

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>AMEREN ENERGY RESOURCES</b>	)	
<b>GENERATING COMPANY,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>PCB No. 14-41</b>
	)	<b>(Permit Appeal - Land)</b>
<b>ILLINOIS ENVIRONMENTAL</b>	)	
<b>PROTECTION AGENCY,</b>	)	
	)	
<b>Respondent.</b>	)	

**NOTICE OF ELECTRONIC FILING**

PLEASE TAKE NOTICE that on April 11, 2014, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, c/o John T. Therriault, Assistant Clerk, James R. Thompson Center, 100 W. Randolph St., Ste. 11-500, Chicago, IL 60601, OBJECTION TO MOTION TO RECONSIDER BOARD ORDER DENYING MOTION TO STRIKE, a copy of which is attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS  
LISA MADIGAN,  
Attorney General of the  
State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

BY: s/Raymond J. Callery  
Raymond J. Callery  
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

AMEREN ENERGY RESOURCES	)	
GENERATING COMPANY	)	
	)	
Petitioner,	)	
	)	
vs.	)	PCB No. 14-41
	)	(Permit Appeal - Land)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**OBJECTION TO MOTION TO RECONSIDER BOARD ORDER DENYING MOTION TO STRIKE**

Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by LISA MADIGAN, Attorney General of Illinois, hereby objects to Petitioner, Ameren Energy Resource Generating Company's ("AERG"), Motion to Reconsider Board Order Denying Motion to Strike, and states as follows:

1. AERG moves to reconsider the Board's March 20, 2014 order ("Order") denying AERG's motion to strike the September 12, 2013 Illinois EPA Memorandum ("Memorandum") (Rec. pp. 243-255) from the administrative record in this matter.

2. As is stated in the Memorandum, it was prepared in response to AERG's August 2013 request seeking approval of the rail spur and haul road constructed at the Duck Creek Power Station in 2004-2005.

3. The Memorandum is from the Illinois EPA Groundwater Unit to the Illinois EPA Disposal Alternatives Unit and states: "The Illinois EPA has determined it cannot approve the Beneficial Use Determination . . ." Memorandum at p. 9.

4. In ruling on a motion for reconsideration, the Board will consider factors including new evidence or a change in the law, to determine if the Board's decision was in

error. Section 101.902 of the Board's Procedural Rules, 35 Ill. Adm. Code 101.902.

5. In *Citizens Against Regional Landfill v. County Board of Whiteside*, PCB 92-156 (Mar. 11, 1993), the Board observed that "the intended purpose of a motion for reconsideration is to bring to the court's attention newly discovered evidence which was not available at the time of hearing, changes in the law or errors in the court's previous application of the existing law." *Korogluyan v. Chicago Title & Trust Co.*, 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1992).

6. Here, AERG makes no argument for newly discovered evidence or changes in the law. AERG argues the Board misapplied existing law.

7. The Board's application of the law was correct. In particular, the Board correctly found that Section 105.212(b) of the Board's Procedural Rules, 35 Ill. Adm. Code 105.212(b), is not an exhaustive list of what *may* be included in the administrative record. Order at p. 8.

8. "It is well-settled that the Agency record in a permit appeal consists only of the information which the Agency considered or should have considered in making its permitting decision." *United Disposal of Bradley, Inc. v. IEPA*, PCB 03-235, slip op at 2 (June 17, 2004).

9. The Board found "the internal memorandum to be a document on which the Agency relied or should have relied in its review of the BUD application, and, therefore, something the Agency properly included in the record in this appeal." Order at p. 9.

10. Section 105.116 of the Board's Procedural Rules, 35 Ill. Adm. Code 105.116, provides the Illinois EPA was required to file with the Board the "entire record of

its decision.” The Agency did so.

11. AERG argues that since the Illinois EPA did not respond to its BUD application within 90 days, the administrative record should be limited to the documents AERG submitted in support of the BUD application. The language of Section 3.135(b) of the Act, 415 ILCS 5/3.135(b) (2012), does not support this interpretation.

12. Pursuant to Section 3.135(b), “the legislature chose to deal with such cases by deeming the BUD request denied and providing for Board review. That the Agency did not issue a BUD determination by the statutory deadline is, therefore, not grounds to strike the internal memorandum . . .” Order at p. 9.

13. AERG’s argument the Board misapplied the law is without merit. Therefore, the motion to reconsider should be denied.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

LISA MADIGAN  
Attorney General of the  
State of Illinois

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Dated: April 11, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that I did on April 11, 2014, cause to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING and OBJECTION TO MOTION TO RECONSIDER BOARD ORDER DENYING MOTION TO STRIKE to the following:

Amy Antonioli  
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Hearing Officer  
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s/Raymond J. Callery  
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