ash - a very fine, powdery material composed mostly of silica made from the burning of finely ground coal in a boiler; (b) bottom ash - a coarse, angular ash particle that forms in the bottom of the coal furnace; and (c) boiler slag - molten bottom ash from slag tap and cyclone type furnaces that turns into pellets having a smooth glassy appearance after it is cooled with water.

8. Coal ash can contain antimony, arsenic, barium, boron, beryllium, cadmium, chromium, chloride, iron, lead, mercury, manganese, nickel, selenium, silver, sulfate, thallium and

total dissolved solids. These constituents are (a) soluble and mobile, and (b) may be harmful to people, aquatic life and animals.

9. Boron and sulfate are primary indicators for coal ash leachate. Both are mobile in most hydrogeologic environments.

10. As part of its operations at the Site, Dynegy discharged, deposited, dumped or placed coal ash into the man-made “ponds” at the Site, including the soil therein.

11. The ponds at the Site include:

- a. The North Ash Pond which contains approximately 1.6 million cubic yards of coal ash; was operated from the mid-1970’s through approximately 1989; is unlined; and consists of one large pit for disposal and another smaller pit for sedimentation overflow. The North Ash Pond is bordered on the north by fields owned by the Illinois Department of Natural Resources, on the east by the Middle Fork of the Vermilion River, on the south by the Old East Ash Pond, and on the west by bluffs that include the Orchid Hill National Heritage Landmark. The North Ash Pond is underlain by the Middle and Lower Groundwater Units comprised of Class I geologic materials.
- b. The Old East Ash Pond which contains approximately 1.2 million cubic yards of coal ash; was operated between the mid-1950’s through mid-1970’s; and is unlined. The Old East Ash Pond is bordered on the north and northeast by the Middle Fork of the Vermilion River, on the southeast, south, and west by bluffs on the Site, and on the northwest by the North Ash Pond. The Old East Ash Pond is underlain by the Middle and Lower Groundwater Units comprised of

Class I geologic materials. The Middle Groundwater Unit outcrops downgradient on the bank of the Middle Fork of the Vermilion River.

- c. The New East Ash Pond which contains approximately 0.5 million cubic yards of coal ash; was operated between 1989 and the plant's closure, and is located over "mine voids," thereby subjecting it to potential subsidence/sinking of land.

12. A true and correct copy of a map showing the Site and the ponds is attached hereto as Exhibit 1.

13. Groundwater at the Site generally flows from the North Ash Pond, the Old East Ash Pond and the New East Ash Pond toward, and discharges into, the Middle Fork of the Vermilion River.

14. Each of the ponds on the Site is located in the western floodplain of the Middle Fork of the Vermilion River. The Middle Fork of the Vermilion River flows into the Vermilion River which flows to the east into the Wabash River.

15. Nearby residents and visitors enjoy canoeing and kayaking on the Middle Fork of the Vermilion River, as well as camping, riding horses, hunting, photographing wildlife and picnicking along the river and its shoreline.

16. In 1989, pursuant to the National Wild and Scenic Rivers Act, 16 U.S.C.A. § 1271 *et seq.*, the United States Secretary of the Interior designated the Middle Fork of the Vermilion River a National Scenic River, which is Illinois' only National Scenic River. Section 2 of the Vermilion River Middle Fork Act, 615 ILCS 95/2 (2020), also provides as follows:

That portion of the middle fork of the Vermilion River which flows through land owned by the State of Illinois and the Vermilion County Conservation District within Vermilion County, Illinois, is hereby designated as a permanently protected river of the State of Illinois. . . .

17. On May 17, 2018, the Illinois EPA conducted a stream survey of the Middle Fork of the Vermilion River.

18. On May 17, 2018, and on such other dates better known to Dynegey, (a) many of the gabion baskets that Dynegey had previously installed near the eastern property boundary of the North Ash Pond to stabilize the streambank, were damaged; and (b) rock media (from the damaged gabions that Dynegey had previously installed) dislodged and washed downstream.

19. On May 17, 2018, and on such other dates better known to Dynegey, numerous seeps containing heavily stained, reddish-orange discoloration were located near the eastern property boundary of the Old East Ash Pond along the streambank.

20. On May 17, 2018, and on such other dates better known to Dynegey, a gravel/sand bar had formed along the same portion of the stream that created a stagnant area along the bank, in which standing river water, sediment and submerged rocks were discolored orange. The discoloration was visible for approximately 60 feet within the stagnant area and along the bank.

21. The riverbank of the Middle Fork of the Vermilion River has been eroding, and continues to erode, approximately 3.6 feet per year.

B. GROUNDWATER QUALITY STANDARDS.

22. The Illinois Pollution Control Board (“Board”) is an independent board created by the Illinois General Assembly in Section 5 of the Act, 415 ILCS 5/5 (2020), and charged, *inter alia*, with the duty of promulgating standards and regulations under the Act and the Illinois Groundwater Protection Act, 415 ILCS 55/1 *et seq.*

23. Section 3.210 of the Act, 415 ILCS 5/3.210 (2020), provides, in pertinent part, as follows:

“Groundwater” means underground water which occurs within the saturated zone and geologic materials where the fluid pressure in the pore space is equal to or greater than atmospheric pressure.

24. Section 620.201(a) of the Board Groundwater Quality Standards, 35 Ill. Adm. Code 620.201(a), establishes four classes of groundwater in the State of Illinois and provides, in pertinent part, as follows:

1) Class I: Potable Resource Groundwater;. . . .

25. Section 620.210(a) of the Board Groundwater Quality Standards, 35 Ill. Adm. Code 620.210(a), provides, in part:

Except as provided in Sections 620.230, 620.240, or 620.250, [Class I] Potable Resource Groundwater is:

a) Groundwater located 10 feet or more below the land surface and within:

* * *

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 (i.e., fines which pass through a No. 200 sieve tested according to ASTM Standard Practice D2487-06, incorporated by reference at Section 620.125);

* * *

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 1×10^{-4} cm/sec or greater using one of the following test methods or its equivalent:

i) Permeameter;

ii) Slug test; or

iii) Pump test. . . .

26. Pursuant to historical documentation that Dynegy submitted to the Illinois EPA, the upper, middle and lower groundwater units that are underlying the North Ash Pond and Old East Ash Pond, as well as the outcropping along the Middle Fork of the Vermilion River, are located more than 10 feet under the land surface; are comprised of sand, and sand and gravel, that is greater than 5 feet thick; and are within geologic material that is capable of a hydraulic conductivity of 1×10^{-4} cm/sec. Accordingly, the groundwater in the aquifers underlying the North Ash Pond and Old East Ash Pond is Class 1 groundwater pursuant to 35 Ill. Adm. Code 620.210(a).

27. Section 620.401 of the Board Groundwater Quality Standards, 35 Ill. Adm. Code 620.401, provides:

Groundwaters must meet the standards appropriate to the groundwater's class as specified in this Subpart and the nondegradation provisions of Subpart C.

28. Section 620.410(a) of the Groundwater Quality Standards, 35 Ill. Adm. Code 620.410(a), provides, in pertinent part, as follows:

a) Inorganic Chemical Constituents

Except due to natural causes or as provided in Section 620.450, concentrations of the following chemical constituents must not be exceeded in Class I groundwater:

Constituent	Class I Standard¹
Arsenic	0.010 mg/L
Boron	2.0 mg/L
Iron	5.0 mg/L
Manganese	0.15 mg/L
Sulfate	400 mg/L
Total Dissolved Solids (TDS)	1,200 mg/L
Beryllium	.004mg/L

¹ 35 Ill. Adm. Code 620.410(a).

29. Section 620.115 of the Board Groundwater Quality Standards, 35 Ill. Adm. Code 620.115, provides:

No person shall cause, threaten or allow a violation of the Act, the [Illinois Groundwater Protection Act] or regulations adopted by the Board thereunder, including but not limited to this Part.

30. Section 620.405 of the Board Groundwater Quality Standards, 35 Ill. Adm. Code 620.405, provides:

No person shall cause, threaten or allow the release of any contaminant to groundwater so as to cause a groundwater quality standard set forth in [35 Ill. Adm. Code 620, Subpart D] to be exceeded.

C. CLASS I GROUNDWATER EXCEEDANCES.

31. Dynegy has reported Class I groundwater exceedances at certain monitoring wells located near the North Ash Pond and the Old East Ash Pond for boron, iron, sulfate, manganese, total dissolved solids (TDS) and pH during the period of 1992 and 2007. A true and correct copy of the summary chart of such exceedances that Dynegy prepared and submitted to the Illinois EPA is attached hereto as Exhibit 2.

32. Dynegy's Application for Groundwater Management Zone, North Ash Pond System and Old East Ash Pond, Vermilion Power Station dated March 27, 2012 stated, among other things, that "[g]roundwater downgradient of the [North Ash Pond System and Old East Ash Pond] had concentrations of boron, sulfate, iron, manganese, and TDS higher than Class 1 groundwater quality standards at multiple locations and in all four sample events during 2011."

