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ILLINOIS POLLUTION CONTROL BOARD
February 5, 2014

STATE OF ILLINOIS
Pollution Control Board

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



ORIGINAL

HEARING OFFICER ORDER

On October 28, 2013, the Illinois Environmental Protection Agency (Agency) filed a proposal to add Part 841 to the Board's Subtitle G waste disposal regulations. In an order dated November 7, 2013, the Board accepted the Agency's proposal for hearing.

In an order dated December 6, 2013, the hearing officer scheduled the first hearing to begin on Wednesday, February 26, 2014, in Springfield. That hearing officer order also set a deadline of January 15, 2014, for the Agency to pre-file testimony for the first hearing. In order to expedite the first hearing and make it more efficient, the hearing officer order also set a deadline of Wednesday, February 5, 2014, to pre-file written questions based on the Agency's pre-filed testimony.

On January 15, 2014, the Agency timely pre-filed the testimony of Mr. Richard P. Cobb, P.G.; Mr. William E. Buscher, P.G.; Mr. Lynn E. Dunaway, P.G.; and Ms. Amy L. Zimmer.

The Board and its staff have reviewed the proposal and testimony submitted by the Agency. The Board poses the questions attached to this order as Attachment A. The Board directs the Agency to prepare to respond to them at the first hearing beginning on February 26, 2014. The Board may raise follow-up questions in the course of the first hearing.

IT IS SO ORDERED.

Timothy J. Fox, Hearing Officer
Illinois Pollution Control Board
100 W. Randolph St., Suite 11-500
Chicago, Illinois 60601
312-814-6085
tim.fox@illinois.gov

Attachment A to Hearing Officer Order of February 5, 2014

Statement of Reasons (SR):

1. The Agency noted that it is “aware of 89 CCW surface impoundments at power generating facilities. Some of [the] surface impoundments are lined with impermeable materials, while others are not.” SR at 3. The Agency’s Technical Support Document (TSD) identified 83 surface impoundments at 24 power generating facilities. TSD at 1.

Attachment C to the Statement of Reasons states that “[t]here 24 power plants in Illinois with a total 83 impoundments. . . . There are also older ash ponds at many of these facilities.” SR, Attachment C at 1. Proposed Section 841.105 specifically refers to “surface impoundments”.

- a) Please clarify the number of CCW surface impoundments and power generating facilities.
 - b) Does the number of CCW surface impoundments include both primary and polishing ponds?
 - c) How many of these impoundments are still receiving CCW wastes?
 - d) How many of these impoundments would be subject to the proposed regulations?
 - e) Do the proposed rules apply to the other “older ash ponds” mentioned in Attachment C? SR, Attachment C. If not, what rules, if any, would apply?
 - f) Please comment on the number of impoundments that are lined with impermeable materials.
2. The Agency stated that “CCW can contain antimony, arsenic, barium, boron, beryllium, cadmium, chromium, chloride, iron, lead, mercury, manganese, nickel, selenium, silver, sulfate, and thallium.” SR at 3. The TSD notes that nationwide studies indicate the presence of inorganic constituents in CCW. TSD at 2. Please comment on whether any testing has been done by the power generating facilities to show that organic compounds are not a concern with the disposal of CCW.
3. The Agency stated that, “[u]nder the ash impoundment strategy, the Illinois EPA identified facilities with CCW surface impoundments, requested groundwater monitoring well data, requested a potable water system surveys, requested hydrogeologic site assessments, required the installation of groundwater monitoring and conferred with the Department of Natural Resources on dam safety.” SR at 5, citing *id.*, Attachment B. “The information gathered as a result of the Illinois EPA’s ash impoundment strategy shows that 14 facilities have violations of the numerical groundwater quality standards on-site.” SR at 5.
 - a) Please clarify whether facilities with CCW surface impoundments identified as a part of the ash impoundment strategy included the 83 impoundments mentioned

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in the TSD. If not, please explain why only a subset of the 83 units was considered for further investigation under the Agency's strategy.

- b) How many of the facilities identified under the Agency strategy were already monitoring groundwater and how many facilities installed groundwater monitoring wells to comply with the Agency's strategy?
 - c) Please clarify whether all identified facilities provided the Agency with the requested information. If not, comment on the status of the facilities with surface impoundments that have not provided the requested information.
4. On page 5, the Agency noted that, "[c]orrective actions, including groundwater management zones, compliance commitment agreements, and consent orders, have been initiated at 11 of these facilities."

