

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

SIERRA CLUB, PRAIRIE RIVERS)
NETWORK, and NATIONAL)
ASSOCIATION FOR THE)
ADVANCEMENT OF COLORED)
PEOPLE,)

Complainants,)

PCB 18-11
(Citizen Enforcement – Water)

v.)

CITY OF SPRINGFIELD, OFFICE OF)
PUBLIC UTILITIES d/b/a CITY WATER,)
LIGHT AND POWER,)

Respondent.)

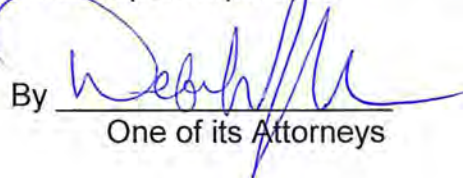
NOTICE OF FILING

To: Don Brown, Clerk
Illinois Pollution Control Board
100 West Randolph
Suite 11-500
Chicago, IL 60601

Please take notice that on July 5, 2019, I served a true and correct copy of **The CITY OF SPRINGFIELD, OFFICE OF PUBLIC UTILITIES d/b/a CITY WATER, LIGHT AND POWER'S ANSWER TO COMPLAINANTS' FIRST AMENDED COMPLAINT AND AFFIRMATIVE DEFENSES**, upon the parties listed on the attached service list.

Respectfully submitted,

THE CITY OF SPRINGFIELD,
a municipal corporation

By 
One of its Attorneys

Dated: July 5, 2019

Deborah J. Williams
Special Assistant Corporation Counsel
Office of Public Utilities
800 East Monroe, 4th Floor
Springfield, Illinois 62701
(217) 789-2116

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**The CITY OF SPRINGFIELD, OFFICE OF PUBLIC UTILITIES d/b/a CITY
WATER, LIGHT AND POWER'S ANSWER TO COMPLAINANTS' FIRST
AMENDED COMPLAINT AND AFFIRMATIVE DEFENSES**

On April 19, 2019, Complainants SIERRA CLUB, PRAIRIE RIVERS NETWORK, and NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE (“Complainants”) filed an Unopposed Motion for Leave to File Amended Complaint and Complainants’ First Amended Complaint with the Pollution Control Board (“Board”). On June 24, 2019, Complaints filed their Notice of Errata making corrections to the Amended Complaint submittal. Respondent, CITY OF SPRINGFIELD, OFFICE OF PUBLIC UTILITIES d/b/a/ CITY WATER, LIGHT AND POWER (“CWLP”)(“Respondent”), by and through its counsel, hereby submits its Answer and Affirmative Defenses to the First Amended Complaint as follows:

FACTUAL BACKGROUND

1. City of Springfield, Office of Public Utilities d/b/a/ City Water, Light & Power (CWLP), located in the City of Springfield, Illinois, owns and operates Dallman Station ("Dallman"), a coal-burning power plant located within city limits on Lake Springfield, in Sangamon County. CWLP used to also own and operate Lakeside Station, another coal-burning plant on the same site as Dallman, but that facility was decommissioned in 2009 (collectively "CWLP Site"). *See* 2010 Map of the CWLP Site Vicinity, attached hereto as Exhibit A.

ANSWER: Respondent admits that it currently operates the coal-burning Dallman Station and operated the Lakeside Station until 2009. Respondent lacks sufficient information to admit or deny the allegations in Exhibit A based, in part, on the quality of the reproduction and therefore denies same.

2. CWLP has historically stored and disposed of coal ash and other coal combustion waste in repositories that include, but are not limited to, two ash ponds and a landfill; and it continues to store or dispose of coal ash and other coal combustion waste in these ponds or repositories. *See* 2010 Map of CWLP Site, attached hereto as Exhibit B. One of the two ash ponds, the Lakeside ash pond, received coal ash from the Lakeside Plant until it was decommissioned; since then, no additional coal ash or other coal combustion waste has been disposed of in that ash pond, though the onsite storage of such materials continues.

ANSWER: Respondent admits the allegation of Exhibit B as a map of a portion of its

property in 2010. Respondent also admits that it operates treatment works and a landfill for coal combustion residuals at the location depicted in Exhibit B. Respondent denies that Exhibit B is an accurate representation of Respondent's treatment processes and denies the remaining allegations in this Paragraph.

