

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:

)
)
COAL COMBUSTION WASTE (CCW))
ASH PONDS AND SURFACE)
IMPOUNDMENTS AT POWER)
GENERATING FACILITIES: PROPOSED)
NEW 35 ILL. ADM. CODE 841)

R14-10
(Rulemaking – Water)

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 **POST-HEARING COMMENTS OF AMEREN MISSOURI AND AMERENENERGY MEDINA VALLEY COGEN, LLC**, copies of which are herewith served upon you.



Amy Antonioli

Dated: October 20, 2014

Amy Antonioli
SCHIFF HARDIN LLP
233 South Wacker Drive
Suite 6600
Chicago, Illinois 60606
312-258-5500

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 |) | |

**POST-HEARING COMMENTS OF AMEREN MISSOURI AND AMERENENERGY
MEDINA VALLEY COGEN, LLC**

I. INTRODUCTION

The Agency filed a proposed rule of general applicability to regulate, manage, and close coal combustion waste (“CCW”) surface impoundments at power generating facilities on October 28, 2013. To date the Board has held seven days of hearing and has not yet adopted the proposal for first notice.

Ameren’s Post-Hearing Comment is based on first-hand knowledge gained from closing surface impoundments in Illinois, under Agency oversight. Specifically, the closed ash ponds include Pond D at Hutsonville Power Station and Ponds 2 and 3 at Venice Power Station. Ameren submitted closure plans to the Agency that were subsequently approved. Ameren implemented the closure plans and achieved closure of these ponds. Closure of Pond D at Hutsonville was completed in January 2013. Closure of Ponds 2 and 3 at Venice was completed in 2012. Pond D at Hutsonville and Ponds 2 and 3 at Venice are now in post closure care.

As the Board is aware, the Agency’s proposal is an out-growth of a rulemaking proposal originally proposed by Ameren through the site specific rulemaking process last year. At that time, the state did not have specific regulations on the books to guide the closure of CCW impoundments and Ameren wanted to proceed with its plan to complete synchronized closures

across the system. *See In the Matter of Site-Specific Rule for the Closure of Ameren Energy Resources Ash Ponds: Proposed New 35 Ill. Adm. Code 840, Subpart B, R13-19.* Instead of waiting until the federal rules were promulgated, and final and effective, Ameren decided to step out ahead and crafted a comprehensive rule for its system so it could continue to execute on its commitment to close certain of its CCW impoundments consistent with a state sanctioned regulatory process. Notably, it was a member of industry that committed resources to proactively develop a rule and it is always much easier to second guess and criticize than it is to do the initial hard work.

Ameren has actively participated in all phases of the Agency's development of the proposal and of this Board's hearings on the proposal and appreciates the opportunity to participate in this process and for the Agency's willingness to develop this rulemaking proposal. Although certain aspects of the rule require revision, our post-hearing comments are intended to provide necessary and constructive suggestions for the Board's consideration.

II. DISCUSSION

A. The Agency's Proposal Provides a Workable Regulatory Program for the Closure of Surface Impoundments.

There can be no question, the Agency proposal is very conservative, but generally provides a workable regulatory structure for the regulated community. The Proposal takes a very conservative approach to protecting groundwater because it is based on compliance with Illinois' Part 620 groundwater quality standards, which by their own nature are very stringent. 35 Ill. Adm. Code 620. For instance, the Board's Part 620 regulations include a Class I: Potable Resource Groundwater groundwater quality standard for boron, which is a relevant coal combustion waste contaminant. *See 35 Ill. Adm. Code 620.410(a).* The groundwater quality

standard for boron, however, is not based on a primary drinking water standard adopted by the Board in 35 Ill. Adm. Code Part 611.

The Environmental Groups frequently pointed to the United States Environmental Protection Agency's draft federal Coal Combustion Residuals ("CCR") standards (75 Fed. Reg. 35128-35265; Docket No. EPA-HQ-RCRA-2009-0640-0352) as more conservative than the Agency proposal. However, under all of the options USEPA proposes, the federal rule does not apply to legacy sites.

Existing CCR Landfill/Existing CCR Surface Impoundment. EPA has included a proposed definition of this term to mean a CCR landfill or surface impoundment, which was in operation on, or for which construction commenced prior to the effective date of the final rule. . . . These definitions are identical to the co-proposed subtitle C definitions, described in section VI. EPA sees no reason to establish separate definitions of these units for purposes of RCRA subtitle D since the question of whether these units are existing should not differ between whether they are regulated under RCRA subtitles C or D.

