

Coal Ash Rulemaking – First Hearing Guidance Document Updated 7/17/21

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Background: Coal Ash in Illinois

Coal Ash - A Toxic Threat to Water Quality and Human Health

- Coal ash is a waste byproduct of burning coal, and contains toxic metals that cause serious health problems, including cancer.
- Coal ash is stored on-site at power plants in coal ash impoundments, which are often referred to as “coal ash ponds” because they resemble man-made ponds filled with coal ash mixed with water. Coal ash is also stored in landfills or dumped as “fill” at power plant sites and elsewhere around the state.
- Illinois EPA identified 73 coal ash ponds at dozens of power plant sites across the state, nearly all of which are next to rivers and lakes. Groundwater at 22 of 24 coal ash sites tested in Illinois, including impoundments and landfills, had unsafe concentrations of toxic coal ash pollutants.
- Safe closure of coal ash impoundments is critically important to protecting human health, drinking water, and the environment.
- Where coal ash has already contaminated the land and water, clean-up of the contamination is a major issue facing Illinois. We need to stop further contamination AND cleanup the pollution already in our water.

What's at Stake?

- The Coal Ash Pollution Prevention Act, passed last year, set up a rulemaking process for the development of regulations for coal ash sites, but it doesn't guarantee that these rules will be strong.
- Throughout the bill drafting and rulemaking process, we have always called for:
 - Robust and meaningful public participation.
 - Thorough vetting of impoundment closure options.
 - Rules that ensure coal ash cannot be exposed to water.
 - Prioritization of environmental justice communities & high risk impoundments.
 - Strong safeguards against coal ash dust pollution to protect communities and workers.
- You can help tell the Illinois Pollution Control Board about the risks of coal ash near you, and what protections would be best to make sure your communities and the environment are safe.

How to Make Comment in the Rulemaking?

- We're approaching the first hearing in the rulemaking (begins August 11th), and there will be opportunity for you, a member of the public, to comment. This document will guide you through how you can participate in the hearing to help ensure protective coal ash rules.

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What is the Coal Ash Rulemaking?

The Coal Ash Rulemaking is the process by which the Illinois Pollution Control Board decides on the rules that Illinois EPA will follow for regulating coal ash. By law, the rules must follow guidelines set by the Coal Ash Pollution Prevention Act, but those guidelines alone will not make for a strong rule.

The Illinois Pollution Control Board is the rulemaking body. They are who we're trying to convince. The Illinois EPA has proposed rules to the Board, but this is a starting point that will shape the conversation. The rule can change from here, and it is up to the Illinois Pollution Control Board to make the final decision. The Illinois EPA, industry, environmental groups, and the public are all participants in the rulemaking.

At the first hearing, we will hear from experts at Illinois EPA as they defend their proposed rule. They will be subject to questions from industry, environmental groups, and others. Additionally, we will hear from the public during public comment. The public will not be subject to questions.

Timeline

- Late Summer 2019 – The Coal Ash Pollution Prevention Act becomes law.
- Fall 2019 - Illinois EPA holds listening sessions across the state to develop their draft proposed rules.
- Winter 2019 - Illinois EPA releases first draft of proposed rules for comment.
- January 2020 - Illinois EPA holds stakeholder meeting in Springfield on draft proposed rules.
- March 2020 - Illinois EPA sends final proposed rules to Illinois Pollution Control Board, rulemaking begins.
- August 2020 – Illinois Pollution Control Board holds first hearing in coal ash rulemaking.
- September 2020 – Illinois Pollution Control Board holds second hearing in coal ash rulemaking.
- ??? – Other hearings are possible, but unlikely, before the deadline.
- October 30th 2020 – IPCB will close the proceeding to deliberate internally on the rule.
- March 30th 2021 – Illinois Pollution Control Board must, by law, finalize the coal ash rules.

Illinois Pollution Control Board (IPCB)
Makes Final Decisions on Rule (the 'judge')

Participants in Rulemaking

Illinois EPA

Illinois
Attorneys
General &
Others

Industry

Environmental
Groups & the
Public

Talking Points for Public Comment

The following talking points present the six big picture concerns with the existing rule, with multiple sub-points in each talking point. Feel free to pick and choose from talking points to find something that fits your message. Additionally, if you would like more specifics, follow the (details) links at the end of each talking point. Lastly, a [Glossary of Terms](#) and more [Resources](#) can be found after the talking points.

