

EPA Issues Final Coal Ash Rule

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On December 19, 2014, EPA released its long-awaited final rule regulating the disposal of coal combustion residuals (CCR) generated by the electric utility industry and independent power producers. The rule will regulate CCR as solid waste under Subtitle D of the Resource Conservation and Recovery Act (RCRA) rather than as a special waste under Subtitle C, with states taking the lead on implementation and enforcement. The regulations will become effective six months after publication in the Federal Register.

The rule establishes minimum national criteria for new and existing CCR landfills and surface impoundments, including location restrictions, design requirements, groundwater monitoring and corrective action requirements, inspection requirements, fugitive dust controls, surface water protection requirements, and closure and post-closure care requirements. Certain of these requirements, such as weekly inspections of the CCR disposal unit, become applicable on the effective date of the regulations. Other requirements, such as groundwater monitoring and corrective action requirements for existing CCR landfills and surface impoundments, become applicable 30 months after the effective date.

In a decision that has drawn the ire of environmental groups who lobbied hard for Subtitle C regulation and mandatory closure of inactive impoundments, the rule will not apply to CCR landfills that cease receiving CCR prior to the effective date. It will, however, apply to inactive CCR surface impoundments at active utilities or independent power producers, regardless of the fuel currently used to produce electricity at such facilities.

The rule is the culmination of a rulemaking process that EPA began in 2010. The rule is expected to be challenged in court by environmentalists and industry.

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