

WASTE MANAGEMENT AND RADIATION CONTROL BOARD
 Executive Summary
 Public Comments and Change in Proposed Rule (CPR) for R315-319
 July 14, 2016

What is the issue before the Board?	The Board is being asked to approve the filing of a change in proposed rule (CPR) for Solid Waste Rule R315-319, Management of Coal Combustion Residuals in Landfills and Surface Impoundments and to set an effective date.
What is the historical background or context for this issue?	<p>Federal rules for the management of coal combustion residuals (CCR) became effective October 19, 2015. These rules outline the minimum criteria for disposal of CCRs from electric utilities in landfills and surface impoundments. In order for the State of Utah to establish a permitting program for these CCR management units, state rules are needed.</p> <p>R315-319 establishes solid waste permit criteria for the management of CCRs in Utah. These rules require that landfills disposing of CCRs and surface impoundments CCRs have a solid waste permit that meets the requirements of R315-319. R315-319 follows the same management criteria in the federal rules (40 CFR 257).</p> <p>R315-319 was published in the April 15, 2016 State Bulletin for a 30-day public comment period. The comment period ended on May 16, 2016. Three commenters submitted comments on proposed rule R315-319. Based on comments received, some changes will be made to the proposed rule. The comments and the response to comments are attached.</p>
What is the governing statutory or regulatory citation?	Utah Solid and Hazardous Waste Act, 19-6-104 and 19-6-106.
Is Board action required?	Yes.
What is the Division Director's recommendation?	The Director recommends that the Board approve the filing of a CPR for Solid Waste Rule R315-319 and set an effective date of September 1, 2016.
Where can more information be obtained?	If you have any questions, please call Allan Moore at (801) 536-0211 or Ralph Bohn at (801) 536-0212.



ADVISORY COUNCIL

Dr. Louis Borgenicht
Dr. Jane Bowman
Craig Buschmann, *Special Advisor, Energy Transitions*
Rep. Rebecca Chavez-Houck
Mary Dickson
Ed Firmage
Claire Geddes
Boyer Jarvis
Dr. Jerry Lazar
Dee Rowland
Barbara Tanner
Chip Ward
Terry Tempest Williams

BOARD OF DIRECTORS

Bob Archibald,
Co-President
Mary Ellen Navas,
Co-President
Troy Knighton, CPA
Board Treasurer
Jeff Clay
Edwin Firmage, Jr.
Clare Gilmore
Dr. Steve Nelson
Rachel Posner
Myron Willson

824 S 400 W, Suite B-111
Salt Lake City, Utah 84101
801-355-5055
www.healutah.org

May 16, 2016

By email to: dwmrcpublic@utah.gov and rbohn@utah.gov

Ralph Bohn
Manager, Planning/Technical Support Section
Waste Management and Radiation Control
Utah Department of Environmental Quality
195 North 1950 West
Salt Lake City, Utah 84116

Re: Comments on Notice of Proposed Rule, R315-310, Permit Requirements for Solid Waste Facilities, DAR File No: 40267

To whom it may concern:

HEAL Utah submits the following comments on the Notice of Proposed Rule, R315-310 regarding permit requirements for coal ash solid waste facilities. We appreciate your attention to our below comments and hope you will adopt the recommendations contained in this comment letter, amend the proposed regulations accordingly, and provide the requested information prior to finalization of the regulations.

A. General Comments and Requests for Information

The proposed regulations largely mimic the recently adopting federal coal ash disposal regulations at 40 C.F.R. Parts 257 and 261, with several notable exceptions discussed herein. *See*, 80 Fed. Reg. 21302.

First, the proposed State regulations changed the language of various section headings from the language used in the federal regulations. The reason for the State's change in section headings is both unclear and unexplained. Please explain why the State chose to alter the federal section headings. Please also confirm that the section headings are not substantive provisions of the proposed regulations and in no way alter the requirements contained in each proposed State regulation or federal regulation.



Second, in numerous instances the State has inserted provisions in the proposed regulations requiring that the owner/operator submit, and seek State approval of, various coal ash disposal plans, reports, and related documents. It is our view that state approval various coal ash plans, reports, and related documents does not impact citizen enforcement of the federal regulations. The proposed State regulations say, in relevant part:

R315-319-2. Relation to Federal Coal Combustion Residuals Rule in 40 CFR 257. (a) The compliance dates in 40 CFR 257 Subpart D are not affected by the requirements in Rule R315-319 for director approval except as the extensions allowed by 40CFR 256.26 may be applied by the Director.

And,

R315-319-52. Applicability of Other Regulations.

(a) Compliance with the requirements of Sections R315- 319-50 through 107 does not affect the need for the owner or operator of a coal combustion residuals landfill, coal combustion residuals surface impoundment, or lateral expansion of a coal combustion residuals unit to comply with all other applicable *federal*, state, tribal, or local laws or other requirements. (emphasis added).

These provisions make clear that citizen enforcement of the federal regulations is unaffected by the adoption of the proposed State regulations. Please confirm this understanding prior to finalizing the proposed regulations.

Third, the proposed State regulations contain the following provision:

R315-319-2. Relation to Federal Coal Combustion Residuals Rule in 40 CFR 257. (a) The compliance dates in 40 CFR 257 Subpart D are not affected by the requirements in Rule R315-319 for director approval *except as the extensions allowed by 40 CFR 256.26 may be applied by the Director.* (emphasis added).

Section 40 C.F.R. §256.26 states:

In implementing the section 4005(c) prohibition on open dumping, the State plan shall provide that any entity which demonstrates that it has considered other public or private alternatives to comply with the prohibition on open dumping and

is unable to utilize such alternatives to so comply, may obtain a timetable or schedule for compliance which specifies a schedule of remedial measures, and an enforceable sequence of actions, leading to compliance within a reasonable time (not to exceed 5 years from the date of publication of the inventory).

Proposed provision R315-319-2(a) appears to grant the Director the ability to authorize an exemption to compliance schedules for non-complying open dumps. It is unclear which open dumps have sought, or may seek, such an exemption and the proposed regulations provide no explanation.

Accordingly, HEAL Utah requests the following information. Please provide a current inventory of all Utah open dumps. Please indicate whether any such open dumps are subject to the requirements of 40 C.F.R. 257. Please indicate whether any such open dumps are located on any currently operating electric generating unit property. Please provide the current enforceable compliance schedule for any such open dumps. Please provide a list of all open dumps that may seek an extension of time to comply under 40 C.F.R. §256.26. Please indicate whether any open dumps that may obtain such an extension received coal combustion residuals. Please provide this information and allow public comment prior to finalizing the proposed regulations.

Fourth, the proposed regulations are largely silent on the issue of enforceability. Please confirm whether the State intends for its regulations to be enforceable privately by citizens in State and/or federal court. Please also indicate whether the proposed regulations are enforceable by the State and/or EPA.

