

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
) R 2020-019
STANDARDS FOR THE DISPOSAL OF)
COAL COMBUSTION RESIDUALS IN) (Rulemaking – Water)
SURFACE IMPOUNDMENTS:)
PROPOSED NEW 35 ILL. ADM.)
CODE 845)

NOTICE OF FILING

To: Service List

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Pollution Control Board Midwest Generation, LLC's Questions for Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

Dated: June 23, 2020

MIDWEST GENERATION, LLC

By: /s/Susan M. Franzetti

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that a true copy of the foregoing Notice of Filing, and Midwest Generation, LLC's Questions for Illinois Environmental Protection Agency was electronically filed on June 23, 2020 with the following:

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and that copies were sent via e-mail on June 23, 2020 to the parties on the service list.

Dated: June 23, 2020

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
STANDARDS FOR THE DISPOSAL OF)
COAL COMBUSTION RESIDUALS IN) **R20-019**
SURFACE IMPOUNDMENTS:) **(Rulemaking - Water)**
PROPOSED NEW TO 35 Ill. Adm. Code Parts 845)

**MIDWEST GENERATION, LLC'S QUESTIONS FOR
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

Midwest Generation, L.L.C. ("Midwest Generation" or "MWGen"), by and through its attorneys, Nijman Franzetti, LLC, submits the following questions to the Illinois Environmental Protection Agency ("Agency" or "Illinois EPA") based upon the Proposed Section 35 Ill. Adm. Code Part 845 ("proposed rule"), the Statement of Reasons and its Attachments, and the testimony submitted by the Illinois Environmental Protection Agency ("Agency" or "Illinois EPA") for William E. Buscher, Lynn E. Dunaway, Darin E. LeCrone, Lauren Martin, Robert L. Mathis, Chris Presnall, Melinda Shaw, and Amy Zimmer. MWGen requests that the Hearing Office allow follow-up questioning to be posed based on the answers provided.

MWGen has set forth questions below for each of the Illinois EPA's witnesses for whom pre-filed testimony was submitted. However, in Section I., questions are posed to the Agency's witnesses without specifying a particular witness because it was not clear from the pre-filed testimony which witness was the appropriate person to respond to the question and/or the Agency may prefer to have more than one witness provide the response. MWGen leaves it to the Agency's discretion to designate the appropriate witness or witnesses who should respond on its behalf to the Section I. questions.

I. GENERAL QUESTIONS TO THE AGENCY WITNESSES

Section 845.100 Scope and Purpose

1. What is the purpose of the second sentence in Section 845.100(a)?

2. Is it correct that section 845.100(e) makes these rules applicable only to electric utilities and independent power producers?

3. Is it the Agency's view that electric utilities and independent power producers are the only parties who may have coal ash accumulations in impoundments on their properties? If not, why is Part 845 limited to electric utilities and independent power producers?

Section 845.130 Surface Impoundment Identification

4. The Agency has identified CCR surface impoundments in Illinois and has assigned identification numbers to the CCR surface impoundments it has identified. What is the authority the Agency is relying upon to identify the CCR surface impoundments?

5. What was the Agency's process for identifying the CCR surface impoundments and assigning identification numbers?

6. Did the Agency conduct any outreach to the owners/operators to identify the CCR surface impoundments to assign the identification numbers? If so, please describe the outreach.

7. If an owner/operator disagrees with the Illinois EPA's identification of CCR surface impoundments, what are the owner/operator's options for seeking to challenge or obtain relief from the Agency's decision?

8. Does the Agency consider its identification of a CCR surface impoundment a final Agency decision?

9. What is the timeframe or due date for an owner/operator to install a marker?

10. Certain of the CCR surface impoundments have a federal CCR rule marker. Would the federal CCR rule markers satisfy the identification requirement here?

II. QUESTIONS FOR DARIN LeCRONE

11. You state on page 3 of your testimony that the draft permit, public notice and participation procedures are modeled after the NPDES program. As the NPDES program does not require two public meetings, why is the Agency proposing to require two public meetings instead of one as provided for in the NPDES program regulations? Why are the public notification requirements for the regulated entities more stringent than those required of the Agency in this program and in the NPDES program?

Section 845.200 Permit Requirements and Standards of Issuance

12. In Section 845.200(a)(1), what is the Agency's definition of a "mitigation facility?"

13. Section 845.200(a)(2) states an existing unit cannot operate without an operating permit and refers to Section 845.230(d). However, section 845.230(d) does not address the temporal gap from the time the proposed rule is promulgated to the date of the permit application

submission in 2021. Please confirm that the Agency will not consider an owner/operator out of compliance for not having submitted an operating permit application immediately upon promulgation of the CCR rule.

Section 845.210 General Provisions

14. Did the Agency intentionally exclude the option to submit a permit application by e-mail and if so, why? If the exclusion was not intentional, does the Agency have any objection to allowing permit applications to be submitted by e-mail?

