

ILLINOIS POLLUTION CONTROL BOARD  
September 16, 2008

IN THE MATTER OF: )  
)  
PETITION OF AMEREN ENERGY ) AS 09-1  
GENERATING COMPANY FOR ) (Adjusted Standard – Land)  
ADJUSTED STANDARDS FROM 35 ILL. )  
ADM. CODE PARTS 811, 814, 815 )

ORDER OF THE BOARD (by A.S. Moore):

On August 11, 2008, Ameren Energy Generating Company (Ameren) filed a petition for an adjusted standard (Pet.). *See* 415 ILCS 5/28.1 (2006). Ameren generates electricity at a power plant known as the Hutsonville Power Station (Station) located on a site approximately 205 acres in size near Hutsonville, Crawford County. Pet. at 5; *see* Pet., Exh. 1 (Site Location Map). The Station employs 58 persons, and its principal equipment “includes coal-fired boilers for steam production and steam driven turbine generators.” Pet. at 5. The Station includes a circulating water system that draws water from the Wabash River for use in the boiler and turbine equipment. *Id.* at 5-6. The system removes ash, a byproduct of coal combustion, and sluices it through pipelines to an ash impoundment system. *Id.* at 6. That system consists of a series of ponds “in which solids settle and sluicewater decants from pond to pond before discharging to the Wabash River via an NPDES [National Pollutant Discharge Elimination System] permitted outfall.” *Id.*; *see id.*, Exh. 2 (Site Plan). The ponds accept only coal combustion waste, both bottom ash and fly ash, and low-volume waste from the Station. *Id.* at 6.

Ameren’s petition addresses an unlined ash impoundment designated as “Pond D.” Pet. at 6. “Pond D was constructed from indigenous earthen materials in 1968 and operated as the Station’s wastewater treatment unit (receiving bottom and fly ash transport water and miscellaneous low-volume wastes) until the construction of a synthetically-lined pond (“Pond A”) in 1986.” *Id.* In 2000, Ameren constructed two additional lined ponds, Ponds B and C. *Id.* Ameren then removed Pond D from service and allowed it to dewater. *Id.* “Ameren estimates that during its 30 years of active operation, Pond D accumulated approximately 750,000 cubic yards of ash and approximately one-third of this volume (280,000 cubic yards) lies below the water table.” *Id.*, citing Pet., Exh. 3, Table 3-2 (Areal Extent and Volumes of Unsaturated and Saturated Ash in Pond D). Ameren states that “[a]n additional 200,000 cubic yards of ash were added to Pond D since it was taken out of service (with Illinois Environmental Protection Agency approval) to establish an acceptable grade in anticipation of constructing the proposed cap at closure.” Pet. at 6-7.

Ameren states that the Illinois Environmental Protection Agency (Agency) has taken the position that “the pond must now be closed consistent with the landfill regulations contained in 35 Ill. Adm. Code Parts 811 through 815, as they apply to the closure of Pond D.” Pet. at 1. Ameren further states that “[b]ecause Pond D was created, operated, and managed throughout its operating life as a surface impoundment, no landfill permit was required pursuant to Section 21(d) of the [Environmental Protection] Act.” *Id.* at 1-2; *see* 415 ILCS 5/21(d) (2006). Ameren

further states that, “[b]ecause Ameren operated Pond D as a water pollution treatment facility and Pond D has received only wastes generated by Ameren within the Site, no landfill permit is required pursuant to Section 21(d) of the [Environmental Protection] Act at closure.” *Id.* at 2, citing 35 Ill. Adm. Code 810.103. Ameren suggests that, if Pond D is to be subject to the landfill regulations and is considered as an existing facility exempt from permitting, “Pond D is subject to 35 Ill. Adm. Code 814.302(a) and (b), as well as the applicable Part 811 and Part 815 requirements, at closure.” *Pet.* at 2, citing 35 Ill. Adm. Code 810.103, Development, Operating and Reporting Requirements for Non-Hazardous Waste Landfills, R88-7 (Aug. 17, 1990). Ameren argues that many of these solid waste landfill regulations do not apply to a previously-operated surface impoundment permitted as a water pollution control facility. *Id.* Ameren further argues that, [p]lainly, the circumstances applicable to this ash pond are very different from those contemplated by the Board in adopting Parts 811 through 815.” *Id.*

