

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

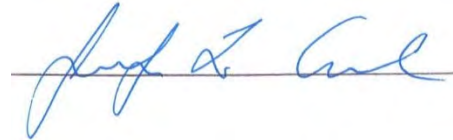
IN THE MATTER OF:)
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STANDARDS FOR THE DISPOSAL OF) R 20-19
COAL COMBUSTION RESIDUALS IN) (Rulemaking – Land)
SURFACE IMPOUNDMENTS: PROPOSED)
NEW 35 ILL. ADM. CODE 845)
)

NOTICE OF FILING

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board the attached **PRE-FILED QUESTIONS OF ELPC, PRAIRIE RIVERS NETWORK, AND SIERRA CLUB TO MELINDA SHAW, LYNN DUNAWAY, AMY ZIMMER, DARIN LECRONE, CHRIS PRESSNALL, WILLIAM BUSCHER, LAUREN MARTIN, AND ROBERT MATHIS**, copies of which are attached hereto and herewith served upon you.

Dated: June 23, 2020

Respectfully submitted,



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Attorney for Prairie Rivers Network

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PRE-FILED QUESTIONS OF ELPC, PRAIRIE RIVERS NETWORK, AND SIERRA CLUB TO MELINDA SHAW

Location Standards:

1. Could you please identify all CCR impoundments in Illinois known by the Illinois Environmental Protection Agency (“Agency”) to have been constructed:
 - a. Less than five feet above the uppermost aquifer?
 - b. In a wetland?
 - c. In a fault area?
 - d. In a seismic impact zone?
 - e. In an unstable area?
2. You state that the location restriction concerning the uppermost aquifer is “to protect groundwater from coming into contact with CCR in a surface impoundment.” Why should groundwater be protected from coming into contact with CCR?
3. If a CCR surface impoundment does not meet the uppermost aquifer location restriction, is it the Agency’s position that closure in place is permissible?
 - a. What is the basis for that position?
4. You state that an owner or operator may locate a CCR surface impoundment in a wetland only if it provides “a clear and objective rebuttal to the presumption that an alternative to the CCR surface impoundment is reasonably available that does not involve wetlands.” Regarding that rebuttable presumption, you state that “[f]actors in the rebuttable presumption include the construction and operation of the CCR surface impoundment will not cause or contribute to any violation of any applicable state or federal water quality standard....”

- a. Does the Agency consider existing groundwater quality standards under 35 Ill. Adm. Code pt. 620 to be “applicable state...water quality standard[s]?”
 - b. Does the Agency consider existing groundwater protection standards under 40 C.F.R. Part 257 to be “applicable. . . federal water quality standard[s]?”
 - c. Could you please identify all standards that the Agency considers to be “applicable state or federal water quality standard[s]?”
 - d. Will the Agency take into account existing groundwater monitoring data from CCR surface impoundments covered by the Federal CCR Rule in determining whether “the construction and operation” of the impoundment “will not cause or contribute to any violation of any applicable state or federal water quality standard?”
 - i. If so, what monitoring results would lead the Agency to determine that operation of the impoundment “will not cause or contribute to any violation of any applicable state or federal water quality standard?”
 - e. Will the Agency take into account existing groundwater monitoring data from CCR surface impoundments not covered by the Federal CCR Rule in determining whether “the construction and operation” of the impoundment “will not cause or contribute to any violation of any applicable state or federal water quality standard?”
 - i. If so, what monitoring results would lead the Agency to determine that operation of the impoundment “will not cause or contribute to any violation of any applicable state or federal water quality standard?”
5. You state that an owner or operator may locate a CCR surface impoundment in a wetland only if it demonstrates that “no degradation of the wetlands will occur.” You explain that “this” is “based on several factors including . . . stability.”
- a. How do you expect that owners or operators will make such a demonstration?
 - b. How do you expect that owners or operators will make such a demonstration specifically concerning the “stability” factor?
 - c. What education or other qualifications would be required to evaluate the validity of such a demonstration?
 - d. Could you please identify the Agency staff who possess such education or qualifications and will review such demonstrations in permit applications for CCR surface impoundments?

- e. Could you please list any posted open positions at the Agency which seek a candidate with the education or qualifications noted in your response to Question 5(c), who will be tasked with reviewing such demonstrations in permit applications for CCR surface impoundments?
6. If an existing CCR surface impoundment is located in a wetland and does not demonstrate that no “degradation of the wetlands will occur,” does the Agency take the position that closure in place is permissible?
7. You explain that CCR surface impoundments may not be located “within 200 feet of a recently active fault that has shown displacement during the last 11,700 years.”
 - a. Has the Agency evaluated whether there are such fault areas in Illinois?
 - b. If so, where are they located?
8. You state that an owner or operator may locate a CCR surface impoundment in a fault area only if it “can show that no structural damage to a CCR surface impoundment will result with a distance less than 200 feet.”
 - a. How can such a demonstration be made?
 - b. What education or other qualifications would be required to evaluate the validity of such a demonstration?
 - c. Could you please identify the Agency staff who possess such education or qualifications and will review such demonstrations in permit applications for CCR surface impoundments?
 - d. Could you please list any posted open positions at the Agency which seek a candidate with the education or qualifications noted in your response to Question 8(b), who will be tasked with reviewing such demonstrations in permit applications for CCR surface impoundments?
9. If a CCR surface impoundment is located in a fault area and does not show that “no structural damage to a CCR surface impoundment will result with a distance less than 200 feet,” is it the Agency’s position that closure in place is permissible?
10. You define a seismic impact zone as “an area having a 2% or greater probability that the maximum expected horizontal acceleration, expressed as a percentage of the earth’s gravitational pull (g), will exceed 0.10 g in 50 years.”
 - a. Has the Agency evaluated whether there are “seismic impact zones,” as you define it, in Illinois?
 - b. If so, where are they located?

11. You state that the purpose of the seismic impact location restriction “is to ensure that the structural stability of a CCR surface impoundment will not be compromised due to seismic activity.”
 - a. In your opinion, is it important that the structural stability of a CCR surface impoundment not be compromised, whether due to seismic activity or other forces?
 - b. If so, why?
12. You define the “maximum horizontal acceleration in lithified earth material” as “the maximum expected horizontal acceleration at the ground surface as depicted on a seismic hazard map....”
 - a. Which “seismic hazard map” is used for purposes of this definition?
 - b. Is it a map the owner/operator or its consultants creates?
 - c. Or is there a particular seismic hazard map that should be used in making this determination?
13. You state that an owner or operator may “conduct a site-specific seismic risk assessment to determine the maximum horizontal acceleration.”
 - a. What does such a risk assessment entail?
 - b. What education or other qualifications would be required to evaluate the validity of such risk assessment?
 - c. Could you please identify the Agency staff who possess such education or qualifications and will review such risk assessments in permit applications for CCR surface impoundments?
 - d. Could you please list any posted open positions at the Agency which seek a candidate with the education or qualifications noted in your response to Question 13(b), who will be tasked with reviewing such risk assessments in permit applications for CCR surface impoundments?
14. In your testimony, you state that an owner or operator may locate a CCR surface impoundment in a seismic impact zone only if the impoundment is “designed and engineered to withstand the calculated maximum horizontal acceleration.”
 - a. How can such a demonstration be made?

- b. What education or other qualifications would be required to evaluate the validity of such a demonstration?
 - c. Could you please identify the Agency staff who possess such education or qualifications and will review such demonstrations in permit applications for CCR surface impoundments?
 - d. Could you please list any posted open positions at the Agency which seek a candidate with the education or qualifications noted in your response to Question 14(b), who will be tasked with reviewing such demonstrations in permit applications for CCR surface impoundments?
15. If a CCR surface impoundment is not designed and engineered to withstand the calculated maximum horizontal acceleration, does the Agency take the position that closure in place is permissible?
16. You define an unstable area as “a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity...of the CCR surface impoundment....”
- a. Could you identify examples of “forces” capable of impairing the integrity of the impoundment?
 - b. Is erosion one such force?
17. You state that unstable areas can include “areas susceptible to mass movements.” Could you please elaborate on what the Agency understands as an “area susceptible to mass movements,” and provide examples?
18. Has the Agency evaluated whether there are unstable areas, as you define them, in Illinois?
- a. If so, where are they located?
19. You state that “if the CCR surface impoundment is in an unstable area, then the structure must be designed and engineered to ensure the integrity of structural components.”
- a. How can such a demonstration be made?
 - b. Can it always be made?
 - c. Are there circumstances – say, underlying mine voids or other circumstances – in which the impoundment cannot be designed and engineered to ensure its structural integrity?
 - d. What education or other qualifications would be required to evaluate the validity of such a demonstration?

- e. Could you please identify the Agency staff who possess such education or qualifications and will review such demonstrations in permit applications for CCR surface impoundments?
 - f. Could you please list any posted open positions at the Agency which seek a candidate with the education or qualifications noted in your response to Question 19(d), who will be tasked with reviewing such demonstrations in permit applications for CCR surface impoundments?
20. If a CCR surface impoundment is not designed and engineered to ensure the integrity of structural components, is it the Agency's position that closure in place is permissible?

Manifests:

21. You state that “[f]ly ash is specifically mentioned in this subsection.” Why is fly ash specifically mentioned?
22. Are manifests also required for transport of bottom ash, slag, or other CCR?
- a. If not, why not?

Recordkeeping:

23. Regarding 35 Ill. Adm. Code 845.800(d):
- a. Why is there not a requirement to put in the operating record any demonstration of a new owner or operator's ability to comply with all applicable financial requirements of proposed Subpart I, pursuant to proposed 35 Ill. Adm. Code 845.280(a)?
 - b. Why is there not a requirement to put in the operating record any demonstration or agreement containing the specific date of transferring permit responsibility from a current permittee to a new permittee?
 - c. Why is there not a requirement to put in the operating record any demonstration that a surface impoundment has satisfied an alternative closure requirement in accordance with proposed 35 Ill. Adm. Code 845.700(d)?
 - d. Why is there not a requirement to put in the operating record proof of financial assurance as required by proposed 35 Ill. Adm. Code 845.900?
24. Regarding proposed 35 Ill. Adm. Code 845.810(f), why was a 14-day time period selected?

Dated: June 23, 2020

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jennifer L. Cassel", is written over a horizontal line.

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PRE-FILED QUESTIONS OF ELPC, PRAIRIE RIVERS NETWORK, AND SIERRA CLUB TO LYNN DUNAWAY

Statement of Reasons

1. On page 3 of the Statement of Reasons, the Agency states that some power generating facilities remove ash from surface impoundments and dispose it off-site. Could you please identify the power generating facilities in Illinois that remove CCR from impoundments for disposal elsewhere?
2. On page 3 of the Statement of Reasons, the Agency states that some CCR impoundments are dammed. Could you please provide a list of all such CCR impoundments, along with the acreage of the enclosure and the height of the dike for each impoundment?
3. On page 3 of the Statement of Reasons, the Agency states that it has identified 73 CCR surface impoundments at power generating facilities. Could you please identify:
 - a. Which impoundments are already closed?
 - i. Which of those closed impoundments are “legacy” impoundments – i.e., at plants that closed before the Oct. 2015 effective date of the federal rule?
 - ii. When was closure completed at those plants?
 - b. Which of the closed impoundments have approved closure plans but have not completed closure?
4. On page 3 of the Statement of Reasons, the Agency states that “Some of [the] surface impoundments are lined with impermeable materials, while others are not.” Could you please identify which CCR impoundments are lined, and with what type of lining?

