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 LISA BRADLEY,** copies of which are attached hereto and herewith served upon you.

Dated: September 10, 2020

Respectfully submitted,

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PREFILED QUESTIONS OF ELPC, PRAIRIE RIVERS NETWORK, AND SIERRA CLUB TO LISA BRADLEY

1. Please refer to Section 2.2 of your testimony (pp. 5-6):

    a. What is your basis for stating that coal ash fails the 40 CFR 261.24 test for toxicity on p. 5? Please provide citations to your factual support for making this claim.

    b. Are you aware of any other way that wastes can be regulated as hazardous waste under EPA's RCRA regulations than by meeting the hazardous criteria in 40 CFR §§ 261.21-24?

    c. Is the TCLP a single-point test pH test? If your answer is "no" please provide a basis for your answer.

    d. What pH condition is used in the TCLP?

    e. What is the range of pH conditions found in CCR impoundments? Please cite your source(s).

    f. Are you aware of any criticisms of the TCLP by EPA scientists regarding its use for studying leaching from CCR?

    g. Has EPA stated that the TCLP may underestimate the actual leach rates of toxic constituents from CCR under different field conditions? If your answer is "no," please provide the basis for your answer.

    h. Have EPA scientists stated that single-point pH tests like the TCLP do not reflect the range of actual conditions under which wastes are plausibly managed, such as changing environmental conditions, especially pH? If your answer is "no," please provide the basis for your answer.

i. Are you familiar with the Leaching Environmental Assessment Framework (LEAF) test, which is an alternative testing method to the TCLP?

j. If yes, does the LEAF test evaluate leaching under a wider range of environmental conditions? If your answer is "no," please provide the basis for your answer.

k. EPA has encouraged the use of the LEAF test for evaluating the potential for adverse impacts to human health or the environment that may result from uses of materials such as coal ash, correct? If your answer is "no," please provide the basis for your answer.

l. Please refer to the bullet pointed list in Section 2.4, p. 8 of your testimony. For each bullet point, please identify which exposure pathways those statements refer to.

2. Please refer to Section 2.4.1 concerning the EU REACH Program. On pp. 8-9, you state "Studies have been conducted to address 10 different toxicity endpoints, for acute (short-term) and chronic (long-term) exposure durations considering oral (ingestion), dermal, and inhalation pathways. As shown on Table 2-1, a total of 47 mammalian toxicity studies have been conducted on CCR – as a whole material." Please also refer to Table 2-1 and Exhibit B, which purport to show the relevant REACH data.

   a. For the 47 mammalian toxicity studies summarized in Table 2-1 and Exhibit B, please provide the following information:

      i. Did you review the underlying study or only the summary available in the REACH dossier?

      ii. Please provide the underlying study in its entirety.

      iii. Was the study peer-reviewed?

      iv. Was the study independently reviewed by a governmental entity, and if so which ones?

      v. What is the date of the study?

      vi. Please specify which mammals were tested.

      vii. The EU REACH dossier gives each study a reliability rating. Please identify any studies that received a rating other than "1 (reliable without restriction)."

   b. For studies of repeated dose toxicity endpoints (Repeated Dose Inhalation Toxicity and Repeated Dose Oral Toxicity), please answer the following: what

animal, what gender animal, how many doses, over what interval, what was the dose, and how was it administered?

c. For studies of Genetic Toxicity and Reproductive Toxicity, how long was the study period?

d. For studies of Genetic Toxicity and Reproductive Toxicity, did the studies look for chronic and sub-chronic effects as well as acute effects?

e. For Worker Epidemiology (or Epidemiology for Workers in Exhibit B) please provide more information about the methodology of the study and the risks to workers that were assessed.

    i. In Exhibit B, for "Epidemiology for Workers," under "Conclusion," you state, "The results of all these studies indicate that pulverized fuel ash is unlikely to give risk to pneumoconiosis under similar working conditions." Did all 5 studies address pneumoconiosis exclusively, or were additional health conditions that might impact workers studied?

f. Please explain why Table 2-1 lists "NA" under "Publications and Reports" next to "Carcinogenicity."

g. Have there been no EU REACH studies of carcinogenicity of coal ash?

h. Does the EU REACH dossier for "Ashes (residues), coal" fulfill all REACH testing requirements? If "yes," please provide a basis for your response.