The TSD stated that "[d]escriptive statistics and box plots have been developed for the IOC contaminants at 13 power generating facilities relative to the applicable Illinois Pollution Control Board's (Board) groundwater quality standards (GWQS) at 35 Ill. Adm. Code 620." TSD at 9. Further, the TSD stated that, "[c]ompliance commitment agreements are in place for all 5 Midwest Generation facilities and the Prairie Power Facility to address groundwater contamination issues. The 2 Dynegy facilities and the 4 Ameren facilities were issued Notices of Intent to Pursue Legal Action on February 13, 2013."

- a) Please comment on whether the compliance commitment agreements for the Dynegy and Ameren facilities have been finalized since filing of this rulemaking proposal. If not, please provide the status of those facilities.
 - b) Please provide for the record copies the compliance commitment agreements that are currently in place.
5. The TSD mentioned the Agency's Ash Impoundment Strategy web page at <http://www.epa.state.il.us/water/ash-impoundment/index.html>. TSD at 23. This webpage contains a link to an Agency document entitled "Other Coal Ash Sites – September 2011". (<http://www.epa.state.il.us/water/ash-impoundment/documents/other-coal-ash-sites.pdf>). That document stated that, "[i]n addition to the coal ash impoundments at coal fired electric power plants, the [Agency] also works with a number of other sites with coal combustion residues." Please provide for the record the document entitled "Other Coal Ash Sites – September 2011" to describe the State's other efforts to address coal combustion residuals.
6. The Agency's Ash Impoundment Strategy webpage also contains a link to a more recent version of "Illinois EPA's Ash Impoundment Strategy Progress Report" from October 2011 than Attachment D to the Statement of Reasons. Please submit the more recent document into the record.

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7. The Statement of Reasons, Attachment C, stated that, “[s]ince the early 1990s, new ash ponds (surface impoundments) have been required to be lined. SR, Attachment C at 1. It also stated that “[s]tate construction and operating permits issued in conjunction with [NPDES] permits require surface impoundments to be in compliance with the Illinois groundwater and surface water quality standards including nondegradation requirements. Permit conditions require low permeable liners and groundwater monitoring.” *Id.* at 2.

The TSD stated that “[a] new unit should be properly engineered and designed to prevent contamination. . . .” TSD at 21.

- a) For new CCW surface impoundments described above, was a liner required as a condition the NPDES permit?
- b) Could you please elaborate on what type(s) of liner was required?
- c) How do the liners compare to those in USEPA’s proposed rule at 40 CFR 257.72(a) or 264.1306(b)?
- d) The proposed rules do not contain a requirement for new units to have a liner. Should this requirement be included in the proposed rule?
- e) Have there been any new CCW surface impoundments permitted in the last few years?
- f) Do the Agency anticipate that there will be new CCW surface impoundments in the future?
- g) Should the proposed rules provide design criteria for new CCW surface impoundments?

Technical Support Document:

8. Please provide a clearer, color copy of the following figures from the TSD:
- a) Figure 1 Illinois Potential for Aquifer Recharge Map with Power Generating Facilities,
 - b) Figure 3 All CWS Wells and the Probabilistic Network,
 - c) Figure 4 Inorganic water quality data within Illinois Sand and Gravel Aquifers, and
 - d) Figure 5 Inorganic water quality data within Illinois Shallow Bedrock Aquifers. TSD at 3, 6-8.

USEPA’s Proposed 40 C.F.R. Part 257

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9. In the Statement of Reasons, the Agency explained that the proposed rule was prompted by the need to have closure requirements for CCW surface impoundments. The Agency stated that “[t]he proposed rule ensures that CCW surface impoundments are closed in a manner that minimizes impacts to the environment including groundwater, surface water and air medias.” SR at 22. In addition to unit closures, Section 841.105(a)(1) indicates that the proposed rule also applies to units that are actively in operation on or after the effective date of the rules, which would include new units. Although the Agency characterizes the purpose of the proposed rule is to “prevent waste and degradation of the groundwater” (SR at 7), the proposal does not appear to address other issues for new or active units, such as design criteria, fugitive emissions, and stormwater run-off controls. The Agency stated that “[m]any of these impoundments are permitted through an NPDES permit or state operating permit issued by the Agency pursuant to Subtitle C.” SR at 8. Attachment C stated that, “[s]ince the early 1990s, new ash ponds (surface impoundments) have been required to be lined. . . . Permit conditions require low permeable liners. . . .” SR, Attachment C at 1, 2.

