

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

SIERRA CLUB and PRAIRIE RIVERS	)	
NETWORK,	)	
	)	
Petitioners,	)	
	)	PCB No. 22 – 69
v.	)	(NPDES Permit Appeal)
	)	
ILLINOIS ENVIRONMENTAL PROTECTION	)	
AGENCY and WILLIAMSON ENERGY LLC,	)	
	)	
Respondents.	)	

**NOTICE OF FILING**

To: See Attached Service List

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board **Agency's Motion for Summary Judgment** and **Certificate of Service**, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

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**AGENCY’S MOTION FOR SUMMARY JUDGMENT**

Now Comes, Respondent, Illinois Environmental Protection Agency, (“Agency”), by and through its attorney, Kwame Raoul, Attorney General of the State of Illinois, and pursuant to 35 Ill. Adm. Code 101.500, 101.508 and 101.516, hereby respectfully moves the Illinois Pollution Control Board (“Board”) to enter summary judgment in favor of the Agency and against the Petitioners, Sierra Club and Prairie Rivers Network (collectively “Petitioners”), in that there exist no genuine issues of material fact and that the Petitioners have failed to sustain their burden of proving that the National Pollutant Discharge Elimination System (“NPDES”) permit, as issued, would violate the Illinois Environmental Protection Act (“Act”) or Board regulations. The Petitioners’ failure to sustain this burden entitles the Agency to judgment as a matter of law, and the NPDES permit must be upheld. In support of its Motion for Summary Judgment, the Agency states as follows:

**I. INTRODUCTION**

In this matter, Petitioners seek review of the decision by the Agency to renew NPDES Permit No. IL0077666 (the “Permit”) held by Williamson Energy LLC. (Administrative Record (“AR”) at R00002-R00033). The Administrative Record before the Board conclusively

demonstrates that the Agency conducted the appropriate review and analysis required by the Act and Board regulations for issuance of the Permit, and determined that the Permit would not violate the Act or the Board's regulations. The Agency respectfully requests that the Board enter an Order granting the Agency's Motion for Summary Judgment and dismissing the Petitioners' appeal.

## **II. SUMMARY OF FACTS**

In February 2015, Respondent Williamson Energy LLC ("Williamson") applied to the Agency for reissuance of the Permit. (AR at R08675-R08803). In November 2016, Williamson submitted to the Agency an antidegradation assessment and attached Draft Conceptual Diffuser Design in support of renewal of the Permit with a proposed new discharge and mixing zone in the Big Muddy River. (AR at R08309-R08453).

On July 12, 2019, the Agency issued a draft permit and fact sheet. (AR at R02802-R02841). On December 18, 2019, a public hearing was held on the draft permit. (AR at R02596-R02796). During the public comment period, the Agency received nearly 400 public comments on the draft permit. (AR at R02843-R05884). On April 15, 2022, the Agency responded to all significant public comments in its Responsiveness Summary. (AR at R00035-R00113). In its Responsiveness Summary, the Agency detailed numerous changes to the Permit made in response to public comments. (AR at R00037-R00039). The Agency issued the Permit on April 15, 2022. (AR at R00002-R00033). On May 10, 2022, Petitioners filed their Petition for Review of an NPDES Permit Decision by the Illinois Environmental Protection Agency ("Petition").

## **III. BURDEN OF PROOF**

Petitioners' permit appeal was brought pursuant to a statutory provision which authorizes interested third parties to appeal NPDES permits to the Board. See 415 ILCS 5/40(e) (2020). Section 40(e) of the Act provides as follows:

- (1) If the Agency grants or denies a permit under subsection (b) of Section 39 of this Act, a third party, other than the permit applicant or Agency, may petition the Board within 35 days from the date of issuance of the Agency's decision, for a hearing to contest the decision of the Agency.
- (2) A petitioner shall include the following within a petition submitted under subdivision (1) of this subsection:
  - (A) a demonstration that the petitioner raised the issues contained within the petition during the public notice period or during the public hearing on the NPDES permit application, if a public hearing was held; and
  - (B) a demonstration that the petitioner is so situated as to be affected by the permitted facility.
- (3) If the Board determines that the petition is not duplicative or frivolous and contains a satisfactory demonstration under subdivision (2) of this subsection, the Board shall hear the petition (i) in accordance with the terms of subsection (a) of this Section and its procedural rules governing permit denial appeals and (ii) exclusively on the basis of the record before the Agency. The burden of proof shall be on the petitioner. The Agency and permit applicant shall be named co-respondents.

