

ILLINOIS POLLUTION CONTROL BOARD
May 26, 2020

IN THE MATTER OF:)
)
STANDARDS FOR THE DISPOSAL OF) R20-19
COAL COMBUSTION RESIDUALS IN) (Rulemaking - Land)
SURFACE IMPOUNDMENTS: PROPOSED)
NEW 35 ILL. ADM. CODE 845)

NOTICE OF HEARING

DATES, TIMES, AND PLACES:

FIRST HEARING: July 21, 22, 2020, to be continued, if necessary, to July 23, 2020
Beginning at 10:00 AM

IN PERSON: SANGAMO ROOM
Illinois EPA Building
1021 N. Grand Ave. E.
SPRINGFIELD

Due to the Coronavirus Disease (COVID-19), and the Executive Orders in effect at the time of this notice, the Board is introducing an additional platform to encourage participation and public safety. If anybody has questions please contact the Hearing Officer, Vanessa Horton, at 312-814-5053, or by email at Vanessa.Horton@Illinois.Gov. If there are connection issues, please contact Marie Tipsord at 312-814-4925.

BY COMPUTER: Click this link:

<https://illinois.webex.com/illinois/j.php?MTID=m8566f63f2fcd50eb732d5c5875b08895>

This will take you to the Cisco Webex page for the hearing. Enter your information and click the “Join Now” button. You may be prompted for a Meeting Number or Password which are below.

Meeting number (access code): 288 340 754
Meeting password: Me9rTrvwT66

BY PHONE: Call US Toll: 1-312-535-8110, or, or US Toll: 1-415-655-0002 and when prompted enter the meeting number, below.

Meeting number (access code): 288 340 754
Meeting password: Me9rTrvwT66

In compliance with the Americans with Disabilities Act and other applicable federal and State laws, the hearing will be accessible to individuals with disabilities. Persons requiring auxiliary aids and services should contact Don Brown, Clerk of the Board, at 100 West Randolph St., Suite 11-500, Chicago, Illinois 60601, at telephone number (312) 814-3620, fax number (312) 814-3669, or TDD number (866) 323-1677, five days prior to the hearing.

SECOND HEARING: September 8, 9, to be continued, if necessary, to September 10, 2020
Beginning at 10:00 AM

IN PERSON: MICHAEL A. BILANDIC BUILDING
Room C500
160 N. LaSalle St.
CHICAGO

BY COMPUTER: Click this link:

<https://illinois.webex.com/illinois/j.php?MTID=m77cab1c6040ca7eada1d0d9c90783190>

This will take you to the Cisco Webex page for the hearing. Enter your information and click the “Join Now” button. You may be prompted for a Meeting Number or Password which can be found below.

Meeting number (access code): 133 318 4681
Meeting password: 3keBGtX8PP3

BY PHONE: Call US Toll: 1-312-535-8110, or US Toll: 1-415-655-0002 and when prompted enter the meeting number, below.

Meeting number (access code): 133 318 4681
Meeting password: 3keBGtX8PP3

PURPOSE OF HEARING: Merit and Economic

ATTENDING BOARD MEMBERS: Barbara Flynn Curie

HEARING OFFICER: Vanessa Horton

HEARING OFFICER ORDER

On March 30, 2020, the Illinois Environmental Protection Agency (IEPA) filed a rulemaking, proposing new rules at 35 Ill. Adm. Code 845 concerning coal combustion residual surface impoundments at power generating facilities in the State. The proposal's accompanying documents included IEPA's Statement of Reasons. *See* 35 Ill. Adm. Code 102.202(b).

Public Act 101-171, effective July 30, 2019, amends the Illinois Environmental Protection Act by, among other things, adding a new Section 22.59 (415 ILCS 5/22.59). Public Act 101-171 includes a rulemaking mandate in Section 22.59(g) which directs the Board to adopt rules "establishing construction permit requirements, operating permit requirements, design standards, reporting, financial assurance, and closure and post-closure care requirements for CCR surface impoundments." 415 ILCS 5/22.59(g). IEPA's proposal sets forth new CCR surface impoundment rules pursuant to Public Act 101-171. The Board is required to adopt new rules for 35 Ill. Adm. Code 845 by March 30, 2021.

On April 24, 2020, a hearing officer order was issued setting the dates for two hearings in this rulemaking. The first hearing was to be held July 21, 22 and 23, 2020, and the second, August 25, 26 and 27, 2020.

Joint Motion to Reschedule the Second Hearing and Set Prefiling Deadlines

On May 7, 2020, a joint motion was filed on behalf of multiple interested participants in this rulemaking - Dynegy Midwest Generation, Electric Energy Inc., Illinois Power Generating Company, Illinois Power Resources Generating, LLC, Kincaid Generation, LLC, Midwest Generation, LLC, the Environmental Law and Policy Center, Little Village Environmental Justice Organization, Prairie Rivers Network and Sierra Club. The motion requests that the hearing officer reschedule the second hearing to a later date to account for the preparation of transcripts from the first hearing and additional prefiling testimony. Joint Motion at 5, 6. The joint motion also raises concerns about the effect the Covid-19 pandemic, and the relevant Executive Orders will have on the hearings. *Id* at 7. The motion argues that setting prefiling deadlines for the second hearing at this point will streamline the process and may reduce the number of witnesses who need to testify at the second hearing. *Id*. No response was filed to the joint motion.

