

**BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS**

<b>IN THE MATTER OF:</b>	)	
	)	
<b>PROPOSED AMENDMENTS TO</b>	)	<b>R22-18</b>
<b>GROUNDWATER QUALITY</b>	)	
<b>(35 35 ILL. ADM. CODE 620)</b>	)	<b>(Rulemaking – Public)</b>
	)	<b>Water Supply)</b>
	)	

**NOTICE OF FILING**

To: Don Brown, Clerk  
Illinois Pollution Control Board  
60 E Van Buren St  
Suite 630  
Chicago, IL 60605

Please take notice that on June 17, 2024, I served a true and correct copy of **The CITY OF SPRINGFIELD, OFFICE OF PUBLIC UTILITIES d/b/a CITY WATER, LIGHT AND POWER’S RESPONSE TO COMPLAINANTS’ RENEWED MOTION FOR PARTIAL SUMMARY JUDGMENT**, upon the parties listed on the attached service list.

Respectfully submitted,

THE CITY OF SPRINGFIELD,  
a municipal corporation

Dated: June 17, 2024

By: *Deborah J. Williams*  
One of its Attorneys

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**FIRST NOTICE COMMENTS OF THE CITY OF SPRINGFIELD, OFFICE OF PUBLIC  
UTILITIES d/b/a CITY WATER, LIGHT AND POWER**

Now comes the City of Springfield, Office of Public Utilities, d/b/a City Water, Light and Power (“CWLP”), by and through one of its attorneys and timely files these First Notice Comments in the above-captioned rulemaking proceeding.

**Background**

The City of Springfield owns and operates the municipal utility referred to as City Water, Light and Power (“City” or “CWLP”). CWLP is a small not-for-profit, municipally-owned electric generation and transmission utility that also serves as the water purification and distribution utility for approximately 150,000 residents of Springfield and surrounding communities. This includes retail service to Springfield as well as Southern View, Leland Grove and certain unincorporated areas around the city. Wholesale service is provided to the surrounding communities of Grandview, Jerome, Loami, Rochester, Sugar Creek Public Water District, Williamsville-Sherman Water Commission and Round Prairie Water Cooperative. Springfield also serves as a back-up, secondary water supply for the Village of Chatham and the Curran-Gardner Water District. Power generation and water purification facilities are both located on the same

Dallman Plant grounds. CWLP also owns and operates two Coal Combustion Residual (“CCR”) surface impoundments (Lakeside ash pond and Dallman ash pond), that function as a single-multi-unit system regulated under 40 C.F.R. Part 257 and 35 Ill. Adm. Code Part 845 which have ceased receipt of CCR and non-CCR material.

On December 7, 2021, the Illinois Environmental Protection Agency (“Agency” or “Illinois EPA”) filed a rulemaking proposal with the Pollution Control Board (“Board”) with numerous updates and amendments to 35 Ill. Adm. Code Part 620. The last time the Board adopted any amendments or updates to this Part of its rules was in R08-18 which was adopted October 19, 2012 with minor technical amendments finalized on October 7, 2013.

On March 7, 2024 the Board issued a First Notice Opinion and Order in this matter and on March 28, 2024 and the Secretary of State published the proposal in the Illinois Register. (48 Ill. Reg. 4608).

CWLP appreciates the hard work the Board and Agency staff have put into this update. Because it is very unlikely such an endeavor will be taken up in the near future, the City felt it was important to address an issue of concern with the applicability of Part 620 in relation to the Board’s subsequently adopted Part 845.

