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ALERT
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EPA Establishes Deadlines for Closing Certain CCR Surface Impoundments

On July 29, 2020, United States Environmental Protection Agency (EPA) Administrator Andrew Wheeler signed a pre-publication version of a final rule (the Rule) revising portions of EPA's 2015 coal combustion residuals (CCR) landfill and impoundment regulations. The Rule becomes final 30 days after publication in the *Federal Register*.

In 2015, EPA promulgated regulations implementing national minimum criteria for new and existing CCR landfills and surface impoundments. A federal appellate court partially vacated and remanded portions of these regulations on August 21, 2018 (the court's decision is covered in more detail in our prior *Alert*). Following the court's decision, EPA published proposed rules in the *Federal Register* on December 2, 2019 and August 14, 2019, to address the court's remand order and make other changes (the Proposed Rules).

The Rule includes the following key changes for CCR units:

- Reclassifies compacted-soil lined or "clay-lined" surface impoundments to "unlined," meaning these structures must be retrofitted or closed;
- Establishes a revised date, April 11, 2021, by which CCR units must cease receiving waste and initiate closure or retrofit because: (1) they are unlined or were formerly "clay-lined" CCR surface impoundments; or (2) they failed the minimum depth to aquifer location standard;
- Revises the alternative closure provisions that would grant certain facilities additional time to develop alternative capacity to manage their CCR and non-CCR waste streams;
- Updates the annual groundwater monitoring and corrective action report requirements to make the data easier to understand for public review, including adding an executive summary requirement; and
- Revises the CCR website requirements to ensure that relevant facility information required by the regulations is immediately available to the public.

As compared with the deadlines in the December 2, 2019 proposed rule, the Rule gives the regulated community additional time to use and for seeking a site-specific alternative for initiating closure of certain CCR surface impoundments. The amended deadlines are summarized in Table 1 of the Rule's preamble and are found below.

- As discussed above, the new deadline to cease receipt of waste and initiate closure for surface impoundments that failed the minimum depth to aquifer location standard and unlined (now including clay-lined) surface impoundments, is April 11, 2021 (previously, August 31, 2020 in the December 2, 2019 proposed rule).

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- The closure initiation deadlines under the site-specific alternative due to lack of capacity is no later than October 15, 2023 (the same as the December 2, 2019 proposed rule) and October 15, 2024 for eligible unlined CCR surface impoundments (previously, October 15, 2023 in the December 2, 2019 proposed rule).
- The deadline for site-specific alternative to initiate closure due to permanent cessation of a coal-fired boiler(s) by a date certain is October 17, 2023 for CCR surface impoundments 40 acres or smaller, or October 17, 2028 for surface impoundments larger than 40 acres (no change from the December 2, 2019 proposed rule).

The extended timelines for initiating closure of existing unlined CCR surface impoundments and those that do not meet the minimum depth to aquifer location requirements provide the regulated community some breathing room until April 2021 to prepare for initiating closure. Affected facilities without adequate alternative on- or off-site disposal capacity, however, will need to move quickly to continue using eligible CCR surface impoundments. The Rule imposes a November 30, 2020 deadline to submit extensive documentation for an alternative closure demonstration.

Legal challenges to the Rule are inevitable. The Sierra Club has already vowed to challenge the Rule, and other environmental groups may follow suit. State attorneys general, industry, or others could join the litigation fray. All eyes will be on the courts to see whether litigation impacts the Rule's deadlines. In the meantime, facilities with affected CCR surface impoundments now know when they need to initiate closure or seek a site-specific alternative closure initiation deadline.

If you have any questions about the Rule and its implications, please contact Donald C. Bluedorn II at (412) 394-5450 or dbluedorn@babstcalland.com, Gary E. Steinbauer at (412) 394-6590 or gsteinbauer@babstcalland.com, or Casey J. Snyder at (412) 394-5438 or csnyder@babstcalland.com.

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