

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
-vs-)	PCB No. 13-41
)	(Enforcement/Land)
AMEREN ENERGY RESOURCES)	
GENERATING COMPANY, INC.,)	
an Illinois corporation,)	
)	
Respondent.)	
)	

AMERENENERGY RESOURCES GENERATING COMPANY, INC.'S ANSWER TO COMPLAINT

Respondent AmerenEnergy Resources Generating Company, Inc. ("AERG"), by and through its attorneys, for its Answer to Complaint states as follows:

COUNT I
OPEN DUMPING VIOLATION

1. This Complaint is brought by the Attorney General on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2010).

ANSWER: AERG states that 415 ILCS 5/31 (2010) speaks for itself. AERG lacks sufficient information to form a belief as to the truth of the remaining factual allegations contained in this paragraph, and thus neither admits nor denies same. Further answering, to the extent that Paragraph 1 contains a legal conclusion, no response is required.

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly under Section 4 of the Act. 415 ILCS 5/4 (2010), and which is charged, *inter alia*, with the duty of enforcing the Act.

ANSWER: AERG admits that the Illinois EPA is a state agency. AERG further states that 415 ILCS 5/4 (2010) speaks for itself, and no response is required.

3. This Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2010), after providing the Respondent with notice and the opportunity for a meeting with the Illinois EPA.

ANSWER: AERG states that 415 ILCS 5/31 (2010) speaks for itself. AERG admits that it was provided with notice and the opportunity for a meeting with the Illinois EPA. Further answering, AERG states that it met with representatives of the Illinois EPA and the Attorney General's office over two years before the initiation of the instant proceeding.

4. Respondent, AMEREN ENERGY GENERATING COMPANY, INC. ("AMEREN"), is an Illinois corporation in good standing.

ANSWER: AERG admits that Ameren Energy Generating Company, Inc. is an Illinois corporation in good standing. Further answering, AERG states that AmerenEnergy Resources Generating Company, Inc., the Respondent to the Amended Complaint to this proceeding, is also an Illinois corporation in good standing.

5. AMEREN is the owner of the Duck Creek Power Generating Station located at 17751 North Cilco Road, Canton, Fulton County, Illinois (the "Site").

ANSWER: AERG admits that AmerenEnergy Resources Generating Company, Inc. is the owner of Duck Creek Power Generating Station. Further answering, AERG denies that Ameren Energy Generating Company, Inc. is the owner of the Duck Creek Power Generating Station.

6. By letter dated July 29, 2004, AMEREN informed Illinois EPA that it intended to use coal ash as fill material to construct a railroad embankment and a haul road at the Site.

ANSWER: AERG admits that, over eight years ago, a notification was sent to Illinois EPA in accordance with 415 ILCS 5/3 135, wherein AERG advised the Agency of its intent to use coal combustion by-product ("CCB") as fill material to construct a railroad embankment and a haul road at the Site (the "Rail and Road Project"). In

further answering, AERG states that the notification announced that the Company intended to begin construction on the Project on September 1, 2004.

7. On dates better known to AMEREN, approximately 180,000 tons of coal ash was transported to the Site from AMEREN's E. D. Edwards Power Generating Station located in Bartonville, Illinois, where it was generated.

ANSWER: AERG admits that it used approximately 180,000 tons of CCB to construct the Rail and Road Project at the Site. In further answering, AERG states that the total length of the portion of the Rail and Road Project that used CCB is approximately 4,738 linear feet. AERG completed construction on the Rail and Road Project in 2005.

8. Coal Combustion By-product ("CCB") as defined by Section 3.135 of the Act, 415 ILCS 5/3.135 (2010), excludes structural fill material that does not meet the Class I Groundwater Standards for metals found at 35 Ill. Adm. Code 620.410, unless a Beneficial Use Determination ("BUD") is obtained from Illinois EPA.

ANSWER: AERG answers that the Act speaks for itself. To the extent the allegations of Paragraph 8 are inconsistent therewith, they are denied. Further answering, to the extent the allegations contained in Paragraph 8 contain a legal conclusion, no response is required.

