BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	AS 2021-006
	)	(Adjusted Standard)
PETITION OF SOUTHERN ILLINOIS POWER COOPERATIVE FOR AN ADJUSTED STANDARD FROM 35 ILL. ADM. CODE 845 OR IN THE ALTERNATIVE A FINDING OF INAPPLICABILITY	)	

NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board an AMENDED RECOMMENDATION on behalf of the Illinois Environmental Protection Agency and a CERTIFICATE OF SERVICE, a copy of which is herewith served upon you.

Respectfully submitted,

Dated: February 3, 2025

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent,

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THIS FILING IS SUBMITTED ELECTRONICALLY

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PETITION OF SOUTHERN ILLINOIS	)	
POWER COOPERATIVE FOR AN	)	(Adjusted Standard)
ADJUSTED STANDARD FROM 35 ILL.	)	
ADM. CODE 845 OR IN THE	)	
ALTERNATIVE A FINDING OF	)	
INAPPLICABILITY	)	

AMENDED RECOMMENDATION

The Illinois Environmental Protection Agency ("Illinois EPA" or "Agency"), by one of its attorneys, hereby files its Amended Recommendation concerning the Southern Illinois Power Cooperative's ("SIPC" or "Petitioner") Marion Generating Station ("Marion Station") in Williamson County, Illinois pursuant to 415 ILCS 5/28.1 and 35 Ill. Adm. Code §104.418. For the reasons stated below, Illinois EPA recommends that the Illinois Pollution Control Board (the "Board") DENY Petitioner's request for a finding of inapplicability regarding 35 Ill. Adm. Code 845 ("Part 845") and DENY Petitioner's request for an Adjusted Standard from Part 845. In support of its Amended Recommendation, the Illinois EPA states as follows:

1. On May 11, 2021, Petitioner filed a "Petition for an Adjusted Standard from 35 Ill. Admin. Code Part 845 or, in the Alternative, a Finding of Inapplicability" ("Petition" or "Pet."). On September 2, 2021, SIPC filed an "Amended Petition for an Adjusted Standard from 35 Ill. Admin. Code Part 845, or, in the Alternative, a Finding of Inapplicability" ("Amended Petition" or "Amd. Pet."). On December 20, 2024, Petitioner filed its "Second Amended Petition for an Adjusted Standard from 35 Ill. Admin. Code Part 845 and a Finding of Inapplicability" ("Second

Amended Petition" or "Sec. Amd. Pet."). SIPC's Second Amended Petition included three new, substantive exhibits. *See* Sec. Amd. Pet. at 1–2.

2. The Agency stands by its Recommendation filed in the above captioned case on January 13, 2023 (the "Recommendation" or "Agency Rec."). This Amended Recommendation incorporates the Recommendation and all accompanying exhibits as if fully set forth herein. This Amended Recommendation addresses the new exhibits in the Second Amended Petition and reaffirms the Agency's position that the ponds at issue are Coal Combustion Residual ("CCR") Surface Impoundments and are therefore subject to Part 845.

Ponds 3, 3A, 4, B-3, 6, and South Fly Ash

3. The Agency stands by its Recommendation regarding the CCR surface impoundments Petitioner refers to as the "De Minimis Units", which are Ponds 3, 3A, 4, B-3, 6, and South Fly Ash.

4. In its Recommendation at pages 8–32, the Agency details the estimated amount of CCR in the De Minimis Units. Based on the assumption that CCR weighs 0.95 tons per cubic yard, *see* Agency Rec. at 58, the amount of CCR ranges from approximately 4,900 tons in Pond B-3 to 950,000 tons in Pond 6 and is based on information provided in Petitioner's Exhibit 29 and supplemented with permit information and aerial photography.

5. The Agency does not consider even the lowest of the CCR amounts addressed in its Recommendation to be de minimis. Petitioner's Second Amended Petition has provided no new information regarding the amount of CCR located in Ponds 3, 3A, 4, B-3, 6 and South Fly Ash.

