BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:	)	
	)	AS 2021-006
Petition of Southern Illinois	)	
Power Cooperative for an	)	(Adjusted Standard)
Adjusted Standard from	)	
35 Ill. Admin. Code Part 845	)	
or, in the Alternative, a Finding of	)	
Inapplicability	)	

NOTICE OF ELECTRONIC FILING

To: Attached Service List

PLEASE TAKE NOTICE that on June 30, 2025, I electronically filed with the Clerk of the Illinois Pollution Control Board the **ENVIRONMENTAL GROUPS' COMMENTS ON SOUTHERN ILLINOIS POWER COOPERATIVE'S SECOND AMENDED PETITION FOR AN ADJUSTED STANDARD AND FINDING OF INAPPLICABILITY**, copies of which are served on you along with this notice.

Dated: June 30, 2025

Respectfully Submitted,

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ENVIRONMENTAL GROUPS' COMMENTS ON SOUTHERN ILLINOIS POWER COOPERATIVE'S SECOND AMENDED PETITION FOR AN ADJUSTED STANDARD AND FINDING OF INAPPLICABILITY

Pursuant to 35 Ill. Adm. Code 101.628(c), 101.110(a), and 104.100, Earthjustice, Prairie Rivers Network, and Sierra Club (collectively, "Environmental Groups") submit the following comments on the Second Amended Petition of Southern Illinois Power Cooperative ("SIPC") for an adjusted standard from 35 Ill. Admin. Code Part 845 and a finding of inapplicability.

SIPC's Second Amended Petition concerns eight total coal ash ponds at Marion Station. SIPC groups these ponds in two categories. Five ponds—Pond 3 (including 3A), Pond 4, Pond B-3, South Fly Ash Pond, and Pond 6—are what SIPC calls the "de minimis" units. SIPC refers to three other ponds as the "former fly ash holding units." Because each of these ponds meets the definition of a CCR surface impoundment under Part 845 and poses a risk to human health and the environment, this Board should adopt the Illinois Environmental Protection Agency's ("IEPA") recommendation to deny SIPC's request for a finding of inapplicability and adjusted standard.

I. IEPA's recommendations correctly identify SIPC's ponds as CCR surface impoundments subject to Part 845.

Environmental Groups agree with IEPA that each of the eight ponds at issue in SIPC's Second Amended Petition meets the definition of a CCR surface impoundment. Part 845 defines a CCR surface impoundment as "a natural topographic depression, man-made excavation, or diked area, which is designed to hold an accumulation of CCR and liquids, and the surface impoundment treats, stores, or disposes of CCR."[1] Part 845 further defines *existing* CCR surface impoundments to include those "in which CCR is placed both before and after October 19, 2015," while an *inactive* CCR surface impoundment is one "in which CCR was placed before but not after October 19, 2015 and still contains CCR on or after October 19, 2015."[2] Evidence presented by IEPA indicates that two of the eight ponds at issue in SIPC's Second Amended

[1] 35 Ill. Adm. Code 845.120.
[2] *Id*.

Petition are "existing" CCR surface impoundments and the remaining six are "inactive" CCR surface impoundments. None of SIPC's contrary arguments have merit.

a. "De Minimis" Units

SIPC argues that five ponds[3] are not CCR surface impoundments because they are not "designed to hold an accumulation of CCR and liquids"; do not "treat[], store[], or dispose[] of CCR"; and contain only "de minimis" amounts of CCR.[4] SIPC claims these ponds mostly functioned as "secondary finishing ponds," relying heavily on that claim as purported proof of how much CCR those ponds hold.[5]

However, evidence presented by IEPA indicates that these ponds are in fact *settling* ponds that contain far more than "de minimis" amounts of CCR. IEPA calculates that these ponds hold an estimated 4,900 to 950,000 tons of CCR.[6] SIPC's arguments do not overcome these facts.

i. Whether these units received coal ash "indirectly," "temporarily," or "intermittently" is immaterial to whether these units meet the legal definition of a "CCR surface impoundment."

