

**IN THE CIRCUIT COURT FOR THE FIFTH JUDICIAL CIRCUIT
VERMILION COUNTY, ILLINOIS
CHANCERY DIVISION**

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. **KWAME RAOUL, Attorney**)
General of the State of Illinois, and)
ex rel. **JACQUELINE M. LACY, State’s**)
Attorney of Vermilion County, Illinois,)
)
Plaintiff,)
)
v.) **No. 2021CH000024**
)
DYNEGY MIDWEST GENERATION, LLC, a)
Delaware limited liability company,)
)
Defendant.)

**JOINT MOTION FOR APPROVAL AND ENTRY OF CONSENT ORDER
INCORPORATING PRAIRIE RIVERS NETWORK’S COMMENTS**

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* KWAME RAOUL, Attorney General of the State of Illinois, and *ex rel.* JACQUELINE M. LACY, State’s Attorney for Vermilion County (collectively, “People”), Defendant, DYNEGY MIDWEST GENERATION, LLC (“Dynegy”), and PRAIRIE RIVERS NETWORK, respectfully request that this Court approve and enter the proposed Consent Order that is attached hereto as Exhibit A (the “Consent Order”) and that has been updated to incorporate Prairie Rivers Network’s comments as an order of the Court.

1. On May 5, 2023, the People filed a Motion for Approval and Entry of Consent Order. A copy of the signed Consent Order was attached to the Motion as Exhibit 1.
2. In the People’s Motion for Approval and Entry of Consent Order, it advised the Court that “Prairie Rivers Network did not review the Consent Order in advance of the filing of this Motion and reserves all rights.” Motion at p. 10.

3. On May 5, 2023, the People served a copy of the Motion for Approval and Entry of Consent Order on counsel for Prairie Rivers Network for its review.

4. On May 30, 2023, Prairie Rivers Network provided its written comments concerning the Consent Order filed by the People on May 5, 2023. Specifically, Prairie Rivers Network requested the following changes/additions to the proposed Consent Order:

- a. A specification that, once CCR has been removed from the coal ash units and they have been backfilled or graded, any remaining gabions and riprap will be removed from the riverbank, together with the white rock wall along the New East Ash Pond's riverbank.
- b. A mandate that any reports created pursuant to the Safety Emergency Response Plan [SERP], including but not limited to the monthly riverbank inspection report, be posted on Dynegey's public CCR website or, at a minimum, emailed in a timely manner to Prairie Rivers Network (as has been done during the litigation).
- c. A small change to the language concerning the beneficial use project for the Middle Fork State Fish & Wildlife Area, specifically, that funding be utilized "for the planting of native riparian vegetation to restore the natural and scenic value of the Middle Fork State Fish and Wildlife Area," rather than "for the planting of hardwood trees and related natural and scenic work in" the wildlife area (para. (E)(1)(a) of the proposed Consent Order).

5. Plaintiff, Illinois EPA, and Dynegey ("Parties to the Consent Order") reviewed the proposed changes to the Consent Order and have agreed to adopt Prairie Rivers proposed changes/additions, as follows:

- a. The Parties to the Consent Order agreed to Prairie Rivers Network's first proposed

change and have added language in Paragraph III.D.11. of the Consent Order to require that “[t]o the extent that Defendant installs erosion control rip rap along the Middle Fork of the Vermilion River pursuant to the First Amended SERP (or any subsequent amendment thereof), such rip rap shall be removed, as detailed in Section 3.5 of the First Amended SERP, following Defendant’s completion of the closure of the Ponds by removal of all CCR in accordance with the Standards and the Board’s Part 845 Regulations.” In addition, the Parties to the Consent Order added a new Paragraph III.D.12.¹ that provides “[f]ollowing Defendant’s completion of the closure of the Ponds by removal of all CCR in accordance with the Standards and the Board’s Part 845 Regulations, and in addition to and consistent with any removal of rip rap material required by Paragraph III.D.11.d. above, Defendant shall remove any remaining gabions and rip rap from the riverbank of the Site, including but not limited to the white rock wall along the riverbank nearest the New East Ash Pond.”

- b. The Parties to the Consent Order agreed to Prairie Rivers Network’s second proposed change and have added language in (i) Paragraph III.D.10. of the Consent Order to require Dynegy to provide to Prairie Rivers Network a copy of its monthly riverbank inspection report, and (ii) Paragraph III.D.11.c. of the Consent Order to require Dynegy to provide to Prairie Rivers Network a copy of any amendments or revisions to the First Amended Safety Emergency Response Plan (“SERP”), or

¹ As the Parties to the Consent Order have agreed to include a new Paragraph III.D.12, the first sentence of Section J of the Consent Order entitled the “Release from Liability”, which references Dynegy’s commitment to cease and desist, has been changed from “contained in Section III.D.14. above” to “contained in Section III.D.15. above”.

“other reports created pursuant to the First Amended SERP”.

- c. The Parties to the Consent Order agreed to Prairie Rivers Network’s third proposed change to modify Paragraph III.E.1.a. of the Consent Order as follows: “[w]ithin 30 days of the date of the entry of this Consent Order, Defendant shall pay the amount of Two Hundred Thousand Dollars (\$200,000.00) to the Illinois Department of Natural Resources for the planting of native riparian vegetation, including but not limited to the planting of a hardwood forest, to restore the natural and scenic value of the Middle Fork State Fish and Wildlife Area located at 10906 Kickapoo Park Road, Oakwood, IL 61858, which would help maintain the integrity of the site by preventing soil erosion, establish high quality habitat for wildlife populations, and create an aesthetically pleasing atmosphere suitable for outdoor recreational use.”
6. The People have received no other comments on the proposed Consent Order, which has been on file and pending with the Court for over 30 days.
7. Therefore, for the reasons stated in the People’s Motion for Approval and Entry of Consent Order filed with the Court on May 5, 2023 and this Motion detailing the changes requested by Prairie Rivers Network and agreed to by the Parties to the Consent Order and Prairie Rivers Network that have been incorporated into the Consent Order, which is attached hereto as Exhibit A, the People, Dynegy and Prairie Rivers Network respectfully request that the Court enter the Consent Order attached hereto as Exhibit A, as an Order of the Court.

WHEREFORE, the People, Dynegy, and Prairie Rivers Network respectfully request that the Court enter the Consent Order as an order of the Court, retain jurisdiction over this action in accordance with the terms of the Consent Order, and grant such other and further relief as the Court deems necessary.

Respectfully submitted,

FOR THE PLAINTIFF:
People of the State of Illinois,
ex rel. Kwame Raoul, Attorney
General of the State of Illinois

FOR DEFENDANT:
Dynegy Midwest Generation, LLC

BY: /s/ Stephen J. Sylvester
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ex rel. JACQUELINE M. LACY
State's Attorney of Vermilion County

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FOR PRAIRIE RIVERS NETWORK:

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EXHIBIT A
CONSENT ORDER

**IN THE CIRCUIT COURT FOR THE FIFTH JUDICIAL CIRCUIT
VERMILION COUNTY, ILLINOIS
CHANCERY DIVISION**

PEOPLE OF THE STATE OF ILLINOIS,)	
<i>ex rel.</i> KWAME RAOUL, Attorney)	
General of the State of Illinois, and)	
<i>ex rel.</i> JACQUELINE M. LACY, State’s)	
Attorney of Vermilion County, Illinois,)	
)	
Plaintiff,)	
)	
v.)	No. 2021CH000024
)	
DYNEGY MIDWEST GENERATION, LLC, a)	
Delaware limited liability company)	
)	
Defendant.)	

CONSENT ORDER

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* KWAME RAOUL, Attorney General of the State of Illinois, and *ex rel.* JACQUELINE M. LACY, State’s Attorney of Vermilion County, Illinois, the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), and Defendant, DYNEGY MIDWEST GENERATION, LLC, a Delaware limited liability company, (collectively “Parties to the Consent Order”), have agreed to the making of this Consent Order and submit it to this Court for approval.

I. INTRODUCTION

This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Court’s entry of the Consent Order and issuance of any injunctive relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/1 *et seq.* (2020), and the Illinois Pollution Control Board (“Board”) regulations alleged in the Complaint, except as

otherwise provided herein. It is the intent of the Parties to this Consent Order that it be a final judgment on the merits of this matter.

A. Parties

1. On June 22, 2021, a Complaint was filed on behalf of the People of the State of Illinois by Kwame Raoul, Attorney General of the State of Illinois, on his own motion and upon the request of Illinois EPA, and Jacqueline M. Lacy, State's Attorney of Vermilion County, pursuant to Sections 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e) (2020), against Dynegy Midwest Generation, LLC ("Defendant").

2. Illinois EPA is an administrative agency of the State of Illinois created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2020).

3. Defendant was and is a Delaware limited liability company who has owned, and continues to own, the real property located at 10188 East 2150 North, Oakwood, Vermilion County, Illinois (the "Site"), at which a coal-fired electric generating facility known as the Vermilion Power Station was operated.

