

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

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

Tim Fox
Hearing Officer
Illinois Pollution Control Board
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Persons included on the attached
SERVICE LIST

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board the attached **Environmental Groups' Status Report** copies of which are served on you along with this notice.

Respectfully submitted,



Jessica Dexter
Staff Attorney
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Dated: July 15, 2016

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ENVIRONMENTAL GROUPS' STATUS REPORT

Prairie Rivers Network, Environmental Law & Policy Center, Eco-Justice Collaborative and the Illinois Chapter of the Sierra Club (hereafter "Environmental Groups") offer these comments as a supplement to the status report filed today by the Illinois Environmental Protection Agency ("IEPA" or "Agency") regarding the R14-10 rulemaking In the Matter of: Coal Combustion Waste (CCW) Ash Ponds and Surface Impoundments at Power Generating Facilities: Proposed New 35 Ill. Adm. Code 841.

When Environmental Groups agreed to support this most recent stay of the proceedings, we did so because the Agency had offered to give serious consideration to our September 15, 2015 proposal (See Environmental Groups' Amended Proposal and Motion to Reopen Proceeding, hereafter "September 2015 proposal") to reconcile the state and federal rules. We thought that such discussions with the Agency could be the most expedient way to come to agreement about the best way to move forward with a state rule. Instead of the process we anticipated, we were deeply disappointed to be presented with a proposal that gutted the rule we have all worked so hard on, taking it from 66 pages down to just 6.

We do not know what IEPA will propose to the Illinois Pollution Control Board ("IPCB") when the Agency responds to the Board's Nov. 5, 2015 and May 19, 2016 orders. But at this point the Environmental Groups' September 2015 proposal to harmonize these proposed state coal ash rules with the newly-promulgated federal rules is the only proposal that meets the Agency's and the Board's responsibility to protect the public and the environment. Since the Agency released its vastly scaled-back proposal, over two thousand public comments have been filed asking the Board to adopt a much stronger rule governing coal ash waste disposal.

Illinois needs its own comprehensive set of rules governing the fate of coal ash in our state. We are very concerned about leaving a legacy of coal ash throughout the state in communities that wish to re-purpose industrial land for new economic development and are worried about the contamination and stigma that leaking coal ash pits inflict on them. Illinois must finalize its own comprehensive rules to fill major gaps in the federal rule in order to best protect people's health, the well-being of numerous communities throughout the state, and the quality of our state's groundwater, lakes and rivers.

The July 17, 2014 Agency proposed state rules were developed over the course of two and a half years and were the product of thousands of hours of work by legal and technical specialists. The proposal took into consideration seven days of formal hearings, as well as carefully considered input from Agency and IPCB staff, industry representatives and environmental organizations. The Environmental Groups' September 2015 proposal offered an approach to harmonize the proposed Illinois rules that are needed to protect local water quality with the new federal requirements. It leverages all of the public input and discussion that went into the original hearing process and made it work alongside the framework of the federal rules while filling crucial gaps those rules do not address.

The gaps left by the federal rule include guaranteed coverage of pits at closed plants, financial assurances by the power companies responsible for creating these messes, a thorough analysis of the best alternative for coal ash clean-up and closure, clear benchmarks by which Illinois EPA staff evaluate companies' chosen remedies and a full opportunity for citizens to participate in the decision-making on the fate of coal ash contamination in their communities. In addition, the requirements under the federal rules must be incorporated into the state rules to ensure that they can be enforced in Illinois, because the federal rules are otherwise self-implementing. A self-implementing system presents a challenge especially for disadvantaged communities that lack the resources to undertake citizen action lawsuits.

On January 20, 2015 IEPA filed a motion to the IPCB stating, "The Agency seeks to stay any action by the Board in this rulemaking proceeding for 90 days while the Agency evaluates whether changes to Agency's proposal are necessary as a result of the newly adopted minimum federal criteria, after which time the Agency will file a status report pursuant to Section 101.514." The Environmental Groups' September 2015 proposal is the only serious attempt so far to do what that motion articulated, but has yet to receive a thorough review by the Agency and other participants in this rulemaking. We again ask the Board to move forward with Environmental Groups' September 2015 proposal, beginning with a request that the parties provide written responses to the proposal.

Given the significant investment of time and good faith that went into the rulemaking process in 2014, we are concerned that IEPA has not responded to our September 2015 proposal and is instead considering substituting a much reduced proposal that does not adequately protect the public or the environment. We look forward to a thorough vetting of our September 2015 proposal by other parties in this proceeding as well as an opportunity to respond to the Agency's status report and motion.

Respectfully,



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CERTIFICATE OF SERVICE

I, Jessica Dexter, hereby certify that a true copy of the foregoing **Environmental Groups' Status Report** was served via email to the parties which have consented to email service and via United States Mail, postage prepaid, in Chicago, Illinois on July 15, 2016 upon the remaining parties on the service list below.



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R14-10

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