EPA Updates on Coal Combustion Residuals

From the Region 4 and National Perspective

Environmental Show of the South

May 16, 2019

Laura McMillan
Overview

• CCR Data
• Compliance dates
• Updates on litigation
• Regulatory development
• Program implementation
• State program approval
National CCR Data

**CCR Universe**
- Total Units: 772
  - Landfills, 234, 30%
  - Impoundments, 538, 70%

**Groundwater Monitoring Data***

<table>
<thead>
<tr>
<th></th>
<th>Surface Impoundments</th>
<th>Landfills</th>
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<tbody>
<tr>
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<td>92</td>
<td>84</td>
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<tr>
<td>Not Leaking</td>
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<td>36</td>
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<td>103</td>
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<tr>
<td>GWPS Exceedance</td>
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**Location Restriction Data***

<table>
<thead>
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<tr>
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*For active CCR units (excludes closed, new, and/or inactive)
## CCR Data - Tennessee

### Groundwater Monitoring Data

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<th>Surface Impoundments</th>
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### Location Restriction Data

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EPA Logo

4
# CCR Compliance Timeframes: Impoundments

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<tr>
<th>Rule Requirement</th>
<th>Action</th>
<th>Existing CCR Impoundments</th>
<th>Eligible Inactive Impoundments at Active Power Plants</th>
<th>Rule Citations</th>
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<td>Apr 17, 2018</td>
<td>257.71(a)(1) and 257.100(e)(3)(i)</td>
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<td>Apr 17, 2019</td>
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<td></td>
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<td>Mar 2, 2019</td>
<td>Sep 3, 2020</td>
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Note: Green shading represents deadlines that have passed
## CCR Compliance Timeframes: Landfills

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Action</th>
<th>Deadline: Existing Units</th>
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<td>257.64(d)(1)</td>
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<td>Post</td>
<td>Mar 2, 2019</td>
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Posting Requirements

Owner/Operators are required to post within 30 days of:

- Establishing Assessment Monitoring
- Detecting a SSI of an Appendix IV constituent
  - This triggers the cease placement of waste no later than October 31, 2020
  - Initiating Assessment of Corrective Measures

Owner/Operators are also required to post:

- Completion of Assessment of Corrective Measures
- Notice of Public Meeting to discuss assessment of corrective measures at least 30 days prior to selection of a remedy
- Semiannual progress report of selecting and designing a remedy
- Final report of the selected remedy
- Notice of Intent to Close
- Annual Closure Progress Reports

Website posting non-compliance
- Nationally: 40%
- Region 4: 25%
Litigation

**USWAG v. EPA – 2015 Rule**

- 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
- “Legacy Units” (that is, inactive surface impoundments at closed power plants)
  - A future rulemaking will bring legacy units at inactive power plants into the CCR universe
  - Working with States to compile these lists
Litigation

July 2018 Rule Litigation

*Waterkeeper Alliance v. EPA*

- Challenged July 2018 Phase 1 Part 1 final rule
- Expedited review of October 2020 date of cease receipt of waste
- March 13 –
  - The court ruled that the 2018 Rule can stay in place while the agency reviews it further
  - The motion for a partial stay of the rule was denied
Litigation

Oklahoma State Program Approval

*Waterkeeper Alliance Inc and Sierra Club v. EPA*

- **Issues raised**
  - Public participation
  - State resources/compliance status of units
  - Applicability of other State and federal rules - 40 CFR Part 257.52

- **Briefing schedule**
  - Plaintiff’s Brief     March 5
  - EPA Brief            April 25
  - PI’s Reply           May 23
  - EPA Reply            June 24
Future Proposed Rules

1. Phase 2 Rule
2. Response to Litigation Rule
3. Federal CCR Permitting Program Rule
Proposed Rules – Phase 2

• Primarily Beneficial reuse
• Will address CCR in piles
• Defining “publicly accessibly” along with other website issues
• Revisions to annual groundwater monitoring requirements
Response to Litigation Rule

- Response to previous litigations
- Addresses issues remanded to the Agency,
  - Date to initiate closure updates
- Originally targeted for summer 2019, reconsidering schedule in light of the shut down
Federal Permitting Rule

- Developing regulations to be proposed in late summer 2019

- Current major issues being considered:
  - 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
Implementation

• Assuring compliance: developing an internal workgroup; sending out compliance letters to utilities
• Developing standardized data reports to send to Regions/States on a regular basis
• Having a technical expert examine location of background wells, intra-well analysis, and alternative demonstrations for aquifer location standard
• Investigating legacy units: effort to identify universe and develop regulatory structure
• Reviewing data on units that are located above geologic clay area
• Corrective action
• Working with Regions/states on site specific issues
State CCR Permitting Programs: Update

• EPA is using the interim final guidance with any interested state

• OK application approved June 28, 2018
  • Challenged by Waterkeeper Alliance and Sierra Club 9/26/2018
  • 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

• Currently working with 8 states on their application materials and regulations
  • Including Georgia and Alabama
State CCR Permitting Programs: Approvals

- Full approval: State program would need to be consistent with USWAG court decision
- Partial approvals are allowed and encouraged
- In developing your program especially consider:
  - §257.3: ESA, floodplains, and surface water
  - Point of Compliance
  - Length of permit (i.e., lifetime)
  - Ability for public participation
  - Current compliance status of CCR facilities in the state
  - Corrective action either consistent or “as protective as”
  - Flexibilities from §258 that have been challenged or not finalized due to lack of record
State CCR Permitting Programs: Lessons learned so far

• Regular communication between the states and EPA is very helpful for quickly addressing any issues or concerns

• State programs are complicated and a clear roadmap of applicability of regulations, statutes, etc. in the narrative is important

• Even minor differences in definitions can make communication challenging

• Specificity in the 257 checklist can help identify/clarify requirements that may need additional discussion

• Public participation opportunities for CCR permitting may be different than participation for MSWLFs

• Addressing all elements of the Permit Program Application Checklist (Chapter 4 of Guidance Document) is important
Questions?

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404-562-8584
Appendix Slides
CCR GWM Compliance Deadlines

Complete 1st round of AM sampling

Post Annual GWM Report

Complete 2nd round AM sampling

Complete statistical analysis for GWPS exceedance

Possible earliest cessation placement of waste date

Initiate Assessment of Corrective Measures

Complete alternate source demonstration and initiate assessment of corrective measures

Conclusion of assessment of corrective measures and begin selection of remedy

Post Appendix IV GWPS exceedance and earliest date for NOI to close or retrofit

Posting of Location Restrictions

Complete 2nd round AM sampling

Complete statistical analysis for GWPS exceedance

Note: the lower labels are if the facility did an alternate source demonstration

*If the October 2020 date is lost in a court challenge
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
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,
- 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
Partial Program Approval

• WIIN Act says programs may be approved “in whole or in part”
• Program could be partial if it only covers some of the units (e.g., only covers landfills)
• Program could be partial if it only contains some of the technical requirements of part 257 regulations (e.g., doesn’t include structural stability requirements, doesn’t include posting of compliance data on a public website)
• If a partial program is approved, the state permit will cover some things and the part 257 regulations will apply to the others
• A state wanting to start their permit program could seek approval of a partial plan consisting of the regulations they currently have in place and then modify them to include flexibilities at a later date