

ILLINOIS POLLUTION CONTROL BOARD
June 23, 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)

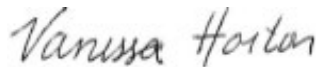
HEARING OFFICER ORDER

On March 30, 2020, the Illinois Environmental Protection Agency (IEPA, or Agency) filed a proposal to add new Part 845 to the Board's waste disposal regulations. The Board adopted IEPA's proposal for first notice under new Part 845 without commenting on the substantive merits of the proposal. The hearing officer scheduled first hearing in this proceeding beginning on July 21, 2020, with pre-filing deadlines of June 2, 2020, for testimony, and June 23, 2020, for questions.

The Board and Staff have reviewed the proposed rules, supporting documents and IEPA's testimony filed on June 2, 2020, and submit with this order their questions to IEPA, included as Attachment A. Anyone may file a comment, and anyone may respond to the attached questions, as well as any other pre-filed questions in the record.

All filings in this proceeding will be available on the Board's website at <https://pcb.illinois.gov/> in the rulemaking docket [R20-19](#). 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](#). 35 Ill. Adm. Code 101.302(h), 101.1000(c), 101.Subpart J.

IT IS SO ORDERED.



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ATTACHMENT A**R20-19****PROPOSED NEW 35 ILL. ADM. CODE 845, STANDARDS FOR THE DISPOSAL OF
COAL COMBUSTION RESIDUALS IN SURFACE IMPOUNDMENTS****Questions for IEPA****GENERAL QUESTIONS**

1. IEPA states of the 73 CCR surface impoundments at power generating facilities, some are lined with impermeable materials, while others are not. Also, six CCR surface impoundments have liners that comply with the federal liner standards in 40 CFR 257. SOR at 3.
 - a. Please clarify whether the list of 73 CCR surface impoundments represent the complete universe of such impoundments in the state. If not, how does the Agency anticipate finding out about additional surface impoundments that are not currently on the list of 73? Who can report surface impoundments? Only owner/operators self-reporting or other third parties? Will the Agency continually update the list?
 - b. Provide map showing the locations of all 73 CCR surface impoundments.
 - c. Clarify whether the 73 CCR surface impoundments include both primary and polishing ponds.
 - d. Clarify whether all 73 CCR impoundments would be subject to the proposed regulations.
 - e. How many of these impoundments would be “Existing CCR surface impoundment” per the proposed definition under Section 845.120?
 - f. How many of these impoundments would be “New CCR surface impoundment” per the proposed definition under Section 845.120?
 - g. How many of these impoundments would be “Inactive CCR surface impoundment” per the proposed definition under Section 845.120?
 - h. How many of these impoundments would be “Inactive Closed CCR surface impoundment” per the proposed definition under Section 845.120?
 - i. How many of these impoundments are located in areas of environmental justice concern?
 - j. How many of the CCR impoundments are planned to be closed before July 31, 2021?

- k. How many of the CCR impoundments have impacted underlying groundwater by exceeding the Board's Part 620 standards or the proposed groundwater protection standards (GWPS)?
- l. Please provide a table listing the 73 CCR surface impoundments along with owner/operator information, as well as their status by addressing questions 1(a) thru 1(j).

