

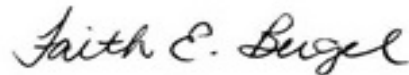
**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

In the Matter of:	)	
	)	
SIERRA CLUB, ENVIRONMENTAL	)	
LAW AND POLICY CENTER,	)	
PRAIRIE RIVERS NETWORK, and	)	
CITIZENS AGAINST RUINING THE	)	
ENVIRONMENT	)	
	)	PCB No-2013-015
Complainants,	)	(Enforcement – Water)
	)	
v.	)	
	)	
MIDWEST GENERATION, LLC,	)	
	)	
Respondent.	)	

**NOTICE OF FILING**

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board the attached **COMPLAINANTS’ MOTION TO INCORPORATE CERTAIN DOCUMENTS INTO THE PCB 13-15 DOCKET**, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,



Faith E. Bugel  
1004 Mohawk  
Wilmette, IL 60091  
(312) 282-9119  
FBugel@gmail.com

*Attorney for Sierra Club*

Dated: February 4, 2022

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

In the Matter of:	)	
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SIERRA CLUB, ENVIRONMENTAL	)	
LAW AND POLICY CENTER,	)	
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CITIZENS AGAINST RUINING THE	)	
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Complainants,	)	(Enforcement – Water)
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v.	)	
	)	
MIDWEST GENERATION, LLC,	)	
	)	
Respondent.	)	

**COMPLAINANTS’ MOTION TO INCORPORATE CERTAIN DOCUMENTS INTO THE PCB 13-15 DOCKET**

Pursuant to 35 Ill. Admin. Code § 101.500 and § 101.306, Complainants hereby request that the Hearing Officer enter an Order granting their Motion to incorporate two documents into the docket for these proceedings because these documents are authentic, credible, and relevant to this proceeding. In support of this Motion, Complainants state as follows:

1. Board Rule 101.306 provides

(a) Upon the separate written request of any person or on its own initiative, the Board or hearing officer may incorporate materials from the record of another Board docket into any proceeding. The person seeking incorporation must file the material to be incorporated with the Board in accordance with Section 101.302(h). *The person seeking incorporation must demonstrate to the Board or the hearing officer that the material to be incorporated is authentic, credible, and relevant to the proceeding.* Notice of the request must be given to all identified participants or parties by the person seeking incorporation.

(b) The Board will give the incorporated matter the appropriate weight in light of the following factors: the standard of evidence under which the material was previously presented to the Board; the present purpose for incorporating the material; and the past and current opportunity for cross-examination of the matters asserted within the incorporated material.

35 Ill. Admin. Code § 101.306 (emphasis added).

2. On March 30, 2020, the Illinois Environmental Protection Agency (“IEPA”) initiated a rulemaking before the Illinois Pollution Control Board (the “Board”). The IEPA proposed a “rule of general applicability for coal combustion residual (“CCR”) surface impoundments at power generating facilities.” (*In re Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments: Proposed New 35 Ill. Adm. Code 845, R2020-19, Statement of Reasons at 1 (Mar. 30, 2020)* (“Illinois Coal Ash Rule Proceedings”).) As indicated by the name of the proceedings, the rulemaking centered on coal ash ponds—or CCR surface impoundments—that are also at issue in this proceeding.

3. One of the elements that the rulemaking considered were “areas of environmental justice concern.” As explained in IEPA testimony supporting the proposed rule, the rule included a prioritization scheme that considered Environmental Justice as one factor in sequencing the closure of coal ash ponds.

The proposed prioritization scheme assists owners and operators in determining where and how to spend their resources by categorizing impoundments based on risk to health and the environment and the impoundment’s proximity to areas of environmental justice concern, requiring those with the highest risk and those located in areas of environmental justice concern to submit a closure application first, approximately nine months after the proposed rules will become effective.

*In re Standards for the Disposal of Coal Combustion Residuals, R2020-19, Pre-filed Testimony of Chris Pressnall at 3 (June 1, 2020).*

4. One of the factors that the Board considers when determining a remedy is “the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved.” 415 ILCS §5/33(c)(iii). In weighing Environmental Justice when ranking surface impoundments for closure, the Illinois coal ash rules for surface impoundments are addressing the suitability or unsuitability of the pollution

source to the area. Thus, the discussion of Environmental Justice in the context of Illinois Coal Ash Rule Proceedings is completely relevant to considering the unsuitability of MWG's pollution sources to the areas in which they are located in the current proceedings.

