

SCS TECHNICAL BULLETIN

CCR RULE REVISIONS – A HOLISTIC APPROACH TO CLOSURE PART A: DEADLINE TO INITIATE CLOSURE AND ENHANCING PUBLIC ACCESS TO INFORMATION

September 24, 2020

The U.S. Environmental Protection Agency (EPA) finalized changes to the final rule for coal combustion residuals (CCR) and published the changes in the Federal Register (Vol. 85, No. 168) August 28, 2020. The updates keep the major protections and requirements of the 2015 rule and implement the Water Infrastructure Improvements to the Nation (WIIN) Act, respond to petitions, address litigation, and apply lessons learned to ensure smoother implementation. The EPA made the following five amendments:

- Soil- or clay-lined surface impoundments initially classified as lined are now considered unlined impoundments.
- The deadline to initiate closure for unlined impoundments and impoundments that fail the aquifer separation requirement changed from October 31, 2020, to April 11, 2021.
- Deadlines related to alternative closure provisions for CCR impoundments that are required to close are extended.
- Annual groundwater monitoring and corrective action reports must now include an executive summary.
- Clarifications for owners' publicly accessible internet sites are added to ensure that relevant facility information is immediately available to the public.

Revisions to Unlined Surface Impoundment Requirements

The USWAG et al. vs. EPA (2018) decision determined that soil- or clay-lined surface impoundments posed adverse impacts on the environment. The revised final rule addresses this and specifies that all unlined surface impoundments must retrofit or close, not just those that have detected groundwater contamination above regulatory levels. The rule also changes the classification of compacted-soil lined or "clay-lined" surface impoundments from "lined" to "unlined," which means formerly defined clay-lined surface impoundments are no longer considered lined surface impoundments and must be retrofitted or closed.

The above changes to the final rule can be seen in the removal of § 257.71(a)(1)(i) and the revision of § 257.71(a)(3)(i) and (ii).

Revisions to Unlined Surface Impoundment Cease Receipt of Waste and Initiation of Closure Deadline

EPA established a revised date of April 11, 2021, by which unlined surface impoundments and units that failed the aquifer separation location restriction must cease receiving waste and initiate closure or retrofit. EPA determined this new date after a review of the planning and construction timeline information submitted during the

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public comment period of the rulemaking process.

The above changes to the final rule can be seen in the revisions to § 257.101(a)(1) and (b)(1).

Revisions to Surface Impoundment Alternative Closure Provision Timelines

EPA finalized revisions to the alternative closure provisions that grant certain facilities additional time to develop an alternative capacity to manage waste streams (including non-CCR wastewater) before they must stop receiving waste and initiate closure of their surface impoundments. In addition to the April 11, 2021 date for unlined impoundments or those that failed the aquifer separation criteria, the following additional scenarios are addressed:

- Waste receipt cessation and closure initiation time extension due to lack of alternative disposal capacity – no later than October 15, 2023, and October 15, 2024, for certain unlined surface impoundments
- Waste receipt cessation and closure completion time extension due to permanent cessation of coal-fired boiler(s) – no later than October 17, 2023 (impoundments no more than 40 acres) and October 17, 2028 (impoundments larger than 40 acres)

Facilities that use the first option must meet the following criteria:

- Alternative disposal capacity is not available on or off-site
- It is not technically feasible to obtain alternative disposal capacity
- The facility complies with all requirements of the final rule

Furthermore, facilities seeking extensions must submit a demonstration to support the request that includes the following items: 1) a

work plan that describes detailed steps that will be taken to evaluate, select, and develop alternative disposal capacity and 2) information that summarizes the facility's status as it relates to hydrogeologic, groundwater quality, corrective measures, and structural stability and factor of safety assessments.

Facilities seeking an extension due to permanent cessation of coal-fired boiler(s) must meet the following criteria:

- Alternative disposal capacity is not available on or off-site
- Potential risks to human health and the environment due to continued use of the impoundment have been addressed
- The facility complies with all requirements of the final rule

In addition, facilities seeking extensions under this scenario must submit a demonstration that includes the following items: 1) a narrative that describes alternative disposal capacity options that were considered, 2) a groundwater mitigation plan, 3) information that summarize the facility's status as it relates to hydrogeological, groundwater quality, corrective measures, and structural stability and factor of safety assessments, and 4) a closure plan for the facility that includes a revised cease-of-waste receipt date.

For both scenarios above, the referenced demonstrations must be submitted to the EPA or a participating state director by November 30, 2020.

The above changes to the final rule can be seen in several revisions to § 257.103(f).

Revisions to the Annual Groundwater Monitoring and Corrective Action Report Requirements

To make the groundwater data easier to see and understand in future annual reports, the

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EPA is making one change and providing further explanation of another revision to the preamble of the August 2019 proposed rule.

The change is an amendment to 257.90, adding a new paragraph (e) (6) that requires including a summary at the beginning of the annual report. At a minimum, the summary must specify:

- Whether the CCR unit was operating under the detection (257.94) or assessment (257.95) monitoring program at the start of the current annual reporting period
- Whether the CCR unit was operating under the detection (257.94) or assessment (257.95) monitoring program at the end of the current annual reporting period
- If there was a statistically significant increase over background for one or more appendix III constituents (257.94(e)):
 - Identify the constituents and well names
 - Provide the date the assessment program was initiated
- If there was a statistically significant level above the Groundwater Protection Standard for one or more appendix IV constituents (257.95(g)):
 - Identify the constituents and well names
 - Provide the date when the assessment of corrective measures (ACM) was initiated
 - Provide the date the public meeting was held for the ACM
 - Provide the date the ACM was completed
- Whether a remedy was selected (257.97) during the current annual reporting period and the date of the remedy selection
- Whether remedial activities were initiated or are ongoing (257.98) during the current reporting period

EPA considered finalizing a requirement that analytical results must be presented in a standardized format. After considering solicited comments, EPA decided not to finalize the requirement, stating they are not convinced it is necessary to serve the purposes of ensuring greater transparency. However, EPA did state that data should be presented in a way to communicate the required information clearly.

Revisions Requirements for Publicly Accessible CCR Internet Sites

The EPA finalized revisions to the rule to ensure that relevant facility information is available to the public via a publicly accessible website. Existing requirements were modified to provide unrestricted access to the public for review, printing, and downloading of information and provide a “contact us” option for the public to submit questions to the owner. Furthermore, should the web address change, the owner must notify the EPA and the appropriate state director. Lastly, the final rule was revised to include requirements related to the demonstrations, approvals, and related information regarding time extensions discussed above.

Changes to the final rule pertaining to publicly accessible website are found in § 257.107.

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