SUBPART A: GENERAL PROVISIONS

2. Section 845.100 limits the applicability of the proposed rules apply only to CCR Surface Impoundments as they are defined in section 845.120. Please explain why the Agency chose to exclude sites at active and inactive electric utilities or independent power producers that have historic CCR that has been commingled with fill material.
3. Subsection 845.100(a) specifies that "CCR surface impoundments failing to satisfy any of the requirements are considered open dumps, which are prohibited." Please comment on whether it would be acceptable to the Agency if subsection (a) is revised as follows to reflect the statutory prohibition of open dumps:
 - a) This Part establishes criteria for the purpose of determining which CCR surface impoundments do not pose a reasonable probability of adverse effects on health or the environment. CCR surface impoundments failing to satisfy any of the requirements of this Part are considered open dumps, which are prohibited under Section 21(a) of the Act.
4. Subsection (e), consistent with 40 CFR 257.50(f), exempts wastes, including fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated at facilities that are not part of an electric utility or independent power producer, such as manufacturing facilities, universities, and hospitals.
 - a. Please clarify whether this exemption generally applies even if the specified wastes generated by facilities that are not part of an electric utility or independent power producer are being treated or stored in surface impoundments. If so, explain the rationale for the exemption if those impoundments pose the same threat to groundwater as the CCR surface impoundments.
 - b. Please comment on whether the Agency is aware of the number surface impoundments in the State that are used to manage the exempted wastes.
5. Please clarify whether proposed language at subsection 845.110(a) should specify as follows: "Compliance with the requirements of this Part does not affect the need for the owner or operator of a CCR surface..."

6. Subsection 845.110(b) states, “Any CCR surface impoundment or lateral expansion of a CCR surface impoundment continues to be subject to the following requirements:” Please clarify whether CCR surface impoundments are already subject to the requirements of subsection (b). If so, under what authorities are they subject to these requirements. If not, comment on whether the proposed language should be revised as follows: “Any CCR surface impoundment or lateral expansion of a CCR surface impoundment ~~is~~ continues to be subject to the following requirements:”
7. Subsection 845.110(b)(1) specifies requirements pertaining to floodplains. Please comment on whether new CCR surface impoundments or lateral expansions should be allowed to locate in floodplains.
8. Subsection 845.110(b)(1)(A) requires surface impoundments in floodplains to prevent wash out of solid waste. Please clarify whether CCR is considered as solid waste under the Environmental Protection Act. Comment on whether this requirement should refer to CCR instead of solid waste.
9. Subsection 845.110(b)(1)(B)(i) defines “base flood” as “a flood that has a 1 percent or greater chance of recurring in any year or a flood of a magnitude equaled or exceeded once in 100 years on average over a significantly long period.” Please explain what “significantly long period” means in the context of the proposed definition. Also, comment on whether it would be acceptable to the Agency to define base flood consistent with FEMA’s definition under 44 CFR §59.1 as follows:

Base flood means a flood that has a 1 percent ~~or greater~~ chance of ~~recurring of being equaled or exceeded in any given year or a flood of a magnitude equaled or exceeded once in 100 years on average over a significantly long period.~~

10. In Subsection 845.110(b)(3), please explain why the term “waters of the United States” is used rather than the “waters of the State”.

Section 845.120 Definitions (Questions 10-13)

11. “Beneficial use of CCR”. Please comment on whether CCR meeting the definition of coal combustion byproduct in the Act would also meet the definition of “beneficial use of CCR under 40 CFR 257.53. If not, clarify which definition would control in making a determination of beneficial use.
12. “Closed”. Please comment on whether this term should be revised to “Closed CCR surface impoundment”.

13. “CCR storage pile”. Please comment on whether the definition should specify a time limit on “temporary accumulation” of non-flowing CCR. For example, the Board has specified a 1-year limit on waste piles in the landfill regulations under 35 Ill. Adm. Code 810.103.
14. “Hazard potential classification.” Please explain the reason for deviating from the three-tiered hazard classification system under 40 CFR 257.53.
15. Section 845.130 requires the owner or operator to maintain the identification marker at all times an operating permit is required under this Part. Please clarify whether the operating permit would be required until a CCR surface impoundment is closed in accordance with the proposed regulations. If not, comment on whether the marker should be maintained until closure is completed under Part 845.