The hearing officer grants the joint motion to reschedule the second hearing to September 8, 9 and 10, 2020, and set prefiling deadlines for that hearing. The date for the first hearing remains the same, July 21, 22 and 23, 2020, but the room location has changed. The Department of Agriculture has cancelled all reservations of its Illinois Building Auditorium in Springfield for the month of July as it is planning to use the space for internal matters. The new location for the first hearing will be the Sangamo Room in the Illinois EPA building in Springfield. Participants will also be able to attend the hearing via Cisco WebEx and by telephone.

The Board is cognizant of all current Executive Orders issued by the Governor relating to the ongoing Covid-19 pandemic. The Board strives to balance its statutory mandate to adopt rules by the March 30, 2021, deadline, along with allowing safe and meaningful public participation in this rulemaking. The hearing schedule and location (in-person and via WebEx and telephone) is set by adhering to the Covid-19 Executive Orders as they exist today. As it is impossible to know now what orders might be in place in July and September 2020, the Board will maintain flexibility in this rulemaking so that these hearings can proceed and the participants may gather in a safe and meaningful way. Therefore, strict social distancing measures will be enforced at each in-person hearing location. Chairs and tables will be spaced so that participants will be six feet apart at all times. Those attending the in-person hearing will be required to wear face masks. The rooms for the in-person locations were chosen deliberately to accommodate the expected participants attending and socially distancing. The hearing officer will grant the participants additional accommodations as necessary should social distancing measures change.

The first hearing will deal solely with IEPA testimony. Public comments will be heard at the second hearing and, as time permits, at the first hearing. The prefiling deadlines for the first hearing remain the same as those described in the April 24, 2020, hearing officer order. Prefiled testimony, must be filed electronically by June 2, 2020. Prefiled questions based on that testimony must be filed electronically by June 23, 2020. Prefiled answers based on those questions must be filed electronically by July 14, 2020.

The date of the second hearing is changed to September 8, 9 and 10, 2020, and will held in-person at the Michael A. Bilandic Building, room C500 in Chicago. Participants will also be able to attend the hearing via Cisco WebEx and by telephone.

The second hearing will deal with all additional testimony and public comment. The Board will give equal weight to public comment, whether presented in-person, via WebEx, via telephone or in writing. Prefiled testimony must be filed electronically by August 14, 2020. Prefiled questions based on that testimony must be filed electronically by August 25, 2020. Prefiled answers based on those questions must be filed electronically by September 3, 2020.

Any document to be offered as a hearing exhibit in either hearing must be received by the Clerk's Office at least 24 hours before the scheduled start of the hearing. 35 Ill. Adm. Code 102.424(h). If not filed at least 24 hours before the scheduled start of the hearings, the document will not be admitted as an exhibit at the hearing but may be filed as a public comment after the hearing. *Id.*

Unless the Board, hearing officer, Clerk, or procedural rules provide otherwise, all documents in this proceeding must be filed electronically through the Clerk's Office On-Line (COOL). 35 Ill. Adm. Code 101.302(h), 101.1000(c), 101.Subpart J.

Motion to Schedule a Prehearing Conference

On May 14, 2020, several participants, the Environmental Law and Policy Center, Little Village Environmental Justice Organization, Prairie Rivers Network, and Sierra Club, filed a

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motion requesting hearing officer set a prehearing conference for the purpose of discussing “dates, times, procedures and locations for public comment at and virtual participation in the hearings.” Motion at 5. No response was filed to the motion. The hearing officer grants the motion to set a prehearing conference.

The prehearing conference will be held via teleconference and will take place after the prefiled questions have been filed on June 23, 2020. The hearing officer is available for a prehearing conference at 10 a.m. on June 24 and 10 a.m. on June 25. Participants are advised to contact the hearing officer if they have a preference between those two days. A hearing officer order setting the date of the prehearing conference and call-in information will be issued on June 3, 2020.

Among other issues to address at the prehearing conference, the hearing officer will discuss the ways in which public comment can be meaningfully presented while adhering to social distancing measures. The hearing officer welcomes suggestions as to how best to accomplish this task. The Board’s responsibility is to have meaningful public comment at its hearings consistent with the Board’s procedural rules. We are at a unique moment in our history and the hearing officer wishes to accommodate all those who wish to participate in this rulemaking.

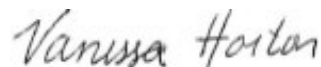
Written Public Comment

Written public comment may be filed with the Board at any time until the conclusion of the comment period. That date will be announced by hearing officer order after the close of the second hearing. If you have any questions regarding written public comment, you may contact the hearing officer or the Clerk of the Board.

Availability of Filings

All filings in this proceeding will be available on the Board’s website at www.pcb.illinois.gov in docket R20-19. The prefiled testimony, prefiled questions, and prefiled answers must be served on the persons on the service list, which is available in docket [R20-19](#).

IT IS SO ORDERED.



Vanessa Horton
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