Please explain why the Agency’s proposed rule does not appear to include sections similar to the following sections in USEPA’s proposed rule for new, active, or expanding surface impoundments or whether the Agency plans to propose requirements in the future.

- a) 40 CFR 257.71 (264.1303) Design criteria for existing CCR surface impoundments,
 - b) 40 CFR 257.72 (264.1303) Design criteria for new CCR surface impoundments and lateral expansions,
 - c) 40 CFR 257.80 (264.1308) Air criteria,
 - d) 40 CFR 257.81 (264.1303(g)) Run-on and run-off controls, and
 - e) 40 CFR 257.82 (264.1307) Surface water requirements. *See* 75 Fed. Reg. 35230 (June 21, 2010).
10. Regarding fugitive emissions from CCW surface impoundments or operations, the Agency stated in “Other Coal Ash Sites – September 2011” that,
- [a]s part of the recent NPDES permit renewal process for this facility, the applicant has been required to develop and implement an updated fugitive dust control plan. Prior to re-issuance of a renewed NPDES permit for this facility, appropriate conditions will be incorporated to address fugitive dust issues based on the good mining practices of 35 Ill. Adm. Code 406.204 [Mine Waste Effluent and Water Quality Standards, Good Mining Practices] and the dust control plan currently being developed.
- a) 35 Ill. Adm. Code 406.204 applies to mines. Could you please elaborate on how the good mining practices of 35 IAC 406.204 address fugitive dust?
 - b) Are conditions for fugitive controls included in the NPDES permits for the CCW surface impoundment units at power generating facilities? If so,

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would you please describe the controls?

- c) Are NPDES permits currently the only mechanism the State has to require control of fugitive dust from power generating facility units or other non-mine related CCW sites?

Dunaway Pre-Filed Testimony

11. On pages 2-3 of your testimony you indicated that the Agency proposed recalculation of background chemical constituent concentrations no less often than every five years, which is less frequent than the recommendation in the Unified Guidance. Would you explain the reason the Agency did not follow the recommendation in the Unified Guidance that you cited in your testimony?

Section 841.105: Applicability

12. Subsection 841.105(a)(1) states that that Part 841 would apply to all surface impoundments at power generating facilities containing [CCW] or leachate from CCW that are operated on or after the effective date of these rules.
 - a) Please clarify whether subsection (a)(1) limits the applicability of Part 841 to new units that have not operated prior to the effective date of Part 841.
 - b) If so, please comment on whether the proposed section 841.105(a)(1) should be revised so that Part 841 would apply to all surface impoundments at power generating facilities containing CCW and/or leachate from CCW?
13. Section 841.105(a)(2) states that Part 841 applies to surface impoundments that are “not operated after the effective date of these rules, but whose coal combustion waste or leachate from coal combustion waste causes or contributes to an exceedence of the groundwater quality standards on or after the effective date of these rules.”
 - a) Please explain whether “not operated after the effective date of the rules” means that an impoundment has stopped receiving CCW or leachate, or the impoundment has been closed in the context of the rules.
 - b) Please clarify whether owner or operators of CCW surface impoundments that are not operated after the effective date of the proposed regulations must demonstrate that coal combustion waste or leachate from coal combustion waste contained in the impoundment is not causing or contributing to an exceedence of the groundwater quality standards to be not subject to the proposed regulations.
14. Section 841.105(b)(1) exempts surface impoundment units operated under a solid waste landfill permit issued by the Agency from the proposed rules.