Specifically, Ameren seeks adjusted standards from a number of regulations: final cover requirements (35 Ill. Adm. Code 811.314(b)(3)); leachate collection and management systems standards (35 Ill. Adm. Code 814.302(b), 811.309); groundwater impact assessment requirements (35 Ill. Adm. Code 811.317, 811.319(c)); maximum allowable predicted concentration requirements (35 Ill. Adm. Code 811.318, 811.319); various groundwater quality standards (35 Ill. Adm. Code 811.320); various groundwater monitoring requirements (35 Ill. Adm. Code 811.319); and monitoring well location requirements (35 Ill. Adm. Code 811.318(b)). *See Pet.* at 3.

In addition, Ameren argues that, as it seeks to close Pond D, a number of operating standards do not apply to it. *Pet.* at 36. Ameren claims that “[t]hese rules were intended to apply to a working landfill handling putrescible waste which would create issues regarding vectors and landfill gas to be addressed by cover, vector control and landfill gas management.” *Id.* at 37. “Accordingly, Ameren requests an adjustment from these standards or a determination from the Board that these regulations do not apply.” *Id.* at 37. Specifically, Ameren claims that the following operating conditions do not apply to closure of Pond D: compaction of waste (35 Ill. Adm. Code 811.105); daily cover (35 Ill. Adm. Code 811.106); phasing of operations (35 Ill. Adm. Code 811.107(a)); working face (35 Ill. Adm. Code 811.107(b)); vector control (35 Ill. Adm. Code 811.107(i)); landfill gas monitoring and management (35 Ill. Adm. Code 811.310, 811.311, 811.312); intermediate cover (35 Ill. Adm. Code 811.313); waste placement (35 Ill. Adm. Code 811.321); final slopes and stabilization (35 Ill. Adm. Code 811.322); initial facility report filing deadline (35 Ill. Adm. Code 815.202(a)); permit information requirements (35 Ill. Adm. Code 815.302(b)); and annual report information requirements (35 Ill. Adm. Code 815.303(a)). *See Pet.* at 3-4, 36-37.

The Board notes that Ameren conditionally waives hearing in this proceeding. *Pet.* at 42. “Should the Agency file a negative recommendation or the Board require additional information, however, Ameren reserves its right to request a hearing at that time.” *Id.*

Section 28.1(d)(1) of the Environmental Protection Act (Act) (415 ILCS 5/28.1(d)(1) (2006)) and Section 104.408(a) of the Board’s procedural rules (35 Ill. Adm. Code 104.408(a)) require the adjusted standard petitioner to publish notice of filing the petition. Those authorities require advertisement in a newspaper of general circulation in the area likely to be affected by

the proposed adjusted standard. The notice must indicate that any person may cause a public hearing to be held on the proposed adjusted standard by filing a hearing request with the Board within 21 days after publication. 415 ILCS 5/28.1(d)(1) (2006); 35 Ill. Adm. Code 104.408(b). Publication must take place within 14 days after the petition is filed. 415 ILCS 5/28.1(d)(1) (2006); 35 Ill. Adm. Code 104.408(a); *see also, e.g., In re Petition of SCA Tissue North American, L.L.C. for an Adjusted Standard from 35 Ill. Adm. Code 218.301 and 218.302(c)*, AS 05-1 (Jan. 6, 2005) (dismissing petition for adjusted standard for lack of jurisdiction when publication of notice occurred after 14-day period). Within 30 days after filing the petition, the petitioner must file a certificate of publication with the Board. 35 Ill. Adm. Code 104.410.

