

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

**SIERRA CLUB, PRAIRIE RIVERS
NETWORK, and NATIONAL ASSOCIATION
FOR THE ADVANCEMENT OF COLORED
PEOPLE,**

Complainants,

V.

**CITY OF SPRINGFIELD, OFFICE OF
PUBLIC UTILITIES d/b/a CITY WATER,
LIGHT AND POWER,**

Respondent.

PCB 18-11
(Citizen Enforcement – Water)

NOTICE OF FILING

To: Don Brown, Clerk
Illinois Pollution Control Board
60 E. Van Buren St., Ste. 630
Chicago, Illinois 60605

Please take notice that today I have electronically filed with the Office of the Clerk of the Illinois Pollution Control Board **THE CITY OF SPRINGFIELD, OFFICE OF PUBLIC UTILITIES d/b/a CITY WATER, LIGHT AND POWER'S MOTION TO BOARD PRELIMINARY TO HEARING**, which is attached and copies of which are herewith served upon you.

Respectfully submitted,

THE CITY OF SPRINGFIELD,
a municipal corporation

Deborah J. Williams

Dated: July 23, 2025

By:

One of its Attorneys

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)	
)	
)	
Respondent.)	
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**THE CITY OF SPRINGFIELD, OFFICE OF PUBLIC UTILITIES d/b/a CITY WATER,
LIGHT AND POWER’S MOTION TO BOARD PRELIMINARY TO HEARING TO
CLARIFY THE SCOPE OF AVAILABLE REMEDIES**

1. NOW COMES Respondent, the City of Springfield, Office of Public Utilities (the “City”) d/b/a City Water, Light and Power (“CWLP”), by and through its counsel and pursuant to 35 Ill. Adm. Code 101.508, and submits this Motion to Board Preliminary to Hearing to Clarify the Scope of Available Remedies. CWLP respectfully requests that the Board order that CWLP’s violations of Class I groundwater protection standards for boron, sulfate, and total dissolved solids as determined in the Board’s September 7, 2023 Order are wholly past and moot violations for which injunctive relief is not available, therefore limiting Complaints to declaratory relief and penalties. As such, the Board and/or its Hearing Officer should exclude any testimony or evidence at the upcoming remedy hearing related to Complaints’ requested injunctive relief or those alleged violations occurring after March 28, 2025. In support thereof, CWLP states as follows.

2. Pursuant to 35 Ill. Adm. Code 101.508, a party may move the Board for a ruling when “a party desires the Board to rule on [a motion] before hearing.” The motion “should be filed at least 21 days prior to the regularly scheduled Board meeting before the noticed hearing date.” *Id.* While this proceeding is moving toward a hearing on remedy, a remedy hearing date has not yet been set. Therefore, this motion is timely.

I. Relevant Procedural Background

3. On September 27, 2017, Complainants Sierra Club, Prairie Rivers Network (“Prairie Rivers”) and the National Association for the Advancement of Colored People (“NAACP”) filed a single-count Complaint with the Illinois Pollution Control Board (“Board”) alleging that groundwater contamination has and continues to cause violations of Sections 12(a) and 12(d) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/12(a) and(d), and Sections 620.115, 620.301(a), and 620.405 of the Board’s regulations. 35 Ill. Adm. Code 620.115, 620.301(a), 620.405. Specifically, Complainants alleged that groundwater monitoring wells (AP-1, AP-1R, AP-2, AP-2R, AP-3, and AW-3)¹ at CWLP’s Dallman Station showed “levels of arsenic, boron, iron, lead, manganese, sulfate, and total dissolved solids that exceed Illinois Groundwater Quality Standards.” Complaint ¶¶ 3, 8 (Sept. 27, 2017). Complainants alleged that the above exceedances are the sole cause of water pollution in violation of 415 ILCS 5/12(a) and (d).

4. Complainants filed an Amended Complaint on April 19, 2019, and an Errata to the Amended Complaint on June 24, 2019. In the Amended Complaint, Complainants removed “any reference in its initial Complaint to exceedances of Illinois Class I and Class II Groundwater

¹ These wells are included in CWLP’s groundwater monitoring network for its surface impoundments under 40 C.F.R. Part 257 and 35 Ill. Adm. Code Part 845. See <https://www.cwlp.com/CCRCompliance.aspx> and <https://www.cwlp.com/IllinoisCCRCompliance.aspx>.