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- a) Please provide for the record the number of CCW surface impoundments that are currently operating under the solid waste landfill permits. Also, comment on whether the Agency expects the number of CCW impoundments with landfill permits to change with the adoption of the proposed rules.
 - b) Please clarify whether CCW surface impoundments subject to solid waste landfill permits are subject to all operating, closure and post closure care requirements under 35 IAC 811 and 814. If not, please identify the specific requirement under those Parts that apply to CCW surface impoundments. Please provide a copy of a recent landfill permit issued to a CCW surface impoundment to illustrate the requirements applicable to such impoundments under the landfill permit.
15. Section 841.105(b)(2) exempts surface impoundment units operated pursuant to procedural requirements for a landfill exempt from permits under 35 Ill. Adm. Code 815 from the proposed rules.
- a) Please provide for the record the number of CCW surface impoundments that are currently operating pursuant to procedural requirements for solid waste landfills under Part 815. Also, comment on whether the Agency expects the number of CCW impoundments operating under Part 815 to change with the adoption of the proposed rules.
 - b) Please clarify whether CCW surface impoundments operating under Part 815 are subject to all operating, closure and postclosure care requirements under 35 IAC 811, 813 and 814. If not, please identify the specific requirement under those Parts that apply to the CCW surface impoundments. Also, please comment on whether the CCW surface impoundments operating under Part 815 are subject to all recordkeeping and reporting requirements of that Part.
16. Please comment on whether there would be any benefit to transition facilities operating under the nonhazardous solid waste landfill regulations to operating under with the requirements of the proposed CCW surface impoundment requirements.
17. Section 841.105(b)(4) exempts small impoundments meeting liner, accumulation period, and volume limitations. Please clarify whether an owner or operator must demonstrate compliance with the three conditions to qualify for this exemption.
18. Section 841.105(b)(5) exempts surface impoundments “used to only collect stormwater runoff, which does not contain leachate.” Would it be acceptable to the Agency if the proposed language is clarified to indicate that the surface impoundment must not contain any CCW?

Section 841.110: Definitions

19. “Aquifer” and “off-site” are defined in proposed Section 841.110, but are not used in the proposed rule. These appear to be carried over from the Part 840 rules applicable to the

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closure of Hutsonville ashpond. Should these terms be defined in the proposed Section 841 if they are not used?

20. Although the proposed definition of “Aquifer” in Section 841.110 is the same as that in Section 840.104, it is slightly different than the definition that appears in Section 810.103. Should it be the same as in Section 810.103?
21. This Section defines “compliance point” in part as “any point in groundwater designated at a lateral distance of 25 feet from the outer edge of the unit, or property boundary, whichever is less, and a depth of 15 feet from the bottom of the unit.”
 - a) Please clarify whether the definition of “groundwater” at Section 3.210 of the Act applies to this Part. If so, would it be acceptable for the Agency to add the statutory definition of groundwater in this Section?
 - b) Please clarify whether the definition is meant to describe a point at the edge of a three-dimensional zone created by a vertical component 25 feet from the ground level edge of the unit straight down to a horizontal plane at a depth 15 feet below the deepest part of the unit similar to the zone of attenuation under 35 Ill. Adm. Code 810.103 and 811.320(c)? Or, is this part of the definition meant to refer to a three-dimensional zone that follows the contours of the unit, 25 feet horizontally from the outer edge of the sides of the unit at and below the ground surface as well as 15 feet vertically below any point along the bottom of the unit? Please revise the proposed language to clarify the proposed intent.
 - c) Also, please comment on whether groundwater as defined in the Act may be located at depths greater than 15 feet from the bottom of surface impoundment units subject to the proposed rules. If so, would the 15 feet limitation still apply?
22. The proposed definition of “Compliance Point” at Section 841.110 also provides that, “[i]f the owner or operator has a GMZ for the site or unit, compliance point means any point in the groundwater at which a contaminant released from the unit could pass beyond the Agency approved GMZ boundary.”
 - a) Should the reference to the GMZ in the proposed definition include a citation to 35 IAC 620.201(b) and 620.250 for designating and establishing groundwater as a GMZ?
 - b) Please comment on whether the proposed definition should more closely mirror the language of or refer to 35 Ill. Adm. Code 620.505(a)(4), which states that “[c]ompliance with standards at a site is to be determined as follows: . . . (4) For a groundwater management zone, as specified in a corrective action process.” 35 Ill. Adm. Code 620.505(a)(4).
23. Proposed Sections 841.230(b)(3), 841.230(c), and 841.235(a) are based on the presence of a down-gradient monitoring well. However, the proposed definition of compliance

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point does not appear to specifically require such a point to be down-gradient of the unit with respect to the direction of groundwater flow. Please clarify whether the definition of compliance point must also indicate that such a point be located down-gradient of the CCW unit with respect to the direction of ground water flow. If not, please explain how comparisons would be made using down-gradient wells in proposed Sections 841.230(b)(3), 841.230(c), and 841.235(a).

