EPA HQ Updates on Coal Combustion Residuals

OCTOBER 31, 2019
Key Messages

The CCR landscape is complex

- The 2015 rule is being implemented; deadlines have passed; many units are in closure and corrective action.
- Groundwater monitoring data indicates more contamination than originally expected.
- More CCR units are moving into corrective action.
- Legal and regulatory landscape is changing.
- Stakeholders are very engaged.
- States are developing regulations and programs.
- EPA is developing its permit program.

EPA appreciates the close working relationship with ASTSMWO and the States and will continue to work closely with you as federal regulations and State regulations and programs are developed.
Overview

CCR Data

Compliance Assistance and Enforcement Effort

State Permit Program Development

Regulatory Development Updates
National CCR Data: Location Restrictions and Closure

**Location Restriction Data***

<table>
<thead>
<tr>
<th></th>
<th>Surface Impoundments</th>
<th>Landfills</th>
</tr>
</thead>
<tbody>
<tr>
<td>Passed</td>
<td>155</td>
<td>Passed</td>
</tr>
<tr>
<td>Failed</td>
<td>191</td>
<td>Failed</td>
</tr>
<tr>
<td>Unknown</td>
<td>69</td>
<td>Unknown</td>
</tr>
</tbody>
</table>

*For active and closed existing CCR units (excludes new, and inactive)*

**Closure Data**

<table>
<thead>
<tr>
<th></th>
<th>Surface Impoundments</th>
<th>Landfills</th>
</tr>
</thead>
<tbody>
<tr>
<td>NOI to Close Posted</td>
<td>204</td>
<td>NOI to Close Posted</td>
</tr>
<tr>
<td>Plan to Close by Removal</td>
<td>216</td>
<td>Plan to Close by Removal</td>
</tr>
<tr>
<td>Plan to Close with Waste in Place</td>
<td>294</td>
<td>Plan to Close with Waste in Place</td>
</tr>
</tbody>
</table>

**CCR Universe**

- Total Units: 768
- Surface Impoundments: 533, 69%
- Landfills: 235, 31%
### National CCR Data: Groundwater Monitoring and Corrective Action

<table>
<thead>
<tr>
<th>Groundwater Monitoring and Corrective Action Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eligible Inactive Surface Impoundments</td>
</tr>
<tr>
<td>Unknown</td>
</tr>
<tr>
<td>Not Leaking</td>
</tr>
<tr>
<td>Assessment Monitoring</td>
</tr>
<tr>
<td>GWPS Exceedance</td>
</tr>
<tr>
<td>Corrective Measures Initiated</td>
</tr>
</tbody>
</table>
Compliance Assistance and Enforcement Effort

Mailed general letter to facilities on May 7, 2019 reminding them of posting requirements

Follow up:

◦ Reviewed facilities that are missing “key documents”
◦ Complied list of top facilities with the highest number of missing documents
◦ Starting to reach out to the regional offices for them to reach out to the states to discuss how to move forward with these facilities
◦ Reviewing groundwater monitoring data such as location of wells, intra vs inter-well analysis, alternative source demonstrations, and assessment of corrective measures
State CCR Permitting Programs: Update

OK application approved June 28, 2018
  ◦ Challenged by Waterkeeper Alliance and Sierra Club 9/26/2018
  ◦ Currently waiting for the court
  ◦ Our position based on WIIN Act is that a state’s approved program is not revoked after rule changes (either litigation or new rules); but that the state will need to come back in with a revised program to address those changes once they have taken place

GA application proposed approval published on June 28, 2019
  ◦ Partial program - Approval for everything except for provisions affected by the USWAG decision and endangered species act (ESA) (257.3-2)
  ◦ Incorporated CCR rule by reference
  ◦ Deadline to take final action is December 16, 2019

Currently working with several states on their application materials and regulations
State CCR Permitting Programs: FAQs

Many States are currently developing regulations and their program elements. These are some of the most common questions:

◦ How should we represent the USWAG court decision in our regulations?
◦ What if we do not have legacy units or clay-lined units?
◦ Can we incorporate the flexibilities from the March 2018 Phase 1 proposed rule that were not finalized?
◦ Can we use the risk based corrective action program we use for other programs in the state?
◦ How much public participation is needed?
◦ Are lifetime permits ok?
◦ How does a partial program work?
◦ Can we consider cost?
Regulatory Development Packages
Package 1: Enhancing Public Access to Information and Reconsideration of Beneficial Use Criteria and Piles

Major elements:
- Discussion of the threshold for an environmental demonstration for beneficial use
- Requirements for piles of CCR
- Internet Posting Requirements
  - Format for GWM Reports
  - Making websites “publicly accessible”
- Alternate risk based GWPS for boron

Comment Period Closed on October 15th
- Approximately 130K comments
- About 60 substantive comments
Package 2- A Holistic Approach to Closure
Part A: Deadline to Initiate Closure

OMB review expected to conclude this week, signature expected week of November 4th
Comment period will be 45 days

Major Elements
- Definition of Lined Unit (removing a clay-lined unit from the definition)
- New Initiation of Closure and Cease Receipt of Waste Deadline of August 31, 2020
- New Alternate Closure Provisions for surface impoundments: Extensions to the cease receipt of waste deadline
  1. 3 Month Self-Implementing Extension: A facility must certify that they need a little more time to achieve cease receipt of waste due to factors outside their control.
  2. Site Specific Alternative: Requires facilities to submit demonstrations to EPA for approval for a specific amount of time to be able to continue to use their surface impoundment while developing alternate capacity for the CCR and non-CCR wastestreams. Maximum of 5 years from date of the court mandate (October 15, 2023).
  3. Alternative for Permanent Cessation of Coal-Fired Boiler(s) by a Date Certain: A facility will have to submit a demonstration to EPA for approval to continue to use their CCR surface impoundment. The facility must be able to complete closure by 2023 for surface impoundments less than 40 acres and by 2028 for surface impoundments larger than 40 acres.
### Proposed Compliance Deadlines for CCR Surface Impoundments

<table>
<thead>
<tr>
<th>Proposed Compliance</th>
<th>Deadline Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>New cease receipt of waste deadline for unlined and formerly clay-lined surface impoundments (§257.101(a)(1))</td>
<td>August 31, 2020</td>
</tr>
<tr>
<td>New cease receipt of waste deadline for surface impoundments that failed the minimum depth to aquifer location standard (§257.101(b)(1)(i))</td>
<td>August 31, 2020</td>
</tr>
<tr>
<td>New short-term alternate to initiation of closure (up to 3-month extension to cease receipt of waste deadline) (§257.103(e))</td>
<td>No later than November 30, 2020</td>
</tr>
<tr>
<td>New site specific alternate to initiation of closure due to lack of capacity (§257.103(f)(1))</td>
<td>No later than October 15, 2023 (maximum of 5 years after USWAG decision mandate date)</td>
</tr>
<tr>
<td>New site specific alternate to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain (§257.103(f)(2))</td>
<td>No later than October 17, 2023 for surface impoundments 40 acres or smaller No later than October 17, 2028 for surface impoundments larger than 40 acres</td>
</tr>
</tbody>
</table>
Package 2 – A Holistic Approach to Closure Part B

Major Elements

- Alternate demonstration: allowing an owner/operator to demonstrate that an unlined surface impoundment and/or its environmental setting are equivalent to a composite-lined surface impoundment
- Use of CCR in units closing for cause
- Completion of closure by removal when corrective action is not complete (i.e., need more time to clean up the groundwater)
- Addition of annual closure progress reports and modification to the notice of intent to close; and
- Seeking comment/information on legacy surface impoundments (that is, those inactive surface impoundments at inactive power plants)

Anticipate transmitting this package to OMB for interagency review in the next few weeks.
Package 3 - Federal Permitting Regulation

