

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 2013-015
Complainants,)	(Enforcement – Water)
)	
v.)	
)	
MIDWEST GENERATION, LLC,)	
)	
Respondent.)	

NOTICE OF FILING

TO: Don Brown, Clerk	Attached Service List
Illinois Pollution Control Board	
James R. Thompson Center	
100 West Randolph Street, Suite 11-500	
Chicago, IL 60601	

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board, Midwest Generation, LLC’s Motion for Leave to File, *Instantly*, Its Reply in Support of Its Motion in Limine to Exclude Evidence of the Need for a Remedy at Certain Areas at Three Stations, a copy of which is hereby served upon you.

MIDWEST GENERATION, LLC

By: /s/ Jennifer T. Nijman

Dated: March 18, 2022

Jennifer T. Nijman
Susan M. Franzetti
Kristen L. Gale
NIJMAN FRANZETTI LLP
10 South LaSalle Street, Suite 3600
Chicago, IL 60603
(312) 251-5255

SERVICE LIST

Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, IL 60601
Brad.Halloran@illinois.gov

Keith Harley
Chicago Legal Clinic, Inc.
211 West Wacker Drive, Suite 750
Chicago, IL 60606
Kharley@kentlaw.edu

Faith E. Bugel
Attorney at Law
Sierra Club
1004 Mohawk
Wilmette, IL 60091
fbugel@gmail.com

Cantrell Jones
Kiana Courtney
Environmental Law & Policy Center
35 East Wacker Drive, Suite 1600
Chicago, IL 60601
CJones@elpc.org
KCourtney@elpc.org

Abel Russ
For Prairie Rivers Network
Environmental Integrity Project
1000 Vermont Avenue, Suite 1100
Washington, DC 20005
aruss@environmentalintegrity.org

Greg Wannier, Associate Attorney
Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612
Greg.wannier@sierraclub.org

Peter Morgan
Sierra Club
1536 Wynkoop St., Ste. 200
Denver, CO 80202
Peter.morgan@sierraclub.org

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that a true copy of the foregoing Notice of Filing, Certificate of Service and Midwest Generation, LLC's Motion for Leave to File, *Instantly*, Its Reply in Support of Its Motion in Limine to Exclude Evidence of the Need for a Remedy at Certain Areas at Three Stations, a copy of which is hereby served upon you was filed on March 18, 2022 with the following:

Don Brown, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

and that true copies of the Notice of Filing, Certificate of Service and Midwest Generation, LLC's Motion for Leave to File, *Instantly*, Its Reply in Support of Its Motion in Limine to Exclude Evidence of the Need for a Remedy at Certain Areas at Three Stations were emailed on March 18, 2022 to the parties listed on the foregoing Service List.

/s/ Jennifer T. Nijman

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 2013-015
Complainants,)	(Enforcement – Water)
)	
v.)	
)	
MIDWEST GENERATION, LLC,)	
)	
Respondent.)	

MIDWEST GENERATION, LLCS MOTION FOR LEAVE TO FILE, INSTANTER, ITS REPLY IN SUPPORT OF ITS MOTIONS *IN LIMINE* TO EXCLUDE EVIDENCE OF THE NEED FOR A REMEDY AT CERTAIN AREAS AT THREE STATIONS

Respondent, Midwest Generation, LLC (“MWG”), submits this Motion for Leave to File, *Instanter*, its Reply (to Complainants’ Response) in support of MWG’s Motions *In Limine* to Exclude Evidence of the Need for a Remedy at the Historic Areas at the Joliet 29 Station, the Former Ash Basin at the Powerton Station, and the Former Slag and Bottom Ash Area at the Will County Station, pursuant to Sections 101.500(e) and 101.514 of the Illinois Pollution Control Board’s (“Board”) Procedural Rules. 35 Ill. Adm. Code 101.500(e), 101.514. A reply brief is warranted because Complainants raised new claims on how Sections 21(r) and 21(d)(1) of the Illinois Environmental Protection Act (“Act”) interact, incorrectly claiming that Section 21(r) did not allow disposal of coal combustion waste (“CCW”) onsite. The legislative history of amendments to Section 21(r) demonstrates that the General Assembly intentionally excluded CCW from the cases that limited the quantities of disposal, and MWG will be materially prejudiced if it is not allowed to reply and show that the prior CCW disposal practices, combined with the Board’s

findings that certain historic areas were not established as sources of groundwater impact, warrant excluding those areas from the Board's consideration of whether a remedy (or penalty, as Complainants assert) is required.

In support of its motion seeking leave to file, MWG submits its Reply and states:

1. On February 4, 2022, MWG filed three related Motions *in Limine* to Exclude Evidence of the Need for a Remedy at the Historic Areas of CCR at the Joliet 29 Station, the Former Ash Basin at the Powerton Station, and the Former Slag and Bottom Ash Area at the Will County Station

2. On March 4, 2022, Complainants filed a combined Response to MWG's Motions *In Limine* ("Response").

3. Complainants incorrectly claim in their Response that Section 21(r), coupled with Section 21(d)(1), barred disposal of larger quantities of CCW, and MWG will suffer material prejudice if it is not allowed to reply.¹ In addition, Complainants incorrectly assert, for the first time in their Response, that any finding of liability by the Board mandates a remedy. In fact, in its Interim Order, the Board does not require a remedy for every issue identified by the Board even it finds liability. The Board states the parties should proceed to hearing to "determine the appropriate relief and *any remedy*." (Int. Order, 6/20/19 p. 93, emphasis added). In fact, in other cases, the Board has not required a remedy or penalty despite finding a respondent liable for violating the Act. Here, the Board found that the historic areas at issue in MWG's motions *in limine* were not established sources of groundwater impact, so MWG asserts that no remedy is required in those specified areas.

¹ Complainants also filed a baseless Motion for Sanctions against MWG that included Complainants' 21(r) argument, without researching the application or history of its enactment. *Sierra Club v. Midwest Generation, LLC*, PCB13-15, Midwest Generation LLC's Response to Complainants' Motion for Sanctions (March 4, 2022)

4. The plain language from the text of Section 21(r)(1) notes that under the stated conditions, deposited CCW does not require a permit. 415 ILCS 5/21(r)(1) (stating that a person is not prohibited from “caus[ing] or allow[ing] the . . . disposal of coal combustion waste” if “such waste is . . . disposed of at a site or facility for which a permit . . . is not . . . required under subsection (d) of this Section”). Section 21(r)(1) cross-references to Section 21(d), whose plain language says that a permit is not required for self-generated waste. There are no other permitting exceptions in 21(d)—either as it existed in 1989 or as it exists today—that Section 21(r)(1) could be referring to.

5. Also, the subsequent legislative history of Section 21(r) confirms that the General Assembly enacted Section 21(r)(1) as a key component of CCW disposal in Illinois. The bill’s Senate sponsor described an amendment to remedy a drafting error in Section 21(r)(1) as necessary for “the current disposal program to continue.”⁸ 9th Ill. Gen. Assem., Senate Proceedings, Mar. 22, 1996, at 27 (Sen. Luechtefeld) attached as Ex. 5.

6. MWG respectfully submits that the filing of the attached Reply will prevent material prejudice and injustice by disputing Complainants’ argument that Section 21(r), which was described as—“*the* current disposal program” for Illinois CCW, is inapplicable. 89th Ill. Gen. Assem., Senate Proceedings, Mar. 22, 1996, at 27 (Sen. Luechtefeld), Ex. 5. MWG should further be permitted to reply to Complainant’s incorrect claims that a remedy is mandated in any case where there is a finding of liability.

7. This Motion is timely filed on March 18, 2022, within fourteen (14) days after service of Complainants’ Response on MWG, in accordance with 35 Ill. Admin. Code §101.500(e).

