

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by KWAME RAOUL, Attorney General)	
of the State of Illinois,)	
)	
Complainant,)	
)	PCB No. 25 –
v.)	(Enforcement – Land)
)	
CTI DEVELOPMENT, LLC, a Delaware limited)	
liability company,)	
)	
Respondent.)	

NOTICE OF FILING

TO: See attached service list (VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Complaint, a copy of which is attached and hereby served upon you. **You may be required to answer the charges of the Complaint at a hearing before the Board, at a date set by the Board.**

Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the clerk's office, or an attorney.

NOTIFICATION - YOU ARE HEREBY NOTIFIED that financing may be available through the Illinois Environmental Facilities Financing Act [20 ILCS 3515/1 *et seq.*] to correct the alleged violations.

Respectfully submitted,

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

By: /s/ Kevin D. Bonin
Kevin D. Bonin, #6294877
Assistant Attorney General
500 S. Second Street
Springfield, IL 62701
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Service List

For the Respondent

CTI Development, LLC
c/o Northwest Registered Agent Service, Inc.
2501 Chatham Road, Suite N
Springfield, IL 62704
(via Certified Mail)

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, complains of Respondent, CTI DEVELOPMENT, LLC, a Delaware limited liability company, as follows:

COUNT I
FAILURE TO SUBMIT CONSTRUCTION PERMIT APPLICATION
FOR CLOSURE OR RETROFIT OF CCR SURFACE IMPOUNDMENTS

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 and at the request of the Illinois Environmental Protection Agency (“Illinois EPA”).

2. Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2022), and is charged, *inter alia*, with the duty of enforcing the Act.

3. 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 (2022), and is charged, *inter alia*, with the duty of promulgating standards and regulations under the Act.

4. Respondent, CTI DEVELOPMENT, LLC, is a Delaware limited liability company in good standing and authorized to do business in the State of Illinois by the Illinois Secretary of State.

5. Respondent is the owner of the Wood River Power Station, a former coal fired power plant located at 1 Chessen Lane, Alton, Madison County, Illinois (“Facility”). As of the date of filing of this Complaint, the Facility is located in an area of Environmental Justice (“EJ”) concern as identified using Illinois EPA EJ Start.

6. The Facility is located within one mile of a census block group where the number of low-income persons is twice the statewide average.

7. The Facility comprises, *inter alia*, four surface impoundments: Primary East Ash Pond and West Ash Ponds 1, 2E, and 2W.

8. West Ash Ponds 1, 2E, and 2W were commissioned in 1997.

9. Primary East Ash Pond was commissioned in 2006.

10. On or about June 1, 2016, the former owner and operator of the Facility, Dynegy Midwest Generation, LLC, ceased power generation operations at the Facility.

11. Between 1997 and 2016, at times better known to Respondent, fly ash, bottom ash, boiler slag, and/or flue gas desulfurization materials generated from the burning of coal were disposed of in Primary East Ash Pond and West Ash Ponds 1, 2E, and 2W.

12. On or about November 28, 2016, Dynegy submitted a closure plan for the West Ash Complex to Illinois EPA.

13. On or about May 25, 2017, Illinois EPA approved Dynegy’s closure plan for the West Ash Complex, as revised by addenda dated April 28, 2017, and May 18, 2017, pursuant to Section 620.250 of the Board’ regulations, 35 Ill. Adm. Code 620.250.

14. On July 30, 2019, Governor JB Pritzker signed into law Public Act 101-171, which became effective immediately and amended the Act to create, *inter alia*, Section 22.59 of the Act, 415 ILCS 5/22.59 (2022).

15. On or about August 30, 2019, Respondent acquired ownership of the Facility.

16. On April 15, 2021, the Board adopted Part 845 of the Board's regulations, 35 Ill. Adm. Code Part 845. On April 21, 2021, Part 845 of the Board's regulations became effective.

17. On or about May 2, 2023, Respondent submitted a closure plan for the Primary East Ash Pond to Illinois EPA.

18. At the time of the filing of the Complaint, Respondent has not submitted an application to Illinois EPA for a construction permit for the closure of Primary East Ash Pond or West Ash Ponds 1, 2E, and 2W.