3. Since at least June 1, 2010, CWLP has sampled at least six groundwater monitoring wells (AP-1 through AP-5, and AW-3) around the CWLP Site ash impoundments and landfill, as depicted in the 2011 Map of CWLP Groundwater Monitoring Wells, attached hereto as Exhibit C. Since CWLP began monitoring in April of 2010, groundwater monitoring results have shown levels of arsenic, boron, iron, lead, manganese, sulfate, and total dissolved solids that exceed Illinois Groundwater Quality Standards ("GQSs"). *See* violations of Class I GQSs and groundwater monitoring data for CWLP Site, attached hereto as Exhibits D and violations of Class II GQSs and groundwater monitoring data for CWLP Site, attached hereto as Exhibits E.

ANSWER: Respondent admits that it installed groundwater monitoring wells AP-1, 2, 3, 4 and AW-3 prior to June 1, 2010. Well AP-5 was not installed until 2012. Respondent denies the remaining allegations in this Paragraph and Exhibits D and E. Respondent lacks sufficient information to admit or deny the allegations in Exhibit C based, in part, on the quality of the reproduction and therefore denies same.

PARTIES

4. Sierra Club is the nation's oldest and largest grassroots environmental organization. Sierra Club is an incorporated, not-for-profit organization with

headquarters located at 2101 Webster St., Ste. 1300, Oakland, CA, 94612. Sierra Club's Illinois Chapter office is located at 70 E. Lake St., Suite 1500, Chicago, IL, 60601. Sierra Club's mission is to preserve, protect, and enhance the natural environment. Sierra Club has 641,000 members, including approximately 23,000 members in Illinois.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in this Paragraph and therefore denies same.

5. Prairie Rivers Network ("PRN") is an Illinois non-profit organization that champions clean, healthy rivers and lakes and safe drinking water to benefit the people and wildlife of Illinois. Drawing upon sound science and working cooperatively with others, PRN advocates public policies and cultural values that sustain the ecological health and biological diversity of water resources and aquatic ecosystems.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in this Paragraph and therefore denies same.

6. The National Association for the Advancement of Colored People ("NAACP") is the nation's oldest and boldest civil rights organization in the world. NAACP is a not-for-profit organization and located at 4805 Mt. Hope, Drive, Baltimore, MD 21215. The mission of the National Association for the Advancement of Colored People (NAACP) is to ensure the political, educational, social, and economic equality of rights of all persons and to eliminate race-based discrimination. The

NAACP's Environmental and Climate Justice Program works at addressing the many practices that are harming communities nationwide and worldwide and the policies needed to rectify these impacts and advance a society that fosters sustainable, cooperative, regenerative communities that uphold all rights for all people in harmony with the earth.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in this Paragraph and therefore denies same.

7. CWLP is the municipal electric and water utility for Springfield, Illinois. It is the largest municipally owned utility in the state of Illinois, and also owns and manages Lake Springfield, the primary source of drinking water for Springfield and one of Central Illinois' premier recreational resources. The utility provides Springfield with drinking water from Lake Springfield, and electric power from Dallman among other sources. CWLP has its principal executive offices at 800 E. Monroe, 4th Floor Springfield, Illinois 62701.

ANSWER: Respondent admits the location of its principal executive offices and the remaining allegations in this Paragraph.

THE GROUNDWATER CONTAMINANTS

8. As set forth in in detail in Exhibits D and E, groundwater monitoring results at the CWLP Site have exceeded Illinois Class I or II GQS, 35 Ill. Admin. Code

§§ 620.410, 620.420, for the following contaminants: arsenic, boron, chromium, iron, lead, manganese, sulfate, and total dissolved solids (“TDS”).

ANSWER: Respondent denies the allegations in this Paragraph and Exhibits D and E.

9. Many of the contaminants found at elevated concentrations in the groundwater monitoring results at the CWLP Site are constituents of coal ash.¹

¹ See, e.g., U.S. EPA, Human and Ecological Risk Assessment of Coal Combustion Wastes at 2-4 (Draft, April 2010) (listing Coal Combustion Waste constituents), *available at* <http://earthjustice.org/sites/default/files/library/reports/epa-coal-combustion-waste-risk-assessment.pdf> (last visited Jun. 22, 2017).

ANSWER: Respondent is without sufficient information to admit or deny the allegations in this Paragraph and Footnote 1 and therefore denies same.