Package Received by OMB on September 6th

Current major topics:
- Requirement for CCR units in non-participating states or tribal lands to obtain a permit
- Permit duration
- Permit application reviews
- General permits and permit by rule
- Modifications
- Part 124 administrative procedures
- E-permitting
Summary/Next Steps

Current goal is to finalize all time-critical proposed provisions in the first half of 2020

If a State is thinking about starting to develop regulations and materials for a State Permit Program contact your EPA Region or HQ early

EPA is looking closely into groundwater monitoring data and the initiation of corrective action
Questions?
Appendix Slides
Eligible Inactive Surface Impoundments

The 2015 CCR Rule said that inactive impoundments that met certain criteria and completed closure by April 17, 2018 were exempt from the other requirements in Subpart D.

This exemption was vacated in June of 2016.

A direct final rule gave those units extended deadlines to come into compliance with the requirements:

- Initial closure plan 5/2018
- GWM system certification 5/2019
- GWM statistical method 5/2019
- First annual GWM report 9/2019
July 2018 Final Rule Topics

Established a new deadline, October 2020, for cease placement of waste for unlined units with a GWPS exceedance and those units that failed aquifer location restriction

Established alternative risk-based groundwater protection standards for constituents where no MCL exists

Suspension of groundwater monitoring requirements if a no migration demonstration can be made

Allow Directors of states to issue certifications in lieu of the current requirement to have PEs issue certifications
Litigation

2015 Rule Litigation

USWAG v. EPA

- The court decision issued August 21, 2018 and mandate issued on October 15, 2018
- Remanded beneficial use issues to EPA (that is, the issue of the threshold for an environmental demonstration [the “12,400 tons”]), and the definition of a “pile”
- Court overturned 3 provisions:
  - That clay lined CCR surface impoundments could operate indefinitely
  - That only leaking unlined surface impoundments were required to close
  - That inactive surface impoundments at closed utilities were not subject to the CCR rule
Litigation

July 2018 Rule Litigation

Waterkeeper Alliance v. EPA
  ◦ Challenged July 2018 final rule
  ◦ Expedited review of October 2020 deadline for cease receipt of waste
  ◦ Deadline remanded to EPA
  ◦ Challenges to other portions of July 2018 rule to be briefed/schedule not yet set.

Oklahoma State Program Approval - Waterkeeper Alliance Inc and Sierra Club v. EPA

Briefing schedule
  ◦ Plaintiff’s Brief March 5
  ◦ EPA Brief May 13
  ◦ PI’s Reply July 3
  ◦ EPA Reply July 25
WIIN Act, CCR Provisions

States may, but are not required, develop and submit a CCR permit program (or other system of prior approval) to EPA for approval.

State program does not have to be identical to, but must be “at least as protective as” the CCR rule.

State programs can be approved in whole or in part.

Once approved, State permit programs would operate in lieu of the federal rule.

The federal CCR rule applies to a CCR unit until a permit is in effect.

EPA must implement a permit program in Indian country.

EPA must implement a permit program in non participating states, but only if specific appropriations are granted.

EPA may use enforcement authorities under RCRA sections 3007 and 3008 to enforce the rule or permit provisions.

EPA must review State permit programs at least once every 12 years and in certain specific situations.
Communicate early and often with EPA.

Need to have regulations in place prior to submitting application for approval of a permit program, but don’t wait for regs to be in place to start working with EPA.

EPA must find that a state program is “at least as protective as” the federal CCR rule in part 257; States need to submit evidence for EPA to make that finding.

EPA approval of a state program is a final agency action subject to challenge.

If the State regulations incorporate the CCR rules in Part 257 by reference, then this does not provide for “flexibilities” or changes from the Part 257 rules.

EPA has 180 days from determining an application complete to make a final decision

State may reference (and include) existing subtitle D approved program elements that are relevant
  ◦ e.g., GA references inspection, compliance and enforcement processes that remain the same

Two major components of review process: technical standards (compared to 257 regulations) and permit program (compared to part 239)