

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
 ) R14-10  
COAL COMBUSTION WASTE (CCW) )  
SURFACE IMPOUNDMENTS AT POWER ) (Rulemaking- Water)  
GENERATING FACILITIES: PROPOSED )  
NEW 35 ILL. ADM. CODE 841 )

**NOTICE OF FILING**

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board ILLINOIS EPA'S MOTION TO AMEND a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/Joanne M. Olson  
Joanne M. Olson  
Assistant Counsel  
Division of Legal Counsel

Date: July 15, 2016

1021 N. Grand Ave. East  
P.O. Box 19276  
Springfield, IL 62794-9276  
(217) 782-5544

**THIS FILING IS SUBMITTED ELECTRONICALLY AND SERVED ON RECYCLED PAPER**

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**ILLINOIS EPA'S MOTION TO AMEND**

NOW COMES the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, ("Illinois EPA" or "Agency") by and through its counsel, and for its Motion to Amend, pursuant to 35 Ill. Adm. Code 102.402, states as follows.

**I. PROCEDURAL BACKGROUND**

On October 28, 2013, the Illinois EPA filed its original proposal to adopt a new Part 841 with the Illinois Pollution Control Board ("Board"). The proposed rule covered coal combustion waste ("CCW") surface impoundments at power generating facilities, and requires the owner or operator of each unit to develop a site-specific plan for groundwater monitoring, preventive response, corrective action and closure. The Agency's proposal was motivated, in part, by Ameren Energy Resources' site-specific rulemaking for the closure of 16 ash ponds at eight different facilities. See R2013-09.

The other participants in this rulemaking include Ameren Missouri, AmerenEnergy Medina Valley Cogen, L.L.C. ("Medina Valley Cogen"), Midwest Generation, L.L.C., City Water Light and Power, the Office of the Attorney General, Grand Tower Energy Center, L.L.C., Dynegy Midwest Generation, L.L.C., Illinois Power Generating Company, Illinois Power Resources Generating, L.L.C., Electric Energy, Inc, and the Environmental Groups. The

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Environmental Groups include the Environmental Law & Policy Center, Environmental Integrity Project, Sierra Club, and Prairie Rivers Network.

On May 13, 2014, the Environmental Groups filed a counterproposal. On July 21, 2014, Ameren Missouri and Medina Valley Cogen filed a counterproposal to Section 841.105 and Section 841.110. The Environmental Groups filed amendments to their counterproposal on July 21, 2014. The hearings in this matter concluded on July 24, 2014, and post hearing comments were filed by October 20, 2014. The Agency's most recent draft of its proposed amendments was filed as Attachment B to the Agency's Prefiled Answers on July 17, 2014 (July 2014 draft).

After hearings in this matter concluded, the United States Environmental Protection Agency ("U.S. EPA") finalized its final rule for the disposal of coal combustion residuals ("CCR") from electric utilities. 80 Fed. Reg. 21302 (April 17, 2015) ("federal rule"). U.S. EPA regulates CCR from electric utilities under Subtitle D of the Resource Conservation and Recovery Act. The federal rule establishes minimum, self-implementing criteria for new and existing CCR landfills and CCR surface impoundments.

In light of the federal rule, the Agency sought to stay the above captioned proceedings. The Board granted the Agency's motion to stay, directing the Agency to file a status report in 90 days. On August 5, 2015, the Agency filed its status report and requested the Board extend the stay indefinitely to allow all participants to evaluate the impact of the federal rule, including its legal challenges, on the above captioned rulemaking. On September 15, 2015, the Environmental Groups again amended their proposal and filed a motion to reopen the proceedings. On November 5, 2015, the Board, having reviewed the numerous responses to the Agency's Status Report and the Environmental Groups' motion to reopen, denied the Agency's

motion for an indefinite stay, but granted the Agency a limited stay until March 4, 2016. The Board reserved ruling on the Environmental Groups' motion to re-open the docket.

On March 4, 2016, the Illinois EPA filed a status report and a motion to extend the stay. The Board granted the Agency's motion and extended the stay until June 15, 2016. On April 19, 2016, the Agency circulated a draft of amendments to the proposed Part 841 to a stakeholder group, which consisted of representatives from the following: the Attorney General's Office, Ameren, Association of Illinois Electric Cooperatives, City Water Light and Power, Dynegy, Eco-Justice Collaborative, Electric Energy, Exelon, Environmental Integrity Project, Environmental Law and Policy Center, Grand Tower Energy Center, the Groundwater Advisory Council, Illinois Environmental Regulatory Group, Kincaid Generation, Midwest Generation/NRG, Prairie Power, Prairie Rivers Network, Prairie State Generating Company, Sierra Club, and Southern Illinois Power Company. An outreach meeting was held on May 3, 2016, during which the Agency explained its draft amendments to proposed Part 841, and discussed the questions contained in Board's March 17, 2016 Order. The stay was again extended until July 15, 2016, and the Agency accepted comments until June 1, 2016.