4. The Site is located on the west bank of a meandering segment of the Middle Fork of the Vermilion River. The Middle Fork is a popular location for canoeing, kayaking, camping, and other outdoor recreational activities, and has been designated as Illinois' only National Scenic River under the federal National Wild and Scenic Rivers Act, 16 U.S.C.A. § 1271, *et seq.*

5. Defendant has owned and maintained, and continues to own and maintain, three man-made coal combustion residual ("CCR") "ponds" at the Site (collectively, the "Ponds"):

a. The North Ash Pond, which contains approximately 1.6 million cubic yards of CCR, is unlined; consists of one large pit for disposal and another smaller pit for sedimentation overflow; and is bordered on the north by fields owned by the Illinois

Department of Natural Resources (“IDNR”), on the east by the Middle Fork of the Vermilion River, on the south by the Old East Ash Pond, and on the west by bluffs that include the Orchid Hill National Heritage Landmark (the “North Ash Pond”).

b. The Old East Ash Pond, which contains approximately 1.2 million cubic yards of CCR, is unlined; and is bordered on the north and northeast by the Middle Fork of the Vermilion River, on the southeast, south, and west by bluffs on the Site, and on the northwest by the North Ash Pond (the “Old East Ash Pond”).

c. The New East Ash Pond, which contains approximately 0.5 million cubic yards of CCR, is located over “mine voids,” thereby subjecting it to potential subsidence/sinking of land (the “New East Ash Pond”).

B. Agreed Interim Order

On June 30, 2021, the Court entered an Agreed Interim Order in the above-captioned case, as modified by that certain First Agreed Modification to Agreed Interim Order filed on December 15, 2022 (collectively, the “Agreed Interim Order”). This Consent Order supersedes the Agreed Interim Order in its entirety.

C. Allegations of Non-Compliance

Plaintiff contends that Defendant has violated the following provisions of the Act and Board regulations:

Count I: Water pollution violations of Class I groundwater standards in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2020), and Sections 620.115, 620.401, 620.405 and 620.410(a) of the Illinois Pollution Control Board (“Board”) Groundwater Quality Standards, 35 Ill. Adm. Code 620.115, 620.401, 620.405 and 620.410(a);

Count II: Impairment of resource groundwater in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2020), and Section 620.301(a) of the Board Groundwater Quality Standards, 35 Ill. Adm. Code 620.301(a);

- Count III: Creating a water pollution hazard in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2020);
- Count IV: Offensive conditions in 2020 in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2020), and Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203;
- Count V: Illegal disposal of waste in violation of Sections 21(a) and (e) of the Act, 415 ILCS 5/21(a) and (e) (2020); and
- Count VI: Common law public nuisance.

D. Non-Admission of Violations

Defendant represents that it has entered into this Consent Order for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Consent Order and complying with its terms, Defendant does not affirmatively admit the allegations of violation within the Complaint and referenced above, and this Consent Order shall not be interpreted as including such admission.

E. Compliance Activities to Date

1. On August 16, 2021, in accordance with Paragraphs II.1., II.2.a. and II.2.b. of the Agreed Interim Order, Defendant submitted to Illinois EPA a Safety Emergency Response Plan and an Interim Corrective Action Measures Plan, the latter of which consisted of a Dewatering Plan and a Groundwater Collection Trench Plan.

2. On February 8, 2022, Illinois EPA granted conceptual approval of Defendant's Dewatering Plan. A true and correct copy of Defendant's conceptually-approved Dewatering Plan is attached hereto as Exhibit A.

3. On March 10, 2022, Defendant resubmitted the Safety Emergency Response Plan and the Groundwater Collection Trench Plan to Illinois EPA.

4. On April 28, 2022, Illinois EPA granted conceptual approval of the Groundwater Collection Trench Plan. A true and correct copy of the conceptually-approved Groundwater Collection Trench Plan is attached hereto as Exhibit B.

5. On April 28, 2022, Illinois EPA conditionally approved the resubmitted Safety Emergency Response Plan.

6. On October 3, 2022, Defendant submitted a National Pollutant Discharge Elimination System (NPDES) renewal permit application for the Site to Illinois EPA (the “NPDES Permit Application”).

7. On December 9, 2021, Defendant held two public meetings regarding its proposals for the CCR located at the Site, as required under 35 Ill. Adm. Code Part 845 and the Agreed Interim Order.

8. Defendant prepared a general summary report of the two public meetings dated December 22, 2021, as required under 35 Ill. Adm. Code Part 845.

9. On January 28, 2022, Defendant submitted construction permit applications to Illinois EPA for the Ponds at the Site, as required under 35 Ill. Adm. Code Part 845, which are pending with Illinois EPA (the “Part 845 Permit Applications”).

10. On February 22, 2023, Defendant submitted to Illinois EPA, for its review and approval, in consultation with the Illinois Department of Natural Resources, a written First Amended Safety Emergency Response Plan (“First Amended SERP”).

11. Between the date of the entry of the Agreed Interim Order and this Consent Order, Defendant timely submitted monthly riverbank inspection reports to Illinois EPA in accordance with Paragraph II.2.c. of the Agreed Interim Order.

II. APPLICABILITY

1. This Consent Order shall apply to and be binding upon the Parties to the Consent Order. Defendant waives as a defense to any enforcement action taken pursuant to this Consent Order the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Consent Order. This Consent Order may be used against Defendant in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2020).

2. Defendant shall notify each contractor to be retained to perform work required in this Consent Order of each of the requirements of this Consent Order relevant to the activities to be performed by that contractor, including all relevant work schedules and reporting deadlines, and shall provide a copy of this Consent Order to each contractor already retained no later than thirty (30) calendar days after the date of entry of this Consent Order. In addition, Defendant shall provide copies of all schedules for implementation of the provisions of this Consent Order to the prime vendor(s) supplying the control technology systems and other equipment required by this Consent Order.

3. No change in ownership, corporate status or operator of the Site shall in any way alter the responsibilities of Defendant under this Consent Order. In the event that Defendant proposes to sell or transfer any real property or operations subject to this Consent Order, Defendant shall notify the Plaintiff thirty (30) calendar days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the Site or a portion thereof. Defendant shall make as a condition of any such sale or transfer, that the purchaser or successor provide to Defendant

site access and all cooperation necessary for Defendant to perform to completion any compliance obligation(s) required by this Consent Order. Defendant shall provide a copy of this Consent Order to any such successor in interest, and Defendant shall continue to be bound by and remain liable for performance of all obligations under this Consent Order. In appropriate circumstances, however, Defendant and a proposed purchaser or operator of the Site may jointly request, and the Plaintiff, in its discretion, may consider modification of this Consent Order to obligate the proposed purchaser or operator to carry out future requirements of this Consent Order in place of, or in addition to, Defendant. This provision does not relieve Defendant from compliance with any regulatory requirement regarding notice and transfer of applicable Site permits.

III. JUDGMENT ORDER

This Court has jurisdiction of the subject matter herein and of the Parties to the Consent Order and, having considered the stipulated facts and being advised in the premises, finds the following relief appropriate:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

A. Civil Penalty

1. Defendant shall pay a civil penalty of One Hundred Thousand Dollars (\$100,000.00). Payment shall be tendered at the time of entry of the Consent Order as follows:

- a. a certified check or money order in the amount of Eighty Thousand Dollars (\$80,000.00) payable to Illinois EPA for deposit into the Environmental Protection Trust Fund (“EPTF”) to

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276;

with a copy to:

Kathryn A. Pamenter
Senior Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602; and

- b. a certified check or money order in the amount of Twenty Thousand Dollars (\$20,000.00) payable to Vermilion County to:

Jacqueline M. Lacy
Vermilion County State's Attorney
7 North Vermilion – Suite 201
Danville, IL 61832

2. The case name and case number shall appear on the face of the certified checks or money orders.

B. Stipulated Penalties, Interest and Default

1. If Defendant fails to complete any activity or fails to comply with any response or reporting requirement by the date specified in this Consent Order, Defendant shall provide notice to the Plaintiff of each failure to comply with this Consent Order and shall pay stipulated penalties in the amount of \$400.00 per day per violation for up to the first fifteen (15) days of violation, \$500.00 per day per violation for the next fifteen (15) days of violation, and \$1,000.00 per day per violation thereafter until such time that compliance is achieved. The Plaintiff may make a demand for stipulated penalties upon Defendant for its noncompliance with this Consent Order. However, failure by the Plaintiff to make this demand shall not relieve Defendant of the obligation to pay stipulated penalties. All stipulated penalties shall be payable within thirty (30) calendar days of the

date Defendant knows or should have known of its noncompliance with any provision of this Consent Order.