15. Section 845.210(e) states that the Agency's final action shall be deemed to have taken place on the post marked date that such notice is mailed. What is the Agency's basis for making the final action date the date the decision is placed in the mail and not the date it is served on the owner/operator? How is Section 845.210(e) consistent with Section 40 of the Act which states that if the Agency denies a permit "the applicant may, within 35 days after the date on which the Agency served its decision on the applicant," appeal the decision? 415 ILCS 5/40.

Section 845.220 Construction Permits

16. Please confirm that an existing groundwater monitoring program will be acceptable to the Agency as part of the construction permit application.

17. What was the basis for the Agency limiting a construction permit to five years for closure?

18. Section 845.700 requires that construction permit applications for Category 1-5 CCR surface impoundments be submitted by January 1, 2022. Section 845.240 requires at least two public meetings 30 days in advance, shortening the time to prepare an application by at least five weeks (i.e. 30 days for the public meetings plus additional time to schedule the meetings). The construction permit application must include the engineered design of a closure or retrofit project, final closure and post-closure plans, and groundwater modeling.¹

a) Please provide the basis for the Agency's determination that a permit applicant will be able to complete all of the tasks that are required to be conducted and submitted by January 1, 2022?

b) Would the Agency consider allowing an extension if good cause were given? If so, would the Agency support revising this section to allow for extensions where good cause is shown?

19. What is the Agency's basis to limit the signatory of the construction permit application to a qualified professional engineer? Would the Agency accept a revision to this section which also allows a qualified geologist and/or hydrogeologist to certify?

¹ Because this question is related to the Required Closure or Retrofit of CCR Surface Impoundments and Permitting, MWG has asked this question of Darin LeCrone and Amy Zimmer. MWG leaves it to the Agency's discretion which witness will respond to this question.

Section 845.230 Operating Permit

20. Similar to the question above, what is the Agency's basis to limit the certification that the composite liner or the alternative liner and the leachate collection system to a qualified professional engineer?

21. In Section 845.230(a)(12), please confirm that the existing groundwater monitoring program and sampling data may be used to satisfy the groundwater monitoring program.

22. What was the basis for the Agency limiting an operating permit's duration to five years?

Section 845.240 Pre-Application Public Notification and Public Meeting

23. What is the Agency's basis for requiring a permit applicant to wait 30 days after the date of the public meeting before it may submit the permit application?

24. What is the Agency's basis for requiring hand or mail delivery to all residents within a one-mile radius of a facility boundary?

a) How did the Agency decide upon the radius of one mile?

b) What scientific studies or support did the Agency rely upon to show that residents up to a mile away from a facility are potentially impacted by construction at or operation of a CCR surface impoundment at a facility?

25. What is the Agency's basis for requiring notice posted in conspicuous locations throughout villages, towns, or cities within 10 miles?

a) What is the Agency's definition of "conspicuous location?"

b) How did the Agency decide upon the radius of 10 miles?

c) What scientific studies or support did the Agency rely upon to show that residents up to 10 miles away from a facility are potentially impacted by construction at or operation of a CCR surface impoundment at a facility?

d) In Section 845.260(b)(3), the Agency is only required to mail a notice to the clerk of the nearest city, town or village requesting further posting. What is the Agency's basis for requiring the additional notice procedures by the owner/operator described in Section 845.240?

26. Section 845.240(c) requires when a proposed construction project is located "in an area with a significant proportion of non-English speaking residents," an owner/operator must circulate the notification in both English and the appropriate non-English language.

a) What is the Agency's definition of "area"?

- b) What is the Agency's definition of "significant proportion?"

Section 845.250 Tentative Determination and Draft Permit

27. Please confirm that a permit applicant will have an opportunity to answer questions or provide further information to the Agency if the Agency's tentative determination is to deny the permit.

28. If the Agency will not provide an opportunity as described above, please provide the basis for not allowing the applicant this opportunity.

Section 845.270 Final Permit Determination and Appeal

29. Section 845.270(e) refers to Section 845.210(e) for filing an appeal of the Agency's permit determination. Please see MWGen's question above regarding Section 845.210(e) and how it comports with Section 40 of the Act.

III. QUESTIONS FOR WILLIAM E. BUSCHER

Section 845.420: Leachate Collection and Removal System

30. The term "leachate" is not defined in the proposed rule. How does the Illinois EPA define leachate as it pertains to a pond that contains CCR transport water, CCR contact water, and precipitation?

31. What is the purpose of requiring the leachate collection system above the liner? Typically, leachate collection systems are installed below or in between two liner systems – won't the impounded water just recirculate in this proposed design?

32. Based on the Statement of Reasons, Part IV ("section-by-section summary of the Illinois EPA's proposal"), Subpart D: Design Criteria, Section 845.420: Leachate Collection and Removal System, the Illinois EPA states: "The system is similar to leachate collection systems required for solid waste landfills." How is typical CCR transport water (which can be discharged into public waterways under certain conditions in the proposed US EPA ELG Rule) similar to or different than leachate from a typical solid waste landfill?

