STATE OF ILLINOIS GENERAL ASSEMBLY

COMMITTEES:
CHAIRPERSON,
PUBLIC UTILITIES
MEMBER:
APPROPRIATIONS - HIGHER EDUCATION
APPROPRIATIONS - PUBLIC SAFETY
ENVIRONMENT
HEALTH CARE LICENSES
LABOR & COMMERCE
VETERANS' AFFAIRS

SPRINGFIELD OFFICE:
200-9S STRATTON BUILDING
SPRINGFIELD, IL 62706
217/782-5131
217/557-0521 FAX

DISTRICT OFFICE:
607 S. COMMERCIAL ST., SUITE B
HARRISBURG, IL 62946
618/253-4189
618/253-3136 FAX

BRANDON W. PHELPS
STATE REPRESENTATIVE
118TH DISTRICT

October 15, 2015

PCB 3913

RECEIVED
CLERK'S OFFICE
OCT 19 2015
STATE OF ILLINOIS
Pollution Control Board

John Therriault, Clerk
IL Pollution Control Board
James R. Thompson Center
100 W. Randolf St., Suite 11-500
Chicago, IL 60601

Illinois Pollution Control Board members:

RE: Coal Combustion Waste (CCW) Ash Ponds and Surface Impoundments at Power Generating Facilities: proposed new 35 Ill. Adm. Code 841 (R14-10)

As a State Representative, and member of the House Environment Committee, I wanted to take a moment to offer support for the Illinois Environmental Protection Agency (IEPA or Agency) motion requesting an indefinite stay of the IEPA's proposed rule on Coal Combustion Waste (CCW), and offer support for the balanced approach that the IEPA has taken with regards to this issue. The IEPA and Illinois Pollution Control Board (Board) are given the difficult task of balancing state and federal policy options while considering the impact upon the public as well as economic impacts. Given the need for additional clarity regarding the federal rule, the State's existing ability to appropriately regulate existing coal combustion waste sites, and the potential cost implications to coal fired-power plant operators and ultimately consumers, I respectfully request that the Board grant the Agency's motion.

On August 5, 2015, the Agency filed a motion asking the Board to indefinitely extend the rulemaking stay it initially granted on May 7, 2015. The Agency's motion stated an indefinite stay will "enable the Illinois EPA and other interested parties to comprehensively evaluate the impact of the relevant [ongoing litigation and Congressional] actions on the proposed rulemaking, once those matters are resolved." The "matters" contemplated by the Agency are ongoing litigation of the USEPA Coal Combustion Residual (CCR) rule and Congressional legislation that could change the scope and content of the proposed rule presently before the Board.

During the requested evaluation period, the Agency will continue to address and resolve groundwater violations in Illinois under the Groundwater Protection Act and the groundwater 35 IAC 620 regulations. The IEPA has testified to the Board that nearly all the existing coal combustion residual impoundments in Illinois are subject to some sort of IEPA oversight, either through active enforcement actions or approval and management of groundwater management zones. The Agency can and has used its

authority and rules to close existing ash ponds, and will be able to continue following this process at facilities covered by or exempt from the federal CCR rule. Therefore, there is no gap in groundwater protection regulations that warrants the Board to expedite this rulemaking process. Even if the Board decides a new rule is warranted, the Board should not make substantive changes to the proposed rule without allowing the regulated community and members of the public a meaningful opportunity to comment on the changes. The worst possible outcome would be the creation of either duplicative or inconsistent regulatory requirements on the affected facilities in Illinois resulting in greater costs and additional administrative requirements with no environmental benefit.

The Board should also deny the Environmental Groups' motion to amend the Agency's proposal. Specifically, the Environmental Groups ask that the Board reopen the stayed rulemaking in order to accept comments on the Environmental Groups' amended proposal. What the Environmental Groups have proposed is contrary to Section 27 of the Illinois Environmental Protection Act, which requires "information supporting the requested change ... [and] describe, to the extent reasonably practicable, the universe of affected sources and facilities and the economic impact of the proposed rule" and the technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution.

I support the Board granting the stay, as requested by the Agency, because granting an indefinite stay will allow the IEPA and other parties to assess the impact of the federal CCR rule and pending legal and legislative matters on the Part 841 Rulemaking and will avoid inconsistent and unnecessary regulatory requirements and increased compliance costs on Illinois facilities.

In the event that the Board declines to grant the Agency's motion to extend the stay indefinitely, it would also be inappropriate for the Board to grant the Environmental Groups' motion. I request that the Board deny the Environmental Group's motion but, should it grant the motion, the Board should schedule hearings on the amended proposal and require the Environmental Groups to provide adequate testimonial support and evidence and answer questions related to its amended proposal consistent with Section 27 of the Illinois Environmental Protection Act.

I appreciate your time and consideration of my comments as a member of the General Assembly.

Sincerely,

Brandon Phelps
State Representative
118th District