



## WILL STATES CONTROL THE REGULATION OF COAL COMBUSTION RESIDUALS?

EPA has proposed two rules which would allow coal ash residuals from electric utilities to be regulated by the states and not EPA.

For a number of years, rulemaking has been evaluated regarding coal ash residuals, which got a lot of attention after the TVA site failure near Knoxville, Tennessee where large volumes of wet coal ash were released into several large rivers.

Gary Brown testified for Plaintiffs in Federal Court, and TVA began a large cleanup which was focused on removing as much of the impacted materials from the rivers as possible. EPA is basically deciding that the coal ash is municipal waste, and its proposal includes:

- A change to allow a state regulatory program to establish alternative risk-based groundwater protection standards for constituents that do not have an established maximum contaminant level (MCL), rather than the use of background levels that are currently required. The proposal also requests public comment on whether a facility may be allowed to establish alternative risk-based standards using a certified professional engineer or other means, subject to EPA oversight.
- A request for comment on whether the current deadlines for groundwater monitoring and analysis remain appropriate in light of the new legal authorities and potential regulatory changes.
- A request for public comment on modifying the location restrictions and associated deadlines concerning construction or operation of a CCR landfill or surface impoundment in certain areas.
- Changes to allow states to establish alternative requirements for how facilities respond to and remediate releases from CCR landfills and surface impoundments. The proposal also requests comment on allowing states to determine when an unlined surface impoundment that is leaking may undertake corrective action rather than be forced to stop receiving CCR and close.
- The addition of boron to the list of constituents for which facilities would need to perform assessment monitoring.
- Streamlined administrative procedures that a facility may comply with if there is a non-groundwater release that can be addressed within 180 days. EPA also requests comment on whether this time period is appropriate.
- Modification of the performance standard for vegetative slope protection to protect against erosion and failure of a surface impoundment.
- A change to the closure provisions to allow the use of coal ash during the closure process and to allow non-CCR waste to continue to be placed in a CCR surface impoundment that is subject to closure.

When the final CCR rule was issued in 2015, EPA did not have the authority to allow states to become authorized to administer their own CCR permit programs in lieu of the federal regulations or to provide

alternative regulatory standards and compliance options. However, in 2016, Congress amended the RCRA with passage of the Water Infrastructure Improvements for the Nation Act (WIIN Act), which provides authority for states to become authorized to operate CCR permit programs "in lieu of the federal regulations," as long as the EPA determines that the state's requirements are at least as protective as the standards in the 2015 final rule or successor regulations. The WIIN Act also provided EPA new authority to provide oversight of CCR units.



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