

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**NOTICE OF FILING**

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the attached document, **Illinois Environmental Protection Agency's Responses to the Board's Questions for Witnesses Testifying at the Second Hearing**, a copy of which is herewith served upon you.

Respectfully submitted,

Dated: September 24, 2020

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Clayton J. Ankney  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
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Petitioner,

BY: /s/ Clayton J. Ankney  
Clayton J. Ankney

**THIS FILING IS SUBMITTED ELECTRONICALLY**

**SERVICE LIST**

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**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY’S RESPONSES TO THE BOARD’S QUESTIONS FOR WITNESSES TESTIFYING AT THE SECOND HEARING**

NOW COMES the Illinois Environmental Protection Agency (Illinois EPA or Agency), by and through one of its attorneys, and pursuant to 35 Ill. Adm. Code 102.424(b) and the September 10, 2020 Hearing Officer Order, hereby submits its responses to the Board’s Questions for Witnesses Testifying at the Second Hearing:

**Questions for Mark Hutson**

6. On page 7, you state that the rules must not allow waste to be left in place at or below the highest seasonal zone of subsurface saturation. Please clarify whether this type of prohibition should apply to only CCR surface impoundments that are impacting groundwater above (exceeding) the groundwater protection standards (GWPS) or apply generally to all CCR impoundments under Part 845.

**Illinois EPA’s Response:** Based on a review of available data to answer a follow-up question posed to the Agency at the first hearing by the environmental groups regarding a former CCR surface impoundment (Havana South Ash Pond) and review of the supporting documents filed as part of the Board’s record in support of 35 Ill. Adm. Code Part 840, (site specific rule for the closure of Hutsonville Ash Pond D), the Agency has found the following information. In both instances, CCR surface impoundments, which were closed in place contain CCR, of which a portion of that CCR is constantly in contact with groundwater. In the instance of the former CCR surface impoundment at Havana, the Part 620 groundwater quality standards were achieved by installing a cover system and allowing monitored natural attenuation. The Agency acknowledges that such a scenario may only work under certain site-specific conditions. With regard to Hutsonville Pond D, closure with a cover system like the one described in Section 845.750(c)(1)(B) and corrective action consisting of a groundwater collection trench were required. The Board found in this instance that the closure and post-closure care required by Part 840 are protective of human health and the environment.

**Questions for David Hagen:**

23. On page 31, you state that it is inappropriate to require corrective measures and post closure care to be completed within the proposed 30-year period because the timeframes to remedy groundwater may take a longer period of time. Please comment on whether the proposed 30-years postclosure care period should be required as a minimum time period rather than a set period of time to complete postclosure care.

**Illinois EPA's Response:** Post-closure care is already a minimum of 30 years. Section 845.780(c)(2) specifies that at the end of the 30-year post-closure care period, that an owner or operator of a CCR surface impoundment must continue post-closure care until groundwater monitoring data shows that constituent concentrations are below the groundwater protection standards of Section 845.600. Section 845.680(c)(1) states that corrective action is complete when compliance with the groundwater protection standards of Section 845.600 has been demonstrated at all points within the plume that lie down gradient of the waste boundary. Section 845.680(c)(2) specifies that the constituent concentrations below the groundwater protection standards must be maintained for three consecutive years. Therefore, neither corrective action nor post-closure care end at 30 years unless compliance with the groundwater protection standards has been demonstrated for three consecutive years prior to that time.

**Questions for Rudolf Bonaparte:**

28. On page 4, you recommend that the rules allow the use alternative monitoring frequency "when a technical demonstration (certified by a qualified professional engineer and approved by IEPA) shows that the alternative frequency satisfies applicable performance criteria (to also be added to Part 845)." Please suggest potential performance standards that could be considered for allowing alternative monitoring frequency.

**Illinois EPA's Response:** Part 840 contains several criteria that should be included in any evaluation where a reduction in groundwater monitoring frequency is being proposed.

- 1. The effectiveness of groundwater monitoring will not be compromised by the reduced frequency. Where a selected statistical method requires a larger data set or a large variability in season concentrations of constituents exists, a longer span of quarterly monitoring may be necessary than at other locations.**
- 2. Sufficient data has been collected to characterize groundwater. The sufficiency of data to characterize groundwater would be site specific and would require some analysis by an owner or operator to demonstrate to the Agency that groundwater has been characterized.**
- 3. The groundwater monitoring schedule currently in place must not show any statistically significant increasing trends. If increasing trends are present in the groundwater data, it does not make sense to decrease the frequency of monitoring, because it could delay initiation of corrective measures.**

4. **There should be a trigger in circumstances where a monitoring frequency has been reduced but an increasing trend develops:**
  - a. **To move back to the higher frequency to allow more frequent tracking of the trend, and**
  - b. **To initiate further analysis and investigation if the increasing trend persists.**
5. **Because Part 845 must be as protective and comprehensive as Part 257, and Part 845 requires monitoring of both the Part 257 Appendix III and Appendix IV constituents, a reduced frequency must not be less than semi-annually.**
6. **Any reduction in groundwater monitoring frequency must be subject to Agency approval.**

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Petitioner,

BY: /s/ Clayton J. Ankney  
Clayton J. Ankney

Dated: September 24, 2020

Clayton J. Ankney  
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**CERTIFICATE OF SERVICE**

I, the undersigned, on affirmation state the following:

