BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SIERRA CLUB, PRAIRIE RIVERS NETWORK, and NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,	)	
Complainants,	)	
v.	)	PCB 18-11 (Enforcement – Water)
CITY OF SPRINGFIELD, OFFICE OF PUBLIC UTILITIES d/b/a CITY WATER, LIGHT AND POWER	)	
Respondent.	)	

COMPLAINANTS' AMENDED PRE-HEARING MEMORANDUM REGARDING REMEDIES

STATEMENT OF THE CASE

Sierra Club, Prairie Rivers Network, and National Association for the Advancement of Colored People ("NAACP") (collectively "Complainants") file this pre-hearing memo to outline the appropriate remedies for the violations of the Illinois Environmental Protection Act found by the Illinois Pollution Control Board ("Board") in its September 7, 2023 order and to introduce the evidence that will be presented by the Complainants in the hearing on remedies.

I. Summary of the Findings of the Board.

In its order of September 7, 2023, the Board found that the City of Springfield, Office of Public Utilities d/b/a City Water, Light and Power ("CWLP") violated 415 ILCS 5/12(a) and Sections 620.115, 620.301(a) and 620.405 of the Board's groundwater rules from 2010 through 2017. PCB 2018-11, Interim Opinion and Order of the Board at 1 (Sep. 7, 2023) (hereinafter "2023 Bd. Order"). The Board found that "CWLP's . . . (2018-2022) . . . self-reported groundwater monitoring results for monitoring wells AP-1, AP-2R and AP-3," as submitted by

the Complainants, "continue[d] to show exceedances of the Class I GWQS for boron, sulfate, and [total dissolved solids ("TDS")] as well as CWLP's background values." 2023 Bd. Order at 7 (citing Exhibit B of Complainants' June 24, 2022 renewed motion for partial summary judgment).

On May 25, 2022, "the parties agreed not to put additional evidence on the issue of whether exceedances of the Class I or Class II groundwater quality standards for arsenic, chromium, iron, lead, and manganese at certain downgradient monitoring wells (AP-1, AP-1R, AP-2, AP-2R, AP-3, or AW-3) at concentrations less than their corresponding background levels were caused by the Dallman or Lakeside surface impoundments nor do they seek a finding from the Board on this issue." 2023 Bd. Order at 6. Importantly though, the agreement of the parties was specifically limited to the identified wells and only when concentrations were less than background.

The Board ultimately found that there was "no genuine issue of material fact that [certain] contaminants ha[d] been detected in 'groundwaters,' which are . . . 'waters' of the State." 2023 Bd. Order at 5 (quoting PCB 2018-11, Interim Opinion and Order of the Board at 23, 26 (Jun. 17, 2021)). The Board also found that there was "no genuine issue of material fact that CWLP allowed releases from one or both impoundments resulting in elevated contaminant levels" at the identified wells. *Id.* The Board concluded that "CWLP violated Section 12(a) of the [Illinois Environmental Protection] Act [415 ILCS 5/12(a))] and Sections 620.115, 620.301(a) and 620.405 of the Board's groundwater rules [35 Ill. Adm. Code 620.115, 620.301(a), 620.405] for the discharge of boron, sulfate, and TDS. Those discharges occurred at monitoring wells AP-1R, AP-2, AP-2R, and AP-3." 2023 Bd. Order at 9.

CWLP has since argued that Complainants are precluded from obtaining a cease-and-desist order ("injunctive relief" according to CWLP) because, as of March 28, 2025, 35 Ill. Adm. Code Part 845 supplanted Part 620 as it applies to sites with coal combustion residual surface impoundments. The Board and the Hearing Officer both denied CWLP's motion on this point. PCB 2018-11, Order of the Board at 3 (Jan. 22, 2026) ("The Board finds the hearing officer correctly denied the motion and affirms that denial."); *see also* PCB 2018-11, Hearing Officer Order (Nov. 5, 2025). Importantly, the Board found ongoing liability for Section 12(a) violations, which are based on multiple lines of evidence including but not limited to Part 620 violations. PCB 2018-11, Order of the Board at 2 (Jan. 22, 2026). Thus, Complainants are seeking a cease-and-desist order for not only Part 620 violations but also for Section 12(a) violations.

