**Section 845.310 Wetlands**

a) Existing and new CCR surface impoundments, and all lateral expansions of CCR surface impoundments, must not be located in wetlands unless the owner or operator demonstrates the following:

1) When applicable under section 404 of the Clean Water Act, Interagency Wetlands Policy Act of 1989 [20 ILCS 830] and Rivers, Lakes, and Streams Act [615 ILCS 5], or other applicable State wetlands laws, a clear and objective rebuttal of the presumption that an alternative to the CCR surface impoundment is reasonably available that does not involve wetlands.

2) The construction and operation of the CCR surface impoundment will not cause or contribute to any of the following:

A) A violation of any applicable State or federal water quality standard;

B) A violation of any applicable toxic effluent standard or prohibition under section 307 of the Clean Water Act;

C) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Endangered Species Act of 1973 (16 USC 1531 et seq.) and the Illinois Endangered Species Protection Act [520 ILCS 10]; and

D) A violation of any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972 (16 USC 1431 and 33 USC 1401) for the protection of a marine sanctuary.

3) The CCR surface impoundment will not cause or contribute to significant degradation of wetlands by addressing all the following factors:

A) Erosion, stability, and migration potential of native wetland soils, muds and deposits used to support the CCR surface impoundment;

B) Erosion, stability, and migration potential of dredged and fill materials used to support the CCR surface impoundment;

C) The volume and chemical nature of the CCR;

D) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of CCR;

E) The potential effects of catastrophic release of CCR to the wetland and the resulting impacts on the environment; and

F) Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected.

4) To the extent required under section 404 of the Clean Water Act or applicable State wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by first avoiding impacts to wetlands to the maximum extent reasonable as required by subsections (a)(1) through (3), then minimizing unavoidable impacts to the maximum extent reasonable, and, finally, offsetting remaining unavoidable wetland impacts through all appropriate and reasonable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands); and

5) Sufficient information is available to make a reasoned determination with respect to the demonstrations in subsections (a)(1) through (4).

b) The owner or operator of the CCR surface impoundment must obtain a certification from a qualified professional engineer stating that the demonstration meets the requirements of subsection (a).

c) The owner or operator of an existing CCR surface impoundment must complete the demonstration required by subsection (a) and submit the completed demonstration, along with the qualified professional engineer's certification, to the Agency with the facility's initial operating permit application.

d) The owner or operator of a new CCR surface impoundment or a lateral expansion of a CCR surface impoundment must submit plans and specifications in a construction permit application that demonstrate the CCR surface impoundment will be constructed under subsection (a). Upon completion of construction, the owner or operator must obtain a certification from a qualified professional engineer that the CCR surface impoundment or lateral expansion was constructed in accordance with the requirements in subsection (a) and submit the certification to the Agency in the facility's initial operating permit application.