On September 9, 2008, Ameren filed with the Board a certificate of publication documenting that the required notice of the petition was published in the *Robinson Daily News* on August 22, 2008. The Board finds that Ameren has met the notice requirements of the Act and the Board's procedural rules. *See* 415 ILCS 5/28.1(d)(1) (2006); 35 Ill. Adm. Code 104.408, 104.410.

The Board accepts Ameren's petition for an adjusted standard. Today's order provides no determination on the informational sufficiency or merits of Ameren's petition. The Board, through orders of its own or its hearing officer, may direct Ameren to provide additional information concerning its petition for an adjusted standard.

As a threshold issue, however, the Board notes that the general provisions of its solid waste disposal regulations define "landfill" in pertinent part as "a unit or part of a facility in or on which waste is placed and accumulated over time for disposal, and which is not a land application unit, a surface impoundment or an underground injection well." 35 Ill. Adm. Code 810.103. The same provisions define a "surface impoundment" in pertinent part as "a natural topographic depression, a man-made excavation, or a diked area into which flowing wastes, such as liquid wastes or wastes containing free liquids, are placed. For the purposes of this Part [810] and 35 Ill. Adm. Code 811 through 815, a surface impoundment is not a landfill." *Id.*

Ameren argues that, because it created, operated, and managed Pond D as a surface impoundment, Pond D did not require a landfill permit during operation. Pet. at 1-2, citing 415 ILCS 5/21(d) (2006), Petition of Conversion Systems, Inc. for an Adjusted Standard from 35 Ill. Adm. Code Part 811 (Liner), AS 93-4, slip op. at 1, n.3 (Aug. 26, 1993). Ameren further argues that, because Pond D operated as a water pollution control facility and accepted only wastes generated on-site by Ameren's own activities, Pond D does not require a landfill permit at closure. Pet. at 2, citing 35 Ill. Adm. Code 810.103. Ameren states that the Agency now requires that Pond D must be closed according to applicable landfill regulations. Pet. at 1. Ameren suggests that the inapplicability of many of these regulations necessitates the filing of its petition. *See* Pet. at 2.

The Board directs Ameren and the Agency to each file with the Board within 30 days of the date of this order a document specifying the authority for applying the Board's landfill regulations to Pond D. Second, the Board directs both Ameren and the Agency in that filing to address whether requirements for the closure of Pond D are addressed in the facility's NPDES or any other applicable permit. In addition, the Board directs both Ameren and the Agency in that

filing to address the issue of whether, under the facts and circumstances described in the petition, a site-specific rule is the appropriate regulatory relief mechanism for Ameren to pursue in seeking to close Pond D. *See* 415 ICLS 5/27(a) (2006), 35 Ill. Adm. Code 102.210 (Proposal Contents for Site-Specific Regulations). Within 14 days after Ameren and the Agency file this document, both Ameren and the Agency may file a response to one another.

The Board notes that, “[u]nless otherwise ordered by the hearing officer or the Board, the [Agency’s] recommendation must be filed with the Board within 45 days after the filing of the petition or amended petition . . . .” 35 Ill. Adm. Code 104.416(a). The Board today stays the Agency’s deadline for filing its recommendation on the petition and will set any deadline necessary for filing the recommendation after Ameren and the Agency have addressed the threshold issue described in the preceding paragraphs.

In this regard, the Board notes that it has granted an adjusted standard from landfill regulations in a case involving deposits of coal combustion wastes. *See* Petition of Commonwealth Edison for an Adjusted Standard from 35 Ill. Adm. Code Parts 811 and 814, AS 96-9 (Aug. 15, 1996). However, that case involved a site that had been permitted as a landfill for coal combustion waste since 1976, approximately 20 years before the Board granted that petition. *See id.* at 2.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 16, 2008, by a vote of 4-0.



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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board