

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

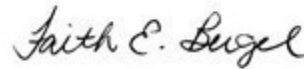
In the Matter of:)
)
 SIERRA CLUB, ENVIRONMENTAL)
 LAW AND POLICY CENTER,)
 PRAIRIE RIVERS NETWORK, and)
 CITIZENS AGAINST RUINING THE)
 ENVIRONMENT)
)
 Complainants,)
)
 v.)
)
 MIDWEST GENERATION, LLC,)
)
 Respondent.)

PCB No-2013-015
(Enforcement – Water)

NOTICE OF FILING

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board the attached **COMPLAINANTS’ REPLY TO RESPONDENT MIDWEST GENERATION, LLC’S RESPONSE IN OPPOSITION TO COMPLAINANTS’ MOTION TO INCORPORATE CERTAIN DOCUMENTS** copies of which are attached hereto and herewith served upon you.

Respectfully submitted,



Faith E. Bugel
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(312) 282-9119
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Attorney for Sierra Club

Dated: March 18, 2022

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:)	
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SIERRA CLUB, ENVIRONMENTAL)	
LAW AND POLICY CENTER,)	
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CITIZENS AGAINST RUINING THE)	
ENVIRONMENT)	
)	PCB No-2013-015
Complainants,)	(Enforcement – Water)
)	
v.)	
)	
MIDWEST GENERATION, LLC,)	
)	
Respondent.)	

COMPLAINANTS’ MOTION FOR LEAVE TO FILE, *INSTANTER*, THEIR REPLY TO RESPONDENT’S RESPONSE TO THEIR MOTION *IN LIMINE*

Pursuant to Section 101.500(e) of the Illinois Pollution Control Board’s (“Board”) Procedural Rules, Complainants Sierra Club, Environmental Law and Policy Center, Prairie Rivers Network, and Citizens Against Ruining the Environment (“Complainants”) submit this Motion for Leave to File, *Instanter*, their Reply to Respondent Midwest Generation LLC’s Response to Complainants’ Motion to Incorporate Certain Documents (Mar. 4, 2022, hereinafter “MWG Resp.”). 35 Ill. Adm. Code 101.500(e). A reply brief is warranted because MWG’s Response fundamentally mischaracterizes Complainants’ Motion, creating material prejudice. In support of their motion, Complainants submit their Reply and state:

1. On February 4, 2022, Complainants filed their Motion to Incorporate Certain Documents into the PCB 13-15 Docket (hereinafter “Comp’s Mot.”). Complainants requested to incorporate (1) the IEPA’s Pre-filed Testimony of Chris Pressnall (*In re Standards for the Disposal of Coal Combustion Residuals*, R2020-19, Pre-filed Testimony of Chris Pressnall (June 1, 2020))

and (2) IEPA's Pre-Filed Answers (*In re Standards for the Disposal of Coal Combustion Residuals*, R2020-19, IEPA's Pre-Filed Answers (August 3, 2020)).

2. On March 4, 2022, MWG filed its Response to Complainants' Motion. MWG's Response materially prejudices Complainants by (1) inaccurately characterizing Complainants' filing, confusing the issues, (2) laying out false accusations against Complainants, such as accusing Complainants of attempting to circumvent the Board, the discovery process, and Hearing Officer's orders by trying to add a new witness, and (3) arguing that Complainants waived their Motion to Incorporate.

3. MWG first argues that Complainants' Motion requests to incorporate documents that are not relevant to or related to the remedy issues in this case. MWG Resp. at 2 – 7. Complainants explained in their initial Motion the connection between this docket and the R2020-19 docket (hereinafter “CCR Rulemaking”), which is that the documents are tied to Section 33(c), specifically, the “suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved.” 415 ILCS §5/33(c)(iii).

4. MWG also argues that the issues presented by the documents are entirely new, never subject to discovery, while accusing Complainants of “seeking an end-run” around the rules. MWG Resp. at 7 – 12. This, in effect, is an attempt by MWG to reopen discovery to add expert rebuttal in response to information from a rulemaking docket that has closed and where the rules have been implemented within the past year—all while Complainants have not offered any new witnesses. MWG argues that this is highly prejudicial, but it is Complainants who are prejudiced by MWG's mischaracterization and request to extend discovery.

5. Next, MWG accuses Complainants of failing to follow Board Rules, resulting in the waiver of the Motion to Incorporate, as well as creating confusion for MWG. *Id.* at 12.

Plaintiffs have not waived this motion and explained in its Motion which documents they wanted the Board to incorporate into the record.

6. Complainants will suffer material prejudice if they are not permitted to reply to these arguments and also clarify the actual nature of their Motion.

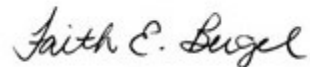
7. Complainants have prepared a Reply in support of their Motion to Incorporate Certain Documents, and have attached that Reply to this motion.

8. This Motion is timely filed on March 18, 2022, within fourteen days after service of MWG's Response, as required by 35 Ill. Admin. Code § 101.500(e).

WHEREFORE, Complainants respectfully request that the Hearing Officer grant Complainants' Motion for Leave to File, *Instantly*, their Reply to Respondent's Response to their Motion to Incorporate Certain Documents and accept the attached Reply as filed on this date.

Dated: March 18, 2022

Respectfully submitted,



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COMPLAINANTS’ REPLY TO RESPONDENT MIDWEST GENERATION, LLC’S RESPONSE IN OPPOSITION TO COMPLAINANTS’ MOTION TO INCORPORATE CERTAIN DOCUMENTS

A. The Documents That Complainants Request to Include Are Related and Relevant to This Proceeding

On February 4, 2022, Complainants filed their Motion. Complainants’ Motion to Incorporate Certain Documents into the PCB 13-15 Docket (Feb. 4, 2022) (hereinafter “Comp. Mot.”). Complainants specifically requested that the Hearing Officer incorporate two documents: (1) the Illinois Environmental Protection Agency’s (IEPA’s) Pre-filed Testimony of Chris Pressnall, *In re Standards for the Disposal of Coal Combustion Residuals*, R2020-19, Pre-filed Testimony of Chris Pressnall (June 1, 2020) and (2) IEPA’s Pre-Filed Answers, *In re Standards for the Disposal of Coal Combustion Residuals*, R2020-19, IEPA’s Pre-Filed Answers (August 3, 2020). The latter document contains IEPA’s answers to pre-filed questions directed at Chris Pressnall, including a table that indicates which surface impoundments in Illinois are within Environmental Justice areas.

Complainants meet the standard for a request to incorporate documents under Board Rule 101.306: “The person seeking incorporation must demonstrate to the Board or the hearing officer that the material to be incorporated is authentic, credible, and relevant to the proceeding.” 35 Ill. Admin. Code 101.306(a). Complainants explained that the two documents are authentic, credible, and relevant. *See* Comp. Mot. ¶¶ 4 – 5. In conjunction with this demonstration, the Board determines the appropriate weight of the incorporated matter. 35 Ill. Admin. Code 101.306(b). In doing so, the Board considers “the standard of evidence under which the material was previously presented to the Board; the present purpose for incorporating the material; and the past and current opportunity for cross-examination of the matters asserted within the incorporated material.” *Id.*

MWG argues that these documents are irrelevant. However, MWG’s argument only provides reasons that relate to the weight that the Board should give the testimony under Section 101.306(b), and not the standard for incorporating material under Section 101.306(a). Further, MWG tries to alter the standard under which material may be incorporated into a proceeding from that articulated by Rule 306— “authentic, credible, and relevant to the proceeding” —to a much higher standard. MWG suggests that the facts and the issues in each proceeding should be directly related or almost identical in order for material to be incorporated. *See* MWG Resp. at 2 – 4 (citing *In the Matter of: Petition of Noveon, Inc. for an Adjusted Standard from 35 Ill. Adm. Code 304.122 PCB02-05, 2004 Ill. ENV LEXIS 608 (Nov. 4, 2004); ExxonMobil Oil Corp. v. Illinois EPA, PCB 11-86, 12-46(cons.), Order, (Sept. 29, 2011)*). In neither of the cases cited by MWG did the Board state that the facts have to be “almost identical.” MWG Resp. at 3.

In fact, the Board has previously granted a motion to incorporate documents from dockets where the facts were not almost identical. In *Webb & Sons, Inc. v. Illinois Environmental Protection Agency*, the petitioner sought review of an Illinois Environmental Protection Agency

(“IEPA”) decision that modified Webb’s proposed budget for the high-priority corrective action plan for a leaking underground storage tank (“UST”) site. *Webb & Sons, Inc., Petitioner v. Illinois Environmental Protection Agency, Respondent*, 2007 WL 555673, at *1. The petitioner requested to incorporate several documents including documents pertaining to the same site (but from a separate appeal) and testimony from a UST rulemaking docket. *Id.* at *4. While IEPA did not object to the petitioner’s motion to incorporate the documents, it did object to the documents’ relevance during the hearing. With respect to the documents from separate appeals concerning the same site, the hearing officer stated that they “pertained to the same location within a short period of time of this appeal, [so] they were relevant as background information of which the Agency should have been aware in making its determination.” *Id.* at *5. With respect to the rulemaking docket, the hearing officer stated that “the Board would be able to take notice of public records such as the three documents that formed part of the record of one of the Board’s own regulatory proceedings.” *Id.* The Board ultimately noted that the petitioner only sought to incorporate “public Board records related either to the site at issue or to the Board’s UST regulations generally. Granting Webb’s motion would not incorporate new data into the Agency record but would only incorporate documents of which the Board can take notice.” *Id.*

Here, Complainants wish to incorporate documents that are from a similar docket. In fact, the Illinois Coal Ash Rules (Part 845) and rulemaking proceeding affect the same surface impoundments at the same facilities in this matter, just as in *Webb & Sons, ExxonMobil*, and *Noveon*.¹ There is no slippery slope, as MWG implies. MWG Response at 7. Both dockets here

¹ Notably, the Board permitted the incorporation of documents that were from rulemakings into the adjudicatory proceedings in *ExxonMobil* and in *Noveon*. *But see* MWG Response 5-6 (arguing incorporating testimony from different types of proceedings supports a finding the testimony and materials are irrelevant).

are about CCR impoundments—and the sites at issue here are still affected by the CCR Rulemaking docket.² *See* Comp. Motion ¶2.

