

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

To: John Therriault, Clerk
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Persons included on the attached
SERVICE LIST

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board the attached **Environmental Groups' Status Report** copies of which are served on you along with this notice.

Respectfully submitted,



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Dated: March 4, 2015

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ENVIRONMENTAL GROUPS' STATUS REPORT

To assist the Board as it considers whether to proceed with this important rulemaking, Environmental Groups submit this status report as a supplement to the testimony we have filed regarding the amendments we proposed on September 15, 2015. While we do not object to the limited stay that Illinois EPA is requesting, we are still adamant that this rule move forward with the Board. We do not agree that existing state and federal rules adequately address the risks posed to Illinois citizens from coal ash pits. However, now that the Agency has seriously evaluated the federal rules and its options for moving forward, we think that trying to work out a mutually-agreeable solution over the next 90 days is likely to be more efficient than exploring those options via adversarial filings before the Board.

In the meantime, there have been developments on several topics that opponents used as reasons to delay this rulemaking indefinitely. In the November 5, 2015 Order, the Board requested “an updated status of the federal litigation and Congressional legislation addressing the federal rule” and an opinion on “the uncertainty resulting from pending federal litigation or legislation and why that uncertainty requires an extension of the stay.” Below we present updates regarding Congressional attempts to dismantle the federal coal ash rule, legislation challenging the federal rule, and the early steps taken to implement the rule. We do not believe any of these present a legitimate basis to delay an Illinois-specific rule. If anything they emphasize the need to adopt a state-based rule as quickly as possible.

I. Congressional attempts to dismantle the federal coal ash rule

Attempts to block EPA from addressing disposal of coal ash waste have been bubbling up in Congress for several years now, beginning well before the final rule was passed last year. Thus far, none of these bills have been successful. In fact, the trend shown in the table below suggests that interest in these destructive bills is on the decline.

TRAJECTORY OF PAST HOUSE VOTES ON COAL ASH

YEAR	BILL NUMBER	YES VOTES	NO VOTES
2011	H.R.2273	267	144
2013	H.R.2218	265	155
2015	H.R.1734	258	166

The House of Representatives has been most interested in this type of legislation, but bills passed by the House have not gained much traction in the Senate thus far. As we describe below, these bills would remove protections against toxic pollution at coal ash pits nationwide. We obviously have no way of predicting what Congress will do in the future, but the supporters of these dangerous bills are not about to give up. In any event, the ever-present legislative threat to the federal rules is an important reason to adopt protections for Illinois waters with due speed, rather than rely on the self-implementing federal rule that could be gutted at any time.

The current bills in play in Congress are the "Improving Coal Combustion Residuals Regulation Act" of 2015 (H.R. 1734) and of 2016 (S. 2446). H.R. 1734 passed on July 22, 2015 and S. 2446 is pending in the Senate. The President threatened to veto H.R. 1734 for lacking key protections that S. 2446 also lacks. These bills would threaten health, safety and the environment while relieving owners of coal-fired power plants of their responsibility to safely dispose of the toxic coal ash they generate. The bills greatly increase the potential for harm to communities by amending the Resource Conservation and Recovery Act (RCRA) to remove critical and long-awaited safeguards established by the U.S. EPA's final CCR rule.

This legislation would allow contaminated and abandoned legacy ponds to operate without safeguards for at least six years, extending the deadline for closure mandated by the federal rule. It would eliminate the federal rule's ban on storing and dumping coal ash in drinking water and its guarantee of public participation and public access to information regarding water contamination and assessments of dangerous coal ash dams.

It would eliminate important requirements and protections in the federal rule including:

- A requirement to immediately clean up all toxic releases from coal ash and notify the public;
- A requirement to close existing coal ash lagoons that are sited in dangerous and unstable areas;
- Environmental and health protections for large coal ash fill projects; and
- A prohibition against siting coal ash dumps in floodplains.

H.R. 1734 and S. 2446 would significantly delay critical requirements, such as inspections, control of fugitive dust, groundwater monitoring and cleanup requirements for all new coal ash lagoons and landfills. They would also significantly weaken and delay the ability of citizens to enforce safety requirements. This legislation places the health of our communities and environment in great danger and fails to guarantee consistent nationwide protection.

