

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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| IN THE MATTER OF: |) | |
| |) | |
| COAL COMBUSTION ASH PONDS |) | R14-10 |
| AND SURFACE IMPOUNDMENTS AT |) | |
| POWER GENERATING FACILITIES: |) | (Rulemaking – Water) |
| PROPOSED 35 ILL. ADM. CODE 841 |) | |

NOTICE OF FILING

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Assistant Clerk
Illinois Pollution Control Board
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Chicago, Illinois 60601

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Office of the Illinois Attorney General
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Attached Service List

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the Illinois Environmental Protection Agency's Motion to Extend Stay, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 

James Jennings
Assistant Counsel
Division of Legal Counsel

DATED: August 5, 2015

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THIS FILING IS SUBMITTED ELECTRONICALLY AND SERVED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
) R14-10
COAL COMBUSTION WASTE (CCW)) (Rulemaking- Water)
SURFACE IMPOUNDMENTS AT POWER)
GENERATING FACILITIES: PROPOSED)
NEW 35 ILL. ADM. CODE 841)

MOTION TO EXTEND STAY

NOW COMES, the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”) by and through its counsel, and pursuant to 35 Ill. Adm. Code 101.514(b), hereby moves the Illinois Pollution Control Board (“Board”) hearing officer to extend the stay of proceedings in the above-captioned matter indefinitely. In support thereof, the following statements are made:

1) **Board Proceedings**

a) On October 28, 2013, the Illinois EPA filed its rulemaking proposal in the above-captioned matter. The rulemaking proposal addresses monitoring, corrective action, and closure of CCW surface impoundments at power generating facilities.

b) On July 24, 2014, the Board’s scheduled hearings in this matter concluded. Participants filed post hearing comments by October 20, 2014. The Board has not proceeded to First Notice.

c) On January 20, 2015, the Illinois EPA moved the Board stay proceedings in this rulemaking in order for it (the Illinois EPA) to evaluate whether changes to the proposed rulemaking were necessary as a result of the United States Environmental Protection Agency (“U.S. EPA”) finalizing its rule for the disposal of coal combustion residuals (“CCR”) from electric utilities.

d) On May 7, 2015, the Board granted the Illinois EPA's motion to stay and directed the Illinois EPA to file a status report on or before August 5, 2015.

2) U.S. EPA's CCR Rule and Legal Challenges to the CCR Rule

a) On December 19, 2014, the U.S. EPA finalized its CCR rule and made an unofficial prepublication copy available online.

b) On April 17, 2015, the final version of the U.S. EPA CCR rule appeared in the Federal Register. 80 Fed. Reg. 21302 (April 17, 2015). The rule is scheduled to become effective on October 19, 2015. 80 Fed. Reg. 37988 (July 2, 2015).

c) U.S. EPA's rule governs CCR under Subtitle D of the Resource Conservation and Recovery Act, and contains national minimum criteria for existing and new CCR surface impoundments and CCR landfills. The regulation is self-implementing, with no direct federal oversight.

d) U.S. EPA's CCR rule contains minimum criteria for CCR surface impoundments consisting of location restrictions, design and operating criteria, groundwater monitoring, corrective action, closure requirements, post closure care, recordkeeping, and notification requirements. The scope and criteria of the federal rule is similar to the rules proposed by the Illinois EPA and other participants, but not identical to any of the proposals in this rulemaking.

e) On July 15, 2015, several entities filed Petitions for Review of the U.S. EPA's CCR rule with the United States Court of Appeals for the District of Columbia. *Utilities Solid Waste Activities Group v. EPA*, D.C. Cir. No. 15-1219 (filed July 15, 2015); *Beneficial Reuse Management v. EPA*, D.C. Cir. No. 15-1221 (filed July 15, 2015); *Lafarge North*

American Inc. v. EPA, D.C. Cir. No. 15-1222 (filed July 15, 2015); *Associated Electric Coop. Inc. v. EPA*, D.C. Cir. No. 15-1223 (filed July 15, 2015).

f) The scope of these legal challenges is presently unclear, but could significantly impact the extent to which the Illinois EPA's proposed rules should be revised in order to be consistent, or avoid conflicting, with applicable federal law.

3) Congressional Action Relating to CCR

a) House Bill 1734

i) On April 13, 2015, a bill was introduced in the United States House of Representatives that would alter the U.S. EPA's approach to regulating the management and disposal of CCR ("H.R. 1734"). *Improving Coal Combustion Residuals Regulation Act*, H.R. 1734, 114th Cong. (2015).

ii) H.R. 1734 would permanently bar the U.S. EPA from regulating CCR as hazardous waste under Subtitle C of the Resource Conservation and Recovery Act. In addition, H.R. 1734 incorporates the minimum protective standards from the U.S. EPA's CCR rule and would allow states to directly enforce those standards.

iii) On July 22, 2015, the United States House of Representatives passed H.R. 1734. *Improving Coal Combustion Residuals Regulation Act*, H.R. 1734, 114th Cong. (2015).

iv) On July 23, 2015, H.R. 1734 was introduced in the United States Senate. As of July 28, 2015, the Senate had not taken any action on H.R. 1734.

b) Senate Bill 1803

i) On July 16, 2015, a bill related to H.R. 1734 was introduced in the United States Senate that, if passed, would address the operation of CCR surface impoundments

and landfills ("S. 1803"). *Improving Coal Combustion Residuals Regulation Act*, S. 1803, 114th Cong. (2015).

ii) If passed, S. 1803 would permanently bar the U.S. EPA from regulating CCR as hazardous waste under Subtitle C of the Resource Conservation and Recovery Act. S. 1803 also incorporates the minimum protective standards from the U.S. EPA's CCR rule while allowing states to craft their own implementation regulations.

c) The scope and contents of H.R. 1734 and S. 1803 are each similar to the U.S. EPA's CCR rule and the Illinois EPA's proposed rules. However, neither piece of legislation is identical to the U.S. EPA's CCR rule or the Illinois EPA's proposed rules.

4) The pending litigation and congressional action each raise significant questions regarding the necessary scope and contents of the Illinois EPA's proposed rules. Accordingly, the Illinois EPA seeks to indefinitely stay any action by the Board in this proceeding to enable the Illinois EPA and other interested parties to comprehensively evaluate the impact of the relevant legal and legislative actions on the proposed rulemaking, once those matters are resolved.

WHEREFORE, the Illinois EPA respectfully requests the Board hearing officer grants this motion and issues an Order to extend the stay of these proceedings indefinitely, in accordance with the above.

[signature page follows]

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 

James Jennings
Assistant Counsel
Division of Legal Counsel

DATED: August 5, 2015

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CERTIFICATE OF SERVICE

James Jennings, Assistant Counsel for the Illinois EPA, herein certifies that he has served a copy of the foregoing NOTICE OF FILING and MOTION TO EXTEND STAY upon persons listed on the Service List by mailing, unless otherwise noted on the Service List, a true copy thereof in an envelope duly addressed bearing proper first class postage and deposited in the United States mail at Springfield, Illinois on August 5, 2015.

By: 

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