The Part 845 Rules, which the Illinois Legislature called for in P.A. 101-0171 (the “Coal Ash Pollution Prevention Act” or “CAPPA”) amended the Illinois Environmental Protection Act³ to “promote a healthful environment, including clean water, air, and land, meaningful public involvement, and the responsible disposal and storage of coal combustion residuals, so as to protect public health and to prevent pollution of the environment of this State.” 415 ILCS 5/22.59 (a). Both statutes affect the same sites—Joliet 29, Powerton, Waukegan, and Will County—and their surface impoundments. The Part 845 rules developed under CAPPA are therefore also tied to these sites. Indeed, MWG elsewhere argues that the Part 845 Rule is so intimately related to this proceeding that its implementation justifies a stay. *See generally* MWG Motion to Stay Proceedings (Jan. 21, 2022).

Given the connection between Sections 5/12 and 5/22.59 (as well as other amendments by CAPPA) of the Act and the Part 845 rules, testimony in the development of those rules bears relevance on this proceeding. While Chris Pressnall’s testimony does, as MWG indicates, describe the environmental justice considerations for closure of statewide impoundments in a proposed rule, those considerations still apply to the sites at issue and are therefore relevant.⁴

² This is not to say that one proceeding should control over another, but that there are some overlapping facts, rendering the dockets relevant to each other.

³ MWG generally argues that the Chris Pressnall and IEPA testimonies for the Part 845 Rulemaking “have nothing to do [with *sic*] MWG’s Stations or their CCR surface impoundments, do not related to the statutes and regulations that are the subject of this matter, and do not to the factors in Section 33(c) of the Illinois Environmental Protection Act.”

⁴ MWG separately argues that the Hearing Officer did not allow questions about specific sites. However, as discussed below, IEPA’s testimony still applied to the sites generally and did testify about whether each site was in an area of environmental justice concern. Despite not being able ask about Powerton, Waukegan, Joliet, or Will County individually or with specificity, parties still had the ability to ask questions about IEPA’s environmental justice determinations which applied to these impoundments.

Furthermore, MWG argues that the idea of environmental justice is a new issue—it is not. The importance of environmental justice and whether the sites are in environmental justice areas is relevant and related to considering the unsuitability of MWG’s pollution sources to the areas in which they are located in the current proceedings. Comp. Mot. ¶4, 5. The suitability of the pollution’s location is an issue at play here, and also contemplated in the CCR Rulemaking. Prioritization of environmental justice communities plays into the legal question of what makes a site unsuitable.

B. Parties Can Discuss the Concept of Environmental Justice Without Additional Discovery

By virtue of Board Rule 101.306, Complainants do not need to offer an expert witness for each piece of information in an adjudicatory proceeding. MWG insinuates that Complainants are trying to circumvent discovery with a new expert witness. MWG Resp. at 2, 7. Complainants have no such agenda. Specifically, Complainants only wish to include information about environmental justice as applied to CCR surface impoundments—an issue that has gone before this Board in the CCR Rulemaking. This is not the same as trying to circumvent this process to include a new witness.

MWG attempts to reframe Complainants Motion as offering a new witness that has yet to be properly disclosed or cross-examined. Not so. Complainants provide Chris Pressnall’s experience in the matter to demonstrate that the testimony is credible as required under Board Rule 101.306 (a). MWG argues that Complainants are attempting to name Pressnall as an “expert” in and that Pressnall is not qualified to be an expert because he has no experience with “evaluating groundwater contamination or remedies for contamination.” MWG Response at 11. This is a red herring. Clearly Complainants are not presenting Pressnall as an expert. Neither do Complainants argue that Mr. Pressnall holds expertise in groundwater contamination, because such expertise is

not necessary for his testimony to be relevant—he is the Environmental Justice Coordinator who provided legal support to the IEPA Environmental Justice Program prior to his current position. Pre-Filed Testimony of Chris Pressnall at 1. Although Complainants do not offer Chris Pressnall as an expert, they are not restricted by the topics mentioned by MWG in the remedy phase⁵ because when the Board drafts an order, Section 33(c) factors are the minimum of the Boards considerations.

Complainants' Motion states that Chris Pressnall's testimony is relevant to the unsuitability of MWG's pollution sources to the areas in which they are located. Comp. Mot. ¶¶ 4, 5. In particular, a table at the end Illinois EPA's Answers to Pre-Filed Questions lists all of the CCR surface impoundments in Illinois and whether the impoundments are within an environmental justice area. See IEPA Pre-Filed Answers at 149, 181 – 82. As MWG pointed out, Chris Pressnall answered a question about the table stating that "Illinois EPA provided a list of coal ash impoundments located in areas of EJ concern." MWG Resp. at 4 – 5. MWG argues that Chris Pressnall did not create or provide sufficient information about the table. MWG Resp. at 4 – 5. However, this does not mean that he did not take part in its formulation. During the CCR Rulemaking, IEPA often elected to answer questions as an agency. For instance, at the hearing, agency staff responded to cross examination as a panel, unless individually addressed, and even then, would answer questions together if necessary. *In re Standards for the Disposal of Coal Combustion Residuals*, R2020-19, Hearing Tr. 28:4 – 10 (Aug. 11, 2020); 69 – 72.⁶ In IEPA's Pre-Filed Answers, Chris Pressnall also referred to a table requested by the Board Staff in pre-filed

⁵ MWG argues that Chris Pressnall's testimony must be limited to discussing MWG, Sections 12(a) and 21(a) of the Act or the groundwater standards, the provisions for orders for determining a remedy or penalty (33(c) and 42(h)). MWG Resp. at 5 – 6. Complainants, however, have explained how IEPA's Pre-Filed Answers and Chris Pressnall's testimony is relevant to Section 33(c).

⁶ Available at <https://pcb.illinois.gov/documents/dsweb/Get/Document-102775>; <https://pcb.illinois.gov/documents/dsweb/Get/Document-102800>

question 1(I). *See* IEPA's Pre-Filed Answers at 12 – 13. This table included the answer to the Board Staff's question: "How many of these impoundments are located in areas of environmental justice concern," to which IEPA responded, "Based on EJ Start 2019 data the Agency believes that 29 of the 73 listed are in areas of environmental justice concern pursuant to Section 845.700(g)(7)." IEPA's Pre-filed Answers at 149. Chris Pressnall's pre-filed testimony explains how EJ Start was used and how the Agency determined areas that meet the criteria of an area of EJ concern as listed in the table.⁷ *See* IEPA Pre-filed Testimony at 68 – 70. Complainants' Motion did not assert that Chris Pressnall created the table in its entirety—rather Complainants attributed the table to IEPA. Comp. Mot. ¶ 6. Chris Pressnall was clearly and sufficiently involved in the aspect of the table relevant to this proceeding—whether a surface impoundment was located in an environmental justice area. Mr. Pressnall's testimony on this point is authentic, relevant, and credible.

The incorporation of testimony from another Board hearing is quite different from introducing a new witness. IEPA and Chris Pressnall's testimony is relevant to the unsuitability of the pollution sources to the areas in which they are located and why environmental justice is relevant to coal ash pollution, contributing to Complainants potential arguments about Section 33(c) factors, including the unsuitability of the location of the pollution. The question of whether the sites are in environmental justice areas is actually affirmed by MWG's own permit construction permit applications under the Part 845 rules, as listed under MWG's preliminary exhibit list: "Publicly available MWG Documents on the Illinois CCR Website (<https://midwestgenerationllc.com/>) related to the Joliet 29 Station, Powerton Station, Waukegan Station, and Will County Station." IEPA and Chris Pressnall's testimonies, however, illuminate

⁷ MWG notes that the Table is outdated because there has been an adjusted standard finding that two ponds (one of which is at Powerton) are not CCR surface impoundments. However, this does not render the table or IEPA's and Chris Pressnall's testimonies inadmissible.

how IEPA made the environmental justice determinations and it's the determinations' relevance to the Part 845 Rules and CCR surface impoundments. While MWG may argue that it did not have the opportunity to ask site-specific questions during cross-examination, it did have the opportunity to ask how IEPA and Chris Pressnall came to the determinations and questioned the Agency's source inputs. In fact, IEPA and Chris Pressnall were asked this very question by some of the Complainants. *See, e.g., In re Standards for the Disposal of Coal Combustion Residuals*, R2020-19, Hearing Tr. 194:17 – 197:13 (Aug 13, 2020). MWG did not pose questions of IEPA on environmental justice during the hearing.

Accordingly, no additional discovery is needed as Complainants have not offered new witnesses.

C. Complainants Motion to Incorporate Documents Is Sufficient

Pursuant to Board Rule 101.306(a), the person seeking incorporation must file the material to be incorporated with the Board in accordance with Section 101.302(h), which states, in part, that “all documents must be filed through COOL electronically.”

Given the length of the documents, Complainants provided a link to the Board's electronic docket system where the documents were already filed and could be easily identified. Complainants Motion cited relevant pages of the documents. MWG acknowledged the document-length (MWG Resp. at 8), but still argue that the Complainants should have attached the documents (one of which happens to be 184 pages) to the Motion. Plaintiffs did not waive their request as these documents have already been filed to the Board and were listed in Complainants Motion. Complainants did not want to burden the Board, Hearing Officer, and administrative staff with burdensome and lengthy documents that have already been filed with the Board through the COOL system so

simply provided a link instead.⁸ Accordingly, Complainants have attached excerpts of Chris Pressnall's testimony and IEPA's pre-filed answers as Attachments 1 and 2. However, this by no means is a waiver of Complainants' Motion.

