

From: [RICHARD J STUCKEY](#)
To: [Brown, Don](#)
Subject: [External] Coal Ash Ruling Webinar
Date: Thursday, August 13, 2020 5:46:20 PM
Attachments: [Testimony of Richard Stuckey.docx](#)
[Six Suggestions for changes to Coal Ash Regulations.docx](#)

Hi Don:

I testified this afternoon just before 1 PM. I have attached a copy of my speech. The sections in blue were omitted as they would only have been used if you have imposed a 5 minute limit rather than 3 minutes.

I have also attached the suggestions for changes to the regulations that I received from Prairie Rivers Network. As I stated in my presentation, the regulations need to be water tight (no pun intended) and leave nothing to chance. We are dealing with companies that will use every trick in the book to avoid following the regulations.

In particular, the option for permanently covering a coal ash dump while leaving the sides and the floor unlined is **completely unacceptable** as it will inevitably result in further seepage into ground water, especially in times of severe flooding, which will be come ever more common due to climate change. I have no doubt that that option is the favorite of the power companies, and was probably included at their insistence, but it is just **a disaster waiting to happen** and needs to be removed from the regulations as a permanent option. It *might* be a temporary improvement over a completely uncovered coal ash dump, but it should only be used as a stopgap measure to reduce current seepage into ground waters. I suggest that the approach should not be allowed for more than 2 years or less while arrangements are made to relocate the coal ash to a fully lined location.

Kind regards,

Richard Stuckey

Good afternoon. Thank you for this opportunity to make a few points on Coal Ash regulations

My name is Richard Stuckey S T U C K E Y. I am a resident of Chicago, a member of the Sierra Club and numerous other environmental organizations. I am a board member and treasurer of Save Our Illinois Land, and organization focused on preserving the environment by stopping the use of fossil fuels, especially oil carried through pipelines in Illinois. However, my remarks are personal and not on behalf of any organization.

I have spoken before at Coal Ash hearings on the insidious nature and poisonous characteristics of coal ash, particularly as it leaks from ponds and impoundments, I am pleased to see that the EPA has progressed as far as producing regulations. I'd like to commend the EPA on the key provisions of the proposed regulations related to Groundwater Monitoring, Worker Protections and No Time-Limit on Monitoring.

However, as you have heard from many people over the course of the last couple of days, there are many

Clean Up Done Right

Background: The final rules for cleanup and closure must provide permanent protection from coal ash pollution.

Talking Points:

1. **No Wet Ash.** The rules must ensure that coal ash, wherever it is stored, does not get wet either now or in the future. ([Click for more details](#))
2. **Closure Standards.** The requirements for closing coal ash impoundments in the proposed rule are exactly the same as the Federal coal ash rule. This is a missed opportunity to be more clear. Illinois EPA's rule should explicitly state that coal ash cannot be closed-in-place if ash is or will remain wet. ([Details](#))
3. **Proper Corrective Action.** The requirements for cleaning up groundwater pollution must be clear that clean up will not be treated as complete until ash is no longer exposed to water. ([Details](#))
4. **No Coal Ash Contaminated Background Wells.** Background wells are intended to measure clean groundwater. Industry should not be allowed to install background wells in areas impacted by coal ash. ([Details](#))

Example Problem Site: Lincoln Stone Quarry: Coal ash is dumped in an old quarry near the Joliet power plants. The coal ash in the quarry sits in groundwater below the water table, and the company proposes to continue pumping for decades or longer to prevent pollution from leaving the site. [Learn More.](#)

Coal Ash Dumps and Fill

Background: In addition to coal ash impoundments, many power plants have very old coal ash dumps and coal ash scattered around the plant site as "fill" for construction. The draft rule covers only coal ash impoundments, but excludes coal ash fill and old coal ash dumps.

Talking Point:

1. **Regulate Coal Ash Dumps and Fill.** The draft rule should include coal ash landfill and dumps in addition to impoundments. By leaving them out of the rulemaking, we are only solving part of the problem. ([Details](#))

Contact: Andrew Rehn w/ Prairie Rivers Network (arehn@prairierivers.org)

Example Problem Site: *Waukegan, Joliet 29, Will County, & Powerton Power Plants*: Following a lawsuit against NRG, the Illinois Pollution Control Board has ruled that coal ash in 'historic ash sites' – old coal ash fill dumped across the property – is polluting groundwater at these NRG owned power plants. These dumps would not be covered by Illinois EPA's proposed version of the rule. [Learn More.](#)

Increased Worker and Community Protection

Background: Removing coal ash responsibly requires worker protections, dust restrictions, and rules about where the ash can go. The draft rule includes some strong onsite worker protections, but there are major gaps.

Talking Points:

1. **Dust Protection.** Increased monitoring of coal ash dust is necessary to ensure that workers and communities are protected. [\(Details\)](#)
2. **Worker Protection.** Safety and health plans must both contain all the necessary safety and health measures to limit workers' exposure to ash. [\(Details\)](#)
3. **Safe Transportation.** All transportation alternatives for coal ash removal must be considered, including barge, rail, and very low polluting trucks (i.e., electric). [\(Details\)](#)

Environmental Justice

Background: The rules are required to prioritize Environmental Justice communities in closing coal ash impoundments.

