

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
COAL COMBUSTION WASTE (CCW) ASH) R14-10
PONDS AND SURFACE IMPOUNDMENTS) (Rulemaking - Water)
AT POWER GENERATING FACILITIES:)
PROPOSED NEW 35 ILL. ADM. CODE 841)

NOTICE OF ELECTRONIC FILING

To: **Service List**

PLEASE TAKE NOTICE that on June 17, 2014, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois on behalf of the Environmental Groups, the **Response to Motion to Sever and Open Subdocket by Environmental Integrity Project, Environmental Law and Policy Center, Prairie Rivers Network, and Sierra Club**, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,



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Dated: June 17, 2014

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RESPONSE TO MOTION TO SEVER AND OPEN SUBDOCKET BY
ENVIRONMENTAL INTEGRITY PROJECT,
ENVIRONMENTAL LAW AND POLICY CENTER,
PRAIRIE RIVERS NETWORK, AND SIERRA CLUB

The Environmental Integrity Project, Environmental Law and Policy Center, Prairie Rivers Network, and Sierra Club (collectively, “Environmental Groups”) oppose the Motion to Sever and Open Subdocket filed by the Illinois Environmental Protection Agency (“Agency”) on June 11, 2014. The Agency asks the Illinois Pollution Control Board (“Board”) to create a subdocket in this proceeding to consider three issues: (1) design standards for both new and existing coal combustion waste (“CCW”) surface impoundments; (2) financial assurance requirements for CCW surface impoundments; and (3) a requirement that closure and post-closure plans for all CCW surface impoundments be submitted within one year of the Board’s adoption of the proposed rules. The Environmental Groups appreciate the Agency’s interest in considering these issues, which are not addressed by the Agency’s proposed rules. The Environmental Groups disagree that relegating the issues to a subdocket is an appropriate way to consider them, though, because they are central to determining the manner in which the State’s numerous unlined, polluting CCW surface impoundments will be regulated.

Creating a subdocket to defer consideration of design criteria, financial assurance, and the timing of closure and post-closure plans—while moving forward with the Agency’s rules as proposed— would not result in a “convenient, expeditious, and complete determination” of

issues relating to the State's CCW surface impoundments. 35 Ill. Adm. Code 101.408. The Environmental Groups have proposed modifications to the Agency's rules to address a central weakness of the existing proposal: the lack of any requirements to close unlined and inadequately lined CCW impoundments causing groundwater contamination—even for impoundments that are no longer needed to accept CCW and leachate.

The scope of this problem is massive. Based on the chart attached as Attachment 2 to the Agency's April 30, 2014 comments, there are at least 23 unlined "inactive" CCW surface impoundments in the State at 14 different plants (Baldwin, Coffeen, Duck Creek, Havana, Hennepin, Hutsonville, Joppa, Marion, Meredosia, Powerton, Vermillion, Venice, Will County, and Wood River).¹ The Agency has issued violation notices for groundwater contamination at at least 7 of these plants. (Cobb Test., Attach. 1). There also are at least 30 "active" unlined impoundments at 13 different plants (Baldwin, Coffeen, Edwards, Grand Tower, Hutsonville, Joppa, Kincaid, Southern Illinois Power Cooperative's Marion Station, Meredosia, Newton, Prairie Power's Pearl Station, Springfield City Water Light and Power's Lakeside and Dallman Stations, and Vermillion).² (Agency Cmts., Apr. 30, 2014, Attach. 2). The Agency has issued violation notices for at least 7 of these plants. (Cobb Test., Attach. 1). Combined, these 53 unlined impoundments constitute the majority of the 87 CCW surface impoundments identified by the Agency in its chart, statewide.

These unlined impoundments share two common features: (1) they are at least approximately 25 years old and (2) they are causing, and will continue to cause, groundwater contamination. The Agency testified in this proceeding that it began encouraging the installation of at least some form of liner for new CCW surface impoundments in approximately 1991.

¹ 23 is the difference between the total number of "Number Inactive (I)" and "Number Lined (Inactive)" ash ponds.

² 30 is the difference between the total number of "Number Active (A)" and "Number Lined (Active)" ash ponds.

