



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 257

[EPA-HQ-RCRA-2015-0331; FRL-9928-44-OSWER]

RIN-2050-AE81

Technical Amendments to the Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities – Correction of the Effective Date

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is taking action to amend the final rule regulating the disposal of coal combustion residuals (CCR) as solid waste under subtitle D of the Resource Conservation and Recovery Act (RCRA). After publication in the Federal Register, inconsistencies resulting from typographical errors established two different effective dates in the regulatory text for the final CCR rule. This action corrects these inconsistencies and revises the Code of Federal Regulations (CFR) so that it accurately reflects the statutory effective date of six months from the publication date of the rule, coinciding with a date of October 19, 2015. Consistent with Federal requirements, the EPA is also correcting dates for certain provisions that fall on January 18, 2016, which is a Federal holiday, to the next succeeding Federal business day, which is January 19, 2016.

DATES: This final rule is effective on October 19, 2015. Effective [insert date of publication in the Federal Register], the effective date of the final CCR rule published on April 17, 2015 at 80 FR 21302 is corrected from October 14, 2015 to October 19, 2015.

ADDRESSES: The EPA has established a docket for this regulatory action under Docket ID No. **EPA-HQ-RCRA-2015-0331**. All documents in this docket are available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the OSWER Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave., NW, Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OSWER Docket is 202-566-0276.

FOR FURTHER INFORMATION CONTACT: For more information on this rulemaking, contact Steve Souders, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery (MC 5304 P), U. S. Environmental Protection Agency, telephone number: (703) 308-8431; fax number: (703) 605-0595; email address: souders.steve@epa.gov.

For more information on this rulemaking please visit:

<http://www.epa.gov/epawaste/nonhaz/industrial/special/fossil/index.htm>.

SUPPLEMENTARY INFORMATION:

The Contents of This Preamble Are Listed in the Following Outline

- I. General Information

- II. Statutory Authority
- III. Corrections Made to the Regulatory Text Regarding the Effective Date
- IV. Statutory and Executive Order Reviews

I. General Information

A. Does this Action Apply to Me?

This rule applies to all coal combustion residuals (CCR) generated by electric utilities and independent power producers that fall within the North American Industry Classification System (NAICS) code 221112 and may affect the following entities: electric utility facilities and independent power producers that fall under the NAICS code 221112. The industry sector(s) identified above may not be exhaustive; other types of entities not listed could also be affected. The Agency's aim is to provide a guide for readers regarding those entities that potentially could be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Why are These Amendments Being Issued as a Final Rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B), provides that, when an Agency for good cause finds that notice and public procedures are impracticable, unnecessary or contrary to the public interest, the Agency may issue a final rule without providing notice and an opportunity for public comment. Similarly, section 553(d) authorizes an Agency to establish an effective date for a rule that is sooner than 30 days from its publication, "as otherwise provided by the agency for good cause found and published with the rule."

This final rule only revises the CFR to be consistent with the requirements in RCRA section 4004(c) and the Office of the Federal Register (OFR) regulation at 1 U.S.C. 18.17(b). The EPA is issuing this rule solely to ensure that the CFR accurately reflects the date by which, under current law, the provisions of the rule become effective. Consequently, the EPA has determined that there is good cause for making the technical amendments in this final rule without prior proposal and opportunity for comment, because notice and public comment would be unnecessary. For the same reasons, the EPA has concluded that good cause exists for making the corrections in this final rule effective [insert date of publication in the Federal Register].

1. Different Effective Dates

After publication in the Federal Register, inconsistencies resulting from typographical errors established two different effective dates for the final CCR rule, one that accurately reflects the statutory effective date, and a second, inaccurate date (80 FR 21302, April 17, 2015). This action corrects these inconsistencies in the CFR, so that it accurately reflects the effective date under RCRA section 4004(c) of six months from the publication date of the rule, i.e., October 19, 2015.