First, SIPC repeatedly emphasizes that these ponds might have received CCR only "indirectly" or "temporarily and intermittently."[7] Even if that were true—and IEPA evidence suggests it is not—that would not exempt these ponds from regulation as CCR surface impoundments. What matters is whether these ponds are "designed to hold an accumulation of CCR and liquids" and treat, store, or dispose of CCR.[8]

U.S. EPA reiterated this point in its preamble to the 2024 Federal CCR Rule: "It is clear from the complete discussion [in the 2015 Federal CCR Rule] that what determines whether a unit is considered a CCR surface impoundment are the three criteria . . . actually in § 257.53."[9] Those criteria are: "(1) The unit must be 'a natural topographic depression, manmade excavation or diked area;' (2) The unit must be 'designed to hold an accumulation of CCR and liquid;' and (3) The unit 'treats, stores or disposes of CCR.'"[10] Indeed, the preamble to the 2024 rule directly contradicts SIPC's repeat assertion that U.S. EPA only intended to regulate units holding a "large amount of CCR."[11] Discussing the exact same language that SIPC relies on for this assertion, U.S. EPA states:

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[3] Pond 3 (including 3A), Pond 4, Pond B-3, South Fly Ash Pond, and Pond 6.
[4] Ex. 39 to Second Amended Petition at 32–38.
[5] *See, e.g., id.* at 33.
[6] IEPA 2025 Recommendation at 4; IEPA 2023 Recommendation at 8–32.
[7] *See, e.g.,* Ex. 39 to Second Amended Petition at 33, 42.
[8] 35 Ill. Adm. Code 845.120. SIPC does not dispute that these ponds satisfy the first criteria in the definition of CCR surface impoundment: "a natural topographic depression, man-made excavation, or diked area." *Id.*
[9] 89 Fed. Reg 38,950, 38,993 (May 8, 2024) ("2024 Federal CCR Rule").
[10] *Id.* at 39,992.
[11] *See, e.g.,* Ex. 39 to Second Amended Petition at 28, 31, 45; *see also* SIPC's Response to IEPA's Recommendation at 7 (Apr. 10, 2025).

> EPA did not limit surface impoundments to units "containing a large amount of CCR managed with water, under a hydraulic head that promotes the rapid leaching of contaminants." The definition of a CCR impoundment is discussed in the 2015 preamble at 80 FR 21357–21358. Reading the discussion as a whole, rather than the single sentence from the preamble that the commenters reference, clearly demonstrates that the 2015 CCR Rule was concerned with more than the risks associated with the force of impounded water on the embankment structure and included the risks of contamination when water travels from the impoundment to the surrounding are [sic], and that EPA did not limit the CCR surface impoundment regulated under the 2015 CCR Rule to those that contain a particular amount of water or degree of hydraulic head.[12]

This makes sense because units that satisfy the definition of "CCR surface impoundment" present the type of risks that CCR regulations are meant to address. These risks do not disappear simply because units might receive CCR temporarily or intermittently, as U.S. EPA explained in its preamble to the 2015 Federal CCR Rule:

> EPA disagrees that impoundments used for "short-term processing and storage" should not be required to comply with all of the technical criteria applicable to CCR surface impoundments. By "short-term," the commenters mean that some portion of the CCR is removed from the unit; however, in EPA's experience these units are never completely dredged free of CCR. But however much is present at any given time, over the lifetime of these "temporary" units, large quantities of CCR impounded with water under a hydraulic head will be managed for extended periods of time. This gives rise to the conditions that both promote the leaching of contaminants from the CCR and are responsible for the static and dynamic loadings that create the potential for structural instability. These units therefore pose the same risks of releases due to structural instability and of leachate contaminating ground or surface water as the units in which CCR are "permanently" disposed.[13]

ii. By definition, these units do not contain "de minimis" amounts of CCR.