## **II. THE AGENCY'S AMENDED PROPOSAL**

When drafting the enclosed amendments to proposed Part 841, the Agency carefully considered the scope of the federal rule. The standards in the federal rule apply directly to every CCR surface impoundment in the United States, and facilities are directly responsible for complying. 80 Fed. Reg. 21311. Neither the Board nor Illinois EPA is required to implement or adopt the federal rule. *Id.* In the preamble to the federal rule, U.S. EPA states: "the final rule establishes self-implementing requirements—primarily performance standards—that owners or operators of regulated units can implement without an interaction with regulatory officials." 80

Fed. Reg. 21330. The federal rule is a comprehensive, clear, environmentally protective, publicly accessible means to perform groundwater monitoring, corrective action, and closure of CCW surface impoundments in Illinois. The federal rule encompasses all major substantive components in the Agency's July 2014 draft, and therefore, an independent Board rule covering the same topics is no longer necessary. Therefore, Illinois EPA has developed an amended proposal substantially reducing the requirements found in the July 2014 draft.

**A. Scope and Applicability**

In proposed Section 841.100, the Agency states that the purpose of these rules is to establish corrective action and closure requirements for CCW surface impoundments at power plants. The Agency believes corrective action and closure must be performed under a state construction permit, issued pursuant to Section 12(b) of the Environmental Protection Act ("Act"). The Agency also believes owners and operators of CCW surface impoundments must obtain a state operating permit before operation of the surface impoundment and maintain the operating permit until the post-closure care has been completed. Proposed Section 841.100 states the relationship between Part 841 and the federal rule: construction permits, operating permits and groundwater management zones must be at least as stringent as the federal rule.

The scope of the federal rule and the Agency's amended proposed Part 841 generally cover the same facilities—surface impoundments containing coal ash. The federal rule includes new and existing landfills and surface impoundments, including those off-site. 40 C.F.R. § 257.50(b). The federal rule covers inactive surface impoundments located at electric utilities that are still producing power. The federal rule does not apply to surface impoundments if the electric utilities ceased producing power by October 19, 2015. 40 C.F.R. §257.50(e).

In its amended proposal, the Agency seeks to clarify who must follow Part 841: those who own or operate a CCW surface impoundment at an active or inactive electric utility or independent power producer. The Agency also proposes to exclude landfills, any surface impoundments with a site-specific rule for closure under 35 Ill. Adm. Code 840, those surface impoundments used to collect stormwater only, and those CCW surface impoundments not subject to the federal rule that have commenced closure prior to the effective date of Part 841 under an Agency approved construction permit, groundwater management zone, or compliance commitment agreement.

Out of the 24 electric utility facilities in Illinois, Illinois EPA has identified the following facilities as having surface impoundments that are exempt under the federal rule: Crawford, Vermillion, Meredosia, Hutsonville, Venice and Pearl. Four of the six facilities—Crawford<sup>1</sup>, Pearl<sup>2</sup>, Venice<sup>3</sup> and Hutsonville<sup>4</sup>—have been working with Agency on closing their ponds, and these facilities are in the final stages of closure. The Agency proposes to exempt these four sites from Part 841 because (1) they are not subject to the federal rule; (2) the Agency has already approved closure and post closure care; and (3) the Agency will monitor and ensure adequate

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<sup>1</sup> The CCW surface impoundments at Crawford were closed under a compliance commitment agreement by removal of all CCW.

<sup>2</sup> Pearl closed its CCW surface impoundment under a compliance commitment agreement. The CCW surface impoundment closed with 40 mil HDPE synthetic cover and three foot thick vegetative protective layer. This cover system exceeds the federal minimum standards. Post-closure care plan approved by the Agency requires cover maintenance, groundwater monitoring for a minimum of 14 years post-closure monitoring.

<sup>3</sup> Venice completed closure under a GMZ pursuant to 35 Ill. Adm. Code 620 in 2012. Venice must maintain an NPDES permit for the discharge of non-contact storm water from the closed ash ponds because the Mississippi River levee system was an integral part of the ponds. The Ponds were closed with a 40 mil LLDPE synthetic cover, geo-net drainage layer and a three foot thick vegetative soil protective layer. This cover system exceeds the federal minimum standards. The Post-closure care plan approved by the Agency requires cover maintenance and groundwater monitoring until 620 groundwater standards are met with a minimum of 14 years post-closure monitoring.

<sup>4</sup> Hutsonville closed Pond D under 35 Ill. Adm. Code 840. In 2015, the Agency issued a construction permit for the closure of Ponds A, B, C and Bottom Ash. Ponds B, C and Bottom Ash were closed by removal, and the CCW was relocated to Pond A, which is closing with a 40 mil HDPE synthetic cover and three foot thick vegetative protective layer. This cover system exceeds the federal minimum standards. Post-closure care plan approved by the Agency requires cover maintenance and groundwater monitoring until the Part 620 groundwater quality standards are met with a minimum of 10 years post-closure monitoring.

post-closure care through the groundwater management zone, the Part 620 groundwater quality standards and enforcement provisions of the Act. These sites should be treated differently because they already have an Agency approved closure plan and they are not bound by the federal rule's post-closure care requirements or groundwater quality standards. Illinois EPA is confident that all remedial action performed at these sites will be in accordance with state law and will meet or exceed the federal standards.