33. On or about April 2, 2012, Dynegy reported the following exceedances at monitoring wells located on the Site based on sampling that it conducted or caused to be conducted at the Site:

Monitoring Well	Parameter	Sample Value (mg/L)	Class I Groundwater Standard (mg/L)	Collection Date
MW-04	Boron	7.8	2.0	10/10/2011
MW-04	Boron	7.1	2.0	07/27/2011
MW-04	Boron	5.7	2.0	05/24/2011
MW-04	Boron	4.9	2.0	03/08/2011
MW-04	Manganese	1.0	0.15	10/10/2011
MW-04	Manganese	0.9	0.15	07/27/2011
MW-04	Manganese	1.0	0.15	05/24/2011
MW-04	Manganese	0.91	0.15	03/08/2011
MW-05	Boron	22	2.0	10/10/2011
MW-05	Boron	19	2.0	07/27/2011
MW-05	Boron	19	2.0	05/24/2011
MW-05	Boron	20	2.0	03/09/2011
MW-05	Manganese	0.34	0.15	10/10/2011
MW-05	Manganese	0.31	0.15	07/27/2011
MW-05	Manganese	0.29	0.15	05/24/2011
MW-05	Manganese	0.31	0.15	03/09/2011
MW-05	Sulfate	480	400	10/10/2011
MW-05	Sulfate	450	400	07/27/2011
MW-05	Sulfate	410	400	05/24/2011
MW-08R	pH	6.35 su	6.5-9.0su	10/10/2011
MW-08R	Boron	40	2.0	10/10/2011
MW-08R	Boron	37	2.0	07/27/2011
MW-08R	Boron	29	2.0	05/24/2011
MW-08R	Manganese	0.22	0.15	05/24/2011
MW-08R	Sulfate	1,500	400	10/10/2011
MW-08R	Sulfate	1,300	400	07/27/2011
MW-08R	Sulfate	1,000	400	05/24/2011
MW-08R	Total Dissolved Solids (TDS)	2,200	1,200	10/10/2011
MW-08R	TDS	2,000	1,200	07/27/2011
MW-08R	TDS	1,700	1,200	05/24/2011
MW-17	Sulfate	1,800	400	3/14/2011
MW-17	pH	6.49su	6.5-9.0su	3/14/2011
MW-17	TDS	2,700	1,200	3/14/2011
MW-17	Boron	3.0	2.0	3/14/2011
MW-17	Manganese	0.17	0.15	3/14/2011
MW-17	Sulfate	1,700	400	5/23/2011
MW-17	TDS	2,200	1,200	5/23/2011
MW-17	Boron	2.7	2.0	5/23/2011
MW-17	Sulfate	1,300	400	7/27/2011
MW-17	TDS	2,600	1,200	7/27/2011
MW-17	Boron	4.9	2.0	7/27/2011

MW-17	Manganese	0.31	0.15	7/27/2011
MW-17	Iron	6.2	5.0	7/27/2011
MW-17	Sulfate	610	400	10/11/2011
MW-17	pH	5.05su	6.5-9.0su	10/11/2011
MW-17	TDS	3,100	1,200	10/11/2011
MW-17	Boron	6.0	2.0	10/11/2011
MW-17	Manganese	0.98	0.15	10/11/2011
MW-17	Iron	8.6	5.0	10/11/2011
MW-17	Beryllium	.0084	.004	10/11/2011
MW-18	Sulfate	1,100	400	3/14/2011
MW-18	TDS	2,000	1,200	3/14/2011
MW-18	Boron	11.0	2.0	3/14/2011
MW-18	Manganese	.96	.15	3/14/2011
MW-18	Sulfate	1,300	400	5/23/2011
MW-18	TDS	1,900	1,200	5/23/2011
MW-18	Boron	12.0	2.0	5/23/2011
MW-18	Manganese	0.97	0.15	5/23/2011
MW-18	Sulfate	1,200	400	5/23/2011
MW-18	TDS	1,800	1,200	5/23/2011
MW-18	Boron	9.0	2.0	5/23/2011
MW-18	Manganese	1.2	.15	5/23/2011
MW-18	Sulfate	930	400	10/11/2011
MW-18	TDS	1,800	1,200	10/11/2011
MW-18	Boron	9.3	2.0	10/11/2011
MW-18	Manganese	1.3	.15	10/11/2011

34. In its U.S. Securities Exchange Commission (“SEC”) Form 10-K for 2012, Dynege stated “[i]n April 2012, we submitted to the Illinois EPA proposed corrective action plans for two of the CCR² surface impoundments³ at the Vermilion facility. The proposed corrective action plans reflect the results of a hydrogeologic investigation, which indicate that the facility’s old east and

² “Coal combustion residual” or “CCR” means fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers. 415 ILCS 5/3.142.

³ “CCR surface impoundment” means a natural topographic depression, man-made excavation, or diked area, which is designed to hold an accumulation of CCR and liquids, and the unit treats, stores, or disposes of CCR. 415 ILCS 5/3.143.

north CCR impoundments impact groundwater quality onsite and that such groundwater migrates offsite to the north of the property and to the adjacent Middle Fork of the Vermilion River.”

35. Further, in its SEC Form 10-K for 2012, Dynegy stated “[w]e have implemented hydrogeologic investigations for the CCR surface impoundment at our Baldwin facility and for two CCR surface impoundments at our Vermilion facility in response to requests by the Illinois EPA. Groundwater monitoring results indicate that the CCR surface impoundments at each site impact onsite groundwater.”

36. In Dynegy’s U.S. SEC Form 10-K for the years 2012 through 2014, it stated “a hydrogeologic investigation, which indicate that the facility’s old east and north CCR impoundments impact groundwater quality onsite and that such groundwater migrates offsite to the north of the property and to the adjacent Middle Fork of the Vermilion River.”

37. In Dynegy’s U.S. SEC Form 10-K for the years 2015 through 2016, it stated “[o]ur hydrogeologic investigation indicates that [the North Ash Pond and Old East Ash Pond] impact groundwater quality onsite and that such groundwater migrates offsite to the north of the property and to the adjacent Middle Fork of the Vermilion River.”

38. In 2017 and 2018, and on dates better known to Dynegy, Dynegy conducted groundwater sampling at the Site, which results included exceedances of Class I Groundwater Quality Standards as set forth on Exhibit 3 (a true and correct copy of Dynegy’s Table 3 (groundwater quality data summary 2017-18)).

39. Section 12(a) of the Act, 415 ILCS 5/12(a) (2020), provides, in pertinent part, as follows:

No person shall:

- (a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in

Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

40. Section 3.315 of the Act, 415 ILCS 5/3.315 (2020), provides the following definition:

“Person” is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

41. Dynegy, a limited liability company, is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2020).

42. Section 3.165 of the Act, 415 ILCS 5/3.165 (2020), provides as follows:

“Contaminant” is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

43. The coal ash and its constituents at the Site are “contaminants,” as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2020).

44. Section 3.142 of the Act, 415 ILCS 5/3.142 (2020), provides the following definition:

“Coal combustion residual” or “CCR” means fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers.

45. The coal ash at the Site constitutes “coal combustion residual” or “CCR,” as that term is defined by Section 3.142 of the Act, 415 ILCS 5/3.142 (2020).

46. Section 3.143 of the Act, 415 ILCS 5/3.143 (2020), provides the following definition:

“CCR surface impoundment” means a natural topographic depression, man-made excavation, or diked area, which is designed to hold an accumulation of CCR and liquids, and the unit treats, stores, or disposes of CCR.

47. The North Ash Pond, Old East Ash Pond and New East Ash Pond at the Site each constitute “CCR surface impoundments,” as that term is defined by Section 3.143 of the Act, 415 ILCS 5/3.143 (2020).

48. Section 3.545 of the Act, 415 ILCS 5/3.545 (2020), provides the following definition:

“Water pollution” is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such 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.

49. Section 3.550 of the Act, 415 ILCS 5/3.550 (2020), provides the following definition:

“Waters” means 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.

50. The groundwater at the Site and the Middle Fork of the Vermilion River are each a “waters” of the State of Illinois as that term is defined by Section 3.550 of the Act, 415 ILCS 5/3.550 (2020).

51. Dynegy’s discharge of CCR and its constituents into the CCR surface impoundments and groundwater at or near the Site, which threatened to enter or entered the Middle Fork of the Vermilion River, Illinois’ only National Scenic River, created or is likely to create a nuisance or is likely to render such waters harmful, detrimental or injurious to public health, commercial, industrial, recreational, or other legitimate uses, wild animals, birds, fish, or other aquatic life, thereby constituting “water pollution,” as that term is defined in 415 ILCS 5/3.545 (2020).

52. By causing, threatening or allowing the discharge of CCR and its constituents into the environment, so as to cause exceedances of the Class I Groundwater Quality Standards for arsenic, boron, iron, manganese, pH, sulfate and total dissolved solids, Dynegy violated Section 620.410(a) of the Board Groundwater Quality Standards, 35 Ill. Adm. Code 620.410(a).

53. By violating Section 620.410(a) of the Board Groundwater Quality Standards, 35 Ill. Adm. Code 620.410(a), Dynegy also violated Sections 620.115, 620.401 and 620.405 of the Board Groundwater Quality Standards, 35 Ill. Adm. Code 620.115, 620.401 and 620.405.

54. By causing, threatening or allowing the discharge of contaminants into the environment, so as to cause exceedances of the standards set forth in Section 620.410(a) of the Board Groundwater Quality Standards, 35 Ill. Adm. Code 620.410(a), Dynegy violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2020).

55. By causing, threatening or allowing the discharge of contaminants into the environment, including the CCR surface impoundments and groundwater at and near the Site, which also have threatened to enter or entered the Middle Fork of the Vermilion River, so as to cause or tend to cause water pollution, Dynegy violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2020).

56. Violations of the pertinent environmental statutes will continue unless and until this Court grants equitable relief in the form of preliminary, and after trial, permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court enter an Order granting a preliminary and, after trial, permanent injunction in favor of Plaintiff and against Defendant, DYNEGY MIDWEST GENERATION, LLC, on Count I as follows:

1. Finding that Dynegy violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2020), and Sections 620.115, 620.401, 620.405 and 620.410(a) of the Board Groundwater Quality Standards, 35 Ill. Adm. Code 620.115, 620.401, 620.405 and 620.410(a);
2. Enjoining Dynegy from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2020), and Sections 620.115, 620.401, 620.405 and 620.410(a) of the Board Groundwater Quality Standards, 35 Ill. Adm. Code 620.115, 620.401, 620.405 and 620.410(a);
3. Ordering Dynegy to immediately undertake all necessary corrective action that will result in a final and permanent abatement of violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2020), and Sections 620.115, 620.401, 620.405 and 620.410(a) of the Board Groundwater Quality Standards, 35 Ill. Adm. Code 620.115, 620.401, 620.405 and 620.410(a);
4. Ordering Dynegy to immediately post with the Illinois EPA financial assurance, pursuant to Section 22.59(f) of the Act, 415 ILCS 5/22.59(f) (2020), in the form of either: (a) a trust fund, (b) a surety bond guaranteeing payment, (c) a surety bond guaranteeing performance, or (d) an irrevocable letter of credit for the purpose of: (i) ensuring closure of the CCR surface impoundment and post-closure care in accordance with the Act and its rules; and (ii) ensuring remediation of releases from Dynegy's North Ash Pond, Old East Ash Pond and New East Ash Pond.
5. Assessing against Dynegy a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of each violation;
6. Ordering Dynegy to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2020), including any attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

7. Granting such other relief as this Court deems appropriate and just.

COUNT II

IMPAIRMENT OF RESOURCE GROUNDWATER

1–42. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 23, 31 through 47 and 49 through 50 of Count I as paragraphs 1 through 42 of this Count II.