9. The analytical data submitted by AMEREN with the July 29, 2004 letter established that the coal ash fill material exceeded the Class I Groundwater Standards for antimony, boron and chromium when tested using test method ASTM D3987-85.

ANSWER: AERG admits that the data submitted on July 29, 2004 show that the CCB material exceeded Class I Groundwater Standards for antimony, boron and chromium when tested using test method ASTM D3987-85. The area in which the CCB was used is industrial/commercial property. Two-thirds of the area where CCB was filled is formerly mined land, where coal was previously extracted by surface mining. All of the area where CCB was filled is underlain by clay or shale geologic media which do not readily transmit groundwater. AERG further states that the CCB used to construct the Rail and Road Project had not been mixed with hazardous waste prior to use and that the use of CCB in the Project did not result in harm to human health or the environment. AERG further states that modeling data reflects that the Rail and Road Project will not exceed Class I groundwater quality standards within a reasonable distance from the road, and that there are no groundwater receptors within 1,200 feet of the rail line or roadway.

10. On August 8, 2006, Illinois EPA conducted an inspection of the Site. Illinois EPA observed an area of filled coal ash at the Site approximately three acres in size and approximately fifteen feet deep.

ANSWER: AERG admits that Illinois EPA conducted an inspection at or near the Duck Creek Power Station on August 8, 2006, over two years after AERG notified Illinois EPA of its intent to use CCB as fill material to construct the Rail and Road Project and after the Project was completed. AERG lacks sufficient information to form a belief as to the truth of the remaining factual allegations contained in this paragraph, and thus neither admits nor denies same.

11. On September 1, 2006, Illinois EPA sent a Violation Notice (“VN”) to AMEREN. AMEREN responded to the VN on September 22, 2006 and a meeting was held on October 10, 2006.

ANSWER: AERG admits that the allegations of this paragraph.

12. On November 2, 2006, AMEREN submitted a Compliance Commitment Agreement (“CCA”) further expanding on its response. The CCA included analytical data from the analysis of additional samples of the coal ash. AMEREN also agreed to submit a request for a BUD.

ANSWER: AERG admits that it submitted a CAA to Illinois EPA on November 2, 2006, including analytical data from the analysis of additional samples of CCB. AERG further admits that it agreed to submit a request for a BUD for the remainder of the project at the Duck Creek Power Station, which encompassed the use of CCB for grading adjacent terrain to assure proper drainage and avoid potential erosion (the “Wedge Project”). AERG denies the remainder of the allegations in this paragraph.

13. The analytical data submitted by AMEREN with the CCA established that the coal ash exceeded the Class I Groundwater Standards for antimony, boron and silver when tested using ASTM D3987-85.

ANSWER: AERG admits that the analytical data submitted with the CAA showed that the CCB exceeded the Class I Groundwater Standards for antimony, boron and silver when tested using ASTM D3987-85 standards. In further answering, AERG states that, as explained in the CAA, the boron levels do not pose a threat to human health or the environment. Based upon information and belief, the cap thickness varies from

the design thickness to more than 20 feet depending on the location. AERG further states that it included in its CAA a copy of a technical paper prepared by Dr. Paul of Southern Illinois University which concluded that the CCB fill materials do not generally result in harmful groundwater plumes.

14. Illinois EPA rejected the proposed CCA on November 27, 2006, because the additional samples of the coal ash from the fill area exceeded the Class I Groundwater Standards and because AMEREN did not agree to remove all coal ash from the fill area at the Site to an Illinois EPA permitted landfill or transfer station.

ANSWER: AERG admits that Illinois EPA rejected the proposed CCA on November 27, 2006. AERG lacks sufficient information to form a belief as to the truth of the remaining factual allegations contained in this paragraph, and thus neither admits nor denies same. Further answering, AERG states that removing all of the CCB material from the already constructed Rail and Road Project including off-site disposal would cost the Company and estimated \$8 million.

15. On September 30, 2008, Illinois EPA rejected that portion of the BUD request dealing with the previously filled area under the haul road and railroad spur at the Site because AMEREN failed to establish that the constituents exceeding the groundwater standards would not negatively impact groundwater quality.