5. On page 3 of the Statement of Reasons, the Agency states that it “believes there are up to 6 CCR surface impoundments with liners that comply with the federal liner standards in 40 CFR 257.” Could you please identify all such CCR impoundments?
6. On pages 3 and 4 of the Statement of Reasons, the Agency states that “When the CCR surface impoundments are not lined with impermeable material, these contaminants may leach into the groundwater, affecting the potential use of the groundwater.”
 - a. Could you please identify all CCR impoundments from which contaminants currently are, or are suspected by the Agency to be, leaching into groundwater?
 - b. Is the Agency aware of any lined CCR impoundments from which contaminants are, or are suspected by the Agency to be, leaching into groundwater?
 - c. Is the Agency aware of any CCR impoundments at which a liner was installed after the impoundment had commenced operation?
 - i. If so, what was done with the coal ash already in the impoundment prior to the installation of the liner?
 - ii. Did the Agency require operators to evaluate the potential for contamination from those impoundments prior to lining them?
 - d. Could you please identify all CCR impoundments that are located in floodplains? Please provide the basis for your answer.
 - e. Is the Agency aware of any CCR impoundments that have caused contamination of groundwater that is connected hydrologically to surface waters?
 - f. Is the Agency aware of any CCR impoundments that are at times directly connected to surface waters, such as during flood events?
7. On page 10 of the Statement of Reasons, the Agency states “The proposed rules contain groundwater protection standards that apply in addition to the groundwater quality standards in Part 620.” However, the Agency deleted 845.600(c) of the draft rule which stated “In addition to the groundwater protection standards in subsections (a) and (b), the groundwater quality standards in 35 Ill. Adm. Code 620 apply to CCR surface impoundments. When the groundwater protection standards in subsections (a) and (b) and the groundwater quality standards in 35 Ill. Adm. Code 620 are inconsistent, the more stringent standard shall apply.” Why did the Agency delete this language?

Inactive Closed CCR Surface Impoundments:

8. Could you please identify the CCR surface impoundments in Illinois that are inactive closed CCR surface impoundments, as defined in the proposed rules in proposed Section 845.120?

9. On page 1 of your testimony, you state that, under the Agency's proposal, inactive closed CCR surface impoundments must "initiate or continue corrective action for releases that occurred prior to closure."
- a. Could you please identify the inactive closed CCR surface impoundments that are already performing corrective action for releases that occurred prior to closure, and identify the constituents released from each such impoundment?
 - i. Under the Agency's proposal, would the inactive closed CCR surface impoundment need to obtain a permit to continue that corrective action? If so, please identify the relevant provision(s).
 - ii. For each such impoundment, was the ongoing corrective action approved by the Agency?
 - iii. For each such impoundment, was the proposal for the ongoing corrective action made available for public review and comment before it was initiated?
 - b. Could you please identify the inactive closed CCR surface impoundments that have yet to initiate corrective action for releases that occurred prior to closure, and identify the constituents released from each such impoundment?
 - i. Under the Agency's proposal, would the inactive closed CCR surface impoundment need to obtain a permit to initiate that corrective action? If so, please identify the relevant provision(s).
 - ii. For each such impoundment, has the corrective action been approved by the Agency?
 - iii. For each such impoundment, has the corrective action been made available for public review and comment?
 - c. How will "releases that occurred prior to closure" be distinguished from new releases?
 - d. Is the Agency aware of inactive closed CCR surface impoundments from which releases continued, or continue, to occur *after* closure was completed? If so, please identify those inactive closed CCR surface impoundments and the constituents that continue, or continued, to be released from each such impoundment.
10. On pages 1-2 of your testimony, you indicate that there is a "post-closure care period" for inactive closed CCR surface impoundments. However, the proposed regulations at

section 845.170 propose to exclude inactive closed CCR surface impoundments from the post-closure care period set out in proposed section 845.780(c).

- a. How long is the post-closure care period for inactive closed CCR surface impoundments?
 - b. When do the requirements for post-closure care end?
 - c. Do the requirements for post-closure care continue if corrective action is found to be needed?
11. What is the mechanism for the public to meaningfully participate in permitting decisions concerning post-closure and corrective action for inactive closed CCR surface impoundments? Please point to the relevant provision(s) in the proposed rules

Groundwater Protection Standards:

12. On page 2 of your testimony, you state that the federal GWPS do not “have numerical values for all of the parameters commonly associated with CCR.” Please identify those parameters and provide the basis for your statement.
13. On page 5 of your testimony, you state that “when the up gradient background concentration of any constituent exceeds the numerical GWPS...an SSI over background is the only reasonable approach for compliance determinations.”
- a. Are there circumstances in which groundwater samples from “up gradient background” monitoring wells may contain CCR contamination? Please describe such circumstances.
 - b. Are there circumstances in which groundwater samples from up gradient monitoring wells may contain CCR contamination? Please describe such circumstances.
 - c. Is the Agency aware of any CCR surface impoundments in Illinois where groundwater samples from up gradient monitoring wells, or up gradient “background” monitoring wells, have revealed CCR contamination? If so, please identify those CCR surface impoundments.
 - d. If groundwater samples taken from up gradient monitoring wells reflect CCR contamination, would the Agency consider that to be “background”?
 - i. If so, is it the Agency’s position that an SSI over the concentrations in such wells is “reasonable approach for compliance determination”?
 - ii. If not, what is the appropriate approach and is it included in the proposed rules?

14. On page 6 of your testimony, you specify when the requirements of proposed Part 845 would end under different closure methods, and state that “during those time frames, any constituent with a Part 620 GWQS that is not subject to proposed Part 845, Subpart F still applies at CCR surface impoundments.”
- a. Could you please clarify which time frames you mean when you state, “during those time frames”?
 - b. Could you please identify the provision(s) in the proposed rules that specify that “a constituent with a Part 620 GWQS that is not subject to proposed Part 845, Subpart F still applies at CCR surface impoundments”?
15. On page 7 of your testimony, you state that “post-closure care for CCR surface impoundments closing by removal may cease being subject to proposed Part 845 in a relatively short time frame, while the completion of post-closure care for CCR surface impoundments closing with a final cover is many years in the future.”
- a. Could you explain why you state that CCR surface impoundments closing by removal “may cease being subject to proposed Part 845 in a relatively short time frame”?
 - b. Could you explain why you say that completion of post-closure care for CCR surface impoundments closing with a final cover is “many years in the future”?
 - c. In your opinion, will post-closure care likely be required for more than thirty years at CCR surface impoundments? Please provide the basis for your answers.
16. On page 7 of your testimony, you state that “[o]nce the applicability of proposed Part 845 ends (at the end of post-closure care), the alternative standard pursuant to Part 620.450(a)(4), is once again available for any constituent with a GWQS.”
- a. If the GWPS have been achieved, can you explain why the owner/operator of the CCR surface impoundment should be permitted to rely on alternative groundwater standards for those constituents after that standard was achieved?
 - b. Why require achievement of those standards, only to allow them to be loosened once they’ve been achieved?

General Requirements:

17. On page 7 of your testimony, you state that proposed Section 845.610, concerning groundwater monitoring programs and “the establishment of background...does not preclude the use of existing information.”
- a. What existing information will be acceptable?

- b. If a groundwater monitoring program already in use does not meet the requirements of Subpart F, given the various differences in the monitoring programs, will the Agency require revisions to that program?
18. On page 7 of your testimony, you state that “owners or operators of CCR surface impoundments, in the event of a release, must control the source of the release immediately and begin appropriate corrective action as required by this Subpart.”
- a. What does the Agency understand as a “release” in this context?
 - b. Is it different from the leaking of CCR constituents into groundwater as determined by proposed Subpart F?
 - i. If so, how?
 - c. Is that interpretation set out in the proposed regulations (or elsewhere in statute or regulations) and if so, could you please identify the relevant provision(s)?

Hydrogeologic Site Characterization:

19. On page 8 of your testimony, you state that the hydrogeologic site characterization “will pull together information about surficial and subsurface geological characteristics”
- a. Do you agree that information about the vertical distance between the bottom of the CCR and the uppermost zone of saturation is necessary to identify contaminant migration pathways?
 - b. If you do not agree, why not? Please provide the basis for your opinion.
20. Do the proposed regulations require that leakage of water from unlined ponds be evaluated with respect to its influence on groundwater flow directions and potential impacts on up gradient water quality? If so, please identify the relevant provision(s).
21. Would you agree that the elevation of water in unlined impoundments is necessary to adequately evaluate groundwater flow direction?
- a. Do the proposed regulations require elevation of the water in unlined impoundments to be measured, and if so, how frequently? Please identify the relevant provision(s).

Groundwater Monitoring System:

22. On page 9 of your testimony, you state that the “groundwater monitoring system must be able to produce groundwater samples that represent groundwater which has not been impacted by a landfill or surface impoundment containing CCR.”

- a. What does the Agency understand to be a “landfill containing CCR”?
 - i. Is that definition contained in any statutory or regulatory provisions or the proposed regulations? If so, please identify the provision(s).
 - b. Why must the groundwater monitoring system be able to “produce groundwater samples that represent groundwater which has not been impacted by a landfill or surface impoundment containing CCR”?
23. On page 9 of your testimony, you state “Separate groundwater systems are not required for each CCR surface impoundment if a release from any one of the CCR surface impoundments can be detected by the same groundwater monitoring system.”
- a. Does the groundwater monitoring system have to be able to identify which impoundment is the source of the contamination?
 - ii. If so, why?
 - iii. If not, why not?

Groundwater Sampling and Analysis Requirements:

24. On page 10 of your testimony, you note that “the quality of groundwater is known to have natural variations” and highlight the need for an “understanding of the groundwater quality that is flowing onto a facility and beneath the CCR surface impoundment(s).”
- a. What do you mean by “facility” in this statement?
 - b. Is background groundwater quality, which you recognize as “vital to any groundwater sampling and analysis plan,” intended to establish the quality of groundwater based on those “natural variations”?
25. What are the implications of a finding of a statistically significant increase (SSI) over background in the proposed regulations?
- a. If an SSI is found, what would happen next under the proposed regulations?
 - b. If an SSI over background is not found in a down gradient monitoring well, but an exceedance of the GWPS for that same constituent is detected in that well, does the non-SSI affect the need to proceed to assessing corrective measures to address that exceedance?
 - i. If so, how?

Groundwater Monitoring Program:

26. On page 12 of your testimony, you state that owners and operators of CCR surface impoundments may “submit a demonstration that a source other than the monitored CCR surface impoundment(s) is the source of the releases and that the monitored CCR surface impoundment(s) didn’t contribute to the detected contamination”
- a. Is the Agency aware of other sources of CCR contaminants near CCR surface impoundments in Illinois? If so,
 - i. Which impoundments?
 - ii. Which contaminants?
 - iii. What are the other source(s)?
 - iv. Have the other sources of that contamination been removed?
 - v. Has the contamination those other sources caused or contributed to been cleaned up?
 - b. What records does the Agency have of industrial sites or disposal sites that predated environmental regulation in Illinois?
 - c. Do those records ever omit chemicals or materials used at those sites? If so, please provide an example and explain how the Agency learned of that example.
 - d. How has the Agency become aware of industrial sites or disposal sites that predated environmental regulation?
 - e. Have there been instances where non-Agency staff, including but not limited to former workers at such old industrial or disposal sites, alerted the Agency about releases or possible releases at such sites? If so, please identify those instances.
 - f. Have there been instances where non-Agency staff, including but not limited to former workers at, or residents near, regulated industrial or disposal sites, alerted the Agency about releases or possible releases at such regulated sites? If so, please identify those instances.
 - g. Is it the Agency’s position that there are certain contaminants or combinations of contaminants that serve as a “chemical signature” of CCR, that, if found, make it unlikely that anything other than CCR is the source of those contaminations? If so, please identify those contaminants.

