

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

In the Matter of: )  
)  
)  
STANDARD FOR THE DISPOSAL OF ) PCB 2020-019  
COAL COMBUSTION RESIDUALS ) (Rulemaking - Water)  
IN SURFACE IMPOUNDMENTS: )  
PROPOSED NEW 35 ILL. ADMIN. )  
CODE 845 )  
)  
)

**NOTICE OF ELECTRONIC FILING**

To: Attached Service List

PLEASE TAKE NOTICE that on September 10, 2020, I electronically filed with the Clerk of the Illinois Pollution Control Board the **PREFILED QUESTIONS OF ELPC, PRAIRIE RIVERS NETWORK, AND SIERRA CLUB TO CYNTHIA VODOPIVEC,** copies of which are served on you along with this notice.

Dated: September 10, 2020

Respectfully Submitted,



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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
)  
STANDARDS FOR THE DISPOSAL OF ) R 20-19  
COAL COMBUSTION RESIDUALS IN ) (Rulemaking – Land)  
SURFACE IMPOUNDMENTS: PROPOSED )  
NEW 35 ILL. ADM. CODE 845 )  
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**PRE-FILED QUESTIONS OF ELPC, PRAIRIE RIVERS NETWORK, AND SIERRA CLUB TO CYNTHIA VODOPIVEC**

- 1 On page 4 of your testimony, you discuss the CCR generated at Dynegy facilities.
  - a Where does Dynegy get the coal that is burned at each of its facilities in Illinois?
  - b Has Dynegy always gotten its coal from those sites?
    - i If not, where did it come from?
    - ii When did Dynegy change the site from which the coal came from?
  - c Does Dynegy dredge its impoundments?
    - i Is there still ash in the impoundments from coal burned from more than 2 decades ago?
    - ii Is that older ash referenced in the question above mixed with more recent ash in the same impoundment?
  - d Does or did Dynegy mix any scrubber sludge with bottom ash or coal ash in any of its impoundments?
    - i Are there sites where scrubber sludge is disposed of in separate impoundments or landfills, not mixed with other CCR?
    - ii How long after the plants began operating did disposal of scrubber sludge begin?
  - e Does or did Dynegy utilize dry sorbent injection (DSI) as a sulfur-removal control technology at any of its plants?
    - i If so, how long after the plants began operating did use of DSI begin?
    - ii Are there impoundments at Dynegy sites that contain only CCR that predates the use of DSI?
    - iii Are there impoundments at Dynegy sites that contain both CCR that predates the use of DSI, as well as CCR generated after DSI use began?

- 2 On page 6 of your testimony, you state “As noted by Dynegy’s experts, particularly Dr. Lisa Bradley and Mark Rokoff, Dynegy’s CCR surface impoundments are already subject to a comprehensive regulatory scheme—the federal CCR Rule.”
  - a Please cite to where in Dr. Lisa Bradley’s testimony, it says or explains that Dynegy’s CCR surface impoundments are already subject to a comprehensive regulatory scheme.
  - b Please cite to where in Mark Rokoff testimony, it says or explains that Dynegy’s CCR surface impoundments are already subject to a comprehensive regulatory scheme
  - c Does Illinois Pubic Act 101-0171 (“P.A. 101-0171,” also known as the Coal Ash Pollution Prevention Act) mandate that the Illinois rules be the same as the federal CCR rules?
  
- 3 On page 8, you state, “The concept of hydraulic head as the greatest source of risk of contaminant leaching is discussed further in the pre-filed testimony of Dynegy’s experts Dr. Lisa Bradley and David Hagen.”
  - a Please provide a citation for where Dr. Lisa Bradley states that in her testimony.
  - b Please provide a citation for where David Hagen states that in his testimony.
  - c Do you have any independent opinion on this topic or do you rely exclusively on the opinion of Dr. Lisa Bradley and David Hagen? If you have an independent opinion, please state that opinion and provide the basis for it.
  
- 4 On pages 7 through 11 of your testimony, you discuss the Joppa West Ash Pond.
  - a Please provide the basis for the statement on page 7 of your testimony that “the Illinois Legislature. . . clearly intend[ed] the scope of the Illinois CCR program to be identical to that of the federal rule.”
  - b Has there been groundwater monitoring done at Joppa West?
  - c If so, what are the results of that groundwater monitoring?
  - d Has Dynegy monitored groundwater at other dewatered CCR impoundments? If so, what were the results of that monitoring?
  - e Groundwater monitoring at Dynegy CCR landfills has revealed exceedances of groundwater protection standards, right?
  
