



Update on CCR and Water Related Issues Presentation



CIBO

- ▶ Energy and Environment Committee Meeting
 - ▶ June 7-8, 2016
 - ▶ Arlington, Va.



Update of CCR Regulatory and Litigation Activities





Litigation of CCR Rule

- Case Name: USWAG et al vs EPA

- Recent Actions
 - EPA's Unopposed Motion for Voluntary Remand of Specific Regulatory Provisions (Filed April 18, 2016)

- Areas of regulations to be addressed:
 - Structural Integrity of Impoundments
 - Inactive Impoundment
 - Applicability
 - Corrective Actions
 - Alternative Closure Plans
 - Monitoring



Statutory Background

- ▶ EPA regulated the disposal of solid waste not presently classified as “hazardous” under Subtitle D of RCRA.
- ▶ **Under Subtitle D, Congress directed EPA to promulgate regulations when a facility is deemed to be a sanitary landfill, which for these purposes includes both landfills and surface impoundments.**



Statutory Background

- ▶ Regulations generated by EPA to ensure that facilities qualify as a sanitary landfill take the form of “minimum criteria.”
- ▶ If a waste unit fails to comply with the regulatory criteria established by EPA to be classified as a sanitary landfill, the unit is deemed to be an “open dump,” which is prohibited by statute
- ▶ If a unit is operating as an open dump, it must either retrofit the unit to come into compliance with the regulatory criteria or close the unit pursuant to the closure procedures promulgated by EPA

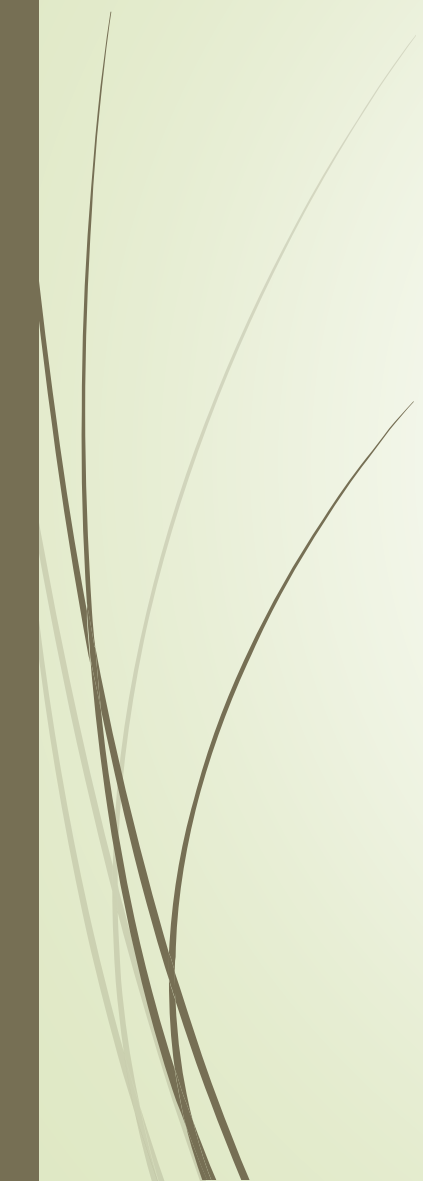


EPA Final Rule Issued April 17, 2015

- Comprehensively regulates the disposal and handling of CCR under Subtitle D.
- The Rule set out specific nationally applicable minimum criteria for the disposal of CCR in landfills and impoundments.
- Failure to comply with these criteria results in the unit being deemed as “open dumps” and, therefore, potentially subject to closure.

