

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments
- 2) Code Citation: 35 Ill. Adm. Code 845
- 3) Section Number: 845.220 Proposed Action: Amendment
- 4) Statutory Authority: Implementing Section 22.59(g), P.A. 101-171 and authorized by Sections 27 and 28 of the Environmental Protection Act [415 ILCS 5/22.59(g), P.A. 101-171 27; and 28].
- 5) A Complete Description of the Subjects and Issues Involved: IEPA proposed suggestions and clarifications to the proposed first notice changes pertaining to coal combustion residuals storage piles. IEPA recommends striking the proposed definition of "CCR Storage Pile" and instead substituting it with "CCR storage unit" based on the federal definition of "CCR pile or pile" under 40 CFR 257.53.

IEPA explains that when proposing the original Part 845 definitions it wanted "to be careful to not create CCR landfills. Therefore, the Agency specifically added the word 'storage' to 'pile' to differentiate it from a CCR landfill." PC 26 at 1. IEPA agrees that the Board's proposed first notice changes to the definition "CCR storage pile" do not create a landfill because the changes specify a time period for removal of the CCR. *Id.* However, the Agency cautions against using a reference to landfill regulations, especially since landfill-related regulations are not used elsewhere in Part 845. *Id.*

Additionally, IEPA notes that the phrase "accumulation of non-flowing CCR on the land" in the existing definition of "CCR storage pile" too closely aligns with the new federal definition of "CCR Management Unit" (CCRMU). A CCRMU is "any area of land on which any noncontainerized accumulation of CCR is received, placed, or is otherwise managed, that is not a regulated CCR unit". *Id.* at 1-2, 40 CFR 257.53. IEPA expresses concern that the Board's proposed changes to the definition of "CCR storage pile" may result in classifying "storage piles formed during closure by removal as CCRMUs, subjecting them to separate regulations, and potentially introducing landfills into Part 845." *Id.* At 2. Further, IEPA suggests replacing the term "piles" with the term "unit" as "unit" is already defined in the Act and will avoid any reference to landfill regulations. *Id.*

IEPA suggests making corresponding changes to Section 845.220 to cross-reference an existing section on additional monitoring wells as well as including CCR storage units in

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the closure construction permit application. The Board notes that the first notice changes to the definition of "CCR storage pile" made clear that CCR storage piles are intended for temporary storage, while also ensuring that there would be no regulatory confusion in considering a CCR storage pile as a CCR landfill (as defined in 40 CFR 257.53). In that construction of the definition, if an owner or operator failed to demonstrate that CCR was not accumulated over a period longer than one year under Section 845.740(c)(4)(F), that CCR would no longer be considered temporary.

However, given IEPA's concern that the proposed changes may create CCR landfills within Part 845 – which is intended to regulate only CCR surface impoundments – the Board agrees to accept IEPA's suggested amendments. The Board finds that these amendments distinguish the CCR storage units from CCR landfills and CCRMUs and provide further specificity on the creation, and maintenance of the temporary units.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? Yes

<u>Section Numbers:</u>	<u>Proposed Actions:</u>	<u>Illinois Register Citations:</u>
845.120	Amendment	48 Ill. Reg. 13140; September 6, 2024
845.500	Amendment	48 Ill. Reg. 13140; September 6, 2024
845.550	Amendment	48 Ill. Reg. 13140; September 6, 2024
845.740	Amendment	48 Ill. Reg. 13140; September 6, 2024
845.800	Amendment	48 Ill. Reg. 13140; September 6, 2024

- 11) Statement of Statewide Policy Objectives: These proposed amendments do not create or enlarge a State mandate as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3]
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of at least 45 days after the date of publication in the *Illinois Register*. Public comments must be filed electronically through the Clerk's Office On-Line (COOL) on the Board's

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website at <https://pcb.illinois.gov/>. Public comments may also be filed with the Clerk of the Board addressed to:

Clerk's Office
Illinois Pollution Control Board
60 E. Van Buren, Suite 630
Chicago, IL 60605

312-814-3621
don.brown@illinois.gov

Public comments must refer to Board docket number R 19-20(B).

Interested persons may request copies of the Board's opinion and order in R19-20(B) by download copies from the Board's Web site at pcb.illinois.gov or by calling the Clerk's office at 312-814-3620.

- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not for profit corporations affected: None
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Small Business Impact Analysis: No small business will be impacted by this rulemaking.
- 15) Regulatory Agenda on which this rulemaking was summarized: This rule did not appear in the previous two regulatory agendas.

The full text of the Proposed Amendment begins on the next page: