BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	R 2020-019
STANDARDS FOR THE DISPOSAL OF	)	
COAL COMBUSTION RESIDUALS IN	)	(Rulemaking – Water)
SURFACE IMPOUNDMENTS:	)	
PROPOSED NEW 35 ILL. ADM.	)	
CODE 845	)	

NOTICE OF FILING

To: Service List

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Pollution Control Board Pre-Filed Testimony of Sharene Shealey on Behalf of Midwest Generation, LLC, a copy of which is herewith served upon you.

Dated: August 27, 2020

MIDWEST GENERATION, LLC

By: __/s/Kristen L. Gale _____

Susan M. Franzetti
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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that a true copy of the foregoing Notice of Filing, and Pre-Filed Testimony of Sharene Shealey on Behalf of Midwest Generation, LLC was electronically filed on August 27, 2020 with the following:

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and that copies were sent via e-mail on August 27, 2020 to the parties on the service list.

Dated: August 27, 2020 /s/Kristen L. Gale

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PROPOSED NEW TO 35 Ill. Adm. Code Parts 845	)	

PRE-FILED TESTIMONY OF SHARENE SHEALEY
ON BEHALF OF MIDWEST GENERATION, LLC

I. Introduction

My name is Sharene Shealey and I am employed as a Senior Environmental Manager with NRG Energy, Inc, which in turn indirectly owns the shares of Midwest Generation, LLC ("MWG"). I have been employed by NRG Energy, Inc. or predecessor companies in various environmental roles supporting power plant operations since 2008. I have a Master of Science in Chemical Engineering from Carnegie Mellon University and a Bachelor of Science in Chemical Engineering from Howard University.

I am testifying on behalf of MWG. MWG appreciates the hard work that the Illinois Environmental Protection Agency ("Illinois EPA" or "the Agency") has done both to expedite the drafting of the Rule on an extremely tight schedule and shepherding the Rule through the rulemaking process. MWG agrees with certain aspects of the Proposed Standards for the Disposal of Coal Combustion Residual ("Draft Rule" or "Rule") and believes that they generally present a balanced approach to address existing and new coal combustion residual ("CCR") surface impoundments. Specifically, MWG supports the sections that closely follow the U.S. Environmental Protection Agency's ("USEPA") 2015 rule "Disposal of Coal Combustion Residuals from Electric Utilities" (80 Fed. Reg. 21,301 (April 17, 2015), as amended and codified at 40 CFR Part 257 ("the federal Rule")). These sections rely upon the extensive research and administrative record that provide the scientific basis for the federal Rule.

Additionally, relying on these sections allows a company to integrate their existing federal CCR program with the Illinois program proposed in the Draft Rule in cases where a specific CCR surface impoundment is subject to the federal Rule.[1] Illinois should not disadvantage Illinois power generators with the burden of costs that are not grounded in science, practicality, and generally accepted engineering practices; otherwise these costs will be arbitrary and capricious. Accordingly, other than the recommended changes described herein and by MWG's other witnesses, Richard Gnat, KPRG & Associates, Inc., and David Nielsen, Sargent & Lundy, MWG supports the Rule as drafted and does not believe that any other changes to the Rule are necessary.

My testimony will focuses on: (1) providing an overview of MWG's CCR surface impoundments, including their operations and the regulations under which they operate; (2) supporting the Closure Alternatives Analysis in 845.710 as proposed in the Draft Rule because it will provide for effective and protective closure methods based upon the unique characteristics of each CCR surface impoundments; (3) describing the estimated costs to implement the Draft Rule and the economic impact to MWG's operations where it differs from the federal rule; and (4) describing the infeasibility of deadlines for submission of permit applications, considering the data and analysis required for the applications and the potential for unanticipated events that may cause a delay -- such as a natural disaster or a stay-at-home order due to a pandemic -- which can affect owners and operators as well as the Agency.

[1] Illinois EPA has designated an additional seven areas that MWG contends are not CCR surface impoundments as that term is defined in the Act. Six of the areas either do not contain liquid, are not designed to hold an accumulation of CCR and liquid, or do not treat, store or dispose of CCR. None of these units are subject to the federal Rule. The seventh area in dispute is the Lincoln Stone Quarry ("LSQ"), a monofill landfill that has operated as a landfill and has been regulated and permitted by the Illinois EPA as a landfill for over forty years (Permit No. 1994-241-LFM).