10. Boron is a primary indicator of potential coal ash impacts to groundwater.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in this Paragraph and therefore denies same.

11. The contaminants listed in this complaint, when present at the concentrations found in CWLP’s groundwater wells, make the groundwater unusable. Many of these contaminants are toxic and have been found at concentrations that present a human health risk. Others are dangerous to aquatic ecosystems; this is a significant concern to the extent that contaminated groundwater is migrating into adjacent surface water bodies.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in this Paragraph and therefore denies same.

12. Arsenic is known to cause multiple forms of cancer in humans and is also associated with non-cancer health effects of the skin and the nervous system.² Groundwater that exceeds Illinois GQSs for arsenic is highly toxic; based on current U.S. EPA risk estimates, the cancer risk associated with drinking water at 0.05 mg/L, the Illinois Class I GQS for arsenic, is greater than 2 in 1,000.³ The risk at 0.2 mg/L, the Class II GQS, is 1 in 100.

²See, e.g., U.S. EPA, Integrated Risk Information System: Arsenic, inorganic, https://cfpub.epa.gov/ncea/iris2/chemicalLanding.cfm?substance_nmbr=278 (last visited June 22, 2017); U.S. Agency for Toxic Substances and Disease Registry (ATSDR), Toxicological Profile for Arsenic (Aug. 2007).

³ Derived from U.S. EPA Integrated Risk Information System Chemical Assessment Survey: Arsenic, Inorganic, 14, available at https://cfpub.epa.gov/ncea/iris/iris_documents/documents/subst/0278_summary.pdf (listing a drinking water unit risk of 5E-5 per ug/L).

ANSWER: Respondent is without sufficient information to admit or deny the allegations in this Paragraph and Footnotes 2 and 3 and therefore denies same.

13. Oral exposure to boron has led to developmental and reproductive toxicity in multiple species. Specific effects include testicular degeneration, reduced sperm count, reduced birth weight, and birth defects.⁴ The EPA has established a child health advisory of 3 mg/L for boron, close to the Illinois Class I and Class II GQS of 2 mg/L.⁵

⁴ See, e.g., U.S. EPA, Toxicological Profile of Boron and Compounds 60-61 (June 2004); U.S. EPA Integrated Risk Information System Chemical Assessment Survey: Boron and Compounds, available at https://cfpub.epa.gov/ncea/iris/iris_documents/documents/subst/0410_summary.pdf.

⁵U.S. EPA, 2012 Edition of the Drinking Water Standards and Health Advisories (April, 2012).

ANSWER: Respondent is without sufficient information to admit or deny the allegations in this Paragraph and Footnotes 4 and 5 and therefore denies same.

14. Chromium is an odorless and tasteless metallic element, and most commonly comes in two forms: trivalent chromium, and hexavalent chromium.⁶ Although some trivalent chromium is an important dietary element, hexavalent chromium is a known human carcinogen, and high levels of exposure through drinking water can cause oral ulcers, diarrhea, vomiting, and other signs of agitation.⁷ Since 1991, the U.S. EPA has enforced a federal drinking water standard of 0.1 mg/l, which is the same as the Illinois Class I standard; it determined that chromium should be regulated based on total chromium, including trivalent chromium, because the two forms of chromium can convert back and forth depending on conditions in the water or even inside the human body.⁸

⁶ U.S. EPA, Chromium in Drinking Water, <https://www.epa.gov/dwstandardsregulations/chromium-drinking-water> (last visited June 22, 2017).

⁷ U.S. EPA, Toxicological Review of Hexavalent Chromium 7 (Aug. 1998), *available at* https://cfpub.epa.gov/ncea/iris/iris_documents/documents/toxreviews/0144tr.pdf.

⁸U.S. EPA, Chromium in Drinking Water, *supra* note 6.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in this Paragraph and Footnotes 6, 7 and 8 and therefore denies same.

15. Iron renders water unusable by imparting a rusty color and a metallic taste and causing sedimentation and staining; to prevent these effects the EPA has set a secondary drinking water regulation of 0.3 mg/L.⁹

⁹ *Id.*

ANSWER: Respondent is without sufficient information to admit or deny the allegations in this Paragraph and Footnote 9 and therefore denies same. Respondent notes that it appears Footnote 9 cross-references Footnote 8 (which in turn cross-references Footnote 6) in error.