6. In addition to demonstrating that the amounts of CCR in these ponds are not de minimis, the Recommendation at pages 8–32 explains how Ponds 3, 3A, 4, B-3, 6 and South Fly Ash each

meet the definition of a CCR surface impoundment. Petitioner has provided no new information in Pet. Exs. 36, 37, or 38, demonstrating that these impoundments were not designed to hold an accumulation of CCR and liquids, nor has information been provided demonstrating that these impoundments do not still store CCR as addressed in the Recommendation.

7. Because Ponds 3, 3A, 4, B-3, 6 and South Fly Ash meet the definition of a CCR surface impoundment and they contain more than a de minimis amount of CCR, the Agency reaffirms its position that Ponds 3, 3A, 4, B-3, 6, and South Fly Ash are CCR surface impoundments, which are regulated under Part 845.

Former Fly Ash Holding Units

8. The Agency stands by its Recommendation regarding the CCR surface impoundments Petitioner refers to as the "Former Fly Ash Holding Units", which are the Initial Fly Ash Pond ("IFAP"), the Replacement Fly Ash Pond ("RFAP"), and the Fly Ash Extension ("FAE").

9. The Recommendation explains how the IFAP, RFAP, and the FAE each meet the definition of a CCR surface impoundment and have historically operated in that manner. *See* Agency Rec. 32–43. Petitioner has provided no new information demonstrating that the IFAP, RFAP, and the FAE were not designed to hold an accumulation of CCR and liquids. Petitioner has instead confirmed that each of these ponds still stores CCR.

10. The Agency reaffirms its position that the IFAP, RFAP, and the FAE are CCR surface impoundments, which are regulated under Part 845.

Petitioner's Additional Exhibits

11. Petitioner has provided three additional substantive exhibits in its Second Amended Petition: Petitioner's Exhibits 36, 37 (which is also attached to Pet. Ex. 36 as Attachment A), and 38, designed to support the alleged inapplicability of Part 845 and to support Petitioner's proposed adjusted standard. The Agency will summarize how Petitioner's Exhibits 36, 37, and 38 fail to provide additional support for Petitioner's argument for inapplicability and for the requested adjusted standard.

12. Ms. Ari Lewis draws three main conclusions in her opinion. *See* Sec. Amd. Pet. Ex. 36 at 1 and 2. Ms. Lewis concludes that: (1) Ponds 3, 3A, 4, B-3, 6 and South Fly Ash ("storage ponds of interest") contain a de minimis amount of CCR; (2) due to the small amount of CCR in the storage ponds of interest, the USEPA risk assessment in support of Part 257 is not applicable; and (3) a site specific risk assessment confirms that the USEPA risk assessment is not applicable and that the storage ponds of interest do not pose a risk to human health or the environment. *Id*.

13. As detailed in the Recommendation pages 8–32, each of the storage ponds of interest contain more than a de minimis amount of CCR. Therefore, Ms. Lewis' first conclusion is incorrect.

14. Because Ms. Lewis' first conclusion is incorrect, and the storage ponds of interest do contain a significant amount of CCR, her second conclusion of the USEPA risk assessment not being applicable is also incorrect.

15. Ms. Lewis' third conclusion is invalid for several reasons.

a. First, as explained in the Recommendation, the monitoring wells from which data was collected for the human health and ecological evaluation are not located at

appropriate locations to intercept contaminants from the storage ponds of interest. *See* Agency Rec. at 47–49.

b. Second, Petitioner's Exhibit 37, Figure 2.2, demonstrates that wells generally down gradient of the storage ponds of interest are not located at the down gradient waste boundary as required by §845.630(a)(2). *See* Sec. Amd. Pet. Ex. 37 at 8.

c. Finally, Ms. Lewis concludes that there is no risk to human health because concentrations of contaminants entering surface water through the groundwater are not high enough to cause concern from dermal contact and the exposure route of drinking contaminated groundwater is not currently complete. *See* Sec. Amd. Pet. Ex. 36 at 18–19. However, risk to human health is not the only consideration under Part 845. There is also the risk to the environment to consider and under §845.650 an exceedance of a groundwater protection standard under §845.600 will lead to corrective action unless an alternative source demonstration is provided and concurred with by the Agency.