WHEREFORE, MWG respectfully requests that the Board grant Respondent's Motion for Leave to File Instantly, its Reply (to Complainants' Response) in support of MWG's Motions *In Limine* to Exclude Evidence of the Need for a Remedy at certain areas at three Stations, and accept the attached Reply as filed on this date.

Respectfully submitted,

MIDWEST GENERATION, LLC

By: /s/ Jennifer T. Nijman
One of Its Attorneys

Jennifer T. Nijman
Susan M. Franzetti
Kristen L. Gale
Nijman Franzetti, LLP
10 S. LaSalle Street, Suite 3600
Chicago, IL 60603
312-251-5255

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 2013-015
Complainants,)	(Enforcement – Water)
)	
v.)	
)	
MIDWEST GENERATION, LLC,)	
)	
Respondent.)	

MIDWEST GENERATION, LLC’S REPLY IN SUPPORT OF ITS MOTIONS *IN LIMINE* TO EXCLUDE EVIDENCE OF THE NEED FOR A REMEDY AT CERTAIN AREAS AT THREE STATIONS

MWG is not attempting to “relitigate” the Illinois Pollution Control Board’s (“Board”) liability opinion through its motions. Instead, MWG’s motions *in limine* for certain historic areas at the Joliet 29 Station, Powerton Station, and Will County Station are based upon the fact that the Board found in its Interim Order that specific areas at these Stations were not sources of groundwater impact, or that Complainants had not demonstrated that the areas were a source. If a specific area is not established as a source, a remedy is not necessary in that area. Moreover, Complainants incorrectly assert that the Board’s Interim Orders require that a remedy be imposed. Instead, the Board ordered a hearing to determine if a remedy is needed. The Board has a history of finding liability against a respondent, and yet also holding that no remedy or penalty was required.

A key purpose of this Reply, however, is to address Complainants’ incorrect assertion that Section 21(r) of the Illinois Environmental Protection Act has no application in the remedy phase of this case *in combination with the fact that the Board found the areas do not constitute a source*. MWG maintains that pursuant to 21(r), when coal combustion waste (“CCW”) was deposited in

certain areas in the past, it was allowed to be deposited and to remain in place. Complainants' attempt to limit Section 21(r) to small quantities is incorrect as applied to CCW. The legislative history of 21(r) and 21(d)(1) demonstrates that the General Assembly intended to allow CCW to remain in place in large quantities. MWG simply asks that the Board properly consider Section 21(r), along with its factual findings about the specified historic areas, to exclude those areas from requiring a remedy.

MWG notes that Complainants' Response fails to include page numbers, in violation of Board rules, and making citations to the Response difficult. If MWG mistakenly refers to an incorrect page of the Response, MWG asks that the Board require Complainants to refile their Response with page numbers included so there is no confusion going forward.¹

A. A Finding of Liability Does Not Mandate a Remedy

Contrary to Complainants' claim that a remedy must be imposed, in its Interim Order, the Board does not mandate a remedy for every issue identified by the Board, but states the parties should proceed to hearing to "determine the appropriate relief *and any remedy*." (Int. Order, 6/20/19 p. 93, *emph. added*). The Board has, in other cases, found a party liable and yet still did not require a remedy or even a penalty. In *People of the State of Illinois v. CSX Transportation, Inc.*, PCB 07-16 (July 12, 2007), the Board found that CSX Transportation violated the Act, yet found that no penalty nor remedy was required. *Id.* at 19. Similarly, in *Union v. Caterpillar*, PCB 94-240 (Aug. 1, 1996), the Board found that Caterpillar violated the Act, and also found that no penalty or remedy was warranted. *Id.* at 30. *See also Shelton v. Crown*, PCB96-53 (Oct. 2, 1997) (Board found respondents violated the Act, but found no penalty was required). Here, simply

¹ Complainants' failure to follow the procedural rule – "All pages in the document sequentially numbered" is an additional unnecessary burden to MWG, the Hearing Officer, and the Board. 35 Ill. Adm. Code 101.302(g). Two of Complainants four Responses failed to include page numbers – this Response, and Complainants' Response to MWG's Motions to Exclude Quarles Opinion. The Hearing Officer could reject both documents on that basis alone.

because the Board found MWG liable under the Act does not automatically mean that the Board must also recommend a remedy, particularly when there is no identified source or no identified impact in certain specified areas.

B. Sections 21(r) and 21(d)(1), and their Legislative History, Shows that There was No Limitation on the Quantity of CCW Disposed

Complainants incorrectly suggest that case law limits the application of Section 21(d)(1)(i) to small quantities in all cases, including CCW, no matter the context. That is not correct, and Complainants cite to no cases that support their assertion as it relates to CCW.

The text of Section 21(d)(1)(i)² states that people need not have a permit to dispose of self-generated, nonhazardous wastes on the land where the wastes were generated. *See Piolet Bros. Trading, Inc. v. PCB*, 110 Ill. App. 3d 752, 755 (5th Dist. 1982) (describing this as “a literal reading of” Section 21(d), which at the time was codified as Section 21(e)). In 1975, the Board held that, if the Section 21(d)(1)(i) exception applies to *all* wastes in *any* quantity, then that exception is in such tension with the overall purposes of the Illinois Environmental Protection Act that a limit on quantity must be inserted into the law to avoid an absurd result. *EPA v. City of Pontiac*, 1975 Ill. ENV LEXIS 317, *7-*8 (PCB 1975)(concerning auto shredding waste). Under a deferential standard of review, Illinois appellate courts have affirmed the *Pontiac* holding. *E.g., Piolet Bros. Trading, Inc.*, 110 Ill. App. 3d at 755. That is not the case, however, for CCW. The text of Sections 21(d)(1)(i) and 21(r)(1) *and* the General Assembly’s demonstrated intentions regarding the disposal of self-generated CCW shows that there was no limitation on the volume of CCW disposed on site.³

² All citations to Section 21(r)(1), unless otherwise noted, refer to that provision as it existed in 2018. In 2019, application of the language (as to CCR surface impoundments) changed (see *Infra*, p. 7).

³ The Board may, under 21(r), determine that it does not have subject matter jurisdiction to issue a remedy concerning the areas at issue in MWG’s motions *in limine* because the CCW was disposed pursuant to 21(r), is not a source, and thus may remain in place.

1. Public Act 86-364, Codified as 21(r), Contradicts the Quantity Limitation for CCW

There was one case, *before* the enactment of 21(r)(1), that applied the *Pontiac* holding to coal ash: *People v Commonwealth Edison Company*. 1976 Ill. ENV LEXIS 273, *9 (Nov. 10, 1976). That decision predates the enactment of Section 21(r)(1) by over a decade. Indeed, by enacting 21(r)(1) *after* the *ComEd* decision, the Illinois General Assembly evidently sought to legislatively overrule the *ComEd* decision. *See Public Act 86-0364* (eff. Jan. 1, 1990, and codified at 415 ILCS 5/21(r)).⁴ This is plain from the text of Section 21(r)(1) which notes that under the stated conditions, deposited CCW does not require a permit. 415 ILCS 5/21(r)(1) (stating that a person is not prohibited from “caus[ing] or allow[ing] the . . . disposal of coal combustion waste” if “such waste is . . . disposed of at a site or facility for which a permit . . . is not . . . required under subsection (d) of this Section”). It cross-references to Section 21(d), whose plain language says that a permit is not required for self-generated waste. There are no other permitting exceptions in 21(d)—either as it existed in 1989 or as it exists today—that Section 21(r)(1) could be referring to.⁵

Sections 21(r)(1) and 21(d)(1)(i) accomplish the Assembly’s overarching purpose in passing Public Act 86-346, which was to allow CCW to remain in place. Section 21(r)(1) was the product of lobbying by the Illinois Coal Association and the United Mine Workers. 86th Ill. Gen. Assem.,

⁴ As initially passed, this was labelled Section 21(s)—and codified at Ch. 111 ½, par. 1021(s). It was renamed to Section 21(r) in 1991. Public Act 87-752 (eff. Sept. 6 1991). The 2018 version of Section 21(r)(1) is identical to how Section 21(s) appeared in 1989. Public Act 86-364.

