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OCT 20 2008

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS  
Pollution Control Board

IN THE MATTER OF: )  
)  
PETITION OF AMEREN ENREGY )  
GENERATING COMPANY )  
FOR ADJUSTED STANDARD FROM )  
35 Ill. Adm. Code Parts 811, 814 and 815 )

AS 09-01  
(Adjusted Standard – Land)

NOTICE

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

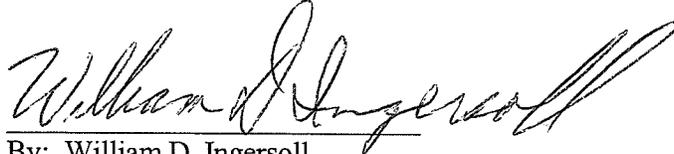
Schiff Hardin, LLP  
Attn: Ms. Renee Cipriano and Amy Antonioli  
233 South Wacker Drive  
6600 Sears Tower  
Chicago, Illinois 60606

Carol Webb, Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Ave East  
P.O. Box 19276  
Springfield, Illinois 62794

**PLEASE TAKE NOTICE** that I have today filed with the office of the Clerk of the Pollution Control Board an **APPEARANCE and RESPONSE OF THE ILLINOIS EPA**, copies of which are herewith served upon you.

Respectfully submitted,

**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,**



By: William D. Ingersoll  
Division of Legal Counsel  
1021 North Grand Avenue, East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
217/782-5544  
217/782-9143 (TDD)

Dated: October 16, 2008

This filing submitted on recycled paper.

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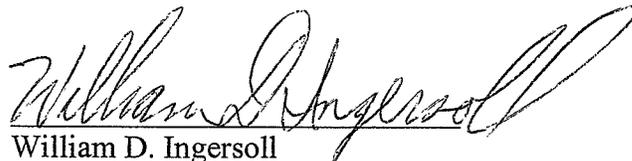
ENTRY OF APPEARANCE

NOW COMES the undersigned, as counsel for and on the behalf of the Environmental Protection Agency of the State of Illinois, and hereby enters his Appearance in the above captioned matter.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,  
Respondent

By



William D. Ingersoll  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue, East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
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STATE OF ILLINOIS  
Pollution Control Board

**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**  
**RESPONSE TO BOARD ORDER OF SEPTEMBER 16, 2008**

The ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), by its attorney William D. Ingersoll, hereby submits its Response to the Illinois Pollution Control Board's September 16, 2008, Order and questions contained therein. The Illinois EPA Responds as follows.

**I. INTRODUCTION**

1. On August 11, 2008, Ameren Energy Generating Company ("Petitioner" or "Ameren"), filed a petition for Adjusted Standard from certain standards set forth within 35 Ill. Adm. Code Parts 811, 814 and 815 ("Petition"). (Pet. at 1)

2. According to the Petition, relief is sought to allow for closure of a unit created, operated and managed throughout its operating life as a surface impoundment, provided that such closure would not require that the facility comply with many of the solid waste landfill requirements contained within Parts 811, 814 and 815 and groundwater quality standards. (Pet. at 2)

3. On September 16, 2008, the Illinois Pollution Control Board ("Board") issued an Order accepting Ameren's petition, reserving the right to review the matter, and directing both Ameren and the Illinois EPA to answer certain questions posed within the Order. The Board also stayed the need for the Illinois EPA to file a Recommendation pending its review of the threshold issues contained within the September 16 Order.

**II. QUESTIONS**

4. In its September 16, 2008, Order the Board posed three questions: (1) what authority exists for applying the Board's landfill regulations to Pond D; (2) what requirements for closure of Pond D are addressed in the facility's NPDES or other applicable permits; and (3) should the facts and circumstances presented require a site-specific rule?

**QUESTION 1) What authority exists for applying the Board's landfill regulations to Pond D?**

**RESPONSE:** In short, and as more fully discussed below, the request to allow the waste to remain within Pond D require that the unit comply with the

### **Board's landfill regulations.**

5. Petitioner provides that “[a]ccording to the [Illinois EPA], 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) Contrary to assertions, the Illinois EPA would frame the debate quite differently. More correctly, waste contained within Pond D may only be disposed within a permitted waste disposal site (of which Pond D is not) which may be a unit within the Ameren site or any other properly operating and permitted waste disposal site. If Pond D is the location for such disposal, then Pond D would have to satisfy the requirements for proper environmental control of potential contaminants. As constructed, Pond D does not qualify. It would be more correct to provide that wherever this waste is disposed, the unit must comply with applicable law and regulation, which are protective of human health and the environment. Petitioner’s assertion attributes to the Illinois EPA a conclusion that the waste must remain in place. It is important to remember that the waste currently within Pond D could be moved to a compliant waste disposal unit, as opposed to remaining in place, as Petitioner intends.