75 Fed. Reg. 35196 (Jun. 21, 2010). Therefore, a surface impoundment that ceased operation prior to the effective date of the final rule is excluded from both the Subtitle C and the Subtitle D options. The Agency rule applies to legacy sites where there may be groundwater standards exceedances,¹ whereas the federal rule applies only to impoundments that are operational as of the date the rule becomes effective. *See* Proposed 40 C.F.R. §257.40; 75 Fed. Reg. 35240. The Agency proposal is based on Agency experience in capping and closing surface impoundments at sites like Venice and Hutsonville; the Environmental Groups' proposal does not add environmental protection, and will make the Agency proposal unworkable.

¹ Referring to the exemption in proposed Section 841.105(a), the Agency stated: "This exemption was designed to apply to legacy sites that may have stopped operating decades ago so long as they were not currently causing groundwater problems." *Illinois Environmental Protection Agency's Prefiled Answers*, R14-10, Att. A, p. 1, filed July 17, 2014.

Ameren's efforts and progress towards the closure of certain units should be recognized in Part 841. Ameren worked voluntarily with the Agency to close Ponds 2 and 3 at Venice. Ameren is also currently working on a technical strategy to close the remaining ponds (other than closed Pond D) at Hutsonville. The closure plan for the remaining ponds at Hutsonville will be protective of human health and the environment and will address the technical closure criteria in the Agency's Part 841 proposal. Ameren has met with the Agency to discuss this strategy as recently as August 6, 2014. Submission, approval, and implementation of closure plans will accelerate environmentally protective closure, a goal that all participants in this proceeding favor.

To that end, on July 21, 2014, Ameren submitted proposed revisions to the Applicability and Definition sections (35 Ill. Adm. Code 841.105, 110). The proposed language would have limited the applicability of Part 841 to the surface impoundments at Venice and Hutsonville Power Stations that are subject to approved closure plans such that the provisions of Part 841 would only apply as to post-closure care obligations.

During the post-hearing public comment period, IEPA and Ameren discussed revised language that would address owners and operators that have taken steps towards closure such as the Hutsonville and Venice Power Stations. Ameren agrees to support the following revised language to proposed sections 841.130, 145, 435, and 505:

Section 841.130 Compliance Period

- a) Except as provided in this Section, the compliance period begins when the unit first receives coal combustion waste, or leachate from coal combustion waste, or on the effective date of this Part, whichever occurs later, and ends when the post-closure care period ends. The post-closure care period for a unit is the time period described in Section 841.440(a) of this Part.
- b) If the unit was in operation on or before the effective date of this Part, the owner or operator shall conduct a hydrogeologic site characterization, establish

background values, develop a groundwater monitoring system, and submit a groundwater monitoring plan within one year of the effective date of this Part. If, pursuant to subsection (c)(3), the owner or operator has demonstrated that the unit has been closed in accordance with Section 841.415 and 841.420, the owner or operator is not required to conduct a hydrogeologic site characterization in accordance with Section 841.200. If the owner or operator wishes to use previous site investigations or characterization, plans or programs to satisfy the requirements of this Part pursuant to Section 841.145, the owner or operator must submit the previous investigations, characterizations, plans or programs in accordance with Section 841.140 of this Part to the Agency for approval pursuant to Section 841.145 of this Part within one year of the effective date of this Part.

- c) If the unit is within a groundwater management zone established pursuant to 35 Ill. Adm. Code 620.250 and the groundwater quality standard exceedence for which the groundwater management zone was established was attributable to a release from the unit, the owner or operator shall, within 1 year after the effective date of this Part:
- 1) submit a corrective action plan pursuant to Section 841.310;
 - 2) submit a closure plan pursuant to Section 841.410; or
 - 3) demonstrate that the unit has been closed in accordance with Sections 841.415 and 841.420, and submit a post-closure care plan in accordance with Section 841.435.

Section 841.145 Previous Investigations, Plans and Programs

- a) The Agency may approve the use of any hydrogeologic site investigation or characterization, groundwater monitoring well or system, groundwater monitoring plan, groundwater management zone or preventive response plan, compliance commitment agreement, or court or Board order existing prior to the effective date of these rules to satisfy the requirements of this Part.
- b) If the unit is within a groundwater management zone established pursuant to 35 Ill. Adm. Code 620.250 and the groundwater quality standard exceedence for which the groundwater management zone was established was attributable to a release from the unit, the Agency shall approve previously submitted corrective action plans or closure plans that satisfy the requirements of this Part. If the owner or operator has demonstrated that the unit has been closed in accordance with Sections 841.415 and 841.420, and has submitted a post-closure care plan in accordance with Section 841.435, the Agency shall deem closure complete and approve the post-closure care plan.

