



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 257

[EPA-HQ-OLEM-2020-0107; FRL-7814.2-01-OLEM]

RIN 2050-AH36

Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; CCR Management Unit Deadline Extension Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is proposing to modify compliance deadlines for select 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 (CCRMU) under the Resource Conservation and Recovery Act (RCRA). This proposal seeks comment on issues discussed in the direct final rule published in this *Federal Register* to establish an additional option for owners or operators of active CCR facilities or inactive CCR facilities with a legacy CCR surface impoundment to comply with the Facility Evaluation Report (FER) Part 1 and to extend compliance deadlines for the remaining CCRMU provisions published in the Legacy Final Rule. EPA is also soliciting comment on extending the deadline to prepare both FER Part 1 and Part 2 by 12 months.

DATES: Comments must be received on or before **[INSERT DATE 30 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 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, or 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. 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), Proprietary Business Information (PBI), 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). Please visit <https://www.epa.gov/dockets/commenting-epa-dockets> for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

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 § 257.50 of title 40 of the Code of Federal Regulations (CFR). 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 amend the regulations governing the disposal of CCR in landfills, surface impoundments and land where noncontainerized accumulations of CCR are received,

placed, or otherwise managed (CCRMU), which are codified in subpart D of part 257 of title 40 of the CFR (CCR regulations). Specifically, EPA is proposing (1) to establish an additional option for owners or operators of active CCR facilities or inactive CCR facilities with a legacy CCR surface impoundment to comply with the FER Part 1 requirements and (2) to extend the deadline for the remaining CCRMU requirements. Lastly, EPA is soliciting comment on extending the deadlines to prepare each FER by 12 months with the same option as discussed in the direct final rule, where owners and operators would be allowed to complete FER Parts 1 and 2 concurrently. Further details are discussed in the preamble of the direct final rule published in the “Rules and Regulations” section of this *Federal Register*.

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 as well as the comment solicitation discussed in Unit III. of this preamble.

In this proposal, EPA is not reconsidering, proposing to reopen, or otherwise soliciting comment on any other provisions of the existing CCR regulations beyond those specifically identified in this proposal. For the reader’s convenience, EPA has provided a background description of existing requirements in several places throughout this preamble. In the absence of a specific request for comment and proposed change to the identified provisions, these descriptions do not reopen any of the described provisions. EPA will not respond to comments submitted on any issues other than those specifically identified in this proposal, and such comments will not be considered part of the rulemaking record.

If EPA receives no adverse comment on the regulatory revisions 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 revisions in the direct final rule that are not withdrawn will become effective on the date set out in the “Dates” section of the direct final rule. 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 1965, 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. What are the incremental costs and benefits of this action?

EPA establishes the requirements under RCRA sections 1008(a)(3) and 4004(a) without taking cost into account. See, *Utility Solid Waste Activities Group, et al. v. EPA (USWAG)* 901 F.3d 414, 448-49 (D.C. Cir. 2018). The following cost estimates are presented in the Regulatory Economic Assessment (REA) and summarized in this preamble for compliance with OMB Circular A-4 and E.O. 12866. The requirements in this rule do not rely on these cost estimates.

The REA estimates that the annualized cost savings of this action will be approximately \$2.97 - \$3.48 million per year when discounting at 3%. The REA estimates that the annualized cost savings of this action will be approximately \$9.43 - \$11.3 million per year when discounting at 7%. The REA estimates that the annualized reduction in benefits of this action will be approximately \$0.18 - \$0.62 million per year when discounting at 3%. The REA estimates that the annualized reduction in benefits of this action will be approximately \$0.38 - \$1.20 million

per year when discounting at 7%. Overall, the REA estimates that the net annualized cost savings of this action will be \$2.84 - \$3.63 million per year when discounting at 3%, and \$9.05 - \$10.1 million when discounting at 7%.

Further information on the economic effects of this action can be found in the preamble of the direct final rule published in the “Rules and Regulations” section of this *Federal Register*.

E. 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. Comment Solicitation on Extending the Facility Evaluation Report Parts 1 and 2

Compliance Deadlines

In this proposed rule EPA is additionally soliciting comment on whether to extend the deadlines to prepare each of the FERs by 12 months. This deadline extension would be in addition to the alternative option to complete the FER Parts 1 and 2 by a single deadline described in the direct final rule. Taken together, the effect of the extension and the direct final rule would be to allow a facility to either (1) complete FER Part 1 by February 8, 2027, and the FER Part 2 by February 8, 2028, or (2) complete FER Parts 1 and 2 by February 8, 2028. If EPA extends the FER deadlines, all other CCRMU requirements would also be extended by 12 months.

