

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

SIERRA CLUB, PRAIRIE RIVERS NETWORK,)
and NATIONAL ASSOCIATION FOR)
THE ADVANCEMENT OF COLORED PEOPLE,)
)
Complainants,)
v.)
CITY WATER, LIGHT and POWER,)
)
Respondent.)

PCB 18-11
(Citizens Enforcement –
Water)

NOTICE OF FILING

To: Don Brown, Clerk
Illinois Pollution Control Board
100 West Randolph
Suite 11-500
Chicago, IL 60601

And Attached Service List

Please take notice that on December 1, 2017, I filed electronically with the Office of the Clerk of the Illinois Pollution Control Board the attached **MOTION TO FILE A REPLY OF THE CITY OF SPRINGFIELD, OFFICE OF PUBLIC UTILITIES d/b/a CITY WATER, LIGHT AND POWER and REPLY TO COMPLAINANTS RESPONSE TO RESPONDENT'S MOTION TO DISMISS**, a copy of which is attached and served upon you.

Respectfully submitted,

THE CITY OF SPRINGFIELD,
a municipal corporation

By 
One of its Attorneys

Dated: December 1, 2017

Deborah J. Williams
Special Assistant Corporation Counsel
Office of Public Utilities
800 East Monroe, 4th Floor
Springfield, Illinois 62701
(217) 789-2116

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

SIERRA CLUB, PRAIRIE RIVERS NETWORK,)	
and NATIONAL ASSOCIATION FOR)	
THE ADVANCEMENT OF COLORED PEOPLE,)	
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v.)	PCB 18-11
)	(Citizens Enforcement –
CITY WATER, LIGHT and POWER,)	Water)
)	
Respondent .)	

**MOTION TO FILE A REPLY OF THE CITY OF SPRINGFIELD, OFFICE OF PUBLIC
UTILITIES d/b/a CITY WATER, LIGHT AND POWER**

NOW COMES Respondent, the City of Springfield, Office of Public Utilities d/b/a City Water, Light and Power ("CWLP"), by and through its counsel, pursuant to 35 Ill. Adm. Code 103.212(b), 101.506 and 101.501(e) and respectfully requests that the Pollution Control Board ("Board") grant Respondent leave to file a Reply to Complainant's Response in this matter. In support of its Motion, the City of Springfield, Office of Public Utilities states as follows:

1. On September 27, 2017, Sierra Club, Prairie Rivers Network and National Association for the Advancement of Colored People ("Complainants") filed a single Count Complaint with the Board alleging violations of Sections 12(a) and 12(d) the Environment Protection Act ("Act") [415 ILCS 5/12(a) and(d)] and Sections 620.115, 620.301(a) and 620.405 of the Board's regulations. 35 Ill. Adm. Code 620.115, 620.301(a) and 620.405.

2. The complaint was served on the City of Springfield, Office of Public Utilities on October 5, 2017.

3. On November 2, 2017, the Board Ordered Complainants to file the documentation of service required by 35 Ill. Adm. Code 101.304(d) by December 1, 2017. Section 101.304(d)(2)(B) requires that the filing party must file with the Board “[w]ithin seven days after it becomes available to the filing party, the delivery confirmation containing the recipient's signature, accompanied by a notice identifying the filed document to which the signed delivery confirmation corresponds.” 35 Ill. Adm. Code 101.304(d)(2)(B). Failure to comply with this requirement makes the proceeding “subject to dismissal.” 35 Ill. Adm. Code 101.304(d).

4. On November 3, 2017, Complainant submitted the required filing indicating service was completed on October 5, 2017.

5. Also on November 3, 2017, Respondent timely filed a Motion to Dismiss and Strike pursuant to 35 Ill. Adm. Code 103.212(b). Complainant filed its Response to the Motion to Dismiss on November 17, 2017.

6. Section 101.501(e) provides that a “motion for permission to file a reply must be filed with the Board within 14 days after service of the response” and is to be granted by the Board where appropriate to prevent “material prejudice.” 35 Ill. Adm. Code 101.501(e).

7. Because the Complainant's Response raises new issues that merit a response, because Complainant's Motion raises important issues regarding the Board's role in citizen enforcement complaints and because a fuller briefing of the issues will assist the Board in making a decision in this matter in addition to preventing material

prejudice, Complainants move the Board to grant permission to file the Reply to Complainants' Response to Respondent's Motion to Dismiss submitted with this filing.

Respectfully submitted,

THE CITY OF SPRINGFIELD,
a municipal corporation

By

A handwritten signature in blue ink, appearing to read "J. Zerkle", is written over a horizontal line.

Dated: December 1, 2017

James K. Zerkle
Corporation Counsel
City of Springfield
800 East Monroe
3rd Floor
Springfield, Illinois 62701

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

SIERRA CLUB, PRAIRIE RIVERS NETWORK, and NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,)	
)	
Complainants,)	
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v.)	PCB 18-11
)	(Citizens Enforcement –
CITY WATER, LIGHT and POWER,)	Water)
)	
Respondent .)	
)	

**REPLY TO COMPLAINANTS RESPONSE TO RESPONDENT’S MOTION TO
DISMISS**

NOW COMES Respondent, the City of Springfield, Office of Public Utilities (“City”) d/b/a City Water, Light and Power (“CWLP”), by and through its counsel, and submits this Reply in Support of its Motion to Dismiss and Strike, in reply to the Response filed by Complaints Sierra Club, Prairie Rivers Network and National Association for the Advancement of Colored People (“NAACP”) pursuant Sections 101.500(e) and 103.212 of the Pollution Control Board’s (“Board”) Procedural Rules. 35 Ill. Adm. Code 101.500(e) and 103.212.

