

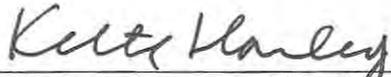
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
STANDARDS FOR THE DISPOSAL) R 2020-019
OF COAL COMBUSTION RESIDUALS) (Rulemaking – Water)
IN SURFACE IMPOUNDMENTS:)
PROPOSED NEW 35 ILL. ADM.)
CODE PART 845)

TO: See Attached Service List

Please take notice that today I filed with the Illinois Pollution Control Board Prefiled Questions on behalf of the Little Village Environmental Justice Organization, a copy of which is attached and served upon you.

Respectfully submitted,



Keith Harley, Attorney for Little Village Environmental Justice Organization

Date: June 23, 2020

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PREFILED QUESTIONS

Now comes Keith Harley of the Chicago Legal Clinic, Inc. on behalf of the Little Village Environmental Justice Organization and respectfully submits these questions based on the Prefiled Testimony of the Illinois Environmental Protection Agency's witnesses.¹

Questions for Lynn E. Dunaway

1. Both the Coal Ash Pollution Prevention Act, 415 ILCS 5/3.143, and proposed Section 845.120, use the term “natural topographical depression” within the definition of a surface impoundment.
 - a. What is the definition of a natural topographical depression?
 - b. Why isn't the term “natural topographical depression” defined in Illinois EPA's proposed regulations?
2. Both the Coal Ash Pollution Prevention Act, 415 ILCS 5/3.143, and proposed Section 845.120, use the term “man-made excavation” within the definition of a surface impoundment.
 - a. What is the definition of a man-made excavation?

¹ LVEJO accepts Illinois EPA's decisions about which witnesses it designates to answer these questions. This was communicated to Illinois EPA Counsel Stefanie Diers in an email exchange that occurred on June 18, 2020.

- b. Why isn't the term "man-made excavation" defined in Illinois EPA's proposed regulations?
3. What is the difference between a landfill that contains CCR and a man-made excavation where CCR was disposed? See: 415 ILCS 5/3.143 and proposed Section 845.100(h).
4. What is the difference between a landfill that contains CCR and a natural topographical depression where CCR was disposed? See: 415 ILCS 5/3.143 and proposed Section 845.100(h).
5. How does Illinois EPA distinguish between "inactive CCR surface impoundments at active and inactive electric utilities or independent power producers" and landfills that contain CCR at these same facilities? See: Proposed Sections 845.100(c) and 845.100(h).
6. Does the Coal Ash Pollution Prevention Act include the same exclusion for "landfills that receive CCR" that is in Illinois EPA's proposed Section 845.100(h)? If not, what is Illinois EPA's legal authority for this exclusion?
7. Do Illinois EPA's Proposed Regulations apply to all natural topographical depressions and man-made excavations where coal combustion residual has been disposed at power generating facilities?
8. Is Illinois EPA aware of any CCR surface impoundments not located at the 23 power generating facilities identified on pages 37 and 38 of its Statement of Reasons? If so, where are these off-site surface impoundments?
9. If a CCR surface impoundment is outside of the property boundaries of a power generating facility (for example, on an adjacent or nearby property), will Illinois EPA's Proposed Regulations apply to this off-site surface impoundment?

a. If not, how is this exclusion consistent with the statutory mandate that “environmental laws should be supplemented to ensure consistent, responsible regulation of all existing CCR surface impoundments (415 ILCS 5/22.59(a)(4), emphasis added)?

b. What steps has Illinois EPA taken to identify CCR surface impoundments that are not located at the 23 power generating facilities identified on pages 37 and 38 of its Statement of Reasons?

10. How will Illinois EPA identify the CCR surface impoundments with the highest risk to public health and the environment, as required by 415 ILCS 5/22.59(g)(9)? Is this process set forth in the Proposed Regulations?

11. Why are decisions about implementing interim measures delegated to owners and operators? Proposed Section 845.680(a)(3). Why isn't this an Illinois EPA authority and responsibility?