II. Overview of Midwest Generation CCR Surface Impoundments

MWG is an independent power producer which operates five power generating stations that have CCR surface impoundments ("MWG Stations" or "Stations") in Illinois. The five Stations have approximately 4,033 megawatts of generation capacity, which is about one third of the conventional fuel power generation from northern and central Illinois. The generating units at two of the Stations - Joliet 29 Station and Joliet 9 Station - converted to natural gas to produce electricity, and as a result, no longer produce coal ash. The generating units at three of the Stations, Powerton Station, Waukegan Station, and Will County Station, are coal-fired. All five Stations are over sixty years old and are located in industrial areas, one of which is surrounded by Superfund sites.

a. The MWG CCR Surface Impoundments

There are nine CCR surface impoundments ("CCR surface impoundments") at MWG's Stations.[2] Because each of the CCR surface impoundments is a man-made excavation or natural topographic depression that is designed to hold an accumulation of CCR and liquids, and stores or disposes of CCR, each of the units falls within the "CCR surface impoundment" definition in Section 3.143 of the Illinois Environmental Protection Act ("Act"). 415 ILCS 5/3.143. Since MWG began operating the Stations in 1999, the coal ash ponds have been used only for temporary storage of coal ash until the material is removed from the ponds for beneficial reuse.

It is important to note that all but one of MWG's CCR surface impoundments have always been lined.[3] In the late 1970s, long before there were any regulations or requirements for CCR units to be lined, the former owner of the Stations installed liners in the CCR surface impoundments. The liners were either plastic or made of a concrete-like material called "poz-o-

[2] See FN 1.
[3] The Powerton Station has an inactive CCR surface impoundment, the Former Ash Basin (the "Powerton FAB"). The most recent placement of ash into the Powerton FAB was more than 40 years ago -- prior to1980). The Powerton FAB does not have a liner.

pac." The thickness of the poz-o-pac liners at the Stations is between one foot and three feet. Similarly, MWG's CCR surface impoundments are different sizes, ranging from less than an acre to over 30 acres, and are situated at different locations at the Stations depending on the impoundment's specific use at each Station.

In the early 2000s as part of MWG's general practice to update and improve its operations, MWG began a systematic relining of its CCR surface impoundments with high-density polyethylene ("HDPE") liners. An HDPE liner is the least permeable type of liner, is resistant to chemicals, and the same liner used for hazardous waste landfills. By 2013, MWG completed its installation of new HDPE liners in all nine of its CCR surface impoundments pursuant to construction permits issued by the Illinois EPA.

b. CCR Surface Impoundments Have Been Regulated for Decades

The CCR surface impoundments at the Stations have been subject to multiple federal and state statutes and regulations for decades. In other words, this is not the early days of environmental and safety regulation, but instead the Draft Rule is seeking to fine tune regulations for specific areas of power-generating stations. In Illinois, existing CCR surface impoundments are regulated as a part of a Station's NPDES permit, identified and regulated as a part of the Station's water treatment system. Similarly, the fugitive dust from CCR is regulated as part of a Station's CAAPP permit pursuant to the Station's overall Fugitive Dust Plan. Fugitive dust plans for an operating power plant are required pursuant to the Clean Air Act, which requires best management practices to control fugitive dust emissions for the entire facility and by regulation includes areas of the facility where CCR surface impoundments are located. The CCR surface impoundments have been and continue to be operated for decades pursuant to the Stations' operating procedures and safety and health procedures that were written pursuant to the OSHA regulations. Moreover, certain CCR surface impoundments are also regulated pursuant to

dam permits issued by the Illinois Department of Natural Resources. The groundwater at the Stations has always been subject to the groundwater regulations under 35 Ill. Adm. Code 620. Accordingly, even though there were no specific CCR surface impoundment regulations until 2015, the CCR surface impoundments were regulated areas of a Station and continue to be operated and regulated pursuant to various federal and state statutes and regulations -- whose purpose are to monitor operations, reduce emissions and releases, and further the health and safety of the environment, the community, and employees.

c. Compliance with the Federal CCR Rule

Following USEPA's adoption of the federal CCR rule in 2015, MWG assessed how the rule applied to its units and began implementing the requirements. Specifically, MWG began the weekly inspections required by the rule and began groundwater monitoring program ("Detection Monitoring") required by 40 CFR 257.94. Depending on the results of the Detection Monitoring Program, MWG has progressed into Assessment Monitoring under 40 CFR 257.95 or conducted Alternate Source Demonstrations under 40 CFR 257.95(g)(3). Additionally, MWG has investigated and evaluated each federal CCR surface impoundment and has posted the required reports on a publicly available website. MWG continues to be committed to operating its Stations in full compliance with the federal CCR rule, and is equally committed to complying with the final Rule promulgated by the Illinois Pollution Control Board.