II. Relief Sought to Prevent Further Violations and Damage to Public Health and the Environment.

To remedy the violations found by the Board, Complaints are seeking excavation of the coal combustion residuals ("CCR") in and around both Lakeside and Dallman CCR surface impoundments with beneficial reuse or removal of the excavated CCR. Any proposed remedy must meet the performance standard for CCR closures contained in Illinois CCR rules. 35 Ill. Admin. Code Section 845.750(a)(1). The Illinois Rules further require an owner or operator of a CCR surface impoundment to "ensure that, at a minimum, the CCR surface impoundment is closed in a manner that will: 1) Control, minimize or eliminate, to the maximum extent feasible, post-closure infiltration of liquids into the waste and releases of CCR, leachate, or contaminated run-off to the ground or surface waters or to the atmosphere . . . ." *Id.* Complainants' proposed remedy of excavating ash with beneficial reuse or disposal of excavated ash in a landfill capable of minimizing contact between ash and water and containing ash contaminants would meet the

requirements of both Illinois CCR rules. Excavating ash with either beneficial reuse or removal would: (1) eliminate the source of groundwater and surface water contaminants, (2) eliminate the risk of release to the environment in the event of flooding, and (3) eliminate years of site monitoring and maintenance costs.

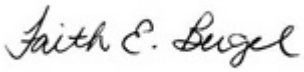
The law applicable to remedies is spelled out in the Illinois Environmental Protection Act. 415 ILCS 5. Regarding remedies, 415 ILCS 5/33(c) provides that:

> 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:
>
> (i) the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
> (ii) the social and economic value of the pollution source;
> (iii) 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;
> (iv) the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
> (v) any subsequent compliance.

However, not all of the Section 33(c) factors are applicable here because the pollution at issue is almost exclusively the legacy of previous economic activity that has already occurred. For instance, consideration of social or economic value can only apply to Dallman Unit 4 because it is the only unit still operating. Even so, none of the coal ash ponds at this site are used for active ash management. Therefore, any remaining social or economic value from the still-operating Dallman Unit 4 is not relevant to the question of cleaning up legacy coal ash because Complainants are not seeking retirement the Dallman 4 coal-fired boiler as part of the remedy in this case. While the coal combustion waste remains at the sites and continues to inflict injury on public health and the environment, whatever positive value there was in past operation of the coal-fired boilers that might be considered by the Board is simply no longer present and need not be considered in shaping a remedy.

Also, as to Section 33(c)(iv), CWLP's financial condition is likewise not a primary consideration in the determination of economic reasonableness of a remedy, because Section 33(c)(iv) does not consider the financial capacity of the Respondent. 415 ILCS 5/33; *Allied Metal Co. v. Illinois Pollution Control Bd.*, 22 Ill. App. 3d 823 (1974); *Allaert Rendering, Inc. v. Illinois Pollution Control Bd.*, 91 Ill. App. 3d 153 (1980); *Freeport v. Pollution Control Bd.*, 187 Ill. App. 3d 745 (1989). To be clear, financial hardship alone is not determinative under Section 33(c) of whether Complainants' requested remedy is economically reasonable.

Respectfully submitted,



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Electronic Filing: Received, Clerk's Office 04/28/2026

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Respondent.	)	

PARTIES' INDIVIDUAL AND JOINT EXHIBIT LISTS

Complainants reserve the right to identify further evidence and exhibits for cross-examination, impeachment, or rebuttal. Complainants reserve the right to use stipulated exhibits or exhibits admitted through an earlier witness with a subsequent witness without referencing or repeating them on Complainants' exhibit list. Complainants reserve the right to use exhibits introduced by Respondent. All exhibits are subject to objection unless agreed to, and neither party waives any objection it may have to an exhibit that is not on the agreed list.

PCB 18-11
Complainants' Initial Exhibit List for Mark Hutson with Respondent's Objections

	Title	Date	Bates Numbers	No. of Pages	Objection (Y/N)	Basis for Objection
1.	USEPA, Proposed Decision: Proposed Denial of Alternative Closure Deadline for Ottumwa Generating Station	January 11, 2022	None	72	No	
2.	USEPA, Letter on Duke Energy Gallagher	January 11, 2022	Comp 8328-8331	4	No	
3.	Geo-Hydro, Inc., Pre-Filed Testimony of Mark Hutson, Illinois Pollution Control Board, Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments: Proposed New Ill. Adm. Code 845, R 20-19	August 27, 2020	None	240	No	

4.	Historic floods	none	none	5	No	
5.	Andrews Engineering, CWLP, Coal Combustion Residuals Surface Impoundments, Groundwater Monitoring Program	October, 2017	CWLP 008643-8715	73	Yes	Relevance, Cumulative
6.	Duke Energy, Closure Plan, Amendment One, Gibson Station, North Ash Pond, North Settling Basin	March 7, 2023		8	Yes	Foundation, Hearsay
7.	Andrews Engineering, Liner Status Report for Coal Combustion Residuals Surface Impoundments	October, 2016	None	4	No	
8.	EPA, Alabama: Denial of State Coal Combustion Residuals Permit Program, 89 Fed. Reg. 48774	June 7, 2024	None	47	No	
9.	Duke Energy, Closure Plan, Gallagher Generating Station, Primary Pond, North Ash Pond, Primary Pond Ash Fill	April 22, 2024	None	9	Yes	Foundation, Hearsay