Clean Up Done Right

Background: The final rules for cleanup and closure must provide permanent protection from coal ash pollution.

Talking Points:

1. **No Wet Ash.** The rules must ensure that coal ash, wherever it is stored, does not get wet either now or in the future. [\(Click for more details\)](#)
2. **Closure Standards.** The requirements for closing coal ash impoundments in the proposed rule are exactly the same as the Federal coal ash rule. This is a missed opportunity to be more clear. Illinois EPA's rule should explicitly state that coal ash cannot be closed-in-place if ash is or will remain wet. [\(Details\)](#)
3. **Proper Corrective Action.** The requirements for cleaning up groundwater pollution must be clear that clean up will not be treated as complete until ash is no longer exposed to water. [\(Details\)](#)
4. **No Coal Ash Contaminated Background Wells.** Background wells are intended to measure clean groundwater. Industry should not be allowed to install background wells in areas impacted by coal ash. [\(Details\)](#)

Example Problem Site: Lincoln Stone Quarry: Coal ash is dumped in an old quarry near the Joliet power plants. The coal ash in the quarry sits in groundwater below the water table, and the company proposes to continue pumping for decades or longer to prevent pollution from leaving the site. [Learn More.](#)

Coal Ash Dumps and Fill

Background: In addition to coal ash impoundments, many power plants have very old coal ash dumps and coal ash scattered around the plant site as “fill” for construction. The draft rule covers only coal ash impoundments, but excludes coal ash fill and old coal ash dumps.

Talking Point:

1. **Regulate Coal Ash Dumps and Fill.** The draft rule should include coal ash landfill and dumps in addition to impoundments. By leaving them out of the rulemaking, we are only solving part of the problem. [\(Details\)](#)

Example Problem Site: Waukegan, Joliet 29, Will County, & Powerton Power Plants: Following a lawsuit against NRG, the Illinois Pollution Control Board has ruled that coal ash in ‘historic ash sites’ – old coal

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ash fill dumped across the property – is polluting groundwater at these NRG owned power plants. These dumps would not be covered by Illinois EPA’s proposed version of the rule. [Learn More.](#)

Increased Worker and Community Protection

Background: Removing coal ash responsibly requires worker protections, dust restrictions, and rules about where the ash can go. The draft rule includes some strong onsite worker protections, but there are major gaps.

Talking Points:

1. **Dust Protection.** Increased monitoring of coal ash dust is necessary to ensure that workers and communities are protected. [\(Details\)](#)
2. **Worker Protection.** Safety and health plans must both contain all the necessary safety and health measures to limit workers’ exposure to ash. [\(Details\)](#)
3. **Safe Transportation.** All transportation alternatives for coal ash removal must be considered, including barge, rail, and very low polluting trucks (i.e., electric). [\(Details\)](#)

Environmental Justice

Background: The rules are required to prioritize Environmental Justice communities in closing coal ash impoundments.

Talking Points:

1. **Community Classification & Cumulative Impacts.** The proposed rules use the Illinois EPA’s EJ Start tool to identify environmental justice communities, but that tool leaves out some of the most impacted communities. The final rule should use the information from US EPA’s Environmental Justice Screen and the Clean Power Plan to identify environmental justice communities. Using this information, the rule can begin to account for cumulative impacts - the combined, incremental effects of multiple pollution sources - on sensitive or vulnerable populations.
2. **Language Access.** The final rules should include requirements for both Illinois EPA and industry to meaningfully engage non-English speaking populations, including requirements that, if requested, interpreters be present at the meetings, hearings, translation of permit materials. As proposed, there is only one isolated requirement for translating anything in the rule. [\(Details\)](#)

Meaningful Public and Agency Oversight

Background: The fox cannot guard the henhouse. The Agency, members of the community, and the public must have access to and an opportunity to review all supporting documents to ensure that communities have a voice and are protected and that owners and operators are complying with required safeguards.