B. Specific Comments

1. “must” v. “shall”

Generally, the federal regulation use the operative word “must” when imposing a mandatory legal obligation on an owner/operator of a CCR unit. Without explanation, the proposed State regulations delete the word “must” and insert the word “shall” for nearly every legal obligation found in the federal regulations. The State’s alteration of the federal regulations in this regard is unnecessary, creates uncertainty, and poses a potential conflict between the federal and state CCR regulations. As noted by the Utah Supreme Court,

...it is pertinent to observe that the term "shall" is a flexible one. This is clearly revealed by reference to that comprehensive lexicon of the law, Words and Phrases. It contains several pages of case references to the word "shall," a perusal of which indicates that it is sometimes used in the **mandatory** sense and sometimes merely as **directory** or permissive, leading to the conclusion that its meaning is to be determined from the context in which it is used and the purpose sought to be accomplished.”

Hansen v. Utah State Retirement Board, 652 P.2d 1332, 1342 (1982)(concurring opinion). To make matters even more uncertain, the Utah Supreme Court has noted,

There is no universal rule by which **directory** provisions may, under all circumstances, be distinguished from those which are **mandatory**. (emphasis added).

Kennecott Copper Corp., v. Salt Lake County, 575 P.2d 705, 706 (1978).

As noted above, the State’s replacement of the word “must” with “shall” is completely unnecessary and creates confusion and conflict with the federal regulations. HEAL Utah requests that the word “must” be reinserted into the proposed State regulations in every instance it was removed. If the State is unwilling to re-establish consistency with the federal regulation in this regard, prior to finalizing the regulation please confirm whether the State’s use of the word “shall” imposes a mandatory duty in every instance it is used in the proposed State regulation. If not, please explain why.

2. Incorporation of federal coal ash regulation settlement into state regulations.

The federal coal ash regulations were appealed in federal circuit court by both industry opponents and environmental organizations. Recently, a settlement agreement was reached that will alter the current language of the federal coal ash regulations. *See, attachment 1 hereto*. Since the proposed State regulations are largely intended to mimic the federal regulations, HEAL Utah requests that the terms of the settlement be incorporated into the proposed State regulations prior to finalization. The proposed federal settlement will become final and effective within weeks of effective date of the proposed State regulations. Thus, it is in all stakeholders’ interest to either: 1) incorporate the terms of the settlement into the



proposed State regulation prior to adoption; or, 2) delay adoption of the proposed State regulations for several weeks until the terms of the settlement become final, effective, and incorporated into the federal regulations, at which time the proposed State regulations can be changed prior to adoption to incorporate the new terms of the federal regulations.

3. Financial assurance.

We request that the State impose financial assurance requirements as a condition of constructing and/or operating a coal ash unit, such as the posting of a bond to cover all costs of cleanup and remediation in the event the coal ash unit operator becomes insolvent. Utah taxpayers should not have to bear the costs of remediation of coal ash units.

4. Drinking water survey requirements

We request that the State add a provision requiring coal ash unit operators to conduct surveys and water quality sampling of all drinking water wells within ½ mile of any coal ash unit. The water quality analysis should include all constituents listed in the Utah regulations and attached settlement agreement. Should well water contamination be detected, the coal ash unit operator should be required to provide an alternate drinking water supply to the owner of the affected property. The North Carolina Coal Ash Management Act has such a provision that could serve as model language for Utah.

5. Public Notice

We request that a provision be added to the regulations requiring public notice of any proposed CCR fill project over 12,400 tons.

6. Application to MSWLFs

We request that a provision be added making Utah's CCR regulations applicable to any municipal solid waste landfill that accepts, or has accepted, coal combustion waste.



7. Exclude soil liners from 40 CFR 257.72.

We request that the regulations be changed to exclude soil lined CCR units from the definition of “line impoundments.” This definition should be limited to impoundments with compliant composite liners.

8. Make rule applicable to inactive impoundments

We request that the regulations apply to inactive surface impoundments at facilities that no longer generate electricity.

9. Date certain for closure of unlined impoundments.

We request that the regulations contain a date certain for the closure of all unlined impoundments.

Thank you for the opportunity to submit comments on the proposed State coal ash regulations. Please adopt all of the suggestions herein, make the corresponding changes the proposed regulations, and produce the requested information prior to finalization of the regulations.

Sincerely,

A handwritten signature in black ink that reads "Matt Pacenza".

Matt Pacenza
Executive Director

SETTLEMENT AGREEMENT

WHEREAS, on April 17, 2015, the United States Environmental Protection Agency (“EPA”) published a regulation promulgated pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.* (“RCRA”), titled “Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities,” 80 Fed. Reg. 21,302 (Apr. 17, 2015) (“Final Rule”);

WHEREAS, Clean Water Action, Environmental Integrity Project, Hoosier Environmental Council, PennEnvironment, Prairie Rivers Network, Sierra Club, Tennessee Clean Water Network, and Waterkeeper Alliance (collectively “Environmental-Petitioners”) and Utility Solid Waste Activities Group, Edison Electric Institute, National Rural Electric Cooperative Association, American Public Power Association, Beneficial Reuse Management, Lafarge North America Inc., Lafarge Midwest, Inc., Lafarge Building Materials Inc., Associated Electric Cooperative, Inc., City of Springfield, Missouri Board of Public Utilities, and AES Puerto Rico, LP (collectively “Industry-Petitioners”), have petitioned for review of the Final Rule in the United States Court of Appeals for the District of Columbia (the “Court”) in seven separate actions consolidated under D.C. Circuit Case No. 15-1219 (the “Pending Action”);

WHEREAS, in response to certain of the claims in the Pending Action, Respondent EPA has determined that it is prudent to reconsider through further administrative proceedings certain specific provisions of the Final Rule (“Reconsidered Provisions”) and to file with the Court a Motion to Remand the Reconsidered Provisions (“Motion to Remand”), said Motion being unopposed by Environmental-Petitioners and Industry-Petitioners, except that the undersigned Industry-Petitioners take no position on the remand of Reconsidered Provision D and the remand and vacatur of Reconsidered Provision B; the remaining Industry-Petitioners have authorized counsel for the undersigned Industry Petitioners to state that the issues addressed in the Motion

to Remand are not among the issues they are pursuing in the Pending Action and that they accordingly take no position on the Motion to Remand;

WHEREAS, the Reconsidered Provisions call for the following:

A. Remand with vacatur of the of the phrase “not to exceed 6 inches above the slope of the dike” within 40 C.F.R. §§ 257.73(a)(4), 257.73(d)(1)(iv), 257.74(a)(4), and 257.74(d)(1)(iv);

B. Remand with vacatur of 40 C.F.R. § 257.100, *except* for the following clause contained in 40 C.F.R. § 257.100(a): “Inactive CCR surface impoundments are subject to all of the requirements of this subpart applicable to existing CCR surface impoundments;” Such vacatur shall be effective as set forth in the Motion to Remand;

C. Remand without vacatur of:

1. The sentence in 40 C.F.R. § 257.90(d) that provides: “The owner or operator of the CCR unit must comply with all applicable requirements in 257.96, 257.97, and 257.98;” and

