BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	AS 2021-006
PETITION OF SOUTHERN ILLINOIS	)	
POWER COOPERATIVE FOR AN	)	(Adjusted Standard)
ADJUSTED STANDARD FROM 35 ILL.	)	
ADM. CODE 845 OR IN THE	)	
ALTERNATIVE A FINDING OF	)	
INAPPLICABILITY	)	

NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the Illinois Environmental Protection Agency's RESPONSE TO PETITIONER'S POST-HEARING BRIEF, a copy of which is herewith served upon you.

Respectfully submitted,

Dated: December 1, 2025

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,
Respondent,

BY: /s/Rebecca Strauss
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ILLINOIS EPA'S RESPONSE TO PETITIONER'S POST-HEARING BRIEF

NOW COMES the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, ("Illinois EPA" or "Agency") by and through its counsel and submits its Response to Petitioner's Post-Hearing Brief in the above-captioned matter. Illinois EPA states as follows:

INTRODUCTION

1. On October 2, 2025, the Hearing Officer in the instant case ordered the parties to file closing briefs by October 10, 2025, and any response briefs by December 1, 2025. Both Southern Illinois Power Cooperative ("Petitioner") and the Agency filed post-hearing briefs on October 10, 2025. Consistent with the Hearing Officer's order, the Agency provides this response to Petitioner's post-hearing brief ("Pet. Brief").

2. On May 11, 2021, Petitioner, Southern Illinois Power Cooperative ("Petitioner" or "SIPC"), filed a "Petition for an Adjusted Standard from 35 Ill. Admin. Code Part 845 or, in the Alternative, a Finding of Inapplicability" ("Petition" or "Pet.").

3. On September 2, 2021, SIPC filed an "Amended Petition for an Adjusted Standard from 35 Ill. Adm. Code Part 845, or, in the Alternative, a Finding of Inapplicability" ("Amended Petition" or "Amd. Pet.").

4. The Agency filed its initial Recommendation ("Recommendation" or "Rec.") in this matter on January 3, 2021.

5. On December 20, 2024, Petitioner filed its "Second Amended Petition for an Adjusted Standard from 35 Ill. Adm. Code Part 845 or in the Alternative, a Finding of Inapplicability" ("Second Amended Petition" or "Sec. Amd. Pet.").

6. The Agency filed its Amended Recommendation ("Amended Recommendation" or "Amd. Rec.") on February 3, 2025.

7. On June 10-12, 2025, the Board held a hearing in Marion, Illinois in this matter.

8. The parties filed simultaneous post-hearing briefs on October 10, 2025.

9. The Agency provided post-hearing support for its Recommendation to deny Petitioner's adjusted standard in its post-hearing brief filed on October 10, 2025 ("Agency Post-Hearing Brief"). In that brief, the Agency explained that all nine ponds at issue in this matter are CCR surface impoundments and should be regulated under the Illinois rules at 35 Ill. Adm. Code 845 ("Part 845") as such. The Agency now provides additional support for its Recommendation in response to Petitioner's post-hearing brief.

ALL NINE PONDS AT ISSUE ARE CCR SURFACE IMPOUNDMENTS THAT DO NOT QUALIFY FOR AN ADJUSTED STANDARD

10. Petitioner alleges that Part 845 should be held as inapplicable to nine ponds at its Marion Generating Station: Pond 3, Pond 3A, Pond 4, Pond B-3, Pond 6, South Fly Ash Pond, Initial Fly Ash Pond ("IFAP"), Replacement Fly Ash Pond ("RFAP"), and Fly Ash Extension ("FAE").

11. The parties agree that under Part 845, a CCR surface impoundment is defined as (1) a natural topographic depression, man-made excavation, or diked area, which is (2) designed to hold an

accumulation of CCR and liquids, and (3) the surface impoundment treats, stores, or disposes of CCR. 415 ILCS 5/3.143, 35 Ill. Adm. Code 845.120, and 40 CFR 257.2.