III. The Closure Alternatives Analysis Under Section 845.710 Will Identify the Effective and Protective Closure Method for Each CCR Surface Impoundment

Because the CCR surface impoundments are varied in size, location, and operation, the Illinois EPA is correct to treat each CCR surface impoundment on a case-by-case basis. Accordingly, MWG supports the Illinois EPA's proposal in Section 845.710 to analyze the closure alternatives based upon the specific circumstance of the CCR surface impoundment. For example, the long- and short-term risk analysis of a closure method for an impoundment that is

small, an acre or two, will likely be vastly different than the long- and short- term risks for an impoundment that is over 40 acres.[4] For a CCR surface impoundment that is relatively small, removal of all CCR from a CCR surface impoundment will likely be the most effective and protective closure method. In reviewing the factors established in Draft Rule Section 857.710, where the volume of material in the unit will be relatively small:

1) the time required to remove the CCR will likely be short;
2) the likelihood of future releases during removal will likely be low;
3) the short-term risks to any nearby community associated with the transportation of CCR will also likely be low; and/or
4) the potential for exposure of human and environmental receptors will be low.

Accordingly, in the relatively small surface impoundment scenario, it is likely that removal of all the CCR material will be the most effective, practical, and protective closure method.

By contrast and by example, pursuant to the factors in Section 845.710, the evaluation of the closure by removal method compared to the closure in place method for a relatively large CCR surface impoundment with a significant volume of material surrounded by commercial businesses, residents, and industries will be very different:

1) The scope of time to remove the CCR would be extensive – upwards of decades.
2) The impact to the surrounding community during implementation of closure by removal would be considerable because of the number of vehicle trips through the neighborhood, the risks associated with that transportation, and the much higher potential for exposure to human and environmental receptors associated with removal.
3) Another challenge would be identification of a disposal location for the excavated CCR. Landfill space is highly competitive and regulated, and depending on the volume, construction of a new landfill to accommodate the additional material would be required in many instances.
    a. Siting a new landfill is an extensive regulatory process that takes time not only for construction, but would require permitting and approvals by the Illinois EPA, the Board, and local authorities.
4) Similarly, consideration of alternative methods to remove and transport the material is neither simple nor straight-forward. Moving material by alternative methods, such as

[4] The Draft Rule treats CCR surface impoundments that are under 40 acres and over 40 acres differently. *See* Proposed 35 IAC 845.700(d)(2)(C), 845.760(c).

barge or train, requires its own permitting and approvals, and depending on the method, could increase risks to the environment.

a. Any new method of transportation of CCR, where new is determined on a case-by-case basis, from an existing CCR surface impoundment for off-site disposal would likely require new infrastructure, and that infrastructure must exist at both the Station and final disposal location. Depending on the specific CCR surface impoundment, new infrastructure could require approvals from multiple local agencies (*e.g.,* municipal and county authorities), multiple state agencies (*e.g.,* Illinois EPA, the Board, IDNR, IDOT), and multiple federal agencies (*e.g.,* US Coast Guard, US Army Corp of Engineers, US Department of Transportation).

b. Without new infrastructure, transporting ash via barge or rail would increase fugitive CCR emissions from material handling by increasing the number of transfer points. CCR would be loaded into and unloaded from trucks - to be reloaded into a railcar or barge. Not only would this increase fugitive emissions, this would increase the potential for accidents and releases of material to the ground or a waterway when the material is transferred to a train or barge.

5) In comparison, closure in place with a cover that limits infiltration of liquids will likely take less time. Moreover, the truck traffic will likely be significantly reduced because the trucks will be primarily hauling the cover material to the surface impoundment.

These types of considerations are critical in Environmental Justice communities, which will be directly affected by the closure method. A closure method that would require fifty trucks per day, operating 5 days per week and 48 weeks per year for over 20 years would result in high volumes of traffic and communities would absorb the impacts of trucks constantly rumbling through. In short, the Agency's approach to address each CCR surface impoundment on a case-by-case basis by reviewing each of the factors established in Section 845.710 to identify the closure method that will be effective and protective is a fundamental and essential element of the final Rule. The analysis proposed by Section 845.710, if implemented correctly will assure the evaluation and reduction of (1) long- and short- term risks of future releases, (2) risks to the neighboring communities, and (3) risks to human and environmental receptors.