2. The phrase in 40 C.F.R. § 257.96(a) that provides “or immediately upon detection of a release from a CCR unit,” said remand for the purpose of proposing to clarify the type and magnitude of non-groundwater releases that would require a facility to comply with some or all of the corrective action procedures set forth in 40 C.F.R. §§ 257.96-257.98 in meeting their obligation to clean up the release;

D. Remand without vacatur of Appendix IV to the Final Rule for the sole purpose of proposing that Boron be added to the list of constituents in Appendix IV that trigger assessment monitoring and corrective action; and

E. Remand without vacatur of 40 C.F.R. § 257.103(a) and § 257.103(b) for further consideration of whether to expand this provision to situations in which a facility needs to continue to manage waste streams other than CCR in the waste unit;

WHEREAS the remand, and vacatur where applicable, of the Reconsidered Provisions may have some effect on one or more of the Environmental and/or Industry Petitioners or members thereof, and the Parties agree to attempt to address those effects through this Settlement Agreement (“Agreement”); and

WHEREAS, it is in the interest of the public, the Parties, and judicial economy to resolve the identified issues without further litigation;

NOW, THEREFORE, the Environmental-Petitioners, the undersigned Industry-Petitioners, and EPA, each intending to be bound by this Agreement, hereby agree as follows:

I. PARTIES

1. The Parties to this Agreement are Environmental-Petitioners, the undersigned Industry-Petitioners, and EPA (collectively the “Parties”). The Parties understand that Gina McCarthy was sued in her official capacity as Administrator of the United States Environmental Protection Agency and that the obligations arising under this Agreement are to be performed by EPA and not by Gina McCarthy in her individual capacity.

2. This Agreement applies to, is binding upon, and inures to the benefit of Environmental-Petitioners and the undersigned Industry-Petitioners (and their successors, assigns, and designees) and EPA.

II. ACTIONS TO BE TAKEN BY EPA

3. EPA shall publish a proposed rule or rules (“Remand Rule”) to:

A. In response to the vacatur and remand of the provisions requiring "vegetative slopes of dikes not to exceed a height of 6 inches above the slope of the dike" in 40 C.F.R. §§ 257.73(a)(4), 257.73(d)(1)(iv), 257.74(a)(4), and 257.74(d)(1)(iv), establish requirements relating to the use of vegetation as slope protection on CCR surface impoundment dikes;

B. Clarify the type and magnitude of non-groundwater releases that would require a facility to comply with some or all of the corrective action procedures set forth in 40 C.F.R. §§ 257.96-257.98 in meeting their obligation to clean up the release; and

C. Add Boron to the list of contaminants in Appendix IV of the Final Rule that trigger the assessment monitoring and corrective action requirements under the Final Rule.

4. EPA shall issue the proposed Remand Rule(s) described in paragraph 3 above as soon as practicable. EPA presently intends to take final action on the matters set forth in paragraph 3 above (the Remand Rule) within three years of an Order from the Court granting the Motion for Remand. Any final rule or rules issued with regard to the remanded issues will be based on the comments received on the proposed Remand Rule(s) and other pertinent information and data. Nothing herein shall be construed to prejudge the substance, findings or provisions of any final Remand Rule(s) issued by EPA pursuant to this Agreement.

5. In order to ameliorate the effects to those owners or operators who relied on the early closure provision (40 C.F.R. § 257.100) that EPA seeks to vacate through the Motion to Remand, EPA shall propose a rule (the "Extension Rule") that is applicable only to those owners or operators that by December 17, 2015, submitted notification of their intent to initiate closure of an inactive CCR surface impoundment pursuant to 40 C.F.R. § 257.100(b) and placed such notification on the owner or operator's CCR Web site by January 18, 2016, as required by 40

C.F.R. § 257.107(i)(1). The proposed Extension Rule shall extend by 525 days (the approximate number of days between the signature date of the Final Rule, December 19, 2014, and an Order from the Court granting the Motion to Remand), the following deadlines (“Extension Period”):

A. Deadline to complete the demonstrations for compliance with the location restrictions, set forth in 40 C.F.R. §§ 257.60(c)(1), 257.61(c)(1), 257.62(c)(1), 257.63(c)(1), 257.64(d)(1);

B. Deadline to document whether the CCR impoundment is lined or unlined, set forth in 40 C.F.R. § 257.71(a)(1);

C. Deadline to install permanent markers, set forth in 40 C.F.R. § 257.73(a)(1);

D. Deadline to document the CCR unit’s history of construction set forth in 40 C.F.R. § 257.73(c)(1);

E. Deadline to complete the initial hazard potential classification assessment, initial structural stability assessment, and initial safety factor assessment set forth in 40 C.F.R. § 257.73(f)(1);

F. Deadline to prepare an Emergency Action Plan, set forth in 40 C.F.R. § 257.73(a)(3);

G. Deadline to prepare a fugitive dust control plan set forth in 40 C.F.R. § 257.80(b)(5);

H. Deadline to prepare an initial inflow design flood control system plan set forth in 40 C.F.R. § 257.82(c)(3);

I. Deadline to initiate weekly inspections of the CCR unit and monthly monitoring of CCR unit instrumentation set forth in 40 C.F.R. § 257.83(a)(2);

J. Deadline to complete the initial annual inspection of the CCR unit set forth in 40 C.F.R. § 257.83(b)(3);

K. Deadline to install the groundwater monitoring system, and begin monitoring, set forth in 40 C.F.R. § 257.90(b);

L. Deadline to prepare an initial groundwater monitoring and corrective action report, set forth in 40 C.F.R. § 257.90(e);

M. Deadline to prepare a written closure plan, set forth in 40 C.F.R. § 257.102(b)(2); and

N. Deadline to prepare a written post-closure care plan, set forth in 40 C.F.R. § 257.104(d)(2).

6. EPA shall issue the proposed Extension Rule within 60 days of an Order from the Court granting the Motion for Remand. EPA will transmit the proposed Extension Rule to the Office of the Federal Register as expeditiously as possible thereafter for publication. EPA will make its best efforts to sign a notice taking final action on the proposed Extension Rule within 120 days of the close of the comment period, but will in any event sign a notice taking final action no later than April 17, 2017. EPA will transmit the signed notice to the Office of the Federal Register as expeditiously as possible thereafter for publication.

7. The Parties agree that EPA may satisfy the requirements set forth in Paragraphs 5 and 6 of this Agreement through the promulgation of a direct final Extension Rule, which it may issue simultaneously with the proposed Extension Rule. If EPA receives adverse comments on such direct final Extension Rule and as a consequence withdraws it, EPA will inform the Parties and continue to proceed with the proposed Extension Rule referenced in Paragraph 6.

8. If the number of days between the signature date of the Final Rule (December 19, 2014) and issuance of the Order granting the Motion to Remand turns out to be greater than 525 days, the number of days comprising the extension period in the proposed Extension Rule described in Paragraph 5 shall automatically be increased to reflect the actual number of days between signature of the Final Rule (December 19, 2014) and the issuance of the Order granting the Motion to Remand.

