CLOSURE DEADLINES FOR CCR SURFACE IMPOUNDMENTS

NEED FOR ADDITIONAL TIME TO REMOVE CCR MATERIALS FOR BENEFICIAL USE PURPOSES

The final CCR rule requires owners or operators to complete the closure of an existing CCR surface impoundment within five years of commencing closure activities.[1] As a general matter, owners and operators must initiate the closure activities for a surface impoundment when the impoundment has stopped receiving CCR or any non-CCR wastestream for a specified period of time.[2] However, the rule provides additional time for the closing of impoundments that are no longer receiving CCR or non-CCR wastestreams if the owner or operator of that impoundment is removing CCR materials from the impoundment for the purpose of beneficial use. In the case of such impoundments, closure activities need not commence until after the last removal of the CCR material for beneficial use.[3] Providing this extra time for the removal of CCR material makes good policy sense and is consistent with RCRA's overarching goal of conserving natural resources through the beneficial use of waste materials whenever possible.

Unfortunately, none of this flexibility is provided for completing closure of surface impoundments that are subject to the forced closure requirements under §257.101. In particular, these impoundments must complete closure within five years of commencing closure activities, which must be initiated within six months of triggering the forced closure requirements of §257.101. In addition, these impoundments would not qualify for the extensions of closure deadlines provided under §257.102(f)(2). These extensions are only available to those impoundments for which the owners or operators "can demonstrate it was not feasible to complete closure of the CCR unit within the required time frames due to factors beyond the facility's control."[4]

The imposition of this requirement has the effect of preventing the beneficial use of CCR materials in the case of those impoundments for which there is an active program to recycle the CCR, but that program cannot be fully implemented within the five-year closure period. Such an outcome is contrary to RCRA's conservation goals to use waste materials instead of natural resources whenever possible. Nor are these prescriptive closure deadlines necessary to protect human health and environment. Any risks to human health and the environmental can be mitigated through the current CCR rule requirements for groundwater monitoring and corrective action that would apply during the extended closure period. Furthermore, this approach would have the counterproductive environmental effect of precluding the clean closure of the impoundments or at least greatly reducing the impacted area by arbitrarily cutting short the time that is available to remove the CCR materials from the impoundments.

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[1] 40 C.F.R. §257.102(f)(1)(ii).

[2] *See* 40 C.F.R. §257.102(e)(1), (2). In particular, the rules require an owner or operator to commence closure no later than 30 days after the date that the CCR unit receives the <u>known</u> final receipt of CCR or non-CCR wastestreams, *id.* at §257.102(e)(1)(i), but no later than two years from the date of the last receipt of such waste for those CCR units for which the owner or operator did not have advance notice of its last known receipt of the waste. *Id.* at §257.102(e)(2)(i).

[3] *See* 40 C.F.R. §257.102(e)(1), (2). Again, the five-year clock for completing closure begins no later than 30 days after the last known receipt of CCR or non-CCR wastestreams, *id.* at §257.102(e)(1)(2), but no later than two years from the date of the last receipt of such waste. *Id.* at §257.102(e)(2)(i).

[4] 40 C.F.R. §257.102(f)(2)(i).

To correct this serious shortcoming, EPA should remove the current inflexible five-year deadline for completing closure of impoundments that must undergo forced closure under 40 C.F.R. §257.101. EPA can accomplish this outcome in one of the following two ways:

1. Delete paragraph (4) of §257.102, which provides that the general (and more flexible) closure deadlines in §257.102(e)(1), (2) do not apply to surface impoundments that are subject to the forced closure requirements under §257.101.

2. Establish in §257.102(f) a provision that would allow for the extension of the current five-year closure deadline in the case of those impoundments for which the CCR materials are being removed for the purpose of beneficial use under an active beneficial use program.