

**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

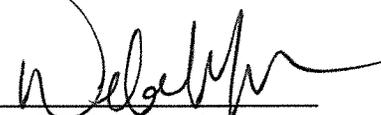
To: Don Brown, Clerk
Illinois Pollution Control Board
100 West Randolph
Suite 11-500
Chicago, IL 60601

And Attached Service List

Please take notice that on January 22, 2018, I filed electronically with the Office of the Clerk of the Illinois Pollution Control Board the attached **The CITY OF SPRINGFIELD, OFFICE OF PUBLIC UTILITIES d/b/a CITY WATER, LIGHT AND POWER'S ANSWER AND AFFIRMATIVE DEFENSES**, 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: January 22, 2018

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

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**The CITY OF SPRINGFIELD, OFFICE OF PUBLIC UTILITIES d/b/a CITY WATER,
LIGHT AND POWER'S ANSWER AND AFFIRMATIVE DEFENSES**

Respondent, The City of Springfield, Office of Public Utilities d/b/a City Water, Light and Power ("CWLP")("Respondent"), by and through its counsel, hereby submits its Answer and Affirmative Defenses to the Complaint as follows:

FACTUAL BACKGROUND

1. **ANSWER:** Respondent admits that it currently operates the coal-burning Dallman Station and operated the Lakeside Station until 2009. Respondent lacks sufficient information to admit or deny the allegations in Exhibit A based, in part, on the quality of the reproduction and therefore denies same.

2. **ANSWER:** Respondent admits that Exhibit B is a map of a portion of its property in 2010. Respondent also admits that it operates treatment works and a landfill for coal combustion residuals at the location depicted in Exhibit B. Respondent denies the remaining allegations in this Paragraph.

3. **ANSWER:** Respondent admits that it installed groundwater monitoring wells AP-1, 2, 3, 4 and AW-3 prior to June 1, 2010. Well AP-5 was not installed until 2012. Respondent denies the remaining allegations in this Paragraph and Exhibits D and E. . Respondent lacks sufficient information to admit or deny the allegations in Exhibit C based, in part, on the quality of the reproduction and therefore denies same.

PARTIES

4. ANSWER: Respondent is without sufficient information to admit or deny the allegations in this Paragraph and therefore denies same.

5. ANSWER: Respondent is without sufficient information to admit or deny the allegations in this Paragraph and therefore denies same.

6. ANSWER: Respondent is without sufficient information to admit or deny the allegations in this Paragraph and therefore denies same.

7. ANSWER: CWLP has its principal executive offices at 800 E. Monroe Street, 4th Floor, Springfield, Illinois 62701. Respondent admits the remaining allegations in this Paragraph.

THE GROUNDWATER CONTAMINANTS

8. ANSWER: Respondent denies the allegations in this Paragraph and Exhibits D and E.

9. ANSWER: Respondent is without sufficient information to admit or deny the allegations in this Paragraph and footnote 1 and therefore denies same.

10. ANSWER: Respondent is without sufficient information to admit or deny the allegations in this Paragraph and therefore denies same.

11. ANSWER: Respondent is without sufficient information to admit or deny the allegations in this Paragraph and therefore denies same.

12. ANSWER: Respondent is without sufficient information to admit or deny the allegations in this Paragraph and Footnotes 2 and 3 and therefore denies same.

13. ANSWER: Respondent is without sufficient information to admit or deny the allegations in this Paragraph and Footnotes 4 and 5 and therefore denies same.

14. ANSWER: Respondent is without sufficient information to admit or deny the allegations in this Paragraph and Footnotes 6, 7 and 8 and therefore denies same.

15. ANSWER: Respondent is without sufficient information to admit or deny the allegations in this Paragraph and Footnote 9 and therefore denies same. Respondent notes that it appears Footnote 9 cross-references Footnote 8 in error.

16. ANSWER: Respondent is without sufficient information to admit or deny the allegations in this Paragraph and Footnotes 10, 11 and 12 and therefore denies same.

17. ANSWER: Respondent is without sufficient information to admit or deny the allegations in this Paragraph and Footnotes 13, 14 and 15 and therefore denies same.

18. ANSWER: Respondent is without sufficient information to admit or deny the allegations in this Paragraph and Footnote 16 and therefore denies same.

19. ANSWER: Respondent is without sufficient information to admit or deny the allegations in this Paragraph and Footnote 17 and therefore denies same. Respondent notes that it appears Footnote 17 cross-references Footnote 12 in error.

