

# COAL COMBUSTION RESIDUALS (CCR) RULE

## ISSUE SUMMARY:

The 2015 Coal Combustion Residuals (CCR) rule established minimum national criteria (including technical standards; groundwater monitoring; corrective action; and closure and post closure care) that certain CCR disposal units located at electric utilities must meet. It also established a definition of beneficial use of CCR to encourage environmentally appropriate beneficial use of CCR. The rule was challenged, and, in August 2018, the court issued its decision (*Utility Solid Waste Activities Group v. EPA*, 901 F.3d 414). As a consequence, all surface impoundments constructed without a composite liner system are currently required to close. Finally, the 2016 Water Infrastructure Improvements for the Nation (WIIN) Act provided States the ability to submit permit programs covering CCR disposal units to EPA for approval. The WIIN ACT also directed EPA to issue permits for disposal units located in Indian Country and in non-participating states,, and granted EPA enforcement authority. Therefore, there will be a significant workload to transition facilities from self-implementing regulations to either state or federal permits.

## UPCOMING MILESTONES:

- **Fall 2024** – EPA will finalize the CCR Federal Permitting Program. This will establish the framework for the CCR permits program.
- **Next several months** – Reviewing state programs will continue to be a priority. Over twenty states have indicated that they intend to establish a state program to operate in lieu of the federal program.
- **Next few years** – EPA to issue the first federal CCR permit.

## BACKGROUND:

Coal Combustion Residuals generally consist of fly ash, bottom ash, boiler slag, and flue gas desulfurization materials and are the residuals from burning coal to generate electricity. The residuals can be managed either wet (in surface impoundments) or dry (in landfills). In December 2008, a massive failure of a Tennessee Valley Authority (TVA) surface impoundment occurred. As a result, EPA committed to developing rules to cover CCR disposal units and to evaluate the structural stability of CCR surface impoundments. EPA signed its final rule in December 2014, and it was published in the Federal Register in April 2015. The rule established minimum national criteria, which certain disposal units (active CCR landfills and active and inactive impoundments) must meet. Due to the limits of EPA's statutory authority at the time, EPA was not able to establish a permit program and/or provide for EPA review and approval of state programs, and the final regulations were self-implementing and contained specific deadlines. A number of critical implementation deadlines have passed, and EPA is monitoring compliance by reviewing the information units are required to post on their public web site.

On May 8, 2024, EPA finalized changes to the CCR regulations for inactive surface impoundments at inactive electric utilities, referred to as "legacy CCR surface impoundments," and areas at regulated CCR facilities where CCR was disposed of or managed on land outside of regulated units at CCR facilities, referred to as "CCR management units." These new regulations are also driven by the record, which clearly demonstrates that regulating legacy CCR surface impoundments will have significant public health and environmental benefits. This is because legacy CCR surface impoundments are more likely to be unlined and unmonitored, making them more prone to leaks and structural problems than units at utilities that are currently in service.

#### KEY EXTERNAL STAKEHOLDERS:

☒ Congress      ☒ Industry      ☒ States      ☒ Tribes      ☒ Media      ☒ Other Federal Agency  
☒ NGO      ☒ Local Government      ☐ Other: \_\_\_\_\_

Some external stakeholders are concerned with implementation of the rule. The issues that are likely to be most significant in the coming months relate to the requirements that will force the closure of surface impoundments and issues related to how such closures must be conducted. Other industry, beneficial use, and environmental groups are interested in how the rule affects the beneficial use of CCR (e.g., in concrete, agricultural uses, wallboard).

The NGO community, especially the environmental justice community, is most concerned with the effect existing and new CCR units have on surrounding communities (notably groundwater contamination, but also other issues such as truck traffic and wastewater discharges at disposal units). They are also concerned about the impacts of inappropriately managed "beneficial use" of CCR. The U.S. Civil Rights Commission conducted an investigation of whether the CCR rule adequately protects environmental justice communities and issued a report in September 2016, (with which EPA substantially disagrees) concluding that it does not.

#### MOVING FORWARD:

Taking final action on the CCR Federal Permit rule and initiating implementation of that program. As of now, we believe EPA will permit about 30% of the surface impoundment universe.

Further action may need to be taken on other pending proposals (e.g. re-proposal of the beneficial use definition and CCR piles issues or take final action on certain closure related issues).

Continuing to support the development of state permit programs will be a priority. The states look to us for guidance on how to develop their CCR programs and how to properly assemble their state application.

LEAD OFFICE/REGION: OLEM

OTHER KEY OFFICES/REGIONS: OW, OECA, OGC, OCIR, REGIONS 3, 4, 5