

## **In Coal Ash Sub-Docket A, Board Proposes Second-Notice Amendments to Strengthen Rules on Temporary Storage Piles and Fugitive Dust Emissions**

The Board opened this sub-docket A in R20-19 (R20-19(A)) to further explore four issues: (1) historic, unconsolidated fill of coal combustion residual (CCR), also known as “coal ash”; (2) the use of temporary storage piles of coal ash, including time and volume limits; (3) CCR fugitive dust monitoring plans for areas neighboring CCR surface impoundments; and (4) the use of environmental justice screening tools.

On August 22, 2024, the Board issued its first-notice opinion and order in sub-docket A, proposing amendments to the Board’s CCR surface impoundment rules (35 Ill. Adm. Code 845). Specifically, the Board’s proposal added obligations and restrictions on using CCR storage piles during the closure of CCR surface impoundments by CCR removal. Also, to supplement Part 845’s requirements for minimizing CCR emissions, which help to protect facility workers and surrounding communities, the proposal added requirements for the Illinois Environmental Protection Agency (IEPA) to evaluate and act on public complaints over CCR “fugitive” dust, generally meaning CCR particulate matter that becomes airborne other than through a stack or chimney. The Board observed that Occupational Safety and Health Administration or “OSHA” regulations, which are referenced in Part 845, “are intended to protect workers from fugitive dust exposure, but are not intended for community protection.” The Board also noted that although emissions of fugitive particulate matter are governed by Board air pollution control rules at 35 Ill. Adm. Code 212, Subpart K, neither those rules nor current Part 845 require air quality monitoring. Accordingly, to further protect surrounding neighborhoods from CCR fugitive dust, the Board proposed provisions that included specifications for air quality monitoring at or near a facility’s property boundary and described when the monitoring either may or must be imposed by IEPA on facility owners or operators. In addition, the Board dedicated a new rulemaking (R25-18) to separately consider environmental justice issues. Finally, on the issue of historic, unconsolidated CCR fill, the Board stated it would consider any proposed amendments to Part 845 to incorporate the new rules of the United States Environmental Protection Agency (USEPA) on “CCR Management Units” or “CCRMUs” (89 Fed. Reg. 38950 (May 8, 2024)).

On May 15, 2025, the Board issued its second-notice opinion and order, proposing several substantive changes to the rule text based on comments received during the first-notice period. Those changes include replacing the term “CCR storage pile” with “CCR storage unit” and giving it a new definition, as well as broadening the circumstances under which IEPA must require facility owners or operators to undertake additional mitigation measures, including air quality monitoring, in response to complaints from members of the public about fugitive dust. The Board also agreed with IEPA that USEPA’s CCRMU rules are self-implementing and do not now require amending Part 845. The proposed second-notice amendments, which appear in Addendum A to the Board’s May 15, 2025 opinion and order, are scheduled to be considered by the Joint Committee on Administrative Rules at its June 17, 2025 meeting.

In addition, during first notice, IEPA proposed amendments to Section 845.220 to require that construction permit applications include additional information related to CCR storage units. The Board concurred with IEPA’s proposed amendments. However, because Section 845.220 was not included in sub-docket A at first notice, the Board opened a sub-docket B in R20-19

(R20-19(B)) to propose, for first notice, the amendments to Section 845.220. These amendments appear in Addendum B to the Board's May 15, 2025 opinion and order.

The rulemaking is captioned Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments: Proposed New 35 Ill. Adm. Code 845, R20-19(A), (B). Here are links to (1) the Board's May 15, 2025 [opinion and order](#); (2) [Addendum A](#); and (3) [Addendum B](#). For more information, please contact Vanessa Horton at 312-814-5053 or [vanessa.horton@illinois.gov](mailto:vanessa.horton@illinois.gov).