43. Section 620.301(a) of the Board Groundwater Quality Standards, 35 Ill. Adm. Code 620.301(a), provides:

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.

44. Section 3.430 of the Act, 415 ILCS 5/ 3.430 (2020), provides:

“Resource groundwater” means groundwater that is presently being or in the future capable of being put to beneficial use by reason of being of suitable quality.

45. The groundwater below the North Ash Pond and Old East Ash Pond is Class I potable water that, in the future with treatment, is capable of being put to beneficial use by reason of being of suitable quality.

46. By causing or allowing releases of contaminants into a resource groundwater that entered the groundwater so as to impair existing and potential uses of the groundwater, Dynegy violated Section 620.301(a) of the Board Groundwater Quality Standards, 35 Ill. Adm. Code 620.301(a).

47. By causing, threatening, or allowing violations of Section 620.301(a) of the Board Groundwater Quality Standards, 35 Ill. Adm. Code 620.301(a), Dynegy violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2020).

48. Violations of the pertinent environmental statutes will continue unless and until this Court grants equitable relief in the form of preliminary, and after trial, permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court enter an Order granting a preliminary and, after trial, permanent injunction in favor of Plaintiff and against Defendant, DYNEGY MIDWEST GENERATION, LLC, on Count II as follows:

1. Finding that Dynegy violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2020), and Section 620.301(a) of the Board Groundwater Quality Standards, 35 Ill. Adm. Code 620.301(a);

2. Enjoining Dynegy from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2020), and Section 620.301(a) of the Board Groundwater Quality Standards, 35 Ill. Adm. Code 620.301(a);

3. Ordering Dynegy to immediately undertake all necessary corrective action that will result in a final and permanent abatement of violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2020), and Section 620.301(a) of the Board Groundwater Quality Standards, 35 Ill. Adm. Code 620.301(a);

4. Ordering Dynegy to immediately post with the Illinois EPA financial assurance, pursuant to Section 22.59(f) of the Act, 415 ILCS 5/22.59(f) (2020), in the form of either: (a) a trust fund, (b) a surety bond guaranteeing payment, (c) a surety bond guaranteeing performance, or (d) an irrevocable letter of credit for the purpose of: (i) ensuring closure of the CCR surface impoundment and post-closure care in accordance with the Act and its rules; and (ii) ensuring remediation of releases from Dynegy's North Ash Pond, Old East Ash Pond and New East Ash Pond.

5. Assessing against Dynegy a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of each violation;

6. Ordering Dynegy to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2020), including any attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

7. Granting such other relief as this Court deems appropriate and just.

COUNT III

CREATING A WATER POLLUTION HAZARD

1-50. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 38 and paragraphs 40 through 51 of Count I as paragraphs 1 through 50 of this Count III.

51. Section 12(d) of the Act, 415 ILCS 5/12(d) (2020), provides as follows:

No person shall:

* * *

(d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

52. On such dates better known to Dynegy, by causing or allowing CCR to be deposited upon the land at the Site, which threatened to discharge or discharged into groundwater and surface water at or near the Site and the Middle Fork of the Vermilion River, Dynegy created a water pollution hazard in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2020).

53. Violations of the pertinent environmental statutes will continue unless and until this Court grants equitable relief in the form of preliminary and, after trial, permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court enter an Order granting a preliminary and, after trial, permanent injunction in favor

of Plaintiff and against Defendant, DYNEGY MIDWEST GENERATION, LLC, on Count III as follows:

1. Finding that Dynegy violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2020);
2. Enjoining Dynegy from any further violations of Section 12(d) of the Act, 415 ILCS 5/12(d) (2020);
3. Ordering Dynegy to immediately undertake all necessary corrective action that will result in a final and permanent abatement of violations of Section 12(d) of the Act, 415 ILCS 5/12(d) (2020);
4. Ordering Dynegy to immediately post with the Illinois EPA financial assurance, pursuant to Section 22.59(f) of the Act, 415 ILCS 5/22.59(f), in the form of either: (a) a trust fund, (b) a surety bond guaranteeing payment, (c) a surety bond guaranteeing performance, or (d) an irrevocable letter of credit for the purpose of: (i) ensuring closure of the CCR surface impoundment and post-closure care in accordance with the Act and its rules; and (ii) ensuring remediation of releases from Dynegy's North Ash Pond, Old East Ash Pond and New East Ash Pond.
5. Assessing against Dynegy a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of each violation;
6. Ordering Dynegy to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2020), including any attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
7. Granting such other relief as this Court deems appropriate and just.

COUNT IV

OFFENSIVE CONDITIONS IN 2020

1-51. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 51 of Count I as paragraphs 1 through 51 of this Count IV.

52. Section 3.395 of the Act, 415 ILCS 5/3.395 (2020), provides the following definition:

“Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. . . .

53. Pursuant to authority granted in Sections 13 and 27 of the Act, 415 ILCS 5/13 and 5/27 (2020), the Board has promulgated rules and regulations to control water pollution in Illinois, codified at 35 Ill. Adm. Code Subtitle C, Chapter I (“Board Water Pollution Regulations”).

54. Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203, provides, in pertinent part, as follows:

Offensive Conditions

Waters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin

55. On May 17, 2018, and on such other dates better known to Dynegy, Dynegy caused or allowed the release, as that term is defined in Section 3.395 of the Act, 415 ILCS 5/3.395 (2020), of coal ash constituents from the Site into the Middle Fork of the Vermilion River. Such release caused the Middle Fork of the Vermilion River to have unnatural color, turbidity and bottom deposits, thereby creating “offensive conditions” as defined in 35 Ill. Adm. Code 302.203, in violation of Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203.

56. By violating Section 302.203 of the Board Water Pollution Regulations, Dynegy also violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2020).

57. Violations of the pertinent environmental statutes will continue unless and until this Court grants equitable relief in the form of preliminary and, after trial, permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court enter an Order granting a preliminary and, after trial, permanent injunction in favor of Plaintiff and against Defendant, DYNEGY MIDWEST GENERATION, LLC, on Count IV as follows:

1. Finding that Dynegy violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2020), and Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203;

2. Enjoining Dynegy from further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2020), and Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203;

3. Ordering Dynegy to immediately undertake all necessary corrective action that will result in a final and permanent abatement of violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2020), and Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203;

4. Ordering Dynegy to immediately post with the Illinois EPA financial assurance, pursuant to Section 22.59(f) of the Act, 415 ILCS 5/22.59(f), in the form of either: (a) a trust fund, (b) a surety bond guaranteeing payment, (c) a surety bond guaranteeing performance, or (d) an irrevocable letter of credit for the purpose of: (i) ensuring closure of the CCR surface impoundment and post-closure care in accordance with the Act and its rules; and (ii) ensuring remediation of releases from Dynegy's North Ash Pond, Old East Ash Pond and New East Ash Pond.

5. Assessing against Dynegy a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of each violation;

6. Ordering Dynegy to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2020), including any attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

7. Granting such other relief as this Court deems appropriate and just.

COUNT V

ILLEGAL DISPOSAL OF WASTE

1. This Count is brought on behalf of the People of the State of Illinois by Kwame Raoul, Attorney General of the State of Illinois, on his own motion.

2-44. Plaintiff realleges and incorporates by reference herein paragraphs 2 through 38, 40 through 41 and 43 through 47 of Count I as paragraphs 2 through 44 of this Count V.

45. Sections 21(a) and (e) of the Act, 415 ILCS 5/21(a) and (e) (2020), provide as follows:

No person shall:

(a) Cause or allow the open dumping of any waste.

* * *

(e) Dispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage, or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.

46. Section 3.305 of the Act, 415 ILCS 5/3.305 (2020), provides the following definition:

“Open dumping” means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.

47. Section 3.385 of the Act, 415 ILCS 5/3.385 (2020), provides the following definition:

“Refuse” means waste.

48. Section 3.535 of the Act, 415 ILCS 5/3.535 (2020), provides the following definition:

“Waste” means any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows, or coal combustion by-products as defined in Section 3.135, or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as now or hereafter amended, or source, special nuclear, or by-product materials as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 921) or any solid or dissolved material from any facility subject to the Federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87) or the rules and regulations thereunder or any law or rule or regulation adopted by the State of Illinois pursuant thereto.

49. The CCR at the Site constitutes “waste” as that term is defined by Section 3.535 of the Act, 415 ILCS 5/3.535 (2020), and “refuse” as that term is defined by Section 3.385 of the Act, 415 ILCS 5/3.385 (2020).

50. Section 3.185 of the Act, 415 ILCS 5/3.185 (2020), provides the following definition:

“Disposal” means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

51. The deposition, dumping, or placement of waste into or on the land and/or water at the Site such that the waste or any of its constituents could enter the environment, be emitted to the air and/or discharged to any waters, including groundwater and the Middle Fork of the Vermilion River, constitutes “disposal” as that term is defined by Section 3.185 of the Act, 415 ILCS 5/3.185 (2020).

52. Section 3.460 of the Act, 415 ILCS 5/3.460, provides the following definition:

“Site” means any location, place, tract of land, and facilities, including but not limited to buildings, and improvements used for purposes subject to regulation or control by this Act or regulations thereunder.

53. The Site is a tract of land used for the disposal of waste, which is subject to regulation under the Act and regulations thereunder, and is therefore a disposal “site” as that term is defined by Section 3.460 of the Act, 415 ILCS 5/3.460 (2020).

54. Section 3.445 of the Act, 415 ILCS 5/3.445 (2020), provides the following definition:

"Sanitary landfill" means a facility permitted by the Agency for the disposal of waste on land meeting the requirements of the Resource Conservation and Recovery Act, P.L. 94-580, and regulations thereunder, and without creating nuisances or hazards to public health or safety, by confining the refuse to the smallest practical volume and covering it with a layer of earth at the conclusion of each day's operation, or by such other methods and intervals as the Board may provide by regulation.

55. The Illinois EPA has never issued a permit to dispose of waste at the Site. Therefore, the Site does not meet the requirements of a “sanitary landfill” as that term is defined in Section 3.445 of the Act, 415 ILCS 5/3.445 (2020).

