

ILLINOIS POLLUTION CONTROL BOARD  
April 16, 2020

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

Proposed Rule. First Notice.

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

On March 30, 2020, the Illinois Environmental Protection Agency (Agency) filed a rulemaking, proposing new rules at 35 Ill. Adm. Code 845 concerning coal combustion residual (CCR) surface impoundments at power generating facilities in the State. A Statement of Reasons (SR) was included with the Agency’s proposal. For the reasons stated below, the Board accepts the Agency’s rulemaking proposal for hearing. Given the statutory deadline to adopt rules by the end of March 2021, without commenting on the substantive merits of the Agency’s proposal, the Board directs the Clerk to submit the proposal for first-notice publication in the *Illinois Register*. The proposed rules appear in an addendum to this order.

**BRIEF SUMMARY OF THE AGENCY’S PROPOSAL**

On July 30, 2019, the Governor signed into law Public Act 101-171, which amended the Illinois Environmental Protection Act (Act) by, among other things, adding a new Section 22.59 (415 ILCS 5/22.59 ). Public Act 101-171 includes a rulemaking mandate in Section 22.59(g) which directs the Board to adopt rules “establishing construction permit requirements, operating permit requirements, design standards, reporting, financial assurance, and closure and post-closure care requirements for CCR surface impoundments.” 415 ILCS 5/22.59(g). Public Act 101-171 also required the Agency to file a proposed rule with the Board by March 30, 2020, and the Board to adopt rules within one year after receipt. *Id.* The Agency timely filed this proposal with the Board.

The Agency identifies 23 power plants in the State that used coal as a fuel source and may be impacted by this rule. SR at 1. At these facilities, the Agency identifies 73 CCR surface impoundments. *Id.* at 3.

Under Section 22.59(g), the Agency must propose and the Board must adopt rules that (1) are as protective and comprehensive as the federal CCR rules in Subpart D of 40 C.F.R. Part 257, (2) specify the permitting requirements and procedures, (3) specify meaningful public participation procedures, (4) prescribe the types and amounts of financial assurance, (5) specify procedures to identify areas of environmental justice concern in relation to CCR surface impoundments, (6) specify a method to prioritize CCR surface impoundments required to close under the federal CCR rules, (7) define when complete removal is achieved, and (8) describe the

process and standards for identifying alternative sources of groundwater pollution. 415 ILCS 5/22.59(g). The Agency states that proposing rules consistent with these requirements is the primary purpose of its proposal. SR. at 10.

The Agency describes six other purposes of its proposal. The second purpose is to protect Illinois groundwater. SR. at 10. The third purpose is to “adopt the federal CCR rules in Illinois and obtain federal approval of Illinois’ CCR surface impoundment program.” *Id.* Fourth, by proposing a closure prioritization scheme based on risk to health and the environment and the impoundment’s proximity to areas of environmental justice concern, the proposed rules attempt to ensure that CCR surface impoundments are closed in an environmentally protective way. *Id.* at 11.

The Agency states that the fifth purpose of its proposal is to ensure meaningful public participation and, to that end, the proposed rules contemplate public participation before the owner or operator applies for a permit. SR. at 11. At least two public meetings must be held prior to the submission of any construction permit applications to the Agency. “Before an owner or operator submits a construction permit to build, modify, retrofit or close a CCR surface impoundment or submits a construction permit to perform corrective action of a release from the CCR surface impoundment, the owner or operator must share with the public its intended plan, including any alternative analyses required by the rule.” *Id.* The proposed rules also provide for circulating the draft permit with the public and holding a public meeting whenever a significant degree of public interest exists. *Id.* at 12.

The sixth purpose of the proposal, as the Agency describes it, is to “provide clear permitting requirements and procedures.” SR at 12. “Consistent with the other permitting programs administered by the [Agency], this regulatory proposal envisions the same two types of permits: construction and operating permits.” *Id.*

The last purpose of the proposal, according to the Agency, is to ensure that owners and operators of CCR surface impoundments “provide adequate financial assurance for the completion of closure, post-closure care, and remediation of releases also referred to as corrective action.” SR. at 12-13. The proposed rules do not detail how each CCR surface impoundment must be closed or how each site with groundwater contamination must be remediated. *Id.* at 13. “Instead, the rules provide a process. \*\*\* The preventative response, corrective action plan or closure plan is site-specific.” *Id.*

### **FIRST-NOTICE PUBLICATION AND COMMENT**

The Board directs its Clerk to provide first-notice publication of the proposal in the *Illinois Register* under the Illinois Administrative Procedure Act (IAPA) (5 ILCS 100/5-40(b) (2018)). Publication of the proposal in the *Illinois Register* begins a period of at least 45 days during which any person may file a public comment with the Board. Comments should include this rulemaking’s docket number R20-19. Comments must be filed electronically through the Clerk’s Office On-Line (COOL) on the Board’s website ([www.ipcb.state.il.us](http://www.ipcb.state.il.us)). Questions about filing comments can be directed to the Clerk’s Office at 312-814-3461.

**ORDER**

1. The Board accepts the Agency's proposal for hearing.
2. Without commenting on the substantive merits of the Agency's proposal, the Board directs its Clerk to provide first-notice publication of the proposal in the *Illinois Register* under the IAPA. The proposed rules appear as an addendum to this order.
3. The Board directs the assigned hearing officer to proceed to hearing under the rulemaking provisions of the Act and the Board's procedural rules (415 ILCS 5/27, 28 (2018); 35 Ill. Adm. Code 102).

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on April 16, 2020 by a vote of 4-0.

  

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Don A. Brown, Clerk  
Illinois Pollution Control Board