**B. The Agency's Proposed CCW Surface Impoundment Program**

The CCW surface impoundment program the Agency proposes in Part 841 relies on two existing regulatory tools: groundwater management zones under Part 620 and permits under the Part 309. To date, the Agency has successfully carried out the purposes of the Act by utilizing these tools, and these tools are sufficient to regulate CCW surface impoundments in Illinois. The regulatory gap identified by the Agency in its Statement of Reasons can and should be filled by Board rules that explicitly allow for the use of groundwater management zones for corrective action, require construction permits for corrective action and closure, and require operating permits for post-closure care.

Proposed Section 841.120 states that groundwater management zones may be used when a CCW surface impoundment causes or contributes to a violation of the groundwater quality standards. The procedures for obtaining and maintaining a groundwater management zone for CCW surface impoundments are found in 35 Ill. Adm. Code 620.250, and require the owner or operator to undertake adequate corrective action. The Agency's amended proposal specifies that the closure may be performed as corrective action under a groundwater management zone. The Agency's proposal does not require an owner or operator to obtain a groundwater management zone, but the Agency anticipates facilities will obtain a groundwater management zone to avoid

enforcement; when the owner or operator obtains a groundwater management zone, he or she would have an alternative groundwater quality standard during the pendency of the corrective action pursuant to Section 620.450. The Agency's proposal in Section 841.120(c) contains a list of information that must be submitted to the Agency when an owner or operator of a CCW surface impoundment chooses to apply for a groundwater management zone.

Under the Agency's proposed CCW surface impoundment program, the Agency envisions the groundwater management zone process as the first opportunity for Agency review of proposed corrective action and closure. When a violation of the groundwater quality standard is detected, the owner or operator will most likely first seek a groundwater management zone to avoid continued violation of the Board's rules. As this will be the first opportunity for Agency review, the Agency believes it should solicit public comments at this stage. The public participation in the amended proposal (Section 841.125) is the same as the July 2014 draft except that it is now tied to groundwater management zone applications instead of specifically to closure plans or corrective action plans.

After obtaining a groundwater management zone, the owner or operator of the CCW surface impoundment must obtain a construction permit from the Agency before commencing corrective action or closure. The Agency is proposing a construction permit requirement instead of proposing design criteria. This permitting program allows the Agency to ensure that the federal minimum design standards in the federal rule are being met in each case. In instances when the minimum federal requirements may result in a violation of the Act or Board rules, the Agency may, pursuant to Section 39 of the Act, be more stringent than the federal minimum standards and may impose stricter design standards or conditions necessary to accomplish the purposes of Act. The Agency does not want the Board to adopt the minimum federal



requirements into its regulations because it would like to be more stringent in instances where the federal design standards will not result in compliance with the Board's groundwater quality standards in Part 620. For example, the Agency will require corrective action and/or closure for violations of the state's groundwater quality standards in Part 620 which are not included in the federal rule.

The Illinois EPA proposes requiring all CCW surface impoundments subject to Part 841 to be operated pursuant to a state operating permit for the duration of post-closure care. The state operating permit will incorporate the minimum federal requirements, including groundwater monitoring, inspections, and annual reporting. The groundwater monitoring requirements contained in the operating permit must be at least as stringent as the federal rule. The operating permit must be maintained throughout post-closure care—30 years if the CCW surface impoundment is capped or until surface impoundment is removed and the groundwater quality standards have been met. Illinois EPA proposes a state operating permit instead of a National Pollutant Discharge Elimination System Permit because not all CCW surface impoundments, especially ones that have been capped, will have a discharge.

The Agency's proposal does not contain details on how to obtain a state construction or operating permit, as these details are contained in 35 Ill. Adm. Code 309. The Agency excludes public participation of the construction and operating permits because these permits typically do not have public participation under Part 309 and because the public will have an opportunity to comment on any proposed corrective action or closure under the groundwater management zone application process. Additionally, under the Act, the Agency must take a final action on the construction and operating permit applications within 90 days; this short time frame is not conducive to meaningful public participation. All Agency's decisions on the groundwater

management zones, state construction or operating permit issued by the Agency can be appealed to the Board by the owner or operator of the CCW surface impoundment.

The Illinois EPA crafted its CCW surface impoundment program and drafted the amended proposal to alleviate the uncertainty surrounding the federal rule. Additional changes to the federal rule may result from the pending appeal, which is still being briefed and may not be concluded for another year. Also, during the course of the federal rule appeal, the U.S. EPA will conduct two rulemakings as a result of the settlement. These two new rules, once finalized by U.S. EPA, may also be appealed. Pending federal legislation could also substantively change the federal rule. A federal rule governing CCW surface impoundments will exist following the appeals, but is not clear what provisions that rule will contain. The Illinois EPA proposes a flexible approach that avoids linking Part 841 to specific substantive components of the challenged federal rule. It allows all regulated parties to comply with existing law through a clear and concise state regulatory structure.

### **C. Groundwater Quality Standards**

A significant difference between the federal rule and Illinois' law is the groundwater quality standards. The Board's groundwater quality standards in Part 620 are very similar to but not identical with the federal groundwater protection standards. Overall, the Board's groundwater quality standards have more constituents than those contained in the federal rule. Illinois, however, does not have a standard for lithium and molybdenum, where the federal rule's standard is background. For lead and cobalt, Illinois has a numeric standard where the federal rule's standard is background. The groundwater quality standard in Illinois for radium 226 and 228 is higher than the federal rule's standard.