- 5 In Attachment A and on page 11 of your testimony, you identify ways that the requirements of Part 845 are “substantially or unnecessarily more restrictive than the CCR Rule.”
  - a What do you mean by “substantially or unnecessarily more restrictive”?

- i What is your basis for this answer?
  - b Where in P.A. 101-171, also known as the Coal Ash Pollution Prevention Act, does it say that there cannot be more restrictive rules than the federal CCR Rule?
  - c You also note that these additional requirements could carry significant costs for owners and operators. Has Dynegy completed a benefits analysis that evaluates the benefits to health and the environment of more protective mandates? If so, please provide the results.
- 6 On page 11 of your testimony, you state, “The Board should therefore accept the more restrictive requirements that IEPA has proposed only where clear evidence has been presented that such requirements will lead to meaningful environmental benefits.”
  - a What do you mean by “meaningful environmental benefits?”
  - b What is your basis for that definition?
- 7 On page 12 of your testimony, you discuss the Proposed Part 845 rules’ requirement to “provide the Agency any necessary licenses and software needed to review and access both the model and the data contained within the model.”
  - a Is there a possibility that a different software or different model would project a different outcome from the raw data?
- 8 On page 13 of your testimony, you state, “In addition to the issues identified by Dynegy’s experts David Hagen and Mark Rokoff, there are several problems with this schedule.”
  - a Please provide citations for where this is in David Hagen’s testimony.
  - b Please provide citations for where this is in Mark Rokoff’s testimony.
  - c Do you have any independent opinion on this topic or do you rely exclusively on the opinion of David Hagen and Mark Rokoff? If you have an independent opinion, please state that opinion and provide the basis for it.
  - d You also state, “During the five months following the first submittal deadline, Dynegy will also be required to hold between 10 and 20 public meetings, pursuant to proposed Section 845.240(a), which requires public meetings to be completed at least 30 days before the application deadline.”
    - i How many Dynegy personnel does Dynegy expect to participate in these meetings?
    - ii Will the same people be at each meeting? If so, please explain why.
- 9 On page 14 of your testimony, you state Dr. Lisa Bradley, Andrew Bittner, and David Hagen all testify that “the groundwater monitoring requirements in IEPA’s Part 845 proposal are substantially more stringent than those in the CCR Rule.”

- a Please provide citations for where it says this in Dr. Lisa Bradley's testimony.
  - b Please provide citations for where it says this in Andrew Bittner's testimony.
  - c Please provide citations for where it says this in David Hagen's testimony.
  - d Do you have any independent opinion on this topic or do you rely exclusively on the opinion of Dr. Lisa Bradley, Andrew Bittner, and David Hagen? If you have an independent opinion, please state that opinion and provide the basis for it.
- 10 On page 16 of your testimony, you state, "as discussed in Dr. Lisa Bradley's and David Hagen's testimonies, proposed Part 845 is significantly more stringent than the CCR Rule because corrective action under proposed Part 845 can be triggered on just a single exceedance (after confirmation) of a groundwater protection standard."
- a Please provide citations for where it says this in Dr. Lisa Bradley's testimony.
  - b Please provide citations for where it says this in David Hagen's testimony.
  - c Do you have any independent opinion on this topic or do you rely exclusively on the opinions of Dr. Lisa Bradley and David Hagen? If you have an independent opinion, please state that opinion and provide the basis for it.
- 11 On page 16, you state, "For CCR units that do not have existing groundwater data, because they are not currently regulated by the CCR Rule, (for example, those at Dynegy's Vermilion Power Station) this time period is not sufficient to gather a representative sample of groundwater conditions. Instead, at least eighteen to twenty-four months should be allowed to gather monitoring data at existing, but newly-regulated units, so that this initial data set will reflect normal seasonal variations in groundwater levels and flow patterns."
- a What is your basis for the amount of time (18 to 24 months) you claim is needed to gather this monitoring data?
  - b How many of Dynegy's CCR units do you claim would need this time extension?
- 12 On page 17, you state, "As outlined in the testimony of David Hagen, because Part 845 departs from the CCR Rule's two-step process—specifically the use of statistical methods to identify exceedances—there is a high probability that IEPA's proposed groundwater monitoring provisions could trigger corrective action based on erroneous or insufficient sampling."
- a Please provide citations for where it says this in David Hagen's testimony.
  - b Are you aware of any instances in which there has been erroneous or insufficient sampling that triggered corrective action?
    - i If so, what caused this "erroneous or insufficient" sampling?
    - ii If so, what was the result of that corrective action?

- c Do you have any independent opinion on this topic or do you rely exclusively on the opinion of David Hagen? If you have an independent opinion, please state that opinion and provide the basis for it.
  