SIPC also argues that U.S. EPA has said federal CCR regulations are not meant to apply to units "containing only truly 'de minimis' levels of CCR." However, U.S. EPA has also made clear that "de minimis" means "trace amounts" of CCR.[14] "Trace" means "a minute and often barely detectable amount or indication" or "an amount of a chemical constituent not always quantitatively determinable because of minuteness."[15] The definition of "CCR surface impoundment" itself filters out units that contain only "trace" amounts of CCR—a point that U.S. EPA made in 2015 and again in 2024: "'units that are designed to hold an accumulation of CCR and in which treatment, storage, or disposal occurs *will contain substantial amounts of*

[12] 2024 Federal CCR Rule, 89 Fed. Reg. at 38,993.
[13] 80 Fed. Reg. 21,302, 21,357 (Apr. 17, 2015) ("2015 Federal CCR Rule").
[14] *Id.*
[15] https://www.merriam-webster.com/dictionary/trace. U.S. EPA itself has not defined "trace" in its CCR regulations.

CCR and consequently are a potentially significant source of contaminants.'"[16] In other words, as IEPA explains in its 2023 Recommendation, "if a unit meets the criteria provided in the definition of a CCR surface impoundment, not only does that mean the unit is subject to the rule; *the unit also, by design, contains a substantial amount of CCR (and therefore, does not contain a 'de minimis' amount of CCR)*."[17]

U.S. EPA's statements in the 2015 and 2024 federal CCR rules are relevant here because Illinois' Coal Ash Pollution Prevention Act ("CAPPA") requires Part 845 to be "at least as protective and comprehensive as" the federal rule,[18] and longstanding mandates of the Illinois Environmental Protection Act require any adjusted standard to be "consistent with" applicable federal law.[19] This means that any adjusted standard that allows CCR surface impoundments at SIPC to be subject to less protective safeguards than the 2015 and 2024 federal CCR rules—the applicability of which is clear, as explained herein—would be *ultra vires*.

The fact that the federal rule is "self-implementing" in Illinois is of no moment: all it means is that, so far,[20] there is no federal *permitting program* in Illinois. It does *not* mean, as the Board has suggested elsewhere,[21] that the federal rules only apply if and when SIPC or U.S. EPA determines they do. Rather, the rules apply regardless of which entity evaluates their applicability. Indeed, U.S. EPA explained in the preamble to the 2015 Federal CCR Rule that the rule relies heavily on citizen enforcement[22]—a compliance mechanism that would not be available if the rule only applied where U.S. EPA and the regulated entity confirm its applicability. In short, the self-implementing nature of the federal CCR rules in Illinois does not relieve the Board of its CAPPA-imposed obligation to ensure that CCR surface impoundments

[16] 2024 Federal CCR Rule, 89 Fed. Reg. at 38,993 (quoting the 2015 Federal CCR Rule) (emphasis in original).
[17] IEPA 2023 Recommendation at 7 (emphasis added).
[18] 415 ILCS 5/22.59(g).
[19] *Id.* at 5/28.1(c).
[20] The Water Infrastructure Improvements for the Nation ("WIIN") Act, Pub. L. No. 114-322, 130 Stat. 1628 (2016); codified at 42 U.S.C. § 6945(d), authorized a federal permitting program for CCR units in "non-participating states," but no federal permitting rule has yet been issued by USEPA. *See* 42 U.S.C. § 6945(d)(2)(B); https://www.epa.gov/coalash/proposed-rule-disposal-coal-combustion-residuals-electric-utilities-federal-ccr-permit.
[21] *See* Opinion and Order of the Board, *In the Matter of: Petition of Electric Energy, Inc. for a Finding of Inapplicability or, in the Alternative, an Adjusted Standard From 35 Ill. Adm. Code Part 845*, AS 21-5, at 44 (June 26, 2025) ("Joppa West Opinion and Order").
[22] *See* 2015 Federal CCR Rule, 80 Fed. Reg. at 21,338 ("[T]he Agency cannot conclude that the regulations promulgated in this rule will ensure that there is no reasonable probability of adverse effects on health or the environment unless there is a mechanism for states and citizens, as the entities responsible for enforcing the rule, to effectively monitor or oversee its implementation."); *id*. at 21,426–27 ("EPA believes that it cannot conclude that the RCRA subtitle D regulations will ensure that there is no reasonable probability of adverse effects on health or the environment, unless there are mechanisms for states and citizens to monitor the situation . . . so they can determine when intervention is appropriate."); *id.* at 21,339 ("[A] key component of EPA's support for determining that the rule achieves the statutory standard is the existence of a mechanism for states and citizens to monitor the situation, such as when groundwater monitoring shows evidence of potential contamination, so that they can determine when intervention is appropriate. The existence of effective oversight measures provides critical support for the statutory finding").