6. As the Board correctly phrases the issue, it is the fact that the landfill regulations become “applicable” to Pond D, not that these regulations were intended initially to apply to such a unit.

7. How do the regulations become “applicable?” Petitioner itself concludes that it seeks relief “... from regulations drafted to manage solid waste landfills, many of the landfill regulations are not applicable to a previously operated surface impoundment, permitted as a water pollution control facility... .” (Pet. at 2) Of course, this realization is mostly true, as it is very instructive on the issue of the applicability of the Board’s regulations to this situation. Again, Petitioner is acknowledging that the many regulations applicable to a unit subject to the regulations, from which it now seeks relief, do not apply to its unit, unless and until they are deemed to be seeking final disposal. Yet, by admission, the unit is a previously operated surface impoundment. The definition of “surface impoundment” found within 35 Ill. Adm. Code 810.103 states that such a unit is “... a natural topographic depression, a man-made excavation, or a dike dares into which flowing wastes, such as liquid wastes or wastes containing free liquids, are placed. For the purpose of this Part and 35 Ill. Adm. Code 811 through 815, a surface impoundment is not a landfill. Other Parts of 35 Ill. Adm. Code: Chapter I may apply, including permitting requirements of 35 Ill. Adm. Code 309.” This definition clearly takes an active surface impoundment out of the landfill regulations and would place such a unit under the Board’s water regulations and compliance with an NPDES permit requirements to insure any discharge would not be injurious to waters of the State. An active unit, a unit which has “flowing” wastes through it, would not be required to comply with landfill regulations, in that it would be regulated under differing areas of the regulations. However, where such a unit ceases to be actively used as a surface impoundment, the waste contained therein would be required to be disposed of within a permitted and compliant waste disposal site.

As the definitions within the regulations point out, a “landfill” is a unit in or on which waste is placed and accumulated over time for disposal. (See: 35 Ill. Adm. Code 810.103; See also: 45

ILCS 5/3.185) "Disposal" is defined as meaning the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water . . . such that solid waste or any constituent of the solid waste may enter the environment (or discharged into any waters, including groundwater). Moreover, Section 810.103 clearly states that "[i]f the solid waste is accumulated and not confined or contained to prevent its entry into the environment, or there is no certain plan for its disposal elsewhere, such accumulation shall constitute disposal." It is evident from this definition, that a unit such as Pond D, where waste has been allowed to accumulate, enter the environment, and for which Petitioner has no plan for disposal elsewhere, falls within the intent of applying regulations which consider its impact on the environment, and which consider techniques to be applied that are protective of the environment.

8. Furthermore, the Illinois EPA agrees with the Board's brief discussion, within the September 16 Order, of the facts and analysis of *Petition of Commonwealth Edison for an Adjusted Standard from 35 Ill. Adm. Code Parts 811 and 814*, AS 96-9 (Aug. 15, 1996). This matter is significantly different than the facts in that Petition. However, should Pond D be a disposal site, and as such a landfill, Petitioner would need to insure that the facility complied with applicable landfill regulations.

**QUESTION 2) What requirements for closure of Pond D are addressed in the facility's NPDES or other applicable permits?**

**RESPONSE: The Illinois EPA is not aware of closure requirements within the currently issued permits applicable to Pond D.**

9. The NPDES permit issued for this facility does not contain closure requirements relative to final disposal of the waste in place. The Illinois EPA is unaware of any other permit issued for this unit which provides for closure of the waste in place.

**QUESTION 3) Should the facts and circumstances presented require a site-specific rule?**

**RESPONSE: The facts and circumstances of this Petition are more appropriately a rule than a request for relief from the landfill regulations.**

10. As plainly stated by Petitioner: "... the circumstances applicable to this ash pond are very different from those contemplated by the Board in adopting Parts 811 through 815." (Pet. at 2, *Emphasis added*) It is also notable that Petitioner's contention that this ash pond is very different from a typical solid waste landfill is the matter of fact that, this very type of unit was not contemplated for permitting, other than for permitting for its intended purpose, as a water pollution control facility.

11. Petitioner appears to base its very justification for relief from the regulations upon the concept that this ash pond is very unlike the units regulated by the rules in question. This may be true, but misses the point. Generally speaking, Adjusted Standard petitions are filed requesting

specific relief from rules of general applicability which apply to such units. A facility or person seeks relief, through Adjusted Standard, from regulations that were intended to apply to them, which regulations do not contemplate fully the specific facts or circumstances that effect their situation. Additionally, Petitioner will demonstrate that the alternate form of compliance is equivalent to that contained within the general rule. What Petitioner request in this pleading is for a waste treatment facility/unit to be "classified" as a non-compliant closed landfill. Such a stretch was not contemplated by the general regulations, since the general regulations were not meant to apply to units not intending to be regulated as a final disposal unit in the first place. Section 102.210 of the Board's procedural rules does allow for a site-specific regulation(s). It would be the Illinois EPA's contention that this procedure may be more appropriate for review of Petitioner's request. However, it must be noted that it has been approximately 18 years since the Board has, in general, considered this type of facility. In that time, considerable review has been had on the national level regarding coal ash disposal and environmental and health impacts from such activity. A significant number of units will likely fall within the category of sites where coal ash remains in regulated units, some of which are no longer accepting or processing waste. It may be appropriate (from an environmental, economic and policy standpoint) to review, this entire group of facilities as opposed to engaging in numerous site specific rulemakings.