Standards that were detected at Monitoring Wells AP-4 and AP-5,” and removed “all claims relating to contamination that is exclusively from the permitted FGD landfill.” Complainants’ Unopposed Motion for Leave to File Amended Complaint ¶ 6 (Apr. 19, 2019).

5. CWLP’s Amended Answer and Affirmative Defenses were filed on July 5, 2019. Complainants’ Reply to Respondent’s Affirmative Defenses to the Amended Complaint was filed on September 16, 2019.

6. The Complaint and Amended Complaint request three types of relief: (1) declaratory relief, seeking an order from the Board declaring that CWLP “has violated the [Act’s] prohibitions on groundwater pollution at its Dallman Station”; (2) civil penalties pursuant to 415 ILCS 5/42; and (3) injunctive relief, purportedly pursuant to 415 ILCS 5/33, seeking an order directing CWLP to (i) “[c]ease and desist from causing or threatening to cause water pollution,” (ii) “[m]odify its coal ash and coal combustion waste disposal and storage practices so as to avoid future groundwater contamination,” and (iii) “[r]emediate the contaminated groundwater so that it meets applicable Illinois Groundwater Quality Standards (GQSs).” Complaint at 11; *see also* Amended Complaint ¶ 16 (Apr. 19, 2019).

7. Complainants filed a Motion for Partial Summary Judgment on the issue of liability on January 29, 2020. CWLP filed its own Motion for Summary Judgment on the issue of remedy on the same date. Responses to the cross-motions were filed on February 13, 2020, and February 27, 2020, respectively. Complainants also filed a motion for permission to file a Reply to the CWLP’s Response. All motions were denied. *See* PCB 2018-11, Interim Opinion and Order of the Board at 31–32 (June 17, 2021).

8. On June 24, 2022, Complainants filed their “Renewed” Motion for Summary Judgment regarding the remaining issues of material fact and questions of law prior to the Board’s

final decision on the issue of liability. In their motion, Complainants included a table listing exceedances of the applicable Part 620 Class I groundwater protection standards from the designated wells for the period of May 2018 through March 2022.

9. In response, on July 25, 2022, CWLP argued that any alleged exceedances of those Part 620 groundwater protection standards after April 21, 2021, were improper because 35 Ill. Adm. Code Part 845 (“Part 845”) became effective on that date, making CWLP no longer subject to the Part 620 Class I groundwater protection standards for constituents regulated by Part 845. CWLP asserted that this reflected the Illinois Environmental Protection Agency’s intent in proposing Part 845 groundwater protections standards that differed from those in Part 620.

10. On September 7, 2023, the Board granted Complainants’ Motion for Summary Judgment on liability as to certain remaining allegations from the Amended Complaint. *See generally* PCB 2018-11, Interim Opinion and Order (Sept. 7, 2023). Specifically, the Board found violations of the Act and groundwater regulations “for the discharge of boron, sulfate, and [total dissolved solids]. Those discharges occurred at monitoring wells AP-1R, AP-2, AP-2R, and AP-3.” *Id.* at 9.

11. The Board found that “[w]hile the administrative record in Docket R20-19 cited by CWLP may show IEPA’s intention for Part 620 standards to not apply during the active life of a CCR impoundment, the Board did not codify the Agency’s intent as an exemption in Part 845.” *Id.* at 8. Therefore, “the plain language of the Part 845 rules does not establish an exemption from Part 620 standards,” and CWLP remained liable for violations of the Part 620 standards even after Part 845 effective date. *Id.* The Board further noted:

[T]he complaint and amended complaint do not specify a duration of the violations. While the Citizen Groups did include monitoring results after April 2021 in their motion, they did not argue the significance of the monitoring results other than noting that they show continued exceedances. Further, both the complaint as well

as the amended complaint allege when the violations began (June 1, 2010), but they offer no end date.

Id.

12. Following the Board's 2023 Interim Opinion and Order, which resolved the question of CWLP's liability as to Class I exceedances of boron, sulfate and total dissolved solids, the proceeding moved to the remedy stage. After settlement negotiations dissolved, a hearing on remedy is imminent following expert discovery.