1. On September 27, 2017, Sierra Club, Prairie Rivers Network and NAACP (“Complainants”) filed a single Count Complaint with the Board alleging violations of Sections 12(a) and 12(d) the Environment Protection Act (“Act”) [415 ILCS 5/12(a) and(d)] and Sections 620.115, 620.301(a) and 620.405 of the Board’s regulations. 35 Ill. Adm. Code 620.115, 620.301(a) and 620.405. On November 3, 2017, Respondent

timely filed a Motion to Dismiss and Strike pursuant to 35 Ill. Adm. Code 103.212(b) and Complainants filed its Response to the Motion to Dismiss on November 17, 2017.

2. In its Motion to Dismiss, the City has provided the Board with the legal basis to dismiss the Complaint in this matter under Section 31 of the Act and the Board's Procedural Rules. 415 ILCS 5/31, 35 Ill. Adm. Code 103.204. In order to proceed to hearing on this Complaint, the Board must find 1) that the complaint meets the requirements of Section 31(c) of the Act, and 2) that the complaint is not duplicative or frivolous. 415 ILCS 5/31(c)(1), 35 Ill. Adm. Code 103.204(c). As presented in the City's Motion to Dismiss, the Board should find that this citizen enforcement complaint is duplicative and frivolous and inadequately pled. As demonstrated more pointedly in Complainants' Response to the City's Motion, this complaint is an effort to make an end run around existing comprehensive regulatory programs and as such is a waste of the Board's limited resources to hear citizen suits that are brought to protect the public from environmental threats the Illinois Environmental Protection Agency ("Agency") and the Illinois Attorney General to have failed to adequately address.

Complaint Must Be Dismissed Because It Is Inadequately Pled

3. In response to the City's argument that the Complaint must be dismissed because the allegations contained therein do not provide notice of what actions it is alleged to have taken or failed to take that would amount to a violation of the Act and Board regulations, Complainants state that "CWLP seems to be expecting Complainants to already have access to internal information of the nature that one doesn't obtain until discovery before filing a Complaint." Response at p. 4. This response demonstrates more clearly to the Board than the City could have the purpose

and intent of this Complaint. Complainants intend to use this Board proceeding as a fishing expedition to develop evidence that violations of the Act and Board regulations may have occurred, not to ensure that violations of the Act are appropriately and vigorously pursued. Though Sierra Club, Prairie Rivers and NAACP correctly point out that Section 103.204(c) does not use the term “practices or acts” in describing what must be alleged in a citizen’s enforcement complaint, they do not explain how it is possible to adequately provide notice of the “dates, location, events, nature, extent, duration and strength of discharges or emissions or consequences alleged to constitute violations of the Act and regulations” without such an allegation of acts, practices, or failures to act. 35 Ill. Adm. 103.204(c)(2). Complainants correctly point out in footnote 2 of their response that failures to act, such as the failure to perform groundwater monitoring, can constitute violations of the Act. Response at page 5, citing *People v. ESG Watts*, PCB 96-233 (Feb. 5, 1998). But Complainants ignore the City’s argument that their Complaint alleges no actions by CWLP or failures of CWLP to take actions necessary to prevent violations of the Act or Board regulations. Nor does the Complaint allege any flaws in the numerous actions CWLP has engaged in to prevent the violations alleged in the complaint such as groundwater monitoring and reporting required by CWLP’s landfill permit, the comprehensive actions established by the federal Coal Combustions Residuals (“CCR”) Rulemaking (40 C.F.R. Part 257) and the additional, voluntary investigations and monitoring undertaken by CWLP at the request of the Agency.

4. In its Response, Complainants point to Board precedent of *People v. Prior* to support the lack of specific fact pleading in their Complaint. *People v. Prior*, PCB, 97-

111 (November 20, 1997), Slip. Op. at 4. Complainants' reliance on this precedent is misplaced and misleading. No motion to dismiss was filed by the Respondent in *Prior* nor was any substantive defense presented by Mr. Prior. However, that case was brought by the Illinois Attorney General on behalf of the People and pursuant to a referral from the Agency following years of enforcement actions against Mr. Prior for failure to comply with landfill permit terms and failure to take required samples from the permitted groundwater monitoring network. PCB 97-111, Slip. Op. at 1 and 9-10. See also, *People v. Prior*, PCB 93-248 (July 7, 1995) and *People v. Prior and Mezo*, PCB 02-177, Slip Op. at 82-83 (summary of prior adjudicated violations over 25-year period) (May 6, 2004). The basis for the complaint in the 1997 *Prior* case cited by Complainants was evidence gathered when Illinois EPA staff performed groundwater sampling and analysis of the results from permitted wells.¹ 97-111, Slip. Op. at 10-11. To suggest that the "charts" attached to Citizens Groups' complaint with no supporting data or analysis or even an attempt to distinguish between upgradient and downgradient wells provide the same notice to the City that the Agency and the Illinois Attorney General had provided in the *Prior* cases is not a reasonable inference. Complainants' suggestion that *People v. Prior* provides a basis to reject the City's argument that the allegations in this Complainant have not met the requirements of 35 Ill. Adm. Code 103.204(c) is not supported by the facts and history of that case.