12. The Agency reiterates its position that all nine of the ponds at issue in this matter meet all three of the criteria (characterized in the Agency's analysis as the (1) Configuration, (2), Design, and (3) Function/Materials criteria) for a CCR surface impoundment.

13. Though Petitioner has argued that the ponds at issue are not currently designed to hold an accumulation of CCR and liquids, the Board has held previously that the "is designed" language in the definition of a CCR surface impoundment can refer to a design that was made in the past. *See* AS 21-3, *Petition of Midwest Generation, LLC for a Finding of Inapplicability of 35 Ill. Adm. Code 845*, Opinion & Order at 11-12 (March 20, 2025). This parallels the reasoning that the D.C. Court of Appeals held in the 2018 *USWAG* decision, which interprets the term "is disposed of" to include both past and present conditions. *Util. Solid Waste Activities Grp. v. EPA*, 901 F.3d 414, 438-42 (D.C. Cir. 2018).

14. Each pond at issue in this matter was initially designed by Petitioner for the purpose of holding CCR and liquids. Notwithstanding any of the ponds' current uses, they all satisfy the design criterion of the definition of a CCR surface impoundment.

15. Additionally, Petitioner confirmed at hearing that the ponds at issue in this matter do satisfy each of the three criteria for a CCR surface impoundment. *See* June 10, 2025, Hearing, Testimony of Todd Gallenbach, p. 170-191.

16. Petitioner argues that none of the ponds at issue are or were subject to the federal Part 257, which came into effect in 2015, prior to the adoption of Part 845. *See* Pet. Brief at 29. However, the Agency notes that Part 257 is a self-implementing rule that relies on owners and operators to properly self-report. *See* 40 CFR 257.50; Hazardous and Solid Waste Management System;

Disposal of Coal Combustion Residuals From Electric Utilities, 80 Fed. Reg. 21302 (April 17, 2015) at 21311. Petitioner has determined for itself that Part 257 does not apply, and no federal authority has confirmed that determination.

17. The parties agree that Petitioner is required to present adequate proof of the following under Section 28.1(c) of the Illinois Environmental Protection Act (the "Act"):

    (1) factors relating to [Petitioner] are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation applicable to that petitioner;

    (2) the existence of those factors justifies an adjusted standard;

    (3) the requested standard will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the rule of general applicability; and

    (4) the adjusted standard is consistent with any applicable federal law.

18. Failure to prove any of the four elements mandates the denial of the adjusted standard. *See* AS 21-3, *Petition of Midwest Generation, LLC for a Finding of Inapplicability of 35 Ill. Adm. Code 845*, Opinion & Order at 7 (March 20, 2025).

19. The Agency reiterates its position that none of the nine ponds qualify for an adjusted standard from the requirements of Part 845. If any pond is deemed by the Board to be a CCR surface impoundment pursuant to Part 845, that pond will not qualify for an adjusted standard.

20. Additionally, Petitioner's proposed adjusted standard is inappropriate because it would unnecessarily cause an adverse environmental impact.

PETITIONER'S "DE MINIMIS" ARGUMENT FAILS

21. Petitioner characterizes six of its ponds as "de minimis" units that have too little CCR to be regulated under Part 845: Pond 3, Pond 3a, Pond 4, Pond B-3, Pond 6, and the South Fly Ash Pond.

22. Petitioner relies on a September 2021 report by Haley & Aldrich (SIPC Ex. 29, hereinafter its "Exhibit 29") to argue that these six ponds contain less than a "typical" amount of CCR.

23. This conclusion is predicated on faulty data; Petitioner, by its own admission, has an inadequate groundwater monitoring system, and additionally failed to perform adequate sampling of several of its ponds. *See* June 11, 2025, Hearing, Testimony of Kenneth Liss, p. 395-396; Agency Post-Hearing Brief at 6-15.