2. If Defendant fails to make any payment required by this Consent Order on or before the date upon which the payment is due, Defendant shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Plaintiff shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

3. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by Defendant not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

4. The stipulated penalties shall be enforceable by the Plaintiff and shall be in addition to, and shall not preclude the use of, any other remedies or sanctions arising from the failure to comply with this Consent Order.

C. Stipulated Penalty and Interest Payment Procedures

1. All payments required by Section III.B of this Consent Order shall be made by certified check or money order payable to Illinois EPA for deposit into the EPTF. Payments shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

2. The case name and case number shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Kathryn A. Pamenter
Senior Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

Jacqueline M. Lacy
Vermilion County State's Attorney
7 North Vermilion – Suite 201
Danville, IL 61832

D. Future Compliance

1. Commencing upon the entry of this Consent Order, Defendant shall comply with the Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments, 415 ILCS 5/22.59 (the "Standards"), and the Illinois Pollution Control Board's adopted Part 845 Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments ("Board's Part 845 Regulations"), with respect to the Site.

2. Notwithstanding anything to the contrary in the Standards or the Board's Part 845 Regulations, Defendant shall close the Ponds by removal of all CCR.

3. Notwithstanding anything to the contrary in the Standards or the Board's Part 845 Regulations, for any activity at the Site for which a National Pollutant Discharge Elimination System (NPDES) Permit must be obtained, Defendant shall meet the requirements of the Act and Board regulations, including the provision of any necessary treatment prior to any discharge to a water of the State and attainment of applicable State water quality standards.

4. Regarding Defendant's pending Part 845 construction permit applications to close the Ponds by removal and dispose of the CCR in a to-be-constructed landfill on the Site, to the extent that Illinois EPA issues a public notice of draft permit pursuant to 35 Ill. Adm. Code 845.260(b)(1) that includes a proposed determination to issue the permit, within 3 years of the date of such public notice, Defendant shall submit to Illinois EPA, for its review and approval, a permit application to develop and operate a landfill on the Site pursuant to 35 Ill. Adm. Code Parts 810 – 813 ("Landfill Development Permit"). Such application shall include a proposed timeline for completion of the construction of the landfill. Following the date of Illinois EPA's written approval of the Landfill Development Permit, including as to the timeline for completion of the construction of the landfill, Defendant and Illinois EPA may modify the construction timeline by mutual written agreement.

5. Within 30 days after construction of the landfill is complete, Defendant shall seek a Significant Permit Modification in accordance with 35 Ill. Adm. Code 813.203 to obtain authorization from Illinois EPA to operate the landfill.

6. To the extent that Illinois EPA issues a public notice for the issuance of a draft construction permit under the Board's Part 845 Regulations as described in Paragraph III.D.4. above, within 9 months of the date of such public notice, Defendant shall commence demolition of the former power station at the Site as necessary to develop the landfill design submitted in the Landfill Development Permit application. Prior to commencing demolition activities at the Site by initiating the physical dismantling of the former power station, Defendant shall:

- a. Take all necessary prerequisite steps, including but not limited to, initiating the demolition contract bidding process, applying for any required permits, paying any required fees, and providing any required notice of the

demolition to the public, including the notice of power plant demolition pursuant to Section 3.141 of the Act, 415 ILCS 5/3.141; and

- b. Submit a fugitive dust plan prepared pursuant to 35 Ill. Adm. Code Part 212 to Illinois EPA for its review and comment, which shall include but not be limited to, preparation of the Site for demolition, the manner of demolition, and subsequent management of the demolished material to control fugitive dust.

7. Commencing upon the date of the entry of this Consent Order, Defendant shall dispose of all waste generated as a result of demolition activities occurring on the Site in accordance with applicable law. Until the completion date of the closure of the Ponds at the Site by removal, Defendant shall retain all disposal receipts and provide them to Illinois EPA upon request.

8. Upon entry of this Consent Order, Defendant shall continue to implement the Dewatering Plan that Illinois EPA conceptually approved on February 8, 2022 and which is attached hereto as Exhibit A. Defendant and Illinois EPA may modify the schedule in the Dewatering Plan by mutual written agreement, including in light of any permit issued in response to the NPDES Permit Application and the Part 845 Permit Applications.

9. Upon entry of this Consent Order, Defendant shall continue to design and install the groundwater collection trench at the Site in accordance with the Groundwater Collection Trench Plan that Illinois EPA conceptually approved on April 28, 2022 and which is attached hereto as Exhibit B. Defendant and Illinois EPA may modify the schedule in the Groundwater Collection Trench Plan by mutual written agreement, including in light of any permit issued in response to the NPDES Permit Application and the Part 845 Permit Applications.

10. To monitor the changes to the riverbank, commencing in the month immediately following the entry of this Consent Order, and continuing each month thereafter until one month following Defendant's completion of the closure of the Ponds by removal of all CCR in accordance with the Standards and the Board's Part 845 Regulations, as well as after each 25-year, 24-hour storm at the Site, Defendant shall conduct an inspection of the riverbank of the Middle Fork of the Vermilion River adjacent to the Site for, among other things, the following:

- a. any appearances of actual or potential structural weakness and other conditions which are disrupting or have the potential to disrupt the operation or safety of the Ponds;
- b. deterioration, malfunctions or improper operation of overtopping control systems where present;
- c. sudden drops in the level of the Ponds' contents;
- d. erosion that creates rills, gullies, or crevices six inches or deeper, other signs of deterioration including failed or eroded vegetation in excess of 100 square feet, or cracks in dikes or other containment devices; and
- e. any visible releases.

Within fifteen (15) days after each inspection, Defendant shall submit a written report of any findings during such inspection to Illinois EPA and IDNR and shall also provide a copy of the report to Prairie Rivers Network.

11. First Amended SERP.

- a. Upon its completion of its review of Dynegey's First Amended SERP, Illinois EPA shall, in writing: (i) approve the submission; (ii) approve the

submission upon specified conditions; (iii) approve part of the submission and disapprove the remainder; or (iv) disapprove the submission.

- i. If Illinois EPA approves the submission, commencing on the date of Illinois EPA's written approval and continuing until Defendant's completion of the closure of the Ponds by removal of all CCR in accordance with the Standards and the Board's Part 845 Regulations, Defendant shall comply with the Illinois EPA-approved submission.
- ii. If Illinois EPA conditionally approves, or approves only part of, any submission, Defendant shall, upon written direction from Illinois EPA, implement all approved actions of the submission that Illinois EPA determines are technically severable from any disapproved portions of the submission.
- iii. If Illinois EPA disapproves the submission, in whole or in part, Defendant shall, within thirty (30) days of the date of disapproval or such other time as Illinois EPA agrees in writing, correct all of the deficiencies and resubmit the submission, for Illinois EPA's review and approval in accordance with this Paragraph III.D.11. If the resubmission is approved in whole or in part, Defendant shall comply with Paragraph III.D.11. herein, as applicable.
- iv. If a resubmission is disapproved, in whole or in part, Illinois EPA may require Defendant to correct any deficiencies in accordance

with the preceding subparagraphs, or Defendant may invoke the Dispute Resolution procedures set forth in Section III.H.

- b. To the extent that Defendant is unable to obtain a required permit, authorization, and/or other approval as detailed in Sections 3.2 – 3.6 of the First Amended SERP, Defendant shall notify Illinois EPA in writing within two business days of such denial/inability. Within 30 days of such notification, Defendant shall submit a written plan to Illinois EPA detailing the steps it will take to address its riverbank erosion control measures in light of such denial/inability. Illinois EPA’s response to Defendant’s written plan may include, but is not limited to, requiring Defendant to submit a Second Amended Safety Emergency Response Plan to Illinois EPA, for its review and approval (in consultation with the Illinois Department of Natural Resources). To the extent that Defendant submits a Second Amended Safety Emergency Response Plan to Illinois EPA, such submission shall be subject to the review and approval process set forth in Paragraph III.D.11.a. above.
- c. To the extent that Defendant submits any amendments or revisions to the First Amended SERP, or other reports created pursuant to the First Amended SERP, to Illinois EPA, Defendant shall provide Prairie Rivers Network with a copy of such submission, when submitted to Illinois EPA, and Prairie Rivers Network may submit comments regarding such submittal to Illinois EPA.
- d. To the extent that Defendant installs erosion control rip rap along the Middle Fork of the Vermilion River pursuant to the First Amended SERP

(or any subsequent amendment thereof), such rip rap shall be removed, as detailed in Section 3.5 of the First Amended SERP, following Defendant's completion of the closure of the Ponds by removal of all CCR in accordance with the Standards and the Board's Part 845 Regulations.

12. Following Defendant's completion of the closure of the Ponds by removal of all CCR in accordance with the Standards and the Board's Part 845 Regulations, and in addition to and consistent with any removal of rip rap material required by Paragraph III.D.11.d. above, Defendant shall remove any remaining gabions and rip rap from the riverbank of the Site, including but not limited to the white rock wall along the riverbank nearest the New East Ash Pond.