are subject to standards "at least as protective and comprehensive" as those rules, nor of its longstanding duty to allow only adjusted standards that are consistent with federal law.

Thus, as IEPA correctly concludes, each of SIPC's so-called "de minimis units" is in fact a "CCR surface impoundment" as defined under both federal and Illinois CCR regulations. IEPA's evidence shows these units are settling ponds that—by design—hold far more than a "trace" amount of CCR. That these units might have received CCR indirectly, temporarily, or intermittently does not change this result. U.S. EPA has made that clear in the context of its federal CCR regulations, and pursuant to CAPPA, the same must be true in the context of Part 845.[23] Accordingly, the Board should find that each of SIPC's so-called "de minimis units" are "CCR surface impoundments" and subject to regulation under Part 845.

b. "Former Fly Ash Holding" Units

i. The law is clear that these units need not currently hold water in order to be CCR surface impoundments.

SIPC argues that another three ponds[24] are "landfills" or "CCRMU" and not "CCR surface impoundments," because they "no longer contain water."[25] This argument is premised on an incorrect interpretation of what it means for a CCR unit to be "designed to hold an accumulation of CCR and liquids"—an interpretation that this Board, the Illinois Court of Appeals, and U.S. EPA have each rejected.

In its recent opinion denying Midwest Generation's adjusted standard request for the Old Pond at Waukegan Station, this Board held that "a CCR surface impoundment need not 'hold' liquids during its entire active life to meet the definition of CCR surface impoundment."[26] The Board expressly rejected Midwest Generation's argument that the term "accumulate" implies a time element and instead found "no such temporal requirement explicitly or implicitly in the statute or regulations."[27] The Board further explained that "[t]he act of 'holding' can be a temporary condition that serves a purpose, which in [Midwest Generation's] case was to allow for the settling of CCR."[28] Thus, the Board concluded, "[t]he fact that the sluiced CCR was conveyed into a 'diked area' with the specific purpose of allowing accumulation of sluiced CCR (CCR and water) long enough to settle CCR satisfies the design requirement" in the definition of "CCR surface impoundment."[29]

[23] 415 ILCS 5/22.59(g).
[24] Initial Fly Ash Pond, Replacement Fly Ash Pond, Fly Ash Extension.
[25] Ex. 39 to Second Amended Petition at 17; *see also* SIPC Response at 19–21.
[26] Opinion and Order of the Board, *In the Matter of: Petition of Midwest Generation, LLC for a Finding of Inapplicability of 35 Ill. Adm. Code Part 845,* AS 21-3, at 12 (Mar. 20, 2025). Midwest Generation has petitioned for review of this decision.
[27] *Id.*
[28] *Id.*
[29] *Id.*

The Board's Waukegan opinion is consistent with the Illinois Court of Appeals' decision upholding the Board's definition of "inactive CCR surface impoundment," where the court explained:

> [A] CCR surface impoundment need only be designed to hold CCR and liquid, not currently holding CCR and liquid. Accordingly, *a dry surface impoundment that was designed to hold liquid but no longer holds liquid first qualifies as a "CCR surface impoundment" by virtue of its design* and next qualifies as an "inactive CCR surface impoundment" by virtue of its current state being liquid-free.[30]

And the Board and court's opinions are consistent with U.S. EPA's interpretation of what it means for a unit to be "designed to hold . . . liquids" as that phrase is used in the federal definition of "CCR surface impoundment":

> That definition contains three criteria: (1) The unit must be "a natural topographic depression, manmade excavation or diked area;" (2) The unit must be "designed to hold an accumulation of CCR and liquid;" and (3) The unit "treats, stores or disposes of CCR." 40 CFR 257.53. None of these require the presence of a particular amount of water or hydraulic head—or indeed any. Rather, the unit must be "designed"—that is, intended to—hold an accumulation of CCR and liquid. Although EPA expected that, based on its understanding of the utilities' current management practices, water would be present as a consequence of the treatment, storage, or disposal occurring in the unit, nothing in the text of the definition requires it, let alone requires a minimum amount.[31]

Thus, neither the federal definition of CCR surface impoundment nor Part 845's definition requires that a unit currently hold liquids. This forecloses SIPC's argument that its three "former fly ash units" are not "CCR surface impoundments" simply because they do not currently hold water.

ii. The facts make clear that these units are not landfills.

SIPC further argues that these units "closed and were dewatered decades ago," making them landfills,[32] but that argument also fails. As IEPA has explained, SIPC has "provided no evidence" establishing that "the units were closed with an Agency approved plan."[33]

Moreover, U.S. EPA has made clear that merely removing or draining water from a CCR surface impoundment does not transform the impoundment into a landfill:

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[30] *Midwest Generation, LLC v. Ill. Pollution Control Bd.*, Ill. App. 4th 210304, at *7 (Mar. 13, 2024) (emphasis added); *see also id.* at *8 ("[W]e conclude that the Board did not exceed its authority by defining 'inactive CCR surface impoundment' to include CCR surface impoundments that are designed to hold liquid but do not currently hold liquid.").

[31] 2024 Federal CCR Rule, 89 Fed. Reg. at 38,992.

[32] Ex. 39 to Second Amended Petition at 17

[33] IEPA 2023 Recommendation at 41.

> EPA disagrees that an impoundment that has been dewatered and closed or is otherwise now maintained so as not to impound liquids should no longer be considered "designed to hold an accumulation of CCR and liquids," and therefore, should not be considered an inactive or legacy impoundment. Just as a landfill would not suddenly become "designed to hold an accumulation of both CCR and liquids" based on the temporary presence of precipitation, removing liquids from a unit that was constructed as a surface impoundment and that operated as a surface impoundment by managing both CCR and liquids for decades, does not suddenly mean that the unit is no longer "designed to hold an accumulation of CCR and liquids." Even assuming all free liquids had been removed from the unit, which as discussed below is unlikely, the subsequent removal of liquids as part of closing the unit does not change either the original design or use of the unit . . . .[34]

Further, as the D.C. Circuit recently explained, removing water from the surface of a CCR impoundment—and even temporarily dewatering the entirety of the CCR in the impoundment—has never been enough to qualify a unit as "closed" under the federal CCR rules: "The 2015 Rule, standing on its own, makes clear that operators cannot close their surface impoundments with groundwater leaching in and out of the unit and mixing with the coal residuals."[35] Instead, if an operator wishes to close a CCR surface impoundment with its CCR in place, the 2015 Federal CCR Rule first requires that operator to "implement engineering measures designed to interrupt any contact between the groundwater and coal residuals in the relevant unit . . . [and] to eliminate 'free liquids' . . . from the impoundment before installing the final cover system."[36] The same must be true of Part 845 pursuant to CAPPA.[37]

In summary, SIPC's argument that the "former fly ash holding units" are not "CCR surface impoundments" because they do not currently hold liquids is foreclosed as a matter of law by holdings from this Board, the Illinois Court of Appeals, U.S. EPA, and the D.C. Circuit Court of Appeals. Accordingly, this Board should deny SIPC's request.