#### **Section 620.401 Applicability**

The Board should amend 35 Ill. Admin. Code 620.401, as follows, to provide regulatory clarity, avoid unnecessary administrative burden, and avoid dueling and duplicative regulatory regimes. CWLP suggests the following:

**Section 620.401 Applicability**

Groundwaters must meet the standards appropriate to the groundwater's class as specified in this Subpart and the nondegradation provisions of Subpart C. For the constituents listed in 35 Ill. Adm. Code Section 845.600(a) and (b), the standards in this Subpart and nondegradation provisions of Subpart C are not applicable to any release of such constituents from a CCR surface impoundment, as defined in 35 Ill. Adm. Code Section 845.120, before the end of post-closure care under 35 Ill. Adm. Code Section 845.780, when closing with a final cover system, or before the end of groundwater monitoring under 35 Ill. Adm. Code Section 845.740(b), when closing by removal.

It is CWLP's understanding the Illinois EPA agrees this clarification is appropriate and necessary. CWLP would also support any alternative language proposed by the Agency that accomplishes this shared purpose.

CWLP recognized the relevance of this issue during the briefing phase of PCB18-11. In the context of an enforcement action under Part 620, CWLP explained that the allegations in the complaint were no longer applicable following the effective date of Part 845. Despite the citations to the history and intent in the rulemaking record, and despite the fact that the Complainant did not object to CWLP's interpretation, the Board nevertheless concluded that the plain language of Part 845 did not support the intent put forward by the Agency. See, Sierra Club et al v. City of Springfield, Office of Public Utilities d/b/a City Water, Light and Power, PCB18-11, Interim Opinion and Order (September 7, 2023) at p. 8. Therefore, CWLP asks the Board to clarify the plain language in this proceeding to match what was intended by the proponent and understood by the parties to the Part 845 proceeding.

In its Response Brief in R18-11, CWLP argued:

"Once Part 845 took effect, on April 21, 2021, CWLP was no longer subject to the 620 regulations for the constituents regulated by Part 845 (which includes boron, sulfate and TDS, among others), although CWLP remains subject to separate

semi-annual sampling requirements under 40 C.F.R. Part 257 until the Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”) seeks and obtains approval from the United States Environmental Protection Agency for its Coal Combustion Residuals (“CCR”) surface impoundment permitting program.”

CWLP Response to Renewed Motion for Partial Summary Judgment at pp. 8-9.

In support of this argument, CWLP provided specific citations to the record of the proceeding adopting Part 845 to assist the Board in resolving the issue of first impression. To ensure clarity of the record of this proceeding, CWLP again provides the same references to the R20-19 Record in this docket.

The Agency witnesses provided testimony on this issue in their Pre-filed Answer to Question 48a submitted by Illinois Environmental Regulatory Group:

Q: “Please clarify whether CCR surface impoundments regulated under Part 845 would be subject Part 620 standards other than Section 620.450(a)(4) during operation, closure and post closure.”

A: “A CCR surface impoundment regulated under Part 845 is generally subject to Part 620. However, the Agency envisions regulation of CCR surface impoundments under Part 845 and Part 620 as a step-wise process, because Part 620 is comprised of more than numerical standards. Part 257 and hence Part 845, don’t recognize Illinois’ groundwater classification system. To be protective the GWPS in Section 845.600(a) are set at the lower of the Class I groundwater standard or the numerical values of Part 257. A CCR surface impoundment subject to Part 620, sighted within an area of Class II groundwater could have a higher groundwater quality standard, than the GWPS. The GWPS of Part 257 and Part 845 have a compliance point at the waste boundary (the Agency assumes this to be the downstream toe of the impoundment berm or edge of the impoundment if incised) and extend to the identified edge of the plume where constituent concentrations exceed the GWPS. Part 620 has a point of compliance as much as 25 feet from toe of the berm or edge of the impoundment. The applicable Part 620 numerical standard extends as far as the geologic material yielding the particular Class of groundwater extends. ***Due to these conflicts, Part 845 must be applied first for any constituent with a***

***GWPS. For any constituent which has no GWPS, and after the active life of a CCR surface impoundment as defined by Part 845, the requirements of Part 620 are applicable.*** (Emphasis added).