10.	Hydrometrics, Assessment of Corrective Measures, Colstrip 3&4 EP CCR Units, April 2019	April, 2019	None	160	Yes	Foundation, Hearsay,
11.	Transcript of William Antonacci deposition dated January 16, 2016	January, 2016	None	110	No	
12.	Report of Mark A. Hutson on Review of Closure Permit Application, etc. (with attachments)	January 5, 2025	None	59	Yes, Table 1 Foundation	
13.	Rebuttal/Reply Report of Mark A. Hutson	August 1, 2025	None	14	No	
14.	Corrected Supplemental Report of Mark A. Hutson	February 10, 2026	None	6	No	
15.	Notice of Non-Issuance of CCA	May 29, 2014	CWLP O1126	1	No	
16.	Letter from EPA re Violation Notice No.: W-2014-0000	April 2, 2014	CWLP 01116	4	No	

17.	Violation Notice	February 20, 2014	CWLP 01110-01115	6	No	
18.	CWLP Annual Groundwater Monitoring Report	January, 2023	None	21	No	

PCB 18-11
Respondent's Initial Exhibit List for Mark Hutson with Complainants' Objections

	Title	Date	Bates Numbers	No. of Pages	Objection (Y/N)	Basis for Objection
1.	NPDES Final Modified Permit IL0024767	February 25, 2026	None	25	Yes	Foundation
2.	Consent Agreement and Final Order, RCRA-05-2025-0015	January 14, 2025	CWLP 30706 - 30807	102	No	
3.	Mark A. Hutson Deposition	March 5, 2025	None	127	Yes	No objection if used to refresh his recollection or for impeachment. But other uses would be improper.
4.	U.S. EPA: Frequent Questions about Closure and Post-closure Care and Implementing the Final Rule Regulating the	Accessed April 7, 2026	None	6	Yes	Foundation

	Disposal of Coal Combustion Residuals (CCR) https://www.epa.gov/coal-combustion-residuals/frequent-questions-about-closure-and-post-closure-care-and-implementing					
5.	Sierra Club v. City Water, Light & Power, PCB18-11, Board Order on Liability	September 7, 2023	None	9	Yes	Calls for legal conclusions

PCB 18-11
Stipulated Exhibit List

	Title	Date	Bates Numbers	No. of Pages
1.	Hanson, Dallman and Lakeside Ash Ponds, Assessment of Corrective Measures	September 23, 2025.	None	2858
2.	Hanson, Dallman and Lakeside Ash Ponds, Interim Measures Report, dated September 23, 2025.	September 23, 2025.	None	269
3.	Hanson, Dallman and Lakeside Ash Ponds, Closure Plan,	September 23, 2025.	None	627
4.	Andrews Engineering , CCR Surface Impoundments – Nature and Extent Report	September 22, 2025.	None	2588

5.	Andrews Engineering, CCR Surface Impoundments and FGDS Unit 2 Landfill, Flow Path Report	September 22, 2025.	None	731
6.	City Water, Light, and Power, Coal Combustion Residuals Surface Impoundment Operating and Construction Permit Application Review Letter	September 9, 2024	None	2298
7.	Andrews Engineering, CWLP Closure Construction Permit Application	February 1, 2022	None	951
8.	Andrews Engineering, Annual Groundwater Monitoring and Corrective Action Report for Year Ending December 31, 2024	January, 2025	None	413

9.	CWLP, Coal Combustion Residuals Surface Impoundment Operating and Construction Permit, Application Review Letter, Supplemental Response Letter from PJ Becker to Darin LeCrone	October 30, 2024	None	180
10.	CWLP Initial Operating Permit Application	February, 2022	None	906
11.	Sugar Creek Relocation Application	1976	CWLP 016169-16179	11
12.	Stabilize, Ash Pond Hydrogeological Assessment	September, 2017	CWLP 01694-01833	140
13.	Andrews Engineering, Annual Groundwater Monitoring and Corrective Action Report	January 31, 2024	None	289

14.	EPA, Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category, 80 Fed. Reg. 67838	November 3, 2015	None	66

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NOTICE OF FILING

PLEASE TAKE NOTICE that I have filed a true and correct copy of **COMPLAINANTS' PRE-HEARING MEMORANDUM** via electronic mail to the parties listed on the attached service list before 5:00 p.m.

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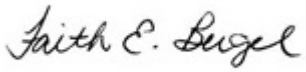
Respectfully submitted,



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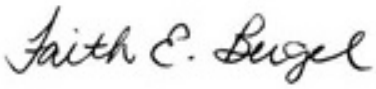
Dated: April 28, 2026

Electronic Filing: Received, Clerk's Office 04/28/2026

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 **JOINT STIPULATIONS** before 5 p.m. Central Time on April 28, 2026 to the email addresses of the parties on the attached Service List. The entire filing package, including exhibits, is 19 pages.

Respectfully submitted,



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PCB 2018-11

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