As demonstrated in IEPA's 2023 and 2025 Recommendations and discussed above, each of the eight surface impoundments at issue in SIPC's Second Amended Petition is a "CCR surface impoundment" under federal CCR regulations and Part 845. Environmental Groups also agree with the analysis set forth in IEPA's recommendations showing that two of these eight ponds are *existing* CCR surface impoundments and the remaining six are *inactive* CCR surface impoundments. The Board should require these eight ponds to be regulated accordingly.

II. IEPA's recommendation to amend certain deadlines but otherwise reject SIPC's request for an adjusted standard is reasonable and appropriate.

[34] *Id.*
[35] *Elec. Energy, Inc. v. EPA*, 106 F.4th 31, 41 (D.C. Cir. 2024).
[36] *Id.* The D.C. Circuit in *Electric Energy* also held that the term "liquids" includes groundwater. *Id.* at 42. Thus, IEPA is incorrect in its 2023 Recommendation (at 40) when it states "[t]here must be both visible water and CCR within an impoundment to be federally regulated as a CCR surface impoundment and hence be regulated by Part 845."
[37] 415 ILCS 5/22.59(a)(5).

Environmental Groups agree with IEPA's recommended denial of SIPC's adjusted standard request. The eight ponds at issue in this proceeding are CCR surface impoundments likely holding large amounts of coal ash and posing ongoing risks to human health and the environment. SIPC has not met its burden of demonstrating that these eight ponds are "substantially and significantly different" from other ponds subject to Part 845. Instead, as discussed above and in IEPA's recommendations, these eight ponds are precisely the type of ponds that both the federal CCR rules and Part 845 regulate. Thus, SIPC fails on the first and second prongs of the adjusted standard test.[38]

SIPC also fails on the third prong[39] because evidence indicates that dangerous concentrations of CCR pollution are rampant at the site.[40] IEPA amply demonstrates this fact in both its 2023 and 2025 Recommendations.[41] Further, the Board has concluded that contamination of groundwater alone establishes environmental risk; there need not be receptors to establish environmental or health risk:

> [T]he Board believes that among the most necessary facets of the State's groundwater protection program is the need to protect all drinkable water at a drinkable level. Similarly, the Board does not believe that current actual use should be the sole control of whether potable groundwater is afforded the protection necessary to maintain potability; we simply cannot allow the sullying of a resource that future generations may need.[42]

The Illinois Supreme Court went on to adopt the Board's determination that water pollution exists not only when actual harm has occurred or will occur, but rather whenever "harm *would* occur if the contaminated water were to be used."[43] The Board and court's holdings foreclose

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[38] 415 ILCS 5/28.1(c)(1)-(2) ("factors relating to that petitioner are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation applicable to that petitioner" and "the existence of those factors justifies an adjusted standard").

[39] *Id.* at 5/28.1(c)(3) ("the requested standard will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the rule general applicability").

[40] In its response to IEPA's 2025 Recommendation, SIPC claims "lead and mercury are not constituents that are attributable to CCR." SIPC Response to IEPA at 32. That is wrong. *See, e.g.,* Statement of Reasons, R 2020-019 (Mar. 30, 2020) (stating that "CCR can contain" lead and mercury, among other pollutants); Pre-Filed Answers of Lauren Martin, R 2020-019, 19 (Aug. 5, 2020) (citing information from U.S. EPA for the fact that lead (and other pollutants) "have been documented to exist in CCR"); U.S. EPA Fact Sheet: Coal Ash (June 2023) (explaining that U.S. EPA regulates coal ash because it "contains contaminants like mercury" and others), https://www.epa.gov/system/files/documents/2023-06/CCR_Fact_Sheet_June_2023.pdf; U.S. EPA, Human and Ecological Risk Assessment of Coal Combustion Residuals, Table ES-1 (Dec. 2014) (identifying lead and mercury among the list of chemical constituents evaluated in U.S. EPA's CCR risk assessment), https://www.regulations.gov/document/EPA-HQ-OLEM-2021-0281-0006.

