

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CITI DEVELOPMENT, LLC,)	
)	
Petitioner,)	
)	
vs.)	PCB No. 21-110
)	
ILLINOIS ENVIRONMENTAL)	(Variance – Land)
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING

To: Mr. Don Brown	Carol Webb
Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
James R. Thompson Center	1021 N. Grand Avenue East
100 W. Randolph Suite 11-500	Post Office Box 19276
Chicago, Illinois 60601	Springfield, Illinois 62794-9276
(VIA ELECTRONIC MAIL)	(VIA ELECTRONIC MAIL)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board **MOTION FOR LEAVE TO FILE REPLY**, a copy of which is herewith served upon you.

Respectfully submitted,

CTI DEVELOPMENT, LLC
Petitioner,

DATE: October 26, 2021

By: /s/ Jennifer M. Martin
One of Its Attorneys

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CERTIFICATE OF SERVICE

I, Jennifer M. Martin, the undersigned, hereby certifies that the **MOTION FOR LEAVE TO FILE REPLY** was served via electronic mail upon the following:

Mr. Don Brown
Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph Suite 11-500
Chicago, Illinois 60601

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 N. Grand Avenue East
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That my email address is Jennifer.Martin@heplerbroom.com.

That the number of pages in the email transmission is 7 total pages.

That the email transmission took place before 5:00 p.m. on the date of October 26, 2021.

/s/ Jennifer M. Martin

Date: October 26, 2021

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MOTION FOR LEAVE TO FILE REPLY

NOW COMES Petitioner, CTI DEVELOPMENT, LLC (“CTI”), by and through its undersigned counsel, and pursuant to 35 Ill. Adm. Code § 101.500, hereby moves the Illinois Pollution Control Board (“Board”) for leave to file a Reply in Support of Petitioner’s Motion for Leave to File Second Amended Petition for Variance. In support of this Motion for Leave, CTI states as follows:

1. On July 29, 2021, CTI filed a Motion for Leave to File Amended Petition.
2. On August 26, 2021, the Board granted CTI’s Motion for Leave to File Amended Petition.
3. Subsequently, after additional discussions with Respondent, CTI determined additional requested relief should be added to CTI’s variance petition in order to make the relief requested comprehensive, covering all related regulatory provisions.
4. On September 22, 2021, Respondent filed a Motion to Dismiss CTI’s Amended Petition.
5. On October 6, 2021, CTI filed a Response to the Motion to Dismiss and a Motion for Leave to File Second Amended Petition.

6. On October 20, 2021, Respondent filed a Response to CTI's Motion for Leave to File Second Amended Petition, arguing that the Motion for Leave should be denied.

7. CTI respectfully requests leave to file a Reply to Respondent's Response to the Motion for Leave to File Second Amended Petition. A Reply is needed in order to ensure that CTI's position as to filing a Second Amended Petition is fully addressed for the Board's consideration.

8. A Reply to Respondent's Response to CTI's Motion for Leave to File Second Amended Petition is attached hereto as Exhibit 1.

WHEREFORE, for the above reasons, Petitioner CTI DEVELOPMENT, LLC respectfully requests that the Illinois Pollution Control Board grant it leave to file, *instanter*, the attached Reply.

Respectfully submitted.

CTI DEVELOPMENT, LLC
Petitioner,

DATE: October 26, 2021

By: /s/ Jennifer M. Martin
One of Its Attorneys

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REPLY TO ILLINOIS ENVIRONMENTAL PROTECTION AGENCY’S RESPONSE TO CTI’S MOTION FOR LEAVE TO FILE SECOND AMENDED PETITION

NOW COMES Petitioner, CTI DEVELOPMENT, LLC (“CTI”), by and through its undersigned counsel, and pursuant to 35 Ill. Adm. Code § 101.500, hereby files its Reply to the Illinois Environmental Protection Agency’s (“Illinois EPA’s”) Response to CTI’s Motion for Leave to File Second Amended Petition for Variance.

On October 6, 2021, CTI filed a Motion for Leave to File Second Amended Petition for Variance. In the Motion for Leave, CTI requested leave to file a Second Amended Petition in order to add a request for relief from 35 Ill. Adm. Code 845.220(e), which provides that CCR surface impoundments that submitted a closure plan prior to May 1, 2019 and complete closure by July 30, 2021 are not required to obtain a construction permit for closure under Part 845. Motion for Leave at 4. This additional requested relief does not differ substantively from the relief already requested by CTI, but is needed to make the variance requested by CTI comprehensive.

In its Response to the Motion for Leave, Respondent argues that the Motion for Leave to File Second Amended Petition should be denied for the same reasons that Respondent argues that the Amended Petition should be dismissed, e.g., that the requested relief is permanent relief

and not appropriate variance relief. Motion to Dismiss at 4-5. However, as discussed in CTI's Response to the Motion to Dismiss, the requested relief does not obviate the need for any authorization for the closure activities. CTI already received approval from Illinois EPA for its closure plan and obtained an NPDES permit that addresses dewatering. Therefore, this is not a situation where CTI is performing closure work without any authorization from Illinois EPA.

Neither is this a situation where CTI delayed the closure work and simply failed to meet the July 30, 2021 deadline to close in Section 845.220(e) and in the Illinois Environmental Protection Act. In 2017, Illinois EPA approved the closure plan for the West Ash Complex, which was submitted by Dynegy Midwest Generation, LLC ("Dynegy"), the former owner of the Wood River Power Station. Amended Petition at 6. Dynegy transferred ownership of the Wood River Power Station to CTI in August 2019. *Id.* Upon transfer of ownership, CTI immediately began the planning and administrative work needed for closure of the West Ash Complex. *Id.* at 6-7. In December 2019, Illinois EPA acknowledged the transfer of closure responsibility to CTI, including that CTI may close the West Ash Complex utilizing the Illinois EPA-approved closure plan submitted by Dynegy. *Id.* at 7. However, CTI was then required to wait for the issuance of a modified NPDES permit, which Dynegy applied for in June 2016, to begin dewatering (the first step in the closure process). *Id.* at 7.

In April 2020, Illinois EPA issued the modified NPDES permit to CTI. *Id.* Immediately following the issuance of the modified NPDES permit, CTI began dewatering of the surface impoundments. *Id.* However, due to the delay in issuance of the NPDES permit, no amount of manpower would have made it possible for CTI to complete closure of the West Ash Complex prior to the July 30, 2021 deadline. *Id.* at 8, 11-3. CTI could not meet the July 30, 2021 deadline

for reasons outside of CTI's control and, therefore, CTI is requesting a three-year variance from 35 Ill. Adm. Code §§ 845.220(e), 845.200(a)(4) and 845.720(b)(2).

WHEREFORE, for the above reasons, Petitioner CTI DEVELOPMENT, LLC respectfully requests that the Illinois Pollution Control Board grant it leave to file the Second Amended Petition for Variance.

Respectfully submitted.

CTI DEVELOPMENT, LLC
Petitioner,

DATE: October 26, 2021

By: /s/ Jennifer M. Martin
One of Its Attorneys

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