III. ACTIONS BY PETITIONERS AND REMEDIES FOR NON-PERFORMANCE

9. Environmental-Petitioners and the undersigned Industry-Petitioners agree to the dismissal of their claims challenging the Remanded Provisions as set forth in EPA's Motion for Remand, said dismissal to become effective upon issuance of an Order from the Court granting the Motion to Remand. Specifically, the undersigned Industry-Petitioners agree to dismissal of their claims described in their Brief submitted to the Court (Doc. No. 1589625) at issues III,D and III,E (lack of notice of two specific criteria) and IV,C,ii (Alternative Closure as applied to non-CCR waste), and Environmental-Petitioners agree to dismissal of their claims described in their Brief submitted to the Court (Doc. No. 1589399) at issues IV (early closure provision) and V (Boron as a covered contaminant).

10. In the event EPA fails to issue a Final Remand Rule(s) within the time periods set forth in paragraph 4 above or sign a notice taking final action on the proposed Extension Rule by April 17, 2017, the undersigned Petitioners' sole remedy is to initiate an action under the Administrative Procedure Act, 5 U.S.C. §§ 551-706, asserting unreasonable delay by EPA in concluding proceedings on the Final Remand Rule(s) or taking final action in issuing the Extension Rule. EPA fully intends to issue the Final Remand Rule(s) within the time periods set forth in paragraph 4 above and to sign a notice taking final action on the proposed Extension

Rule by April 17, 2017. Nevertheless, because future events cannot be predicted, nothing herein shall be deemed to waive any defense to any action alleging unreasonable delay by EPA in issuing the Final Remand Rule(s) or signing a notice taking final action on the proposed Extension Rule. Any such filed challenge renders any remaining EPA obligations under this Agreement pertaining to the Challenged Rule (i.e., the Remand Rule or Extension Rule, whichever is challenged) null and void.

11. Under no circumstances shall any provision of this Agreement be the basis for any action for specific performance, mandamus, or any other remedy seeking to compel EPA to take any of the actions referenced in this Agreement. The Parties agree that contempt of court is not an available remedy for a breach of this Agreement. Nothing herein prevents any party from bringing an action asserting that EPA has unreasonably delayed taking some action.

12. Nothing herein shall prohibit any Petitioner from challenging the Final Remand Rule(s) or Extension Rule upon their promulgation.

IV. EFFECTIVE DATE

13. This Agreement shall not become effective unless and until it is executed by the representatives of all Parties and until the Court issues an Order granting the Motion to Remand. The Agreement may be executed in counterparts.

14. In the event the Agreement is executed by representatives of all Parties but the Court does not issue an Order granting the Motion to Remand substantially in the form set forth in the Motion to Remand, the Parties may attempt to renegotiate this Agreement to conform with the actions of the Court. In such event, nothing herein shall obligate any Party to agree to a modified Settlement Agreement.

V. GENERAL PROVISIONS

15. The Parties may agree in writing to modify any term of this Agreement. Except for the modification referred to in paragraph 8, above, any such written modification must be executed by all Parties.

16. This Agreement was negotiated between the undersigned Petitioners and EPA in good faith and jointly drafted by the Parties. The Parties hereby agree that any and all rules of construction to the effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Agreement.

17. This Agreement contains all terms and conditions agreed upon by the Parties. All statements, representations, promises, agreements, or negotiations, oral or otherwise, among the Parties or counsel that are not included herein are specifically superseded by this Agreement and shall have no force or effect.

18. This Agreement shall not constitute or be construed as an admission or adjudication by the United States or EPA or by any other person or entity of any question of fact or law with respect to any of the claims raised in the Pending Action, nor is it an admission of violation of any law, rule, regulation, or policy by the United States or EPA.

19. Nothing in this Agreement shall be construed to limit or modify the discretion accorded to EPA under RCRA, general principles of administrative law, or under any other statutes or regulations, nor shall it in any way be deemed to limit EPA's discretion in adopting any final rule or taking any other administrative action.

20. Nothing in this Agreement shall be construed to limit EPA's authority to alter, amend, or revise any final rule, guidance, permit, interpretation or other administrative action that EPA has issued or may issue, or to promulgate superseding regulations. Correspondingly, nothing herein shall be construed to limit the undersigned Petitioners' ability to seek

administrative or judicial review of any such alteration, amendment, revision, superseding regulation or administrative action.

21. No provision of this Agreement shall be interpreted as or constitute a commitment or requirement that EPA obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or take actions in contravention of the Administrative Procedure Act, 5 U.S.C. §§ 551-559, 701-706, RCRA, 40 U.S.C. §§ 6901 *et seq.*, or any other law or regulation, either substantive or procedural.

22. Nothing in this Agreement shall be construed to confer upon a district or appellate court jurisdiction to review any decision to be made by EPA pursuant to this Agreement that would not otherwise be reviewable by such court, or to otherwise confer upon a district court jurisdiction to review any issues that are within the exclusive jurisdiction of the United States Courts of Appeals under section 7006 of RCRA, 42 U.S.C. § 6976.

23. If a subsequent change in law alters or relieves EPA of any of its obligations concerning the matters addressed in this Agreement, then this Agreement shall be amended to conform to such changes.

24. Nothing in this Agreement shall be construed to make any other person or entity not executing this Agreement a third-party beneficiary to this Agreement.

25. This Agreement shall not be admitted against EPA for any purpose in any proceeding, except an action for unreasonable delay or non-compliance with any obligation set forth herein.

26. EPA will promptly notify the undersigned Petitioners if it believes that it will be unable to meet one or more of the dates specified in Paragraphs 4 or 6 above because of any of the following circumstances beyond its control: (a) a government shutdown; (b) an extreme

weather event that renders EPA staff unable to complete the work necessary to meet the deadlines; (c) a catastrophic environmental event (e.g., natural disaster or environmental accident) that results in the necessary diversion of EPA staff resources away from the work needed to meet the deadlines in this Agreement. Should EPA be unable to meet the dates in Paragraphs 4 or 6 due to one or more of the specific circumstances listed in this paragraph, then any resulting failure by EPA to meet that date shall not constitute a failure to comply with the terms of this Agreement, and the date or dates so affected shall be extended one business day for each day of the unavoidable delay, unless the Parties agree to a longer period. In the event that EPA invokes this provision, it will provide the undersigned Petitioners with reasonable notice and explanation for any unavoidable delay.

27. The individuals signing this Agreement on behalf of the Parties hereby certify that they are authorized to bind their respective parties to this Agreement.

28. This Agreement shall be governed and construed under the laws of the United States.

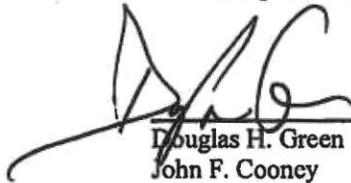
29. Any notice required or made with respect to this Agreement shall be in writing and shall be effective upon receipt. For any matter relating to this Agreement, notice shall be sent to a Party by sending such notice to signatories for such Party listed below.