16. Petitioner's Exhibit 37 Tables 3.2 and 3.3 display groundwater monitoring well results at the Marion Station with exceedances of Antimony, Arsenic, Beryllium, Boron, Cadmium, Chloride, Cobalt, Lead, Sulfate, Thallium, and Total Dissolved Solids. *See* Sec. Amd. Pet. Ex. 37 at 20–21. Therefore, Petitioner's Exhibits 36 and 37 demonstrate there is an environmental risk posed by the storage ponds of interest even though the existing groundwater monitoring well system is inadequate, as discussed in the Recommendation at 47–49.

17. Petitioner's Exhibit 38, Closure Impact Assessment Pond 4 by Andrew Bittner, supports the Agency's position that Pond 4 contains more than a de minimis amount of CCR. *See* Sec. Amd. Pet. Ex. 38 at 11, Table 4.1. Though the Agency believes the estimate of the amount of

CCR in Table 4.1 to be low, *see* Agency Rec. at 17–18, Table 4.1 estimates the amount of CCR in Pond 4 to be 3,373 cubic yards or approximately 3,200 tons, *id*. at 58, which the Agency believes is not a de minimis amount of CCR.

18. Based off the potentiometric surface map in Petitioner's Exhibit 38, Figure 3.1, monitoring well S-6 is side gradient to Pond 4. *See* Sec. Amd. Pet. Ex. 38 at 5, Figure 3.1. Because well S-6 is the only monitoring well proximate to Pond 4, the actual direction of groundwater flow near Pond 4 cannot be accurately determined.

19. Whether well S-6 is fully down gradient of Pond 4 or not, Table 4.2 displays results showing that groundwater monitoring from well S-6 exceeded the benchmark value for Cadmium, Cobalt, and Lead. *Id*. at 13.

20. The Second Amended Petition explains that the exceedances in the "S-Series" wells, (including well S-6) are likely due to the historic ponds and storage areas that received CCR during their operation. *See* Sec. Amd. Pet. at 14. This statement raises two concerns.

21. First, relative to all the impoundments subject to the Second Amended Petition, Mr. Bittner has concluded that they are causing exceedances of the groundwater protection standards under §845.600. The Agency explained in its evaluation of Petitioner's Exhibits 36 and 37 above, that exceedances of groundwater protection standards demonstrate unacceptable risk.

22. Second, relative to the closure assessment of Pond 4, if there is no way to distinguish between impacts from Pond 4 and other CCR surface impoundments at the site, there is no way for Petitioner's Exhibit 38 to realistically assess the impact of Pond 4 closure relative to not closing Pond 4 at all. The inability to accurately assess the impact of Pond 4 relative to the other

CCR surface impoundments at the site further implicates the proposed adjusted standard for Pond 4 relative to its continuing environmental impacts if it is not closed pursuant to Part 845.

Proposed Adjusted Standard

23. The Agency does not agree with the proposed adjusted standard presented by Petitioner for the CCR surface impoundments subject to the Second Amended Petition. The Recommendation and this Amended Recommendation demonstrate that each of these ponds meet the definition of CCR surface impoundment and as such, are subject to all the Part 845 requirements, with the exception of Part 845, Subpart I, which does not apply to Petitioner as a not-for-profit electric cooperative.

24. However, because the initial adjusted standard petition was timely filed under 415 ILCS 5/28.1(e), an automatic stay on compliance with Part 845 necessitates an adjusted standard for certain activities under Part 845.

25. Because Petitioner states that all CCR generated at the site is handled dry, *see* Sec. Amd. Pet. at 4, there does not appear to be a need to retrofit any CCR surface impoundment under §845.770.

26. As explained previously in this Amended Recommendation, Pond 4 is not a good candidate for retrofit because of its proximity to other CCR surface impoundments that are contaminating groundwater. *See* Sec. Amd. Pet. Ex. 38 at 14. However, if Petitioner determines that it may need to keep a CCR surface impoundment at Marion Station, the initial written retrofit plan should be submitted within 30 days of a Board order finding that the ponds subject to this adjusted standard are CCR surface impoundments.

27. Part 845 became effective April 21, 2021. The owner or operator of any existing and inactive CCR surface impoundments was required to submit its initial operating permit application(s) by October 31, 2021, which was six months after the effective date of Part 845.

