

# Coal Combustion Residuals/National Minimum Criteria: U.S. Environmental Protection Agency Proposed Revisions



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The United States Environmental Protection Agency (“EPA”) issued a prepublication notice of proposed revisions to the National Minimum Criteria for Existing and New Coal Combustion Residuals (“CCR”) Landfills and Surface Impoundments (“CCR Rule”).

The proposed rule addresses what the agency describes as:

- “Targeted changes” to the 2015 CCR Rule
- Revisions to a later final rule that were remanded on August 21, 2018, by the U.S. Court of Appeals for the D.C. Circuit

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 had issued on July 18, 2018, revisions to the 2015 CCR. The agency described these revisions as amending the 2015 CCR Rule. It had previously granted in a September 13, 2017, letter Petitions for Reconsideration from the Utility Solid Waste Activities Group and AES Puerto Rico, LLP, of the rule that had been previously finalized in 2015.

EPA’s rationale for granting the Petitions for Reconsideration included:

- Issues raised in Petitions
- New Authorities provided in the Federal Water Infrastructure Improvements for the Nation Act (“WIIN”)

WIIN provided the authority for states to operate permit programs in addressing CCR that EPA determines are at least as protective as the federal baseline requirements. Several environmental organizations filed a Petition for Review in the United States Court of Appeals for the District of Columbia Circuit challenging the July 2018 revisions to the 2015 CCR Rule.

EPA describes the “target changes” to the 2015 CCR Rule as:

- Revisions to the annual groundwater monitoring corrective action report requirements
- Establishing an alternate risk-based groundwater protection standards for boron
- Revisions to the publically assessable CCR website requirements

The two provisions of the final rule that were remanded back to EPA on August 21, 2018, by the D.C. Circuit address:

- Revision of the CCR beneficial use definition

- Requirements applicable to piles of CCR

The elimination of the mass-based numerical threshold used to trigger environmental demonstration is proposed. It would be replaced with specific location-based criteria. As to piles, the agency is proposing what it describes as a:

. . . single approach to consistently address the potential environmental and human health issues associated with piles, regardless of whether a pile is on the land on-site (at an electric utility or independent producer site) or off-site (at a beneficial use site) and whether the CCR is destined for disposal or beneficial use.

A link to the prepublication copy of the proposed rule can be found [here](#).