27. On pages 12-13 of your testimony, you state that “if an alternative source demonstration is not provided, the owner or operator must characterize the nature and extent of the release....”

28. Under the Agency’s proposal, must the owner or operator only “provide” an Alternate Source Demonstration in order for the owner or operator to avoid characterizing the nature and extent of the release?

- a. What is the timing of the submission of an Alternate Source Demonstration relative to the characterization of the nature and extent of the release?
- b. What is the timing of the submission of an Alternate Source Demonstration relative to the assessment of corrective measures?

Assessment of Corrective Measures:

29. On page 14 of your testimony, you state that the owner or operator “must discuss the results of the assessment of corrective measures...at a public meeting with interested and affected parties.”

- a. Under the Agency’s proposal, must the assessment of corrective measures be made available to the public prior to the public meeting?
 - i. If so, how far in advance? Please identify the relevant provision(s).
 - ii. Under the Agency’s proposal, must the assessment of corrective measures – not just the “results” thereof – be made available at the public meeting? Please identify the relevant provision(s).
- b. Must the assessment of corrective measures be included in the corrective action construction permit application?
 - i. If not, why not?

30. On page 14 of your testimony, you state that “if the owner or operator of a CCR surface impoundment is completing closure and corrective action together, the requirements of this subsection and 845.710 may be combined.”

- a. Could you please explain what you mean by “combined”?
- b. If an owner or operator is seeking a permit for both corrective action and closure, must all requirements of both Proposed Sections 845.660 and 845.710 (and all other applicable requirements for closure and corrective action) be met?

Corrective Action Plan:

31. On page 15 of your testimony, you state that “while a remedy is being selected, the owner or operator must submit a semiannual report of the progress being made.” What “progress” is that referring to?
 - a. Progress in doing what?

32. On page 15 of your testimony, you state that the standards for the protection of the environment and public health that you state the corrective action plan “must...meet” include “controls of releases to the maximum extent feasible to eliminate future releases.”
 - a. What does the Agency mean by “feasible”?
 - b. What information will be considered in determining what is “feasible”?

33. Does the Agency plan to consider any information concerning costs of different corrective action alternatives in reviewing corrective action construction permit applications?
 - a. If so, what is the basis for doing so?
 - b. If not, why do the proposed regulations not make clear that cost will not be considered in evaluating corrective action permit applications?

34. On page 15 of your testimony, you state that “the alternatives analysis must also assess any short term risks to the local community and the environment from the excavation, transportation and re-disposal of wastes”
 - a. Would you agree that different transport methods – for example, rail, barge, or truck – pose different risks to the local community? If not, please explain.
 - b. Would you agree that different transport methods – for example, rail, barge, or truck – have different pollution profiles from each other? If not, please explain.
 - c. Did Agency staff review the location of rail or barge in relationship to coal ash impoundments? If not, please explain.
 - d. Are Agency staff familiar with low-sulfur diesel trucks and/or the development of electric trucks?
 - e. Why didn’t the Agency include specifications for types of trucks that may be used for transport of CCR in the proposed regulations?

35. On page 15 of your testimony, you note that a factor considered in the alternatives analysis for corrective action is “the availability of treatment technologies, the degree of difficulty in constructing the technologies used and the reliability of that technology.”
- a. Are you familiar with treatment technologies for remediating contaminated groundwater? If so, please identify and briefly describe each such technology.
 - b. What do you mean by the “availability” of a treatment technology?
 - c. What information will be considered in evaluating that “availability”?
 - i. Is the information required to be submitted in the permit application? If so, please identify the relevant provision(s).
 - d. What do you mean by the “degree of difficulty” in constructing the technologies?
 - e. What information will be considered in evaluating that “degree of difficulty”?
 - i. Is the information required to be submitted in the permit application? If so, please identify the relevant provision(s).
 - f. What information will be considered in evaluating the “reliability” of a technology?
 - i. Is the information required to be submitted in the permit application? If so, please identify the relevant provision(s).
36. Could you please clarify what the Agency understands as “destabilizing activities” for purposes of the corrective action alternatives analysis?
37. On page 16 of your testimony, you state that when “establishing the implementation and completion schedule for a corrective action plan, the owner or operator must consider . . . the likelihood that a remedy will achieve the GWPS” However, achievement of the GWPS is a requirement for selecting a remedy and for approval of that remedy under proposed Section 845.670(d)(2). Given that requirement, why is “likelihood” that the remedy will achieve the GWPS a relevant factor for consideration?
38. On page 16 of your testimony, you state that in establishing the corrective action implementation schedule, the owner or operator must consider “availability of treatment and disposal capacity” What do you mean by “availability” and what information will be considered in evaluating that availability?

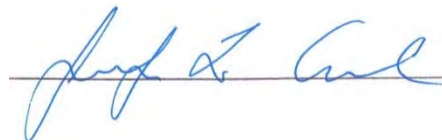
Implementation of the Corrective Action Plan:

39. How often will the Agency review progress of compliance with corrective action plans?

40. How will they review such progress? On paper, or on site?
41. How many inspectors does the Agency have to do such inspections?
42. Has the Agency had experience with instances in which cleanup did not go as planned or proposed and modifications had to be made? If so, please answer the following questions.
- a. How did the Agency know of the need for such modifications?
 - b. How long had the problems with the cleanup plan been present before they were identified?
 - c. How long had the problems with the cleanup plan been present before the clean-up plan was modified?
 - d. Have requests by community members led the Agency to inspect/investigate and find that cleanup or closure wasn't going as planned?
 - e. Does the Agency require polluters to submit progress reports on cleanup or other actions? If so, please answer the following questions.
 - i. What are those instances?
 - ii. Has the Agency ever identified challenges or deficiencies with implementation of cleanup or other plans via such progress reports?
 - iii. Did the Progress Reports allow the Agency to address the problems more quickly than otherwise?
 - iv. How does the Agency plan to allow for public input into whether corrective action or closure is properly implemented?
 - v. Is that specified in the proposed rules? If so, please identify the relevant provision(s).

Dated: June 23, 2020

Respectfully submitted,



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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

PRE-FILED QUESTIONS OF ELPC, PRAIRIE RIVERS NETWORK, AND SIERRA CLUB TO AMY ZIMMER

Hydrogeologic Site Characterization:

1. You state that “[r]eview of direction of groundwater flow helps determine appropriate locations for up-gradient wells, down-gradient wells, and compliance wells for the unit(s).”
 - a. Do the proposed regulations require determination of the elevation of water in unlined ponds as well as the groundwater elevation? If so, please identify the relevant provision(s).
 - b. Do the proposed regulations require that leakage of water from unlined ponds be evaluated with respect to its influence on groundwater flow directions and potential impacts on “up-gradient” water quality? If so, please identify the relevant provisions.
 - c. Do you agree that knowing the elevation of water in unlined impoundments could be necessary to adequately evaluate groundwater flow direction?
2. Does the hydrogeologic site assessment require determination of the vertical distance between the bottom of the CCR and the uppermost zone of saturation?
 - a. Would you agree that knowing that distance is necessary to identify contamination migration pathways? If not, please explain.
3. You state that, for existing CCR surface impoundments, “[a]ny discrepancies noted between the site characterization data and proper designs of the monitoring system and monitoring plans will be noted and missing data will be requested and addressed.”
 - a. Could you please explain what you mean by “addressed”?

- b. If the site characterization data indicates that the monitoring system was not properly designed or implemented, what will the Agency do?
 - c. Will the Agency require a new groundwater monitoring design be submitted in order to issue an operating permit for the impoundment?
 - d. If the pre-existing groundwater monitoring system at sites that are currently monitoring groundwater is not designed so that background monitoring wells meet the proposed requirements, how will the Agency address that?
4. Do the proposed regulations require that leakage of water from unlined ponds be evaluated with respect to its influence on groundwater flow directions and potential impacts on “up-gradient” water quality? If so, please identify the relevant provision(s).
 5. Do you agree that knowing the elevation of water in unlined impoundments could be necessary to adequately evaluate groundwater flow direction? Please explain your answer.

Closure or Retrofit of CCR Surface Impoundments:

6. You state that “[a]ll surface impoundments required to initiate closure or electing to initiate closure rather than retrofit must immediately categorize the surface impoundment according to subsection (g) of Section 845.700 and then complete the closure alternatives analysis in Section 845.710.” The proposed regulations at Section 845.700(c) provide that, “[n]o later than 30 days after the effective date of this Part, the owner or operator must send the category designation, including a justification for the category designation, for each CCR surface impoundment to the Agency for review.”
 - a. Does the Agency intend to approve or disapprove the proposed category designation, in addition to reviewing it?
 - b. Will the Agency disapprove the proposed categorization if the Agency finds that the owner or operator did not adequately support its proposed category designation?
 - c. Will the Agency consider information available to it, even if not included in the owner or operator’s category designation, in determining whether to approve or disapprove a proposed category designation?
 - d. When and how will the public be afforded opportunities to provide input into whether the owner or operator’s proposed category designation is appropriate? Please specify the proposed provision(s) that provide opportunities for public input on that category designation.

- e. When and how will the public be notified of the closure prioritization category of an impoundment? Please specify the proposed provision(s) that provide for such notice.
 - f. If community members have information indicating that the closure prioritization category should be higher than proposed by the owner or operator, but the first opportunity for formal public input into the category designation is when the construction permit application is due, how will that deficiency be remedied?
7. You state in your testimony that the proposed prioritization scheme for closure is based on “risk to health and the environment and the impoundment’s proximity to areas of environmental justice concern.”
- a. How will the Agency evaluate the “risk to health and the environment” posed by an impoundment?
 - i. What information is necessary to evaluate that “risk to health and the environment”?
 - ii. Is that information required to be submitted to the Agency? If so, please specify the relevant provision(s).
 - iii. Is that information required to be submitted in a permit application? If so, please specify the relevant provision(s).
 - b. Does the Agency consider the stability of an impoundment important to determining the health and environmental risks it poses? Please explain your answer.
 - c. Does the Agency plan to consider a CCR surface impoundment’s compliance with the location restrictions in evaluating such “risk to health and the environment”?
 - i. If so, which location restrictions?
 - ii. Is that specified in the proposed regulations? If so, please specify the relevant provision(s).
 - d. If the Agency plans to consider only some location restrictions but not others, could you please provide the basis for considering some but not others?
 - e. Do you agree there are risks to allowing an unlined impoundment in a floodplain?
 - i. How does the Agency define “floodplain”?

- ii. If you agree there are risks to allowing an unlined impoundment in a floodplain, what are those risks?
 - iii. Are there any reasons you believe those risks would not be present for any CCR surface impoundment in Illinois? If so, please identify the impoundment and explain why.
 - f. Does Illinois allow landfills to be located in floodplains?
 - i. If so, does that include unlined landfills?
 - g. What qualifications are necessary to evaluate the “risk to health” that an impoundment poses?
 - h. Could you please identify Agency staff who possess the qualifications necessary to evaluate “risk to health” and will review owners/operators proposed closure category designations?
8. You state that the timeframes for closure are “staggered” and that the “second date [for closure] is October 15, 2023 for CCR surface impoundments that have demonstrated that alternative disposal capacity is infeasible under 40 CFR 257.103.”
- a. What must be shown for a CCR surface impoundments to “demonstrate[] that alternative disposal capacity is infeasible”?
 - b. Will the Agency review those “demonstrations”?
 - c. Will the Agency approve or, if the demonstration does not meet requirements, disapprove those demonstrations?
9. You state that the “date for closure completion is October 17, 2023” for impoundments that are forty acres or smaller at closed coal-fired power plants. As noted in your testimony and under Proposed Section 845.700(h), the earliest date for submission of a closure construction permit application is January 1, 2022, while the latest date for submission of a closure construction permit applications is July 1, 2023, depending on the closure prioritization category. These dates do not seem to account for each other. Please explain whether closure may be completed later than the specified October 17, 2023 date.

