

EPA Must Change Course on the Legacy Coal Ash Rule and Coal Ash Permitting

Key Findings

- In May 2024, EPA published a final rule that would apply its coal combustion residuals regulations to a broad array of legacy and historic CCR sites regardless of size or relative risk.
- EPA's one-size-fits-all rule relies on broad and unclear definitions, includes unrealistic timelines, and imposes unnecessary, duplicative costs.
- EPA should reconsider this flawed rule which would cause serious disruptions at active power plants and exacerbate grid reliability challenges for co-ops and other utilities.
- EPA should prioritize finalization of state and federal CCR permit programs, which would allow for requirements to be tailored to individual sites and provide regulatory certainty.

NRECA Supports Risk-Based CCR Regulations and Permits

In 2015, the U.S. Environmental Protection Agency (EPA) established federal requirements for managing coal combustion residuals (CCRs or coal ash) in coal ash ponds (impoundments) and landfills and required some units to close. EPA also reaffirmed that CCRs are not hazardous wastes and encouraged their continued beneficial use (e.g., as an ingredient in concrete). Electric cooperatives with coal ash units regulated under the 2015 regulations work with professional engineers to comply with the standards and must document their compliance through public-facing websites. Coal ash units also are regulated under state programs. Units that meet federal criteria, or are as protective as those criteria, should be able to continue to operate.

In 2016, the U.S. Congress authorized a risk-based standard for CCR regulations, which allows co-ops to make decisions regarding the continued use and eventual closure of CCR units based on potential environmental risks as well as economic considerations. Congress also authorized states to implement and enforce the federal CCR regulations through state-specific permit programs approved by EPA, with a federal permit program for states without EPA-approved permit programs. As with other environmental programs, this will allow utilities to work with state or federal regulators to appropriately apply the CCR regulatory requirements at a specific site. Unfortunately, EPA has only approved state CCR permit programs in Oklahoma, Georgia, and Texas and has not yet finalized the federal permitting program.

EPA's One-Size-Fits-All Legacy Coal Ash Rule

In May 2024, EPA finalized and published an amendment to its CCR regulations to establish two new classes of federally regulated CCR units. The first class is legacy CCR surface impoundments, which are comprised of inactive CCR surface impoundments at inactive power plants. The second class is CCR management units (CCRMUs), a category that captures a broad array of dissimilar sites.

Instead of standing up a federal CCR permitting program and using its authority to approve state CCR permit programs, as directed by Congress, EPA's final Legacy Coal Ash Rule takes a one-size-fits-all approach, relies on broad and unclear definitions, and sets unrealistic compliance timelines. This will impose unnecessary and duplicative costs on electric co-ops and their consumer-members.

The final regulation of CCRMUs is particularly concerning. The definition of covered CCRMUs is overly broad, lacks clarity, and subjects currently exempt beneficial uses of CCR to the rule's stringent requirements. EPA's rule does not demonstrate that EPA fully comprehends the complexity or challenges associated with applying existing regulatory requirements to already closed sites, some of which are located under active CCR landfills or existing power plant infrastructure. Even in the final rule, EPA has significantly underestimated the number of CCMUs under the vague definition and by extension the costs and timeframes for compliance.

EPA Must Reconsider Its Approach to CCR Management

NRECA has significant concerns with the final rule, which fails to address many of the revisions NRECA had recommended. Those included separating the legacy CCR surface impoundments and CCRMU proposals into two separate actions and addressing practical, legal, economic, and electric reliability concerns. EPA should reconsider this final Legacy Coal Ash Rule.

EPA should instead prioritize finalizing a previously-proposed federal permitting program to issue risk-based CCR permits in states that do not establish their own program. EPA should also expeditiously review and approve state CCR permitting programs that will operate in place of – and be as protective as – the federal permitting program. Permitting programs will provide a more effective way of regulating CCR units through tailored requirements based on an individual site's characteristics and provide certainty to electric co-ops that are properly managing CCR sites.

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