

**EPN COMMENTS ON EPA'S COAL COMBUSTION RESIDUALS (CCR)
PART A AND PART B IMPLEMENTATION**

February 23, 2022

BACKGROUND AND INTRODUCTION

The Environmental Protection Network (EPN) is comprised of more than 550 U.S. Environmental Protection Agency (EPA) alumni volunteering their time to protect the integrity of EPA, human health, and the environment. We harness the expertise of former EPA career staff and confirmation-level appointees to provide insights into proposed regulations and policies that have an impact on public health and environmental protections.

EPN appreciates the opportunity to provide these comments in support of EPA's review of the site-specific CCR "Part A" demonstrations that were submitted to EPA under 40 CFR §257.103(f). On January 11, 2022, EPA announced the status of its review of the Part A demonstrations, and on January 25, 2022, EPA initiated a 30-day public comment period.

EPA has also conducted completeness reviews of the 8 "Part B" applications¹ that are before the agency. One of those has been withdrawn. EPA announced the status of its Part B reviews on January 11, 2022, indicating the seven remaining Part B applications are complete. However, EPA has not gone further and proposed facility-specific determinations of compliance with the Part B liner equivalency standards under 40 CFR §257.71(d). EPN also offers comments on the importance of the full adjudication of the Part B demonstrations.

**EPN COMMENTS ON EPA'S REVIEW OF THE 40 CFR §257.71(d) Part B
DEMONSTRATIONS**

While EPA has not asked for comments on its completeness review of the Part B demonstrations, this is nevertheless one of the most significant CCR concerns of EPN. EPA has offered a regulatory mechanism that allows facilities that meet certain standards to operate over the long term without a liner that meets the minimum design requirements of the federal CCR rules. Seven facilities remain before the agency for consideration. The concern is these facilities have CCR surface impoundments with limited or no containment control, yet they continue to receive CCR and non-CCR solid waste. Upon completion of EPA's facility-specific Part B review, they may be allowed to continue to operate in their present state or, far more likely given the appropriate stringency of EPA's criteria, they may be found ineligible for a Part B demonstration and receive a denial from EPA. In which case, the continued addition of CCR to these units, while we await EPA action, will only have resulted in a larger environmental footprint and made their corrective action and closure obligations grow more daunting. It is also worth noting that many of these facilities are especially large, making their environmental impact all the more concerning and significant due to delays.

¹ One facility submitted two applications, which EPA will combine and address as a single application.

EPN understands the resource struggle the agency faces, and given the depth of analysis required for the few Part A demonstrations that EPA has advanced, it is clear that drawing comprehensive conclusions regarding each of these facility-specific proposed demonstrations is a daunting exercise. Regardless, EPN asks that EPA make the Part B demonstrations a high priority. The Part B standards that EPA put forward to allow facilities to operate without a liner were appropriately stringent and comprehensive. It seems clear, given the position the agency has taken on the Part A applications (see below) with respect to, for example, groundwater monitoring, closure and corrective action, that it is unlikely that an unlined surface impoundment will be able to meet the exacting standards that EPA has established for Part B. EPN is encouraging EPA to move forward expeditiously. EPA need not find every shortcoming with the Part B demonstrations, but only those that are most significant and defensible. EPA should also strive to address those facilities with the greatest risk first; it would seem that the facilities seeking the ability to continue to operate surface impoundments in perpetuity without properly designed liner systems are likely to be among the highest risk CCR units.

Finally, EPN also understands that when all or most of these facilities are notified that they are no longer allowed to operate their surface impoundments without properly designed liners, they will be interested in seeking Part A relief to extend their initiation of closure deadlines. When making Part B determinations, EPN encourages EPA to clearly and explicitly explain that the options for closure initiation deadline extensions under EPA's Part A rules are quite limited and short term and only apply if the facility can demonstrate compliance with the full suite of 40 CFR §257 CCR regulations.

EPN COMMENTS ON EPA'S REVIEW OF THE 40 CFR §257.103(f) Part A DEMONSTRATIONS

EPA received and reviewed 57 Part A applications from CCR facilities requesting deadline extensions. EPA determined 52 are complete, four are incomplete, and one is ineligible for an extension. Of the 52 complete Part A applications, EPA proposed determinations on four applications. In total, EPA has rendered facility-specific reviews of nine facilities.

EPN is providing generic comments that collectively address EPA's various facility-specific Part A determinations. Overall, EPN is supportive of and in agreement with the results of the analyses that EPA has taken to evaluate the demonstrations that have been advanced in support of the desire to extend the initiation of closure of these various CCR surface impoundments. Overall, EPA's analysis has been multifaceted, comprehensive, and substantiated with fact-based support consistent with the effective federal regulations. Consequently, EPA has appropriately reached determinations of incompleteness, ineligibility, denial, or tentative approval.

EPN offers the following specific comments regarding facilities seeking extension of the date to initiate closure of their CCR surface impoundments:

INCOMPLETE SUBMITTALS

EPA has correctly concluded that several applications are incomplete. EPA's rationale for making determinations of incompleteness is fact based and well founded.

Specifically, EPA has noted and provided support (e.g., Dallman) for the conclusion of a failure to provide an adequate evaluation of potential offsite alternative capacity options; failure to provide an in-depth analysis of the site and any site-specific conditions that led to the decision to select the alternative capacity being developed; failure to provide either explanation or justification for the amount of time being requested for units in question to continue operation, or substantiation that this is the fastest feasible time to cease receipt of waste; and failure to include either a certification of compliance or the required supporting documentation for the entire facility, including on-site CCR landfills.

