

Technical Bulletin

USEPA Motion for Voluntary Remand of Five Provisions of the CCR Rule

Background

In a [Motion](#) filed on November 7, the U.S. Environmental Protection Agency (USEPA) requested remand of five provisions of the Coal Combustion Residuals (CCR) Rule ([40 CFR Parts 257 and 261](#)), which would allow the agency to reconsider the provisions:

1. Groundwater protection standards based on Maximum Contaminant Level (MCL) standards, or background level for constituents that lack an MCL
2. Regulation of temporary CCR piles stored on-site that will be beneficially reused
3. 12,400 ton threshold triggering the need to make an environmental safety demonstration when using CCR in an encapsulated manner
4. Regulation of Inactive Impoundments (i.e., those that ceased placing CCR *before* the effective date of the Rule)
5. Lack of regulation of Legacy Impoundments (i.e., those that no longer accept CCR and are located at facilities that no longer produce electricity)

These provisions remain in place unless and until USEPA revises or rescinds them in a future rulemaking. A brief description of the current rule standard and the basis for reconsideration is presented below, as well as the next steps.

Basis for Reconsideration of Provisions

Groundwater Protection Standards

Current Rule Provision. When groundwater monitoring reveals that covered constituents are present in levels that exceed Groundwater Protection Standards (the MCL, or background for constituents that do not have an MCL), the facility must implement corrective action. If the unit is an unlined surface impoundment,

the facility must cease deposits of CCR into impoundments and must either retrofit or close the impoundment.

Basis for Reconsideration. When the Rule was promulgated, it was self-regulating, so USEPA did not have review authority over the development of alternative standards. The Water Infrastructure Improvements for the Nation Act (WINN Act) was subsequently signed, which authorizes potential alternative regulatory mechanisms, specifically site-specific and targeted requirements that are subject to oversight and USEPA enforcement, and could potentially provide an alternative framework to address this issue on a site-specific basis.

Regulation of Temporary CCR Piles

Current Rule Provision. While temporary CCR piles located at a manufacturing facility that will encapsulate the product are not subject to the Rule's criteria, temporary piles destined for beneficial reuse that are stored at the coal combustion facility are subject to all of the regulatory requirements of the Rule.

Basis for Reconsideration. USEPA made this distinction in part because it lacked the oversight and enforcement authority to ensure that the pile of CCR at the coal combustion facility would, in fact, be transferred to a manufacturer within a reasonable period of time. The subsequent signing of the WINN Act provides authority that could potentially address this issue.

12,400 Ton Threshold

Current Rule Provision. If a CCR pile planned for non-encapsulated and non-roadway beneficial use exceeds 12,400 tons, the user must perform environmental safety demonstrations in order to qualify as a beneficial use that is not subject to the Rule's technical criteria.

Basis for Reconsideration. EPA has admitted it made a mathematical error leading to the 12,400 ton threshold. USEPA will revisit this threshold.

Regulation of Inactive Impoundments

Current Rule Provision. On August 5, 2016, EPA amended the CCR Rule to regulate Inactive Impoundments, which are impoundments where the operator has ceased accepting CCR as of the original effective date of the CCR Rule.

Basis for Reconsideration. Industry representatives have petitioned that the statute on which this authority is based, does not allow USEPA to regulate Inactive Impoundments. USEPA acknowledges that the statute is ambiguous, and will reconsider the provision.

Lack of Regulation of Legacy Impoundments

Current Rule Provision. USEPA concluded it would not regulate Legacy Impoundment, which are those that no longer receive CCR and which are also located at facilities that no longer produce electricity.

Basis for Reconsideration. Environmental representatives have challenged this provision, arguing that statute require USEPA to regulate such units. USEPA's reconsidered views of Inactive Impoundments (see above) may also impact their views on Legacy Impoundments.

What's Next

Oral arguments on EPA's motion took place on November 20, 2017. EPA had asked that oral arguments be postponed, and all other aspects of the litigation are suspended until it could rule, but the court did not agree.

The current provisions remain in place unless and until USEPA revises or rescinds them in a future rulemaking.

SCS Engineers will continue to track these issues and keep you informed.

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