Section 40(e)(3) of the Act provides that the burden of proof shall be on the petitioner in third party NPDES permit appeals. 415 ILCS 5/40(e)(3) (2020). In the context of a third party appeal, the Board will look at the language of the permit and the entire record to determine if the permit, as issued, violates the Act or Board regulations. *See Natural Resources Defense Council v. Illinois EPA*, PCB 13-17 (June 5, 2014), at 37.

#### **IV. LEGAL STANDARD FOR SUMMARY JUDGMENT**

Section 101.516(b) of the Board's regulations, 35 Ill. Adm. Code 101.516(b), provides as follows:

- b) If the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law, the Board will enter summary judgment.

Summary judgment is appropriate when the pleadings, depositions, admissions on file, and affidavits disclose that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 483 (1998). In ruling on a motion for summary judgment, the Board “must consider the pleadings, depositions, and affidavits strictly against the movant and in favor of the opposing party.” *Id.* Summary judgment “is a drastic means of disposing of litigation,” and therefore it should be granted only when the movant’s right to the relief “is clear and free from doubt.” *Id.* (citing *Purtill v. Hess*, 111 Ill. 2d 299, 240 (1986)). However, a party opposing a motion for summary judgment may not rest on its pleadings, but must “present a factual basis which would arguably entitle [it] to a judgment.” *Gauthier v. Westfall*, 266 Ill. App. 3d 213, 219 (2d Dist. 1994).

Summary judgment may also be appropriate in a permit appeal when the Agency record demonstrates that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Clayton Chemical Acquisition, LLC v. Illinois EPA*, PCB 98-113 (Mar. 1, 2001), at 3. In the instant case, the record establishes “that there is no genuine issue of material fact” regarding Petitioners’ challenge to the Permit, and the Administrative Record supports the Permit as issued. Accordingly, summary judgment is the appropriate means of upholding the Agency’s decision to renew the Permit.

## V. ARGUMENT

### A. The Permit Does Not Authorize Discharges That Would Cause or Contribute to Violations of Water Quality Standards

#### 1. Outfall 011 Discharges to the Big Muddy River Will Not Violate Water Quality Standards

Illinois EPA analyzed the permittee’s proposed new discharge to the Big Muddy River and determined it would not cause or contribute to violations of water quality standards. In compliance

with Section 39 of the Act, 415 ILCS 5/39 (2020), and Section 302.102 of the Board's regulations, 35 Ill. Adm. Code 302.102, the NPDES Permit includes a condition defining a mixing zone and zone of initial dilution ("ZID") for discharges from Outfall 011. Within the defined area of the mixing zone, water quality standards may be exceeded while still protecting the designated uses of the waterbody as a whole. Within the defined area of the ZID, acute water quality standards may likewise be exceeded. Petitioners do not contend that the mixing zone and ZID incorporated in the Permit violate Section 302.102 of the Board's regulations.

In support of its application for a mixing zone at Outfall 011, Williamson submitted a mixing zone study to the Agency in November 2016 (AR at R08372-R08453). Williamson additionally submitted updated modeling results and calculations to the Agency in December 2019 and January 2020. (AR at R01656-R01844, R05971-R06154). The results of the mixing zone study showed that, for a chloride discharge of 12,000 mg/L, a dispersion ratio of 34:1 was required. (AR at R01656). The Agency later further restricted the chloride effluent limit to 5,000 mg/L and accordingly incorporated a 13.3:1 dispersion ratio into the Permit. (AR at R00027, R00038). The mixing zone study found that chloride was the limiting parameter requiring the most dispersion (AR at R08392). Sulfate, iron, nickel, and copper all require far less dispersion than chloride (AR at R05972), and therefore water quality standards for such parameters will be met well before the edge of the mixing zone.

Furthermore, the Agency analyzed additional sampling data from Cell 417 at Pond Creek Mine, which retains the on-site waters that will be discharged through Outfall 011 (AR at R00226-R00501, R01240-R01375, R08363). The Agency's analysis of these sampling data provides additional support that Outfall 011 discharges will comply with the water quality standards for

iron (dissolved), sulfate, chloride, nickel, and copper at—or before—the edge of the mixing zone. (AR at R21204-R21265).

