

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
STANDARDS FOR THE DISPOSAL OF) R 20-19
COAL COMBUSTION RESIDUALS IN) (Rulemaking – Land)
SURFACE IMPOUNDMENTS: PROPOSED)
NEW 35 ILL. ADM. CODE 845)
)

NOTICE OF FILING

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board the attached **PREFILED QUESTIONS OF ELPC, PRAIRIE RIVERS NETWORK, AND SIERRA CLUB TO RUDOLPH BONAPARTE**, copies of which are attached hereto and herewith served upon you.

Dated: September 10, 2020

Respectfully submitted,

/s/ Jennifer Cassel

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PREFILED QUESTIONS OF ELPC, PRAIRIE RIVERS NETWORK, AND SIERRA CLUB TO RUDOLPH BONAPARTE

1. On page 1 of your prefiled testimony, with reference to closure by removal and closure by a final cover system, you state: “Both closure methods have been successfully used in the past in Illinois and other states.”
 - a. Please explain in detail how you would define when a closure method has been used “successfully.”
 - b. Please identify all examples from Illinois of “successful” closure that you reference in your testimony.
 - c. To be successful, must closure by a final cover system securely and permanently isolate coal ash from groundwater? Why or why not?
 - d. To be successful, must closure by a final cover system securely and permanently isolate coal ash from the highest seasonal zone of saturation at a site? Why or why not?
 - e. To be successful, must closure by a final cover system securely and permanently isolate coal ash from surface water, including probable maximum flooding events? Why or why not?
2. On page 1 of your prefiled testimony, you state that final cover systems “can be designed and constructed to be reliable and durable and too often achieve the performance standards of Section 845.750(a).”
 - a. Please explain in detail why you state that such systems can be designed and constructed so that they achieve performance standards “too often.”
 - b. Please explain in detail under what circumstances final cover systems are not “reliable and durable.”

3. On page 1 of your prefiled testimony, you state that “[a]t site-specific locations where the final cover system alone (along with the drainage and stabilization requirements of Section 845.750(b)) will not meet a specific performance standard, the final cover system can often be supplemented with one or more additional engineering measures (selected by the qualified professional engineer preparing the closure design) to meet the performance standard.”
 - a. Please identify the “additional engineering measures” you reference in the testimony.
 - b. For each of the “additional engineering measures” identified in response to paragraph (a), please explain in detail the reasons why the measure may be needed to supplement the final cover system.
 - c. For each of the “additional engineering measures” identified in response to paragraph (a), please identify the typical design lifespan of such measures.
 - d. For each of the “additional engineering measures” identified in response to paragraph (a), please identify any ongoing operation, maintenance, and inspection needs associated with implementing the measure.
 - e. For each of the “additional engineering measures” identified in response to paragraph (a), please identify the typical annual operating, maintenance, and inspection costs associated with implementing the measure.
4. On page 2 of your prefiled testimony, you state that “[t]he qualified professional engineer responsible for designing the final cover system would select, and IEPA would require, final protection layer thicknesses larger than these [sic] prescribed minimum should site-specific conditions warrant such.”
 - a. Please explain in detail what “site-specific conditions” you believe might require greater thicknesses in the final protection layer.
 - b. Please explain in detail what you believe to be the appropriate design lifespan for a final cover system.
5. Please explain in detail the basis for the statement on page 8 of your prefiled testimony that “there is no need to have prescriptive minimum design requirements that are protective at every site.”
6. Should final cover systems be designed to ensure that they provide permanent protection against infiltration from above, into the underlying waste? Why or why not?
7. Should final cover systems be designed to ensure that they provide permanent protection against probable maximum floods? Why or why not?