30. The headings contained in this Agreement are for convenience only and shall not be construed as having any substantive effect.

31. Counsel for the following Industry Petitioners have authorized counsel for the undersigned Industry Petitioners to state that the issues addressed in this Agreement, including but not limited to the issues set out in the fourth Whereas Clause and numbered paragraph nine of this Agreement, are not among the issues they are pursuing in the Pending Action and that

they accordingly take no position on the terms of this Agreement: Beneficial Reuse Management, Lafarge North America Inc., Lafarge Midwest, Inc., Lafarge Building Materials Inc., Associated Electric Cooperative, Inc., City of Springfield, Missouri Board of Public Utilities, and AES Puerto Rico, LP.

So agreed to by:



Date: 4/13/16

Douglas H. Green
John F. Cooney
Margaret K. Kuhn
Venable LLP
575 7th Street NW
Washington, DC 20002
(202) 344-4483
dhgreen@venable.com

On behalf of: *Utility Solid Waste Activities Group, Edison Electric Institute, American Public Power Association, and National Rural Electric Cooperative Association*



Date: 4/18/16

Perry M. Rosen
U.S. Department of Justice
Environment & Natural Resources Div.
PO Box 7611, Ben Franklin Station
Washington, DC 20044

Laurel Celeste
U.S. Environmental Protection Agency
Office of General Counsel
William Jefferson Clinton Building
1200 Pennsylvania Ave., NW
Mail Code 2344A
Washington, D.C. 20460
Tel: 202-564-1751

On behalf of: *United States Environmental Protection Agency*



Date: 4/14/2016

Mary Whittle
Earthjustice
1617 JFK Blvd., Suite 1675
Philadelphia, PA 19103
(215) 717-4524
mwhittle@earthjustice.org

Matthew Gerhart

Earthjustice
705 Second Avenue, Suite 203
Seattle, WA 98104
(206) 343-7340
mgerhart@earthjustice.org

Lisa Evans
Earthjustice
21 Ocean Ave.
Marblehead, MA 01945
(781) 631-4119
levans@earthjustice.org

*On behalf of: Clean Water Action,
Comité Dialogo Ambiental, Inc.,
Environmental Integrity Project,
Hoosier Environmental Council,
PennEnvironment, Prairie Rivers
Network, Sierra Club, Tennessee Clean
Water Network, and Waterkeeper
Alliance*



Div of Waste Management
and Radiation Control

MAY 16 2016

DSHW-2016-009902

May 13, 2016

Scott Anderson
Director
Utah Division of Waste Management and Radiation Control
195 North 1950 West
Salt Lake City, Utah

Subject: Proposed Changes to R351-310 and Adoption of R315-319

PacifiCorp appreciates the opportunity to comment on the above Notice of Proposed Rule ("NOPR"). PacifiCorp's Hunter and Huntington coal fired power plants will be directly impacted by the NOPR. Because the Federal Coal Combustion Residuals ("CCR") Rules are in place, PacifiCorp supports Utah's efforts to adopt those federal rules into state requirements and to take the lead in their administration. PacifiCorp has been properly managing CCR for over sixty years and continues to manage CCR in a safe and environmentally sound manner. PacifiCorp supports the adoption of the NOPR because it will allow for direct state oversight of CCR in an environmentally prudent manner. In addition, under the NOPR, the public will have an opportunity to comment during the permitting process further contributing to the proper management of CCR. The approach benefits the citizens of Utah, PacifiCorp, and its customers.

In light of the federal CCR rules, PacifiCorp already has implemented improvements at its the Hunter and Huntington plants in Utah at a cost of over \$7.5 million. Adoption of the NOPR will further support these actions, and assure appropriate oversight by the state of Utah regarding future management of CCR. PacifiCorp supports adoption of the NOPR.

Sincerely,

William K Lawson
Director, Environmental Services



Div of Waste Management
and Radiation Control

MAY 11 2016

DSHW-2016-009901

May 4, 2016

Scott T. Anderson, Director
Utah Division of Waste Management and Radiation Control
195 North 1950 West
P.O. Box 144880
Salt Lake City, Utah 84114-4880

Intermountain Power Service Corporation (IPSC)
Comments on the Division of Waste Management and Radiation Control (Division)
Draft Rules R315-310 and R315-319 for Coal Combustion Residuals (CCRs)

Dear Director Anderson:

IPSC appreciates the opportunity to comment on the Division's draft CCR rule. IPSC supports the Division having oversight of this new rule and looks forward to working together. IPSC strongly suggests the Division incorporate the federal rule by reference so that the Division's State rule is consistent with the federal rule. If it does not do this, the Division should follow the federal CCR rule as closely as possible, not adding any additional requirements or restrictions above and beyond the federal rule. The Division's draft CCR rule proposes to add additional requirements above and beyond the federal CCR rule and a timeline which are problematic and cause concern to IPSC. IPSC's specific comments are outlined below.

- IPSC suggests that the Division's State CCR rule should simply incorporate the federal CCR rule by reference. This would make it so the Division would not have to change its rule each time the federal rule changes but rather make a simple amendment to update the incorporation date.

As you may be aware, the EPA recently (April 18, 2016) filed a motion to voluntarily remand specific provisions of its CCR rule. A copy of EPA's motion is attached to IPSC's comment letter. The EPA's current motion to remand portions of its CCR provisions is unopposed so will probably go through. If all or part of the federal CCR rule is vacated or relaxed now or in the future, IPSC should not be expected to meet requirements that are no longer federally valid, which IPSC might be required to meet if the Division's CCR rule is still in place. In fact, Utah law prohibits the State's environmental law from being more restrictive than its corresponding federal equivalent unless a specific showing is made, after public comment and hearing, that the federal regulations are not adequate to protect human health and the environment (see Utah Code Ann. 19-2-106 (air quality), 19-3-104(7) (radiation control); 19-4-105 (drinking water); 19-5-105 (water quality); and 19-6-106 (hazardous waste)). If the Division decides to not incorporate the federal CCR rule by reference, another approach might be to add a section to the Division's CCR rule that would in essence require the Division to review its CCR rule periodically to check for consistency with the federal CCR rule and amend its rule as needed to be consistent with the federal CCR rule.

Mr. Scott T. Anderson
May 4, 2016
Page 2

- Division's draft rule provisions which are equivalent to the corresponding federal rule provisions in 40 CFR 257.73(a)(4), 40 CFR 257.73(d)(1)(iv), 40 CFR 257.74(a)(4), 40 CFR 257.74(d)(1)(iv), 40 CFR 257.100 (except for 40CFR 257.100(a)), 40 CFR 257.90(d), 40 CFR 257.96(a), Appendix IV to the rule, 40 CFR 257.103(a), and 40 CFR 257.103(b):

The EPA filed a motion on April 18, 2016 which specifically requested that the above listed provisions in the federal CCR rule be remanded. EPA requested that some of these provisions be remanded and vacated, some of them be remanded without being vacated, and that Boron be added to the list of constituents in Appendix IV.

