

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

To: Attached Service List

PLEASE TAKE NOTICE that on March 3, 2025, I have electronically with the Office of the Clerk of the Illinois Pollution Control Board, **DYNEGY'S COMMENTS IN RESPONSE TO BOARD ORDER AND IEPA COMMENTS** and a **CERTIFICATE OF SERVICE**, which is attached and a copy of which is herewith served upon you.

Respectfully submitted,

/s/ Sarah L. Lode

Dated: March 3, 2025

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*Illinois Power Resources Generating, LLC, and
Kincaid Generation, LLC*

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**DYNEGY'S COMMENTS IN RESPONSE
TO BOARD ORDER AND IEPA COMMENTS**

Dynegy Midwest Generation, LLC, Electric Energy, Inc., Illinois Power Generating Company, Illinois Power Resources Generating, LLC, and Kincaid Generation, LLC, (collectively, "Dynegy"), by and through their attorneys, respectfully submit the following Comments to the Illinois Pollution Control Board (the "Board"), supporting the Illinois Environmental Protection Agency's ("IEPA's") Comments submitted in this sub-docket on February 20, 2025 ("IEPA's Comments") and requesting that the Board refrain from initiation of a new rulemaking at this time. In support of its Comments, Dynegy states as follows:

I. **Procedural Background**

On May 8, 2024, the United States Environmental Protection Agency ("USEPA") published a final rule (the "CCRMU Rule") regulating legacy coal combustion residual ("CCR") surface impoundments, including CCR management units ("CCRMUs").¹ In its August 22, 2024, Order in this sub-docket (the "Order"), the Board found that USEPA's CCRMU Rule addressed historic unconsolidated CCR fills in Illinois and directed IEPA, or the other sub-docket participants, to file a new rulemaking proposal incorporating the CCRMU Rule into Illinois law.

¹ The final rule was corrected on November 8, 2024, and January 25, 2025. *See* 89 Fed. Reg. 38950; 89 Fed. Reg. 88,650 (Nov. 8, 2024); 90 Fed. Reg. 4635 (Jan. 16, 2025).

Order at 6. The Board further stated that if IEPA or other sub-docket participants did not file a rulemaking proposal by May 5, 2025, the Board would do so on its own. *Id.* at 6.

II. **The Board Should Refrain from a New Rulemaking at this Time.**

Dynegy supports refraining from a new rulemaking and provides the following points of concern for the Board to consider.

First, IEPA does not currently have the resources to implement another program regulating CCR. The State has not yet submitted the existing Illinois regulations governing CCR surface impoundments (35 Ill. Admin. Code Part 845 or “Part 845”) for approval to USEPA. This is likely due to the complexities and difficulties associated with implementing the existing Part 845.² Additionally, Part 845’s implementation has been bogged down by delays in evaluating applications and issuing permits due to lack of resources and staffing, even with millions of dollars in funding to implement the program. *See, e.g., IEPA, Recent News: Coal Combustion Residual Surface Impoundments*³ (demonstrating IEPA has yet to issue any final operating permits for CCR surface impoundments in Illinois; applications for which were submitted more than three years ago). Initiating an Illinois CCRMU rulemaking will only divert resources and lead to further delays with implementation and federal approval of Part 845.

Second, there is no existing statutory mechanism providing funding for another program. As noted in IEPA’s Comments and recognized by the Board, Section 22.59 of the Environmental Protection Act, 415 ILCS 5/22.59, does not grant IEPA the authority to seek fees for administration of an Illinois CCRMU program. *See IEPA’s Comments at 3–4; Second Notice Opinion and Order at 12, R2020-019, (Feb. 4, 2021).* The General Assembly has also not provided any indication that

² IEPA was heavily involved with the design of the existing CCR program and is well situated to understand the scope and intricacies of the existing program. The fact that they are not advocating for an expanded CCRMU program at the state level is a good indication that one is not necessary or viable for state implementation at this time.

³ Available at <https://epa.illinois.gov/topics/water-quality/watershed-management/ccr-surface-impoundments.html>.

the Board should adopt an expanded state permitting program regulating CCRMUs. *See* Public Act 101-171 (limited to including revenue for the existing CCR surface impoundment program). Therefore, there is no statutory authority for fees to support IEPA's administration of an expanded CCR program covering unconsolidated fill. Adding an additional CCRMU program to IEPA's plate would only exacerbate delays for an already resource-strapped program.

Finally, another rulemaking is not necessary at this time because there is no regulatory gap to fill. At the time the Board instituted this sub-docket, there were no federal regulations governing CCRMUs. Therefore, according to the Board, the sub-docket was warranted to explore the necessity of regulating unconsolidated CCR deposits. However, since the Board's initial decision to open this sub-docket, USEPA has promulgated the CCRMU Rule governing unconsolidated CCR. 89 Fed. Reg. 39,093. As noted in IEPA's Comments, the Rule is self-implementing, or immediately enforceable, without any additional action necessary to bring CCRMUs within the State of Illinois under its jurisdiction. IEPA's Comments at 4.

Overall, given the lack of progress at IEPA to implement Part 845 with their current resources, and IEPA's stated financial and personnel limitations in expanding the program, the Board should refrain from the initiation of a new rulemaking at this time. Without authority or direction from the Illinois General Assembly, the Board should not create an expanded program regulating CCRMUs. A new rulemaking can be initiated if the General Assembly acts to equip IEPA with the resources necessary to implement an expanded State CCR permitting program.

Dated: March 3, 2025

Respectfully submitted,

Dynegy Midwest Generation, LLC, Electric
Energy, Inc., Illinois Power Generating
Company, Illinois Power Resources
Generating, LLC, Kincaid Generation, LLC

/s/ Bina Joshi

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CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 3rd day of March, 2025:

I have electronically served true and correct copies of **DYNEGY'S COMMENTS IN RESPONSE TO BOARD ORDER AND IEPA COMMENTS** by electronically filing with the Clerk of the Illinois Pollution Control Board and by e-mail upon each person listed in the attached service list.

My e-mail address is sarah.lode@afslaw.com.

The number of pages in the e-mail transmission is 9.

The e-mail transmission took place before 5:00 p.m.

/s/ Sarah L. Lode

Dated: March 3, 2025

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