

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of: )  
)  
COAL COMBUSTION WASTE (CCW) ) R14-10  
ASH PONDS AND SURFACE ) (Rulemaking – Water)  
IMPOUNDMENTS AT POWER )  
GENERATING FACILITIES: )  
PROPOSED NEW 35 ILL. ADM. )  
CODE 841 )

NOTICE OF FILING

TO: See attached Service List

PLEASE TAKE NOTICE that on June 11, 2014, I filed electronically with the Clerk of the Pollution Control Board of the State of Illinois, my **PRE-FILED QUESTIONS FOR ENVIRONMENTAL GROUPS**, a copy of which is herewith served upon you.

Respectfully submitted,

/s/ David L. Rieser

David L. Rieser  
Much Shelist, P. C.  
191 North Wacker Drive, Suite 1800  
Chicago, Illinois 60606  
312-521-2000  
drieser@muchshelist.com

**CERTIFICATE OF SERVICE**

I, David L. Reiser, an attorney, hereby certify that on June 11, 2014, I served the foregoing **PRE-FILED QUESTIONS FOR ENVIRONMENTAL GROUPS** upon those listed below:

**Via the Illinois Pollution Control Board Clerk's Office Online (COOL) electronic filing system to:**

Mr. John Therriault, Assistant Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, IL 60601

**Via U.S. Mail to:**

Mr. John Therriault, Assistant Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, IL 60601

Stephen Sylvester  
Division Chief of Environmental Enforcement  
Office of the Attorney General  
69 W. Washington Street, Suite 1800  
Chicago, IL 60601

Joanne Olson  
James Jennings  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue, East  
P.O. Box 19276  
Springfield, IL 62794-9276

Christine Zeman  
City of Springfield  
Office of Public Utilities  
800 East Monroe, 4<sup>th</sup> Floor  
Municipal Building East  
Springfield, IL 62757

Amy Antonioli  
Schiff Hardin, LLP  
6600 Willis Tower  
233 S. Wacker Drive  
Chicago, IL 60606

Andrew Armstrong  
Faith E. Bugel  
Jennifer L. Cassel  
Jessica Dexter  
Environmental Law and Policy Center  
35 E. Wacker Drive, Suite 1600  
Chicago, IL 60601

Jack Darin  
Sierra Club  
70 E. Lake Street  
Suite 1500  
Chicago, IL 60601

Ameren Services  
One Ameren Plaza  
P.O. Box 66149  
St. Louis, MO 63166

Michael Smallwood  
Ameren Services  
1901 Chouteau Avenue  
St. Louis, MO 63103

Jason McLaurin  
Southern Illinois Power Cooperative  
11543 Lake of Egypt Road  
Marion, IL 62959-8500

Traci Barkley  
Prairie Rivers Network  
1902 Fox Drive, Suite 6  
Champaign, IL 61820

Alec Messina  
IERG  
215 E. Adams Street  
Springfield, IL 62701

Abel Russ  
Environmental Integrity Project  
1000 Vermont Avenue NW  
Suite 1100  
Washington, DC 20005

Electric Energy, Inc.  
2100 Portland Road  
P.O. Box 165  
Joppa, IL 62953

Prairie Power, Inc.  
P.O. Box 10  
Peral, IL 62361

Office of Legal Services  
Illinois Department of Natural Resources  
One Natural Resources Way  
Springfield, IL 62702-1271

Exelon Law Department  
10 S. Dearborn, 49<sup>th</sup> Floor  
Chicago, IL 60603

Susan M. Franzetti  
Nijman Franzetti LLP  
10 S. LaSalle Street  
Suite 3600  
Chicago, IL 60603

Rick Diericx  
Dynergy Midwest Generation, Inc.  
604 Pierce Blvd.  
O'Fallon, IL 62269

Christopher Foley  
Midwest Generation  
500 W. Madison Street, Suite 2640  
Chicago, IL 60661

Kincaid Generation LLC  
P.O. Box 260  
Kincaid, IL 62540

Prairie State Generating Company  
4190 County Highway 12  
Marissa, IL 62257

/s/ David L. Rieser

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>In the Matter of:</b>	)	
	)	
<b>COAL COMBUSTION WASTE (CCW)</b>	)	<b>R14-10</b>
<b>ASH PONDS AND SURFACE</b>	)	<b>(Rulemaking – Water)</b>
<b>IMPOUNDMENTS AT POWER</b>	)	
<b>GENERATING FACILITIES:</b>	)	
<b>PROPOSED NEW 35 ILL. ADM.</b>	)	
<b>CODE 841</b>	)	

**PRE-FILED QUESTIONS FOR ENVIRONMENTAL GROUPS**

Dynergy Midwest Generation, LLC, Illinois Power Generating Company, Illinois Power Resources Generating, LLC and Electric Energy, Inc. (collectively, “Dynergy”), by and through their counsel Much Shelist P.C., submits these questions for the witnesses presented by the Environmental Groups. Dynergy requests that the Hearing Officer allow follow-up questions to be posed based on the answers provided.

