



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 257

[EPA-HQ-OLEM-2020-0107; FRL-7814.1-03-OLEM]

RIN 2050-AH34

Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Legacy CCR Surface Impoundments; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is proposing to correct errors and clarify several provisions published in the *Federal Register* on May 8, 2024. This May 8, 2024 rule (Legacy Final Rule) established regulatory requirements for legacy coal combustion residuals (CCR) surface impoundments and CCR management units, among other things, under the Resource Conservation and Recovery Act (RCRA). This proposal seeks comment on issues discussed in a direct final rule to correct errors and clarify in the Legacy Final Rule.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OLEM-2020-0107, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov/> (our preferred method).

Follow the online instructions for submitting comments.

- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Office of Land and Emergency Management (OLEM) Docket, Mail Code 28221T, 1200 Pennsylvania Ave. N.W., Washington, DC 20460.

- *Hand Delivery or Courier* (by scheduled appointment only): EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004. The Docket Center’s hours of operations are 8:30 a.m. – 4:30 p.m., Monday – Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions concerning this proposal, contact Frank Behan, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, MC: 5304T, Washington, DC 20460; telephone number: (202) 566-0531; email address: behan.frank@epa.gov, or Taylor Holt, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, MC: 5304T, Washington, DC 20460; telephone number: (202) 566-1439; email address: Holt.Taylor@epa.gov. For more information on this rulemaking please visit <https://www.epa.gov/coalash>.

SUPPLEMENTARY INFORMATION:

I. Public Participation- Written Comments

Submit your comments, identified by Docket ID No. EPA-HQ-OLEM-2020-0107, at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit to EPA’s docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia

submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

II. General Information

A. Does this action apply to me?

This rule may be of interest to electric utilities and independent power producers that fall within the North American Industry Classification System (NAICS) code 221112. The reference to NAICS code 221112 is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This discussion lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not described here could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria found in 40 CFR 257.50 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What action is the agency taking?

EPA is proposing to correct errors and conform the regulatory text to the decisions articulated in the Legacy Final Rule published in the *Federal Register* on May 8, 2024, which established regulatory requirements for legacy CCR surface impoundments and CCR management units (CCRMU). 89 FR 38950. In addition, EPA is proposing a number of revisions to clarify the final requirements, such as consolidating the compliance deadlines for CCRMU

into a single section and providing a deadline for the initial fugitive dust plan for CCRMU at facilities without a regulated unit.

In the “Rules and Regulations” section of this *Federal Register*, EPA has also published a direct final rule for this same action because the Agency views this as a noncontroversial action and anticipates no adverse comment. EPA has explained the reasons for this in the preamble to the direct final rule. This proposed rule provides an opportunity for the public to comment on the issues discussed in the preamble to the direct final rule.

In light of the narrow purpose of this rule to conform the regulatory text to the final actions described in the Legacy Final Rule, EPA is only soliciting comment on whether the changes in the direct final rule conform the text to EPA’s stated intent in the Legacy Final Rule preamble. EPA is not reconsidering, proposing to reopen, or otherwise soliciting comment on any provisions of the Legacy Final Rule itself. For the reader’s convenience, EPA has provided a background description of individual provisions in the Legacy Final Rule in several places throughout the direct final rule preamble. These descriptions do not reopen the underlying described provisions, but merely explain the context to inform the public of the basis for this action’s technical corrections. EPA will not respond to comments submitted on any issues other than those specifically identified in the direct final rule, and such comments will not be considered part of the rulemaking record.

If EPA receives no adverse comment on the corrections in the direct final rule, the Agency will not take further action on this proposed rule and the direct final rule will become effective as provided in that action. If EPA does receive adverse comment, EPA will publish a timely withdrawal in the *Federal Register* informing the public about the specific regulatory paragraph(s) or amendment(s) in the direct final rule that will not take effect. The corrections in the direct final rule that are not withdrawn will become effective on the date set out above. EPA will address all public comments in any subsequent final rule based on this proposed rule.

EPA does not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this proposed rule see the **ADDRESSES** section of this document.

C. What is the agency's authority for taking this action?

EPA is publishing this rulemaking under the authority of sections 1008(a)(3), 2002(a), 4004, and 4005(a), (d) of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) and the Water Infrastructure Improvements for the Nation (WIIN) Act of 2016, 42 U.S.C. 6907(a), 6912(a), 6944, 6945(a) and (d).

D. Where is the location of regulatory text for this proposal?

The regulatory text for this proposal is identical to that for the direct final rule published in the Rules and Regulations section of this *Federal Register*. For further supplemental information, the detailed rationale for the proposal, and the regulatory revisions, see the information provided in the direct final rule published in the Rules and Regulations section of this *Federal Register*.

III. Statutory and Executive Order (EO) Reviews

For a complete discussion of all of the administrative requirements applicable to this action, see the direct final rule in the Rules and Regulations section of this *Federal Register*.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 257

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

Jane Nishida,
Acting Administrator.

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