National Ground Water Association

Comments on

U.S. Environmental Protection Agency

Proposed Rule

Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Legacy/CCRMU Amendments

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Summary:
The Environmental Protection Agency (EPA proposed revisions to the existing federal CCR regulations, including exempting CCR dewatering structures and modifying the legacy coal combustion residual (CCR) surface impoundment and CCR management unit provisions. Additionally, EPA is proposing to establish a new compliance pathway that allows for site-specific considerations during permitting regarding the groundwater monitoring points of compliance, the cleanup levels for corrective action, the appropriate closure requirements, closure timeframes, and allowing CCR extraction for beneficial use during the post-closure care period. The Agency is also proposing to revise the definition of beneficial use by eliminating the requirement for an environmental demonstration for the non-roadway use of more than 12,400 tons of unencapsulated CCR on land, as well as proposing a definition of CCR storage pile, and proposing to exclude specific beneficial uses from federal CCR regulations. Lastly, EPA is providing notice that EPA will reopen the public comment period for the Federal CCR permit program proposed rule, published on February 20, 2020, for a period of 30 days in a future separate action.

Comments of the National Ground Water Association

1. **40 CFR § 257.90 Applicability (b) (2) New CCR landfills, new CCR surface impoundments, and all lateral expansions of CCR units.**

NGWA Comment – NGWA supports the provisions that all new CCR landfills, new CCR surface impoundments, and all lateral expansions be in compliance with the groundwater , monitoring requirements specified in paragraphs 40 CFR § 257.90 (b)(1)(i) and (ii). These new units must have adequate liners to minimize the leakage and release of the CCRs beyond the containment method selected in compliance with § 257.71, Liner design criteria for existing CCR surface impoundments, as a groundwater protective measure related to groundwater monitoring, and a leachate collection system to intercept leakage.

2. **40 CFR § 257.94 Detection monitoring program.**

NGWA Comment: With new CCR landfills, surface impoundments, and lateral expansions, NGWA recommends that, where practicable, detection monitoring be initiated in advance of construction to establish representative baseline groundwater conditions. The monitoring frequency should be at least every 6 months, or more frequently, as determined by the regulatory agency, based on the site geology. However, the deadline indicated in the proposed rule is unclear as 40 CFR § 257.90 (b)(1)(i) and (ii) as currently published does not appear to have a date associated with it.

NGWA supports early establishment of groundwater monitoring networks and collection of representative background data. Where practicable, baseline monitoring should be initiated in advance of waste placement to characterize pre-operational groundwater conditions.

However, NGWA recognizes that:

- Existing facilities or expansions may already have robust background datasets, and
- Construction and permitting timelines may limit the feasibility of extended pre-construction monitoring.

Accordingly, NGWA recommends that EPA clarify that:

- Background characterization may rely on existing site data where technically appropriate, and
- Monitoring frequency and duration should be based on site-specific hydrogeologic conditions, including hydraulic conductivity and groundwater flow gradients.

3. **40 CFR § 257.100 Inactive CCR surface impoundments and Legacy CCR surface impoundments. (g)(7)**

This Section requires that documentation occur that a regulatory authority played an active role in overseeing and approving the closure by removal and any necessary corrective action, pursuant to an enforceable requirement issued on or after October 19, 2015. Impacts to groundwater must have been considered prior to or as part of the impoundment closure. This enforceable requirement includes a State or Federal permit, an administrative order, or consent order under CERCLA or by an EPA-approved RCRA State program

NGWA Comment: Coordination with "a regulatory authority [that] played an active role in overseeing and approving the closure" should include certification of the adequacy of the closure process plan and of a completed risk assessment that addresses the potential and actual contamination of adjacent users' groundwater. The certification should incorporate addressing health and property impacts to the residents of dwellings and businesses in the path of the CCR contaminant plume or future plume location who will be adequately protected from the contaminants of past releases. Where site conditions indicate potential or demonstrated impacts to groundwater users, the certification should evaluate the need for contingency measures, which may include provision of alternative water supply. CCR impoundments closed in the past under other authorities (such as the Clean Water Act) should have a risk assessment conducted to determine that they do not convey any excess risk to adjacent groundwater users.

Consideration of groundwater impacts should include:

> Are monitoring locations appropriate?
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> Have all groundwater supply systems adjacent to the impoundment been identified?
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> How fast is the contaminant plume advancing and when may adjacent populations potentially be affected?
>
> What is the potential to impact public or private groundwater-supplied water systems?
>
> Is the financial need for remediation adequately funded?

NGWA supports requirements that closure determinations include documentation of regulatory oversight and consideration of groundwater impacts.

To strengthen groundwater protection while maintaining consistency with existing regulatory frameworks, NGWA recommends:

- Certification by a qualified professional (e.g., licensed engineer or certified hydrogeologist) that closure plans and supporting data adequately characterize groundwater conditions and potential risks; and

- Use of risk-informed evaluation approaches to assess impacts to adjacent groundwater users.

