

ILLINOIS POLLUTION CONTROL BOARD

June 18, 2009

IN THE MATTER OF: )  
)  
AMEREN ASH POND CLOSURE RULES ) R09-21  
(HUTSONVILLE POWER STATION): ) (Rulemaking - Land)  
PROPOSED 35 ILL. ADM. CODE PART )  
840.101 THROUGH 840.144 )

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

On May 19, 2009, Ameren Energy Generating Company (Ameren) filed a proposal (Prop.) for site-specific rulemaking pursuant to Sections 27 and 28 of the Environmental Protection Act (Act) (415 ILCS 5/27, 28 (2006)), Section 8 of the Illinois Groundwater Protection Act (415 ILCS 55/8 (2006)), and Sections 102.208 and 102.210 of the Board's procedural rules (35 Ill. Adm. Code 102.208, 102.210). Ameren included a Statement of Reasons (SR) and a Technical Support Document (TSD) in its filing.

Ameren proposes a new subchapter in the Board's waste disposal regulations to address the closure of surface impoundments. Specifically, Ameren seeks the adoption of regulations through which it can close Ash Pond D at its Hutsonville Power Station (Station) near Hutsonville, Crawford County.

Ameren also filed a motion requesting that the Board waive the requirement that the petition include the signatures of at least 200 persons (Mot. Waive) (*see* 415 ILCS 5/28 (2006); 35 Ill. Adm. Code 102.202(g)) and a motion requesting that the Board expedite review of the proposal (Mot. Exp.) (*see* 35 Ill. Adm. Code 101.512). On June 1, 2009, the Illinois Environmental Protection Agency (Agency) filed a response to the motion for expedited review (Resp.). On June 3, 2009, Ameren filed a motion for leave to file a reply in support of its motion for expedited review (Mot. Leave), accompanied by its reply (Reply).

Below, the Board first briefly addresses two preliminary matters before reviewing Ameren's proposal. The Board then summarizes the filings regarding Ameren's motion for expedited review. In the discussion following those summaries, the Board accepts Ameren's proposal for hearing and denies the motion for expedited review.

**PRELIMINARY MATTERS**

**Motion to Waive Signature Requirement**

Ameren states that, because current Board regulations do not address closure of surface impoundments or ash ponds at coal-fired electric generating plants, it proposes a site-specific rule adding a new subchapter to the Board's existing waste disposal rules. Mot. Waive at 1. Ameren further states that its proposed site-specific rule specifically provides for closure of Ash Pond D at its Hutsonville Power Station. *Id.* Ameren claims that, because the scope of its

proposal is limited to that station, obtaining “200 signatures would present an added expense that is burdensome and unnecessary.” *Id.* at 2. Accordingly, Ameren requests that the Board waive the requirement that it submit the signatures of at least 200 persons with its rulemaking proposal. *Id.* at 1; *see* 415 ILCS 5/28(a) (2006); 35 Ill. Adm. Code 102.202(g).

Section 101.500(d) of the Board’s procedural rules provides in pertinent part that, “[w]ithin 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of the motion.” 35 Ill. Adm. Code 101.500(d). The Board has received no response to Ameren’s motion to waive signature requirements. Based on its review of the Ameren’s motion, and in the absence of any response, the Board grants the motion and waives the requirements that Ameren submit the signatures of 200 persons with its proposal.

### **Ameren’s Motion for Leave to File Reply**

Ameren’s motion first notes that, “[u]nder the Board’s procedural rules, a moving party is not entitled to file a reply, except as permitted by the Board or Hearing Officer to prevent material prejudice.” Mot. Leave at 1, citing 35 Ill. Adm. Code 101.500(e). Ameren continues by claiming that the Agency’s response “mischaracterizes several items” and that it is therefore “imperative” that the Board grant the motion for leave and consider the substance of the reply. Mot. Leave at 1. Ameren requests that the Board grant its motion and accept the reply “to prevent material prejudice that would result if the Response was allowed to stand containing such misrepresentations.” *Id.* at 2. Stating that it has negotiated with the Agency for many years on closing Pond D, Ameren argues that the Agency and the public would not be prejudiced if the Board grants the motion but that it “would suffer irreparable harm” if the motion is denied. *Id.* at 2.

