

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
COAL COMBUSTION ASH PONDS)
AND SURFACE IMPOUNDMENTS AT) **R14-10**
POWER GENERATING FACILITIES:) **(Rulemaking – Water)**
PROPOSED 35 ILL.ADM. CODE PART 841:)

NOTICE OF FILING

TO: John Therriault, Assistant Clerk Attached Service List
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

PLEASE TAKE NOTICE that I have today filed with the Illinois Pollution Control Board Midwest Generation, LLC's Questions for Environmental Groups' Witnesses on Proposed Rules Revisions, a copy of which is herewith served upon you.

Dated: June 11, 2014

MIDWEST GENERATION, LLC

By: /s/ Susan M. Franzetti
One of Its Attorneys

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that a true copy of the foregoing Notice of Filing and Midwest Generation, LLC's Questions for Environmental Groups' Witnesses on Proposed Rules Revisions was filed electronically on June 11, 2014 with the following:

John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

and that true copies were mailed by First Class Mail, postage prepaid, on June 11, 2014 to the parties listed on the foregoing Service List.

/s/ Susan M. Franzetti

ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
COAL COMBUSTION ASH PONDS) **R14-10**
AND SURFACE IMPOUNDMENTS AT) **(Rulemaking-Water)**
POWER GENERATING FACILITIES:)
PROPOSED 35 ILL.ADM. CODE PART 841)

MIDWEST GENERATION, LLC'S QUESTIONS FOR ENVIRONMENTAL GROUPS' WITNESSES ON PROPOSED RULES REVISIONS

Midwest Generation, LLC ("Midwest Generation" or "MWGen"), by and through its attorneys, Nijman Franzetti LLP, submits the following questions concerning the Environmental Groups (Environmental Integrity Project, Environmental Law and Policy Center, Prairie Rivers Network, and Sierra Club) proposed revisions, filed May 13, 2014 and as updated on June 6, 2014, to the proposed Part 841 regulations by the Illinois Environmental Protection Agency ("Illinois EPA" or "Agency"). Midwest Generation requests that the Hearing Officer allow follow-up questioning to be posed based on the answers provided.

I. Definitions - Section 841.110

1. In the proposed revision to the definition of "Surface Impoundment," please explain why you deleted the Agency's proposed language "where earthen materials provide structural support for the containment of liquid wastes or wastes containing free liquids" and replaced it with "that is designed to hold and/or transfer liquid waste or wastes containing free liquids"?

II. Groundwater Quality Standards – Section 841.125

2. What is the intended purpose and meaning of the proposed revision to Section 841.125 Groundwater Quality Standards that requires an owner or operator to comply with the Part 620 groundwater standards "at all times, notwithstanding the compliance period established in Section 841.130 of this Part."

III. Compliance Period - Section 841.130

3. In your June 6, 2014 comments regarding the proposed requirement to submit a closure plan and post-closure care plan within one year of the rules' effective date, you explain that such a requirement is justified because of the existence of "inadequately lined ponds" in

Illinois. Why is the requirement to submit closure and post-closure care plans within one year of the rules' effective date justified for CCW surface impoundments that are adequately lined?

4. For CCW surface impoundments which have ash periodically removed, and are not used as waste disposal sites, is your position the same regarding the proposed requirement to submit closure and post-closure plans within one year of the rules' effective date?

5. Given the Environmental Groups' proposed revisions relating to the preference for closure by removal of CCW, is it also your intent that these closure and post-closure care plans must be based on the assumption that all CCW will be removed from an impoundment?

IV. Public Notice - Section 841.165

6. Please explain why your proposed revision in Section 841.165(c) provides that a public informational meeting "is not required to comply with the procedures of 35 Ill. Adm. Code Part 164"?

