

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

TO: Mr. Don A. Brown,	Vanessa Horton,
Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500	100 West Randolph Road, Suite 11-500
Chicago, Illinois 60601	Chicago, Illinois 60601
(VIA ELECTRONIC MAIL)	(VIA ELECTRONIC MAIL)

(SEE PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board, **THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP’S RESPONSE IN OPPOSITION TO THE ENVIRONMENTAL GROUPS’ MOTION TO MODIFY PART 845**, copies of which are hereby served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

Dated: November 4, 2022

By: /s/ Melissa S. Brown

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THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP’S RESPONSE IN OPPOSITION TO ENVIRONMENTAL GROUPS’ MOTION TO MODIFY PART 845

NOW COMES the Illinois Environmental Regulatory Group (“IERG”), by and through its attorneys, HEPLERBROOM, LLC, and pursuant to the Illinois Pollution Control Board’s (“Board”) September 22, 2022 Order, hereby submits its Response in Opposition to the Environmental Groups’ Motion to Modify Part 845. In support of its Response, IERG states as follows:

On September 2, 2022, the Environmental Law & Policy Center, Little Village Environmental Justice Organization, Prairie Rivers Network, and Sierra Club (collectively “Environmental Groups”) filed a Motion to Modify Certain Provisions of Part 845 and Memorandum in Support (collectively “Motion to Modify”). In the Motion to Modify, the Environmental Groups move the Board to adopt revisions to 35 Ill. Adm. Code Part 845 to address additional coal combustion residuals (“CCR”) being placed into unlined CCR surface impoundments prior to closure, provisions concerning background groundwater monitoring wells, and provisions concerning temporary CCR piles. IERG opposes the proposed amendments suggested by the Environmental Groups and urges the Board to deny their Motion to Modify.

First, the Environmental Groups’ proposed amendments are outside the scope of this rulemaking sub-docket. The Environmental Groups are moving for amendments that concern

additional CCR being placed into unlined CCR surface impoundments and background groundwater monitoring wells. However, as directed by the Board in its February 3, 2021 Order, this sub-docket was opened to explore only the following four subjects: (1) historic, unconsolidated coal ash fill in the State; (2) the use of temporary storage piles of coal ash, including time and volume limits; (3) fugitive dust monitoring plans for areas neighboring CCR surface impoundments; and (4) the use of environmental justice screening tools. Second Notice Order and Opinion, *In the Matter of: Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments: Proposed New 35 Ill. Adm. Code 845*, PCB R 20-19, at 2 (Ill.Pol.Control.Bd. Feb. 4, 2021).

On May 6, 2021, the Hearing Officer entered an Order in this sub-docket stating that the Board was seeking comments, information, and specific proposals on rule language on these four issues. Hearing Officer Order, PCB R 20-19(A), at 1 (Ill.Pol.Control.Bd. May 6, 2021). Specifically, the Hearing Officer provided detail on the four issues that the Board sought comments on, stating:

1. Historic, unconsolidated coal ash fills in the State.

The Board would like the comments to provide information on historic, unconsolidated fills, including the number of fills in the State, the location of the fills, whether the fills are located at active or inactive power stations, ownership status of the fills, potential groundwater issues, and regulatory approaches to manage or close the fills along with specific rule language to that effect.

2. The use of temporary storage piles of coal ash, including time and volume limits.

The Board invites comments on whether to revise the definitions of “CCR storage pile” and “temporary accumulation” under Section 845.120 by addressing the following issues: limitations on duration of storage and quantity of CCR in the storage piles, any additional measures necessary for storage piles to ensure protection against ground and surface water contamination, and criteria for the owner or operator to demonstrate that the storage of CCR is temporary.

3. Fugitive dust monitoring plans for areas neighboring CCR surface impoundments.

The Board invites comments on air monitoring plans to measure fugitive dust in the vicinity of CCR surface impoundments, including monitoring instrumentation, size of particles measured (PM10, PM2.5, etc.), cost of monitoring, monitoring period, linking monitoring results to mitigation measures, impact of fugitive dust on facility employees, impact of fugitive dust on surrounding residents, and whether fugitive dust emissions are increased during closure of CCR surface impoundments.

