

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

**In the Matter of:** )  
 )  
**STANDARDS OF THE DISPOSAL** )  
**OF COAL COMBUSTION RESIDUAL** ) **R 2020-019**  
**IN SURFACE IMPOUNDMENTS:** )  
**PROPOSED NEW 35 ILL. ADM.** ) **(Rulemaking – Water)**  
**CODE 845** )

**NOTICE OF FILING**

TO: Don Brown Vanessa Horton  
Clerk of the Board Hearing Officer  
Illinois Pollution Control Board Illinois Pollution Control Board  
100 W. Randolph Street, Suite 11-500 100 W. Randolph Street, Suite 11-500  
Chicago, Illinois 60601 Chicago, Illinois 60601  
**(VIA ELECTRONIC MAIL)** **(VIA ELECTRONIC MAIL)**

**(SEE PERSONS ON ATTACHED SERVICE LIST)**

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board an **POST-HEARING COMMENT SUBMITTED BY THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP**, copies of which are herewith served upon you.

Respectfully submitted,

Dated: October 30, 2020

By:           /s/ Melissa S. Brown            
One of Its Attorneys

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**CERTIFICATE OF SERVICE**

I, the undersigned, on oath state the following:

That I have served the attached **POST-HEARING COMMENT SUBMITTED BY THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP** via electronic mail upon:

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That my email address is [Melissa.Brown@heplerbroom.com](mailto:Melissa.Brown@heplerbroom.com)

That the number of pages in the email transmission is 8 pages.

That the email transmission took place before 5:00 p.m. on the date of October 30, 2020.

/s/ Melissa S. Brown

Melissa S. Brown

Date: October 30, 2020

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<b>In the Matter of:</b>	)	
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<b>STANDARDS OF THE DISPOSAL</b>	)	
<b>OF COAL COMBUSTION RESIDUAL</b>	)	<b>R 2020-019</b>
<b>IN SURFACE IMPOUNDMENTS:</b>	)	
<b>PROPOSED NEW 35 ILL. ADM.</b>	)	<b>(Rulemaking – Water)</b>
<b>CODE 845</b>	)	

**POST-HEARING COMMENT SUBMITTED BY  
THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP**

NOW COMES the Illinois Environmental Regulatory Group (“IERG”), by and through its attorneys, HEPLERBROOM, LLC, and pursuant to the Illinois Pollution Control Board’s (“Board”) Hearing Officer Orders of October 2 and 20, 2020, submits the following post-hearing comment for the Board’s consideration in the above-referenced proceeding.

IERG is an Illinois non-profit corporation affiliated with the Illinois Chamber of Commerce and is comprised of forty-six (46) member companies that are regulated by governmental agencies that promulgate, enforce, or administer environmental laws, rules, regulations, or other policies. IERG participated in the hearings in this matter, submitting pre-filed questions and questioning the Illinois Environmental Protection Agency’s (“Agency”) witnesses at hearing. IERG’s questioning concerned a number of topics, including applicability of proposed Part 845 to inactive closed CCR surface impoundments. IERG appreciates the opportunity to submit this post-hearing comment.

**Inactive Closed Surface Impoundments**

On June 23, 2019, IERG submitted pre-filed questions of the Agency’s witnesses concerning the applicability of certain requirements under proposed 35 Ill. Adm. Code Part 845 to inactive closed CCR surface impoundments. Per Section 845.170, the only provisions of Part 845 that apply to inactive closed CCR surface impoundments are the provisions listed in Section

845.170. *See* proposed 35 Ill. Adm. Code 845.170(a) (“Only the following provisions apply to inactive closed CCR surface impoundments . . .”). In the Agency’s pre-filed responses to IERG’s pre-filed questions, the Agency confirmed this, stating that “[o]nly the Subparts, Sections and subsections listed in Section 845.170 are applicable to inactive closed surface impoundments.” Hearing Exhibit 2, Illinois EPA’s Pre-filed Answers, PCB R 20-19, at 136 (Aug. 3, 2020).