II. CWLP'S MOTION TO THE BOARD PRELIMINARY TO HEARING

13. CWLP respectfully requests that the Board enter an Order preliminary to hearing clarifying the scope of available remedies by finding the following: (1) CWLP's violations of Sections 12(a) and 12(d) of the Act based on exceedances of Part 620's Class I groundwater protection standards for boron, sulfate, and total dissolved solids ceased, at the very latest, on March 28, 2025,² due to the Board's recent amendment to Part 620; (2) Given that exceedances of boron, sulfate, and total dissolved solids have ceased as of March 28, 2025, the remedies available to Complainants are narrowed to declaratory relief and penalties, as Complainants allege only wholly past violations, which are now moot and for which injunctive relief is not available; and (3) Based on such a finding, the Board and/or its Hearing Officer will prohibit admission of any evidence related to exceedances of boron, sulfate, and total dissolved solids, or any other parameter for which there is a standard in Part 845, occurring after March 28, 2025, in addition to any

² While this Motion limits its applicability to the Board's liability finding for boron, sulfate and total dissolved solids, in the event Complainants attempt to introduce evidence related to other alleged exceedances – for example related to arsenic, chromium, or lead, as alleged in the Amended Complaint – the arguments in the Motion apply as if fully argued herein. The groundwater and these constituents are regulated by Part 845, not Part 620, and following the Board's amendments to Part 620, there is no ambiguity that any alleged exceedances of Part 620 Class I groundwater standards are wholly past and not ongoing.

evidence supporting a request for a cease-and-desist order or other injunctive relief—CWLP respectfully requests that only evidence related to the Complainants' requested declaratory relief and penalties be permitted at the remedy hearing.

A. CWLP's violations of Part 620's Class I groundwater protection standards for boron, sulfate, and total dissolved solids are wholly past violations.

14. Relevant to this motion, Complainants alleged that groundwater monitoring wells AP-1, AP-1R, AP-2, AP-2R, and AP-3 at CWLP's Dallman Station show levels of boron, sulfate, and total dissolved solids that exceed Part 620's Class I groundwater protection standards. Amended Complaint ¶ 28. Complainants have not provided an end date to these alleged violations. *See* PCB 18-11, Interim Opinion and Order at 8. On September 7, 2023, the Board found liability for those above-described discharges causing exceedances of the Class I groundwater protection standards for boron, sulfate and total dissolved solids.

15. Since the filing of the Amended Complaint and the issuance of the Board's Interim Opinion and Order on September 7, 2023, Part 620 has been amended to classify groundwater subject to Part 845 as Class IV groundwater. *See generally* R22-018; *see also* 35 Ill. Adm. Code 620.240(h).

16. It is undisputed that the groundwater in question is subject to Part 845 and therefore classified as Class IV groundwater.³

17. After Part 620's amendment, Class IV's groundwater quality standards indicate that for groundwater regulated by Part 845, the groundwater protection standard under Section 845.600 must not be exceeded for any constituent with a Section 845.600 standard. For a constituent that

³As indicated in footnote 1, the wells identified in the Board's Interim Opinion and Order on liability are included CWLP's Part 845 groundwater monitoring network. *See, e.g.,* <https://www.cwlp.com/IllinoisCCRCCompliance.aspx> (e.g., Annual Consolidated Report 2024).

does not have a Section 845.600 standard, the groundwater quality standards of Sections 620.410, 620.420, 620.430 or 620.440(b) and (c) apply. 35 Ill. Adm. Code 620.440(d).

18. Part 845 includes groundwater protection standards for each of the constituents in the Board's liability finding. 35 Ill. Adm. Code 845.600(a)(1)(E), (Q), (S) ("Boron: 2 mg/L"; "Sulfate: 400 mg/L"; "Total Dissolved Solids: 1,200 mg/L").

19. Therefore, with Part 620's amendment, the violations of the Class I groundwater protection standards for boron, sulfate, and total dissolved solids are not ongoing—they are wholly past—and the remedial measures governing such groundwater are controlled by Part 845.

20. Thus, CWLP respectfully requests that the Board issue an order that the alleged violations of Class I groundwater protection standards ceased as of March 28, 2025 (the date Part 620 was amended).

B. The remedies available must be limited to declaratory relief and penalties for the exceedances of boron, sulfate, and total dissolved solids. Complainants are not entitled to injunctive relief.

21. Complainants seek three types of relief: punitive, declaratory, and injunctive.

22. Injunctive relief is not appropriate for the violations found by the Board of the Class I groundwater protection standards. First, the violations related to boron, sulfate, and total dissolved solids exceedances are now wholly past due to the amendment of Part 620. As discussed above, Part 620's amendment provides that the groundwater at issue is Class IV groundwater, and Part 845 groundwater protection standards control. As of March 28, 2025, it is legally impossible for CWLP to continue to violate the Part 620 Class I groundwater protection standards at issue.