Unlike the federal rule, Illinois has different classes of groundwater and different groundwater quality standards apply in each class. A CCW surface impoundment is a potential primary source, and the groundwater which underlies a potential primary source is considered Class IV. 35 Ill. Adm. Code 620.240(e). Under Class IV, the groundwater quality standard is the existing concentration. 35 Ill. Adm. Code 620.440(a). The Class IV groundwater under a CCW surface impoundment extends a lateral distance of 25 feet from the edge of surface impoundment or to the property boundary, whichever is less, and to a depth of 15 feet from the bottom of the surface impoundment or the land surface, whichever is greater. Outside the Class IV groundwater, the class of groundwater must be either Class I, II or III. See 35 Ill. Adm. Code 620 Subpart B. Compliance with the groundwater quality standards of Class I, Class II and Class III groundwater begins at the outermost edge of the Class IV boundary. 35 Ill. Adm. Code 620.505(a)(2); 35 Ill. Adm. 620.240(e)(1). Because Class IV groundwater quality standards are the existing concentrations, the Agency determines compliance with the Class I, II or III standards at a lateral distance of 25 feet from the edge of the surface impoundment and a depth of 15 feet below the surface impoundment. The compliance point under the federal rule, however, is the waste boundary.

To make Illinois' groundwater quality standards for CCW surface impoundments as stringent as the federal rule, the Agency proposes changing the Class IV groundwater quality standards to match the standards in the federal rule and moving the point of compliance to the edge of the waste boundary. In proposed Section 841.115(a), the Illinois EPA states that the Class I, II and III standards of Part 620 apply to CCW surface impoundments. In a separate rulemaking, the Agency plans to propose that Part 620 be updated to match the groundwater quality standards in the federal rule. In proposed Section 841.115(b)(1) and (2), the Agency

proposes to change the Class IV groundwater standards for antimony, arsenic, barium, beryllium, cadmium, chromium, cobalt, fluoride, lead, lithium, mercury, molybdenum, selenium, thallium, radium 226 and 228 combined to match the federal groundwater quality standards. In proposed Section 841.115(b)(3), the Illinois EPA intends to clarify that for any constituent not listed in (b)(1), the groundwater quality standard is the existing concentration.

The Agency does not intend previously granted groundwater management zones to be changed, amended or redone once amended proposed Part 841 becomes effective. However, the Agency will conduct all future reviews of existing groundwater management zones at CCW surface impoundments based on the new groundwater quality standards adopted in Part 841. After the adopting of groundwater quality standards consistent with the federal rule, it is possible that a change or amendment to an existing groundwater management zone will be necessary.

### **III. OUTREACH**

As discussed in the Illinois EPA's Status Report, filed simultaneous herewith, the Agency circulated a proposed draft of amendments to the Agency's pending Part 841 proposal on April 19, 2016. See Illinois EPA's Status Report, Exhibit A, July 15, 2016. The Agency received eight comments from stakeholders and 1949 comments from the public. Illinois EPA reviewed and considered all comments received. The Agency made changes to proposed Sections 841.100, 841.105, 841.115, and 841.130 based on the comments received.

Regarding proposed Section 841.100, the Agency received comments that the purpose section needed to be revised to ensure implementation consistent with the federal rule. The Agency's intent is that groundwater management zones and permits issued under Part 841 be at least as stringent as the federal rule. Therefore, the Agency added language clarifying its intended purpose:

Construction permits, operating permits and groundwater management zones issued pursuant to this Part must be at least as stringent as~~This part is intended to work in conjunction with~~ the federal requirements found in "Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments," 40 C.F.R. Part 257, Subpart D.

The Agency received numerous comments that the Part 841 should apply to active sites only. It also received numerous comments that Part 841 should apply to both inactive and active sites. The Agency believes Part 841 should apply to both active and inactive sites; therefore, it added "active and inactive" to proposed Section 841.105:

- a) Except as specified in subsection (b) of this Section, this Part applies to all surface impoundments containing coal combustion waste at active or inactive electric utilities and independent power producers.

Additionally, the Agency revised the Section 841.105(b)(4) exception. During the stakeholder outreach meeting, the Agency realized that the (b)(4) exception was confusing and it was unclear if closure had to be completed before the effective date of Part 841 or if the owner or operator just needed to obtain a construction permit or groundwater management zone. The Agency intended the (b)(4) exception to apply to any owner or operator who had commenced closure before the effective date of Part 841. Therefore, the Agency changed the language as follows:

- 4) not subject to 40 C.F.R. Part 257 and that has commenced~~that completed~~ closure of the CCW surface impoundment prior to {INSERT EFFECTIVE DATE OF RULES} under an Agency approved construction permit application, groundwater management zone or compliance commitment agreement as specified in a~~construction permit or groundwater management zone approved by the Agency or state construction permit issued by the Agency prior to {INSERT EFFECTIVE DATE}; and~~

The Agency received numerous comments that the groundwater quality standards proposed in Section 841.115 did not match the federal rule because under the federal rule, the groundwater quality standard is background if background was higher than the Maximum Contaminant Level. The Agency agreed and added the following language to subsection (b)(2):

For the constituents for which the background concentration is higher than the groundwater quality standard listed in subsection (b)(1), the background concentration shall be the groundwater quality standard.