Talking Points:

1. **Community Classification & Cumulative Impacts.** The proposed rules use the Illinois EPA's EJ Start tool to identify environmental justice communities, but that tool leaves out some of the most impacted communities. The final rule should use the information from US EPA's Environmental Justice Screen and the Clean Power Plan to identify environmental justice communities. Using this information, the rule can begin to account for cumulative impacts - the combined, incremental effects of multiple pollution sources - on sensitive or vulnerable populations.
2. **Language Access.** The final rules should include requirements for both Illinois EPA and industry to meaningfully engage non-English speaking populations, including requirements that, if requested, interpreters be present at the meetings, hearings, translation of permit materials. As proposed, there is only one isolated requirement for translating anything in the rule. [\(Details\)](#)

Meaningful Public and Agency Oversight

Background: The fox cannot guard the henhouse. The Agency, members of the community, and the public must have access to and an opportunity to review all supporting documents to ensure that

communities have a voice and are protected and that owners and operators are complying with required safeguards.

Talking Points:

1. **Document Accessibility.** The proposed rules need to make all key documents available for public review and comment, in an easily-accessible place, and with sufficient time for review. ([Details](#))
2. **Public Input First.** Public input should be part of the agency technical staff's review and approval of all plans, programs, and assessments. ([Details](#))

Example Problem Site: Wood River. The Wood River power plant was sold to a developer – Commercial Liability Partners – that intends to flip the property & cap its coal ash ponds, then sell it to the highest bidder. Community groups have been unable to get the company to engage them at all. This is why we need as much transparency and avenues for public input as possible in the final rules. ([Learn more.](#))

No Rollbacks

Background: The Coal Ash Pollution Prevention Act does not allow the Illinois Rule to be weaker than the federal rule. The current federal administration is proposing to roll back numerous protections contained in the federal CCR rule. These proposals are political gamesmanship, not supported by the evidence, and may be struck down by courts.

Talking Point:

No Rollbacks. The Illinois Pollution Control Board must not include the unapproved federal rollbacks to weaken coal ash protections in the final rules. These rollbacks include allowing “temporary” piles with no assurance that they’re temporary, dumping more coal ash into unlined ash ponds before they close, and unlimited time for excavating ash when a pond closes by removal. ([Details](#))

shortcomings and loopholes that remain in the draft regulations. I am not going to repeat those problem areas. I will include list them in an attachment to the written version of my notes that I will hand in after my presentation.

The point I would like to make in my 3 minutes is that it is critically important if the regulations are to achieve the results that everyone (other than the owners of these coal ash repositories) hopes they will deliver that every one of the loopholes and shortcomings in the regulations is closed securely.

These regulations are designed to protect the citizens of Illinois. They are aimed at current and previous owners of coal fired power stations. These organizations have known for many years that these power stations will be shut down. They have already taken legal steps to isolate themselves from the liabilities that they have to their workers, including ducking responsibilities for pensions, and failing to provide for their workers healthcare. They have set themselves up so they can walk away from their liabilities related to coal ash.

We are not dealing with good players here who have the best interest of the citizens of Illinois at heart. The regulations should not be written from the viewpoint that the companies are good citizens and are going to willingly go along with them. The regulations have to be written with the expectation that the companies involved will use every legal (and probably many illegal) ruse to avoid compliance with the regulations. They would use every cent in their control to pay their officers bonuses or pay attorney's fees to avoid following the regulations.

We have contemporary evidence in the Commonwealth Edison case of the lengths that utility companies will go to to work around regulations and craft regulations that favor them over the citizens they are supposed to serve. There must be every expectation that the owners of current, or shortly to be defunct, power stations will go to similar lengths to avoid their responsibility to clean up after the mess that they have created and the damage they have already done to Illinois and its citizens. Most of these power station owners are not based in Illinois and will have no business in our state once they have shut down their power stations. They have no interest in creating a positive relationship with Illinois as good

citizens for future business. There may be some good companies who intend to stay in business here and be good citizens, but the regulations must not be written with them in mind.

It is essential that you anticipate in the regulations every possible trick and scheme that these organizations will use to avoid following your regulations and put in the necessary steps to preclude them. Penalties for non-compliance must be proportional to the damage the State will suffer if these companies walk away from their responsibilities without cleaning up their messes. Just like the monitoring that has to go on for 30 years **or more to detect leaks** so must the legal and financial liabilities last for 30 years or longer until the dangers are completely removed.

But a long-term view is not enough. We also need to deal with the dangers that climate change brings with increases in heavy rain and flooding. **Flooding is going to increase substantially in coming years.** It exacerbates the dangers of coal ash ponds that are located close to rivers and lakes that are sources of drinking water for millions. The regulations must require companies to take steps **NOW** in anticipation of imminent flooding events to

prevent overflows from their ponds, even if that means spending money on protecting overflows of current ponds that will, under the regulations eventually have to be closed and their contents relocated.

Please take seriously my concerns about the likely evasive measures that the companies will take, and close the loopholes and shortcomings that exist in the draft regulations so that, for the sake of the neighbors of these ponds, and those whose wells and drinking water sources are endangered so we will not be looking back years from now and seeing that the companies were able to escape their liabilities because our regulations did not anticipate all the tricks they would use to avoid obeying the intent of the regulations.

Thank you.

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Attachment: Points for Public Comment on deficiencies in Draft Coal Ash Regulations