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Talking Points:

1. *Document Accessibility*. The proposed rules need to make all key documents available for public review and comment, in an easily-accessible place, and with sufficient time for review. ([Details](#))
2. *Public Input First*. Public input should be part of the agency technical staff's review and approval of all plans, programs, and assessments. ([Details](#))

Example Problem Site: *Wood River*. The Wood River power plant was sold to a developer – Commercial Liability Partners – that intends to flip the property & cap its coal ash ponds, then sell it to the highest bidder. Community groups have been unable to get the company to engage them at all. This is why we need as much transparency and avenues for public input as possible in the final rules. [Learn more.](#)

No Rollbacks

Background: The Coal Ash Pollution Prevention Act does not allow the Illinois Rule to be weaker than the federal rule. The current federal administration is proposing to roll back numerous protections contained in the federal CCR rule. These proposals are political gamesmanship, not supported by the evidence, and may be struck down by courts.

Talking Point:

No Rollbacks. The Illinois Pollution Control Board must not include the unapproved federal rollbacks to weaken coal ash protections in the final rules. These rollbacks include allowing “temporary” piles with no assurance that they’re temporary, dumping more coal ash into unlined ash ponds before they close, and unlimited time for excavating ash when a pond closes by removal. ([Details](#))

Support for Good Parts of Proposed Rule

Background: It is important for the Illinois Pollution Control Board to know what we like in Illinois EPA's proposed rules. There are places where Illinois EPA included key protections that we want to support.

1. *Groundwater Monitoring.* The Agency proposes to require more frequent groundwater monitoring than the federal rule does, and to do away with the federal rule's phased monitoring program that delays cleanup of contaminated sites, in favor of monitoring for all relevant pollutants during every monitoring period. We applaud the agency for taking those steps.
2. *Worker Protections.* By requiring a “Safety and Health Plan,” the Agency acknowledges the need for worker protections above and beyond the federal rule. We are happy to see that; however, the Plan must be improved.
3. *No Time-Limit on Monitoring.* When closing an ash pond in place, the Agency's proposed rules requires industry's post-closure care of the site to continue until the groundwater quality meets the groundwater protection standards, whereas the federal rules cut-off that care at 30 years. By tying the end of care to results instead of a fixed year, the proposal helps to ensure clean up.

Additional Site-Specific Coal Ash Examples

Background: We've been learning about coal ash sites across Illinois for a while now. Here are some additional examples to help provide context to the talking points. This list is not inclusive by any means.

- **Vermilion Power Station:** The coal ash ponds along Illinois's only National Scenic River were located irresponsibly close to the river. The natural erosion of the riverbank threatens to destabilize the ash ponds and risks a spill that would be catastrophic to the river. [Learn more.](#)
- **Groundwater pollution site-by-site:** Check out the [Cap and Run](#) report for site specific groundwater impacts showing which pollutants are found at each site.
- **Dallman Power Station in Springfield:** Coal ash is stored in multiple impoundments next to Spaulding Dam, which creates Lake Springfield. These ponds are unlined, located in the floodplain, and are leaching boron and arsenic into the groundwater. [Learn more.](#)

Glossary of Terms

- **Agency:** The Illinois Environmental Protection Agency or IEPA.
- **Alternatives Analysis:** A consideration of different alternatives for a particular activity, usually *corrective action* or *closure*. The draft rule specifies what must be considered in alternative analysis for each of these activities.
- **Background Well:** A background well is part of a system for monitoring groundwater quality. The background well is intended to measure groundwater that has not been impacted by pollution from the source that you are monitoring (in this case, coal ash). In contrast, a downgradient well is intended to measure the pollution.
- **Clean Power Plan:** The [Clean Power Plan](#), announced by President Obama in August 2015 and later ended by Trump, set the first-ever limits on carbon pollution from U.S. power plants. The plan built in environmental justice considerations from the ground up to ensure that the interests of those Americans most vulnerable to power plant pollution are safeguarded. It used a tool called EJ Screen.
- **Coal Ash Pollution Prevention Act:** The Coal Ash Pollution Prevention Act is Illinois legislation passed in 2019 to address the many coal ash impoundments in the State. It provides a regulatory framework to ensure polluters, not taxpayers, pay for needed closure and cleanup, guarantees public participation and transparency around cleanups for affected communities, and provides Illinois EPA the funds it needs to properly oversee closure and cleanup. It also requires Illinois to put in place standards for coal ash impoundments that are at least as protective as federal coal ash rule requirements.
- **Closure:** When a coal ash impoundment is no longer receiving coal ash, or if it violates particular rules, it must undergo closure. Typically, an impoundment is closed by either cap in place (cover it and leave it) or removal (dig it up and put it elsewhere). Closure requires a *construction permit*, and is therefore subject to public process.
- **Closure Plan:** The written document explaining the alternatives analysis and proposed closure method. The Coal Ash Pollution Prevention Act requires that removal be fully considered as an alternative, but does not force them to choose that alternative. (See *Performance Standards*).

