

January 16, 2025

Honorable Lee Zeldin
Nominee to be Administrator, U.S. Environmental Protection Agency

Dear Rep. Zeldin:

Congratulations on your nomination to be Administrator of the U.S. Environmental Protection Agency. I write on behalf of the Utility Solid Waste Activities Group (“USWAG”) to share a white paper identifying critically important actions that can be immediately taken to help address fundamental problems with EPA’s regulations for disposal of coal combustion residuals (“CCR”), a byproduct from the generation of coal-fired power, much of which is recycled for a wide variety of important beneficial uses across the country. This letter serves as a follow up and expression of support to a submission on January 15, 2025, by a some of the nation’s largest energy providers.

USWAG represents the full spectrum of the nation’s diverse electric power generation sector on solid waste issues, including CCR. Our members include utility operating companies, power producers, energy companies, and industry associations, including the National Rural Electric Cooperative Association and the American Public Power Association. Although diverse, our members—including investor-owned utilities, public power, and community-owned cooperatives—all share a common goal: to provide affordable and reliable power to millions of people and businesses across the country. They do this while also complying with numerous stringent, complex, and continually evolving environmental regulations, including the federal regulations for CCR.

Since the CCR regulations were first promulgated in 2015, they have undergone revisions through six separate rulemakings. While some of these changes were intended to provide additional flexibilities in complying with the rule, others have resulted in impractical and burdensome requirements that give no consideration to risk and have very little corresponding environmental benefit. The most recent changes—issued in May 2024—broadly expanded the scope of the regulations to encompass activities that not only are outside of EPA’s statutory authority but also have historically been within the purview of the States. The changes also placed unnecessary restrictions on beneficial use of CCR. The estimated cost of these new requirements dwarfs the estimated benefits, ultimately diverting much-needed resources away from the power sector’s efforts to meet the nation’s growing energy needs.

The actions identified in the white paper are immediate steps that can be taken to improve the CCR program. But these actions are just a first step. Fundamentally, there is a need to revisit the overall approach for implementing the federal CCR program, as the current regulatory regime results in inefficiency and wasteful over-regulation. Overall, the rule could be vastly improved by moving away from the current one-size-fits all self-implementing program, to one that provides certainty through the issuance of permits and allows decisions to be made based on risk and site-specific conditions.

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We welcome the opportunity to partner with the new Administration on these important issues for improving the nation's regulation of CCR and look forward to working with you.

Sincerely,



Daniel L. Chartier
USWAG Executive Director

Coal Combustion Residuals Rules Impede U.S. Energy Production

Coal combustion residuals (“CCR”) are a natural byproduct of generating electricity with coal. For years, CCR has been used for beneficial purposes in U.S. construction and manufacturing, including to construct road base and make concrete and other construction materials. Using domestic CCR lowers construction costs, reduces inflation, supports infrastructure development, reduces waste, and decreases the Nation’s dependence on foreign imports.

EPA’s recent unprecedented expansion of the federal CCR regulations has needlessly diverted funds from the power sector’s efforts to meet the Nation’s growing energy needs; increased costs for power companies and consumers without corresponding benefits to public health or the environment; and placed unnecessary restrictions on beneficial use of CCR. Swift action by the incoming Trump Administration is needed to reverse EPA’s regulatory overreach and to support critical energy production and development at U.S. power plants.