⁵ In 1987 (when 21(r) was enacted), the language of Section 21(d) read:

No person shall...Conduct any waste-storage, waste-treatment, or waste disposal operation... without a permit granted by the Agency or in violation of any conditions imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder; provided, however, *that no permit shall be required for any person conducting a waste-storage, waste-treatment, or waste disposal operation for wastes generated by such person’s own activities which are stored, treated, or disposed within the site where such waste are generated...*

1989, Ch. 111 ½, par. 1021(d)(1) (emphasis added). The differences between these versions are cosmetic.

Senate Proceedings, June 21, 1989, at 220 (statements of Senator Dunn), attached as Ex. 1. It becomes clear that the purpose was to allow coal ash to remain in place, especially as coal ash was being used consistently throughout the state for a variety of construction purposes, including roadbeds, and as fill. For example, the Melvin E. Amstutz Expressway in Waukegan used 246,000 cubic yards of fly ash as fill embankment for the four-lane highway. *See* Ex. 2 excerpt of USEPA's Development of Guidelines for Procurement of Highway Construction Products Containing Recovered Material, p. I-31. Similarly, other companies touted in advertisements in the early 1990's that they "recycled" coal ash "into the building of highways like Interstate 55 and the foundation of the Sears Tower." Ex. 3, excerpt of Chicago Tribune, Oct. 28, 1991, p. 13. This suggests that the General Assembly did not think that the *ComEd* decision's quantitative limit for self-generated CCW deposits struck an appropriate balance. *Pielet Bros. Trading, Inc.*, 110 Ill. App. 3d at 755 (legislature is presumed to be aware of administrative interpretations). "An amendment that contradicts a recent interpretation of a statute is an indication that such interpretation was incorrect and that the amendment was enacted to clarify the legislature's original intent." *Collins v. Bd. of Trs. of Firemen's Annuity & Benefit Fund*, 155 Ill. 2d 103, 111 (1993). Because the Assembly's intent was to allow the disposal of CCW, the Board must follow that intent. *People ex rel. Madigan v. Wildermuth*, 2017 IL 120763, ¶17 (Court found that when construing a statute, "[a] court's fundamental objective is to ascertain and give effect to the intent of the legislature.")⁶

The Board has never found that the General Assembly's enactment of Public Act 86-346 was intended to protect only parties that dispose of small quantities of self-generated CCW. Applying

⁶ Complainants mis-interpret MWG's reliance upon this case. As is clear in MWG's original drafting, MWG's reliance on this case is solely for the basic premise that a Court, or in this case the Board, must give effect to the legislature's intent.

such a reading to a waste seldom found in small quantities is in tension with the Board's own interpretive tools. *See ComEd, 1976 Ill. ENV LEXIS 273*, at *3 (noting that in 1976 alone, the Joliet Generating Station generated 280,000 tons of combustion byproducts).

Additionally, the Board must avoid interpretations that would make any portion of Section 21(r)(1) meaningless. *People v. Tarlton*, 91 Ill. 2d 1, 5 (1982). Inserting a quantitative restriction into Section 21(d)(1)(i) for CCW would make the "is not otherwise required under subsection (d)" language in Section 21(r)(1) inoperative. *Knolls Condominium Assn. v. Harms*, 202 Ill.2d 450, 460 (2002) (statutes should not be construed in a manner whereby "portions are rendered inoperative"). Without the "not otherwise required" language, Section 21(r)(1) is essentially pointless — if CCW *must* be placed in a permitted landfill, as Complainants suggest, then Section 21(r)(1) does little more than repeat the sanitary landfill requirement in Section 21(a).

In passing Section 21(r)(1), the General Assembly determined how to regulate disposal practices for self-generated CCW. Its decision will not result in "operators disposing their waste...indiscriminately...and without accountability for the resulting pollution..." *People ex rel. Madigan v. Dixon-Marquette Cement, Inc.*, 343 Ill. App. 3d 163, 173 (2d Dist. 2003). Elected representatives simply concluded that the risk of "serious hazards to public health and safety" (415 ILCS 5/20(2)) that might accompany CCW disposal could be effectively managed through enforcement actions under other portions of the Act, such as Section 12(a)'s prohibition on water pollution and Section 12(d)'s prohibition on water pollution hazards.⁷ While the Board may prefer that enforcement be supplemented with a permitting system, the General Assembly adopted that view only recently when it changed the law in 2019 for surface impoundments, discussed below.

⁷ MWG does not contend that compliance with Section 21(r) is an absolute bar to prosecuting CCW-related pollution under statutes like Section 12(a) or 12(d). Moreover, MWG is not attempting, at this time, to reargue liability. Its position is that no remedy is needed just because coal ash was historically deposited in an area, without a showing of "pollution" related thereto.

Thus it cannot be said that the text of Sections 21(d)(1)(i) and (r)(1) creates a “serious gap[]” in environmental enforcement that will cause the Illinois Environmental Protection Act to “fail[] in one of its material aspects.” *R.E. Joos Excavating Co. v. PCB*, 58 Ill. App.3d 309, 312-13 (3d Dist. 1978). The Board closed the Section 21(d)(1) “gap” in the *Pontiac* decision. And though the General Assembly acquiesced to the *Pontiac* decision in most regards, it overruled the application of *Pontiac* to CCW by enacting 21(r)(1). The lawmakers were well-aware that CCW was disposed of in large quantities, and the Board must defer to the Assembly’s decision on how best to address the disposal of self-generated CCW.

2. Amendments to 21(r) (Public Acts 89-93 and 89-535) Confirm No Quantity Limitation Applied to CCW

The Board must assume that the enactment of Section 21(r)(1) worked a meaningful change in Illinois law. *Maiter v. Chi. Bd. of Educ.*, 82 Ill. 2d 373, 388-89 (1980) (“[C]ourts will not assume that the legislature engaged in a meaningless act”). But here, assumptions are unnecessary: The subsequent history of Section 21(r) confirms that the General Assembly thought that Section 21(r)(1) was a key component of CCW disposal in Illinois, not just an obscure afterthought.

In 1995, the General Assembly modified Section 21(r)(1) in a way that basically repealed it. *See* Public Act 89-93 (eff. July 6, 1995) (changing Section 21(r)(1) to apply to Coal Combustion Byproducts, instead of Coal Combustion Waste). This was a drafting error. But because Section 21(r)(1) is *not* an obscure provision that applies only in rare situations, the problem was noticed almost immediately. After lobbying by the coal industry and the United Mine Workers, the statute was fixed in the same session, and the language returned to CCW. Public Act 89-535 (eff. July 19, 1996); *see also* 89th Ill. Gen. Assem., House Proceedings, Apr. 26, 1996, at 75-76 (Rep. Bost) (describing supporters) attached as Ex. 4. The bill’s Senate sponsor described the restoration of Section 21(r)(1) as necessary for “the current disposal program to continue.”⁸ 9th Ill. Gen. Assem.,

Senate Proceedings, Mar. 22, 1996, at 27 (Sen. Luechtefeld) attached as Ex. 5. Thus Section 21(r)(1) was neither redundant nor trivial. It was “*the* current disposal program” for CCW in Illinois. *Id.* (emph. added).