- 13 On page 17, you state, “To ensure corrective action is triggered only where scientifically justified, Dynegy recommends, as outlined in the testimonies of Dr. Lisa Bradley and David Hagen, that corrective action be triggered only when there is a statistically significant level above a groundwater protection standard.”
  - a Please provide citations for where it says this in Dr. Lisa Bradley’s testimony.
  - b Please provide citations for where it says this in David Hagen’s testimony.
  - c Do you have any independent opinion on this topic or do you rely exclusively on the opinions of Dr. Lisa Bradley and David Hagen? If you have an independent opinion, please state that opinion and provide the basis for it.
  
- 14 On page 17, you state, “as explained in Mark Rokoff and Andrew Bittner’s expert testimony, proposed Part 845 is more stringent than the requirements in the CCR Rule with respect to evaluating closure options.”
  - a Please provide citations for where it says this in Andrew Bittner’s testimony.
  - b Please provide citations for where it says this in Mark Rokoff’s testimony.
  - c Do you have any independent opinion on this topic or do you rely exclusively on the opinions of Mark Rokoff and Andrew Bittner? If you have an independent opinion, please state that opinion and provide the basis for it.
  
- 15 On page 17, you discuss costs associated with closure alternative analysis performed under Section 845.710. You also state that “[t]he prescriptive nature of Section 845.710 takes away some of the flexibility afforded under the CCR Rule to select a closure methodology best suited to each site.”
  - a What closure methods are “best suited” for a site?
  - b What “flexibility” do you assert that the alternatives analysis “takes away?”
  - c How does the alternatives analysis – an informational requirement – “take away” those “flexibilities?”
  
- 16 On page 18, you state, “as explained in Dr. Rudy Bonaparte’s testimony, the requirements for final covers for CCR surface impoundments under proposed Part 845 are substantially more stringent than under the CCR Rule.”
  - a Please provide citations for where it says this in Dr. Rudy Bonaparte’s testimony.

- b Do you have any independent opinion on this topic or do you rely exclusively on the opinion of Dr. Rudy Bonaparte? If you have an independent opinion, please state that opinion and provide the basis for it.
- 17 On page 18, you state, “Because the majority of its sites lack sufficient native borrow material, Dynegy anticipates that a requirement to use 18-inches of additional earthen material in the cover system could cost up to \$50 – \$100 million, with no associated environmental benefit.”
- a What is the basis for your assertion that there no associated environmental benefit?
- 18 On page 19 of your testimony, you state, “As discussed in the testimony of David Hagan, and consistent with prior Agency approvals, Dr. Bonaparte’s proposed revisions to the final cover system requirements are protective of human health and the environment.”
- a Please cite to where in David Hagan’s testimony he asserts that Dr. Bonaparte’s proposed revisions to the final cover system requirements are protective of human health and the environment.
- b Please specify which of Dr. Bonaparte’s proposed revisions to the final cover system requirements you assert are protective of human health and the environment.
- c What is the basis of your assertion that Dr. Bonaparte’s proposed revisions to the final cover system requirements protective of human health and the environment?
- d Do you have any independent opinion on this topic or do you rely exclusively on the opinions of David Hagen and Dr. Bonaparte? If you have an independent opinion, please state that opinion and provide the basis for it.
- 19 On page 19 of your testimony, you state, “Exceeding the requirements of the CCR Rule, without clear scientific justification, is not in the interests of the State of Illinois, particularly the communities surrounding CCR surface impoundments.”
- a What is the basis for this opinion regarding the “State of Illinois?”
- b What is the basis for this opinion regarding “communities surrounding CCR surface impoundments?”
- c Do you work with “communities surrounding CCR impoundments? If yes, what communities and in what capacity do you engage with them?
- d Did you ask those communities whether “[e]xceeding the requirements of the CCR Rule, without clear scientific justification,” is in the interest of communities surrounding CCR surface impoundments? If yes, when did you ask them this? If you spoke with different communities at different times or in different contexts, provide details of each.

Dated: September 10, 2020

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

The undersigned, Jeffery T. Hammons, an attorney, certifies that I have served by email the Clerk and by email the individuals with email addresses named on the Service List provided on the Board's website, available at <https://pcb.illinois.gov/Cases/GetCaseDetailsById?caseId=16858>, true and correct copies of the **PREFILED QUESTIONS OF ELPC, PRAIRIE RIVERS NETWORK, AND SIERRA CLUB TO CYNTHIA VODOPIVEC**, before 5 p.m. Central Time on September 10, 2020. The number of pages in the email transmission is 13 pages.

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