

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
 ) R14-10  
COAL COMBUSTION WASTE (CCW) )  
SURFACE IMPOUNDMENTS AT POWER ) (Rulemaking- Water)  
GENERATING FACILITIES: PROPOSED )  
NEW 35 ILL. ADM. CODE 841 )

**NOTICE OF FILING**

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board ILLINOIS EPA'S STATUS REPORT, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/Joanne M. Olson  
Joanne M. Olson  
Assistant Counsel  
Division of Legal Counsel

Date: July 15, 2016

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**ILLINOIS EPA'S STATUS REPORT**

NOW COMES the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, ("Illinois EPA" or "Agency") by and through its counsel, and for its Status Report, pursuant to 35 Ill. Adm. Code 101.514, states as follows.

**I. Procedural History**

On August 5, 2015, the Illinois EPA sought to stay the above proceedings in light of the newly adopted federal rule governing coal combustion residuals ("CCR") from electric utilities under the Resource Conservation and Recovery Act ("RCRA"). 80 Fed. Reg. 21302 (April 17, 2015). The Illinois Pollution Control Board ("Board") granted the Agency's request for a stay for 120 days until March 4, 2016. At the end of this stay period, the Agency asked the Board to extend the stay for 90 days until June 15, 2016 so that it could conduct outreach and convene a stakeholders meeting. The Board granted the Agency's request to extend the stay, and ordered the Agency to file a status report at the conclusion of the stay addressing the following: general outcome of the stakeholders' meeting; the current status of the litigation and legislation addressing the federal rule; the status of the preparation of any revised proposal and any anticipated date of filing it with the Board; and the Agency's recommendation on how the Board should proceed in this docket.

**II. General Outcome of the Stakeholders' Meeting**

On April 19, 2016, the Agency circulated via email a proposed draft of amendments to the Agency's pending Part 841 proposal and a stakeholder meeting notice. Exhibit A. Members of the stakeholder group consisted of representatives from the following: the Attorney General's Office, Ameren, Association of Illinois Electric Cooperatives, City Water Light and Power, Dynegy, Eco-Justice Collaborative, Electric Energy, Exelon, Environmental Integrity Project, Environmental Law and Policy Center, Grand Tower Energy Center, the Groundwater Advisory Council, Illinois Environmental Regulatory Group ("IERG"), Kincaid Generation, Midwest Generation/NRG, Prairie Power, Prairie Rivers Network, Prairie State Generating Company, Sierra Club, and Southern Illinois Power Company. The Agency held a stakeholder outreach meeting on May 3, 2016. The meeting sign-in sheet is attached. Exhibit B. The Agency presented a power point on its proposed path forward. Exhibit C. *See* the Illinois EPA's Motion to Amend, filed simultaneously herewith.

During the outreach meeting, the Agency presented stakeholders an opportunity to discuss the following questions: Should state rules adopt at least the federal minimum criteria into their regulations? Should state rules require financial assurance? Should state rules address CCW surface impoundments located at inactive generating facilities? The Agency began the discussion on these questions by offering its position. The Agency believes the federal rules should not be incorporated into Part 841, should not require financial assurance and should govern surface impoundments at both active and inactive generating facilities. *See* the Illinois EPA's Motion to Amend, filed simultaneously herewith.

Initially, the Illinois EPA provided a stakeholder comment period lasting until May 10, 2016. Upon request, the Agency extended the stakeholder comment period until May 20, 2016. On May 16, 2016, the IERG filed an unopposed motion to extend the stay an additional 30 days for comments and resolution of differences among the parties. The Board granted the stay, and the Agency extended the stakeholder comment deadline until June 1, 2016.

The Agency received comments from (1) Midwest Generation; (2) Prairie Rivers Network, Environmental Law and Policy Center, Eco-Justice Collaborative and the Illinois Chapter of the Sierra Club ("Environmental Groups"); (3) Prairie Power, Inc.; (4) IERG; (5) Dynegey Inc.; (6) City Water Light and Power; (7) Prairie State Generating Company; and (8) AmerenEnergy Medina Valley Cogen and Illinois Power Resources ("Ameren"). Additionally Prairie Rivers Network gathered comments from the public and submitted to the Agency 113 letters from the public, five of which were customized. Sierra Club also gathered 1836 comments from the public, of which 73 were customized.

The Agency appreciates receiving these comments and has reviewed each of them. Based on the comments, the Agency made minor changes to its proposed amendments to Part 841. *See* the Illinois EPA's Motion to Amend, filed simultaneously herewith.

### **III. Federal Litigation and Legislation**

The appeal of the federal rule is being heard by the United States Court of Appeals for the District of Columbia; *Utility Solid Waste Activities Group, et al., v. USEPA*, D.C. Cir. 15-1219. Since the Agency's last status report, the parties' briefing schedule has been amended.

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The new briefing schedule is:

<b>Date</b>	<b>Brief(s) due</b>
December 18, 2015	Environmental and Industry Petitioners' briefs
April 18, 2016	USEPA's brief
May 18, 2016	Intervenors' briefs
July 15, 2016	Environmental and Industry Petitioners' reply briefs
September 6, 2016	Final briefs

On April 17, 2016, U.S. EPA, the Environmental-Petitioners and Industrial-Petitioners reached a settlement. Exhibit D. The next day, U.S. EPA filed an unopposed motion to voluntarily remand specific regulatory provisions. Exhibit E. On June 14, 2016, the court granted the U.S. EPA's motion. Exhibit F. The court remanded the following provisions with vacatur:

- 1) the phrase "not to exceed a height of 6 inches above the slope of the dike" within 40 C.F.R §257.73(a)(4), 257.73(d)(1)(iv), 257.74(a)(4) and 275.74(d)(1)(iv); and
- 2) all of 40 C.F.R § 257.100 except the clause in § 257.100(a) that reads "inactive CCR surface impoundments are subject to all of the requirements of this subpart applicable to existing CCR surface impoundments."