23. Second, Complainants request for an injunction is moot because there is only one standard that applies to the groundwater in question (*i.e.*, Part 845), and Part 845 provides a "heightened level of groundwater protection" through "a detailed corrective action process and

closure requirements.” *See* R22-018, Second Notice Opinion and Order of the Board at 22 (Oct. 17, 2024).

- i. Injunctive relief is unavailable because the violations related to boron, sulfate, and total dissolved solids exceedances are now wholly past due to the amendment of Part 620.*

24. Complainants request for a cease-and-desist order pursuant to 415 ILCS 5/33(b) is not appropriate where the alleged violations are wholly past. *See, e.g., Illinois v. G&M Total, Inc.*, PCB 1997-119, Opinion and Order of the Board at 5 (Oct. 7, 2004) (finding that a cease-and-desist order is not appropriate where there are no ongoing violations) (“[T]he Board would not be able to issue a cease and desist order because respondents have complied with the only found violations in this case. . . . No allegations of ongoing violations exist”); *see also Pearl v. Bicoastal Corporation*, PCB 1996-265, Order of the Board (Apr. 3, 1997) (finding that ongoing violations justified a cease-and-desist order) (“Similarly, we find that since there is an allegation of on-going violations the requested relief of cease and desist and remediation of the site may be granted and is not frivolous.”).

25. As discussed above, due to the amendment of Part 620, all alleged violations of Class I groundwater protection standards for boron, sulfate, and total dissolved solids are no longer ongoing. A cease-and-desist order would therefore be inappropriate because (1) all violations are wholly past and such an order would merely require CWLP to continue following the law, and (2) it may imply that CWLP must comply with Part 620 Class I groundwater protection standards when it is no longer required to do so.

26. Complainants also seek injunctive relief ordering CWLP to “[m]odify its coal ash and coal combustion waste disposal and storage practices so as to avoid future groundwater

contamination” and “[r]emediate the contaminated groundwater so that it meets applicable Illinois Groundwater Quality Standards (GQSs).”⁴

27. Injunctive relief is available to prevent or address ongoing or future violations—not those violations that are complete or have occurred in the past. *See Bridgeview Bank Grp. v. Meyer*, 49 N.E.3d 916, 923 (Ill. App. Ct. 1st Dist. 2016) (“Because injunctive relief is forward-looking, it “cannot remedy misconduct . . . that occurred in the past.” (quoting *Liebert Corp. v. Mazur*, 357 Ill. App. 3d 265, 279 (2005))); *see also Commissioners of Highways v. Deboe*, 43 Ill. App. 25, 30 (Ill. App. Ct. 3d Dist. 1892) (“The writ of injunction can only afford preventative relief. It can not be employed to correct a wrong or injury already done, nor to restore parties to rights of which they have been already deprived.”).

28. As previously stated, the alleged violations of Part 620’s Class I groundwater protection standards for boron, sulfate, and total dissolved solids have ceased. Therefore, injunctive relief is inappropriate as there is no ongoing or future violation to address.

ii. *Complainants request for injunctive relief is moot because Part 845’s groundwater program, instead of Part 620’s, applies to the alleged violations.*

29. A matter is considered moot where “no controversy remains or the issues involved cease to exist, thereby rendering it impossible for the court to grant effective relief to the complaining party.” *Morgan v. Dep’t of Fin. & Pro. Regul.*, 871 N.E.2d 178, 202 (1st Dist. Ill. App.

⁴ Complainants also lack statutory authority to request broad injunctive relief. 415 ILCS 5/33(b) limits the available requested relief to a cease-and-desist order. While the Board has the authority to grant injunctive relief for violations of the Act, that authority is limited to suits brought by the State or persons affected by the alleged violations. *See* 415 ILCS 5/43(a) (“In circumstances of substantial danger to the environment or to the public health of persons or to the welfare of persons where such danger is to the livelihood of such persons, the State’s Attorney or Attorney General, upon request of the Agency or on his own motion, may institute a civil action for an immediate injunction . . .”); 415 ILCS 5/45 (“Any person adversely affected in fact by a violation of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order may sue for injunctive relief against such violation.”); *see also* Pawlowski v. Johansen, PCB 2000-157, 2000 WL 568237, at *1 (“Respondents are correct that the Board cannot issue an injunction. The Board can order that the alleged violations cease and desist. In addition, the request for a civil penalty is certainly within the Board’s authority.”)

2007); *see also First Nat. Bank of Waukegan v. Kusper*, 456 N.E.2d 7, 10 (Ill. 1983) (“A matter is considered to be moot when it ‘presents or involves no actual controversy, interests or rights of the parties, or where the issues have ceased to exist.’”).