20. ANSWER: Respondent is without sufficient information to admit or deny the allegations in this Paragraph and Footnote 18 and therefore denies same.

LEGAL BACKGROUND

21. ANSWER: Respondent admits that there are statutory provisions 415 ILCS 5/3.545, 3.540, 12(a) and 12(d) and states that the statutes speak for themselves. Respondent denies the allegations to the extent that they are inconsistent with the statutes as cited and to the extent a response is required.

22. ANSWER: Respondent admits that there is a regulatory provision 35 Ill. Adm. Code 620.405 and states that the regulation speaks for itself. Respondent denies the allegations to the extent that they are inconsistent with the regulation as cited and to the extent a response is required.

23. ANSWER: Respondent admits that there are regulatory provisions 35 Ill. Adm. Code 620.410 and 620.210(a) and states that the regulations speak for themselves. Respondent denies the allegations to the extent that they are inconsistent with the regulations as cited and to the extent a response is required.

24. ANSWER: Respondent admits that there are regulatory provisions 35 Ill. Adm. Code 620.115, 620.210, 620.230, 620.240, 620.250 and 620.301 and states that the regulations speak for themselves. Respondent denies the allegations to the extent that they are inconsistent with the regulations as cited and to the extent a response is required.

25. ANSWER: Respondent admits that there are regulatory provisions 35 Ill. Adm. Code 620.220, 620.260, 620.420 and 620.440(b) and states that the regulations speak for themselves. Respondent denies the allegations to the extent that they are inconsistent with the regulations as cited and to the extent a response is required.

26. ANSWER: Respondent admits that there are regulatory provisions 35 Ill. Adm. Code 620.410 and 620.420 and states that the regulations speak for themselves. Respondent denies the allegations to the extent that they are inconsistent with the regulations as cited and to the extent a response is required.

COUNT 1

WATER POLLUTION AT DALLMAN

27. ANSWER: Respondent incorporates herein, as if restated, its answers to Paragraphs 1 through 26 of the Complaint.

28. ANSWER: Respondent denies the allegations in this Paragraph and Exhibits D and E.

29. ANSWER: Respondent denies the allegations in this Paragraph.

THE CITY OF SPRINGFIELD'S AFFIRMATIVE DEFENSES

Respondent, City of Springfield, Office of Public Utilities d/b/a CWLP asserts the following affirmative defenses without waiving Complainants' obligation to meet its burden of proof and without assuming any burden of proof not otherwise imposed by law.

A) Respondent Did Not Cause or Allow Water Pollution

30. Complainants allege that Respondent has "discharged contaminants into the environment at Dallman and thereby caused water pollution in violation of Sections 12(a) and 12(d)" of the Environmental Protection Act. ¶ 28. Those provisions state that no person shall:

"(a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

(d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard." 415 ILCS 5/12(a) and 12(d).

31. Complainants allege no specific actions Respondent has taken that would constitute a discharge of contaminants into the environment or specific actions that have caused water pollution, as defined in the Act.

32. Complaints identify as violations of the Act and Board regulations the

numeric values of raw data obtained from six groundwater monitoring wells, including data obtained from wells that measure background concentrations of various constituents occurring in the environment. Respondent cannot violate the Act – or any regulations intended to implement the Act -- by monitoring background levels of constituents in the environment. Monitoring of these constituents does not constitute a discharge of contaminants that caused water pollution.

2) Respondent Did Not Cause Water Pollution Because There is No Risk to Public Health and No Risk of Environmental Harm

33. Complainants allege that City of Springfield “has discharged contaminants into the environment at Dallman and thereby caused water pollution in violation of 415 ILCS 5/12(a) and (d), and 35 Ill. Admin. Code §§620.115, 620.301(a), and 620.405.” ¶28.

34. “Water pollution” is defined as “such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.” 415 ILCS 5/3.545.

35. Count 1 of the Complaint does not specify which provisions in the definition of water pollution it alleges are present, but in order to find a violation of Sections 12(a) and 12(d) of the Act through actions of the City of Springfield that “caused water pollution,” the Board must find a nuisance or waters that are harmful, detrimental or injurious to public health or other beneficial uses of waters of the State.

36. Respondent has not caused water pollution in violation of the Act because there is no nuisance, harm or injury to public health, or impairment or preclusion of any beneficial uses of any waters of the State as a result of low levels of constituents in groundwater samples and the inability of any contaminants to migrate off-site or impact the public's health or uses of groundwater.