19. Section 22.59(b)(2) of the Act, 415 ILCS 5/22.59(b)(2) (2022), provides as follows:

(b) No person shall:

* * *

(2) construct, install, modify, operate, or close any CCR surface impoundment without a permit granted by the Agency, or so as to violate any conditions imposed by such permit, any provision of this Section or any regulations or standards adopted by the Board under this Section;

20. Section 3.315 of the Act, 415 ILCS 5/3.315 (2022), provides as follows:

"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.

21. Respondent, a limited liability company, is a "person," as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2022).

22. Section 3.143 of the Act, 415 ILCS 5/3.143 (2022), provides as follows:

“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.

23. Section 3.142 of the Act, 415 ILCS 5/3.142 (2022), provides as follows:

“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.

24. Primary East Ash Pond and West Ash Ponds 1, 2E, and 2W contain “CCR,” as that term is defined in Section 3.142 of the Act, 415 ILCS 5/3.142 (2022).

25. Primary East Ash Pond and West Ash Ponds 1, 2E, and 2W are “CCR surface impoundments,” as that term is defined in Section 3.143 of the Act, 415 ILCS 5/3.143 (2022).

26. Section 845.120 of the Board’s regulations, 35 Ill. Adm. Code 845.120, provides, in pertinent part, as follows:

* * *

“Operator” means the person or persons responsible for the overall operation of a CCR surface impoundment.

* * *

“Owner” means the person or persons who own a CCR surface impoundment or part of a CCR surface impoundment.

* * *

27. Respondent is the “owner” and/or “operator” of Primary East Ash Pond and West Ash Ponds 1, 2E, and 2W, as those terms are defined in Section 845.120 of the Board’s regulations, 35 Ill. Adm. Code 845.120.

28. Section 845.400(f) of the Board’s regulations, 35 Ill. Adm. Code 845.400(f), provides as follows:

f) A CCR surface impoundment is considered to be an unlined CCR

surface impoundment if either:

- 1) The owner or operator of the CCR surface impoundment determines that the CCR surface impoundment is not constructed with a liner that meets the requirements of subsection (b) or (c); or
- 2) The owner or operator of the CCR surface impoundment fails to document whether the CCR surface impoundment was constructed with a liner that meets the requirements of subsection (b) or (c).

29. Section 845.700 of the Board's regulations, 35 Ill. Adm. Code 845.700, provides, in pertinent part, as follows:

* * *

- b) **Required Closure or Retrofit.** The owner or operator of an existing unlined CCR surface impoundment, as determined under Section 845.400(f), must stop placing CCR and non-CCR waste streams into that CCR surface impoundment and either retrofit or close the CCR surface impoundment in accordance with the requirements of Subpart G. . . .

* * *

- g) **Closure Prioritization**

- 1) The owner or operator of a CCR surface impoundment required to close under this Section must assign the CCR surface impoundment to one of the following categories. Category 1 has the highest priority for closure. Category 7 has the lowest priority for closure.

* * *

- C) Category 3 includes CCR surface impoundments located in areas of environmental justice concern, as determined by the Agency under subsection (g)(6).

* * *

- 6) For purposes of, and only for, this Part, areas of environmental justice concern are identified as any area that meets either of the following:

- A) Any area within one mile of a census block group where the number of low-income persons is twice the statewide average, where low income means the number or percent of a census block group's population in households where the household income is less than or equal to twice the federal poverty level; . . .

* * *

- h) Application Schedule

- 1) Category 1, Category 2, Category 3, and Category 4 CCR surface impoundment owners or operators must submit either a construction permit application containing a final closure plan or a construction permit application to retrofit the CCR surface impoundment in accordance with the requirements of this Part by February 1, 2022.

30. Respondent failed to document whether Primary East Ash Pond and West Ash Ponds 1, 2E, and 2W were constructed with a liner that meets the requirements of Section 845.400(b) or (c) of the Board's regulations, 35 Ill. Adm. Code 845.400(b), (c).

31. Primary East Ash Pond and West Ash Ponds 1, 2E, and 2W are unlined CCR surface impoundments as defined under Section 845.400(f) of the Board's regulations, 35 Ill. Adm. Code 845.400(f).

32. Pursuant to Section 845.700(b) of the Board's regulations, 35 Ill. Adm. Code 845.700(b), Respondent is required to either retrofit or close Primary East Ash Pond and West Ash Ponds 1, 2E, and 2W in accordance with Subpart G of Part 845 of the Board's regulations.