As noted above, Section 101.500(d) of the Board’s procedural rules provides in pertinent part that,

[w]ithin 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of the motion. Unless undue delay or material prejudice would result, neither the Board nor the hearing officer will grant any motion before expiration of the 14 day response period except in deadline driven proceedings where no waiver has been filed. 35 Ill. Adm. Code 101.500(d).

As Ameren filed its motion for leave on June 3, 2009, the Agency’s 14 day response deadline expired June 17, 2009. *See* 35 Ill. Adm. Code 101.300(b)(2) (“mailbox rule”). In order for the Board to decide this motion at its regularly-scheduled meeting today, and in order to avoid undue delay in this proceeding, the Board grants Ameren’s motion for leave to file a reply in support of its motion for expedited review and considers that reply below.

## AMEREN'S PROPOSAL

Ameren generates electricity at the Station, which is located on a site approximately 205 acres in size along the Wabash River near Hutsonville. SR at 7; *see* TSD at 2 (Site Location Map). The Station employs 58 persons. SR at 8. Electric generating equipment at the Station “includes two coal-fired boilers for steam production and steam-driven turbine generators.” *Id.* at 7. The Station also includes a circulating water system that draws water from the Wabash River for use in the boiler and turbine equipment. *Id.* The system removes ash, a byproduct of coal combustion, from the boilers and then sluices it through pipelines to an ash impoundment system. *Id.* at 8. 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* TSD at 4 (Site Plan), 14 (Background). The surface impoundment system accepts coal combustion waste including both bottom ash and fly ash, low-volume waste consisting of demineralizers and boiler blow-down, and sanitary wastewater. SR at 8.

Ameren’s proposal addresses an unlined ash impoundment designated as “Pond D.” Prop. at 6; TSD at 14. Pond D was constructed from indigenous earthen materials and operated as the Station’s primary ash management unit from 1968 until the construction of a synthetically-lined Pond A during the 1980s. Prop. at 8; TSD at 14. In 2000, Ameren constructed two additional lined ponds, Ponds B and C. Prop. at 8. Ameren then removed Pond D from service and allowed it to dewater. *Id.* Ameren estimates that, during 30 years of active operation, Pond D accumulated approximately 750,000 cubic yards of ash. *Id.* at 9. Ameren further estimates that 280,000 cubic yards, or approximately one-third of that volume, lies below the water table. *Id.* Ameren states that “the Agency approved the addition of approximately 200,000 cubic yards of ash to Ash Pond D after it was taken out of service to enable the establishment of an acceptable final grade.” *Id.*

Before submitting its proposal for a site-specific rule, Ameren filed with the Board a petition for an adjusted standard from the Board’s landfill regulations as the mechanism to close Pond D. Prop. at 1; *see* Petition of Ameren Energy Generating Company for Adjusted Standard from 35 Ill. Adm. Code Parts 811, 814, and 815 (Hutsonville Power Station), AS 09-1 (Aug. 11, 2008). In an order dated September 16, 2008, the Board accepted Ameren’s petition but directed Ameren and the Agency to address three issues: the authority to apply landfill regulations to Pond D, whether any permit issued to Ameren addressed requirements to close Pond D, and whether a site-specific rule is the appropriate mechanism through which to establish the requirements to close Pond D. Petition of Ameren Energy Generating Company for Adjusted Standard from 35 Ill. Adm. Code Parts 811, 814, and 815 (Hutsonville Power Station), AS 09-1, slip op. at 3-4 (Sept. 16, 2008). After receiving responses from both Ameren and the Agency, the Board in an order dated March 5, 2009, dismissed Ameren’s petition for an adjusted standard and concluded “that a site-specific rule is the appropriate regulatory relief mechanism under which to close Ameren’s Pond D.” Petition of Ameren Energy Generating Company for Adjusted Standard from 35 Ill. Adm. Code Parts 811, 814, and 815 (Hutsonville Power Station), AS 09-1, slip op. at 1, 11 (Mar. 5, 2009).