Petitioners object that the discharge limits imposed by the mixing zone are “unenforceable formulas.” (Petition, ¶ 10). However, the mixing zone incorporated in the Permit is enforceable. For chloride, compliance can be determined in two ways. First, Special Condition 15 of the Permit provides a formula by which the “calculated” downstream chloride concentration can be determined at the edge of the mixing zone. (AR at R00027-R00028). The formula requires four data points: (1) the effluent chloride concentration, (2) the effluent flow rate, (3) the upstream flow rate, and (4) the upstream chloride concentration. (*Id.*). The Permit requires that effluent chloride concentrations be measured three times per week when Outfall 011 is discharging; requires effluent flow monitoring; requires upstream flow measurements; and requires installation of an upstream conductivity monitor to determine the upstream chloride concentration correlated to the conductivity value. (*Id.*). The calculated downstream chloride concentration must be reported on discharge monitoring reports (“DMRs”). (*Id.*). The underlying data must be available to the Agency during inspections and—pursuant to Standard Condition 10 of the Permit—retained for at least three years. (AR at R00027-R00028, R00031). Second, Special Condition 15 of the Permit also requires installation of a downstream conductivity monitor within 10 feet of the edge of the mixing zone to monitor downstream chloride concentrations correlated to the conductivity value, and the maximum daily value must be reported on DMRs. (AR at R00027-R00028). An exceedance shown by either of these methods constitutes a violation of the Permit.

For iron (dissolved), sulfate, nickel, and copper, the Permit requires that sufficient flow exist in the stream to ensure that water quality standards will be met outside the mixing zone. (*Id.*). As previously noted, these parameters require much less dilution than chloride discharges from



Outfall 011, and there is no reasonable probability that the water quality standards for such parameters will be exceeded if chloride discharges comply with Special Condition 15. Special Condition 15 of the Permit requires that effluent concentrations of sulfate and iron (dissolved) be measured three times per week when Outfall 011 is discharging, and Special Condition 18 of the Permit requires that Outfall 011 effluent concentrations of copper and nickel be measured once per month for the first year and twice per year thereafter. (AR at R00027-R00029). In addition, Special Condition 16(b) of the Permit requires that three samples of sulfate, iron (dissolved), nickel, and copper shall be collected per week within 10 feet downstream of the edge of the mixing zone, allowing the Agency to determine if the discharge is causing exceedances outside of the mixing zone for these parameters. (AR at R00028). Special Conditions 3, 4, and 5 and Standard Condition 12(e)(1) of the Permit require the results of such monitoring to be reported on DMRs. (AR at R00025, R00031).

Finally, the Petition contains assertions regarding offensive conditions and dissolved oxygen standards related to chloride discharges, cyano-bacteria, mercury, sediments, and phosphorus (Petition, ¶¶ 9, 12, 21). The Agency concluded that there are insufficient phosphorus levels in the expected Outfall 011 discharge to contribute to cyano-bacteria growth and decreased dissolved oxygen levels. (AR at R01296-R01301). The Agency does not expect deoxygenating compounds in the Outfall 011 effluent. (AR at R00105). *See* 35 Ill. Adm. Code 405.104, 406.106. Regarding the interaction of chlorides with sediments within the mixing zone, the mixing zone study indicates that plumes will not interact with bottom sediments, minimizing the risk of methylmercury release. (AR at R00072, R01656-R01844, R05971-R06154, R08372-R08453). Outside of the mixing zone, the Board's water quality standard for chloride is set at a level that protects designated uses, and thus the Board has already determined that chloride concentrations

outside the mixing zone are not expected to have deleterious effects on water quality. *See* 40 C.F.R. § 131.11(a) (“States must adopt those water quality criteria that protect the designated use[.]”).

**2. The Permit Incorporates the Correct Water Quality Standard for Chloride**

Petitioners argue that the Agency failed to consider incorporating limits necessary to protect the Big Muddy River from “chronic chloride toxicity.” (Petition, ¶ 11). Petitioners cite to federal guidance on chronic chloride toxicity and other scientific studies in support of a 230 mg/L chronic water quality standard for chloride. (*Id.*). However, the Board has adopted—and the federal government has approved—a single value water quality standard of 500 mg/L for chloride. *See* 35 Ill. Adm. Code 302.208(g). The Board has not adopted a chronic water quality standard for chloride, and any change to the water quality standard for chloride should be addressed by the Board through rulemaking and not by the Agency in individual permit decisions. As discussed above, the Permit requires that Outfall 011 discharges comply with the applicable 500 mg/L water quality standard for chloride outside of the mixing zone.