5. Two documents on Environmental Justice from the Illinois Coal Ash Rule Proceedings are particularly pertinent to these proceedings. The first is IEPA's Pre-filed Testimony of Chris Pressnall. *In re Standards for the Disposal of Coal Combustion Residuals*, R2020-19, Pre-filed Testimony of Chris Pressnall (June 1, 2020).<sup>1</sup> Chris Pressnall is the Environmental Justice Coordinator for IEPA. *Id.* at 1. Mr. Pressnall administers "the Illinois Environmental Protection Agency's Environmental Justice Program . . . [which] includes screening of regulated sources of pollution to determine if the source is located in an area of environmental justice concern." *Id.* at 1. His testimony from the Illinois Coal Ash Rule Proceedings covered "the environmental justice screening of coal ash impoundments" and, thus, speaks directly to consideration of environmental justice as it relates to the location of coal ash ponds. *Id.* His testimony is, therefore, relevant to the unsuitability of the pollution sources to the areas in which they are located. Further, Mr. Pressnall is the Environmental Justice Coordinator for IEPA and was the witness selected by IEPA to testify about environmental justice and coal ash impoundments. As a result, Mr. Pressnall's testimony on this subject is credible.

6. The second pertinent document is IEPA's Pre-Filed Answers. *In re Standards for the Disposal of Coal Combustion Residuals*, R2020-19, IEPA's Pre-Filed Answers (August 3, 2020).<sup>2</sup> This document contains IEPA's answers to pre-filed questions directed at Chris Pressnall, including a table that indicates which surface impoundments in Illinois are within Environmental

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<sup>1</sup> Available at <https://pcb.illinois.gov/documents/dsweb/Get/Document-102323>.

<sup>2</sup> Available at <https://pcb.illinois.gov/documents/dsweb/Get/Document-102654>.

Justice areas. *Id.* at 12, 88, 132, 181-182. For the same reasons as discussed in the preceding paragraph, the contents of IEPA's Pre-Filed Answers are relevant and credible. When material from another docket is relevant, a motion to incorporate should be granted. *ExxonMobil Oil Corp. v. IEPA*, 2011 WL 4615015, PCB 11-86, at \*1 (Sept. 29, 2011) ("Finding that the transcripts to be incorporated are relevant, the petitioner's motion is granted.").

7. Complainants retrieved both of these documents from the IPCB's online e-docket.<sup>3</sup> Upon information and belief, they are both authentic.

8. Finally, one factor the rules require the Board to consider when deciding the weight of the testimony is opportunity for cross examination. All IEPA witnesses were presented for cross examination in the Illinois Coal Ash Rules Proceedings. *In re Standards for the Disposal of Coal Combustion Residuals*, R2020-19, (August 11, 12, 13, 25, 2020).<sup>4</sup> In fact, IEPA's answers to pre-filed questions were part of that cross examination. Witnesses also appeared for oral cross examination. *Id.*

9. For the reasons stated above, these two documents from the Illinois Coal Ash Proceedings are authentic, credible, and relevant to this proceeding and should be incorporated into this docket.

WHEREFORE Complainants respectfully request that the Hearing Officer order that the Pre-filed Testimony of Chris Presnall of June 1, 2020,<sup>5</sup> and IEPA's Pre-filed Answers of August

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<sup>3</sup> Available at <https://pcb.illinois.gov/documents/dsweb/Get/Document-102323> and <https://pcb.illinois.gov/documents/dsweb/Get/Document-102654>.

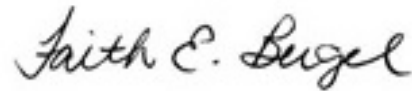
<sup>4</sup> Available at <https://pcb.illinois.gov/documents/dsweb/Get/Document-102775>; <https://pcb.illinois.gov/documents/dsweb/Get/Document-102800>; <https://pcb.illinois.gov/documents/dsweb/Get/Document-102825>; <https://pcb.illinois.gov/documents/dsweb/Get/Document-102899>.