II. Legal challenges to the federal coal ash rule

While the pending litigation of administrative challenges to the federal CCR rule may create some uncertainty as to future changes, we have confidence that the rule will remain in effect. Both industry and environmental groups challenged the CCR rule in the D.C. Circuit and filed their opening briefs in December 2015, with DOJ and EPA to respond in March. These challenges, however, do not create uncertainty as to the state's responsibility to move forward with a state program that will adequately protect the people and environment of Illinois.

Environmental groups are challenging EPA's final coal ash disposal rule because it unlawfully fails to protect against the health and environmental risks of toxic coal ash. The petition filed on December 18 contends that the rule fails to ensure that coal ash disposal does not present a "reasonable probability of adverse effects on health or the environment" as required under the Resource Conservation and Recovery Act (RCRA). 42 U.S.C. § 6944(a). Environmental groups contend the CCR rule is arbitrary and capricious because it exempts certain impoundments from regulation and it allows existing, unlined surface impoundments to continue to operate or be considered "lined" without any effective liners.

Industry groups contend the new rule is too restrictive and contains arbitrary and capricious provisions, such as the restrictions on CCR stored for beneficial use, and argue that EPA's regulation of inactive impoundments no longer receiving CCR is outside the scope of EPA's authority to regulate "disposal." Environmental groups have also intervened as a respondent on behalf of EPA to defend the rule against challenges from industry, as it does provide needed protections that did not previously exist.

Following EPA's response (expected by March 17, 2016), environmental groups intend to file a brief in support of the rule by April 18 and a reply brief (in opposition) by May 16. Final briefs with appendix cites are due on July 6, with arguments expected sometime after. Regardless of the outcome of these challenges, Illinois needs a state CCR rule to ensure proper closure and disposal of contaminated material and to protect and involve the public.

III. Federal rule implementation

Several parties to this proceeding that supported an indefinite stay last fall argued that Illinois should wait to observe the implementation of the federal rule before considering whether a state rule is necessary. Several initial deadlines in the federal rule have passed during the pendency of the 120-day stay. What we are seeing in those early filings has only confirmed the cause for alarm. Closure plans have been announced that simply will not protect water quality. Inspection reports have been posted that are plainly insufficient under the federal rule. But because the federal rule is "self-implementing," no Agency is actually overseeing any of these actions. There is no permitting process; litigation is the only means of correcting any of the deficiencies in what has been filed pursuant to the federal rule.

Closure Plans

The federal coal ash rule required companies to indicate by Dec. 17, 2015 their intent to initiate closure of legacy ponds. Owners or operators of ponds that complete closure and meet all of the requirements in §257.100 within 36 months after the date of publication of the final Rule in the Federal Register are exempt from all other requirements in the Federal Rule. However, states may provide their own guidance and set of requirements for inactive closure. Companies with coal ash ponds in Illinois have indicated on their websites their intent to close 10 ponds, with dates of anticipated closure from 2018 to 2020. These include two ponds at Baldwin, one at Coffeen, two at Duck Creek, three at Hennepin, one at Powerton and one at Wood River.

All the coal ash pond closures announcements made to date propose to leave the coal ash in place, and cap the site. These include sites where it appears that coal ash has been deposited in wetlands and floodplains, which is a significant risk for surface water contamination. For example, the maps of the Baldwin and Hennepin sites below show that the ash ponds are located within a zone that will flood at some point. Nonetheless, Dynegy's solution is to leave the ash there permanently. Without state rules, that decision will not be reviewed, and no one is in a position to require a different solution.