24. The TSD stated that

[t]he leachate definition we are proposing to include under this regulation is generated from the storage of coal combustion waste in a surface impoundment, and is not just stormwater runoff that may have come into contact with fugitive ash. Precipitation moving through a larger quantity of CCW stored in a surface impoundment could produce a larger quantity of leachate and a higher concentration of contaminants that represent a threat to groundwater. TSD at 19-20.

Please clarify whether it is the Agency's position that stormwater runoff that comes in contact with CCW should not be considered as leachate because of lesser quantity and lower concentration of contaminants. If so, does the Agency have any data on chemical characteristics of stormwater runoff at coal-fired power generating facility to support its position?

25. Please comment on whether it would be acceptable to the Agency if the term "Storm", which is defined at Section 841.110, is revised as "25-year, 24-hour Storm" to be consistent with how that term has been proposed in other Board regulations. *See In the Matter of Concentrated Animal Feeding Operations (CAFOs): Proposed Amendments to 35 Ill. Adm. Code 501, 502, and 504, R12-23 (Nov. 7, 2013)*. Also, would it be acceptable to the Agency if the National Weather Service's NOAA Atlas 14-Precipitation Frequency Atlas of the United States, Volume 2, Version 3.0 (2004) is incorporated by reference?

Section 841.115: Abbreviations and Acronyms

26. Proposed Section 841.110 defines "Agency" as the Illinois Environmental Protection Agency. Does the Agency object to removing "Agency" from the abbreviations listed in this proposed section?

Section 841.130: Compliance Period

27. This Section provides that "[t]he compliance period begins when the unit first receives coal combustion waste, or leachate from coal combustion waste, or one year after the effective date of this rule, whichever occurs later, and ends when the post-closure care period ends." Please clarify whether the compliance period applies to all requirements under Part 841 or to specific requirements such as compliance with groundwater standards.

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28. This Section requires an owner or operator to “conduct a hydrogeologic site characterization, establish background values, develop a groundwater monitoring system, and groundwater monitoring plan before the compliance period begins.”
- a) Please clarify whether an owner or operator must comply with the proposed requirements under Subpart B for hydrogeologic site characterization, groundwater monitoring system and groundwater monitoring plan when preparing plans required under this Section.
 - b) Please indicate whether the groundwater monitoring plan, which according to Section 841.210 includes information concerning hydrogeologic characterization, background values and groundwater monitoring system, must be submitted to, and approved by the Agency prior to the beginning of the compliance period. If so, would it be appropriate to include a reasonable deadline in the rules for submission and approval of the groundwater monitoring plan prior to the beginning of the compliance period.
29. This section requires that, “[i]f the owner or operator wishes to use previous site investigations or characterization, plans or programs to satisfy the requirements of this Part pursuant to Section 841.145, the owner or operator must submit the previous investigations, characterizations, plans or programs to the Agency for approval of this Part before the compliance period begins.” Please clarify whether the proposed language must read as “submit the previous investigations, characterizations, plans or programs in accordance with Section 841.140 of this Part to the Agency for approval pursuant to Section 841.145 of this Part before the compliance period begins”.

Section 841.155: Construction Quality Assurance Program

30. Subsection (b)(1) requires that an operator must designate a CQA officer. Would the Agency comment whether that requirement should apply to an owner or operator of a unit?

Section 841.165: Public Notice

31. This Section requires the Agency to post proposed corrective action plans and closure plans on the Agency’s website.
- a) Would you please explain the reason that the proposal does not include newspaper notice?
 - b) In the absence of some sort of direct notice, would you please describe how an interested person would be notified or prompted to go to the Agency’s website for specific details?
 - c) Would you please describe how a person would navigate the Agency’s website to find public notices or posted corrective action or closure plans?

