

State of Illinois
Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60601
<http://www.ipcb.state.il.us/>



ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

JUN 16 2014

STATE OF ILLINOIS
Pollution Control Board

In the matter of:

SIERRA CLUB,)
)
Complainant,)
)
vs.)
)
AMEREN ENERGY MEDINA VALLEY)
COGEN, LLC)
)
and)
)
FUTUREGEN INDUSTRIAL ALLIANCE)
INC.,)
)
Respondents.)

PCB No. --14-134

NOTICE OF FILING

To: AMERENENERGY MEDINA
VALLEY COGEN, LLC
James Michael Showalter
Renee Cipriano
Ashley Thomson
SCHIFF HARDIN LLP
Suite 6600
233 South Wacker Drive
Chicago, IL 60606-6473
312-258-5561
Email: mshowalter@schiffhardin.com

FUTUREGEN INDUSTRIAL ALLIANCE
Dale N Johnson
VAN NESS FELDMAN LLP
Suite 1150
719 Second Avenue
Seattle, WA 98104
206-623-9372
Email: dnj@vnf.com

PLEASE TAKE NOTICE that on this date I filed with the Clerk of the Pollution Control Board of the State of Illinois: a COMPLAINT, a copy of which is attached hereto and herewith

served upon you; and an ENTRY OF APPEARANCE for Eric Schwing, and MOTION TO APPEAR PRO HOC VICE and APPEARANCE for Eva Schueller, copies of which are attached hereto and herewith served upon you. Pursuant to the Board's procedural rules, the documents referenced above are served upon Respondents addressed as set forth above by Certified Mail. 35 Ill. Admin. Code 103.204(a). Failure to file an answer to this Complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in this Complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney. FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1-19 (2007), to correct the violations alleged in the Complaint filed in this case.

Respectfully submitted,

/s/ Eric Schwing

*Eric Schwing
w/ permission*

DATED: June 11, 2014

Eric M Schwing
Attorney at Law
1100 South 5th Street
Springfield, IL 62703
217-544-4440
Email: eric.schwing@comcast.net

Eva Schueller
Associate Attorney
Sierra Club Environmental Law Program
85 Second St., Second Floor
San Francisco, CA 94105
Email: eva.schueller@sierraclub.org
Tel: (415) 977-5637

Counsel for the Complainant

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CERTIFICATE OF SERVICE

I hereby certify that I did on June 11, 2014, send by certified mail, return receipt requested, with postage thereon fully prepaid, by depositing in a United States Post Office in San Francisco, California, a true and correct copy of the following instruments, entitled: NOTICE OF FILING, ENTRY OF APPEARANCE for Eric Schwing, MOTION TO APPEAR PRO HAC VICE and APPEARANCE for Eva Schueller, and COMPLAINT, in the above-captioned matter, to the following parties:

TO: AMERENENERGY MEDINA
VALLEY COGEN, LLC
James Michael Showalter
Renee Cipriano
Ashley Thomson
SCHIFF HARDIN LLP
Suite 6600
233 South Wacker Drive
Chicago, IL 60606-6473
312-258-5561
Email: mshowalter@schiffhardin.com

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Dale N Johnson
VAN NESS FELDMAN LLP
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Seattle, WA 98104
206-623-9372
Email: dnj@vnf.com

as authorized by the Clerk of the Illinois Pollution Control Board under 35 Ill. Admin. Code §§ 101.302(c), 101.304(c).

DATED: June 11, 2014

/s/ Eric Schwing

E. Schwing
w/permission

Eric M Schwing
Attorney at Law
1100 South 5th Street
Springfield, IL 62703
217-544-4440
Email: eric.schwing@comcast.net
Counsel for the Complainant

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PCB No. -- 14-134

ENTRY OF APPEARANCE

TO: Clerk of the Illinois Pollution Control Board and All Parties of Record.

Please enter my appearance as counsel of record in this case for:

SIERRA CLUB, Complainant.

DATED: June 11, 2014

Respectfully submitted,

/s/ Eric Schwing

*Eric Schwing
w/permission*

Eric M Schwing
Attorney at Law
1100 South 5th Street
Springfield, IL 62703
217-544-4440
Email: eric.schwing@comcast.net

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Request to Appear Pro Hac Vice

Pursuant to 35 Ill. Adm. Code § 101.400(a), the undersigned requests approval by the Illinois Pollution Control Board to appear pro hac vice on behalf of the Sierra Club in connection with the above-titled matter.