Section 841.435 Post-Closure Care Plan

- a) The owner or operator of the unit must prepare and submit to the Agency a post-closure care plan for review and approval at the same time it submits the closure plan pursuant to Section 841.410 of this Part.
- b) The owner or operator must maintain the post-closure care plan on-site or at a location specified in the post-closure care plan.
- c) The post-closure care plan, or modification of the plan, must include, at a minimum, the following elements:
 - 1) description of the post-closure care activities required by Section 841.430 of this Part;
 - 2) description of the operation and maintenance that will be required for the groundwater collection system and discharge systems, if applicable;
 - 3) ~~the information and documents required in the closure plan pursuant to Section 841.410 of this Part; and~~
 - 4) a description of the planned uses of the property during the post closure care period; and
 - 4)5) the signature and seal of the professional engineer supervising the preparation of the post-closure care plan.

Section 841.505 Review and Approval of Reports and Certifications

The corrective action report, certification of corrective action, closure report, certification of closure, demonstration pursuant to Section 841.130(c)(3), post-closure report, and certification of completion of post-closure care prepared and submitted to the Agency in accordance with this Part must be reviewed and approved by the Agency prior to the completion of corrective action, closure, or post-closure care.

- a) Corrective action, closure and post-closure activities will not be deemed complete until the reports are approved by the Agency.
- b) Submission, review, and approval procedures and deadlines, notification requirements, and rights of appeal shall be the same as those set forth in Section 841.500 of this Part.
- c) When reviewing a corrective action report and certification of corrective action, the Agency must consider whether the documentation demonstrates that the activities, structures and devices approved in the corrective action plan have been

completed, operated and maintained in accordance with this Part and the approved corrective action plan.

- d) When reviewing a closure report and certification of completion of closure, the Agency must consider whether the documentation demonstrates that the activities, structures and devices approved in the closure plan have been completed in accordance with this Part and the approved closure plan.
- e) When reviewing a demonstration pursuant to Sections 841.130(c)(3), the Agency must consider whether the unit has been closed in accordance with Section 841.415 and 841.420.
- f)e) When reviewing a post-closure report and certification of completion of post-closure care plan, the Agency must consider whether the documentation demonstrates that the activities, structures and devices approved in the post-closure care plan have been completed, operated and maintained in accordance with this Part and the approved post-closure care plan.

As drafted, the language will allow Ameren to submit a closure demonstration and post-closure care plan for Venice Ponds 2 and 3 to the Agency for approval after the adoption of the rule (pursuant to Section 841.130(c)(3)), and the Agency shall deem closure complete and approve the post-closure care plan, assuming it meets the requirements stated therein (Section 841.145(b)). Allowing Ameren to rely on plans that have already been submitted and approved, such as a hydrogeologic site characterization, recognizes the important and careful work Ameren has previously accomplished in closing surface impoundments pursuant to Agency approval and oversight. Subjecting a closed unit to have to recreate and resubmit previously-approved analyses and reports is not a wise use of anyone's resources nor is it necessary. Moreover, not providing for previously-approved plans creates a disincentive for moving forward with submitting plans for the balance of surface impoundments at Hutsonville at this time. Without this language, the rule would, in effect, force Ameren to do what it specifically wanted to avoid—wait to move forward with the environmentally responsible work of closing its ash ponds consistent with its plan, budget, and a synchronized approach.

Ameren agrees, therefore, to support IEPA's proposed revisions to Sections 841.130, 841.145, 435 and 841.505 as set forth above. The proposed amendments would provide Ameren assurance that prior efforts towards closing these ponds are recognized.

B. Ameren Supports the Agency's Use of Institutional Controls and Alternative Groundwater Quality Standards.

In its most recent revisions to the proposal language, the Agency recognized the need for a practical and protective approach to handling impacts to groundwater. Importantly, the Agency noted that "in some instances an institutional control may be necessary because the Part 620 numeric standards are not achievable following corrective action. Therefore, under the Agency's proposal, the owner or operator of a unit may use an institutional control or other mechanism to exclude a migration pathway only as evidence that threats to the public health and environment have been minimized, in order to obtain an alternative groundwater standard."² The Agency allows the use of institutional controls in newly revised Section 841.125(b), and alternative groundwater quality standards under proposed Section 841.310(h)(2) and 841.440(a)(2).

