Top 20 Questions on EPA's CCR Final Rule

1. An owner or operator of an inactive CCR surface impoundment completes closure of the inactive impoundment within 36 months as prescribed by §257.100 of the rule. Is the owner or operator of the inactive impoundment subject to any other requirements of the CCR rule while the unit is being closed? For example, is the owner or operator subject to the structural stability and groundwater monitoring requirements of the CCR rule while the inactive impoundment is being closed?

- Answer: In addition to the closure-related requirements specified for inactive CCR surface impoundments in §257.100, the owner or operator of the inactive impoundment is also subject to certain recordkeeping, notification, and internet requirements, such as the requirement to submit notifications and annual progress reports. The owner or operator of an inactive impoundment that completes closure of the inactive impoundment in accordance with the procedures in §257.100 would not be subject to the requirements otherwise applicable to CCR surface impoundments, such as the structural stability and groundwater monitoring requirements.

2. If an impoundment is in the process of closure on the effective date of the rule and liquids have been drained from the unit and it is maintained during the closure process so that it can no longer impound water, is the unit an inactive CCR surface impoundment subject to regulation under the rule?

- Answer: An inactive CCR surface impoundment is defined as a CCR surface impoundment that no longer receives CCR on or after the effective date of the rule and that still contains both CCR and liquids on or after the effective date of the rule. If the unit is the process of closure and no longer contains liquid on the effective date of the rule, and is maintained during the closure process so that it can no longer impound liquids, the unit is not an inactive CCR surface impoundment.

3. Are inactive CCR landfills subject to the requirements of the CCR rule? An inactive landfill would be a unit that no longer receives CCR on or after the effective date of the rule.

- Answer: The CCR rule does not apply to inactive CCR landfills. See §257.50(d).

4. Does the CCR rule apply to CCR from a facility that is no longer part of the NAICS code 221112 (Fossil Fuel Electric Power Generation) because a fossil fuel power plant has closed if the CCR is sent for off-site management?

- Answer: The CCR rule does not apply to CCR generated by electric utilities and independent power producers that have ceased generating electricity (i.e., has closed) prior to the effective date of the rule. *See* §257(e).

5. Is CCR generated at an active facility (i.e., part of the NAICS code 221112) but then sent for management at a facility no longer producing power regulated under the CCR rule?

- Answer: CCR generated at an active facility but then sent for management at a facility no longer producing power is regulated under the rule. Section 257.50(b) specifies CCR generated by electric utilities and independent power producers that are generating electricity after the rule's effective date are subject to the rule. Section 257.50(b) specifies that the requirements also apply to CCR disposal units located off-site of the electric utility or independent power producer.

6. Is a fly ash pond located on the property of an electric utility that does not operate (i.e., the facility is not producing electricity) on or after the effective date of the rule subject to the requirements of the CCR rule?

- Answer: The CCR rule does not apply to CCR surface impoundments at electric utilities that no longer generate electricity.

7. Would a concrete basin be considered a surface impoundment under the CCR rule?

- Answer: EPA guidance for tanks under the Agency's subtitle C hazardous waste program would be relevant to this situation. Namely, "[i]n making this assessment, the unit should be evaluated as if it were free standing, and filled to its design capacity with the material it is intended to hold. If the walls or shell of the unit alone provide sufficient structural support to maintain the structural integrity of the unit under these conditions, the unit can be considered a tank. Accordingly, if the unit is not capable of retaining its structural integrity without supporting earthen materials, it must be considered a surface impoundment." So, using the same logic, if the concrete basin were free standing, and filled to its design capacity with the material it is intended to hold and the walls or shell of the unit alone provide sufficient structural support to maintain the structural integrity of the unit under these conditions, the unit would likely not be considered to be a surface impoundment.

8. The preamble of the CCR rule identifies certain impoundments as not being CCR surface impoundments – i.e., cooling water ponds, wastewater treatment ponds, storm water holding ponds, and aeration ponds. Are other types of ponds not specifically identified in the preamble but that similarly are not used to impound "significant quantities" of CCR considered not to be CCR surface impoundments.

- Answer: The final rule defines CCR surface impoundments as units that are designed to hold an accumulation of CCR and liquids, and the unit treats, stores, or disposes of CCR. Units that are not designed to hold an accumulation of CCR, and that do not treat, store, or dispose of CCR are not CCR surface impoundments. EPA provide examples in the preamble to the final rule of units that, in EPA's experience, typically would be expected to fall outside of that definition. These examples were not intended to be exclusive or definitive. There may well be additional units that do not meet the definition of a CCR surface impoundment. Similarly, there may be instances in which a particular "wastewater treatment pond" is in fact functioning as a CCR unit (e.g., a facility uses an existing CCR disposal unit for wastewater treatment without dredging the CCR out of the impoundment). Ultimately, the critical determinant of whether a unit is subject to the rule is whether it meets the criteria in the regulatory definition, rather than whether it was included as an example in the final rule preamble.

9. Are aquifers that do not yield a usable quantity or quality of groundwater covered by the rule's definition of "aquifer" which is limited to those "capable of yielding usable quantities of groundwater to wells or springs."

