

ILLINOIS POLLUTION CONTROL BOARD
April 30, 2014

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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 December 6, 2013, the hearing officer scheduled the second hearing to begin on Wednesday, May 14, 2014, in Chicago and to continue if necessary on Thursday, May 15, 2014. In an order dated March 3, 2014, the hearing officer set revised filing deadlines for the second hearing. That order set a deadline of Wednesday, April 9, 2014, to pre-file testimony. To expedite the hearing and make it more efficient, the order also set a deadline of Wednesday, April 30, 2014, to pre-file written questions based on the pre-filed testimony. The order provided that, “[i]f any witness wishes to prepare and submit written answers to these pre-filed questions, he or she may do so by filing those answers with the Board’s Clerk.”

The March 3, 2014 hearing officer order also recognized the agreement by the Illinois Environmental Protection Agency (Agency) to respond in writing by March 23, 2014, to questions and requests during the first hearing. On March 23, 2014, the Agency timely filed post-hearing comments. The hearing officer order also provided that “participants may pre-file questions based upon the Agency’s responses no later than Wednesday, April 30, 2014.”

On April 9, 2014, the Board received pre-filed testimony by Mr. Gary King on behalf of Ameren Missouri and Amerenenergy Medina Valley Cogen, LLC. Also on April 9, 2014, the Environmental Law and Policy Center, Environmental Integrity Project, Sierra Club, and Prairie Rivers Network pre-filed testimony by Keir Soderberg, Ph. D. and Ms. Traci Barkley. The Board and its staff have reviewed the testimony pre-filed for the second hearing. The Board poses the questions attached to this order as Attachment A. The Board directs the witnesses to prepare to respond to these questions at the second hearing. The Board may raise follow-up questions in the course of the second hearing.

IT IS SO ORDERED.

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Attachment A to Hearing Officer Order of April 30, 2014

Agency

1. In response to Question 1, the Agency has proposed changes to Section 841.230. PC 4, Attach. 1 at 1-3.
 - a) Please comment on whether it is acceptable to the Agency if Section 841.230(c) is modified as follows for purposes of clarity:
 - c) Reduced monitoring. Monitoring frequency may be reduced from semi-annual frequency for individual monitoring wells . . .
 - b) Please clarify whether the groundwater monitoring plan should be modified and approved by the Agency when monitoring frequency is reduced in accordance with subsections 841.230(b)(2) and (c). If so, comment on whether it would be acceptable to the Agency to amend Section 841.230(d) as follows:
 - d) The owner or operator of the unit must modify the groundwater monitoring plan and obtain Agency approval pursuant to Subpart E before reducing monitoring in accordance with subsections (b)(2) and (c) of this Section.
2. In response to Question 2 pertaining to maintenance of records by CCW impoundments exempt under Part 841, the Agency proposes that the Board add a Board Note stating that “[a] unit not subject to this Part should maintain records demonstrating how the exemption in subsection (b) applies or how the unit is outside the scope of application set forth in subsection (a).” PC 4, Attach. 1 at 4. Please comment on whether the Board Note sets forth a recordkeeping requirement for all units not subject to Part 841. If so, should the proposed note be codified as a rule requirement under Section 841.105?
3. In response to Question 6 regarding the evaluation of preexisting plans, the Agency states that, “[i]f previously submitted hydrogeologic site characterizations are re-submitted to the Agency under this rule, the characterizations must be updated with any changes to the site that have occurred since the original submission.” PC 4, Attach. 1 at 5. Please comment on whether a requirement reflecting the Agency’s intent must be added to the hydrogeologic site characterization requirements under Section 841.200.
4. The Agency’s response to Question 16 appears to indicate that 31 of 36 units identified as “not receiving CCW” have groundwater monitoring wells. PC 4, Attach. 1 at 11. Please clarify whether the remaining five units will have to install groundwater monitoring wells to determine whether they are impacting groundwater to comply with the recordkeeping requirement in the proposed Board Note under response to Question 2. See Tr. 2/27/14 at 82.
5. The Agency’s response to Question 24 includes a revision of Section 841.130 that adds an exception to the proposed compliance period at subsection 841.130(b) for units in operation on or before the effective date of Part 841. However, it is not clear whether the

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units that would be exempt under subsection (b) are exempted from the compliance period for a year or they are allowed up to a year to comply with certain requirements pertaining to the groundwater monitoring plan. Please clarify the proposed intent.