**3. Special Condition 16(c) of the Permit Does Not Allow Violations of Water Quality Standards**

Petitioners appear to fundamentally misconstrue Special Condition 16(c) of the Permit. Contrary to Petitioners’ argument, Special Condition 16(c) is not a numeric effluent limit that “allows” discharges to cause exceedances of water quality standards outside of the mixing zone.<sup>1</sup> (Petition, ¶ 15). Rather, Special Condition 16(c) operates as an automatic “cease and desist” provision, requiring Outfall 011 discharges to cease when associated monitoring reveals specific instream conditions. (AR at R00028). Pursuant to Special Condition 15 of the Permit, discharges must still comply with water quality standards outside of the mixing zone.

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<sup>1</sup> Petitioners’ comment that Special Condition 16(d) and (e) appear to contain drafting errors. (Petition, ¶16) These subsections were intended to operate similarly to Special Condition 16(c) and may be revised accordingly. (*See* AR at R00028).

**4. Discharges to Pond Creek Will Not Violate Numeric Water Quality Standards**

The Agency also conducted a reasonable potential analysis for discharges from Outfalls 001 through 008 to the tributary of Pond Creek. (AR at R00211-R00220, R008241-R08250, R21204-R21265). For discharges of chloride and sulfate, the Agency set effluent limits based on the water quality standards for chloride and sulfate. *See* 35 Ill. Adm. Code 302.208(g), (h). For discharges of iron (dissolved), the Agency set effluent limits based on the water quality standard for iron (dissolved) at outfalls where there is a reasonable potential for discharges to exceed the water quality standard. *See* 35 Ill. Adm. Code 302.208(g). For discharges of copper, nickel, and zinc, the Agency set effluent limits based on the acute water quality standards for such parameters due to the intermittent frequency of discharges from Outfalls 001 through 008.

The Permit's effluent limits for chloride and sulfate discharges from Outfalls 001 through 008 are appropriate. The Permit incorporates a chloride effluent limit of 500 mg/L based on the chloride water quality standard in Section 302.208(g) of the Board's regulations, 35 Ill. Adm. Code 302.208(g). (AR at R00005-R00012). As discussed above, the Board has not adopted a chronic water quality standard for chloride. Outfalls 001 through 008 are limited to a sulfate discharge of 1,250 mg/L. (*Id.*). The sulfate effluent limit is based on Section 302.208(h)(2) of the Board's regulations, 35 Ill. Adm. Code 302.208(h)(2), and a hardness concentration of 141 mg/L measured at AWQMN station NG-02 in Pond Creek. (AR at R08241). Special Condition 13(b) of the Permit additionally requires periodic downstream monitoring of chloride, sulfate, and hardness in the tributary of Pond Creek. (AR at R00026). Data from the downstream monitoring "will be used to recalculate sulfate limits for the next renewed or modified permit." (AR at R08242).

The Permit's effluent limits for iron (dissolved) are also appropriate. The Board has adopted a single value water quality standard of 1.0 mg/L for iron (dissolved). *See* 35 Ill. Adm.

Code 302.208(g). The Agency's reasonable potential analysis concluded that there is no reasonable potential for discharges from Outfalls 001, 002, 004, 005, 006, and 008 to violate the water quality standard for iron (dissolved). (AR at R00211-R00220). The Agency's analysis did determine a reasonable potential for discharges from outfalls 003 and 007 to violate the water quality standard for iron (dissolved). (*Id.*). Accordingly, the Permit incorporates an iron (dissolved) effluent limit of 1.0 mg/L for discharges from Outfalls 003 and 007. (AR at R00007, R00011).