- Answer: The requirement to construct a unit with a base located no less than 1.52 meters (five feet) above the upper limit of the uppermost aquifer would not apply to geologic formations that are incapable of yielding usable quantities of groundwater to wells or springs. However, consistent with the final CCR regulations, as well as the part 258 regulations on which the CCR regulations are based, the quality and value of an aquifer should be a site-specific determination. Usable water in an aquifer typically includes all groundwater currently used or potentially available for drinking water and other beneficial uses (e.g., industrial or agricultural use), whether or not it is particularly vulnerable to contamination. The Agency is unable to judge the resource value of an aquifer based on a generic scale of significance because of the variability of aquifers on a site-by-site basis.

10. Within one year of the effective date of the rule, an owner or operator of an existing CCR surface impoundment must document whether or not the unit is constructed with either (1) a liner consisting of a minimum of two feet of compacted soil with a hydraulic conductivity of no more than $1x10^{-7}$ cm/sec; (2) a composite liner that meets the requirements of §257.70(b); or (3) an alternative composite liner that meets the requirements of §257.70(c). Can a natural clay liner system with a hydraulic conductivity of no more than $1x10^{-7}$ cm/sec be considered as meeting the standard?

- Answer: No, consistent with Part 258 (which is the source of this requirement) EPA considers compacted soil to mean soil that is mechanically compacted in lifts and not naturally compacted soil.

11. Does the CCR rule require an unlined CCR landfill to retrofit to install a composite liner?

- Answer: No; all existing CCR landfills can continue to operate for the remainder of their useful life without retrofitting to a composite or alternative composite liner system. Lateral expansions of these CCR landfills however are considered new units and must comply with the design requirements for new units including the installation of a composite or alternate composite liner and a leachate collection system.

12. The regulatory text at §257.90(b) specifies that a that a facility must begin evaluating data for a statistically significant increase for Appendix III constituents as the first round of sampling under detection monitoring. The facility is given 90 days to analyze these samples (at 257.93(h)(2)) and, if they show a statistically significant increase over background, it has another 90 days to begin assessment monitoring (at 257.95(b)). We believe that this provides a total of 2.5 years after the effective date of the rule (3 years after Federal Register publication) to begin assessment monitoring. Is this correct?

- Answer: The final rule provides a total of 2.5 years after the effective date of the rule (3 years after Federal Register publication) to begin assessment monitoring. Within 30 months of publication the facility must install the groundwater monitoring system, take eight independent samples of upgradient and downgradient wells to develop background levels, and begin detection monitoring. Within 90 days, the facility must determine if there is a statistically significant increase over background levels for any Appendix III constituent. If there is a statistically significant increase over background for any Appendix III constituent, the facility has 90 days to begin assessment monitoring. This provides for three years after the publication date before the facility would need to begin assessment monitoring, at the earliest.

13. Does background need to be established for both Appendix III and IV constituents within 30 months of publication or just Appendix III?

- Answer: Background levels have to be established for both appendix III and IV constituents within 30 months of publication. See §257.94(b).

14. Where is the point of compliance for groundwater monitoring?

- Answer: The objective of a ground-water monitoring system is to intercept groundwater that has been contaminated by leachate from the CCR unit. To accomplish this objective, the rule requires that downgradient monitoring wells must be installed at the waste boundary that ensures detection of groundwater contamination in the uppermost aquifer. (40 CFR § 257.91(a)(2)). If it is not feasible to install wells at the waste boundary (e.g., it would disturb the unit's liner), the owner or operator must install the wells at the closest feasible point from the waste management unit boundary.

15. Does the CCR rule prohibit a unit from closing using multiple closure methods – e.g., closing one portion of a large pond via clean closure and closing another portion of the same pond via closure in place (as would occur where CCR in the pond is consolidated towards the center to reduce the footprint and slope of the closure in place portion)?

- Answer: EPA agrees that the rule does not prohibit a unit from closing using multiple closure methods.

16. What is the relationship between the EPA and the states in regard to implementation of the CCR rule?

- Answer: The final rule establishes self-implementing requirements—primarily performance standards--that owners or operators of regulated units can implement without any interaction with regulatory officials. These requirements apply directly to the facilities. States are not required to adopt or implement these regulations, to develop a permit program, or submit a program covering these units to EPA for approval and there is no mechanism for EPA to officially approve or authorize a State program to operate "in lieu of" the federal regulations. In order to ease implementation the regulatory requirements for CCR landfills and CCR surface impoundments, EPA strongly encourages the States to adopt at least the federal minimum criteria into their regulations. EPA recognizes that some States have already adopted requirements that go beyond the minimum federal requirements; for example, some States currently impose financial assurance requirements for CCR units, and require a permit for some or all of these units. This rule will not affect these State requirements. The federal criteria are minimum requirements and do not preclude States' from adopting more stringent requirements where they deem to be appropriate.

17. What are the consequences, if any, to a state for not participating, i.e., not having an EPA-approved Solid Waste Management Plan or not having one that includes the CCR requirements?