Where impacts to groundwater are identified, NGWA recommends that closure and post-closure measures consider:

- Long-term plume stability and migration potential,
- Protection of existing drinking water sources, and
- Availability of contingency measures (e.g., alternative water supply) where warranted by site-specific conditions.

NGWA notes that not all legacy units will require identical corrective actions; therefore, responses should be proportional to risk and supported by site data.

4. **40 CFR 257.101 Closure or Retrofit of CCR Units (g) Deferral of previous closures of legacy CCR surface impoundments**

NGWA Comment: NGWA is concerned that the owner or operator of a legacy CCR surface impoundment need not demonstrate compliance with the performance standards in § 257.102(c) or (d) provided they demonstrate that the closure of the CCR unit met the standards specified in paragraphs (g)(1) through (4) does not provide sufficient protection for adjacent groundwater users on public or private wells. The criteria of the proposal list (1) a regulatory authority played an active role in overseeing and approving the closure, (2) documentation that the utility installed a groundwater monitoring system and performed groundwater monitoring, (3) a signed statement that information requested was included in the applicability document, and (4) the closure equivalency determination include groundwater data meeting standards and the "equivalency" of the closure has been successfully demonstrated.

Additionally, the proposal indicates that specific requirements necessary for the closed unit to achieve compliance with § 257.112 is included in a closure permit. The closure permit requires a plan but does not indicate that the plan is to be implemented, nor over what timeframe, a short-coming of the proposed rule revisions. The closure permit also does not indicate that removal of the CCR as a contaminant source nor corrective action is to occur under the permit, an inadequacy of the proposed equivalency determination. NGWA recommends that the closure requirements remain as in the current regulation. Measures sufficient to protect groundwater and adjacent receptors should be implemented based on site-specific conditions, with consideration of plume stability, extent, and long-term risk.

NGWA supports EPA's intent to provide flexibility for previously closed units but is concerned that the proposed equivalency framework may allow closure determinations without sufficient demonstration of long-term groundwater protection.

NGWA recommends that equivalency determinations:

- Be supported by groundwater monitoring data demonstrating stable or controlled conditions;
- Clearly define expectations for implementation of closure-related measures, not solely planning; and
- Include enforceable provisions, where appropriate, linking closure status with ongoing groundwater monitoring and corrective action obligations.

NGWA emphasizes that closure determinations should remain performance-based, focusing on protection of groundwater and receptors, rather than solely on documentation of prior actions.

5. Flexibilities for Owners or Operators of CCR Units Operating Under CCR Permits

§ 257.110 Groundwater monitoring under a CCR permit authority.

This proposed new section of the CCR regulations provides for an alternative point of compliance (POC) which may be not more than 150 meters from the CCR disposal unit. A decision to utilize such an alternative POC must consider that the alternate location not materially delay detection of any statistically significant amounts of any of the constituents and will minimize the migration of any of those constituents from that CCR unit to the uppermost aquifer.

NGWA Comment: Moving the POC to a more distant location will delay detection of contamination or cause dilution of the contaminants, to which exposure to even low levels may be harmful. A more distant POC will have a lower concentration of the contaminant due to well-understood hydrogeologic processes of advection and dispersion: the physical processes by which contaminants move with groundwater flow and mix with uncontaminated groundwater and spread out, forming a plume that occupies a larger volume of the aquifer than when it first entered diluting the pollutant concentration at the advancing edge of a plume. This has implications for the timing of detection monitoring transitions and corrective action decisions under the CCR program.

Furthermore, if the release of the CCR contaminants is monitored at a more distant location and found to be at a high and harmful concentration at that more distant location, the capability to remediate it will be more time consuming and costly and the result potentially more damaging than when it could have been mitigated earlier by a POC closer to the waste containment site.

The approach to groundwater monitoring should be based on the hydrogeology of the site with monitoring wells as close to the contamination source as possible. Groundwater monitoring steps have been previously specified in 40 CFR 257.22 Ground-water

monitoring systems, which requires that "the number, spacing, and depths of monitoring systems shall be" based on the site's hydrogeologic characteristics, including hydraulic conductivity, and be certified by a "qualified ground-water scientist or approved by the Director of an approved State". Frequency of monitoring in conjunction with hydraulic conductivity and preferential pathways of groundwater flow should also be considered in determining the number, spacing and depths of groundwater monitoring systems.

NGWA recognizes the proposed flexibility to establish an alternative point of compliance (POC). However, proper placement of monitoring wells remains critical to early detection of releases.