SUBPART B: PERMITTING

16. Subsection 845.200(a)(1) specifies that “[n]o person must construct, install, or modify a CCR surface impoundment or related treatment or mitigation facilities, under corrective action measures under Subpart F, without a construction permit issued by the Agency under this Part.” Mr. Lecrone’s testimony that permits are required for the construction, installation, modification or operation of CCR surface impoundments. Lecrone PFT at 3. Please clarify the intent of including the phrase “under corrective action measures under Subpart F”. Does this provision apply to only facilities under corrective action measures?
17. Subsection 845.200(b)(2)(C) allows the issuance of a construction or operating permit under Part 845 if the permit application is for construction, installation, or operation of equipment necessary to restore, protect or enhance the environment. Please explain how this provision is different from subsection 845.200(b)(2)(B), which allows the issuance of permit for construction, installation, or operation of equipment to alleviate or correct a violation.
18. Subsection 845.210(a) requires all permit applications to be made on such forms as are prescribed by the Agency and must be mailed or delivered to the address designated by the Agency on the forms.
 - a. Please clarify whether the Agency has prepared permit application forms specifically for CCR facilities regulated under Part 845. If so, submit copies of the permit application forms into the record.
 - b. Does the Agency have any plans to make these forms available on its website to facilitate online submission of the permit application forms?
19. Subsection 845.210(d)(1) allows the Agency to approve “the use of any hydrogeologic site investigation or characterization, groundwater monitoring well or system, or groundwater

monitoring plan completed prior to the effective date of these rules to satisfy the requirements.” Please clarify whether the Agency approval would be contingent on prior investigations, groundwater systems or plans meeting the requirements of the proposed rules. If not, please explain what criteria would be used by the Agency for approval.

20. Subsection 845.210(d)(4) allows the owner or operator of inactive closed CCR surface impoundments to use a post-closure care plan previously approved by the Agency. Please comment on whether such approved plans must meet the requirements of the proposed rules.

21. In Section 845.220(b)(1), would it be acceptable to the Agency if the proposed language is revised as follows to mirror Section 845.230(a):

- 1) Plans and specifications that demonstrate the proposed CCR surface impoundment will meet the location standards in the following sections ~~not be~~:
 - A) ~~placed less than five feet above the uppermost aquifer under~~ Section 845.300 (Placement Above the Uppermost Aquifer);
 - B) ~~located in wetlands under~~ Section 845.310 (Wetlands);
 - C) ~~located in fault areas under~~ Section 845.320 (Fault areas);
 - D) ~~located in a seismic impact zone under~~ Section 845.330 (Seismic impact zones); and
 - E) ~~located in an unstable area under~~ Section 845.340 (Unstable areas).

22. The proposed subsection Section 845.230(d)(2)(E) is numbered as (d)(2)(D) due to a typographical oversight. Therefore, subsections Section 845.230(d)(2)(D) thru (d)(2)(L) needs to be renumbered, as well as any cross references.

23. The proposed subsections 845.230(d)(2)(H)(i) thru (iv) specify detailed groundwater monitoring information that must be submitted for Initial Operating Permit for Existing, Inactive and Inactive Closed CCR Surface Impoundments. Please comment on why similar information is not required for construction permit applications under Section 845.210, as well as initial operating permit for new construction.

24. Subsection 845.240(b) requires the owner or operator to prepare and circulate a notice explaining the proposed construction project and any related activities and the time and place of the public meeting. Please comment on whether this section should specify that the public notification must include the owner or operator’s contact information, including

the owner or operator's publicly accessible internet site where all documentation relied upon in preparing the tentative construction permit application would be available.