24. Further, each of the allegedly de minimis ponds contain well over 50 cubic yards of CCR, which the Agency earlier proposed and the Board agreed is an appropriate volume of CCR in a CCR surface impoundment to be considered de minimis. *See* Adjusted Standard 2021-004, *In the Matter of: Petition of Illinois Power Resources Generating, LLC for an Adjusted Standard from 35 Ill. Admin. Code Part 845, or In the Alternative, a Finding of Inapplicability*, Final Board Order (February 17, 2022).

25. USEPA guidance gives a volume of 1,000 tons, which is approximately equal to 1,000 cubic yards[1] to be a volume of CCR that has been demonstrated to cause exceedances of groundwater protection standards at CCR management units ("CCRMUs") under the federal Part 257, upon which Part 845 is based. Some CCR surface impoundments also meet the definition of CCRMUs. *See* Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Legacy CCR Surface Impoundments, 89 Fed. Reg. 38950 (May 8, 2024) at 38979, 39000.

26. While the Agency does not argue that the ponds at issue in this matter are CCRMUs under Part 257, the Agency must note that the CCR surface impoundments that meet the definition of CCRMUs are closed impoundments. USEPA guidance states that a volume of 1,000 tons of

[1] As was calculated for the Agency Recommendation, CCR weighs approximately 0.95 tons per cubic yard. Rec. at 58; *see* Agency Ex. VV at 58-59.

CCR can cause an environmental impact. *See id* at 39000. As the CCR surface impoundments at issue in this matter are not closed, the threshold for environmental impact would be expected at a lower volume.

27. Each of the allegedly de minimis ponds contains well over 1,000 cubic yards of CCR. None of these ponds have fewer than 3,000 cubic yards of CCR. *See* SIPC Ex. 29 at 7 (Table 1), 14 (Table 6). It is unreasonable that this amount of CCR be considered "de minimis."

28. Petitioner's own data undercuts its de minimis claim. In Petitioner's Exhibit 29, Petitioner excluded the "Other" fraction of its summary of the sediment samples from each pond when estimating CCR in the units it labeled "de minimis." SIPC Ex. 29, Attachment D, Appendix, letters dated June 25, 2021, and July 23, 2025. As explained in the Agency's Post-Hearing Brief, Petitioner has erroneously characterized scrubber sludge at its site as 100% "Other," despite the fact that scrubber sludge is CCR. *See* Agency Post-Hearing Brief at 20-22. Therefore, in the absence of any further explanation by Petitioner, the "Other" fraction must be included when calculating the volume of CCR in each of the "de minimis" ponds.

29. Additionally, even if the volumes of CCR in these ponds could be considered de minimis at one snapshot in time, the current volumes do not reflect all the CCR that has been present in the ponds over the years but at some points removed. All the allegedly de minimis ponds have been cleaned out, some multiple times, and would hold a higher volume of CCR had they not been cleaned out. *See* June 10, 2025, Hearing, Testimony of Todd Gallenbach, p. 170-191; SIPC Ex. 49.

30. A presently low volume of CCR in any of the allegedly de minimis ponds would not negate decades of use as a CCR surface impoundment. Per Part 845, simply taking some of the CCR out of a CCR surface impoundment, without any other closure actions, does not make it cease

to be a CCR surface impoundment. *See*, *e.g*., 35 Ill. Adm. Code 845.750 (setting out requirements for closure by removal).

31. A pond-by-pond analysis of the allegedly "de minimis" ponds demonstrates that these ponds are CCR surface impoundments, thus subject to the requirements of Part 845, and do not qualify for an adjusted standard from Part 845.

32. The proposed adjusted standard terms for each pond are inappropriate, as they are vague as to deadlines and seek to extend operating permit application deadlines without valid justification.

Pond 3

33. The Agency reiterates its position that Pond 3 meets all three criteria for a CCR surface impoundment and thus is a CCR surface impoundment under Part 845. *See* Agency Post-Hearing Brief at 6-7.

34. Per the data provided in Petitioner's own Pond Investigation, Pond 3 contains approximately 3,110 cubic yards of CCR. *See* SIPC Ex. 29 at 7 (Table 1), 14 (Table 6). As explained *supra*, this is not a de minimis amount of CCR.