Section 4004 (c) of RCRA generally establishes a six month effective date for rules issued under subtitle D, providing that “the prohibition contained in subsection (b) shall take effect on the date six months after the date of promulgation of regulations under subsection (a).” 42 U.S.C. 6944(c). In other words, RCRA requires that six months after promulgation of a rule under section 4004(a), solid waste can only be managed in a manner that complies with the requirements of the rule.

Under RCRA, promulgation of a rule occurs upon signature and publication in the Federal Register. *Horsehead Resource Development Co, Inc., v. EPA*, 130 F.3d 1090, 1094-1095

(DC Cir. 1997) (“We hold ...at least in the absence of a contrary agency regulation, "promulgation" as used in section [7006(a)(1) of RCRA] means the date of Federal Register publication.”). Thus by operation of law, the requirements in the final CCR rule go into effect six months from the date of its publication in the Federal Register, or October 19, 2015. Based on the rule published in the Federal Register (80 FR 21302, April 17, 2015), the CFR inaccurately reflects the current date by which facilities must be in compliance with certain requirements. This action merely corrects the CFR to accurately reflect these existing legal obligations; it does not alter or affect them in any way, but merely ensures that the public will not be confused by inaccuracies. The EPA has therefore determined that further public comment on this action is unnecessary and that good cause exists for making the corrections in this final rule without prior publication or public comment.

2. Inconsistency with Other Federal Regulations

The EPA is also correcting dates for certain provisions that fall on January 18, 2016, which is a Federal holiday. According to 1 CFR 18.07(b), “where the final count would fall on a Saturday, Sunday, or holiday, the date certain will be the next succeeding Federal business day.” To be consistent with 1 CFR 18.07(b), that date needs to be revised to the next Federal business day, or January 19, 2016. Based on the final CCR rule published in Federal Register (80 FR 21302), the CFR inaccurately reflects the current date by which facilities must be in compliance with these requirements. This action merely corrects the CFR to ensure that the public will not be confused. The EPA has therefore determined that further public comment on this action is unnecessary and that good cause exists for making the corrections in this final rule without prior publication or public comment.

II. Statutory Authority

This regulation is established under the authority of sections 1008(a), 2002(a), 3001, 4004, and 4005(a) of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6906(b), 6907(a), 6912(a), 6944 and 6945(a).

III. Corrections Made to the Regulatory Text Regarding the Effective Date

In drafting the final CCR rule, the Agency used the following two bracketed “instructions” when referring to the effective date of the CCR rule: (1) **[INSERT DATE 180 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**; and (2) **[INSERT DATE SIX MONTHS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. These “instructions” provided direction to the OFR for computing and inserting a specified date, in this case, the effective date of the rule.

On April 17, 2015, the CCR rule was published in the Federal Register (80 FR 21302). After publication, the EPA discovered that the two “instructions” used to calculate the effective date had resulted in the computing and inserting of two different effective dates, rather than single effective date established under RCRA 4004(c). The first “instruction” used in the CCR rule for the effective date exactly mirrored the statutory language, i.e., **[INSERT DATE 6 MONTHS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, which resulted in a date of October 19, 2015. By contrast, the second “instruction,” paraphrased the statute, i.e., **[INSERT DATE 180 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, which resulted in a date of October 14, 2015. In order to correct this error, the EPA is issuing this final rule to revise the CFR so that it accurately reflects the existing effective date for the CCR rule established by RCRA section 4004 (c), i.e., October 19, 2015,

which is consistent with the “instruction” of: **[INSERT DATE SIX MONTHS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

In addition at § 257.83(b)(3) and § 257.84(b)(3)(i) (Inspection requirements for CCR surface impoundments and CCR landfills respectively) the instructions for calculating and inserting dates in these two sections of the CCR rule were: **[INSERT DATE NINE MONTHS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. After publication, the EPA discovered that the computed and inserted date for these provisions was January 18, 2016, which is a Federal holiday. According to 1 CFR 18.07(b) “where the final count would fall on a Saturday, Sunday, or holiday, the date certain will be the next succeeding Federal business day when a date falls on a weekend or a Federal holiday, the [Office of Federal Register] uses the next Federal business day.” To be consistent with 1 CFR 18.07(b), that date needs to be revised to the next Federal business day, or January 19, 2016. Based on the rule published in the Federal Register, the CFR inaccurately reflects the current date by which facilities must be in compliance with these requirements.