See, Agency Response to Pre-filed Questions, August 3, 2020 at pp. 167-168 (In the Matter of: Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments, Proposed New 35 Ill. Adm. Code 845, R20-19).

In addition, Illinois EPA witness Lynn Dunaway further clarified this issue during questioning at the August 13, 2020 Hearing:

MR. MORE: "The Agency talks about a step-wise approach and then states 'For any constituent which has no GWPS, and after the active life of a CCR surface impoundment as defined by Part 845, the requirements of Part 620 are applicable.' Is the inverse also true?"

MR. DUNAWAY: "Will you state the inverse?"

MR. MORE: "Yeah, let's use an example. Boron. There's a groundwater protection standard under 845 for boron, correct?"

MR. DUNAWAY: "Right"

MR. MORE: "And there's also a corresponding groundwater quality standard under Part [620] for boron, correct?"

MR. DUNAWAY: "Correct."

MR. MORE: "So for boron, are the corresponding Part 620 standards applicable during the active life of a CCR surface impoundment?"

MR. DUNAWAY: "No, they're not."

MR. MORE: "Okay. And can you give me an example of a constituent where the Part 620 standards would be applicable during the active life of a CCR surface impoundment?"

MR. DUNAWAY: "An example would be nitrate."

MR. MORE: "Thank you. Can you point to any language in Part 845 that sets forth this concept that we just went over that is that for constituents which have no groundwater protection standard under Part 845 and after the active life of a

CCR surface impoundment is defined by Part 845, so the requirements of Part 620 are applicable? So, in essence, the stepwise approach that you've described in your testimony, where in 845 is that?"

MR. DUNAWAY: "845.600(c)."

August 13, 2020 Hearing Transcript at 29–30.

As adopted by the Board, Section 845.600(c) prohibits an owner or operator of a CCR surface impoundment from obtaining an alternative standard under 35 Ill. Adm. Code 620.450(a)(4) for any constituent with a GWPS before the end of post-closure care under Section 845.780, when closing with a final cover system, or before the end of groundwater monitoring under Section 845.740(b), when closing via removal. This supports the idea that Part 620 requirements are intended to be superseded, for overlapping constituents, while a CCR surface impoundment is undergoing Part 845 closure and post-closure care.

The Record of Part 845 establishes that compliance with 845 supplants the requirements of 35 Ill. Adm. Code 620 in those instances where the two parts address the same constituents. Generally, 845 will be more stringent and specific and provide a methodology for addressing contamination. Failure to take this interpretation could lead to illogical results in the real world. For example, under Part 845, the owner or operator of a CCR surface impoundment will already have an obligation to investigate and take corrective action to remedy contamination of a constituent for which a GWPS exists under Section 845.600 and to which a CCR surface impoundment is contributing. If Part 620 also applies, the owner or operator would likely simultaneously need to apply for a groundwater management zone under Part 620 and have a separate corrective action

process approved by Illinois EPA. It makes little practical, legal or environmental sense to have these two regulatory regimes apply simultaneously. The simultaneous application of both will result in application and approval processes under Part 620 and Part 845 that contain both conflicting and duplicative requirements. The CCR surface impoundments at CWLP's facility are already subject to the duplicative requirements of having to comply simultaneously with 40 C.F.R. Part 257 and 35 Ill. Adm. Code Part 845 because no federal approval of the Part 845 permitting program has been obtained by Illinois at this time. Having both Parts 845 and 620 also apply simultaneously adds an unnecessary administrative burden upon Illinois EPA and upon owners and operators. For these reasons, CWLP asks the Board to resolve this inconsistency in the rules as currently interpreted by the Board as a part of this proceeding.