3. On p. 9, you state: "The REACH system classifies materials by hazard category – if no hazards are identified, based on their classification system definitions, then the conclusion is that no classification is warranted due to 'data conclusive but not sufficient for classification.' The terminology is a bit cumbersome but means there is no hazard to classify. In other words, when that label is used, it means that testing shows the material does not pose a hazard, or 'no hazard.'"

    a. Please clarify what you mean by "no hazard" in Table 2-1: do you mean that no hazard was *identified* by each of the EU REACH studies, or do you mean that that the studies prove that coal ash poses no hazard? Or do you mean something else?

    b. For all studies that you characterize as "no hazard," please state whether any effects on the mammalian test subjects were observed after dosing and describe the effects.

4. Section 2.4.2 of your testimony on page 10 refers to EPA's RCRA regulation 40 CFR 261.11(a)(2) and describes that section as the definition of "acutely toxic."

a. Is it true that 40 CFR § 261.11(a)(2) provides a criterion for EPA listing of waste described as "acute hazardous waste, not "acutely toxic," as you state in your testimony? If your response is "no," please state the basis for your answer.

b. Is there a third criterion that can be met for listing hazardous waste under 40 CFR 261.11(a)(3) for wastes to be "designated as Toxic wastes," which is not mentioned in your testimony? If your response is "no," please state the basis for your answer.

5. Please refer to your testimony on p. 11 in which you state, "News stories commonly refer to CCR as 'toxic coal ash,' and commonly list elements it contains, for example, arsenic, mercury, selenium, chromium, and lead, as though that is proof of CCR toxicity. However, all of these elements are naturally occurring, and the USGS has a map for their occurrence in soils in the U.S. for each of them."

a. Are you aware of any materials that are both naturally occurring and harmful to human health? Please explain.

b. Are some elements present in coal ash in higher concentrations than they are in soil? Please list them.

c. Can certain elements present together in CCR cause greater adverse effects on human health or the environment when they are found together than if each were alone? Please explain your answer and provide your source(s).

d. If certain elements present together in CCR can create greater adverse effects on human health if found together, have you evaluated whether they are likely to be present together in naturally occurring environments?

i. If so, how does the likelihood that those elements are present together in the natural environment compare to the likelihood that those elements are together in CCR. Please provide your source(s).

e. Are you aware of whether any of these elements present in both coal ash and soil more likely to leach from coal ash than they are from soil? Please explain the basis for your answer and provide your source(s).

6. Please refer to your testimony on p. 11, where you state, "Because plants grow on soil and take up minerals (inorganics and elements) from the soil, these elements are also naturally present in the food we eat."

a. Are you aware of any materials that are both present in food and harmful to human health? Please explain.

b. For the contaminants that are present in both CCR and food, can any of them be present in higher concentrations in CCR or CCR leachate than they are in food? If so, please list them.

7. Please refer to your testimony on p. 12, where you state, "The detailed compositional data for fly ashes and bottom ashes from the USGS can be compared to the USEPA risk-based screening levels for residential soil, which can be used to assess their relative potential 'toxicity. . . . A detailed report on this comparison [between CCR and residential soil] is available from the American Coal Ash Association (ACAA), and a summary of the analysis was presented in an article in the trade journal Ash at Work."

   a. Were you the lead author on either or both publications?

   b. Were either of these publications peer-reviewed?

   c. Are you aware of any studies other than the ACAA report you cited that perform the same comparative analysis? If so, please cite them.

   d. Did either of the reports you cited consider exposure pathways other than ingestion or wind inhalation of CCR constituents?

   e. Did either of these reports consider exposure related to leaching of materials into water? If "yes," please also answer the following:

      i. Did the studies account for variability in the pH of CCR and how that can affect leaching from the CCR?

      ii. Did the studies account for the variability in the pH of CCR and how that could mobilize constituents already in an aquifer?

      iii. Did the studies account for the "residence time" of water in CCR?

   f. Did the study consider impacts on more sensitive populations, such as babies?

   g. Did either of these reports consider exposure pathways and levels in an occupational setting, such as for workers handling coal ash?

      i. If your answer is "no," please explain why these exposure pathways were not included in your study.