The court remanded the following provisions without vacatur for further proceedings:

- 1) the sentence in 40 C.F.R. § 257.90(d) that reads "The owner or operator of the CCR unit must comply with all applicable requirements in 257.96, 257.97, and 257.98";
- 2) the phrase in 40 C.F.R. § 257.96(a) that reads "or immediately upon detection of a release from a CCR unit";
- 3) all of Appendix IV; and
- 4) all of 40 C.F.R. § 257.103 (a) and (b).

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The court severed issues related to §257.100 from the current docket, and assigned a new docket no. 16-1183.

The vacatur of §257.100 is stayed to allow U.S. EPA to promulgate a new rule revising the deadlines that are affected by the vacatur of § 257.100. Specifically, the federal rule had previously allowed inactive impoundments that completed closure pursuant to § 257.100 before April 17, 2018 to be exempt from the remainder of federal rule and all the deadlines contained in the federal rule. With the vacatur, these impoundments are no longer exempt. U.S. EPA's new rule "will provide facilities that become subject to the post-closure requirements as a result of the vacatur . . . with adequate time to come into compliance." Exhibit E at 5. U.S. EPA stated it plans to promulgate an expedited rule and complete the rulemaking within 120 days. Within the settlement agreement, this rulemaking is described as the "Extension Rule" and described as follows:

In order to ameliorate the effects to those owners or operators who relied on the early closure provision (40 C.F.R. § 257.100) that EPA seeks to vacate through the Motion to Remand, EPA shall propose a rule (the "Extension Rule") that is applicable only to those owners or operators that by December 17, 2015, submitted notification of their intent to initiate closure of an inactive CCR surface impoundment pursuant to 40 C.F.R. § 257.100(b) and placed such notification on the owner or operator's CCR Web site by January 18, 2016, as required by 40 C.F.R. § 257.107(i)(1).

Exhibit D at 4-5. U.S. EPA will develop deadlines for these facilities to complete location restriction demonstrations, determine whether they are lined, document the surface impoundments history of construction; complete an initial hazard potential classification assessment, complete an initial structural stability assessment, complete a safety factor assessment, prepare an emergency action plan, prepare a fugitive dust control plan; prepare an inflow design flood control system, initiate weekly inspections, complete the annual inspection, install a groundwater monitoring system; prepare an initial groundwater monitoring report and

corrective action report, prepare a written closure plan, and prepare a post closure care plan. The Illinois EPA is only aware of one facility, Powerton, in Illinois that submitted a notification intent to initiate closure of an inactive surface impoundment pursuant to § 257.100(b).

In the settlement agreement, U.S. EPA also agreed to a second rulemaking—the Remand Rule. Exhibit D at 4. The Remand Rule will establish requirements related to the use of vegetation as slop protection on CCR surface impoundment dikes; clarify the type and magnitude of non-groundwater related releases that trigger the corrective action procedures; and add boron to Appendix IV. *Id.*

U.S. EPA also filed its brief responding to the Industry- Petitioners and Environmental Petitioners on April 18, 2016, but U.S. EPA did not address the issues addressed in the settlement. On May 18, 2016, the Industry Intervenor-Respondents (supporting U.S. EPA against the Environmental Petitioners) and Environmental Intervenor Respondents (supporting U.S. EPA against the Industry Petitioners) filed briefs.

The Agency summarized the congressional action relating to CCR in its August 8, 2015 Motion to Extend Stay. Senate Bill 1803, Improving Coal Combustion Residuals Regulation Act of 2015, has been read twice and referred to the Committee on Environment and Public Works. A related bill, S2446, Improving Coal Combustion Residuals Regulation Act of 2016, was introduced on January 19, 2016. On March 2, 2016 hearings were held by Committee on Environment and Public Works.

#### **IV. Status of Agency's Revised Proposal**

The Illinois EPA has prepared an amended proposal, which it now submits to the Board simultaneously herewith.

**V. Agency's Recommendation on How the Board Should Proceed**

The Illinois EPA believes the Board should not adopt the federal rule into its regulations; that the Board's rules should govern both active and inactive coal combustion waste surface impoundments, and that the Board should adopt the Agency's amended proposal after opportunity for public comment, and if the Board feels it is warranted, a hearing on the Agency's amended proposal.

**CONCLUSION**

WHEREFORE, the Illinois EPA respectfully submits its status report.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/Joanne M. Olson  
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**CERTIFICATE OF SERVICE**

Joanne M. Olson, Assistant Counsel for the Illinois EPA, herein certifies that she has served a copy of the foregoing NOTICE OF FILING, ILLINOIS EPA'S STATUS REPORT, upon persons listed on the Service List by mailing, unless otherwise noted on the Service List, a true copy thereof in an envelope duly addressed bearing proper first class postage and deposited in the United States mail at Springfield, Illinois on July 15, 2016.

By: /s/Joanne Olson  
Joanne Olson

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