For discharges of copper, nickel, and zinc, the Agency evaluated the reasonable potential of discharges from Outfalls 001 through 008 to exceed acute water quality standards. (AR at R00211-R00220, R21204-R21265). Discharges from Outfalls 001 through 008 are non-continuous, intermittent discharges. Chronic water quality standards protect aquatic life against long term effects from prolonged exposure by incorporating monthly average effluent limits. Thus, in accord with longstanding Agency practice for intermittent discharges, the Agency incorporated daily maximum effluent limits based on acute water quality standards that protect aquatic life from acute impacts during intermittent discharge events. Based on its reasonable potential analysis, the Agency incorporated daily maximum effluent limits, based on the applicable acute water quality standard, for copper at Outfalls 002, 004, 007, and 008, for nickel at Outfalls 002, 006, 007, and 008, and for zinc at Outfall 008. (AR at R00006, R00008, R00010, R00011, R00012).

**B. Issuance of the Permit Complies with Section 302.105 of the Board's Regulations**

**1. Existing Uses in the Big Muddy River Will Be Maintained as Required by Section 302.105(a) of the Board's Regulations**

Section 302.105(a) of the Board's regulations requires that uses actually attained in a surface water body or water body segment must be maintained and protected. 35 Ill. Adm. Code 302.105(a). As discussed above, the Administrative Record supports the Agency's determination that numeric water quality standards will be met outside of the mixing zone, thereby protecting

existing uses in the Big Muddy River. *See* Section V.A.1. Similarly, the Administrative Record supports the Agency's determination that narrative water quality standards will not be impacted within and outside of the mixing zone due to (1) low concentrations of phosphorus and deoxygenating compounds, (2) no interactions of the mixing plume with bottom sediments within the mixing zone, and (3) and compliance with numerical water quality standards. *See id.* Therefore, Outfall 011 discharges will not impair existing uses in the Big Muddy River in contravention of Section 302.105(a).

Petitioners additionally argue that "alteration of stream flows in the vicinity of the mine" will have a "degrading effect on existing uses." (Petition, ¶ 10). However, Petitioners' concern does not violate—or implicate—Section 302.105(a). As the Agency noted in its Responsiveness Summary, "water recharging to the depth of the mine would be coming from upland areas further away, not local creeks." (AR at R00105). Additionally, groundwater is already being withdrawn from the mine. The issue before the Agency is whether such waters may be discharged in the proposed manner, not whether they should be removed from the mine.

**2. The Agency Conducted an Antidegradation Assessment in Compliance with Section 302.105(f) of the Board's Regulations**

Section 302.105(f) of the Board's regulations, 35 Ill. Adm. Code 302.105(f), requires the Agency to comply with specified procedures in conducting an antidegradation assessment. The Agency has complied with these procedural requirements.

Williamson's application for the Permit contained the information required by Section 302.105(f)(1) of the Board's regulations, 35 Ill. Adm. Code 302.105(f)(1). The Permit application contains identification and characterization of the affected water bodies. (AR at R08318-R08320, R08338-R08339, R08788-R08789). The Permit application contains information identifying and quantifying proposed load increases and potential impacts on affected waters. (R08320-R08323,

R08363-R08453, R08455-R08475, R08789). The Permit application assesses the purpose and anticipated benefits of the proposed activities. (AR at R08323-R08324, R08339-R08341, R08787-R08788). The Permit application includes assessments of alternatives to the proposed increases in pollutant loading. (AR at R08324-R08337, R08341-R08354, R08790-R08798). Finally, the Permit application is supplemented by copious additional information requested by the Agency. (AR at R00151-R00164, R00226-R00501, R00503-R02584, R05886-R05969, R05971-R06154, R06238-R06240, R06246-R06248).

The Agency completed an individualized antidegradation assessment in compliance with Section 302.105(f)(2) of the Board's regulations, 35 Ill. Adm. Code 302.105(f)(2). First, the Agency considered the information provided by the applicant, as required by Section 302.105(f)(2)(B). Second, the Agency produced a written analysis addressing antidegradation requirements and providing the results of the Agency's decision in compliance with Section 302.105(f)(2)(C)(i). (AR at R06167-R06183). Third, as described in more detail below, and in compliance with Section 302.105(f)(2)(A), the Agency considered the criteria stated in Section 302.105(c)(2).

