BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS POWER GENERATING COMPANY)
Petitioner,)
v.) PCB 2024-043
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY))
Respondent.)

NOTICE OF ELECTRONIC FILING

To: Attached Service List

PLEASE TAKE NOTICE that on November 21, 2024, I electronically filed with the Clerk of the Illinois Pollution Control Board ("Board") the **Comments of Sierra Club**, **Earthjustice, and Prairie Rivers Network**, copies of which are attached hereto and herewith served upon you.

Dated: November 21, 2024

Respectfully Submitted,

/s/ Faith E. Bugel Faith E. Bugel ARDC No. 6255685 1004 Mohawk Wilmette, IL 60091 (312) 282-9119 fbugel@gmail.com

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PUBLIC COMMENTS OF SIERRA CLUB, EARTHJUSTICE, AND PRAIRIE RIVERS NETWORK

Illinois Power Generating Company ("IPG"), the Petitioner in this matter, operates the Primary Ash Pond ("PAP"), a coal ash impoundment, at the Newton Power Plant in Jasper County, Illinois ("Newton"). IPG, through its not-yet-approved groundwater monitoring system, detected chloride contamination exceeding groundwater protection standards. In an effort to demonstrate that the PAP was not the source of the chloride contamination, IPG submitted an alternative source demonstration ("ASD") to Illinois Environmental Protection Agency ("IEPA" or "Agency"), with which IEPA did not concur. IPG appealed IEPA's non-concurrence to the Illinois Pollution Control Board ("Board"). Commenters Sierra Club, Earthjustice, and Prairie Rivers Network submit these public comments on the parties' Motions for Summary Judgment in this matter.

I. IEPA Cannot Concur with any ASDs for a CCR Surface Impoundment Until It Issues an Operating Permit That Includes an Approved Groundwater Monitoring Program for that Impoundment.

The Board should uphold the IEPA's non-concurrence with the Newton ASD, and for all the other sites that have appealed ASD non-concurrence decisions to the Board,¹ because IEPA has not yet, for any of these facilities, issued an operating permit² that sets out an approved

¹ The additional appeals to the Board of IEPA non-concurrence decisions for ASDs include the following matters: *Illinois Power Resources Generating, LLC v. IEPA,* PCB 24-48, (for the Duck Creek Gypsum Management Facility Pond), *Dynegy Midwest Generation, LLC v. IEPA,* PCB 24-53, (for the Vermillion Power Plant New East Ash Pond), *IPG. v. IEPA,* PCB 24-55, (for cobalt at the Coffeen Power Plant Ash Pond No. 2), and *IPG v. IEPA,* PCB 24-56, (for sulfate and Total Dissolved Solids at the Coffeen Power Plant Ash Pond No. 2).

² All owners and operators of a CCR surface impoundment in Illinois must obtain an operating permit issued by IEPA. 35 I.A.C. § 845.200(a)(2). Operating permits for existing or inactive CCR surface impoundments, such as the PAP, must contain, amongst other information and documents, a hydrogeologic site characterization; design and construction plans for a groundwater monitoring system; a groundwater sampling and analysis program; and a proposed groundwater monitoring program. *Id.* § 845.230(d)(2)(I). Once IEPA makes a tentative decision to issue or

groundwater monitoring program. Without an approved groundwater monitoring program, the Agency cannot make a supported decision that the purported "demonstration" in fact establishes that the impoundment has not contributed to the contamination. A review of relevant Part 845 provisions makes this clear. Under section 845.650(e),

The owner or operator of a CCR surface impoundment may, within 60 days after the *detected exceedance* of the groundwater protection standard, submit a demonstration to the Agency that a source other than the CCR surface impoundment caused the contamination and the CCR surface impoundment *did not contribute* to the contamination, or that the exceedance . . . resulted from error in sampling, analysis, statistical evaluation, natural variation in groundwater quality, or a change in potentiometric surface and groundwater flow direction.

35 I.A.C. 845.650(e) (emphasis added).

In short, before an ASD may be approved, there must be a "detected exceedance" for a given surface impoundment—here, the PAP—as well as a method for determining what contamination comes from that impoundment. Moreover, the proper sampling, analysis, and statistical evaluation of groundwater must be established so that an error in the same can be readily identified.

Under Part 845, <u>none</u> of these elements can be properly determined without an approved groundwater monitoring program. For each impoundment, the groundwater monitoring program sets out the appropriate locations, depths, and number of background and downgradient monitoring wells; determines which wells accurately represent "background" groundwater quality; and establishes satisfactory sampling and analysis procedures to detect exceedances of groundwater protection standards. *See* 35 I.A.C. § 845.650. An "exceedance," in turn, depends on what is set out in the approved groundwater monitoring program. Part 845 defines an exceedance of the groundwater protection standard as:

an analytical result with a concentration greater than the numerical value of the constituents listed in Section 845.600(a), in a *down gradient well*; or when the *up gradient background* concentration of a constituent exceeds the numerical value listed in Section 845.600(a), an analytical result with a concentration at a *statistically significant* level above the up gradient background concentration, in a down gradient well.

35 I.A.C. § 845.120 (emphases added). Under that definition, "down gradient well[s]" must necessarily be identified for an exceedance to exist; where the ASD is based on an exceedance of an "up gradient background concentration," both the "up gradient background concentration" and what constitutes a "statistically significant level" above that concentration also must be identified. Part 845 calls for all these items to be set in the impoundment's groundwater

deny a draft operating permit application, the Agency is required to issue public notice of the decision and open a 45-day written public comment period. *Id.* § 845.260(b), (c). In addition, IEPA is required to hold a public hearing on the issuance or denial of a draft operating permit "whenever the Agency determines that there exists a significant degree of public interest in the proposed permit." *Id.* § 845.260(d)(1).

monitoring program, in accordance with the regulations' detailed mandates for selecting down gradient wells, up gradient background concentrations, and methods for statistical analysis. *See* 35 I.A.C. Part 845, Subpart F. An approved groundwater monitoring program is thus an *essential prerequisite for any exceedance, which is the trigger for an ASD*.

