

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

To: ALL PARTIES ON THE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the **Prefiled Questions for the Illinois Environmental Protection Agency**, copies of which are herewith served upon you.

Respectfully submitted,

/s/ Ryan C. Granholm

Ryan C. Granholm

Dated: June 23, 2020

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Prefiled Questions for the Illinois Environmental Protection Agency

NOW COMES Dynegy Midwest Generation, LLC; Electric Energy Inc., Illinois Power Generating Company; Illinois Power Resources Generating, LLC; and Kincaid Generation, LLC (collectively, “Dynegy”) by their attorneys, Schiff Hardin LLP, pursuant to the Hearing Officer’s April 24, 2020 Order and 35 Ill. Adm. Code 102.430, and hereby submit prefiled questions for the Illinois Environmental Protection Agency (“Agency” or “IEPA”). Dynegy respectfully request that the Hearing Officer allow follow-up questioning to be asked at hearing based on the answers provided.

1. In the Agency’s Statement of Reasons, it states that the “third purpose and effect” of its proposed regulations to be codified at 35 Ill. Adm. Code 845 (“Part 845”) is “to adopt the federal CCR rules in Illinois and obtain federal approval of Illinois’ CCR surface impoundment program.” (Statement of Reasons at 10). The phrase “federal CCR rules” refers to the U.S. Environmental Protection Agency’s 2015 rule, as amended, and codified at 40 C.F.R. Part 257 (the “CCR Rule”), correct?¹
 - a. To “obtain federal approval,” under the Water Infrastructure Improvements for the Nation Act (P.L. 114-322) (“WIIN Act”), Part 845 must be “at least as protective as” the federal rule, correct? (42 U.S.C. § 6945(d)).
 - b. What does IEPA believe is required for Part 845 to be “at least as protective as” the CCR Rule?

¹ Unless otherwise defined, all terms used in these Prefiled Questions have the same definition, if any, provided in proposed Part 845.120.

- c. Does IEPA interpret the phrase “as protective as” in the WIIN Act, to create the same standard as the phrase “at least as protective and comprehensive,” as used in 415 ILCS 5/22.59(g)(1)?
 - d. Does IEPA believe its Part 845 proposal is “as protective” as the federal CCR Rule?
 2. The Agency cites the CCR Rule’s 2015 preamble (80 Fed. Reg. 21,301 (Apr. 17, 2015)), as one of the “List of Documents Relied Upon” in developing Part 845. (Statement of Reasons at 43). The CCR Rule was promulgated by U.S. EPA pursuant to its authority under the Resource Conservation and Recovery Act (“RCRA”), correct?
 - a. The preamble to the 2015 CCR Rule states that the CCR Rule must meet RCRA’s requirement that there be “no reasonable probability of adverse effects on health or the environment” from the disposal of CCR in CCR surface impoundments, correct? (81 Fed. Reg. at 21,311).
 - b. To be “at least as protective” as the CCR Rule, does Part 845 also need to ensure that CCR surface impoundments subject to Part 845 will not present a “reasonable probability of adverse effects on health or the environment”?
 3. Is IEPA aware that U.S. EPA used a 2014 risk assessment (*Human and Ecological Risk Assessment of Coal Combustion Residuals*, Reg. ID No. 2050-AE81 (Dec. 2014)) to “estimate the resulting risks to human and ecological receptors” from CCR units? (See 80 Fed. Reg. at 21,433).
 - a. Has IEPA reviewed that risk assessment?
 - b. Did IEPA rely upon U.S. EPA’s risk assessment to support its Part 845 proposal?
 - c. Does IEPA view U.S. EPA’s risk assessment as sufficiently conservative? In other words, does the Agency believe that U.S. EPA adequately assessed and quantified the potential risks associated with CCR surface impoundments?
 - d. If so, are there any risks that IEPA does not believe were adequately assessed in U.S. EPA’s risk assessment?
 - e. Has IEPA performed its own risk assessment to identify risks associated with surface impoundments warranting regulation?
 - f. Are there any other risk assessments that IEPA relied on in developing its Part 845 proposal?
 4. In its 2015 preamble for the CCR Rule, U.S. EPA stated that it “reviewed the risk assessment and the damage cases to determine the characteristics of the surface impoundments that are the source of the risks the rule seeks to address. Specifically,

