

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	R 2020-019
STANDARDS FOR THE DISPOSAL)	
OF COAL COMBUSTION RESIDUALS)	(Rulemaking - Water)
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 a **NOTICE OF FILING** and **SECOND SUPPLEMENT TO IEPA’S PRE-FILED ANSWERS** on behalf of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

Dated: August 6, 2020

Stefanie N. Diers
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Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Petitioner,

BY: /s/ Stefanie N. Diers
Stefanie N. Diers

THIS FILING IS SUBMITTED ELECTRONICALLY

SERVICE LIST

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SECOND SUPPLEMENT TO ILLINOIS EPA'S PRE-FILED ANSWERS

NOW COMES the Illinois Environmental Protection Agency (Illinois EPA or Agency), by and through one of its attorneys, and submits the following information with respect to this second supplement to its pre-filed answers.

1. On March 30, 2020, the Illinois EPA filed a rulemaking, proposing new rules at 35 Ill. Adm. Code 845 concerning coal combustion residual surface impoundments at power generating facilities in the State.

2. Public Act 101-171, effective July 30, 2019, amended the Illinois Environmental Protection Act, by among other things, adding a new Section 22.59 (415 ILCS 5/22.59). Public Act 101-171 includes a rulemaking mandate in Section 22.59(g) which directs the Board to adopt rules “establishing construction permit requirements, operating permit requirements, design standards, reporting, financial assurance, and closure and post-closure care requirements for CCR surface impoundments.” 415 ICLS 5/22.59(g). The Board is required is adopt new rules for 35 Ill. Adm. Code part 845 by March 30, 2021.

3. The Agency timely filed pre-filed testimony for eight witnesses.

4. Based on the pre-filed testimony, Illinois EPA received over 1000 questions counting subparts.

5. On June 30, 2020, the Agency asked that it be granted until August 3, 2020 to

respond to the pre-filed questions.

6. On July 14, 2019, the hearing officer granted the Agency's request.

7. On August 3, 2020, the Agency filed Pre-Filed Answers to Little Village Environmental Justice Organization, ELPC, Prairie Rivers Network and Sierra Club, CWLP, Illinois Environmental Regulatory Group, Ameren, and the Board.

8. Since receiving all the pre-filed the questions, Agency staff has been working diligently to respond to all the pre-filed questions. However, despite the extra time granted the Agency was not able to prepare final answers by the August 3, 2020 filing deadline for the following Dynegy and Midwest Generation.

9. The Agency is today filing responses to Dynegy's pre-filed questions, number 85 to 107.

10. It should be noted that if a question was directed at a witness and the Agency answered it as a panel, the answer is provided as: "Agency Response".

Respectfully submitted,

BY: /s/ Stefanie N. Diers
Stefanie N. Diers

Dynegy

- 85. Part 845.750(d)(4)(A) limits the slope of final cover systems when closing an impoundment to 5%. How did the Agency select 5% as its default slope limit?**

Response: The limit on the slope of the final cover at 5%, was based on a site specific rule for the closure of an impoundment, that was approved and adopted by the Board prior to this rulemaking. This can be found at 35 Ill. Adm. Code 840.124 (d)(3).

- 86. Has the Agency evaluated whether slopes steeper than 5% on a cover system can effectively manage run-off and minimize erosion?**

Response: No. The Agency is not aware of an approved cover system on a CCR surface impoundment, which was proposed with a slope steeper than 5%.

- 87. Has the Agency previously approved final cover systems, of the type required by Section 845.750, for CCR surface impoundments and landfills (of any type) with slopes greater than 5%?**

Response: The Agency is not aware of the approval of a cover system for a CCR surface impoundment, with a slope on the primary structure of the cover system, of greater than 5%.

- 88. Does Part 845 allow for the use of additional engineering components (i.e., deep mixing walls, slurry walls and other physical/hydraulic barriers, etc.) to achieve the closure and groundwater corrective measures requirements under Part 845.660, 670, 710, 740, & 750?**

Response: Yes. Any of the listed engineering components could be included as part of closure or correct action subject to the assessments required by Part 845.

- 89. Can institutional controls reduce risk by eliminating potential exposure pathways, e.g., by restricting private parties from digging through an engineered cap and potentially encountering CCRs and by restricting the installation of groundwater supply wells downgradient of a closed CCR surface impoundment?**

Response: Yes

- 90. Has IEPA approved institutional controls in the past, for example, in the Site Remediation Program, to help minimize the potential for exposure to contaminants in groundwater?**

Response: Yes.

- 91. Has IEPA previously approved the use of institutional controls at sites that contain CCR surface impoundments?**

Response: Yes, IEPA has approved the use of institutional controls on property owned by the utility operating the CCR surface impoundment.

92. **After closure by removal is complete, then groundwater monitoring is required for a minimum of three years to show groundwater protection standard compliance, correct?**

Response: Yes.

93. **Has the Agency evaluated how long it may take to complete closure of impoundments located in the State that have not yet submitted a closure application? If so, which units and what are the Agency's findings?**

Response: No, the Agency has not evaluated how long it may take to complete closure on an impoundment by impoundment basis.

