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STATE OF ILLINOIS  
POLLUTION CONTROL BOARD

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF: )  
 )  
PETITION OF COMMONWEALTH EDISON ) R94-30  
COMPANY FOR SITE-SPECIFIC ) (Site-Specific  
REGULATION FOR EXISTING ) Rulemaking - Land)  
LANDFILLS AND UNITS: 35 ILL. )  
ADM. CODE 811.814 )

IEPA Response to Commonwealth Edison's Petition to Designate  
the Joliet/Lincoln Quarry Site as a Surface Impoundment

Now comes the Illinois Environmental Protection Agency ("IEPA") by its attorney and files its response to the petition by Commonwealth Edison ("Edison") to designate the Joliet/Lincoln Quarry Site as a Surface Impoundment.

In its petition, Edison requests that the Board designate the Lincoln Quarry site at issue in this proceeding as a surface impoundment, exempt from regulation under 35 Ill. Adm. Code Parts 807 and 811-815 and subject only to the NPDES permit program.

The IEPA urges the Board to deny Edison's petition to designate the Lincoln Quarry site as a surface impoundment subject only to the NPDES permit program for the following reasons:

As Edison points out in its petition, a "surface impoundment" is defined in the landfill regulations as "a natural topographic depression, a man-made excavation, or a diked area into which flowing wastes, such as liquid wastes or wastes containing free liquids, are placed. [emphasis added]" 35 Ill. Adm. Code 810.103

A "landfill" is defined in the landfill regulations, in pertinent part, as "a unit or part of a facility in or on which waste is placed and accumulated over time for disposal, and which is not a land application unit, a surface impoundment or an underground injection well. [emphasis added]" 35 Ill. Adm. Code 810.103

Viewed together, these two definitions reflect the intent to distinguish placement of flowing wastes from permanent disposal of settled solid waste. "[A]ccumulated over time for disposal" is a critical element of the definition of landfill; this phrase is absent from the surface impoundment definition. Natural topographic depressions, man-made excavations or diked areas function as surface impoundments only to the extent that flowing wastes are placed in them. To the extent that waste is accumulated in them over time for disposal, they are functioning as landfills, and should be regulated as such.

The Board, in R88-7, alluded to the appropriateness of this distinction:

The term "landfill" always connotes disposal, unlike the other terms [landfill and surface impoundment], which can connote storage, treatment or disposal. We have retained the term "disposal" for landfills, but have removed the word "disposal" from the definitions of land application unit and surface impoundment; defining them in terms of disposal, as opposed to treatment or storage, is not necessary here, since they are not proposed to be regulated under this proposal in any event.

Another distinguishing, though not unique, feature of a landfill is that the waste is accumulated over time and is not going to be removed from the site. This may or may not be true of a surface impoundment, which receives wastes in liquid form and where the solid residues accumulated over time may be transported to another

site for final disposal. In the Matter of: Development, Operating and Reporting Requirements for Non-Hazardous Waste Landfills, IPCB No. R88-7 at 18 (August 17, 1990).

A utility ash pond used for the permanent disposal of coal combustion wastes should be regulated as or like a landfill. Beneath the free liquids used to carry the bottom ash and slag to the site lies waste accumulated over time for disposal. The liquid portion is a treatment works, the rest functions as a landfill. Insofar as such impoundments are used to accumulate wastes over time for disposal, they should be regulated as or like on-site landfills.

The surface of the Quarry at issue is being used for the placement of flowing wastes; to that extent the Quarry is a surface impoundment properly subject to the NPDES permit program. Its floor, however, is being used for the permanent disposal of solid waste - bottom ash and slag - and should be regulated as or like an on-site landfill.

The definition of "waste pile" in the landfill regulations supports this contention. A waste pile is defined, in relevant part, as:

[A]n area on which non-containerized masses of solid, non-flowing wastes are placed for disposal. For the purposes of this Part and 35 Ill. Adm. Code 811 through 815, a waste pile is a landfill, unless the operator can demonstrate that the wastes are not accumulated over time for disposal. 35 Ill. Adm. Code 810.103

The floor of the Quarry constitutes an area on which non-containerized masses of solid, non-flowing wastes, initially carried in free liquids, are accumulated over time for disposal. To disregard this significant waste pile, regulating only the supernatant discharged from the ash pond under the NPDES permit system, would be inconsistent with the intent of the landfill regulations. This site must be regulated as or like a landfill.

The IEPA recognizes that the language quoted above from the Board's R88-7 order in some manner supports Edison's argument, that the Quarry is a surface impoundment exempt from the landfill regulations. However, that language ought not be read in a vacuum. The Board clearly felt in R88-7 that, while ash ponds are not technically landfills, similar environmental safeguards should apply to them, hence the R90-25 docket. Pointing out that R88-7 was dedicated to the promulgation of regulations addressing landfills, the Board deferred consideration of the specifics applicable to other treatment, storage and disposal facilities, including utility ash ponds, to a future rulemaking. In the Matter of: Development, Operating and Reporting Requirements for Non-Hazardous Waste Landfills, IFCB No. R88-7 at 17 (August 17, 1990). It is misleading to characterize the Board's deferral of consideration of rules appropriate for utility ash ponds as conferring on such facilities an unqualified exclusion from vital environmental safeguards.

The Board, in its order dismissing R90-25, conveyed in a footnote the following caveat:

Even though the Utility Group deleted utility ash ponds from its proposal, today's dismissal should not be construed as a determination that existing utility ash ponds do not become landfills upon closure.

This language reflects the Board's specific awareness that utility ash ponds must not receive a blanket exclusion from the landfill rules.<sup>1</sup>

Until the adoption of any regulatory provisions specifically addressing utility ash ponds, the IEPA recommends that the Lincoln Quarry site continue to be regulated pursuant to its landfill permit, as it has been for close to 20 years. The site-specific relief sought by Edison in this proceeding should be pursued to resolve any outstanding 811 and 815 compliance issues

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<sup>1</sup> The IEPA respectfully submits to the Board that to wait until closure to regulate utility ash ponds as landfills makes no sense. At that point any damage of the type the landfill rules are designed to preclude would have already occurred. Moreover, retrofitting of the site upon closure to comply with the landfill standards would be impossible.

The floor of the Quarry constitutes an area on which non-containerized masses of solid, non-flowing wastes, initially carried in free liquids, are accumulated over time for disposal. To disregard this significant waste pile, regulating only the supernatant discharged from the ash pond under the NPDES permit system, would be inconsistent with the intent of the landfill regulations. This site must be regulated as or like a landfill.

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For these reasons, the IEPA urges the Board to deny Edison's Petition to Designate The Joliet/Lincoln Quarry as a Surface Impoundment. The Agency reserves the right to respond further in writing following the hearing to be scheduled addressing this issue.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: \_\_\_\_\_

  
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Dated: April 21, 1995

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STATE OF ILLINOIS     )  
                                  )  
COUNTY OF SANGAMON    )

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached  
IEPA Response to Commonwealth Edison's Petition to Designate the  
Joliet/Lincoln Quarry Site as a Surface Impoundment

upon the person to whom it is directed, by placing a copy in an envelope to

Ms. Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
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Mr. Matthew Dunn, Chief  
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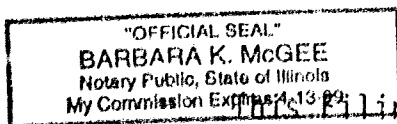
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and mailing it from Springfield, Illinois on April 21, 1995,  
with sufficient postage affixed, first-class mail.

Judith S. Dyer

Subscribed and Sworn To before me  
this 21st day of April, 1995.

Barbara K. McGee  
Notary Public



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