



Why Coal Ash Regulation Should Be on Everyone's Watch List

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Recently, the use of coal has been most highlighted in the power production industry, although coal has been used for generations in many industries. For example, steel, paper, chemicals, and oil refining industries utilize coal. Some industries also use coal combustion byproducts because they can be substituted for cement in some applications. Because the Coal Ash Combustion Residuals Rule (CCR Rule) only impacts electric utilities, other industries have been watching from the sidelines. However, the regulatory framework in the CCR Rule could have far-reaching impacts regardless of industry. EPA is creating a record that may be used as the basis for future regulations on coal ash disposal and reuse outside of power generation, so all companies that use coal or coal combustion byproducts should pay attention. Issues such as beneficial use of CCR, location restrictions on coal ash disposal, monitoring, and closure of disposal areas are issues of concern for all coal ash byproducts.

The most recent development in coal ash regulation for electric utilities is an August 2019 Proposed Rule that addresses beneficial use of coal ash and the public access to coal ash data (the "Proposed Rule"). The comment period on the Proposed Rule closed on October 15, 2019:

- Beneficial Use of Coal Ash. Presently, the CCR Rule has a numerical mass-based threshold of 12,400 tons, above which a user must demonstrate that environmental releases to groundwater are comparable to analogous products that do not contain CCR. EPA is considering eliminating this requirement and replacing it. EPA could replace it with location-based criteria derived from the current CCR location requirements, a new mass-based value based on current risk-based information, or a combination of both.
- Temporary storage of CCR. The CCR Rule currently regulates piles of CCR on-site as a CCR landfill but regulates storage of CCR materials off-site differently because those materials may qualify for "beneficial use." EPA is proposing to establish a single set of requirements that apply to all temporary placement of unencapsulated CCR on land.
- Annual Groundwater Monitoring and Corrective Action Report. EPA is seeking comment on standardizing the information and the way it is presented in the Annual Groundwater Report required by the CCR Rule.
- Boron. EPA is proposing to establish an alternate risk-based groundwater protection standard for

boron.

- [CCR Public Websites](#). EPA is seeking comment on whether to add website requirements to ensure that CCR information is available to the public, such as prohibiting website sign-in portals and ensuring that website URLs are locatable and current.

EPA is preparing to publish two more proposed rules that will further impact the CCR Rule. The proposed rules are expected to address permitting for CCR units and the deadline for closure of CCR units. Both proposed rules are presently at the Office of Management and Budget for review.

In summary, all industries that create or use coal combustion byproducts should track developments concerning the CCR Rule. We see a trend toward increased public access to CCR reports and data and evolving requirements for permitting, CCR storage, and beneficial use. EPA's rationale for the closure deadline will also be instructive. By the end of this year, EPA will have provided the public the opportunity to comment on all of these aspects of CCR regulation.

Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals From Electric Utilities; Final Rule, 80 Fed. Reg. 21302 (Apr. 17, 2015).

Enhancing Public Access to Information; Reconsideration of Beneficial Use Criteria and Piles, 84 Fed. Reg. 40353 (Aug. 14, 2019).

Proposed rules not yet published: ?Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities: Federal CCR Permit Program? and ?Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; A Holistic Approach to Closure Part A: Deadline to Initiate Closure.?

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- Liz Williamson ? 804.420.6050 ? ewilliamson@williamsmullen.com

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