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32. Under subsection (d), the Agency would be required to post its final decision on proposed corrective action plans, closure plans, and modifications to them on its Web page for a period not shorter than 30 days. Under proposed Section 841.500, the period for appeal to the Board if the Agency disapproves a plan or modification or approves it with conditions is 35 days. Would the Agency comment on a requirement that the Agency “shall post its final decisions on the proposed corrective action plans and closure plans, or modifications thereto, on the Agency’s Web page on the postmarked date that the notice is mailed and maintain it there for a period not shorter than 35 consecutive days”?

Section 841.200: Hydrogeologic Site Characterization

33. Please clarify whether an owner or operator is required to prepare a hydrogeologic characterization plan under subsection (a). If so, should that plan be submitted to the Agency for approval in accordance with Section 841.140? If not, please explain the rationale for not requiring the submission of a hydrogeologic investigation plan to the Agency.
34. Please clarify whether an owner or operator will have to submit a hydrogeologic characterization completion report to the Agency under this section. If not, please explain the rationale for not requiring any Agency oversight regarding hydrogeologic characterization.

Section 841.205: Groundwater Monitoring System

35. Proposed subsection 841.205(c)(2) would require monitoring wells that represent groundwater quality at the compliance point(s). “Compliance Point” is defined in proposed subsection 841.110 with a spatial reference to “a lateral distance of 25 feet from outer edge of unit, or property boundary, whichever is less, and a depth of 15 feet from the bottom of the unit.” However, proposed section 841.205(d) requires “Monitoring wells must be located in stratigraphic horizons that are potential contamination migration pathways.” What if the compliance point located pursuant to the spatial reference in proposed 841.110 does not fall within a potential migration pathway? Should proposed subsection 841.205(d) be phrased something like this:
- d) The groundwater monitoring system must include Mmonitoring well(s) ~~must be~~ located in stratigraphic horizons that are potential contamination migration pathways.
- OR
- d) The groundwater monitoring system must include Mmonitoring well(s) ~~must be~~ located in all stratigraphic horizons that are potential contamination migration pathways as identified by the hydrogeologic site characterization conducted pursuant to Section 841.200.
36. Proposed section 841.205(c)(3) states that the groundwater monitoring system must have sufficient wells to “determine compliance” with Part 620. Proposed section 841.210(a)

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states the owner or operator must develop a groundwater monitoring plan to “demonstrate compliance” with Part 620. However, none of these sections or any of the others in the proposal appear specifically to refer to provisions setting forth when and how compliance with the applicable groundwater quality standards would be achieved. Should proposed Subpart B contain a distinct section on “Compliance Determination” similar to 35 Ill. Adm. Code 620.505 Compliance Determination or 840.118 Demonstration of Compliance? Or should the proposal specifically reference 35 Ill. Adm. Code 620.505(a)(5) and (6)?

Section 841.210: Groundwater Monitoring Plan

37. Subsection (e) requires “[a]ll groundwater samples taken pursuant to this Section must be analyzed for the chemical constituents listed in Section 841.215 of this Part by a certified laboratory.” Please clarify whether the samples must be analyzed by a laboratory certified by the Agency. Also, comment on whether it would acceptable to the Agency if samples are analyzed by certified laboratories outside of Illinois.

Section 841.220: Determining Background Values

38. The third subsection, which the Board intends to re-designate as subsection (c), refers to up-gradient wells. However, the proposed rules do not clearly specify whether background values must be established for all monitored wells or only up-gradient wells. Please clarify the proposed intent.

Section 841.225: Statistical Methods

39. Subsection (a) provides that, “[w]hen determining background values and when conducting compliance or assessment monitoring,” the owner or operator must specify statistical methods. Please explain the difference between compliance and assessment monitoring under the proposed regulations.
40. Subsection (c) requires the sample size to “be as large as necessary to ensure with reasonable confidence that a contaminant release to groundwater from a facility will be detected.” Please explain what “reasonable confidence” means statistically in the context of the proposed regulations.

Section 841.235: Annual Statistical Analysis

41. Please explain the rationale for requiring statistical analysis of groundwater monitoring data on an annual basis instead of a semi-annual or quarterly basis consistent with the sampling frequency.