Ameren states that it proposed this site-specific rule “to cover a gap in the Board’s existing Waste Disposal regulations and allow for the closure of Ash Pond D.” SR at 1. Ameren argues that the Board’s water pollution regulations apply during the operation of surface impoundments such as Pond D. *Id.* at 1-2. Ameren further argues that, when closed, they are not defined as landfills and do not fit within the scope of the Board’s waste disposal rules or other regulations. *Id.* at 2, citing 35 Ill. Adm. Code 810.103. Ameren claims that these circumstances warrant adoption of a site-specific rule. *See* SR at 2. Specifically, Ameren proposes a new subchapter addressing surface impoundments under the existing Subtitle G regulations governing waste disposal. *Id.* at 3.

Ameren states that it considered a number of options for closing Pond D. SR at 15-21; *see* TSD at 10-174. Ameren’s proposed regulations allow existing ash to remain in place and require “a geosynthetic membrane cap and final cover system that meet the performance requirements of the general landfill regulations along with a groundwater collection trench.” SR at 15, citing 35 Ill. Adm. Code 811.314. Ameren states that its proposal relies where appropriate on “methods for measurement and performance criteria from the landfill regulations.” SR at 15. Ameren estimates that the capital costs associated with this closure plan could range from \$3 to \$4 million, excluding engineering. *Id.* at 21. It expects annual operating and maintenance costs of approximately \$50,000. *Id.* In addition, Ameren reports that it assessed the environmental impact of its proposed regulations. *Id.* at 22; *see* TSD at 331-492. That assessment concluded “that the closure plan and associated activities do not pose a threat to human health or the environment under current and reasonably foreseeable future conditions and land use.” SR at 22.

## **MOTION FOR EXPEDITED REVIEW**

### **Ameren’s Motion**

Ameren states that it has discussed the standards under which to close Pond D with the Agency “[o]ver a number of years.” Mot. Exp. at 1. Ameren notes that, while in 2008 it filed a petition for an adjusted standard as the mechanism for closing Pond D, the Board dismissed the petition and found that a site-specific rule is the appropriate mechanism. *Id.*; *see* Petition of Ameren Energy Generating Company for Adjusted Standard from 35 Ill. Adm. Code Parts 811, 814, and 815 (Hutsonville Power Station), AS 09-1, slip op. at 1, 11 (Mar. 5, 2009).

Ameren states that, in the meantime, it has placed its Hutsonville Station on the market for sale. Ameren argues that, “[a]lthough having already closed Ash Pond D would present Hutsonville in a better light to a potential buyer, having at least a rule that sets forth the parameters under which Ash Pond D may be closed would be beneficial. Regulatory certainty would provide a buyer with information sufficient to estimate and plan for environmental compliance obligations.” Mot. Exp. at 2.

Ameren also claims that there is increased interest on the part of regulators and the general public in addressing ash ponds at coal-fired electric generating plants. *See* Mot. Exp. at 2. Ameren notes that the Agency has requested that power plants “voluntarily monitor groundwater at ash impoundments.” *Id.* Ameren further notes that the United States Environmental Protection Agency (USEPA) intends to visit ash impoundments “to gather

information regarding structural stability and design issues.” *Id.* Ameren also states that a petition for a site-specific rule is the appropriate course to follow in closing Pond D. *Id.*

Ameren argues that it “will continue to suffer material hardship so long as the parameters under which it may close Ash Pond D are undecided.” Mot. Exp. at 2.