30. Following Part 620’s amendment, Complainants allege continuing violations that have ceased to exist and are now moot. Complainants limit their single-count Complaints to allegations that CWLP is in violation of Part 620’s Class I and Class II groundwater protection standards. As already indicated, the groundwater at issue is no longer subject to Part 620’s Class I and II groundwater protection standards. Instead, that groundwater is considered Class IV groundwater and the alleged violations are subject to only one set of standards—Part 845.

31. Therefore, Complainants’ request that the Board issue injunctive relief is similarly moot because no effective injunctive relief can be granted to remedy the controversy alleged in the Complaint.

32. The Board cannot issue a cease-and-desist order directing CWLP to cease its alleged ongoing violation of Part 620’s Class I groundwater standards because those violations necessarily cannot still be occurring; the groundwater is now Class IV groundwater subject to Part 845’s groundwater protection standards.

33. Similarly, the Board cannot issue injunctive relief requiring CWLP to modify its practices to avoid future violations of Class I groundwater protection standards and remediate current exceedances of those same standards. Again, those standards are no longer applicable to the groundwater at issue in the Complaint.

34. Finally, the Board cannot issue the Complainants’ requested injunction regarding remedial action at the site because Part 620 no longer governs remedial action for the groundwater at issue. Instead, Part 845, which provides a “heightened level of groundwater protection” through

“a detailed corrective action process and closure requirements,” governs the site in its entirety. See R22-18, Second Notice Opinion and Order of the Board at 22. (October 17, 2024).

35. CWLP respectfully requests that the Board find Complainants’ requests for a cease-and-desist order and further injunctive relief to be moot because the groundwater protection standards and remedial action program upon which the requested injunctive relief and Amended Complaint rest are no longer applicable to the groundwater at issue.

C. Any evidence related to Part 620 exceedances or in support of Complainants’ request for injunctive relief must be excluded from the remedy hearing.

36. Due to the inapplicability of Part 620’s Class I groundwater protection standards for boron, sulfate and total dissolved solids to CWLP’s operations following Part 620’s amendment, CWLP further requests that any evidence or testimony related to exceedances of these standards occurring after March 28, 2025, be excluded.

37. Further, CWLP respectfully requests that any evidence introduced to support Complainants’ request for a cease-and-desist order or further injunctive relief similarly be excluded because such relief cannot be obtained for wholly past violations and, similarly, is moot due to the lack of an existing controversy. This would include any evidence of mitigation techniques, testimony or evidence regarding groundwater remediation, or any evidence submitted to support a request for a cease-and-desist order under 415 ILCS 5/33(c).

38. Therefore, CWLP requests that the Board and/or its Hearing Officer limit any evidence introduced during the remedy hearing to that which is relevant to Complainants’ request for declaratory relief and penalties. Specifically, CWLP requests that the Board and/or its Hearing Officer limit the scope of admissible evidence to that evidence relevant to the factors delineated in 415 ILCS 5/42(h)—the suggested factors for Board consideration when determining the appropriate civil penalty amount.

III. Conclusion

For the reasons stated herein, Respondent, City of Springfield, Office of Public Utilities d/b/a City Water, Light and Power respectfully requests that the Board issue an order (1) finding that boron, sulfate, and total dissolved solids exceedances of Part 620 Class I groundwater protection standards occurring after March 28, 2025, have ceased due to Part 620's amendments, (2) prohibiting Complainants from seeking a cease-and-desist order or further injunctive relief for wholly past and moot violations, and (3) limiting the admission of testimony and evidence related to such alleged violations and requested injunctive relief at the remedy hearing.

Respectfully submitted,

THE CITY OF SPRINGFIELD,
a municipal corporation

Deborah J. Williams

Dated: July 23, 2025

By:

One of its Attorneys

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CERTIFICATE OF SERVICE

The undersigned, Deborah J. Williams, an attorney, certifies that I have served electronically upon the Clerk and by email upon the individuals named in the attached Service List, a true and correct copy of the **NOTICE OF FILING** and **THE CITY OF SPRINGFIELD, OFFICE OF PUBLIC UTILITIES d/b/a CITY WATER, LIGHT AND POWER'S MOTION TO BOARD PRELIMINARY TO HEARING**, from the email address deborah.williams@cwlp.com of this **15** page document before 5:00 p.m. Central Time on July 23, 2025 to the email address provided on the attached Service List.

Deborah J. Williams

SERVICE LIST PCB 18-11

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