1. Revisions to the Facility Evaluation Report Part 1 and Part 2 Compliance Deadlines

As mentioned in Unit IV.A.3. of the direct final rule, EPA received feedback that some owners or operators of active facilities or facilities with a legacy CCR surface impoundment found the FER Part 1 and 2 compliance deadlines infeasible. While some members of the regulated community only requested the consolidation of the FER deadlines, others requested

EPA to extend the FER compliance deadlines by no less than 12 months. These companies cited the same challenges with the existing compliance deadlines discussed in Unit IV.A.3. of the direct final rule, namely the difficulty of accessing and reviewing historical documentation, contractor shortages and backlogs, large volumes of data, and the need to coordinate across affiliate companies or with local, state, and federal regulatory authorities. However, these entities stated that an extension of 12 months for both FER Part 1 and Part 2 was necessary to provide sufficient time for data and information collection, review, field work, and completion of the reports given the challenges mentioned above.

Commenters did not provide sufficient support for a proposal to extend the FER 2 compliance deadlines by 12 months. However, as stated in both the Legacy Final Rule and Unit IV.A.2. of the direct final rule, EPA recognizes the need to provide sufficient time for the completion of a robust FER. This is because the FER serves as the prerequisite for all other CCRMU requirements. Therefore, in response to these comments, EPA is soliciting comment on whether to extend each of the FER compliance deadlines by 12 months. As the rule is modified by the direct final rule and after the proposed extension, a facility could either (1) complete FER Part 1 by February 8, 2027, and the FER Part 2 by February 8, 2028, or (2) complete FER Parts 1 and 2 by February 8, 2028. Note that the proposed extension does not eliminate the requirement to prepare the report documenting compliance with part 1 of the facility evaluation (i.e., FER Part 1). The changes would merely require the FER Part 1 to be complete no later than the revised deadline for completing FER Part 2.

2. Conforming Revisions to Other CCRMU Compliance Deadlines

As explained in the Legacy Final Rule, the FER serves as the prerequisite for all other CCRMU requirements. See 89 FR 39060. Therefore, for the same reasons as laid out in Unit IV.C. of the direct final rule, if EPA extends the FER Parts 1 and 2 deadlines, EPA will make conforming changes to the remaining CCRMU compliance deadlines. Specifically, EPA would extend the deadlines to comply with the groundwater monitoring, closure, and post-closure care

requirements by 12 months. Additionally, because the deadline to establish a public CCR website is tied to the first reporting requirement, which would be the FER Part 1, EPA would provide facilities with the option to establish the public CCR website specified in § 257.107 by no later than either February 9, 2027 or February 8, 2028 to correspond to when the owner or operator completes FER Part 1. These conforming changes, along with those included in the direct final rule, are shown below in table 1.

Table 1. Comparison of Compliance Deadlines for CCRMU under the Legacy Final Rule, the Direct Final Rule, and the Alternative EPA is Soliciting Comment On

40 CFR part 257, subpart D requirement	Description of requirement to be completed	Legacy final rule deadlines	Direct final rule deadlines	Alternative with FER part 2 extension
Internet Posting (§ 257.107)	Establish CCR website	February 9, 2026	February 9, 2026 or February 8, 2027	February 8, 2027 or February 8, 2028
Facility Evaluation (§ 257.75)	Complete the Facility Evaluation Report Part 1	February 9, 2026	February 9, 2026 or February 8, 2027	February 8, 2027 or February 8, 2028
Facility Evaluation (§ 257.75)	Complete the Facility Evaluation Report Part 2	February 8, 2027	February 8, 2027	February 8, 2028
GWMCA (§ 257.91)	Install the groundwater monitoring system	May 8, 2028	August 8, 2029	May 8, 2029
GWMCA (§ 257.93)	Develop the groundwater sampling and analysis program	May 8, 2028	August 8, 2029	May 8, 2029
GWMCA (§§ 257.90–257.95)	Initiate detection monitoring and assessment monitoring. Begin evaluating groundwater monitoring data for SSIs over background levels and SSLs over groundwater protection standards	May 8, 2028	August 8, 2029	May 8, 2029
GWMCA (§ 257.90(e))	Complete the initial annual GWMCA report	January 31, 2029	January 31, 2030	January 31, 2030
Closure (§ 257.102)	Prepare written closure plan	November 8, 2028	February 8, 2030	November 8, 2029
Post-Closure Care (§ 257.104)	Prepare written post-closure care plan	November 8, 2028	February 8, 2030	November 8, 2029

Closure and Post-Closure Care (§ 257.101)	Initiate closure	May 8, 2029	August 8, 2030	May 8, 2030
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IV. 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 in 40 CFR Part 257

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

Lee Zeldin,
Administrator.

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