

Board Adopts Final Rules on CCR Surface Impoundments

On April 15, 2021, the Board adopted a new Part 845 of its waste disposal regulations (35 Ill. Adm. Code 845), creating Illinois' first Statewide standards for the disposal of coal combustion residuals (CCR) in surface impoundments. CCR, commonly called "coal ash," is generated when coal is burned at power plants to produce electricity. By adopting Part 845, the Board fulfilled one of the primary objectives of the Coal Ash Pollution Prevention Act, which the General Assembly passed and Governor JB Pritzker signed into law as Public Act 101-171 (eff. July 30, 2019). The legislation recognized that CCR has caused groundwater contamination and other forms of pollution at active and inactive power plants throughout Illinois and that our environmental laws should be bolstered to ensure surface impoundments are consistently and responsibly regulated.

Part 845 provides for the protection of public health and the environment by establishing a comprehensive State permitting program to govern all aspects of CCR surface impoundments. The rules impose requirements for impoundment location, design, construction, operation, closure, and post-closure care; for the remediation of impoundment releases; for financial assurance to ensure impoundment owners or operators pay for closure, post-closure care, and remediation; for meaningful public participation opportunities in the permitting application process; and for prioritizing impoundment closures in areas of environmental justice concern. The Board's adoption of Part 845 also allows the Illinois Environmental Protection Agency (IEPA) to pursue United States Environmental Protection Agency (USEPA) approval of these rules to operate in Illinois in lieu of the federal CCR surface impoundment rules (40 CFR 257, Subpart D). The Board's rules are as stringent as—and, where warranted, more stringent than—USEPA's rules.

The Board's rulemaking began with IEPA's filing of its proposal on March 30, 2020. First notice of the proposed rules was published in the *Illinois Register* on May 1, 2020 (44 Ill. Reg. 6696). The Board held six days of public hearings at which 21 witnesses testified and 58 exhibits were admitted. The Board also held four sessions at which 120 members of the public provided oral comments. In addition, the Board received 138 written public comments. By order of February 4, 2021, the Board submitted the proposed rules to second-notice review by the Joint Committee on Administrative Rules (JCAR). At its March 16, 2021 meeting, JCAR requested, and the Board agreed to, an extension of the second-notice period. During the original and extended second notice, the Board docketed another ten public comments, each of which had been submitted directly to JCAR. As adopted, new Part 845 reflects changes that the Board agreed to with JCAR, which issued a certification of no objection to Part 845 at its April 13, 2021 meeting. Part 845 becomes effective on April 21, 2021.

The rulemaking is captioned Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments: Proposed New 35 Ill. Adm. Code 845, docket R20-19. Here is a link to [docket R20-19](#), where you can view the opinions and orders of the Board, hearing transcripts, public comments, and many other documents in the rulemaking record. For more information, please contact Vanessa Horton at 312-814-5053 or vanessa.horton@illinois.gov.