- I. Questions Regarding June 6 Comments
  - 1. What standards should the Agency use in determining whether the removal of CCW from a given impoundment is “technically feasible?” Is it your position that the Agency should be precluded from considering economic reasonableness?
  - 2. What was your basis for rejecting any consideration of economic reasonableness as described on page 5?
  - 3. Regarding your proposed language at Section 841.400(b) are the standards regarding the technical infeasibility for units subject to the criteria listed in subsections 1-3, different than the standards for other units? Does the Agency make the decision regarding the technical infeasibility for units subject to the criteria in subsections 1-3? If not, why not? What entity makes that decision and according to what process?

4. Have the Groups estimated the volume of CCW which would need to be removed from units meeting these criteria or the cost of closing these units by removal of CCW?
5. On the bottom of page 5, your comments identify Board regulations regarding the siting of certain disposal facilities in support of your proposal that some units should always be closed by removal of CCW. These regulations apply solely to the siting of future facilities? Do any of these require the removal of waste from existing facilities?
6. With respect to your comments regarding design standards at p. 10 you indicate that you are proposing standards “similar” to U.S. EPA’s Subtitle D proposal for disposal of coal ash residues. In what ways is your proposal similar to the proposed rules and in what ways is it different? If U.S. EPA’s rules are going to provide the reference point, shouldn’t the Board wait for those rules to be adopted before determining whether they are adequate or inadequate?
7. With respect to your comments regarding Anti-Degradation assessments at page 12, and other than your proposal to modify the timing for the IEPA to make an Anti-Degradation Assessment, is it your intent that the Board modify its current anti-degradation requirements at 35 Ill. Adm. Code 302.105? If, so, in what way?
8. What is the basis for treating CCW units differently than any other source which plans to seek a new or modified NPDES permit?
9. Is it your intent that the Agency make and propose publicly an anti-degradation determination in the absence of the information required by the Board for an

application for an NPDES permit or modification? Would its decision be subject to review by U.S. EPA?

10. What procedure would third parties use to challenge an Agency determination on anti-degradation made outside of the NPDES permit process?
11. At page 16, you state that the “proposed rule would be applicable to all units receiving stormwater...” Please confirm that the “units” referenced in this statement refer only to surface impoundment units containing CCW or leachate from coal combustion waste.
12. At page 18, you urge the Board to adopt a rule requiring closure “where the owner or operator fails to implement a viable corrective action plan.” Please define what you mean by "viable" in this context.
13. Regarding the proposed prohibition of CCW for final grade or slope, what is the basis for the prohibition in all instances? Are there any engineering solutions that would meet the objections of the Groups?

## II. Questions Regarding the Groups’ Proposed Revisions

14. At Section 841.130(a) what is your purpose in adding “Except as provided in this Section...?”
15. Does the proposed language in Section 841.150 apply to applicants who appeal the Agency’s denial to the Board?
16. At Section 841.165, why are alternative cause demonstrations added to the public notice requirements?

17. At Section 841.165(c), why don't the Agency's public hearing requirements apply? Does the Board have the authority to determine to which Agency hearings the Agency's public hearing rules apply?
18. At Section 841.235(c)(2) and (c)(3), what is the basis for deleting the limitations based on the classification of groundwater?
19. At Sections 841.300(b)(2) and 841.305(c)(1) the proposed revisions appear to direct the owner or operator to "initiate closure" after submitting plans to the Agency. Do these changes require the owner or operator to "initiate closure" without waiting for Agency action on their submitted plans? Is the owner or operator required to forgo any appeals to the Board of Agency action? If not, what is the purpose of adding this language?
20. At Sections 841.405(a)(1)(C) and (a)(2)(B), the Groups propose adding a requirement to take action within a specified time of an event and without regard to the Agency's approval of a closure plan. What is the purpose of these additional requirements? Should owners or operators proceed with a closure plan without Agency approval?

21. At Sections 841.500(f) and 841.505(f), what is the purpose of the language stating that the Agency's approval of a plan should not be a defense to violation of the Act or regulations?

Respectfully submitted,

/s/ David L. Rieser

David L. Rieser  
**Much Shelist, P. C.**  
191 North Wacker Drive, Suite 1800  
Chicago, Illinois 60606  
312-521-2000  
drieser@muchshelist.com