An approved groundwater monitoring program is likewise a prerequisite for any ASD evaluation because it establishes which monitoring wells, at which locations and depths, are necessary to identify pollution that the CCR surface impoundment is causing or contributing to. *See* 35 I.A.C. § 845.630. Without an approved program, owners/operators may be engaging in a variety of erroneous monitoring practices that result in contamination from the CCR surface impoundment not being fully detected or characterized. Among other flaws, owners or operators may have set up a groundwater monitoring system that is missing contaminant pathways; treating CCR-contaminated wells as "background" wells, resulting in pollution associated with the CCR surface impoundment improperly not being classified as an exceedance; or failing to account for "mounding" or other hydrogeological characteristics that affect groundwater flow direction. In short, without an IEPA-approved program in accordance with Part 845 that properly reveals what contamination is coming from the PAP, *there is insufficient information for IEPA to conclude—or for IPG to demonstrate—that pollution is NOT coming from the PAP*.

Our concerns about serious flaws in groundwater monitoring performed by industry, absent review and approval (after public comment) from the Agency, are far from hypothetical. USEPA has reviewed the groundwater monitoring systems of multiple CCR surface impoundments—including one here in Illinois—and found, or proposed to find, numerous grave errors in how that monitoring is being carried out. *See* <u>https://www.epa.gov/coalash/coal-combustion-residuals-ccr-part-implementation</u> (noting proposed denial of Waukegan "Part A" application, with link to proposed denial).

Many of these evaluations have come in the form of USEPA's review of owners/operators' "Part A" applications. To obtain an extension of the deadline to cease receipt of CCR in a CCR surface impoundment that is required to close, owners/operators were required to demonstrate, among other things, full compliance with the federal CCR rule at the entire facility where the CCR surface impoundment is located. USEPA, Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; A Holistic Approach to Closure Part A: Deadline to Initiate Closure, 85 Fed. Reg. 53,516 (Aug. 28, 2020). As of this writing, USEPA has issued thirteen proposed decisions on Part A applications, one of which it finalized. *See* https://www.epa.gov/coalash/coal-combustion-residuals-ccr-part-implementation (listing CCR surface impoundments for which USEPA has issued proposed and final decisions). It evaluated compliance with the groundwater monitoring mandates of the federal CCR rule at eight of those facilities. *See id.* (noting proposed decisions, including complete and incomplete or ineligible applications).

At *every* site that USEPA reviewed as part of its Part A evaluations, it identified serious problems with facilities' groundwater monitoring systems:

• At the Gavin coal-fired power plant, USEPA found that the owner/operator failed to thoroughly characterize groundwater flow direction, failed to properly establish

background wells, and lacked adequate downgradient wells, among other flaws. *See* final Gavin Part A decision at 45-54 and 70-76, available at <u>https://www.regulations.gov/document/EPA-HQ-OLEM-2021-0590-0100</u>.

- At the Waukegan plant, USEPA proposed to find that Midwest Generation did not properly characterize groundwater flow direction, lacked sufficient wells to fully monitor potential contamination, improperly used "intrawell" statistical analysis of monitoring results, and used improper "background" wells that were dug through CCR. *See* proposed Waukegan Part A decision at 31-47, available at https://www.regulations.gov/document/EPA-HQ-OLEM-2023-0209-0001.
- At the Ottumwa, Clifty Creek, and Spurlock plants, USEPA proposed to find that, among other deficiencies, the groundwater monitoring wells were too far apart or not properly sited, leaving potential contaminant pathways unmonitored. *See* proposed Ottumwa Part A decision at 43-46, available at https://www.regulations.gov/document/EPA-HQ-OLEM-2021-0593-0002; proposed Clifty Creek Part A decision at 44-45, available at https://www.regulations.gov/document/EPA-HQ-OLEM-2021-0593-0002; proposed Clifty Creek Part A decision at 44-45, available at https://www.regulations.gov/document/EPA-HQ-OLEM-2021-0587-0023; and proposed Spurlock Part A decision at 55-56, available at https://www.regulations.gov/document/EPA-HQ-OLEM-2021-0587-0023; and proposed Spurlock Part A decision at 55-56, available at https://www.regulations.gov/document/EPA-HQ-OLEM-2021-0595-002.
- At A.B. Brown, USEPA proposed to find, among other concerns, that the groundwater monitoring wells were not placed in sufficient locations to detect all potential contaminant pathways, that groundwater flow characterization was inadequate, and samples were improperly evaluated using "intrawell" statistical analysis. *See* proposed A.B. Brown Part A decision at 31-47, available at https://www.regulations.gov/document/EPA-HQ-OLEM-2022-0335-0001.
- At Mountaineer, USEPA proposed to find, among other flaws, that the company did not appropriately locate either background or downgradient wells, and improperly analyzed groundwater monitoring data, including by excluding so-called "outlier" data and by using "intrawell" analysis. *See* proposed Mountaineer Part A decision at 33-48, available at https://www.regulations.gov/document/EPA-HQ-OLEM-2021-0842-0001.
- At the Calaveras plant, USEPA proposed to find, among other flaws, that groundwater monitoring wells are improperly spaced, inadequate in number, and not located at the waste boundary, and the company did not appropriately identify background wells. *See* proposed Calaveras Part A decision at 47-55, available at https://www.regulations.gov/document/EPA-HQ-OLEM-2022-0333-0001.

USEPA has likewise identified severe deficiencies in the groundwater monitoring programs at multiple CCR facilities in Alabama (Alabama: Denial of State Coal Combustion Residuals Permit Program, 88 Fed. Reg. 55,220, 55,239-55,241, 55,249-55,253, 55,260-55,267, and 55,271-55,272 (Aug. 14, 2023)) and at one facility in Kansas to which it sent a letter summarizing conversations regarding compliance concerns. USEPA, Letter re: Notice of Potential Violations/Opportunity to Confer, Tecumseh Energy Center, Tecumseh, Kansas, Enclosure 1 at 1-4 (Jan. 2021), attached hereto. In effect, *every time* USEPA has taken a close

look at the groundwater monitoring program for a CCR surface impoundment or landfill, it has identified deficiencies that could lead to contamination from those CCR units being released undetected. There is no reason to believe those deficiencies are limited to sites outside of Illinois; indeed, as noted, one facility where USEPA found those deficiencies is the Waukegan plant. Until IEPA fulfills the critical oversight role assigned to it by the Coal Ash Pollution Prevention Act ("CAPPA") and Part 845—namely, it has reviewed and approved, following public review and comment, a groundwater monitoring program for Newton and for all the other sites that have appealed ASD non-concurrence decisions—the Board should uphold IEPA's non-concurrence with the ASDs.

