



December 16, 2020

Kent Walters, Geologist  
Department of Environment, Great Lakes, and Energy  
Materials Management Division  
350 Ottawa Avenue, NW Unit 10  
Grand Rapids, MI 49503-2341

Re: J.B. Sims Power Plant Site Closure

In response to your letter dated November 13, 2020 regarding the request for mixing zone authorization, we provide the following response. As presented in our discussion with the Environmental Protection Agency (EPA) and the Department of Environment, Great Lakes, and Energy (EGLE) on November 24, 2020 our environmental engineering firm, Golder Associates, has recommended evaluating a compliance strategy that minimizes any disturbance of the historical materials at the former J.B. Sims Generating Station (Sims).

Because of the past uses of this site (former city dump, ash used as beneficial fill, and an undefined unlined coal ash impoundment), Golder believes that a comprehensive site wide approach should be taken for protection of human health and the environment. Golder's recommendation to the Board of Directors (the Board) followed a four-month water quality analysis that included twice weekly samples taken from the waters surrounding the Sims site. Their recommendation made to the Board in October 2020 was to first submit a mixing zone analysis request to EGLE, based on the recent sampling program, followed by conducting an analysis to determine the feasibility of an in-situ stabilization program to deal with both the ash used as historical fill on the island (both in and outside of the impoundment) and the former trash dump. They do not recommend taking actions that negatively impact the in-situ materials (both ash and trash) that have been undisturbed in the ground for over 40 years.

The Board has serious concerns that, if removal is intrusive, it could cause an uncontrolled geochemical release of contamination downstream threatening the Grand River, Lake Michigan, and the community's drinking water intake.

Golder delineated the coal combustion residuals (CCR) Unit and submitted a delineation report on October 14, 2019. Based on EGLE guidance received on October 18<sup>th</sup>, Golder submitted additional information regarding delineation on November 19, 2019. In March 2020, EGLE notified the BLP that EPA was reviewing the site and considering a potentially larger boundary area for the CCR Unit. Two discussions were had with EPA (one on April 27, 2020 and the second on August 24, 2020) so that EPA could reach a decision. EPA provided a decision on November 24, 2020 as to the boundaries of the Units 1 & 2 impoundment but left open the possibility that EPA could view other areas as part of the Impoundment. Based on EPA's recent definition of what it considers the Units 1 & 2 impoundment, the BLP asked Golder to review the hydrogeologic monitoring plan to ensure that there are adequate numbers of wells to monitoring the impoundment.

Regarding state law requirements, the BLP's legal counsel has reviewed the applicability of Part 115 to the Units 1 & 2 impoundment and it was their opinion that this impoundment does not fall under those regulations. We have submitted their findings for your legal counsel's review. Please be aware that the Units 1 & 2 impoundment did not receive any CCR material after 2012. Our engineering

**J.B. SIMS Generating Station** Community Owned. Locally Controlled. Not-for-Profit. Environmentally Responsible.



firm is recommending that we pursue closure of this site in accordance with the water quality standards contained in Parts 201/31 and according to Part 257.

We apologize for any confusion if it appears that our request was made under Part 115. Recent data as presented in the Unit 3 Impoundment closure report provides documentation that the integrity of the clay liner remained intact through unit retirement. While this was welcomed news, it also shifts our focus into finding solutions to the contamination from the historical uses of the JB Sims site which include the Units 1 & 2 impoundment, ash historically placed as fill, and the former trash dump. We feel that approaching the whole site is more environmentally protective than a piecemeal approach. The request made was made under Part 201 and should be considered. We would anticipate that both EGLE and EPA would find this a welcomed approach, considering the complexity of this site.

Part 201 of the Michigan Environmental Code, MCL 324.20101 et seq., allows a person to demonstrate compliance with Part 201 by, among other means, the use of mixing zone-based groundwater/surface water interface (GSI) criteria consistent with Part 31. MCL 324.20120e(1)(c). Therefore, the BLP would like to submit to EGLE a response activity plan that includes a demonstration of compliance with the Part 201 standards, documentation that it is possible to reasonably estimate the volume and rate of venting groundwater and a site-specific monitoring plan. Our October 28, 2020 request for mixing zone criteria was the first step in this process. Your letter states that the request is premature because BLP has not provided EGLE with statutorily required information EGLE would need to review the request but does not specify what information EGLE thinks was lacking from the BLP's request. If you would please provide more detail as to what information EGLE requests, BLP will try to provide it.

As discussed during our meeting on November 24<sup>th</sup>, this is a challenging site with a complex use history. The Board is committed to taking appropriate actions to protect the environment, but we need to ensure that we do not create a downstream hazard while we are doing this and need to ensure that a wholistic approach is developed to deal with these multiple pasts uses. Golder will be submitting a separate response to the individual concerns raised in your November 13, 2020 letter. We hope that the attachment provides you with the necessary information to move forward in a collaborative manner with the BLP.

We recommend setting up a conference call to discuss Golder's proposed study and welcome any feedback you have to help us move forward with closure of this site.

If you have any questions regarding this submission, please feel free to contact me at (616) 577-2054.