MWG also accuses Complainants of failing to identify the parts of the IEPA testimony to be included. Complainants noted the link for the documents and because of the length of the Pre-filed Answers and IEPA's responses to Chris Pressnall questions began on several pages, Complainants identified where each of those answer sets began (pages 12, 88, and 132), as well as the page numbers for the table (pages 181 – 82). Comp. Mot. ¶6.

Therefore, the Hearing Officer should find that Complainants' Motion to Incorporate Documents provided sufficient notice to Respondents and the Board to identify the relevant portions of the materials that Complainants sought to incorporate.

D. Incorporation of These Documents Is Appropriate and Not Prejudicial

Incorporation of the documents is appropriate and not highly prejudicial to MWG because cross-examination is not required—rather the ability to cross in the past and present goes to the weight of the incorporation. Board Rule 101.306 states, in part,

The person seeking incorporation must demonstrate to the Board or the hearing officer that the material to be incorporated is authentic, credible, and relevant to the proceeding. The Board will give the incorporated matter the appropriate weight in light of the following factors: the standard of evidence under which the material was previously presented to the Board; the present purpose for incorporating the material; and the past and current opportunity for cross-examination of the matters asserted within the incorporated material.

35 Ill. Admin. Code 101.306. Board Rule 101.306 does not mandate that parties have the opportunity to cross examine in *this* proceeding. The opportunity to cross-examine goes to the weight that the Board will apply—not whether it is admissible as MWG implies. MWG Resp. at 9. MWG however did have the opportunity to ask IEPA staff, including Chris Pressnall, about

⁸ Complainants admit that they could have more explicitly explained this in their original motion.

what they relied on and how they reached their conclusions. *See e.g., In re Standards for the Disposal of Coal Combustion Residuals*, R2020-19, Hearing Tr. 194:17 – 197:13 (Aug 13, 2020). Complainants asked IEPA and Chris Pressnall similar questions during pre-filed questions and cross examination.

MWG instead raises here whether and how environmental justice should be factored into the suitability of the pollution source and the latter should be explored through discovery. MWG Resp. at 11 – 12. The Board Rules indicate MWG’s concerns are more associated with the weight of the testimony.

MWG questions whether Mr. Pressnall’s testimony is relevant to the suitability of the sites and question his prioritization. IEPA and Chris Pressnall’s testimonies about environmental justice are relevant to the suitability factor of Section 33(c). Section 33(c) of the Act states, “In making its orders and determinations, the Board shall take into consideration *all the facts* and circumstances bearing upon the reasonableness of the emissions, discharges or deposits involved including, but not limited to. . .” 415 Ill. Comp. Stat. Ann. 5/33 (emphasis added). The Illinois legislature did not restrict what factors the Board should consider and MWG has the opportunity to introduce whatever evidence it believes is relevant to the Section 33(c) considerations. In fact, the burden is not on Complainants to introduce evidence on each one of these factors. “[I]t cannot be said that the legislature intended the [complainant] to have the additional burden of introducing proof (affirmatively, as part of complainant's case) relative to each of the factors enumerated in section 33(c),’ the appellate court elaborated upon the operation of Section 33(c) in *Ford v. Environmental Protection Agency*, 9 Ill. App. 3d 711, 720 – 21, 292 N.E.2d 540, 546 (3rd Dist. 1973).” *Environmental Site Developers v. White & Brewer Trucking*, 1997 WL 735012, at *9. Rather the legislature mandated that the Board consider all the facts and circumstances and

explicitly stated it was not limiting the Board to the factors in Section 33(c) and MWG has the opportunity to introduce any evidence it believes is relevant to the question of remedy.

As to “the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved,” expert testimony is not necessarily needed on the question of whether the sources are located in Environmental Justice communities. MWG provides this identification in their permit applications, which are listed in MWG’s Preliminary Exhibit List.⁹ MWG tries to create a dispute by suggesting other things Chris Pressnall and IEPA should have considered but MWG could have offered witness testimony on these points at any time, especially considering that Complainant does not bear the burden on Section 33(c) factors. These questions do not provide grounds for denying Complainants motion to incorporate Chris Pressnall’s testimony or IEPA’s Pre-filed Answers.

Accordingly, MWG is not prejudiced by the incorporation of these documents because Complainants’ Motion meets the standard set by Rule 306 for incorporation. 35 Ill. Admin. Code 101.306.

E. Conclusion

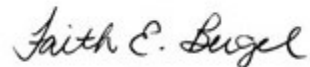
For these reasons and those stated in Complainants’ Motion to Incorporate Certain Documents, Complainants request that the Hearing Officer grant Complainants’ Motion to incorporate: (1) the IEPA’s Pre-filed Testimony of Chris Pressnall (*In re Standards for the Disposal of Coal Combustion Residuals*, R2020-19, Pre-filed Testimony of Chris Pressnall (June 1, 2020)) and (2) IEPA’s Pre-Filed Answers (*In re Standards for the Disposal of Coal Combustion*

⁹ Publicly available MWG Documents (<https://www.nrg.com/legal/coal-combustionresiduals.html>) related to the Joliet 29 Station, the Powerton Station, the Waukegan Station, and the Will County Station
Publicly available MWG Documents on the Illinois CCR Website (<https://midwestgenerationllc.com/>) related to the Joliet 29 Station, Powerton Station, Waukegan Station, and Will County Station

Residuals, R2020-19, IEPA's Pre-Filed Answers (August 3, 2020)), including all of Chris Pressnall's Answers contained on pages 12 – 15, 88 – 98, and 132 – 135, and the Table provided for the Board at pages 181 – 182 of the document.

Dated: March 18, 2022

Respectfully submitted,



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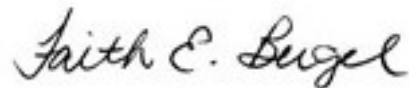
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CERTIFICATE OF SERVICE

The undersigned, Faith E. Bugel, an attorney, certifies that I have served electronically upon the Clerk and by email upon the individuals named on the attached Service List a true and correct copy of **COMPLAINANTS' MOTION FOR LEAVE TO FILE, INSTANTER, THEIR REPLY TO RESPONDENT'S RESPONSE TO THEIR MOTION TO INCORPORATE CERTAIN DOCUMENTS and COMPLAINANTS' REPLY IN SUPPORT OF THEIR MOTION TO INCORPORATE CERTAIN DOCUMENTS** before 5 p.m. Central Time on March 18, 2022, to the email addresses of the parties on the attached Service List. The entire filing package, including exhibits, is 54 pages.

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ATTACHMENT 1

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	R 2020-019
STANDARDS FOR THE DISPOSAL)	
OF COAL COMBUSTION RESIDUALS)	(Rulemaking - Water)
IN SURFACE IMPOUNDMENTS:)	
PROPOSED NEW 35 ILL. ADM.)	
CODE 845)	

NOTICE OF FILING

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board a **NOTICE OF FILING** and **PRE-FILED TESTIMONY** on behalf of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

Respectfully submitted,

Dated: June 2, 2020

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Stefanie N. Diers
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
(217) 782-5544

Petitioner,

BY: /s/ Stefanie N. Diers
Stefanie N. Diers

THIS FILING IS SUBMITTED ELECTRONICALLY

SERVICE LIST

<p>ILLINOIS POLLUTION CONTROL BOARD Don Brown, Clerk Vanessa Horton, Hearing Officer James R. Thompson Center 100 W. Randolph, Suite 11-500 Chicago, IL 60601</p>	<p>ILLINOIS ENVIRONMENTAL PROTECTION AGENCY Christine Zeivel Stefanie Diers 1021 North Grand Avenue East Springfield, IL 62794-9276</p>
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	R 2020-019
STANDARDS FOR THE DISPOSAL)	
OF COAL COMBUSTION RESIDUALS)	(Rulemaking - Water)
IN SURFACE IMPOUNDMENTS:)	
PROPOSED NEW 35 ILL. ADM.)	
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PRE-FILED TESTIMONY

The following pre-filed testimony is being submitted on behalf of the Agency: William Buscher, Lynn Dunaway, Amy Zimmer, Lauren Martin, Chris Pressnall, Robert Mathis, Darin LeCrone and Melinda Shaw.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Dated: June 2, 2020

Stefanie N. Diers
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
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Springfield, IL 62794-9276
(217) 782-5544

Petitioner,

BY: /s/ Stefanie N. Diers
Stefanie N. Diers

THIS FILING IS SUBMITTED ELECTRONICALLY

CERTIFICATE OF SERVICE

I, the undersigned, on affirmation state the following:

That I have served the attached **NOTICE OF FILING** and **PRE-FILED TESTIMONY** by e-mail upon Don Brown at the e-mail address of don.brown@illinois.gov, upon Renee Snow at the e-mail address of Renee.Snow@Illinois.Gov, upon Matt Dunn at the e-mail address of mdunn@atg.state.il.us, upon Stephen Sylvester at the e-mail address of ssylvester@atg.state.il.us, upon Andrew Armstrong at the e-mail address of aarmstrong@atg.state.il.us, upon Kathryn A. Pamenter at the e-mail address of KPamenter@atg.state.il.us, upon Virginia I. Yang at the e-mail address of virginia.yang@illinois.gov, upon Nick San Diego at the e-mail address of nick.sandiego@illinois.gov, upon Robert G. Mool at the e-mail address of bob.mool@illinois.gov, upon Vanessa Horton at the e-mail address of Vanessa.Horton@Illinois.gov, upon Paul Mauer at the e-mail address of Paul.Mauer@illinois.gov, upon Deborah Williams at the e-mail address of Deborah.Williams@cwlp.com, upon Kim Knowles at the e-mail address of Kknowles@prairierivers.org, upon Andrew Rehn at the e-mail address of Arehn@prairierivers.org, upon Faith Bugel at the e-mail address of fbugel@gmail.com, upon Jeffrey Hammons at the e-mail address of Jhammons@elpc.org, upon Keith Harley at the e-mail address of kharley@kentlaw.edu, upon Daryl Grable at the e-mail address of dgrable@clclaw.org, upon Michael Smallwood at the e-mail address of Msmallwood@ameren.com, upon Mark A. Bilut at the e-mail address of Mbilut@mwe.com, upon Abel Russ at the e-mail address of aruss@environmentalintegrity.org, upon Susan M. Franzetti at the e-mail address of Sf@nijmanfranzetti.com, upon Kristen Laughridge Gale at the e-mail address of kg@nijmanfranzetti.com, upon Vincent R. Angermeier at the e-mail address of va@nijmanfranzetti.com, upon Alec M. Davis at the e-mail address of adavis@ierg.org, upon Jennifer M. Martin at the e-mail address of Jmartin@heplerbroom.com, upon Kelly Thompson at the e-mail address of kthompson@ierg.org, upon Walter Stone at the e-mail address of Water.stone@nrgeenergy.com, upon Cynthia Skrukrud at the e-mail address of Cynthia.Skrukrud@sierraclub.org, upon Jack Darin at the e-mail address of Jack.Darin@sierraclub.org, upon Christine Nannicelli at the e-mail address of christine.nannicelli@sierraclub.org, upon Stephen J. Bonebrake at the e-mail address of bonebrake@schiffhardin.com, upon Joshua R. More at the e-mail address of jmore@schiffhardin.com, upon Ryan C. Granholm at the e-mail address of rgranholm@schiffhardin.com, upon N. LaDonna Driver at the e-mail address of LaDonna.Driver@heplerbroom.com, upon Alisha Anker at the e-mail address of aanker@ppi.coop, upon Chris Newman at the e-mail address of newman.christopherm@epa.gov, upon Claire A. Manning at the e-mail address of cmanning@bhslaw.com, upon Anthony D. Schuering at the e-mail address of aschuering@bhslaw.com, upon Jennifer Cassel at the e-mail address of jcassel@earthjustice.org, upon Melissa Brown at the e-mail address of Melissa.Brown@heplerbroom.com, upon Thomas Cmar at the e-mail address of tcmarr@earthjustice.org, upon Stefanie Diers at the e-mail address of

Stefanie.Diers@Illinois.gov, and upon Christine Zeivel and the e-mail address of Christine.Zeivel@illinois.gov.

That my e-mail address is Stefanie.diers@illinois.gov

That the e-mail transmission took place before 4:30 p.m. on the date of June 2, 2020.

/s/ Stefanie N. Diers

June 2, 2020

IN THE MATTER OF:)
) R 2020-019
STANDARDS FOR THE DISPOSAL)
OF COAL COMBUSTION RESIDUALS) (Rulemaking - Water)
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PRE-FILED TESTIMONY OF CHRIS PRESSNALL

My name is Chris Pressnall. I am the Environmental Justice Coordinator for the Illinois Environmental Protection Agency. I have been the Environmental Justice Coordinator since 2017. Prior to becoming the Environmental Justice Coordinator, for approximately 19 years I was in the Illinois EPA Division of Legal serving as an air enforcement attorney. Part of my responsibilities as part of the Division of Legal Counsel was to provide legal support to the Agency's Environmental Justice Program. My curriculum vitae is attached. My current responsibilities include administration of the Illinois Environmental Protection Agency's Environmental Justice Program. This includes screening of regulated sources of pollution to determine if the source is located in an area of environmental justice concern. My responsibilities also include implementation of the Illinois EPA Environmental Justice Policy and the Illinois EPA Environmental Justice Public Participation Policy. In addition, I facilitate and am a member of the Illinois Commission on Environmental Justice. I will present testimony and answer questions related the environmental justice screening of coal ash impoundments.

Environmental Justice Screening of Coal Ash Impoundments

Environmental Justice is based on the principle that all people should be protected from environmental pollution and have the right to a clean and healthy environment. Environmental justice is the protection of the health of the people of Illinois and its environment, equity in the

administration of the State's environmental programs, and the provision of adequate opportunities for meaningful involvement of all people with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

As a recipient of federal funding, the Illinois EPA is required to comply with 40 CFR Part 7 (Nondiscrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency). Partially to ensure compliance with 40 CFR Part 7, Illinois EPA administers its Environmental Justice Program via the Agency's Environmental Justice Policy and Environmental Justice Public Participation Policy. Within the Public Participation Policy, Illinois EPA defines "area of EJ concern" as a census block group or areas within one mile of a census block group with income below poverty and/or minority population greater than twice the statewide average.

In order to determine areas that meet the criteria of an area of EJ concern, the Illinois EPA has developed a Geographic Information System (GIS) mapping tool called EJ Start to identify census block groups and areas within one mile of census block groups meeting the EJ demographic screening criteria. EJ Start is publicly available and can be found on the Illinois EPA's EJ webpage (<http://www.epa.illinois.gov/topics/environmental-justice/index>). IEPA uses the same US Census/American Community Survey 5-year Estimates tables as those USEPA utilizes in its EJ Screen tool. The tables are joined to the US Census 2010 block groups.

Each block group is given "EJ Minority", "EJ Low-Income" or "EJ Both" scores. The scores are determined by dividing the population from each minority population & low-income population by the total population of each block group and then comparing these values to the statewide average for each EJ category. If the EJ scores are twice the Illinois average for either

minority, low-income or both, the block group is assigned an EJ score of 1 for minority, 2 for low-income and 3 if it is both minority and low- income.

The main difference between USEPA EJ Screen and Illinois EPA EJ Start is that the USEPA uses a wide variety of information to “paint a picture” of the area around a facility in the form of percentiles to the NATIONAL averages (Illinois EPA uses statewide averages).

However, USEPA EJ Start does not indicate whether a given area is considered an EJ community. Rather it is up to the user to generate reports in order to make the case that the area should be considered overburdened, in other words meeting the criteria of an EJ community.

Prioritization of Coal Ash Impoundments in Areas of Environmental Justice Concern

The proposed prioritization scheme assists owners and operators in determining where and how to spend their resources by categorizing impoundments based on risk to health and the environment and the impoundment’s proximity to areas of environmental justice concern, requiring those with the highest risk and those located in areas of environmental justice concern to submit a closure application first, approximately nine months after the proposed rules will become effective.

Prioritization coal ash impoundments located in areas of environmental justice concern is appropriate given the potential impact of coal ash impoundments on overburdened communities. USEPA defines “overburdened communities” as “minority, low-income, tribal, or indigenous populations or geographic locations in the United States that potentially experience disproportionate environmental harms and risks. This disproportionality can be as a result of greater vulnerability to environmental hazards, lack of opportunity for public participation, or other factors. Increased vulnerability may be attributable to an accumulation of negative or lack of positive environmental, health, economic, or social conditions within these populations or

places. The term describes situations where multiple factors, including both environmental and socio-economic stressors, may act cumulatively to affect health and the environment and contribute to persistent environmental health disparities.”

ATTACHMENT 2

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	R 2020-019
STANDARDS FOR THE DISPOSAL)	
OF COAL COMBUSTION RESIDUALS)	(Rulemaking - Water)
IN SURFACE IMPOUNDMENTS:)	
PROPOSED NEW 35 ILL. ADM.)	
CODE 845)	

NOTICE OF FILING

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board a **NOTICE OF FILING** and **PRE-FILED ANSWERS** on behalf of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

Respectfully submitted,

Dated: August 3, 2020

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Christine Zeivel
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Springfield, IL 62794-9276
(217) 782-5544

Petitioner,

BY: /s/ Christine Zeivel
Christine Zeivel

THIS FILING IS SUBMITTED ELECTRONICALLY

Response: Based on this question, if the Board believes a revision is warranted, the Agency suggests that the Board add the following requirement to Section 845.240(c)

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

- c) If the Illinois EPA concludes a permit will affect an area with a significant proportion of non-English speaking residents, why isn't Illinois EPA required to have translation services available at the public hearing for its draft permit as part of proposed Section 845.260(d)?**

Response: The Agency's public engagement, including the public hearing for the draft permit, will be conducted pursuant to the Illinois EPA Environmental Justice Public Participation Policy, which includes as a consideration, translation during public hearings.

19. *No Question was received for placement of 19.

- 20. Do the public participation requirements in proposed Sections 845.240 and 845.260 apply to the submission of a proposed Corrective Action Plan pursuant to proposed Section 845.670 and the Illinois EPA's process of approving a Corrective Action Plan? If not, why not, especially given the short-term and residual risks that might be posed to the community (proposed Section 845.670(e)(1)(B) and (D)), the potential for exposure of humans and environmental receptors (proposed Section 845.670(e)(1)(F)) and the need to identify a remedy that is protective of human health and the environment (proposed Section 845.670(d)(1))?**

Response: The processes laid out in Sections 845.240 and Section 845.260 apply to a construction permit for corrective action just as they would for other required construction activities.

Questions for Chris Pressnall

- 1. The link to EJ Start on page 2 of your testimony is not a valid link. Can you provide a correct link to this resource and provide a practical example of how this resource can be used to identify environmental justice areas of concern pursuant to proposed Sections 845.700(g)(6) and (7)?**

Response: This is the This is the link to EJ Start: <https://illinois-epa.maps.arcgis.com/apps/webappviewer/index.html?id=be7488489355496682fd6ba13ff0b287>.