56. The deposition, dumping, or placement and continued presence of waste at the Site constitutes “open dumping” as that term is defined by Section 3.305 of the Act, 415 ILCS 5/3.305 (2020).

57. Dynegy, the owner and former operator of the Site, directed and/or allowed waste to be to be deposited, dumped or placed on the Site.

58. By (i) directing and/or allowing waste to be to be deposited, dumped or placed on the Site, and (ii) failing to remove the accumulated waste at the Site for disposal at a facility permitted to accept such waste, Dynegy has caused and/or allowed and continues to cause and/or allow open dumping at the Site.

59. By causing and/or allowing the open dumping of waste at the Site without a permit, Dynegy violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2020).

60. Because the Illinois EPA has never issued a permit for the disposal of waste at the Site, the Site fails to meet the requirements of the Act for the disposal, treatment, storage, and/or abandonment of waste.

61. Dynegy, the owner and former operator of the Site, failed to remove the accumulated waste at the Site for disposal at a facility permitted to accept such waste, and thereby disposed, stored and/or abandoned waste at the Site.

62. By (i) disposing, storing, and/or abandoning waste at the Site, which fails to meet the requirements of the Act, and (ii) failing to remove the accumulated waste at the Site for disposal at a facility permitted to accept such waste, Dynegy has violated and continues to violate Section 21(e) of the Act, 415 ILCS 5/21(e) (2020).

63. Violations of the pertinent environmental statutes will continue unless and until this Court grants equitable relief in the form of preliminary and, after trial, permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court enter an Order granting a preliminary and, after trial, permanent injunction in favor of Plaintiff and against Defendant, DYNEGY MIDWEST GENERATION, LLC, on Count V as

follows:

1. Finding that Dynege violated Sections 21(a) and (e) of the Act, 415 ILCS 5/21(a) and (e) (2020);
2. Enjoining Dynege from any further violations of Sections 21(a) and (e) of the Act, 415 ILCS 5/21(a) and (e) (2020);
3. Ordering Dynege to immediately undertake all necessary corrective action that will result in a final and permanent abatement of violations of Sections 21(a) of the Act, 415 ILCS 5/21(a) and (e) (2020);
4. Ordering Dynege to immediately post with the Illinois EPA financial assurance, pursuant to Section 22.59(f) of the Act, 415 ILCS 5/22.59(f), in the form of either: (a) a trust fund, (b) a surety bond guaranteeing payment, (c) a surety bond guaranteeing performance, or (d) an irrevocable letter of credit for the purpose of: (i) ensuring closure of the CCR surface impoundment and post-closure care in accordance with the Act and its rules; and (ii) ensuring remediation of releases from Dynege's North Ash Pond, Old East Ash Pond and New East Ash Pond.
5. Assessing against Dynege a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of each violation;
6. Ordering Dynege to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2020), including any attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
7. Granting such other relief as this Court deems appropriate and just.

COUNT VI

COMMON LAW PUBLIC NUISANCE

1-28. Plaintiff realleges and incorporates by reference herein paragraphs 2 through 20 and paragraphs 30 through 37 of Count I and paragraph 1 of Count V as paragraphs 1 through 28 of this Count VI.

29. The Illinois Constitution provides the People of the State of Illinois a common right “to a healthful environment.” Ill. Const. art. XI, sec. 1 (1970).

30. Dynegy, by its actions, has caused and continues to cause an unreasonable and substantial prejudice to the public health and welfare and the environment, to wit, has discharged, deposited, dumped or placed several million cubic yards of CCR into the soil and groundwater at or near the Site, which, as a result, threatens to enter or entered Illinois’ only National Scenic River, the Middle Fork of the Vermilion River, thereby detrimentally interfering with residents’ and visitors’ use and enjoyment of such river and surrounding areas as well as threatening harm to, among other things, animals, birds, fish and other aquatic life.

31. As a consequence of its actions as alleged herein, Dynegy has created and maintained a public nuisance at common law.

32. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured, and violations of the applicable and pertinent environmental statutes and regulations will continue unless and until this court grants equitable relief in the form of preliminary and, after trial, permanent injunctive relief.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court enter an Order granting a preliminary and, after trial, permanent injunction in favor of Plaintiff and against Defendant, DYNEGY MIDWEST GENERATION, LLC, with respect to

Count VI:


1. Finding that Dynegy has created and maintained a common law public nuisance at and around the Site;
2. Enjoining Dynegy from maintaining a common law public nuisance at and around the Site;
3. Ordering Dynegy to immediately undertake the necessary action that will result in a final and permanent abatement of the common law public nuisance;

[Remainder of Page Blank; Text Continues on Page 29]

4. Granting such other relief as this Court deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. KWAME RAOUL, Attorney
General of the State of Illinois,

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

By: 
STEPHEN J. SYLVESTER, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel:

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ex rel. JACQUELINE M. LACY
State's Attorney of Vermilion County

By: 
Jacqueline M. Lacy
7 North Vermilion – Suite 201
Danville, IL 61832
(217) 554-7750
salacy@vercounty.org

**IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
VERMILION COUNTY, ILLINOIS
CHANCERY DIVISION**

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. KWAME RAOUL, Attorney)
General of the State of Illinois, and)
ex rel. JACQUELINE M. LACY, State's)
Attorney of Vermilion County, Illinois,)

Plaintiff,)

v.)

DYNEGY MIDWEST GENERATION, LLC, a)
Delaware limited liability company,)

Defendant.)

No. _____

COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

EXHIBIT 1

SITE MAP

Y:\Mapping\Projects\22285\MXD\Figure 1_Vermilion_Overview AshPonds.mxd

PROJECT: 169000XXXX | DATED: 6/16/2021 | DESIGNER: STOLZSD



- APPROXIMATE ASH POND BOUNDARY
- APPROXIMATE PROPERTY BOUNDARY (ORIN, 2012)

OVERVIEW OF ASH PONDS

FIGURE 1

0 375 750
 Feet

VERMILION SITE
OAKWOOD, ILLINOIS

RAMBOLL US CORPORATION
A RAMBOLL COMPANY



**IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
VERMILION COUNTY, ILLINOIS
CHANCERY DIVISION**

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. KWAME RAOUL, Attorney)
General of the State of Illinois, and)
ex rel. JACQUELINE M. LACY, State's)
Attorney of Vermilion County, Illinois,)

Plaintiff,)

v.)

DYNEGY MIDWEST GENERATION, LLC, a)
Delaware limited liability company,)

Defendant.)

No. _____

COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

EXHIBIT 2

SUMMARY CHART OF EXCEEDANCES 1992 - 2007

**Table 2. Monitored Parameters and Class I Groundwater Exceedances: 1992 - 2007
North Ash Pond System and Old East Ash Pond
Vermillion Power Station; Oakwood, Illinois**

Monitoring Area	Monitoring Wells	Location ¹ (BCK, IN, DG)	Monitoring Period	Monitored Parameters ²	Parameters Exceeding Class I Groundwater Standards
North Ash Pond System	03R	DG	1994 - 1999	Alk, B, Ca, Cl, Hardness, Fe, Mg, Mn, pH, K, Na, SO ₄ , TDS, GW elev	
			2000 - 2007	B, Mn, pH, SO ₄ , TDS, GW elev (Cl: 2001-2002 only)	B
	04	DG	1992	B, Fe, Mn, pH, SO ₄ , TDS, GW elev	B, Mn, SO ₄ , TDS
			1994 - 1999	Alk, B, Ca, Cl, Hardness, Fe, Mg, Mn, pH, K, Na, SO ₄ , TDS, GW elev	B, Mn, SO ₄ , TDS
	05	DG	2000 - 2007	B, Mn, pH, SO ₄ , TDS, GW elev (Cl: 2001-2002 only)	B, Mn, SO ₄ , TDS
			1992	B, Fe, Mn, pH, SO ₄ , TDS, GW elev	B, Mn, SO ₄ , TDS
	06R	BCK	1994 - 1999	Alk, B, Ca, Cl, Hardness, Fe, Mg, Mn, pH, K, Na, SO ₄ , TDS, GW elev	B, Mn, SO ₄ , TDS
			2000 - 2007	B, Mn, pH, SO ₄ , TDS, GW elev (Cl: 2001-2002 only)	B, Mn, SO ₄ , TDS
	08R	DG	1992	B, Fe, Mn, pH, SO ₄ , TDS, GW elev	Mn
			1994 - 1999	Alk, B, Ca, Cl, Hardness, Fe, Mg, Mn, pH, K, Na, SO ₄ , TDS, GW elev	Mn
	09	BCK	2000 - 2007	B, Mn, pH, SO ₄ , TDS, GW elev (Cl: 2001-2002 only)	Mn
			1994 - 1999	Alk, B, Ca, Cl, Hardness, Fe, Mg, Mn, pH, K, Na, SO ₄ , TDS, GW elev	B, Mn, pH, SO ₄ , TDS
	17	IN	2000 - 2007	B, Mn, pH, SO ₄ , TDS, GW elev (Cl: 2001-2002 only)	B, Mn, pH, SO ₄ , TDS
			1992	B, Fe, Mn, pH, SO ₄ , TDS, GW elev	Fe
	18	IN	1994 - 1999	Alk, B, Ca, Cl, Hardness, Fe, Mg, Mn, pH, K, Na, SO ₄ , TDS, GW elev	Fe
			2000 - 2007	B, Mn, pH, SO ₄ , TDS, GW elev (Cl: 2001-2002 only)	Fe
19	DG	1994 - 1999	Alk, B, Ca, Cl, Hardness, Fe, Mg, Mn, pH, K, Na, SO ₄ , TDS, GW elev	B, Fe, Mn, SO ₄ , TDS	
		2000 - 2007	B, Mn, pH, SO ₄ , TDS, GW elev (Cl: 2001-2002 only)	B, Mn, SO ₄ , TDS	
20	DG	1994 - 1999	Alk, B, Ca, Cl, Hardness, Fe, Mg, Mn, pH, K, Na, SO ₄ , TDS, GW elev	Mn	
		2000 - 2007	B, Mn, pH, SO ₄ , TDS, GW elev (Cl: 2001-2002 only)	B, TDS	
Old East Ash Pond	01	DG	1996 - 1999	Alk, B, Ca, Cl, Hardness, Fe, Mg, Mn, pH, K, Na, SO ₄ , TDS, GW elev	B, Mn, SO ₄ , TDS
			2000 - 2007	B, Mn, pH, SO ₄ , TDS, GW elev (Cl: 2001-2002 only)	B, Mn, SO ₄ , TDS
	02	DG	1994 - 1995	Alk, B, Ca, Cl, Hardness, Fe, Mg, Mn, pH, K, Na, SO ₄ , TDS, GW elev	B, Fe, Mn, SO ₄ , TDS
			1997	B, Mn, pH, SO ₄ , TDS, GW elev	Fe, Mn, SO ₄ , TDS
	07	DG	2000 - 2007	B, Mn, pH, SO ₄ , TDS, GW elev (Cl: 2001-2002 only)	Mn
			1992	B, Fe, Mn, pH, SO ₄ , TDS, GW elev	B, Fe, Mn, pH, SO ₄ , TDS
	17	IN	1994 - 1998	Alk, B, Ca, Cl, Hardness, Fe, Mg, Mn, pH, K, Na, SO ₄ , TDS, GW elev	B, Fe, Mn, pH, SO ₄ , TDS
			1998 - 1999	Alk, B, Ca, Cl, Hardness, Fe, Mg, Mn, pH, K, Na, SO ₄ , TDS, GW elev	B, Mn, SO ₄
	18	IN	2000 - 2008	GW elev	
			1994 - 1999	Alk, B, Ca, Cl, Hardness, Fe, Mg, Mn, pH, K, Na, SO ₄ , TDS, GW elev	B, Fe, Mn, pH, SO ₄ , TDS
21	BCK	2000 - 2007	B, Mn, pH, SO ₄ , TDS, GW elev (Cl: 2001-2002 only)	B, Mn, SO ₄ , TDS	
		1994 - 1999	Alk, B, Ca, Cl, Hardness, Fe, Mg, Mn, pH, K, Na, SO ₄ , TDS, GW elev	B, Fe, Mn, SO ₄ , TDS	