16. Lead is known to be toxic to the nervous system, and is particularly associated with effects on childhood neurobehavioral development at very low doses. Lead is also classified by the EPA as a “probable human carcinogen.”¹⁰ The EPA Action Level for lead in drinking water is 0.015 mg/L.¹¹ This is unlikely to represent a “safe” level of exposure—the EPA has noted, for example, that there may be no threshold for lead toxicity.¹² Groundwater concentrations of lead above the Illinois Class I GQS, 0.0075 mg/L, are potentially unsafe in drinking water.

¹⁰ U.S. EPA, Integrated Risk Information System: Lead and Compounds (Inorganic), https://cfpub.epa.gov/ncea/iris2/chemicalLanding.cfm?substance_nmbr=277 (last visited June 22, 2017).

¹¹ U.S. EPA National Primary Drinking Water Regulations, Basic Information about Lead in Drinking Water, <https://www.epa.gov/ground-water-and-drinking-water/basic-information-about-lead-drinking-water> (last visited June 22, 2017).

¹² U.S. EPA Integrated Risk Information System Chemical Assessment Survey: Lead and Compounds (Inorganic), 2, *available at* https://cfpub.epa.gov/ncea/iris/iris_documents/documents/subst/0277_summary.pdf.

ANSWER: Respondent is without sufficient information to admit or deny the

allegations in this Paragraph and Footnotes 10, 11 and 12 and therefore denies same.

17. Manganese is also known to be toxic to the nervous system.¹³ The EPA has not updated its assessment of manganese toxicity in 16 years, so EPA standards and advisories may not reflect the latest scientific knowledge concerning effects on childhood neurological development,¹⁴ and the EPA Lifetime Health Advisory for manganese – 0.3 mg/L – may not be adequately health-protective. In any event, manganese concentrations greater than 0.05 mg/L render water non-potable by discoloring the water, giving it a metallic taste, and causing black staining.¹⁵ Groundwater with manganese above the Illinois Class I GQS – 0.15 mg/L – is unfit for human consumption and is potentially toxic.

¹³ See, e.g., U.S. EPA, Integrated Risk Information System: Manganese, https://cfpub.epa.gov/ncea/iris2/chemicalLanding.cfm?substance_nmbr=373 (last visited June 22, 2017).

¹⁴ See, e.g., G.A. Wasserman et al., Water manganese exposure and children's intellectual function in araihar, Bangladesh. 114 ENVIRON. HEALTH PERSP. 124 (2006).

¹⁵ See U.S. EPA secondary drinking water regulations, <https://www.epa.gov/dwstandardsregulations/secondary-drinking-water-standards-guidance- nuisance-chemicals> (last visited June 22, 2017).

ANSWER: Respondent is without sufficient information to admit or deny the allegations in this Paragraph and Footnotes 13, 14 and 15 and therefore denies same.

18. High concentrations of sulfates in drinking water impart a salty taste and can cause diarrhea; to protect against these effects, the U.S. EPA has established a health-based advisory of 500 mg/L.¹⁶ Groundwater with sulfate concentrations above the

Illinois Class I and Class II GQS of 400 mg/L is therefore unsuitable for human consumption.

¹⁶U.S. EPA, Drinking Water Advisory: Consumer Acceptability Advice and Health Effects Analysis on Sulfate (Feb. 2003).

ANSWER: Respondent is without sufficient information to admit or deny the allegations in this Paragraph and Footnote 16 and therefore denies same.

19. Total Dissolved Solids (TDS) is a measure of multiple dissolved chemicals, and high TDS is generally associated with hardness, staining, salty taste, and deposits.¹⁷ Groundwater with TDS above the Illinois Class I and Class II GQS, 1,200 mg/L, is unsafe as drinking water.

¹⁷ See U.S. EPA secondary drinking water regulations, *supra* note 12.

ANSWER: Respondent is without sufficient information to admit or deny the allegations in this Paragraph and Footnote 17 and therefore denies same. Respondent notes that it appears Footnote 17 cross-references Footnote 12 in error.