*Chrome web browser is required for using. The Illinois EPA has also added an EJ layer to the coal ash impoundments GIS map found here: <https://illinois-epa.maps.arcgis.com/apps/webappviewer/index.html?id=558102bb7b304d20907d3420ddcdf9eb>

*Chrome web browser is required for using. In addition, the Illinois EPA provided a list of coal ash impoundments located in areas of EJ concern to the Board question 1(1).

2. **Based on Illinois EPA 's list of 23 facilities and 73 surface impoundments on pages 37 and 38 of its Statement of Reasons, which surface impoundments are currently located in areas of environmental justice concern as defined by Illinois EPA in proposed Sections 845.700(g)(6) and (7)?**

Response: The Illinois EPA identified a list of coal ash impoundments located in areas of EJ concern in the answer to PCB's question 1(1).

3. **415 ILCS 5/22.59(a)(5) refers to "vulnerable populations who may be affected by regulatory actions".**

- a. **What are vulnerable populations and how will Illinois EPA make this determination?**

- b. **Can you provide an example of a vulnerable population?**

- c. **Does Illinois EPA consider a community with a significant proportion of English non-speaking residents as a factor in defining a vulnerable population?**

Response: The Illinois EPA proposes utilizing the EJ Start Geographic Information System screening tool to fulfill the legislative mandate to determine "areas of EJ concern". As such, the Illinois EPA does not propose defining and identifying "vulnerable populations" as referenced in the legislative findings in Section 22.59. Notwithstanding, for the purposes of public participation, a community with a significant proportion of English non-speaking residents should be accommodated via translation services.

4. **415 ILCS 5/22.59(a)(5) refers to "communities in this State that bear disproportionate burdens imposed by environmental pollution."**

- a. **What are "communities in this State that bear disproportionate burdens imposed by environmental pollution"?**

- b. **Is this the same as the U.S. EPA definition of "over-burdened communities" described in your written testimony?**

- c. **How will Illinois EPA identify these communities?**

- d. **Can you provide an example of a community that bears disproportionate burdens imposed by environmental pollution?**

Response: The Illinois EPA proposes utilizing the EJ Start Geographic Information System screening tool to fulfill the legislative mandate to determine "areas of EJ concern". As such, the Illinois EPA does not propose defining and identifying "communities in this State that bear disproportionate burdens imposed by environmental pollution" as referenced in the legislative findings in Section 22.59.

5. **415 ILCS 5/22.59(g)(8) refers to "areas of environmental justice concern in relation to CCR surface impoundments".**

- a. Why does Illinois EPA propose this determination should be based solely on the demographic characteristics of areas that are proximate to CCR surface impoundments (proposed Sections 845.700(g)(6)(A) and (B))?**

Response: The Illinois EPA proposed utilizing the existing demographic screening tool for consistency in application of EJ concepts across Agency Programs.

- b. Why doesn't Illinois EPA incorporate information about communities that bear disproportionate burdens imposed by environmental pollution?**

Response: The Illinois EPA proposed utilizing the existing demographic screening tool for consistency in application of EJ concepts across Agency programs.

6. **Are there differences between:**

- "vulnerable populations who may be affected by regulatory actions"
- "communities in this State that bear disproportionate burdens imposed by environmental pollution"; and,
- "areas of environmental justice concern in relation to CCR surface impoundments"?

If so, what are these differences and how does Illinois EPA account for these differences in its Proposed Regulations?

Response: The Illinois EPA proposes utilizing the EJ Start Geographic Information System screening tool to fulfill the legislative mandate to determine "areas of EJ concern". As such, the Illinois EPA does not propose defining and identifying "communities in this State that bear disproportionate burdens imposed by environmental pollution" or "vulnerable populations who may be affected by regulatory actions" as referenced in the legislative findings in Section 22.59.

7. **On pages 3 and 4 of your Pre-Filed Testimony, you reference U.S. EPA's EJ Screen.**

- a. Does Illinois EPA currently use EJ Screen to identify environmental justice areas and, if so, how?**

Response: No. However, Illinois EPA may utilize USEPA EJ Screen as an ancillary tool when researching and analyzing a community that has identified potential EJ issues.

- b. Does Illinois EPA currently use EJ Screen to differentiate between the disproportionate burdens present in different environmental justice areas and, if so, how?**

Response: No but it has utilized USEPA EJ Screen to look at areas of EJ concern versus communities that do not meet the criteria of an area of EJ concern.

8. **Your pre-filed testimony indicates that you are a member of the Illinois Commission on Environmental Justice.**

- a. Please describe the methodology the Commission proposed for the Illinois Power Agency to determine environmental justice communities as part of implementing the Future Energy Jobs Act.**

Response: The methodology recommended by the Illinois Commission on Environmental Justice can be found in this letter:
<https://www2.illinois.gov/epa/Documents/iepa/environmental-justice/commission/resources/ejcommissionipa2.pdf>

*Chrome web browser is required for using.

- b. Was this methodology approved by the Illinois Commerce Commission?**

Response: Yes

- c. Why isn't Illinois EPA proposing the same methodology to be used as part of the present rulemaking?**

Response: The Illinois EPA proposed utilizing the existing demographic screening tool for consistency in application of EJ concepts across Agency programs and to fulfill its obligation to identify “areas of EJ concern”. The Illinois Power Agency was given a statutory mandate to define “EJ communities” for the administration of the Illinois Solar For All program and developed a mapping tool to identify “EJ communities” in accordance with recommendations made the Commission on Environmental Justice.

- d. If the methodology approved by the Illinois Commerce Commission and utilized by the Illinois Power Agency isn't used, won't this lead to inconsistency in how environmental justice areas are identified in Illinois?**

Response: The Illinois EPA’s EJ Start and Illinois Power Agency’s Illinois Solar For All EJ community GIS screening tool are both currently utilized in Illinois by their respective agencies.

- 9. What are the differences between Illinois EPA's Environmental Justice Public Participation Policy and the process described in Illinois EPA's proposed Sections 845.240-845.270? What additional public participation measures will Illinois EPA utilize in environmental justice areas and, if there are any, why aren't these additional requirements stated in the Proposed Regulations?**

Response: The Illinois EPA has proposed that the Board consider revising the proposed regulations to address issues such as non-English translation in communities with a significant number of persons that do not utilize English as their primary written or spoken language.

Response: Yes. The modification of a permit must follow the public notice process outlined in Section 845.260, UNLESS the modification meets the definition of a “minor modification” pursuant to Section 845.280(d)

29. Regarding proposed of 35 Ill. Adm. Code 845.280(e)(2), what is a reasonably justifiable cause for which a waiver will be granted when a permittee does not meet the 180-day requirement for permit renewal filing?

Response: This section also comes from the NPDES regulations, and allows for the waiver of a re-application deadline for circumstances out of the control of the permittee. This could result from among other things, the accidental contamination of samples by the lab or lab errors resulting in the inability to report sampling data, operational issues or extended plant shut-down, severe storms or other acts of God which may prevent the collection of data needed as part of the application, and other similar causes.

30. Regarding proposed of 35 Ill. Adm. Code 845.260(f), why do the rules not require posting the agency’s responsiveness summary on a publicly available website?

Response: In practice, the Agency intends to post the responsiveness summary and the Agency’s final permit determination on the Agency’s website. This is the current practice of the NPDES program. The Agency would not object to the revision of Section 845.270(c) to require the posting of the Agency’s final determination as well as the responsiveness summary if applicable, to the Agency’s website. Should the Board deem a revision appropriate, the Agency would suggest the following language:

“The Agency shall provide a notice of the issuance or denial of the permit to the applicant, to any person who provides comments or an email address to the Agency during the public notice period or a public hearing, and to any person on the Agency’s listserv for the facility. Such notice shall briefly indicate any significant changes which were made from terms and conditions set forth in the draft permit. The Agency shall post its final permit determination and if a public hearing was held, the responsiveness summary, to the Agency’s website.”

CHRIS PRESSNALL

1. Regarding proposed 35 Ill. Adm. Code 845.700(g):

a. Why do the criteria for an area of environmental justice (EJ) concern only rely upon income below poverty and/or minority population greater than the statewide average?

Response: The Illinois EPA proposed utilizing the existing demographic screening tool for consistency in application of EJ concepts across Agency programs.

b. Are there other factors that IEPA would agree are relevant for the purposes of identifying areas of environmental justice concern?

Response: No. The Illinois EPA utilizes the term “area of EJ concern” to acknowledge that it is a demographic screening tool and does not attempt to incorporate environmental or other indicators.

- c. Why does IEPA not consider environmental indicators, such as exposure to PM 2.5, when determining if an area is an area of EJ concern?**

Response: As mentioned above, Illinois EPA’s EJ Start is a demographic screening tool utilized to identify “areas of EJ concern” and does not seek to incorporate environmental or other indicators.

- d. Why does IEPA not consider environmental justice indexes, such as cancer risk, when determining if an area is an area of EJ concern?**

Response: As mentioned above, Illinois EPA’s EJ Start is a demographic screening tool utilized to identify “areas of EJ concern” and does not seek to incorporate environmental or other indicators.

- e. Are there instances where part of a community does not fall into Category 3, but would ordinarily be recognized as an area of environmental justice concern?**

Response: The Agency cannot answer this question without more specificity or clarification on what is meant by ordinarily.

- 2. Regarding EJ Start, at page 2, continuing to page 3, your testimony indicates that an area qualifies as an EJ area (for either minority or income or both) based on a score of being twice the Illinois average.**

- a. Would you agree that this is a “bright line rule”? If not, please explain why not.**

Response: Yes, it is a “bright line rule”.

- b. Is drawing the line at twice the Illinois average somewhat arbitrary? If not, please explain why not.**

Response: In order to assess the potential for disproportionate impacts on an area, which is a foundational concept in EJ, the Illinois EPA determined that census block groups and areas within one mile of census blocks with twice the statewide average of minority and/or low-income would identify communities with potential for disproportionate impacts given the high percentage of low-income and/or minority persons.