Ameren strongly supports the inclusion of these provisions in Part 841. They will be key to the long term functioning of Part 841 in a manner that protects human health and the environment, but also provides the potential for relief to owners and operators using regulatory mechanisms that have long been recognized by the Agency in its implementation of Part 620.

² *Illinois Environmental Protection Agency's Prefiled Answers*, R14-10, Att. A, p. 13, filed July 17, 2014.

C. Ameren's Prior Experience Managing and Closing Surface Impoundments Illustrates the Costs and Technical Challenges Related to Clean Closure.

The record shows that the cost of removing CCW from surface impoundments can be cost prohibitive relative to the cost of closing surface impoundments with CCW left in place. The record further shows that the additional costs that will be incurred is not justified in any respect since closure in place for most CCW impoundments is protective of human health and the environment. The Environmental Groups provided examples that are not useful to this analysis. Ameren provided in this proceeding a technical memorandum submitted previously to the Agency in support of closing Ponds 2 and 3 at Venice Power Station (entitled "Technical Memorandum #4, Evaluation of Closure Alternatives, Venice Ash Ponds," Natural Resource Technology, Mar. 12, 2010). Jun. 18, 2014 Tr., Exh. 50.³ The memorandum evaluated several alternatives to closing Ponds 2 and 3. The option of removing the ash and disposing of it offsite was estimated at \$200 million. This alternative assumes that ash removed can be disposed in a municipal solid waste landfill as a nonhazardous waste. Jun. 18, 2014 Tr., Exh. 50, p. 5. The alternative ultimately selected at the site by Ameren, and approved by the Agency, was a geosynthetic membrane cap and cover at an estimated cost of \$11 million. The cost of excavation and disposal is approximately \$67 per ton of ash.⁴ Jun. 18, 2014, Tr. at 166.

Ameren submitted a second document into the record which was previously entered into the record in support of Ameren's request for a site-specific rulemaking for the closure of

³ This technical memorandum is also available at: <http://www.epa.state.il.us/water/ash-impoundment/ameren-venice-station/tech-memo4.pdf>.

⁴ Ameren arrived at this number by multiplying the estimated quantity of ash to be excavated from Ponds 2 and 3 (2,427,260 cubic yards) by a ratio of 2,430 pounds per cubic yard, totaling (c) 2,949,121 tons of ash to be hauled away and disposed of. The estimated cost of the project was \$197,300,000, which makes the cost per ton (\$197,300,000/2,949,121 tons) equal to \$66.90 per ton. Jun. 18, 2014 Tr., Exh. 50, Attachment 2, Cost Estimation Sheets.

Hutsonville Pond D. Jun. 18, 2014 Tr., Exh. 51.⁵ Chapter five of the technical support document evaluated closure alternatives. Ameren evaluated the option of removing and disposing of the ash at Pond D, which was estimated at approximately \$34 million, and ultimately selected the final cover option of a geomembrane with an estimated cost of \$4 million, combined with a groundwater collection trench with an estimated cost of \$800,000. *Id.* at 170; Jun. 18, 2014 Tr., Exh. 51, p. 000073. The cost of excavation and disposal is approximately \$25 per ton of ash.⁶ Jun. 18, 2014 Tr., Exh. 51, p. 000158.

These real life cost comparisons of closure alternatives show the inappropriateness of any rule which would mandate removal of CCW from a coal ash impoundment.

D. Ameren Supports Opening a Separate Subdocket to Consider The Environmental Groups' Proposed Design Criteria for New Surface Impoundments.

On June 11, 2014, IEPA moved to sever the docket and open a separate subdocket for the consideration of the Environmental Groups' proposed design criteria for new surface impoundments, as well as financial assurance requirements and the requirement that closure and post-closure care plans be submitted during the compliance period.⁷ Ameren supports the Agency's position that the Board should open a separate subdocket.⁸ This approach would allow

⁵ Chapter 5 is also available at: <http://www.ipcb.state.il.us/documents/dsweb/Get/Document-65180>.

⁶ Ameren arrived at this number by multiplying the estimated quantity of dry and saturated ash to be excavated (830,000 cubic yards) by a ratio of 1.6 tons per cubic yard, resulting in a total of 1,328,000 tons to be hauled away. The total estimated cost of the project was \$34,000,000, which makes the cost per ton equal to \$25.60 per ton. These costs are based on 2005 dollars and assumed disposal at a non-hazardous landfill (at a cost of \$7.40/ton).