13. Illinois EPA, its employees and representatives, the Attorney General, his employees and representatives, and the Vermilion County State's Attorney, her employees and representatives shall have the right of entry into and upon Defendant's Site which is the subject of this Consent Order, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, Illinois EPA, its employees and representatives, the Attorney General, his employees and representatives, and the Vermilion County State's Attorney, her employees and representatives may take photographs, samples, and collect information, as they deem necessary. In conducting such inspections, Illinois EPA, its employees and representatives, the Attorney General, his employees and representatives, and the Vermilion County State's Attorney, her employees and representatives agree to comply with Defendant's health and safety protocols pertinent to the Site.

14. This Consent Order in no way affects the responsibilities of Defendant to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board regulations.

15. Defendant shall cease and desist from future violations of the Act and Board regulations that were the subject matter of the Complaint.

E. Beneficial Projects

1. In addition to the payment of a statutory civil penalty, Defendant shall perform two projects that will benefit the environment in Vermilion County, Illinois. The Parties to the Consent Order agree that the projects shall consist of the following:

a. **Middle Fork State Fish and Wildlife Area Beneficial Project.** Within 30 days of the date of the entry of this Consent Order, Defendant shall pay the amount of Two Hundred Thousand Dollars (\$200,000.00) to the Illinois Department of Natural Resources for the planting of native riparian vegetation, including but not limited to the planting of a hardwood forest, to restore the natural and scenic value of the Middle Fork State Fish and Wildlife Area located at 10906 Kickapoo Park Road, Oakwood, IL 61858, which would help maintain the integrity of the site by preventing soil erosion, establish high quality habitat for wildlife populations, and create an aesthetically pleasing atmosphere suitable for outdoor recreational use.

i. The payment shall be paid by certified check or money order made payable to the Illinois Department of Natural Resources. The certified check or money order shall be sent by overnight mail to:

Illinois Department of Natural Resources
c/o David Berry, Land Management Fiscal Officer
One Natural Resources Way
Springfield, IL 62702

ii. A copy of the check and the transmittal letter shall be sent to:

Kathryn A. Pamenter
Senior Assistant Attorney General
Environmental Bureau

Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602; and

Jacqueline M. Lacy
Vermilion County State's Attorney
7 North Vermilion – Suite 201
Danville, IL 61832

b. **Kennekuk County Park Beneficial Project.** Within 60 days of the date of the entry of this Consent Order, Defendant, after consultation with the Vermilion County Conservation District (“District”) and the Vermilion County Conservation District Foundation a/k/a the Vermilion County Conservation Foundation (“VCCDF”), shall submit a written proposal to the Plaintiff, for its review and approval, of one or more projects that Defendant will fund and which are designed to improve the natural, scenic and recreational areas in Kennekuk County Park located in Vermilion County, Illinois (collectively, the “Park Project”). Defendant’s proposal shall include, without limitation,

- i. A description of Defendant’s contribution of Two Hundred Thousand Dollars (\$200,000.00) towards the Park Project, the payment delivery information, and a certification from the District and VCCDF that the funding shall not displace any other source of funding for the Park Project;
- ii. A provision that within 30 days of the date of the Plaintiff’s written approval of the Park Project, Defendant shall deposit the amount of \$200,000.00 for the Park Project with an escrow agent approved by the Plaintiff, with instructions approved by the Plaintiff that disbursements shall be made only for projects approved by Plaintiff

under this Section III.E.1.b. and only upon the joint direction of the Plaintiff and Defendant;

- iii. A schedule for the completion of the Park Project; and
- iv. A statement that Defendant shall provide Prairie Rivers Network with a copy of the proposal, when submitted to the Plaintiff, and Prairie Rivers Network may submit comments regarding such proposal to the Plaintiff.

Within twenty-one (21) days of the completion of the Park Project, Defendant shall submit a final report to the Plaintiff in accordance with Section III.I. herein, describing the completed Park Project (the “Final Report”). The Final Report shall include any documents, including a summary of expenditures, provided by the District or VCCDF, as applicable, to Defendant relating to the completion of the Park Project. Within 30 days of the determination that any approved Park Project cannot be completed or the summary of expenditures for the approved Park Project do not total the amount in this Section III.E.1.b. above, Defendant shall consult with the District and VCCDF and propose one or more additional projects designed to benefit Kennekuk County Park in Vermilion County, Illinois, following the procedures set forth in this Section III.E.1.b. above.

2. By signature on this Consent Order, Defendant certifies that, as of the date of entry of this Consent Order, it is not required to perform or develop the foregoing beneficial projects by any federal, state or local law or regulation, nor is it required to perform or develop the beneficial projects by agreement or injunctive relief in any other case. Defendant further certifies that it has

not received, and is not presently negotiating to receive credit for, the beneficial projects in any other enforcement action.

3. Any public statement, oral or written, in print, film or other media, made by Defendant making reference to the foregoing beneficial projects shall include the following language:

“This project was undertaken in connection with the settlement of an enforcement action taken by the Illinois Attorney General, the Vermilion County State’s Attorney, and the Illinois EPA for alleged violations of the Illinois Environmental Protection Act and regulations promulgated thereunder.”

F. *Force Majeure*

1. *Force majeure* is an event arising solely beyond the control of Defendant, which prevents the timely performance of any of the requirements of this Consent Order and shall include, but is not limited to, events such as floods, fires, tornadoes, other natural disasters, and labor disputes beyond the reasonable control of Defendant. An increase in costs associated with implementing any requirement of this Consent Order shall not, by itself, excuse Defendant for a failure to comply with such a requirement.

2. When a *force majeure* event occurs which causes or may cause a delay in the performance of any of the requirements of this Consent Order, Defendant shall orally notify Illinois EPA (Michael Summers at Michael.summers@illinois.gov) within forty-eight (48) hours of the occurrence. Written notice shall be given to the Plaintiff’s representatives as listed in Section III.I of this Consent Order as soon as practicable, but no later than ten (10) calendar days after the claimed occurrence. This section shall be of no effect as to the particular event involved if Defendant fails to comply with these notice requirements.

3. Within ten (10) calendar days of receipt of any written *force majeure* notice, the Plaintiff shall respond in writing regarding Defendant’s claim of a delay or impediment to

performance. If the Plaintiff agrees that the delay or impediment to performance has been or will be caused by circumstances beyond the control of Defendant and that Defendant could not have prevented the delay by the exercise of due diligence, the parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay, by a period equivalent to the delay actually caused by such circumstances. Such stipulation may be filed as a modification to this Consent Order. Defendant shall not be liable for stipulated penalties for the period of any such stipulated extension.

4. If the Plaintiff does not accept Defendant's claim of a *force majeure* event, Defendant must file a petition with the Court within twenty (20) calendar days of receipt of the Plaintiff's determination in order to contest the imposition of stipulated penalties. The Plaintiff shall have twenty (20) calendar days to file its response to said petition. The burden of proof of establishing that a *force majeure* event prevented the timely performance shall be upon Defendant. If this Court determines that the delay or impediment to performance has been or will be caused by circumstances solely beyond the control of Defendant and that Defendant could not have prevented the delay by the exercise of due diligence, Defendant shall be excused as to that event (including any imposition of stipulated penalties), for all requirements affected by the delay, for a period of time equivalent to the delay or such other period as may be determined by this Court.

G. Enforcement and Modification of Consent Order

1. This Consent Order is a binding and enforceable order of this Court. This Court shall retain jurisdiction of this matter and shall consider any motion by any party for the purposes of interpreting and enforcing the terms and conditions of this Consent Order. Defendant agrees

that notice of any subsequent proceeding to enforce this Consent Order may be made by mail and waives any requirement of service of process.

2. The Parties to the Consent Order may, by mutual written consent, extend any compliance dates or modify the terms of this Consent Order without leave of this Court. A request for any modification shall be made in writing and submitted to the representatives designated in Section III.I. of this Consent Order. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Consent Order. Any such agreed modification shall be in writing and signed by authorized representatives of each party, for filing and incorporation by reference into this Consent Order.

H. Dispute Resolution

1. Except as provided herein, the Parties to the Consent Order may seek to informally resolve disputes arising under this Consent Order, including but not limited to Illinois EPA's decision regarding appropriate or necessary response activity, approval or denial of any report, plan or remediation objective, or the Plaintiff's rejection of a request for modification or termination of the Consent Order. The Plaintiff reserves the right to seek enforcement by the Court where Defendant has failed to satisfy any compliance deadline within this Consent Order. The following are also not subject to the dispute resolution procedures provided by this section: a claim of *force majeure*, a failure to make any required payment and any circumstances posing a substantial danger to the environment or to the public health or welfare of persons.