33. On page 2 of your testimony you state, "The system will reduce the head (depth of water) on the CCR liner system." Considering the following items, how does the mandated leachate collection and removal system reduce the head on the liner?

- The proposed rule does not mandate a maximum allowed head in the drainage layer.
- The proposed rule does not mandate a minimum pump capacity to remove the waters collected in the drainage layer.
- The proposed rule does not include an upper flow-restricting layer that would reduce the flow into the collection system. Thus, if the pond contains free water, as ponds are

designed, and the pump system is exceeded by the inflow of water into the pond, the head on the liner would be approximately equal to the depth of water in the pond.

34. In December 2014 the US EPA published its *Human and Ecological Risk Assessment of Coal Combustion Residuals* (Regulation Identifier Number: 2050-AE81). The purpose of this work was to characterize the risks that may result from the current disposal practices for CCR and provide a scientific basis for the development of regulations necessary to protect human health and the environment under the Resource Conservation and Recovery Act (RCRA). One of the conclusions from this assessment was, "Composite-lined units were found to be the most protective disposal practice, resulting in risks far below all criteria identified in this risk assessment." Accordingly, the final US EPA CCR rule that was in part based on this risk assessment requires composite liners for new CCR surface impoundments. However, the final federal rule does not require such impoundments to have "leachate" collection and removal systems.

- a) What was the basis for the Illinois EPA's determination that a more rigorous standard was appropriate than that required by the US EPA?
- b) Does the Agency have any scientific studies or real-life examples that support the conclusion that water is seeping through a composite liner system such that the head must be reduced? If so, please identify the studies or examples.

35. Section 845.420(a)(2) of the proposed rule requires new CCR surface impoundments to have a filter layer above the leachate collection system that has a hydraulic conductivity of no less than 1×10^{-5} cm/sec. Yet the rule does not require a thickness or filtration criteria. Does this mean that anything more permeable (e.g. geotextiles, geogrids, etc.) can be utilized?

36. Section 845.420(a)(7)(A) specifies that the leachate collected by the leachate collection and removal system be pumped or otherwise conveyed out of the CCR surface impoundment. This is interpreted to mean that the leachate is either pumped or that it flows out of the impoundment, and that, if pumped, it can be pumped directly back into the impoundment, similar to standard practice for US EPA Subtitle C dual liner system design. Is pumping the fluids removed back into the CCR Impoundment allowed?

- a) If we assume a thin protective layer of crushed stone that is somewhat more permeable than the filter layer, it will not limit the flow. Thus, the filter layer will be the flow limiting layer for flow into the leachate collection layer. Considering a filter layer that is 6-inches (0.5-feet) thick with the minimum hydraulic conductivity permitted by the Illinois EPA, the flow velocity for a 20 ft deep impoundment is calculated to be 0.05 ft/hr. If the CCR surface impoundment is 20 acres in area, the total flow into the leachate collection and removal system is 5,400 gal/min or 7.8 million gal/day.

Because the hydraulic conductivity used in this example is the lowest allowed by the proposed rule with a thickness of 6 inches, the flow could be significantly higher with more permeable and/or thinner filter materials. If the rule is modified to require removal of this water to prevent water from standing on the liner, this significant flow of water warrants

further consideration. If it is not allowed to be returned to the impoundment, most coal fired power plants cannot consumptively utilize this volume of water. In light of the proposed US EPA ELG rule, how does Illinois EPA anticipate power plant operators will dispose of this quantity of water?

37. Section 845.420(a)(8) of the proposed rule requires new CCR surface impoundments have a protective layer above the filter layer or some other means of deflecting the force of CCR pumped into the CCR surface impoundment. What does the Illinois EPA intend this layer to be?

- a) Would geotextile satisfy the requirement for protection and filtration?
- b) Because one of the most effective energy dissipators for flows into standing water in a surface impoundment is the impounded water itself, it appears the agency intends for CCR surface impoundments to be dry. Does the Illinois EPA intend that future CCR surface impoundments contain no or minimal standing water?

38. Based on the requirements of the proposed rule we have graphically depicted (see attached Figure 1) our understanding of the rule. Is this understanding correct?

39. If the water levels in a CCR surface impoundment are reduced, then the CCR will dry out and there is a higher likelihood of causing air emissions. This will cause significantly greater fugitive dust control requirements than are typically needed for a surface impoundment. Has the Agency considered that the reduction of water in a pond will impact the potential for airborne CCR and in operation and maintenance requirements for utilities?