3) Respondent cannot violate both Class I and Class II groundwater standards

37. Count 1 of the Complaint alleges that “the groundwater at Dallman has exceeded the Class I GQSs for arsenic, boron, chromium, iron, lead, manganese, sulfate, and TDS, and the Class II GQSs for arsenic, boron, iron, lead, manganese, sulfate, and TDS. 35 Ill. Admin. Code §§ 620.410, 620.420.” ¶29.

38. Section 620.201 of the Board's regulations provides that “All groundwaters of the State are designated as: a) One of the following four classes of groundwater in accordance with Sections 620.210 through 620.240: 1) Class I:

Potable Resource Groundwater; 2) Class II: General Resource Groundwater....” It is not possible for the groundwater to be both a Class I and Class II groundwater and therefore it is not possible for the Respondent to have violated both 35 Ill. Adm. Code 620.210 and 620.420.

4) Complainants May Not Be Granted Injunctive Relief

39. In their prayer for relief, Complainants request the Board to “Order Respondent, pursuant to 415 Ill Comp. Stat. 5/33, to... ii. Modify its coal ash and coal combustion waste disposal and storage practices to avoid future groundwater contamination, iii. Remediate the contaminated groundwater so that it meets applicable Illinois Groundwater Quality Standards...” Complaint at p. 11.

40. The contents of a Board Order in a citizens’ enforcement case are identified in and limited by the language in Section 33(b) of the Act, which provides:

“Such order may include a direction to cease and desist from violations of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order, and/or the imposition by the Board of civil penalties in accord with Section 42 of this Act. The Board may also revoke the permit as a penalty for violation. If such order includes a reasonable delay during which to correct a violation, the Board may require the posting of sufficient performance bond or other security to assure the correction of such violation within the time prescribed.” 415 ILCS 5/33(b).

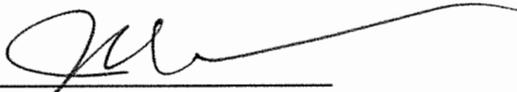
41. While the Board may order a Respondent to cease and desist from violations of the Act, the Board authority does not extend to the imposition of the relief requested by Complainants to order modification of coal ash practice or to order a plan of remediation of contaminated groundwater. Such injunctive relief is beyond the Board’s authority under the Act. See, *Janson v. Illinois Pollution Control Bd.*, 69 Ill.App.3d 324, 328, 387 N.E.2d 404, 408 (3rd Dist., 1979) and *Clean the Uniform Company-Highland v. Aramark Uniform & Career Apparel, Inc.*, PCB 03-21, Nov. 7, 2002, slip. Op. at 1& 3.

42. The process for injunctive relief under the Environmental Protection Act is limited to the process provided in Section 42(e) whereby “[t]he State’s Attorney of the county in which the violation occurred, or the Attorney General, may, at the request of the Agency or on his own motion, institute a civil action for an injunction, prohibitory or mandatory, to restrain violations of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order, or to require such other actions as may be necessary to address violations of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order.” 415 ILCS 5/42(e).

WHEREFORE, Respondent, City of Springfield, Office of Public Utilities d/b/a City Water, Light and Power, respectfully requests that the Board dismiss Complainants' Complaint with prejudice and issue such further relief as the Board deems just and proper.

Respectfully submitted,

THE CITY OF SPRINGFIELD,
a municipal corporation

By 
One of its Attorneys

Dated: January 22, 2018

James K. Zerkle
Corporation Counsel
Deborah J. Williams
Special Assistant Corporation Counsel
City of Springfield
800 East Monroe, 3rd Floor
Springfield, Illinois 62701

CERTIFICATE OF SERVICE

The undersigned, Deborah J. Williams, an attorney, certifies that I have served upon the individuals named on the attached Service List a true and correct copy of the **NOTICE OF FILING, THE CITY OF SPRINGFIELD, OFFICE OF PUBLIC UTILITIES d/b/a CITY WATER, LIGHT AND POWER'S ANSWER AND AFFIRMATIVE DEFENSES**, by e-mail from my email address (deborah.williams@cwlp.com) of this ~~10~~ page document before 5:00 p.m. on January 22, 2018 at the address provided on the attached Service List.

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~~10~~
DJK



SERVICE LIST PCB 18-11

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