- these are units that contain a large amount of CCR managed with water, under a hydraulic head that promotes the rapid leaching of contaminants.” (80 Fed. Reg. at 21,357.) Does IEPA agree that “units that contain a large amount of CCR managed with water, under a hydraulic head” are the “source of the risks” that Part 845 seeks to address? If not, why not?
5. How did IEPA identify the 73 surface impoundments listed in the Statement of Reasons? (Statement of Reasons at 37-38).
 6. Are Illinois landfills containing CCR subject to the Board’s rules governing landfills (e.g., 35 Ill. Adm. Code 810 – 815)?
 - a. Do those rules include provisions to prevent and correct groundwater contamination?
 7. Are Illinois landfills containing CCR also subject to the requirements of the CCR Rule?
 - a. Do those rules include provisions to prevent and correct groundwater contamination?
 8. Does IEPA have any information suggesting that the Board’s rules governing landfills, as applied to the units subject to those rules, are insufficient to ensure protection of human health and the environment in Illinois?
 9. On page 8 of their June 15, 2020 public comments, the Environmental Law & Policy Center, Prairie Rivers Network, and Sierra Club (collectively, the “ENGOs”) state that “CCR landfills and fill in Illinois are leaching pollutants into our waters and can be expected to continue to do so.” Assuming that fact pattern, could such groundwater contamination be subject to Section 12 of the Environmental Protection Act and Part 620 of the Board’s rules?
 10. Units that “closed” (units that were capped or otherwise maintained to no longer contain water) prior to the effective date of the CCR Rule are not subject to the CCR Rule, correct? (80 Fed. Reg. at 21,343).
 11. Does IEPA agree with U.S. EPA that units should be considered “closed” if they are “capped or otherwise maintained” such that they “no longer contain water and can no longer impound liquid?”
 12. Does IEPA agree with U.S. EPA that units that are “closed” are not “CCR surface impoundments”? If not, why not?
 13. Has IEPA performed any assessment to understand any risks to human health or the environment associated with surface impoundments in Illinois that contain CCR but no longer contain water?

14. U.S. EPA chose not to regulate units that contain “de minimis” amounts of CCR, correct? (80 Fed. Reg. at 21,357).
15. Does the Agency agree that Part 845 does not regulate surface impoundments that contain “de minimis” amounts of CCR?
16. Has IEPA performed any assessment to understand any risks to human health or the environment associated with surface impoundments in Illinois that contain “de minimis” amounts of CCR?
17. Once Part 845 becomes effective, will existing CCR surface impoundments be required to obtain operating or construction permits under 35 Ill. Adm. Code 309 (“Part 309”) for corrective action, closure, post-closure care, or retrofit activities conducted under Part 845?
18. Does the Agency believe any modifications to Part 309 are necessary to harmonize it with proposed Part 845?
19. In the event that the Agency approves of an existing groundwater monitoring well or system under Part 845.210(d)(1), will it also approve the use of the existing sampling data collected by that well or system?
20. Does Part 845.220 require the closure application to include a Part 845.660 assessment of corrective measures when closure is part of the selected groundwater corrective action?
 - a. If so, do each of the elements of the corrective measures assessment outlined in 845.660 need to be completed at the time the closure application is submitted?
21. Does Part 845.220 require the closure application to include a Part 845.670(e) corrective action alternatives analysis when closure is part of the selected groundwater corrective action?
 - a. If so, do each of the requirements in Part 845.670 need to be completed and included with the closure application?
22. Part 845.220(c)(2)(E) & (d)(3)(E) require owners/operators to provide licenses/software to the Agency to review groundwater modeling. Is the Agency aware of any Illinois or federal regulatory programs that require owners/operators to provide the Agency with either software or licenses to software?
23. Has the Agency approved closure of CCR surface impoundments in the past without requiring owners/operators to provide software for the review of groundwater modeling?
24. Has the Agency attempted to purchase or otherwise gain access to the software it now requires?