ANSWER: AERG admits that, on September 30, 2008, Illinois EPA granted the BUD request for the use of CCB to construct the Wedge Project. AERG denies that Illinois EPA rejected AERG's BUD request for the previously filled area under the haul road and railroad spur – the Rail and Road Project, as AERG never submitted a BUD request related to the Rail and Road Project, as this portion of the work at the Site had already been completed.

16. AMEREN did not obtain a permit or BUD from Illinois EPA before using the coal ash as fill material at the Site.

ANSWER: AERG admits that it did not obtain a permit or BUD from Illinois EPA before using CCB as fill material for the Rail and Road Project at the Site. Further answering, AERG states that it notified Illinois EPA of its intent to undertake the Rail and Road Project on July 24, 2004 and that Illinois EPA did not inform AERG of its position that a permit or BUD was necessary until after the Project was completed.

17. Section 3.140 of the Act, 415 ILCS 5/3.140 (2010) provides as follows:

“Coal combustion waste” means any fly ash, bottom ash, slag, or flue gas or fluid bed boiler desulfurization by-products generated as a result of the combustion of:

- (1) coal, or
- (2) coal in combination with: (i) fuel grade petroleum coke, (ii) other fossil fuel, or (iii) both fuel grade petroleum coke and other fossil fuel, or
- (3) coal (with or without: (i) fuel grade petroleum coke, (ii) other fossil fuel, or (iii) both fuel grade petroleum coke and other fossil fuel) in combination with no more than 20% of tire derived fuel or wood or other materials by weight of the materials combusted; provided that the coal is burned with other materials, the Agency has made a written determination that the storage or disposal of the resultant wastes in accordance with the provisions of item (r) of Section 21 would result in no environmental impact greater than that of wastes generated as a result of the combustion of coal alone, and the storage disposal of the resultant wastes would not violate applicable federal law.

ANSWER: AERG answers that the Act speaks for itself. To the extent the allegations of Paragraph 17 are inconsistent therewith, they are denied.

18. Section 3.305 of the Act, 415 ILCS 5/3.305 (2010), provides as follows:

“Open dumping” means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.

ANSWER: AERG answers that the Act speaks for itself. To the extent the allegations of Paragraph 18 are inconsistent therewith, they are denied.

19. Section 3.385 of the Act, 415 ILCS 5/3.385 (2010) provides as follows:

“Refuse” means waste.

ANSWER: AERG answers that the Act speaks for itself. To the extent the allegations of Paragraph 19 are inconsistent therewith, they are denied.

20. Section 3.445 of the Act, 415 ILCS 5/3.445 (2010) provides, in pertinent part, as follows:

“Sanitary landfill” means a facility permitted by the Agency for the disposal of waste on land . . . without creating nuisances or hazards to

public health or safety, by confining the refuse to the smallest practical volume and covering it with a layer of earth at the conclusion of each day's operation, or by such other methods and intervals as the Board may provide by regulations.

ANSWER: AERG answers that the Act speaks for itself. To the extent the allegations of Paragraph 20 are inconsistent therewith, they are denied.

21. Section 3.535 of the Act, 415 ILCS 5/3.535 (2010) provides, in pertinent part, as follows:

“Waste” means any garbage, . . . or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities . . .

ANSWER: AERG answers that the Act speaks for itself. To the extent the allegations of Paragraph 21 are inconsistent therewith, they are denied.

22. Section 21 of the Act, 415 ILCS 5/21 (2010) provides, in pertinent part, as follows:

No person shall:

(a) Cause or allow the open dumping of any waste.

* * *

(d) Conduct any waste-storage, waste-treatment, or waste-disposal operation:

1. Without a permit granted by the Agency or in violation of any conditions imposed by such permit . . . ;

2. In violation of any regulations or standards adopted by the Board under this Act; or

* * *

(e) Dispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.

* * *

(r) Cause or allow the storage or disposal of coal combustion waste unless:

(1) such waste is stored or disposed of at a site or facility for which a permit has been obtained or is not otherwise required under subsection (d) of this Section; or . . .

* * *

ANSWER: AERG answers that the Act speaks for itself. To the extent the allegations of Paragraph 22 are inconsistent therewith, they are denied.