⁷ *Agency Motion to Sever and Open Subdocket*, R14-10, filed June 11, 2014; see also *Illinois Environmental Protection Agency's Prefiled Answers*, R14-10, Att. A, p. 15-16, filed July 17, 2014.

⁸ *Ameren's Response in Support of IEPA's Motion to Sever and Open Subdocket*, R14-10 (filed June 25, 2014).

the Agency to conduct stakeholder outreach specifically on the Environmental Group's proposal and gather input from the regulated community as well as environmental groups. As stated in more detail in *Ameren's Response in Support of IEPA's Motion to Sever and Open Subdocket*, the Environmental Groups' proposed revisions on these issues do not adequately address the potential environmental, technical, economic or legal impacts to the Agency or the regulated community and are not adequately supported by facts. Allowing the Environmental Groups to further support the proposed revisions and supplement the record in this docket would significantly delay the progress and resolution of this rulemaking if, for example, the Board were to conduct additional hearings on these issues.

E. Many of The Environmental Groups' Proposed Revisions Are Unworkable and Should Not Be Adopted.

The Environmental Groups' filed proposed amendments to the Agency's proposed new Part 841 on July 21, 2014, and this constitutes the latest draft of their proposed revisions. See July 24, 2014 Tr. at 159. The following provisions of the Environmental Groups' proposed amendments to the Agency's proposal are simply unworkable and should not be adopted:

Revisions to Applicability Section (35 Ill. Adm. Code 841.105)

The Environmental Groups included an exemption to applicability which would exempt no facility. In addition, the language is confusing and ineffective. The exemption states:

- b) Except for the requirements of subsection (c) of this Section, ~~T~~his Part does not apply to any surface impoundment unit:

- 2) that has initiated closure pursuant to a closure plan that will require the removal of all coal combustion waste and leachate, or cover with a final cover system meeting the standards of Section 841.420, before the effective date of these rules, that is not operated after the effective date of these rules, and whose coal combustion waste or leachate from coal combustion waste does not

cause or contribute to an exceedence of the groundwater quality standards;-

Environmental Groups' Proposed Amendments to Proposed New 35 Ill. Adm. Code Part 841, R14-10, pp. 3-4 (filed July 21, 2014). The Environmental Groups did not have any units in mind when crafting this exemption. July 24, 2014 Tr. at 155. Moreover, if a unit has initiated closure prior to the effective date of the rule, but then receives rainfall during construction, the unit is suddenly no longer exempt from Part 841. July 24, 2014 Tr. at 157. Not only did the Environmental Groups not have any particular unit in mind when proposing this provision, the applicability of this provision (based on whether it rains during the closure process) is not logical or practical.

The Environmental Groups also proposed adding a new Subsection (c) which would require exempt units to comply with the closure requirements of Subpart D. *Environmental Groups' Proposed Amendments to Proposed New 35 Ill. Adm. Code Part 841*, R14-10, pp. 4-5 (filed July 21, 2014). Among the Subpart D requirements is the obligation to submit a closure plan within a year of the effective date of the rules. However, at hearing the Environmental Groups stated this was not their intent. July 24, 2014 Tr. at 158. The Board should not adopt the Environmental Groups' proposed new Section 841.105(c) requiring exempt units that have initiated closure prior to the effective date of the Rules (and are in all likelihood closing with IEPA oversight and approval) to resubmit a closure plan that complies with the Subpart D requirements. Such an absurd result was not intended by the authors, nor is it practical for the owner or operator of the facility or IEPA. Note that IEPA did not recommend including the Environmental Groups' proposed revisions to the applicability section.

Definition of Surface Impoundment (35 Ill. Adm. Code 841.110)

In the July 21, 2014 version of proposed amendments, the Environmental Groups amend the definition of “surface impoundment” as follows:

“Surface impoundment” means a natural topographical depression, man-made excavation, or diked area ~~where earthen materials provide structural support for the containment of liquid wastes or wastes containing free liquids~~ that is designed to hold liquid waste or wastes containing free liquids, and which is not a landfill, ~~as defined in 35 Ill. Adm. Code 810.103 permitted under Illinois Solid Waste Disposal rules at 35 Ill. Adm. Code, Parts 813 or 814.~~

Environmental Groups’ Proposed Amendments to Proposed new 35 Ill. Adm. Code Part 841, R14-10, p. 8 (filed July 21, 2014). The Environmental Groups’ deletion of the phrase “earthen materials” from the definition of “surface impoundment” is an effort to expand its applicability, but is not consistent with the federal CCR rule or Board rule 35 Ill. Adm. Code 720.110. Ameren agrees with the Agency that “language requiring that the earthen materials provide structural support [is] necessary to distinguish surface impoundments from ditches, collection trenches, tanks, or piping.”⁹ The Environmental Groups state in their post-hearing comments filed on August 19, 2014 (P.C. #3018) that they do not object to including the phrase “earthen materials” in the definition of “surface impoundment.” P.C. #3018, p. 1. Ameren respectfully requests that the Board adopt the Agency’s proposed definition of “surface impoundment” and reject the Environmental Groups’ suggestion to delete the words “earthen materials.”