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- **Closure Prioritization:** The draft rule proposes seven categories of priority for closure, based on factors such as impact to water supply, threat to human health, environmental justice concerns, and violation of groundwater standards. These closures follow an application schedule that will help Illinois EPA prioritize their efforts.
- **Construction Permit:** A construction permit is required for modification of a coal ash impoundment, including closure, corrective action, other modifications to impoundments (i.e. higher berms), and construction of new impoundments (unlikely to happen). Construction permits are subject to public participation.
- **Corrective Action:** Cleaning up an already existing mess or a new mess made at a coal ash impoundment. Most sites will already require corrective action because they are polluting groundwater. Sometimes, that corrective action will be closure. Other times, it may be something like groundwater pumping. Corrective action requires a *construction permit*, and therefore is subject to public process.
- **EJ Screen Tool:** is an environmental justice mapping and screening tool that provides EPA with a nationally consistent dataset and approach for combining environmental and demographic indicators.
- **Federal CCR Rule:** The Coal Ash Pollution Prevention Act requires that Illinois's rules be as protective as or more protective than the federal rule.
- **Groundwater Monitoring:** A collection of groundwater sampling locations to measure pollution around coal ash impoundment. The rule requires these to be monitored frequently for multiple pollutants which can be found in coal ash.
- **Location Restrictions:** Location restrictions prevent new impoundments from being constructed in certain areas, and they force existing impoundments in those areas to begin closure. The location restrictions included in the draft rule are: placement above the uppermost aquifer, wetlands, fault areas, seismic impact zones, and unstable areas.
- **Operating Permit:** An operating permit is required for anyone operating a coal ash impoundment, even if it is now inactive, from when it first receives coal ash till the end of the closure and post-closure process. Operating permits are subject to public participation.
- **Performance Standards:** The bar that must be met for approval of plan. Performance standards are used for closure by removal, closure with a cap, and groundwater monitoring program. If the proposed activity meets all performance standards, Illinois EPA will approve it. For example, one of the performance standards for cap in place is the thickness of the cover.

Resources for Additional Details

1. [Rulemaking Comments](#) filed by Earthjustice, Environmental Law & Policy Center, Prairie Rivers Network, and the Sierra Club.
2. [Rulemaking Comments](#) filed by the Little Village Environmental Justice Organization.
3. [Cap and Run](#). A report about the impacts of coal ash at nearly all sites across the state.

How to Participate in the Coal Ash Rulemaking First Hearing – August 11, 12, and 13

The Illinois Pollution Control Board is holding the first hearing in the coal ash rulemaking over three days at 9am on August 11th, 12th, and 13th. At this hearing, the Illinois EPA will testify in defense of their proposed coal ash rules, and will be subject to questioning from industry, environmental groups, and other stakeholders.

The **public participation** part of the first coal ash rulemaking hearing will occur on August 12th from 5pm-7pm, and August 13th from 11am-12pm. Members of the public making comment will not be subject to questioning.

The hearing will physically take place in Springfield, but remote participation will be fully supported via phone or a free-to-use software called WebEx. See the following page for instructions on [How to Remotely Connect to the Hearing \(page 3\)](#). Due to Covid-19, **we urge you to participate remotely** via WebEx or phone. If you choose to attend in-person, the Board is requiring the following measures: advanced sign-up and a mask at all times. As of July 15th, there is a 50 person limit in the official hearing room, and that number decreases if things in Illinois get worse. There is an overflow room, but you may have to line up in the hallway or even outside to ensure safety. Official details are [available here](#).

Please sign up using the button below if you want to make comment or just attend (either in-person or remotely). The following page has information on how to attend the hearing remotely.

If you require an interpreter, email your request to the Illinois Pollution Control Board hearing officer Vanessa Horton at Vanessa.Horton@illinois.gov by July 29th, 2020.