20. Finally, many of the contaminants associated with coal ash bioaccumulate in aquatic ecosystems causing tissue damage and other effects in fish and amphibians. One review, for example, noted that “the combined effects of multiple accumulated elements may lead to numerous changes in individuals that could compromise individual fitness or health,” and provided several examples of coal ash-contaminated sites where the health of individuals and communities in aquatic ecosystems had been severely impaired.¹⁸

¹⁸ C.L. Rowe et al., *Ecotoxicological implications of aquatic disposal of coal combustion residues*

in the United States: A review, 80 ENVTL. MONITORING AND ASSESSMENT 207, 242 (2002); see also A.D. Lemly and J.P. Skorupa, *Wildlife and the coal waste policy debate: Proposed rules or coal waste disposal ignore lessons from 45 years of wildlife poisoning*, 46 ENVTL. SCI. TECH. 46 (2012).

ANSWER: Respondent is without sufficient information to admit or deny the allegations in this Paragraph and Footnote 18 and therefore denies same.

LEGAL BACKGROUND

21. The Illinois Environmental Protection Act prohibits “the discharge of any contaminants into the environment . . . so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources,” 415 ILCS 5/12(a), and prohibits the deposition of “any contaminants upon the land in such place and manner so as to create a water pollution hazard.” 415 ILCS 5/12(d). “Water pollution” is defined as the “alteration” or “discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.” 415 ILCS 5/3.545. “Waters” of the State is defined to include “all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.” 415 ILCS 5/3.550.

ANSWER: Respondent admits that there are statutory provisions 415 ILCS 5/3.545, 3.540, 12(a) and 12(d) and states that the statutes speak for themselves. Respondent denies the allegations to the extent that they are inconsistent with the statutes as cited and to the extent a response is required.

22. Section 620.405 prohibits “the release of any contaminant to groundwater so as to cause a groundwater quality standard set forth in this Subpart to be exceeded.”

35 Ill. Admin. Code § 620.405. The Illinois Administrative Code establishes different groundwater quality standards for Class I and Class II groundwater.

ANSWER: Respondent admits that there is a regulatory provision 35 Ill. Adm. Code 620.405 and states that the regulation speaks for itself. Respondent denies the allegations to the extent that they are inconsistent with the regulation as cited and to the extent a response is required.

23. Section 620.410 establishes Class I GQs that cannot be exceeded in potable resource groundwater. 35 Ill. Admin. Code § 620.410. “Potable resource groundwater” is defined as:

Groundwater located 10 feet or more below the land surface and within: (1) The minimum setback zone of a well which serves as a potable water supply and to the bottom of such well; (2) Unconsolidated sand, gravel or sand and gravel which is 5 feet or more in thickness and that contains 12 percent or less of fines . . . ; (3) Sandstone which is 10 feet or more in thickness, or fractured carbonate which is 15 feet or more in thickness; or (4) Any geologic material which is capable of a: (A) sustained groundwater yield, from up to a 12 inch borehole, of 150 gallons per day or more from a thickness of 15 feet or less; or (B) Hydraulic conductivity of 1×10^{-4} cm/sec or greater using one of the following test methods or its equivalent: (i) Permeameter; (ii) Slug test; or (iii) Pump test. 35 Ill. Admin. Code § 620.210(a).

ANSWER: Respondent admits that there are regulatory provisions 35 Ill. Adm. Code 620.410 and 620.210(a) and states that the regulations speak for themselves. Respondent denies the allegations to the extent that they are inconsistent with the regulations as cited

and to the extent a response is required.

24. The definition of Class I groundwater specifically excludes: Class III “special resource groundwater,” Class IV “other groundwater,” which includes groundwater in a zone of attenuation; and groundwater in a “groundwater management zone.” 35 Ill. Admin. Code § 620.210; *see also* 35 Ill. Admin. Code §§ 620.230, 620.240, 620.250. Section 620.115 provides that “No person shall cause, threaten or allow a violation of the Act, the [Illinois Groundwater Protection Act] or regulations adopted by the Board thereunder, including but not limited to this part.” 35 Ill. Admin. Code § 620.115. Section 620.301(a) provides that “No person shall cause, threaten or allow the release of any contaminant to a resource groundwater such that: 1) Treatment or additional treatment is necessary to continue an existing use or to assure a potential use of such groundwater; or 2) An existing or potential use of such groundwater is precluded.” 35 Ill. Admin. Code § 620.301.

ANSWER: Respondent admits that there are regulatory provisions 35 Ill. Adm. Code 620.115, 620.210, 620.230, 620.240, 620.250 and 620.301 and states that the regulations speak for themselves. Respondent denies the allegations to the extent that they are inconsistent with the regulations as cited and to the extent a response is required.