33. Primary East Ash Pond and West Ash Ponds 1, 2E, and 2W are located in an area of environmental justice concern, as defined in Section 845.700(g)(6)(A) of the Board's regulations, 35 Ill. Adm. Code 845.700(g)(6)(A), and Primary East Ash Pond and West Ash Ponds 1, 2E, and 2W are therefore Category 3 CCR surface impoundments.

34. As an owner of Category 3 CCR surface impoundments required to close pursuant

to Section 845.700(b) of the Board's regulations, 35 Ill. Adm. Code 845.700(b), Respondent was required to submit a construction permit application for the final closure or retrofit of Primary East Ash Pond and West Ash Ponds 1, 2E, and 2W by February 1, 2022.

35. By failing to submit a construction permit application for the final closure or retrofit of Primary East Ash Pond and West Ash Ponds 1, 2E, and 2W by February 1, 2022, Respondent violated Section 845.700(h)(1) of the Board's regulations, 35 Ill. Adm. Code 845.700(h)(1).

36. By constructing, installing, modifying, operating, or closing a CCR surface impoundment so as to violate Section 845.700(h)(1) of the Board's regulations, Respondent violated Section 22.59(b)(2) of the Act, 415 ILCS 5/22.59(b)(2) (2022).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, CTI DEVELOPMENT, LLC, a Delaware limited liability company, on Count I:

A. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;

B. Finding that Respondent violated the Act and Board regulations as alleged herein;

C. Ordering Respondent to cease and desist from any further violations of the Act and Board regulations;

D. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and Board regulations, and an additional Ten Thousand Dollars (\$10,000.00) for each day each violation continued, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2022);

E. Ordering Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415

ILCS 5/42(f) (2022), including any attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and

F. Granting such other relief as the Board may deem appropriate.

COUNT II
FAILURE TO PREPARE AND SUBMIT ANNUAL CONSOLIDATED REPORTS

1-27. Complainant re-alleges and incorporates by reference herein paragraphs 1 through 27 of Count I as paragraphs 1 through 27 of this Count II.

28. On or before January 31, 2022, Respondent failed to prepare an annual consolidated report for Primary East Ash Pond and West Ash Ponds 1, 2E, and 2W for calendar year 2021.

29. On or about October 3, 2022, Respondent submitted an annual consolidated report for Primary East Ash Pond and West Ash Ponds 1, 2E, and 2W for calendar year 2021 to Illinois EPA.

30. At all times relevant to the Complaint, Respondent failed to prepare annual consolidated reports for Primary East Ash Pond and West Ash Ponds 1, 2E, and 2W for calendar years 2022 and 2023.

31. At all times relevant to the Complaint, Respondent failed to submit annual consolidated reports for Primary East Ash Pond and West Ash Ponds 1, 2E, and 2W for calendar years 2022 and 2023 to Illinois EPA.

32. Section 845.550(a) and (b) of the Board's regulations, 35 Ill. Adm. Code 845.550(a), (b), provides as follows:

- a) By January 31 of each year, the owner or operator of the CCR surface impoundment must prepare an annual consolidated report for the preceding calendar year. . . .

* * *

- b) The owner or operator of the CCR surface impoundment must submit the annual consolidated report to the Agency in addition to placing the annual consolidated report in the facility's operating record as required by Section 845.800(d)(14).

33. By failing to timely prepare an annual consolidated report for calendar year 2021 on or before January 31, 2022, Respondent violated Section 845.550(a) of the Board's regulations, 35 Ill. Adm. Code 845.550(a).

34. By failing to timely prepare an annual consolidated report for calendar year 2022 on or before January 31, 2023, Respondent violated Section 845.550(a) of the Board's regulations, 35 Ill. Adm. Code 845.550(a).

35. By failing to timely prepare an annual consolidated report for calendar year 2023 on or before January 31, 2024, Respondent violated Section 845.550(a) of the Board's regulations, 35 Ill. Adm. Code 845.550(a).

36. By failing to timely submit an annual consolidated report for calendar year 2021 to Illinois EPA on or before January 31, 2022, Respondent violated Section 845.550(b) of the Board's regulations, 35 Ill. Adm. Code 845.550(b).

37. By failing to submit annual consolidated reports for calendar years 2022 and 2023 to Illinois EPA, Respondent violated Section 845.550(b) of the Board's regulations, 35 Ill. Adm. Code 845.550(b).