Location¹:

- BCK Background
- IN Intermediate - located on berm between ponds
- DG Downgradient

Parameters²:

Alk - Alkalinity; B - Boron; Ca - Calcium, Cl - Chloride; Fe - Iron, Mg - Magnesium, Mn - Manganese; K - Potassium, Na - Sodium
SO₄ - Sulfate; TDS - Total Dissolved Solids; GW elev - Groundwater Elevation

All inorganic parameter analyses are for filtered samples (dissolved phase) except for Alkalinity (total), Chloride (total), and Sulfate (total)

Notes:

- Well 03R replaced abandoned well 03 (Mathes well number JMA-3A)
- Well 06R replaced abandoned well 06 (Mathes well number JMA-6A)
- Well 08R replaced abandoned well 08 (Mathes well number JMA-8B)

**IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
VERMILION COUNTY, ILLINOIS
CHANCERY DIVISION**

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. KWAME RAOUL, Attorney)
General of the State of Illinois, and)
ex rel. JACQUELINE M. LACY, State's)
Attorney of Vermilion County, Illinois,)

Plaintiff,)

v.)

DYNEGY MIDWEST GENERATION, LLC, a)
Delaware limited liability company,)

Defendant.)

No. _____

COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

EXHIBIT 3

GROUNDWATER QUALITY DATA SUMMARY 2017-2018

Table 3. Groundwater Quality Data Summary 2012-2018
2012 Groundwater Monitoring and Evaluation Report
North Abitibi Region and Oulfa Iron Mine Project
Version: Sep, Oshkosh, Illinois

Parameter	Method Used	Standard Limit*	Units	Hydrograph Units: Upper Unit and Middle Groundwater Unit																				
				2012			2013			2014			2015											
Sampling Date				1	2	3	1	2	3	4	5	6	1	2	3	4	5	6						
Temperature	Field	na	°C	19.49	15.54	14.96	14.99	12.18	10.69	12.18	16.27	16.27	15.31	14.66	9.37	10.79	11.49	16.48	15.39	14.73	10.94	20.59	11.81	
Turbidity	Field	na	NTU	1.13	<1	<1	<1	<1	<1	<1	<1	<1	<1	<1	<1	<1	<1	<1	<1	<1	<1	<1	<1	
Specific Conductivity	Field	na	µmhos/cm	115	315	291	281	278	262	291	467	466	408	416	255	318	322	418	514	518	316	1,200	809	
Dissolved Oxygen	Field	na	mg/L	1.15	<1.00	<1.00	<1.00	<1.00	<1.00	<1.00	1.06	0.90	0.90	1.00	<1.00	<1.00	<1.00	<1.00	<1.00	<1.00	<1.00	<1.00	<1.00	
pH	Field	6.5-9.0	u.u.	7.12	7.50	7.12	7.12	7.44	7.94	7.44	7.61	7.41	7.26	7.30	6.90	7.43	7.15	7.15	7.15	6.93	7.00	6.76	7.69	6.43
Total Dissolved Solids	Field	1,200	mg/L	492	428	410	310	318	370	480	418	438	438	382	588	628	628	628	628	578	578	590	568	
Nitrate as N (total)	MACHO 9031 F	10.0	mg/L	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05	
Chloride (total)	SW9221	200.0	mg/L	12	11	9	10	10	32	47	31	31	11	11	11	11	11	11	11	11	7	6	<5	
Sulfate (total)	SW9205	400.0	mg/L	93	69	84	84	84	99	90	269	269	212	291	265	281	283	283	47	58	360	391	396	
Ammonia (filtered)	SW9214	4.0	mg/L	0.19	0.3	0.32	0.29	0.29	0.28	0.28	0.51	0.51	0.41	0.46	0.67	0.67	0.64	0.17	0.17	0.15	0.13	0.21	0.1	
Arsenic (filtered)	10M0720A	0.01	mg/L	0.0051	0.0055	0.0056	0.0056	0.0052	0.0051	0.006	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	
Boron (filtered)	10M0720A	2.0	mg/L	0.301	0.271	0.160	0.274	0.216	0.216	0.310	0.0299	0.0298	0.0298	0.0298	0.0298	0.0298	0.0298	0.1617	0.0907	0.1764	0.0757	0.0948	0.0879	
Iron (filtered)	SW9203A	2.0	mg/L	6.48	6.48	6.28	5.48	4.80	4.80	4.80	17.9	17.9	17.2	17.4	18.3	18.7	18.7	18.7	18.7	18.7	18.7	18.7	18.7	
Iron (gross)	SW9203A	5.0	mg/L	6.68	6.53	6.28	5.48	4.80	4.80	4.80	18.1	18.1	17.4	17.6	18.5	18.9	18.9	18.9	18.9	18.9	18.9	18.9	18.9	
Manganese (filtered)	SW9203A	0.15	mg/L	0.031	0.029	0.028	0.029	0.029	0.029	0.029	0.031	0.031	0.031	0.031	0.031	0.031	0.031	0.031	0.031	0.031	0.031	0.031	0.031	
Mercury (filtered)	SW9203A	0.05	mg/L	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	
Groundwater Elevation	Field		(MAD98 Elev)	303.51	303.37	303.38	303.18	304.15	304.56	304.55	304.75	304.75	305.31	306.31	309.76	309.76	309.76	304.45	302.54	302.54	302.54	308.48	308.48	

Note: Monitoring well 07 was dry for all groundwater monitoring events.
Groundwater samples were not collected or analyzed in 2017 or 2018.
na Not Applicable, No Blank Chain (Groundwater Standard for parameter returned)
Blank Chain (Groundwater Standard)
Blank Chain (Groundwater Standard)
Blank Chain (Groundwater Standard)

* Standard Limit
CGF Canadian Council of Ministers of the Environment
CFC Canadian Council of Ministers of the Environment
MTU Methylene Turbidity Units
mg/L milligrams per liter
µmhos/cm micro-mhos per centimeter
u.u. standard units
NAF008 North American Vertical Datum of 1988

DMG | THIER'S WAY

Table 3. Groundwater Quality Data Summary 2013-2018
 KUL Groundwater Monitoring and Modeling Report
 North Ash Road System and Old Fort Ash Road
 Wellhead 59a, Glenwood, Nevada

Parameter	Method Used	Standard Unit*	Units	Hydrographic Wells: Upper Unit and Middle Groundwater Unit																					
				999			17			18			20												
				1	2	3	4	5	6	1	2	3	4	5	6	1	2	3	4	5	6				
Sampling Date	Field	na	°C	07/11/17	06/14/17	11/06/17	01/24/18	01/21/18	05/09/18	07/12/17	09/15/17	11/08/17	01/24/18	01/22/18	05/09/18	07/12/17	09/15/17	11/08/17	01/24/18	01/22/18	05/09/18	07/12/17			
Temperature	Field	na	°C	14.99	14.73	14.78	14.78	10.61	11.79	13.50	17.28	17.28	17.28	17.28	11.41	11.41	11.41	12.44	15.18	15.18	15.18	15.28			
pH	Field	na	pH	7.2	7.1	7.1	7.1	7.2	7.2	7.2	7.2	7.2	7.2	7.2	7.2	7.2	7.2	7.2	7.2	7.2	7.2	7.2			
Specific Conductivity	Field	na	µmhos/cm	1.785	1.785	1.785	1.785	1.785	1.785	1.785	1.785	1.785	1.785	1.785	1.785	1.785	1.785	1.785	1.785	1.785	1.785	1.785			
Dissolved Oxygen	Field	na	mg/L	8.73	8.17	8.58	6.88	7.87	7.87	8.80	6.85	6.84	6.84	6.84	6.84	6.84	6.84	6.84	6.84	6.84	6.84	6.84			
pH	Field	na	mg/L	2.608	2.608	2.608	2.608	2.608	2.608	2.608	2.608	2.608	2.608	2.608	2.608	2.608	2.608	2.608	2.608	2.608	2.608	2.608			
Total Dissolved Solids	Field	na	mg/L	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00			
Chloride (Total)	Field	na	mg/L	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6			
Sulfate (Total)	Field	na	mg/L	1.848	1.780	1.848	1.780	1.848	1.780	1.848	1.780	1.848	1.780	1.848	1.780	1.848	1.780	1.848	1.780	1.848	1.780	1.848			
Fluoride (Total)	Field	na	mg/L	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1			
Arsenic (Ground)	Field	na	mg/L	0.077	0.077	0.077	0.077	0.077	0.077	0.077	0.077	0.077	0.077	0.077	0.077	0.077	0.077	0.077	0.077	0.077	0.077	0.077			
Boron (Ground)	Field	na	mg/L	0.2757	0.2757	0.2757	0.2757	0.2757	0.2757	0.2757	0.2757	0.2757	0.2757	0.2757	0.2757	0.2757	0.2757	0.2757	0.2757	0.2757	0.2757	0.2757			
Iron (Ground)	Field	na	mg/L	4.87	5.28	5.28	5.28	5.28	5.28	5.28	5.28	5.28	5.28	5.28	5.28	5.28	5.28	5.28	5.28	5.28	5.28	5.28			
Ammonia (Total)	Field	na	mg/L	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13	0.13			
Nitrate (Total)	Field	na	mg/L	0.819	0.072	0.111	0.346	0.346	0.346	0.346	0.346	0.346	0.346	0.346	0.346	0.346	0.346	0.346	0.346	0.346	0.346	0.346			
Electrical Conductivity	Field	na	mg/L	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001	0.001			
Groundwater Dissolved	Field	na	NAVD83 Elev.	577.41	578.21	576.46	577.27	577.46	577.67	584.67	583.66	583.36	584.23	584.15	584.81	583.21	587.12	586.02	586.02	588.16	586.89	577.96	577.24	578.24	578.09