Hyporheic Zone Monitoring (35 Ill. Adm. Code 841.200, 205)

The Environmental Groups’ propose revisions requiring the hydrogeologic site characterization to identify any nearby surface water body “where exchanges between groundwater and surface water occurs.” *Environmental Groups’ Proposed Amendments to*

⁹ *IEPA’s Prefiled Answers*, R14-10, p. 3.

Proposed New 35 Ill. Adm. Code Part 841, R14-10, p. 20 (filed July 21, 2014). In addition, the Environmental Groups propose that the groundwater monitoring system consist of monitoring points necessary to measure water levels and collect samples within the hyporheic zone where any exchange between groundwater and surface water occurs. *Id.* at 22. The Environmental Groups' expert testified that piezometers are used to sample within the hyporheic zone (July 24, 2014 Tr. at 39-40) yet agrees that hyporheic zone monitoring with piezometers is not practical or cost effective on large surface waters. July 24 Tr., pp. 40-41. The Wabash, Illinois, Ohio, and Mississippi Rivers are all very large rivers. Moreover, it is difficult to determine from the Environmental Groups' proposed language when hyporheic zone monitoring would be required. July 24, 2014, Tr. at 43. The Environmental Groups state that hyporheic zone monitoring is required when modeling shows there will be an "interaction" between a unit and a surface water. However, the Environmental Groups do not define the term nor explained what constitutes an "interaction," and instead testified that the determination of whether to install monitoring points to establish hydraulic gradient is left to the Agency's discretion. July 24, 2014, Tr. at 47.

The Environmental Groups' proposed revisions to include hyporheic zone monitoring should be rejected. Groundwater flow and potential impact on river systems can be determined and estimated without hyporheic monitoring such as Ameren did in the information it presented in *In the Matter of Site-Specific Rule for the Closure of Ameren Energy Resources Ash Ponds: Proposed New 35 Ill. Adm. Code 840, Subpart B*, R13-19. In that proceeding, for instance, Ameren presented a site specific hydrogeologic study for the Meredosia Power Station that included a mixing calculation to conservatively estimate the impact on contaminant concentrations in the water of the Illinois River from contaminants moving from the coal combustion waste ash ponds through groundwater to the Illinois River.

Ameren supports the Agency position rejecting the Environmental Groups' suggested revisions with respect to hyporheic zone monitoring requirements.¹⁰

Timeframe to Achieve Compliance with Groundwater Standards (35 Ill. Adm. Code 841.405)

The Environmental Groups' propose significant revisions to the requirements for Closure Prioritization. Under the Agency's proposal, "Category 3" units include active units that do not threaten a potable water supply where there is a confirmed exceedance of water quality standards attributable to a release from a unit. Category 3 units are given two years to submit a closure plan and must close within five years of the Agency's closure plan approval. The proposal also allows the Agency to approve an alternative timeline if, for example, the site owner or operator submits a corrective action plan to remedy any exceedance.

The Environmental Groups' proposal eliminates Categories 3 and 4, and keeps only Categories 1 and 2. Category 1 requires any unit that impacts a potable water supply within two years of the Agency's approval of a closure plan or a confirmed release. Category 2 requires closure within 5 years from the Agency's approval of a closure plan or within five years of a confirmed groundwater quality standard exceedance attributable to the unit (more time is allowed for closure by removal). The Environmental Groups explain that a unit must close within five years if previous attempts at corrective action have proven ineffective in attaining compliance. *Environmental Groups' Answers to the Illinois Environmental Protection Agency's June 11, 2014 Questions for the Environmental Groups*, R14-10, p. 13 (filed July 17, 2014). A review of the Environmental Groups' proposed revisions to Section 841.405(a)(2) reveals a very short timeframe for a Category 2 unit owner or operator to perform corrective action once there is a confirmed exceedance of a groundwater quality standard. Consistent with a hypothetical

¹⁰ See *IEPA's Prefiled Answers*, R14-10, Att. B.

presented by IEPA at hearing, this provision could allow an owner or operator as little as two years and eight months to remediate a surface impoundment before otherwise required to close that impoundment. July 24, 2014, Tr. at 52. The Environmental Groups' expert admitted that the timeframe provided under the Environmental Groups' proposal for remediating groundwater is short. This is an understatement. Given the planning, approvals, and procurement required to perform corrective action, or simply the time allowed for corrective action under a groundwater management zone, less than three years' time is woefully inadequate and shows a lack of familiarity with the practical aspects of corrective action and closure processes. Note that IEPA does not recommend adopting this provision. The Board should not adopt the Environmental Groups' proposed revisions to Closure Prioritization.