2. The dispute resolution procedure must be invoked by a party through a written notice describing the nature of the dispute and the party's position with regard to such dispute. The other party shall acknowledge receipt of the notice and schedule a meeting to discuss the dispute informally not later than fourteen (14) calendar days from the receipt of such notice. These

informal negotiations shall be concluded within thirty (30) calendar days from the date of the first meeting between the parties, unless the parties agree, in writing, to shorten or extend this period. The invocation of dispute resolution, in and of itself, shall not excuse compliance with any requirement, obligation or deadline contained herein, and stipulated penalties may be assessed for failure or noncompliance during the period of dispute resolution. As part of the resolution of any dispute, the Parties to the Consent Order, by agreement or by order of this Court, may extend or modify the schedule for completion of work under this Consent Order to account for the delay in the work that occurred as a result of dispute resolution.

3. In the event that the parties are unable to reach agreement during the informal negotiation period, the Plaintiff shall provide Defendant with a written summary of its position regarding the dispute. The position advanced by the Plaintiff shall be considered binding unless, within twenty (20) calendar days of Defendant's receipt of the written summary of the Plaintiff's position, Defendant files a petition with this Court seeking judicial resolution of the dispute. The Plaintiff shall respond to the petition by filing the administrative record of the dispute and any argument responsive to the petition within twenty (20) calendar days of service of Defendant's petition. The administrative record of the dispute shall include the written notice of the dispute, any responsive submittals, the Plaintiff's written summary of its position, Defendant's petition before the Court and the Plaintiff's response to the petition. The Plaintiff's position shall be affirmed unless, based upon the administrative record, it is against the manifest weight of the evidence.

I. Notice and Submittals

Except for payments, the submittal of any notice, reports or other documents required under this Consent Order, shall be delivered to the following designated representatives:

As to the Plaintiff

Kathryn A. Pamenter
Senior Assistant Attorney General
Stephen J. Sylvester
Bureau Chief
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
Kathryn.Pamenter@ilag.gov
Stephen.Sylvester@ilag.gov

Michael Roubitchek
Deputy General Counsel
Gabriel Neibergall
Assistant Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
Mike.Roubitchek@illinois.gov
Gabriel.Neibergall@illinois.gov

Jacqueline M. Lacy
Vermilion County State's Attorney
7 North Vermilion – Suite 201
Danville, IL 61832
(217) 554-7750
salacy@vercounty.org

As to Defendant

Joshua R. More
ArentFox Schiff LLP
233 South Wacker Drive
Suite 7100
Chicago, IL 60606
joshua.more@afslaw.com

For Purposes of Paragraphs III.D.10. and 11. and III.E.1. herein

As to Illinois Department of Natural Resources

Paul Mauer
Illinois Department of Natural Resources

1 Natural Resources Way
Springfield, IL 62702
Paul.mauer@illinois.gov

As to Prairie Rivers Network
Jennifer Cassel
Earthjustice
311 S. Wacker Dr., Suite 1400
Chicago, IL 60606
(312) 500-2198
jcassel@earthjustice.org

Thomas Cmar
Earthjustice
6608 Wooster Pike
Cincinnati, OH 45227
(312) 257-9338
tcmar@earthjustice.org

Andrew Rehn
Prairie Rivers Network
1605 South State St., Suite 1
Champaign, IL 61820
(217) 344-2371 x 8208
arehn@prairierivers.org

J. Release from Liability

In consideration of Defendant's payment of a \$100,000.00 penalty, its commitment to cease and desist as contained in Section III.D.15. above, and completion of all activities required hereunder, the Plaintiff releases, waives and discharges Defendant from any further liability or penalties for the violations of the Act and Board regulations that were the subject matter of the Complaint. The release set forth above does not extend to any matters other than those expressly specified in Plaintiff's Complaint filed on June 22, 2021. The Plaintiff reserves, and this Consent Order is without prejudice to, all rights of the State of Illinois against Defendant with respect to all other matters, including but not limited to the following:

- a. criminal liability;

- b. liability for future violations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. Defendant's failure to satisfy the requirements of this Consent Order.

Nothing in this Consent Order is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, other than Defendant.

K. Execution and Entry of Consent Order

This Order shall become effective only when executed by all Parties to the Consent Order and the Court. This Order may be executed by the parties in one or more counterparts, all of which taken together shall constitute one and the same instrument. The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Consent Order and to legally bind them to it.

[Remainder of Page Blank; Text Continues on Page 27]

WHEREFORE, the parties, by their representatives, enter into this Consent Order and submit it to this Court that it may be approved and entered.

AGREED:


FOR THE PLAINTIFF:


PEOPLE OF THE STATE OF ILLINOIS
ex rel. KWAME RAOUL, Attorney General
of the State of Illinois

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

JOHN J. KIM, Director
Illinois Environmental Protection Agency

BY: 
STEPHEN J. SYLVESTER, Chief
Assistant Attorney General
Environmental Bureau

BY: 
CHARLES W. GUNNARSON
Chief Legal Counsel

DATE: 6/6/23

DATE: 6/6/23

ex rel. JACQUELINE M. LACY
State's Attorney of Vermilion County

By: _____

DATE: _____

FOR DEFENDANT:

DYNEGY MIDWEST GENERATION, LLC

BY: _____
Its: Executive Vice President and General
Counsel

DATE: _____

ENTERED:

JUDGE

DATE: _____

WHEREFORE, the parties, by their representatives, enter into this Consent Order and submit it to this Court that it may be approved and entered.

AGREED:

FOR THE PLAINTIFF:

PEOPLE OF THE STATE OF ILLINOIS
ex rel. KWAME RAOUL, Attorney General
of the State of Illinois

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

JOHN J. KIM, Director
Illinois Environmental Protection Agency

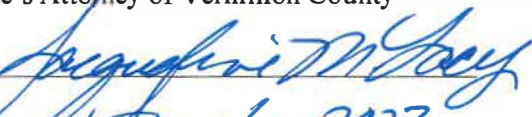
BY: _____
STEPHEN J. SYLVESTER, Chief
Assistant Attorney General
Environmental Bureau

BY: _____
CHARLES W. GUNNARSON
Chief Legal Counsel

DATE: _____

DATE: _____

ex rel. JACQUELINE M. LACY
State's Attorney of Vermilion County

By: 
DATE: June 6, 2023

FOR DEFENDANT:

DYNEGY MIDWEST GENERATION,
LLC

BY:

Its: Executive Vice President and General
Counsel

ENTERED:

DATE: _____

J U D G E

DATE: _____

WHEREFORE, the parties, by their representatives, enter into this Consent Order and submit it to this Court that it may be approved and entered.

AGREED:

FOR THE PLAINTIFF:

PEOPLE OF THE STATE OF ILLINOIS
ex rel. KWAME RAOUL, Attorney General
of the State of Illinois

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

JOHN J. KIM, Director
Illinois Environmental Protection Agency

BY: _____
STEPHEN J. SYLVESTER, Chief
Assistant Attorney General
Environmental Bureau

BY: _____
CHARLES W. GUNNARSON
Chief Legal Counsel

DATE: _____

DATE: _____


ex rel. JACQUELINE M. LACY
State's Attorney of Vermilion County

By: _____

DATE: _____

FOR DEFENDANT:

DYNEGY MIDWEST GENERATION, LLC

BY: 

Its: Executive Vice President and General
Counsel

DATE: Jun 5, 2023

ENTERED:

J U D G E

DATE: _____

Exhibit A

3. DEWATERING SCOPE AND SCHEDULE

IAG Interim Order Section (II)(2)(b): Dewatering. Within forty-five (45) days of the entry of this Order, Defendant shall submit to Illinois EPA, for its review and approval, a written scope of work for the removal of free water and dewatering of the Ponds at the Site, including a proposed schedule for implementation.

DMG plans to close the surface impoundments at the Vermilion Site. The proposed closure plan will require physical alterations to the surface impoundments, including removal of waters from the surface impoundments. DMG will be applying for a modification to NPDES Permit No. IL0004057 to reflect the planned physical alterations and short-term discharges of waters from the ponds.

The closure construction activities include removal of open water from the ponds, referred to as “unwatering” and also includes partial removal of pore water contained in ash-filled portions of the surface impoundments, referred to as “dewatering”.

Discharge of unwaters would occur from removal of the free surface water in the NEAP and the NAP. These waters generally result from storm water precipitation. There is no ponded water in the OEAP area as it is filled and graded to drain surface water.

To facilitate both the unwatering and dewatering of the surface impoundments, a two-step approach is planned. The following is a general description of the unwatering and dewatering processes. Step 1 will initiate removal of the unwaters.

Step 1 – Channels will be cut into the ponded ash in the NEAP and the NAP. These channels will facilitate the passive drainage of the majority of the unwaters and some smaller amounts of the dewaters to a collection point and then pumped and discharged to the Secondary Pond and then to the River through the NPDES outfall.

Discharge of dewaters would occur from removal of the water from pore spaces in deposited ash in the surface impoundments. Step 2 will facilitate removal of the dewaters.

