



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 22, 124, and 257

[EPA-HQ-OLEM-2019-0361; FRL-7080-06-OLEM]

RIN 2050-AH07

Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Federal CCR Permit Program; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Environmental Protection Agency (EPA) issued a proposed rule on February 20, 2020, to establish a Federal permit program for disposal of coal combustion residuals (CCR). The EPA is reopening the comment period on that proposed rule and requesting comment on several issues in particular.

DATES: The comment period for the proposed rule published on February 20, 2020 (85 FR 9940) closed April 20, 2020. The comment period was extended on April 14, 2020 (85 FR 20625) and May 19, 2020 (85 FR 29878) to close on July 19, 2020 and was reopened on July 31, 2020 to close on August 7, 2020 (85 FR 46046). With this document, EPA is reopening the comment period until **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OLEM-2019-0361, online at <https://www.regulations.gov>. Follow the detailed online instructions provided under **ADDRESSES** in the *Federal Register* document published on February 20, 2020 (85 FR 9940). Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional

instruction on commenting and visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Jessica Schumacher, Region 5, Land, Chemicals, and Redevelopment Division, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, MC: 5304T, Washington, DC 20460; telephone number: (312) 886-0769; email address: schumacher.jessica@epa.gov, or Phoebe O'Connor, Office of Resource Conservation and Recovery, Waste Information, Notice, and Generators Division, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, MC: 5304T, Washington, DC 20460; telephone number: (202) 566-1451; email address: oconnor.phoebe@epa.gov. For more information on this rulemaking please visit <https://www.epa.gov/coal-combustion-residuals>.

SUPPLEMENTARY INFORMATION:

I. General Information

On April 17, 2015, EPA published a final rule creating 40 CFR part 257, subpart D, which established a comprehensive set of minimum Federal requirements for the disposal of CCR in landfills and surface impoundments (80 FR 21302) (2015 CCR Rule or Federal CCR regulations). The rule established a set of self-implementing regulations that apply directly to CCR units, including requirements for the location, design, operating criteria, recordkeeping, notifications, groundwater monitoring and corrective action, as well as the closure and post-closure care of CCR units. It also requires recordkeeping and notifications for CCR units.

In 2016, Congress passed the Water Infrastructure Improvements for the Nation (WIIN) Act, which – among other things – authorized EPA to issue permits under RCRA for CCR units located in Indian country or in a State that has not been approved to issue its own CCR permits (a “nonparticipating State”). And under the WIIN Act, once an EPA (or State) permit is issued and in effect, the requirements of that permit apply in lieu of the federal regulations. On February 20, 2020, EPA proposed a rule (85 FR 9940) (2020 Proposed Rule) to establish a Federal CCR

permit program. The original comment period closed on August 7, 2020. With this document, EPA reopens the public comment period on the entire proposal for 30 days.

Since publication of the 2020 Proposed Rule, EPA established regulations applicable to inactive surface impoundments at inactive facilities (legacy CCR surface impoundments) under 40 CFR part 257, subpart D (89 FR 38950, May 8, 2024) (2024 Legacy Final Rule). In the 2024 Legacy Final Rule, EPA established regulations requiring owners and operators of legacy CCR surface impoundments to comply with the existing CCR regulations that apply to other inactive CCR surface impoundments, and established new compliance deadlines to ensure the owners or operators of these units have time to come into compliance with these newly applicable regulatory requirements. In addition, EPA established requirements to address the risks from solid waste management activities involving the direct placement of CCR on the land at CCR facilities; EPA regulated these activities as CCR management units or CCRMU. EPA extended a subset of the existing requirements in 40 CFR part 257, subpart D to CCRMU, which include CCR surface impoundments and landfills that closed prior to the effective date of the 2015 CCR Rule, inactive CCR landfills, and other areas where CCR is managed directly on the land at CCR facilities. The additional requirements for CCRMU apply to all active CCR facilities, all inactive facilities with legacy CCR surface impoundments, and those active facilities (i.e., facilities producing electricity for the grid as of October 19, 2015) that ceased placing CCR in onsite CCR units prior to the effective date of the 2015 CCR Rule.