Based on the comments received, the Agency also added clarifying language to subsection (b) that the groundwater quality standard for constituents not listed in subsection (b)(1) (the federal appendix IV constituents) are set forth in Section 620.440 (existing concentrations).

- 3) For constituents not listed in subsection (b)(1), the groundwater quality standard are set forth in 35 Ill. Adm. Code 620.440.

Finally, the Agency added a requirement that background, for the purposes of this section, be determined as required by the federal rule:

- d) For the purposes of subsection (b), background shall be determined in accordance with 40 C.F.R. 257.91(a).

The Agency received comments that the length of the operating permit requirement in proposed Section 841.130 did not account for clean closures. The Agency agreed and added the following language modeled from 40 C.F.R. § 257.102(c).

- c) Owners or operators of CCW surface impoundments must maintain an operating permit for following time periods:
- 1) Closure when leaving CCW in place: 30 years after closure of the CCW surface impoundment has been completed, or until the groundwater quality standards in Section 841.115(b) have been met, whichever is later; or
  - 2) Closure by removal of CCW: until all CCW has been removed and properly disposed or been beneficially used, final grading has been completed, and any areas affected by surface releases from the CCW surface impoundment have been removed and the groundwater quality standards in Section 841.115(b) have been met.

#### **IV. ILLINOIS EPA'S AMENDED PROPOSAL**

A section-by-section narrative summary of the Agency's amended proposal follows.

**Section 841.400 Purpose**

The stated purpose of the Agency's proposal is to set forth requirements for CCW surface impoundments at electric utilities and independent power producers. Agency issued construction permits, operating permits and groundwater management zones must be as stringent as the federal rule.

**Section 841.105 Applicability**

Illinois EPA proposes that this Part is applicable to any CCW surface impoundment at an active or inactive power electric utility or independent power producer. The following are excluded from Part 841: landfills, CCW surface impoundments closed under a site specific rule; surface impoundments used only to collect stormwater, any CCW surface impoundments not subject to the federal rule that has commenced closure under an Agency approved compliance commitment agreement, construction permit or groundwater management zone before the rules become effective.

**Section 841.110 Definitions**

In this section, the Agency proposes defining the following terms: Agency, Board, coal combustion waste, facility, groundwater, operator, owner, and surface impoundment. The proposed definition of facility, operator, and surface impoundment are taken directly from the federal rule. The terms “coal combustion waste” and “groundwater” have the same definition as found in the Act. The term “owner” is taken directly from 35 Ill. Adm. Code 807.104.

**Section 841.115 Ground Water Quality Standards**

The Board's current groundwater quality standards in Part 620 conflict with the federal rule in two ways. First, some of the federal groundwater quality standards are either not listed in Part 620, or if they are listed, they are not as stringent. Second, the compliance point under the federal rule is the waste boundary. The Agency's proposed language in this section makes Illinois groundwater quality standards as stringent as the federal rule; the Agency proposes adopting Class IV groundwater quality standards for the federal rule constituents and moving the point of compliance to the edge of the waste boundary.

**Section 841.120 Groundwater Management Zone**

The Illinois EPA intends to do three things in this section. First, it wants to clarify that groundwater management zones can be used to close a facility that has a groundwater quality standards violation. In light of the Board's order in *In the Matter of: Petition of Ameren Energy Generating Company for Adjusted Standards from 35 Ill. Adm. Code parts 811, 814 and 815*, AS 09-1, which concluded that "a site-specific rule is the appropriate source of regulatory relief under which to close Ameren's [CCW surface impoundment]," the Illinois EPA feels it is necessary to clarify in Part 841 that CCW surface impoundments may be closed under a groundwater management zone.

Second, the Agency proposes that groundwater management zones contain a groundwater monitoring plan and corrective action plan, which may include closure. The corrective action plan must be designed to achieve compliance with groundwater quality standards in proposed Section 841.115.

Third, during the pendency of the stay in the above captioned rulemaking, the Agency received questions from owners and operators of CCW surface impoundments about the required contents of a groundwater management zone application in light of the



requirements in the federal rule. To provide clarity to the regulated community, the Agency proposed Section 841.120 which lists information that must be included in a groundwater management zone application: facility information, identification of units present at the facility, maps and drawings of the facility, groundwater classifications at the facility, identification of chemical constituents released to groundwater, schedule for investigation of the release, results of soil testing and groundwater monitoring, description of the selected remedy, results of groundwater monitoring, description of the fate and transport of contaminants over time, explanation of monitoring post corrective action, and any other information the Agency needs in its review of the groundwater management zone application .

**Section 841.125 Public Notice for Groundwater Management Zone Applications**

The proposed public notice in this section is identical to the language proposed by the Agency in the July 2014 draft, Section 841.165.

**Section 841.130 Construction and Operating Permit**

This proposed section contains three requirements. Owners and operators must (1) obtain a state construction permit before implementing corrective action or closure of a CCW surface impoundment; (2) obtain a state operating permit before operation of the a CCW surface impoundment; and (3) maintain a state operating permit for a period of 30 years after closure when the CCW is left in place or until the groundwater quality standards have been met when all the CCW has been removed.

