

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
STANDARDS FOR THE DISPOSAL OF)	R20-19(A)
COAL COMBUSTION RESIDUALS IN)	(Rulemaking – Land)
SURFACE IMPOUNDMENTS: PROPOSED)	
NEW 35 ILL. ADM. CODE 845)	

NOTICE OF FILING

TO: Don A. Brown, Clerk
Illinois Pollution Control Board
60 East Van Buren Street
Suite 630
Chicago, Illinois 60605

See attached Service List

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board a COMMENT SUBMITTED BY THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, a copy of which are herewith served upon you along with this notice.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Nick M. San Diego
Nick M. San Diego
Deputy General Counsel
Division of Legal Counsel

DATED: February 20, 2025

2520 West Iles Avenue
P.O. Box 19726
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**COMMENT SUBMITTED BY
THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

NOW COMES the Illinois Environmental Protection Agency (“Agency”), by and through its attorneys and, in response to the Illinois Pollution Control Board’s (“Board”) Order of August 22, 2024, submits the following comment for the Board’s consideration in the above-referenced proceeding.

I. INTRODUCTION AND GENERAL COMMENTS

In its August 22, 2024, Order (Order), the Board noted the adoption of USEPA’s final rule¹ regulating legacy coal combustion residual (CCR) surface impoundments (inactive surface impoundments at inactive facilities), including areas it has called “coal combustion residuals management units” (CCRMUs). Order at 3. The Board found that USEPA’s final rules on CCRMUs address the issue of historic unconsolidated CCR fills in the State. *Id.* at 6. The Board further stated that, should Illinois EPA or other subdocket participants not file a rulemaking proposal by May 5, 2025, to incorporate these federal rule amendments to 40 CFR Part 257 (Part 257) into 35 Ill. Adm. Code Part 845 (Part 845), then the Board plans to, on its own motion, propose such rulemaking amendments. *Id.* at 6. Last, the Board directed Illinois EPA, or the other

¹Published on May 8, 2024 with an effective date of November 8, 2024. *See* 89 Fed. Reg. 38950. On November 8, 2024, USEPA published a Direct Final Rule to correct errors in the May 8, 2024 Federal Register publication. *See* 89 Fed. Reg. 88650 (November 8, 2024). On January 16, 2025, USEPA published another Direct Final Rule to correct errors and clarify several provisions published in the Federal Register on May 8, 2024. *See* 90 Fed. Reg. 4635 (January 16, 2025).

subdocket participants, to file such a new rulemaking proposal by May 5, 2025. *Id.* at 30. While the Illinois EPA appreciates the Board's initiative to adopt rules incorporating the amendments at the federal level into state rules, there are several issues and points of concern for the Board to consider before taking this course of action.

A. The State of Illinois Does Not Have an Approved CCR Program.

It appears that the Board's impetus to begin amending its regulations now to include the recent federal amendments regulating CCRMUs and historic unconsolidated ash is USEPA's November 4, 2027, deadline for states *with approved CCR permit programs* to revise their rules in order to maintain full program approval. The USEPA has not yet approved the State of Illinois' CCR program. Therefore, this deadline is currently inapplicable to Illinois. If the State of Illinois receives USEPA approval of the Part 845 rules prior to the deadline, Illinois EPA will not be prevented from seeking approval of any program rules that are adopted later.

B. No Statutory Authority Exists to Promulgate Sufficient Regulations to Stand Up a CCRMU Permitting Program.

While Section 22.59 of the Environmental Protection Act, 415 ILCS 5/22.59, provided clear statutory authority for the Board to adopt a State permitting program for CCR surface impoundments, there is by contrast no indication yet that the General Assembly intends for the Board to adopt a State permitting program for CCRMUs. During negotiation of that legislation, the Agency stood ready to discuss the possibility of a larger scope than just CCR surface impoundments. However, the legislation remained limited to surface impoundments. There is likewise no statutory authority for fees to support the Agency's administration of an expanded CCRMU permitting program. Public Act 101-171 included revenue for the Agency's administration of the CCR program it created. There is no similar revenue for the Agency's administration of rules that would regulate CCRMUs. As the Board has recognized,

unconsolidated coal ash does not fall within the statutory mandate of Section 22.59. *See Second Notice Opinion and Order*, R20-19, slip op. at 12 (Feb. 4, 2021). Clear statutory authority for expansion of the existing CCR permitting program to include CCRMUs is necessary to ensure there is sufficient legal and financial support for the expansion.

C. Federal CCRMU Regulations are Self-Implementing.

It should be noted that the amended federal regulations for CCRMUs are self-implementing (i.e., they are immediately enforceable without any further implementation steps to be taken). Any CCRMUs in the State of Illinois will be subject to these federal requirements to provide environmental protection until the General Assembly enacts legislation directing or authorizing the Board to expand the state's existing CCR permitting program by adopting regulations governing CCRMUs. While USEPA ultimately intends to adopt a federal permitting program covering CCR surface impoundments and CCRMUs alike, the timing and the nature of that permitting program remain to be seen, and regulated entities must in the interim comply with the amended federal regulations. 89 Fed. Reg. 39093.

II. CONCLUSIONS

The Agency appreciates the Board's initiative to adopt rules to expand the state's existing CCR program to include CCRMUs. However, it believes legislative action by the General Assembly is first appropriate to ensure there is clear authority for such an expansion. The Agency stands ready to follow such legislation should the General Assembly act to equip the Board and the Illinois EPA with the authority and resources necessary to implement an effective CCRMU permitting program.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Nick M. San Diego
Nick M. San Diego
Deputy General Counsel
Division of Legal Counsel

DATED: February 20, 2025
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CERTIFICATE OF SERVICE

I, the undersigned, an attorney, state the following:

I have electronically served the attached COMMENT SUBMITTED BY THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY upon the following:

See attached Service List

I affirm that my e-mail address is nick.m.sandiego@illinois.gov; the number of pages in the e-mail transmission is 8; and the e-mail transmission took place before 5:00 p.m. on February 20, 2025.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Nick M. San Diego
Nick M. San Diego
Deputy General Counsel
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DATED: February 20, 2025

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