Baldwin Energy Complex
Flood Risk

Andrew Rehn, Prairie Rivers Network
Source: FEMA 100-Year Floodplain

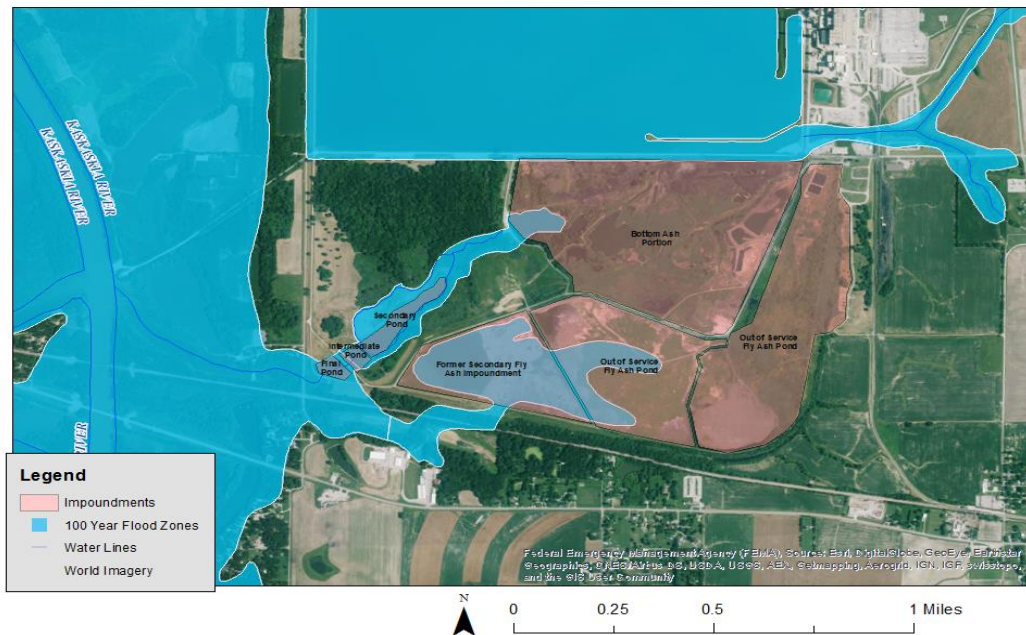


Fig. 1. At Baldwin, Dynegy proposes to close in place Old East Fly Ash Pond and East Fly Ash Pond.