- c. For instance, an area could be 1.9 times the Illinois average for minority**

and 1.9 times the Illinois average for low-income and not fall within Illinois EPA's classification of EJ, right?

Response: Theoretically yes. However, the Illinois EPA adds a one-mile buffer to each census block group that meets the criteria for an area of EJ concern, which minimizes the chance of failing to identify communities that are close to meeting the screening criteria but do not.

Could an area that is 1.9 times the Illinois average for minority and 1.9 times the Illinois average for low-income still be overburdened, as you use that term in your testimony?

Response: Yes.

d. Do you think that there can be a bright line rule that captures all the EJ areas and excludes all the non-EJ areas?

Response: No, which is why the Illinois EPA utilizes a screening criterion to identify areas of EJ concern.

i. If so, why?

ii. If not, why not?

Response: Determining whether a given area is an "EJ community" requires a more in-depth analysis. In fact, USEPA's EJ Screen explicitly states that it does not identify areas as EJ communities but rather gives interested parties data to perform analyses for the desired purpose such as a grant application.

e. Are there a lot of factors that affect whether an area is EJ? Are there factors beyond minority population and low-income population? If so, what are they?

Response: Potentially yes. USEPA has identified some potential factors here: <https://www.epa.gov/ejscreen/overview-environmental-indicators-ejscreen> and here: <https://www.epa.gov/ejscreen/overview-demographic-indicators-ejscreen>. The factors utilized depends on the study area and the purpose of the EJ determination. Furthermore, other factors not utilized by USEPA could conceivably be used if sufficient and accurate data was available.

3. On page 3, your testimony states that "USEPA uses a wide variety of information to 'paint a picture' of the area around a facility in the form of percentiles," correct?

Response: Yes.

a. Why did you include this discussion of how USEPA identifies EJ areas in your testimony?

Response: To contrast USEPA's approach, which does not identify EJ communities, with Illinois EPA's approach, which identifies areas of EJ concern.

- b. Did you include it for the purpose of suggesting that you do not agree with the way USEPA does it?**

Response: No. As stated previously, it was included to note that USEPA's EJ Screen does not identify EJ communities.

- c. What are some of the factors that USEPA considers to "paint a picture" of the area around a facility? Please list all that you are aware of.**

Response: The factors utilized by USEPA can be found here: <https://www.epa.gov/ejscreen/overview-environmental-indicators-ejscreen> and here: <https://www.epa.gov/ejscreen/overview-demographic-indicators-ejscreen>

- i. Why does Illinois not use those factors in determining what areas constitute areas of EJ concern? Please explain.**

Response: As discussed elsewhere, the Illinois EPA utilizes percent minority and low-income to perform a demographic screen and identify areas of EJ concern.

- ii. Does Illinois use any tool(s) to evaluate pollution burdens on Illinois communities? If so, please identify them and state which types of pollution – e.g., air, water, etc. – they address.**

Response: Yes, the Illinois EPA utilizes various tools available to analyze site-specific issues. Examples are USEPA EJ Screen and the Toxic Release Inventory.

- 4. On page 3 of your testimony, you use the term "overburdened" and indicate that USEPA identifies areas that are "overburdened". You go on to indicate that "overburdened" means "meeting the criteria of an EJ community."**

- a. Is it the Agency's position that EJ communities are overburdened?**

Response: Generally yes, EJ communities by definition are overburdened.

- b. If so, can you please identify what EJ communities are overburdened with?**

Response: No because that would require a community specific analysis.

- 5. On page 3 of your testimony, you state that "Prioritization [of] coal ash impoundments located in areas of environmental justice concern is appropriate given the potential impact of coal ash impoundments on overburdened**

communities.”

- a. What is the “potential impact” of coal ash impoundments in areas of environmental justice concern?**

Response: Any potential migration of pollution (air, water or land) offsite.

- b. Does IEPA have its own definition of “overburdened communities”?**

Response: No.

- c. The term “overburdened communities” does not appear in IEPA’s EJ policy, correct?**

Response: Correct.

- d. Did you rely on USEPA’s definition of overburdened communities?**

Response: The Illinois EPA did not rely on USEPA’s definition of overburdened communities for the purposes of the coal ash impoundment rulemaking in so far as the Agency is relying on its demographic screening tool EJ Start.

- e. USEPA considers factors beyond just minority and low-income in identifying overburdened communities, correct?**

Response: Yes.

- f. What other factors? Please list all that you are aware of.**

Response: USEPA defines “overburdened community” as minority, low-income, tribal, or indigenous populations or geographic locations in the United States that potentially experience disproportionate environmental harms and risks. This disproportionality can be as a result of greater vulnerability to environmental hazards, lack of opportunity for public participation, or other factors. Increased vulnerability may be attributable to an accumulation of negative or lack of positive environmental, health, economic, or social conditions within these populations or places. The term describes situations where multiple factors, including both environmental and socio-economic stressors, may act cumulatively to affect health and the environment and contribute to persistent environmental health disparities. <https://www.epa.gov/environmentaljustice/ej-2020-glossary>

- g. Are these the same factors you identified above when you listed the factors that USEPA consider to “paint a picture” of the area around a facility?**

Response: Potentially yes but USEPA’s definition of overburdened communities does not identify specific factors.

- h. Would you agree that it is appropriate to consider those factors?**

Response: It is unclear for what purpose the question refers to.

i. If not, why not?

6. The only way that the Proposed Rule prioritizes coal ash impoundments in EJ communities is through requiring submittal of the closure applications for impoundments in EJ communities to be first, right?

Response: Section 845.700(g) prioritizes closure, with Category 1 having the highest priority for closure and Category 7 having the lowest priority for closure. Category 3 includes CCR surface impoundments located in areas of EJ concern. Areas of environmental concern are not referenced outside of Subpart G: Closure and Post-Closure Care. (Agency Response)

a. The Coal Ash Pollution Prevention Act requires the prioritization of closure of impoundments in EJ communities that are required to close under Federal Law, right?

Response: Section 22.59(g)(9) requires the Agency to propose and the Board to adopt rules that specify a method to prioritize CCR surface impoundments required to close so that CCR surface impoundments with the highest risk to public health and the environment, and areas of environmental justice concern are given first priority. (Agency Response)

b. Is there anything limiting Illinois EPA from prioritizing coal ash ponds in EJ areas in a manner not specifically mandated by the Coal Ash Pollution Prevention Act?

Response: Regarding issuance of permits, Illinois EPA is limited by its statutory authority in the Act. This question would need to be narrowed for the Agency to provide a more informative answer. (Agency Response)

i. If so, what?

c. Is IEPA's EJ policy "evolutionary"?

Response: Yes.

i. What does it mean to be "evolutionary"?

Response: That the policy will be revised based on new information, procedures, etc.

ii. Would one way of being "evolutionary" be to go further than the Coal Ash Pollution Prevention Act's explicit mandates in prioritizing EJ communities?

Response: This question is beyond the scope of the rulemaking.

- d. Is one of the goals of Illinois EPA's EJ policy to be "responsive" to the communities it serves?**

Response: Yes.

- i. What does it mean to be "responsive to the communities it serves"?**

Response: Provide information, answer questions and resolve issues raised by community members and groups that concern EJ issues.

- ii. What does the "it" refer to in "it serves"? IEPA?**

Response: Yes.

- iii. And what "communities" does this refer to? EJ communities?**

Response: Communities that raise concerns or questions related to EJ issues.

- iv. Would one way of being responsive to the communities IEPA serves under the EJ policy be to close ash impoundments that EJ communities ask to be closed?**

Response: This question is beyond the scope of the rulemaking. Notwithstanding, the EJ policy is just that, a policy and not a law or regulation so inclusion of such a provision would be unenforceable.

- v. Would another way of being responsive to the communities IEPA serves under the EJ policy be to close by removal ash impoundments that EJ communities ask to be closed by removal?**

Response: This question is beyond the scope of the rulemaking.

- e. There are other ways of prioritizing coal ash impoundments in EJ areas, right?**

- i. Did IEPA consider other ways?**

- ii. If so, what ways?**

Response: The Illinois EPA prioritized coal ash impoundments in accordance with Public Act 101-171.

- f. Do you know if it is possible for coal plants to continue operating without coal ash impoundments?**

Response: That determination would be an economic decision which would need to be made by the

owner or operator. (Agency Response)

g. Could not a plant simply convert to dry ash handling?

Response: That determination would be an economic decision which would need to be made by the owner or operator. (Agency Response)

h. Would another way of prioritizing coal ash impoundments in EJ communities be to require all such impoundments to close?

Response: The Agency's statutory directive is to prioritize those surface impoundments required to close based on the highest risks to public health, the environment and areas of EJ concern, which is reflected in the proposed rules. (Agency Response)

i. Did IEPA consider complete closure of all coal ash impoundments in EJ communities as one way of prioritizing EJ communities? If so, please explain why this means of prioritization was not included in the Proposed Rule.

Response: No. Section 22.59(g)(9) requires the rules to prioritize CCR surface impoundments required to close under RCRA. (Agency Response)

7. Regarding proposed 35 Ill. Adm. Code 845.700(g)(1)(C):

a. What steps is IEPA going to take to ensure that the communities that make up Category 3 are notified of their status?

Response: The communities that are near a Category 3 CCR surface impoundment will be notified of the status of the impoundments on the owner or operators' publicly available internet site, since the category is required to be placed in the operating record. It is also required to be placed on the website as part of the pre-application public notification for the public meeting held by the owner or operator for any construction permit application as it is part of the documentation relied upon in making the tentative construction permit application. (Agency Response)

b. Where will this information be publicly available?

Response: It must be placed upon the publicly available internet site 30 days within placement in the operating record, or at least 14 days prior to the above mentioned pre-application public meeting. (Agency Response)

8. Regarding proposed 35 Ill. Adm. Code 845.700(g)(1)(C), what is the timeline for IEPA to make the determination that an area falls into Category 3 prioritization?