25. In proposed 845.230(d)(2)(H)(iv) & (d)(3)(E)(iv); 845.610(b)(1)(D); and 845.650(b)(1)(A), can the eight independent samples required be satisfied using existing sampling data from an approved groundwater monitoring well or system?
26. Will the Agency accept a single permit application for closure, corrective action, or post-closure care when multiple units making up the same waste water treatment system are being closed as a single unit?
27. The Agency has issued invoices seeking initial fees and annual fees for each of the 73 CCR surface impoundments identified in the Statement of Reasons, correct?
 - a. Where multiple units are part of the same wastewater treatment system, will the Agency's decision to invoice units as separate CCR surface impoundments preclude closing those units under a single permit application?
 - b. Where multiple units are part of the same wastewater treatment system, will the Agency's decision to invoice units as separate CCR surface impoundments preclude those units from using a single multi-unit groundwater monitoring network in accordance with Part 845.630(d)?
 - c. Where multiple units are part of the same wastewater treatment system, will the Agency's decision to invoice units as separate CCR surface impoundments preclude the use of combined groundwater modeling to assess impacts from and closure/groundwater corrective measures for multiple units making up the same waste water treatment system?
28. Please identify all permit programs administered by IEPA that require a permittee to hold a public meeting before submitting a permit application to the Agency.
 - a. Please identify any such permit programs that require two public meetings prior to submitting a permit application.
 - b. Please identify all permit programs administered by IEPA that require an applicant to provide the public with preliminary decisions regarding a permitted activity and/or draft submittals before a permit application is submitted to the Agency.
29. Will the Agency identify the facilities for which it expects non-English language notification, pursuant to proposed Part 845.240(c)?
30. Does the Agency view the public notice procedures under Part 845.260(b)(3) as adequate to ensure public awareness and opportunity to participate in the public comment period under Part 845.260(c)? Please explain.
 - a. If so, why are the notification requirements imposed on owners/operators under Part 845.240 substantially more expansive?
31. When does IEPA expect Part 845 to become effective?

- a. Has IEPA done any analysis to determine how much time is required for owners/operators to perform a closure alternatives analysis with groundwater modeling, facilitate two public meetings, and complete the rest of the application materials required by Part 845?
32. What is the basis for the construction quality assurance requirements proposed in Part 845.290?
 - a. What is the basis for requiring weekly construction quality assurance reports to be prepared and placed in the operating record under Part 845.290(b)(2)?
33. What regulatory program(s) governs worker safety in Illinois?
 - a. Does IEPA have any reason to believe those regulatory programs are insufficient?
 - b. Are any of these programs administered by IEPA?
34. Does the federal hazardous waste program set forth requirements for a safety and health plan to protect workers during the remediation or closure of hazardous waste sites?
35. Has the Agency determined the costs for owners/operators to perform annual updates to their safety and health plans, as required by proposed Part 845.530(a)?
36. Has the Agency determined the costs for owners/operators to perform a structural stability assessment, safety factor assessment, and inflow design flood control system plan on an annual basis, as required by proposed Part 845.540(b)?
37. Most of the constituents listed in Part 845.600 are naturally occurring in soils in Illinois, correct?
38. Isn't it true that the sampled concentration of these inorganic chemicals often increase as the turbidity increases in groundwater? In other words, as turbidity varies, so do the concentrations of inorganic chemicals, right?
39. Does turbidity in groundwater vary naturally over time?
40. On page 3 of Mr. Dunaway's pre-filed testimony, he states that "Part 257 uses the value of the MCL, when available, as a [groundwater protection standard]" and "USEPA adopted health-based values" for constituents that do not have MCLs. Under Part 257, isn't it true that, where background concentrations exceed the MCL, the groundwater protection standards are the background concentrations?
 - a. For example, the MCL for arsenic is 0.1 micrograms/liter. If the background concentration at a site for AS is 0.5 micrograms/liter, the groundwater protection standard ("GWPS") for AS at the site under Part 257 is 0.5 micrograms/liter, right? If not, please explain why not.