Notes:
 Monitoring well 07 was dry for all groundwater monitoring events.
 Groundwater samples were not collected or analyzed in 2017 or 2018.
 na Not Applicable, No Illinois Class I groundwater standard for parameter exists.
 * Parameter Units are based on the following table:
 C Celsius
 °C Degrees Centigrade
 NTU Nephelometric Turbidity Units
 mV millivolt
 µmhos/cm micrograms per centimeter
 mg/L milligrams per liter
 LxL standard units
 NAVD83 North American Vertical Datum of 1988

Table 3. Groundwater Quality Data Summary 2013-2018
2018 Groundwater Monitoring and Modeling Report
North Air Feed System and East Air Feed
Verillion St., Okemos, Illinois

Table with columns: Parameter, Method Used, Standard Limit, Units, and a grid of values for dates from 07/11/13 to 07/18/18. Parameters include Temperature, pH, Specific Conductivity, Dissolved Oxygen, Total Dissolved Solids, Nitrate as N, Chloride, Fluoride, Arsenic, Barium, Iron, Manganese, and Sulfate. Methods include Field, SW9018, SW9019, SW9021, SW9024, SW9025, SW9026, SW9027, SW9028, SW9029, SW9030, SW9031, SW9032, SW9033, SW9034, and MNAVRS.

Notes:
Monitoring well 07 was dry for all groundwater monitoring events.
Groundwater sample were not collected or analyzed in 2017 or 2018.
NA Not Applicable. No Mount Olin Groundwater.

3.A Parameter with restrictions of Class I standard

C Degraded Confidence

HTU Heptachlor Epoxide (Unitless)

NTU Nephelometric Turbidity Units

mg/L micrograms per liter

mg/L micrograms per liter

Standard units

MNAVRS North American Vertical Datum of 1988

Table 1. Groundwater Quality Data Summary 2013-2018
 2013 Groundwater Monitoring and Testing Report
 North Ash Road System and Old East Ash Road
 Verillion, SD, Okmwood, Illinois

Parameter	Method Used	Standard Limit*	Units	Hydrographs Data: Upgrad Groundwater Data										Hydrographs Data: Upgrad Conting Data									
				1	2	3	4	5	6	7	8	9	10	1	2	3	4	5	6	7	8	9	10
Sampling Date				07/11/17	09/20/17	11/06/17	01/26/18	03/17/18	05/09/18	07/11/17	09/19/17	11/06/17	01/26/18	03/17/18	05/09/18	07/11/17	09/19/17	11/06/17	01/26/18	03/17/18	05/09/18		
Sampling Time				19:34	18:57	13:29	11:25	14:09	14:47	18:18	17:49	12:48	11:38	13:49	14:44	17:12	09/14/17	11/06/17	01/26/18	03/17/18	05/09/18		
Location				Field	Field	Field	Field	Field	Field	Field	Field	Field	Field	Field	Field	Field	Field	Field	Field	Field	Field		
Depth				4'	4'	4'	4'	4'	4'	4'	4'	4'	4'	4'	4'	4'	4'	4'	4'	4'	4'		
Specific Conductivity				81	81	74	74	74	74	74	74	74	74	74	74	74	74	74	74	74	74		
Dissolved Oxygen				mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L		
pH				7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4	7.4		
Total Dissolved Solids				mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L		
Nitrate as N (Total)				mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L		
Chloride (Total)				mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L		
Sulfate (Total)				mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L		
Ammonia (Total)				mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L		
Barium (Detectable)				mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L		
Iron (Detectable)				mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L		
Manganese (Detectable)				mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L		
Selenium (Detectable)				mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L		
Groundwater Elevation				ft	ft	ft	ft	ft	ft	ft	ft	ft	ft	ft	ft	ft	ft	ft	ft	ft	ft		

Note: Monitoring well 07 was dry for all groundwater monitoring events. Groundwater samples were not collected or analyzed in 2017 or 2018. Not Applicable, No Mocha Class I groundwater. Parameter for parameter indicated. Parameter with asterisk of Class I standard. Parameter with asterisk of Class II standard. Parameter with asterisk of Class III standard. Parameter with asterisk of Class IV standard. Parameter with asterisk of Class V standard. Parameter with asterisk of Class VI standard. Parameter with asterisk of Class VII standard. Parameter with asterisk of Class VIII standard. Parameter with asterisk of Class IX standard. Parameter with asterisk of Class X standard. Parameter with asterisk of Class XI standard. Parameter with asterisk of Class XII standard. Parameter with asterisk of Class XIII standard. Parameter with asterisk of Class XIV standard. Parameter with asterisk of Class XV standard. Parameter with asterisk of Class XVI standard. Parameter with asterisk of Class XVII standard. Parameter with asterisk of Class XVIII standard. Parameter with asterisk of Class XIX standard. Parameter with asterisk of Class XX standard. Parameter with asterisk of Class XXI standard. Parameter with asterisk of Class XXII standard. Parameter with asterisk of Class XXIII standard. Parameter with asterisk of Class XXIV standard. Parameter with asterisk of Class XXV standard. Parameter with asterisk of Class XXVI standard. Parameter with asterisk of Class XXVII standard. Parameter with asterisk of Class XXVIII standard. Parameter with asterisk of Class XXIX standard. Parameter with asterisk of Class XXX standard.

EXHIBIT 2

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
VERMILION COUNTY, ILLINOIS
CHANCERY DIVISION

FILED

JUN 30 2021

Melissa Quick
Clerk of the Circuit Court
Vermilion County, Illinois

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. KWAME RAOUL, Attorney)
General of the State of Illinois, and)
ex rel. JACQUELINE M. LACY, State's)
Attorney of Vermilion County, Illinois,)
)
Plaintiff,)
)
v.)
)
DYNEGY MIDWEST GENERATION, LLC, a)
Delaware limited liability company,)
)
Defendant.)

No. 2021CH000024

AGREED INTERIM ORDER

This cause coming before the Court on Plaintiff's Motion to Enter the Agreed Interim Order (the "Motion"), due notice having been given, the Court having jurisdiction over the parties and the subject matter herein, the parties having appeared, the Court having reviewed Plaintiff's Complaint for Injunctive Relief and Civil Penalties ("Complaint") and the Motion, and the Court otherwise being duly advised in the premises;

THE COURT HEREBY FINDS THAT:

1. Dynegy Midwest Generation, LLC ("Defendant") was and is a Delaware limited liability company who has owned, and continues to own, the real property located at 10188 East 2150 North, Oakwood, Vermilion County, Illinois (the "Site"), at which a coal-fired electric generating facility known as the Vermilion Power Station was operated.

2. The Site is located on the west bank of a meandering segment of the Middle Fork of the Vermilion River. The Middle Fork is a popular location for canoeing, kayaking, camping,

and other outdoor recreational activities, and has been designated as Illinois' only National Scenic River under the federal National Wild and Scenic Rivers Act.

3. Defendant has owned and maintained, and continues to own and maintain, three man-made coal combustion residual ("CCR") "ponds" at the Site (collectively, the "Ponds"):

- a. The North Ash Pond which contains approximately 1.6 million cubic yards of CCR; is unlined; consists of one large pit for disposal and another smaller pit for sedimentation overflow; and is bordered on the north by fields owned by the Illinois Department of Natural Resources, on the east by the Middle Fork of the Vermilion River, on the south by the Old East Ash Pond, and on the west by bluffs that include the Orchid Hill National Heritage Landmark (the "North Ash Pond").
- b. The Old East Ash Pond which contains approximately 1.2 million cubic yards of CCR; is unlined; and is bordered on the north and northeast by the Middle Fork of the Vermilion River, on the southeast, south, and west by bluffs on the Site, and on the northwest by the North Ash Pond (the "Old East Ash Pond").
- c. The New East Ash Pond which contains approximately 0.5 million cubic yards of CCR; and is located over "mine voids," thereby subjecting it to potential subsidence/sinking of land (the "New East Ash Pond").

A true and correct copy of a map showing the boundaries of the Site and the Ponds is attached hereto as Exhibit 1.

4. On June 22, 2021, the People of the State of Illinois by Kwame Raoul, Attorney General of the State of Illinois, on his own motion and at the request of the Illinois Environmental

Protection Agency (“Illinois EPA”), filed the Complaint in this case against Defendant, alleging (a) water pollution violations of Class I groundwater standards in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2020), and Sections 620.115, 620.401, 620.405 and 620.410(a) of the Illinois Pollution Control Board (“Board”) Groundwater Quality Standards, 35 Ill. Adm. Code 620.115, 620.401, 620.405 and 620.410(a); (b) impairment of resource groundwater in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2020), and Section 620.301(a) of the Board Groundwater Quality Standards, 35 Ill. Adm. Code 620.301(a); (c) creating a water pollution hazard in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2020); (d) offensive conditions in 2020 in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2020), and Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203; (e) illegal disposal of waste in violation of Sections 21(a) and (e) of the Act, 415 ILCS 5/21(a) and (e) (2020); and (f) common law public nuisance.