¹"The groundwater contamination violations alleged in count I of complainant's complaint are based upon data obtained from a groundwater investigation performed by the Agency...[after] the Agency became aware that respondents had failed to provide monitoring data and that respondents did not demonstrate compliance regarding closure and post-closure care of their three landfill sites." PCB 97-11, Slip Op. at 10-11.

5. In asking the Board to rely primarily on *Prior* to deny the City's Motion to Dismiss, Complainants also ask the Board to overlook its ultimate holding in that case that Defendants long-standing failure to comply with permit requirements had led to violations of the groundwater standards. In contrast to *Prior's* long-standing and adjudicated failure to comply with landfill permitting requirements (including groundwater sampling) which was found to result in groundwater pollution, Sierra Club, Prairie Rivers and NAACP have stated in FN4 of their response that "Compliance with their existing NPDES and landfill permits is irrelevant because those permits do not cover discharges to groundwater. The issue of which wells are upgradient and downgradient is one that requires expert testimony in order to make a determination and therefore is not necessary in notice pleading." Response at p. 9. Again, Complainants have made clear to the Board that CWLP's history of compliance with land and water regulations and whether regulatory Agencies have found CWLP to be in non-compliance is irrelevant because their interpretation of Section 31 of the Act is that it allows them to use the discovery process to develop the elements of a properly pled Complaint under 35 Ill. Adm. Code 103.204(c).

6. Rather than resembling the facts of the *Prior* case which did not involve a ruling on the adequacy of a complaint in a motion to dismiss, the complaint in this case more closely resembles the one the Complainants have attempted to distinguish in *People v. Waste Hauling Landfill, Inc.*, PCB 10-09 (December 3, 2009), slip op. at 15. The specificity of the allegations in this Complaint closely resembles the specificity of allegations against Caterpillar that were dismissed in *People v. Waste Hauling Landfill Inc.* In its Motion to Dismiss, Caterpillar alleged that the requirements of the fact

pleading standard contained in Section 103.204 had not been met because "People have failed to provide any dates or descriptions of the nature, extent, duration or strength of the releases or of Caterpillar's alleged contribution to the releases." *Id.* at 7. As the Board explained in that case, "In the Board's Part 103 procedural rules which concern enforcement, the Board has adopted provisions that reflect Illinois requirements for fact pleading at Section 103.204." *Id.* at 14. The Board rests its dismissal of the charges against Caterpillar on the failure to provide "dates as to the life of the facility, facts as to when Caterpillar allegedly sent waste, or what hazardous substance may have been involved," even though in this cost recovery action the People did allege that Caterpillar "sent wastes to the Landfill during its operating life and those wastes contained hazardous substances." *Id.* at 14. As the Board found with the claims against Caterpillar in *People v. Waste Hauling Landfill, Inc.*, Complainants have failed to provide adequate fact pleading regarding dates, locations, nature, extent or duration of any pollution or violations to provide notice to CWLP that would allow it to prepare a defense. The Complaint makes no attempt to allege during what time period any actions were taken by CWLP that led to the alleged violations. It does not even go so far as to make clear whether any actions or inactions that are alleged to have occurred were determined to be subsequent to the adoption by the Board of the 35 Ill. Adm. Code Part 620 regulations on November 25, 1991 that are alleged to have been violated. The Board should find that allegations as vague as those in Sierra Club, Prairie Rivers and NAACP's Complaint cannot possibly comply with the fact pleading standard of Section 103.204 and Section 31(c) of the Act. 35 Ill. Adm. Code 103.204, 415 ILCS 5/31(c).

Previous Board Precedent Supports the City's Motion to Dismiss

7. To address Complainants' conclusion that the City has not provided precedent in support of its Motion to Dismiss, the City argues this case is also more analogous to the Motion to Dismiss granted by the Board in *United City of Yorkville v. Hamman Farms*, in which the Board made the commonly cited holding that "[c]onstruing the complaint, however liberally, cannot generate those missing facts." PCB 08-96, slip op. at 22 (Oct. 16, 2008).²

8. *United City of Yorkville v. Hamman Farms* also involved a citizen enforcement complaint in which the City of Yorkville alleged that Hamman Farms had committed violations of air pollution and water pollution regulations outside the enforcement of permit conditions and terms. In describing the allegations and the conclusion that they were inadequately pled the Board stated:

Nevertheless, the Board does find merit in Hamman's argument that Yorkville's air pollution count is inadequately pled. Yorkville alleges that since approximately 1993, Hamman has applied landscape waste at rates greater than the agronomic rate and that at unspecified times over the ensuing 15-year period, the Agency has received an unspecified number of complaints about "strong and offensive odors around Hamman." Comp. at ¶¶4, 9, 10, 12. It is widely recognized that the mishandling of landscape waste can result in odor problems. e.g., *Regulation of Landscape Waste Compost Facilities 35 Ill. Adm. Code 830-832*, R93-29, slip op. at 5, 11-14 (Nov. 3, 1994). The Board finds, however, that Yorkville has not pled in its complaint sufficient facts concerning the alleged odor emissions or their consequences.