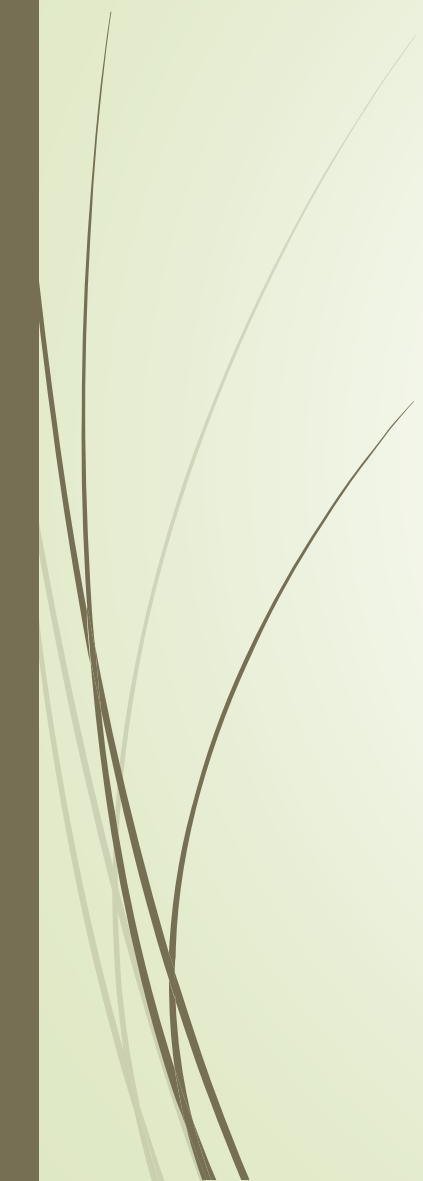



Minimum Criteria

- Location restrictions
 - Liner design criteria
 - Structural integrity requirements
 - Operating criteria
 - Groundwater monitoring and corrective actions
 - Closure and post-closure requirements
 - Recordkeeping and modification requirements
- 



EPA

- IS seeking remands for some provisions
 - IS seeking “vacatur” with some remands
 - IS not seeking “vacatur” for other remands
- 



Regulations Referenced In Request

- ▶ [§257.73](#) Structural integrity criteria for existing CCR surface impoundments.
- ▶ [§257.74](#) Structural integrity criteria for new CCR surface impoundments and any lateral expansion of a CCR surface impoundment.
- ▶ [§257.100](#) Inactive CCR surface impoundments.
- ▶ [§257.90](#) Applicability.
- ▶ [§257.96](#) Assessment of corrective measures.
- ▶ [§257.97](#) Selection of remedy.
- ▶ [§257.98](#) Implementation of the corrective action program.
- ▶ [§257.103](#) Alternative closure requirements
- ▶ [Appendix IV to Part 257](#)—Constituents for Assessment Monitoring




Remand

With

VACATUR


40 CFR Sections 257.73 and 257.74

- Seeking remand with vacatur of only the phrase **“not to exceed a height of 6 inches above the slope of the dike”** located within 40 CFR Sections 257.73(a)(4), 257.73(d)(1)(iv), 257.74(a)(4), and 257.74(d)(1)(iv).
- It is limited only to the height restrictions of the vegetation.
- **Reason: EPA did not provide reasonable notice and comment**



Section 257.100

- ▶ EPA Seeks Remand and Vacatur of this Section, except for a single sentence.
- ▶ *What is really happening is that EPA is having the exemption in 40 CFR Section 257.100 removed and will provide adequate time to come into compliance!*
- ▶ *However, EPA is also requesting that the effective of this part of the order be stayed for 120 days before VACATUR becomes effective.*
- ▶ **Reason: EPA did not provide reasonable notice and comment.**



Section 257.100

The Exception

- ▶ EPA wants the following clause contained in 40 CFR Section 257.100(a) *“Inactive CCR surface impoundments are subject to all the requirement of this subpart applicable to existing CCR surface impoundments.”*
- ▶ **Why retain: The retention is necessary to clarify that the vacatur of the balance of section 257.100 does not affect the other regulatory requirements throughout the Rule applicable to CCR surface impoundments whether active or inactive.**