Closure Alternatives Analysis:

10. You state that the owner or operator of a CCR surface impoundment must take into account the short- and long-term effectiveness and protectiveness of the closure method.
- a. What does the Agency consider to be an “effective” closure method? Please explain.

- b. What does the Agency consider to be a “protective” closure method? Please explain.
- c. What does the Agency consider to be “long-term”?
 - i. What is the basis for selecting that length of time?
- d. Are you aware of how long constituents can continue to leach out of CCR?
 - i. If so, for how long and what is the basis for that statement?
- e. Are you familiar with the Risk Assessment performed by U.S. EPA when it finalized the 2015 Federal CCR Rule?
 - i. If so, have you reviewed that document’s conclusions with regard to how long constituents can continue to leach out of CCR?
 - ii. If so, what are those conclusions?
- f. Given how long constituents can continue to leach out of CCR, how long must water be kept out of contact with CCR in order for the closure method to continue to be effective and protective? Please explain.
- g. Given how long constituents can continue to leach out of CCR, how long must a cover be maintained in order for the closure method to continue to be effective and protective? Please explain.
- h. Are you familiar with how long the covers the Agency here proposes in Proposed Section 845.750(c) limit infiltration of precipitation, runoff, or other water on the surface of the cover into the CCR?
 - i. If so, how long? Please provide the basis for your answer.
- i. What maintenance is necessary to ensure a cover continues to limit infiltration into the CCR?
 - i. Is there a time when the need for such maintenance stops?
 - ii. If so, when is that and what is the basis for that statement?
- j. Do the proposed regulations require inspection and maintenance of the cover even after the end of the post-closure care period? If so, please identify the relevant provision(s).

- k. How will future Illinois residents know the state of the cover after post-closure care has ended, including whether the cover has deteriorated or become damaged, allowing infiltration to the CCR to increase?
 - l. If a river is meandering toward the CCR surface impoundment, does erosion of the CCR surface impoundment and release of the CCR contained therein ever cease to be a concern?
 - i. If so, when? Please provide the basis for your statements.
11. You state that the closure alternatives analysis must consider the amount of risk reduction of existing risks and the magnitude of residual risks related to future releases.
- a. What assumptions about future land use and potential receptors must be included in such analysis? Please explain.
 - b. Are those assumptions specified in the proposed regulations? If so, please specify the provision(s).
12. You state that the closure alternatives analysis must consider “the difficulty of implementation of a potential closure method.”
- a. What does the Agency understand to constitute “difficulty of implementation”?
 - b. What sort of difficulties would the Agency consider relevant?
 - c. Are there any sorts of “difficulties” that the Agency would not consider? If so, please explain and provide examples.
13. You state that the closure alternatives analysis must take into account “the concerns of residents within communities where the CCR will be handled, transported and disposed.”
- a. How will the Agency know which are the relevant communities?
 - b. Did the Agency review the location of rail or barge in relationship to coal ash impoundments? If not, please explain.
 - c. Is the Agency familiar with the development of fuel cell trucks, electric trucks, or low-sulfur diesel trucks?
 - d. Did the Agency consider including requirements for transport of CCR only via electric, fuel-cell, or low-diesel trucks?
 - i. If not, why not?

- ii. If so, what is the basis for not directing companies to use such trucks if trucks are needed to transport ash?
- 14. You state that the closure alternatives analysis must, for each alternative, “contain groundwater contaminant transport modeling showing that the alternative will achieve applicable groundwater protection standards.”
 - a. Must the model include all constituents for which the Agency establishes groundwater protection standards (GWPS)? If not, please answer the following:
 - i. Why not?
 - ii. Which constituents must be modeled?
 - iii. How can modeling only a limited set of constituents show that the closure option will achieve the applicable groundwater protection standards for all constituents for which there are GWPS?
 - b. Has the Agency considered that there may be alternatives that will never achieve the groundwater protection standards?
 - c. Has the Agency considered that there may be alternatives that will take hundreds of years to achieve the groundwater protection standards?
 - d. If modeling does not show achievement of the standards for more than 100 years, will that disqualify an alternative from approval?
 - e. Is there a certain period of time that a closure alternative will take to achieve the groundwater protection standards that the Agency will consider unacceptable?
 - f. How many years, at a minimum, does the Agency propose to require owners and operators to model out?
 - i. Is that specified in the proposed regulations? If so, please specify the relevant provision(s).
 - g. Are there groundwater modeling methods that account for continuous or intermittent saturation of coal ash due to rising groundwater or the lateral flow of groundwater, rather than from solely recharge from above?
 - i. If so, which methods?
 - ii. Is the Agency requiring those methods to be used where an impoundment fails to meet the aquifer location restriction? Please specify the relevant provision(s).

- iii. Is the Agency requiring those methods to be used when information makes clear that CCR is intermittently or continuously wetted by groundwater? Please specify the relevant provision(s).

15. Does the Agency plan to consider any information concerning costs of different closure alternatives in evaluating construction permit applications for closure?
- a. If so, what is the basis for doing so?
 - b. If not, why do the proposed regulations not make clear that cost will not be considered in evaluating closure permit applications?

Initiation of Closure:

16. You state that an owner or operator must “initiate closure of an impoundment no later than 30 days after the date on which the impoundment either receives the final placement of waste or removes the final volume of CCR for the purpose of beneficial use,” and that “closure has been initiated if the owner/operator has ceased placing waste in the CCR surface impoundment and has submitted to the Agency a closure construction permit application.”
- a. What is the timeframe for submission of the closure construction permit application if the impoundment ceased receiving waste before the effective date of the rules?
 - b. Could you please explain how that submission deadline will allow for at least two public meetings at least 30 days prior to submission of the application under Proposed Section 845.240(a)?
 - c. Does an owner/operator of a surface impoundment that will be receiving the final placement of waste or removing the final volume of CCR for beneficial use need to hold the two public meetings require by Proposed Section 845.240(a) before they receive the final volume of waste or remove the final volume of CCR for beneficial use?

Closure by removal:

17. You state that “closure by removal is complete when all CCR has been removed from the impoundment and all areas affected by releases from the impoundment have been decontaminated.” You then state that, “after removal is completed, groundwater monitoring must continue until . . . for three years after closure” or for three years after the monitoring “does not show any exceedance of the groundwater protection standard, whichever is longer.”
- a. What does the Agency mean by “decontaminated”?

- i. Is it achievement of the groundwater protection standards, or something else?
 - ii. If it is achievement of the groundwater protection standards, is not closure not complete until the groundwater protection standards are achieved? Please explain.
 - b. What does the Agency mean by “areas affected by releases”?
 - c. How are “areas affected by releases” determined?
 - d. Do the proposed regulations for closure by removal require achievement of the GWPS (groundwater protection standards)? If so, please identify the specific provision(s).
18. How does the Agency intend to determine compliance with the transportation plan and other removal requirements – including, in particular, fugitive dust mitigation requirements – in Proposed Section 845.740?
19. How will the Agency, the owner/operator, workers, and communities know that dust is being limited to safe levels on a daily basis?
20. Did the Agency consider requiring air monitors to determine the effectiveness of the dust controls?
 - a. If not, why not?
 - b. If so, why did the Agency choose not to require their use? Please explain.
21. How will it be determined whether a CCR pile is “temporary”?
22. Why did the Agency not define “temporary” in this instance, in contrast to 415 ILCS 5/3.135, where a limitation on the duration of piles is included?

Closure with a final cover system:

23. You state that the “impoundment must be closed in a manner that will control, minimize, or eliminate, as much as feasible, post-closure infiltration of liquids and also releases of CCR, leachate, or contaminated runoff.”
 - a. What does the Agency mean by “as much as feasible”?
 - b. What information will be considered in determining what is “feasible”?
 - c. What does the Agency mean by “post-closure infiltration of liquids”? Please provide examples of how liquids could continue to infiltrate the CCR surface impoundment after closure.

24. You state that the owner or operator must eliminate free liquids by removing liquid wastes and solidifying the remaining wastes and residues. Does the Agency consider CCR surface impoundments that allow groundwater to flow into, and leachate to flow out of, CCR – either continuously or episodically – as having “eliminated free liquids”? Please explain the basis for your statement.
25. Did the Agency consider requiring a drainage layer on top of the low permeability layer to promote movement of infiltrated liquids off of the cover?
 - a. If not, why not?
 - b. If so, could you please explain why the Agency did not propose to require a drainage layer?
26. Has the Agency evaluated the potential environmental impact of allowing additional CCR, rather than clean fill, to be placed in the impoundment before closure?
 - a. If not, why not?
 - b. If so, could you please describe the results?

Completion of closure:

27. What is the Agency’s basis for allowing unlimited extensions of closure deadlines for CCR surface impoundments closing by removal?
28. Is there any information that the Agency will not consider in evaluating requests for extensions (whether for removal or for closure by cap-in-place)? If so, please explain.
29. How often will the Agency review progress of compliance with closure plans?
30. How will they review such progress (e.g., on paper, onsite inspection, etc.)?
31. How many inspectors does the Agency have to do such inspections?
32. Has the Agency had experience with instances in which closure of waste sites did not go as planned or proposed and modifications had to be made?
 - a. How did the Agency know of the need for such modifications?
 - b. How long had the problems with the cleanup or closure plans been present before they were identified?
 - c. How long had the problems with the cleanup or closure plan been present before the plans were modified?

33. Have requests by community members led the Agency to inspect/investigate and find that closure was not going as planned?
34. Does the Agency require owners and operators of other waste sites or other regulated entities to submit progress reports on closure? Please specify the relevant waste sites and regulatory provisions.
 - a. If so, has the Agency identified challenges or deficiencies with implementation of closure plans via such progress reports?
 - b. If so, did the progress reports allow the Agency to address the problems more quickly than they otherwise would have been addressed?
35. How does the Agency plan to allow for public input into whether closure is properly implemented? Please identify where that is specified in the Proposed Rules.

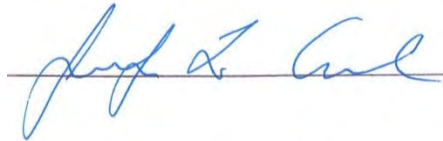
Post-Closure Care:

36. The proposed regulations describe post-closure care, which they define to include, among other things, “[m]aintaining the groundwater monitoring system and monitoring the groundwater in accordance with the requirements of Subpart F.” Subpart F includes not only groundwater monitoring, but also corrective action requirements.
37. Does the Agency understand Proposed Section 845.780(b)(3) to also require compliance with the corrective action components of Subpart F?
 - a. If not, please explain why the Agency believes that compliance with the corrective action components of Subpart F are not required during the post-closure care period.
38. The proposed regulations at Proposed Section 845.780(c)(2) provide that an owner or operator of a CCR surface impoundment that closed by cover “must continue to conduct post-closure care until the groundwater monitoring data shows the concentrations are: (A) below the groundwater protections standards in Section 845.600; and (B) not increasing for those constituents over background, using the statistical procedures and performance standards in Section 845.640(f) and (g), provided that: i) concentrations have been reduced to the maximum extent feasible and ii) concentrations are protective of human health and the environment.”
 - a. What does the Agency mean by “the maximum extent feasible”?
 - b. What information will be considered in determining what is “feasible”? Please identify the regulatory provision(s) where that is specified.

