

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF ELECTRONIC FILING

To: Attached Service List

PLEASE TAKE NOTICE that on September 2, 2022, I electronically filed with the Clerk of the Illinois Pollution Control Board (“Board”) the Environmental Groups’ **MOTION TO MODIFY CERTAIN PROVISIONS OF PART 845**, copies of which are served on you along with this notice.

Dated: Sept. 2, 2022

Respectfully Submitted,

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MOTION TO MODIFY CERTAIN PROVISIONS OF PART 845

The Environmental Law & Policy Center (“ELPC”), Little Village Environmental Justice Organization (“LVEJO”), Prairie Rivers Network (“PRN”), and Sierra Club (collectively, “Environmental Groups”) respectfully request that the Board modify certain provisions of 35 Ill. Adm. Code Part 845. In support, Environmental Groups submit the accompanying Memorandum in Support of Motion to Modify Certain Provisions of Part 845, and state as follows:

1. In April 2015, the U.S. Environmental Protection Agency (“USEPA”) promulgated regulations that, for the first time, established safeguards for landfills and surface impoundments containing coal combustions residuals (“CCR” or “coal ash”), which were codified at Subpart D of 40 C.F.R. Part 257 (“the federal CCR rule”).¹
2. In December 2016, Congress adopted the Water Infrastructure Improvements for the Nation Act (“WIIN Act”),² amending the Resource Conservation and Recovery Act (“RCRA”)³ by, among other things, directing USEPA to authorize State coal ash permitting programs that “require[] each coal combustion residuals unit located in the State to achieve compliance with . . . criteria that . . . [are] at least as protective as” the federal CCR rule.⁴
3. In August 2019, Illinois adopted the Coal Ash Pollution Prevention Act (“CAPPA”),⁵ which added Section 22.59 to the Illinois Environmental Protection Act and directed the Illinois Environmental Protection Agency (“IEPA” or “the Agency”) to propose, and the

¹ Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals From Electric Utilities, 80 Fed. Reg. 21,302 (Apr. 17, 2015).

² Pub. L. No. 114-322, 130 Stat. 1628 (2016) (codified at 42 U.S.C. § 6945(d)).

³ 42 U.S.C. § 6901 et. seq.

⁴ 42 U.S.C. § 6945(d)(1)(B) (emphasis added); *see also Util. Solid Waste Activities Grp v. EPA*, 901 F.3d 414, 426 (D.C. Cir. 2018) (“[T]he Administrator may only approve a state plan if its standards ‘are at least as protective as the criteria’ set by the EPA in its corresponding RCRA regulations, specifically including Coal Residuals regulation, 40 C.F.R. pt. 257.”) (attached as Attachment C to IEPA’s Statement of Reasons, R2020-19 (Mar. 30, 2020)).

⁵ Pub. Act 101-171 (eff. July 30, 2019) (adding 415 ILCS 5/22.59).

Board to adopt, regulations for CCR surface impoundments that are “at least as protective and comprehensive” as the federal CCR rule.⁶

4. On March 30, 2020, the Agency proposed draft rules to the Board in R2020-19, noting that it planned to seek USEPA authorization of Illinois’ permitting program for CCR surface impoundments after final rules were issued.⁷ The Agency reiterated that intention in its final comments to the Board in R2020-19, dated October 2020,⁸ as well as in comments filed with the Board in R2020-19 in April 2021.⁹
5. On June 15, 2020, in initial comments submitted to the Board in R2020-19, ELPC, PRN, and Sierra Club pointed out various provisions of the Agency’s draft rules that fall short of the protections of the federal CCR rule. ELPC, PRN, and Sierra Club explained that provisions concerning allowing more CCR to be placed in unlined impoundments before closure, as well as provisions exempting “temporary” piles from the federal requirements for CCR landfills, were not permitted by the federal CCR rule; rather, they were based on never-adopted revisions to the federal CCR rule.¹⁰ In addition, those comments highlighted concerns about “background” groundwater monitoring wells installed in CCR-contaminated groundwater.¹¹
6. On October 30, 2020, in final comments submitted to the Board in R2020-19, Environmental Groups identified two sets of provisions in the then-proposed Part 845 rules that are inconsistent with, and less protective than, the federal CCR rule. We reiterated that provisions allowing more CCR to be placed in unlined impoundments before closure were based on proposed changes to the federal CCR rule that were never adopted, highlighting risks posed by that practice explained by hydrogeologist Mark Hutson.¹² We also noted that provisions concerning “temporary” CCR piles likewise were based on proposed, but never adopted, changes to the federal CCR rule.¹³ Finally, we reiterated that owners/operators of CCR surface impoundments must not improperly evade cleanup by siting “background” wells in CCR-polluted groundwater.¹⁴
7. In comments to the Joint Committee on Administration Rules (“JCAR”), submitted to the Board by the Environmental Groups on February 24, 2021, Environmental Groups again stated that provisions allowing more coal ash to be placed in unlined

⁶ 415 ILCS 5/22.59(g)(1) (emphasis added) (“The rules must, at a minimum: (1) be at least as protective and comprehensive as the federal regulations or amendments thereto promulgated by the Administrator of the United States Environmental Protection Agency in Subpart D of 40 CFR 257 governing CCR surface impoundments . . .”).

⁷ IEPA, Statement of Reasons at 10, R2020-19 (Mar. 30, 2020).

⁸ IEPA, Final Post-Hearing Comments at 10, 56–57, R2020-19 (Oct. 30, 2020).

⁹ IEPA, Public Comment No. 153 at 9, R2020-19 (Apr. 6, 2021) (“It is the Agency’s intent to have Part 845 serve in lieu of Part 257 as allowed by the WIIN Act”).