3. Legislative Changes in 2019 (Public Act 101-171) Further Confirm that 21 (r) Contains No Quantity Limitation for CCW Areas

The lack of a quantitative limit in Section 21(r)(1) is further confirmed by the General Assembly specifically repealing the Section 21(d)(1)(i) exception as applied to “CCR Surface Impoundments” in 2019. Public Act 101-171 (eff. date June 30, 2019). The bill’s sponsors did not want to merely eliminate a loophole in Section 21(r)(1) regarding small-scale CCW deposits. On the contrary, the change addressed environmental concerns related to CCW deposits large enough to “fill Chicago’s . . . Sears Tower nearly two times.” 101st Ill. Gen. Assem., House Proceedings, May 27, 2019, at 161 (statements of Rep. Ammons), attached as Ex. 6.

If the General Assembly enacted Public Act 101-171 to *prohibit* unpermitted, large-scale, self-generated, CCW deposits, then this confirms that before 2019, Section 21(r)(1) *allowed* such unpermitted, large-scale, self-generated CCW deposits. There is no evidence in the legislative history that Public Act 101-171 was intended merely to create a permitting requirement for small CCW impoundments. Nor does such a modest goal track with what the bill’s advocates said. Complainant Prairie Rivers Network described the legislation as “groundbreaking” and “Landmark Legislation.”⁸

⁸ Prairie Rivers Network, Press Release: Illinois House and Senate Pass Landmark Legislation to Clean Up Coal Ash (May 27, 2019), <https://prairierivers.org/uncategorized/2019/05/il-house-senate-pass-coal-ash-legislation/>. Complainant Sierra Club called it “Landmark Legislation” that addresses “many waste pits . . . located all over the state.” Sierraclub.org, Press Release: Illinois House and Senate Pass Landmark Legislation to Clean Up Coal Ash (May 28, 2019), <https://www.sierraclub.org/press-releases/2019/05/illinois-house-and-senate-pass-landmark-legislation-clean-coal-ash>.

C. The General-Specific Canon of Statutory Construction Dictates that Section 21(r) Controls.

Complainants' approach to statutory interpretation contradicts Illinois caselaw. The *Knolls Condominium* decision forbids allowing a general statute to "eliminate" a remedy that "the legislature specifically provided for". 202 Ill.2d 450, 460 (2002).⁹ Complainants do not "give effect to all of the provisions of" Section 21(r)(1) by saying that the protections in the "not otherwise required under subsection (d)" clause are made illusory by Section 21(a). *Cinkus v. Stickney Mun. Officers Electoral Bd.*, 228 Ill. 2d 200, 218 (2008). This is not a "harmonious" reading of the two sections, and the only solution is to recognize that the General Assembly did not intend for Section 21(a) to apply to activities regulated under Section 21(r)—"the current disposal program" for Illinois CCW. 89th Ill. Gen. Assem., Senate Proceedings, Mar. 22, 1996, at 27 (Sen. Luechtefeld), Ex. 5.

Complainants' final argument is complicated and tenuous. They note that Section 21(r) contains a general statement that parties complying with Section 21(r)(2), and (r)(3) are exempt "from the other provisions of . . . Title V." Comp. Resp at 7. Although the general statement does not mention Section 21(r)(1), Complainants infer that parties complying with Section 21(r)(1) are not exempt from other provisions from Title V. And because Section 21(a) is within Title V, they say, this *must* mean that parties in compliance with Section 21(r)(1) are not "exempt" from Section 21(a). Complainants are simply ignoring the canons of statutory construction. There is no logic to an argument that the General Assembly would want Section 21(a) to punish behavior that Section 21(r)(1) explicitly allows. Rather, this portion of Section 21(r) is simply trying to avoid interpretive

⁹ See also *People ex rel. Kempiners v. Draper*, 113 Ill.2d 318, 320-21 (1986) (Mobile Home Act allows State officials to regulate any mobile home outside of the corporate limits of state municipalities, and that specific power is not limited by general provision in Municipal Code allowing municipalities to "enforce health and quarantine ordinances" outside of corporate limits).

problems that might otherwise be created by having portions of Title V – Sections 21(r)(2) and (3) – cover sites that are primarily governed by laws other than the Illinois Environmental Protection Act (*i.e.*, the Abandoned Mined Lands and Water Reclamation Act and the federal Surface Mining Control and Reclamation Act). It reflects a prudent effort by the General Assembly to create a foresighted law that operates smoothly. It does not, as Complainants suggest, make Section 21(r) internally inconsistent, or override legislative intent and ordinary canons of construction.

D. Because the CCW at the Areas At Three MWG Stations is not a Source and was Allowed Under Section 21(r), No Remedy is Required.

While the Board made a finding of open dumping at all the MWG Stations (despite no claim of open dumping for Joliet 29 in the complaint),¹⁰ MWG's motions *in limine* argue that no remedy is required for the CCW in specified areas at three of its Stations, where those areas were not established as sources of contamination, and CCW was properly disposed in the past in accord with 21(r). When determining a remedy under Section 33 of the Act the Board must consider “the reasonableness of the...deposits involved.” 415 ILCS 5/33(c). Several factors influence this “reasonableness” determination, including the character and degree of injury. *Id.* at 5/33(c)(i). Here, it is inherently reasonable to allow CCW to remain in place with no required remedy when it was deposited under 21(r)(1), and is not established as a source.¹¹

¹⁰ In this case, Complainants did not allege open dumping at Joliet 29 in its Amended Complaint, and thus it is unclear how the Board reached its finding as to Joliet 29. MWG did not defend that issue – because it was not alleged – and the Board has no jurisdiction to issue findings over claims that are not before it. *See Alton & Southern R.R. v. Ill. Commerce Comm'n*, 316 Ill. 625, 630 (1925) (“The Commerce Commission cannot enter a valid order which is broader than the written complaint filed in the case”). Subject-matter jurisdiction may be challenged at any time. *Tate v. PCB*, 188 Ill. App. 3d 994, 1018 (4th Dist. 1989).

¹¹ As it relates to the Former Ash Basin at Powerton, Complainants should know that the Former Ash Basin is an inactive CCR surface impoundment, subject to both 40 CFR 257 and 35 Ill. Adm. Code 845. The publicly available closure plan for the Former Ash Basin is to close it with a final cover system. See, <https://midwestgenerationllc.com/illinois-ccr-rule-compliance-data-and-information/#location1>. Surely, Complainants cannot be suggesting that the closure of the Former Ash Basin as a CCR surface impoundment is not a remedy.

E. Conclusion

MWG respectfully requests that the Hearing Officer exclude these areas from consideration of a remedy: the Historic Areas at the Joliet 29 Station, the Former Ash Basin at the Powerton Station, and the Former Slag and Bottom Ash Placement Area at Will County.

Respectfully submitted,

MIDWEST GENERATION, LLC

By: /s/ Jennifer T. Nijman
One of Its Attorneys

Jennifer T. Nijman
Susan M. Franzetti
Kristen L. Gale
Nijman Franzetti, LLP
10 S. LaSalle Street, Suite 3600
Chicago, IL 60603
312-251-5255

EXHIBIT 1

51st Legislative Day

June 21, 1989

PRESIDING OFFICER: (SENATOR LECHOWICZ)

Senator Kustra. Any more ghosts? Senator Marovitz, to close.

SENATOR MAROVITZ:

Just solicit your Aye vote.

PRESIDING OFFICER: (SENATOR LECHOWICZ)

Question is, shall House Bill 1620 pass. All in favor, vote Aye. All opposed, vote No. The voting is open. Have all voted who wish? Have all voted who wish? Please take the record. On this question, there are 43 Ayes, 10 Nays, 1 recorded as Present. This bill, having received the constitutional majority, is hereby declared passed. 1627. Senator Ralph Dunn. Read the bill, please.

ACTING SECRETARY: (MR. HARRY)

House Bill 1627.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR LECHOWICZ)

The Gentleman from Perry, Senator Dunn.