Section 841.240: Inspection

42. This Section sets forth provisions for inspection of surface impoundments, some of which are not directly related to groundwater monitoring. Please comment on whether it would

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be acceptable to the Agency if the Board moved this Section under Subpart A of the proposed regulations.

43. The Statement of Reasons states that CCW surface impoundments constructed as diked enclosures “are considered dams and are required to comply with Illinois’ dam safety regulations.” SR at 2-3. Further, the Agency states that it “conferred with the Department of Natural Resources on dam safety.” SR at 5, citing SR, Attachment B (Letters to Power Generating Facilities). The TSD explains that the purpose of the weekly inspections under proposed Section 841.240 is different than the Department of Natural Resources dam safety program. TSD at 36.
- a) Please provide a citation to the Illinois dam safety regulations as well as a copy for the record.
 - b) Of the current CCW surface impoundments in Illinois, would the dams be classified as Class I, II, or III under 17 Ill. Adm. Code 3702?
 - c) Please elaborate on the Agency’s conference with the Department of Natural Resources on dam safety related to this proposal.
 - d) The proposed federal rule for disposal of coal combustion residuals from electric utilities states,

It should also be recognized that while states currently have considerable expertise in their State dam safety programs, those programs do not tend to be part of State solid waste or clean water act programs, and so, oversight may not be adequately captured in [US]EPA’s existing data. This proposal requests states and others to provide further information on state programs. . . . 75 Fed. Reg. 35133 (June 20, 2010).

Please compare inspection requirements under the Department of Natural Resources dam safety program together with the proposed rule at 35 IAC 841.320 against inspection requirements under the proposed federal rule for dam safety at 40 CFR 257.83 (Alternative 1 - Subtitle D) or 264.1304 (Alternative 2 - Subtitle C).

Section 841.300: Confirmation Sampling

44. Subsection (a) requires the submission of confirmation sampling results to the Agency within 30 days after the date on which the original sample analysis was submitted to the Agency pursuant to Section 841.210(d). Counting the 60 days allowed by Section 841.210(d), subsection (a) allows an owner or operator 90 days from the time of initial exceedence to notify the Agency. Please comment on whether the confirmation of an exceedence and the notification of a confirmed exceedence should be done on shorter deadline.

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Section 841.310: Corrective Action Plans

45. Subsection (d) provides that “[t]he owner or operator shall submit a corrective action plan within 180 days after submission of confirmation sampling results. This requirement is waived if no groundwater quality standard is exceeded in the samples taken pursuant to subsection (a) of this Section for two consecutive quarters.” Please clarify whether compliance with the groundwater quality standard over two consecutive quarters is sufficient to demonstrate that a confirmed exceedence is no longer a cause for concern. The Board notes that Section 841.315(c)(1) requires four quarterly samples of groundwater monitoring wells to ensure compliance with the applicable groundwater standards. Also, please comment on whether the owner or operator must report to Agency that a corrective action plan will not be submitted pursuant to subsection 841.310(d).

46. Subsection (e)(9), which the Board intends to re-number as (e)(8), refers to Institutional Controls, but that term is not defined in the proposed regulations. The Board notes that proposed Section 841.410(a)(9) also refers to institutional controls.

Section 840.116(a)(3) refers to institutional controls as being “in accordance with the Uniform Environmental Covenants Act [765 ILCS 122] or an alternative instrument authorized for environmental uses under Illinois law and approved by the Agency.” 35 Ill. Adm. Code 840.116(a)(3). Please comment on whether it would be acceptable to the Agency if language based on Part 840 is added Sections 841.310(e)(9) and 841.410(a)(9) to describe institutional controls.

47. Would the Agency clarify whether the annual progress report required by subsection (g) would be reviewed by the Agency according to Subpart E?

Section 841.325: Corrective Action Report and Certification

48. Subsection(c) refers to submission of a corrective action certification on forms prescribed by the Agency. The Board notes that proposed Sections 841.425(c) and 841.440 include similar requirements regarding closure certification and post-closure certification, respectively. Please submit into the record any drafts of the proposed forms for these certifications.