**V. TECHNICAL FEASIBILITY AND ECONOMIC REASONABLENESS**

The amended proposal does not require installation of any particular technology, and therefore, the Agency does not believe it to be technically infeasible or economically

unreasonable. To the contrary, removing the duplicate regulation of the Agency's initial proposal and the federal rule makes the amended proposal more efficient, saving the regulated community time and money and reducing overall compliance costs. The proposed amendments also provide regulatory clarity by identifying the components of Illinois EPA's proposed CCW Surface Impoundment Program.

If the Agency's proposal is adopted, CCW surface impoundments will be regulated in Illinois by groundwater management zones, construction permits and operating permits. The proposed amendments also simplify the groundwater quality standards applicable to CCW surface impoundments by changing Illinois' standards to match the federal rule.

#### **VI. TESTIMONY AND HEARINGS**

The Agency does not believe further testimony or a hearing on the Agency's amended proposal is necessary, but will prefile testimony on its amended proposal or provide any other information upon request. A hearing and testimony is not necessary because the record before the Board supports the Agency's proposed changes. Instead of a hearing, the Illinois EPA believes the Board should hold a comment period.

#### **VII. PUBLISHED STUDY OR RESEARCH REPORT**

Section 102.202(e) of Title 35 of the Illinois Administrative Code requires the regulatory proposal to include “[a] descriptive title or other description of any published study or research report used in developing the rule.” Subsection 102.202(k) requires “a complete justification for the inapplicability or unavailability” of any information required under this 122.202. Neither a research report nor a published study was used in developing amended proposal.

**VIII. CONCLUSION**

For the above stated reasons, the Illinois EPA respectfully submits its amended proposal, and requests the Board adopt its amended proposal in its entirety as submitted.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/Joanne M. Olson  
Joanne M. Olson  
Assistant Counsel  
Division of Legal Counsel

1021 N. Grand Ave. East  
P.O. Box 19276  
Springfield, IL 62794-9276  
(217) 782-5544

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TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE G: WASTE DISPOSAL  
CHAPTER I: POLLUTION CONTROL BOARD  
SUBCHAPTER j: COAL COMBUSTION WASTE SURFACE IMPOUNDMENTS

PART 841  
COAL COMBUSTION  
WASTE SURFACE IMPOUNDMENTS AT POWER GENERATING FACILITIES

SUBPART A: GENERAL

Section	
841.100	Purpose
841.105	Applicability
841.110	Definitions
841.115	Groundwater Quality Standards
841.120	Groundwater Management Zone Application
841.125	Public Notice
841.130	Construction and Operating Permit
841.135	Severability

AUTHORITY: Implementing Sections 12 and 22 of the Environmental Protection Act [415 ILCS 5/12 and 22] and authorized by Sections 13, 22, 27, and 28 of the Environmental Protection Act [415 ILCS 5/13, 22, 27, and 28].

SOURCE: Adopted in R\_\_ - \_\_ at \_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART A: GENERAL

**Section 841.100 Purpose**

This Part establishes requirements for corrective action and closure of surface impoundments containing coal combustion waste at electric utilities and independent power producers. Construction permits, operating permits and groundwater management zones issued pursuant to this Part must be at least as stringent as the federal requirements found in "Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments," 40 C.F.R. Part 257, Subpart D.

**Section 841.105 Applicability**

- a) Except as specified in subsection (b) of this Section, this Part applies to all surface impoundments containing coal combustion waste at active or inactive electric utilities and independent power producers.
- b) This Part does not apply to any surface impoundment:

- 1) operated under a solid waste landfill permit issued by the Agency;
- 2) operated pursuant to procedural requirements for a landfill exempt from permits under 35 Ill. Adm. Code 815;
- 3) subject to 35 Ill. Adm. Code 840;
- 4) not subject to 40 C.F.R. Part 257 and that has commenced closure of the CCW surface impoundment prior to {INSERT EFFECTIVE DATE OF RULES} under an Agency approved construction permit application, groundwater management zone or compliance commitment agreement.
- 5) used to only collect stormwater runoff.

### **Section 841.110 Definitions**

Unless otherwise specified, the definitions of the Environmental Protection Act (Act) [415 ILCS 5] apply to this Part. The following definitions also apply:

"Agency" means the Illinois Environmental Protection Agency.

"Board" means the Illinois Pollution Control Board.

*"Coal combustion waste" or "CCW" means any fly ash, bottom ash, slag, or flue gas or fluid bed boiler desulfurization by-products generated as a result of the combustion of:*

- (1) coal, or*
- (2) coal in combination with: (i) fuel grade petroleum coke, (ii) other fossil fuel, or (iii) both fuel grade petroleum coke and other fossil fuel, or*
- (3) coal (with or without: (i) fuel grade petroleum coke, (ii) other fossil fuel, or (iii) both fuel grade petroleum coke and other fossil fuel) in combination with no more than 20% of tire derived fuel or wood or other materials by weight of the materials combusted; provided that the coal is burned with other materials, the Agency has made a written determination that the storage or disposal of the resultant wastes in accordance with the provisions of item (r) of Section 21 would result in no environmental impact greater than that of wastes generated as a result of the combustion of coal alone, and the storage disposal of the resultant wastes would not violate applicable federal law. [415 ILCS 5/3.140]*

"Facility" means all contiguous land and structures, other appurtenances, and improvements on the land, used for treating, storing, disposing or otherwise conducting solid waste management of CCW. A facility may consist of several treatment, storage, or disposal operational units.