23. Section 812.101(a) of the Land Pollution Regulations, 35 Ill. Adm. Code 812.101(a), provides, in pertinent part, as follows:

All persons, except those specifically exempted by Section 21(d) of the Act, shall submit to the Agency an application for a permit to develop and operate a landfill . . .

* * *

ANSWER: AERG answers that the Act speaks for itself. To the extent the allegations of Paragraph 23 are inconsistent therewith, they are denied.

24. Respondent caused or allowed the open dumping of Coal Combustion Waste or “CCW”, in violation of Section 21(a) of the Act, 415 ILCS 5/21(a) (2010).

ANSWER: The allegations of Paragraph 24 are legal conclusions to which no answer is necessary or required. To the extent they also allege facts, they are denied.

COUNT II
WASTE STORAGE AND WASTE DISPOSAL VIOLATIONS

1-23. Complainant realleges and incorporates herein by reference paragraphs 1 through 23 of Count I as paragraphs 1 through 23 of this Count II.

ANSWER: AERG realleges and incorporates its foregoing answers to Paragraphs 1-23 of the sections of this Complaint.

24. Respondent conducted a waste-storage and waste-disposal operation at the Site without a permit granted by Illinois EPA, in violation of Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2010).

ANSWER: The allegations of Paragraph 24 are legal conclusions to which no answer is necessary or required. To the extent they also allege facts, they are denied.

25. Respondent conducted a waste-storage and waste-disposal operation at the Site without submitting an application for a permit to Illinois EPA, in violation of 35 Ill. Adm. Code 812.101(a) and Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2010).

ANSWER: The allegations of Paragraph 24 are legal conclusions to which no answer is necessary or required. To the extent they also allege facts, they are denied.

26. Respondent conducted a waste-storage and waste-disposal operation at the Site that did not meet the requirements of the Act and regulations, in violation of Section 21(e) of the Act, 415 ILCS 5/21(e) (2010).

ANSWER: The allegations of Paragraph 24 are legal conclusions to which no answer is necessary or required. To the extent they also allege facts, they are denied.

COUNT III
COAL COMBUSTION WASTE DISPOSAL VIOLATION

1-23. Complainant realleges and incorporates herein by reference paragraphs 1 through 23 of Count I as paragraphs 1 through 23 of this Count III.

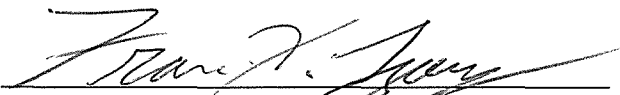
ANSWER: AERG realleges and incorporates its foregoing answers to Paragraphs 1-23 of the sections of this Complaint

24. Respondent operated a CCW disposal site without a permit granted by Illinois EPA, in violation of Section 21(r) of the Act, 415 ILCS 5/21(r) (2010).

ANSWER: The allegations of Paragraph 24 are legal conclusions to which no answer is necessary or required. To the extent they also allege facts, they are denied.

Respectfully submitted,

AMERENENERGY RESOURCES
GENERATING COMPANY

By: 
FRANCIS X. LYONS

Dated: May 6, 2013

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

v.

AMERENENERGY RESOURCES GENERATING
COMPANY, INC.,

Respondent.

PCB 13-41
(Enforcement - Land)

NOTICE OF FILING

TO: Attached Service List

PLEASE TAKE NOTICE that on May 6, 2013, I filed with the Pollution Control Board of the State of Illinois, an ANSWER TO COMPLAINT on behalf of AmerenEnergy Resources Generating Company, Inc., copies of which are attached hereto and herewith served upon you.

Respectfully submitted,

AMERENENERGY RESOURCES GENERATING
COMPANY, INC.

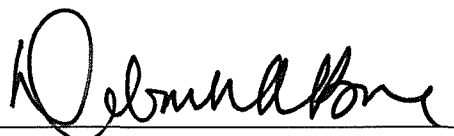
By: _____


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CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2013, I caused to be served a true and correct copy of the NOTICE OF FILING and ANSWER TO COMPLAINT on behalf of AmerenEnergy Resources Generating Company, Inc., upon the persons on the service list below.



Deborah Bone

SERVICE LIST

ELECTRONICALLY

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