8. Please refer to your testimony on p. 12, where you state, "Only the upper end of the range of the measured concentrations of five constituents in the coal ashes studied are above the residential soil screening level in <u>some</u> but <u>not all</u> of the coal ashes: arsenic, chromium, cobalt, thallium, and vanadium. Moreover, these concentrations are only slightly above the screening levels" (emphasis in original).

a. Are you familiar with EPA's Superfund investigation of Town of Pines, Indiana, and resultant removal of ash-contaminated soil?

b. Are you familiar with the levels of arsenic detected in Town of Pines during that investigation?

c. One removal action in Pines followed the discovery of arsenic levels in a public playground above 340 ppm, correct?

d. What is US EPA's regional screening level (RSL) for residential soil?

9. Please refer to your testimony on p. 12, where you state, "This comparison demonstrates that there would be no basis for health risk for incidental contact with CCR on a daily or less frequent basis."

a. Please explain what you mean by the phrase "basis for health risk."

b. Does this statement ("there would be no basis for health risk…") also apply to *non*-incidental contact with CCR on a daily basis, such as contact with CCR by workers at coal ash facilities? If your answer is "no," please provide factual support for your answer.

c. Are you familiar with the illnesses and health effects reported by over 400 workers who were employed to clean up the Tennessee Valley Authority coal ash spill in Kingston, Tennessee?

d. Have you evaluated the reports of illnesses and health effects from those workers?

e. Are those illnesses and health effects related to CCR? If your answer is "no," please provide a basis for your answer.

10. Please refer to your testimony on p. 12, Section 2.4.5, in which you state. "The graphic is even more misleading because it suggests that <u>any</u> exposure to CCR (and, really, soil) <u>will</u> result in these adverse health effects" (emphasis in original). Please provide a citation to the graphic or graphics your testimony describes.

11. Please refer to your testimony on p. 12, Section 2.4.5, in which you state, "[t]here are safe levels of exposure to each of the constituents in CCR (and in soil), as defined by USEPA . . . ."

a. Is lead one of the constituents of CCR? If your answer is "no," please provide a basis for your answer.

b. Has US EPA defined a safe level of exposure to lead? If your answer is "no," please provide a basis for your answer.

c. Is arsenic one of the constituents of CCR? If your answer is "no," please provide a basis for your answer.

d. What is the Maximum Contaminant Level Goal (MCLG) for arsenic in drinking water? If your answer is "no," please provide a basis for your answer.

e. Is Thallium one of the constituents of CCR? If your answer is "no," please provide a basis for your answer.

f. What is the MCLG for thallium in drinking water? If your answer is "no," please provide a basis for your answer.

12. Please refer to your testimony on p.13, in which you state, "This is supported by the legislative and regulatory history of the federal CCR Rule which demonstrates that Congress and the USEPA do not regulate, nor intend to regulate, CCR as hazardous waste but as a solid waste."

a. Please state your professional experiences that qualify you to evaluate and characterize the legislative and regulatory history of the federal CCR rule.

b. Are you familiar with the Bevill Amendment, which requires US EPA to determine whether to regulate coal ash as a hazardous waste under RCRA Subtitle C?

c. Are you familiar with US EPA's statement regarding the Bevill Amendment in the 2015 CCR Rule?

d. If so, what did US EPA say regarding its final Bevill Determination?

13. On p. 14 of your testimony, Section 3.1, you state, "The federal CCR Rule was based on a national human health and ecological risk assessment of CCR disposal units that identified only one scenario as a risk driver."

a. What was the scenario that US EPA "identified . . . as a risk driver" in its CCR assessment?

b. Have you reviewed the model US EPA used in its CCR risk assessment?

c. Did you review in detail what assumptions the model relied on?

d. Are you familiar with any limitations of the model?

e. Do you know whether the model used by US EPA in its CCR risk assessment simulated scenarios where CCR is disposed within an underlying aquifer? If so, please state whether it did and provide the basis for your answer.

f. Do you know whether the model used by US EPA in its CCR risk assessment simulated groundwater flow through fractured rock? If so, please state whether it did and provide the basis for your answer.

g. Do you know whether CCR mineralogy and leachate chemistry evolve over time, as leaching continues? If so, please state whether it does and explain your answer.

h. Do you know whether the model used by US EPA in its CCR risk assessment simulated more than a single leachate composition from an operating or closed impoundment? If so, please state whether it did and provide the basis for your answer.

i. Do you know whether the model used by US EPA in its CCR risk assessment assumes that there is no net addition of ash into the impoundment over its operating life? If so, please state whether it did and provide the basis for your answer.