Revisions to Alternative Cause Demonstration Provision (35 Ill. Adm. Code 841.305)

The Environmental Groups proposed numerous changes to Agency "alternative cause demonstration" provision, but do not explain why the Agency version was inadequate. For example, the proposed revisions require the owner or operator to "specify" the cause of an exceedance of a groundwater quality standard not attributable to a release from a unit. At hearing, the Environmental Groups' explanation did not clarify how a site owner or operator might fulfill this obligation:

Ideally, in our view, the owner or operator would attempt to find publically available information about where this contamination might have originated from offsite, but, again, our proposed standard does not specify a specific level of information.

July 24, 2014 Tr. at 60. In fact, the Environmental Groups conceded that in some cases where there is no documentation available, "then the owner or operator can't provide documentation." *Id.* at 62. This explanation directly conflicts with the proposed language which provides "the report must describe and justify a specific cause, with documentation that establishes the

existence of the asserted error” This language is not justified, creates confusion, and should not be adopted. Note that IEPA did not recommend including the Environmental Groups’ proposed revisions to this provision, proposed Section 841.305.

Addition of Opportunity for Public Hearing (35 Ill. Adm. Code 841.165)

The Environmental Groups proposed new opportunities for public hearing at virtually every stage of the surface impoundment closure process. *Environmental Groups’ Proposed Amendments to Proposed New 35 Ill. Adm. Code Part 841*, R14-10, p. 18 (filed July 21, 2014). Under the Agency’s proposal, the Agency must post corrective action plans and closure plans on the Agency’s webpage, accept written comments for a period of 30 days, and take any comments into consideration in making its final decision. The Environmental Groups’ proposed revisions expand public notice requirements to also include alternative cause demonstrations and post-closure care plans. In addition, the Agency must hold a public hearing any time it finds a significant degree of public interest in a proposed alternative cause demonstration, corrective action plan, closure plan, or post-closure care plan, or any modification of the foregoing. *Id.*

These opportunities allow the public to request the Agency to hold a public hearing even before IEPA makes a tentative decision on whether to approve or deny a request, which seems to be of little utility to the public. July 24, 2014 Tr. at 132-33. In addition under the proposed language, if requested, the Agency is required to hold a hearing on a proposal that it did not make and which it may not approve. *Id.* at 130. More importantly, such extensive and frequent opportunities for public hearings would place an intense physical, administrative, and economic burden on the Agency and the site owner and operator and make it virtually impossible for the Agency to make decisions within the regulatory deadlines.¹¹ NPDES permits do not have

¹¹ July 24, 2014 Tr., pp. 75-77.

similar deadlines. The Environmental Groups' proposed amendments to Section 841.165 should be rejected. We again note that IEPA did not recommend including the Environmental Groups' proposed revisions to this provision and there are simply some decisions that must be left to the regulatory agency entrusted by the General Assembly for making technical decisions regarding the protection of human health and the environment.

Risk Evaluation Factors (35 Ill. Adm. Code 841.500(c), 841.310(e) and 841.410(a))

The Agency proposes 11 factors to be considered by the Agency when approving a corrective action or closure plan. Ameren supports the addition of these factors because they provide a basis for Agency determination on corrective action and closure plans. These factors include the location of CCW in the water table, location of the CCW surface impoundment in a wetland, flood plain, fault area, or unstable area, surface impoundment design, institutional controls on the use of groundwater, length of time to complete closure, reduction of future releases, potential need to amend or replace the closure plan, effectiveness of alternatives, type of long term maintenance, and availability of treatment, storage and disposal service.