- Answer: The rule imposes minimum federal criteria with which CCR units must comply without any additional action by a State or federal regulator. States are not required to adopt or implement these regulations, to develop a permit program, or submit a program covering these units to EPA for approval and there is no mechanism for EPA to officially approve or authorize a State program to operate "in lieu of" the federal regulations. The facilities will have to comply with the federal regulations whether or not the state adopts them. If the state has regulations that differ from the federal requirements, and the state does not adopt the federal rules, the facilities will have to comply with both sets of regulations. If a state does not revise their solid waste management plan and get it approved by EPA, the state will not be able to establish a compliance schedule for a facility.

18. How does the CCR rule impact CCR that are beneficially used?

- Answer: The final rule does not regulate CCR that are beneficially used. The Bevill determination remains unchanged for beneficial use. This rule provides a definition of beneficial use to distinguish between beneficial use and disposal. The rule clarifies that a use of a CCR that does not meet the definition of a beneficial use is disposal.

19. Are CCR piles located in a containment building that protect it from the elements considered a CCR pile subject to the requirements for CCR landfills?

- Answer: No, as defined in the rule, a CCR pile or pile means any non-containerized accumulation of solid, non-flowing CCR that is place on the land. CCR piles that are containerized, or that are placed on an impermeable base with runoff control and fugitive dust control are not considered CCR piles and are not subject to the requirements of the rule. Therefore, if an accumulation of CCR is in a building that meets the above criteria, it would not be subject to the requirements of the rule.

20. When will the CCR rule be published in the Federal Register?

- Answer:

Friday, April 17, 2015

CCR Rule Implementation Dates

- CCR Rule is scheduled to be published in the Federal Register on April 17, 2015
- If published on April 17, the effective date of the rule would be October 14, 2015
- Tables 1 & 2 show the implementation time frames for existing CCR surface impoundments and existing CCR landfills based on an April 17 rule publication

Table 1–Existing Surface Impoundments

Requirement	Deadline to Comply	Description of Requirement
Location Restrictions (§257.60 - §257.64)	Oct 17, 2018	- Complete demonstrations for placement above the uppermost aquifer, wetlands, fault areas, seismic impact zones, and unstable areas
Design Criteria (§257.71)	Oct 17, 2016	- Document whether CCR unit is either a lined or unlined surface impoundment
Structural Integrity (§257.73)	Dec 17, 2015 Oct 17, 2016 Apr 17, 2017 Apr 17, 2017	- Install permanent marker - Compile a history of construction - Complete initial assessments (hazard potential classification, structural stability, & safety factor) - Prepare emergency action plan
Air Criteria (§257.80)	Oct 19, 2015	- Prepare fugitive dust control plan
Hydrologic and Hydraulic Capacity (257.82)	Oct 17, 2016	- Prepare initial inflow design flood control system plan
Inspections (§257.83)	Oct 19, 2015 Oct 19, 2015 Jan 18, 2016	- Initiate weekly inspections of the CCR unit - Initiate monthly monitoring of instrumentation - Complete initial annual inspection of CCR unit

Table 1–Impoundments cont.

Requirement	Deadline to Comply	Description of Requirement
Groundwater Monitoring and Corrective Action (§257.90 - §257.98)	Oct 17, 2017	- Install the groundwater monitoring system; develop the groundwater sampling & analysis program; initiate the detection monitoring program; and begin evaluating the groundwater monitoring data for statistically significant increases over background levels
Closure & Post-Closure Care (§257.103 - §257.104)	Oct 17, 2016	- Prepare written closure and post-closure care plans
Recordkeeping, Notification, and Internet Requirements (§257.105 - §257.107)	Oct 19, 2015 Oct 19, 2015 Oct 19, 2015	- Conduct required recordkeeping - Provide required notifications - Establish CCR website

Table 2-Existing CCR Landfills

Requirement	Deadline to Comply	Description of Requirement
Location Restrictions (§257.60 - §257.64)	Oct 17, 2018	- Complete demonstration for unstable areas
Air Criteria (§257.80)	Oct 19, 2015	- Prepare fugitive dust control plan
Run-On & Run-Off Controls (257.82)	Oct 17, 2016	- Prepare initial run-on and run-off control system plan
Inspections (§257.83)	Oct 19, 2015 Jan 18, 2016	- Initiate weekly inspections of the CCR unit - Complete initial annual inspection of CCR unit
Groundwater Monitoring and Corrective Action (§257.90 - §257.98)	Oct 17, 2017	- Install the groundwater monitoring system; develop the groundwater sampling & analysis program; initiate the detection monitoring program; and begin evaluating the groundwater monitoring data for statistically significant increases over background levels
Closure & Post-Closure Care (§257.103-257.104)	Oct 17, 2016	- Prepare written closure and post-closure care plans
Recordkeeping, Notification, and Internet Requirements	Oct 19, 2015 Oct 19, 2015 Oct 19, 2015	- Conduct required recordkeeping - Provide required notifications - Establish CCR website

Thank you

Questions?