- c. Is there any sort of information that the Agency will not consider in determining what is “feasible”? Please explain and identify the regulatory provision(s) where that is specified.
39. At closed-in-place CCR surface impoundments where groundwater protection standards have been achieved, are there circumstances in which leaching of CCR constituents could increase, leading to renewed exceedances of groundwater protection standards at CCR units that have completed post-closure?
- a. If so, what are those circumstances?
 - b. If not, please provide the basis for your statement.

Dated: June 23, 2020

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

PRE-FILED QUESTIONS OF ELPC, PRAIRIE RIVERS NETWORK, AND SIERRA CLUB TO DARIN LECRONE

1. In your testimony, you state that, “[i]n accordance with the Act, any rules adopted by the Board must at a minimum . . . specify which types of permits are required for certain activities” Which activities are those? Please provide the basis for your answer.
2. In your testimony, you state that “SB9”, also known as the Coal Ash Pollution Protection Act, created the challenge of “adapt[ing] a program intended to be self-implementing, into a permit program with Agency oversight.” What is the purpose of Agency oversight?
3. In your testimony, you state that “[m]any of the proposed components of either a construction permit application or an operating permit application, were certifications, demonstrations, or reports required by 40 C.F.R. § 257.”
 - a. Regarding the requirement that impoundments have a composite liner, as defined in the federal rules: Are permit applicants required to submit any documentation aside from the certification that the impoundment has a liner, or statement that it does not have a liner that meets the minimum standards, to support that certification or statement? If so, please identify the provision(s) that so require.
 - b. Regarding the requirement that CCR surface impoundments conduct a hazard potential classification assessment under Proposed Section 845.440:
 - i. Are permit applicants required to submit the certification of that assessment in a permit application? If so, please identify the provision(s) that so require.
 - ii. Are permit applicants required to submit that assessment in a permit application? If so, please identify the provision(s) that so require.
 - iii. Are any revisions to the hazard potential classification assessment required to be submitted in permit applications? If so, please identify the relevant provision(s).

- c. Regarding the Emergency Action Plan required by Proposed Section 845.520:
 - i. Are permit applicants required to submit the Emergency Action Plan in a permit application? If so, please identify the provision(s) that so require.
 - ii. Are any revisions to the Emergency Action Plan required to be submitted in a permit application? If so, please identify the provision(s) that so require.
- d. Regarding the structural stability assessment required under Proposed Section 845.450:
 - i. Are permit applicants required to submit the certification of that assessment in a permit application? If so, please identify the provision(s) that so require.
 - ii. Are permit applicants required to submit the structural stability assessment in a permit application? If so, please identify the provision(s) that so require.
 - iii. Are any revisions to the structural stability assessment required to be submitted in a permit application? If so, please identify the provision(s) that so require.
- e. Regarding the safety factor assessment required under Proposed Section 845.460:
 - i. Are permit applicants required to submit the certification of the safety factor assessment in a permit application? If so, please identify the provision(s) that so require.
 - ii. Are permit applicants required to submit the safety factor assessment in a permit application? If so, please identify the provision(s) that so require.
 - iii. Are any revisions to the safety factor assessment required to be submitted in a permit application? If so, please identify the provision(s) that so require.
- f. Regarding the fugitive dust control plan required under Proposed Section 845.500(b):
 - i. For existing CCR surface impoundment, are permit applicants required to submit the fugitive dust control plan in a permit application? If so, please identify the provision(s) that so require.

- ii. Are any revisions to the fugitive dust control plan required to be submitted in a permit application? If so, please identify the provision(s) that so require.
 - g. Regarding the inflow design flood control system plan required by Proposed Section 845.510(c):
 - i. For existing CCR surface impoundments, are permit applicants required to submit the certification of the inflow design flood control system plan in a permit application? If so, please identify the provision(s) that so require.
 - ii. For existing CCR surface impoundments, are permit applicants required to submit the inflow design flood control system plan in a permit application? If so, please identify the provision(s) that so require.
 - iii. Are any revisions to the inflow design flood control system plan required to be submitted in a permit application? If so, please identify the provision(s) that so require.
 - h. Regarding the safety and health plan required by Proposed Section 845.530:
 - i. Are permit applicants required to submit the safety and health plan in a permit application? If so, please identify the provision(s) that so require.
 - ii. Are any revisions to the safety and health plan required to be submitted in a permit application? If so, please identify the provision(s) that so require.
4. Why did the Agency propose regulations that do not require the certifications, assessments, and plans referenced in the subparts to question 3 above to be submitted in permit applications?
5. Do the proposed regulations require submission of supporting documentation that provides the basis for the certifications, assessments, and plans referenced in the subparts to question 3 above to be submitted in a permit application? If so, please identify the specific provision(s).
6. Do the proposed regulations require submission, in permit applications, of supporting documentation that provides the basis for plans, certifications and other documents which are required to be submitted in permit applications? If so, please identify the specific provision(s) that so require and the plan, certification, or document for which underlying documentation is required to be submitted.

7. How will the Agency ensure that surface impoundments have developed plans and assessments that meet applicable requirements if those plans and assessments are not required to be submitted to, and approved by, the Agency?
8. Will any Agency staff be tasked with reviewing the required plans and assessments that are not required to be submitted to, and approved by, the Agency? If so:
 - a. Is that review required by the proposed rules? If yes, please identify the relevant provision(s).
 - b. Could you please identify specifically which Agency staff will review plans and assessments not required to be submitted to, or approved by, the Agency?
 - c. How many Agency staff members will be tasked with reviewing plans and assessments not required to be submitted to, or approved by, the Agency?
 - d. How often will those plans and assessments be reviewed by the Agency?
 - e. How much time does it take to review the various plans and assessments referenced in the subparts to question 3 above?
 - f. If the plans and assessments do not meet applicable requirements, what is the Agency's plan to remedy those deficiencies?
9. Does the Agency have personnel on staff that are qualified to evaluate structural stability and/or safety factor assessments and will be tasked with reviewing those assessments?
 - a. If so, could you please specifically identify those staff members and provide the credentials that qualify them to evaluate structural stability and/or safety factor assessments?
 - b. If not, does the Agency have a plan to ensure that structural stability and safety factor requirements are met? If so, please describe that plan, including the specific provision(s) of the proposed regulations where it is set forth.
10. Does the Agency have personnel on staff that are qualified to evaluate fugitive dust control plans and will be tasked with reviewing those plans?
 - a. If so, could you please specifically identify those staff members and provide the credentials that qualify them to evaluate fugitive dust control plans?
 - b. If not, does the Agency have a plan to ensure that fugitive dust control requirements are met? If so, please describe that plan, including the specific provision(s) of the proposed regulations where it is set forth.

11. Are there any other permitting programs that the Agency administers that require submission of “certifications” or “demonstrations” provided by a third party, without submission of the underlying documents that “certification” or “demonstration” pertains to? If so, please identify the program and the referenced certification or demonstration.
12. Regarding the plans referenced in the subparts to question 3 above, will compliance with those plans be a required condition of a permit?
 - a. If so, please identify which plans will be required conditions of permits and state which type of permit they will be a required condition of.
 - b. If not, please explain why not.
13. Regarding any plans or programs that are required to be submitted in permit applications, will compliance with those plans or programs be a required condition of a permit?
 - a. If so, please identify which plans or programs will be required conditions of permits and state which type of permit they will be a required condition of.
 - b. If not, please explain why not.
14. Regarding proposed 35 Ill. Adm. Code 845.210(d), why do the rules not require a qualified professional engineer certification for previous assessments, investigations, plans and programs?
 - a. Will the Agency verify whether these previous assessments, investigations or plans continue to accurately reflect conditions at the impoundments? If so:
 - i. Is that verification required by the proposed rules? If yes, please identify the relevant provision(s).
 - ii. When will that verification be done?
 - iii. Will that verification be conducted prior to making permitting decisions about the site, including permitting decisions concerning corrective action or closure?
 - iv. Could you please specifically identify the Agency staff who will verify whether the previous assessment, investigation, or plan continues to accurately reflect conditions at the impoundment?
15. Regarding proposed 35 Ill. Adm. Code 845.220, why do the rules not require cost estimates be provided as part of a construction permit?
16. Regarding proposed 35 Ill. Adm. Code 845.220(b):

- a. Why do the rules not prohibit new construction of a surface impoundment in floodplains?
- b. Why do the rules not prohibit new construction of surface impoundments in areas with environmental justice concerns?

17. Regarding proposed 35 Ill. Adm. Code 845.220(c)(2) and (d)(3):

- a. Why do the rules not require a demonstration of achieving compliance with applicable groundwater standards within thirty years?
- b. Do the proposed rules require modeling groundwater with consideration of seasonal variation of groundwater elevations? If so, please specify the relevant provision(s) and answer the following questions.
 - i. How does the Agency define seasonal variation?
 - ii. How will the modeling consider seasonal variation?
- c. If the proposed rules do not required modeling groundwater with consideration of seasonal variation of groundwater elevations, why not?

18. Regarding proposed 35 Ill. Adm. Code 845.230(a), why do the rules not prohibit existing surface impoundments in floodplains?

19. Regarding proposed 35 Ill. Adm. Code 845.230(a)(1) to (a)(11):

- a. Why do the rules not require the certifications be provided by a professional engineer?
- b. Why do the rules not require the permit applications include all documents supporting certifications pursuant to (a)(1) to (a)(11) or relied on be providing such certifications?

20. Regarding proposed 35 Ill. Adm. Code 845.230(b), why do the rules not require providing documents supporting certified plans pursuant to (b)(1), (b)(2), and (b)(5)?

21. Regarding proposed 35 Ill. Adm. Code 845.230(d)(3):

- a. Why do the rules not require certification for whether the surface impoundment has a liner that meets the requirements of proposed 35 Ill. Adm. Code 845.400(b) or 845.400(c)?
- b. Why do the rules not require providing documents supporting the Emergency Action Plan certification required by (d)(3)(D)?

22. Regarding proposed 35 Ill. Adm. Code 845.240(a):

- a. Do the rules require a pre-application public meeting for joint construction & operating permit applications? If so, please specify the provision(s) that so require.
- b. Why do the rules not require an interpreter at public meetings if the public notice is sent out in a non-English language pursuant to proposed 35 Ill. Adm. Code 845.240(c)?
- c. How does the Agency plan to make the public meeting a “meaningful” opportunity for public participation for non-English speaking populations? Please identify where that is specified in the proposed rules.

23. Regarding proposed 35 Ill. Adm. Code 845.240(b):

- a. How far in advance of the public meeting must the owner or operator provide the notices specified in proposed 845.240(b)? Please identify where that is specified in the rules.
- b. If the proposed rules do not require that the notice in 845.240(b) be provided in advance of the pre-application meeting, why do they not require that?
- c. Does the Agency intend for the owner or operator’s CCR website address to be included in the pre-application public meeting notice?
 - i. If so, why did the Agency not specify that in the proposed rules?
 - ii. If not, why not?
 - iii. Given that the owner or operator’s CCR website is where application materials must be posted fourteen days before the public meeting under Proposed Section 845.240(e), if the public notice does not include the owner or operator’s CCR website, how does the Agency intend to ensure the public can find the relevant materials in advance of the meeting?
- d. Why do the rules not require posting public notice in the local newspaper or on the owner or operator’s CCR website?
- e. Given the length and complexity of permit application materials, did the Agency consider requiring that the draft application materials be available on the publicly available website at least thirty days before the pre-application meeting, in order to allow the public to be better informed and prepared for the meeting?