*"Groundwater" means underground water which occurs within the saturated zone and geologic materials where the fluid pressure in the pore space is equal to or greater than atmospheric pressure. [415 ILCS 5/3.210]*

"Operator" means the person responsible for the operation and maintenance of a surface impoundment.

"Owner" means a person who has an interest, directly or indirectly, in land, including a leasehold interest, on which a person operates and maintains a unit. The "owner" is the "operator" if there is no other person who is operating and maintaining a surface impoundment.

"Surface impoundment" means a natural topographic depression, man-made excavation, or diked area, which is designed to hold an accumulation of CCW and liquids, and the unit treats, stores or disposes of CCW.

#### **Section 841.115 Groundwater Quality Standards**

- a) The owner or operator shall comply with the groundwater standards in 35 Ill. Adm. Code 620 except as provided in subsection (b).
- b) When any CCW surface impoundment is located above or within Class IV groundwater:
  - 1) The Class IV groundwater quality standards for the following chemical constituents shall be as follows:

Constituent	Standard (mg/L unless otherwise noted)
Antimony	0.006
Arsenic	0.010
Barium	2
Beryllium	0.004
Cadmium	0.005
Chromium	0.1
Cobalt	background
Fluoride	4.0
Lead	background
Lithium	background
Mercury	0.002
Molybdenum	background

Selenium	0.05
Thallium	0.002
Radium 226 and 228 combined	5 pCi/L

- 2) For the constituents for which the background concentration is higher than the groundwater quality standard listed in subsection (b)(1), the background concentration shall be the groundwater quality standard.
- 3) For constituents not listed in subsection (b)(1), the groundwater quality standard are set forth in 35 Ill. Adm. Code 620.440.
- c) The compliance point for the chemical constituents listed in subsection (b)(1) is at the edge of the waste boundary.
- d) For the purposes of subsection (b), background shall be determined in accordance with 40 C.F.R. 257.91(a).

**Section 841.120 Groundwater Management Zone**

- a) When a surface impoundment containing coal combustion waste causes or contributes to a violation of the groundwater quality standards set forth in Section 841.115 of this Part, the owner or operator of the surface impoundment may seek a groundwater management zone pursuant to 35 Ill. Adm. Code 620.250.
- b) All groundwater management zones approved by the Agency must contain a groundwater monitoring plan and a corrective action plan, which may include closure, designed to achieve compliance with the groundwater quality standards set forth in Section 841.115.
- c) Except as provided in subsection (d), groundwater management zones shall be issued pursuant to 35 Ill. Adm. Code 620.250.
- d) All groundwater management zone applications submitted pursuant to subsection (a) must contain the following:
  - 1) Facility information, including name, address and county where the surface impoundment is located;
  - 2) Identification of specific units (operating or closed) present at the facility:
    - A) CCW landfill;
    - B) CCW surface impoundment;
    - C) waste pile; or

- D) other units that may be causing groundwater contamination.
- 3) Maps and engineering drawings showing the facility, surface impoundments and other units at the facility.
- 4) Statement of the groundwater classification(s) at the facility.
- 5) Identification of the chemical constituents released to the groundwater.
- 6) Description of how groundwater will be monitored to determine the rate and extent of the release, and if it has migrated off site.
- 7) Schedule for investigation of the extent of the release.
- 8) Results of available soil testing and groundwater monitoring associated with a release from the surface impoundment, locations and depths of samples, and monitoring well construction details with well logs.
- 9) Remedy
  - A) Description of selected remedy and why it was chosen;
  - B) Results of groundwater contaminant transport modeling showing how the selected remedy will achieve compliance with the applicable groundwater standards;
  - C) Description of the fate and transport of contaminants with selected remedy over time; and
  - D) A statement of how groundwater at the facility will be monitored following implementation of the remedy to ensure that the groundwater standards have been attained.
- 10) information requested by the Agency, necessary for its review of the groundwater management zone application.

**Section 841.125 Public Notice for Groundwater Management Zone Applications**

- a) The Agency shall post all applications to create new or modify existing groundwater management zones, submitted pursuant to this Part, on the Agency's webpage for a period not shorter than 30 days.
- b) The Agency shall accept written comments for a period of 30 days beginning on the day the groundwater management zone application is posted on the Agency's webpage.



- c) The Agency is not required to hold a public hearing pursuant to 35 Ill. Adm. Code 164 or prepare a written response to comments received.
- d) The Agency shall take any comments received into consideration in making its final decision and shall post the final decisions on groundwater management zone application on the Agency's webpage for a period not shorter than 30 days.