12. 415 ILCS 5/22.59(b)(1) prohibits the discharge of any contaminants from CCR surface impoundments into the environment “... so as to cause, directly or indirectly, a violation of this Section or any regulations or standards adopted by the Board under this Section, either alone or in combination with contaminants from other sources.” Dust control is specifically mandated by 415 ILCS 5/22.59(g)(10).

a. Under Illinois EPA's Proposed Regulations, does this provision apply to dust that originates from CCR surface impoundments in combination with other on-site and off-site sources that are also discharging dust?

b. If so, where is this stated and applied in Illinois EPA's Proposed Regulations?

13. Can the owner/operator of a site that includes a CCR surface impoundment elect to remediate the surface impoundment pursuant to the Illinois Site Remediation Program, 415 ILCS 5/58, 35

IAC 740 and 742, as an alternative to the requirements contained in Illinois EPA's Proposed Regulations?

14. Why doesn't the Pre-Application Public Notification mandated by proposed Section 845.240(b) require information about where and when the public will be able to acquire all documentation relied upon the permit applicant in preparing its tentative construction permit application (proposed Section 845.240(e))? In the absence of this information in the Pre-Application Public Notice, how will members of the public know when these documents will be available and how to access them?

15. How can members of the public access documents that are subsequent to the tentative permit application? Proposed Section 845.240(e). Why doesn't Illinois EPA's regulatory proposal make provision for continuously updated on-line access to these documents, especially since Illinois EPA has the existing capability to post permit transaction documents on its Public Notice website and/or on its Document Explorer website?

16. Why does Illinois EPA require Pre-Application Public Meetings (proposed Section 845.240) but give itself discretion about whether to hold a Public Hearing as part of the same permit process (proposed Section 845.260(d))?

a. Why is it necessary for members of the public to request a public hearing and "include the reasons why a hearing is warranted"? Proposed Section 845.260(d)(2). How is this requirement consistent with the legislative finding that meaningful public participation is critical? 415 ILCS 5/22.59(a)(5).

b. Why is it necessary for the Agency to determine on a case-by-case basis whether there is a "significant degree of public interest in the proposed permit." Proposed Section 845.260(d)(1)? How will the Agency make this determination? How is this requirement

consistent with the legislative finding that meaningful public participation is critical? 415 ILCS 5/22.59(a)(5).

c. In the absence of an Illinois EPA public hearing and the resulting transcript, how will the Illinois Pollution Control Board assess whether Illinois EPA adequately addressed the interests of affected members of the public as part of a permit appeal pursuant to proposed Section 845.270(e)(2)?

17. In the absence of a public hearing, proposed Section 845.260(c)(1)-(5) ("Public Comment Period") does not require Illinois EPA to prepare a summary of all significant comments, criticisms and suggestions or the Agency's response to these significant comments, criticisms and suggestions. This is in contrast to the requirement for a Responsiveness Summary if a public hearing is held. Proposed Section 845.260(f)(4) and (5).

a. Why is the requirement for a Responsiveness Summary not included when there are written comments but not a public hearing?

b. In the absence of a Responsiveness Summary, how will the Illinois Pollution Control Board assess whether Illinois EPA adequately addressed the interests of affected members of the public as part of a permit appeal pursuant to proposed Section 845.270(e)(2)?

18. Does Illinois EPA consider a significant proportion of non-English speaking residents an important factor in the design and implementation of public participation strategies?

a) Why is Illinois EPA requiring the permit applicant to distribute a Pre-Application Public Notification in the appropriate non-English language (proposed Section 845.240(c), but is not proposing this for its own Draft Permit Notice (proposed Section 845.260(b))?

b) If the permit applicant concludes its regulated activity is located in an area with a significant proportion of non-English speaking residents pursuant to proposed Section 845.240(c), why isn't the permit applicant required to have translation services available at the Pre-Application Public Meeting?

c) If the Illinois EPA concludes a permit will affect an area with a significant proportion of non-English speaking residents, why isn't Illinois EPA required to have translation services available at the public hearing for its draft permit as part of proposed Section 845.260(d)?

20. Do the public participation requirements in proposed Sections 845.240 and 845.260 apply to the submission of a proposed Corrective Action Plan pursuant to proposed Section 845.670 and the Illinois EPA's process of approving a Corrective Action Plan? If not, why not, especially given the short-term and residual risks that might be posed to the community (proposed Section 845.670(e)(1)(B) and (D)), the potential for exposure of humans and environmental receptors (proposed Section 845.670(e)(1)(F)) and the need to identify a remedy that is protective of human health and the environment (proposed Section 845.670(d)(1))?

