

EPA “Phase One, Part One” Coal Ash Rule

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On July 30, 2018, the EPA promulgated revisions to the coal ash disposal rule under the Resource Conservation and Recovery Act (RCRA). The “phase one, part one” revisions include new groundwater monitoring mandates and a delay of closure deadlines for some leaking facilities.

The groundwater monitoring mandates were revised to allow facilities to avoid monitoring requirements for groundwater contamination when there is “no potential for migration” beyond the immediate area or to a drinking water source. Another groundwater monitoring directive sets protection standards for four ash-related constituents—cobalt, lithium, molybdenum, and lead—that do not have a maximum contaminant level under the Safe Drinking Water Act. The last addition allows for regulators in states with an EPA-approved ash permit program to certify compliance of facilities with the rule, rather than relying on a qualified professional engineer.

The revisions also postpone the closure deadline for ash disposal sites that are either leaking without a protective liner or located too close to a protected aquifer by to October 31, 2020. EPA is making this change to align with the compliance dates under the Clean Water Act effluent limitation guidelines for power plants.

The description of the rulemaking as “phase one, part one” indicates there will be at least a “part two” in the first phase before the second phase is released. “Phase one, part one” did not finalize certain elements of the proposal released by the EPA in March 2018, but it is likely that some of those elements will be addressed in “part two.” Specifically, changes that would allow regulators to loosen cleanup requirements for some groundwater leaks may appear in the subsequent rulemaking.

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