# ILLINOIS POLLUTION CONTROL BOARD July 21, 2016

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 13-41
	)	(Enforcement - Land)
AMERENENERGY RESOURCES	)	
GENERATING COMPANY, INC., an Illinois	)	
corporation, and AMERENENERGY	)	
MEDINA VALLEY COGEN, LLC, an Illinois	( )	
limited liability company,	)	
	)	
Respondents.	)	

# ORDER OF THE BOARD (by J.D. O'Leary):

On February 4, 2013, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a three-count complaint against Ameren Energy Generating Company, Inc. On March 7, 2013, the Board granted the People's unopposed motion to substitute AmerenEnergy Resources Generating Company (AERG) as respondent. The complaint concerns the Duck Creek Power Generating Station located at 17751 North Cilco Road in Canton, Fulton County.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2014)), the Attorney General may bring actions before the Board to enforce Illinois' environmental requirements on behalf of the People. *See* 415 ILCS 5/31 (2014); 35 Ill. Adm. Code 103. In this case, the People allege that respondent violated Sections 21(a), (d)(1), (d)(2), (e), and (r) of the Act (415 ILCS 5/21(a), (d)(1), (d)(2), (e), and (r) (2014)) and Section 812.101(a) of the Land Pollution Regulations (35 Ill. Adm. Code 812.101(a)). The People allege that respondent violated these provisions by causing or allowing the open dumping of Coal Combustion Waste or "CCW" and by operating a CCW disposal site without a permit granted by the Illinois Environmental Protection Agency (Agency). Moreover, the People allege that respondent violated these provisions by conducting a waste-storage and waste-disposal operation at the site that did not meet the requirements of the Act and regulations, and by conducting the same operation without a permit granted by the Agency and without submitting an application for a permit.

On July 15, 2016, the parties filed an agreed motion to join Ameren Energy Medina Valley Cogen, LLC (Medina Valley) as Respondent (Mot.) and a Stipulation and Proposed Settlement (Stip.). For the reasons below, the Board grants the joint motion to join Medina Valley and directs the Clerk to provide public notice of the parties' stipulation and proposed settlement.

## AGREED MOTION TO JOIN MEDINA VALLEY

Ameren Corporation on December 2, 2013, "completed a transaction resulting in the divestiture of its generation business including the Duck Creek Energy Center." Mot. at 2. Following that transaction, "AERG and Medina Valley entered into an Assignment and Assumption Agreement, pursuant to which AERG assigned and Median Valley assumed any liabilities arising from the Complaint filed in this matter" (*Id.*) and "the authority to resolve the matter at issue" (Stip. at 4). Pursuant to this agreement, "Medina Valley is legally responsible for the violations alleged in the complaint herein." Mot. at 2.

On August 7, 2014, the Board denied AERG's motion to substitute Medina Valley as a respondent. The order noted that no motion to join Medina Valley had been filed and that the Board need not address the issue. People v. Ameren Energy Resources Generating Co., Inc., PCB 13-41, slip op. at 5 (Aug. 7, 2014). The parties now jointly move that the Board join Medina Valley as respondent. Mot. at 3, citing 735 ILCS 5/2-405 (2014); 35 Ill. Adm. Code 101.403(a) (Joinder of Parties).

The Board grants the parties' joint motion to join Medina Valley as a respondent. In doing so, the Board notes that Medina Valley requests that the Board accept and adopt the stipulation and proposed settlement of this matter. Stip. at 16; see 35 Ill. Adm. Code 101.500(d). The Board has amended the caption to reflect joinder of Medina Valley and directs the Clerk to do so in future opinions and orders.

### STIPULATION AND PROPOSED SETTLEMENT

On July 15, 2016, the People and ERG and Medina Valley filed a stipulation and proposed settlement. This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2014)), which requires that the public have an opportunity to request a hearing whenever the State and a respondent propose settling an enforcement action without a public hearing. *See* 35 Ill. Adm. Code 103.300(a).

Under the proposed stipulation, the respondents do not affirmatively admit the alleged violations and agree to pay a civil penalty of \$60,000. Stip. at 8. In addition, "to minimize groundwater migration through the coal combustion material fill area," respondents agree to construct a low permeability barrier wall to a depth of 50-60 feet between the road and the rail line at the site. Stip. at 10 (design and construction parameters). Construction of the barrier wall must be completed within 24 months of the Board's acceptance of the stipulation and proposed settlement. *Id.* at 11. Respondents then must perform and report the results of monitoring of groundwater elevation. *Id.* at 11-12. If the groundwater elevation exceeds 597 feet mean sea level at any point, respondents must submit an assessment report and proposed action to the Agency within 90 days. *Id.* at 13 (required elements of report). Respondents then must perform work required under the assessment reports and action plans according to any schedule approved by the Agency. *Id.* at 14. In addition, respondents must cease and desist from future violations that were the subject of the complaint. *Id.* 

Unless the Board determines that a hearing is needed, the Board must cause notice of the stipulation, proposed settlement, and request for relief from the hearing requirement. Any person may file a written demand for hearing within 21 days after receiving the notice. If anyone timely files a written demand for hearing, the Board will deny the parties' request for relief and hold a hearing. See 415 ILCS 5/31(c)(2) (2014); 35 Ill. Adm. Code 103.300(b), (c). The Board directs the Clerk to provide the required notice.

### IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 21, 2016, by a vote of 5-0.

John T. Therriault, Clerk

Illinois Pollution Control Board