In support of this request, the undersigned states that she is licensed and registered to practice before the bar of the State of California (bar no. 237886).

DATED: June 11, 2014

Respectfully submitted:



Eva Schueller
Associate Attorney
Sierra Club Environmental Law Program
85 Second St., Second Floor
San Francisco, CA 94105
Email: eva.schueller@sierraclub.org
Tel: (415) 977-5637

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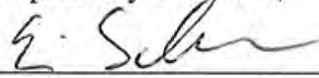
ENTRY OF APPEARANCE

TO: Clerk of the Illinois Pollution Control Board and All Parties of Record.

Please enter my appearance as counsel of record in this case for:

SIERRA CLUB, Complainant.

Respectfully submitted,



Eva Schueller
Associate Attorney
Sierra Club Environmental Law Program
85 Second St., Second Floor
San Francisco, CA 94105
Email: eva.schueller@sierraclub.org
Tel: (415) 977-5637

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COMPLAINT

1. This is a "citizen enforcement suit" under Section 31(d) of the Illinois Environmental Protection Act ("the Act"), 415 ILCS 5/31(d); 415 ILCS 5/9.1(d); *Sierra Club v. Midwest Generation, LLC*, PCB 13-15, slip op. at 24 (Oct. 3, 2013).

2. Sierra Club seeks an order requiring the Respondents, AmerenEnergy Medina Valley Cogen, LLC and FutureGen Industrial Alliance, Inc., to comply with federal requirements as incorporated into Illinois law, with respect to the proposed construction of a new coal-fired Boiler #7 at the Meredosia Energy Center power plant located in Meredosia, Illinois.

3. As a result of burning coal, Boiler #7 will emit thousands of tons of carbon dioxide, nitrous oxides, nitrogen oxides, sulfur oxides, particulate matter and carbon monoxide each year. Those pollutants contribute to climate change, respiratory distress, cardiovascular disease, and even premature mortality. Nitrogen oxides and sulfur oxides in the air also contribute to acid rain, which sterilizes lakes and damages property, crops and forests. The presence of these pollutants in the atmosphere is also associated with increased hospital admissions and emergency room visits.

4. Respondents' current minor source permit allows it to emit 1,691.7 tons per year of the air pollutant nitrogen oxides (NOx). A 2013 Chrysler/Jeep Patriot two-wheel drive emits 0.10 grams/mile of NOx. So 12,780,037 people, about the entire population of the state of Illinois, could each drive Jeep Patriots 12,000 miles per year to equal the NOx emissions from the Respondents' coal-burning power plant. NOx emissions are a very serious matter. Not only is NOx a harmful pollutant in its own right, it transforms into particulate matter less than 2.5 microns in diameter once it is emitted into the ambient air and also contributes to ozone, commonly referred to as smog, formation. *New York v. EPA*, 133 F.3d 987, 989 (7th Cir. 1998). Morgan County is designated attainment for ozone, not because it has low ozone levels, but because it has no ozone monitor. Nearby Jersey County is violating the national ambient air quality standard for ozone based on 2010 – 2012 data. The Illinois Environmental Protection Agency has admitted that Jersey County remained in violation of the national ambient air quality standard based on 2011 – 2013 data. Similarly, neighboring Sangamon County's available ozone data indicates that it has unsafe ozone levels based on 2011 and 2012 data.

5. Respondents propose to construct Boiler #7 without first obtaining a Prevention of Significant Deterioration (PSD) permit authorizing that construction as required by the Illinois and federal law, without meeting emission limits that are “best available control technology,” without installing appropriate technology to control emissions of nitrogen oxides, sulfur dioxides, particulate matter, and other pollutants, and without making a determination that emissions increases from the modifications would not cause or contribute to a violation of any National Ambient Air Quality Standard or applicable maximum allowable increases.

6. Respondents’ own analysis already shows that Boiler #7 will contribute to violations of the public health based sulfur dioxide and nitrogen oxides national ambient air quality standards, thus endangered the health of innocent people including Sierra Club members.

PARTIES

7. Complainant Sierra Club is an incorporated, not-for-profit organization with its headquarters at 85 Second Street, 2nd Floor, San Francisco, California, and its Illinois Chapter Office at 70 E. Lake Street, Suite 1500, Chicago, Illinois 60601. Its purpose is to preserve, protect, and enhance the natural environment. Its mission includes reducing and eliminating pollution from the mining, combustion, water consumption and waste disposal of coal, which negatively affects Sierra Club’s members as well as members of the public. Sierra Club has over a million members and supporters nationwide, including over 23,000 members and supporters in Illinois.