35. The Agency reiterates its position that Pond 3, like the other ponds at issue in this matter, does not meet any of the four elements necessary for an adjusted standard. *See* Agency Post-Hearing Brief at 24-28.

36. Petitioner's proposed adjusted standard requests an extension of deadlines for its operating permit application and its closure permit application. See Sec. Am. Pet., Appendix A. If the Board determines that Petitioner qualifies for any adjusted standard for Pond 3, Petitioner agrees with the Agency's proposed extension of 16 months for Petitioner's submittal of a closure construction permit. *See* Pet. Brief at 56; Amd. Rec. at 10-11. The Agency is amenable to this extension should it be limited to the agreed upon 16 months at maximum.

37. Petitioner also requests at least a 12-month extension to submit its initial operating permit application. Petitioner states that it needs at least 12 months because SIPC requires a minimum of 12 months (and possibly longer) to design and install a groundwater monitoring system, collect representative groundwater samples, and conduct a hydrogeological assessment for an operating permit application. SIPC Ex. 47; Pet. Brief at 56-57.

38. The submittal of a permit application does not require the necessary groundwater monitoring system to be installed at the time of submitting the application. 35 Ill. Adm. Code 845.230(d)(2)(I)(ii)-(iv). Rather, the application needs to contain a plan for designing and installing the groundwater monitoring system. *See id*. Therefore, Petitioner's rationale for needing at least 12 months to submits its operating permit application for Pond 3 is unconvincing.

Pond 3a

39. The Agency reiterates its position that Pond 3a meets all three criteria for a CCR surface impoundment and thus is a CCR surface impoundment under Part 845. *See* Agency Post-Hearing Brief at 7-9.

40. Per the data provided in Petitioner's own Pond Investigation, Pond 3a contains approximately 3,543 cubic yards of CCR. *See* SIPC Ex. 29 at 7 (Table 1), 14 (Table 6). As explained *supra*, this is not a de minimis amount of CCR.

41. The Agency reiterates its position that Pond 3a, like the other ponds at issue in this matter, does not meet any of the four elements necessary for an adjusted standard. *See* Agency Post-Hearing Brief at 24-28.

42. Petitioner's proposed adjusted standard requests an extension of deadlines for its operating permit application and its closure permit application. If the Board determines that Petitioner qualifies for any adjusted standard for Pond 3a, Petitioner agrees with the Agency's proposed

extension of 16 months for Petitioner's submittal a closure construction permit. See Pet. Brief at 56; Amd. Rec. at 10-11. The Agency is amenable to this extension should it be limited to the agreed upon 16 months at maximum.

43. Again, Petitioner also requests at least a 12-month extension to submit its initial operating permit application. Petitioner states that it needs at least 12 months because SIPC requires a minimum of 12 months (and possibly longer) to design and install a groundwater monitoring system, collect representative groundwater samples, and conduct a hydrogeological assessment for an operating permit application. SIPC Ex. 47; Pet. Brief at 69.

44. As explained *supra* at Paragraphs 37-38, the submittal of a permit application does not require the necessary groundwater monitoring system to be installed at the time of submitting the application. 35 Ill. Adm. Code 845.230(d)(2)(I)(ii)-(iv). Rather, the application needs to contain a plan for designing and installing the groundwater monitoring system. *See id*. Petitioner's rationale for needing at least 12 months to submit its operating permit application for Pond 3a is therefore unconvincing.

45. Pond 3a is therefore still a CCR surface impoundment, and it does not qualify for an adjusted standard.

Pond 4

46. The Agency reiterates its position that Pond 4 meets all three criteria for a CCR surface impoundment and thus is a CCR surface impoundment under Part 845. *See* Agency Post-Hearing Brief at 9-10.

47. Per the data provided in Petitioner's own Pond Investigation, Pond 4 contains approximately 3,373 cubic yards of CCR. *See* SIPC Ex. 29 at 7 (Table 1), 14 (Table 6). As explained *supra*, this is not a de minimis amount of CCR.