SENATOR R. DUNN:

Thank you, Mr. President and Members. This is a Department of Mines and Minerals bill that deals with the storage and handling of explosives. There's two amendments on it. One of them had to do with an agreement between the EPA, the Coal Association and the United Mine Workers on the disposal of flyash, and then the last amendment, Amendment No. 2, gives clear specifications for qualifications to receive license to handle explosives, and I'll be glad to answer any questions, and move for passage of...

PRESIDING OFFICER: (SENATOR LECHOWICZ)

Any discussion?

SENATOR R. DUNN:

...House...

PRESIDING OFFICER: (SENATOR LECHOWICZ)

Question is, shall House Bill 1627 pass. All in favor, vote

51st Legislative Day

June 21, 1989

Aye. All opposed, vote Nay. The voting is open. Have all voted who wish? Have all voted who wish? Please take the record. On this question, there are 57 Ayes, no Nays, none recorded as Present. This bill, having received the constitutional majority, is hereby declared passed. 1662. Senator Schaffer. Read the bill, please.

ACTING SECRETARY: (MR. HARRY)

House Bill 1662.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR LECHOWICZ)

The Gentleman from McHenry, Senator Schaffer.

SENATOR SCHAFFER:

Mr. President, House Bill 1662 is a -- an attempt by the Department of Licensure and Registration to standardize the language of their various licensure Acts. It's a fairly lengthy bill, but it is not controversial. Provides some standard language and attempts to standardize some of the fees. I'm unaware of any opposition, although I haven't talked to the Senator from Galesburg.

PRESIDING OFFICER: (SENATOR LECHOWICZ)

Any discussion? The Gentleman from Knox, Senator Hawkinson.

SENATOR HAWKINSON:

Will the sponsor yield for a question?

PRESIDING OFFICER: (SENATOR LECHOWICZ)

Indicates he will.

SENATOR HAWKINSON:

Senator, my analysis indicates there'll be a hundred-dollar fee for a bad check. Does -- does this mean if a check bounces for any reason, that's an overdrawn check that can happen to people from time to time, there's going to be a hundred-dollar fee?

PRESIDING OFFICER: (SENATOR LECHOWICZ)

EXHIBIT 2

DATA COLLECTION AND ANALYSES PERTINENT TO EPA'S
DEVELOPMENT OF GUIDELINES FOR PROCUREMENT OF HIGHWAY CONSTRUCTION
PRODUCTS CONTAINING RECOVERED MATERIAL

Vol. II

DATA COLLECTION AND ANALYSES PERTINENT
TO EPA'S DEVELOPMENT OF GUIDELINES
FOR PROCUREMENT OF HIGHWAY CONSTRUCTION PRODUCTS
CONTAINING RECOVERED MATERIALS

Volume II
Technical Data and Appendices

This report (ms. 2096) describes work performed
for the Office of Solid Waste under contract no. 68-01-6014
and is reproduced as received from the contractor.
The findings should be attributed to the contractor
and not to the Office of Solid Waste
and Emergency Response

Fly ash was hauled to the site in open trucks with no dusting problems during hauling or placement. The ash was tailgated and spread in 9-inch thick lifts and compacted by a rubber-tired vibratory roller to a density of 97 percent or more of Standard Proctor (ASTM D698 or AASHTO T-99) density values. Upon completion of compaction operations, the exposed surface of the fly ash embankment was sealed with a coat of hand-sprayed road tar (Reference I-32).

Melvin E. Amstutz Expressway - Waukegan, Illinois. The Melvin E. Amstutz project (Federal Aid Route 437, Section 8) in Lake County, Illinois involved the construction of a fill embankment for a four-lane divided highway with a 42-foot wide median between Grand and Greenwood Avenues in Waukegan, Illinois, some 40 miles north of Chicago. This is probably the most outstanding example of fly ash use in highway embankment construction thus far in the United States.

A total of 246,000 cubic yards of embankment material were required for this job. Fly ash was selected as an alternate because a nearby Commonwealth Edison power plant offered an available source of material at a potential cost savings. Alternate bids indicated that construction of a fly ash embankment would result in a savings of approximately \$62,000 compared to an earth embankment (Reference I-33).

Prior to placement of the fly ash, unsuitable in-place soils were removed and replaced with granular fill to a height of 2 feet above the ground water table. The average height of the fly ash embankment was 3.5 feet, although 18 to 20 foot embankments were built in ramp areas. The fly ash embankment was covered by 8 feet of earth fill on the outside slopes and by 2 feet of earth fill in the median areas.

Fly ash was trucked to the site either from stockpiles located outside the power plant or from closed storage silos and placed in 6 inch layers. Each layer was compacted by means of a 10-ton vibratory single steel drum roller to densities in excess of 85 percent of the maximum dry density at optimum moisture levels of 25 percent.

The contractor added water where necessary to obtain the desired density. Side slopes of 2 to 1 were maintained and are performing satisfactorily.

The fly ash placed in this embankment is stronger than most natural soils because of its age-hardening characteristics. The material was workable and stable with excellent compaction characteristics, provided the proper construction methods and equipment are utilized. The use of fly ash enabled work to proceed under wet conditions when it might not have been possible to work with conventional soils. Moreover, the lighter weight fly ash was found to be advantageous in bridging over weak subsoils (Reference I-33).

EXHIBIT 3



A tribal solution to family woes

WASHINGTON—Kent Ames, a consultant family man, wants to say a couple of words on behalf of families. Back of...

"You keep hearing about what families and parents are doing, or not doing, and how this is the reason today's children are so terrible..."

"I have with what you say, but I don't like to say back and look at the records by which children have been raised..."

"The problem with today's children is that the tribe is no longer functioning..."

"This message," he says, "has been broken—not so much by the family as by the rest of us..."

Ames, a one-time Xerox executive who for 10 years has been "father" to a constantly shifting group of 12 "orphans" under the impetus of adults of his generation...

"I was just in Texas, listening to a white executive talking about growing up on a farm in the middle of Oklahoma, where if there's a store and a neighborhood, there was always some adult to say, 'Boy, Pat, go over if your mother says you need it!'"

But those were the days when adults disciplined and were respected by all the children in the community, when fathers stood for authority and where churches served the neighborhoods in which they were located...

"Now," says Ames, "adult neighbors often don't know each other, let alone one another's children. Families are dispersed. There's no neighborhood and community as before..."

William Raspberry

service and then back home, and the churches themselves may be dabbling in everything from politics to real estate development. The government has lost its ability to serve the needs of a community in a consistent relationship, as opposed to a process relationship...

"Even our language suggests distance that keeps us from looking at taking care of children, we put them in programs. We call them 'youth' rather than children, and if we really want to put distance between us, we call them something like 'at-risk' youth..."

Some of what Ames is talking about diminishes the importance of parents in the child-rearing enterprise. There was always vital, but as Kent reminds, it was seldom exclusive. The most competent parents almost always had a hand in guiding and inspiring the neighbors' kids. The least able parents could at least exert tell-your-mother discipline...

The most competent parents almost always had a hand in guiding and inspiring the neighbors' kids. The least able parents could at least exert tell-your-mother discipline...

If we could reduce some of that nitpick—and Ames believes it is possible—it might be the best thing that could happen for single mothers struggling to raise decent children in a frequently harsh environment...

"Some of it still exists," says Ames. "If you go into the most tight-knit and tightest neighborhood in the city, you'll find children who come through it..."

"Of course we do, and we need to do something else as well. We need to recognize and act on the well-being of children. The No. 1 priority, and to pamper them in recognition that all children are the most precious through which we reproduce and preserve the best of ourselves..."

All in all, the policy seems straightforward and about as close as it can get. But people sometimes bounce it to the point where wanting is necessary, if not action, which can include firing. And Judy Frenck, the Tribune's national editor, in an article on this page the other day was moved to report that her male colleague here was "incredibly discomfited" by all the talk about sexual harassment that surrounded the job—perhaps unwittingly—of sexual harassment...