²See also, *West v. Nokomis Quarry Co.*, PCB 09-45 (June 4, 2009) where a citizen enforcement complaint was dismissed as frivolous under 415 ILCS 5/31(c)(1), (d)(1) and 35 Ill. Adm. Code 103.204(c)(2) for being factually deficient where "[t]he complaint does not specify the dates or duration and frequency of the alleged emissions, or state whose health or enjoyment of life or property has allegedly suffered as a result of the emissions. In addition, the complaint is ambiguous about the nature of the "multiple activities" allegedly resulting in pollution and whether Nokomis Quarry alone is carrying out those activities. Comp. at 2." PCB 09-45, Slip. Op. at p. 4.

As discussed above, the elements of this air pollution violation include interference that is unreasonable. In considering Hamman's motion, the Board has taken all well-pled allegations in the complaint as true and drawn all reasonable inferences from them in favor of Yorkville. See *Chicago Flood*, 176 Ill. 2d at 184, 680 N.E.2d at 268; *Beers*, PCB 04-204, slip op. at 2. The Board finds that Yorkville has stated little more than the legal conclusion that the odor has resulted in unreasonable interference with the enjoyment of life and property. See *Village of Mettawa*, 249 Ill. App. 3d at 557, 616 N.E.2d at 1303 ("legal conclusions unsupported by allegations of specific facts are insufficient"). "[P]ure conclusions, even in administrative proceedings, are insufficient." *City of Des Plaines v. PCB*, 60 Ill. App. 3d 995, 1000, 377 N.E.2d 114, 119 (1st Dist. 1978).

A complainant alleging unreasonable interference is not required to plead facts on each of the Section 33(c) factors, nor set out all of its evidence. See *Kankakee Federation of Teachers*, 46 Ill. 2d at 446-47 (1970) ("only the ultimate facts to be proved should be alleged and not the evidentiary facts tending to prove such ultimate facts"); *Grist Mill Confections*, PCB 97-174, slip op. at 5 ("complainant is not required to present facts in the complaint concerning Section 33(c) of the Act in order to file a sufficient pleading but instead may present facts at hearing."). However, absent the ultimate facts on the dates or frequency and duration of the alleged odor emissions and the nature and extent of the allegedly resulting interference, Yorkville's complaint does not meet the pleading requirements, including the requirement to advise Hamman so as to reasonably allow Hamman to prepare a defense.

United City of Yorkville v. Hamman Farms, PCB 08-96, slip op. at 21 (Oct. 16, 2008).

The case can be made that the facts pled in Count III in the *Hamman Farms* case were done with much more specificity than those in the instant Complaint. This is especially true with regard to the specificity of "dates, location, events, nature, extent, duration and strength of discharges or emissions or consequences" as required by Section 103.204(c). Most notably in *Hamman Farms*, the Board refused to accept (and seemed persuaded to dismiss as a result) Yorkville's assertions in its Response to the Motion to Dismiss that any deficiencies in its pleadings could be resolved through the discovery process. A less cited, but equally key holding in this case was the Board's

conclusion that: "Moreover, the Board finds that when considering a motion to strike or dismiss, the availability of discovery does not dilute the pleading requirements, contrary to Yorkville's suggestion." PCB 08-96, slip op. at 22. As in previous Board cases, the failure to plead facts with specificity to allow Respondent to prepare a defense subjects the complaint to dismissal and the ability to use discovery to obtain additional specificity of the allegations does not defeat a Motion to Dismiss or Strike.

Complaint Is Not Properly Pled In The Alternative

9. In its Motion, the City argued that the Complaint fails to plead the alleged violations with the specificity necessary for CWLP to prepare a defense when the Complainants allege 388 violations of Class I groundwater standards and 235 violations of Class II groundwater standards. Complaint at ¶¶28, Motion at ¶¶18. Since it is not possible for CWLP to be violating both of these two mutually exclusive sets of groundwater standards, the City argued the Complaint must be dismissed for failure to provide CWLP notice of what standards the Complainant alleges are applicable to CWLP and how they are being violated as required by 35 Ill. Adm. Code 103.204(c)(1). Complaint at ¶¶28, ¶¶ 29 and Exhibit A, Motion at ¶¶18. Complainants respond to this basis for dismissal by asserting for the first time that they are pleading these violations in the alternative because "Complainants do not yet have access to the factual information that would indicate whether the Class I or Class II groundwater standards apply." Response at p. 7. They also state that: "Complainants do not have access to the property or to hydrogeological analyses of the site sufficiently specific to allow them to determine whether groundwater is" Class I or Class II. Id. Again, Sierra Club, Prairie Rivers and NAACP make clear to the Board their intent to use this proceeding to

discover whether there are violations of the Act rather than to enforce existing violations. For this reason, the Board should find the complaint duplicative and frivolous and order it to be dismissed.