II. The Newton ASD Fails to Adequately Identify an Alternative Source of Contamination.

The Board should also affirm IEPA's non-concurrence with the ASD because IPG's ASD for Newton fails to specifically and sufficiently identify an alternative source of groundwater contamination. The ASD claims to show that the regulated unit did not contribute to the chloride exceedance but omits the specific identification of an actual alternative source as the cause of the exceedance. CAPPA is clear that no exemption from corrective action provisions is available unless the owner/operator of a regulated unit "identif[ies] a specific alternative source of groundwater pollution." 415 ILCS § 5/22.59(g)(11). The Board's implementing regulations, at Section 845.650(e), elaborate on that mandate, specifying that the "owner or operator of a CCR surface impoundment may... submit a demonstration to the Agency that a source other than the CCR surface impoundment caused the contamination and the CCR surface impoundment did not contribute to the contamination," and that demonstration must "include a report that contains the factual or evidentiary basis for any conclusions." 35 Ill. Adm. Code § 845.650(e). In short, in order to successfully use an ASD to exempt itself from Part 845 corrective action under a claim that another source is the cause, an owner/operator of a regulated unit must "identify" the particular source or sources of pollution and demonstrate that the other source is causing the groundwater pollution. See id.; see also AG Br. At 10-11.

IPG's ASD for Newton on its face fails to meet the first prong of the two requirements contained in Section 845.650. IPG's ASD for Newton states that:

This information serves as the written ASD prepared in accordance with 35 I.A.C. § 845.650(e), demonstrating that the chloride exceedance observed at APW15 during the E001 sampling event was not due to the PAP. Therefore, assessment of corrective measures is not required for chloride at the PAP.

ASD at 9 (Att. B. to Petition). This language in the ASD submittal thus only claims to show that the regulated unit did not contribute to the chloride exceedance and omits the specific identification of an actual alternative source as the cause of the exceedance. AG Br. 11. Further, the introduction to the ASD does not confine the identification of an alternative source to the one speculative source discussed in the ASD but rather suggests that there may be more than one alternative source. "Pursuant to 35 I.A.C. § 845.650(e), the lines of evidence (LOEs) presented in Section 3 demonstrate that *sources* other than the PAP were the cause of the chloride GWPS exceedance listed above." ASD at 3 (Att. B. to Petition) (emphasis added). On its face, the ASD

thus fails to meet the requirements of 415 ILCS Section 5/22.59(g)(11) and Section 845.650 by failing to specifically identify the alternative source or sources of groundwater pollution at the PAP.

What little information the ASD does include about a potential alternative source was based on a "review of regional literature" and is, thus, both completely speculative and not specific. ASD at 9 (Att. B. to Petition); see also ASD at 5 (discussing "Regional Bedrock Geology") (Att. B. to Petition). There was no site-specific investigation into potential alternative sources that actually exist in the vicinity of the regulated unit. See, generally, ASD. The appeal petition attempts to re-characterize the ASD's speculation and reliance on generic regional literature as a "site-specific" identification of an alternative source. Pet. at pt. 43. The ASD, however, does not actually use any site-specific information to identify the alternative source and only uses generic regional information to speculate as to alternative sources. "It is well established that an administrative review of an agency's decision is limited to consideration of the record on appeal to determine whether the action of the agency is supported by the evidence in that record." Clark v. Bd. of Rev. of Il. Dep't of Lab., 126 Ill.App.3d 559, 562, 467 N.E.2d 950, 953 (July 24, 1984) (citing Odell v. Vill. of Hoffman Est. (Nov. 29, 1982), 110 Ill.App.3d 974, 979, 443 N.E.2d 247.); see also Collier v. Il. Dep't of Emp. Sec., 157 Ill.App.3d 988, 993, 510 N.E.2d 623, 626 (July 14, 1987). The Petitioner cannot supplement the record on appeal with conclusions that the Petition claims are in the ASD when such conclusions are not supported by the ASD and were not before the Agency. For these reasons, the Board should affirm IEPA's non-concurrence with the ASD.

III. IEPA Has Broad Discretionary Authority to Review and Either Concur or Not Concur with ASDs.

IPG argues that "Section 845.650(e) does not specify what information must be included in an alternative source demonstration," IPG Br. at 15, asserting that:

The plain language of § 845.650(e) does not include reference to any of the information in IEPA's "Data Gaps," nor does it reference a need to collect or develop *any particular* information in support of an alternative source demonstration. While requiring an ASD to provide the "factual or evidentiary basis" for its conclusions, this provision does not specify what that factual and evidentiary basis must consist of.

Id. (quoting 35 Ill. Adm. Code § 845.650(e)). Petitioner's argument at its core is that because the section does not identify any specific information, IEPA is prohibited from demanding any specific information. Petitioner is wrong for numerous reasons.

To begin with, IEPA was delegated permitting and oversight authority over CCR surface impoundments in CAPPA Section 22.59. CAPPA includes a directive that the Board adopt rules governing the ASD process: "The rules must, at a minimum: . . . (11) describe the process and standards for identifying a specific alternative source of groundwater pollution when the owner or operator of the CCR surface impoundment believes that groundwater contamination on the site is not from the CCR surface impoundment." 415 ILCS § 5/22.59(g). Because it is the Agency, not the Board, that implements the Board's rules, CAPPA's directive that the Board

promulgate rules concerning alternative sources of pollution necessarily authorizes the Agency to administer those rules. This grant of authority includes sufficient standards and guidance for the Agency to follow when implementing and enforcing § 22.59.³

Moreover, CAPPA and Part 845 include adequate guidance for IEPA to make decisions on ASD sufficiency. *Meyers v. Schmitz*, 2018 IL App (4th) 170395-U, at 8; *see also Vill. of Hillside v. John Sexton Sand & Gravel Corp.*, 105 Ill.App.3d 533, 543, 434 N.E.2d 382, 390 (Mar. 26, 1982) (citing *Winnetkans Interested in Protecting the Environment (WIPE) v. Pollution Control Board*, 55 Ill.App.3d 475, 370 N.E.2d 1176 (Dec. 5, 1977)). In this instance, IEPA was delegated the authority to determine whether an ASD makes a sufficient demonstration that (1) a specific source other than the regulated CCR surface impoundment caused the contamination, (2) the regulated CCR surface impoundment did not contribute to the contamination, and (3) the demonstration is supported with sufficient facts and evidence for each conclusion in the demonstration. 415 ILCS § 5/22.59(g)(11); 35 Ill. Adm. Code § 845.650(e); *see also* IPG SJ Memo at 15; AG Br. at 10-11.

