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BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

SIERRA CLUB, PRAIRIE RIVERS NETWORK, and NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,	)	
Complainants,	)	PCB 18-11 (Citizen Enforcement – Water)
v.	)	
CITY OF SPRINGFIELD, OFFICE OF PUBLIC UTILITIES d/b/a CITY WATER, LIGHT AND POWER,	)	
Respondent.	)	

NOTICE OF FILING

To: Don Brown, Clerk
Illinois Pollution Control Board
60 E. Van Buren St., Ste. 630
Chicago, Illinois 60605

Please take notice that today I have electronically filed with the Office of the Clerk of the Illinois Pollution Control Board **THE CITY OF SPRINGFIELD, OFFICE OF PUBLIC UTILITIES d/b/a CITY WATER, LIGHT AND POWER'S PRE-HEARING MEMORANDUM,** which is attached and copies of which are herewith served upon you.

Respectfully submitted,

THE CITY OF SPRINGFIELD,
a municipal corporation

Dated: October 7, 2026

By: *Deborah J. Williams*

One of its Attorneys

Deborah J. Williams
Special Assistant Corporation Counsel
Office of Public Utilities
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THE CITY OF SPRINGFIELD, OFFICE OF PUBLIC UTILITIES d/b/a CITY WATER, LIGHT AND POWER'S PRE-HEARING MEMORANDUM

NOW COMES Respondent, the City of Springfield, Office of Public Utilities (the "City") d/b/a City Water, Light and Power ("CWLP"), by and through its counsel and submits this Pre-Hearing Memorandum to address the outline of the remaining issues for the Remedy phase of this proceedings and to summarize the evidence the Respondent will present at the October 14-16, 2026 hearing.

ISSUES BEFORE THE BOARD

The liability phase of this proceeding was resolved in a September 7, 2023 Opinion by the Board as follows:

> "The Board grants the Citizen Groups motion for summary judgment. The Board finds that there are no issues of genuine fact that CWLP violated Sections 12(a) of the Act and Sections 620.115, 620.301(a) and 620.405 of the Board's groundwater rules ***for the discharge of boron, sulfate, and TDS at wells AP-1R, AP-2, AP-2R, and AP-3***." *Id*. at 9. (emphasis added).

This holding is the beginning and end of the violations that the remedy hearing is being held to address.

The Environmental Protection Act gives the Board authority to order two primary forms of remedy: Monetary Civil Penalties and a "Cease-and-Desist" Order. 415 ILCS 5/33(b).

In its initial Pre-Hearing Memorandum for the Remedy Phase Complainants made some statements regarding the issue of available remedies that simply cannot be allowed to stand unaddressed:

> "CWLP has since argued that Complainants are precluded from obtaining a cease-and-desist order ("injunctive relief" according to CWLP) because, as of March 28, 2025, 35 Ill. Adm. Code Part 845 supplanted Part 620 as it applies to sites with coal combustion residual surface impoundments. The Board and the Hearing Officer both denied CWLP's motion on this point. PCB 2018-11, Order of the Board at 3 (Jan. 22, 2026) ("The Board finds the hearing officer correctly denied the motion and affirms that denial."); see also PCB 2018-11, Hearing Officer Order (Nov. 5, 2025***). Importantly, the Board found ongoing liability for Section 12(a) violations, which are based on multiple lines of evidence including but not limited to Part 620 violations.*** PCB 2018-11, Order of the Board at 2 (Jan. 22, 2026). Thus, Complainants are seeking a cease-and-desist order for not only Part 620 violations but also for Section 12(a) violations." Complainants' Pre-Hearing Memorandum, April 28, 2026 at p. 3.

There is absolutely no support in the Board's January 22, 2026 decision for the statements Complainants have made in their Pre-Hearing Memorandum. The Hearing Officer and the Board both chose to treat CWLP's motions as evidentiary and not dispositive of the case and simply ruled that it refused to prohibit certain evidence from being presented at hearing to be ruled on by the Hearing Officer. There is absolutely no support to Complainants' claim that there has been a finding of ongoing liability or ongoing violations in this matter.

STATEMENT OF THE CASE

CWLP's most concise Statement of the Case is that after nine years of protracted litigation, the parties have reached a point where this case is simply moot.

As Respondent has maintained previously, the Board no longer has authority to issue a cease-and-desist order in this matter. A cease-and-desist order is not available for wholly past violations. The relief available is for monetary civil penalties. Complainants have taken the position (silently in their Pre-Hearing Memorandum and explicitly at the May 5, 2026 hearing) that they are not requesting monetary penalties. Without trying to presume their reasoning, CWLP is a non-profit municipal utility and therefore gained no economic benefit or profit through the violations to be remedied in this case and all penalties are paid directly from the same source of funds as all other expenses of CWLP are paid --- the electric rates paid by the citizens of Springfield, including members of Sierra Club and the NAACP**.** Section 42(h)(1) through (4) present the primary factors the Board looks to in every case for determining an appropriate monetary penalty. 415 ILCS 5/42(h).[1] These factors are:

> (1) the duration and gravity of the violation;
> (2) the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
> (3) any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
> (4) the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;

[1] Factors (h)(5) through (8) only apply in certain cases and are not applicable to this matter. 415 ILCS 42(h).

415 ILCS 5/42(h). Although Complainants' do not argue for monetary penalties, and CWLP believes it would be inappropriate for the Board to Order them without such a demand, CWLP will be able to show these factors all support the Complainants' decision not to seek monetary penalties.

