



# EPA Proposes Revisions to Rules for Disposal of Coal Combustion Residuals from Electric Utilities

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## EPA Proposes Revisions to Rules for Disposal of Coal Combustion Residuals from Electric Utilities

Today, EPA published a [proposal](#) to amend the regulations in 40 CFR Part 257, Subpart D, governing the disposal of coal combustion residuals (“CCR” or coal ash) in landfills and surface impoundments. The proposed rule is the first (i.e., “Phase One”) of potentially two proposals to amend EPA’s CCR rules, which the agency finalized in April 2015. Today’s Phase One proposal reflects an EPA willingness to build certain operational flexibility into the CCR rules, and to revisit some of the details of the governing standards. It is a detailed proposal that merits a close review by facilities with CCR units regulated under the rules, and those that are otherwise concerned with compliance with the CCR rules. The Phase One proposal seeks to accomplish the following three main goals:

1. **Address provisions of the 2015 CCR rule that were remanded back to EPA by the D.C. Circuit.** Today’s proposal addresses four provisions of the final CCR rule that were remanded back to EPA in June 2016 by the D.C. Circuit following a partial settlement in a suit brought by industry stakeholders and environmental groups challenging the final rule. See *USWAG v. EPA*, No. 15-1219 (D.C. Cir. 2015). These proposed rule revisions would (i) clarify the type and magnitude of non-groundwater releases of CCR requiring corrective action under the rule and the scope of such corrective action; (ii) add boron to the list of constituents in Appendix IV of 40 CFR Part 257 for which groundwater samples are analyzed for in the “assessment” stage of groundwater monitoring at CCR units even though there is no maximum contaminant level (“MCL”) for boron; (iii) revise the height limitations for vegetative cover on the slopes of CCR surface impoundments; and (iv) allow facilities to qualify for alternative provisions for closure of a CCR unit based on the facility’s continued need to manage non-CCR waste streams in the unit.
2. **Revise additional provisions of the 2015 CCR rule in response to stakeholder comments received since the effective date of the final rule.** Additional CCR rule revisions are proposed to address (i) comments EPA has received since the final rule went into effect and (ii) rulemaking petitions to reconsider parts of the final rule, which EPA granted in September 2017. More specifically, EPA is proposing to

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allow the use of CCR in the construction of the final cover for CCR units that close with CCR remaining in the unit (i.e., waste-in-place closure), if such units meet certain criteria for the use of CCR in final cover systems.

3. **Allow participating states/EPA to set certain alternative performance standards.** Borrowing heavily from the federal, RCRA Subtitle D framework for municipal solid waste ("MSW") landfills in 40 CFR Part 258, today's proposal includes six alternative performance standards that would allow states with CCR programs approved by EPA under the 2016 Water Infrastructure Improvements for the Nation ("WIIN") Act, and EPA in states where EPA is the permitting authority, to (i) set risk-based groundwater protection standards for constituents that do not have an MCL established under the Safe Drinking Water Act; (ii) determine that remediation of a release to groundwater is not necessary under certain conditions; (iii) set alternative deadlines for demonstrating completion of corrective action remedies; (iv) suspend groundwater monitoring requirements upon a demonstration that there is no potential for migration of hazardous constituents to the uppermost aquifer through the post-closure care period; (v) modify the length of the post-closure care period; and (vi) certify a facility's compliance in lieu of, or in addition to, certifications by professional engineers.

The proposal also seeks comment on whether an individual facility should be allowed to implement these alternative performance standards unilaterally in states without an EPA-approved CCR program, subject to EPA oversight and enforcement.

When EPA promulgated the CCR rule in 2015, the agency took the position that it did not have the requisite authority under RCRA to authorize states to administer their own CCR permit program in lieu of the federal CCR rule, or to allow for much, if anything, in terms of site-specific flexibilities in the final rule. However, the 2016 WIIN Act amended RCRA to authorize states to implement the CCR rule through an EPA-approved permit program, as long as the state's program is at least as protective as the federal CCR rule requirements. States with EPA-approved CCR permit programs are called "participating states." The WIIN Act also provided EPA with new authority to enforce the CCR rule and, in certain circumstances, to serve as the permitting authority. Under the Act, EPA is the CCR permitting authority in Indian Country and in non-participating states that do not have an EPA-approved CCR permit program.

One of the more significant proposals is EPA's attempt to clarify the requirements for remediating non-groundwater releases of CCR. The proposal would refine the rule requirements based on the scale of the release and magnitude of the corrective measures needed. EPA observes that not all non-groundwater releases are "catastrophic" and that some may be "quite minor" and could be addressed quickly. To identify those non-groundwater releases that are of lower magnitude, EPA proposes a 180-day time period for complete remediation as the bright-line test; those corrections that can be completed within 180 days would be subject to streamlined procedures rather than those set out under the original rule. EPA explains its expectation that its proposal for non-groundwater releases of CCR would encompass those releases with "limited potential for harm to human health and the environment." EPA further reasons that the proposed change would "most likely apply to incidental releases (including fugitive dust) that occur from seepage through the embankment, minor ponding ..." or other conditions that are distinguished from those of a "catastrophic" nature and may not warrant all of the corrective action procedures currently required under the rule. EPA seeks feedback on whether the 180-day time period makes sense or whether it should be shorter or longer.

EPA will accept comments on today's Phase One proposal for a period of 45 days, until April 30, 2018, and the agency expects to take final action on the proposal by June 2019, in accordance with the settlement agreement associated with the remand from the rule challenge pending in the D.C. Circuit. EPA is contemplating various other CCR rule revisions that, if the agency decides to go forward with them, will be proposed as Phase Two by September 2018 and finalized by December 2019.

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