Questions for Chris Pressnall

1. The link to EJ Start on page 2 of your testimony is not a valid link. Can you provide a correct link to this resource and provide a practical example of how this resource can be used to identify environmental justice areas of concern pursuant to proposed Sections 845.700(g)(6) and (7)?

2. Based on Illinois EPA's list of 23 facilities and 73 surface impoundments on pages 37 and 38 of its Statement of Reasons, which surface impoundments are currently located in areas of environmental justice concern as defined by Illinois EPA in proposed Sections 845.700(g)(6) and (7)?

3. 415 ILCS 5/22.59(a)(5) refers to “vulnerable populations who may be affected by regulatory actions”.

- a. What are vulnerable populations and how will Illinois EPA make this determination?
- b. Can you provide an example of a vulnerable population?
- c. Does Illinois EPA consider a community with a significant proportion of English non-speaking residents as a factor in defining a vulnerable population?

4. 415 ILCS 5/22.59(a)(5) refers to “communities in this State that bear disproportionate burdens imposed by environmental pollution.”

- a. What are “communities in this State that bear disproportionate burdens imposed by environmental pollution”?
- b. Is this the same as the U.S. EPA definition of “overburdened communities” described in your written testimony?
- c. How will Illinois EPA identify these communities?
- d. Can you provide an example of a community that bears disproportionate burdens imposed by environmental pollution?

5. 415 ILCS 5/22.59(g)(8) refers to “areas of environmental justice concern in relation to CCR surface impoundments”.

- a. Why does Illinois EPA propose this determination should be based solely on the demographic characteristics of areas that are proximate to CCR surface impoundments (proposed Sections 845.700(g)(6)(A)and(B))?
- b. Why doesn't Illinois EPA incorporate information about communities that bear disproportionate burdens imposed by environmental pollution?

6. Are there differences between:

- “vulnerable populations who may be affected by regulatory actions”
- “communities in this State that bear disproportionate burdens imposed by environmental pollution”; and,
- “areas of environmental justice concern in relation to CCR surface impoundments”?

If so, what are these differences and how does Illinois EPA account for these differences in its Proposed Regulations?

7. On pages 3 and 4 of your Pre-Filed Testimony, you reference U.S. EPA’s EJ Screen.

- a. Does Illinois EPA currently use EJ Screen to identify environmental justice areas and, if so, how?
- b. Does Illinois EPA currently use EJ Screen to differentiate between the disproportionate burdens present in different environmental justice areas and, if so, how?

8. Your pre-filed testimony indicates that you are a member of the Illinois Commission on Environmental Justice.

- a. Please describe the methodology the Commission proposed for the Illinois Power Agency to determine environmental justice communities as part of implementing the Future Energy Jobs Act.
- b. Was this methodology approved by the Illinois Commerce Commission?
- c. Why isn’t Illinois EPA proposing the same methodology to be used as part of the present rulemaking?
- d. If the methodology approved by the Illinois Commerce Commission and utilized by the Illinois Power Agency isn’t used, won’t this lead to inconsistency in how environmental justice areas are identified in Illinois?

9. What are the differences between Illinois EPA's Environmental Justice Public Participation Policy and the process described in Illinois EPA's proposed Sections 845.240-845.270? What additional public participation measures will Illinois EPA utilize in environmental justice areas and, if there are any, why aren't these additional requirements stated in the Proposed Regulations?

Respectfully Submitted,



Keith Harley, Attorney for Little Village Environmental Justice Organization

Date: June 23, 2020

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CERTIFICATE OF SERVICE

The undersigned, Keith Harley, an attorney, certifies that I served by email the Clerk and by email the individuals with email addresses named on the Service List provided on the Board's website - <https://pcb.illinois.gov/Cases/GetCaseDetailsById?caseId=16858> – a true and accurate copy of Little Village Environmental Justice Organization's Prefiled Questions before 5 p.m. on June 23, 2020.

Respectfully submitted,



Keith Harley, Attorney for Little Village Environmental Justice Organization

Date: June 23, 2020

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