

ILLINOIS POLLUTION CONTROL BOARD  
May 30, 2019

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

ORDER OF THE BOARD (by K. Papadimitriou):

In a March 28, 2019 order, the Board questioned whether it was justified to move ahead in this rulemaking with its current record. During 2014, the Board held hearings on the Illinois Environmental Protection Agency's (IEPA's) rulemaking proposal and received more than 3,000 public comments before granting motions to stay consideration. Since then, federal rulemaking, litigation, and legislation have all addressed regulation of coal combustion waste (CCW) surface impoundments. In its March 28, 2019 order, the Board briefly summarized these developments. Before dismissing this rulemaking, the Board directed IEPA as the proponent to show cause by April 29, 2019, why this docket should not be closed. The Board also welcomed comment from other participants.

On April 25, 2019, IEPA filed its response (IEPA Resp.). On April 29, 2019, the Board received responses from the Illinois Attorney General's Office (AG) (AG Resp.), as well as a response from Prairie Rivers Network, Sierra Club, and the Environmental Law & Policy Center (collectively, Environmental Groups) (Env. Resp.).

IEPA cites pending Illinois legislation, including Senate Bill 9 (SB9), that may be enacted and affect this rulemaking. IEPA Resp. at 1, 3. IEPA states that the Illinois General Assembly may direct the Board to adopt rules regulating coal combustion residuals (CCR), as CCW is termed in the federal rules. In that case, this rulemaking "may need to be dismissed and reopened considering potentially new statutory authority." *Id.* at 4.

IEPA argues that this rulemaking should remain open until after the end of the General Assembly's current session, which is expected on May 31, 2019. IEPA Resp. at 4. IEPA requests that the Board set a deadline of July 1, 2019, to provide "a recommendation on how to proceed in this rulemaking." *Id.*

The AG agrees with IEPA's position and requests that this rulemaking remain open until at least July 1, 2019. AG Resp. at 1. This deadline should allow time to determine whether the General Assembly enacts CCW legislation and provides the Board direction. *Id.* The AG cites SB9 as an example of legislation that could direct the Board to adopt rules regulating impoundments. *Id.*

Similarly, pending legislation is the primary reason that the Environmental Groups oppose dismissing this docket. Env. Resp. at 2. They argue that, if the General Assembly adopts

legislation such as SB9, the Board and participants “should consider whether it would be appropriate to enact implementing regulations in a new docket or in this docket.” *Id.* at 3. However, the Environmental Groups propose a deadline of June 14, 2019, to comment on whether dismissal is appropriate and what steps the Board might then take. *Id.*

All three comments cite SB9 as an example of pending legislation addressing CCW surface impoundments. On May 27, 2019, SB9 passed both houses of the General Assembly. Among its provisions, the enrolled version of SB9 adds to the Environmental Protection Act a new Section 22.59 entitled “CCR surface impoundments,” subsection (g) of which requires IEPA to propose and the Board to adopt CCR surface impoundment rules addressing, at a minimum, 11 specific factors. *See* <http://www.ilga.gov/legislation/fulltext.asp?DocName=10100SB0009enr&GA=101&SessionId=108&DocTypeId=SB&LegID=113581&DocNum=9&GAID=15&Session=> (last viewed May 29, 2019). Under these circumstances, the Board agrees that it should keep this docket open to review any action the Governor takes on SB9, which might not occur for 90 days after passage. ILL. CONST. art. IV, §§ 9(a), (b).

Accordingly, the Board today declines to dismiss this docket. The Board directs IEPA as the proponent to comment by Tuesday, September 3, 2019, on the status of SB9 and, in light of that status, whether the Board should close this docket. The Board also welcomes comment from all other participants on these same matters by the same deadline. If the status of SB9 changes well before that deadline, the Board encourages IEPA and other participants not to wait until the deadline to comment.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 30, 2019, by a vote of 4-0.



Don A. Brown, Clerk  
Illinois Pollution Control Board