25. Subsection 845.240(f) requires the owner or operator of the CCR surface impoundment to outline its decision-making process for the construction permit application. Please comment on whether the owner or operator is obligated to receive any public comments and respond to questions at the meeting. Also, clarify if Agency has any role in the pre-application public meeting.
26. Please comment on whether section 845.250 should specify a time limit for the Agency to make a tentative determination to issue or deny the construction permit. If not, please explain the rationale.
27. Subsection 845.260(a) requires the Agency to email the notification to the Agency's listserv for the applicant's facility. Please comment on who will be on the Agency's listserv for the facility, and how the Agency collects information for developing the listserv.
28. Subsection 845.260(b)(2)(F) requires the public notice to include Address and telephone number of Agency premises at which interested persons may obtain further information, request a copy of the permit application and related documents. Please comment on whether the rules should require the Agency to make permit application and related documents available on its webpage for easy access to interested persons. If so, please provide amended language to allow digital access. If not, please explain the reasons for not providing online access to permit application and related documents.
29. Under subsection 845.260(c), please comment on whether the Agency will allow interested persons to file public comments online. If so, should the public notice include any specific emailing instructions to file public comments.
30. Under subsection 845.260(d)(1), please comment on how the Agency determines if there is a significant degree of public interest to decide whether a hearing must be held.
31. Under subsection 845.260(d)(3), please comment on whether the hearing location chosen by the Agency must comply with the requirements of Americans with Disabilities Act of 1990 (42 USC 12101 et seq.). If so, please amend this subsection to reflect the proposed intent.

SUBPART C: LOCATION RESTRICTIONS

32. Please comment on whether the Agency is aware of how many of the 73 CCR surface impoundments are located within 5 feet of the uppermost aquifer, wetlands, fault areas, seismic impact zones, and unstable areas. If so, provide a listing of the impoundments indicating the specific affected location restrictions. Also, comment on whether the

Agency is aware of how many of the existing CCR surface impoundments affected by the location restrictions would continue to operate by making the demonstrations required under Subpart C.

33. Regarding restrictions pertaining to wetlands, please comment on whether the proposed rules should prohibit CCR surface impoundments from being located in wetlands.
34. Please comment on whether the Agency believes that the proposed requirements under Section 845.310 would be protective of the wetlands if CCR surface impoundments are allowed to continue to operate in wetlands.
35. Please comment on whether the CCR surface impoundments required to close for failing to meet the wetland restrictions under Section 845.310 should close through removal of the CCR and decontamination of the CCR surface impoundment rather than leaving the CCR in place and installing a final cover system. If not, please explain the rationale for leaving CCR permanently in wetlands.
36. Please comment on whether it would be acceptable to the Agency if subsection 845.300(c) is modified as follows to require the submission of the qualified professional engineer's certification with the initial operating permit application:
 - c) The owner or operator of an existing CCR surface impoundment must complete the demonstration required by subsection (a) and submit the completed demonstration along with the qualified professional engineer's certification to the Agency in the facility's initial operating permit application.

If so, comment on whether similar changes should be made to Sections 845.310(c), 845.320(c), 845.330(c) and 845.340(d).

SUBPART D: DESIGN CRITERIA

37. Please comment on whether the design and construction of a new CCR surface impoundment or a retrofit of an existing surface impoundment must be subject to a groundwater impact assessment similar to the construction of new nonhazardous solid waste landfills under 35 Ill. Adm. Code 811.317 to ensure compliance with the GWPS of Section 845.600 over extended time period beyond the 30-year postclosure care period. Also, indicate if there are any proposed provisions that require a similar or equivalent assessment.
38. Please clarify if the construction quality assurance (CQA) requirements of Section 845.290 apply to the installation liner at new CCR surface impoundments or lateral expansion of a CCR surface impoundment under Section 845.410, and leachate collection system at new CCR surface impoundments under Section 845.420. If so, comment on whether Sections

845.410 and 420 include a provision requiring compliance with the CQA requirements of Section 845.290.