25. Section 620.420 establishes Class II GQSs that cannot be exceeded in general resource groundwater. 35 Ill. Admin. Code § 620.420. “General resource groundwater” is defined as “groundwater which does not meet the provisions of . . . Class

I . . . Class III . . . or . . . Class IV” and “groundwater which is found by the Board, pursuant to the petition procedures set forth in Section 620.260, to be capable of agricultural, industrial, recreational or other beneficial uses.” 35 Ill. Admin. Code § 620.220. Groundwater in a zone of attenuation must meet Class II GQSs. 35 Ill. Admin. Code § 620.440(b).

ANSWER: Respondent admits that there are regulatory provisions 35 Ill. Adm. Code 620.220, 620.260, 620.420 and 620.440(b) and states that the regulations speak for themselves. Respondent denies the allegations to the extent that they are inconsistent with the regulations as cited and to the extent a response is required.

26. The Illinois Class I and Class II GQSs for contaminants identified in this report are as follows:

Chemical	Class I GQS (mg/L) (35 Ill. Admin. Code § 620.410)	Class II GQS (mg/L) (35 IAC § 620.420)
Arsenic	0.01	0.2
Boron	2	2
Chromium	0.1	1.0
Iron	5	5
Lead	0.0075	0.10
Manganese	0.15	10
Sulfate	400	400
Total Dissolved Solids (TDS)	1,200	1,200

ANSWER: Respondent admits that there are regulatory provisions 35 Ill. Adm. Code 620.410 and 620.420 and states that the regulations speak for themselves. Respondent denies the allegations to the extent that they are inconsistent with the regulations as cited

and to the extent a response is required.

COUNT 1: WATER POLLUTION AT DALLMAN

27. Paragraphs 1-26 are realleged and incorporated herein by reference.

ANSWER: Respondent incorporates herein, as if restated, its Answers to Paragraphs 1 through 26 of the Complaint.

28. CWLP, through its coal ash disposal ponds, unconsolidated coal ash fill, and/or other coal ash and coal combustion waste repositories at the CWLP Site, has discharged contaminants into the environment at the CWLP Site and thereby caused water pollution in violation of 415 ILCS 5/12(a) and (d), and 35 Ill. Admin. Code §§ 620.115, 620.301(a), and 620.405. As shown in Exhibit D, even with sometimes inconsistent sampling, CWLP has identified ongoing violations of Illinois Class I Groundwater Quality Standards on ~~365369~~ separate occasions or, as shown in Exhibit E, ongoing violations of Illinois Class II Groundwater Quality Standards on ~~237241~~ separate occasions, since monitoring began in late 2010.¹

ANSWER: Respondent denies the allegations in this Paragraph and Exhibits D and E.

29. Since 2010, the groundwater at the CWLP Site has exceeded the Class I GQs for arsenic, boron, chromium, iron, lead, manganese, sulfate, and TDS, or the

¹ Strikethroughs indicate edits to the Amended Complaint made in Complainants June 24, 2019 Errata filing.

Class II GQSs for arsenic, boron, iron, lead, manganese, sulfate, and TDS. 35 Ill. Admin. Code §§ 620.410, 620.420.

ANSWER: Respondent denies the allegations in this Paragraph.

THE CITY OF SPRINGFIELD'S AFFIRMATIVE DEFENSES

Respondent, City of Springfield, Office of Public Utilities d/b/a CWLP asserts the following affirmative defenses without waiving Complainants' obligation to meet its burden of proof and without assuming any burden of proof not otherwise imposed by law.

1) Respondent Did Not Cause or Allow Water Pollution

30. Paragraphs 1-29 are realleged and incorporated herein by reference.

31. Complainants allege that Respondent has "discharged contaminants into the environment at the CWLP site and thereby caused water pollution in violation of Sections 12(a) and 12(d)" of the Environmental Protection Act. ¶ 28. Those provisions state that no person shall:

"(a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

(d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard." 415 ILCS 5/12(a) and 12(d)."

32. Complainants allege no specific actions Respondent has taken that would constitute a discharge of contaminants into the environment or specific actions that have caused water pollution, as defined in the Act. Complaints allege no actions taken by

Respondent that constitute depositing contaminants onto the land so as to create a water pollution hazard.