- i. If so, why did the Agency not propose to require those materials to be posted at least thirty days before the public meeting?
 - ii. If the Agency did not consider that, why was it not considered?
 - f. Why do the rules not require notice to the clerk of the nearest city, town or village requesting further posting in conspicuous locations throughout the city, town, or village?
 - g. Why do the rules require a pre-application public meeting?
- 24. Has the Agency received information from the public on proposed regulations or a proposed permit that has led the Agency to strengthen protections in the proposed regulations or permit? If so, please provide examples.
- 25. Regarding proposed 35 Ill. Adm. Code 845.240(e), why do the rules not require a fact sheet of the facility and the tentative permit application?
- 26. Regarding proposed 35 Ill. Adm. Code 845.260(b):
 - a. Why do the rules not require instructions on how to request a public hearing?
 - b. Why do the rules not require instructions on how to be added to the agency's listserv?
 - c. Why do the rules not require instructions on how to request technical assistance funding from U.S. EPA?
 - d. Does the Agency intend for all application materials, the draft permit, and the tentative permit determination be posted on the permit applicant's CCR website by the date by which the notice of the tentative determination must be circulated?
 - i. If not, why not?
 - ii. If so, do the proposed rules so require? Please identify the relevant provision(s).
 - iii. Why do the proposed rules not require that the website on which the relevant application materials, draft permit, and tentative permit decision are posted be included in the notice?
 - iv. Does the Agency intend to require community members to have to go to Springfield or other physical locations in order to review applications materials, the draft permit, and the tentative determination?

27. Regarding proposed 35 Ill. Adm. Code 845.260(c):

- a. Why do the rules require a 30-day comment period and not a 45-day comment period?
- b. Will all application materials, the draft permit, and any accompanying documents be posted on a public website by the start of the comment period? If so, please identify the relevant provision(s).
- c. Why do the rules not require posting all comments received on a publicly available website?

28. Regarding proposed 35 Ill. Adm. Code 845.260(d):

- a. Why do the rules not require the agency to hold a public hearing if the agency determines that there exists a significant degree of public interest, even though it is called for by the Statement of Reasons?
- b. What does a “significant degree of public interest” mean?
 - i. Is that specified in the proposed rules? If so, please specify the relevant provision(s).
- c. Why do the rules not provide the option to request interpretive services in a non-English language?

29. Regarding proposed 35 Ill. Adm. Code 845.280(d)(c), do the requirements of proposed 35 Ill. Adm. Code 845.260 apply to modification applications submitted by the owner or operator of a surface impoundment?

30. Regarding proposed of 35 Ill. Adm. Code 845.280(e)(2), what is a reasonably justifiable cause for which a waiver will be granted when a permittee does not meet the 180-day requirement for permit renewal filing?

31. Regarding proposed of 35 Ill. Adm. Code 845.260(f), why do the rules not require posting the agency’s responsiveness summary on a publicly available website?

Dated: June 23, 2020

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

PRE-FILED QUESTIONS OF ELPC, PRAIRIE RIVERS NETWORK, AND SIERRA CLUB TO CHRIS PRESSNALL

1. Regarding proposed 35 Ill. Adm. Code 845.700(g):
 - a. Why do the criteria for an area of environmental justice (EJ) concern only rely upon income below poverty and/or minority population greater than the statewide average?
 - b. Are there other factors that IEPA would agree are relevant for the purposes of identifying areas of environmental justice concern?
 - c. Why does IEPA not consider environmental indicators, such as exposure to PM 2.5, when determining if an area is an area of EJ concern?
 - d. Why does IEPA not consider environmental justice indexes, such as cancer risk, when determining if an area is an area of EJ concern?
 - e. Are there instances where part of a community does not fall into Category 3, but would ordinarily be recognized as an area of environmental justice concern?
2. Regarding EJ Start, at page 2, continuing to page 3, your testimony indicates that an area qualifies as an EJ area (for either minority or income or both) based on a score of being twice the Illinois average.
 - a. Would you agree that this is a “bright line rule”? If not, please explain why not.
 - b. Is drawing the line at twice the Illinois average somewhat arbitrary? If not, please explain why not.
 - c. For instance, an area could be 1.9 times the Illinois average for minority and 1.9 times the Illinois average for low-income and not fall within Illinois EPA’s classification of EJ, right?

- d. Could an area that is 1.9 times the Illinois average for minority and 1.9 times the Illinois average for low-income still be overburdened, as you use that term in your testimony?
 - e. Do you think that there can be a bright line rule that captures all the EJ areas and excludes all the non-EJ areas?
 - i. If so, why?
 - ii. If not, why not?
 - f. Are there a lot of factors that affect whether an area is EJ? Are there factors beyond minority population and low-income population? If so, what are they?
3. On page 3, your testimony states that “USEPA uses a wide variety of information to ‘paint a picture’ of the area around a facility in the form of percentiles,” correct?
- a. Why did you include this discussion of how USEPA identifies EJ areas in your testimony?
 - b. Did you include it for the purpose of suggesting that you do not agree with the way USEPA does it?
 - c. What are some of the factors that USEPA considers to “paint a picture” of the area around a facility? Please list all that you are aware of.
 - i. Why does Illinois not use those factors in determining what areas constitute areas of EJ concern? Please explain.
 - ii. Does Illinois use any tool(s) to evaluate pollution burdens on Illinois communities? If so, please identify them and state which types of pollution – e.g., air, water, etc. – they address.
4. On page 3 of your testimony, you use the term “overburdened” and indicate that USEPA identifies areas that are “overburdened”. You go on to indicate that “overburdened” means “meeting the criteria of an EJ community.”
- a. Is it the Agency’s position that EJ communities are overburdened?
 - b. If so, can you please identify what EJ communities are overburdened with?
5. On page 3 of your testimony, you state that “Prioritization [of] coal ash impoundments located in areas of environmental justice concern is appropriate given the potential impact of coal ash impoundments on overburdened communities.”

- a. What is the “potential impact” of coal ash impoundments in areas of environmental justice concern?
 - b. Does IEPA have its own definition of “overburdened communities”?
 - c. The term “overburdened communities” does not appear in IEPA’s EJ policy, correct?
 - d. Did you rely on USEPA’s definition of overburdened communities?
 - e. USEPA considers factors beyond just minority and low-income in identifying overburdened communities, correct?
 - f. What other factors? Please list all that you are aware of.
 - g. Are these the same factors you identified above when you listed the factors that USEPA consider to “paint a picture” of the area around a facility?
 - h. Would you agree that it is appropriate to consider those factors?
 - i. If not, why not?
6. The only way that the Proposed Rule prioritizes coal ash impoundments in EJ communities is through requiring submittal of the closure applications for impoundments in EJ communities to be first, right?
- a. The Coal Ash Pollution Prevention Act requires the prioritization of closure of impoundments in EJ communities that are required to close under Federal Law, right?
 - b. Is there anything limiting Illinois EPA from prioritizing coal ash ponds in EJ areas in a manner not specifically mandated by the Coal Ash Pollution Prevention Act?
 - i. If so, what?
 - c. Is IEPA’s EJ policy “evolutionary”?
 - i. What does it mean to be “evolutionary”?
 - ii. Would one way of being “evolutionary” be to go further than the Coal Ash Pollution Prevention Act’s explicit mandates in prioritizing EJ communities?
 - d. Is one of the goals of Illinois EPA’s EJ policy to be “responsive” to the communities it serves?

- i. What does it mean to be “responsive to the communities it serves”?
 - ii. What does the “it” refer to in “it serves”? IEPA?
 - iii. And what “communities” does this refer to? EJ communities?
 - iv. Would one way of being responsive to the communities IEPA serves under the EJ policy be to close ash impoundments that EJ communities ask to be closed?
 - v. Would another way of being responsive to the communities IEPA serves under the EJ policy be to close by removal ash impoundments that EJ communities ask to be closed by removal?
 - e. There are other ways of prioritizing coal ash impoundments in EJ areas, right?
 - i. Did IEPA consider other ways?
 - ii. If so, what ways?
 - f. Do you know if it is possible for coal plants to continue operating without coal ash impoundments?
 - g. Could not a plant simply convert to dry ash handling?
 - h. Would another way of prioritizing coal ash impoundments in EJ communities be to require all such impoundments to close?
 - i. Did IEPA consider complete closure of all coal ash impoundments in EJ communities as one way of prioritizing EJ communities? If so, please explain why this means of prioritization was not included in the Proposed Rule.
7. Regarding proposed 35 Ill. Adm. Code 845.700(g)(1)(C):
- a. What steps is IEPA going to take to ensure that the communities that make up Category 3 are notified of their status?
 - b. Where will this information be publicly available?
8. Regarding proposed 35 Ill. Adm. Code 845.700(g)(1)(C), what is the timeline for IEPA to make the determination that an area falls into Category 3 prioritization?
9. Are you aware of the federal requirements for public participation, e.g., Section 7004 of RCRA (42 U.S.C. § 6974) and 40 C.F.R. § 239?
- a. How do the Proposed Rules align with the federal rules?

- b. How does IEPA go above and beyond the federal rules?
10. On page 3 of your testimony, you state “lack or opportunity for public participation” as one of the causes of the “disproportional environmental harms and risks” borne by areas of environmental justice concern.
- a. Are you familiar with the Coal Ash Pollution Prevention Act’s mandate in 415 ILCS 5/22.59(g)(6) that the rules must “specify meaningful public participation procedures”?
- i. What makes public participation meaningful?
 - ii. Would that include the owner or operator of a CCR facility putting out notices in non-English language when there is a significant population that does not speak English? If not, please explain.
 - iii. Would that also include a requirement for the Agency to put out notices of a public hearing in a non-English language when there is a significant population that does not speak English? If not, please explain.
 - iv. Would that include making key documents available in non-English language when there is a significant population that does not speak English? If not, please explain.
 - v. Would that include the public having access to documents supporting the permit application and supporting certifications and plans? If not, please explain.
 - vi. Would that include giving the public a sufficient amount of time to review any permit application materials before a public meeting? If not, please explain.
 - vii. Would that include giving the public a sufficient amount of time to review any permit application materials before a pre-application public meeting? If not, please explain.
- b. Are you familiar with the legislature’s finding in the Coal Ash Pollution Prevention Act, at 415 ILCS 5/22.59(a)(5), that “meaningful public participation of State residents, especially vulnerable populations who may be affected by regulatory actions, is critical to ensure that environmental justice considerations are incorporated in the development of decision-making related to, and implementation of environmental laws and rulemaking that protects and improves the well-being of communities in the State that bear the disproportionate burdens imposed by environmental pollution”?

- i. Why is ensuring meaningful public participation critical to ensure that EJ considerations are incorporated?
- ii. What is the Agency doing to ensure that public participation is meaningful?