In order to aid the public, the following table identifies those sections of the rule which contained particular dates that the EPA is correcting in this action, as well as those sections where no correction is needed. The first column of the following table identifies those sections of the CCR rule where the date of October 14, 2015 was inserted. These sections of the rule are being corrected in this final rule to establish the correct date of October 19, 2015. The second column of the table identifies those rule provisions where the date of January 18, 2016, a Federal holiday, was inserted. These sections of the rule are being corrected to establish the correct date of January 19, 2016. The third column of the table identifies those sections of the regulatory text

where the correct effective date of October 19, 2015 was inserted. These sections will not be changed.

Rule Provisions with an October 14, 2015 Effective Date that will be Changed to October 19, 2015	Rule Provisions with a Date of January 18, 2016 that will be Changed to January 19, 2016	Rule Provisions with the Correct October 19, 2015 Effective Date
Regulatory Cite	Regulatory Cite	Regulatory Cite
§ 257.53 (Definitions) “active facility” or “active electric utilities or independent power producers” “existing CCR landfill” “existing CCR surface impoundment” “inactive CCR surface impoundment” “lateral expansion” “new CCR landfill” “new CCR surface impoundment”	§ 257.83(b)(3) (Inspection requirements for CCR surface impoundments) § 257.84(b)(3)(i) (Inspection requirements for CCR landfills)	§ 257.50(d) and (e) (Scope and purpose) § 257.51 (Effective date of this subpart) § 257.80(b)(5) (Air criteria) § 257.83(a)(2) (Inspection requirements for CCR surface impoundments) § 257.84(a)(2) (Inspection requirements for CCR landfills) § 257.91(d)(2) (Multiunit groundwater monitoring systems) § 257.101(a)(1) (Closure of unlined impoundments)

In addition to the inconsistencies in the regulatory text, the preamble to the final CCR rule also contained several incorrect effective dates: (1) 80 FR 21302: the “Dates” section in the preamble states that the effective date of the rule is October 14, 2015 (180 days from the

publication date) instead of the correct date of October 19, 2015; and (2) 80 FR 21467: EPA included a sentence in the Congressional Review Act Executive Order stating that the CCR rule “will be effective 180 days after publication in the Federal Register” which equates to October 14, 2015, instead of stating that the CCR rule “will be effective six months after publication in the Federal Register” which equates to October 19, 2015. While the Agency is not correcting the CCR rule preamble language, it is presenting these additional inconsistencies to provide the reader with a complete accounting of the error.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action is not a significant regulatory action and does not impose an information collection burden under the PRA. The changes made to the regulations as a result of this action impose no new or different reporting requirements on regulated parties.

C. Regulatory Flexibility Act

This action does not modify existing legal requirements applicable to any entity. As such, I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small

entities subject to the rule. This action corrects a typographical error that resulted in the calculation of an incorrect effective date in some sections of the regulation. This action merely corrects that error so that the CFR will reflect the existing effective date for the CCR rule of October 19, 2015, established by section 4004 (c) of RCRA. This action also corrects the dates in two provisions of the CCR rule, which, as published, fall on a Federal holiday. This action corrects the error and revises the CFR to reflect that, consistent with 1 CFR § 18.07(b), the correct date for these two provisions is the next Federal business day after the holiday or January 19, 2016. The impacts on small businesses were already addressed in the rule promulgated on April 17, 2015 (80 FR 21302); and this rule will not impose any requirements on small entities beyond those that have previously been analyzed. We have therefore concluded that this action will have no net regulatory burden for small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. This action implements mandates specifically and explicitly set forth in the Resource Conservation and Recovery Act without the exercise of any policy discretion by the EPA.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. This action merely corrects typographical errors that resulted in the calculation of an incorrect

effective date in some sections of the CCR rule. Thus Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets E.O. 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. This action merely corrects typographical errors that resulted in the calculation of incorrect effective dates in some sections of the CFR.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

This rule merely corrects errors in dates and does not concern an environmental health or safety risk. Therefore, Executive Order 12898 does not apply.