33. Complaints identify as violations of the Act and Board regulations the numeric values of raw data obtained from groundwater monitoring wells without regard to whether the raw data has been analyzed and without regard to whether any constituents present are found in background wells AP-4 and AP-5. Respondent cannot violate the Act – or any regulations intended to implement the Act – by monitoring levels of constituents in the environment. Monitoring of these constituents does not constitute a discharge of contaminants that caused water pollution.

34. Because Complainants allege no facts that would represent actions taken in violation of Section 12(a) or 12(d) of the Act, the Amended Complaint is insufficiently pled under Section 103.204(c)(1) and (2) of the Board's procedural rules and relief cannot be granted by the Board. 35 Ill. Adm. Code 103.204(c)(1) and (2).

2. Respondent Did Not Cause Water Pollution Because There is No Risk to Public Health and No Risk of Environmental Harm

35. Paragraphs 1-34 are realleged and incorporated herein by reference.

36. Complainants allege that Respondent “has discharged contaminants into the environment at the CWLP site and thereby caused water pollution in violation of 415 ILCS 5/12(a) and (d), and 35 Ill. Admin. Code §§620.115, 620.301(a), and 620.405.” ¶28.

37. “*Water pollution*” is defined as “*such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare,*

or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.” 415 ILCS 5/3.545.

38. Count 1 of the Complaint does not specify which provisions in the definition of water pollution it alleges are present, but in order to find a violation of Sections 12(a) and 12(d) of the Act through actions of the City of Springfield that “caused water pollution,” the Board must find a nuisance or waters that are harmful, detrimental or injurious to public health or other beneficial uses of waters of the State.

39. Respondent has not caused water pollution in violation of the Act because there is no nuisance, harm or injury to public health, or impairment or preclusion of any beneficial uses of any waters of the State as a result of low levels of constituents in groundwater samples and the inability of any contaminants to migrate off-site or impact the public’s health or uses of groundwater. Because Complainants have not alleged facts that demonstrate water pollution under the Act, the Amended Complaint is insufficiently pled and relief cannot be granted by the Board.

3. Respondent cannot violate both Class I and Class II groundwater standards

40. Paragraphs 1-39 are realleged and incorporated herein by reference.

41. Count 1 of the Complaint alleges that “the groundwater at the CWLP Site has exceeded the Class I GQSs for arsenic, boron, chromium, iron, lead, manganese, sulfate, and TDS, or the Class II GQSs for arsenic, boron, iron, lead, manganese, sulfate, and TDS. 35 Ill. Admin. Code §§ 620.410, 620.420.” ¶29.

42. Section 620.201 of the Board’s regulations provides that “All groundwaters of the State are designated as: a) One of the following four classes of groundwater in accordance with Sections 620.210 through 620.240: 1) Class I: Potable

Resource Groundwater; 2) Class II: General Resource Groundwater...” It is not possible under this definition for groundwater to be both a Class I and Class II groundwater and therefore it is not possible for the Respondent to have violated both 35 Ill. Adm. Code 620.210 and 620.420.

43. In the Amended Complaint, Complainants have now properly pled these violations of Class I and Class II standards in the alternative. However, Complaints still fail to allege facts to support which standard it alleges to be applicable to the CWLP site and therefore the Amended Complainant is still insufficiently pled under the Board’s procedural regulations and the allegations of violations of the Board’s groundwater standards cannot be sustained. 35 Ill. Adm. Code 103.204(c)(1) and (2).

4. Respondent cannot violate the Act or Board regulations if constituents monitored in groundwater are present at or below background levels

44. Paragraphs 1-43 are realleged and incorporated herein by reference.

45. In the Amended Complaint, Complainants have removed allegations of violations of the Act and Board regulations as a result of constituents monitored in upgradient, background wells. Nevertheless, Complaints have not removed allegations that Respondent has violated Class I or Class II groundwater quality standards at downgradient wells for those constituents which have been documented to have naturally occurring levels of constituents at higher levels than the Class I or Class II standards.

46. Because Complainants allege no actions Respondent has taken to cause or allow water pollution and because Complainants allege background conditions at Respondents site can represent a violation of the Act, the Complaint is insufficiently pled and relief cannot be granted by the Board.