Ameren characterizes the Board’s docket as “heavy” but expresses the belief that “it has addressed most, if not all, of the Agency’s requests and has prepared this proposal and supporting technical documents to facilitate prompt review.” Mot. Exp. at 2. Specifically, Ameren states that it “has performed numerous studies, assessments, and analyses of the impacts of Ash Pond D and the best method for closing it.” *Id.* at 3. Ameren notes that the Board recently granted motions for expedited review. *Id.* at 2-3; *see, e.g., In the Matter of: Amendments to 35 Ill. Adm. Code 217, Nitrogen Oxides Emissions, and 35 Ill. Adm. Code 211, R08-19, slip op. at 4 (Apr. 2, 2009)* (characterizing USEPA implementation deadline and risk of federal sanctions as “dire circumstances”). Ameren further notes that the Board recently provided first notice of a site-specific rule proposed by the City of Galva without commenting on the merits of that proposal. Mot. Exp. at 3, citing *In the Matter of: City of Galva Site-Specific Water Quality Standard for Boron Discharges to Edwards River and Mud Creek: 35 Ill. Adm. Code 303.447 and 303.448, R09-11, slip op. at 3 (Feb. 5, 2009)*. “Ameren requests that the Board grant it the same consideration” by providing first notice of its proposal, and setting hearings and moving toward decision expeditiously. Mot. Exp. at 3.

### **Agency’s Response to Ameren’s Motion**

In its response, the Agency notes that Ameren wishes to sell the Station and argues that closing Ash Pond D, “or the certainty of the steps necessary to achieve closure, would make the facility more attractive to potential buyers.” Resp. at 2; *see* Mot. Exp. at 2. The Agency suggests that this argument effectively seeks expedited review “upon the basis of providing for a more marketable plant.” Resp. at 2. Although the Agency acknowledges that a more marketable plant would benefit Ameren, it states that Ameren’s “decision to offer the sale of its plant is, at best, a self-imposed hardship.” *Id.* The Agency argues that Ameren’s interest in placing its property in a more favorable light should not by itself resolve the motion for expedited review. *See id.* at 2-3.

The Agency continues its response by citing “the public interest in conducting a proceeding that thoroughly and deliberately evaluates the proposal. . . .” Resp. at 3. The Agency argues in support of this evaluation by describing the recent course of its communication with Ameren on the issues raised by this proposal. *Id.* at 3-5. The Agency first notes that the Board issued the order finding that a site-specific rule is the appropriate mechanism for closing Pond D on March 5, 2009. *Id.* at 3, citing *Petition of Ameren Energy Generating Company for Adjusted Standard from 35 Ill. Adm. Code Parts 811, 814, and 815 (Hutsonville Power Station), AS 09-1 (Mar. 5, 2009)*. The Agency states that, on March 10, 2009, it received from Ameren a draft version of proposed legislation applying generally to closing surface impoundments containing coal combustion waste. Resp. at 3. The Agency further states that, by March 13, 2009, it had assembled a group of staff members to begin evaluating that draft legislation. The Agency indicates that, on March 22, 2009, it received from Ameren a draft version of the legislation

prepared by the Legislative Reference Bureau. *Id.* The Agency also indicates that, by March 24, 2009, its staff “had identified a list of significant questions and concerns about the legislation in the event the draft proposal was introduced in the General Assembly.” *Id.* The Agency expressed doubt about the potentially rapid pace of the legislative process and the risk that legislation might conflict with expected federal proposals. *Id.* at 4.

The Agency reports that, on April 8, 2009, it received three documents from Ameren: “the generally applicable draft legislation, Ameren’s draft site-specific rule for the closure of Ash Pond D, and a ‘Summary Document presenting the underlying elements of the approach for the closure of Ash Pond D . . . as found in the draft rule.’” *Resp.* at 4. The Agency states that, on April 9, 2009, it expressed to Ameren its preference to pursue adoption of a site-specific rule on this issue rather than passage of legislation. *Id.* The Agency reports that, “[o]n or about April 13th, Ameren proposed a meeting at Agency headquarters in Springfield the following Thursday, April 16th, for the purpose of walking through its proposal and supporting documentation and receiving the Agency’s comments on the proposal.” *Id.* The Agency states that, although it could not meet on that proposed date, it scheduled a meeting on April 21st and provided Ameren with comments and supporting documentation on April 17th. *Id.* The Agency claims that both the Agency and Ameren then understood that the Agency’s comments were preliminary and not necessarily complete and also that “Ameren had not yet ruled out proceeding with legislation.” *Id.* at 4-5.