40. As required by the US EPA CCR Rule, the groundwater monitoring wells installed at the edge of waste (as required by 40 CFR 257.91) act as an early leak detection system. Moreover, corrective measures would be implemented in accordance with 40 CFR 257.98 to identify the source of the leak, remedy the leak, prevent future leaks, and restore the area(s) impacted by the leak. Early detection and remedy of such a leak (i.e., when the impacted water is at the edge of the waste) would protect offsite groundwater quality. Because there is an early leak detection system through the groundwater monitoring wells, why is the Agency requiring a leachate collection system?

41. What other jurisdictions are you aware of that require a leachate collection and removal system above a composite liner system for non-hazardous waste impoundments where only one such liner is provided?

Section 845.450: Structural Stability Assessment

42. What is the Agency's basis to require the structural stability assessment to be conducted annually?

43. Would the Agency consider the annual Inspection by the Professional Engineer required by Section 845.540(b) to cover this assessment? If not, why?

Section 845.460: Safety Factor Assessment

44. What is the Agency's basis to require the safety factor assessment to be conducted annually?

45. Would the Agency consider the annual Inspection by the Professional Engineer required by Section 845.540(b) to cover this assessment? If not, why?

Section 845.510: Hydrologic and Hydraulic Capacity Requirements for CCR Surface Impoundments

46. What is the Agency's basis to require the inflow flood control system certifications to be conducted annually?

47. How often does the Agency believe that conditions change that would substantially affect the written plan?

48. Would the Agency consider the Annual Inspection by the Professional Engineer required by Section 845.540(b) to cover this assessment? If not, why?

IV. QUESTIONS FOR LAUREN MARTIN

Section 845.500 Air Criteria

49. The fugitive dust control plan offers examples of control measures to minimize CCR from becoming airborne, but does not include relying upon the water in the CCR surface impoundment. Is the Agency foreclosing the availability to rely upon the water used to sluice the ash into the basin to prevent potential fugitive dust emissions?

50. In Section 845.500(b), please confirm that the federal regulations referenced are examples for an owner/operator to look to.

Section 845.530 Safety & Health Plan

51. Please identify the information the Agency relied upon to require a Safety and Health Plan for operation of a CCR surface impoundment?

52. On page 5, you state that safety and health plans are required under 29 CFR 1910.120; however, that citation references hazardous waste operations and emergency response. Is the Agency suggesting that CCR surface impoundments are uncontrolled hazardous waste sites? If not, what is the Agency's basis for relying upon safety and health plans for hazardous waste operations for a material that is not a hazardous waste?

53. Both 29 CFR 1910.120(b)(1)(ii)(C) and 29 CFR 1926.65(b)(1)(ii)(C) state "The written safety and health program shall incorporate the following...a site-specific safety and health plan which need not repeat the employer's standard operating procedures..." Does the Agency agree that a separate safety and health plan (as required by 845.530) is not required if all

parts are covered in the facility's standard operating procedures? If not, what is the Agency's basis for a facility to duplicate the safety and health plans facilities are operating under?

54. What is the Agency's basis to require the Safety and Health Plans to be updated annually?

V. QUESTIONS FOR LYNN E. DUNAWAY

Section 845.600 Groundwater Protection Standards

55. On pages 4-5 of your written testimony, you compare the proposed groundwater monitoring program under the Rule to the Federal CCR groundwater monitoring program. Under the proposed groundwater program numerical standards are established and if there is a single statistical exceedance, even for a general indicator parameter such as Total Dissolved Solids (TDS) or pH, the need for potential corrective action is triggered. Under the Federal two-tiered monitoring programs, if there is a potential statistically significant increase (SSI) identified during the "detection" monitoring which would include general indicator parameters, an "assessment" monitoring program is triggered to allow a more detailed evaluation of the groundwater quality conditions to determine whether the initial single SSI is truly associated with a release from the regulated unit that will require a corrective measure.

a) Considering that most science and engineering based decisions are not based on a single occurrence or data point, what is the technical basis and rationale for the Agency's proposal to trigger corrective action following one data point with one confirmatory sample?

b) Please identify a scientific study or citation for your following statement on page 4 of your written testimony: "When exceedances are common, the tiered monitoring approach is unnecessary since there is a high degree of likelihood that the groundwater monitoring will show exceedances of multiple parameters."

56. Please confirm that Paragraph 2 of page 5 of your testimony is regarding Section 845.600(a)(2).

57. In Paragraph 2 of page 5 of your written testimony, you state: "This approach makes it clear that concentrations in excess of the GWPS, in downgradient wells, do not need to have further increases in their current concentrations, to initiate corrective action..." Based on what justification would the IEPA require corrective action under this Rule (which addresses potential releases from a regulated unit) if background water quality concentrations in the upgradient wells are also above 845.600(a)(1) and above the concentrations in the noted downgradient wells?

58. Please explain your statement in the same paragraph that "absolute numerical concentration also forestalls the application of different statistical methods which may result in a change to the trigger levels for either the initiation of or termination of corrective action."