5. Complainants May Not Be Granted Injunctive Relief

47. Paragraphs 1-46 are realleged and incorporated herein by reference.

48. In their prayer for relief, Complainants request the Board to “Order Respondent, pursuant to 415 Ill Comp. Stat. 5/33, to... ii. Modify its coal ash and coal combustion waste disposal and storage practices to avoid future groundwater contamination, iii. Remediate the contaminated groundwater so that it meets applicable Illinois Groundwater Quality Standards...” Complaint at p. 11.

49. The contents of a Board Order in a citizens’ enforcement case are identified in and limited by the language in Section 33(b) of the Act, which provides:

“Such order may include a direction to cease and desist from violations of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order, and/or the imposition by the Board of civil penalties in accord with Section 42 of this Act. The Board may also revoke the permit as a penalty for violation. If such order includes a reasonable delay during which to correct a violation, the Board may require the posting of sufficient performance bond or other security to assure the correction of such violation within the time prescribed.” 415 ILCS 5/33(b).

50. While the Board may order a Respondent to cease and desist from violations of the Act, the Board authority does not extend to the imposition of the relief requested by Complainants to order modification of coal ash practice or to order a plan of remediation of contaminated groundwater. Such injunctive relief is beyond the Board’s authority under the Act. See, *Janson v. Illinois Pollution Control Bd.*, 69 Ill.App.3d 324, 328, 387 N.E.2d 404, 408 (3rd Dist., 1979) and *Clean the Uniform Company-Highland v. Aramark Uniform & Career Apparel, Inc.*, PCB 03-21, Nov. 7, 2002, slip. Op. at 1& 3.

51. The process for mandatory injunctive relief under the Environmental Protection Act is limited to the process provided in Section 42(e) whereby “[t]he State's Attorney of the county in which the violation occurred, or the Attorney

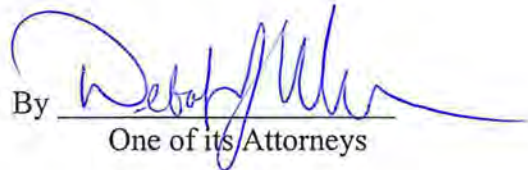
General, may, at the request of the Agency or on his own motion, institute a civil action for an injunction, prohibitory or mandatory, to restrain violations of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order, or to require such other actions as may be necessary to address violations of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order.” 415 ILCS 5/42(e).

52. Because Complainants request relief not available under the Act, the Board may not act on Complainants prayer for relief and it must be stricken.

WHEREFORE, Respondent, City of Springfield, Office of Public Utilities d/b/a City Water, Light and Power, respectfully requests that the Board dismiss Complainants' Complaint with prejudice and issue such further relief as the Board deems just and proper.

Respectfully submitted,

THE CITY OF SPRINGFIELD,
a municipal corporation

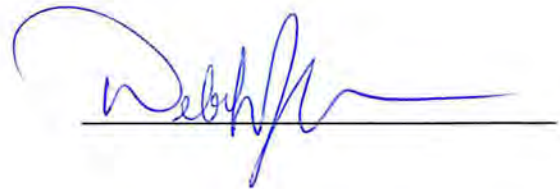
By 
One of its Attorneys

Dated: July 5, 2019

Deborah J. Williams
Special Assistant Corporation Counsel
Office of Public Utilities
800 East Monroe, 4th Floor
Springfield, Illinois 62701
(217) 789-2116

CERTIFICATE OF SERVICE

The undersigned, Deborah J. Williams, an attorney, certifies that I have served electronically upon the Clerk and by email upon the individuals named on the attached Service List a true and correct copy of the **NOTICE OF FILING and THE CITY OF SPRINGFIELD, OFFICE OF PUBLIC UTILITIES d/b/a CITY WATER, LIGHT AND POWER'S ANSWER TO COMPLAINANTS' FIRST AMENDED COMPLAINT AND AFFIRMATIVE DEFENSES** from the email address deborah.williams@cwlp.com of this 25 page document before 5 p.m. Central Time on July 5, 2019 to the email address of the parties on the attached Service List.



SERVICE LIST PCB 18-11

Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois
62794-9274
carol.webb@illinois.gov

Gregory E. Wannier
Staff Attorney
Sierra Club
2101 Webster St. Suite 1300
Oakland, CA
94612
greg.wannier@sierraclub.org

Faith E. Bugel
1004 Mohawk
Wilmette, Illinois
60091
fbugel@gmail.com