Hennepin Power Station Flood Risk

Andrew Rehn, Prairie Rivers Network
Source: FEMA 100-Year Floodplain

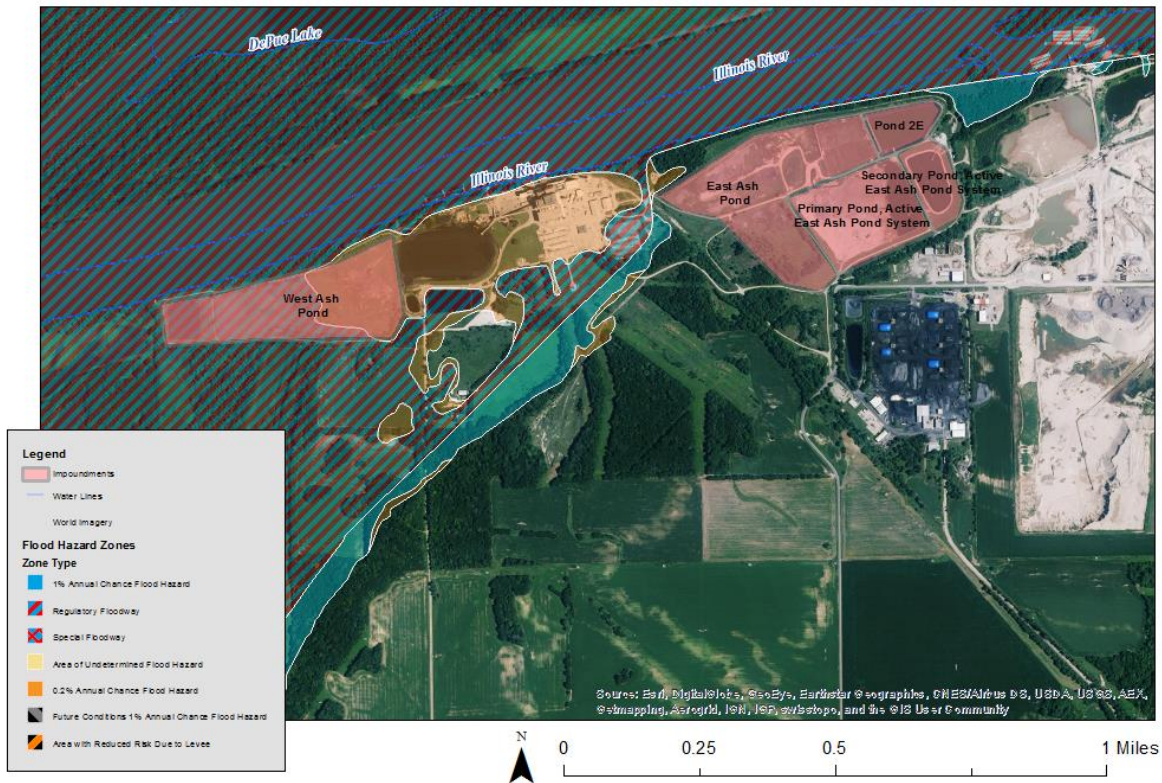


Fig. 2. At Hennepin, Dynegy proposes to close in place Ash Pond 2, Old West Pond and Old West Polishing Pond.

The draft state coal ash rules would require hydrogeologic site characterization. 35 Ill. Adm. Code 841.200. Environmental Groups' July 21, 2014 amendments to that proposal would require the owner or operator to identify nearby surface water bodies and downgradient hyporheic zones where exchanges between groundwater and surface water occurs, and any potential hydrologic connection between the unit and nearby surface water bodies and pumping wells. Environmental Groups also propose an alternative impact assessment when an owner or operator is developing a corrective action plan or closure plan. 35 Ill. Adm. Code §§ 841.310(a)(6); 841.410(a)(6) (Environmental Groups' July 21, 2014 proposal). The alternative impact assessment would evaluate technical and economic feasibility as well as potential impacts of a corrective action on groundwater and surface water quality. Among alternatives to be considered should be closure of the unit, including closure by removal of coal combustion waste and leachate from coal combustion waste. These are essential issues to consider as closure plans are developed, but we cannot ensure they will be considered without strong state coal ash rules.

Furthermore, sites with announced plans to close ash ponds in place have documented groundwater contamination. For example, Wood River and Hennepin have Groundwater Management Zones. At Baldwin, levels of antimony, boron, nitrate, arsenic, cobalt, manganese

and sulfate in groundwater exceed federal drinking water standards and advisories. See <http://www.ashtracker.org/>. Powerton Generating Station received a violation notice from Illinois EPA in June 2012 for levels arsenic, boron, chloride, iron, lead, manganese, mercury, nitrate, pH, selenium, sulfate, thallium, total dissolved solids levels in excess of Illinois groundwater quality standards. Boron is not on the monitoring list of contaminants that trigger corrective action under the federal rule. No state groundwater violations need be accounted for in the federal closure plan if they don't also trigger the federal threshold, which could mean that the owners and operators of those pits move forward with investments in closure plans that don't solve the problems on site. Environmental Groups' proposal would have all of these problems considered in one closure process, instead of in separate, fragmented processes that could lead to inefficient and unnecessarily expensive solutions.

The alternative impact assessment proposed by Environmental Groups as described above would also have to evaluate the potential groundwater quality impacts of the corrective action or closure plan options being considered. Alternatives that protect groundwater quality might involve closure of the unit, closure by removal of coal combustion waste and leachate from coal combustion waste, and installation or replacement of liner systems. These are important considerations to be made; as other states have moved forward with the cleanup of coal ash ponds, they have seen rapid improvements in groundwater quality when coal ash is removed from ponds.¹

As we describe in more detail below, the initial closure plans that have been posted to comply with the federal CCR rule fall short of protecting Illinois waters. These closure plans are inadequate because the proposed covers on the ash pit may not protect against leaching of contaminants from the CCR material. Stormwater runoff, potentially contaminated by leaching from the pond, will be discharged through the existing NPDES permitted outfalls at many of the sites, threatening surrounding surface water even after the ponds have been closed. The permanent storage of CCR in these ponds will continue to threaten water quality and the health of surrounding communities. We need a state rule to ensure that protecting surface water and groundwater is the primary objective considered before, during and after pond closures.