IV. The Additional Estimated Costs to Implement the Draft Rule

In addition to the stated purposes and effects of the Draft Rule proposal, the Board must consider whether the increased regulatory burden is economically reasonable. Accordingly,

MWG also seeks to present to the Board the significant compliance costs to owners and operators of CCR surface impoundments. The estimated costs described herein are in addition to both the fees prescribed in Section 22.59(j) of the Act and compliance costs that are common between the Draft Rule and the Federal CCR Rule. Moreover, the estimated costs presented here also do not include the areas more recently designated by the Illinois EPA as CCR surface impoundments, but which are not federal CCR surface impoundments. MWG disputes Illinois EPA's new designations. Accordingly, depending on the outcome of the disputed CCR surface impoundments designations with Illinois EPA, the potential costs to MWG may increase even further.

a. Permitting and Public Notice Requirements

The direct costs to prepare the operating and closure construction permit applications required in Subpart B of the Draft Rule are significant. Based on the requirements of the Draft Rule, MWG estimates that the direct cost to prepare an operating permit application for existing CCR surface impoundments to be on the order of $30,000 and for a closure construction permit application, to be on the order of $120,000. That is $150,000 in direct costs per impoundment for initial permit applications.

The costs for preparing a permit application and conducting the multiple public meetings are in addition to the costs already allocated for the closure or retrofitting of a CCR surface impoundment pursuant to the federal CCR Rule. Accordingly, assuming that each CCR surface impoundment is closed or retrofitted differently, requiring separate applications and separate public meetings, for all of MWG's CCR surface impoundments the total additional cost for permitting and public meetings alone will be approximately $1,400,000.

b. Financial Assurance

The financial assurance requirements in Subpart I of the Draft Rule would impose new costs to owners of CCR surface impoundments. While the cost of financial assurance will vary across impoundments based on size and risk, a general rule of thumb is that each $1,000 of financial assurance costs $10. For example, a closure and post-closure care estimate of $5,000,000 would cost an owner or operator of that specific CCR surface impoundment $50,000 per year. While MWG does not object to financial assurance, the increased cost must be properly accounted for in an analysis of the economic impact to the people of Illinois.

c. Leachate Collection and Liner Replacement

The leachate collection system proposed in the Draft Rule would unnecessarily increase the cost of operating a new CCR surface impoundment. MWG does not support the concept of leachate collection for an impoundment. A leachate collection system placed above the liner of a CCR surface impoundment, as proposed in the Draft Rule, serves no functional purpose and will operate constantly, because by definition and design, CCR surface impoundments contain water. In fact, when operating, millions of gallons of water would be needlessly circulated through a Station's CCR surface impoundment system on a daily basis. There is always water above the liner in a CCR surface impoundment, and so a leachate collection system above the liner will be in continuous operation. The costs of operating and maintaining a leachate collection system that is constantly pumping will be significant, and not necessarily more protective of a liner.

Contrast that to a leachate collection system placed below a CCR surface impoundment's liner system. In this instance, the leachate collection system would only encounter water that was able to move through the liner, and a liner system designed in accordance with the Draft Rule would substantially reduce that penetration. The net effect would be that a leachate collection system placed below the liner would encounter less water, and in turn require less pumping

and/or treatment of that water – while being at least equally as protective of the environment; it would capture any contamination prior to interaction with groundwater. Accordingly, MWG recommends that the Board include language in 845.420 that would allow an entity to install an alternative leachate collection system that is at least as protective as the system required in 845.420(a).

Similarly, the Draft Rule requires that to retrofit an existing CCR surface impoundment, the liner must be removed, even though the liner may not be contaminated with CCR. This is an unnecessary requirement that does nothing to protect the environment. MWG agrees that the retrofit of an existing CCR surface impoundment must begin with the removal of all CCR and contaminated soils and sediments from that CCR surface impoundment. MWG strongly disagrees, though, with the Draft Rule requirement to remove an existing liner system without consideration of whether that liner is contaminated. The stringent requirement to remove the liner regardless of its condition, does not take into account that the existing liners, while not part of the new liner system, could serve as an additional protective barrier. This may be useful in an overall redesign of the CCR surface impoundment by providing an extra layer that is even more protective of the environment. Removal and replacement of a competent liner that is not contaminated with CCR constituents adds even more unnecessary costs for retrofitting a CCR surface impoundment without any added benefit or protection. Accordingly, MWG recommends that the Board remove the phrase “including any liners” from 845.770(a)(1) so that existing liners that are not contaminated and in fact may be protective can remain in place for retrofitting.