Step 2 – After the free surface unwaters (i.e., storm water) are removed from the surface impoundments in Step 1 and to facilitate more active drainage of the dewaters, additional channels will be excavated into the valley areas of the proposed earthen cover geometry. Deeper sumps may be installed along selected areas of the channels. The dewaters will

August 16, 2021

be drained to a collection point and then pumped and discharged to the Secondary Pond and then to the River through the NPDES outfall.

Table 3-1. Proposed Schedule for Dewatering

Milestone	Completion Timeframe
<p>Update existing antidegradation assessment</p> <p><i>If possible, concurrently with antidegradation assessment revision for the groundwater collection trench.</i></p>	<p>Three to six months</p>
<p>Submit NPDES permit modification</p> <p><i>If possible, concurrently with antidegradation assessment revision for the groundwater collection trench.</i></p>	<p>Two months after antidegradation assessment is revised and finalized</p>
<p>Contingency item for evaluation of additional treatment options, to meet NPDES-permitted outfall limits, and development of final wastewater treatment design and procurement of associated WPC Permit.</p>	<p>Six months after issuance of the NPDES permit</p>
<p>Contingency to construct treatment system</p>	<p>Three months after design and permitting are completed</p>
<p>Start pond dewatering</p>	<p>Upon permit issuance</p>
<p>Initial dewatering complete</p>	<p>Two years</p>
<p>Ongoing dewatering (stormwater)</p>	<p>Until all ash is removed to landfill</p>



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782-3397

JB PRITZKER, GOVERNOR

JOHN J. KIM, DIRECTOR

217-782-0610

February 8, 2022

Dianna Tickner
Dynergy Midwest Generation, LLC
1500 Eastport Plaza Drive
Collinsville, IL 62234

**Re: Interim Corrective Action Measures Plan
Former Vermilion Power Station**

Dear Ms. Tickner,

On August 16, 2021, pursuant to the Agreed Interim Order entered on June 30, 2021, in Case No. 2021CH000024, Dynergy submitted an Interim Corrective Action Measures Plan to Illinois EPA for review and approval. This letter only addresses the Interim Corrective Action Measures Plan; additional Illinois EPA letters will address the other plan(s) submitted. The Interim Corrective Action Measures Plan contains two separate plans / scopes of work, including a Dewatering Plan and a Groundwater Collection Trench Plan. The Illinois EPA's comments on these plans, as well as the information it is seeking from Dynergy to address these comments, are outlined below.

Additionally, the Illinois EPA received comments on the plans from Earthjustice in a letter dated November 16, 2021, a copy of which is attached.

Dewatering Plan

At this time, the Illinois EPA grants conceptual approval of the Dewatering Plan.¹ The Illinois EPA's approval is "conceptual" in nature based on a recognition that any plan for the dewatering of the ash ponds is subject to the NPDES permitting process pursuant to 35 Ill. Adm. Code Part 309 and State construction/operating permitting process pursuant to 35 Ill. Adm Code Part 845. These permitting processes necessarily would require the submittal of detailed information to ensure that any dewatering plans include, but are not limited to, a full characterization of the wastewater, a plan for how the dewatering would occur, the need to address antidegradation, and an evaluation of the potential for treatment/treatment technologies, all of which are intended to demonstrate compliance with the Illinois Environmental Protection Act and applicable regulations.

¹ Pursuant to Section II.3.b. of the Agreed Interim Order, this would amount to an Illinois EPA "approv[al] [of] the submission upon specified conditions."

4302 N. Main Street, Rockford, IL 61103 (815) 987-7760
595 S. State Street, Elgin, IL 60123 (847) 608-3131
2125 S. First Street, Champaign, IL 61820 (217) 278-5800
2009 Mall Street Collinsville, IL 62234 (618) 346-5120

9511 Harrison Street, Des Plaines, IL 60016 (847) 294-4000
412 SW Washington Street, Suite D, Peoria, IL 61602 (309) 671-3022
2309 W. Main Street, Suite 116, Marion, IL 62959 (618) 993-7200
100 W. Randolph Street, Suite 4-500, Chicago, IL 60601

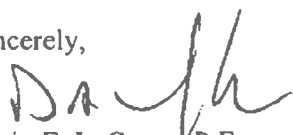
Groundwater Collection Trench Plan

At this time, the Illinois EPA is unable to approve the Groundwater Collection Trench Plan.² The Illinois EPA's comments on the Groundwater Collection Trench Plan, as well as the information it is seeking from Dynegy to address these comments, are listed in (1) & (2) below. Additionally, the Illinois EPA would note that any plan to construct and operate a groundwater interceptor type of trench is contingent upon obtaining a NPDES permit for any discharges associated with the operation of the trench. This would include a full characterization of the groundwater, estimates of volume, intended scope of groundwater capture, antidegradation, and potential treatment of the groundwater which may be necessary to comply with water quality standards. The Illinois EPA further notes that the Illinois Department of Natural Resources (IDNR), through its Office of Water Resources dam safety program, has regulatory authority over the construction, operation and maintenance of dams and should be consulted with respect to the Groundwater Collection Trench Plan.

- 1) The Groundwater Collection Trench Plan should include a discussion as to how riverbank stability will be addressed. IDNR should be consulted concerning the potential impact a groundwater collection trench may have on riverbank stability. The plan must address any issues related to impacts to bank stability and/or a slope stability analysis. This includes outlining any concerns or comments by IDNR, and how those concerns or comments are being addressed.
- 2) The plan must also address any potential permitting requirements with IDNR or any other state or federal agency, including, without limitation, the estimated timelines associated with such permitting.

With respect to the Groundwater Collection Trench Plan / scope of work, the Illinois EPA requests that Dynegy obtain additional information in response to the above-referenced comments, modify the Plan as necessary, and re-submit the modified Plan to the Illinois EPA in accordance with the terms of the Agreed Interim Order.

Sincerely,



Darin E. LeCrone, P.E.
Manager, Permit Section
Division of Water Pollution Control

Cc: Division of Legal Counsel
Illinois Attorney General's Office

Enclosure

² Pursuant to Section II.3.b. of the Agreed Interim Order, this would amount to an Illinois EPA "disapprov[al] [of] the submission"

Exhibit B

2. GROUNDWATER COLLECTION TRENCH

IAG Interim Order Section (II)(2)(a): Groundwater Collection Trench. Within forty-five (45) days of the entry of this Order, Defendant shall submit to Illinois EPA, for its review and approval, a written scope of work for a groundwater collection trench located downgradient of the Old East Ash Pond, which would serve to collect groundwater migrating from the Ponds and prevent such groundwater from seeping into the Middle Fork (the "Trench Scope of Work"). The Trench Scope of Work shall include, at a minimum, (a) the list of all governmental permits and approvals that Defendant must obtain to construct and operate the groundwater collection trench and (b) a proposed schedule for implementation.

This Scope of Work for a groundwater collection trench has been prepared in accordance with the requirements of the IAG Interim Order (as detailed in the subsequent sections) and will be submitted within forty-five (45) days of the Order, which was entered on June 30, 2021.

2.1. Overview

Seepage has been identified on the riverbank along the OEAP as shown in Figure 2-1. The seepage is estimated to be occurring near the interface of the Middle Groundwater Unit (MGU) and Middle Confining Unit (MCU) around elevation 575 ft. The Groundwater Collection Trench (Trench) will be constructed along the OEAP riverbank to intercept water migrating into the River and convey it to the Secondary NEAP. The Trench will be operated until the OEAP and NAP are closed by removal.

The project will be executed in four phases:

- Phase 1 – Pre-permitting Phase (Section 2.2);
- Phase 2 – Permit Application Phase (Section 2.3);
- Phase 3 – Design Phase (Section 2.4); and
- Phase 4 – Construction Phase (Section 2.5).

The scope of work for each phase along with time frames are provided below. The overall project schedule is provided in Section 2.6.

2.2. Phase 1 – Pre-permitting Phase

The scope of work for this phase will include preparing supplementary documents that are necessary for permit applications. The following documents will be prepared and compiled during this phase:

1. Revised antidegradation study as required for the NPDES permit modification application.
2. Stormwater Pollution Prevention Plan (SWPPP) as required for the general NPDES permit for construction activities application.
3. Thirty percent design documents as required for all environmental permit applications. This includes a contingency for evaluation of additional wastewater treatment options, pending revised antidegradation study completion.

Items 2 and 3 will be conducted as part of Phase 3 (see Section 2.4 for details).

Phase 1 will take approximately six to twelve months to prepare and submit.

2.3. Phase 2 – Permit Application Phase

Permit applications will be filled out and submitted for review and approval. The following permit applications will be submitted:

- NPDES permit modification
- General NPDES permit for construction activities
 - Requires project review and approval from the State Historic Preservation Office (SHPO)
 - Requires project review and approval from the Illinois Department of Natural Resources (IDNR)
- Joint water pollution control construction and operating permit (WPC Permit)
 - As a contingency, upon issuance of the NPDES permit modification, a revision to the existing WPC Permit may be required.

