

ILLINOIS POLLUTION CONTROL BOARD
September 19, 2019

IN THE MATTER OF:)
)
COAL COMBUSTION WASTE (CCW) AND) R14-10
SURFACE IMPOUNDMENTS AT POWER) (Rulemaking - Water)
GENERATING STATIONS: PROPOSED)
NEW 35 ILL. ADM. CODE 841)

ORDER OF THE BOARD (by B.F. Currie):

In an order on March 28, 2019, the Board questioned whether it was justified to move ahead with the current record in this rulemaking. The order briefly summarized recent developments at the federal level, including rulemaking, litigation, and legislation. The Board directed the Illinois Environmental Protection Agency (IEPA) as the proponent to show cause by April 29, 2019, why the rulemaking should not be closed. The Board also welcomed comment from other participants.

The Board received timely responses from IEPA, the Illinois Attorney General's Office, and Prairie Rivers Network, Sierra Club, and Environmental Law & Policy Center. Each response cited then-pending Senate Bill 9, which addressed coal combustion waste (CCW). Generally, the responses recommended that this docket remain open until after the end of the legislative session. IEPA commented that, if the Illinois General Assembly directs the Board to adopt CCW rules, this rulemaking may need to be dismissed in order to consider a proposal under new statutory authority.

In an order on May 30, 2019, the Board declined to dismiss this docket. The Board noted that, on May 27, 2019, Senate Bill 9 had passed both houses of the General Assembly. The Board directed IEPA to comment by September 3, 2019, on the status of Senate Bill 9 and, in light of that status, whether the Board should close this docket. The Board welcomed comment from all other participants by the same deadline.

IEPA responded on August 16, 2019 (IEPA Resp.), but no other participant filed additional comments by the September 3, 2019 deadline.

IEPA reported that the governor signed Senate Bill 9 into law on July 30, 2019, as Public Act 101-171 (P.A. 101-171) with an immediate effective date. Among its provisions, P.A. 101-171 adds to the Environmental Protection Act a new Section 22.59 addressing coal combustion residual, as CCW is termed in federal regulations. Subsection (g) requires IEPA, within eight months of the effective date of P.A. 101-171, to propose rules addressing, at a minimum, 11 specific factors including construction and operating permits, financial assurance, public participation, environmental justice, closure, and removal. Within one year of receiving IEPA's proposal, the Board must adopt rules. P.A. 101-171.

Based on these statutory rulemaking requirements, IEPA recommends that the Board close R 14-10. IEPA states that it will submit a new rulemaking proposal under P.A. 101-171 and “establish a clean record.” IEPA Resp. at 3.

The Board has reviewed P.A. 101-171, which directs the Board to adopt CCW rules addressing specific issues and provides a deadline for it to do so. The Board agrees with IEPA that a new rulemaking proposal will help develop a clean and clear record on these issues. Consistent with IEPA’s recommendation and P.A. 101-171, the Board closes this docket. The Board expects to open a new rulemaking docket to consider the proposal filed under P.A. 101-171.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 19, 2019, by a vote of 4-0.

A handwritten signature in cursive script that reads "Don A. Brown". The signature is written in black ink and is positioned above a horizontal line.

Don A. Brown, Clerk
Illinois Pollution Control Board