39. Under Section 845.430(b)(1) and (b)(3), please explain what is included in “pertinent surrounding area” of the CCR surface impoundments.
40. Section 845.450(a)(5)(A) requires spillways to be designed on the basis of sustained flows or infrequent flows. Please explain on what basis will owner or operator determine the type of flow expected from a CCR surface impoundment.
41. Section 845.450(a)(5)(B) requires the spillway capacity for Class 2 CCR surface impoundments to be based on the flow from a 1000-year flood. Please comment whether the proposed rules should include a definition of the term 1000-year flood under Section 845.130. If so, propose a definition for that term.
42. Section 845.460(c)(4) requires the owner or operator of a new CCR surface impoundment to place each safety factor assessment in the facility's operating record as required by Section 845.800(d)(6). Please explain on why a similar requirement is not proposed for existing CCR surface impoundments.

SUBPART E: OPERATING CRITERIA

43. Section 845.510(c)(1) requires an owner or operator of a CCR surface impoundment to prepare initial and annual inflow design flood control system plans for the CCR surface impoundment. Please explain the rationale for requiring an annual plan if there is no change in the conditions at the facility that would substantially affect the written plan in effect.
44. Section 845.540(a)(1)(A) requires inspection by a qualified person after each 25-year, 24-hour storm. Please clarify whether the inspection needs to be done within 24 or 48 hours after the storm. Also, comment on whether information on the magnitude of the storm would be readily available within a short duration of a storm.
45. Section 845.540(b)(3) requires the qualified engineer’s annual inspection report to be “completed and submitted” with the annual consolidated report required by Section 845.550 by January 31 of each year. However, Section 845.550 does not require the annual consolidated report to be submitted to the Agency. Please clarify whether the annual inspection report or the annual consolidated report needs to be submitted to the Agency. If so, propose language changes to reflect the proposed intent.

SUBPART F: GROUNDWATER MONITORING AND CORRECTIVE ACTION

46. Section 845.600(a)(1) lists Groundwater Protection Standards (GWPS) for 20 chemical constituents.
- a. Please clarify whether the listed constituents represent the chemical constituents of concern associated with CCR in Illinois.
 - b. Comment on whether the existing CCR surface impoundments with Agency approved groundwater monitoring program are currently monitoring for any constituents not listed in Section 845.600(a)(1).
 - c. If so, provide a list of other chemical constituents being monitored at existing CCR impoundments and comment on whether they should be included in Section 845.600(a)(1) with corresponding GWPS.
47. Mr. Dunaway states that the proposed GWPS concentrations in Section 845.600(a) are the “lower of the numerical concentrations adopted in Part 257 or the existing Class I GWQS for that parameter. The numerical concentration of a constituent is more protective than a background concentration in proposed Part 845.” Dunaway PFT at 4.
- a. Please list the chemical constituents in Section 845.600(a) for which the GWPS are based on Part 620 Class I standards, and 40 CFR 257.
 - b. Also, explain why the numerical concentration (GWPS) is more protective than the background concentration, particularly if the upgradient background concentration is lower than the proposed numeric GWPS.
 - c. Please clarify whether calcium is required to be monitored at existing and inactive CCR surface impoundments. Since a GWPS is not proposed for calcium, please comment on whether the background concentration for calcium should be the GWPS for existing and inactive CCR surface impoundments similar to the new CCR surface impoundments under Section 845.600(b). If so, propose appropriate revisions Section 845.600 to reflect the proposed intent.
48. Mr. Dunaway notes that the GWPS in proposed Part 845 are intended to be stand-alone standards, unrelated to Part 620. Dunaway PFT at 6. Further, he explains that Section 845.600(c) is intended to clarify that the alternative standard pursuant to Part 620.450(a)(4) is not available for any constituents with GWPS subject to proposed Part 845 until the end of postclosure care.
- a. Please clarify whether CCR surface impoundments regulated under Part 845 would be subject Part 620 standards other than Section 620.450(a)(4) during operation, closure and post closure.