48. The Agency reiterates its position that Pond 4, like the other ponds at issue in this matter, does not meet any of the four elements necessary for an adjusted standard. *See* Agency Post-Hearing Brief at 24-28.

49. Further, Petitioner provided an expert report specifically on the environmental impact of Pond 4. *See* SIPC Ex. 38. This report essentially states that any contamination that appears to be coming from Pond 4 is instead coming from the surrounding ponds. This is contradictory, as those ponds are also at issue in this matter, and Petitioner claims they also do not pose an environmental risk.

50. Petitioner's proposed adjusted standard is particularly troubling, as it proposes that Pond 4's application for closure or retrofit be due within 12 months of finding an exceedance, and not before. *See* Sec. Am. Pet., Appendix A. This closure scheme is inconsistent with the 2018 *USWAG* decision. There, the D.C. Court of Appeals found that it could not allow an unlined pond to operate until an exceedance was found, as that would violate the Resource Conservation and Recovery Act (RCRA). *Util. Solid Waste Activities Grp. v. EPA*, 901 F.3d 414, 433 (D.C. Cir. 2018).

51. Further, given the content of the risk analysis report on Pond 4, Petitioner is unlikely to accurately report exceedances; there are already exceedances observed in well S6 near Pond 4, but this report attributes these exceedances to the surrounding surface impoundments, which Petitioner may continue to do with future exceedances to avoid initiating closure if granted an adjusted standard. *See* SIPC Ex. 38.

52. Additionally, if Pond 4 is deemed a CCR surface impoundment that qualifies for an adjusted standard, Pond 4 needs to be closed, not retrofitted. Petitioner draws a comparison to Emery

Pond, which was not a true retrofit; rather, Emery Pond was closed and replaced with a new stormwater pond. SIPC Ex. 11, at Section 5. Similarly, Pond 4 must be closed as well.

Pond B-3

53. The Agency reiterates its position that Pond B-3 meets all three criteria for a CCR surface impoundment and thus is a CCR surface impoundment under Part 845. *See* Agency Post-Hearing Brief at 11-12.

54. Petitioner has not provided an estimate of the volume of CCR in Pond B-3. Petitioner declined to sample Pond B-3 so as to provide such an estimate, claiming instead that there is "little or no CCR" based on partial shake test data. This vague description does not substantiate a de minimis amount of CCR. *See* Agency Post-Hearing Brief at 12.

55. The Agency reiterates its position that Pond B-3, like the other ponds at issue in this matter, does not meet any of the four elements necessary for an adjusted standard. *See* Agency Post-Hearing Brief at 24-28.

56. Petitioner proposes the same extension of operating permit application deadline for this pond as with the other "de minimis" ponds, and this is inappropriate for the same reasons described *supra* at Paragraphs 37-38.

Pond 6

57. The Agency reiterates its position that Pond 6 meets all three criteria for a CCR surface impoundment and thus is a CCR surface impoundment under Part 845. *See* Agency Post-Hearing Brief at 12-14.

58. Per the data provided in Petitioner's own Pond Investigation, Pond 6 contains approximately 3,831 cubic yards of CCR. *See* SIPC Ex. 29 at 7 (Table 1), 14 (Table 6). As explained *supra*, this is not a de minimis amount of CCR.

59. The Agency reiterates its position that Pond 6, like the other ponds at issue in this matter, does not meet any of the four elements necessary for an adjusted standard. *See* Agency Post-Hearing Brief at 24-28.

60. Petitioner proposes the same extension of operating permit application deadline for this pond as with the other "de minimis" ponds, and this is inappropriate for the same reasons described *supra* at Paragraphs 37-38.