K. Congressional Review Act

This action is subject to the CRA, and the EPA will submit a rule report to each House of Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by U.S.C. 804(2).

List of Subjects in 40 CFR Part 257

Environmental protection, Beneficial use, Coal combustion products, Coal combustion residuals, Coal combustion waste, Disposal, Hazardous waste, Landfill, Surface impoundment.

Dated: June 16, 2015.

Mathy Stanislaus,

Assistant Administrator,

Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 257—CRITERIA FOR CLASSIFICATION OF SOLID WASTE DISPOSAL FACILITIES AND PRACTICES

1. The authority citation for part 257 continues to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6912(a)(1), 6944(a); 33 U.S.C. 1345(d) and (e).

2. Section 257.53 is amended by revising the definitions of “Active facility or active electric utilities or independent power producers”, “Existing CCR landfill”, “Existing CCR surface impoundment”, “Inactive CCR surface impoundment”, “Lateral expansion”, “New CCR landfill”, and “New CCR surface impoundment” to read as follows:

§ 257.53 Definitions.

* * * * *

Active facility or active electric utilities or independent power producers means any facility subject to the requirements of this subpart that is in operation on October 19, 2015. An electric utility or independent power producer is in operation if it is generating electricity that is provided to electric power transmission systems or to electric power distribution systems on or after October 19, 2015. An off-site disposal facility is in operation if it is accepting or managing CCR on or after October 19, 2015.

* * * * *

Existing CCR landfill means a CCR landfill that receives CCR both before and after October 19, 2015, or for which construction commenced prior to October 19, 2015 and receives CCR on or after October 19, 2015. A CCR landfill has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin

physical construction and a continuous on-site, physical construction program had begun prior to October 19, 2015.

Existing CCR surface impoundment means a CCR surface impoundment that receives CCR both before and after October 19, 2015, or for which construction commenced prior to October 19, 2015 and receives CCR on or after October 19, 2015. A CCR surface impoundment has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous on-site, physical construction program had begun prior to October 19, 2015.

* * * * *

Inactive CCR surface impoundment means a CCR surface impoundment that no longer receives CCR on or after October 19, 2015 and still contains both CCR and liquids on or after October 19, 2015.

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Lateral expansion means a horizontal expansion of the waste boundaries of an existing CCR landfill or existing CCR surface impoundment made after October 19, 2015.

* * * * *

New CCR landfill means a CCR landfill or lateral expansion of a CCR landfill that first receives CCR or commences construction after October 19, 2015. A new CCR landfill has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous on-site, physical construction program had begun after October 19, 2015. Overfills are also considered new CCR landfills.

New CCR surface impoundment means a CCR surface impoundment or lateral expansion of an existing or new CCR surface impoundment that first receives CCR or commences construction after October 19, 2015. A new CCR surface impoundment has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous on-site, physical construction program had begun after October 19, 2015.

* * * * *

3. Section 257.83 is amended by revising paragraph (b)(3)(i) to read as follows:

§ 257.83 Inspection requirements for CCR surface impoundments.

* * * * *

(b) * * *

(3) * * * (i) Existing CCR surface impoundments. The owner or operator of the CCR unit must complete the initial inspection required by paragraphs (b)(1) and (2) of this section no later than January 19, 2016.

* * * * *

4. Section 257.84 is amended by revising paragraph (b)(3)(i) to read as follows:

§ 257.84 Inspection requirements for CCR landfills.

* * * * *

(b) * * *

(3) * * * (i) Existing CCR landfills. The owner or operator of the CCR unit must complete the initial inspection required by paragraphs (b)(1) and (2) of this section no later than January 19, 2016.

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[FR Doc. 2015-15913 Filed: 7/1/2015 08:45 am; Publication Date: 7/2/2015]