The permit documents will be submitted to Middle Fork River Corridor Advisory Committee for review.

Phase 2 will take approximately three to six months to prepare and submit.

2.4. Phase 3 – Design Phase

Phase 3 will be conducted concurrently with Phase 1 and Phase 2. Preliminary and Issued for Construction (IFC) level drawings and specifications will be created as part of this task, and the content will be included in other phases as needed. The scope of work for Trench construction will be included in the following work items:

- Task 1 – Establish the Extent of Trench
- Task 2 – Conduct Interim Slope Stability Assessment
- Task 3 – Perform Mechanical & Electrical Design
- Task 4 – Prepare Construction Drawings and Specifications

2.4.1. Task 1 – Establish the Extent of Trench

Seepage has been visually observed along a certain portion of the riverbank along OEAP (see Figure 2-1). However, the Trench will be designed to extend along the OEAP riverbank and further extend northwest into the riverbank along the NAP, and wrap around at the northeast corner of OEAP (see Figure 2-1).

The depth of the trench will be established based on the interpreted boundaries of MGU, MCU, and the Lower Groundwater Unit (LGU). The Trench will be designed to vertically extend downward through MGU, and the bottom of the Trench will be within MCU, and stay above the LGU. The purpose is to collect migrating groundwater from seeping into the River. The bottom of the Trench will be designed so that the groundwater is collected by gravity at one or more low points along the Trench and transported to Secondary NEAP with a forcemain (see Section 2.4.3 for details).

Available data will be reviewed, and additional field/laboratory data will be gathered as necessary to interpret soil layers for MGU, MCU, and LGU.

The alignment of the Trench will be established predominantly based on the interim slope stability assessment.

2.4.2. Task 2 – Conduct Interim Slope Stability Assessment

The lateral distance between the toe of the OEAP Eastern Berm and the top of the riverbank ranges from approximately 20 to 50 feet. It is expected that a contractor will need a flat working platform

with a minimum 20 ft width. Considering these dimensions and additional offsets that will be needed from the top edge of the riverbank for safety considerations, and installation of soil erosion and sediment control (SESC) measures (e.g., silt fence), part of the OEAP Eastern Berm will be excavated to provide additional space during construction. Therefore, an interim slope stability analyses will be conducted to assess stability during the interim conditions and help establish the alignment of the Trench.

2.4.3. Task 3 – Perform Mechanical & Electrical Design

Mechanical and electrical design will be needed to transport water collected within the Trench to the Secondary NEAP pond, which has the NPDES Outfall 003. Based on soil stratigraphy and the need for gravity drainage within the Trench, it is expected to have multiple low points along the Trench alignment. Each of these low points will have a dedicated pump, which will convey the collected water with one or multiple forcemains to the discharge location.

This task will include design to establish: (i) number and type of pumps at each location; (ii) pump elevations; (iii) type, size, and number of forcemains; (iv) electrical needs and details; and (v) instrumentation details for monitoring the condition of pumps.

2.4.4. Task 4 – Prepare Construction Drawings and Specifications

Preliminary and IFC level drawing sets will be prepared to include construction details and specifications. It is expected that the drawing set will consist of approximately 12 sheets and the IFC level drawings will include:

- Cover Sheet
- Overall Site Plan
- Preconstruction Conditions – will provide information on the existing structures at the Site.
- Construction Sheet – Plan View I – will include Trench alignment, control point (CP) locations, callouts, the extent of tree removal needed to provide access, and other construction details. Stormwater pollution prevention plan (SWPPP) items and narrative will be included on the construction plan view sheets.
- Construction Sheet – Plan View II – this sheet will be utilized as needed, and will include the alignment and construction details for the shallow trench that will be constructed to convey the forcemain to the Secondary NEAP.
- Sections – will include sections cut perpendicular to the Eastern Berm at a 200-ft interval. The existing grade and interim grades will be displayed.

August 16, 2021

- Trench Profile – will include cross-sectional view along the Trench alignment, provide grades along the bottom of the Trench, control points, pump locations, and inverts.
- Details I – will include construction level details for various components of the work (e.g. material information, dimensions, etc.)
- Details II – will include details for the SESC measures that will be implemented.
- Control Point Summary Sheet – will provide coordinates and elevations for each CP provided on earlier sheets.
- Specifications I – will include specifications for civil-related work items, including SESC specifications.
- Specifications II – will include specifications for mechanical and electrical work.
- Contingency to include the additional wastewater treatment design, evaluated under Phase I.

The information listed above may be combined together; the exact number of sheets and content will be established during the design phase. The preliminary design drawings may or may not include all the IFC level details (e.g., CP information).

Thirty percent design drawings will be prepared within six to nine months, concurrently with Phase I. IFC level drawings will be prepared upon permit approvals and take approximately four months.

2.5. Construction and Quality Assurance

Construction will commence only after receiving all environmental permits and approval of construction documents by IEPA and the IAG. The construction will be conducted in accordance with the permits and IFC level drawings. A third-party firm experienced in construction quality assurance services will be contracted to observe and document the construction activities. A construction completion report will be prepared certifying the construction.

It is expected that the bidding phase will take two months, construction and certification documentation will take six months. Bidding phase will not commence until after receiving all environmental permits.

2.6. Schedule

The approximate schedule for different phases is tabulated below.

Table 2-1. Approximate Schedule for Implementation of Groundwater Collection Trench.

Time Period	Phase 1 - Pre-permitting Phase	Phase 2 - Permit Application Phase	Phase 3 - Design Phase
Month 1	X		X
Month 2	X		X
Month 3	X		X
Month 4	X		X
Month 5	X		X
Month 6	X		X
Month 7	X	X	X
Month 8	X	X	X
Month 9	X	X	X
Month 10	X	X	
Month 11	X	X	
Month 12	X	X	
Month 13		X	
Month 14		X	
Month 15		X	
Month 16		X	
Month 17		X	
Month 18		X	

Time Period (After All Permits are Issued)	Phase 4 - Construction Phase		
	IFC Document Preparation	Bidding	Construction
Month 1	X		
Month 2	X		
Month 3	X		
Month 4	X		
Month 5		X	
Month 6		X	
Month 7			X
Month 8			X
Month 9			X
Month 10			X
Month 11			X
Month 12			X

August 16, 2021

Table 2-1 Note: Initial evaluations or Agency reviews may trigger the need for additional field work which could extend the permitting phase durations and delay or extend the timeframes necessary to produce preliminary design documents required for permit applications. The uncertainty and potential for extension of these timeframes is depicted by overlap of Phase 1 and 2 timeframes. Additionally, the construction timeline is subject to weather delays.

via email to Victor.Modeer@vistracorp.com

9 March 2022

Mr. Victor Modeer, DGE, PE
Senior Engineering Manager
Dynergy Midwest Generation, LLC
1500 Eastport Plaza Drive
Collinsville, Illinois 62234

**Subject: Response to Illinois Environmental Protection Agency Comments
Vermilion Power Station Interim Corrective Measures Plan (ICAM) and
Safety, Emergency Response Plan (SERP)**

Dear Mr. Modeer:

This letter provides responses to comments from Illinois Environmental Protection Agency on the ICAM and SERP in letters dated 8 February 2022. The agency comments are presented in *italics* followed by the response in normal font.

Interim Corrective Action Measures (ICAM) Plan

Groundwater Collection Trench Plan

1) The Groundwater Collection Trench Plan should include a discussion as to how riverbank stability will be addressed. IDNR should be consulted concerning the potential impact a groundwater collection trench may have on river bank stability. The plan must address any issues related to impacts to bank stability and/or a slope stability analysis. This includes outlining any concerns or comments of IDNR, and how those concerns or comments are being addressed.

The riverbank stability and the stability of the Old East Ash Pond (OEAP) Eastern Berm will both be addressed concurrently during Phase 3, the Design Phase; the scope of work is defined in the ICAM Plan Section 2.4. During Phase 3, the lateral (alignment) and vertical (depth) extent of the trench will be finalized in Task 1 and an Interim Slope Stability Assessment will be completed under Task 2. Task 1 and Task 2 will be completed in an iterative process to arrive at a safe and effective design alignment and depth.

In addition, Dynergy Midwest Generation, LLC (DMG) has been implementing the monthly monitoring program, as described in the Safety, Emergency and Response Plan (SERP). The

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monitoring assesses the riverbank conditions, and the current conditions will be factored into the interim slope stability assessment.

The design will include soil and sediment control measures that will be included in a Stormwater Pollution Prevention Plan (SWPPP) as required for the general NPDES permit application for construction activities under Phase 1, Pre-permitting Phase. As a part of the SWPPP, runoff and sediment will be controlled around the work area, including along the riverbank, to avoid impacts of stormwater and sediment that could affect riverbank stability.