Illinois courts have upheld agency action in circumstances with far less guidance from the legislature. In *Freedom Oil*, the Appellate Court noted that "[n]either the Act which created the Board (415 ILCS 5/5 (West 1992)) nor the Board's own rules. . . provide for telephone meetings by the Board. Generally, an administrative agency is a creature of statute and has no general or common law powers." *Freedom Oil v. IPCB*, 275 Ill.App.3d 508, 514, 655 N.E.2d 1184, 1189 (Sept. 21, 1995). The Court held, however, that the Board did have authority to conduct a special meeting by telephone because, it explained, "[i]n performing its specific duties, an administrative agency has wide latitude to accomplish its responsibilities." *Id*. (quoting *Lake Cnty. Bd. of Rev. v. Prop. Tax Appeal Bd.* (1988), 119 Ill.2d 419, 427–28, <u>519 N.E.2d 459, 463</u>.). Similarly, in *Hillside v. John Sexton Sand and Gravel*, the Appellate Court held that the Agency's discretion to issue supplemental permits was adequately cabined by Board rules authorizing the Agency to ""impose such conditions in a permit as may be necessary to accomplish the purposes of the Act" and barring IEPA from issuing a supplemental permit

³ "A delegation of legislative authority is constitutional only if the legislature provided sufficient identification of: (1) the persons and activities potentially subject to regulation; (2) the harm sought to be prevented; and (3) the general means intended to be available to the administrator to prevent the identified harm." Friendship Facilities, Inc. v. Region 1B Human Rights Authority, 167 Ill.App.3d 425, 521 N.E.2d 578 (Mar. 25, 1988), quoted in ESG Watts, Inc. v. PCB, 286 Ill.App.3d 325, 334, 676 N.E.2d 299, 305 (Feb. 6, 1997). IPG did not argue that the legislature's grant of authority over the CCRSI's program was unconstitutional, nor could they have. The legislature's delegation of authority over the CCRSI program is constitutional because it sufficiently identifies the activities subject to regulation: "construct[ing], install[ing], modify[ing], operat[ing], or clos[ing] any CCR surface impoundment" and "caus[ing] or allow[ing], directly or indirectly, the discharge, deposit, injection, dumping, spilling, leaking, or placing of any CCR upon the land" 415 ILCS § 5/22.59(b)(2)-(3). The legislature's delegation of authority is also constitutional because it sufficiently identifies the harm sought to be prevented: "caus[ing] or allow[ing] the discharge of any contaminants from a CCR surface impoundment into the environment so as to cause, directly or indirectly, a violation of this Section," 415 ILCS § 5/22.59(b)(1). Finally, the legislature's delegation of authority is constitutional because it sufficiently identifies the general means available to the administrator to prevent the harm: "a permit granted by the Agency" (id. at (2)), submittal "to the Agency for approval a closure alternatives analysis" (id. at § 5/22.59(d)), posting "with the Agency a performance bond or other security" (id. at § 5/22.59(f)), Board adoption of rules (id. at § 5/22.59(g)), and permit fees (id. at § 5/22.59(j)).

without proof from the applicant that the requested permit "will not violate the Act or Board Rules and conforms to specified criteria." *Hillside*, 105 Ill.App.3d at 543, 434 N.E.2d at 390.

In the present matter, the Agency is tasked with assessing whether a regulated entity has demonstrated that an alternative source is fully responsible for contamination being detected in the regulated entity's onsite monitors. Since that assessment is a specific duty of IEPA's, and IEPA is the agency tasked with implementing Part 845, it necessarily follows that IEPA is also granted the latitude necessary to conclude whether an entity has or has not sufficiently demonstrated that blame falls on an alternative source. *See Freedom Oil*, 275 Ill.App.3d at 514, 655 N.E.2d at 1189; *Hillside*, 105 Ill.App.3d at 543, 434 N.E.2d at 390.

The fact that the Agency's evaluation of ASDs is, in part, a product of Board rules is of no consequence when gauging Agency discretion. Just as "the General Assembly may invest administrative agencies with discretion to implement legislation," Board rules may also vest the IEPA with discretion to implement the rules. Meyers, 2018 IL App (4th) at 8 citing Chicagoland Chamber of Com. v. Pappas, 378 Ill.App.3d 334, 348-49, 880 N.E.2d 1105, 1119-20 (2007); E. St. Louis Fed'n of Tchr., Loc. 1220, Am. Fed'n of Tchr., AFL-CIO v. E. St. Louis Sch. Dist. No. 189 Fin. Oversight Panel, 178 Ill. 2d 399, 423, 687 N.E.2d 1050, 1063-64 (1997). And, just as "the General Assembly need not articulate in the statute every detail that will be necessary for its enforcement as long as it provides intelligible standards to guide the agency's use of discretion," the Board also need not identify every detail in rules that will be necessary for their enforcement. Id. An administrative agency "may validly exercise discretion to accomplish in detail what is legislatively authorized in general terms," and it has the power to do what is reasonably necessary to fulfill its duties. R.L. Polk & Co. v. Ryan, 296 Ill.App.3d 132, 140-41, 694 N.E.2d 1027, 1033 (Apr. 22, 1998) (quoting Lake Cntv., 119 Ill.2d at 428, 519 N.E.2d at 463). IPG in essence argues that the regulations need to articulate every detail necessary for its enforcement, but it is this very premise that Illinois Appellate Courts have rejected. Here, IEPA may validly exercise discretion in scrutinizing ASDs and their factual and evidentiary support in order to determine whether the ASD adequately demonstrates that "a source other than the CCR surface impoundment caused the contamination." 35 Ill. Adm. Code § 845.650(e). IEPA is granted the power to assess the ASDs and the factual and evidentiary support contained therein because such an assessment is "reasonably necessary to ... perform [its] duties." R.L. Polk, 296 Ill.App.3d at 140-41, 694 N.E.2d at 1033 (quoting Lake Cnty., 119 Ill.2d at 428, 519 N.E.2d at 463).

Furthermore, Petitioner's argument is wrong because it would lead to an absurd result. IPG argues that because Part 845 does not require any particular information, IEPA does not have the authority to conclude that any particular information is missing. Petitioner argues that "[w]hile requiring an ASD to provide the 'factual or evidentiary basis' for its conclusions, this provision does not specify what that factual and evidentiary basis must consist of." IPG Br. at 15 (citing 35 Ill. Adm. Code § 845.650(e)). Petitioner argues that "a plain reading of 35 Ill. Adm. Code § 845.650(e), the Part 845 regulatory provision governing alternative source demonstrations, does not require the information in the 'Data Gaps' to be included in an alternative source demonstration." IPG Br. at 15. IPG elaborates: "The plain language of § 845.650(e) does not include reference to any of the information in IEPA's 'Data Gaps,' nor does it reference a need to collect or develop *any particular* information in support of an alternative source demonstration." IPG Br. at 15.