Dated: June 23, 2020

Respectfully submitted,



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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

PRE-FILED QUESTIONS OF ELPC, PRAIRIE RIVERS NETWORK, AND SIERRA CLUB TO WILLIAM E. BUSCHER

1. Page 1 of your testimony states “Since the early 1990s, new ash impoundments have been built with low permeability liners.”
 - a. What do you mean by “low permeability liners”?
 - b. Could you please quantify the permeability of low-permeability liners in terms of hydraulic conductivity?
 - c. Could you please compare the permeability of low-permeability liners to the permeability of the composite liner or alternative composite liner specified in Section 845.400?
 - d. Could you please describe the materials with which low-permeability liners were made?
 - i. Were any of them 60-mil high-density polyethylene (HDPE)? If so, please identify which CCR surface impoundments have 60-mil HPDE liners.
 - ii. How do low-permeability liners compare in terms of hydraulic conductivity to 60-mil HDPE?
 - iii. Were any of them “Poz-o-pac” liners? If so, please identify which CCR surface impoundments have “poz-o-pac” liners.
 - e. Could you please describe whether the low-permeability liners would qualify as composite liners as specified in Section 845.400? Please explain why or why not.
2. Page 2 of your testimony discusses Section 845.400 of the Proposed Rule. Section 845.400 liner design criteria for existing CCR surface impoundments, correct?

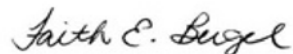
- a. Are you familiar with the 40 C.F.R. § 257.71 which contains the liner design criteria for existing CCR surface impoundments for the Federal CCR Rule?
 - b. Are you able to describe how the liner design criteria in Section 845.400 compare to the liner design criteria contained in the 40 C.F.R. § 257.71 of the Federal CCR Rule?
 - c. Do you know the reason why IEPA selected the liner design criteria that it selected for existing CCR surface impoundments?
 - i. If so, what was that reason?
 - ii. Did IEPA simply include the same liner design criteria as the Federal CCR Rule?
 - iii. Did IEPA consider more stringent liner design criteria than the Federal CCR Rule? If so, please explain any reason for rejecting more stringent criteria.
 - d. Comparing Sections 845.400 and 845.410, the liner design criteria are the same for existing surface impoundments and new surface impoundments, correct?
 - i. If you compare 40 C.F.R. § 257.71 and 40 C.F.R. § 257.72, this is also true for the Federal Rule, correct?
3. Page 2 of your testimony discusses Section 845.410 of the Proposed Rule Section.
- a. Is it accurate that proposed Section 845.410 requires the certification of a qualified professional engineer at two different times: first, to certify that the design of a liner complies with the requirements of the Section 845.410, and second, to certify that the liner has been constructed in accordance with the requirements of the Section?
 - b. Does this Section require the engineer or owner/operator to provide the basis for either certification?
 - c. Does this Section require the engineer or owner/operator to provide any documentation supporting the certification?
 - i. If not, did IEPA consider requiring the basis for or documentation supporting either certification? If so, please explain any reason for rejecting such requirements.
4. On page 3 of your testimony, discussing Section 845.450 of the Proposed Rule, you address construction permits for corrective measures and state that “[n]ecessary permits must be obtained from the Agency as soon as feasible.”

- a. Does the language “as soon as feasible” come directly from 845.450(b)?
 - b. What does the Agency understand “as soon as feasible” to mean?
 - i. Is that interpretation specified in the Proposed Rule? If so, please specify the relevant provision(s).
 - c. What information may be considered in determining what timeframe is “as soon as feasible”?
 - d. Is there any information that may not be considered in determining what timeframe is “as soon as feasible”?
 - i. If so, what is it?
 - ii. Is that specified in the proposed rules? If so, please specify the relevant provision(s).
 - e. Under the Proposed Rule, who makes the determination as to what timeframe is “as soon as feasible”?
 - f. What happens if there is a dispute about what timeframe is “as soon as feasible”?
 - g. Did the Agency have a reason for not including a specified time period here? If so, please explain the reason.
 - h. Do you know how long an owner/operator has, pursuant to proposed Section 845.670, to submit construction permit applications with corrective action plans after completing the assessment of corrective measures? If so, please state how long.
 - i. Do you know how long an owner/operator has, pursuant to Section 845.660, to complete the assessment of corrective measures after starting the assessment? If so, please state how long.
 - j. Is there any reason that specific timeframes can't be set for the determination as to corrective measures and application for necessary construction permits in Section 845.450 just as they were set in Sections 845.660 and 845.670? Please explain your answer.
5. Page 4 of your testimony discusses Section 845.510 of the Proposed Rule, concerning the inflow design flood control system.

- a. One of the requirements regarding the inflow design flood control system is the requirement for an inflow design flood control system plan, correct?
- b. What is the purpose of the inflow design flood control system plan?
- c. What is the "design flood"?
- d. Does the inflow design flood control system plan itself get submitted to the agency?
- e. Must the owner/operator get Agency approval for the inflow design flood control plan?
- f. Is the inflow design flood control system plan part of the permit application?
- g. Is the inflow design flood control system plan placed on the owner/operator's publicly accessible internet site?
 - i. If yes, is it required to be posted before operating or construction permits are issued for the CCR surface impoundment?
 1. May any of those permits be issued before the plan is posted? If so, please state which.
- h. Can the public get the inflow design flood control system plan from the Agency by FOIA?
- i. Do the Proposed Rules provide the public an opportunity to offer comments on the inflow design flood control system plan?
 - i. If so, under the proposed rules, must those comments be considered by the Agency in making any decisions with regard to the CCR surface impoundment? Please explain your answer.

Dated: June 23, 2020

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PRE-FILED QUESTIONS OF ELPC, PRAIRIE RIVERS NETWORK, AND SIERRA CLUB TO LAUREN MARTIN

Air Criteria:

1. Please list all OSHA worker safety regulations pertaining to air that apply to coal ash impoundments.
2. In your testimony, you refer to the “Preamble to Part 257, Section F Operating Criteria” and relate that it “states that fugitive dust should be limited to 35 $\mu\text{g}/\text{m}^3$ per 24-hour period or alternative standard established under a State Implementation Plan.”
 - a. Please provide a citation to this source.
 - b. Does the Agency’s proposed rule purport to limit fugitive dust to 35 $\mu\text{g}/\text{m}^3$ per 24-hour period? If so, where?
 - c. Does the Agency’s proposed rule purport to establish or comply with an “alternative standard established under a State Implementation Plan”?
 - i. If so, where?
 - ii. If so, what is the alternate standard?
3. Are there any other Illinois regulations applicable to CCR surface impoundments that limit fugitive dust pollution at those impoundments? If so, please identify them by specific citation.
4. Your testimony states, “In 845.500(b) Illinois EPA is addressing specific hazardous substances that are found within the CCR materials. Specifically, these materials are arsenic, beryllium, lead, cadmium and silica.”
 - a. Please state specifically how Proposed Section 845.500(b) addresses these hazardous substances.

- b. Does it address them beyond citing to applicable OSHA regulations for each of those substances? Please explain.
 5. In your testimony, you note that “[t]he onus of proving that the arsenic is not present in quantities and particle sizes that can cause acute or chronic exposure symptoms in workers or the surrounding community is on the owners/operators of the CCR surface impoundment.”
 - a. Please identify where the referenced burden of proof is specified in regulations applicable to CCR surface impoundments, including the specific citation.
 - b. By what methods must owners/operators prove that arsenic is not present in quantities and particle sizes that can cause acute or chronic exposure symptoms in workers or the surrounding community?
 - c. Are those methods specified in the proposed rules? If so, please identify the relevant provision(s).
 - d. Are those methods specified in other regulations applicable to CCR surface impoundments? If so, please identify the relevant provision(s).
 - e. What education or qualifications are needed to verify whether an owner or operator has proven that arsenic is not present in quantities and particle sizes that can cause acute or chronic exposure symptoms in workers or the surrounding community?
 - f. Will the Agency verify that the owner or operator has proven that arsenic is not present in quantities and particle sizes that can cause acute or chronic exposure symptoms in workers or the surrounding community?
 - i. If so, could you please specifically identify the Agency staff who have the education or qualifications referenced in question 5(e) above?
 - ii. If the Agency will not verify this information, will any other state agency verify that the owner or operator has met its burden of proof concerning arsenic? If so, please identify which agency.
6. You state that “[a]rsenic quantities in air within the site operations must be documented by the facility to provide a record for due diligence. . . .”
 - a. Please identify the specific provision(s) of the proposed rules that contain the referenced requirement.
 - b. How must the facility document the arsenic quantities in air within the site operations? Please explain.
 - c. To whom must the facility provide this documentation?

- d. Is the referenced documentation required to be submitted to the Agency? If so, please identify the provision(s) that so require.
 - e. Is the referenced documentation required to be submitted to another state agency? If so, please specify which agency and the provision(s) that so require.
7. You state that an owner or operators of CCR surface impoundments must “provide objective data” that shows that “beryllium is not present above 0.1% of the material collected in an air monitoring device, then monitoring is not required.”
- a. What is the “air monitoring device” you reference?
 - b. Do the proposed regulations require the use of that “air monitoring device”? If so, please specify the relevant provision(s).
 - c. How frequently must the material be collected in the air monitoring device? Please identify the relevant provision(s) that so require.
 - d. How frequently must the content of the material collected in the air monitoring device be tested? Please identify the relevant provision(s) that so require.
 - e. Must the material collected in the air monitoring device be tested for any other substances found in CCR, in addition to beryllium?
 - i. If so, which substances? Please identify the relevant provision(s) that so require.
 - ii. If so, how frequently must those other substances be tested for? Please identify the relevant provision(s) that so require.
 - iii. If so, to whom is the information concerning the content of the material collected in the air monitoring device submitted? Please identify the relevant provision(s) that so require.
 - f. How frequently must the referenced “objective data” be provided?
 - g. To whom must that referenced “objective data” be provided?
 - h. Must the “objective data” be submitted to the Agency? If so, please identify the specific provision(s) that so require.
 - i. What “monitoring is not required” if the owner or operator provides the “objective data” showing that beryllium is below the 0.1% threshold?
 - j. How will the Agency ensure the referenced federal regulations are met?
8. How will IEPA ensure that a fugitive dust control plan complies with Proposed Section 845.500 and relevant federal rules before approving a permit application?

9. How will members of the public be provided “meaningful” opportunities to provide input into the fugitive dust control plans if they are not submitted as part of a facility’s permit application?
10. Is it correct that, for facilities applying for operating permits only, the first time that the Agency will see a facility’s fugitive dust control plan is when the it is placed in the facility’s operating record as required by Section 845.800(d)(7), per Proposed Section 845.500(b)(6)? Please explain.
11. Does the agency have personnel on staff who are qualified to evaluate fugitive dust control plans?
 - a. If so, whom?
 - b. What are their qualifications?
 - c. How often does the Agency plan to review fugitive dust control plans to ensure that they meet regulatory requirements
 - d. Is such review mandated the Proposed Rules? If so, where?
 - e. If fugitive dust control plans do not meet regulatory requirements, what is the Agency’s plan to address their deficiencies?
 - f. How much Agency time does it take to review a fugitive dust control plan?
12. How will fugitive dust control plans be enforced by the Agency?
 - a. What Agency time and resources will be allocated towards enforcement?
 - b. What will enforcement entail?
 - c. Would initial review of plans during permitting be less resource intensive than after-the-fact enforcement and review?
13. Please refer to Proposed Section 845.500(b)(1).
 - a. What does “minimize CCR from becoming airborne at the facility” mean?
 - b. Will the Agency review owners’ and operators’ choice of fugitive dust control measures to ensure that the measures actually “minimize CCR from becoming airborne at the facility”?
 - c. Will the Agency review owners’ and operators’ explanation of how the measures selected are applicable and appropriate for site conditions?
 - d. If the Agency does plan to review the choice of measures and/or explanation, how will the Agency address any deficiencies it finds?

