

Coal Combustion Residuals: U.S. Environmental Protection Agency Proposed Rule



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

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The United States Environmental Protection Agency (“EPA”) issued on March 1st a pre-publication version of a proposed rule that would amend the regulations for the disposal of coal combustion residuals (“CCR”) from electric utilities and independent power producers.

CCR (also referred to as coal ash, fly ash, or bottom ash) is typically created when coal is combusted by power plants to produce electricity.

EPA previously granted in a September 13, 2017, letter petitions for reconsideration from the Utilities Solid Waste Activities Group and AES Puerto Rico, LLP of a rule that the agency had previously finalized on April 17, 2015. EPA’s rationale for granting the petitions for reconsideration included:

- Issued raised in the petitions
- New authorities provided in the Water Infrastructure Improvements for the Nation Act, PB. L. No. 114-332

The referenced federal legislation provided the authority for states to operate permit programs addressing CCR that EPA determines are at least as protective as the federal baseline requirements.

The March 1st proposed rule addresses four provisions in the previously issued final rule that were remanded back to EPA on June 14, 2016, by the United States Court of Appeals for the D.C. Circuit decision. The agency is also proposing six provisions that establish alternative performance standards for owners and operators of CCR units located in states that have approved CCR permit programs or are otherwise subject to oversight through a permit program administered by EPA. In addition, a revision based on comments received since the date of the final CCR rule is proposed.

As to the proposed four changes from the prior CCR final rule, they include:

- Clarify the type and magnitude of non-groundwater releases that would require a facility to comply with some or all of the corrective action procedures set forth in 40 C.F.R. §§ 257.96-257.98 in meeting their obligation to clean up the release
- Add boron to the list of constituents in Appendix IV of Part 257 that trigger corrective action and potentially the requirement to retrofit or close the CCR unit
- Determine the requirement for proper height of woody and grassy vegetation for slope protection
- Modify the alternative closure provisions

The changes associated with the previously referenced federal legislation (Water Infrastructure Improvements for the Nation Act) include six alternative performance standards that would apply in

participating states or in those instances where EPA is the permitting authority. The alternative performance standards are stated to allow a state with an approved permit program or EPA to:

- Use alternative risk-based groundwater protection standards for constituents where no Maximum Contaminant Level exists
- Modify the corrective action remedy in certain cases
- Suspend groundwater monitoring requirements if a no migration demonstration can be made
- Establish an alternate period of time to demonstrate compliance with a corrective action remedy
- Modify the post-closure care period
- Allow Directors of states to issue technical certifications in lieu of the current requirement to have professional engineers issue certifications

The proposed rule includes revision of the current regulations to allow the use of CCR in the construction of final cover systems for CCR units closing pursuant to § 257.101 that closing with waste-in-place. Also included is specific criteria that the facility would need to meet in order to allow for the use of CCR in the final cover system.

[A link to the pre-publication version of the proposed rule can be found here.](#)