- b. If not, to avoid any conflicts or confusion with the application of Part 620, comment on whether the proposed rules must include a provision noting that CCR surface impoundments subject to Part 845 are exempted from the Part 620 groundwater quality standards until the Agency approves the facility's completion of postclosure care.
49. Section 845.610(d) requires the owner or operator a CCR surface impoundment in the event of a release to immediately take all necessary measures to control all sources of the release so as to reduce or eliminate, to the maximum extent feasible, further releases of contaminants into the environment.
- a. Please clarify whether the term "release" has the same meaning as the definition under Section 3.395 of the Act.
 - b. If not, explain what constitutes "release" in the context of this subsection.
 - c. Would subsurface transport of contaminants from a CCR surface impoundment to underlying groundwater that does not cause exceedances of the applicable GWPS considered as a release?
50. Section 845.610(e)(3) requires certain information to be included in the annual groundwater monitoring and corrective action report "to the extent available". Please clarify whether the informational requirements in this subsection are optional or does the rule require the owner or operator to include all information described in Section 845.610(e)(3)(A) through (F).
51. Regarding the hydrogeologic site characterization under Section 845.620, Mr. Dunaway states that the characterization will incorporate existing information from publicly available data sources and maps, as well as site specific information derived from borings, monitoring and analyses performed specifically for the hydrogeologic site characterization, or other previously existing site investigations. Dunaway PFT at 8.
- a. Please clarify whether all or most existing CCR surface impoundments have performed hydrogeologic site characterization that meets the proposed requirements.
 - b. Comment on whether the rule as proposed allows the use of existing information derived from previous investigations for site characterization.
52. Section 845.630(f) requires the owner or operator of a new CCR surface impoundment to submit a construction permit application containing documentation showing that the groundwater monitoring system is designed to meet the requirements. Please clarify whether the owner or operator must wait for the Agency to approve the construction permit before installing the groundwater monitoring system. If so, does the proposed rule reflect the proposed intent?

53. Please comment on whether it would be acceptable to the Agency if Section 845.640(c) is revised as follows:

c) The owner or operator must perform the following each time ground water is sampled:

1) Measure ~~G~~groundwater elevations ~~must be measured~~ in each well prior to purging, ~~each time groundwater is sampled.~~;

2) The owner or operator of the CCR surface impoundment must determine the rate and direction of groundwater flow ~~each time groundwater is sampled.~~; and

3) Measure ~~G~~groundwater elevations in wells which monitor the same CCR management area ~~must be measured~~ within a time period short enough to avoid temporal variations in groundwater flow which could preclude accurate determination of groundwater flow rate and direction.

54. In Section 845.640(f), please clarify whether “compliance wells” refer to all downgradient wells. If not, does the proposed rules allow an owner or operator to designate certain downgradient wells as compliance wells?

55. Section 845.650(b)(1)(B) requires, for new CCR surface impoundments or lateral expansions, a minimum of eight independent samples for each background well and downgradient well to be collected and analyzed for all constituents with a groundwater protection standard listed in Section 845.600(a) and Calcium during the first 180 days of sampling. Please clarify whether the 180-day period starts after the placement of CCR in the impoundment or before. Comment on whether sampling should be done prior to placement of waste in order to collect samples unimpacted by the CCR to establish background at new facilities.

56. The proposed response activities required under Section 845.650(d)(1) and (d)(2) do not include any timeframes for completing those activities. Please comment on whether the proposed rules should include deadlines for the owner or operator to complete the response activities under subsections (d)(1) and (2).

57. Please clarify whether the Agency nonconcurrence determination Section 845.650(d)(4)(C) of an alternative source demonstration is considered as an Agency action appealable to the Board. If not, please explain if the owner or operator has any recourse other than initiating assessment of corrective action measures.

58. Section 845.660(a)(1) requires the initiation assessment of corrective measures within 90 days of finding that any constituent listed in Section 845.600 has been detected in

exceedance of the GWPS in Section 845.600, or immediately upon detection of a release from a CCR surface impoundment. Please clarify whether assessment of corrective action measures must be done even if detection of a release from a CCR impoundment is below the applicable GWPS. If so, explain why assessment is necessary if monitored levels are below GWPS.