10. In support of this new information that they have plead alternative legal theories in their Complaint against the City,³ Complainants cite to *Bureau Serv. Co. v. King* for the proposition that alternative pleading is acceptable “as long as the factual statements are made in good faith and with genuine doubt as to which contradictory allegation is true.” 308 Ill. App. 3d 835, 841, 721 N.E.2 159, 163 (1999). Complainants claim that “Since Complainants do not have access to the property to obtain the necessary information about the groundwater, Complainants made good faith claims that the groundwater at Dallman exceeded both Class I and Class II groundwater quality standards.” Response at 8.

11. Since Complainants have raised for the first time the alternative nature of the allegations they have pled and that they purport to have made a good faith claim of the alternative facts as they know them, it is appropriate for the Board to examine whether a good faith alternative pleading of facts is an accurate description of the Complaint in this case. Simultaneous with its filing of the complaint with the Board alleging violations of both Class I and Class II groundwater standards in upgradient and downgradient wells, which they claim to have been plead in the alternative, Complainants Sierra Club and Prairie Rivers Network issued press releases and presented the media with a fact sheet entitled “Background on Groundwater Violations

³ In footnote 3, Complainants attempt to explain away their failure to identify their allegations in Count 1 as being pled in the alternative by stating that “[e]ven though Complainants used ‘and’ instead of ‘or’ when pleading in the alternative, this would not be grounds for dismissal.” Response at p. 8.

at CWLP's Dallman Coal Ash Ponds." Exhibit A. In this fact sheet, Prairie Rivers stated that "Since June 2010, CWLP has self-reported groundwater monitoring results to the Illinois EPA that show violations of Illinois groundwater quality standards 623 times at six monitoring wells..." Exhibit A. Following issuance of the press releases, Scott Gauvin, chair of the Sangamon Valley Group of the Sierra Club was quoted in a September 28, 2017 article in the *State Journal-Register* titled Local Groups file complaint against CWLP over coal ash, as stating: "The fact remains that there are state regulations, there are federal regulations and they are there for a reason. CWLP is showing us, 623 times, that they are violating state regulations." See, Exhibit B. If Complainants were intending to plead these violations in the alternative, Complaints showed bad faith in presenting this 623 figure to the media and the Board knowing that number could not be factually correct. Giving Sierra Club and Prairie Rivers the benefit of the doubt, it is also just as likely that the Complainants were not intending to plead in the alternative until the issue was raised in the Motion to Dismiss as a basis for the Complaint to be found to be duplicative and frivolous and insufficiently pled to allow CWLP to prepare a defense.

12. As Sierra Club stated, "there are federal regulations and they are there for a reason." The federal CCR regulations provide a comprehensive scheme for managing CCR impoundments and this Complaint is attempting to use the Board's resources to frustrate and circumvent that program rather than to ensure compliance with it. There is a very real danger that by allowing this suit to go forward, the Board may make findings at cross purposes with the requirements CWLP must follow to maintain compliance with the federal CCR program. It is frivolous for Sierra Club,

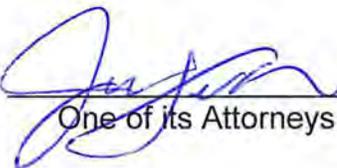
Prairie Rivers Network and NAACP to ask the Board to allow them to use the discovery process before the Board to explore the nature of the impact of CWLP's operations on its on-site ground water when the road-map provided by the CCR rules will conclusively and permanently determine whether any issues are present and provide a methodology for addressing them in due time. It is premature and frivolous to ask for this Complaint to be adjudicated by the Board until the relevant facts have been developed under the CCR rule.

Conclusion

For the reasons stated herein and in Respondent's Motion to Dismiss and Strike, Respondent, City of Springfield, Office of Public Utilities d/b/a City Water, Light and Power respectfully requests that the Board dismiss the Complaint, with prejudice.

Respectfully submitted,

THE CITY OF SPRINGFIELD,
a municipal corporation

By 
One of its Attorneys

Dated: December 1, 2017

James K. Zerkle
Corporation Counsel
City of Springfield
800 East Monroe, 3rd Floor
Springfield, Illinois 62701