38. By constructing, installing, modifying, operating, or closing a CCR surface impoundment so as to violate Section 845.550(a) and (b) of the Board's regulations, Respondent violated Section 22.59(b)(2) of the Act, 415 ILCS 5/22.59(b)(2) (2022).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, CTI DEVELOPMENT, LLC, a

Delaware limited liability company, on Count II:

- A. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
- B. Finding that Respondent violated the Act and Board regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and Board regulations;
- D. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and Board regulations, and an additional Ten Thousand Dollars (\$10,000.00) for each day each violation continued, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2022);
- E. Ordering Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2022), including any attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and
- F. Granting such other relief as the Board may deem appropriate.

COUNT III
FAILURE TO SUBMIT COST ESTIMATES

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.

2-27. Complainant re-alleges and incorporates by reference herein paragraphs 2 through 27 of Count I as paragraphs 2 through 27 of this Count III.

28. On July 16, 2021, Illinois EPA sent a letter to Respondent requesting that Respondent submit cost estimates to Illinois EPA, as required by Section 845.930 of the Board's regulations, 35 Ill. Adm. Code 845.930.

29. At all times relevant to the Complaint, Respondent failed to submit to Illinois EPA

written cost estimates for the total costs for closure and post-closure care of the Primary East Ash Pond or the West Ash Complex.

30. At all times relevant to the Complaint, Respondent failed to submit to Illinois EPA written cost estimates for preliminary corrective action costs for the Primary East Ash Pond or the West Ash Complex.

31. At all times relevant to the Complaint, Respondent failed to submit to Illinois EPA written cost estimates for the total costs of the corrective action plan for the remediation of releases from the Primary East Ash Pond or the West Ash Complex.

32. Section 845.930(a) of the Board's regulations, 35 Ill. Adm. Code 845.930(a), provides as follows:

- a) The owner or operator must prepare and submit to the Agency, for approval, written cost estimates for:
 - 1) The total costs for closure and post-closure care;
 - 2) Preliminary corrective action costs; and
 - 3) The total costs of the corrective action plan for remediation of any releases from a CCR surface impoundment.

33. By failing to submit written cost estimates to Illinois EPA for the total costs for closure and post-closure care of Primary East Ash Pond or the West Ash Complex, Respondent violated Section 845.930(a) of the Board's regulations, 35 Ill. Adm. Code 845.930(a).

34. By failing to submit written cost estimates to Illinois EPA for the preliminary corrective actions costs for Primary East Ash Pond or the West Ash Complex, Respondent violated Section 845.930(a) of the Board's regulations, 35 Ill. Adm. Code 845.930(a).

35. By failing to submit written cost estimates to Illinois EPA for the total costs of the corrective action plan for the remediation of releases from Primary East Ash Pond or the West Ash

Complex, Respondent violated Section 845.930(a) of the Board's regulations, 35 Ill. Adm. Code 845.930(a).

36. By constructing, installing, modifying, operating, or closing a CCR surface impoundment so as to violate Section 845.930(a) of the Board's regulations, Respondent violated Section 22.59(b)(2) of the Act, 415 ILCS 5/22.59(b)(2) (2022).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, CTI DEVELOPMENT, LLC, a Delaware limited liability company, on Count III:

A. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;

B. Finding that Respondent violated the Act and Board regulations as alleged herein;

C. Ordering Respondent to cease and desist from any further violations of the Act and Board regulations;

D. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and Board regulations, and an additional Ten Thousand Dollars (\$10,000.00) for each day each violation continued, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2022);

E. Ordering Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2022), including any attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and

F. Granting such other relief as the Board may deem appropriate.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
by KWAME RAOUL, Attorney General
of the State of Illinois

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

BY: /s/ Rachel R. Medina
RACHEL R. MEDINA, Chief
ARDC #6297171
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CERTIFICATE OF SERVICE

I, Cathy Formigoni, certify that on the 30th day of October, 2024, I caused to be served by certified mail the foregoing **Notice of Filing** and **Complaint** to the parties listed below:

For the Respondent

CTI Development, LLC
c/o Northwest Registered Agent Service, Inc.
2501 Chatham Road, Suite N
Springfield, IL 62704

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Certificate of Service 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 she verily believes the same to be true.

/s/ Cathy Formigoni
CATHY FORMIGONI
Paralegal
500 South 2nd Street
Springfield, Illinois 62701
cathy.formigoni@ilag.gov