12. Within the Introduction, Petitioner provides that "...Ameren considers Pond D at closure as an "existing" facility because it accepted waste prior to September 18, 1990, the effective date of the landfill regulations." (Pet. at 2) Significant debate has occurred relative to this issue. What can be said, in general, is that if Petitioner placed waste within a unit following 1990 and continued past 1997, and IF the ash pond is to be a final waste disposal site, the regulations which would be applicable to such a landfill would be those of Parts 811 through 815 as opposed to Part 807. In other words, if the Petitioner were to have a surface impoundment prior to 1990, and continue use past 1997, the resulting waste unit, under the landfill regulations, would be considered analogous to a landfill placing waste within an existing unit, and by comparison, the Petitioner's unit would be considered an "existing" unit under the landfill regulations.

13. It is very important to point out that discussion of the application of the landfill regulations to such units has concerned both the Illinois EPA and Board in the past. As noted in footnote 2 of the Board's April 9, 1992 Order in R 90-25, the Board did not want the Utility Group's deletion of "existing utility ash ponds" from the proposed rulemaking to be construed as a determination that such units "... do not become landfills upon closure." The Illinois EPA would still agree with this statement, to the extent that it evidences a concern that such units not fall outside of regulations which apply to a disposal site designed to protect human health and the environment.

### **III. CONCLUSION**

14. Petitioner seeks to transform an unlined wastewater treatment system into a final disposal site for solid waste. Petitioner seeks to construct a solid waste disposal unit without a permit; seeks relief from past activity applicable to such a unit; requests to forgo most, if not essentially all, of the leachate requirements; proposes to add additional waste and other materials to

create a cap; by omission seeks that financial assurance, closure plan perpetration and approval and post closure care requirements be forgone; and finally requests relief from groundwater standards applicable to the very contaminants commonly found (and indeed found in this case) within the waste proposed for final disposal.

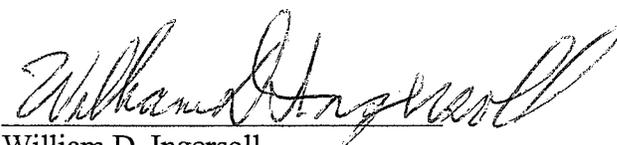
15. The constructed and closed facility that would result from the requested relief does not fit within the spirit nor intent of the solid waste landfill disposal regulations from which relief is sought and, more importantly, shoehorning this unit into such requirements is only less attractive than allowing for disposal absent most of the applicable regulatory requirements set in place to insure proper construction, operation and maintenance of final disposal units.

16. In general, it may fairly be surmised that this Petition seeks relief from disposal of waste within a properly permitted facility by requesting to create by Adjusted Standard a new type of disposal site, absent many requirements on other disposal sites which insure protection of the environment and human health. Thus, this Petition sounds more similar to a proposed new class of general rule, and as such, general relief from more stringent and specific requirements should likely not be granted in this matter.

**WHEREFORE**, in accordance with the Board's September 16, 2008 Order in this matter, the Illinois EPA respectfully offers the forgoing review and analysis for the Board's consideration.

Respectfully submitted,

**ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY**

By:   
William D. Ingersoll  
Division of Legal Counsel

DATED: October 16, 2008  
1021 North Grand Ave. East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
217/782-5544

## CERTIFICATE OF SERVICE

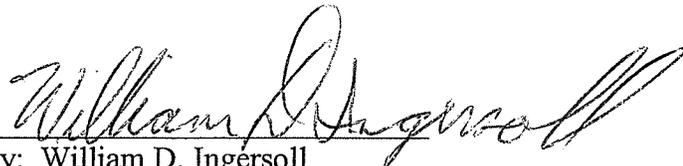
I, the undersigned attorney at law, hereby certify that on October 16, 2008 I served true and correct copies of an **APPEARANCE and RESPONSE OF THE ILLINOIS EPA**, by causing to be placed true and correct copies in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. mail drop box located within Springfield, Illinois, with sufficient postage affixed thereto, upon the following named persons:

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

Schiff Hardin, LLP  
Attn: Ms. Renee Cipriano and Amy Antonioli  
233 South Wacker Drive  
6600 Sears Tower  
Chicago, Illinois 60606

Carol Webb, Hearing Officer  
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Respondent**



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