8. Sierra Club is a “person” within the meaning of 415 ILCS 5/31(d).

9. AmerenEnergy Medina Valley Cogen, LLC is a corporation organized under the laws of Illinois. It is a subsidiary of Ameren Energy Resources Company, LLC which is a non-

rate regulated, that is “merchant,” electric generating company. AmerenEnergy Resources, LLC is a subsidiary of Ameren Corporation, an investor-owned, publicly traded, electric company.

10. FutureGen Industrial Alliance, Inc. is a nonprofit corporation organized under the laws of Delaware.

11. Sierra Club has members who live, work, engage in other economic activity, garden and recreate around and downwind from the Meredosia Energy Center. These members are and will be impacted negatively by pollution from the Meredosia Energy Center. The health and welfare of Sierra Club’s members, as well as their enjoyment of outdoor activities, has been and will be harmed by pollution from the Meredosia Energy Center. In addition, Respondents’ violation of the Illinois Environmental Protection Act and the Clean Air Act denies Sierra Club and its members information which Sierra Club and its members are entitled to under the law.

12. Furthermore, Respondents’ violation of the law denies Sierra Club and its members procedural and due process protections which Sierra Club and its members are entitled to under Illinois law and the United States Constitution.

13. These injuries are traceable to Respondents’ violation of the Illinois Environmental Protection Act set forth in this complaint.

14. An order of this Board enjoining Respondents from constructing Boiler #7 without a PSD permit, will delay pollution and also require significant decreases in pollution. The delay and reductions in air pollution will redress the injuries to Sierra Club’s members. In addition, an order of this Board enjoining Respondents from constructing Boiler #7 without a PSD permit, will provide Sierra Club and its members with information and procedural and due

process protections which Sierra Club and its members are entitled to under the Illinois Environmental Protection Act, the Clean Air Act and the Constitution.

15. Sierra Club members' injuries would also be redressed in part by any civil penalties awarded pursuant to Illinois law, including a beneficial mitigation project, and other required mitigation measures.

GENERAL ALLEGATIONS

16. The Clean Air Act, relevant provisions of which are incorporated into Illinois law, requires that the United States Environmental Protection Agency (US EPA) promulgate National Ambient Air Quality Standards (NAAQS), which are upper limits on air pollution in the ambient air, to protect public health and welfare, 42 U.S.C. § 7409.

17. The Clean Air Act also requires US EPA to designate areas where the air quality meets or exceeds NAAQS for each pollutant. An area that meets the NAAQS for a particular pollutant is termed an "attainment" area, whereas an area that exceeds the NAAQS is a "nonattainment" area. Areas for which there is insufficient information to determine compliance with NAAQS are "unclassifiable," 42 U.S.C. § 7407(d).

18. Respondents propose to construction Boiler #7 in Morgan County, Illinois. At the times relevant to this complaint, Morgan County was classified as either "attainment" or "unclassifiable" for all pollutants. This classification is largely due to the lack of ambient air monitors in Morgan County.

19. The Clean Air Act's Prevention of Significant Deterioration (PSD) Program, incorporated into Illinois law through Illinois Environmental Protection Act Section 9.1(d), applies to major stationary sources of pollution in areas designated attainment or unclassifiable.

20. Under the Clean Air Act's PSD program, a new major source of air pollution cannot be constructed, and an existing major source of air pollution cannot undergo a "major modification," without a permit. *See* 42 U.S.C. §§ 7475(a) (prohibiting the construction of a major emitting facility without PSD review, issuance of a PSD permit, and imposition of BACT limits) and 7479(2)(C) ("construction" includes the "modification" of a source or facility); 40 C.F.R. § 52.21(a)(2)(iii)(2013). Therefore, any major stationary source in an attainment or unclassifiable area that proposes to construct a new major stationary source or "major modification" must first obtain a PSD permit.

21. Included in the definition of "major source" are fossil fuel fired steam electric plants of more than 250 million British thermal units per hour heat input. 40 C.F.R. § 52.21(b)(1)(i)(a).

22. A project of adding a new unit at an existing major stationary source is a major modification triggering PSD requirements if the new unit causes both a significant emission increase and a significant net emission increase. 40 C.F.R. § 52.21(a)(2)(iv)(a)(2013).

23. The test to determine the emission increase when a new emission unit is added is the actual to potential test. 40 C.F.R. § 52.21(a)(2)(iv)(d)(2013).

