

# CCR Update

# Proposed Rulemaking

CIBO

Energy and Environmental Meeting

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Arlington, VA

# Proposed Rule Making - March 1, 2018

- ▶ Administrator Pruitt signs the first of two rules that proposes to amend the April 2015 final rule.
- ▶ Proposal covers following:
  - ▶ Addresses provisions of the final rule that were remanded back to the Agency on June 14, 2016, by the U.S. Court of Appeals for the D.C. Circuit;
  - ▶ Provides states with approved CCR permit Programs (or EPA where it is the permitting authority) under the Water Infrastructure Improvements for the Nation (WIIN) Act the ability to set certain alternative performance standards;
  - ▶ Addresses one additional issue that has arisen since the April 2015 publication of the final rule.

## Addresses provisions of the final rule that were remanded back to the Agency on June 14, 2016, by the U.S. Court of Appeals for the D.C. Circuit

- ▶ The 4 changes associated with judicial review are:
  - ▶ Clarify the type and magnitude of non-groundwater releases that would require a facility to comply with some or all of the corrective action procedures set forth in 40 CFR §§ 257.96-257.98 in meeting their obligation to clean up the release;
  - ▶ Add boron to the list of constituents in Appendix IV of part 257 that trigger corrective action and potentially the requirement to retrofit or close the CCR unit
  - ▶ Determine the requirement for proper height of woody and grassy vegetation for slope protection;
  - ▶ Modify the alternative closure provisions

**Provides states with approved CCR permit Programs (or EPA where it is the permitting authority) under the Water Infrastructure Improvements for the Nation (WIIN) Act the ability to set certain alternative performance standards**

- ▶ EPA is proposing six provisions that would allow states or EPA the ability to incorporate flexibilities into their coal ash permit programs. These flexibilities would also be available to facilities with U.S. EPA-issued CCR permits.
- ▶ These flexibilities would also be available to facilities with U.S. EPA-issued CCR permits.

# The six alternative performance standards proposed

- ▶ Use alternative risk-based groundwater protection standards for constituents where no Maximum Contaminant Level exists;
- ▶ Modify the corrective action remedy in certain cases;
- ▶ Suspend groundwater monitoring requirements if a no migration demonstration can be made;
- ▶ Establish an alternate period of time to demonstrate compliance with the corrective action remedy;
- ▶ Modify the post-closure care period; and
- ▶ Allow Directors of states to issue technical certifications in lieu of the current requirement to have professional engineers issue certifications.

## Addresses one additional issue that has arisen since the April 2015 publication of the final rule.

- ▶ The proposal would allow CCR to be used during certain closure situations.
  - ▶ EPA is proposing to revise the current regulations to allow the use of CCR in the construction of final cover systems for CCR units closing pursuant to § 257.101 that are closing with waste-in-place.
  - ▶ EPA is also proposing specific criteria that the facility would need to meet in order to allow for the use of CCR in the final cover system

# Website to obtain pre-publication draft of proposed rule

[https://www.epa.gov/sites/production/files/201803/documents/hazardous\\_and\\_solid\\_waste\\_management\\_system\\_disposal\\_of\\_coal\\_combustion\\_residuals\\_from\\_electric\\_utilities\\_amendments\\_to\\_the\\_national\\_minimum\\_criteria\\_phase\\_one\\_proposed\\_rule\\_2.pdf](https://www.epa.gov/sites/production/files/201803/documents/hazardous_and_solid_waste_management_system_disposal_of_coal_combustion_residuals_from_electric_utilities_amendments_to_the_national_minimum_criteria_phase_one_proposed_rule_2.pdf)

# The proposed rule does not change the requirements set forth in Subpart D - Section 257.50

## ▶ Section 257.50

- ▶ (a) This subpart establishes minimum national criteria ...
- ▶ (b) This subpart applies to owners and operators of new and existing landfills and surface impoundments, including any lateral expansions of such units that dispose or otherwise engage in solid waste management of CCR generated from the combustion of coal at electric utilities and independent power producers...
- ▶ (c) This subpart also applies to inactive CCR surface impoundments at active electric utilities or independent power producers, regardless of the fuel currently used at the facility to produce electricity.
- ▶ (d) This subpart does not apply to CCR landfills that have ceased receiving CCR prior to October 19, 2015.



# Section 257.50 (Continued)

- ▶ (e) This subpart does not apply to electric utilities or independent power producers that have ceased producing electricity prior to October 19, 2015.
- ▶ (f) This subpart does not apply to wastes, including fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated at facilities that are not part of an electric utility or independent power producer, such as manufacturing facilities, universities, and hospitals....
- ▶ (g) This subpart does not apply to practices that meet the definition of a beneficial use of CCR.
- ▶ (h) This subpart does not apply to CCR placement at active or abandoned underground or surface coal mines
- ▶ (i) This subpart does not apply to municipal solid waste landfills that receive CCR.