EXHIBIT

A



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DALLMAN COAL PLANT

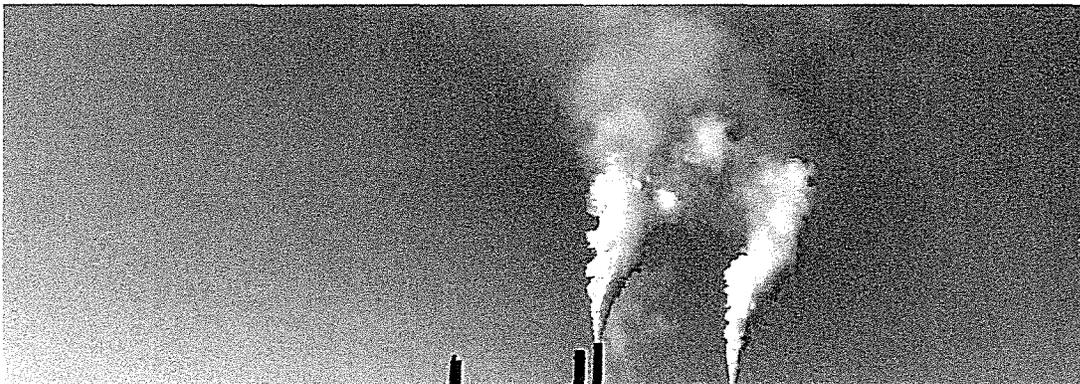
PRN JOINS COMPLAINT AGAINST SPRINGFIELD'S DALLMAN COAL PLANT

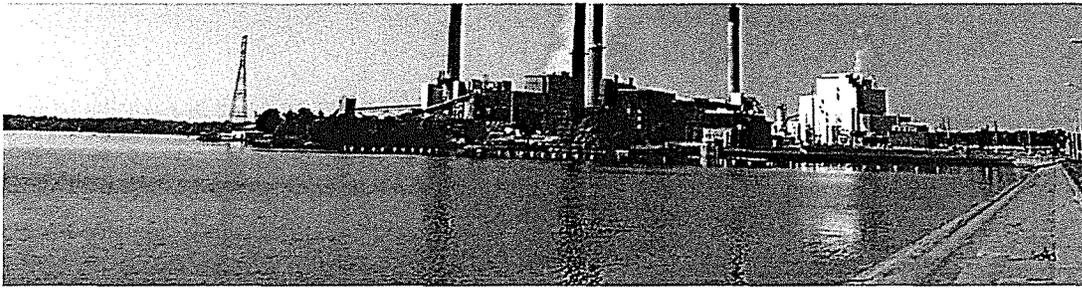
SEPTEMBER 27, 2017

TAGS: COAL, PRESS RELEASES

FOR IMMEDIATE RELEASE

**PRAIRIE RIVERS NETWORK JOINS COMPLAINT
AGAINST SPRINGFIELD'S DALLMAN COAL PLANT**





Contact: Andrew Rehn, arehn@prairierivers.org, 217-344-2371 ext. 208

SPRINGFIELD, IL – Prairie Rivers Network (PRN) with the Springfield Branch of the NAACP and the Sangamon Valley Group of the Sierra Club announced a joint filing of a complaint against the Illinois Pollution Control Board (IPCB) and the City Water, Light and Power's (CWLP) Dallman Coal Plant. There have been over 600 cases of self-reported groundwater violations since 2010 including for arsenic, lead, boron, chromium, manganese, iron and other pollutants.

“Coal ash is a serious problem in Springfield,” said Andrew Rehn, Water Resources Engineer at PRN. “CWLP’s coal ash has been violating groundwater standards here for years, and that pollution could be coming out in Sugar Creek. We’re filing this complaint to ask the Illinois Pollution Control Board to take action on the ongoing groundwater contamination happening at the Dallman coal ash ponds.”

PRN and its allies are asking the IPCB to find CWLP in violation of state prohibition of groundwater contamination, enforce the groundwater standards, and order the utility to halt and remediate the pollution.

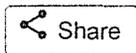
“Today we file a complaint to address the ongoing groundwater contamination,” Rehn said. “But we need to keep the long term fate of

the coal ash in mind as we search for a solution. If left in place, this ash will be a liability for future generations in Springfield.”

For the last three years, local groups, like the Sierra Club and others, have been raising concerns about the coal plant including the leaching unlined coal ash ponds the city has failed to address. Additional background information available here.

Prairie Rivers Network is Illinois' advocate for clean water and healthy rivers and is the Illinois affiliate of the National Wildlife Federation. PRN advocates for cultural values, policies and practices that sustain the ecological health and biological diversity of Illinois' water resources and aquatic ecosystems. It is a member-supported, nonprofit organization that champions clean, healthy rivers and lakes and safe drinking water to benefit the people and wildlife of Illinois.

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MORE ON THE SUBJECT

PRN, SIERRA CLUB TO SUE PEKIN ETHANOL PLANT

PRN CALLS ON GOVERNOR RAUNER TO STAY IN PARIS CLIMATE AGREEMENT

RECLAIM ACT

ART STUDENT AWARDED PURCHASE PRIZE AT WILD & SCENIC FILM FESTIVAL

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EXPLORE, ENJOY, AND PROTECT THE PLANET

Press Releases (/press-releases)

Local Groups Ask IPCB to Act After Hundreds of Pollution Violations by CWLP

Wednesday, September 27, 2017

Contact:

Andy Knott, andy.knott@sierraclub.org (mailto:andy.knott@sierraclub.org), 314-803-4695

Renner Barsella, renner.barsella@sierraclub.org (mailto:renner.barsella@sierraclub.org), 217-390-9394

SPRINGFIELD, IL -- Today, Prairie Rivers Network, Springfield Branch of the NAACP and the Sangamon Valley Group of the Sierra Club announced a [joint filing of a complaint with the Illinois Pollution Control Board](http://www.ipcb.state.il.us/COOL/external/CaseView.aspx?referer=results&case=15478) (http://www.ipcb.state.il.us/COOL/external/CaseView.aspx?referer=results&case=15478) (IPCB) against City Water, Light and Power's (CWLP) Dallman Coal Plant for over 600 cases of self-reported groundwater violations since 2010. These include violations for arsenic, lead, boron, chromium, manganese, iron and other pollutants.