8. Do you believe that it is appropriate to place additional coal combustion residuals into an unlined impoundment that is closing, for purposes of grading or contouring, when the base of the impoundment is within the highest seasonal zone of saturation? Why or why not?
9. Do you believe that it is appropriate to place additional coal combustion residuals into an unlined impoundment that is closing, for purposes of grading or contouring, when that impoundment is within a floodplain? Why or why not?
10. On page 14 of your prefiled testimony, you state that “[f]inal cover systems of the type required by Section 845.750 have been successfully constructed and maintained at slopes of 33% (3H:1V) and 25% (4H:1V) for many years.”
 - a. Please identify any final cover systems at sites in Illinois that meet the criteria specified above.
 - b. Please identify any final cover systems in the United States that meet the criteria specified above.
11. On page 14 of your prefiled testimony, you state that “I have personally been the engineer-of-record for projects where the final cover system slopes for waste management facilities were in the aforementioned range and the performance criteria for the cover included managing run-off from design storms and limiting erosion.” Please identify any such projects where you personally have been the engineer of record, including the location of the project, the company that owned the site, and the year of the project.
12. In promulgating the CCR Rule in 2015, the United States Environmental Protection Agency made the following statement: “[O]verfills cannot be constructed unless the underlying foundation—i.e., the existing CCR surface impoundment has first been dewatered, capped, and completely closed. And because overfills are considered to be ‘new CCR landfills,’ the design and construction of such units must comply with the technical requirements that address foundation settlement, overall and side slope stability, side slope and subgrade reinforcement, and leachate collection and groundwater monitoring system requirements, which will all need to be evaluated independent of the underlying CCR unit to ensure that the overfill design is environmentally protective.” 80 Fed. Reg. 21,302, 21,373 (Apr. 17, 2015).
 - a. Do you agree with this statement? If not, please explain in detail why not.
 - b. Would placement of additional CCR in an impoundment for purposes of grading and contouring, as described in your testimony, constitute an “overfill” as that term is used in the above statement? If not, please explain in detail why not.
13. Have you evaluated what worker safety protections proposed Part 845 would require during closure of coal ash sites?

- a. If no, then please explain in detail the basis for the statement on page 15 of your prefiled testimony that worker safety is an important factor that must be explicitly considered in the closure alternatives analysis under Section 845.710.
 - b. If yes, is fugitive dust a major concern for worker safety during coal ash closure? Why or why not?
 - c. Can fugitive dust be reduced by implementing dust controls?
 - d. Given the importance of worker safety to a closure alternatives analysis, as you note on page 15 of your prefiled testimony, should proposed Part 845 require increased fugitive dust controls during closure? Why or why not?
14. Would evaluation of different coal ash transportation options, including but not limited to rail, barge, truck size, truck trips, number of days and hours truck trips are taking place, and their climate impacts, assist Illinois EPA and the public in accounting for risks in evaluating closure and corrective action alternatives? Please explain in detail the basis for your answer.
15. Are you aware that the Coal Ash Pollution Prevention Act requires that the Part 845 rules be at least as protective as federal regulations of coal combustion residuals promulgated by the United States Environmental Protection Agency under Subtitle D of the Resource Conservation and Recovery Act?
- a. If yes, did the United States Court of Appeals for the District of Columbia Circuit hold in *Utility Solid Waste Activities Group v. United States Environmental Protection Agency*, 901 F.3d 414, 448-49 (D.C. Cir. 2018), that cost cannot be considered in establishing regulatory standards under Subtitle D of the Resource Conservation and Recovery Act? If not, please explain in detail the basis for your answer.
 - b. Does the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which you cite on page 16 of your prefiled testimony, incorporate different standards concerning consideration of cost than Subtitle D of the Resource Conservation and Recovery Act? If not, please explain in detail the basis for your answer.

Dated: September 10, 2020

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned, Jennifer Cassel, an attorney, certifies that I have served by email the Clerk and by email the individuals with email addresses named on the Service List provided on the Board's website, available at <https://pcb.illinois.gov/Cases/GetCaseDetailsById?caseId=16858>, a true and correct copy of the **PRE-FILED QUESTIONS OF ELPC, PRAIRIE RIVERS NETWORK, AND SIERRA CLUB TO RUDOLPH BONAPARTE**, before 5 p.m. Central Time on September 10, 2020. The number of pages in the email transmission is 12 pages.

Dated: September 10, 2020

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