94. **Does the Agency believe some closure activities will take longer than 5 years to complete? If so, please give some examples.**

Response: The Agency believes some closure activities may take longer than five years. Two examples could be removal of CCR for closure by removal. Groundwater monitoring could also last more than five years.

95. **Does the Agency believe some groundwater corrective measures taken pursuant to proposed Part 845 will take longer than 30 years to complete?**

Response: Some corrective action measures could take longer than 30 years.

96. **What is the basis for closure construction permits expiring after 5 years when the approved construction activities may last longer than 5 years?**

Response: Please see Response 98

97. **Is the Agency aware that U.S. EPA has proposed a federal CCR permit program that would allow permits for CCR units to be issued without an expiration date? (Proposed 257.120(b)(7); 85 Fed. Reg. at 9,978 (Feb. 20, 2020)).**

Response: Yes, the Agency is aware that USEPA has proposed a permit program.

98. **How did the Agency determine that 3 years was appropriate for construction permits not related to closure or retrofit and 5 years was appropriate for closure and retrofit permits?**

Response: The current Board regulations governing the duration of construction permits for wastewater facilities can be found at 35 Ill. Adm. Code 309.242. This Section states in

part that: "Construction permits for treatment works and pretreatment works must require that construction be completed within three years. In situations in which the magnitude and complexity of the project require it, the Agency may issue a construction permit, requiring completion within a period not to exceed five years". In order to be as consistent as possible with existing Board regulations, proposed Section 845.220(f) requires that construction permits which are not for the closure or retrofit of a CCR surface impoundment, must not exceed 3 years. Construction permits which are for the closure or retrofit of a CCR surface impoundment shall expire after a term approved by the Agency, or five years, whichever is less.

99. What is the basis for limiting the term of an operating permit to 5 years?

Response: Currently most operating permits issued by the Agency (with rare exceptions) expire after 5 years. This includes State operating permits as well as NPDES permits.

100. Is an owner/operator that has demonstrated permanent cessation of coal-fired power boiler(s) by a date certain under 40 CFR 257.103, and in accordance with Part 845.700(d)(2)(C), allowed to continue to operate the CCR surface impoundment up to a date the owner/operator deems sufficient to ensure closure of the impoundment is completed by the dates specified in Part 845.700(d)(2)(C)?

Response: Yes. However, the Agency notes that a failure to meet the regulatory deadline would be a violation of Part 845.

- a. For example, Pond A is 45 acres and is scheduled to close in place which is expected to take 12 months to complete. Would Pond A be authorized to receive CCR and non-CCR wastes until at least October 17, 2027, 12 months before the October 17, 2028 deadline set forth in Part 845.700(d)(2)(C)? If not, why not?

Response: Please see Response 100.

101. Proposed 845.760(g) provides that notice regarding closure of a surface impoundment prior to the effective date of Part 845 must be provided to Illinois EPA by September 30, 2021, if not earlier provided. Does this proposed requirement apply only to "existing," "new," and "inactive" CCR surface impoundments as defined by proposed Part 845?

Response: Section 845.760(g) applies to any CCR surface impoundment that has not already notified the Agency of completed closure.

102. Does the closure report requirement of proposed 845.760(e) apply to any surface impoundments that closed before the effective date of Part 845? If so, which ones?

Response: No, it does not apply to inactive closed CCR surface impoundments.

- 103. In Robert Mathis's testimony, he indicates that the financial assurance portion of the Agency's proposal was constructed using selected components from "other FAP regulations." Please identify the specific components from the other FAP regulations used to construct the financial assurance portions of the Agency's Part 845 proposal.**

Response: The financial assurance components in the Agency's Part 845 proposal were basically extracted from the financial assurance portion of Part 811. The language in Part 845 basically mirrors the language in Part 811. The financial assurance mechanisms of Part 845 are very similar to those in Parts 724, 725, 807, 811 and 848.

- 104. Can an owner/operator provide separate financial assurance for each of the activities set forth in Part 845.900(b)? If not, why not?**

Response: An owner/operator can provide separate financial assurance mechanisms for each of the activities (closure, post-closure and corrective action) listed in Section 845.900(b). This is detailed in Section 845.950(e).

- 105. Post closure care periods under Part 845 will last for at least 30 years where units close in place. May owners or operators reduce financial assurance using Part 845.940 as work is completed and therefore cost estimates for future work are reduced? If not, why not?**

Response: Section 845.940(b) requires during the active life of the CCR surface impoundment, the owner/operator must revise the cost estimate (closure, post-closure and corrective action) no later than 30 days after the Agency has approved a request to modify the correction action plan, closure plan or post-closure care plan. Basically, if the cost estimate based on the latest approved permit or request to modify is less than the financial assurance posted, then the financial assurance may be reduced to equal the approved cost estimate.

- 106. Will the Agency release an owner/operator from the financial assurance obligations tied to closure upon the Agency's approval of the closure report and certification pursuant to Section 845.760?**

Response: In the Agency's approval of the closure report and certification pursuant to Section 845.760, the Agency will notify the owner or operator in writing that it is no longer required to maintain financial assurance for closure, pursuant to Section 845.920(b)(1). Section 845.920(b)(2) applies to Post-closure care and Section 845.920(b)(3) applies to corrective action.