61. Pond 6 poses additional problems, as, though Petitioner characterizes it as a "de minimis" pond in its brief, part of Pond 6 is also contained within the area that it calls a landfill. *See* Pet. Brief at 81; Sec. Am. Pet., Appendix A. Petitioner defines Pond 6 in its de minimis discussion as the portion of the permitted area that contains water. The portion of Pond 6 that Petitioner considers part of the landfill is essentially a dry pile of CCR that abuts the water. *See* Agency Exs. 1-18; June 12, 2025, Hearing, Testimony of Lynn Dunaway, p. 488.

62. What Petitioner calls Pond 6 (the portion of Pond 6 that contains water) cannot remain until plant closure, because the water is part of the permitted footprint of Pond 6 and must close with the solids portion because they are direct contact with each other. *See* June 12, 2025, Hearing, Testimony of Lynn Dunaway, p. 488.

South Fly Ash Pond

63. The Agency reiterates its position that the South Fly Ash Pond meets all three criteria for a CCR surface impoundment and thus is a CCR surface impoundment under Part 845. *See* Agency Post-Hearing Brief at 14-15.

64. Per the data provided in Petitioner's own Pond Investigation, the South Fly Ash Pond contains approximately 20,854 cubic yards of CCR. *See* SIPC Ex. 29 at 7 (Table 1), 14 (Table 6). As explained *supra*, this is not a de minimis amount of CCR.

65. The Agency reiterates its position that the South Fly Ash Pond, like the other ponds at issue in this matter, does not meet any of the four elements necessary for an adjusted standard. *See* Agency Post-Hearing Brief at 24-28.

66. Petitioner proposes the same extension of operating permit application deadline for this pond as with the other "de minimis" ponds, and this is inappropriate for the same reasons described *supra* at Paragraphs 37-38.

PETITIONER'S LANDFILL ARGUMENT FAILS

67. Petitioner groups the Initial Fly Ash Pond, ("IFAP"), the Replacement Fly Ash Pond ("RFAP"), and the Fly Ash Holding Area Extension ("FAE") as the "Former Fly Ash Holding Units."

68. As demonstrated in the Agency's Post-Hearing Brief, all three of the "Former Fly Ash Holding Units" meet the criteria for CCR surface impoundments. Agency Post-Hearing Brief at 15-19.

69. Petitioner contends the Former Fly Ash Holding Units are part of a landfill regulated under 35 Ill. Adm. Code 815 ("Part 815") rather than CCR surface impoundments regulated under Part 845. Sec. Amd. Pet. at 17. Petitioner's contention is unsupported, as classification as a CCR surface impoundment is governed by Part 845's definition, not by Petitioner's characterization.

70. Additionally, the area that Petitioner contends is the former CCR landfill also contains part of Pond 6—which, as explained *supra* and in the Agency's Post-Hearing Brief—is likewise a CCR surface impoundment. *See* Agency Post-Hearing Brief at 12-14.

71. Per the definitions of waste pile and surface impoundment from Part 810, waste piles, a type of landfill, have "solid, non-flowing waste" while surface impoundments do have flowing waste. *See* 35 Ill. Adm. Code 810.103; June 12, 2025, Hearing, Testimony of Lynn Dunaway, p. 490-492.

72. Thus, no part of this area could reasonably be treated as a landfill, and all ponds contained in this area must be regulated as CCR surface impoundments.

The "Former Fly Ash Holding Units" are CCR Surface Impoundments, Not Structural Fill

73. Petitioner ~~says~~ states that the CCR in these ponds is structural fill that "served as a structural base for and was treated as part of the Former CCR Landfill". Pet. Brief at 27-28. This CCR cannot be "structural fill" because the three CCR surface impoundments were never closed in accordance with Part 845. Closure under Part 845 requires an owner or operator to "…control, minimize or eliminate, to the maximum extent feasible, post-closure infiltration of liquids". 35 Ill. Adm. Code 845.750(a)(1). Merely piling CCR on top of a CCR surface impoundment is insufficient for closure under Part 845, nor does it adequately prevent the infiltration of liquids. *See* June 12, 2025, Hearing, Testimony of Lynn Dunaway, p. 500-502.