It is illogical to interpret § 845.650(e) to mean that IEPA never has any discretion to say that anything is missing from an alternative source demonstration. Under IPG's argument, if a regulated source supported its demonstration with a pudding recipe, IEPA would be required to accept the pudding recipe as adequate evidentiary support and not have the discretion to identify any "data gaps." This is an absurd result. As IPG itself pointed out, "[r]egulations should not be construed in a manner that would lead to consequences that are 'absurd, unreasonable, unjust, or inconvenient'." IPG Br. at 19 (quoting *Midwest Sanitary Serv., Inc.*, 2022 IL 127327, ¶ 24 ("When interpreting statutory language, we are to give effect to the plain and ordinary meaning, avoiding absurd, unreasonable, unjust, or inconvenient results."); *People v. Wilhelm*, 346 Ill.App.3d 206, 208 (2004) (citing *McMahan v. Industrial Comm'n*, 183 Ill.2d 499, 513–14 (1998) ("A court should not construe a regulation in a manner that would lead to consequences that are absurd, inconvenient, or unjust")); *Bank of New York Mellon*, 2018 IL 121995, ¶ 18 (Jan. 19, 2018)).

IV. Conclusion

In conclusion, because (1) without an approved groundwater monitoring program, IPG cannot demonstrate—and the Agency cannot conclusively find—that another source or sources caused the pollution found in onsite groundwater surrounding the PAP; (2) IPG failed to allege, much less identify, a specific alternative source or sources that purportedly caused the groundwater contamination at Newton; and (3) the Agency is vested with sufficient, and adequately constrained, authority to implement Part 845, including authority to review alleged "demonstrations" that the PAP is not contributing to groundwater contamination at the site, the Board should uphold the Agency's nonconcurrence with IPG's ASD for Newton in this matter.

Dated: November 21, 2024

Respectfully submitted, /s/ Faith E. Bugel Faith E. Bugel ARDC No. 6255685 1004 Mohawk Wilmette, IL 60091 (312) 282-9119 fbugel@gmail.com

On Behalf of Sierra Club

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<u>/s/ Lauren Piette</u> Lauren Piette IL Bar No. 6330290 Earthjustice 311 S. Wacker Dr., Suite 1400 Chicago, IL 60606 (312) 500-2193 lpiette@earthjustice.org

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On Behalf of Earthjustice

<u>/s/ Andrew Rehn</u> Andrew Rehn Prairie Rivers Network 1605 S State St Suite 1 Champaign, IL 61820 (217) 344-2371, ext. 208 arehn@prairierivers.org

On Behalf of Prairie Rivers Network

Attachment



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 7 11201 Renner Boulevard Lenexa, Kansas 66219

<u>SENT BY ELECTRONIC MAIL</u> <u>RECEIPT CONFIRMATION REQUESTED</u>

jared.morrison@evergy.com

Mr. Jared Morrison Director, Water and Waste Programs Evergy Kansas Central, Inc. 818 S. Kansas Avenue P.O. Box 889 Topeka, Kansas 66601

> Re: Notice of Potential Violations/Opportunity to Confer Tecumseh Energy Center, Tecumseh, Kansas

Dear Mr. Morrison:

Thank you for taking the time on January 25, 2021, and March 9, 2021, to discuss disposal of coal combustion residuals (CCR) at the Evergy Tecumseh Energy Center (TEC) located near Tecumseh, Kansas, and the requirements of 40 C.F.R. Part 257, Subpart D (the CCR Rule). After further review of the information posted on your publicly accessible CCR compliance web site (TEC CCR web site), the U.S. Environmental Protection Agency (the EPA or the Agency) continues to be concerned about compliance with the CCR Rule at TEC.

According to the TEC CCR web site, two units at the facility are subject to requirements in the CCR Rule: one surface impoundment (Bottom Ash Settling Area or BASA) and one landfill (322 Landfill). The Agency has reviewed the following documents posted for these units:

- Annual Groundwater Monitoring and Corrective Action (GWMCA) Reports (2017, 2018, 2019 and 2020, revised March 6, 2021)
- Groundwater Monitoring Systems Certification (2017, revised March 9, 2021)
- Statistical Method Certifications (2017, 2018, 2019)
- Closure Plan TEC Industrial Landfill 322 (2016, revised Mar 4, 2021)
- Post-Closure Plan TEC Industrial Landfill 322 (2016, revised March 4, 2021)



This review identified several missing, erroneous, or incomplete elements, which represent potential violations, described in Enclosure 1. The EPA's priority is to ensure Evergy is operating in compliance with the CCR Rule. While we appreciate Evergy's efforts to date to comply with the CCR Rule, and offers to perform additional work, the EPA has continuing concerns as to whether some requirements are being met. Based on the issues highlighted in the May 13, 2021, letter from Mr. Mark Anstoetter, and the results of the January and March meetings, we believe that further discussions are warranted. The EPA is interested in discussing the issues identified in Mr. Anstoetter's letter and developing an agreed-upon compliance schedule to address areas of noncompliance if possible. A proposed compliance schedule is set forth in Enclosure 2.

The EPA also believes that these potential violations are likely significant enough to warrant the assessment of a civil penalty. The terms of any agreed-upon resolution of areas of noncompliance, a compliance schedule and penalty would be incorporated into a Consent Agreement and Final Order issued pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

Any submittal that TEC prepares to comply with the CCR Rule must be maintained, placed in the operating record, and posted by TEC in accordance with the recordkeeping, notification and publicly accessible CCR web site requirements, pursuant to 40 C.F.R. §§ 257.105, 257.106 and 257.107. Please note that original versions of documents must remain on the CCR web site for 5 years, in accordance with 40 C.F.R. § 257.107(c).

To schedule a call to discuss these issues, please contact Kelley Catlin in the Office of Regional Counsel within 10 calendar days of receipt of this letter at (913) 551-7110 or Bob Aston, at (913) 551-7392. Thank you for your prompt attention to this important matter.

Sincerely,

Wendy Lubbe Acting Director Enforcement and Compliance Assurance Division

cc: Mark Anstoetter, Esq. Shook, Hardy and Bacon manstoetter@shb.com

> Julie Coleman, Director (e-copy) Bureau of Waste Management Kansas Department of Health and Environment

ENCLOSURE 1 Potential Violations Tecumseh Energy Center

1) Reporting monitoring data

 40 C.F.R. § 257.90(e)(3) – The Annual Groundwater Monitoring and Corrective Action (GWMCA) Reports must include all monitoring data obtained under 40 C.F.R. §§ 257.90 through 257.98. This includes results of laboratory analysis of groundwater or other environmental media samples for the presence of constituents in Appendices III and IV to 40 C.F.R. part 257 (or of other constituents, such as those supporting characterization of site conditions that may ultimately affect a remedy), any required statistical analyses performed on those results, measured groundwater elevations, and calculated groundwater flow rate and direction. The posted Annual GWMCA Reports do not include all the required information.