59. On Page 6 of your testimony, you state that Part 620 is not available for any constituents with groundwater protection standards subject the Proposed Rule. Groundwater

Management Zones (“GMZs”) are provided for in Part 620 and their use is a commonly accepted practice in support of natural attenuation monitoring and managing residual groundwater impacts after the completion of an active portion of remedy. As written, the Rule appears to assume that once the active remedy (e.g., removal of CCR) is completed then the groundwater quality across the monitoring network will automatically be below standard.

- a) Many of the CCR surface impoundments in Illinois have GMZs established pursuant to corrective actions already taken. What is the Agency’s position on the continued validity of GMZs that it has already approved?
- b) Please confirm that the Agency agrees that monitored natural attenuation is an available remedy, which is a long process by its nature.

Section 845.610 General Requirements

60. The Draft Rule specifies that all groundwater monitoring data and associated interpretation and reporting must be completed and submitted within 60-days of sample collection.

- a) What was the Agency’s basis for determining that 60 days from sample collection was a reasonable amount of time to submit the monitoring data?
- b) Did Illinois EPA consider that standard analytical turnaround times for radium analyses (which is one of the required analytical parameters) is generally in excess of 30 days?
- c) Is this 60-day period intended to include potential verification resampling that may be required by the selected statistical method for the site?

61. Has the IEPA considered making the submittal based on “30-days from receipt of all data” rather than from the date of sample collection?

62. Section 845.610(e)(4) uses the phrase “statistically significant increase.” Since the proposed rule requires immediate corrective action if an exceedance occurs, why is the Agency requiring an evaluation of the statistically significant increase?

Section 845.620 Hydrogeologic Site Characterization

63. Subsections (b)(3) and (4) of this Section the states “nearby” water bodies, drinking water intakes, and pumping wells. Please specify the search radius for this assessment work.

64. To fulfill requirements under subsection (b)(13), will available local stratigraphic information be sufficient to fulfill this requirement without necessarily drilling to 100 feet as part of the site-specific study?

65. Why does subsection (b)(17) require a groundwater classification pursuant to 35 Ill. Adm. Code 620 when the proposed rule is based on assuming a Class I drinking water aquifer

and establishing the operative numerical standards that need to be met based on a Class I aquifer?

Section 845.630 Groundwater Monitoring Systems

66. Section 845.630(a)(1) states that the background water must represent the quality that “has not been affected by leakage from landfill containing CCR or CCR surface impoundment.” What is the Agency’s definition of a “landfill containing CCR”?

67. Why is certification of the groundwater monitoring system limited to a qualified professional engineer and does not include a qualified professional geologist/hydrogeologist?

Section 845.640 Groundwater Sampling and Analysis Requirements

68. The proposed rule states that the monitoring program must include all parameters listed in Section 845.600 through post-closure care of the CCR surface impoundment.

- a) Has the Agency considered allowing for a more focused and site-specific analyte list to be developed based on characterization of the ash within the regulate impoundment, as also suggested in the comment above? If not, what is the Agency’s basis for not allowing a site-specific analyte list?
- b) Would the Agency agree to allow an owner/operator drop a monitoring parameter from the analytical list if it is documented after three or five years of quarterly sampling that the parameter has not been detected and it can be shown that it is not expected to be present within the CCR placed into the regulated unit?

Section 845.650 Groundwater Monitoring Program

69. This section specifies that background water quality is to be developed based on a minimum of eight sampling events which are to occur within 180 days (6 months). On pages 10 and 11 of your written testimony you correctly state that quality of groundwater is known to have natural variation both spatially and temporally and that is why appropriate statistics need to be applied to assist in providing an understanding of the data being generated and its variability and distribution.

- a) Knowing that seasonality in data distribution, such as chloride, is common in Illinois due to changing of seasons, what is the basis to limit the timeframe for background data development to 180 days?
- b) Collecting eight rounds of sampling in 180 days also requires a sampling event to occur every 22.5 days. Have you considered that if the CCR surface impoundment is located within an area of low permeability aquifer matrix materials (e.g., silty or clayey matrix) sampling every 22.5 days will likely not provide independent sampling results and may result in highly autocorrelated, non-independent data?

(1) If you did consider that a CCR surface impoundment may be within an area of low permeability, how does the Agency propose to avoid the non-independent data?

(2) If you did not take into consideration the permeability of the area a CCR surface impoundment is in, please explain why you did not consider that.

70. What is the Agency's basis to require groundwater elevation monitoring on a monthly basis?

71. The proposed rule states that the owner/operator must take certain actions if there is an exceedance of a ground water protection standard confirmed by an immediate resample.

a) What is the Agency's basis to require corrective action following the exceedance of one data point with an immediate resample?

b) Please identify other monitoring and corrective action programs in Illinois or otherwise that trigger corrective action based on one data point with one confirmation sample.

c) Please identify any scientific studies the Agency is relying upon to support the requirement to conduct corrective action following detection of one constituent above a standard and a confirmation sample.

d) What is the Agency's definition of "immediate resample?"

e) Is the formal confirmation of exceedance considered from the date of sample collection or the date of receipt of all analytical data?

f) Why must an owner/operator notify the Agency and place notification in the operating record before an Alternative Source Demonstration is conducted?