BACKGROUND

- 2015: EPA promulgates the first regulations specific to disposal of CCR at active power plants. EPA correctly determined that CCR is nonhazardous, but those rules did not include site-specific, risk-based provisions contained in other federal and State solid waste permitting programs. Instead, the rules included one-size-fits-all, inflexible, and often impracticable requirements that have resulted in enormous costs.
- 2016: Congress amends the Resource Conservation and Recovery Act with the Water Infrastructure and Improvements for the Nation (WIIN) Act, which (1) authorizes the CCR rules to be implemented through State permit programs or, in States without such programs, through a federal permit program and (2) authorizes more flexible risk-based rules.
- 2017-2020: Under the Trump Administration, EPA makes key improvements to the regulations to prevent the premature closure of coal-fired power plants and to reduce costs, including the extension of key deadlines and the creation of an administrative process to obtain relief from the regulations’ burdensome one-size-fits-all closure requirements. During this time, EPA also approves two State CCR programs in Oklahoma and Georgia and proposes approval of Texas’s program.
- 2021-2024: EPA eliminates many of the flexibilities achieved in the first Trump Administration by issuing new “guidance” and “interpretations” that (1) effectively nullify the efforts of the prior Administration to reduce compliance costs and prevent the premature closure of power plants and (2) impose unnecessary restrictions on the beneficial use of CCR. During this time, EPA finalizes approval of the State CCR program in Texas and denies the State CCR program in Alabama.
- May 2024: EPA finalizes new regulations (the “Legacy Impoundment Rule”) that broadly expand the scope of the rules to CCR management activities that are well beyond its statutory authority, reverses prior State regulatory decisions on CCR closures (including closures where the CCR had already been removed entirely), and nullifies substantial investments made by power generators. EPA developed the new regulations before even conducting a risk assessment, and its after-the-fact assessment was based on incomplete data, inappropriate methodologies, and unreasonable assumptions. EPA denied requests from States and others to provide additional notice and comment on the assessment. EPA also made last-minute, behind-the-scenes revisions to the regulations—including key definitions—without public comment. These new rules have been challenged by seventeen States, dozens of power plant owners from across the country, and industry trade associations. The litigation is in early stages.

IMMEDIATE ACTION NEEDED

An overhaul of the CCR regulations and EPA’s current approach is needed to establish standards that are practical and based on demonstrated risk. The incoming Administration should take the following immediate steps:

1. Hold the release of any new CCR regulations or guidance documents from EPA until review and reconsideration of those documents can be conducted.
2. Decline to defend the Legacy Impoundment Rule because it exceeds EPA’s statutory authority. File a motion with the Court for voluntary vacatur of the unlawful “CCR management unit” provisions and the definitions of “liquids,” “infiltration,” and “contains both CCR and liquids” that were issued without proper notice. Request

remand of the remaining provisions for additional rulemaking, including to promptly correct the retroactive regulation of legacy impoundments and units so that the rule only regulates legacy impoundments that currently contain both CCR and surface water and to allow for risk-based closure standards tailored to site-specific conditions. Prompt rescission of the current requirements is essential given upcoming deadlines that require substantial investment and expenditures.

3. Rescind EPA's incorrect interpretation that on-site uses of CCR do not qualify as exempt beneficial uses and reaffirm that all beneficial uses of CCR, whether on- or off-site, are exempt from all provisions of the federal CCR regulations.
4. Review and assess EPA's National Enforcement and Compliance Initiative on CCR as well as recent EPA regional enforcement actions on CCR in light of new priorities. Review federal contracts with private consultants used by EPA to implement the agency's compliance and enforcement responsibilities with respect to CCR.
5. Revoke or revise: (1) the "guidance" document that accompanied the Legacy Impoundment Rule entitled "Considerations for the Identification and Elimination of Free Liquids in Coal Combustion Residuals (CCR) Surface Impoundments and Landfills"; (2) EPA's Final Denial for Gavin Power's Request For a Part A Extension of Closure Date ("Final Denial"); and (3) any similar "contact with groundwater" guidance or interpretation issued by EPA. Seek a litigation abeyance and remand of the Final Denial to allow for reconsideration. Revocation of these guidance documents is necessary to prevent costly third-party litigation that may seek to rely on these prior interpretations.
6. Initiate a critical review of EPA's April 2024 "Risk Assessment of Coal Combustion Residuals: Legacy Impoundments and CCR Management Units," including conducting additional notice and comment proceedings regarding the data, assumptions, methodologies, and conclusions in the assessment.
7. Prioritize the expeditious approval of State CCR permit programs to operate in place of the federal rule and include a streamlined process for approving State CCR programs that adopt the federal rules by reference.