[41] *See, e.g.*, IEPA 2023 Recommendation at 63; IEPA 2025 Recommendation at 7.

[42] Final Order, slip op. at 11, PCB R89-14(B) (Nov. 7, 1991) (emphasis in original); 35 Ill. Admin. Code Part 620 (Groundwater Quality Standards).

[43] *Cent. Ill. Pub. Serv. Co. v. Ill. Pollution Control Bd.*, 116 Ill.2d 397, 409 (Ill. 1987) (emphasis in original).

SIPC's attempt to claim that "no unacceptable risk to human health or ecological *receptors*"[44] means the requested adjusted standard will not result in adverse environmental or health effects.

Further, as several members of the public explained at the hearing on June 10, coal ash pollution from SIPC has real and profound implications for the community. As one community member stated:

> This issue also has a personal interest to me. My family and I have friends that live on the Lake of Egypt and we often spend time with them, enjoying the water and the natural beauty of the area. The fact that these ash ponds are located on the lake is . . . a threat to the health of the lake, the people who live and recreate there and the general ecosystem . . . . [C]oal ash contains a lot of harmful substances, like arsenic, lead and mercury, which will leach into the groundwater and the surface water, threatening both the environment and human health. So we must not allow short-term convenience for a single operator to evade or override long-term protection for the entire community.[45]

Another explained: "My family and friends swim in the Lake of Egypt. I don't want my three beautiful granddaughters to be exposed to toxins while swimming and enjoying water sports at the Lake of Egypt."[46] Others raised similar concerns about coal ash pollution impacting the Lake of Egypt and groundwater resources.[47] These concerns are consistent with this Board's observation in its recent order on the Joppa West adjusted standard petition that "[t]he primary concern, as always, is the health, safety, and welfare of humans and the environment."[48]

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[44] Ex. 39 to Second Amended Petition at 54, 62, 69 (emphasis added).
[45] Transcript of Evidentiary Hearing on SIPC Adjusted Standard, 11:19–12:24 (June 10, 2025) (comments of Rick Steger).
[46] *Id.* at 18:20-23 (comments of Linda Linsin).
[47] *See id.* at 13:20–15:22, 21:1–32:8.
[48] Joppa West Opinion and Order at 44. Other commenters raised concerns about the potential costs of requiring SIPC to comply with coal ash regulations. While costs may not be considered in determining the applicable requirements under the federal CCR rules—and therefore the minimum standards that SIPC ash ponds must satisfy—it is important to note that compliance with those rules both creates jobs and likely saves money in the long term by avoiding liability, facilitating redevelopment, and ensuring clean water for generations to come. *See, e.g.*, Earthjustice, *Cleaning Up Coal Ash for Good*, 5 (July 2021) (finding that, for each of three coal plant sites evaluated, "the job creation, economic activity, and environmental benefits were far greater" if CCR units were closed by removing ash instead of capping the ash in place), https://earthjustice.org/wp-content/uploads/coal_ash_addendum_new_final_email.pdf; Order of the Commission, Indiana Utility Regulatory Commission, Cause No. 45290, at 4–5 (May 13, 2020) (concluding that closing CCR units with ash in place would be more expensive than closing them by removal due in part to the risk of future groundwater contamination and associated remediation costs), https://iurc.portal.in.gov/_entity/sharepointdocumentlocation/8cf73060-2c95-ea11-a811-001dd8018831/bb9c6bba-fd52-45ad-8e64-a444aef13c39?file=45280%20ORDER%20051320.pdf; D. Propp, *How Shadowy Corporations, Secret Deals and False Promises Keep Retired Coal Plants from Being Redeveloped* (May 9, 2024) (discussing how coal ash contamination can preclude economic redevelopment of retired coal plan sites), https://insideclimatenews.org/news/09052024/great-lakes-retired-coal-plants-redevelopment/.