2) Groundwater monitoring system

- 40 C.F.R. § 257.91 The performance standards require that a groundwater monitoring system consist of a sufficient number of wells, installed at appropriate locations and depths, to accurately characterize the quality of groundwater upgradient and passing the downgradient boundary of the unit. The following issues with the groundwater monitoring system have been identified:
 - 40 C.F.R. § 257.91(c) Each groundwater monitoring system is required to have a sufficient number of wells to accurately characterize groundwater quality, including at least three downgradient wells¹. In December 2019 at the BASA, MW-9 was not monitored due to lack of water in the well. This resulted in failure of the BASA groundwater monitoring system to meet the requirement to have a minimum of 3 downgradient wells in the BASA groundwater monitoring system during this semi-annual period.
 - 40 C.F.R. § 257.91(f) The certification by a professional engineer (P.E.) that the groundwater monitoring systems have been designed and constructed to meet the requirements of 40 C.F.R. § 257.91 must document the basis supporting the determination for monitoring systems using only one upgradient and three downgradient wells. The groundwater monitoring systems for both the BASA and the 322 Landfill each consist of only one upgradient and three downgradient wells. The p.E. certification for the systems does not include the basis for the certification. This basis must include the criteria specified in 40 C.F.R. § 257.91(b), which is required to

¹ As the EPA explained in the preamble to the CCR Rule (see 80 FR 21400), "As a practical matter, the EPA expects that there will be few cases, if any, where four wells will be sufficient, given that this requirement was originally developed for hazardous waste management units that are typically much smaller than CCR units. As mentioned above, a small unit with simple geology, a flat and constant hydraulic gradient, uniform hydraulic conductivity, low seepage velocity, and high dispersivity potential would be the type of unit for which the minimum number of wells could be sufficient to meet the overall performance standard. Although the EPA is finalizing a requirement for one upgradient and three downgradient wells as a regulatory minimum, the Agency expects large CCR units to have many more wells because most CCR sites have hydrologic settings that are too complex for the regulatory minimum to be adequate."

be considered when determining the appropriate number, spacing and depths of groundwater monitoring wells.

TEC has not provided any of the information required to support the design of the groundwater monitoring systems in the system certifications, except potentiometric maps included in the Annual GWMCA Reports. Some of the potentiometric maps appear to be based on an insufficient number of groundwater elevation data points to support the contours drawn. Moreover, there is evidence that both the BASA and the 322 Landfill groundwater monitoring systems do not meet the performance standard in 40 C.F.R. § 257.91.

With regard to the BASA, the analysis and data included in the BASA Alternate Source Demonstrations (ASDs) indicate background groundwater quality may not be properly characterized. Potentiometric maps included in the revised 2018 Annual GWMCA Report indicate at least a 90-degree shift in groundwater flow direction. This shift in flow direction results in monitoring well MW-11, which is designated as a side gradient well, being downgradient during 2018. This shift in flow direction similarly affects upgradient well MW-7. During 2018, MW-7 is depicted as either side gradient and potentially downgradient of the BASA unit and may not represent true background conditions. This shift in groundwater flow direction is not noted in the revised 2018 GWMCA Report. Additionally, the BASA is located next to a water feature that appears to exert seasonal or temporal influence on groundwater flow direction.

With regard to the 322 Landfill, this unit is too large for one upgradient and three downgradient wells to be spatially adequate to represent groundwater quality. The unit is approximately 56 acres, and its western and eastern boundaries are each approximately 2500 feet long. However, there are no groundwater monitoring wells along the western boundary of the unit and only one downgradient well on the eastern boundary of the unit, approximately 300 feet south of the northeast corner of the unit (see Figure 1 in the 2020 Annual GWMCA Report). Potentiometric flow maps depict groundwater flow toward the north/northeast, and groundwater is depicted as migrating toward the unit in this direction along the entire length of the western boundary and away from it along the entire length of the eastern boundary and away from it along the entire length of the eastern boundary that ensures detection of groundwater contamination," such that "all potential contaminant pathways must be monitored." Thus, the existence of over 2,000 feet of unmonitored, downgradient waste boundary along the eastern side of the landfill does not ensure detection of groundwater contamination.

The number, spacing, and depths of groundwater monitoring wells needed to sufficiently monitor upgradient groundwater quality and at the downgradient boundary must be determined using site-specific information as required by 40 C.F.R. § 257.91(b), which is currently missing from the reports and certifications available for review. However, simply based on size and available information it appears that neither background groundwater quality nor groundwater quality at the downgradient unit boundary are accurately characterized at either the BASA or the 322 Landfill.

3) Groundwater sampling and analysis requirements

• 40 C.F.R. § 257.93(d) – Background groundwater quality must be established for each constituent in a hydraulically upgradient well, or a background well that meets the requirements of 40 C.F.R. § 257.91(a)(1). 40 C.F.R. § 257.91(a)(1) allows background groundwater quality to be established in a well that has not been affected by leakage from a CCR unit and is not hydraulically upgradient if either of two criteria is met:

- o inability to determine a groundwater flow gradient; or
- samples from other wells are as representative or more representative of background groundwater quality than samples from a hydraulically upgradient well.

Intrawell comparisons conducted at the BASA do not appear to meet these requirements, as discussed below.

• 40 C.F.R. § 257.93(c) – The rate and direction of groundwater flow must be determined each time groundwater is sampled. The determination of the rate of groundwater flow has not been included in the Annual GWMCA Reports.

When conducting "intrawell" data comparison, samples taken at different times from the same well are used to characterize both background groundwater quality and downgradient groundwater quality. When conducting "interwell" data comparison, samples from one or more upgradient or side-gradient wells characterize background groundwater quality and samples from one or more down-gradient wells characterize groundwater quality down-gradient from the unit.

TEC has utilized intrawell comparisons at certain wells for certain constituents in Appendix IV to 40 C.F.R. part 257, for which interwell comparisons would have yielded a statistically significant level (SSL) (e.g., see Table II in the 2019 Annual GWMCA Report for the BASA for MW-9 for arsenic and cobalt and MW-10 for arsenic). This approach was implemented for the October 2019 sampling event, after TEC prepared an ASD in which TEC claimed there was natural variation in groundwater quality occurring below the BASA, for particular Appendix IV constituents only.

