

October 3, 2024

Mr. Don Brown
Clerk's Office
Illinois Pollution Control Board
60 E. Van Buren, Suite 630
Chicago, IL 60605

Re: Docket R20-19A
Standards for the Disposal of Coal Combustion Residuals (CCR)
35 Ill. Admin. Code 845

Dear Mr. Brown:

Ameren Illinois respectfully submits the following comments on the above-referenced docket, which explored the following four issues raised during the rulemaking process for 35 Ill. Admin. Code 845: (1) historic, unconsolidated coal ash fill in the State; (2) the use of temporary storage piles of coal ash, including time and volume limits; (3) fugitive dust monitoring plans for areas surrounding CCR surface impoundments; and (4) the use of environmental justice screening tools. The immediate outgrowth of that effort is a set of proposed amendments to 35 Ill. Admin. Code 845 related to the second and third issues, and an underlying order from the Board dated August 22, 2024, directing IEPA, or participants, to file a new rulemaking proposal incorporating the federal rule amendments for 40 CFR Part 257 by May 5, 2025.

To be clear, Ameren takes no position on the proposed amendments published in the Illinois Register. Instead, Ameren offers these comments to address the Board's conclusion that historic unconsolidated fills likely will be subsumed within EPA's new definition of "CCR management unit" in its "legacy CCR rule," 89 Fed. Reg. 38950 (May 8, 2024), to be codified at 40 CFR 257.53, and that as a result there should be a wholly new State rulemaking to adopt EPA's legacy CCR rule.

Ameren notes that EPA's legacy CCR rule is under review by the D.C. Circuit Court of Appeals in a series of consolidated cases styled, *City Utilities of Springfield, Missouri v. EPA*, Case No. 24-1200, and that industry petitioners have identified a number of issues, including retroactive application of EPA's rule to previously closed CCR units (particularly those closed under active State oversight, as in Illinois), and invalidation of the long-standing beneficial use exemption for on-site uses of CCR, including as structural fill. Ameren respectfully submits that it would be premature for IEPA, participants, or the Board to file a new rulemaking proposal incorporating EPA's rule amendments until after litigation has concluded on the contested issues. As a result,

Ameren requests that the Board extend the May 5, 2025 deadline, at the earliest, to the date on which the D.C. Circuit issues a dispositive ruling and all relevant appeal periods have passed.

Please feel free to contact me if you have any questions or would like any additional information.

Sincerely,

A handwritten signature in black ink that reads "Craig J. Giesmann". The signature is written in a cursive style with a clear, legible font.

Craig J. Giesmann, P.E., P.M.P.
Director, Environmental Services