74. The CCR in these impoundments was never engineered in any manner. The Agency has no evidence of grain size analysis, compaction, and testing to confirm required specifications, all of which are required for use as structural fill. *See* 415 ILCS 5/3.135(a)(8), 40 CFR 257.102(d)(2)(i), June 12, 2025, Hearing, Testimony of Lynn Dunaway, p. 500-502. Petitioner also does not claim that any of these necessary steps for closure have occurred in any of the ponds it calls the Former Fly Ash Holding Units.

75. Petitioner states that these ponds were dewatered in support of its claim that they became a landfill. *See* SIPC Ex. 39 at 17. However, the definition of a CCR surface impoundment does not require a unit to currently contain liquids; rather, the definition requires it to be *designed* to hold CCR and liquids. 415 ILCS 5/3.143, 35 Ill. Adm. Code 845.120, and 40 CFR 257.2. Thus, the Former Fly Ash Holding Units continue to be CCR surface impoundments, even if they were at one point dewatered, because they continue to contain CCR.

76. Rather than close these ponds, Petitioner appears to have instead "abandoned" them, leaving their CCR in place, and then piled more CCR on top of them, which Petitioner then called a

landfill. These ponds are thus more accurately characterized as CCR surface impoundments that were filled beyond capacity, rather than a landfill.

77. Furthermore, despite characterizing these ponds as part of a landfill, Petitioner has continued to operate them as CCR surface impoundments, sluicing CCR and water to them for decades after claiming they were a landfill. *See* June 10, 2025, Hearing, Testimony of Todd Gallenbach, p. 202. Long thin strips of water on top of this area have been observed on top of the landfill area at multiple times over multiple years, including in an aerial photo taken in 1998. *See* Agency Ex. 4. Per testimony at hearing, these narrow strips received CCR and liquids "a couple" times a year during precipitation events. *See* June 11, 2025, Hearing, Testimony of Jason McLaurin, p. 249-250. These strips were approximately six to seven feet deep, and though Petitioner claims that the water was diverted quickly enough so as not to saturate into the landfill below, Petitioner could not provide any data to support that assertion. *See Id*. At hearing, Petitioner's witness Todd Gallenbach stated that the strips of water drained into Pond 6, which, as noted *supra,* is directly connected to the CCR in the landfill area. June 10, 2025, Hearing, Testimony of Todd Gallenbach, p. 202-203.

Any Past Treatment of These Ponds as Landfills is Irrelevant to Their Current Legal Status

78. Petitioner points to a 2020 Violation Notice as evidence that the Agency treated these ponds as a landfill. This Violation Notice was rescinded because upon reviewing critical information about these ponds, the Agency determined that these ponds were CCR surface impoundments. *See* Sec. Am. Pet. at 18.

79. Petitioner submitted an Initial Facility Report for these ponds in 1992 characterizing them as a permit-exempt landfill under Part 815. *See* SIPC Ex. 15. This is the earliest record that the Agency has of treating this area as a landfill.

80. Under Part 815, it is the duty of the owner or operating submitting an operating report for a landfill to portray its site accurately. *See* 35 Ill. Adm. Code 815.201.

81. These ponds were previously regulated as surface impoundments. Per the Part 810 definition of a landfill, a landfill cannot be a surface impoundment. 35 Ill. Adm. Code 810.103. Petitioner thus ignored the Part 810 definition of a landfill and incorrectly reported these surface impoundments as a permit-exempt landfill.

82. The Agency relied on Petitioner's characterization of these ponds as a landfill. As there is no permitting process for a permit-exempt landfill under Part 815, the Agency is not required to review any data submitted under Part 815. *See generally* 35 Ill. Adm. Code 815.

83. Again, notwithstanding any past regulation as a landfill, these ponds meet the current definition of a CCR surface impoundment under Part 845 and must be regulated as such. Once Part 845 was adopted, these ponds were treated as such, and the Violation Notice at issue was rescinded by the Illinois EPA's Bureau of Land in a letter dated May 6, 2021. *See* Sec. Am. Pet. at 18.