Under the Agency's revisions, corrective action plans must contain an alternative impact assessment, which in turn includes a technical and economic assessment of alternatives. See proposed 35 Ill. Adm. Code 841.310(e)(6)(D). In addition, closure plans must include an alternative impact assessment (which includes a technical and economic assessment of alternatives) and an estimate of the cost of closure and post-closure care. See proposed 35 Ill. Adm. Code 841.410(a)(6)(D) and (a)(8). Because the plans must include estimates of the cost of alternatives and of closure, Ameren believes that cost should also be a factor the Agency considers when reviewing and deciding whether to approve or deny a corrective action plan,

closure plan, or post-closure care plan. Ameren suggests the following language should be added as a factor to proposed Section 841.500(c)(3).

Section 841.500(c) Plan Review, Approval, and Modification

c) When reviewing a plan or modification, the Agency must consider:

3) When reviewing a corrective action plan, closure plan or post closure plan, or modification to any of these plans, the following factors:

C) The technical and economic assessment of alternatives to the proposed action.

Miscellaneous Revisions

In the Agency's responses to Board questions submitted prior to the May 14, 2014 hearing, IEPA agreed to make certain revisions in response to Ameren's April 9, 2014 pre-filed testimony. *Illinois EPA Responses to Board Questions*, May 14, 2014 Tr., Exh. 32; Pre-filed Testimony of Gary King on Behalf of Ameren Missouri and AmerenEnergy Medina Valley Cogen, LLC, R14-10 (filed April 9, 2014). The most recent version of the Agency's proposal (dated July 17) does not include these changes. Ameren asks the Board to incorporate these agreed-to revisions in the first notice rule language. They are the following:

- In IEPA's answer 6.B., it agreed to make a change to 841.135(a);
- In the answer to 6.C., IEPA agreed to add a new section, 841.200(d); and
- In the answer to 6.D., IEPA agreed to make a change to 841.220(c).

Respectfully submitted,



Ameren Missouri and AmerenEnergy Medina Valley Cogen, LLC

Amy Antonioli
Schiff Hardin LLP
233 South Wacker Drive, Suite 6600
Chicago, Illinois 60606
312-258-5500
aantonioli@schiffhardin.com

CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 20th day of October, 2014, I have served the attached **POST-HEARING COMMENTS OF AMEREN MISSOURI AND AMERENENERGY MEDINA VALLEY COGEN, LLC**, by first class mail, postage affixed, upon the persons on the attached service list.



Amy Antonioli

Amy Antonioli
SCHIFF HARDIN LLP
233 South Wacker Drive
Suite 6600
Chicago, Illinois 60606
312-258-5500

SERVICE LIST

| | |
|--|--|
| <p>John Therriault, Clerk Tim Fox, Hearing Officer Illinois Pollution Control Board James R. Thompson Center 100 West Randolph Street, Suite 11-500 Chicago, Illinois 60601 therriaj@ipcb.state.il.us</p> | <p>Joanne Olson James Jennings Division of Legal Counsel Illinois Environmental Protection Agency 1021 North Grand Avenue, East P.O. Box 19276 Springfield, Illinois 62794-9276</p> |
| <p>Office of Legal Services Illinois Department of Natural Resources One Natural Resources Way Springfield IL 62702-1271</p> | <p>Stephen Sylvester Division Chief of Environmental Enforcement Office of the Attorney General 69 West Washington St., Suite 1800 Chicago IL 60601</p> |
| <p>Christine Zeman City of Springfield Office of Public Utilities 800 East Monroe, 4th Floor Municipal Building East Springfield, IL 62757</p> | <p>Andrew Armstrong Faith E. Bugel Jennifer L. Cassel Jessica Dexter Josh Zaharoff Environmental Law and Policy Center 35 East Wacker Drive, Suite 1600 Chicago, IL 60601</p> |
| <p>Michael Smallwood Ameren Services One Ameren Plaza P.O. Box 66149 St. Louis, MO 63166</p> | <p>Jack Darin Sierra Club 70 East Lake Street, Suite 1500 Chicago, IL 60601</p> |
| <p>Exelon Law Department 10 South Dearborn, 49th Floor Chicago, IL 60603</p> | <p>Jason McLaurin Southern Illinois Power Cooperative 11543 Lake of Egypt Road Marion, IL 62959</p> |
| <p>Alec Messina IERG 215 E. Adams Street Springfield, IL 62701</p> | <p>Traci Barkley Prairie Rivers Network 1902 Fox Drive, Suite 6 Champaign, IL 61820</p> |
| <p>Abel Russ Environmental Integrity Project 1000 Vermont Avenue NW, Suite 1100 Washington DC 20005</p> | <p>Rick Diericx Dynegy Midwest Generation, Inc. 604 Pierce Blvd. O'Fallon, IL 62269</p> |