

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	R20-19(A)
STANDARDS FOR THE DISPOSAL OF)	(Rulemaking - Land)
COAL COMBUSTION RESIDUALS IN)	
SURFACE IMPOUNDMENTS: PROPOSED)	
NEW 35 ILL. ADM. CODE 845)	

NOTICE OF FILING

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board, the **ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S FIRST NOTICE COMMENTS**, a copy of which is served upon you.

Respectfully submitted,

Dated: October 21, 2024

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

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BY: /s/ Kaitlyn Hutchison
Kaitlyn Hutchison

THIS FILING IS SUBMITTED ELECTRONICALLY

SERVICE LIST

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**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S
FIRST NOTICE COMMENTS**

NOW COMES the Illinois Environmental Protection Agency (Illinois EPA or Agency), by and through one of its attorneys, and submits First Notice Comments to the Illinois Pollution Control Board (Board):

1. While Illinois EPA is currently working with the United States Environmental Protection Agency (USEPA), Illinois EPA's permitting program for the regulation of coal combustion residuals (CCR), 35 Ill. Adm. Code 845 (Part 845), **has not** been approved by USEPA.
2. The Agency recommends striking the proposed definition of "CCR Storage Pile" and implementing the federal definition of "CCR pile or pile" from 40 CFR 257.53.

When Part 845 was drafted, the federal definitions for "CCR landfill or landfill" and "CCR pile or pile" were already codified in 40 CFR 257.53. In practice, for closure by removal, CCR may have to be stockpiled outside of the coal combustion residual surface impoundment (CCRSI). Since Part 845 regulates only CCRSIs, the Agency wants to be careful to not create CCR landfills. Therefore, the Agency specifically added the word "storage" to "pile" to differentiate it from a CCR landfill.¹

The Board's proposed definition of "CCR Storage Pile" is cognizant of not creating landfills by specifying a period for removal. However, the use of landfill regulations to make the distinction raises issues, as landfill regulations are not referenced elsewhere in Part 845. The Part 845 definition of "Temporary Accumulation"² accomplishes the same limited time concept, without using the term "landfill."

The USEPA recently proposed defining "CCR Management Units" (CCRMUs) as any area of land where noncontainerized CCR accumulations are received, placed, or otherwise managed, excluding regulated CCR units.³ The Agency is concerned that the Board's use of the phrase

¹ 40 CFR 257.53.

² 35 Ill. Adm. Code 845.120.

³ 89 Fed Reg 39100 (May 8, 2024) ("*CCR management unit* means any area of land on which any noncontainerized accumulation of CCR is received, is placed, or is otherwise managed, that is not a regulated CCR unit. This includes

“accumulation of non-flowing CCR on the land” too closely aligns with the federal definition’s “any area of land” and “any noncontainerized accumulation of CCR” for CCRMUs. Additionally, 40 CFR 257.75 mandates a facility evaluation report inventorying all CCRMUs, regardless of when they were established. The Agency is further concerned that the Board’s proposed definition could classify storage piles formed during closure by removal as CCRMUs, subjecting them to separate regulations, and potentially introducing landfills into Part 845.

Finally, the Agency recommends using the term “unit” as opposed to “piles” as “unit” is already defined in the Illinois Environmental Protection Act⁴ and avoids the landfill-related implications associated with the term “pile.” Additionally, to qualify as a storage unit, it must be part of an approved permit, indicating that the unit’s design and usage have been reviewed by and approved by the Agency with an opportunity for public comment.⁵

The Agency recommends:

“CCR storage unit” means any accumulation of solid, non-flowing CCR, designed and managed to control releases of CCR to the environment, utilizing the measures specified in Section 845.740(c)(4)(A)-(F) of this Part, and the CCR storage unit is authorized by a closure construction permit under Section 845.220(d).

For the purposes of this Part, CCR contained in an enclosed structure is not a “CCR storage unit.” Additionally, for the purposes of this Part, CCR that is beneficially used is not a “CCR storage unit.”

3. The Agency recommends that “CCR storage units,” as defined in 35 Ill. Adm. Code 845.120 and as operated under 35 Ill. Adm. Code 845.740, should be included in 35 Ill. Adm. Code 845.220; Construction Permits. CCR storage units need to utilize closure construction permits. The Agency recommends the following addition:

845.220(d)(6)

Design and construction plans and specifications for a CCR storage unit and any associated barriers or berms, if applicable, including:

- A) The dimensions of the CCR storage unit and the type of storage pad or geomembrane to be used;
- B) The estimated maximum and estimated average tons or cubic yards of CCR that will be stored in the CCR storage unit monthly or annually;

inactive CCR landfills and CCR units that closed prior to October 19, 2015, but does not include roadbed and associated embankments in which CCR is used unless the facility or a permitting authority determines that the roadbed is causing or contributing to a statistically significant level above the groundwater protection standard established under § 257.95(h).”).