There are several cases (Erickson, Meramec, Sioux) where EPA has correctly determined that the submitted demonstration was incomplete based on a failure to provide all of the groundwater monitoring information that has been required since the effective date of the federal CCR regulations.

Another incompleteness observation that EPA made has to do with the failure to provide a complete risk mitigation plan, which is required by the federal CCR regulations. In particular, in one case (Meramec) EPA has correctly determined that the facility has failed to submit a complete assessment of corrective measures package, specifically failing to include a plan to expedite and maintain the containment of any groundwater contaminant plume.

Another reason EPA found an application (Sioux) to be incomplete has to do with a failure to provide the information necessary to support the claim that the time requested in the demonstration is the fastest technically feasible to develop alternative capacity. Specifically, the submittal included gaps in time, lacked specific dates, included timelines that did not provide adequate information for EPA to evaluate whether this is the fastest technically feasible time, included internal contradictions within the submittal, failed to depict all phases of the project, and did not state when the surface impoundment in question will cease receipt of waste.

INELIGIBILITY

EPA has also properly concluded that a facility (Greenidge) is not eligible for a demonstration under 40 CFR §257.103(f)(2). This provision is available to facilities that anticipate their coal-fired power boilers will be closing in the near term and, upon meeting certain requirements, allows the facility to continue operating its CCR surface impoundment(s) until the coal-fired power plant ceases operations. However, the utility in question has already converted from coal to gas as a fuel. The analysis need go no further, as it is clear, and EPA is correct in concluding, that the facility is not eligible to extend the initiation of closure deadline for their CCR surface impoundment in anticipation of shutting down a coal-fired power plant as that has already happened.

DENIALS

At several facilities (e.g., Clifty Creek, Gavin, Ottumwa) EPA has concluded that the analyses in support of extending the initiation of closure date do not meet the appropriate regulatory requirements and has correctly proposed to deny the facility's respective Part A demonstration. EPA has correctly determined that there has been a failure to adequately demonstrate that there is no off-site or alternative capacity or that the requested time frame is the fastest technically feasible amount of time in which to complete the measures necessary to obtain alternative capacity. EPA has also documented failures to demonstrate that the facility is in compliance with all the CCR regulatory requirements including groundwater monitoring, corrective action, and preparation of closure plans that meet the closure performance standards outlined in EPA's CCR

regulations. EPA's conditional approval (Spurlock) is noteworthy because the conditions of the approval state, as do the current regulations, the groundwater monitoring expectations of the EPA. Further, EPA has correctly determined that in some cases the plans for construction of the alternative disposal capacity fail to include a composite liner as required by the federal CCR regulations at 40 C.F.R. §257.72.

EPN is also pleased that EPA in the context of the review of closure plans (e.g., Ottumwa) has proposed to clarify the agency's interpretation of the performance standard that accompanies the 40 CFR §257.100(1) "closure by leaving CCR in place" closure option. In particular, EPA has put forward a long-awaited clarification of the term infiltration:

"EPA views the word "infiltration" as a general term that refers to any kind of movement of liquids into a CCR unit. That would include, for example, any liquid passing into or through the CCR unit by filtering or permeating from any direction, including the sides and bottom of the unit."

This interpretation only makes common sense as EPA has shown repeatedly in its review of damage cases and in its risk assessment work the adverse impact that CCRs produce when they are left in contact with water regardless of its source or direction. The evidence is clear that any long-term entombment of CCR in an aqueous environment, such as CCR being located below the water table or otherwise in long-term or repeated contact with water, would run the risk of perpetuating environmental releases. Such an outcome certainly would not meet the Resource Conservation and Recovery Act 4004(a) statutory standard of "...no reasonable probability of adverse effects on health or the environment..."

SUMMARY/CONCLUSIONS

EPN is encouraged by the thoughtful and thorough analysis of EPA on the Part A demonstrations evaluated to date. It is clear this is tedious work that involves in-depth analysis of the detailed technical submittals, alongside detailed and technical governing regulations. Many of these analyses consume more than 70 pages of documentation, rationale, and explanation of EPA's position. In order to fully benefit from EPA's effort, this body of review needs to compel action beyond the nine facilities reviewed.

EPA's expectations on the management of CCR have been clear and explicit for some time, ever since the 2015 final CCR regulations were issued and in subsequent more focused rulemakings that amended those 2015 rules. We now reach another milestone where, given the broad comprehensive scope of these recently announced reviews, the agency has yet again clearly articulated guideposts regarding the exact environmental protection actions that are needed to ensure protectiveness when managing CCRs. The entire coal-fired power producing industry is now on full notice of what the expectations are to ensure fully protective management of CCR solid wastes. EPN encourages coal-fired power producers that have not received an EPA review to date not to wait for EPA to review the remaining 48² Part A demonstrations and the seven Part B demonstrations, but rather, model the actions asked for in these few reviews at all coal-fired power plants. That is, all coal-fired power plants need to without delay implement the requirements outlined throughout these comprehensive reviews.

² 57 Total - 1 ineligible - 4 incomplete = 52; 52 - 3 denials - 1 conditional approval = 48 remaining Part A demonstrations to review.