The Agency states that, as a result of that meeting, Ameren revised its proposal for a site-specific rule and provided the Agency a copy of the revised proposal on May 2, 2009. *Resp.* at 5. The Agency reports, however, that it could not conduct “accelerated review” of that amended proposal until May 11, 2009. *Id.* The Agency further reports that it had not compiled comments when Ameren checked on the progress of that review on May 15, 2009. During that check, “Ameren stated its intention to file the proposal with the Board the following week.” *Id.* The Agency states that, when Ameren called on May 19, 2009, to check again on that progress, it had assembled only partial comments that had not been reviewed and were not ready for discussion. *Id.*

The Agency states that Ameren filed its proposal on May 19, 2009, before the Agency had completed its evaluation. *Resp.* at 5. The Agency further states that there had not been a “meeting of the minds” on that proposal before Ameren filed it. *Id.* at 6. Nonetheless, the Agency suggests that, in the course of the exchanges described above, it has conscientiously participated in discussions and has sought “to identify and resolve as many issues as possible before the proposal was filed with the Board.” *Id.* at 5. Characterizing Ameren’s course since March 5, 2009, as hasty, the Agency argues that the motion for expedited review seeks to continue a pace that has allowed it “little time to fully evaluate the proposal and its effects, much less for deliberation about how the proposal might be improved to the extent necessary.” *Id.*

The Agency takes the position that, based on the environmental issues it raises, “this proposal is too important to rush.” *Resp.* at 6. The Agency emphasizes that Ameren itself has seven facilities similar to Pond D that will require closure in the future and that Ameren expects other companies to use its proposal as an example in closing their own surface impoundments. *Id.*, citing Petition of Ameren Energy Generating Company for Adjusted Standard from 35 Ill.

Adm. Code Parts 811, 814, and 815 (Hutsonville Power Station), AS 09-1, slip op. at 5 (Mar. 5, 2009). Stating that the Board may in effect be adopting a regulatory program through a site-specific rulemaking, the Agency expresses that belief that “it is not in the public interest to accelerate this proceeding.” Resp. at 6.

The Agency states that, although it discussed and responded to a first draft of Ameren’s proposal, it has not yet had substantive discussions with Ameren on the subsequent draft filed with the Board. Resp. at 8. Suggesting that its review of that proposal is not complete, the Agency lists issues about which it has questions and expresses reservations:

Groundwater contamination monitoring, assessment, and response: Several unclear, open-ended and/or inappropriate provisions; omissions such as no clear requirements to control public or private uses of contaminated off-site groundwater;

Requirements for final slope and stabilization and cover system;

Time periods for initial implementation and compliance; [and]

Little or no Agency oversight or involvement where provisions propose the flexibility to establish or alter elements of the closure and post-closure plans, or, in the alternative, the proposal may be insufficiently prescriptive to support effective field inspections and enforcement for non-compliance. *Id.*

The Agency affirms its willingness to continue discussions with Ameren in order to address its questions and reservations and as a “constructive alternative” to expedited review. *Id.* at 9. The Agency proposes that it would be a more effective course than expedited review “for the Agency to identify satisfactory alternatives, consider amendments to the proposal or an alternative proposal to implement the alternatives, and prepare written testimony to convey all of this to the Board and participants.” *Id.*

The Agency states its reservation that expedited review “will compromise the Agency’s capacity to fully identify, address, and express its concerns and proposed solutions.” Resp. at 9. The Agency notes that the Board recently denied the City of Galva’s motion for expedited review after noting that it had a pressing workload and limited resources. *Id.* at 7, citing In the Matter of: City of Galva Site-Specific Water Quality Standard for Boron Discharges to Edwards River and Mud Creek: 35 Ill. Adm. Code 303.447 and 303.448, R09-11, slip op. at 3 (Feb. 5, 2009). The Agency indicates that it is experiencing similarly limited resources. *See* Resp. at 7-8.