41. Under 257.95(h), the owner or operator establishes GWPS for the Appendix IV constituents, right?
42. On page 4 of Mr. Dunaway's testimony, he states that the limits proposed in 845.600(a) "are the lower of the numerical concentrations adopted in Part 257 or the existing Class I GWQS for that parameter." Why did IEPA model the Part 845.600(a) numeric standards on Class I groundwater standards and not Class II, III, or IV?
 - a. Is the Agency aware of facilities in Illinois where CCR surface impoundments are not located in areas of Class I groundwater?
43. Are the groundwater protection standards set forth in Part 845.600 protective of human health and the environment?
44. Will the Part 620 groundwater quality standards remain applicable at sites that have CCR surface impoundments regulated by Part 845?
 - a. Mr. Dunaway suggests on p. 6 of his testimony that during closure and post-closure care, Part 620 standards are applicable only for constituents not regulated by Part 845. Is that correct?
45. The Agency has previously approved GMZs under Part 620 for CCR surface impoundments, correct?
 - a. In each case where a GMZ was issued, did IEPA determine that the approved corrective action and closure would not violate the Illinois Environmental Protection Act or Board regulations?
 - b. In each instance where a GMZ was issued for a CCR surface impoundment, did IEPA also determine that the approved closure and/or corrective action was protective of human health and the environment?
 - c. Isn't it true that some of the closure plans approved by IEPA for CCR surface impoundments predicted that it would take decades for groundwater to meet the groundwater quality standards after closure had been completed?
46. Does Part 845 preclude an owner/operator from seeking a GMZ under Part 620?
 - a. Would a GMZ issued under Part 620 provide relief from the groundwater protection standards set forth in Part 845.600?
47. Are the Part 620 numeric groundwater quality standards more stringent than the CCR Rule's groundwater protection standards? Please explain.
48. Could groundwater corrective measures implemented pursuant to Part 845 satisfy the groundwater corrective action requirements of Part 620?

49. Could groundwater corrective actions implemented pursuant to Part 620 satisfy the groundwater corrective measure requirements of Part 845?
- a. For example, if a site has a GMZ, approved by the Agency under Part 620, and exceedances of the Part 845 groundwater protection standards are detected, could the existing approved measures that are part of the GMZ be used to satisfy the corrective measures requirements of Part 845?
50. Mr. Dunaway, on page 11 of his June 2, 2020 testimony, states that “four sampling events per year is not overly burdensome for owners and operators of CCR surface impoundments.” What is the basis for this statement?
- a. Has the Agency presented testimony to the Board regarding the cost of each sampling event and the cost of analysis for each of the parameters identified in Part 845.600(a)(1)?
 - b. What monitoring frequency would be “overly burdensome for owners and operators of CCR surface impoundments?”
51. Has the Agency previously approved CCR surface impoundment closure applications under Part 620 that allow an owner or operator to reduce the monitoring frequency from quarterly monitoring if certain conditions are achieved?
52. Mr. Dunaway refers to annual groundwater monitoring reports under 845.610 on pages 7-8 of his testimony, and states that reports are due by “January 31st of the year following the year that is the subject of the report.” When would the first such report be due following the effective date of Part 845?
53. Page 13 of IEPA’s Statement of Reasons states “[i]f the groundwater monitoring shows statistically significant increasing constituent concentration over the groundwater protection standards, the owner or operator must perform corrective action.” Is that statement consistent with the language of 845.650(d)?
- a. Where in Part 845.650(d) is statistical analysis allowed to determine whether a notification or corrective action is triggered?
54. Under 257.94 & 257.95 there is a distinction between a statistically significant increase (SSI) and a statistically significant level (SSL), correct?
- a. An SSI is used to assess whether a site goes to assessment monitoring (257.94(e)) and an SSL is used to assess whether a site goes to corrective action (257.95(g)), correct? If not, please explain why not.
55. On page 3 of Mr. Dunaway’s testimony, he states that “Part 257 does not allow the end of post-closure care until the GWPS for both Appendix III and IV have been met, ...” Please provide a reference to the specific provision(s) in Part 257 that supports this statement.