¹⁰ See ELPC, PRN, and Sierra Club, Initial Comments at Section VII(B), R2020-19PC (June 15, 2020).

¹¹ *Id.* at Section VI, 21–22 of 31.

¹² See Env’t Groups, Final Post-Hearing Comments at 106–109, R2020-19 (Oct. 30, 2020).

¹³ *Id.*

¹⁴ *Id.* at 18–22.

impoundments before those unsafe units close were inconsistent with, and less protective than, the federal CCR rule.¹⁵

8. In a March 8, 2021 letter to JCAR staff, Edward Nam, Director of the Land, Chemicals, and Redevelopment Division of USEPA, Region V, agreed with the Environmental Groups that provisions allowing for “the consolidation of coal ash from one pond into another” should be removed because those requirements “have not been incorporated into 40 CFR Part 257, Subpart D.”¹⁶
9. On January 11, 2022, USEPA issued proposed decisions on several cease-receipt extension requests submitted by owners of CCR surface impoundments and also sent letters to various facilities that had not requested extensions of their cease-receipt deadlines. In two of those documents, USEPA made clear that adding CCR to unlined impoundments already required to close is not permitted by the federal CCR rule.¹⁷ In another proposed decision, USEPA elaborated on the mandate that “background” groundwater monitoring wells must not be affected by leakage from CCR units, which include other CCR deposits beyond CCR surface impoundments.¹⁸

Accordingly, for the reasons set out herein and in the accompanying Memorandum in Support, Environmental Groups respectfully request that the Board modify the provisions as set out in Attachment A hereto and in the section concerning CCR piles in Environmental Groups’ Comments on Environmental Groups’ Proposed Rules, filed in this subdocket on June 3, 2022.

Dated: Sept. 2, 2022

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¹⁵ See Env’t Groups, Public Comment #144, R2020-19PC (Feb. 24, 2021); JCAR, Public Comment #145, R2020-19PC (Mar. 2, 2021).

¹⁶ See JCAR, Public Comment #146, R2020-19PC (Mar. 9, 2021) (letter to JCAR from Edward Nam of USEPA, Region V).

¹⁷ USEPA, Proposed Decision: Proposed Denial of Alternative Closure Deadline for Ottumwa Generating Station at 35-36 (Jan. 25, 2022) (attached as Ex. B to Environmental Groups’ Comments on Environmental Groups’ Proposed Rules, R2020-19(A) (June 3, 2022)); USEPA, Letter on Duke Energy Gallagher at 3-4 (Jan 11, 2022) (attached as Ex. F to Environmental Groups’ Comments on Environmental Groups’ Proposed Rules, R2020-19(A) (June 3, 2022)).

¹⁸ USEPA, Proposed Decision: Proposed Denial of Alternative Closure Deadline for Clifty Creek Power Station at 46 (Jan. 25, 2022) (attached as Ex. E to Environmental Groups’ Comments on Environmental Groups’ Proposed Rules, R2020-19(A) (June 3, 2022)).

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CERTIFICATE OF SERVICE

The undersigned, Jennifer Cassel, 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=16975>, a true and correct copy of the **MOTION TO MODIFY CERTAIN PROVISIONS OF PART 845**, before 5 p.m. Central Time on September 2, 2022. The number of pages in the email transmission is 13 pages.

Dated: Sept. 2, 2022

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Appendix A

Appendix A
Proposed amendments to Part 845

35 Ill. Adm. Code 845.630(a)(1)

- a) Performance Standard. The owner or operator of a CCR surface impoundment must install a groundwater monitoring system that consists of a sufficient number of wells, installed at appropriate locations and depths, to yield groundwater samples that:
- 1) Accurately represent the quality of background groundwater that has not been affected by leakage from a CCR surface impoundment or CCR landfill as defined at 40 CFR 257.53. A determination of background quality may include sampling of wells that are not hydraulically upgradient of the CCR management area where:
 - A) Hydrogeologic conditions do not allow the owner or operator of the CCR surface impoundment to determine what wells are hydraulically upgradient; or
 - B) Sampling at other wells will provide an indication of background groundwater quality that is demonstratively as representative or more representative than that provided by the upgradient wells; and
 - 2) Accurately represent the quality of groundwater passing the waste boundary of the CCR surface impoundment. The downgradient monitoring system must be installed at the waste boundary that ensures detection of groundwater contamination. All potential contaminant pathways must be monitored.

35 Ill. Adm. Code 845.750(d)

- ~~(d) This subsection specifies the allowable uses of CCR in the closure of CCR surface impoundments closing under Section 845.700. Notwithstanding the prohibition on further placement in Section 845.700, CCR may be placed in these surface impoundments, but only for purposes of grading and contouring in the design and construction of the final cover system, if:~~
- ~~1) The CCR placed was generated at the facility and is located at the facility at the time closure was initiated;~~
 - ~~2) CCR is placed entirely above the elevation of CCR in the surface impoundment, following dewatering and stabilization (see subsection (b));~~
 - ~~3) The CCR is placed entirely within the perimeter berms of the CCR surface impoundment; and~~
 - ~~4) The final cover system is constructed with either:~~

~~A) — A slope not steeper than 5% grade after allowance for settlement;
or~~

~~B) — At a steeper grade, if the Agency determines that the steeper slope is necessary, based on conditions at the site, to facilitate run-off and minimize erosion, and that side slopes are evaluated for erosion potential based on a stability analysis to evaluate possible erosion potential. The stability analysis, at a minimum, must evaluate the site geology; characterize soil shear strength; construct a slope stability model; establish groundwater and seepage conditions, if any; select loading conditions; locate critical failure surface; and iterate until minimum factor of safety is achieved.~~