j. Do you know whether the model used by US EPA considered climate data that is more recent than 1990? If so, please state whether it did and provide the basis for your answer.

k. Do you know whether the model used by US EPA considered the potential effects of climate change, such as changes in rainfall, temperature, or episodic rainfall events? If so, please state whether it did and provide the basis for your answer.

l. Can CCR be highly alkaline?

m. Can CCR create pH plumes downgradient of the CCR impoundment?

n. Do you know whether the model used by US EPA in its CCR risk assessment simulated scenarios where CCR leachate changes the chemistry of the aquifer receiving the leachate? If so, please state whether it did and provide the basis for your answer.

o. Do you know whether the model used by US EPA in its CCR risk assessment simulated variable oxidation/reduction potential (Eh) conditions in either leachate or leachate-impacted groundwater? If so, please state whether it did and provide the basis for your answer.

p. Do you know whether the model used by US EPA in its CCR risk assessment evaluated the effect of contaminant-plume mobilization of non-waste related metals from the aquifer due to altered aquifer water quality? If so, please state whether it did and provide the basis for your answer.

q. Do you know whether the model used by US EPA in its CCR risk assessment considered either the pre-existing occupation of adsorption sites in the aquifer by

naturally occurring metals or competition for remaining sites by multiple contaminants migrating from the waste disposal area? If so, please state whether it did and provide the basis for your answer.

14. On p. 25 of your testimony, Section 4, you state "proposed Part 845 inappropriately uses a single, confirmed exceedance of a groundwater protection standard during assessment monitoring as a trigger for the initiation of corrective action."

    a. What does "single, confirmed exceedance" mean?

    b. If monitoring shows an exceedance of groundwater protection standards due to natural variation in groundwater quality, does the owner/operator of an impoundment have the option to make an Alternative Source Demonstration? If your answer is no, please provide the basis for your answer.

    c. Does the owner/operator have to complete assessment of corrective action if the Agency agrees with the owner/operator regarding the Alternate Source Demonstration?

    d. Have you evaluated whether, in Illinois EPA's past practice of relying on a sample followed by a confirmation to trigger corrective action (see Aug. 13 transcript at p. 129), the Agency has required any corrective action that was later found to be based on "false positives" or sources other than the source of contamination that the Agency found? If so, please describe your findings.

15. On page 26, you state: "Moreover, this 'simplification' in Section 845.650 is not any easier to implement because such statistics on the downgradient well data are currently required under the federal CCR Rule."

    a. Is "simplification" your word, or are you quoting another source? If another source, please provide a citation.

    b. If Illinois EPA obtains approval from US EPA to administer its state permit program, will owners/operators of ash impoundments need to follow the specific requirements in Illinois's rule or the federal CCR rule?

    c. Would it be impossible to comply with both the requirements of the proposed Illinois CCR rule and the existing federal CCR Rule?

16. On page 29-30, Section 5, you state your opinion that closure prioritization Category 2 in proposed Section 845.700(g) should be revised "to address only conditions that could pose an imminent threat."

    a. Please state your expertise that qualifies you to evaluate the threat posed by the location of an impoundment relevant to groundwater, drinking water supplies, or

the areas identified as location restrictions in the federal CCR Rule. Do you have expert qualifications in engineering, hydrogeology, or similar fields?

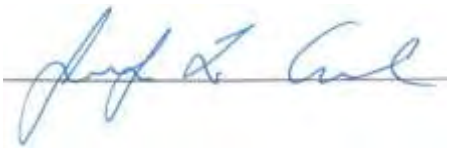
b. You state that Category 1 already "addresses the imminent threat" related to impacts to a potable water supply. Does Category 1 address conditions where drinking water supply or setback of an existing potable water supply well has *already* been impacted by pollution?

c. Does Category 1 address a condition where a drinking water supply is threatened by pollution from a coal ash impoundment, but no contamination has yet been detected within the drinking water supply or well setback?

17. Referring to your list of published articles from the last 10 years in Exhibit A, please identify which articles were peer-reviewed, if any.

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 **PREFILED QUESTIONS OF ELPC, PRAIRIE RIVERS NETWORK, AND SIERRA CLUB TO LISA BRADLEY**, before 5 p.m. Central Time on September 10, 2020. The number of pages in the email transmission is 17 pages.

Dated: September 10, 2020

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