It's not just Blue. Norms started on the air. It's not just her. We're all involved in this. Already, hostilities are expected to continue for some time—perhaps in 25 or 30 years—when the human genome will be completely mapped and individual DNA mapped for each of us as well as easy to obtain...

Such personal medicine will warn about errors in genes that could mean serious problems for our offspring. Scientists have already identified thousands of genetic disorders. Most of them are rare and caused by recessive genes, so don't occur in a child unless both parents have the same faulty gene...

Our DNA profiles will also tell much more about us than the genetic information we carry. Each of us probably has four to 20 such abnormal genes, scientists say. They will also reveal tendencies and susceptibilities, forecast whether we are likely to grow bald or fat, how resistant our bodies will be to cancer, triggers, whether we will suffer from allergies or arthritis...

But who will have a right to such minute information? To what use will such data be put? Will prospective parents be given genetic profiles of their unborn children based on a few fetal cells, and pressed to abort those who are bad, their perfect and will require extra medical care? Will "less than perfect" couples be induced to abort the genetically fatal Tay-Sachs disease, but hemophilia, Huntington's disease, alcoholism, cancer, schizophrenia, mental retardation, cystic fibrosis—and everything else?...

Will couples be coerced to exchange DNA records, to ensure that genetic errors don't match up in ways that could produce a serious genetic disorder in a future offspring? Could a genetic susceptibility to alcoholism or depression be reason to reject a potential marriage partner?...

Would a prospective employer have the right to insist on seeing an applicant's genetic profile before offering a job? Would he prefer an otherwise qualified candidate because of a genetic susceptibility toward alcoholism or an illness that requires long-term health insurance costs? Or because of a susceptibility to certain chemicals he might be exposed to on the job?...

Or, for an example posed by Robert Shapiro in his new book, "The Language of Life," would a congressional committee evaluating a Supreme Court nominee learn that two relatives suffer from manic depression. If opponents demand he make public his genetic profile, would he?

In 25 to 30 years, perhaps, our DNA profiles will tell much more about us than the genetic abnormalities we carry. They will also reveal tendencies and susceptibilities. But who will have a right to such intimate information? To what use will such data be put?...

A Pandora's box of genetic bigotry

Are some people genetically unfit to have children? The question was raised in a science, only and public was recently in Los Angeles when the Norris soon her overboard radio talk show on KFYM...

Joan Beck

their unborn children based on a few fetal cells, and pressed to abort those who are bad, their perfect and will require extra medical care? Will "less than perfect" couples be induced to abort the genetically fatal Tay-Sachs disease, but hemophilia, Huntington's disease, alcoholism, cancer, schizophrenia, mental retardation, cystic fibrosis—and everything else?...

Will couples be coerced to exchange DNA records, to ensure that genetic errors don't match up in ways that could produce a serious genetic disorder in a future offspring? Could a genetic susceptibility to alcoholism or depression be reason to reject a potential marriage partner?...

Would a prospective employer have the right to insist on seeing an applicant's genetic profile before offering a job? Would he prefer an otherwise qualified candidate because of a genetic susceptibility toward alcoholism or an illness that requires long-term health insurance costs? Or because of a susceptibility to certain chemicals he might be exposed to on the job?...

Or, for an example posed by Robert Shapiro in his new book, "The Language of Life," would a congressional committee evaluating a Supreme Court nominee learn that two relatives suffer from manic depression. If opponents demand he make public his genetic profile, would he?

In 25 to 30 years, perhaps, our DNA profiles will tell much more about us than the genetic abnormalities we carry. They will also reveal tendencies and susceptibilities. But who will have a right to such intimate information? To what use will such data be put?...

DNA pointed to show he has no genetic tendencies toward mental instability, dare he refuse? It wouldn't. We need the information about our most serious risks from which we suffer are caused by genetic factors. Deciphering the DNA code and its individual variations is the next, necessary step toward finding a way to cure and to prevent them...

But along with the scientific challenge comes the equally difficult task of learning to live wisely and fairly with unprecedented and potentially personal information. It is important to stamp out genetic bigotry and to value each other for our unique selves.

Taking the Thomas-Hill story to heart

By Douglas E. Kneeland

Maybe I'm wrong, but I've always thought most readers look upon those of us in the newspaper business as virtuous with morals and careers who stand aloof from and untouched by the real world we report on...

With another mega story winding down—Charles Thomas has been confirmed and sworn as a justice of the U.S. Supreme Court and Anita Hill is back at her job as professor at the University of Oklahoma—it might be a good time to talk about that...

Most news people are professional enough to keep their coverage even-handed. But it's a lot easier to do that when you're dealing with issues that touch you only intellectually...

Whenever special interest news reporters or editors only have in the CIA, for instance, the issue is not central to their personal lives. But the subject of sexual harassment has a reach so broad in this final decade of the 20th Century that it strikes all of us...

Journalists worked hard to maintain their neutrality as they wrote and edited the news emanating from the emotional public conflict between the prosecutor and the judge. But inside, all those I talked with, colleagues, their own feelings were churning...

I don't know how it is at all companies, or at all newspapers, but I have worked for five daily papers in my day, including this one, and I can tell you how it was to be. It's probably true of a lot of editors and professors, but over the years this newspaper business has been a rough and tumble one...

At least as recently as two decades ago, there weren't many women in the news departments of papers. And those who were there had to battle continuously for respect and acceptance. A lot of them at the papers where I worked over most of the last four decades adhered to the only realistic defense they had at the time: they tried their best to be one of the guys. It took a little courage, listening to or stifling the occasional off-color joke, enduring or exchanging a bit of sexual innuendo, they said that time. Not always wisely, as I now know better than I know then...

There are many more women in most newsrooms now and their numbers continue to increase, as do these in executive positions. For these reasons alone, I believe it's important to stamp out genetic bigotry and to value each other for our unique selves.

Inside the paper

There has been some improvement in the treatment of women in newspaper jobs. Most I know here at the Tribune are in that. But I don't know any who would say they are dealt with as equals by every man at work in all situations...

Like a lot of other companies, the Chicago Tribune has taken steps to comply with state and federal regulations to provide its employees "a professional work environment that is totally free of physical, psychological or verbal harassment..."

Journalists worked hard to maintain their neutrality as they wrote and edited the news emanating from the conflict between the professor and the judge. But inside, their own feelings were churning...

All in all, the policy seems straightforward and about as close as it can get. But people sometimes bounce it to the point where wanting is necessary, if not action, which can include firing. And Judy Frenck, the Tribune's national editor, in an article on this page the other day was moved to report that her male colleague here was "incredibly discomfited" by all the talk about sexual harassment that surrounded the job—perhaps unwittingly—of sexual harassment...

It's not just Blue. Norms started on the air. It's not just her. We're all involved in this. Already, hostilities are expected to continue for some time—perhaps in 25 or 30 years—when the human genome will be completely mapped and individual DNA mapped for each of us as well as easy to obtain...

Such personal medicine will warn about errors in genes that could mean serious problems for our offspring. Scientists have already identified thousands of genetic disorders. Most of them are rare and caused by recessive genes, so don't occur in a child unless both parents have the same faulty gene...

Our DNA profiles will also tell much more about us than the genetic information we carry. Each of us probably has four to 20 such abnormal genes, scientists say. They will also reveal tendencies and susceptibilities, forecast whether we are likely to grow bald or fat, how resistant our bodies will be to cancer, triggers, whether we will suffer from allergies or arthritis...

But who will have a right to such minute information? To what use will such data be put? Will prospective parents be given genetic profiles of their unborn children based on a few fetal cells, and pressed to abort those who are bad, their perfect and will require extra medical care? Will "less than perfect" couples be induced to abort the genetically fatal Tay-Sachs disease, but hemophilia, Huntington's disease, alcoholism, cancer, schizophrenia, mental retardation, cystic fibrosis—and everything else?...