NGWA recommends that:

- POC locations be established based on site-specific hydrogeology, including flow direction, hydraulic gradients, and preferential pathways;
- Monitoring systems be designed to ensure timely detection of releases before impacts to downgradient receptors; and
- Any alternative POC location be supported by technical justification demonstrating that it will not materially delay detection or obscure concentration trends.

NGWA emphasizes that monitoring systems should balance:

- Early detection near the source, and
- Practical constraints associated with well installation and long-term monitoring.

6. **40 CFR § 257.111 Alternative groundwater protection standards for corrective action under a CCR permit authority.**

These alternative groundwater protection standards proposed to be set by a State Director or EPA for contaminants that do not have an existing maximum contaminant level are to be set using appropriate health-based levels using EPA health-based guidelines.

NGWA Comment: The proposed rule should provide for public review and comment on setting alternative groundwater protection standards based on human health and environmental effects, including surface water impairment. Public review provides input to decisionmakers regarding the public's, and in particular the adjacent groundwater users', willingness to accept the risk for any unregulated contaminants for which CCR is the source.

7. **40 CFR § 257.112 Closure method under a CCR permit authority.**

This proposed closure method only requires a plan, a conceptual site model, installation of groundwater monitoring system, groundwater monitoring, contaminant fate and transport predictions, identification of contaminant pathways of exposure and a plan for mitigation.

NGWA Comment: This alternate closure method does not require mitigation of the contamination. This is a shortcoming of the proposed rule potentially affecting adjacent groundwater users. Where dewatering is proposed as part of a closure or construction approach, it may have implications for adjacent groundwater users and should be evaluated using site-specific hydrogeologic analysis. This is not an appropriate closure method without warning adjacent groundwater users, groundwater modeling clearly indicating no impact and provision to offer alternative water supply during the entirety of the dewatering operation.

8. **40 CFR § 257.113 Closure completion timeframes under a CCR permit authority.**

This section proposes that a State Director or EPA, where EPA is the permit authority, for closure with extraction of CCR for beneficial use as a component of the overall closure method, may establish the closure completion timeframes for CCR units in lieu of others established and be based on a demonstration by the owner or operator, that the extended timeframe will pose no reasonable probability of adverse effects on health or the environment.

NGWA Comment: Closure completion timeframes must be protective of adjacent public and private well owners and groundwater users and subject to public review. For closure with extraction of CCR for beneficial use as a component of the overall closure method, this proposal does not include a public notice, meeting or hearing to obtain public input on delayed closure of a CCR disposal facility. This is particularly significant to adjacent groundwater users who are potentially most affected by groundwater contamination. This proposal does not clearly distinguish between closure-related activities and continued disposal operations, which may create uncertainty regarding how closure is defined and implemented. Continued disposal in existing disposal sites for later extraction would be inconsistent with closure as typically understood.

9. **40 CFR § 257.114 Post-closure care under a CCR permit authority**.

This section provides the permit authority to allow the owner or operator of a closed CCR unit to extract CCR for beneficial use during the post-closure care period only if this use will not pose a reasonable probability of adverse effects to human health and the environment.

NGWA Comment: This section appears reasonable as long as post-closure care, groundwater monitoring and corrective action continue uninterrupted at the closure site. Removing the cap of a landfill to mine disposed CCR waste for critical elements exposes

the buried wastes to precipitation that can infiltrate and carry contaminants to the aquifer. The benefit of the cap of the landfill should not be minimized. Additionally, the mining activities for CCR to be used beneficially should be prefaced – before mining occurs - with an operational plan for groundwater protection and subject to prior public review.

Basis for the Interest of the National Ground Water Association (NGWA) in Disposal of Coal Combustion Residuals From Electric Utilities

NGWA, the largest trade association and professional society of groundwater professionals in the world, represents over 10,000 groundwater professionals within the United States and internationally. NGWA represents four key sectors: scientists and engineers, water-well contractors, manufacturers and suppliers responsible for providing the equipment needed to make groundwater development possible. NGWA's mission is to advocate for and support the responsible development, management, and use of groundwater.

Over 43 million people in the United States rely on private wells and nearly 93 million people are served by groundwater from community water systems.

NGWA views groundwater and the subsurface as a significant natural resource that should be sustainably managed for current and future use. The subsurface environment should be considered from an integrated resource perspective. The natural infrastructure of the subsurface environment with proper management can provide fresh groundwater for drinking, industrial and manufacturing applications, food production, and ecosystem support.

A concise summary of the position of the National Ground Water Association on groundwater protection related to potential sources of contamination is:

- Aquifers should be protected from degradation.
- Groundwater quality should be protected for existing or potential beneficial uses.
- Control of potential and active sources of contamination should be a national objective, reducing the need for remediation of groundwater.

NGWA appreciates the opportunity to review this proposed rule and looks forward to working with EPA and the RCRA program to support a groundwater-protective approach to coal ash disposal.

For follow-up, please contact:

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