72. Section 845.650(d)(4) allows for completing an Alternate Source Demonstration (ASD) and allows 60 days from the detected exceedance to complete the ASD. As currently written, it appears that the characterization of the nature and extent of the release, which is described under Section 845.650(d)(1), would need to be initiated immediately upon the detection of a potential groundwater protection standard exceedance. If an ASD is completed that successfully demonstrates another source, then there is no release from the regulated unit and there is no need for initiating a nature and extent characterization under this rule.

a) Please confirm that if an owner/operator decides to conduct an ASD under Section 845.650(d)(4), they do not need to begin any additional characterization or corrective action work until the ASD and review of the ASD by Illinois EPA is complete?

b) May an owner/operator rely upon the Alternative Source Demonstration prepared pursuant to the Federal CCR Rules?

- c) Is the 60 days from the date of the initial sampling or from the date of the resampling?
- d) Is the formal confirmation of exceedance considered from the date of sample collection or the date of receipt of all analytical data?
- e) The Federal Rule allows for 90 days to conduct an ASD. The 90 days allows enough time to conduct a Leaching Environmental Assessment Framework (LEAF) method or a combination of LEAF methods. The analytical turnarounds alone for these tests can range anywhere from 28 days to 84 days, depending on objective of the study and the appropriate LEAF method to meet that objective. What is the Illinois EPA's basis to establish the 60-day timeframe for completing an ASD?
- f) Once the ASD is submitted to Illinois EPA for review, will Illinois EPA provide review comments and provide the owner/operator an opportunity to respond to those comments?
- g) What, if any, criteria apply to the review process by which the Agency will make a determination whether the exceedance is not the result of the operation of the unit?
- h) If the Agency concurs with the owner or operator's ASD that the release is not attributable to a unit but is either due to natural causes or another source, does the owner or operator have to continue thereafter to notify the Agency of confirmed detections of concentrations above any groundwater quality standard for these constituents?
- i) If the Agency disagrees with a company's ASD, will the Agency give the company an opportunity to develop more data to respond to the Agency's concern?
- j) If the Illinois EPA disagrees with the conclusions of the ASD and the owner/operator believes that its CCR surface impoundment is not the source of the exceedance, what is the process to appeal the Agency's decision?

Section 845.660 Assessment of Corrective Measures

73. On page 13 of your testimony, you state that this subsection is intended to "distinguish between a long-term release to groundwater and a sudden catastrophic release to the surface." Please confirm that "detection of a release" in Section 845.660(a)(1) means a sudden catastrophic release. If not, please provide the Agency's definition of "detection of a release."

74. The Draft Rule states that the owner/operator must discuss the results of the assessment of corrective measures at a public meeting at least 30-days prior to the selection of a remedy as required under Section 845.240. Section 845.240 specifies that two public meetings are to be held at least 30-days before the submission of a construction permit application.

- a) Is this intended to also mean that the public meeting must be held before selecting a remedy based on the assessment of corrective measures?
- b) If so, does the 30-day time period start from the date of the first or second of the required public meetings?

Section 845.670 Corrective Action Plan

75. Section 845.670(b) requires that an owner/operator submit a corrective action plan within one year of completing the assessment of corrective measures. What is the Agency's basis to require a plan within one year?

76. Will the Agency allow for an extension to collect additional data or conduct additional modeling?

77. What is the Agency's definition of "subsurface ecosystems" in Section 845.670(f)(5)(D)?

VI. QUESTIONS FOR AMY ZIMMER

Section 845.700 Required Closure or Retrofit of CCR Surface Impoundments

78. Unlike the Federal CCR Rule, the Proposed Rule does not allow for an extension of the October 15, 2023 date to cease placement of CCR after a company has demonstrated that there were no alternative closure options available. Why did Agency decide not to follow the Federal CCR Rule's allowance for an extension?

79. Section 845.700 requires that construction permit applications for Category 1-5 CCR surface impoundments be submitted by January 1, 2022. Section 845.240 requires at least two public meetings 30 days in advance, effectively shortening the time to prepare an application by at least five weeks. The construction permit application must include the engineered design of a closure or retrofit project, final closure and post-closure plans, and groundwater modeling.²

a) Can you detail the Agency's thought process on how a permittee would be able to complete the tasks that are required to be submitted with the first construction permit applications due January 1, 2022?

b) Would the Agency consider allowing an extension if good cause were given?

