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Washington, DC and Pittsburgh, PA

Environmental Alert

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On April 13, 2026, the U.S. Environmental Protection Agency (EPA) published a [Proposed Rule](#) in the *Federal Register* that would amend federal regulations related to the disposal and beneficial use of coal combustion residuals (CCR). If finalized as proposed, the amendments would provide increased regulatory flexibility, expand pathways for owners and operators of CCR disposal units to achieve compliance with federal CCR regulations, rescind or reduce the scope of regulations governing certain CCR disposal and storage areas, and reduce restrictions on the beneficial use of CCR. In addition, EPA announced that it is planning to reopen the public comment period for the proposed Federal CCR Permit Program rule, which was originally published on February 20, 2020.

Background

The federal regulation of CCR dates back to 2015, when EPA finalized the first national minimum criteria for the beneficial use and disposal of CCR as a solid waste under Subtitle D of the Resource Conservation and Recovery Act (RCRA). As reported in detail in an earlier Babst Calland [Environmental Alert](#), in 2024, EPA supplemented the 2015 regulations by finalizing what is known as the “Legacy CCR Rule,” which expanded the scope of the federal CCR rules to regulate inactive CCR surface impoundments at inactive electric utilities, otherwise known as legacy CCR surface impoundments and CCR management units (CCRMUs). CCRMUs represent a broad general category of CCR disposal units, including inactive CCR landfills and other land-based disposal areas that had previously not been regulated under EPA’s CCR rules.

Proposed Amendments

The more notable and potentially impactful elements of the Proposed Rule are described below:

- Expansion of Option to Certify Closure by Removal for Legacy CCR Surface Impoundments: The Proposed Rule would create another option to certify closure of legacy CCR surface impoundments by removal if the removal was completed prior to November 8, 2024, under the oversight of a regulatory authority. At present, the closure by removal option for legacy CCR surface impoundments is only available to owners and operators able to certify that a legacy CCR surface impoundment has been closed by removal in accordance with the current rule’s specific performance standards. The proposal would modify this compliance pathway by allowing the owner or operator to certify closure by removal when (i) a regulatory authority played an active role in overseeing and approving the closure by removal and any necessary corrective action pursuant to an enforceable requirement issued on or after October 19, 2015, and (ii) impacts to groundwater were considered by the regulator. Enforceable requirements may include a state or federal permit, an administrative order, or consent order issued under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or by an EPA-approved state RCRA program. In addition, EPA is soliciting comments on whether this compliance option should be expanded further to include removal-based closures of legacy CCR surface impoundments concluded prior to October 19, 2015, and/or such closures there were not performed pursuant to an enforceable requirement.
- Reduced Limitations on Owner/Operators’ Ability to Defer Certain Legacy CCR Surface Impoundment Closures to Permitting: The proposal would streamline an owner/operator’s ability to defer compliance with federal closure requirements for legacy CCR surface impoundments that (i) completed closure under state law prior to November 8, 2024; (ii) under the oversight of a regulatory authority; (iii) pursuant to an enforceable requirement issued after October 19, 2015; and (iv) have had groundwater monitoring performed, until the facility becomes subject to a EPA-approved state permitting program or the federal permitting program, at which point the permitting authority

would make a final determination of whether the facility achieved the performance standards set for the in the federal CCR rules.