(Feb. 14, 2014 Trans. at 230, lines 9-21). The Agency additionally testified that, in its view, the problem of CCW contamination in groundwater was linked exclusively to the unlined impoundments that predate this unofficial liner requirement. (*Id.* at 225, lines 14-21).³ To the extent that these proposed rules are meant to deal with coal ash impoundments causing groundwater contamination, then, these rules must first and foremost address what should be done with these aging, unlined impoundments.

In its proposed “Subtitle D” rules applicable to CCW surface impoundments, the United States Environmental Protection Agency (“USEPA”) would require all unlined and inadequately lined impoundments to either be retrofitted or closed within five years of the rules’ effective date, because of the threat that such impoundments pose to human health and the environment. USEPA, *Hazardous and Solid Waste Management System; Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals From Electric Utilities*, 75 Fed. Reg. 35128, 35302 (June 21, 2010).⁴ By contrast, the Agency’s proposed rules would allow unlined and inadequately lined CCW surface impoundments to remain open indefinitely. Under the Agency’s proposed rules, impoundments need close only if an owner or operator elects to do so. Even if an impoundment has been documented to cause or contribute to exceedences of groundwater quality standards, its owner or operator can choose between corrective action and closure of the impoundment. *See* proposed 35 Ill. Adm. Code 841.300(b). Again, this is the case

³ The Agency did later state that it “suspected” that some CCW surface impoundments owned or operated by Midwest Generation that the Agency considered to have inadequate liners may have leaked contaminants. (*Id.* at 226, lines 16-24; 227, line 21 to 228, line 9).

⁴ In proposing the requirement, USEPA stated:

The CCR [coal combustion residual] damage cases and EPA’s quantitative groundwater risk assessment clearly show the need for effective liners—namely composite liners—to very significantly reduce the probability of adverse effects. The co-proposed subtitle D design standards would require that new landfills and all surface impoundments that have not completed closure prior to the effective date of the rule, can only continue to operate if composite liners and leachate collection and removal systems have been installed.

Id.

even if the impoundment is no longer receiving CCW or leachate. Allowing owners or operators to pursue long-term corrective action plans that could require decades to come into compliance with numerical groundwater quality standards is not as effective of a remedy, and is not as protective of human health and the environment, as cutting off the contamination at its source by requiring the responsible closure of leaking impoundments.

The Agency has raised the possibility that any delay on its proposed rules “may have the effect of delaying corrective action and closure at surface impoundments that may be subject to the proposed rule whose owners or operators are awaiting a final rule.” (Mtn. to Sever at ¶ 18). The Environmental Groups do not generally support delaying these rules, but they disagree with the Agency’s premise. Even in the absence of these rules, the Agency has moved forward with corrective action and closure plans for some CCW surface impoundments. (*See* Tr. May 14, 2014 at 80, line 32, to 81, line 12) (relating to pending closure plans by Ameren entities). The Environmental Groups are not endorsing any of these plans in particular, but it is clear that the Agency, owners, and operators are capable of taking some actions during the pendency of these rules.

The three issues of design standards, financial assurance, and closure and post-closure plans that have been raised by the Environmental Groups should not be consigned to a subdocket. Instead, they should be a central focus of these rules and considered in parallel with the other issues raised in this proceeding. Most fundamentally, the three issues concern when and how unlined and inadequately-lined impoundments will be closed, and whether there will be enough resources available to close them responsibly. These issues need to be addressed up front so that the owners and operators put forth plans for responsible closure—not simply plans for long-term and comparatively ineffective corrective action.

If the Board finds that additional testimony on design standards, financial assurance, and the timing of closure and post-closure plans is advisable before adopting rules on these issues, then the Environmental Groups respectfully request that additional hearings be scheduled as expeditiously as possible in this proceeding, so that all of the relevant issues concerning the closure of the State's CCW surface impoundments can be considered together.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Andrew Armstrong, hereby certify that I have served the attached the **Response to Motion to Sever and Open Subdocket by Environmental Integrity Project, Environmental Law and Policy Center, Prairie Rivers Network, and Sierra Club** on behalf of the Environmental Groups in R14-10 upon the attached service list by depositing said documents in the United States Mail, postage prepaid, in Chicago, Illinois on June 17, 2014.

Respectfully submitted,



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Dated: June 17, 2013

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