59. Section 845.660(d) requires the owner or operator of the CCR surface impoundment to discuss the results of the corrective measures assessment at least 30 days prior to the selection of remedy in a public meeting with interested and affected parties as required by Section 845.240. This section specifies requirements for public meetings concerning application for a construction permit. Please comment on whether Section 845.240 needs to be modified in any way to accommodate public meeting requirements tailored to address corrective measures assessment. If so, propose any necessary revisions to Section 845.240.
60. Section 845.670(b) allows owner or operator of the CCR surface impoundment one year after the completion of the assessment of corrective measures, and completion of the public meeting in Section 845.660(d) to submit a corrective action plan in a construction permit application.
 - a. Please comment on the rationale for allowing a one-year period for plan submission rather than shorter time frame in the range of four to six months.
 - b. Comment on whether the proposed rules require the Agency to approve or deny the corrective action plan /construction permit within a certain time period like 90 or 120 days of receiving the permit application. If not, please explain why an approval timeframe is unnecessary.
 - c. If the Agency denies the corrective action plan in the construction permit, please clarify whether the Agency's action is appealable.

SUBPART G: CLOSURE AND POST-CLOSURE CARE

61. Section 845.700(a) specifies that the owner or operator must cease placing CCR or "non-CCR waste streams" in CCR surface impoundments that are required to initiate closure under Subpart G.
 - a. Please clarify whether CCR surface impoundments subject to Part 845 are generally allowed to receive "non-CCR waste streams" during operation.
 - b. If not, comment on whether a provision prohibiting the placement of "non-CCR waste streams" in CCR surface impoundments should be added to Section 845.100.

- c. If so, comment on the types of non-CCR waste streams that are allowed to be accepted at CCR surface impoundments.
62. Section 845.700(d)(2) specifies timeframes for closure based upon whether CCR surface impoundment has satisfied an alternative closure requirement of 40 CFR § 257.103 that allows for the continued receipt of CCR or non-CCR waste streams.
 - a. Please comment on why the Agency chose to include a cross-reference to 40 CFR § 257.103 rather than including the alternative closure requirement provisions in Part 845.
 - b. Clarify whether the owner or operator of a CCR surface impoundment under Section 845.700(d)(2) must initiate closure within 6 months of ceasing to accept CCR. If so, please revise subsection (d)(2) to reflect the proposed intent. If not, explain when impoundments under subsection (d)(2) are required to initiate closure.
63. Under the alternative closure requirements of 40 CFR § 257.103 (a)(1), a CCR surface impoundment subject to Subpart G is allowed to continue to receive CCR up to 5 years of the initial certification if the owner or operator certifies that the CCR must continue to be managed in that impoundment due to the absence of alternative disposal capacity both on-site and off-site of the facility if certain conditions are met.
 - a. Please comment on whether the Agency expects CCR surface impoundments in Illinois would be faced with the situation of not having alternative disposal capacity both on-site and off-site.
 - b. Clarify whether the non-availability of off-site capacity applies to off-site disposal sites within Illinois or outside the state.
 - c. Does the Agency have the authority to disapprove the certification submitted by an owner or operator of a CCR surface impoundment under 40 CFR § 257.103(a)(1)? If so, what criteria will the Agency use to make its determination?
 - d. Also, explain the rationale for limiting the continued acceptance of CCR under 40 CFR § 257.103 to October 15, 2023 rather than 5 years from the date of initial certification.
64. Section 845.700(g)(1)(C) specifies that Category 3 includes CCR surface impoundments located in areas of environmental justice concern as determined by the Agency under subsection 845.700(g)(6).
 - a. Please clarify whether the Agency's determination under subsection (g)(6) be appealed to the Board by an affected community.