24. The Meredosia Energy Center and Boiler #7 units are electric utility steam generating units because they are "steam electric generating unit[s] constructed for the purpose of supplying more than one third of [their] potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale." 40 C.F.R. §52.21(b)(31)(2013).

25. Boiler #7 has the “potential to emit,” as that term is defined in 40 C.F.R. 52.21(b)(4)(2013), in excess of 100 tons per year of the following pollutants: nitrogen oxides, sulfur dioxide, carbon monoxide, and ozone and in excess of 100,000 tons per year of the following pollutants: carbon dioxide equivalent (CO_{2e}).

26. Boiler #7 is a “major emitting facility,” as that term is used in 42 U.S.C. § 7475(a) and “major stationary source,” as that term is used in 40 C.F.R. § 52.21(b)(1)(2013).

27. Meredosia Energy Center has the “potential to emit,” as that term is defined in 40 C.F.R. 52.21(b)(4)(2013), in excess of 100 tons per year of the following pollutants: nitrogen oxides, sulfur dioxide, carbon monoxide, particulate matter, particulate matter less than 10 microns in diameter (PM₁₀), particulate matter less than 2.5 microns in diameter (PM_{2.5}) and ozone and in excess of 100,000 tons per year of the following pollutants: carbon dioxide equivalent (CO_{2e}).

28. Meredosia Energy Center is a “major emitting facility,” as that term is used in 42 U.S.C. § 7475(a) and “major stationary source,” as that term is used in 40 C.F.R. § 52.21(b)(1)(2013).

29. The construction of Boiler #7 will cause a significant emission increase and a significant net emission increase for the following pollutants: PM, PM₁₀, PM_{2.5}, nitrogen oxides, sulfur dioxide, ozone, sulfuric acid mist, fluorides, carbon monoxide and CO_{2e}.

30. For areas located in areas designated as “attainment” or “unclassifiable,” the PSD programs require units undertaking major modifications to “apply best available control technology for each air contaminant for which it would be a significant net emissions increase at the source.” 42 U.S.C. § 7475(a)(4) (a major emitting facility that commences “construction,”

the definition of which includes modification, is “subject to the best available control technology for each pollutant subject to regulation under this chapter” that are emitted or result from the modification).

31. The PSD program also requires the owners or operators of a proposed major modification to demonstrate that allowable emission increases from such modification would not cause or contribute to air pollution in violation of either (1) any national ambient air quality standard in any air quality control region or (2) any applicable maximum allowable increase over the baseline concentration in any area. 42 U.S.C. § 7475(a)(3).

32. Ameren failed to obtain from US EPA a permit pursuant to the PSD program for the construction of Boiler # 7.

FIRST CLAIM

(Major Modification Without a PSD Permit)

33. Paragraphs 1 through 32 are incorporated herein by reference.

34. Respondents propose to construct or are constructing Boiler # 7, which is a new or modified major emitting facility, without a permit required under the PSD program.

35. Based upon the foregoing, Respondents have violated and continue to violate Section 9.1(d) of the Illinois Environmental Protection Act, which incorporates Section 165(a) of the Clean Air Act, 42 U.S.C. § 7475(a), and 40 C.F.R. § 52.21(a)(2)(iii)(2013) into Illinois law. Unless restrained by an order of this Board, these and similar violations of the PSD provisions of the Act are and will be ongoing.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing, the Sierra Club requests that this Board:

1. Permanently enjoin Respondents from proposing to or constructing Boiler # 7, except in accordance with the Illinois Environmental Protection Act, the Clean Air Act, and any applicable regulatory requirements;
2. Order Respondents to apply for and obtain a PSD permit from the United States Environmental Protection Agency in conformity with the requirements of the PSD provisions of the Clean Air Act, as incorporated into Illinois law, before proposing to or constructing Boiler #7;
3. Order Respondents to pay civil penalties under 415 ILCS 5/42; including a potential beneficial mitigation project;
4. Declare that Respondents were required to obtain a PSD for Boiler # 7;
5. Award any other relief that the Board finds just and equitable.

DATED: June 11, 2014

Respectfully submitted,

/s/ Eric Schwing



Eric M Schwing
Attorney at Law
1100 South 5th Street
Springfield, IL 62703
217-544-4440
Email: eric.schwing@comcast.net

Eva Schueller
Associate Attorney
Sierra Club Environmental Law Program
85 Second St., Second Floor
San Francisco, CA 94105
Email: eva.schueller@sierraclub.org
Tel: (415) 977-5637

Attorney for the Complainant Sierra Club

NOTICE TO RESPONDENT

NOTE: THIS STATEMENT MUST BE INCLUDED IN THE SERVICE OF THE FORMAL COMPLAINT ON THE RESPONDENT

INFORMATION FOR RESPONDENT RECEIVING FORMAL COMPLAINT

Please take notice that today I filed with the Clerk of the Illinois Pollution Control Board (Board) a formal complaint, a copy of which is served on you along with this notice. You may be required to attend a hearing on a date set by the Board.