80. Section 845.700(h)(5) states that if the Agency's denial is appealed, an owner/operator must submit a revised construction permit application within 90 days after a final decision by the Illinois Pollution Control Board ("Board").

a) If the Board overturns the Agency's denial of a construction permit application, why would an owner/operator be required to submit a new construction permit application?

b) What is the Agency's basis to require another public meeting following the Agency's denial of a construction permit? What is the purpose of this public meeting?

c) If an owner/operator appeals the Agency's denial, is it the Agency's position that a public meeting must occur before the Board has rendered a decision on the Agency's denial?

² See FN 1.

d) If the Board overturns the Agency's denial of a construction permit application, is it the Agency's position that an owner/operator must still have a public meeting?

e) What is the Agency's basis to require a revised construction permit application within 90 days after a final decision by the Board? Did the Agency consider that because this section requires a public meeting at least 30 days prior to submission of the application and all information must be made available to the public 14 days before the meeting, an owner/operator is only afforded 44 days to redesign closure or retrofit? How long does the Agency think it takes to redesign a closure or retrofit of a CCR surface impoundment?

Section 845.740 Closure by Removal

81. What is the Agency's basis for requiring written notice to local governments the CCR material will be transported through explaining the hazards of CCR dust inhalation, transportation plan, and transportation schedule?

a) Does the Agency require this for other nonhazardous or special waste materials?

b) Does this apply when the CCR material is being used for beneficial use?

82. If an owner/operator removes all of the CCR from a CCR surface impoundments and desires to reuse the impoundment for another purpose wholly unrelated to CCR, would the Agency consider the removal a "closure" subject to Section 845.740 or "retrofitting" subject to Section 845.770?

Section 845.770 Retrofitting

83. In your answer to Question 82 above, if you consider the removal of all of the CCR with the intention of using the impoundment for another purpose a "retrofit" subject to Section 845.770, what is your basis?

84. If the future use of an impoundment will not include accumulation of CCR, what is the Agency's basis to require removal of the liner system?

Section 845.790 Post-Closure Care Requirements

85. If the post-closure sampling analysis shows that certain constituents are below the groundwater protection standards in 845.600, would the Agency allow an owner/operator to petition the Agency to reduce the post-closure care analysis? If not, why not?

VII. QUESTIONS FOR MELINDA SHAW

Section 845.740(c)(1)(A)

91. Under Federal law, hazardous wastes that are beneficially used materials are not subject to federal hazardous waste regulations, including the manifest requirements. Under this section, do manifesting requirements also apply to CCR materials that are hauled offsite for

beneficial use purposes? If so, would the Agency consider a modification to allow for an exception for CCR materials that are removed for beneficial reuse?

Section 845.810 Publicly Accessible Internet Site Requirements

92. What is the Agency's basis to require every document in the operating record be placed on a public website? What considerations did the Agency make on the burden to the regulated entities to maintain all of the documents on a website?

93. What is the Agency's basis to require that the entire operating record be maintained on the website until 3 years after post-closure care?

VIII. QUESTIONS FOR ROBERT L. MATHIS

Section 845.930 Cost Estimates

94. Mr. Dunaway testified that the "proposed Part 845 are intended to be standalone standards, unrelated to Part 620." *See Pre-filed Testimony of Lynn E. Dunaway*, June 3, 2020, at p. 6. Because proposed Part 845 is intended to be unrelated to Part 620, what is the basis to include it in Section 845.930(c)(1)?

95. What is the Agency's basis to require a preliminary corrective action cost estimate that is equal to 25% of the costs calculated in subsection (b)? Why did the Agency choose 25%?

96. Section 845.930(c)(4) requires an owner/operator to increase the corrective action cost estimates and the amount of financial assurance if changes in the corrective action plan increase the maximum costs of the corrective action. If changes in the corrective action plan *decrease* the maximum costs of the corrective action, will the Agency allow an owner/operator to decrease the corrective action cost estimates and the amount of financial assurance?

Section 845.940 Revision of Cost Estimates

97. Would the Agency consider amended mechanisms in addition to annual? For example, as major construction activities are completed, would the Agency allow a reopening to amend cost estimates at any time.

98. Similar to Question 96 above, Section 945.940(b) requires an owner/operator to modify the cost estimate after the Agency has approved a request to modify the corrective action plan, closure plan or post-closure plan if the change in the modified plan increases the cost. If changes in the plans *decrease* the costs, will the Agency allow an owner/operator to decrease cost estimate?

Section 845.970 Surety Bond Guaranteeing Payment

99. In Section 845.970(e)(2)(B), what is the Agency's basis to include an adjudicated bankruptcy as one of the surety's liabilities if the surety and principal liability are tied to "non-action" as described in Sections (e)(2)(A) and (C) through (F) address?

Section 845.990 Letter of Credit

100. In Section 845.990(f)(2), the Agency approval reduction in the amount of credit if the cost estimate decreases. How long does the Agency take to review and approve a request to reduce the amount of credit?

