Message

From: Roewer, James [JRoewer@eei.org]
Sent: 9/6/2018 6:30:08 PM
To: Huggins, Richard [Huggins.Richard@epa.gov]
CC: Johnson, Barnes [Johnson.Barnes@epa.gov]; Cook, Steven [cook.steven@epa.gov]; Breen, Barry [Breen.Barry@epa.gov]; 'Doug Green' [dhgreen@venable.com]; 'HAROLD D. REGISTER JR <HAROLD.REGISTERJR@cmsenergy.com> (HAROLD.REGISTERJR@cmsenergy.com)' [HAROLD.REGISTERJR@cmsenergy.com]; Lisa C Messinger [Lisa.C.Messinger@dominionenergy.com]
Subject: RE: Information Regarding CCR Impoundments vis-a-vis DC Circuit Decision
Attachments: ATT00001.txt

Richard: I received some additional responses from my members. We now have:

61 Unlined CCR Impoundments expected to meet the CCR rule's performance standards
37 Impoundments with clay liners per 257.71(a)(1)(i)
45 Inactive Surface Impoundments at inactive power plant sites

Please contact me with any questions, etc.

Jim

From: Roewer, James
Sent: Wednesday, September 05, 2018 3:16 PM
To: 'huggins.richard@epa.gov' <huggins.richard@epa.gov>
Cc: 'Johnson, Barnes' <Johnson.Barnes@epa.gov>; 'Cook, Steven' <cook.steven@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; 'Doug Green' <dhgreen@venable.com>; 'HAROLD D. REGISTER JR <HAROLD.REGISTERJR@cmsenergy.com> (HAROLD.REGISTERJR@cmsenergy.com)' <HAROLD.REGISTERJR@cmsenergy.com>; Lisa C Messinger <Lisa.C.Messinger@dominionenergy.com>
Subject: Information Regarding CCR Impoundments vis-a-vis DC Circuit Decision
Importance: High

Richard, et. al.

In follow-up to our discussion last week, below is information regarding potential impacts to the utility industry and its CCR management as a result of the DC Circuit's decision in the CCR litigation. We received the following information from 42 individual companies. While USWAG represents the majority of the owners and operators of CCR disposal units, please keep in mind that the number of facilities in each category is likely greater than reported below.

1. Unlined CCR Impoundments expected to meet the CCR rule's performance standards: Our members have identified 56 unlined surface impoundments that were expected to meet applicable groundwater protection standards and location restrictions and, therefore, under the existing rule are *not* expected to be subject to forced closure. Data for these units show that they are not expected to have an adverse impact to groundwater and will not pose a risk to health or the environment under the rule's location restrictions. Nonetheless, under the Court's vacatur of 40 C.F.R. 257.101(a), the regulatory status of these units going forward is uncertain. Units whose groundwater data show that they are not having an adverse impact to groundwater and which also meet the rule's location restrictions do not pose a reasonable probability of having an adverse effect on health or the environment and are not "open dumps."

2. CCR impoundments with clay liners: Our data show that 35 surface impoundments considered lined under the existing rule because they meet the two-foot clay liner criteria under 40 C.F.R. 257.71(a)(1)(i) will be classified as "unlined" on the day the Court's mandate vacating this provision becomes effective. The regulatory future of these surface impoundments is uncertain – *i.e.*, will they be forced to close, even though

some of these units are having no impact on groundwater (which is the case for many of the units due to the underlying clay base), or will they be able to continue operating provided that they continue to have no adverse effect on health or the environment (understanding that the conditions necessary to make this demonstration may change).

Owners/operators of these units in both of the above categories were relying on being able to continue using these impoundments as important components of plant operations. Therefore, any change to the rule that would require these surface impoundments to close would cause facility owners/operators to rapidly alter long-term plant strategies, including constructing alternative management capacity. Unlike units that were expected to be closed under the rule, these facilities have not developed contingency plans in the event of forced closure. For this reason, USWAG suggests that EPA request the Court to stay the effective date of the Court's judgment vacating these provisions to allow the Agency time to issue a rule providing owners/operators the requisite time to come into compliance with the new requirements applicable to these units.

3. Inactive Surface Impoundments at inactive power plant sites: Our members have identified 42 "inactive surface impoundments" at facilities that ceased producing power prior to October 19, 2015. Upon the effective date of the Court's mandate vacating 40 C.F.R. 257.50(e) these units will become subject to regulation for the first time under the CCR rule. Because many of the requirements applicable to inactive surface impoundments have come and gone (*e.g.*, the obligation to install and initiate groundwater monitoring), USWAG suggests that EPA request the Court stay the effective date of the judgment vacating this provision to allow the Agency time to issue a rule providing owners/operators of these newly regulated units the requisite time to come into compliance with the requirements applicable to these units.

We trust that information will be useful to your decision-making as you contemplate your response to the DC Circuit's decision. Please contact me with any questions or to discuss these issues further.

Jim

Jim Roewer
Executive Director
USWAG