Section 302.105(c)(2) of the Board's regulations requires the Agency to make specific considerations and assurances in its antidegradation assessment. 35 Ill. Adm. Code 302.105(c)(2). Pursuant to Section 302.105(c)(2)(A), the Agency must "[c]onsider the fate and effect of any parameters proposed for an increased pollutant loading." 35 Ill. Adm. Code 302.105(c)(2)(A). As discussed in Section V.A.1, the Agency reviewed sampling data characterizing the Outfall 011 discharge (AR at R00226-R00501, R01240-R01375, R08363); conducted an analysis of the reasonable potential for violation of water quality standards (AR at R21204-R21265); and considered modeling data of the proposed mixing of effluent in the Big Muddy River. (AR at

R01656-R01844, R05971-R06154, R08372-R08453). Based on these data and analyses, the Agency incorporated conditions in the Permit that assure that Outfall 011 discharges (1) will not violate numeric and narrative water quality standards and (2) will fully protect existing uses both within and outside of the mixing zone. *See* 35 Ill. Adm. Code 302.105(c)(2)(B)(i)-(ii); Sections V.A.1, V.B.1, *supra*. In compliance with Section 302.105(c)(2)(B)(iii), 35 Ill. Adm. Code 302.105(c)(2)(B)(iii), the Agency considered nine alternatives assessed by Williamson, (AR at R05886-R05894, R08324-R08331), and concluded that there were no viable alternatives to avoiding the discharge. (AR at R00087-R00090, R06181-R06182). The Agency did, however, incorporate measures to minimize the pollutant loading by reducing the maximum concentration of Outfall 011 chloride discharges from 12,000 mg/L to 5,000 mg/L and by reducing the length of the mixing zone from 251 feet to 46 feet. (AR at R00027, R00038, R02840). In addition, the Agency considered the local employment and tax revenue provided by the mine and concluded that the regulated activity benefits the community at large. (AR at R00090, R05888-R05889, R06181, R08323-R08324, R08327-R08328).

Finally, the Agency conducted public notice and public participation on the Permit, as required by Section 302.105(f)(3). 35 Ill. Adm. Code 302.105(f)(3). The Agency issued a fact sheet that complied with the requirements of Section 302.105(f)(3)(A)-(E), 35 Ill. Adm. Code 302.105(f)(3)(A)-(E). (AR at R06167-R06183). The Agency received nearly 400 public comments on the issued draft permit. (AR at R02843-R05884). The Agency additionally conducted a public hearing on the draft permit and made changes to the draft permit based on comments received from the public. (AR at R00037-R00039, R02800-R02801, R02596-R02796).

**3. The Proposed Discharge Satisfies the Requirements of Section 302.105(c)(1) of the Board's Regulations**

Section 302.105(c)(1) of the Board's regulations requires that any lowering of water quality in high quality waters be "necessary to accommodate important economic or social development." 35 Ill. Adm. Code 302.105(c)(1). The Agency—after making an antidegradation assessment in compliance with Section 302.105(f)—concluded that the Outfall 011 discharge is necessary to accommodate important economic or social development.

First, the Agency concluded that the proposed discharge is necessary. Pond Creek Mine experiences an influx of groundwater in the mine from an overlying saline aquifer. (AR at 08313). Williamson must remove the groundwater from the mine to protect the health and safety of its employees and to conduct mining operations. (*Id.*). Pond Creek Mine experiences up to 3.5 million gallons per day of groundwater infiltration. (AR at R08329-R08330). Williamson's existing outfalls and on-site water retention structures do not provide a long-term solution for managing the quantities of water Williamson must remove from the mine. (AR at R08313-R08314). As noted above, Williamson detailed nine alternatives to the proposed discharge. (AR at R05886-R05894, R08324-R08331). The Agency determined that the proposed discharge is the only practicable or economically viable long-term means of addressing the issue of groundwater infiltration, which is necessary for the mine to continue operations. (AR at R00087-R00090, R06181-R06182).

Second, the Agency concluded that Williamson continuing the operation of Pond Creek Mine is an important economic or social development. Williamson directly employs 235 employees, with a payroll of approximately \$20.2 million annually. (AR at R00090, R05888). The mine indirectly provides local employment opportunities through the hiring of truck drivers, engineers, support personnel, and other independent contractors, as well as through the purchase of supplies and services from local vendors. (*Id.*). These employment opportunities benefit other



local businesses through the creation and distribution of wealth in the local economy. (*Id.*). In addition, Williamson pays approximately \$1.5 million in federal taxes and approximately \$700,000 in state and local taxes. (*Id.*). Based on such facts, as well as others in the Administrative Record, the Agency reasonably concluded that continued operation of the mine is an important economic or social development. (*See* AR at R00090, R05888-R05889, R06181, R08323-R08324, R08327-R08328).