The testimony of MWG expert witness David Nielsen of Sargent & Lundy provides additional information on leachate collection and removal systems as proposed in the Draft Rule and the requirement to remove a competent liner. MWG estimates that additional cost associated

with the requirement to install a leachate collection system and to remove and dispose of a liner, regardless of its condition, is approximately $12,700,000.

V. The Deadlines For Submission of the Operating Permit and Construction Permit Applications Are Infeasible

The Draft Rule contains unachievable deadlines to submit operating and construction permit applications that conflict internally with other deadlines and leave no room for unanticipated interruptions. In Section 845.230(d)(1) of the Draft Rule, operating permit applications for existing and inactive impoundments that have not completed post-closure care are due no later than September 30, 2021. Pursuant to Section 845.230(d)(2), a complete operating permit application must be composed of twenty different technical documents, including the groundwater monitoring program required in Section 845.650(b). Section 845.650(b)(1)(A) requires all existing impoundments to complete eight distinct rounds of groundwater sampling within 180 days of the effective date of the rule. Assuming the rule becomes effective March 31, 2021, the groundwater sampling must be completed no later than September 30, 2021 – the same date as the due date for the operating permit application. It is simply not possible to submit the groundwater monitoring program information with the operating permit application in the deadlines proposed in the Draft Rule.[5] Specifically, this infeasible timeline also does not allow for interruptions in conducting the compliance work for weather, unavailability of equipment, or another stay-at-home order due to the continued response to the COVID-19 pandemic. Moreover, as MWG expert witness Richard Gnat of KPRG has stated in his pre-filed testimony, conducting a groundwater monitoring program within 180 days is not scientifically sound, because the program should cover at least a one-year sampling period to account for seasonal

[5] Because section 845.210(d) allows a company to rely upon previously conducted groundwater monitoring plan completed before the effective date of the Rule, deadlines to complete the applications for the federal CCR surface impoundments may not be as difficult to achieve. However, the Illinois EPA has expanded its interpretation of the definition of "CCR surface impoundment," and certain areas that are not federal CCR surface impoundments but may now be subject to the Draft Rule will require conducting new groundwater monitoring.

variability. Accordingly, to allow for the development of a scientifically sound groundwater monitoring program and allow for preparation of a complete operating permit application, operating permits should be due fifteen months after the effective date of the Draft Rule. Alternatively, the Draft Rule should allow a process for obtaining an extension of the September 30, 2021 deadline as agreed to between a company and the Illinois EPA to account for unanticipated interruptions.

Similarly, pursuant to Section 845.700(h)(1), construction permit applications to close or retrofit for Category 1-4 CCR surface impoundments would be due no later than January 1, 2022. Assuming the final Rule becomes effective March 31, 2021, companies would have only nine months to collect the required groundwater samples, initiate and complete the engineered design of a closure or retrofit project, develop final closure and post-closure plans and perform groundwater modeling (as needed), hold pre-application public meetings, revise application materials as a result of the public meetings, and submit the final permit application packages. This does not include the 180 days to conduct the initial groundwater monitoring program pursuant to Section 845.650(b). Assuming that all of the required work may be conducted without interruptions due to weather, equipment shortages, mistakes in data collection or analysis, or a State-wide stay-at-home order, MWG calculated that it would take a minimum of nine and a half months to complete the closure and retrofit construction permit application packages for submittal to the Agency – not enough time to submit the application by the deadline. Additionally, if there is any unexpected interruption, it would be impossible to complete the application within the time allowed by the Rule. This is an unnecessarily and unreasonably tight schedule for surface impoundments and will not allow for development of high-quality baseline groundwater data or engineering to ensure that the closure or retrofit is compliant with the final Rule. Instead, MWG suggests that the construction permit application

also be due fifteen months following enactment of the Rule, or at some similar time to allow for collection of accurate data and preparation of a complete permit application package. Alternatively, MWG suggests that the final Rule allow for case-by-case extensions if an entity can demonstrate good cause.

VI. Conclusion

MWG commends the Illinois EPA for its efforts to prepare a comprehensive Draft Rule that will further protect the environment and public health, particularly in light of the tight scheduled established by Section 22.59 of the Illinois Environmental Protection Act. The Rule is technically and environmentally sound with the inclusion of the adjustments recommended herein and by MWG witnesses Mr. Gnat and Mr. Nielsen. If these recommended adjustments are included, the final Rule will establish a robust regulatory scheme that furthers the goals of the Illinois Environmental Protection Act to establish technically feasible and economically reasonable regulations that fully protect of the environment and human health. 415 ILCS 5/27(a).

Respectfully submitted

/s/Sharene Shealey
Sharene Shealey