"We can sit by no more," said **Scott Gauvin, Springfield Resident and Chair of the Sangamon Valley Group of the Sierra Club**, "we have brought this issue up time and again and CWLP and city officials are not taking it seriously. If the water of any Springfield resident was being knowingly contaminated we would not expect that person to wait years for a solution and we've already waited too long. The time for action is now."

In one instance in November 2016, arsenic was found to be more than 22 times the groundwater standard. Arsenic exposure is linked to bladder, lung and skin cancer.

"The lack of proper environmental protections cost lives, and therefore is immoral and a violation of our most sacred values," said **Teresa Haley, President of the State and Local NAACP**. "We are committed to bring justice to this issue of coal ash and to call attention to CWLP which is operating without regard for the impacts of this pollution."

The groups are asking the IPCB to find CWLP in violation of state prohibition of groundwater contamination, enforce the groundwater standards and order the utility to halt and remediate the pollution.

"Coal ash is a serious problem in Springfield," said **Andrew Rehn, Water Resources Engineer at Prairie Rivers Network**, "Prairie Rivers Network is committed to safeguarding streams, rivers and safe drinking water to benefit the people and wildlife of Illinois. CWLP's coal ash has been violating groundwater standards here for years, and that pollution could be coming out in Sugar Creek. We're filing this complaint to ask the Illinois Pollution Control Board to take action on the ongoing groundwater contamination happening at the Dallman coal ash ponds."

For the last three years, the local group of the Sierra Club and allies have been raising issues of concern about the coal plant including the leaching unlined coal ash ponds that the city has failed to address. [Additional background information available here](https://docs.google.com/document/d/14Ve6KFTIGd6FUilaWSaUA_wWTpn-i0aO6XnpKB4BkKY/edit?usp=sharing) (https://docs.google.com/document/d/14Ve6KFTIGd6FUilaWSaUA_wWTpn-i0aO6XnpKB4BkKY/edit?usp=sharing).

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About the Sierra Club

The Sierra Club is America's largest and most influential grassroots environmental organization, with more than 3 million members and supporters. In addition to helping people from all backgrounds explore nature and our outdoor heritage, the Sierra Club works to promote clean energy, safeguard the health of our communities, protect wildlife, and preserve our remaining wild places through grassroots activism, public education, lobbying, and legal action. For more information, visit www.sierraclub.org (<http://www.sierraclub.org>).

Background on Groundwater Violations at CWLP's Dallman Coal Ash Ponds

- Since June 2010, CWLP has self-reported groundwater monitoring results to the Illinois EPA that show violations of Illinois groundwater quality standards 623 times at six monitoring wells surrounding the Dallman coal ash ponds. These include violations for arsenic, lead, boron, chromium, manganese, iron and other pollutants. Some of the violations are quite high; in one instance in November 2016, arsenic was found to be more than 22 times the groundwater standard.
- In May, 2016, CWLP contracted with Burns & McDonnell to produce a compliance plan for US EPA's coal ash and water toxics rules at a projected cost of \$552,000. That report was to be completed by February 2017. The contract was amended in March 2017 to increase the amount of coal ash compliance planning at an amended projected cost of \$770,000. A final report has yet to be issued.
- Since 2014, Sierra Club volunteers, staff, and allies including NAACP and Prairie Rivers Network have attended and testified at multiple City Council and other CWLP public forums raising concerns about the environmental and health threats that the Dallman groundwater contamination poses. Citizens have turned in hundreds of petitions to Mayor Langfelder and City Council urging action to clean up the coal ash contamination. CWLP has yet to propose a plan for cleaning up the contamination.
- Sierra Club raised concerns over groundwater contamination in two letters in October 2014 and July 2015 and has met with CWLP on these issues in November 2014 and May 2015. Recent requests to meet with CWLP in February and May 2017, as well as last week, received no response from CWLP.
- Since the Presidential election in November, the Trump administration has moved to relax US EPA's coal ash and water toxics rules. CWLP has lauded the Trump administration's approach: See "CWLP sees possibility for regulatory relief under Trump," State Journal-Register, January 19, 2017, and "CWLP applauds president-elect Trump's pick for head of EPA," Fox-Illinois, December 12, 2016.

EXHIBIT

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Local groups file complaint against CWLP over coal ash

By John Reynolds

Staff Writer

Posted Sep 27, 2017 at 2:46 PM

Updated Sep 27, 2017 at 7:12 PM

The Sangamon Valley Group of the Sierra Club and two other local organizations are asking the Illinois Pollution Control Board to order City Water, Light and Power to clean up contaminated groundwater at its coal ash storage site near the Dallman power plant.

The Sierra Club, the NAACP and the Prairie Rivers Network filed a complaint against CWLP with the Pollution Control Board Wednesday. The complaint states that there have been 623 instances of self-reported groundwater violations at the coal ash site since 2010. These include violations for elevated levels of arsenic, lead, boron, chromium, manganese iron and other pollutants.