56. Does an owner/operator have the right to appeal an Agency decision to “not concur[]” with the owner/operator’s demonstration under Part 845.650(d)(4) that a source other than the CCR surface impoundment is causing the detected exceedances of the groundwater protection standards? If so, please set forth the regulatory and/or statutory authorization for bringing such an appeal.
57. On page 6 of the ENGO’s June 15, 2020 public comments, the ENGOs suggest that owners or operators can “evade corrective action” by making a demonstration that CCR sources other than a CCR surface impoundment at the facility are the source of groundwater contamination. Assuming that fact pattern, could such groundwater contamination be subject to Section 12 of the Environmental Protection Act and Part 620 of the Board’s rules?
58. Does the Agency agree with the ENGOs that Part 845 as proposed allows owners and operators to “evade” cleaning up groundwater contamination from CCR sources other than CCR surface impoundments?
59. On p. 14 of Mr. Dunaway’s testimony, he refers to the requirement that the corrective action plan under Part 845.670 “provide an anticipated schedule for implementing and completing the remedy in consideration of site specific conditions.” What types of “site specific conditions” does this refer to?
- a. How might those site specific conditions impact the amount of time required to complete corrective action?
60. On Page 8 of the Statement of Reasons IEPA asserts that 415 ILCS 5/22.59(g) requires the Board’s rules to “specify a method to prioritize CCR surface impoundments required to close under the federal CCR rule.” 415 ILCS 5/22.59(g)(9) states that the rules must: “specify a method to prioritize CCR surface impoundments required to close under RCRA *if not otherwise specified by the United States Environmental Protection Agency*, so that CCR surface impoundments with the highest risk to public health and the environment, and areas of environmental justice are given first priority.” (emphasis added).
- a. Does IEPA’s proposed closure prioritization apply only to CCR surface impoundments for which a closure schedule has not been established by the CCR Rule?
- b. If the Agency intends its prioritization program to apply to CCR surface impoundments for which closure deadlines have already been established under the CCR Rule, does it believe such prioritization is required by 415 5/22.59(g)(9)?
61. Why did the Agency choose the specific application deadlines set forth in Part 845.700(h)?
62. How many applications does the Agency expect to receive for each category set forth in Part 845.700?

63. How long does the Agency anticipate will be required to for it to assess each closure application?
64. Ms. Zimmer states on page 3 of her testimony that “[t]he timeframes for closure of existing CCR surface impoundments are set up in stages so they do not all occur at once but are staggered.” What elements of Part 845 ensure that closures are performed in “stages?”
65. Ms. Zimmer, on Page 4 of her testimony, refers to Part 845.700(g) requirements that an owner/operator shall close impoundments in order of priority. What is “closure” under this provision? Does it mean cease receipt of all waste and commence closure activities or complete closure (e.g., installation of a cap or removing all of the CCR)?
66. Has the Agency evaluated how many units in the state fail to meet one or more of the location restrictions listed in proposed Part 845.300 – 845.340?
67. Why does the Agency believe failure to demonstrate compliance with a location restriction potentially warrants classifying a unit as Category 2?
68. Has the Agency determined whether any CCR surface impoundment in Illinois actually warrants being classified as a Category 2 unit?
 - a. If such a determination has been made, what did the Agency conclude and what was the basis for the conclusion?
 - b. If no such determination has been made, why not? When does the Agency anticipate making such designations, if any?
69. What factors will the Agency use to determine whether a CCR surface impoundment is an “immediate danger to public health or welfare, or the environment” warranting a Category 2 designation?
70. Does the CCR Rule require owners/operators to perform a closure alternatives analysis?
71. Does IEPA believe the factors listed in Part 845.710 are sufficient to assess and ensure that potential closures are protective of human health and the environment?
72. Do the factors listed in Part 845.710 allow for consideration of all site-specific factors that could impact or influence the closure analysis for each CCR surface impoundment?
73. Does IEPA believe the factors listed in Part 845.710 present a process for selecting appropriate closures that can account for all site-specific factors that may exist at each of the CCR surface impoundments subject to Part 845?