TEC has not provided data that indicate a groundwater flow gradient is not present at the BASA. Accordingly, the first criterion set forth at 40 C.F.R. § 257.91(a)(1)(i), that would allow background to be established in a non-upgradient well, is not met. With respect to the second criterion set forth at 40 C.F.R. § 257.91(a)(1)(ii), TEC has provided no information that indicates that the samples taken from the downgradient wells at the BASA are as or more representative of background groundwater quality than could be obtained from an up-gradient well.

If background groundwater quality samples are obtained from either an upgradient or a side-gradient well, interwell data comparisons would necessarily be used to identify SSIs or SSLs, because samples to characterize groundwater quality at the downgradient unit boundary would necessarily come from different wells than background samples. Additionally, samples that characterize background groundwater quality must always be taken from a well unimpacted by releases from a CCR unit.

If it can be demonstrated that samples obtained from wells located at the downgradient boundary of the CCR unit characterize background groundwater quality as accurately or more accurately than samples from an upgradient well, then all data analyzed for SSIs or SSLs would come from the same wells, and intrawell data comparisons would be used. As noted above, samples that characterize background groundwater quality must always be taken from a well unimpacted by releases from the CCR unit. Like many other CCR units, the BASA operated for decades (since construction in 1968) prior to becoming regulated by the CCR Rule. The 2019 Annual GWMCA Report indicates in a footnote to Table II that data collected through June 2019 were used to characterize background in the intrawell statistical analysis of the October 2019 groundwater data. Samples would need to have been obtained from these wells long before that time in order for them to be known to be unimpacted by the CCR unit. Therefore,

intrawell data comparisons are inappropriate to demonstrate compliance with the requirements of the CCR Rule at the BASA.

4) Assessment Monitoring program

Whenever there is an SSI over background levels for one or more of the constituents in Appendix III to 40 C.F.R. part 257 at any monitoring well at the waste boundary, an assessment monitoring program must be established. The following issues with the assessment monitoring program at the BASA have been identified:

- 40 C.F.R. § 257.95(b) The assessment monitoring program requires annual sampling for all constituents in Appendix IV to 40 C.F.R. part 257. This sampling was last conducted at the BASA on June 25, 2019. No sampling was conducted in 2020 to meet this requirement, as reported in Section 2.3.3 of the 2020 Annual GWMCA Report (amended March 6, 2021).
- 40 C.F.R. § 257.95(d)(1) The assessment monitoring program requires semi-annual monitoring at all wells for all constituents in Appendix III to 40 C.F.R. part 257 and for those constituents in Appendix IV to 40 C.F.R. part 257 that were detected in the sampling event conducted in accordance with 40 C.F.R. § 257.93(b). This sampling was last conducted timely on March 20-21, 2019. The next sampling event occurred on October 10, 2019, beyond the semi-annual timeframe. No sampling was conducted in 2020 to meet this requirement, as reported in Section 2.3.3 of the 2020 Annual GWMCA Report (amended March 6, 2021).

5) The Alternate Source Demonstrations (ASD)

In order to rebut the site-specific monitoring data and analysis that resulted in an SSI or SSL, an ASD must be supported by site-specific facts and analytical data. Merely speculative or theoretical bases for the conclusions are insufficient. An ASD should be conclusive, rather than probable or possible.

At the BASA, constituents in Appendix IV to 40 C.F.R. part 257 were detected at SSLs in September 2018 and March 2019. The 2019 Annual GWMCA Report included ASDs for these sampling events. These ASDs do not support a determination that the SSLs detected (arsenic in MW-9 and MW-10 and cobalt in MW-9) in both September 2018 and March 2019 are due to an alternate source rather than the BASA, in accordance with requirements in 40 C.F.R. § 257.95(g)(3)(ii). Specific concerns regarding the validity of the ASDs include:

• No alternative source was credibly identified that would have contributed to the SSIs/SSLs detected. The EPA has previously outlined the expectations for a valid ASD in the Solid Waste Disposal Facility Criteria, Technical Manual² for the Municipal Solid Waste Landfill regulatory program at 40 C.F.R. part 258. In Chapter 5, beginning on page 286, and further explained on page 280, a facility seeking an ASD must document that "*an* alternative source exists" and that a hydraulic connection exists between *the* alternative source and the well with the significant increase. Furthermore, the facility must document that "constituents (or precursor constituents) are present at *the alternative source* or along the flow path *from the alternative source* prior to possible release from the regulated unit." The ASD regulatory

² Solid Waste Disposal Facility Criteria, Technical Manual (November 1993), EPA530-93-017 https://archive.epa.gov/epawaste/nonhaz/municipal/web/pdf/subparte.pdf

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language at 40 C.F.R. part 258 tracks the ASD regulatory language at 40 C.F.R. part 257. Just as this approach makes sense and has been appropriate for ASDs under Part 258 for over 25 years, the Agency believes the same approach is appropriate for Part 257.

- Claims that variation in groundwater quality between upgradient and downgradient wells is occurring naturally are unsupported by data in the ASD. While the ASD highlights average decreasing concentrations of some constituents (e.g., boron, chloride and sulfate) from upgradient to downgradient wells as evidence of the BASA not impacting groundwater, the ASD neglects to address that higher calcium concentrations exist downgradient, and fluoride concentration patterns are mixed; the Appendix III sampling data are inconclusive in proving natural groundwater variation. Some Appendix IV sampling data show similar uneven concentration patterns, but some are more clearly at elevated levels downgradient for key constituents like arsenic. Sampling results do not indicate the presence of Appendix IV constituents at unexpected high concentrations in the aquifer matrix downgradient of the background wells. Other possible reasons for such variations include improper characterization of background groundwater quality (see prior discussion on the 2018 groundwater potentiometric maps), or changes in groundwater chemistry below the unit caused by releases from the BASA to the aquifer. Sampling from additional wells or other environmental media could better substantiate a claim of groundwater natural variability as the cause of constituent concentration patterns.
- The leachate tests are of limited value for the following reasons:
 - Not enough information is provided about the sampling collection protocols (e.g., depth, volume, location of samples), the typical residence time of ash in the unit, or how the composition of ash being disposed may have changed over time.
 - Ash collected from the impoundment may have already leached a substantial fraction of the contaminant mass and provide an incomplete estimate of total release potential.
 - Not enough information is provided to determine whether the selected leachate test accurately reflects field conditions. This is in part due to the lack of field parameter results in Annual GWMCA Reports. These tests are not useful in an ASD if they are not similar to conditions in the unit (e.g., pH of liquid or the liquid to solid ratio).
 - The leaching test results do not provide evidence to refute that elevated arsenic and cobalt at MW-9 and MW-10 are being at least partially caused by the unit.
- The evidence presented, primarily leachability testing, does not outweigh the significant amount of field data indicating the detections are the result of a leak in the BASA. This evidence includes the following:
 - The BASA does not have a liner to inhibit infiltration of releases into the underlying, uppermost aquifer.
 - Approximately 20 feet of hydraulic head was present within the BASA during operation to drive the sluiced ash water into the underlying, uppermost aquifer throughout the 35 years of operational history.