Edison's latest pollution control device. Instead of simply burying coal ash from our power plants in landfills, we recycle as much of it as we can. It's gone into the building of highways like Interstate 55 and the foundation of the Sears Tower. And the amount we recycle is more than double the industry average.

Commonwealth Edison
We're There When You Need Us.

EXHIBIT 4

121st Legislative Day

April 26, 1996

Speaker Daniels: "The House will come to order. The Members will please be in their chairs. Those not entitled to the floor will please retire to the gallery. The Chaplain for the day is Pastor Herb Knudsen of the First Christian Church in Bloomington, Illinois. Pastor Knudsen is the guest of Representative Bill Brady. Guests in the gallery may wish to rise for the invocation. Pastor Knudsen."

Pastor Herb Knudsen: "Let us pray together. O God, our Creator and our Lord, how majestic is Thy name. We marvel at Your...which surrounds us and nurtures us and sustains us. Your blessings toward us are far more than we can count or deserve, but in these quiet moments, we recall the diversity and the presence of Your gifts in our midst. Our families and our friends, our critics and our supporters. The colleagues whose particular deaths surround each of us here, as well as those across the aisle. The constituents from the poor and beleaguered single parent to the the regular working Jane and Joe, to the wealthy corporate executive. From the little leaguer to the big leaguer. All those whom we seek to represent. From the teeming urban centers to the expansive rural farm lands which make up the millions of miles in this wondrous state we call Illinois. O Lord, our Lord, we call them into memory. We visualize them and we thank You for them. For indeed, each one of them is a child of Your creation made in Your image with whom we are called to live in community and together to build up Your Kingdom. Not our will, but Your will be done. Your will which calls for justice and mercy, love and compassion, generosity and peace. Especially this day, O Lord, we lift into Your comfort and healing presence, those of our neighbors suffering from the ravages of weather. The tornadoes and winds which swept across our

121st Legislative Day

April 26, 1996

colleagues on the other side of the aisle for their favorable comments for this Bill. And I would ask for your favorable consideration."

Speaker Wojcik: "The question is, 'Shall Senate Bill 1266 pass?' All those in favor vote 'aye'; all those opposed vote 'nay'. The voting is open. This is final action. Have all voted who wish? Have all voted who wish? Have all voted who wish? Mr. Clerk, take the record. On this question, there are 90 'ayes', 14 'nays', 8 voting 'present'. And this Bill, having received a Constitutional Majority, is hereby declared passed. Mr. Clerk, what is the status of Senate Bill 1279?"

Clerk Rossi: "Senate Bill 1279 is on the Order of Senate Bills - Third Reading."

Speaker Wojcik: "Return that Bill to Second. Representative Lang, for what purpose do you rise? Mr. Clerk, please read Senate Bill 1360."

Clerk Rossi: "Senate Bill 1360. A Bill for an Act in relation to coal combustion waste. Third Reading of this Senate Bill."

Speaker Wojcik: "The Chair recognizes Representative Bost."

Bost: "Thank you, Madam Chairman, Members of the House. Senate Bill 1360 amends the Environmental Protection Act to provide that no person shall cause or allow the storage or disposal of coal combustion waste except under specific conditions. Basically, all it does, it replaces, last year we had Senate Bill 327 in which the words were put, 'coal combustible' or 'coal combustion by-products'. We want to change that and put 'coal combustible waste'. Be glad to answer any questions."

Speaker Wojcik: "Is there any discussion? The Gentleman from Kankakee, Representative Novak, is recognized."

Novak: "Thank you, Madam Speaker. Will the Sponsor yield?"

121st Legislative Day

April 26, 1996

Speaker Wojcik: "He indicates he will."

Novak: "Representative Bost, could you explain for the Body the difference between 'coal combustion waste' and the other was it 'coal combustion by-products', I think you indicated. Could you explain the difference to us?"

Speaker Wojcik: "Representative Bost."

Bost: "Under the Mines and Minerals Program, the wording 'by-product' is going to require different standards than combustion waste."

Speaker Wojcik: "Representative Novak."

Novak: "Well, thank you, Madam Speaker. What do you mean by different standards, different items? I mean, will there be more things that will be included in the definition of coal combustion waste that were included in the definition of coal combustion by-products? I think that was the question I was asking."

Speaker Wojcik: "Representative Bost."

Bost: "Representative, maybe I can better answer your question of, and I'm hoping I am. I'm trying to here. By reading the word from the department, a coal mine facility wanting to dispose of coal combustion waste must submit an application obtaining approval for Illinois Environmental Protection Agency and Department of Natural Resources, offices of Mines and Minerals. The application for such a request must include a reclamation plan to demonstrate the disposal area will be covered in a manner that will support continuous vegetation. A demonstration that the facility will be adequately protected from wind and water and erosion. This demonstration shall also include a description of storage handling and placement operating and an estimate of the volume of waste to be disposed, demonstrating that the PH will be maintained so as to

121st Legislative Day

April 26, 1996

prevent excessive leaching of metal ions that shall include the chemical analysis of the waste and/or waste mixture. Representative, fly ash is a product that is a coal combustible waste, and is one that would not fall under this the way it is now."

Speaker Wojcik: "Representative Novak."

Novak: "Thank you, Madam Speaker. Representative Bost, will the old railroad ties or scrap tires or other type of contaminated material be included in this?"

Speaker Wojcik: "Representative Bost."

Bost: "No, Representative. They will not."

Speaker Wojcik: "Representative Novak."

Novak: "There isn't any provision in this Bill that allows a certain percentage of scrap tires or wood or other materials to be allowed in this process? My analysis shows that."

Speaker Wojcik: "Representative Bost."

Bost: "The analysis that I have of the Bill and the word that we have from the department is it will not."

Speaker Wojcik: "Representative Novak."

Novak: "Well, so you can assure us that scrap tires, you can assure us that creosote saturated railroad ties, creosote saturated telephone poles that are no longer in use will not be used in this process? Is that correct?"

Speaker Wojcik: "Representative Bost."

Bost: "This is no change to the current program, so those are not in there now. They weren't protected under this law either."

Speaker Wojcik: "Representative Novak."

Novak: "What about fly ash?"

Speaker Wojcik: "Representative Bost."

Bost: "Fly ash is what we currently dispose of, and that is one

121st Legislative Day

April 26, 1996

of the products that we're trying to make sure that we can still continue to dispose of."

Speaker Wojcik: "Representative Novak."

Novak: "I'm sorry, Representative. What did you say about fly ash? You said that product is included in this process?"

Speaker Wojcik: "Representative Bost."

Bost: "Yes it is. That's what we're trying to do, is make sure that we can still dispose of the fly ash."

Speaker Wojcik: "Representative Novak."

Novak: "I'm sure you are aware that certain fly ash products that are generated from an incineration process has been ruled as hazardous waste. Now, that type of fly ash certainly will not be included in this process. Is that correct?"

Speaker Wojcik: "Representative Bost."

Bost: "If it is not any different than the current standards. Now, if that fly ash, it is discovered that it does not meet those standards, then it will be a completely different situation."

Speaker Wojcik: "Representative Novak."

Novak: "And one last question. What is this filler material that's supposed to be involved in this?"

Speaker Wojcik: "Representative Bost."

Bost: "I don't have an answer for that."

Speaker Wojcik: "Representative Novak."

Novak: "No further questions."

Speaker Wojcik: "Are there any further discussion? The Gentleman from Washington, Representative Deering, is recognized."

Deering: "Thank you, Madam Speaker. Will the Sponsor yield?"

Speaker Wojcik: "He indicates he will."