**C. The Permit's Monitoring Conditions Satisfy the Board's Regulations**

**1. Permit Conditions Related to the Big Muddy River Mixing Zone Satisfy the Requirements of Section 309.146 of the Board's Regulations**

Section 309.146 of the Board's regulations, 35 Ill. Adm. Code 309.146, requires the Agency to issue NPDES permits containing conditions pertaining to monitoring, effluent sampling, reporting adequate to determine compliance, and recordkeeping. The Permit contains sufficient conditions to satisfy these requirements related to the Big Muddy River mixing zone.

The Permit requires Williamson to install conductivity monitors—calibrated to monitor chloride concentrations—both upstream of the Outfall 011 discharge and within 10 feet of the edge of the mixing zone. (AR at R00027-R00028). Williamson must take monthly chloride and conductivity samples of the Outfall 011 effluent and of the receiving stream—both upstream and downstream of the discharge—to ensure that calibration curves remain accurate. (AR at R00027). Such calibration curves must be reviewed and approved by the Agency before the discharge, after six months of operation, and yearly thereafter. (*Id.*). As discussed in detail in Section V.A.1, the Permit requires Williamson to report the downstream “calculated” chloride concentration, the chloride concentration (correlated to conductivity) measured at the monitoring station to be installed within 10 feet downstream of the mixing zone, and the results of three weekly instream samples of chloride, sulfate, iron (dissolved), copper, and nickel on monthly DMRs. The Permit

also requires three effluent samples of chloride, sulfate, and iron (dissolved) per week and one effluent sample of copper and nickel per month for the first year, and twice per year thereafter. (AR at R00027-R00029). Special Conditions 3, 4, and 5 of the Permit require Williamson to submit all reports, including DMRs, and periodic monitoring results to the Agency and to retain such records for three months. (AR at R00025). Standard Condition 10 of the Permit requires Williamson to retain records of all continuous monitoring information, including calibration and maintenance, for at least three years. (AR at R00031). Together, these permit conditions ensure that adequate data is collected, retained, and reported to determine violations of the Permit's limits and to identify exceedances of water quality standards outside of the approved mixing zone.

Petitioners object that one aspect of this detailed monitoring program—the calibration curves for chloride and conductivity—had not yet been finalized at the time of Permit issuance, but rather remains to be developed as set out in the Permit. (AR at R00027). Petitioners assert that the Permit's inclusion of a plan to develop and periodically reassess calibration curves through ongoing monitoring, instead of precise curves themselves, violates rights of public participation. (Petition, ¶ 17). As the Permit makes clear, though, the calibration curves are intended to be revised on an ongoing basis to more accurately reflect field data and are to be reassessed by the Agency over the term of the permit to ensure that the calibration curves remain accurate. (AR at R00027). The Permit therefore appropriately sets forth a plan to develop and periodically reassess calibration curves over time.

## **2. The Permit's Monitoring Provisions Account for the Permittee's Past Compliance History**

Petitioners object that “[i]n establishing monitoring requirements, [the Agency] appears to have failed to take into account the Permittee's long history of permit violations[.]” (Petition, ¶ 17). However, the Agency did take account of Williamson's past noncompliance by incorporating

Special Condition 16(c)-(e) into the Permit. (AR at R00052). As noted in Section V.A.3, such provisions are intended to operate as automatic cease-and-desist provisions in the Permit, requiring Williamson to automatically cease discharging from Outfall 011 when instream monitoring reveals threshold exceedances of water quality standards for chloride, sulfate, iron (dissolved), copper, or nickel.

## VI. CONCLUSION

For the reasons stated above, the Agency requests that, because there is no genuine issue of material fact and because the Petitioners cannot sustain their burden of proving that the Permit, as issued, would violate the Act or the Board's regulations, the Board enter an order: 1) finding that the Agency is entitled to summary judgment as a matter of law; 2) granting the Agency's Motion for Summary Judgment; and 3) finding that the Permit must be upheld.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
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**CERTIFICATE OF SERVICE**

I, Lilia M. Brown, certify that on the 19th day of September, 2022, I caused to be served by Electronic Mail the foregoing **Notice of Filing** and **Agency's Motion for Summary Judgment** to the parties listed below:

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Certificate of Service are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

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