In IERG’s pre-filed questions of the Agency’s witnesses, IERG proposed a series of revisions to certain sections of Part 845 to clarify which requirements are applicable to inactive closed CCR surface impoundments per Section 845.170. Pursuant to Section 845.170, as proposed, and per the Agency’s responses to IERG’s questions, Section 845.170 contains a comprehensive list of subparts and sections that are applicable to inactive closed CCR surface impoundments. However, there are numerous provisions listed in Section 845.170 that contain references to sections in Part 845 that are not listed in Section 845.170. The references to provisions not listed in Section 845.170, without additional clarifying language, create confusion regarding what provisions are indeed applicable to inactive closed CCR surface impoundments.

For example, Section 845.250 (“Tentative Determination and Draft Permit”) is listed in Section 845.170 as being applicable to inactive closed CCR surface impoundments. However, Section 845.250(b)(1) contains a reference to Section 845.260, as seen below:

- (b) Upon tentative determination to issue or deny the permit:
  - (1) If the determination is to issue the permit, the Agency must notify the applicant in writing of the content of the tentative determination and draft permit and of its intent to circulate public notice of issuance in accordance with Section 845.260.

Section 845.260 is not listed in Section 845.170 and, as such, IERG understands that the Agency does not intend for it to be applicable to inactive closed CCR surface impoundments. The

reference to Section 845.260, without additional clarifying language, creates confusion regarding what provisions are applicable or not applicable to inactive closed CCR surface impoundments.

As to the above example concerning Section 845.250(b)(1), IERG proposed revising the provision to add language clarifying that Section 845.260, as referenced, may not be applicable to all surface impoundments under Part 845. Specifically, IERG proposed the following revision:

- (b) Upon tentative determination to issue or deny the permit:
  - (1) If the determination is to issue the permit, the Agency must notify the applicant in writing of the content of the tentative determination and draft permit and of its intent to circulate public notice of issuance in accordance with Section 845.260, if applicable.

The Agency responded that such proposed revision is not needed, and then referred to its prior response that “[o]nly the Subparts, Sections, and subsections listed in Section 845.170 are applicable to inactive closed surface impoundments.” Illinois EPA’s Pre-filed Answers, PCB R 20-19, at 136 (Aug. 3, 2020). The Agency gave the same response to additional proposed revisions, similar to the Section 845.250(b)(1) example above, suggested by IERG in its pre-filed questions.

However, given the Agency’s responses, IERG renews its suggestion to add clarifying language to such provisions to ensure that the rule reflects the Agency’s intent. Adding minor language revisions now will prevent confusion within the regulated community, regulators, and the public in the future as to what requirements are applicable to inactive closed CCR surface impoundments. As such, IERG urges the Board to include the following proposed revisions in the final Part 845 rule language:

- Add “if applicable” at the end of Section 845.250(b)(1) so that it would read as follows: “If the determination is to issue the permit, the Agency must notify the

applicant in writing of the content of the tentative determination and draft permit and of its intent to circulate public notice of issuance in accordance with Section 845.260, if applicable.”

- Add “if applicable” to Section 845.250(b)(2) so that it would read as follows: “If the determination is to deny the permit, the Agency must notify the applicant in writing of the tentative determination and of its intent to circulate public notice of denial, in accordance with Section 845.260, if applicable. . . . .”
- Add “if applicable” to Section 845.270(a) so that it would read as follows: “The Agency shall not make a final permit determination until the public participation process in Section 845.260, if applicable, has concluded.”
- Revise Section 845.780(b)(3) so it would read as follows: “Maintaining the groundwater monitoring system and monitoring the groundwater in accordance with the requirements of Subpart F, if applicable.”

IERG would like to thank the Board for the opportunity to submit these comments.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP

Dated: October 30, 2020

By:           /s/ Melissa S. Brown            
One of Its Attorneys

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