

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 electronically filed with the Office of the Clerk of the Illinois Pollution Control Board the attached **Prefiled Responses of Mark Rokoff**, copies of which are herewith served upon you.

/s/ Ryan C. Granholm

Ryan C. Granholm

Dated: September 24, 2020

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NOW COME 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 July 14, 2020 Order and submit the below responses.

Prefiled Responses of Mark Rokoff

Illinois Pollution Control Board:

26. On page 24, you state, [i]n addition to the ability for cost recovery, the opportunity for beneficial use also has a direct effect on the closure approach decision.”

a. Please clarify whether you have any Illinois-specific or national data on the beneficial use of CCR in terms annual volume, as well as a percentage of CCR available for beneficial use to show the significance beneficial use factor when it comes to making closure approach decision.

RESPONSE: As stated in my testimony, the data used to support my opinions is based primarily on publicly available data required to be disclosed under the Federal CCR Rule. As the annual volume of beneficial use is not an item that is required to be posted under the provisions of the Federal CCR Rule, I do not have access to this data. My statement is based on my experience in the CCR management industry and has been supported by the examples provided on page 24 of my testimony.

b. If so, submit such information into the record.

RESPONSE: N/A.

City Water, Light & Power:

1. Is it a correct summary of your testimony to state that just under half of ash impoundment closures have been by removal, but that those represent only 17% of the volume of CCR from ash ponds that have been subject to closure?

RESPONSE: This statement is correct, but it should be noted that it is based on the total population of impoundments regulated under the Federal CCR Rule. This population of ponds includes surface impoundments that have completed closure, those undergoing closure, and those that have stated a closure method in an uploaded closure plan.

ELPC, Prairie Rivers Network, and Sierra Club:

1. On page 10 of your prefiled testimony, you state: "A number of the approximately 500 written closure plans involve implementation of hybrid closures. . . . For the purposes of closure approach discussed in this testimony, these hybrid closures have been tagged as closure in place as the CCR material remains onsite and within the unit limits. In scenarios where closure involves removal of the majority of CCR material from within the surface impoundment limits (and placed in a landfill or beneficially used), but some amount of material remains onsite due to removal complications (e.g., material below an existing landfill, etc.), these units have been considered to be closed by removal."

a. How many of the 259 closures tagged as closure in place are hybrid closures?

RESPONSE: 25 of the 259 in-place closure plans involve use of the term "hybrid" or similar term.

b. How many of the 236 closures tagged as closure by removal are hybrid closures?

RESPONSE: 16 of the 236 removal closure plans use the term hybrid or similar term indicating the intent of closure by removal but with a portion of the material remaining within the unit limits.

c. What do you mean by “majority” when you state “scenarios where closure involves removal of the majority of CCR material from within the surface impoundment limits”? Do you mean more than 50% of the CCR material?

RESPONSE: Yes, although I would note that a formal quantitative assessment is not able to be performed due to data limitations. In assessing closure method, units were grouped as closure by removal, closure in place, or non-specified based on the information contained in the closure plans. As a means of verification/validation, a word search was also performed for such terms as “hybrid,” “consolidation,” and “footprint reduction.” This process resulted in the identification of 41 plans that used these terms. Each of these closure plans were then reviewed. In the majority of these cases (25 out of 41), the closure plans involved removal of ash from a portion of the unit and consolidation of this material with other CCR within the unit limits, resulting in a change to the unit footprint. Because the material remained within the unit limits, these were tagged as closure in place. For the remaining cases, the term “hybrid” or similar term typically referred to the condition where the bulk of the CCR material was either removed and either placed in a landfill or beneficially used, but a smaller portion of the CCR could not be removed because of existing infrastructure over a portion of the unit (such as a landfill, transmission towers, wastewater treatment unit, etc.). These cases were tagged as closure by removal because the larger volume (or area) was removed from the unit boundary and managed outside the unit boundary (either landfill or beneficial use).

2. On page 10, you state: “The surface impoundment material volumes have been determined based on a ‘best available estimate’ approach. In general, data from the most recent annual inspection report (typically 2019) represents the best available data. In some cases, this is

not available and data from the closure plan is used. Unit area data follows a similar approach. Where this data is not available in either the inspection or closure report, it has been estimated using Google Earth.”

a. Why would surface impoundment material volume data not be available in the annual inspection report or closure plan?

RESPONSE: As volume is required to be provided both as part of the closure plan (maximum inventory during active life) and annual inspections (volume present at the time of inspection), volume data is generally available in one of these locations. This statement is intended to indicate that in most cases, the volume data from the most recent inspection report was used. In cases where the volume was not disclosed in the inspection report due to omission, incompleteness, or other reason such as the reporting of multiple impoundments in a single report where it was difficult to separate the individual pond data, the volume data presented in the closure plan was used in these instances.