IPSC Comment: Change the corresponding parts of the Division's draft rule to be the same as the federal rule in the above instances. A copy of EPA's motion is attached to IPSC's comment letter. Since EPA's motion is unopposed, it is anticipated that the Court will approve EPA's motion in a relatively quick time frame. IPSC requests that the Division make its CCR rule consistent with EPA's motion and take out the portions of the Division's rule that will be remanded in the federal rule.

IPSC Reason: State law requires that the State environmental law cannot be more stringent than the federal law.

- Draft R315-319-1(c)(1): "An application for a permit . . . has not been reach at the time . . ."

IPSC Comment: Change the word "reach" to "reached."

IPSC Reason: Correct a minor typographical error.

- Draft R315-319-1(h): "Director approval required in Sections R315-319-60 through 102 are satisfied by the issuance of a permit by the Director."

IPSC Comment: Change this to read "Director approval required in Sections R315-319-60 through 102 are satisfied by submission of a completed permit application."

IPSC Reason: Draft R315-319-1(h) is a good rule if the Director issues permits on a timely basis. However, if the Director does not issue permits on a timely basis, it could be very problematic in IPSC's ability to meet the tight deadlines required by the rule. Requiring the Director's approval is more stringent than the federal rule. IPSC is fine with the Director reviewing and approving the various CCR reports, but is concerned with meeting the tight deadlines and adding the requirement of obtaining the Director's approval could make meeting the tight deadlines much more difficult if not impossible to meet.

- Draft R315-319-60(c)(3): “The owner or operator has completed the demonstration required by Subsection R315-319-60(a) when the demonstration has been submitted to and has received approval from the Director and is placed in the facility’s operating record”

IPSC Comment: Change this to read “The owner or operator has completed the demonstration required by Subsection R315-319-60(a) when the demonstration has been submitted to the Director and is placed in the facility’s operating record”

IPSC Reason: The language proposed in the Division’s draft rule would most likely prevent IPSC from demonstrating compliance with the mandated deadlines due to the additional step of waiting for approval from the Director in the event the Director has not issued a permit prior to the time this demonstration is required to be submitted and placed in the facility’s operating record.

- Draft R315-319-61(c)(3): “The owner or operator has completed the demonstration required by Subsection R315-319-61(a) when the demonstration has been submitted to and has received approval from the Director and the demonstration is placed in the facility’s operating record as required”

IPSC Comment: Change this to read “The owner or operator has completed the demonstration required by Subsection R315-319-61(a) when the demonstration has been submitted to the Director and is placed in the facility’s operating record”

IPSC Reason: The language proposed in the Division’s draft rule would most likely prevent IPSC from demonstrating compliance with the mandated deadlines due to the additional step of waiting for approval from the Director in the event the Director has not issued a permit prior to the time this demonstration is required to be submitted and placed in the facility’s operating record.

- Draft R315-319-62(c)(3): “The owner or operator has completed the demonstration required by Subsection R315-319-62(a) when the demonstration has been submitted to and has received approval from the Director and the demonstration is placed in the facility’s operating record as required”

IPSC Comment: Change this to read “The owner or operator has completed the demonstration required by Subsection R315-319-62(a) when the demonstration has been submitted to the Director and is placed in the facility’s operating record”

IPSC Reason: The language proposed in the Division’s draft rule would most likely prevent IPSC from demonstrating compliance with the mandated deadlines due to the additional step of waiting for approval from the Director in the event the Director has not issued a permit prior to the time this demonstration is required to be submitted and placed in the facility’s operating record.

- Draft R315-319-63(c)(3): “The owner or operator has completed the demonstration required by Subsection R315-319-63(a) when the demonstration has been submitted to and has received approval from the Director and the demonstration is placed in the facility’s operating record as required”

IPSC Comment: Change this to read “The owner or operator has completed the demonstration required by Subsection R315-319-63(a) when the demonstration has been submitted to the Director and is placed in the facility’s operating record”

IPSC Reason: The language proposed in the Division’s draft rule would most likely prevent IPSC from demonstrating compliance with the mandated deadlines due to the additional step of waiting for approval from the Director in the event the Director has not issued a permit prior to the time this demonstration is required to be submitted and placed in the facility’s operating record.

- Draft R315-319-64(d)(3): “The owner or operator has completed the demonstration required by Subsection R315-319-64(a) when the demonstration has been submitted to and has received approval from the Director and the demonstration is placed in the facility’s operating record as required”

IPSC Comment: Change this to read “The owner or operator has completed the demonstration required by Subsection R315-319-60(a) when the demonstration has been submitted to the Director and is placed in the facility’s operating record”

IPSC Reason: The language proposed in the Division’s draft rule would most likely prevent IPSC from demonstrating compliance with the mandated deadlines due to the additional step of waiting for approval from the Director in the event the Director has not issued a permit prior to the time this demonstration is required to be submitted and placed in the facility’s operating record.

- Draft R315-319-73(a)(3)(ii)(A): “The owner or operator of a CCR unit subject to the requirements of Subsection R315-319-73(a)(3)(i) may amend the written EAP at any time provided the revised plan has been submitted to and has received approval from the Director and placed in the facility’s operating record as required”

IPSC Comment: Change this to read “The owner or operator of a CCR unit subject to the requirements of Subsection R315-319-73(a)(3)(i) may amend the written EAP at any time provided the revised plan has been submitted to the Director and placed in the facility’s operating record as required”

IPSC Reason: The language proposed in the Division's draft rule would possibly prevent IPSC from demonstrating compliance with the mandated deadlines due to the additional step of waiting for approval from the Director in the event the Director has not issued a permit prior to the time this demonstration is required to be submitted and placed in the facility's operating record.

- Draft R315-319-73(a)(3)(ii)(B): "... As necessary, the EAP must be updated and a revised EAP has been submitted to and has received approval from the Director and placed in the facility's operating record as required ..."

IPSC Comment: Change this to read "... As necessary, the EAP must be updated and a revised EAP submitted to the Director and placed in the facility's operating record as required ..."

IPSC Reason: The language proposed in the Division's draft rule would possibly prevent IPSC from demonstrating compliance with the mandated deadlines due to the additional step of waiting for approval from the Director in the event the Director has not issued a permit prior to the time this demonstration is required to be submitted and placed in the facility's operating record.

- Draft R315-319-73(a)(3)(iii)(A): "... then the owner or operator of the CCR unit is no longer subject to the requirement to prepare and maintain a written EAP beginning on the date the periodic hazard potential assessment documentation has been submitted to and has received approval from the Director and placed in the facility's operating record as required ..."

IPSC Comment: Change this to read "... then the owner or operator of the CCR unit is no longer subject to the requirement to prepare and maintain a written EAP beginning on the date the periodic hazard potential assessment documentation was submitted to the Director and placed in the facility's operating record as required ..."