Response: In Section 845.700 (c), it states that beginning on the effective date of this

Part, the owner or operator of the CCR surface impoundments required to close under subsection (a) or electing to close under subsection (b) must immediately take steps to categorize the CCR surface impoundment pursuant to subsection (g) of this Section. (Agency Response)

9. Are you aware of the federal requirements for public participation, e.g., Section 7004 of RCRA (42 U.S.C. § 6974) and 40 C.F.R. § 239?

Response: The office of Community Relations in conjunction with the Bureau of Water handles public relations aspects of these programs. (Agency Response)

a. How do the Proposed Rules align with the federal rules?

Response: Section 22.59 of the Act requires that the Agency propose Part 845 to be as protective and comprehensive as Part 257. (Agency Response)

b. How does IEPA go above and beyond the federal rules?

Response: See above.

10. On page 3 of your testimony, you state “lack or opportunity for public participation” as one of the causes of the “disproportional environmental harms and risks” borne by areas of environmental justice concern.

a. Are you familiar with the Coal Ash Pollution Prevention Act’s mandate in 415 ILCS 5/22.59(g)(6) that the rules must “specify meaningful public participation procedures”?

Response: Yes.

i. What makes public participation meaningful?

Response: USEPA’s definition of “meaningful involvement” is instructive: “Potentially affected community residents have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health; the public's contribution can influence the regulatory agency's decision; the concerns of all participants involved will be considered in the decision-making process; the decision makers seek out and facilitate the involvement of those potentially affected.” <https://www.epa.gov/environmentaljustice/ej-2020-glossary>

ii. Would that include the owner or operator of a CCR facility putting out notices in non-English language when there is a significant population that does not speak English? If not, please explain.

Response: Yes.

- iii. **Would that also include a requirement for the Agency to put out notices of a public hearing in a non-English language when there is a significant population that does not speak English? If not, please explain.**

Response: Yes.

- iv. **Would that include making key documents available in non-English language when there is a significant population that does not speak English? If not, please explain.**

Response: Potentially yes depending on the scope and definition of “key documents” and translating technical documents can be problematic insofar as there may not be direct translations available for certain words or concepts among other issues. Notwithstanding, this could include plain language documents generated for the purpose of public outreach.

- v. **Would that include the public having access to documents supporting the permit application and supporting certifications and plans? If not, please explain.**

Response: Yes.

- vi. **Would that include giving the public a sufficient amount of time to review any permit application materials before a public meeting? If not, please explain.**

Response: It is difficult to quantify what amount of time is “sufficient” for any given member of the public considering varying degrees of knowledge and expertise regarding coal ash impoundments and the regulation thereof. The rules have established a process whereby the public engages in the process at an early point (pre-application) and then is give another opportunity to engage during the Agency application review.

- vii. **Would that include giving the public a sufficient amount of time to review any permit application materials before a pre-application public meeting? If not, please explain.**

Response: It is difficult to quantify what about of time is “sufficient” for any given member of the public considering varying degrees of knowledge and expertise regarding coal ash impoundments and the regulation thereof. The rules have

established a process whereby the public engages in the process at an early point (pre-application) and then is give another opportunity to engage during the Agency application review.

- b. Are you familiar with the legislature’s finding in the Coal Ash Pollution Prevention Act, at 415 ILCS 5/22.59(a)(5), that “meaningful public participation of State residents, especially vulnerable populations who may be affected by regulatory actions, is critical to ensure that environmental justice considerations are incorporated in the development of decision-making related to, and implementation of environmental laws and rulemaking that protects and improves the well-being of communities in the State that bear the disproportionate burdens imposed by environmental pollution”?**

Response: Yes.

- i. Why is ensuring meaningful public participation critical to ensure that EJ considerations are incorporated?**

Response: So that public input is received and considered by decisionmakers and incorporated into the decision-making process to the extent it is practical, appropriate and legally allowed.

- ii. What is the Agency doing to ensure that public participation is meaningful?**

Response: The activities that call for public participation have not yet begun.

WILLIAM E. BUSCHER

- 1. Page 1 of your testimony states “Since the early 1990s, new ash impoundments have been built with low permeability liners.”**
- a. What do you mean by “low permeability liners”?**

Response: Liners engineered to minimize movement of liquids from the impoundment.

- b. Could you please quantify the permeability of low-permeability liners in terms of hydraulic conductivity?**

Response: Liners built of compacted soil with a permeability of 1×10^{-7} cm/sec or a geomembrane membrane liner designed to impede flow.

applications?

Response: Construction permit applications filed pursuant to Section 845.220 must contain all the information necessary for the Agency to make an informed determination on the issuance of a permit. Each permit decision or determination must be made based on the information in the application pending before the Agency. Each permit decision is a separate action and must be made based on the information contained in the Agency record for that permit action, be it for new construction, corrective action, a modification of a previously permitted facility, or the renewal of a previously permitted construction activity.

Question for Lauren Hunt Martin

- 14. Explain what is meant by the language in Section 845.530(b)(3) "provide employees with safety data sheets"? Will inclusion of this information in required training program be adequate? What about posting them at the facility?**

Response: Current federal OSHA regulations, adopted for public employees by the State of Illinois in September 2009, require that safety data sheets be available to all employees that will be dealing with the chemicals that are the subject of the safety data sheet. The manner in which the facility makes those available to the employees is up to the individual facility.

Questions for Chris Pressnall

- 15. When will the Agency's Environmental Justice mapping tool be updated to reflect the 2020 census?**

Response: The Illinois EPA utilizes American Community Survey 5-year data, which is updated yearly. The Illinois EPA most recently updated EJ Start with 2019 data on July 9, 2020.

- 16. Is it possible that a facility could be defined as being within an EJ area but still be located greater than 1 mile from a residential home in a low income or minority area?**

Response: Yes.

Question for Melinda K. Shaw

17. For the publicly accessible internet site requirements in Section 845.810, you testify on page 7 that "[i]t was written to include all of the requirements of 40 CFR 257.107." Can a facility use the same webpage for both sets of information?

Response: The Agency intended the CCR website be dedicated to only the information required by 35 IAC 845 and should be clearly labeled as such. The Agency would propose the Board makes the following revision, "The owner or operator's website must be titled, 'Illinois CCR Rule Compliance Data and Information'".

Questions for Amy L. Zimmer

18. You testify that "The final cover system must be designed to accommodate settling and subsidence to minimize disruption of the integrity of the final cover system."
- a. Can you explain what causes settling and subsidence at a closed CCR impoundment?

Response: Any settling at a closed surface impoundment would be caused by loss of pore water as the impoundment gradually dewateres following installation of the final cover system. Subsidence could be caused by the location of the impoundment over previous areas of subsurface mining. The additional weight of the material within the impoundment could possibly cause collapse of a mine void. Identification of mine voids is required before a permit is issued, and structural stability of the impoundment in relation to subsidence is regulated by Illinois DNR. One of the primary reasons for a post-closure care period, is to monitor the closed impoundment for the potential development of settling, subsidence, or any other issue requiring maintenance, repair, or corrective action.

- b. How does this compare to settling and subsidence at a municipal solid waste landfill generally?

Response: Settling at a municipal solid waste landfill would generally be greater. This is due to the greater height and amount of the material and the fact that the material placed within the landfill is much more compactible. Therefore, settling of the surface of the landfill would be much greater compared to a CCR

surface impoundment. The risk of subsidence would be greater for the same reason.

19. You state on pages 15-16 of your testimony that: "Use of the property during the post-closure care period shall not disturb the cover, liner, the containment system, of [sic] the monitoring system unless necessary to comply with the requirements of this Part. Any other disturbance is allowed if the owner or operator demonstrates that it will not increase the potential threat of human health or the environment. The demonstration must be certified by a professional engineer."

a. Explain how the process for making such a demonstration will work and how long it would take to obtain Agency approval or a permit amendment?

Response: The owner or operator would need to submit a demonstration outlining the use of the property during the post-closure care period and the specifics of how the use would not disturb any of the outlined items. The post closure care plan and demonstration should include a description of any planned post closure usage for the property, along with any deed restrictions which will be recorded for the property. The plan must demonstrate how these activities on the property would be undertaken without disturbing the cover, liner, containment system or monitoring system. The initial written post-closure care plan must be submitted with the initial operating permit application. The approval of the initial post-closure care plan would come with the approval of the initial operating permit. An amendment to the post-closure care plan would require an amended operating permit modification application. The timeframe would follow that for other operating permits under this Part.

b. How will the process differ for changes submitted to the Agency within 60 days of implementation following an unanticipated need for revision?

Response: The process would not significantly differ under the process or timeframe.

20. Has the Agency considered any alternatives to a one-size-fits-all post-closure care period of 30 years?

Response: No.