⁴ 415 ILCS 5/3.515.

⁵ 35 Ill. Adm. Code 845.220(a)-(d).

- C) An estimate of the amount of time the CCR storage unit will be operational;
- D) A description of the function of any barriers or berms that will be used to control wind and water run-on and run-off;
- E) A description of the demolition and disposal of the components of the CCR storage unit; and
- F) An assessment of how the CCR storage unit will meet the operating criteria under Section 845.740(c)(4).

4. The Agency recommends adding “including monitoring wells for a CCR storage unit under Section 845.740(c)(4)(B)(vi), if applicable” to Section 845.220(a)(4)(C).

The Agency notes it may not be necessary to explicitly name the CCR storage unit, as any additional wells required under 845.740(c)(4)(B)(vi) would be covered by the “proposed wells” clause in this subsection. However, a cross-reference helps link the requirements.

845.220(a)

- 4) Site Plan Map. The application must contain maps, including cross-sectional maps of the site boundaries, showing the location of the facility. The following information must be shown:
 - A) The entire facility, including any proposed and all existing CCR surface impoundment locations;
 - B) The boundaries, both above and below ground level, of the facility and all CCR surface impoundments or landfills containing CCR included in the facility;
 - C) All existing and proposed groundwater monitoring wells including monitoring wells for a CCR storage unit under Section 845.740(c)(4)(B)(vi), if applicable; and
 - D) All main service corridors, transportation routes, and access roads to the facility.

5. The Agency recommends several modifications to new proposed Section 845.500(b)(3), concerning the revision of CCR fugitive dust control plans. First, the Agency suggests clarifying that its determination that mitigation measures in a CCR fugitive dust control plan are inadequate may be based on all available information, such as, for example, Agency inspections, not just quarterly complaint reports. Second, the Agency suggests treating all impoundments in the State on an equal footing and requiring plan revisions whenever the Agency determines that the mitigation measures in a CCR fugitive dust control are inadequate to address off-site dust issues. The Agency recommends the proposed language in Section 845.500(b)(3):

845.500(b)(3)

The Agency must evaluate quarterly complaint reports received under Section 845.500(b)(2)(B):

- A) If the Agency determines based on all available information that the mitigation measures under the CCR fugitive dust control plan are not addressing the dust issues beyond the property boundary, the Agency ~~may~~ must require the owner or operator to revise the plan to include additional mitigation measures, including air quality (dust) monitoring at the property boundary.
- B) ~~If the Agency determines that the facility is causing dust issues over a period of time based on complaints received during at least two consecutive quarters in an area of environmental justice concern identified under Section 845.700(g)(6), the Agency must require the owner or operator to revise the CCR fugitive dust control plan to include additional mitigation measures, and air quality (dust) monitoring.~~
- C) Air quality (dust) monitoring under subsections (b)(3)(A) ~~and (b)(3)(B)~~ must include at least four each of PM10 and PM2.5 air monitors located at or near facility's property boundary with one air monitor each of PM10 and PM2.5 located at each cardinal point (north, south, east, west) with additional two each of PM10 and PM2.5 air monitors located at downwind locations if not covered by the cardinal point monitors.

6. The Agency recommends minor revisions to the Board's proposed language in Sections 845.550(a)(4) and 845.550(a)(5) for consistency. These modifications align with the proposed definition changes and subsection updates.

4) CCR storage unit pile pad, or geomembrane, barrier and berm ~~monthly inspection and repair documentation report~~ under Section 845.740(c)(4).

5) CCR storage unit pile demonstration under Section 845.740(c)(4)(F).

7. The Agency recommends the following language:

Section 845.740(c)(4)

- 4) The owner or operator of the surface impoundment must take measures to prevent contamination of surface water, groundwater, soil and sediments from the removal of CCR, including the following:

- A) CCR removed from the surface impoundment ~~may only be temporarily stored, and~~ must be stored in a lined landfill, CCR surface impoundment, enclosed structure, or CCR storage unit pile.
- B) CCR storage units piles must:
- i) Be tarped or constructed with wind barriers to suppress dust and to limit stormwater contact with CCR storage units piles;
 - ii) Be periodically wetted or have periodic application of dust suppressants when needed to control dust;
 - iii) Have a storage pad, or a geomembrane liner, with a hydraulic conductivity no greater than 1×10^{-7} cm/sec, that is properly sloped to allow appropriate drainage, and large enough to allow each portion of the pad or liner to be uncovered for inspection at least once in a year as required under subsection (c)(4)(C)(iii);
 - iv) Be tarped over the edge of the storage pad where possible;
 - v) Be constructed with fixed and mobile berms, where appropriate, to reduce run-on and run-off of stormwater to and from the CCR storage unit pile, and minimize stormwater-CCR contact; and
 - vi) Have a groundwater monitoring system that is consistent with the requirements of Section 845.630 and approved by the Agency.
 - vii) CCR storage units must be located as far as possible from waterways while taking into considering worker safety, transportation logistics, closure or corrective action activities and other facility operational needs.
- C) The owner or operator of the CCR surface impoundment must:
- i) incorporate general housekeeping procedures including such as daily cleanup of CCR, tarping of trucks, maintaining the pad and equipment; ~~and~~
 - ii) incorporate good best management practices during unloading and loading including minimizing drop distance on to CCR storage units piles; and -

- iii) inspect the storage pad, or geomembrane and any barriers or berms of the CCR storage units ~~piles~~ monthly for visible damage or defects, with all portions of the storage pad or geomembrane visible at least once each a year of operation; and
 - iv) The owner or operator of a CCR storage unit must repair any cracks, holes, tears, or other damage identified during the inspections within 90 days of the inspection or before the damaged area of the CCR storage unit is reused for CCR storage, whichever is sooner. ~~as soon as practicable; and~~
 - v) The owner or operator of a CCR storage unit must place documentation ~~An annual inspection report summarizing the results of the monthly inspections and any required repairs to the CCR storage unit under this subsection in the monthly report under Section 845.740(d) and must be include in the annual consolidated~~ report under Section 845.550.
- D) The owner or operator of the CCR must minimize the amount of time the CCR is exposed to precipitation and wind.
- E) The discharge of stormwater runoff that has contact with CCR must be covered by an individual National Pollutant Discharge Elimination System (NPDES) permit. The owner or operator must develop and implement a Stormwater Pollution Prevention Plan (SWPPP) in addition to any other requirements of the facility's NPDES permit. Any construction permit application for closure must include a copy of the SWPPP.
- F) The owner or operator must demonstrate that CCR in a CCR storage unit is not accumulated in any area of the CCR storage unit ~~a storage pile over~~ for a period longer than one year without the pad or geomembrane being visible for inspection by using photographs, records (contracts, purchase orders), or other observable or discernable information that shows CCR is being removed from each area within one year of being placed in the CCR storage unit ~~pile~~. This demonstration must be placed in the monthly report under Section 845.740(d) and included in the annual consolidated~~ion~~ report under Section 845.550.

8. To clarify the monthly reporting requirements in Section 845.740(d), the Agency recommends the following:

- d) At the end of each month during which CCR is being removed from a CCR surface impoundment, the owner or operator must prepare a report that:
- 1) Describes the weather, precipitation amounts, the amount of CCR removed from the CCR surface impoundment, the amount and location of CCR being stored on-site, the amount of CCR transported offsite, the implementation of good housekeeping procedures required by subsection (c)(4)(C), and the implementation of dust control measures;
 - 2) Documents the inspections of the CCR storage units' storage pad, geomembrane and any barriers or berms for damage or defects as required by subsection (c)(4)(C)(iii) and documents repairs to any CCR storage unit storage pad, geomembrane and any barriers or berms under subsection (c)(4)(C)(iv);
 - 3) Contains the photographs, records (contracts, purchase orders), or other observable or discernable information that shows CCR is being removed from each area of the CCR storage unit within one year of being placed in the CCR storage unit under subsection (c)(4)(F) ; and
 - 4) Documents worker safety measures implemented.
 - 5) The owner or operator of the CCR surface impoundment must place the monthly report in the facility's operating record as required by Section 845.800(d)(23).

WHEREFORE, the Illinois EPA asks the Board to accept these Comments.

Dated: October 21, 2024

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Respectfully submitted,
ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

BY: /s/ Kaitlyn Hutchison
Kaitlyn Hutchison

CERTIFICATE OF SERVICE

I, the undersigned, on affirmation state the following:

That I have served the attached **NOTICE OF FILING** and **ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S FIRST NOTICE COMMENTS** by e-mail upon the attached service list.

That my e-mail address is: kaitlyn.hutchison@illinois.gov.

That the e-mail transmission took place before 4:30 p.m. on the date of October 21, 2024.

/s/ Kaitlyn Hutchison

October 21, 2024