Complaintants have presented their case in terms of Section 33(c) factors rather than Section 42(h) factors. 415 ILCS 5/33(c). While CWLP agrees that Section 33(c) of the Act presents general concepts that the Board should consider in every type of proceeding before it when drafting its final orders and that these general concepts such as "the social and economic value of the pollution source" and the "technical practicability and economic reasonableness of reducing or eliminating emissions, discharges or deposits" are appropriate for the Board to evaluate, these Section 33(c) factors do not establish a basis for expanding the Board's authority for granting relief beyond civil penalties and cease-and-desist orders. They also do not provide a basis for expanding a cease-and-desist order into injunctive relief or otherwise allow for cease-and-desist order relief for wholly past violations.

Even if the Board were to agree with Complainants that there remain certain ongoing violations following the explicit adoption of regulations by the Board to clarify that closure and corrective action at this facility is to be governed by Part 845 and not Part 620, a cease-and-desist order would be an inappropriate and unreasonable remedy.[2]

Even if the Board did find an ongoing violation and authority to issue a cease-and-desist remedy, Complainants' still make a huge leap and expansion of the Board's authority to suggest

[2] Complainants try to argue there is an ongoing violation of Section 12(a) of the Act. The Board's Opinion does not provide a basis to distinguish activity that would violate that provision other than the exceedances of Part 620 groundwater standards. A violation of 12(a) under Part 845 requirements would require a new Complaint and basis therefore. Respondents due process rights to respond to alleged violations would be infringed upon to conclude there is an ongoing separate violation of Section 12(a) without reopening the liability phase of this matter.

that the only appropriate way to effectuate a cease-and-desist order would be to order a specific remedy of removal of the surface impoundments without requiring a permitting agency input or approval. To define the remedy Sierra Club seeks within the bounds of "cease-and-desist" authority would be a massive expansion of Board authority beyond anything contemplated by the Environmental Protection Act. Complainants have simply made an unreasonable attempt to twist what they already know they want (injunctive relief) into something they are arguably entitled to ask for.

For these reasons, CWLP believes this matter to be moot and one to be decided by a Board Order on the law, not the facts, or even the penalty factors established under the Act. However, because Board guidance on this issue is still pending, CWLP must still put forward a defense that the unlawful remedy Complainants seek is also completely unnecessary.

EVIDENCE TO BE PRESENTED AT HEARING

CWLP will present evidence of the massive efforts the City has taken since the inception of surface impoundment regulations to comply with those regulations and to move towards closure and remediation of its surface impoundments. CWLP's three witnesses **(PJ Becker, Eric Staley and Brad Hunsberger)** will show definitively what Complainants' expert witness has already admitted: there is no reason to believe that there is a regulatory gap or any basis in fact or law for the Board to believe that the U.S. EPA and Illinois EPA are not effectively and diligently addressing any issues at this facility that would leave room for the Board to argue it was necessary to take drastic action that could only be described accurately in the law as injunctive relief.

Arsenic

Complainants have sought to overturn a ruling of the Hearing Officer regarding the introduction of evidence related to arsenic. As the Board has not ruled on this Motion,

Respondents will be relying on the reasonable compromise reached by the Hearing Officer and will not expend unnecessary time and resources of the Hearing Officer to present extensive evidence rebutting allegations of violations that have not been adjudicated in this Remedy hearing. If the Board chooses to overturn the Hearing Officer after hearing record has closed, CWLP will be prejudiced and will seek to reopen the record for further proceedings.

WITNESS LIST

PJ Becker, Environmental Health and Safety Manager

Eric Staley, Technical Specialist

Brad Hunsberger, L.P.G., Andrews Engineering

EXHIBIT LIST

	Title	Date	Witness	No. of Pages	Objection (Y/N)
1.	NPDES Final Modified Permit IL0024767	February 25, 2026	Becker	25	N
2.	U.S. EPA: Frequent Questions about Closure and Post-closure Care and Implementing the Final Rule Regulating the Disposal of Coal Combustion Residuals (CCR) https://www.epa.gov/coal-combustion-residuals/frequent-questions-about-closure-and-post-closure-care-and-implementing	Accessed April 7, 2026	Becker	6	Y

3.	CWLP Timeline of Activities Related to CCR Surface Impoundments	September 25, 2026	Becker/Staley/Hunsberger	5	Y
4.	CCR Rule Compliance Data and Information	Accessed September 23, 2026	Becker/Staley	9	N
5.	Illinois CCR Rule Compliance Data and Information	Accessed September 23, 2026	Becker/Staley	22	N
6.	Response to Sierra Club Witness Discovery Report and Deposition – Mark Hutson (Expert Rebuttal Report of Bradley Hunsberger, LPG)	May 2025	Hunsberger	18	N

Respectfully submitted,

THE CITY OF SPRINGFIELD,
a municipal corporation

Dated: October 7, 2026

By: *Deborah J. Williams*
One of its Attorneys

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CERTIFICATE OF SERVICE

The undersigned, Deborah J. Williams, an attorney, certifies that I have served electronically upon the Clerk and by email upon the individuals named in the attached Service List, a true and correct copy of the **NOTICE OF FILING** and **THE CITY OF SPRINGFIELD, OFFICE OF PUBLIC UTILITIES d/b/a CITY WATER, LIGHT AND POWER'S PRE-HEARING MEMORANDUM**, from the email address deborah.williams@cwlp.com of this 10 page document before 5:00 p.m. Central Time on October 7, 2026 to the email address provided on the attached Service List.

Deborah J. Williams

SERVICE LIST PCB 18-11

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