4. The use of environmental justice screening tools.

The Board invites comments on the application of environmental justice tools, including USEPA's EJSCREEN, that rely on both environmental and demographic indicators to identify areas of environmental justice concern under Part 845.

Id. at 1-2.

The Environmental Groups' proposed amendments addressed in their Motion to Modify concerning CCR being placed into unlined CCR surface impoundments and background groundwater monitoring wells are clearly outside the scope of the four subjects at issue in this sub-docket. Additionally, the changes proposed by the Environmental Groups as to temporary storage piles are also outside the subject matter descriptions in the Hearing Officer's May 6, 2021 Order. For example, the Environmental Groups propose several changes concerning fugitive dust control plans and fugitive dust monitors as they relate to temporary storage piles.

See Motion to Modify at 9-10- referencing Environmental Groups' Comments on Environmental Groups' Proposed Rules, PCB R 20-19(A), at 13-15 (Ill.Pol.Control.Bd. June 3, 2022).

However, the topic of fugitive dust as it relates to temporary storage piles is not within the scope of the Hearing Officer's description of the subject matter. *See* Hearing Officer Order, PCB R 20-19(A), at 1 (Ill.Pol.Control.Bd. May 6, 2021). Therefore, the Environmental Groups' Motion to

Modify should be denied based on the Motion being outside the scope of this sub-docket rulemaking.

Second, the Environmental Groups' Motion to Modify should be denied as it is procedurally improper. Part 102 of the Board's procedural rules governs the rulemaking process to adopt new rules or amendments to existing rules. 35 Ill. Adm. Code Part 102. Part 102, and in particular Section 102.202, provides requirements for the contents of proposals for regulations of general applicability. There is no authority under Part 102 of the Board's rules to file a "Motion to Modify" existing rules, especially if the filing does not meet the substantive content requirements specified in Section 102.202. IERG laid out the requirements for rulemaking proposals in detail in its June 3, 2022 comment filed in this sub-docket and will not repeat the requirements here. Similar to the Environmental Groups' August 6, 2021 Recommended Rules, the Environmental Groups' Motion to Modify does not meet the procedural requirements of Part 102. Therefore, the Motion to Modify should be denied as it is procedurally improper.

Lastly, IERG does not support the amendments proposed by the Environmental Groups in their Motion to Modify. Existing Part 845 is comprehensive and aims to protect human health and the environment from any impacts attributable to any of the concerns raised by the Environmental Groups. Additional requirements concerning these topics is unnecessary, duplicative, and premature. Part 845 was adopted on April 15, 2021. The effects of the requirements of Part 845, including any benefits or potential shortcomings, have yet to be seen. There has not been adequate time to let the requirements in Part 845, or in the federal CCR rules, take effect in order to determine if additional requirements are necessary for the protection of the environment. Additionally, substantial revisions to Part 845, so soon after its adoption, may interfere with the implementation of Part 845. If the requirements under Part 845 are subject to

continuous substantial revisions, it may hinder the progress of implementation of those requirements, including the issuance of permits and the completion of closure or corrective action.

WHEREFORE, the Illinois Environmental Regulatory Group respectfully requests that the Illinois Pollution Control Board enter an Order denying the Environmental Groups' Motion to Modify Part 845.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP

Dated: November 4, 2022

By: /s/ Melissa S. Brown
 One of Its Attorneys

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CERTIFICATE OF SERVICE

I, the undersigned, on oath state the following:

That I have served the attached **ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S RESPONSE IN OPPOSITION TO THE ENVIRONMENTAL GROUPS' MOTION TO MODIFY PART 845** via electronic mail upon:

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That my email address is Melissa.Brown@heplerbroom.com

That the number of pages in the email transmission is 9.

That the email transmission took place before 5:00 p.m. on the date of November 4, 2022.

Date: November 4, 2022

/s/ Melissa S. Brown
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