<sup>5</sup> *In re Standards for the Disposal of Coal Combustion Residuals*, R2020-19, Pre-filed Testimony of Chris Pressnall (June 1, 2020).

3, 2020,<sup>6</sup> both from docket R20-19, are hereby incorporated into the docket for this matter going forward.

Dated: February 4, 2022

Respectfully submitted,



Faith E. Bugel  
1004 Mohawk  
Wilmette, IL 60091  
(312) 282-9119  
FBugel@gmail.com

Gregory E. Wannier  
2101 Webster St., Ste. 1300  
Oakland, CA 94612  
(415) 977-5646  
Greg.Wannier@sierraclub.org

*Attorneys for Sierra Club*

Abel Russ  
Attorney  
Environmental Integrity Project  
1000 Vermont Avenue NW  
Washington, DC 20005  
802-662-7800 (phone)  
ARuss@environmentalintegrity.org

*Attorney for Prairie Rivers Network*

Cantrell Jones  
Kiana Courtney  
Environmental Law & Policy Center  
35 E Wacker Dr, Ste 1600  
Chicago, IL 606057  
cjones@elpc.org

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<sup>6</sup> *In re Standards for the Disposal of Coal Combustion Residuals*, R2020-19, IEPA's Pre-Filed Answers (August 3, 2020).

kcourtney@elpc.org  
(312) 673-6500

*Attorney for ELPC, Sierra Club and  
Prairie Rivers Network*

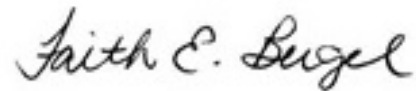
Keith Harley  
Chicago Legal Clinic, Inc.  
211 W. Wacker, Suite 750  
Chicago, IL 60606  
312-726-2938  
KHarley@kentlaw.iit.edu

*Attorney for CARE*

**CERTIFICATE OF SERVICE**

The undersigned, Faith E. Bugel, an attorney, certifies that I have served electronically upon the Clerk and by email upon the individuals named on the attached Service List a true and correct copy of **COMPLAINANTS' MOTION TO INCORPORATE CERTAIN DOCUMENTS INTO THE PCB 13-15 DOCKET** before 5 p.m. Central Time on February 4, 2022, to the email addresses of the parties on the attached Service List. The entire filing package, including exhibits, is 9 pages.

Respectfully submitted,



Faith E. Bugel  
1004 Mohawk  
Wilmette, IL 60091  
[fbugel@gmail.com](mailto:fbugel@gmail.com)

**PCB 2013-015 SERVICE LIST:**

Jennifer T. Nijman  
Kristen L. Gale  
NIJMAN FRANZETTI LLP  
10 South LaSalle Street, Suite 3600  
Chicago, IL 60603  
[jn@nijmanfranzetti.com](mailto:jn@nijmanfranzetti.com)  
[kg@nijmanfranzetti.com](mailto:kg@nijmanfranzetti.com)

Abel Russ  
Environmental Integrity Project  
1000 Vermont Avenue NW  
Washington, DC 20005  
[aruss@environmentalintegrity.org](mailto:aruss@environmentalintegrity.org)

Bradley P. Halloran,  
Hearing Officer  
Illinois Pollution Control Board  
100 West Randolph St., Suite 11-500  
Chicago, IL 60601  
[Brad.Halloran@illinois.gov](mailto:Brad.Halloran@illinois.gov)

Gregory E. Wannier  
Sierra Club Environmental Law  
Program  
2101 Webster St., Ste. 1300  
Oakland, CA  
94612  
[greg.wannier@sierraclub.org](mailto:greg.wannier@sierraclub.org)



Cantrell Jones  
Kiana Courtney  
Environmental Law & Policy Center  
35 E Wacker Dr, Ste 1600  
Chicago, IL 606057  
[cjones@elpc.org](mailto:cjones@elpc.org)  
[kcourtney@elpc.org](mailto:kcourtney@elpc.org)

Keith Harley  
Chicago Legal Clinic, Inc.  
211 W. Wacker, Suite 750  
Chicago, IL 60606  
[Kharley@kentlaw.edu](mailto:Kharley@kentlaw.edu)