74. U.S. EPA stated in the 2015 preamble to the CCR Rule that closure-in-place and closure-by-removal, if conducted properly, “can be equally protective” of human health and the environment, correct? (80 Fed. Reg. at 21,412).
75. Please identify any regulatory programs that regulate the transportation of CCR offsite from the facility where it was generated and state whether any such programs are administered by IEPA.
76. Has the Agency performed any assessment to determine what final cover system requirements are appropriate for CCR surface impoundments in Illinois? If so, please explain the Agency’s findings.
77. What resources did the Agency use to develop the final cover standards included in proposed Part 845.750?
78. The final cover system requirements proposed in Part 845.750 are more stringent than those required by the CCR Rule in 40 CFR 257.102, correct?
79. Did IEPA perform an evaluation or analysis to assess the efficacy of the cover system requirements set forth in 40 CFR 257.102? If so, please explain the Agency’s findings?
80. Has the Agency evaluated the cost implications of requiring a cover system that is thicker and less permeable than what is required by the CCR Rule? If so, please explain the Agency’s findings.
81. The Agency, in connection with GMZ and closure applications under Part 620, has previously approved cover systems for CCR surface impoundments that do not meet the cover system requirements proposed in Part 845.750, correct?
 - a. Does the Agency have any information demonstrating that cover systems it approved prior to proposing Part 845 are inadequate to protect human health or the environment? If so, please provide that information.
82. Part 845 would require a 3-foot thick protective layer regardless of whether a geomembrane or compacted earth are used for the low permeability layer, correct?
 - a. Part 845.750(c)(2)(B) states that the final protective layer must “be sufficient to protect the low permeability layer from freezing. . . .” Does the Agency have evidence that geomembranes are vulnerable to damage as a result of freeze/thaw cycles when used in final cover systems?
83. Agency approved final cover systems have been completed for CCR surface impoundments located at the Havana, Hutsonville, and Venice power stations, correct?
 - a. Has the Agency reviewed groundwater monitoring data that postdates the completion of final cover systems for each of these impoundments?

- b. After reviewing groundwater monitoring data from each of these impoundments following the completion of final cover systems, has the Agency required any further groundwater corrective action associated with CCR surface impoundments at any of these three sites?
 - c. Of these three, the Havana South Ash Pond system has been closed the longest, correct?
 - d. Does groundwater data for the CCR Havana South Ash Pond demonstrate that closure-in-place achieved compliance with the applicable Part 620 groundwater quality standards?
 - e. Does groundwater data for the CCR Havana South Ash Pond demonstrate that closure-in-place can mitigate and control groundwater contamination from a CCR surface impoundment?
84. In the past, under the Part 620 groundwater management zone (“GMZ”) program, has IEPA approved monitored natural attenuation as a component of corrective action to address groundwater contamination associated with CCR surface impoundments in Illinois?
85. Part 845.750(d)(4)(A) limits the slope of final cover systems when closing an impoundment to 5%. How did the Agency select 5% as its default slope limit?
86. Has the Agency evaluated whether slopes steeper than 5% on a cover system can effectively manage run-off and minimize erosion?
87. Has the Agency previously approved final cover systems, of the type required by Section 845.750, for CCR surface impoundments and landfills (of any type) with slopes greater than 5%?
88. Does Part 845 allow for the use of additional engineering components (i.e., deep mixing walls, slurry walls and other physical/hydraulic barriers, etc.) to achieve the closure and groundwater corrective measures requirements under Part 845.660, 670, 710, 740, & 750?
89. Can institutional controls reduce risk by eliminating potential exposure pathways, e.g., by restricting private parties from digging through an engineered cap and potentially encountering CCRs and by restricting the installation of groundwater supply wells downgradient of a closed CCR surface impoundment?
90. Has IEPA approved institutional controls in the past, for example, in the Site Remediation Program, to help minimize the potential for exposure to contaminants in groundwater?
91. Has IEPA previously approved the use of institutional controls at sites that contain CCR surface impoundments?