5. Defendant contends that the New East Ash Pond is not known to be contributing contaminants to the Middle Fork of the Vermilion River.

6. Defendant has agreed to the entry of this Agreed Interim Order (“Order”).

THEREFORE, IT IS HEREBY ORDERED THAT:

I. GENERAL PROVISIONS

1. The Court enters this Order pursuant to Section 42(e) of the Act, 415 ILCS 5/42(e) (2020), which shall remain in effect until further order of this Court.

2. This Order is not a final resolution of the merits of the Complaint, but rather addresses Plaintiff’s most immediate concerns regarding the allegations in the Complaint.

3. By entering into this Order and complying with its terms, Defendant does not affirmatively admit the allegations within the Complaint and referenced above, and this Order and compliance therewith shall not be interpreted as including such admission.

II. INTERIM INJUNCTIVE RELIEF

1. **Safety Emergency Response Plan.** Within forty-five (45) days of the entry of this Order, Defendant shall submit to Illinois EPA, for its review and approval, a written Safety Emergency Response Plan for the Site which, at a minimum, must:

- a. Define the events or circumstances involving the Ponds at the Site that represent a safety emergency, along with a description of the procedures that will be followed to detect a safety emergency in a timely manner;
- b. Define responsible persons, their respective responsibilities, and notification procedures in the event of a safety emergency involving a Pond at the Site;
- c. Provide contact information of emergency responders;
- d. Include a map which delineates the downstream area which would be affected in the event of a Pond failure and a physical description of the Ponds at the Site;
- e. Include provisions for an annual face-to-face meeting or exercise between representatives of the owner or operator of the Ponds at the Site and the local emergency responders; and
- f. Describe emergency riverbank stabilization measures at or near the Site, including but not limited to:

- i. The monitoring activities that Defendant shall conduct in the Middle Fork of the Vermilion River and the riverbank adjacent to the North Ash Pond and the Old East Ash Pond to assist in determining when a safety emergency exists and when the installation of temporary erosion protection is necessary;
- ii. The temporary erosion protection that Defendant shall install upon its determination that a safety emergency exists and shall maintain until its closure of the North Ash Pond and the Old East Ash Pond is completed; and
- iii. The method and timing of when Defendant will remove the temporary erosion protection, if installed, in consultation with the relevant regulatory authorities.

2. **Interim Corrective Action Measures.**

- a. **Groundwater Collection Trench.** Within forty-five (45) days of the entry of this Order, Defendant shall submit to Illinois EPA, for its review and approval, a written scope of work for a groundwater collection trench located downgradient of the Old East Ash Pond, which would serve to collect groundwater migrating from the Ponds and prevent such groundwater from seeping into the Middle Fork (the “Trench Scope of Work”). The Trench Scope of Work shall include, at a minimum, (a) the list of all governmental permits and approvals that Defendant must obtain to construct and operate the groundwater collection trench and (b) a proposed schedule for implementation.

- b. **Dewatering.** Within forty-five (45) days of the entry of this Order, Defendant shall submit to Illinois EPA, for its review and approval, a written scope of work for the removal of free water and dewatering of the Ponds at the Site, including a proposed schedule for implementation.
- c. **Riverbank Inspections.** To monitor the changes to the riverbank, commencing in the month immediately following the entry of this Order, and continuing each month thereafter until further order of this Court, as well as after each 25-year, 24-hour storm at the Site, Defendant shall conduct an inspection of the riverbank of the Middle Fork of the Vermilion River adjacent to the Site for the following:
- i. any appearances of actual or potential structural weakness and other conditions which are disrupting or have the potential to disrupt the operation or safety of the Ponds;
 - ii. deterioration, malfunctions or improper operation of overtopping control systems where present;
 - iii. sudden drops in the level of the Ponds' contents;
 - iv. erosion that creates rills, gullies, or crevices six inches or deeper, other signs of deterioration including failed or eroded vegetation in excess of 100 square feet, or cracks in dikes or other containment devices; and
 - v. any visible releases.

Within fifteen (15) days after each inspection, Defendant shall submit a written report of any findings during such inspection to Illinois EPA.

d. **Preparation of Reports/Public Meeting.**

- i. Defendant shall take all necessary steps to prepare its closure alternatives analysis report, corrective actions alternatives analysis report, proposed closure plan and other related documents for the Site (collectively, the "Reports") so as to hold a public meeting with interested and affected parties regarding such Reports, plans and documents on or before December 17, 2021. Such public meeting shall comply with the Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments, 415 ILCS 5/22.59(d) and (g), and the Illinois Pollution Control Board's adopted Part 845 Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments ("Board's Part 845 Regulations").
- ii. Notwithstanding the foregoing, Defendant's closure alternatives analysis shall only consider and discuss closure by removal for the Ponds.

3. **Illinois EPA Review and Approval Process of Plans, Reports and Proposals.**

- a. Defendant shall submit each plan, report, scope of work, proposal or other such document required by this Order to Illinois EPA whenever such plan, report, proposal or other such document is required to be submitted for review or approval pursuant to this Order.
- b. After review of any plan, report, proposal or other document that is required to be submitted pursuant to this Order, Illinois EPA shall in writing:

- (i) approve the submission; (ii) approve the submission upon specified conditions; (iii) approve part of the submission and disapprove the remainder; or (iv) disapprove the submission.
- c. If the submission is approved pursuant to Paragraph II.3.b.i., Defendant shall take all actions required by the proposal, plan, report or other document, in accordance with the schedules and requirements of the proposal, plan, report or other document, as approved (including any modifications to such schedules and requirements as may be subsequently approved by Illinois EPA). If the submission is conditionally approved or approved only in part pursuant to Paragraph II.3.b.ii. or iii., Defendant shall, upon written direction from Illinois EPA, take all actions required by the approved proposal, plan, report, or other item that Illinois EPA determines are technically severable from any disapproved portions.
- d. If the submission is disapproved in whole or in part pursuant to Paragraph II.3.b.iii. or iv., Defendant shall, within thirty (30) days or such other time as Illinois EPA agrees in writing, correct all deficiencies and resubmit the proposal, plan, report, or other document, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Defendant shall proceed in accordance with Paragraph II.3.c.
- e. If a resubmitted proposal, plan, report, or other item, or portion thereof, is disapproved in whole or in part, Illinois EPA may again require Defendant to correct any deficiencies, in accordance with Paragraph II.3.d., or may

itself correct any deficiencies.

4. **Compliance with Statute and Part 845 Regulations.** Notwithstanding any provisions set forth in this Order to the contrary, Defendant shall comply with Section 22.59 of the Act, 415 ILCS 5/22.59, and the Board's Part 845 Regulations.

III. RIGHT OF ENTRY

In addition to any other authority, Illinois EPA, its employees and representatives, and the Illinois Attorney General, his employees and representatives, shall have the right of entry into and upon the Site, at all reasonable times, for the purposes of carrying out inspections and/or verifying compliance with this Order. In conducting such inspections, Illinois EPA, its employees and representatives, and the Illinois Attorney General, his employees and representatives, may take photographs and samples, collect information and remove material from the Site as they deem necessary.

IV. SUBMITTALS

All submittals and correspondence relating to the requirements of this Order shall be directed to the following persons, with email being the preferred method of communication:

As to Plaintiff

Stephen J. Sylvester
Bureau Chief
Kathryn A. Pamenter
Senior Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
Stephen.sylvester@illinois.gov
Kathryn.pamenter@illinois.gov

Jacqueline M. Lacy
State's Attorney of Vermilion County
7 North Vermilion – Suite 201
Danville, IL 61832
(217) 554-7750
salacy@vercounty.org

Michael Roubitchek
Deputy General Counsel, Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
Mike.Roubitchek@illinois.gov

Michael Summers
Groundwater Section Manager, Bureau of Water
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
Michael.Summers@illinois.gov

As to Defendant

Joshua R. More
Schiff Hardin LLP
233 South Wacker Drive
Suite 7100
Chicago, IL 60606
jmore@schiffhardin.com

V. DUTY TO COOPERATE

The Parties shall cooperate with each other in the implementation of this Order.

VI. COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Order in no way affects the responsibilities of Defendant to comply with any other federal, state or local laws or regulations, including but not limited to the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.*, and the Board regulations, 35 Ill. Adm. Code 101 *et seq.*

VII. STIPULATED PENALTIES

1. If Defendant fails to complete any activity or fails to comply with any response or reporting requirement by the date specified in this Order, Defendant shall provide notice to Plaintiff of each failure to comply with this order and shall pay stipulated penalties in the amount of \$400.00 per day per violation for up to the first fifteen (15) days of violation, \$500.00 per day per violation for the next fifteen (15) days of violation, and \$1,000.00 per day per violation thereafter until such time that compliance is achieved. Plaintiff may make a demand for stipulated penalties upon Defendant for its noncompliance with this Order. However, failure by Plaintiff to make this demand shall not relieve Defendant of the obligation to pay stipulated penalties. All stipulated penalties shall be payable within thirty (30) calendar days of the date Defendant knows or should have known of its noncompliance with any provision of this Order.

2. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by Defendant not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

3. The stipulated penalties shall be enforceable by Plaintiff and shall be in addition to, and shall not preclude the use of, any other remedies or sanctions arising from the failure to comply with this Order.

4. All stipulated penalty and interest payments shall be made by certified check, cashier's check or money order payable to Illinois EPA for deposit into the Environmental Protection Trust Fund. Payments shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

The case name and case number shall appear on the face of the certified check, cashier's check or money order. A copy of the certified check, cashier's check or money order and any transmittal letter shall be sent to:

Kathryn A. Pamenter
Senior Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

VIII. DISPUTE RESOLUTION

The Parties shall use their best efforts to resolve any and all disputes or differences of opinion arising with regard to this Order, informally and in good faith, within thirty (30) days of a Party providing notice to the other Parties of such a dispute. If, however, a dispute arises concerning this Order that the Parties are unable to resolve informally, either Party may, by written motion, within fourteen (15) business days of conclusion of the informal resolution efforts, request that an evidentiary hearing be held before the Circuit Court for Vermilion County, Illinois, Chancery Division to resolve the dispute between the Parties.