The Agency also suggests that providing first notice of the proposal without comment on its merits does not overcome this reservation. The Agency claims that such a step “still has the effect of starting the time clock and reducing the Board’s flexibility.” *Id.* The Agency indicates that the Board should not provide first notice of a proposal “until the nature and extent of the issues are better understood.” *Id.*

## **Ameren's Reply**

Ameren notes suggestions by the Agency in its response that expedited review “would be contrary to the public interest in conducting a proceeding that thoroughly and deliberately evaluates the proposal and does not consider Agency resource limitations.” Reply at 1. Ameren states its appreciation for these views but “believes that an expedited proceeding would not adversely impact the public’s interest, and the Agency’s limited resources are a chronic problem that would not be solved by less than prompt review of this matter.” *Id.*

Ameren argues that, whether or not the Board grants the motion for expedited review, the Board will hold a hearing on the proposal in the vicinity of the Station. Reply at 2; *see* 415 ILCS 5/28(a) (2006). Ameren further argues that, whether or not the Board grants the motion for expedited review, the Board “must provide at least 20 days’ notice of the hearing.” Reply at 2, citing 35 Ill. Adm. Code 102.604; *see* 415 ILCS 5/28(a) (2006). Ameren also argues that, in the event that the Board provides first notice of the proposal, “the Board must allow for a 45-day public comment period prior to second notice.” Reply at 2, citing 35 Ill. Adm. Code 102.608; *see* 5 ILCS 100/5-40(b) (2006). Ameren claims that, “[d]uring this entire process, the Agency, the Board, and the public have sufficient time to thoroughly and deliberately evaluate the rule, as provided by the Board’s regulations.” Reply at 2. Ameren also notes that, even if the Board granted its motion for expedited review and adopted the proposal for first notice as quickly as possible, a hearing could occur no sooner than the end of June. *Id.* at 3. Ameren indicates that it would not object to a hearing at the end of July, which would allow the Agency more than 60 days of review after the initial filing of the petition. *Id.*

Ameren states that it has intermittently engaged in consultation on the issue of closing ash ponds “for many years” and has supplied the Agency with documents relating to that closure. Reply at 2. Ameren notes that it filed a petition for an adjusted standard in 2008, and that the Board subsequently “determined that a site-specific rule is the appropriate mechanism under which Ameren should close Ash Pond D.” *Id.*, citing Petition of Ameren Energy Generating Company for Adjusted Standard from 35 Ill. Adm. Code Parts 811, 814, and 815 (Hutsonville Power Station), AS 09-1, slip op. at 1, 11 (Mar. 5, 2009). Ameren argues that the substance of this petition is not different than its petition for an adjusted standard. Ameren further argues that, in discussing ash pond closure, it has “provided the Agency with virtually all of the documents that comprise the Technical Support Document.” Reply at 3.

Ameren argues that, because “the issues in this proposal are not new to the Agency or materially different than what has been discussed by the participants for years.” Reply at 3. Ameren further argues that it has proceeded aggressively but prudently in seeking a course through which to close Pond D. *See id.* Ameren suggests that, having offered the Station for sale and facing heightened public and regulatory interest in ash ponds, it cannot afford to be drawn by the Agency into additional negotiations on the issue. *See id.* Ameren thus restates its request that the Board accept the proposal, adopt it for first-notice publication, and set a hearing date as soon as possible. *Id.* at 4.

## **DISCUSSION**

First, the Board finds that Ameren's petition meets the content requirements of 35 Ill. Adm. Code 102.208 and 102.210 and accepts the petition for hearing.