92. After closure by removal is complete, then groundwater monitoring is required for a minimum of three years to show groundwater protection standard compliance, correct?
93. Has the Agency evaluated how long it may take to complete closure of impoundments located in the State that have not yet submitted a closure application? If so, which units and what are the Agency's findings?
94. Does the Agency believe some closure activities will take longer than 5 years to complete? If so, please give some examples.
95. Does the Agency believe some groundwater corrective measures taken pursuant to proposed Part 845 will take longer than 30 years to complete?
96. What is the basis for closure construction permits expiring after 5 years when the approved construction activities may last longer than 5 years?
97. Is the Agency aware that U.S. EPA has proposed a federal CCR permit program that would allow permits for CCR units to be issued without an expiration date? (Proposed 257.120(b)(7); 85 Fed. Reg. at 9,978 (Feb. 20, 2020)).
98. How did the Agency determine that 3 years was appropriate for construction permits not related to closure or retrofit and 5 years was appropriate for closure and retrofit permits?
99. What is the basis for limiting the term of an operating permit to 5 years?
100. Is an owner/operator that has demonstrated permanent cessation of coal-fired power boiler(s) by a date certain under 40 CFR 257.103, and in accordance with Part 845.700(d)(2)(C), allowed to continue to operate the CCR surface impoundment up to a date the owner/operator deems sufficient to ensure closure of the impoundment is completed by the dates specified in Part 845.700(d)(2)(C)?
 - a. For example, Pond A is 45 acres and is scheduled to close in place which is expected to take 12 months to complete. Would Pond A be authorized to receive CCR and non-CCR wastes until at least October 17, 2027, 12 months before the October 17, 2028 deadline set forth in Part 845.700(d)(2)(C)? If not, why not?
101. Proposed 845.760(g) provides that notice regarding closure of a surface impoundment prior to the effective date of Part 845 must be provided to Illinois EPA by September 30, 2021, if not earlier provided. Does this proposed requirement apply only to "existing," "new," and "inactive" CCR surface impoundments as defined by proposed Part 845?
102. Does the closure report requirement of proposed 845.760(e) apply to any surface impoundments that closed before the effective date of Part 845? If so, which ones?

103. In Robert Mathis's testimony, he indicates that the financial assurance portion of the Agency's proposal was constructed using selected components from "other FAP regulations." Please identify the specific components from the other FAP regulations used to construct the financial assurance portions of the Agency's Part 845 proposal.
104. Can an owner/operator provide separate financial assurance for each of the activities set forth in Part 845.900(b)? If not, why not?
105. Post closure care periods under Part 845 will last for at least 30 years where units close in place. May owners or operators reduce financial assurance using Part 845.940 as work is completed and therefore cost estimates for future work are reduced? If not, why not?
106. Will the Agency release an owner/operator from the financial assurance obligations tied to closure upon the Agency's approval of the closure report and certification pursuant to Section 845.760?
107. What is Mr. Mathis referring to when he says "closure, post-closure and remediation costs . . . most likely increase through the passage of time" on page 2 of his June 2, 2020 testimony?
 - a. Isn't it also possible that these costs could decrease, for example because of new technology, a reduction in labor costs, or as work is completed? Why not allow a reduction in the financial assurance obligations as costs are reduced?

Respectfully submitted,

/s/ Joshua R. More

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CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 23rd day of June, 2020, I have served electronically the attached **Prefiled Questions for the Illinois Environmental Protection Agency**, upon the individuals on the attached service list. I further certify that my email address is rgranholm@schiffhardin.com; the number of pages in the email transmission is 19; and the email transmission took place today before 5:00 p.m.

Respectfully submitted,

/s/ Ryan C. Granholm

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