The Part 845 Construction Permit Application for Vermilion was submitted in January 2022 after the submittal of the ICAM Plan; it also includes an updated draft design drawing of the collection trench that includes a geologic profile with the approximate depth of the trench.

DMG will be meeting with IDNR to discuss trench design, permitting, and construction as identified in Phase 2, Permit Application Phase, as described in Section 2.3 of the ICAM Plan. These meetings/discussions would occur after IEPA approval of the ICAM Plan and will address concerns and comments of the IDNR and will propose actions to address IDNR concerns.

Safety Emergency Response Plan (SERP)

- 1) a) *What is the basis for Dynegy establishing “cumulative lateral erosion reaches three feet over an entire vertical profile of the riverbank along the OEAP or NAP” as the trigger to determine whether “maintenance measures” are required? Has IDNR evaluated the adequacy of this approach? If so, has IDNR provide feedback on this approach?*

The three feet of lateral erosion was established based on a slope stability reliability assessment (Geosyntec, 2021). The stability of the current slope (2021) and potential future slope geometries, resulting from continued loss of riverbank, were assessed to estimate when slope strengthening (a.k.a., “maintenance measures”) should be implemented to maintain the reliable performance of the OEAP and NAP Eastern Berm. The preliminary Stability Assessment was conducted by Geosyntec prior to the August 2021 submittal of the SERP, and it was finalized in November 2021. The Stability Assessment was included in the Construction Permit Application (Geosyntec, 2022) as an appendix (“Appendix C, Supporting Information”) to the “Closure Alternatives Analysis and Corrective Measures Assessment/Corrective Action Alternatives Analysis for the North Ash Pond/Old East Ash Pond (NAP/OEAP) and New East Ash Pond (NEAP)”, which is Attachment 1 to the “Final Closure Plan and Closure Schedule”.

The Stability Assessment examined both of the following: 1) the rate of riverbank loss over time using LiDAR mapping, and 2) conducted a slope stability analysis that calculated a reliability

Mr. Victor Modeer, DGE, PE

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index (β). The reliability index is related to the probability of failure—the larger the reliability index, the farther the slope is from failure. This analytical method is utilized by the United States Bureau of Reclamation (USBR) and the United States Army Corps of Engineers (USACE) when evaluating rehabilitation of structures such as dams and levees (USBR/USACE, 2018). A “trigger index” ($\beta_{trigger}$) of 3.0 was established which indicates a slope is estimated to have an “above average” performance and no maintenance would normally be recommended. However, in an effort to be overly conservative, we chose to use 3.0 as the trigger.

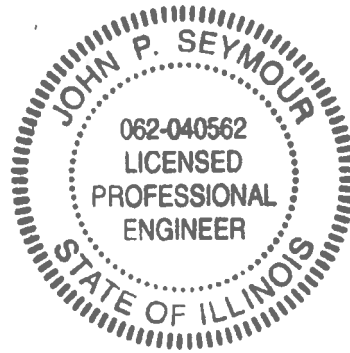
The results of the Stability Assessment estimated a rate of riverbank loss of approximately one (1) ft/year. All of the cross sections examined along the OEAP and NAP had a $\beta_{trigger}$ greater than 3.0 in the current condition. It was also calculated that $\beta_{trigger}$ of 3.0 could be reached first at a section along the OEAP after 10 years should the estimated riverbank loss continue. Even when the $\beta_{trigger}$ of 3.0 is reached, it should be recognized that it does not imply unacceptable stability. Dynegy decided to take a conservative approach to maintain the riverbank and give enough time to be able to design, permit and implement maintenance measures to restore the condition to a higher degree of reliability. This could include a buttress to mitigate riverbank loss and avoid further reduction in strength of the Eastern Berm. Therefore, instead of waiting until the β conditions deteriorate to a level that would normally trigger emergency action, DMG chose a trigger that would allow sufficient time to implement maintenance actions without river conditions presenting an imminent threat.

DMG is conducting monthly monitoring to identify the actual rate of riverbank loss. Monthly reports indicate the actual rate has not reached the trigger amount of three feet. This will allow for implementation of maintenance actions in the event that three feet of erosion is reached, instead of relying on an estimated rate of riverbank erosion.

DMG will be meeting with IDNR to discuss the SERP. These meetings/discussions would occur after IEPA approval of the SERP and will address concerns and comments of the IDNR and will propose actions to address IDNR concerns.

Please call me at (312) 416-3919 if you have any questions.

Mr. Victor Modeer, DGE, PE
9 March 2022
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Sincerely,

A handwritten signature in cursive script that reads "John Seymour".

John Seymour, PE
Senior Principal
Illinois PE 062.040562
Expires 11/30/2023

Copies to: David Mitchell, Dynegy
Phil Morris, Dynegy

2022-03-09-IEPA-Response-ICAM-SERP-ltr

engineers | scientists | innovators

Mr. Victor Modeer, DGE, PE

9 March 2022

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References

Geosyntec, 2021, "Summary of Old East Ash Pond Area Slope Stability Reliability Assessment", Vermilion Power Plant, November 2021

Geosyntec, 2022, "Construction Permit Application, Vermilion Power Plant, Old East Ash Pond Area, North Ash Pond Area, Oakwood, Illinois", January 2022

Attachment N, Final Closure Plan and Closure Schedule (845.720)

Appendix 1- Gradient, Closure Alternatives Analysis and Corrective Measures Assessment/Corrective Action Alternatives Analysis for the North Ash Pond/Old East Ash Pond (NAP/OEAP) and New East Ash Pond (NEAP), Vermilion Power Plant, Oakwood, Illinois, January 28, 2022

Appendix C, Supporting Information

United States Bureau of Reclamation (USBR) and the United States Army Corps of Engineers (USACE) for "Probabilistic Stability Analysis (Reliability Analysis)" updated July 2019.



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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JB PRITZKER, GOVERNOR

JOHN J. KIM, DIRECTOR

217-782-0610

April 28, 2022

Dianna Tickner
Dynergy Midwest Generation, LLC
1500 Eastport Plaza Drive
Collinsville, IL 62234

**Re: Interim Corrective Action Measures Plan
Former Vermilion Power Station**

Dear Ms. Tickner,

On March 10, 2022, pursuant to the Agreed Interim Order entered on June 30, 2021, in Case No. 2021CH000024, Dynergy resubmitted its Interim Corrective Action Measures Plan to Illinois EPA for review and approval. This resubmittal followed Dynergy's original submittal on August 16, 2021, as well as Illinois EPA's response dated February 8, 2022. This letter only addresses the Interim Corrective Action Measures Plan; additional Illinois EPA letters will address the other plan(s) submitted.

The Interim Corrective Action Measures Plan contains two separate plans / scopes of work, including a Dewatering Plan and a Groundwater Collection Trench Plan. The Illinois EPA previously granted conceptual approval of the Dewatering Plan on February 8, 2022.

Groundwater Collection Trench Plan

After carefully reviewing the additional information and explanation provided by Dynergy in its resubmittal, the Illinois EPA grants conceptual approval of the Groundwater Collection Trench Plan.¹ The Illinois EPA's approval is "conceptual" in nature based on a recognition that any plan to construct and operate a groundwater interceptor type of trench is subject to the NPDES permitting process pursuant to 35 Ill. Adm. Code Part 309 and State construction/operating permitting process pursuant to 35 Ill. Adm. Code Part 845. These permitting processes necessarily would require the submittal of detailed information to ensure that any construction/operation plans include, but are not limited to, a full characterization of the groundwater, estimates of volume, intended scope of groundwater capture, a plan for how the construction/operation would occur, the need to address antidegradation, and an evaluation of the

¹ Pursuant to Section II.3.b. of the Agreed Interim Order, this would amount to an Illinois EPA "approv[al] [of] the submission upon specified conditions."

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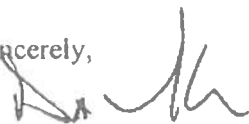
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potential for treatment/treatment technologies, all of which are intended to demonstrate compliance with the Illinois Environmental Protection Act and applicable regulations.

The Illinois EPA also reiterates that the Illinois Department of Natural Resources (IDNR), through its Office of Water Resources Dam Safety Section, has regulatory authority over the construction, operation and maintenance of dams and should be consulted with respect to the Groundwater Collection Trench Plan. In addition to satisfying all of IDNR's potential permitting requirements, IDNR should be consulted concerning the potential impact a groundwater collection trench may have on riverbank stability.

Please let me know if you have any questions at this time. The Illinois EPA looks forward to working with you throughout the existing and upcoming permitting processes needed for this facility.

Sincerely,



Darin E. LeCrone, P.E.
Manager, Permit Section
Division of Water Pollution Control

Cc: Records
Division of Legal Counsel
Illinois Attorney General's Office
Illinois Department of Natural Resources, Legal Counsel