Electronic Filing: Received, Clerk's Office 08/03/2020

A	B	C	D	E	F	G	H	I	J
1	Company Facility	Pond ID Number	Pond Description	Closure Complete	Post Closure Care Complete	Status	Close before July 31, 2021	Area of EJ Concern	Exceeds 620/GWPS
2	Ameren Venice	W1191050002-01	N. Pond	yes, Nov. 2012	no	Inactive Closed	see closure date	yes	yes has GMZ
3	Ameren Venice	W1191050002-02	S. Pond	yes, Nov. 2012	no	Inactive Closed	see closure date	yes	yes has GMZ
4	Ameren Hutsonville	W0330100003-01	Pond A	yes, Nov. 2016	no	Inactive	see closure date	no	yes has GMZ
5	Ameren Hutsonville	W0330100003-02	Pond B	no, removal Nov. 2016	no pond specific monitoring	Inactive	see closure date	no	unknown, no pond specific monitoring
6	Ameren Hutsonville	W0330100003-03	Pond C	no, removal Nov. 2016	no pond specific monitoring	Inactive	see closure date	no	unknown, no pond specific monitoring
7	Ameren Hutsonville	W0330100003-04	Pond D	yes, Jan. 2013	no	Inactive Closed	see closure date	no	yes
8	Ameren Hutsonville	W0330100003-05	Bottom Ash	no, removal Nov. 2016	no pond specific monitoring	Inactive	see closure date	no	unknown, no pond specific monitoring
9	Ameren Meredosia	W1370300005-01	Bottom Ash Pond	yes, Jan. 2019	no	Inactive	see closure date	no	yes has GMZ
10	Ameren Meredosia	W1370300005-02	Fly Ash	yes, Aug 2019	no	Inactive	see closure date	no	yes has GMZ
11	Ameren Meredosia	W1370300005-03	Old Ash Pond	no	no	Inactive	no	no	Not Fully Evaluated
12	CWLP City Water Light and Power	W1671200052-01	Lake Side Pond	no	no	Existing	no	yes	yes
13	CWLP City Water Light and Power	W1671200052-02	Dallman Pond	no	no	Existing	no	yes	yes
14	Baldwin Energy Center	W1578510001-01	Old East Fly Ash Pond	no	no	Existing	Likely	no	yes has GMZ
15	Visira Baldwin Energy Center	W1578510001-02	East Fly Ash Pond	no	no	Existing	Likely	no	yes has GMZ
16	Visira Baldwin Energy Center	W1578510001-03	West Fly Ash Pond	no	no	Existing	Likely	no	yes has GMZ
17	Visira Baldwin Energy Center	W1578510001-06	Bottom Ash Pond	no	no	Existing	no	no	yes
18	Visira Coffeen Station	W1350150004-01	Ash Pond 1	no	no	Existing	no	no	Not Fully Evaluated
19	Visira Coffeen Station	W1350150004-02	Ash Pond 2	no	no	Existing	Likely	no	yes has GMZ
20	Visira Coffeen Station	W1350150004-03	GMF Pond	no	no	Existing	no	no	Not Fully Evaluated
21	Visira Coffeen Station	W1350150004-04	GMF Recycle Pond	no	no	Existing	no	no	Not Fully Evaluated
22	Visira Duck Creek Station	W0578010001-01	Ash Pond No. 1	no	no	Existing	Likely	yes	yes has GMZ
23	Visira Duck Creek Station	W0578010001-02	Ash Pond No. 2	no	no	Existing	Likely	yes	yes has GMZ
24	Visira Duck Creek Station	W0578010001-03	Bottom Ash Basin	no	no	Existing	no	yes	Not Fully Evaluated
25	Visira Duck Creek Station	W0578010001-04	GMF Pond	no	no	Existing	no	yes	Not Fully Evaluated
26	Visira Duck Creek Station	W0578010001-05	GMF Recycle Pond	no	no	Existing	no	yes	Not Fully Evaluated
27	Visira Edwards Station	W1438050005-01	Ash Pond 1	no	no	Existing	no	no	Not Fully Evaluated
28	Visira Joppa Station	W1270100004-01	West Pond 1	no	no	Inactive	no	no	Not Fully Evaluated
29	Visira Joppa Station	W1270100004-02	East Ash Pond 2	no	no	Existing	no	no	Not Fully Evaluated
30	Visira Havana Station	W1250200004-01	East Ash Pond Cell 1	no	no	Existing	no	yes	Not Fully Evaluated
31	Visira Havana Station	W1250200004-02	East Ash Pond Cell 2	no	no	Existing	no	yes	Not Fully Evaluated
32	Visira Havana Station	W1250200004-03	East Ash Pond Cell 3	no	no	Existing	no	yes	Not Fully Evaluated
33	Visira Hennepin Station	W1550100002-01	West Ash Pond 1	no	no	Inactive	Likely	yes	yes has GMZ
34	Visira Hennepin Station	W1550100002-02	West Ash Pond 3	no	no	Inactive	Likely	yes	yes has GMZ
35	Visira Hennepin Station	W1550100002-03	West Secondary Ash Pond	no	no	Inactive	Likely	yes	yes has GMZ
36	Visira Hennepin Station	W1550100002-04	East Ash Pond 2	no	no	Inactive	Likely	yes	yes has GMZ
37	Visira Hennepin Station	W1550100002-05	East New Primary Pond	no	no	Existing	no	yes	Not Fully Evaluated
38	Visira Hennepin Station	W1550100002-07	East Pond 4	no	no	Existing	Likely	yes	yes has GMZ
39	Visira Kincaid Generation	W0218140002-01	Ash Pond	no	no	Existing	no	no	Not Fully Evaluated
40	Visira Newton Station	W0798070001-01	Primary Ash Pond	no	no	Existing	no	no	yes
41	Visira Vermilion Station	W1838000002-01	North Pond Cell 1 & 2	no	no	Inactive	no	no	yes
42	Visira Vermilion Station	W1838000002-03	Old East Pond	no	no	Inactive	no	no	yes
43	Visira Vermilion Station	W1838000002-04	New East Pond Cell 1 & 2	no	no	Inactive	no	no	yes
44	CTI Development Wood River Station	W1190200004-01	West Ash Pond 1	no	no	Inactive	Likely	yes	yes has GMZ
45	CTI Development Wood River Station	W1190200004-02	West Ash Pond 2W	no	no	Inactive	Likely	yes	yes has GMZ
46	CTI Development Wood River Station	W1190200004-03	West Ash Pond 2E	no	no	Inactive	Likely	yes	yes has GMZ
47	CTI Development Wood River Station	W1190200004-05	Pond	no	no	Existing	no	yes	Not Fully Evaluated
48	Grand Tower	W0770400003-01	Ash Pond	no	no	Inactive	Likely	no	yes has GMZ
49	NRG Will County Station	W1978100011-01	Pond 1 North	no	no	Inactive	no	no	yes VN/CCA/GMZ
50	NRG Will County Station	W1978100011-02	Pond 3 South	no	no	Existing	no	no	yes VN/CCA/GMZ
51	NRG Will County Station	W1978100011-03	Pond 2 South	no	no	Existing	no	no	yes VN/CCA/GMZ
52	NRG Will County Station	W1978100011-04	Pond 1 South	no	no	Inactive	no	no	yes VN/CCA/GMZ

Electronic Filing: Received, Clerk's Office 3/18/2022

	A	B	C	D	E	F	G	H	I	J
1	Company	Facility	Pond ID Number	Pond Description	Closure Complete	Post Closure Care Complete	Status	Close before July 31, 2021	Area of EJ Concern	Exceeds 620/GWPS yes VN/CCA
53	NRG	Waukegan Station	W0971900021-01	East Pond	no	no	Existing	no	yes	yes VN/CCA
54	NRG	Waukegan Station	W0971900021-02	West Pond	no	no	Existing	no	yes	yes VN/CCA
55	NRG	Waukegan Station	W0971900021-03	Old Pond	no	no	Existing	no	yes	Not Fully Evaluated
56	NRG	Powerton	W1798010008-01	Ash Basin	no	no	Existing	no	no	yes VN/CCA/GMZ
57	NRG	Powerton	W1798010008-02	Sec. Ash Basin	no	no	Existing	no	no	yes VN/CCA/GMZ
58	NRG	Powerton	W1798010008-03	Metal Cleaning Basin	no	no	Existing	no	no	yes VN/CCA/GMZ
59	NRG	Powerton	W1798010008-04	Bypass Basin	no	no	Existing	no	no	yes VN/CCA/GMZ
60	NRG	Powerton	W1798010008-05	Former Ash Basin	no	no	Inactive	no	no	Not Fully Evaluated
61	NRG	Joliet 29	W1970450047-01	Pond 1	no	no	Inactive	no	yes	yes VN/CCA/GMZ
62	NRG	Joliet 29	W1970450047-02	Pond 2	no	no	Existing	no	yes	yes VN/CCA/GMZ
63	NRG	Joliet 29	W1970450047-03	Pond 3	no	no	Inactive	no	yes	yes VN/CCA/GMZ
64	NRG	Joliet 9	W1970450046-01	Lincoln Stone Quarry	no	no	Existing	no	yes	yes
65	Prairie Power	Prairie Power Inc	W1490650005-01	N. Pond	yes, Nov. 2014	no	Inactive Closed	see closure date	no	yes has GMZ
66	SIPC	Southern Illinois Power Co-op	W1998600002-01	Pond 1	no	no	Existing	no	no	unknown, no pond specific monitoring
67	SIPC	Southern Illinois Power Co-op	W1998600002-02	Pond 2	no	no	Existing	no	no	unknown, no pond specific monitoring
68	SIPC	Southern Illinois Power Co-op	W1998600002-03	Pond 4	no	no	Existing	no	no	unknown, no pond specific monitoring
69	SIPC	Southern Illinois Power Co-op	W1998600002-04	Pond A-1	no, removal Nov. 2017(may	not compliant W/GWPS	Inactive	no	no	unknown, no pond specific monitoring
70	SIPC	Southern Illinois Power Co-op	W1998600002-05	Pond B-3	no, removal Nov. 2017	not compliant W/GWPS	Existing	no	no	unknown, no pond specific monitoring
71	SIPC	Southern Illinois Power Co-op	W1998600002-06	South Fly Ash Pond	no	no	Existing	no	no	unknown, no pond specific monitoring
72	SIPC	Southern Illinois Power Co-op	W1998600002-07	Pond 3	no	no	Existing	no	no	unknown, no pond specific monitoring
73	SIPC	Southern Illinois Power Co-op	W1998600002-09	Pond 6	no	no	Existing	no	no	unknown, no pond specific monitoring
74	SIPC	Southern Illinois Power Co-op	W1998600002-10	Emergy Pond	no	no	Existing	Likely	no	Yes, GMZ application