Finally, SIPC fails on the fourth prong[49] of the adjusted standard test because, as discussed above, the eight ponds at issue here are CCR surface impoundments under the federal CCR rule and thus are subject to all applicable provisions of that federal rule. Granting SIPC's adjusted standard request would, accordingly, be inconsistent with, and less protective than, federal law, and thus would run afoul of CAPPA[50] and jeopardize the state's ability to obtain primacy over its CCR program.[51]

Thus, IEPA correctly recommends that the Board deny SIPC's adjusted standards request with one limited exception. IEPA's 2025 Recommendation states: "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."[52] IEPA likewise recommends that SIPC "have six months after a Board order . . . to submit its initial operating permit application(s)."[53] Environmental Groups do not oppose these limited adjustments to the compliance schedule for the reasons set forth in IEPA's 2025 Recommendation. However, we do oppose SIPC's request to delay these timelines further.[54] SIPC should have no more than the time IEPA believes is necessary to prepare adequate, supportable permit applications. If SIPC has so far chosen not to comply with the federal CCR rules by failing to conduct groundwater monitoring for the eight ponds at issue here,[55] then SIPC must begin groundwater monitoring immediately instead of waiting for this proceeding to resolve. SIPC's years of delay should not be rewarded with further delay.

III. Conclusion

SIPC's attempt to evade regulation under Part 845 is now almost four years in the making. As discussed here and in IEPA's recommendations, the eight ponds at issue in SIPC's petition are CCR surface impoundments posing the same type of risks and presenting the same kinds of ongoing environmental and health harms as other CCR surface impoundments. We appreciate this Board's recent efforts to move this case forward, including by holding the hearing on June 10 through 12, and we join IEPA in urging a swift resolution of this case.

For the foregoing reasons, the Board should deny SIPC's requested relief.

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[49] 415 ILCS 5/28.1(c)(4) ("the adjusted standard is consistent with any applicable federal law).
[50] *Id.* at 5/22.59(g).
[51] U.S. EPA may only grant primacy over CCR regulation to a state if that state's CCR regulatory program is "at least as protective as" the federal requirements. 42 U.S.C. § 6945(d)(1)(B)(ii). Adjusted standards that allow for weaker standards are, by definition, not "at least as protective as" the federal mandates and thus may not be approved. *See, e.g.*, U.S. EPA, Proposed Approval of North Dakota's CCR Permit Program, 90 Fed. Reg. 20,985, 20,994 (May 16, 2025) (explaining that a state regulation that "allows for certain variances [] could be less protective than the Federal CCR regulations" and thus "will not apply to CCR units").
[52] IEPA 2025 Recommendation at 11.
[53] *Id.* at 10.
[54] *See, e.g.*, SIPC Response to IEPA Recommendation at 29, 31.
[55] *Id.*

Respectfully Submitted,

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:	)	
	)	AS 2021-006
Petition of Southern Illinois	)	
Power Cooperative for an	)	(Adjusted Standard)
Adjusted Standard from	)	
35 Ill. Admin. Code Part 845	)	
or, in the Alternative, a Finding of	)	
Inapplicability	)	

CERTIFICATE OF SERVICE

The undersigned, Lauren Piette, 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=17037, a true and correct copy of the **ENVIRONMENTAL GROUPS' COMMENTS ON SOUTHERN ILLINOIS POWER COOPERATIVE'S SECOND AMENDED PETITION FOR AN ADJUSTED STANDARD AND FINDING OF INAPPLICABILITY**, before 5 p.m. Central Time on June 30, 2025. The number of pages in the email transmission is 14 pages.

Dated: June 30, 2025

Respectfully Submitted,

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