101. What is the basis to require the issuing institution to notify at least 120 days before the expiration date the Agency and the owner/operator that the letter of credit will not be renewed? Would the Agency consider a shorter time for the issuing institution?

102. In Section 845.990(g)(3), the Agency must return the letter of credit to the issuing institution for termination. How long does the Agency take to review and approve an alternative financial assurance or a release from the requirements?

Respectfully submitted,

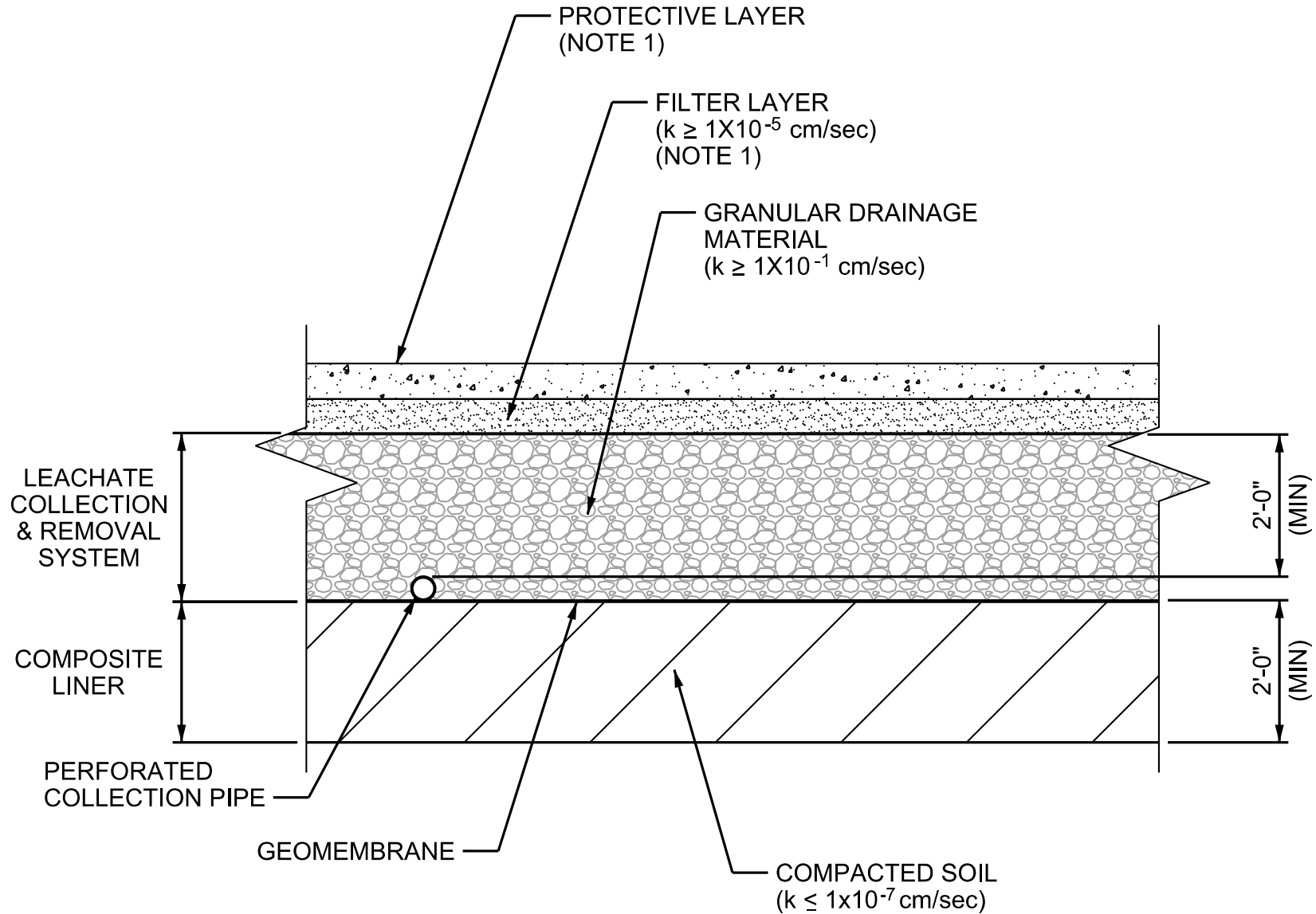
MIDWEST GENERATION, LLC

By: /s/ Kristen L. Gale
One of Its Attorneys

Dated: June 23, 2020

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FIGURE 1



**MINIMUM REQUIREMENTS PROPOSED BY ILLINOIS EPA FOR
CCR SURFACE IMPOUNDMENT LINER & LEACHATE COLLECTION & REMOVAL SYSTEM**

FIGURE 1

NOTE 1: PROPOSED 35 ILL. ADM. CODE 845.420 DOES NOT SPECIFY THICKNESS REQUIREMENTS FOR THE PROTECTIVE AND FILTER LAYERS.