IPSC Reason: The language proposed in the Division's draft rule would possibly prevent IPSC from demonstrating compliance with the mandated deadlines due to the additional step of waiting for approval from the Director in the event the Director has not issued a permit prior to the time this demonstration is required to be submitted and placed in the facility's operating record.

- Draft R315-319-73(a)(3)(iii)(B): "... then the owner or operator of the CCR unit must prepare a written EAP for the CCR unit as required by Subsection R315-319-73(a)(3)(i) within six months of completing such periodic hazard potential assessment and submit the EAP to the Director for approval."

IPSC Comment: Change this to read "... and submit the EAP to the Director."

IPSC Reason: The language proposed in the Division's draft rule would possibly prevent IPSC from demonstrating compliance with the mandated deadlines due to the additional step of waiting for approval from the Director in the event the Director has not issued a permit prior to the time this demonstration is required to be submitted and placed in the facility's operating record.

- Draft R315-319-73(a)(4): "The CCR unit and surrounding areas shall be designed, constructed, operated, and maintained with vegetated slopes of dikes not to exceed a height of 6 inches above the slope of the dike, except for slopes which are protected with an alternate form(s) of protection."

IPSC Comment: The 6 inch height limitation on vegetation on slopes of dikes in the Division's draft rule should be deleted entirely. The EPA has filed a motion to delete this provision in its federal CCR rule.

IPSC Reason: As noted above, the EPA has filed a motion to have the 6 inch height limitation on vegetation on dike slopes in this provision of its CCR rule remanded. This motion was unopposed so will likely be granted in the very near future. Utah's law cannot be more stringent than the federal equivalent. Further, it is well known that vegetation is beneficial on dike slopes to prevent erosion. Experience at IPP has shown that the only types of vegetation that grow on the dike slopes in this arid region are generally taller than 6 inches in height. Our experience is that it is difficult to get any type of vegetation to grow on the dike slopes, but that the vegetation that does grow is typically above 6 inches in height and not very thick or dense. It appears that one of the main reasons that the 6 inch height limitation was established by the EPA is that in areas where vegetation is riparian and very thick, the condition of the dike slope under the vegetation cannot be seen. What little vegetation that does grow on the slopes of IPP's dikes is often taller than 6 inches but is sparse enough to be able to see the condition of the slope of the dike the vegetation is growing on. EPA's 6 inch rule was designed for wet, riparian areas where the vegetation on dike slopes is very thick, not for arid areas such as exist at IPP.

- Draft R315-319-73(d)(1)(iv): "Vegetated slopes of dikes and surrounding areas not to exceed a height of 6 inches above the slope of the dike, except for slopes which have an alternate form or forms of slope protection."

IPSC Comment: The 6 inch height limitation on vegetation on slopes of dikes in the Division's draft rule should be deleted entirely. The EPA has filed a motion to delete this provision in its federal CCR rule.

IPSC Reason: As noted above, the EPA has filed a motion to have the 6 inch height limitation on vegetation on dike slopes in this provision of its CCR rule remanded. This motion was unopposed so will likely be granted in the very near future. Utah's law cannot be more stringent than the federal equivalent. Further, it is well known that vegetation is beneficial on dike slopes to prevent erosion. Experience at IPP has shown that the only types of vegetation that grow on the dike slopes in this arid region are generally taller than 6 inches in height. Our experience is that it is difficult to get any types of vegetation to grow on the dike slopes, but that the vegetation that does grow is typically above 6 inches in height and not very thick or dense. It appears that one of the main reasons that the 6 inch height limitation was established by the EPA is that in areas where vegetation is riparian and very thick, the condition of the dike slope under the vegetation cannot be seen. What little vegetation that does grow on the slopes of IPP's dikes is often taller than 6 inches but is sparse enough to be able to see the condition of the slope of the dike the vegetation is growing on. EPA's 6 inch rule was designed for wet, riparian areas where the vegetation on dike slopes is very thick, not for arid areas such as exist at IPP.

- Draft R315-319-73(f)(3): ". . . For purposes of Subsection R315-319-73(f)(3), the owner or operator has completed an assessment when the relevant assessment(s) required by Subsections R315-319-73(a)(2), (d), and (e) has been submitted and approved by the Director and has been placed in the facility's operating record"

IPSC Comment: Change this to read ". . . For purposes of Subsection R315-319-73(f)(3), the owner or operator has completed an assessment when the relevant assessment(s) required by Subsections R315-319-73(a)(2), (d), and (e) has been submitted to the Director and has been placed in the facility's operating record"

IPSC Reason: The language proposed in the Division's draft rule would most likely prevent IPSC from demonstrating compliance with the mandated deadlines due to the additional step of waiting for approval from the Director in the event the Director has not issued a permit prior to the time this demonstration is required to be submitted and placed in the facility's operating record.

- Draft R315-319-74(a)(3)(iii)(A): ". . . then the owner or operator of the CCR unit is no longer subject to the requirement to prepare and maintain a written EAP beginning on the date the periodic hazard potential assessment documentation has been submitted to and has received approval from the Director and placed in the facility's operating record as required"

IPSC Comment: Change this to read ". . . then the owner or operator of the CCR unit is no longer subject to the requirement to prepare and maintain a written EAP beginning on the date the periodic hazard potential assessment documentation has been submitted to the Director and placed in the facility's operating record as required"

IPSC Reason: The language proposed in the Division's draft rule would possibly prevent IPSC from demonstrating compliance with the mandated deadlines due to the additional step of waiting for approval from the Director in the event the Director has not issued a permit prior to the time this demonstration is required to be submitted and placed in the facility's operating record.

- Draft R315-319-74(a)(4): "The CCR unit and surrounding areas shall be designed, constructed, operated, and maintained with vegetated slopes of dikes not to exceed a height of 6 inches above the slope of the dike, except for slopes which are protected with an alternate form(s) of protection."

IPSC Comment: The 6 inch height limitation on vegetation on slopes of dikes in the Division's draft rule should be deleted entirely. The EPA has filed a motion to delete this provision in its federal CCR rule.

IPSC Reason: As noted above, the EPA has filed a motion to have the 6 inch height limitation on vegetation on dike slopes in this provision of its CCR rule remanded. This motion was unopposed so will likely be granted in the very near future. Utah's law cannot be more stringent than the federal equivalent. Further, it is well known that vegetation is beneficial on dike slopes to prevent erosion. Experience at IPP has shown that the only types of vegetation that grow on the dike slopes in this arid region are generally taller than 6 inches in height. Our experience is that it is difficult to get any type of vegetation to grow on the dike slopes, but that the vegetation that does grow is typically above 6 inches in height and not very thick or dense. It appears that one of the main reasons that the 6 inch height limitation was established by the EPA is that in areas where vegetation is riparian and very thick, the condition of the dike slope under the vegetation cannot be seen. What little vegetation that does grow on the slopes of IPP's dikes is often taller than 6 inches but is sparse enough to be able to see the condition of the slope of the dike the vegetation is growing on. EPA's 6 inch rule was designed for wet, riparian areas where the vegetation on dike slopes is very thick, not for arid areas such as exist at IPP.

