

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: ALL PARTIES ON THE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that today I have electronically filed with the Office of the Clerk of the Illinois Pollution Control Board the attached **REPOSE IN SUPPORT OF IEPA'S MOTION TO SEVER AND OPEN SUBDOCKET**, copies of which are herewith served upon you.



Amy Antonioli

Dated: June 26, 2014

Amy Antonioli
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REPONSE IN SUPPORT OF IEPA’S MOTION TO SEVER AND OPEN SUBDOCKET

Participants Ameren Missouri and AmerenEnergy Medina Valley Cogen, LLC (“Ameren”), by their attorneys, Schiff Hardin, LLP, support and ask the Illinois Pollution Control Board (“Board”) to grant the Motion to Sever (the “Motion”), filed electronically by the Illinois Environmental Protection Agency (“IEPA” or “Agency”) on June 11, 2014. This response is timely filed in accordance with 35 Ill. Adm. Code 101.500(d).

In the Motion, the Agency asks the Board to create a subdocket for the consideration of three issues proposed for adoption by the Environmental Integrity Project, Environmental Law & Policy Center, Prairie Rivers Network, and Sierra Club (collectively, “Environmental Groups”). Specifically, the three issues from the Environmental Groups’ proposal include: (1) the design criteria set forth in proposed Section 841.450; (2) the financial assurance requirements set forth in proposed Section 841.130(b); and (3) the requirement that closure and post-closure care plans be submitted during the compliance period as set forth in Section 841.130(b). On June 17, 2014, the Environmental Groups responded in opposition to the Agency’s motion (“Objection”), arguing that severing the docket would not result in a convenient, expeditious, or complete determination of these issues.

Ameren supports the Agency’s Motion and contends that severing the docket would provide certainty on long-awaited regulations for the closure of surface impoundments in a

timely manner and in a way that is protective of human health and the environment. In support of this Response in Support of IEPA's Motion to Sever and Open Subdocket, Ameren respectfully states as follows:

1. In this rulemaking proceeding, the Environmental Groups filed a counterproposal on May 13, 2014, the day before the hearing scheduled in Chicago on May 14, 2014. This provided all participants less than 24 hours to review the proposed revisions to the Agency's rulemaking proposal. The revisions proposed for the first time requirements for design criteria, and financial assurance, and a requirement that owners or operators of units subject to Part 841 file a closure plan and post-closure care plan within a year of the effective date of Part 841. The timing of such eleventh hour filing could only be assumed to be deliberate. The Environmental Groups proposed these significant revisions without conducting outreach with the implementing Agency or affected sources and without any demonstration of the economic or technical impacts of the revisions. As recent as June 19, 2014, as demonstrated at hearing,¹ the Environmental Groups were unprepared to answer the Agency's pre-filed questions regarding the design criteria elements of their proposed revisions.

2. The Agency moves to sever the docket consistent with 35 Ill. Adm. Code 101.408 on the grounds that doing so would be "in the interest of convenient, expeditious, and complete determination of claims," and would not cause any participant "material prejudice." Mot., par. II. 1.

3. Ameren agrees that the Environmental Groups' proposed amendments do not even begin to address environmental, technical, economic, and legal impacts of the proposed

¹ At the time of this filing, the transcript of the June 19 hearing was not yet available.

surface impoundment design criteria and financial assurance, and that these issues and their impact must be thoroughly examined and considered.

4. As stakeholders we continually demand that the Agency conduct outreach prior to coming before this Board with rulemaking proposals, and in this case, the Agency did just that in a thoughtful and comprehensive way. The provisions of proposed Part 841 are the result of a commitment of great time and effort by both the Agency and numerous other stakeholders and, most importantly, represent environmental progress and regulatory certainty.

5. There is no question that the Agency now must conduct additional outreach and fully develop the record regarding these issues. It is unclear why the Environmental Groups pursued the strategy that they did instead of presenting their proposal through the outreach efforts afforded by the Agency before the rulemaking proposal was filed. The Environmental Groups' implied request to delay these rules by introducing on the eleventh hour drastically revised revisions with no support and a severely limited opportunity to question the technical basis for the revisions should not be allowed.

6. The Agency lists several ways that severing the docket will provide benefits, including that severing "will allow owners and operators of CCW surface impoundments to proceed with the corrective action and closure at their existing units." Mot. par. II. 15. The Agency further explains that delaying the adoption of the proposed rule "may have the effect of delaying corrective action and closure at surface impoundments that may be subject to the proposed rule whose owners or operators are awaiting a final rule." *Id.* at par. II. 18. We agree.


7. The Agency has conducted extensive outreach on its proposal and the regulated community has had the opportunity to work with the Agency and provide comment in this rulemaking proceeding regarding those issues. Allowing the rulemaking to be further delayed

due to the Environmental Groups' lack of preparation regarding these three issues would prejudice both the Agency as well as owners and operators seeking to close surface impoundments in a timely fashion.

8. Contrary to the Environmental Groups' Objection, severing the docket will also result in greater protection of human health and the environment. Adopting the proposed regulations without further delay will provide owners and operators the regulatory certainty needed to begin progressing towards corrective action or closure under the Agency's proposed regulatory scheme. With a Part 841 in place, owners and operators will be able to address groundwater impacts and close surface impoundments years earlier than if the rulemaking were further delayed to address the design criteria, financial assurance, and timing of closure and post-closure care plan issues raised in the Environmental Groups' proposed revisions.

WHEREFORE, Ameren respectfully requests that the Board grant the Illinois Environmental Protection Agency's Motion to Sever and Open Subdocket.

Respectfully submitted,




Ameren Missouri and AmerenEnergy Medina Valley Cogen, LLC

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CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 26th day of June, 2014, I have served the attached **REPOSE IN SUPPORT OF IEPA'S MOTION TO SEVER AND OPEN SUBDOCKET**, by first class mail, postage affixed, upon the persons in the attached service list.


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