Sign Up to Make Public Comment or Just Watch & Listen

We are collecting a list of folks who are planning to attend the hearing, either remotely or in-person. Please use this form to sign up to offer public comment or just watch and listen to part of the hearing:

[Click here to SIGN UP to ATTEND and/or MAKE COMMENT!](#)

or go to: <https://forms.gle/hGK1Bn2cLVJ1VKme9>

We want as many people to remotely connect and listen as possible. We're recommending folks prioritize joining during public comment (August 12th 5-7pm and August 13th 11am-12pm) or at the start of the first day of the hearing for Illinois EPA's opening comments (August 11th 9am).

You Should Make Public Comment If...

You should make public comment if you supported the strong protections in the Coal Ash Pollution Prevention Act, if you live near a coal-fired power plant with coal ash (most), if you want to support communities near coal ash ponds, if you believe in a clean environment and industry accountability, or if you want to protect our shared groundwater resources.

Contact: Andrew Rehn w/ Prairie Rivers Network (arehn@prairierivers.org)

How to Remotely Connect to the Hearing

You can remotely connect to the hearing in two ways – video or audio only.

If you want to **participate with video**, it is best to download and install the Webex application (on mobile or your desktop) before the call. See [How to Install Cisco Webex Meeting On Various Devices \(page 4\)](#) on the following page. There is also a ‘web’ version that would allow you to access the video stream without downloading anything. You can [click on this link](#) to test Webex in a private conference at any time.

If you would like to **participate with only sound**, you can call into the meeting with your phone. You will need to call in and then enter the passcode listed below. I believe you will be automatically muted, but make sure to mute your phone by either pressing *6 or using your phone’s built in mute function. If you need to speak on the call, you may need to press *6 to unmute. The telephone number is NOT toll free which generally means you pay any long distance fees that are associated with the call.

Links and phone numbers for connecting are available in the next section.

Connection Information for First Hearing

The first hearing is on August 11th, 12th and 13th. Public comment will take place on **Wednesday, August 12th from 5-7pm** and **Thursday, August 13th from 11am-12pm**. The hearing begins at 10am each day, and you can join for more than just the public participation. You can join with the following link:

<https://illinois.webex.com/illinois/j.php?MTID=m2ddaa544419ceb1016b11e1f9ab65f20>

Meeting number (access code): 288 340 754

Meeting password: Me9rTrvwT66

Or with this phone number and passcode:

1-312-535-8110 or 1-415-655-0002

Passcode: 288 340 754

Having issues? Additional connection information for the first hearing [available here](#).

Connection Information for Second Hearing

The second hearing on **September 29th, 30th and October 1st**. Times for public comment are not yet set. There will be another pre-conference hearing before the second hearing to set those details, and we’ll share an updated guidance document when the time comes.

Written Public Comment

You can also submit written comments at any time via email, and they are weighed equally to spoken comments. For email, write to Clerk of the Board Don Brown by email (don.brown@illinois.gov). If you have any issues or questions regarding submission of comments, Don has said you can call him at 312-814-3461, or you can ask Andrew Rehn with Prairie Rivers Network for help (arehn@prairierivers.org).

Contact: Andrew Rehn w/ Prairie Rivers Network (arehn@prairierivers.org)

How to Install Cisco WebEx Meetings On Various Devices

If you want to participate with video, you need to use WebEx. Alternatively, you can participate by phone simply by calling in, but you will only get audio.

Desktop App

[\(Reference\)](#)

The Webex Meetings desktop app automatically downloads after starting or joining a Webex meeting from a Webex site or email invitation, or by using this [test link](#). Click the installation file to install it. If you want to install the app without joining a meeting first, you can also download it manually. Go [here](#) to get the download file.

iOS

[\(Reference\)](#)

You can download the app by:

- Searching for *Cisco Webex Meetings* in the **App Store**
- Joining a meeting for the first time in your device's web browser and accepting the offer to install the app on your device
- Or, scanning this code:



Android

[\(Reference\)](#)

You can download the app by:

- Searching for Cisco Webex Meetings in the Google Play Store or Amazon Appstore for Android
- Joining a meeting for the first time in your device's web browser and accepting the offer to install the app on your device