Turning to Ameren's motion for expedited review, the Board notes that Section 101.512 of its procedural rules addresses requests for expedited review. *See* 35 Ill. Adm. Code 101.512. Such requests must include, among other elements, "a complete statement of the facts and reasons for the request." 35 Ill. Adm. Code 101.512(a). In acting on a motion for expedited review, the Board considers, at a minimum, "all statutory requirements and whether or not material prejudice will result from the motion being granted or denied." 35 Ill. Adm. Code 101.512(b). In addition, the Board will only grant a motion for expedited review consistent with available resources. *See* 35 Ill. Adm. Code 101.512(c).

As a matter of its various resources and decision deadlines, the Board cannot expedite consideration of every case or rulemaking proposal. In denying a motion for expedited review filed by the City of Galva, the Board recently stated that its "limited resources in light of its current and future decision deadlines render the granting of a motion for expedited review unlikely in all but the most dire circumstances." In the Matter of: City of Galva Site-Specific Water Quality Standard for Boron Discharges to Edwards River and Mud Creek: 35 Ill. Adm. Code 303.447 and 303.448, R9-11, slip op. at 3 (Feb. 5, 2009); see also In the Matter of: Petition of Westwood Lands, Inc. for an Adjusted Standard from Portion of 35 Ill. Adm. Code 807.104 and 810.103 or, in the Alternative, a Finding of Inapplicability, AS 09-3, slip op. at 10 (May 21, 2009) (denying motion for expedited review).

The Board did recently grant two Agency motions to expedite consideration of proposed rules, in which the Agency described the risk of United States Environmental Protection Agency (USEPA) sanctions if the State failed to remedy deficiencies in the State Implementation Plan for ozone attainment. In each of these two rulemaking proceedings, the Board found that the USEPA implementation deadline and the risk of federal sanctions constitute "dire circumstances." Section 27 Proposed Rules for Nitrogen Oxide (NO<sub>x</sub>) Emissions From Stationary Reciprocating Internal Combustion Engines and Turbines: Amendments to 35 Ill. Adm. Code Parts 211 and 217, R07-19, slip op. at 4 (Apr. 2, 2009); In the Matter of: Nitrogen Oxides Emissions from Various Source Categories, Amendments to 35 Ill. Adm. Code Parts 211 and 217, R08-19, slip op. at 4 (Apr. 2, 2009).

As noted above, expedited review is granted consistent with the Board's decision deadlines and available resources. *See* 35 Ill. Adm. Code 101.512(c). The Board currently has a number rulemaking dockets requiring immediate attention, as well as pressing cases of other types. As a result of attrition, the Board has fewer staff than it has had in many years. These circumstances have not meaningfully changed since the Board denied the City of Galva's motion for expedited review. These limited resources, particularly in light of current and future decision deadlines, continue to make it unlikely that the Board will grant a motion for expedited review in all but the most dire circumstances.

The Board does not discount Ameren's position that regulatory certainty may facilitate a sale of its station. The Board also does not discount Ameren's view that there is general regulatory and public interest in ash ponds at sites such as the Hutsonville Station. However,

these factors do not necessarily constitute “material prejudice” sufficient to allow the Board to grant Ameren’s motion. The Board concurs with the Agency in weighing any heightened interest in regulating ash ponds against granting the motion for expedited review. Particularly when any rule adopted in this proceeding may guide the closure of many other surface impoundments, the Board cannot agree that expedited review is appropriate. Accordingly, the motion is denied.

The Board notes that Ameren has effectively proposed that the Board expedite review by providing first notice of the proposal without commenting on its substantive merits. The Board believes that this step would reduce its own flexibility and that of other participants. Substantial amendments to the proposal, even agreed amendments, may necessitate publication of a second first notice so that granting Ameren’s request would not necessarily result in more expeditious adoption of a rule. However, the Board commits to reaching a prompt decision in this matter as soon as the record is complete and directs its hearing officer to take any necessary steps to avoid delay in completing the record.

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 June 18, 2009, by a vote of 5-0.



---

John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board