3. On page 10, you state: “Similar to the above items, a small number of closure plans do not specifically state the closure method—either closure in place or closure by removal.” You also state: “In some cases, we know from public disclosures that a surface impoundment is required to close by removal based on agency or public disclosures even though the closure plan has not been updated to reflect this announcement.”

a. If a closure method is specifically stated in a closure plan, can an owner or operator easily amend the closure plan to change the selected closure method?

RESPONSE: Yes.

4. On Page 11, you state: “closure in place is considered an ‘equally protective’ closure method when implemented properly and compliant with the Federal CCR Rule closure standards. In fact, as stated in the Federal CCR Rule Preamble (Preamble page 21412), both methods of closure (closure in place and closure by removal) ‘can be equally protective, provided they are conducted properly.’”

a. Is your opinion that closure in place and closure by removal are “equally protective” based solely on the Federal CCR Rule Preamble language cited in your above statement?

RESPONSE: No. Based on my 21 years of experience, I believe closure by removal and closure in place can be equally protective.

b. If not, please explain the basis of your opinion that closure in place and closure by removal are “equally protective.”

RESPONSE: See Response 4(a).

5. On Page 15, you provide a bar chart displaying three groups of surface impoundments and the closure method selected based on size.

a. For the group you refer to as “less than 1 MCY [million cubic yards],” how many units are closing by removal?

RESPONSE: For the group “less than 1 MCY,” 203 units are closing by removal.

b. For the group you refer to as “1 to 3 MCY,” how many units are closing by removal?

RESPONSE: For the group “1 to 3 MCY,” 23 units are closing by removal.

c. For the group you refer to as “over 3 MCY,” how many units are closing by removal?

RESPONSE: For the group “over 3 MCY,” 14 units are closing by removal. Note that for the “over 3 MCY group,” 53 units are closing in place.

6. On page 15, in reference to units over 3 MCY that are planning to close by removal, you state “each of these are each affected by some significant external factor (i.e., regulatory directive, lawsuit settlement, beneficial use opportunity, etc.).”

a. Please list how many units are closing by removal due to regulatory directive and state how you obtained this information.

RESPONSE: 13 of these units were influenced by a state regulation or regulatory directive.

It should be noted that the reasons for the decision to close by removal for these units are not mutually-exclusive by factor listed. In many cases, there are multiple contributing factors. As discussed in my testimony, the ability for cost recovery is also a significant factor for these larger units deciding to close by removal. An example of a unit (or grouping of units) where a regulatory directive is a key factor in the selection of closure by removal would be the Dominion Energy sites in Virginia. The closure method for these sites was directed

through legislation (Senate Bill 1355), which included a requirement for mandated beneficial use.

The information which this testimony is formally based upon is publicly available information as noted and defined within my testimony. More specifically to this question, this information was obtained through public notifications which include news reports and agency/ENGO/utility company disclosures.

b. Please list how many units are closing by removal due to lawsuit settlement and state how you obtained this information.

RESPONSE: 11 of these units were influenced by lawsuit settlements. This information was obtained from news reports.

c. Please list how many units are closing by removal due to beneficial use opportunity and state how you obtained this information.

RESPONSE: Two of these units were influenced by beneficial use opportunities. This information was obtained from news reports and company press releases.

d. Please list how many units are closing by removal due to another “significant external factor” not listed in your statement and state how you obtained this information.

RESPONSE: All 14 of the units were influenced by another significant external factor, namely the ability for cost recovery. This information was obtained through news reports or PUC filings.

7. On page 17, when discussing the methods of closure for CCR surface impoundments that trigger closure for cause, you state: “Many [owners/operators] are confident that closure in place is an appropriate solution and the data from the CCR websites supports this.”

a. What is the basis for your opinion that “[m]any [owners/operators] are confident that closure in place is an appropriate solution”?

RESPONSE: My statement is based on my direct experience working with companies in the design of these unit closures and from the information publicly available. We know

from Ash Mart that the majority of surface impoundments are planning to close in place. In my opinion, owners and operators that follow the regulatory requirements defined in the Federal CCR Rule are confident in the appropriateness of their solution to close in place.

b. Please explain what you mean by “appropriate solution” in this statement.

RESPONSE: As stated above, an appropriate solution is one that has been evaluated for compliance with the applicable regulatory requirements and designed consistent with industry standards.

c. Please identify any circumstances under which closure in place would not be an “appropriate solution.”

