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DETAILS ON EPA COAL ASH REGULATION

In a widely discussed recent rulemaking, EPA made decisions on how coal ash will be regulated in the United States. We are pleased to present below an excellent article on the coal ash regulatory summarizing package prepared by Babst Calland. Babst Calland is one of Pennsylvania's leading environmental law firms.

ADMINISTRATIVE WATCH

ADDRESSING ENVIRONMENTAL, ENERGY AND NATURAL RESOURCE ISSUES



EPA Issues Final Rulemaking for Coal Combustion Residuals

On December 19, 2014, the U.S. Environmental Protection Agency (EPA) issued an advance notice of a final rulemaking that will regulate coal combustion residuals (CCR) as solid waste under Subtitle D of the Resource Conservation and Recovery Act (RCRA). The rulemaking will apply to CCR generated by coal-fired power plants.

Although CCR will not be regulated as hazardous waste under Subtitle C of RCRA, the rulemaking does provide a number of requirements related to CCR disposal. The rulemaking will establish minimum criteria for the placement of CCR in landfills and surface impoundments; however, the rulemaking will not impact CCR disposed in coal mines. According to the EPA, the U.S. Department of the Interior will address the placement of CCR in minefills as a separate regulatory action.



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Location Restrictions

Included in the rulemaking are location restrictions which will apply to the disposal of CCR in landfills and surface impoundments, and all lateral expansions of CCR landfills and CCR surface impoundments (CCR Units). The location restrictions will relate to the placement of CCR in the following locations:

- Above the uppermost aquifer;
- In wetlands;
- Within fault areas;
- In seismic impact zones; and
- In unstable areas.

Liner Requirements

The rulemaking will also include requirements for liners and leachate collection systems which are briefly summarized in the following table.

Requirements	All New CCR Units	New Landfills	Existing CCR Surface Impoundments
Composite liner consisting of a geomembrane and a two-foot layer of compacted soil	Required	Required	1) Retrofit required if not constructed with a composite liner or with at least two feet of compacted soil with a specified hydraulic conductivity 2) Retrofit required if concentrations of one or more constituents are found in groundwater at statistically significant levels above groundwater protection standards
Leachate Collection and Removal System	Not required – see New Landfills	Required	Not Applicable

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Structural Integrity Assessments

The rulemaking also requires owners or operators to regularly conduct a number of structural integrity-related assessments, including hazard potential classification assessments, structural stability assessments, and safety factor assessments. The rulemaking establishes structural integrity criteria for new and existing surface impoundments and all lateral expansions thereto as part of the requisite design criteria. The applicability of the structural integrity requirements will vary depending on factors specific to individual CCR surface impoundments such as dike heights and the potential for loss of life.

Operating Requirements

The rulemaking will establish operating criteria which will include:

- Air criteria for all CCR Units;
- Stormwater run-on and run-off controls for CCR landfills;
- Hydrologic and hydraulic capacity requirements for CCR surface impoundments;
- Periodic inspection requirements for all CCR Units;
- Groundwater monitoring and subsequent corrective action requirements if certain criteria are exceeded;
- Closure and post-closure requirements; and
- Recordkeeping, notification, and internet posting requirements.

Timing for Compliance

This rulemaking will become effective 180 days after publication in the Federal Register. Once published, existing CCR Units will have a staggered timeframe to comply, which ranges from as little as six months to as much as 42 months depending on the requirement. Extensions may be available for facilities located in states with plans approved per Section 4003(b) of RCRA. The advance notice may be viewed and downloaded at http://www2.epa.gov/sites/production/files/2014-12/documents/ccr_finalrule_prepub.pdf.

If you have any questions regarding this development or any other issues related to CCR or RCRA, please contact Donald C. Bluedorn II at (412) 394-5450 or dbluedorn@babstealfand.com, or Timothy S. Bytner at (412) 394-6504 or tbytner@babstealfand.com.

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