THE PROPOSED ADJUSTED STANDARD WOULD RESULT IN ENVIRONMENTAL HARM

84. The Agency reiterates that Petitioner's evaluation of environmental harm is based on an inadequate groundwater monitoring system. Evaluations using the resulting incomplete and substandard data are not protective, and equating no completed exposure pathways is inconsistent with meeting compliance with the groundwater protection standards at the waste boundary. *See* Agency Post-Hearing Brief at 25.

85. Petitioner's own witness Kenneth Liss admitted at hearing that the groundwater monitoring system is inadequate for the purposes of the federal Part 257. *See* June 11, 2025, Hearing, Testimony of Kenneth Liss, p. 395-396. This means that it is inadequate for the purposes of

Part 845. *See* Coal Combustion Residuals State Permit Program Guidance Document; Interim Final, p. 2-10 (82 Fed. Reg. 38685, August 15, 2017).

86. As Agency expert Lynn Dunaway explained at hearing, monitoring wells need to be placed at the edge of the waste boundaries in order to be in compliance with Part 845. June 12, 2025, Hearing, Testimony of Lynn Dunaway, p. 507. The wells at this site are not at the edges of the waste boundaries, so they cannot capture the true concentrations of the constituents being discharged from the CCR surface impoundments. *See* SIPC Ex. 29; June 12, 2025, Hearing, Testimony of Lynn Dunaway, p. 507.

87. Further, Petitioner has proposed giving itself extra time to complete a "beneficial use" study before it applies for operating permits, and well before it initiates closure. *See* Sec. Am. Pet., Appendix A. This unnecessarily delays remediation of the environmental harm caused by the CCR left in these ponds. *See* Agency Post-Hearing Brief at 26.

88. Furthermore, the proposed adjusted standard is vague as to what this beneficial use study would entail and the criteria used to determine beneficial use. *See* Sec. Am. Pet., Appendix A. This calls into question whether the proposed beneficial use study will be effective in making an accurate and good faith determination of beneficial use.

89. Petitioner also has not provided data showing that CCR meets the Act's Beneficial Use Criteria (its "shake test" submittal in Pet. Ex. 29, Table 9 reports results for 6 of the 24 metals identified in Section 3.135 of the Act). SIPC Ex. 29, Table 9; 415 ILCS 5/3.135. Given this data, extending deadlines for a beneficial use study would delay remediation with no certain environmental benefit, as there no evidence that CCR would qualify for beneficial use—despite the passage of many years during which SIPC could have collected such data.

90. Any unnecessary delay will further exacerbate the environmental harm that these nine unlined CCR surface impoundments are causing to the environment. As the Environmental Groups noted in their post-hearing public comments, coal ash pollution from these nine ponds has a profound impact on the surrounding environment and community, and increasing delay only worsens that impact. *See* Environmental Groups' Comments (filed June 30, 2025) at 10-11. Should the Board find any adjusted standard appropriate, it should be limited to the adjustments to the compliance schedule set forth in the Agency's Amended Recommendation, as those adjustments would enable Petitioner to prepare adequate, supportable permit applications while limiting the environmental impact of further delays. *See* Amd. Rec. at 10-11.

WHEREFORE, for the reasons stated above, Illinois EPA respectfully reiterates its recommendation that the Board DENY Petitioner's request for a Board finding of inapplicability from Part 845 and likewise DENY Petitioner's request for an adjusted standard.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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DATED: December 1, 2025

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THIS FILING IS SUBMITTED ELECTRONICALLY

CERTIFICATE OF SERVICE

I, the undersigned, on affirmation certify the following:

That I have electronically served the attached **NOTICE OF ELECTRONIC FILING** and **ILLINOIS EPA'S RESPONSE TO PETITIONER'S POST-HEARING BRIEF** upon those listed on the Service List before 4:30 p.m. on December 1, 2025.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

BY: /s/Rebecca Strauss
Rebecca Strauss
Assistant Counsel
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DATED: December 1, 2025

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