Remand

WITHOUT

Vacatur

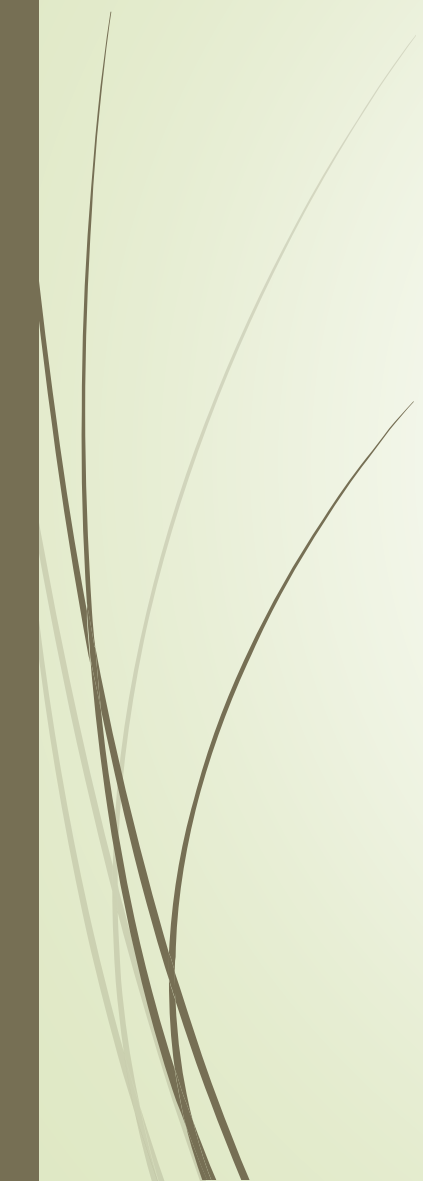


Proposing to Clarify Issues Related to Non-Groundwater Release

- The sentence in 40CFR Section 257.90(d) that provides: “The owner or operator of the CCR unit must comply with all applicable requirements in 257.96, 257.97, and 257.98;” and
- The phrase in 40 CFR Section 257.96(a) that provides “or immediately upon detection of a release from a CCR unit.”



Remand Appendix IV

- ▶ Remand for the sole purpose of adding Boron to the list of constituents in Appendix IV that triggers assessment and monitoring corrective action.
- 



Remand for 40 CR 257.103(a) and 257.103(b)

- ▶ These provisions establish Alternative Closure Procedures that may be utilized in the event an impoundment required to be closed under the Rule cannot locate suitable alternative capacity for disposal of CCR.
- ▶ **Reason: Because EPA would be considering whether to extend the Alternative Closure temporary exemption to a new subclass of impoundments there is no provision to vacate.**



Concerns



- The Applicability Section is not part of this motion.
- Impact on Non-EGUs unknown as it is a State issue
- If the rule is applicable, if you do not meet the minimum criteria, you are classified an “Open Dump”.
- The real impact is losing the exemption in Section 257.100.
- Addressing non-groundwater releases could be a problem.
- The impacts are what is the trigger and what is the , clean up costs relating to Boron.