Dynegy Midwest Generation, LLC has posted initial closure plans for the following ash ponds on its website, <https://ccr.dynegy.com/document.aspx>:

- The West Ash Pond 2W at the Wood River Power Station (1 Chesson Lane, Alton, IL 62002)

Dynegy's initial closure plan for West Ash Pond 2W says that the ash pond will be dewatered, filled with dry coal combustion residuals (CCR) from Pond 1 at the site, and closed in-place. Groundwater quality has already been impacted at this location and will likely continue to be impacted by CCR in the pond if it is left in place.

- The Former Ash Basin at the Powerton Station (13082 East Manito Rd, Pekin, IL, 61554)

¹http://yubanet.com/enviro/South-Carolina-Groundwater-Contamination-Plummetts-after-Coal-Ash-Removal.php#.Vq_gKjYwdJ1

The Former Ash Basin will be closed by dredging and sluicing CCR to move it from the North to the South Pond and then capping the South Pond and dewatering the North Pond. The movement of coal ash and water contaminated by coal ash, and the ongoing storage of coal ash in the South Pond, threatens the groundwater and surface water surrounding the area.

- The Old East Fly Ash Pond and the East Fly Ash Pond at the Baldwin Energy Complex (10901 Baldwin Rd, Baldwin, IL 62217)

The ash ponds will be dewatered to facilitate closure and closed in-place with a clayey soil cover. CCR material will be placed and regraded as fill to bring the grade up to the design slopes so that the cover system will be installed in direct contact with graded CCR or fill.

- Ash Pond No. 2 at the Coffeen Power Station (134 Cips Lane, Coffeen, IL 62017)

Ash Pond No. 2 will be dewatered to facilitate closure and closed in-place. The final cover will be sloped to promote drainage and the stormwater runoff will be discharged through the existing NPDES permitted outfall. The existing perimeter berms will remain and the final cover system will tie into these berms.

- Ash Pond No. 1 and No. 2 at the Duck Creek Power Station (17751 North Cilco Road, Canton, IL 61520)

Ash Ponds No. 1 and 2 will be dewatered to facilitate closure and closed in-place. Dry CCR will be removed from Pond No. 1 and Pond No. 2 and placed as fill (i.e., crown) in the north end of Pond No. 2. CCR from station operations and/or from other affiliated stations may also be used for the crown. The ponds will be regraded or filled before the final cover is installed.

- Ash Pond No. 2 and the Old West Ash Pond (Pond No. 1 and Pond No. 3) at Hennepin Power Station (13498 E. 800th Street, Hennepin, IL 61327)

Ash Pond No. 2 and the Old West Ash Pond (Pond No. 1 and Pond No. 3) will be dewatered to facilitate closure and closed in-place. The fill will be regraded, final covers will be sloped to promote drainage and the stormwater runoff will be discharged through the existing NPDES permitted outfalls.

- The Old West Polishing Pond at Hennepin Power Station (13498 E. 800th Street, Hennepin, IL 61327)

The Old West Polishing Pond will be closed by removing and decontaminating all areas affected by releases from the CCR unit. The pond will be dewatered and the CCR surface exposed. CCR will be removed by mechanical excavation and will be placed in the footprint of the west ash pond to assist with grading the west ash pond to final subgrade elevations.

All of the above closure plans for Dynegy ash ponds that will be capped in-place state that the permeability of the final cover will be equal to or less than the permeability of the natural

subsoils present or a permeability no greater than 1×10^{-5} cm/sec, whichever is less. This is much less protective than the 1×10^{-7} cm/sec low permeability layer standard in the draft state rule, Section 841.420 Final Cover System, and in the final federal rule, 40 CFR §§ 257.70, 257.71 and 257.72.

NRG has posted its intent to initiate closure of the Former Ash Basin at the Midwest Generation Powerton Station in Pekin, IL <http://www.nrg.com/legal/coal-combustion-residuals/>. Existing ash from both North and South Ponds will be consolidated into the South Pond. CCR will be moved from the North to the South Pond by dredging and sluicing. After the CCR in the North pond is removed by dredge, the pond will be dewatered and any remaining CCR will be removed. They state that the South Pond will be capped with an 18- inch thick (minimum) infiltration layer overlain by 6-inch (minimum) thick erosion layer with a permeability of 1×10^{-5} cm/sec or less. This is much less protective than the 1×10^{-7} cm/sec low permeability layer standard in the draft state rule. Section 841.420 Final Cover System.