That I have served the attached **NOTICE OF FILING** and **ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S RESPONSES TO THE BOARD'S QUESTIONS FOR WITNESSES TESTIFYING AT THE SECOND HEARING** by e-mail upon Don Brown at the e-mail address of [don.brown@illinois.gov](mailto:don.brown@illinois.gov), upon Renee Snow at the e-mail address of [Renee.Snow@Illinois.Gov](mailto:Renee.Snow@Illinois.Gov), upon Matt Dunn at the e-mail address of [mdunn@atg.state.il.us](mailto:mdunn@atg.state.il.us), upon Stephen Sylvester at the e-mail address of [ssylvester@atg.state.il.us](mailto:ssylvester@atg.state.il.us), upon Andrew Armstrong at the e-mail address of [aarmstrong@atg.state.il.us](mailto:aarmstrong@atg.state.il.us), upon Kathryn A. Pamenter at the e-mail address of [KPamenter@atg.state.il.us](mailto:KPamenter@atg.state.il.us), upon Virginia I. Yang at the e-mail address of [virginia.yang@illinois.gov](mailto:virginia.yang@illinois.gov), upon Nick San Diego at the e-mail address of [nick.sandiego@illinois.gov](mailto:nick.sandiego@illinois.gov), upon Robert G. Mool at the e-mail address of [bob.mool@illinois.gov](mailto:bob.mool@illinois.gov), upon Vanessa Horton at the e-mail address of [Vanessa.Horton@Illinois.gov](mailto:Vanessa.Horton@Illinois.gov), upon Paul Mauer at the e-mail address of [Paul.Mauer@illinois.gov](mailto:Paul.Mauer@illinois.gov), upon Deborah Williams at the e-mail address of [Deborah.Williams@cwlp.com](mailto:Deborah.Williams@cwlp.com), upon Kim Knowles at the e-mail address of [Kknowles@prairierivers.org](mailto:Kknowles@prairierivers.org), upon Andrew Rehn at the e-mail address of [Arehn@prairierivers.org](mailto:Arehn@prairierivers.org), upon Faith Bugel at the e-mail address of [fbugel@gmail.com](mailto:fbugel@gmail.com), upon Jeffrey Hammons at the e-mail address of [Jhammons@elpc.org](mailto:Jhammons@elpc.org), upon Keith Harley at the e-mail address of [kharley@kentlaw.edu](mailto:kharley@kentlaw.edu), upon Daryl Grable at the e-mail address of [dgrable@clclaw.org](mailto:dgrable@clclaw.org), upon Michael Smallwood at the e-mail address of [Msmallwood@ameren.com](mailto:Msmallwood@ameren.com), upon Mark A. Bilut at the e-mail address of [Mbilut@mwe.com](mailto:Mbilut@mwe.com), upon Abel Russ at the e-mail address of [aruss@environmentalintegrity.org](mailto:aruss@environmentalintegrity.org), upon Susan M. Franzetti at the e-mail address of [Sf@nijmanfranzetti.com](mailto:Sf@nijmanfranzetti.com), upon Kristen Laughridge Gale at the e-mail address of [kg@nijmanfranzetti.com](mailto:kg@nijmanfranzetti.com), upon Vincent R. Angermeier at the e-mail address of [va@nijmanfranzetti.com](mailto:va@nijmanfranzetti.com), upon Alec M. Davis at the e-mail address of [adavis@ierg.org](mailto:adavis@ierg.org), upon Jennifer M. Martin at the e-mail address of [Jmartin@heplerbroom.com](mailto:Jmartin@heplerbroom.com), upon Kelly Thompson at the e-mail address of [kthompson@ierg.org](mailto:kthompson@ierg.org), upon Walter Stone at the e-mail address of [Water.stone@nrgenergy.com](mailto:Water.stone@nrgenergy.com), upon Cynthia Skrukrud at the e-mail address of [Cynthia.Skrukrud@sierraclub.org](mailto:Cynthia.Skrukrud@sierraclub.org), upon Jack Darin at the e-mail address of [Jack.Darin@sierraclub.org](mailto:Jack.Darin@sierraclub.org), upon Christine Nannicelli at the e-mail address of [christine.nannicelli@sierraclub.org](mailto:christine.nannicelli@sierraclub.org), upon Stephen J. Bonebrake at the e-mail address of [bonebrake@schiffhardin.com](mailto:bonebrake@schiffhardin.com), upon Joshua R. More at the e-mail address of [jmore@schiffhardin.com](mailto:jmore@schiffhardin.com), upon Ryan C. Granholm at the e-mail address of [rgranholm@schiffhardin.com](mailto:rgranholm@schiffhardin.com), upon N. LaDonna Driver at the e-mail address of [LaDonna.Driver@heplerbroom.com](mailto:LaDonna.Driver@heplerbroom.com), upon Alisha Anker at the e-mail address of [aanker@ppi.coop](mailto:aanker@ppi.coop), upon Chris Newman at the e-mail address of [newman.christopherm@epa.gov](mailto:newman.christopherm@epa.gov), upon Claire A. Manning at the e-mail address of [cmanning@bhslaw.com](mailto:cmanning@bhslaw.com), upon Anthony D. Schuering at the e-mail address of [aschuering@bhslaw.com](mailto:aschuering@bhslaw.com), upon Jennifer Cassel at the e-mail address of [jcassel@earthjustice.org](mailto:jcassel@earthjustice.org), upon Melissa Brown at the e-mail address of [Melissa.Brown@heplerbroom.com](mailto:Melissa.Brown@heplerbroom.com), upon Thomas Cmar at the e-mail address of [tcmar@earthjustice.org](mailto:tcmar@earthjustice.org), and upon Kiana Courtney at the e-mail address of [KCourtney@elpc.org](mailto:KCourtney@elpc.org).

That my e-mail address is [clayton.ankney@illinois.gov](mailto:clayton.ankney@illinois.gov)

That the e-mail transmission took place before 4:30 p.m. on the date of September 24, 2020.

/s/ Clayton J. Ankney  
September 24, 2020