IX. EXTENSIONS AND MODIFICATIONS

The Parties may, by mutual consent, extend any compliance dates or modify the terms of this Order without leave of Court. Any such agreed modification shall be in writing, signed by authorized representatives of each Party and incorporated into this Order by reference. Any request for modification shall be made by Defendant in writing and shall be independent of any other

submittal made pursuant to this Order. Moreover, notice of a request for any proposed modification shall be provided to Plaintiff representatives in Paragraph IV of this Order.

X. RETENTION OF JURISDICTION

This Court shall retain jurisdiction of this matter and shall consider any motion by Plaintiff or Defendant for the purposes of interpreting and enforcing the terms and conditions of this Order.

XI. RESERVATION OF RIGHTS

Nothing contained herein shall be deemed an admission of any wrongful conduct or violation of any applicable statute, law or regulations thereunder by Defendant, nor a finding of fact or adjudication by this Court of any of the facts or claims contained in the Complaint. Plaintiff reserves the right to seek additional technical relief and civil penalties in this matter.

XII. EFFECT OF ORDER

This Order remains in effect until superseded by further order of this Court.

XIII. BINDING ON SUCCESSORS, ASSIGNS AND FUTURE OWNERS/OPERATORS

This Order shall be binding upon Defendant and its successors, assigns and future owners and/or operators of the Site.

XIV. SIGNATURE

This Order may be signed in counterparts, all of which shall be considered one agreement.

XV. STATUS CONFERENCE WITH THE COURT

This matter is set for a status conference on 20 Sept 2021, at 11 a.m. at the Vermilion County Courthouse, Vermilion County, Illinois in Courtroom 4A, without further notice.

WHEREFORE, the parties, by their representatives, enter into this Agreed Interim Order and submit it to this Court that it may be approved and entered.

AGREED:


FOR PLAINTIFF:

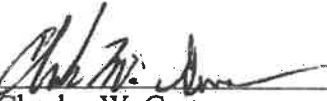
PEOPLE OF THE STATE OF ILLINOIS
ex rel. KWAME RAOUL, Attorney General
of the State of Illinois

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

JOHN J. KIM, Director
Illinois Environmental Protection Agency

BY: 
Stephen J. Sylvester, Chief
Assistant Attorney General
Environmental Bureau

BY: 
Charles W. Gunnarson
Chief Legal Counsel

DATE: June 15, 2021

DATE: 6/15/21

PEOPLE OF THE STATE OF ILLINOIS
ex rel. JACQUELINE M. LACY, State's
Attorney of Vermilion County

BY: _____
Jacqueline M. Lacy

DATE:

WHEREFORE, the parties, by their representatives, enter into this Agreed Interim Order and submit it to this Court that it may be approved and entered.

AGREED:

FOR PLAINTIFF:

PEOPLE OF THE STATE OF ILLINOIS
ex rel. KWAME RAOUL, Attorney General
of the State of Illinois

ILLINOIS ENVIRONMENTAL
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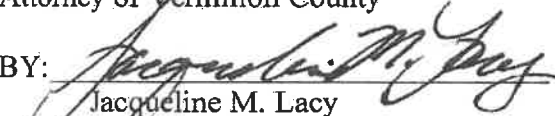
BY: _____
Stephen J. Sylvester, Chief
Assistant Attorney General
Environmental Bureau

BY: _____
Charles W. Gunnarson
Chief Legal Counsel

DATE:

DATE:

PEOPLE OF THE STATE OF ILLINOIS
ex rel. JACQUELINE M. LACY, State's
Attorney of Vermillion County

BY: 
Jacqueline M. Lacy

DATE: *June 21, 2021*

FOR DEFENDANT:

DYNEGY MIDWEST GENERATION, LLC,

BY: *Cynthia E. Udy*
Its: SVP Environmental, Health & Safety

DATE: June 11, 2021

ENTERED:

Raymond J. Kelly
JUDGE

DATE: 30 June 2021

**IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
VERMILION COUNTY, ILLINOIS
CHANCERY DIVISION**

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. KWAME RAOUL, Attorney)
General of the State of Illinois, and)
ex rel. JACQUELINE M. LACY, State's)
Attorney of Vermilion County, Illinois,)

Plaintiff,)

v.)

DYNEGY MIDWEST GENERATION, LLC, a)
Delaware limited liability company,)

Defendant.)

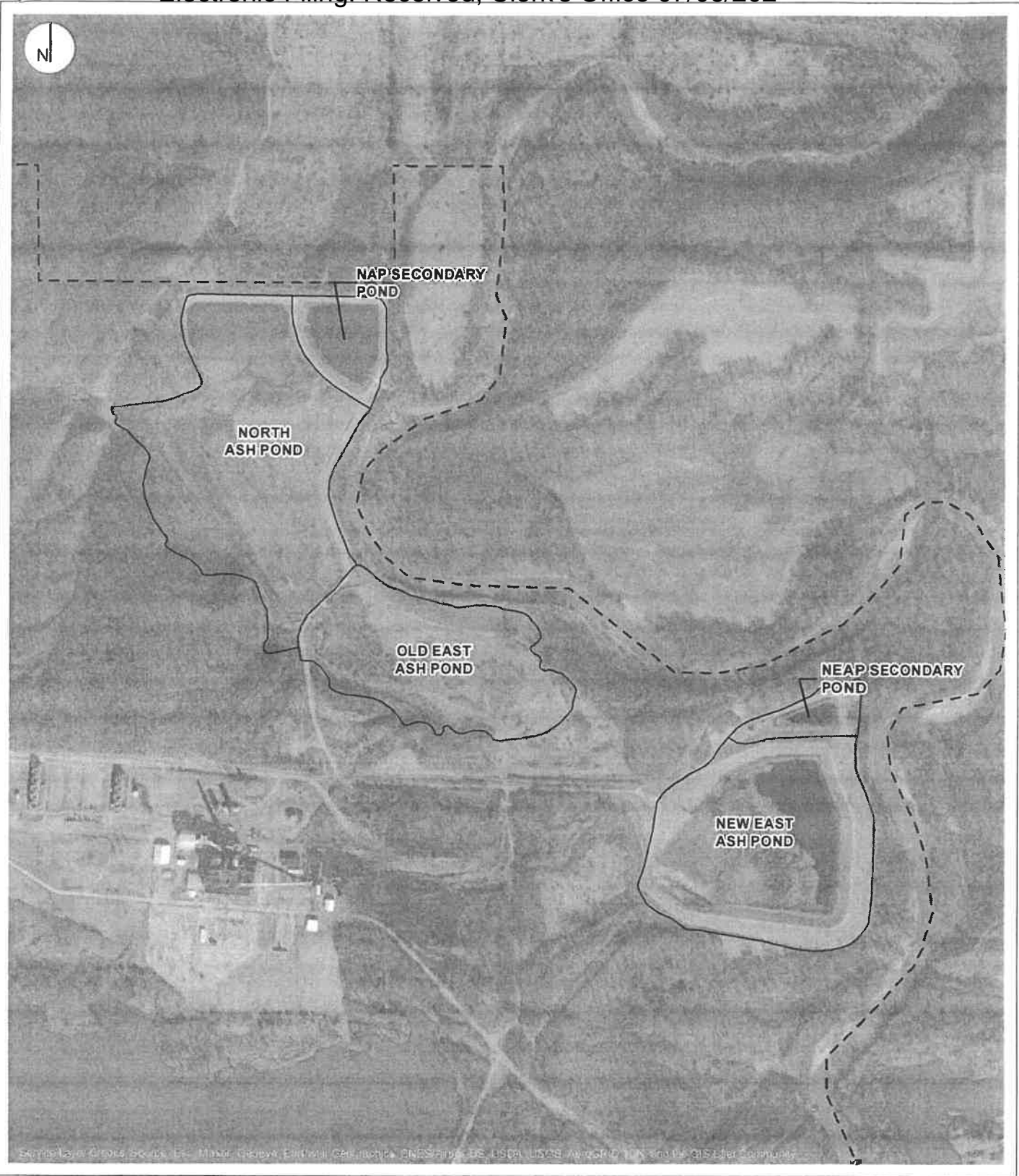
No. 2021CH000024

PLAINTIFF'S MOTION TO ENTER AGREED INTERIM ORDER

EXHIBIT 1

SITE MAP

Y:\Mapping\Projects\22285\MXD\Figure 1_Vermilion_Overview AshPonds.mxd



PROJECT: 169000XXXX | DATED: 6/16/2021 | DESIGNER: STOLZSD

- APPROXIMATE ASH POND BOUNDARY
- APPROXIMATE PROPERTY BOUNDARY (ORIN, 2012)

OVERVIEW OF ASH PONDS

FIGURE 1

0 375 760
 Feet

VERMILION SITE
OAKWOOD, ILLINOIS

RAMBOLL US CORPORATION
A RAMBOLL COMPANY



CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 6th day of July, 2021, I have served electronically the attached **Answer to Complaint**, upon the following persons by e-mail at the email addresses indicated below:

Don Brown, Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center Suite
11-500
100 West Randolph
Chicago, Illinois 60601
(312) 814-3461
don.brown@illinois.gov

Thomas Cmar
Jennifer Cassel
Earthjustice
1010 Lake Street, Ste. 200
Oak Park, IL 60301
(312) 257-9338 (phone)
tcmar@earthjustice.org
jassel@earthjustice.org

Melissa Legge
Earthjustice
48 Wall Street, 15th Floor
New York, NY 10005
(215) 823-4978 (phone)
mlegge@earthjustice.org

Mychal Ozaeta
Earthjustice
1617 John F. Kennedy Blvd., Ste. 1130
Philadelphia, PA 19103
(215) 717-4529 (phone)
(212) 918-1556 (fax)
mozaeta@earthjustice.org

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

I further certify that my email address is rmiddleton@schiffhardin.com; the number of pages in the email transmission is 89; and the email transmission took place today before 5:00 p.m.

Respectfully submitted,

/s/ Robert Middleton

Robert A.H. Middleton

SCHIFF HARDIN LLP

Daniel J. Deeb

Joshua R. More

Robert Middleton

233 South Wacker Drive, Suite 7100

Chicago, Illinois 60606

Phone: (312) 258-5500

Fax: (312) 258-5600

rmiddleton@schiffhardin.com

Attorneys for Respondent