Deering: "Representative, by changing this language, we worked on this Bill last year I know, and we do have some combustion by-products coming out of the utilities that are remnants

121st Legislative Day

April 26, 1996

of a cogeneration with shredded tires and everything, some of the coal fired power plants. So we do have some of those burnt tires in the fly ash just so we can clarify the record. But by changing the wording here, we're not taking away any of the uses of the fly ash, the bottom ash or any of the other by-products could be used for structural fill to be used for filters in sanitary landfills. We can still use these products for those purposes. Is that not correct?"

Speaker Wojcik: "Representative Bost."

Bost: "That's correct, Representative. Thank you for bringing that up because that is the intent. There are times that we use these products, and we want to be able to continue to use these products. When the wording was changed, there became a problem with that. And that's why we're trying to change it back."

Speaker Wojcik: "Representative Deering."

Deering: "Thank you, Madam Speaker. Representative, I'm somewhat unfamiliar ... came about since I think we worked on some of this legislation last year, and I thought we had all the 't's' crossed and the 'i's' dotted. But this will clear up some problems that could be brought forth in the future. I know especially in our areas, the downstate areas that we represent, that a lot of these by-products are used to keep people working. They're used for fill for construction of highways, asphalt shingles, so this is good clarification language. I strongly support this Bill."

Speaker Wojcik: "Seeing no further discussion, Representative Bost to close."

Bost: "Thank you, Madam Speaker. Members of the House, this is a cleanup of some language. The Coal Association is in support of it. The United Mine Workers are in support of

121st Legislative Day

April 26, 1996

this. I would ask for your 'aye' vote."

Speaker Wojcik: "The question is, 'Shall Senate Bill 1360 pass?'

All those in favor vote 'aye'; all those opposed vote 'nay'. The voting is open. This is final action. Have all voted who wish? Have all voted who wish? Have all voted who wish? Mr. Clerk, take the record. On this question, there are 111 'ayes', 0 'nays', 0 voting 'present'. And this Bill, having received a Constitutional Majority, is hereby declared passed. Mr. Clerk, please read Senate Bill 1361."

Clerk McLennand: "Senate Bill 1361. A Bill for an Act concerning tax exemptions. Third Reading of this Senate Bill."

Speaker Wojcik: "The Chair recognizes Representative Bost."

Bost: "Thank you, Madam Speaker, Members of the House. Senate Bill 1361 amends the Use Tax Act and the Service Use Tax Acts, Service Occupation Tax Act and the Retailers Occupation Tax. It's identical to a Bill we moved in the House, Bill 2702, which is...basically what it does is it allows the people in the coal industry to purchase equipment less than \$250 without the...makes them tax exempt, just puts them on line with farms and many other industries in the state. Be glad to answer any questions."

Speaker Wojcik: "Is there any discussion? The Gentleman from Cook, Representative Dart, is recognized."

Dart: "Thank you. Will the Sponsor yield?"

Speaker Wojcik: "He indicates he will."

Dart: "Representative, how many companies are going to be affected by this?"

Speaker Wojcik: "Representative Bost."

Bost: "We're not sure on the total number of companies that would be affected by this."

Speaker Wojcik: "Representative Dart."

EXHIBIT 5

STATE OF ILLINOIS
89TH GENERAL ASSEMBLY
REGULAR SESSION
SENATE TRANSCRIPT

86th Legislative Day

March 22, 1996

PRESIDENT PHILIP:

The regular Session of the 89th General Assembly will please come to order. Will the Members please be at their desks, and will our guests in the galleries please rise. Our prayer today will be given by the Reverend Jean Martin, United Methodist Church, Oakford, Illinois. Reverend Martin.

THE REVEREND JEAN MARTIN:

(Prayer by the Reverend Jean Martin)

PRESIDENT PHILIP:

Will you please rise for the Pledge of Allegiance. Senator Sieben.

SENATOR SIEBEN:

(Pledge of Allegiance, led by Senator Sieben)

PRESIDENT PHILIP:

Reading of the Journal. Senator Butler.

SENATOR BUTLER:

Mr. President, I move that reading and approval of the Journals of Wednesday, March 20th and Thursday, March 21st, in the year 1996, be -- be postponed, pending arrival of the printed Journals.

PRESIDENT PHILIP:

Senator Butler moves to postpone the reading and the approval of the Journal, pending the arrival of the printed transcript. There being no objection, so ordered. Committee Reports.

SECRETARY HARRY:

Senator Woodyard, Chair of the Committee on Agriculture and Conservation, reports Senate Amendment 2 to Senate Bill 1633 Be Approved for Consideration; Senate Amendment 2 to Senate Bill 1749 Be Approved for Consideration; and Senate Amendment 2 to Senate Bill 1777 Be Approved for Consideration.

Senator Madigan, Chair of the Committee on Insurance, Pensions and Licensed Activities, reports Senate Amendment 2 to Senate Bill

STATE OF ILLINOIS
89TH GENERAL ASSEMBLY
REGULAR SESSION
SENATE TRANSCRIPT

86th Legislative Day

March 22, 1996

Senate Bill 1360.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR DONAHUE)

Senator Luechtefeld.

SENATOR LUECHTEFELD:

Thank you, Madam President and Members of the Senate. Senate Bill 1360 simply clears up some language of an earlier bill. It amends the Environmental Protection Act. And this bill replaces the term "coal combustion by-product" with "coal combustion waste" in the provisions of the Environmental Protection Act regarding disposal. This will allow the current disposal program to continue. I would ask for a favorable vote on this bill.

PRESIDING OFFICER: (SENATOR DONAHUE)

Is there any discussion? Any discussion? Seeing none, the question is, shall Senate Bill 1360 pass. Those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 50 Ayes, no Nays, none voting Present. Senate Bill 1360, having received the required constitutional majority, is declared passed. Senator Luechtefeld, on Senate Bill 1361. Read the bill, Madam Secretary.

ACTING SECRETARY HAWKER:

Senate Bill 1361.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR DONAHUE)

Senator Luechtefeld.

SENATOR LUECHTEFELD:

Thank you, Madam -- Madam President and Members of the Senate. Senate Bill 1361 would remove a -- a tax on coal equipment and spare parts of under two hundred and fifty dollars. This -- this

EXHIBIT 6

Electronic Filing: Received, Clerk's Office 3/18/2022

STATE OF ILLINOIS
101st GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES
TRANSCRIPTION DEBATE

58th Legislative Day

5/27/2019

passed. Senate Bill 9, Representative Ammons. Mr. Clerk, please read the Bill."

Clerk Hollman: "Senate Bill 9, a Bill for an Act concerning coal ash. This Bill was read a second time a previous day. No Committee Amendments. No Floor Amendments have been approved for consideration. No Motions are filed."

Speaker Manley: "Third Reading. Representative Ammons, Senate Bill 9. Mr. Clerk, please read the Bill."

Clerk Hollman: "Senate Bill 9, a Bill for an Act concerning coal ash. Third Reading of this Senate Bill."

Speaker Manley: "Representative Ammons."

Ammons: "Thank you, Madam Speaker. Senate Bill 9 is a Coal Ash Pollution Prevention Act. Coal ash is a by-product that is produced when burning coal. It contains toxic metals that cause serious health problems, including cancer. For over seven years, we've been working to try to address the issue of coal ash. For over 55 years, power plant operators at the Vermilion Power Station dumped over 3.3 million cubic yards of toxic ash in the floodplains of the Middle Fork. This is enough to fill Chicago's Willis or Sears Tower nearly two times. Protecting our communities and our environment is our number one option. This Bill will set the parameters of how coal ash will be handled in the State of Illinois. It is a good piece of legislation negotiated with many, many partners. And we look forward to passing coal ash this evening for the taxpayers of Illinois but, specifically for those who are impacted by the coal ash that is in their backward. We highly urge a 'yes' vote for this Bill, Senate Bill 9. And I'll take any questions."