# Comment in regard to Section 257.50 and EPA approving State Request for Program Approval

- ▶ Oklahoma was the first state to request approval of its CCR Program by EPA
- ▶ Jan. 16, 2018, EPA announced its intent to proposing to approve the application submitted by the Oklahoma Department of Environmental Quality to allow the Oklahoma Coal Combustion Residuals (CCR) state permit program to operate in lieu of the Federal CCR program.
  - ▶ EPA has preliminarily determined that Oklahoma's program meets the standard for approval under RCRA.
  - ▶ Once approved, the State program requirements and resulting permit provisions will be subject to EPA's inspection and enforcement authorities under RCRA and other applicable statutory and regulatory provisions.
- ▶ EPA was seeking comment on this proposal which closed on March 2, 2018.

# Groundwater Monitoring

## March 2, 2018

- ▶ Under the 2015 rule, utilities were subject to a March 2 deadline to publicly release data on potential groundwater pollution.
- ▶ If the data suggests groundwater impacts additional testing is required and possibly remediation plans.
- ▶ A critical issue that needs to be fully evaluated is “What is the background level for each constituent?”
- ▶ Establishing background water quality is paramount in determining any impacts on groundwater from the CCR facility (landfill, storage, or impoundment).

# WIIN Program

- ▶ An unknown issue is whether a State Program, which cover facilities that are excluded by Section 257.50 (f), makes those facilities subject to EPA oversight.
- ▶ If you have operations in a State that also regulates CCRs or CCBs from non-EGU facilities need to monitor these actions.

# Other regulations or policies to be monitored

- ▶ Any proposed changes to the ELG regulations related to 40 CFR Part 423 -- Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category; Final Rule
- ▶ Request for comment -- **Clean Water Act Coverage of “Discharges of Pollutants” via a Direct Hydrologic Connection to Surface Water -- 40 CFR Part 122 -- [EPA-HQ-OW-2018-0063; FRL-9973-41-OW]**
- ▶ “

# 40 CFR Part 423 -- Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category

- ▶ Delaying implementation date for sections dealing with coal ash, scrubber sludges, impoundments

# Clean Water Act Coverage of “Discharges of Pollutants” via a Direct Hydrologic Connection to Surface Water

- ▶ The Environmental Protection Agency (EPA) is requesting comment on the Agency’s previous statements regarding the Clean Water Act (CWA) and whether pollutant discharges from point sources that reach jurisdictional surface waters via groundwater or other subsurface flow that has a direct hydrologic connection to the jurisdictional surface water may be subject to CWA regulation.
- ▶ EPA is requesting comment on whether the Agency should consider clarification or revision of those statements and if so, comment on how clarification or revision should be provided.

# Clean Water Act Coverage of “Discharges of Pollutants” via a Direct Hydrologic Connection to Surface Water

- ▶ EPA has previously stated that pollutants discharged from point sources that reach jurisdictional surface waters via groundwater or other subsurface flow that has a direct hydrologic connection to the jurisdictional water may be subject to CWA permitting requirements.
- ▶ EPA has not stated that CWA permits are required for pollutant discharges to groundwater in all cases, but rather that pollutants discharged from point sources to jurisdictional surface waters that occur via groundwater or other subsurface flow that has a direct hydrologic connection to the surface water may require such permits.
- ▶ The Agency has made these statements in previous rulemaking, permitting, and guidance documents, although most of these statements were collateral to the central focus of a rulemaking or adjudication.



# Clean Water Act Coverage of “Discharges of Pollutants” via a Direct Hydrologic Connection to Surface Water

- ▶ EPA and most courts addressing the issues have recognized that . . . the Act requires NPDES permits for discharges to groundwater where there is a direct hydrological connection between groundwaters and surface waters. In these situations, the affected groundwaters are not considered ‘waters of the United States’ but discharges to them are regulated because such discharges are effectively discharges to the directly connected surface waters.”); Concentrated Animal Feeding Operations (CAFO) in Idaho ID-G-01-0000, 62 FR 20,178 (1997) (“the Clean Water Act does not give EPA the authority to regulate groundwater quality through NPDES permits.
- ▶ The only situation in which groundwater may be affected by the NPDES program is when a discharge of pollutants to surface waters can be proven to be via groundwater. . . . [T]he permit requirements . . . are intended to protect surface waters which are contaminated via a groundwater (subsurface) connection.”).