Information about the formal complaint process before the Board is found in the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.*) and the Board's procedural rules (35 Ill. Adm. Code 101 and 103). These can be accessed at the Board's Web site (www.ipcb.state.il.us). The following is a summary of some of the most important points in the Act and the Board's procedural rules. It is provided for general informational purposes only and does not constitute legal advice or substitute for the provisions of any statute, rule, or regulation:

Board Accepting Formal Complaint for Hearing; Motions

The Board will not accept this formal complaint for hearing if the Board finds that it is either "duplicative" or "frivolous" within the meaning of Section 31(d) of the Act (415 ILCS 5/31(d)) and Section 101.202 of the Board's procedural rules (35 Ill. Adm. Code 101.202). "Duplicative" means that an identical or substantially similar case is already pending before the Board or in court. See 35 Ill. Adm. Code 103.212(a) and item 10 of the formal complaint.

"Frivolous" means that the formal complaint seeks relief that the Board does not have the authority to grant, or fails to state a cause of action upon which the Board can grant relief. For example, the Board has the authority to order a respondent to stop polluting and pay a civil penalty, to implement pollution abatement measures, or to perform a cleanup or reimburse cleanup costs. The Board does not have the authority, however, to award attorney fees to a citizen complainant. See 35 Ill. Adm. Code 103.212(a) and items 5 and 9 of the formal complaint.

If you believe that this formal complaint is duplicative or frivolous, you may file a motion with the Board, within 30 days after the date you were served with the complaint, requesting that the Board not accept the complaint for hearing. The motion must state the facts supporting your belief that the complaint is duplicative or frivolous. Memoranda, affidavits, and any other relevant documents may accompany the motion. If you need more time than 30 days to file a motion alleging that the complaint is duplicative or frivolous, you must file a motion for an extension of time within 30 days after service of the complaint. A motion for an extension of time must state why you

need more time and the amount of additional time you need. Timely filing a motion alleging that the complaint is duplicative or frivolous will stay the 60-day period for filing an answer to the complaint. See 35 Ill. Adm. Code 103.204, 103.212(b).

All motions filed with the Board's Clerk must include an original, nine copies, and proof of service on the other parties. Service may be made in person, by U.S. mail, or by messenger service. Mail service is presumed complete four days after mailing. See 35 Ill. Adm. Code 101.300(c), 101.302, 101.304.

If you do not respond to the Board within 30 days after the date on which the complaint was served on you, the Board may find that the complaint is not duplicative or frivolous and accept the case for hearing. The Board will then assign a hearing officer who will contact you to schedule times for telephone status conferences and for hearing. See 35 Ill. Adm. Code 103.212(a).

Answer to Complaint

You have the right to file an answer to this formal complaint within 60 days after you receive the complaint. If you timely file a motion alleging that the complaint is duplicative or frivolous, or a motion to strike, dismiss, or challenge the sufficiency of the complaint, then you may file an answer within 60 days after the Board rules on your motion. See 35 Ill. Adm. Code 101.506, 103.204(d), (e), 103.212(b).

The Board's procedural rules require the complainant to tell you as respondent that:

Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney. 35 Ill. Adm. Code 103.204(f).

Necessity of an Attorney

Under Illinois law, an association, citizens group, unit of local government, or corporation must be represented before the Board by an attorney. In addition, an individual who is not an attorney cannot represent another individual or other individuals before the Board. However, even if an individual is not an attorney, he or she is allowed to represent (1) himself or herself as an individual or (2) his or her unincorporated sole proprietorship. See 35 Ill. Adm. Code 101.400(a). Such an individual may nevertheless wish to have an attorney prepare an answer and any motions or briefs, and present a defense at hearing.

Costs

In defending against this formal complaint, you are responsible for your attorney fees, duplicating charges, travel expenses, witness fees, and any other costs that you or your attorney may incur. The Board requires no filing fee to file your answer or any other document with the Board. The Board will pay any hearing costs (*e.g.*, hearing room rental, court reporting fees, hearing officer expenses).

If you have any questions, please contact the Clerk's Office at (312) 814-3629.