V. Alternative Cause Demonstration - Section 841.305

7. In the Environmental Groups' June 6 Comments, on pages 16-17, it is stated that the Agency's proposed rule on alternative cause demonstrations conflicts with the groundwater quality standards because the Part 620 Subpart D regulations, in sections 620.410 and 620.420, provide that if a constituent is elevated due to natural causes, there is no exceedance. How does the Environmental Groups' proposed revisions to Section 841.305 address or resolve this alleged conflict between proposed Section 841.305 and the Part 620 Subpart D regulations?

VI. Surface Impoundment Closure – Section 841.400

8. The proposed revisions to Section 841.400(b) require closure by removal of all impounded coal combustion waste "unless the Agency determines that removal is technically feasible or would not result in greater protection of human health and the environment."

a) What criteria is the Agency to use in determining whether removal "would not result in greater protection of human health and the environment"?

b) How will the level of protection of human health and the environment provided by closure in place versus closure by removal determined?

c) If the subject CCW impoundment is adequately lined, under what types of circumstances would closure by removal result in "greater protection of human health and the environment"?

d) If a CCW impoundment is adequately lined, why is a presumption in favor of closure by removal reasonable?

e) When a CCW impoundment is adequately lined, why is the proposed presumption in Section 841.400(b)(2) that closure by removal is more protective of human health and the environment where the unit is located in a 100-year floodplain?

f) If the level of protection afforded by closure in place and closure by removal is substantially equivalent, why is it not appropriate to consider the reasonableness of the costs of each closure option?

g) Under this proposed revision, is the Agency authorized to determine that closure by removal would present environmental concerns, such as adverse effects caused by the removal of large amounts of CCW, impact on the community from the removal operation and the ultimate off-site disposal of the CCW, which justify closure in place?

9. Please provide any precedent you are aware of for the proposed revision to Section 841.400(b).

10. In the Environmental Groups' June 6 comments, at page 5, the Environmental Groups state that they do not support including "economic reasonableness" as a factor to be considered by the Agency for purposes of determining whether closure in place or closure by removal is appropriate. Please explain why the Environmental Groups do not believe that economic reasonableness should be a relevant factor in determining the type of closure for a CCW impoundment.

11. How do the Environmental Groups propose that "technical feasibility" be determined? What criteria should be used? Who would make the determination and how would it be decided? Would it be determined in a public proceeding? Would experimental technology constitute "technical feasibility"? If the costs reached a certain level, would removal no longer be technically feasible?

VII. Closure Prioritization – Section 841.405

12. Does the proposed revision to Section 841.405(a)(2)(B) require closure where an exceedance of any groundwater standard at any downgradient monitoring well has not been corrected within a five-year period?

a) Is it correct that this proposed revision does not allow the Agency any discretion to consider the magnitude or severity of the exceedance in question?

13. How does the existence of an approved Groundwater Management Zone ("GMZ") affect the application of the proposed revision to Section 841.405(a)(2)(B)?

14. How does the existence of institutional controls, such as deed restrictions prohibiting the use of impacted groundwater, affect the application of the proposed revision to Section 841.405(a)(2)(B)?

15. Please provide any precedent you are aware of for the proposed revision to Section 841.400(b) that requires a release to be corrected within five-years of detection or else the source of the release must be shut down or otherwise closed?

VIII. Financial Assurance - Sections 841.600 – 841.610

16. Have there been any incidents in Illinois where the owner or operator of a CCW impoundment has lacked the financial ability to close a CCW impoundment?

17. What state regulations, if any, did the Environmental Groups rely upon to prepare proposed Sections 841.600 – 841.610?

18. In Section 841.600(a), what does the phrase “a local government financial test” mean?

19. In Section 841.600(a), what does the phrase “a local government guarantee” mean?

20. In Section 841.600(a), what does the phrase “a corporate financial test” mean?

21. Given the proposed revision by the Environmental Groups to require a presumption in favor of closure by removal, under these proposed financial assurance regulations, must an owner or operator base its financial assurance amount upon closure by removal or may it assume closure in place?

Respectfully submitted,

MIDWEST GENERATION, LLC

By: /s/ Susan M. Franzetti
One of Its Attorneys

Dated: June 11, 2014

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