

EPA Finalizes Rule Expanding Federal CCR Program



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Environmental Alert

(by **Donald C. Bluedorn II**, **Gary E. Steinbauer**, and **Mackenzie M. Moyer**)

On April 25, 2024, the U.S. Environmental Protection Agency (EPA) **finalized** changes to the coal combustion residuals (CCR) regulations to now regulate inactive surface impoundments at inactive electric utilities, known as legacy CCR surface impoundments. The Final Rule also imposes requirements on an additional, new category of CCR units, known as CCR management units, or CCRMUs. Regulated legacy CCR surface impoundments will need to comply with the requirements in Subpart D, as articulated in the Final Rule, beginning as early as six months after the date of publication of the Final Rule in the *Federal Register* and CCRMUs will need to comply with specified requirements beginning 21 months after publication.

The Final Rule is being promulgated in response to the August 21, 2018 opinion by the U.S. Court of Appeals for the District of Columbia Circuit in *Utility Solid Waste Activities Group, et al. v. EPA*, in which the Court vacated and remanded the provision of the 2015 CCR Rule that exempted inactive impoundments at inactive facilities from regulation. EPA is also expanding the CCR Rule to address CCRMUs due to the associated risks from the direct placement of CCR on the land; according to information obtained from EPA since 2015, these previously unregulated units are contaminating groundwater and pose risks similar to the risks associated with currently regulated activities. In the last year, EPA has focused on CCR Rule enforcement, adding “protecting communities from coal ash contamination” as one of EPA’s six National Enforcement and Compliance Initiatives for fiscal years 2024 through 2027. Every four years, EPA publishes a list of national initiatives to focus its enforcement efforts, and on August 17, 2023, EPA **formally announced** CCR issues as an enforcement priority for the next four years. With this Final Rule expanding the scope of the CCR Rule regulatory program, EPA has also increased the number of potential targets for enforcement.

A legacy CCR surface impoundment is defined in the Final Rule as “a CCR surface impoundment that no longer receives CCR but contained both CCR and liquids on or after October 19, 2015, and that is located at an inactive electric utility or independent power producer.” The Final Rule imposes all CCR requirements already applicable to inactive CCR surface impoundments at active facilities under Subpart D of 40 C.F.R. Part 257 on these so-called legacy CCR surface impoundments, with limited exceptions. EPA also finalized a change to the existing groundwater monitoring requirements for legacy CCR surface impoundments by combining the detection and assessment monitoring requirements and finalized two new requirements—applicability documentation and a site security requirement.

EPA estimates that there are 194 legacy CCR surface impoundments located at 85 facilities that are subject to the Final Rule. A list of potentially regulated surface impoundments can be found [here](#). Given the extent of groundwater monitoring and other requirements that these previously unregulated facilities will need to undertake, the compliance deadline is short and affected facilities will need to devise and implement compliance programs quickly.

The Final Rule also imposes requirements on a new category of regulated CCR units, CCRMUs. A CCRMU is “any area of land on which any noncontainerized accumulation of CCR is received, is placed, or is otherwise managed, that is not a regulated CCR unit” and includes inactive CCR landfills and CCR units that closed prior to October 19, 2015. CCRMUs are subject to regulation under the Final Rule when they are located at “covered CCR facilities”: (1) facilities currently regulated under the 2015 CCR Rule; (2) inactive facilities with a legacy CCR surface impoundment; and (3) facilities that, on or after October 19, 2015, produced electricity for the grid but were not regulated under the 2015 CCR Rule because they had ceased placement of CCR in onsite CCR units and did not

have an inactive CCR surface impoundment. The Final Rule imposes groundwater monitoring, corrective action, closure, and post-closure care requirements for all CCRMUs at regulated CCR facilities. EPA estimates there are 179 CCRMUs at 92 active facilities and 16 CCRMUs at 12 inactive facilities that are subject to the Final Rule. A list of potentially regulated CCRMUs at inactive facilities can be found [here](#) and at active facilities can be found [here](#).

EPA continues to take action on CCR, focusing on CCR Rule regulatory and enforcement matters, and operators of CCR Rule-regulated units, now expanded by this recent Final Rule, should be prepared for continued oversight by EPA. Babst Calland attorneys continue to track these developments and are available to assist with CCR-related matters. For more information on this development and other waste matters, 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, Mackenzie M. Moyer at (412) 394-6578 or mmoyer@babstcalland.com, or any of our other [environmental attorneys](#).