- 107. What is Mr. Mathis referring to when he says "closure, post-closure and remediation costs . . . most likely increase through the passage of time" on page 2 of his June 2, 2020 testimony?**

a. Isn't it also possible that these costs could decrease, for example because of new technology, a reduction in labor costs, or as work is completed? Why

not allow a reduction in the financial assurance obligations as costs are reduced?

Response: The statement “most likely increase through the passage of time” references that costs historically increase with inflation. Therefore, the need to ensure the cost estimates are increased in accordance with Section 845.940 to reflect inflation is necessary. This also means that it is critical to confirm the financial assurance equals those cost estimates to protect taxpayer assets. If the future provides new technology, methods or labor savings that reduce cost, these of course can be approved in a permit modification resulting in a reduced cost estimate. Once that occurs, then the financial assurance can be reduced in accordance with Part 845.

CERTIFICATE OF SERVICE

I, the undersigned, on affirmation state the following:

That I have served the attached **NOTICE OF FILING** and **SECOND SUPPLEMENT TO THE AGENCY'S PRE-FILED ANSWERS** by e-mail upon Don Brown at the e-mail address of don.brown@illinois.gov, upon Renee Snow at the e-mail address of Renee.Snow@Illinois.Gov, upon Matt Dunn at the e-mail address of mdunn@atg.state.il.us, upon Stephen Sylvester at the e-mail address of ssylvester@atg.state.il.us, upon Andrew Armstrong at the e-mail address of aarmstrong@atg.state.il.us, upon Kathryn A. Pamenter at the e-mail address of KPamenter@atg.state.il.us, upon Virginia I. Yang at the e-mail address of virginia.yang@illinois.gov, upon Nick San Diego at the e-mail address of nick.sandiego@illinois.gov, upon Robert G. Mool at the e-mail address of bob.mool@illinois.gov, upon Vanessa Horton at the e-mail address of Vanessa.Horton@Illinois.gov, upon Paul Mauer at the e-mail address of Paul.Mauer@illinois.gov, upon Deborah Williams at the e-mail address of Deborah.Williams@cwlp.com, upon Kim Knowles at the e-mail address of Kknowles@prairierivers.org, upon Andrew Rehn at the e-mail address of Arehn@prairierivers.org, upon Faith Bugel at the e-mail address of fbugel@gmail.com, upon Jeffrey Hammons at the e-mail address of Jhammons@elpc.org, upon Keith Harley at the e-mail address of kharley@kentlaw.edu, upon Daryl Grable at the e-mail address of dgrable@clclaw.org, upon Michael Smallwood at the e-mail address of Msmallwood@ameren.com, upon Mark A. Bilut at the e-mail address of Mbilit@mwe.com, upon Abel Russ at the e-mail address of aruss@environmentalintegrity.org, upon Susan M. Franzetti at the e-mail address of Sf@nijmanfranzetti.com, upon Kristen Laughridge Gale at the e-mail address of kg@nijmanfranzetti.com, upon Vincent R. Angermeier at the e-mail address of va@nijmanfranzetti.com, upon Alec M. Davis at the e-mail address of adavis@ierg.org, upon Jennifer M. Martin at the e-mail address of Jmartin@heplerbroom.com, upon Kelly Thompson at the e-mail address of kthompson@ierg.org, upon Walter Stone at the e-mail address of Walter.stone@nrgeenergy.com, upon Cynthia Skrukrud at the e-mail address of Cynthia.Skrukrud@sierraclub.org, upon Jack Darin at the e-mail address of Jack.Darin@sierraclub.org, upon Christine Nannicelli at the e-mail address of christine.nannicelli@sierraclub.org, upon Stephen J. Bonebrake at the e-mail address of bonebrake@schiffhardin.com, upon Joshua R. More at the e-mail address of jmore@schiffhardin.com, upon Ryan C. Granholm at the e-mail address of rgranholm@schiffhardin.com, upon N. LaDonna Driver at the e-mail address of LaDonna.Driver@heplerbroom.com, upon Alisha Anker at the e-mail address of aanker@ppi.coop, upon Chris Newman at the e-mail address of newman.christopherm@epa.gov, upon Claire A. Manning at the e-mail address of cmanning@bhslaw.com, upon Anthony D. Schuering at the e-mail address of aschuering@bhslaw.com, upon Jennifer Cassel at the e-mail address of jcassel@earthjustice.org, upon Melissa Brown at the e-mail address of Melissa.Brown@heplerbroom.com, upon Thomas Cmar at the e-mail address of tcmar@earthjustice.org, upon Melissa Legge at the e-mail address of mlegge@earthjustice.org, upon Mychal Ozaeta at the e-mail address of mozaeta@earthjustice.org, upon Michael L Raiff at the e-mail address of mraiff@gibsondunn.com

That my e-mail address is Stefanie.diers@illinois.gov

That the e-mail transmission took place before 4:30 p.m. on the date of August 6.

/s/ Stefanie N. Diers
August 6, 2020