**Section 841.130 Construction and Operating Permit**

- a) No person shall implement corrective action or closure of a CCW surface impoundment, or modify a CCW surface impoundment without a construction permit issued by the Agency under 35 Ill. Adm. Code Part 309. Activities requiring a permit under this subsection include but are not limited to the following:
  - 1) constructing the final cover or cap on the surface impoundment;
  - 2) dewatering;
  - 3) pumping and treating groundwater;
  - 4) removal of all the waste; and
  - 5) Slurry walls or other groundwater containment structures;
- b) No person shall cause or allow the use or operation of CCW surface impoundment without a state operating permit issued by the Agency under 35 Ill. Adm. Code 309.Subpart B. Any CCW surface impoundments without a state operating permit on the {EFFECTIVE DATE OF THE RULE} must obtain a state operating permit within 3 years of {EFFECTIVE DATE OF THE RULE}.
- c) Owners or operators of CCW surface impoundments must maintain an operating permit for the following time periods:
  - 1) Closure when leaving CCW in place: 30 years after closure of the CCW surface impoundment has been completed, or until the groundwater quality standards in Section 841.115(b) have been met, whichever is later; or
  - 2) Closure by removal of CCW: until all CCW has been removed and properly disposed or been beneficially used, final grading and seeding where applicable has been completed, and any areas affected by surface releases from the CCW surface impoundment have been removed and the groundwater quality standards in Section 841.115 have been met.

**Section 841.135 Severability**

If any Section, subsection, sentence or clause of this Part shall be adjudged unconstitutional, void, invalid, or otherwise unlawful, such adjudication shall not affect the validity of this Part as a whole, or any Section, subsection, sentence, or clause thereof not adjudged unconstitutional, void, invalid, or otherwise unlawful.

**CERTIFICATE OF SERVICE**

Joanne M. Olson, Assistant Counsel for the Illinois EPA, herein certifies that she has served a copy of the foregoing NOTICE OF FILING, and ILLINOIS EPA'S MOTION TO AMEND, upon persons listed on the Service List by mailing, unless otherwise noted on the Service List, a true copy thereof in an envelope duly addressed bearing proper first class postage and deposited in the United States mail at Springfield, Illinois on July 15, 2016.

By: /s/Joanne M. Olson

**THIS FILING IS SUBMITTED ELECTRONICALLY AND SERVED ON RECYCLED PAPER**

**SERVICE LIST**

<p>Stephen Sylvester Environmental Enforcement/Asbestos 69 West Washington, St. Suite 1800 Chicago, IL 62706</p>	<p>David Rieser 191 North Wacker Drive Suite 1800 Chicago, IL 60606</p>
<p>Mark A. Bilut McDermott, Will &amp; Emery 227 West Monroe Street Chicago, IL 60606-5096</p>	<p>Christine G. Zeman City of Springfield Office of Public Utilities 800 East Monroe, 4th Floor, Municipal Bldg. East Springfield, IL 62757-0001</p>
<p>Amy Antonioli 233 South Wacker Drive Chicago, IL 60606-6473</p>	<p>Jessica Dexter Environmental Law and Policy Center 35 E. Wacker Drive Suite 1600 Chicago, IL 60601</p>
<p>Jack Darin Sierra Club 70 E. Lake Street Chicago, IL 60601-7447</p>	<p>Ameren Services One Ameren Plaza PO Box 66149 St. Louis, MO 63166</p>
<p>Robert Mool Illinois Department of Natural Resources One Natural Resources Way Springfield, IL 62702-1271</p>	<p>Jason McLaurin Southern Illinois Power Cooperative 11543 Lake of Egypt Road Marion, IL 62959-8500</p>
<p>Exelon Law Department 10 South Dearborn, 49th Floor Chicago, IL 60603</p>	<p>Traci Barkley Prairie Rivers Network 1902 Fox Drive, Suite 6 Champaign, IL 61820</p>
<p>Susan M. Franzetti Nijman Franzetti LLP 10 South LaSalle Street Suite 3600 Chicago, IL 60603</p>	<p>Antonette R. Palumbo Illinois Environmental Regulatory Group 215 E. Adams St. Springfield, IL 62701</p>

Electronic Filing - Received, Clerk's Office : 07/15/2016

<p>Rick Diericx Dynergy Midwest Generation, Inc. 1500 Eastport Plaza Dr. Collinsville IL 62234-6135</p>	<p>Michael Smallwood Consulting Engineer Ameren 1901 Chouteau Avenue St. Louis, MO 63103</p>
<p>Abel Russ Environmental Integrity Project 1000 Vermont Avenue NW Suite 1100 Washington, DC 20005</p>	<p>Electric Energy, Inc. 2100 Portland Road P.O. Box 165 Joppa, IL 62953</p>
<p>Kincaid Generation LLC P.O. Box 260 Kincaid, IL 62540</p>	<p>Prairie Power, Inc. P.O. Box 10 Pearl, IL 62361</p>
<p>Prairie State Generating Company 4190 County Highway 12 Marissa, IL 62257</p>	<p>Elizabeth Quirk-Hendry General Counsel East Region NRG Energy, Inc. 211 Carnegie Center Princeton, NJ 08540</p>
<p>Walter Stone Vice President NRG Energy, Inc. 8301 Professional Place, Suite 230 Landover MD 20785</p>	<p>Jennifer M. Martin Heplerbroom, LLC 3150 Roland Avenue Springfield, IL 62703</p>
	<p>Tim Fox Illinois Pollution Control Board James R. Thompson Center 100 W. Randolph Suite 11-500 Chicago, Illinois 60601</p>