28. Similarly, Petitioner should have six months after a Board order, finding that the ponds subject to this adjusted standard are CCR surface impoundments, to submit its initial operating permit application(s). Petitioner's initial operating permit application(s) must contain the information required for existing and inactive CCR surface impoundments that have not completed closure under Part 845, Subpart B.

29. Based on documents filed in this matter, the only CCR being actively placed in any CCR surface impoundment at the Marion Station is from run-off. *See* Agency Rec. 8–43.

30. Petitioner's Second Amended Petition indicates that the South Fly Ash Pond, Pond 3, Pond 6, and Pond 4 are part of a water management circuit, with Pond 4 directly receiving coal pile run-off. *See* Sec. Amend. Pet. at 10. Due to the amount of CCR entering Pond 3 through run-off, the Agency believes Pond 3 meets the definition of an existing CCR surface impoundment as does the South Fly Ash Pond because of CCR carry-over from the former Emery Pond. *See* Agency Rec. at 9 and 24. The Agency believes the rest of the CCR surface impoundments are inactive CCR surface impoundments. *Id*. at 8–43.

31. The distinction between existing and inactive CCR surface impoundments is important relative to the submission of construction permit applications. Because the available permits for CCR surface impoundments at the Marion Station do not include liners (*see* Agency Rec. Exhibits 34, 48, 49, 50, AA, BB, CC, DD, EE, GG, NN, OO, QQ, RR, SS, TT, VV, WW, XX) they must either close or retrofit. The Marion Station does not appear to need CCR surface

impoundments for future operations, *see* Sec. Amd. Pet. at 4, so the construction permit application(s) will likely be for closure construction.

32. Under §845.700(g), CCR surface impoundments are categorized based on various criteria and the most relevant factors at the Marion Station appear to be whether the CCR surface impoundment is existing or inactive and if there are exceedances of groundwater protection standards. Petitioner's Exhibit 38 has determined there are exceedances of groundwater protection standards related to the CCR surface impoundments at Marion Station. *See* Sec. Amd. Pet. Ex. 38 at 13 and 14.

33. Therefore, a mixture of Category 4 and Category 5 CCR surface impoundments occur at the Marion Station. However, many of the CCR surface impoundments at the Marion Station are part of a single wastewater management circuit. *See* Sec. Amd. Pet. at 10.

34. Because Petitioner will have to alter the existing water circuit to close the CCR surface impoundments at the Marion Station, the only adjusted standard component the Agency supports is one that allows the closure construction permit application time frame afforded to Category 5 CCR surface impoundments, which was 16 months after the effective date of Part 845, to apply to all the CCR surface impoundments at the Marion Station. The closure construction permit applications must contain all the information required for existing and inactive CCR surface impoundments that have not completed closure under Part 845, Subpart B.

35. For all the reasons set forth in its Recommendation and this Amended Recommendation, the Agency contends that Petitioner has not met—and will be unable to meet—its burden of proof pursuant to 35 Ill. Adm. Code 104.426 and Section 28.1(c) of the Act.

36. The Agency reiterates that this Amended Recommendation fully incorporates and supplements the Agency's initial Recommendation and its corresponding exhibits.

37. The Agency renews its request for a public hearing pursuant to 35 Ill. Adm. Code 104.420, and urges the Board to set this matter for hearing at its next status conference. It has been over three and half years since SIPC's initial Petition, and the Board denied SIPC's Motion for Stay on March 21, 2024.

RECOMMENDATION

WHEREFORE, for the reasons stated in the Agency's Recommendation and in this Amended Recommendation, Illinois EPA recommends that the Board DENY Petitioner's request for a finding of inapplicability regarding Part 845 and DENY Petitioner's request for an adjusted standard.

Dated: February 3, 2025

Respectfully submitted,
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

Respondent,

BY: /s/Kaitlyn Hutchison
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CERTIFICATE OF SERVICE

I, the undersigned, on affirmation certify the following:

That I have electronically served the attached **NOTICE OF FILING** and **AMENDED RECOMMENDATION**

by e-mail upon the following:

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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 February 3, 2025.

/s/Kaitlyn Hutchison February 3, 2025