

Ameren's Requested Modifications to the Pollution Control Board's CCR Rules (Part 845)

In 2011, Ameren stopped generating coal power in Illinois. Over the next ten years, most of Ameren's Illinois coal ash ponds (containing Coal Combustion Residuals or "CCR") were then closed with the involvement of IEPA. Although no state or federal law required Ameren to do so, it nevertheless worked with IEPA to close these ponds in a manner that protected human health and the environment. The closures involved substantial IEPA review and input, culminating in IEPA closure authorization letters and follow-up documentation that the closures were completed as authorized.

Some ponds were ***closed by removal***, meaning all coal ash was removed and placed in nearby ***closed in place*** surface impoundments at the site. Other ponds were ***closed in place*** – and are subject to extensive post-closure care requirements, such as groundwater monitoring. ***Ameren spent well over \$26 million closing these coal ash ponds.***

In 2019, Illinois passed its own CCR Law to regulate CCR Surface Impoundments. The Pollution Control Board has now promulgated rules (Part 845) implementing the CCR Law. Ameren requests two modest changes to Part 845 to ensure that the rules are consistent with the intent of the CCR Law and to appropriately account for all the work Ameren has done (on its own initiative) to close its ash ponds before passage of the CCR Law.

1. Clarify that Part 845 does not apply to former ash ponds that no longer contain CCR.

- ***Requested Addition to Section 845.100 (Scope and Purpose):*** "A former ash pond that was closed by removal of CCR pursuant to a state-approved closure plan prior to the effective date of this Part is not a surface impoundment as defined in Section 3.143 of the Act, and is not subject to this Part."
- ***Rationale:*** IEPA can only regulate "CCR surface impoundments" under the new CCR Law. As defined, a CCR surface impoundment must "store, treat or dispose of" CCR. The Ameren ponds that were authorized to close by removal and do not contain CCR as of the effective date of the rules simply do not meet this definition and are therefore not subject to the CCR Law or Part 845. Ameren requested this change during the PCB's hearing, but the PCB order did not discuss this issue at all. It is critically important for the CCR Rules to provide regulatory clarity on this issue because IEPA is now seeking to apply Part 845 to clean closed ponds.

2. Eliminate October 19, 2015 as the triggering date for "closure" under Part 845.

- ***Requested Revision to Section 845.120 (Definitions):*** "Inactive Closed CCR surface impoundment" means an inactive CCR surface impoundment that completed closure before ~~October 19, 2015~~ the effective date of this Part with an Agency-approved closure plan."
- ***Rationale:*** Before Illinois passed the CCR Rule, the USEPA issued its own rules regarding coal ash pond closure (Part 257) that took effect on October 19, 2015. PCB is now attempting to apply Part 845 to any pond that had not completed closure when USEPA's Part 257 went into effect. In other words, PCB is attempting to make Part 845 ***retroactive to a point in time nearly 6 six years ago***. What this means is that Part 845 will end up negating the fact that many Ameren ash ponds that have actually been closed (with IEPA's authorization) will not be deemed closed under the new rules since they were not closed before October 19, 2015. This legal fiction, *which adversely impacts only Ameren because only Ameren closed its ponds*, must be eliminated.