Inspection Reports

The CCR rules are self-implementing, resulting in lower quality reporting. For example, annual inspection of surface impoundments is required by 40 CFR § 257.83, and this year's set became available to the public on February 17th. The quality of these reports varies due to the lack of a regulatory body setting the standards for reporting.

The reports from Dynegy contain almost no information. They read like a list of boxes being checked. At the Edwards and Wood River sites, the amount of coal ash Dynegy reported is currently being stored exceeds the stated capacity of the impoundments. Other companies appeared to put more effort into the reporting, but there are still errors. The reports from CWLP's Dallman Power Station did not report the current volume of coal ash stored, only the total capacity (both numbers are required to be reported). This low-quality reporting will continue if an enforcement authority mandating good reporting and correct information is not established. If citizens wish to see more diligence and care put into these inspections, the only recourse available to us is to file a lawsuit.

Some reports say that the presence of vegetation prevented a thorough inspection, but no plans are included to remedy this issue in order to conduct a full inspection. For example, the inspection report for the ash pond at Dynegy's Edwards plant says that "[w]oody vegetation along the west side of the embankment toe adjacent to the stream channel limits the availability to inspect the toe of the embankment." The report for the East and West Ash Basins at the Waukegan Generating Station says that vegetation on the northern slopes of both basins and the northeastern slopes of the East Basin "precludes thorough inspection of slopes surfaces." Without a thorough inspection of all slopes of these basins, their structural stability cannot be fully assessed. We are concerned about the impact the pond may have on the surrounding groundwater and surface water, especially given the lack of a full inspection.

While the annual inspection reports lack important information, some contain information of concern that supports the need for additional state regulations on coal ash. The report for CWLP's Dallman ash ponds says that indications of seepage, including noticeable

drainage, have been observed on west, north and outer berms of the Lakeside Ash Pond and lime softening ponds. According to the report, “[t]he presence of uncontrolled seepage poses a potential structural weakness.” The report also says that signs of erosion have been periodically observed on the outer berms of the Dallman Ash Pond in the forms of ruts and gullies ranging from 6 to 24 inches deep.

The Waukegan inspection of the coal ash pits on the shore Lake Michigan documented threats to the structural stability of the basins including slopes bare of vegetation, evidence of animal burrows, and the need for measures to control erosion. In addition, the inspection found that a pipe conveying CCR as part of the inlet distribution system for East Basin was disconnected. The report says that this pipe should be reconnected as soon as feasible and prior to using the system. Failures of proper operation such as the disconnection of this pipe and instability of the pond slopes raise concerns about potential impacts on surrounding groundwater and surface water.

Ash Ponds that Escape Coverage by the Federal Rule

Seeing the federal rule implementation stumble ahead at many Illinois coal ash pits brings into focus the ash pits that are left behind by the federal rule. Several Illinois power generating stations have closed in recent years, including Vermilion Generating Station (3 ash pits), Pearl Station (1 ash pit), Hutsonville (5 ash pits), Grand Tower Station (1 ash pit), Meredosia Station (4 ash pits), Venice (2 ash pits), and Crawford (1 ash pit). These facilities do not pose a lesser risk to contamination of Illinois waters. For example, Illinois EPA has issued violation notices to both Vermilion and Baldwin for groundwater contamination. A state rule is necessary to ensure that the owners and operators of these ash pits actually move forward with closure and corrective action in a process that requires them to consider the surface water and groundwater implications of their options.

CONCLUSION

Environmental Groups wish to thank Board Members for their continued consideration of this critical rule to protect citizens of Illinois and the water we depend upon.

Respectfully,



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CERTIFICATE OF SERVICE

I, Jessica Dexter, hereby certify that a true copy of the foregoing **Environmental Groups' Status Report** was served via United States Mail, postage prepaid, in Chicago, Illinois on March 4, 2015 upon the service list below.



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