Section 841.400: Surface Impoundment Closure

49. Subsection (b) addresses closure by removal and requires that “[a]ll coal combustion waste must be properly disposed unless beneficially reused.” Please explain what proper disposal means in the context of the proposed regulations. Would it be acceptable to the Agency if the last sentence of subsection (b) is revised as “All coal combustion waste and leachate must be disposed in accordance the applicable laws and regulations unless beneficially reused?”

Section 841.405: Closure Prioritization

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50. Subsection (a)(1)(C) requires a Category 1 unit to be closed within two years of the Agency's approval of the closure plan.
- a) Please comment on whether the two-year time period is based on the duration for closure of a typical CCW surface impoundments.
 - b) If so, please explain the rationale for allowing 5 years or more for the closure of impoundments under Categories 2, 3 and 4, particularly for closure of inactive units.
 - c) Also, please explain why a distinction between active and inactive units is not proposed for Category 4 units.
51. Please comment on whether it would be acceptable to the Agency if subsection (a)(4)(A) is revised to include a citation to Part 620 as follows:

Unless Category 1 applies, Category 4 applies where the unit is located on a site that has been characterized as Class IV groundwater pursuant to 35 Ill. Adm. Code 620.240 beyond a lateral distance of 25 feet from the edge of the unit.

52. Subsection (a) sets a closure deadline for each of the four categories of units but includes language allowing the Agency to approve "a longer timeline" for closure. Would the Agency comment on factors or circumstances that may lead it to extend a closure deadline?

Section 841.410: Closure Plan

53. Institutional controls addressed in subsection (a)(9) refer only to those prohibiting potable uses. Should there be any requirement in the Closure Plan for institutional controls to address future use and ensure that any final cover, final grading, liner, and/or containment barrier specified in the closure plan remain intact?

Section 841.415: Final Slope and Stabilization

54. Subsection (b) requires that "[a]ll slopes must be designed to drain runoff away from the cover and to prevent ponding, unless otherwise approved by the Agency." Would the Agency comment on circumstances in which it may approve a final slope that did not drain runoff away from the cover or prevent ponding?

Section 841.420: Final Cover System

55. Subsection (b)(1) suggests that, if the unit has a bottom layer with permeability greater than 1×10^{-7} cm/sec, then the low permeability layer could be constructed with equal permeability.

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However, subsection (b)(1) requires construction of a low permeability layer according to subsections (A) and (B), both of which rely on a standard of 1×10^{-7} cm/sec. Also, subsection (b)(1) allows the Agency to approve alternative techniques or materials equivalent or superior to the requirements of subsection (A) or (B). Does the Agency wish to comment on language regarding units with a bottom layer or propose any clarifying language?

Section 841.435: Post-Closure Care Plan

56. The Agency's Statement of Reasons addresses the Agency's outreach with stakeholders from industry, environmental groups, and the Attorney General's office regarding the issue of a financial assurance requirement for CCW surface impoundments. SR at 26. Would the Agency estimate the expected cost for a typical surface impoundment to provide financial assurance to cover closure and post-closure care required by proposed regulations?
57. Please address whether there are other Illinois regulations that require financial assurance for corrective action.

Section 841.440: Post-Closure Report and Certification

58. Please comment on whether it would be acceptable if Section 840.440(a) is revised as follows:

Post-closure care must continue until

- (1) compliance with the groundwater quality standards set forth in 35 Ill. Adm. Code 620 or in a groundwater management zone established pursuant to 35 Ill. Adm. Code 620.250 is achieved; and
- (2) a minimum of ten years after ~~from~~ the Agency's approval of the closure report.

Section 841.450: Resource Conservation and Recovery Act

59. If the Board adopts Part 841 and USEPA then adopts federal rules under RCRA, would the Agency propose amendments to Part 841?

Section 841.500: Plan Review, Approval, and Modification

60. Subsection (e) provides that appeals are subject to review under Section 40 of the Act and allows filing an appeal "within 35 days after the post-marked date that the notice is mailed." Section 841.505(b) incorporates these rights of appeal with regard to approval of reports and certifications.

Section 40(a)(1) of the Act requires filing a petition "within 35 days after the date on which the Agency served its decision on the applicant." Similarly, Section 105.206(a) of

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the Board's procedural rules requires filing an appeal "within 35 days after the date of service of the Agency's final decision." Does the Agency wish to comment on the appeal deadline or propose any clarifying language?