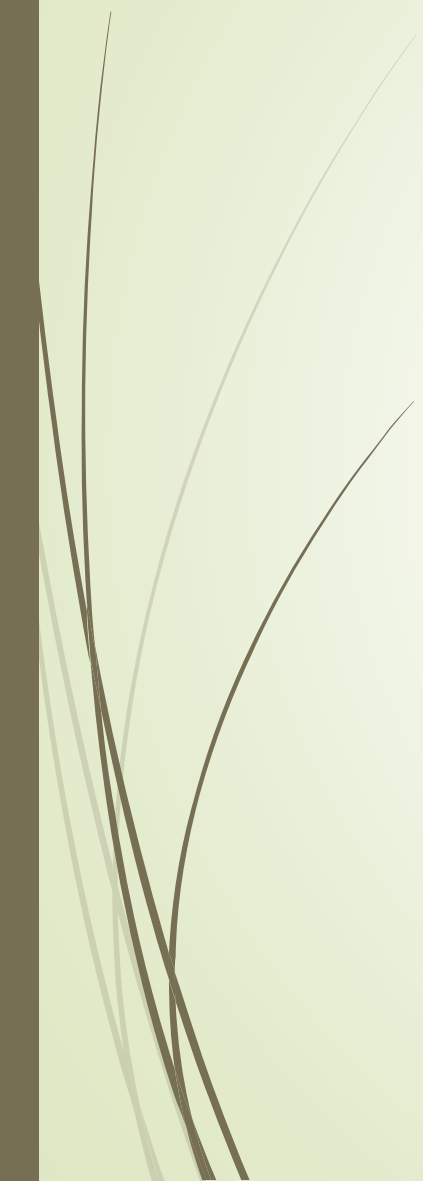


Update of Water Program Activities





NPDES Program

- ▶ EPA proposed changes to the NPDES rules
 - ▶ Proposed changes were published in the *Fédéral Register* dated May 18, 2016 (Vol. 81, No. 96, pp 33134-331374)
 - ▶ Entitled: 40 CFR Parts 122, 123, 124, et al. National Pollutant Discharge Elimination System (NPDES): Applications and Program Updates; Proposed Rule
 - ▶ Public comment Period Ends: July 18, 2016
- 



EPA Proposes Rule to Make Targeted Updates to NPDES Regulations

- There are several regulatory revisions and updates to the NPDES Program being proposed:
- EPA is proposing several key fixes, including:
 - Clarifying NPDES definitions and application requirements;
 - Improving permit decision documentation in fact sheets;
 - Allowing permitting authorities to issue public notice of certain permit actions online rather than in a newspaper; and
 - Ensuring issuance of environmentally significant permits in a timelier manner.
 - This proposal would not reopen the regulations for other specific or comprehensive revisions.



Other Topics

- Permit applications
- Water quality-based permitting process
- Permit objections (Documentation and process efficiencies)
- The “vessels exclusion” (which authorizes certain discharges incidental to the normal operation of commercial vehicles)
- Section 401 certification process.



PROPOSED TOPICS FOR REVISION AND PUBLIC COMMENT

- ▶ Permit Application Requirements
 - ▶ Purpose and Scope (40 CFR 122.1).
 - ▶ NPDES Program Definition including: Pesticide Applications to Waters of the United States, Proposed Permit,
 - ▶ New Discharger and Whole Effluent Toxicity Definition (40 CFR 122.2);
 - ▶ Changes to Existing Application Requirements (40 CFR 122.21).



PROPOSED TOPICS FOR REVISION AND PUBLIC COMMENT (Continued)

- Water Quality-Based Permitting Process.
 - Anti-degradation Reference (40 CFR 122.44(d));
 - Dilution Allowances (40 CFR 122.44(d));
 - Reasonable Potential Determinations for New Discharges (40 CFR 122.44(d));
 - Best Management Practices (40 CFR 122.44(k));
 - Anti-backsliding (40 CFR 122.44(l));
 - Design Flow for Publicly Owned Treatment Works (40 CFR 122.45(b)).



PROPOSED TOPICS FOR REVISION AND PUBLIC COMMENT (Continued)

- ▶ Permit Objection, Documentation and Process Efficiencies
 - ▶ Objection to Administratively Continued Permits (40 CFR 123.44);
 - ▶ Public Notice Requirements (40 CFR 124.10(c));
 - ▶ Fact Sheet Requirements (40 CFR 124.56); and
 - ▶ Deletion of 40 CFR 125.3(a)(1)(ii).



PROPOSED TOPICS FOR REVISION AND PUBLIC COMMENT (Continued)

- Vessels Exclusion
 - Vessels Exclusion (40 CFR 122.3(a)).
- CWA section 401 Certification Process.
 - CWA section 401 Certification Process (40 CFR 124.55(b)).



Reminder – Stormwater Management

- ▶ Every 4 years, EPA reviews and the requirements for stormwater management for construction projects utilizing a General Permit (GP). For large construction projects the current CGP was issued in 2012 and is set to expire Feb. 16, 2017, when 2017 CGP will go into effect.
- ▶ Stormwater Management by local government is a growing concern with Stormwater Authorities or Stormwater Management Districts being established and programs are being develop that includes a fee structure to support their activities. (Fees are being developed with everyone from landowner to industrials being assess. You need to monitor and get involved to protect your investments.)



Questions