RESPONSE: A solution that would not be appropriate would be one that is not compliant with the stated performance standards (based on stability, water management considerations, etc.) provided within the Federal CCR Rules.

d. Please explain which data from the CCR websites “supports” owner/operator’s confidence that closure by removal is an “appropriate solution.”

RESPONSE: My testimony does not specifically address whether owners/operators are confident of closure by removal as an appropriate solution. However, it is my experience that if the closure is performed in conformance with applicable requirements and industry standards, owners are often confident that the closure is appropriate.

8. On page 27, in reference to the defined criteria in Section 845.710(b), you state: “these are important factors that I often see utilized in weighing alternatives during the closure evaluation and decision-making process.” On page 28, you then state: “by defining the criteria, which omits key parameters necessary in the selection approach, and prescribing the method on which closure selection is made, the proposed Illinois Rule removes some of the flexibility and decision-making from owners/operators responsible for implementation and long-term performance.”

a. Is it your opinion that these “important factors” should be considered by owner/operators during the closure evaluation and decision-making process? Why or why not?

RESPONSE: Yes, I believe that these (and other) factors are appropriate for consideration when selecting a closure method. However, I do not believe that considerations should be limited to this list. I believe that owners/operators should have the ability to identify and weigh selection criteria based on their internal requirements and metrics that allow them to comply with the explicit requirements presented within the applicable regulations.

9. On page 28, you state: “Key elements such as the ability to satisfy regulatory timelines and cost are not explicitly listed as criteria [in Section 845.710(b)].”

a. What types of options or methods would be excluded if the ability to satisfy regulatory timelines and costs were listed as criteria in Section 845.710(b)?

RESPONSE: Options or methods would not necessarily be “excluded” through application of cost and ability to satisfy regulatory timelines.

10. On page 28, you state that Part 845 expands the definition of “Inactive CCR Surface Impoundments” by removing the reference to “liquids” as a component of the definition, and as a result, “a greater number of units will potentially be regulated under Part 845 as compared to the Federal CCR Rule.”

a. Have you evaluated which, if any, units in Illinois contained CCR, but not liquids, on or after October 19, 2015? If so, please identify them and explain how you determined that.

RESPONSE: No. This analysis has not been performed nor am I aware of a data source where this could easily be performed.

11. On page 29, you state: “The Vistra Illinois Subsidiaries anticipate that the majority of their regulated impoundments will be categorized as Category 4 or 5.”

a. What impoundments do the Vistra Illinois Subsidiaries anticipate will be categorized as Category 4?

RESPONSE: The basis for this statement is found on p. 14 of Cynthia Vodopivec’s prefiled testimony. I have not evaluated each of Vistra’s units and their corresponding category.

b. What impoundments do the Vistra Illinois Subsidiaries anticipate will be categorized as Category 5?

RESPONSE: I have not evaluated each of Vistra's units and their corresponding category.

c. What impoundments do the Vistra Illinois Subsidiaries anticipate will be categorized as a category other than 4 and 5?

RESPONSE: I have not evaluated each of Vistra's units and their corresponding category.

12. On page 30, you state: “based upon experience, this process [full alternatives analysis with groundwater modelling, two public meetings, and preparation of construction permit application] typically takes 6 months to 2 years or longer depending upon the site complexity and, given the increased requirements as noted above. [sic] 9 months would not be sufficient for a more complex unit to complete this process.”

a. In your experience, were the owners/operators that you are referring to in this statement operating under a timetable or deadline for completing this closure assessment process?

RESPONSE: Yes. Internal or external timelines and deadlines are present in any investigation, alternatives analysis, and closure design process.

b. What does “sufficient” mean? Are you saying it would be impossible to conduct the “process [full alternatives analysis with groundwater modelling, two public meetings, and preparation of construction permit application] within 9 months?”

RESPONSE: Each scenario would need to be evaluated on a case by case basis. I am not stating that this would be impossible. However, I am saying that completing this process within 9 months would be significantly constrained and potentially unattainable for a number of sites.

c. If it is your opinion that 9 months is an impossible timeline, what is the basis for that opinion?

RESPONSE: N/A.

d. How do the “increased requirements as noted above” render 9 months not “sufficient”?

RESPONSE: Identification of viable alternatives, conceptual design of these alternatives, and modelling of these alternatives is an iterative, data-intensive, and time-consuming process. In many cases, this process could involve the collection of additional data to address gaps in understanding. As I have stated in my testimony, the design process for a complex site commonly takes one to two years.

CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 24th day of September, 2020, I have electronically served the attached **Prefiled Responses of Mark Rokoff**, upon all parties 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 15; and the email transmission took place today before 5:00 p.m.

/s/ Ryan Granholm

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