EPA has recently proposed several further revisions to subpart D that would exempt CCR dewatering structures and modify certain legacy CCR surface impoundment and CCR management unit provisions (91 FR 18968, April 13, 2026) (“2026 Proposed Rule”). Additionally, EPA proposed to establish new provisions that would allow a CCR permit authority to establish alternative requirements in light of site-specific conditions for the groundwater monitoring and corrective action points of compliance, the cleanup levels for corrective action, the appropriate closure requirements, closure timeframes; and extend the

closure deadlines timeframes for CCR units where CCR is being extracted from the unit for beneficial use during closure. The Agency also proposed to revise the definition of beneficial use by eliminating the requirement for an environmental demonstration for the non-roadway use of more than 12,400 tons of unencapsulated CCR on land; to establish a definition of CCR storage pile; and to exclude specific beneficial uses from Federal CCR regulations.

II. Requests for Comment

Although EPA is soliciting comment on all aspects of the proposal, EPA is specifically seeking comments on: (1) The estimated timeframes to compile materials that would be needed under all of the various proposals discussed in the 2026 Proposed Rule, to aid the Agency in determining the permit application deadline; (2) Shortening the deadline for the first tier of permit applications to the effective date of the final permitting rule, which would be six months after publication of the final permitting rule in the *Federal Register*; and (3) Implementing an electronic permitting process for both EPA-issued CCR permits as well as for States that are implementing the CCR permitting program in lieu of EPA. Each of these are discussed in more detail below.

A. Deadlines for Federal CCR Permit Applications

In the 2020 Proposed Rule, EPA proposed that all owners and operators of a CCR unit in a nonparticipating State or in Indian country must apply for and obtain a Federal CCR permit in accordance with § 257.123(a). EPA planned to establish tiers of deadlines for the owners and operators of a CCR unit to submit a permit application, and proposed at § 257.124(a)(1) that the first tier of permit applications would be due 18 months after the effective date of the final rule. As it relates to this first set of deadlines, EPA requests comment on the amount of time that facilities estimate would be necessary to compile the materials needed for all of the various site-specific decisions that the permit authority would make under the provisions discussed in the 2026 Proposed Rule. For example, EPA requests estimates of how long it would take a CCR facility to conduct a site-specific risk assessment and compile the documents needed to support a

request for alternative closure requirements. In order to expediate processing permit applications, EPA also requests comment on shortening the deadline for submission of the first tier of permit applications to the effective date of the final permitting rule, which would be six months after publication of the final permitting rule in the *Federal Register*, and whether this is enough time to compile materials needed for the permit application.

EPA is also seeking comment on the approaches or criteria to tiering permit applications that EPA identified in the 2020 Proposed Rule; such as, prioritizing CCR units located in States that affirmatively declare to EPA that they do not intend to pursue program approval.¹ Further EPA is seeking comment from State agencies that have not yet submitted an application package to confirm interest in seeking program approval and approximate timelines, as it has been six years since the initial proposal, and up-to-date information may be used for tiering permit applications.

B. Electronic Permitting

In the Federal CCR permit program proposed rule, EPA proposed to use an electronic permitting process whereby applicants would electronically submit a permit application to EPA. This included proposing development of a CCR module in the RCRAInfo system which would allow for improved effectiveness and efficiency in the permitting process. EPA is seeking comment on how best to implement this electronic permitting process, including use of required forms that would provide basic information about each CCR unit at the facility as part of the permit application process.

In addition, EPA is considering implementing the electronic permitting process for both EPA-issued CCR permits as well as for States that are implementing the CCR permitting program in lieu of EPA to provide for national data consistency. This would require the state to enter permit data into an EPA data management system to track the status of state-issued permits in the same database as federal-issued permits, in line with the practice for RCRA hazardous

¹ See further examples at 85 FR 9951 (February 20, 2020).

waste Part B permits for the treatment, storage, and disposal of hazardous waste. EPA requests comment on this provision.

III. Public Participation

Written Comments

To submit comments or access the docket, please follow the detailed instructions provided under **ADDRESSES** in the *Federal Register* document published on February 20, 2020 (85 FR 9940). Comments previously submitted need not be resubmitted as they are already incorporated into the public record and will be considered in the final action as appropriate. If you have questions, consult the people listed under **FOR FURTHER INFORMATION CONTACT**.

Steven Cook,

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Office of Land and Emergency Management.*

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