Andrew Rehn, water resource engineer at Prairie Rivers Network, was one of the people who spoke at a noon press conference to announce the filing. The press conference was held on the 12th floor of the Crown Plaza Hotel, 3000 S. Dirksen Parkway, which provided an aerial view of the coal ash site on the opposite side of Interstate 55.

Rehn explained that coal ash is a by-product of coal-fired power plants.

"There is a groundwater problem in the coal ash ponds at CWLP's Dallman power plant," Rehn said. "...These coal ash ponds are unlined, which means the ash has no barrier between it and the groundwater. It sits directly on the ground, meaning that any water that is there can saturate the ash, and contaminants from the ash can spread into the groundwater. From there, this groundwater can migrate offsite and contaminate groundwater, as well as come up through the ground and into places like Sugar Creek where there could be contamination as well."

Amber Sabin, spokeswoman for CWLP, said the utility was unable to comment on the complaint because it had just been filed.

The complaint includes results from tests conducted by CWLP at monitoring wells at the site since 2010. In one instance in November 2016, arsenic was found to be 22 times the groundwater standard, the complaint said.

Rehn said the tests also revealed boron to be 9 times the accepted standard, iron was at 12 times the accepted standard and manganese was 54 times the standard.

"We're filing this complaint because something needs to be done about the persistent and ongoing groundwater contamination at this site," Rehn said. "And, Springfield needs to start thinking about the future. The coal ash should never have been put where it is. It is in the floodplain and directly adjacent to water bodies. This is no place to leave coal ash forever. Sooner or later, Springfield is going to have to do something about this coal ash."

Teresa Haley, president of the state and Springfield Branch of the NAACP, said her group was pleased to join the Sierra Club and Prairie Rivers Network in filing the complaint.

"We are most concerned about what is happening environmentally," Haley said. "We see it as a social justice issue, we see it as a civil rights issue."

Scott Gauvin, chair of the Sangamon Valley Group of the Sierra Club, said they have had meetings with CWLP and Mayor Jim Langfelder on the coal ash issue.

"The answer we usually get from CWLP is that it's not drinking water so there's nothing to worry about," Gauvin said. "The fact remains that there are state regulations, there are federal regulations and they are there for a reason. CWLP is showing us, 623 times, that they are violating state regulations."

In addition to groundwater, coal ash can also contaminate the air, Gauvin said.

"Anytime you move it from one location to another, it is going to be airborne. It is something that is contaminating our environment," Gauvin said.

Sierra Club officials said the next step would be for CWLP to file a response to the complaint. At some point, a hearing will likely be held.

Specifically, the complaint asks the pollution control board to declare that CWLP has violated the Illinois Environmental Protection Act's prohibitions on groundwater pollution at its Dallman plant and impose civil penalties.

Electronic Filing: Received, Clerk's Office 9/27/2017 ** PCB 2018-011 **

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the matter of:)	
)	
SIERRA CLUB; PRAIRIE RIVERS)	
NETWORK; NATIONAL ASSOCIATION)	
FOR THE ADVANCEMENT OF)	
COLORED PEOPLE,)	
Complainant(s),)	PCB 20 -
)	[For Board use only]
v.)	
CITY WATER, LIGHT & POWER)	
Respondent(s))	

NOTICE OF ELECTRONIC FILING

To: Attached Service List

PLEASE TAKE NOTICE that on September 27, 2017, I electronically filed with the Clerk of the Illinois Pollution Control Board (Board) a formal COMPLAINT and ENTRY OF APPEARANCE, co Page 1 / 34 You may be required to attend a hearing on _____

The complaint also requests that the pollution control board order CWLP to:

- * Cease and desist from causing or threatening to cause water pollution.
- * Modify its coal ash and coal combustion waste disposal and storage practices so as to avoid future groundwater contamination.
- * Remediate the contaminated groundwater so that it meets applicable Illinois groundwater quality standards.

-Contact John Reynolds: _____, 788-1524,
twitter.com/JohnReynoldsSJR.



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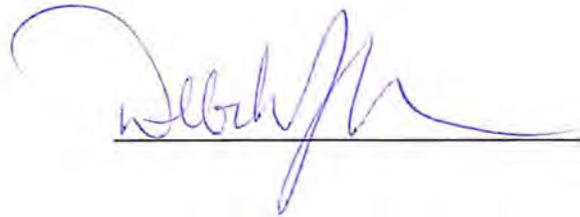
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CERTIFICATE OF E-MAIL SERVICE

The undersigned, Deborah J. Williams, an attorney, certifies that I have served by email upon the individuals named on the attached Service List a true and correct copy of the **NOTICE OF FILING, MOTION TO FILE A REPLY OF THE CITY OF SPRINGFIELD, OFFICE OF PUBLIC UTILITIES d/b/a CITY WATER, LIGHT AND POWER and REPLY TO COMPLAINANTS RESPONSE TO RESPONDENT'S MOTION TO DISMISS** from the email address (deborah.williams@cwlp.com) of this 29 page document before 5:00 p.m. on December 1, 2017 at the address provided on the attached Service List.



SERVICE LIST PCB 18-11

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