6. Please comment on the language revisions proposed by Mr. Gary King in his pre-filed testimony dated April 9, 2014.
7. Regarding proposed subsection 841.105(a)(2), Dr. Kier Soderberg states that “it is unclear how and when the Agency will make this determination. . . .” that a surface impoundment unit containing CCW or leachate not operating after the effective date of the rules has caused or contributed to “an exceedance of the groundwater quality standards...” Soderberg Test. at 2. Would you please elaborate on the circumstances under which the Agency expects exceedances would be detected and attributed to these types of units in order to bring them under the applicability of proposed Part 841?
8. Dr. Soderberg also proposes that Section 841.105 should state specifically that all units at a given site must be listed in the groundwater monitoring plan and in all annual reports along with descriptions following section 841.210(b)(3) as well as their status with respect to the rule. This annual listing would make it easier for the Agency to track the status of old units as well as any new units. Soderberg Test. at 3. Please comment on the suggested listing of all units in the groundwater monitoring plan.
9. Dr. Soderberg also recommends that Section 841.105 should state specifically what is required to verify that the inactive impoundments exempted from the proposed rule under section 841.105(a)(2) are not a threat to human health and the environment, including the level of detail required and how and when such a demonstration would be reported to the Agency. Soderberg Test. at 3. Please comment on the inclusion of a demonstration requirement for inactive impoundments to qualify for an exemption under Section 841.105(a)(2).
10. Dr. Soderberg suggests the proposed rule address the source-receptor pathway for humans resulting from the discharge of contaminants from CCW to surface water via groundwater with surface water monitoring. Soderberg Test. at 10-11. Please comment on this suggestion along with Dr. Soderberg’s recommendations concerning: measurement of water levels in monitoring wells; maintenance an updated potentiometric surface map; and statistical methods.
11. The Agency provided a suggested revision to proposed subsection 841.230(c) for reducing monitoring of certain constituents to once in five years if the previous five years resulted in no detection. IEPA explained that “[t]he sporadic nature of some chemical constituents will make statistical analysis complex, and therefore some relief from monitoring consistently non detected constituents may have merit under some circumstances.” PC 4 at 1, 3. Dr. Soderberg argues that “[s]ampling once every five years is insufficient to capture [the] variabilities” of infiltration, precipitation, and changes in the waste characteristics. Soderberg Test. at 7. Would you please elaborate on the Agency’s rationale for proposing a five-year period?

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12. Under proposed Section 841.305, Dr. Soderberg suggests the rules require that the alternative cause demonstration always identify the cause of contamination, even if it is not the CCW unit. Please comment on the responsibility of the property owner or operator of the CCW unit to identify a source of contamination not attributed to its own activities.
13. Ms. Barkley states that “[s]ome plant operators routinely pump excess water into nearby surface water, especially during storm events. . . . Stormwater also routinely flows through the coal ash impoundments at the Meredosia Plant into the Illinois River. . . .” Barkley Test. at 4. In light of Ms. Barkley’s statement, would you please elaborate on NPDES requirements for CCW surface impoundments and the associated risks to surface water?
14. During the first hearing, Mr. Armstrong referenced a USEPA discussion stating that groundwater concentrations of constituents attributed to unlined surface impoundments typically peak within the first 100 years. 2-26-14 Tr. at 76-78, citing 75 Fed. Reg. 35145 (June 21, 2010). Mr. Cobb responded that the Agency runs the contaminant transport modeling out many years using the local information until steady state conditions are reached. 2-26-14 Tr. at 76-78.

Proposed Subsection 841.440(a) requires post-closure care to continue until compliance with the groundwater quality standards and for a minimum of ten years. Please address what would happen if compliance with the groundwater quality standards occurs at the end of ten years, but the modeling does not show peak concentrations and steady state conditions occurring until later.

15. The definition of “leachate” refers specifically to contact with CCW, the definition of which refers to the by-products resulting from combustion. Would the Agency comment on whether “stormwater that comes in contact with raw coal” is within the definition of “leachate.” If it is not, does the Agency wish to amend its proposal in any way?

Gary King

16. In your April 4, 2014 pre-filed testimony regarding renumbered subsection 841.220(c), you suggested that “IEPA should clarify that closure objectives and compliance are not required to be based on achieving background concentrations down-gradient from a unit.” King Test. at 4, citing PC 4, Attach. 2 at 20. Would you consider proposing such clarifying language?
17. Section 813.503 of the Board’s Waste Disposal regulations provides in part that, “[i]f there is no active office for maintenance of records at the facility during the postclosure care period, then an alternate active operation site in the state, owned or operated by the same facility operator, may be specified. The Agency must be notified of the address and telephone number of the operator at the alternative facility where the information will be retained.”

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Please comment on whether similar language would more clearly provide an alternative to on-site storage when a facility with a closed surface impoundment no longer operates as an electric generating plant.

- 18 Your proposed change to Section 841.200(c) doesn't appear to address impoundments where "existing site or regional information" doesn't adequately characterize the geologic layers to a minimum depth of 100 feet as would be required. Have you considered or would you propose alternative language to address potential gaps in that information?

Tracy Barkley

19. In your pre-filed testimony, you refer to "monetary damages from coal ash to the sports recreation industry at 22 waterways due to the absence of the safeguards needed to protect the adjacent game fish habitat at [coal ash] impoundment sites." Barkley Test. at 2. Would you please elaborate more specifically on the "safeguards" to which you refer that were absent?
20. Would you please provide copies of the references you cited in the footnotes of your April 9, 2014 pre-filed testimony?