### **Class I Groundwater Standards with MCLs**

On April 26, 2024, the United States Environmental Protection Agency (USEPA) finalized drinking water standards in the form of MCLs for 6 compounds in the per- and polyfluoralkyl (PFAS) category. See, PFAS National Primary Drinking Water Regulation, 89 Fed. Reg. 32532 (April 26, 2024). In response to questions raised by the Board regarding the differences between the Agency's proposed values for these six PFAs chemicals and the adopted MCLs, Illinois EPA expressed support for the Board adopting Class I standards that mirror these MCLs. CWLP would like to comment in support of the general idea that the Class I groundwater quality standards should attempt to mirror the MCLs whenever possible and should not attempt to deviate, be more stringent than or "get out ahead of" USEPA on standards that have effective MCLs available. While CWLP appreciates the efforts of the Agency and the



Board to address this important issue, now that the federal government has taken action, Illinois should follow and remain consistent with that action to avoid duplicative and conflicting regulations and otherwise creating confusion as to which standards should apply.<sup>1</sup>

### **Irrigation Based Class I and Class II Groundwater Standards**

In Illinois EPA's proposal, the Class I and Class II Groundwater Quality Standards for selenium are being "updated." The Agency proposes revising the existing Class I and Class II selenium standard of 0.05 mg/L to 0.02 mg/L in Sections 620.410(a) and 620.420(a)(2), respectively. The proposal shifts the basis of the selenium standard from the health based USEPA MCL to beneficial use for irrigation of crops. The Agency explained that the proposed standard for selenium "is taken from the same source for irrigation standards that has been relied upon since the Board's first promulgation of the 35 Ill. Adm. Code Part 620 groundwater quality regulations in 1991" --- which are the 1972 USEPA criteria document for irrigation based uses. Board First Notice Opinion (March 7, 2024) at p. 42. Many of the Board's water quality standards in both Part 620 and Part 302 can be found to have their origin in this 1972 Criteria Document. Over time, as these Criteria were updated by new science, the Board's standards were also updated to reflect more recent science. Unlike some irrigation-based standards (like boron), selenium has been the subject of a great deal of updated USEPA research and criteria documents in the 50 years since this document

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<sup>1</sup> CWLP also reviewed Illinois EPA's response to the Board's question on the standards for regulation of atrazine and the atrazine metabolites. CWLP remains unclear on the explanation for this deviation from the MCL and is not convinced an adequate justification has been presented. CWLP would encourage the Board to look more carefully at the scientific basis for summing the values of total atrazine plus atrazine metabolites before finalizing this change.

was written. The Agency's explanation and the Board's reasoning for accepting it are not arbitrary, but CWLP does encourage the Board to reconsider and look at little more closely at whether this explanation for "updating" standards to reflect studies that are in excess of 50 years old makes sense at this time. Where the Board determined not to adopt a standard from the 1972 Criteria when the State standards were adopted and where no update since 1972 has been undertaken to reexamine whether the studies on which the 50 year old irrigation-based standard were based are still valid, there is reason to look more closely at whether this change is necessary at this time or whether there should be a distinction between the Class I and Class II standards.

### **Conclusion**

The City of Springfield, Office of Public Utilities acknowledges the efforts of the Board and the parties to update the 35 Ill. Adm. Code Part 620 regulations and appreciates the opportunity to provide input on improvements to the first notice proposal.

Respectfully submitted,

The City of Springfield, Office of Public Utilities

By *Deborah J. Williams*

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CERTIFICATE OF SERVICE

The undersigned, Deborah J. Williams, an attorney, certifies that I have served electronically upon the Clerk and by email upon the individuals named in the attached Service List, a true and correct copy of the **NOTICE OF FILING** and **FIRST NOTICE COMMENTS OF THE CITY OF SPRINGFIELD, OFFICE OF PUBLIC UTILITIES d/b/a CITY WATER, LIGHT AND POWER**, from the email address [deborah.williams@cwlp.com](mailto:deborah.williams@cwlp.com) of this 13 page document before 5:00 p.m. Central Time on June 17, 2024 to the email address provided on the attached Service List.

*Deborah J. Williams*

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