- b. Do affected communities have access to the data used by the Agency to determine whether a community is an EJ community or not?
 - c. Will the Agency identify the source of the data used to make its determination under subsection (g)(6)?
65. Mr. Pressnall states that the Agency has developed a Geographic Information System (GIS) mapping tool call EJ Start to identify census block groups and areas within one mile of census block groups meeting the EJ demographic screening criteria. Presnell PFT at 69. Please provide a valid website link to EJ Start.
66. Section 845.700(g)(4) requires the owner or operator of a Category 1 surface impoundment to replace the water supply with a supply of equal or better quality and quantity within 30 days of notice that such impact has occurred. Please identify the specific provision of the proposed rules that require the owner or operator to provide a notification of impact to any existing potable water supply and include a cross-reference to that provision in Section 845.700(g)(4).
67. Please clarify whether an owner or operator submitting the preliminary closure plan with the initial operating permit application per Section 845.720(a)(2) should also submit the qualified professional engineer's certification that the initial and any amendment of the preliminary written closure plan meets the requirements of Part 845. If so, revise Section 845.720(a)(2) to reflect the proposed intent.
68. In Section 845.720(b)(2), please clarify whether the exception, as provided in Section 22.59 of the Act, from filing a construction permit refers to CCR surface impoundments with permits issued by the USEPA. If not, please explain what's covered under the exception.
69. Please clarify whether an owner or operator submitting the written final closure plan as a part of a construction permit application under Section 845.720(b)(1) should also submit the qualified professional engineer's certification that the final closure plan meets the requirements of Part 845. If so, revise Section 845.720(a)(2) to reflect the proposed intent.
70. Please clarify whether written certification from a qualified professional engineer required under Section 845.750(c)(4) that the design of the final cover system meets the requirements of Section 845.750 must be submitted with the final closure plan as well as the construction permit. If so, comment on whether the proposed rules must be revised to reflect the proposed intent.
71. Section 845.760(a) allows the owner or operator of a CCR surface impoundment up to 5 years from the date of submitting the construction permit application to complete closure activities. Please comment the rationale for allowing up to 5 years for completing closure

activities. In this regard, the Board's landfill regulations require closure activities to be completed within 180 days of beginning closure. See 35 Ill. Adm. Code 811.110.

72. Please clarify why extension of closure under Section 845.760(c)(3) does not have limit on number of times an owner or operator may seek an extension.
73. Section 845.760(f) requires the owner or operator to prepare a notification of closure of the CCR surface impoundment and place the notification in the facility's operating record. Please clarify whether the owner or operator needs to notify the Agency are any other persons regarding the closure of the CCR surface impoundment.
74. Section 845.780(a)(1) specifies that the post-closure care requirements apply to the owners or operators of CCR surface impoundments who have completed an Agency approved closure. Please clarify whether an Agency approved closure means the Agency's approval of the closure report and closure certification submitted under Section 845.760(f). If so, should Section 845.780(a)(1) include a cross reference to Section 845.760(f)?
75. Please clarify whether Section 845.780(c) allows termination of post-closure care only if both subsections (c)(1) (GWPS) and (c)(2) are met. Comment on whether post-closure care could be terminated if concentrations have been reduced to the maximum extent feasible, and concentrations are protective of human health and the environment even if the concentrations are above the GWPS.

SUBPART I: FINANCIAL ASSURANCE

76. Section 845.900(e) states that Subpart I does not apply to State of Illinois, local government, and not-for-profit electric co-ops. How many of these groups have CCR surface impoundments in Illinois?
77. Section 845.950(b) requires the language of the mechanisms used for providing financial assurance for closure, post-closure, and corrective action of CCR surface impoundments to be consistent with the forms prescribed by the Agency. Please clarify whether the Agency has developed financial assurance forms tailored for CCR surface impoundments regulated under Part 845. If so, please submit CCR surface impoundment financial assurance forms into the record. (This question applies to Sections 845.960(c), 970(c), 980(c) and 990(c)).