Sincerely,

A handwritten signature in blue ink, appearing to read "Erik Booth".

Erik Booth, P.E.  
Manager of Operations & Power Supply  
Grand Haven Board of Light & Power

Attachment: Jaffee letter dated December 1, 2020



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December 1, 2020

Erik Booth, P.E.  
Power Supply Manager  
Grand Haven Board of Light & Power  
1700 Eaton Drive  
Grand Haven, Michigan 49417

Dear Mr. Booth:

During GHBLP's recent dialogue with the United States EPA and the Michigan Department of Environment, Great Lakes and Energy (EGLE), it appears that there is a question as to whether Impoundment 1/2 is required to seek a license under Part 115 of the Michigan Natural Resources and Environmental Protection Act, MCL 324.101, MCL 325.11501 *et seq.* The answer to that questions is no. The applicable sections Part 115 are discussed below. In particular, MCL 324.11512(2) provides in part that:

Except as otherwise provided in this section or in section 11529, a person shall not conduct, manage, maintain, or operate a disposal area within this state except as authorized by an operating license issued by the department pursuant to part 13. ...  
***Existing coal ash impoundments are exempt from the licensing requirements of this part through the date that is 2 years after the effective date of the amendatory act that added section 11511a.***

(Emphasis added). The two year period expires December 28, 2020.

While I do not believe that EGLE has put its position into writing, it seems that EGLE is asserting that Impoundment 1/2 is an "existing coal ash impoundment" under Part 115 and therefore, following December 28<sup>th</sup> of this year, it will be required to seek a license. EGLE has not asserted that Impoundment 1/2 is any other sort of disposal area under Part 115.<sup>1</sup> The term "existing coal ash impoundment" is defined as:

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<sup>1</sup> "'Disposal area' means 1 or more of the following at a location as defined by the boundary identified in its construction permit or engineering plans approved by the department:  
(a) A solid waste transfer facility.

a coal ash impoundment that received coal ash before December 28, 2018, and that, as of that date, had not initiated elements of closure that include dewatering, stabilizing residuals, or placement of an engineered cover or otherwise closed pursuant to its part 31 permit or pursuant to R 299.4309 of the part 115 rules and, therefore, is capable of receiving coal ash in the future. A coal ash impoundment that has initiated closure is considered an open dump unless the owner or operator has completed closure of the coal ash impoundment under section 11519b or obtained an operating license for the coal ash impoundment by December 28, 2020.

MCL 324.11503(9).

Because the Impoundment received ash before December 28, 2018 and has not begun dewatering, stabilizing or placement of an engineered cover, EGLE appears to conclude that, under MCL 324.11512, the Authority must seek a license for the Impoundment. However, as stated in MCL 324.11503(9), quoted above, to be an “existing coal ash impoundment,” an impoundment must be “**a coal ash impoundment** that received coal ash...” (Emphasis added). When construing a statute, one must give meaning to every word adopted by the Legislature. *Pohutski v Allen Park*, 465 Mich 675, 683-684 (2002). Therefore, to qualify as an “existing impoundment” under Section 11503(9), an impoundment must first be a “coal ash impoundment” which is defined as:

a natural topographic depression, man-made excavation, or diked area that is not a landfill and that is designed to hold **and, after October 14, 2015, accepted an accumulation of coal ash and liquids or other materials** approved by the department for treatment, storage, or disposal and did not receive department approval of its closure. A coal ash impoundment in existence before October 14, 2015 that receives waste after the effective date of the amendatory act that added this subsection, and that does not have a permit pursuant to part 31, is considered an open dump beginning 2 years after the effective date of the amendatory act that added this subsection unless the owner or operator has completed closure of the coal ash impoundment under section 11519b or obtained an operating license for the coal ash impoundment.

MCL 324.11502(17) (emphasis added). The Grand Haven Board of Light and Power ceased using Impoundment 1/2 in 2012 and, after that year the Impoundment did not accept any coal ash and

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(b) An incinerator.

(c) A sanitary landfill.

(d) A processing plant.

(e) A coal ash impoundment.

(f) Any other solid waste handling or disposal facility utilized in the disposal of solid waste....”

MCL 324.11503(5). Further, Impoundment 1/2 does not appear to have any construction permit or approved engineering plans.

Mr. Erik Booth  
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liquids or other materials for treatment, storage or disposal. This stands in juxtaposition to the Unit 3 Impoundment which did hold and accepted coal ash after October 14, 2015.

As a result, Impoundment 1/2 was not a defined “coal ash impoundment” and, therefore, we conclude that Impoundment 1/2 is not an “existing coal ash impoundment” required to seek a license under MCL 324.11503(9). We believe that this answers the question in its entirety. While Impoundment 1/2 may be subject to regulation under other Michigan laws, such as Part 201, MCL 324.20101 *et seq.*, but it is not subject to regulation or licensure under Part 115. If you have any further questions, please do not hesitate to contact me.

Sincerely,

**Jaffe Raitt Heuer & Weiss**  
Professional Corporation

*Arthur Siegal*

Arthur H. Siegal

AHS/BRR  
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