- Following dewatering of the BASA in September 2019, the groundwater elevations dropped approximately nine feet in MW-8, MW-9 and MW-10, confirming a direct hydraulic connection between sluiced ash in BASA and groundwater at these downgradient wells.
- Multiple SSIs above background occurred at all three downgradient wells (MW-8, MW-9, MW-10) in each of the four monitoring events in 2018 and 2019.

Because an ASD meeting the requirements of 40 C.F.R. § 257.95(g)(3)(ii) was not completed within 90 days of finding that an SSL was detected, TEC became subject to the requirements of 40 C.F.R. § 257.95(g) and was also required to initiate an Assessment of Corrective Measures within 90 days after detecting the SSL in accordance with 40 C.F.R. § 257.96.

While the EPA is not foreclosing TEC from continuing its efforts to identify an alternative source, TEC must, in parallel, work through the assessment monitoring and corrective action program.

6) Closure and post-closure requirements

For the reasons stated above, the EPA believes the BASA is subject to corrective action requirements. Accordingly, the Closure Plan must be amended, and a Post-closure Care Plan must be developed to reflect that the unit has triggered corrective action requirements. The Post-closure Care Plan must incorporate changes necessary to reflect that closure will be complete when constituent concentrations throughout the unit and any areas affected by releases from the CCR unit have been removed and groundwater monitoring concentrations do not exceed the groundwater protection standards, in accordance with 40 C.F.R. § 257.102(c).

Regarding the 322 Landfill, the EPA identified issues associated with the Post-closure Care Plan. In general, the plan should document actions to be taken to comply with the performance standards for post-closure care in 40 C.F.R. § 257.104. The Post-closure Care Plan lacked specificity regarding actions to be taken, frequency or timing of activities discussed, and criteria for implementing described contingencies. By failing to provide specific measures or any guiding procedures or principles, it fails to serve as a plan. As such, the Landfill Post-closure Care Plan does not meet the requirements at 40 C.F.R. § 257.104(d):

- 40 C.F.R. § 257.104(d)(1)(i) requires that the plan contain a description of monitoring and maintenance activities required in 40 C.F.R. § 257.104(b)(1), to maintain the integrity and effectiveness of the final cover system. Section 5.1 of the Landfill Postclosure Plan states that inspections will initially occur weekly, then quarterly or semiannually, and that "Inspection frequency will be reduced as final cover conditions are found to be stable and depending on the need for periodic maintenance." The Plan does not provide any criteria for evaluating stability or any method for conducting inspections. It does not specify what level of periodic maintenance might warrant more or less frequent inspections.
- Additionally, potential damage to the final cover, due to the lack of planned actions to restrict public access to the cover, necessitates the need for more frequent inspections than semi-annual.

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• Section 5.2 of the Landfill Post-closure Plan provides a list of possible measures that could be used to control public access to the landfill (e.g., site security, fencing, lockable gates, and/or site surface water features) to prevent cover damage. This list simply represents a broad range of options, all or none of which may be implemented. If any of these measures were to be implemented, there is no information about their design (e.g., fence height) or requirements for maintenance or inspection.

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ENCLOSURE 2 Proposed Compliance Schedule Tecumseh Energy Center

#	CCR Rule	Summary of Issues Discussed	Projected Time Frame for
#		Summary of issues Discussed	
1	40 C.F.R. § 257.90(e)	Incomplete Reports	30 days
2	40 C.F.R. § 257.91(c)	BASA groundwater monitoring system lacked sufficient number of wells	30 days
3	40 C.F.R. § 257.91(f)	Incomplete groundwater monitoring system certification	30 days
4	40 C.F.R. § 257.93(c)	Failure to report groundwater flow rate	30 days
5	40 C.F.R. § 257.95(b)	Conduct annual assessment monitoring for all constituents in Appendix III and IV	30 days
6	40 C.F.R. § 257.95(d)	Conduct semi-annual assessment monitoring for all constituents in Appendix III and for Appendix IV identified in sampling required by item 5	90 days
7	40 C.F.R. § 257.91	Submit a plan to install additional wells at 322 Landfill	45 days
8	40 C.F.R. § 257.95(g) and 40 C.F.R. § 257.96	Submit a plan to conduct initial fieldwork to characterize nature and extent of release from BASA and initiate an assessment of corrective measures (ACM)	45 days
9	40 C.F.R. § 257.93(d) and § 257.91(a)(1)	Establish background levels in wells as required and re-analyze groundwater monitoring data to identify SSLs for inclusion in ACM	45 days
10	40 C.F.R. § 257.104 and §§ 257.102(b), (c)	Develop a BASA Post-closure Care Plan and amend the Closure Plan to reflect the fact that corrective actions requirements apply	45 days
11	40 C.F.R. §257.104	Amend 322 Landfill Post-closure Plan to identify planned land use and to include a plan for actions in accordance with requirements to prevent damage to cap.	45 days
12	40 C.F.R. § 257.105- 257.107	Notification and reporting requirements	Ongoing

CERTIFICATE OF SERVICE

The undersigned, Faith E. Bugel, an attorney, certifies that I have served by email the Clerk and by email the individuals with email addresses named on the Service List provided on the Board's website, *available at* https://pcb.illinois.gov/Cases/GetCaseDetailsById?caseId=17449, a true and correct copy of the **Comments of Sierra Club**, **Earthjustice**, and **Prairie Rivers Network**, before 4:30 p.m. Central Time on November 21, 2024. The number of pages in the transmission is 24 pages.

Dated: November 21, 2024

Respectfully Submitted,

/s/ Faith E. Bugel Faith E. Bugel ARDC No. 6255685 1004 Mohawk Wilmette, IL 60091 (312) 282-9119 fbugel@gmail.com

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