- **Site-Specific Considerations during Permitting:** The Proposed Rule would also create a new compliance pathway allowing for site-specific considerations during permitting for CCR units complying with groundwater monitoring, corrective action, and closure requirements under a federal or state CCR permit. If finalized, the permitting authority could make site-specific determinations regarding the appropriate point of compliance for the groundwater monitoring system, site-specific cleanup levels during corrective action for constituents without federal maximum contaminant levels, and other closure requirements. Owners or operators would still be required to ensure that the unit poses no reasonable probability of adverse effects on human health and the environment. Of particular note, EPA is also soliciting comment on an alternative closure performance standard that would allow owner/operators to close a CCR disposal unit with waste in place that is in contact with liquids, provided that (i) standing liquid and sufficient subsurface liquid is eliminated; (ii) the hydraulic condition within the CCR unit will not adversely impact the stability of the cover system; (iii) the hydraulic condition of the CCR unit will not adversely impact any required corrective actions; and (iv) the hydraulic condition will not result in a reasonable probability of adverse effects on human health and ecological factors as determined through a site-specific assessment. If finalized, this revision to the standards for closing CCR units with waste in place would represent a significant departure from EPA's recent interpretations of CCR rule requirements to allow for such closure only when "free liquids" have been removed from the unit.
- **Rescission or Limiting the Scope of CCRMU Requirements:** EPA is proposing to rescind all CCRMU requirements, which would represent a significant reduction in the number of CCR units regulated under the federal rules. In the alternative, EPA is soliciting comments on several potential revisions that may be implemented alone or in combination with one another, including: (i) deferring all CCRMU requirements to permitting; (ii) allowing owner/operators to defer compliance with federal closure requirements for CCRMUs that completed closure under state law prior to November 8, 2024; (iii) exempting past onsite CCR uses that meet the definition of beneficial use; (iv) expanding the roadbed exemption to include railbeds and all roadbed and railbed embankments; and (v) increasing the threshold CCR amounts to be employed in determining whether a land-based accumulation of CCR constitutes a CCRMU. EPA is also soliciting comments on the appropriate scope of the Facility Evaluation Reports (FER) required under the current CCRMU regulations. In the preamble to the Proposed Rule, EPA states that it understands that the FER requirements may need to be modified as well, depending on what is modified for CCRMUs.
- **Removal of CCR Dewatering Structures from Regulation:** EPA proposes to define "CCR dewatering structures" as "a stationary device, designed to temporarily contain an accumulation of CCR which is constructed of non-earthen materials (e.g., concrete, steel, plastic). The device must be used primarily for dewatering CCR waste to facilitate disposal of CCR solids elsewhere." As proposed, dewatering structures would not be classified as a CCR surface impoundment or a CCRMU and thus would not be subject to federal CCR regulation. Common dewatering structures may include holding basins, scrubber drying basins, fly ash washdown basins, tanks, or settling ponds.
- **Expansion of the Beneficial Use of CCR:** EPA is also proposing revisions to the definition of beneficial use by removing the criterion that requires environmental demonstrations for non-roadway uses of more than 12,400 tons of unencapsulated CCR on land. EPA also proposes to exclude the following beneficial uses from federal regulation: (i) CCR used in cement manufacturing at cement kilns, (ii) flue gas desulfurization (FGD) gypsum used in agriculture, and (iii) FGD gypsum used in wallboard.

As noted above, along with the Proposed Rule, EPA announced that in a separate action, it would reopen the public comment period for the **Federal CCR Permit Program** proposed rule originally published on February 20, 2020. Given the Proposed Rule's increased deferral of CCR rule compliance determinations to either EPA-approved state permitting programs (at present only four states have such programs) or a federal permitting program, and its contemplated reliance on the permitting authorities to make site-specific, risk-based determinations regarding CCR rule compliance requirements, the finalization of the federal permit program is an integral component of EPA's efforts to amend the CCR rules.

The public comment period on the Proposed Rule closes on June 12, 2026. EPA plans to hold a virtual public hearing on the proposal on May 28, 2026. Babst Calland attorneys continue to track these developments and are available to assist with CCR Rule-related matters. For more information on this development and other waste matters, please contact Ben Clapp at (202) 853-3488 or bclapp@babstcalland.com, Gary Steinbauer at (412) 394-6590 or gsteinbauer@babstcalland.com, Mackenzie Moyer at (412) 394-6578 or mmoyer@babstcalland.com, or any of our other [environmental attorneys](#).

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