- e. Did the Agency conduct any review of the efficacy of the various fugitive dust control measures listed as examples in 845.500(b)(1)?
 - i. If so, please explain what that review entailed.
 - ii. If not, why not?
 - iii. If so, did the Agency discover that any of the listed measures reduce fugitive dust in all or most circumstances?
 - 1. If so, please provide the basis for this finding.
 - f. Has the Agency evaluated the efficacy of fugitive dust control measures in other contexts (e.g., petcoke piles or coal refuse piles)?
 - i. If so, what contexts?
 - ii. What control measures did the Agency find to be effective?
 - g. Did the Agency consider specifying certain minimum control measures to be required for all sites?
 - i. If so, why did the Agency not require certain minimum control measures?
 - ii. If not, why not? Please explain.
14. Regarding proposed Section 845.500(b)(2), requiring “procedures to log citizen complaints received by the owner or operator involving CCR fugitive dust events at the facility.”
- a. What is a “citizen complaint”?
 - b. Who can make a “citizen complaint”?
 - c. Must a person be a citizen to make a “citizen complaint”?
 - d. Do the Proposed Rules require owners or operators to investigate citizen complaints? Please explain.
 - e. Do the Proposed Rules require owners or operators to respond to citizen complaints? Please explain.
 - f. Do the Proposed Rules require owners or operators to address the factors underlying citizen complaints?
 - i. If so, in what circumstances? Please identify the relevant provision(s).
 - ii. If not, do the Proposed Rules provide for other mechanisms to address citizen complaints?

- iii. If so, what are they?
 - g. Do the Proposed Rules require owners or operators to report citizen complaints to the Agency? Please explain.
 - h. Will the Agency review the citizen complaint log?
 - i. If so, how often will the Agency review a facility's citizen complaint log?
 - j. Does the Agency plan to take any action based on the citizen complaint logs?
 - k. If so, what action(s) would the Agency take?
15. Do the Proposed Rules require any air monitoring to ensure the fugitive dust plan is actually working to minimize dust?
- a. If so, where?
 - b. If not, how will the Agency know if fugitive dust plans are implemented and working?
 - c. If not, did the Agency consider requiring air monitoring as part of fugitive dust plans?
 - d. If the Agency did consider requiring air monitoring as part of fugitive dust plans but ultimately did not include requirements for air monitoring, on what basis did the Agency make that decision?
16. Do the Agency's proposed regulations include any means for monitoring whether the volume of CCR dust in the air at the impoundment remains within safe levels? If so, please specify the relevant provision(s).

Safety and Health Plans:

17. Please list all OSHA worker safety regulations that apply to coal ash impoundments, to the Agency's knowledge.
18. You state that "owner operators are allowed to create their own safety data sheets for their individual sites."
- a. On what basis did the Agency decide to allow owner/operators to make their own safety data sheets?
 - b. Will IEPA verify that any owner/operator-created data sheets:
 - i. are at least as comprehensive and accurate as the ones adopted by OSHA?
 - ii. cover all hazardous chemical constituents found in the CCR?

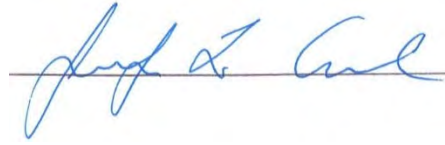
- iii. are “based on analytical data for airborne dust constituents, leachate constituents, groundwater chemicals and CCR materials found in the CCR surface impoundment,” as described in your testimony?
 - c. If the Agency does not verify any of the above items (b)(i-iii), will anyone verify those items under the proposed regulations?
 - i. If so, who will do so?
 - ii. Is the verification specified in the proposed regulations? If so, please identify the relevant provision(s).
 - d. Will the Agency verify that the owner/operator-created data sheets meet regulatory requirements?
 - i. If not, will anyone verify that the sheets meet regulatory requirements?
 - ii. If so, please explain who will do so and identify the provision(s) in the proposed rules that so require.
- 19. The following questions refer to changes between the Stakeholder Draft circulated by IEPA in December 2019 and the Draft currently before the Board.
 - a. In Proposed Section 845.530(b)(1), why did the Agency change the word “implement” to the word “consider” before the phrase “the recommendations in the most recent NIOSH Pocket Guide”?
 - b. In Proposed Section 845.530(b)(2), why did the Agency add the phrase “for all hazards not otherwise classified as defined in 29 CFR 1910.1200(c)” after “implement the Occupational Safety and Health Administration regulations in Chapter 17 of Title 29 of the Code of Federal Regulations”?
 - c. In proposed Section 845.530(c)(1), why did the Agency change the requirement to maintain an “outline of the training program . . . and a brief description of how the training program is designed to meet actual job tasks” to “outline of the training program . . . and a brief description of how the training program updates”? (emphasis added)
 - d. In proposed Section 845.530(c)(2), why did the Agency delete the phrase “emergencies by familiarizing them with” from the phrase, “At a minimum, the training program must be designed to ensure that facility personnel . . . are able to respond effectively to the following emergencies by familiarizing them with: A) procedures . . . , B) communications, . . .” etc. (emphasis added). It now reads, “ensure that [facility personnel] are able to respond effectively to the following: A) procedures . . . , B) communications, . . . etc.”
 - e. Why did the Agency decline to add a requirement, suggested by ELPC, Prairie Rivers Network, and Sierra Club, that the owner or operator provide certain

measures for workers, including onsite changing rooms with regularly maintained lockers and showers for workers engaged in the handling, movement, cleanup or excavation of CCR; reasonable time for workers to shower and change into or out of work clothes and protective gear; and onsite enclosed areas or areas shielded from CCR fugitive dust for workers to take breaks and eat meals?

20. Do the Agency's proposed regulations require any personal protective equipment for workers handling CCR? If so, please identify the relevant provision(s).
21. Do the Agency's proposed regulations include any barriers or other physical protections to separate workers from CCR dust while they are on breaks? If so, please specify the relevant provision(s).
22. Does the Agency require submission of any facility's Safety and Health Plan?
 - a. If so, where?
 - b. If not, how will the Agency determine that Safety and Health Plans meet regulatory requirements?
 - c. Who will do so?
 - d. Is such review mandated by the rules? If so, where?
 - e. How will interested members of the public and/or workers gain access to facility Safety and Health Plans?
 - f. If plans do not meet regulatory requirements, what is the Agency's plan to address the plans' deficiencies?
23. Does the Agency have occupational safety experts on staff?
 - a. Will people with occupational safety expertise be asked to review facility Safety and Health plans?
 - b. How much Agency staff time and resources will be dedicated to reviewing facility Safety and Health Plans?
24. Will facility Safety and Health Plans be enforced?
 - a. What will enforcement of Safety and Health Plans entail?
 - b. How much Agency staff time and resources will be dedicated to enforcing the worker protections found in Safety and Health Plans?

Dated: June 23, 2020

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jennifer L. Cassel", is written over a horizontal line.

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

PRE-FILED QUESTIONS OF ELPC, PRAIRIE RIVERS NETWORK, AND SIERRA CLUB TO ROBERT MATHIS

1. On page 1 of your testimony, you refer to the Financial Assurance Program (“FAP”):
 - a. How many people are staffed in the FAP?
 - b. Will any FAP staff be dedicated to the financial assurance requirements of the Proposed Rule?
 - c. How will responsibilities be divided among the FAP staff?
2. On page 1 of your testimony, you refer to Standard Operating Procedures for the FAP:
 - a. What is the purpose of the Standard Operating Procedures?
 - b. What are the Standard Operating Procedures’ requirements?
3. On page 2 of your testimony, you state that “[t]he Agency may sue in any court of competent jurisdiction to enforce its rights regarding financial assurance.”
 - a. Is this true of other programs beside the Proposed Rule?
 - b. If so, how often has the Agency sued to enforce its rights regarding financial assurance?
 - i. Can you describe the circumstances?
 - c. Can the Attorney General sue on behalf of the Agency to enforce the Agency’s rights regarding financial assurance?
 - i. If so, how often has the Agency referred such cases to the Attorney General?

- ii. Can you describe the circumstances?
- 4. On page 2 of your testimony, you discuss 35 Ill. Adm. Code 845.910, which addresses Upgrading Financial Assurance.
 - a. Are there other programs beside the Proposed Rule that provide for upgrading financial assurance?
 - i. If so, what other programs are there? Please describe those programs.
 - b. Have regulated entities generally upgraded financial assurance as required?
 - i. If so, have they done so within the required timeframe?
 - c. How often have regulated entities failed to upgrade financial assurance as required?
 - i. Can you describe the circumstances?
- 5. Regarding proposed 35 Ill. Adm. Code 845.930, you indicate that these provisions contain the requirements for Cost Estimates.
 - a. Are there other programs beside the Proposed Rule that provide for cost estimates similar actions (i.e., corrective action)?
 - i. If so, what other programs are there? Please describe those programs.
 - b. Does the Agency verify cost estimates?
 - i. If so, how does it do so?
 - c. Has the Agency ever disagreed with a cost estimate provided in another program?
 - i. If so, can you describe the circumstances?
 - ii. Can you describe how this situation was resolved?
- 6. Regarding proposed 35 Ill. Adm. Code 945.940(b), did the Agency consider making cost estimate revisions for modifications to corrective action, closure plan, or post-closure plan a required part of the application to modify a corrective action, closure plan, or post-closure plan?
 - a. If so, why were these requirements rejected?
 - b. If not, why not?

7. Regarding proposed 35 Ill. Adm. Code 945.960(h)(2):
 - a. Why did the Agency select a time period for reimbursement as within sixty days of receiving the itemized bill?
8. Regarding proposed 35 Ill. Adm. Code 945.960(h)(3):
 - a. Are there similar withholding provisions for trust funds in other programs with financial assurance regulations?
 - i. If so, have there been instances in the last ten years where the FAP or the agency withheld reimbursement?
 - ii. Can you describe the circumstances?
 - b. What is the procedure for making the determination whether withholding is permissible?
 - i. Are there Agency staff who make that determination?
 - ii. If so, who are the staff?
 - iii. What are their titles?
 - iv. How do they make the determination?
 - v. What criteria does the Agency consider?
 - vi. Has this determination ever been legally challenged by a regulated entity?
 1. If so, can you describe the circumstances?
 - vii. Does FAP review any specific documents in order to determine whether withholding is permissible?
 1. If so, what documents?
 - c. Has a 60-day time period for reimbursement or withholding been used in other FAP contexts?
 - i. If so, have there been instances in the last ten years where FAP was unable to conduct the analysis necessary to determine whether withholding would be permissible due to the 60-day time limit?
 - d. If a different time period has been used in other FAP contexts, what was the time period?

Dated: June 23, 2020

Respectfully submitted,



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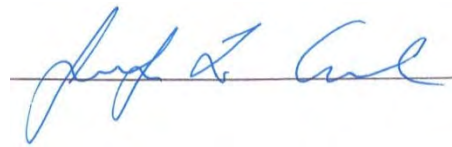
Attorneys for Prairie Rivers Network

CERTIFICATE OF SERVICE

The undersigned, Jennifer Cassel, an attorney, certifies that I have served by email the Clerk and by email the individuals with email addresses named on the Service List provided on the Board's website, available at <https://pcb.illinois.gov/Cases/GetCaseDetailsById?caseId=16858>, a true and correct copy of the **PRE-FILED QUESTIONS OF ELPC, PRAIRIE RIVERS NETWORK, AND SIERRA CLUB TO MELINDA SHAW, LYNN DUNAWAY, AMY ZIMMER, DARIN LECRONE, CHRIS PRESSNALL, WILLIAM BUSCHER, LAUREN MARTIN, AND ROBERT MATHIS** before 5 p.m. Central Time on June 23, 2020. The number of pages in the email transmission is 72 pages.

Dated: June 23, 2020

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