- Draft R315-319-74(d)(1)(iv): "Vegetated slopes of dikes and surrounding areas not to exceed a height of 6 inches above the slope of the dike, except for slopes which have an alternate form or forms of slope protection."

IPSC Comment: The 6 inch height limitation on vegetation on slopes of dikes in the Division's draft rule should be deleted entirely. The EPA has filed a motion to delete this provision in its federal CCR rule.

IPSC Reason: As noted above, the EPA has filed a motion to have the 6 inch height limitation on vegetation on dike slopes in this provision of its CCR rule remanded. This motion was unopposed so will likely be granted in the very near future. Utah's law cannot be more stringent than the federal equivalent. Further, it is well known that vegetation is beneficial on dike slopes to prevent erosion. Experience at IPP has shown that the only types of vegetation that grow on the dike slopes in this arid region are generally taller than 6 inches in height. Our experience is that it is difficult to get any types of vegetation to grow on the dike slopes, but that the vegetation that does grow is typically above 6 inches in height and not very thick or dense. It appears that one of the main reasons that the 6 inch height limitation was established by the EPA is that in areas where vegetation is riparian and very thick, the condition of the dike slope under the vegetation cannot be seen. What little vegetation that does grow on the slopes of IPP's dikes is often taller than 6 inches but is sparse enough to be able to see the condition of the slope of the dike the vegetation is growing on. EPA's 6 inch rule was designed for wet, riparian areas where the vegetation on dike slopes is very thick, not for arid areas such as exist at IPP.

- Draft R315-319-73(f)(3): "... For purposes of Subsection R315-319-73(f)(3), the owner or operator has completed an assessment when the relevant assessment(s) required by Subsections R315-319-73(a)(2), (d), and (e) has been submitted and approved by the Director and has been placed in the facility's operating record as required"

IPSC Comment: Change this to read "... For purposes of Subsection R315-319-73(f)(3), the owner or operator has completed an assessment when the relevant assessment(s) required by Subsections R315-319-73(a)(2), (d), and (e) has been submitted to the Director and has been placed in the facility's operating record as required"

IPSC Reason: The language proposed in the Division's draft rule would most likely prevent IPSC from demonstrating compliance with the mandated deadlines due to the additional step of waiting for approval from the Director in the event the Director has not issued a permit prior to the time this demonstration is required.

- Draft R315-319-80(b): "... The owner or operator of the CCR unit must prepare and operate in accordance with a CCR fugitive dust control plan has been submitted to and has received approval from the Director"

IPSC Comment: Change this to read "... The owner or operator of the CCR unit must prepare and operate in accordance with a CCR fugitive dust control plan which has been submitted to the Director"

IPSC Reason: The language proposed in the Division's draft rule would prevent IPSC from demonstrating compliance with the mandated deadline due to the additional step of waiting for approval from the Director. The due date on this is October 19, 2015 (see R315-319-80(b)(5)) which has already come and gone. IPSC met the requirement in the federal rule by preparing and operating under a CCR fugitive dust control plan prior to October 19, 2015. IPSC followed the federal rule completely on this. It is impossible for IPSC to now meet the Division's October 19, 2015 deadline outlined in the State's draft rule in this section by getting the Director's approval or a permit prior to this time which is already several months in the past. This condition needs to be reworked by the State so it is even possible to comply with.

- Draft R315-319-93(a): "... The owner or operator of the CCR unit must develop and receive approval from the Director for a sampling and analysis program"

IPSC Comment: Change this to read "...The owner or operator of the CCR unit must develop and submit a sampling and analysis program to the Director"

IPSC Reason: The language proposed in the draft would most likely prevent IPSC from demonstrating compliance with the mandated deadlines due to the additional step of waiting for approval from the Director in the event the Director has not issued a permit prior to the time this demonstration is required to be submitted and placed in the facility's operating record. The fact of the matter is that in order to meet the tight compliance dates with the federal rule IPSC has had a qualified professional engineer already develop a sampling and analysis plan and has followed it. IPSC does not have the luxury in this matter to wait for the State to finalize its rule and then wait for the Director to approve this plan, there simply is not enough time in the rule's tight time frame to sit back and wait for this.

- Draft R315-319-93(f)(5): "Another statistical test method that meets the performance standards of Subsection R315-319-93(g) and has been approved by the Director."

IPSC Comment: Change this to read "Another statistical test method that meets the performance standards of Subsection R315-319-93(g)."

IPSC Reason: The language proposed in the Division's draft rule would most likely prevent IPSC from demonstrating compliance with the mandated deadlines due to the additional step of waiting for approval from the Director. Further, the EPA in its federal rule has already determined that another statistical test method can be used provided that it meets the required criteria. The bottom line is that if another statistical test method is used, it must be certified by a qualified professional engineer stating that the selected statistical method is appropriate for evaluating the groundwater monitoring

method is used, it must be certified by a qualified professional engineer stating that the selected statistical method is appropriate for evaluating the groundwater monitoring data for the CCR management area. IPSC feels that the federal rule is completely adequate for this area and should not have any additional requirements added to it.

- Draft R315-319-94(d): “. . . This demonstration shall be submitted and approved by the Director.”

IPSC Comment: Change this to read “. . . This demonstration shall be submitted to the Director.”

IPSC Reason: The language proposed in the Division’s draft rule would possibly prevent IPSC from demonstrating compliance with the mandated deadlines due to the additional step of waiting for approval from the Director in the event the Director has not issued a permit prior to the time this demonstration is required to be submitted and placed in the facility’s operating record.

- Draft R315-319-95(e): “. . . The owner or operator must prepare a notification stating that the detection monitoring is resuming for the CCR unit and submit the notification to the Director for approval.”

IPSC Comment: Change this to read “. . . The owner or operator must prepare a notification stating that the detection monitoring is resuming for the CCR unit and submit the notification to the Director.”

IPSC Reason: The language proposed in the draft rule would most likely prevent IPSC from demonstrating compliance with the mandated deadlines due to the additional step of waiting for approval from the Director in the event the Director has not issued a permit prior to the time this demonstration is required to be submitted and placed in the facility’s operating record. Further, the federal rule states clearly that detection monitoring can be resumed if the conditions in this subsection are met. This should not be based on approval, either the conditions have been met or they have not been met independent of any approval.

- Draft R315-319-97(a): “. . . The remedy and report shall be approved by the Director. . . .”

IPSC Comment: Change this to read “The remedy and report shall be submitted to the Director.”

Mr. Scott T. Anderson
May 4, 2016
Page 12

IPSC Reason: Draft R315-319-96(e) requires that the owner or operator discuss the results of the corrective measures assessment at least 30 days prior to the selection of remedy, in a public meeting with interested and affected parties. Draft R315-319-97(a) needs to clarify that the remedy comes after the public meeting just discussed. The remedy needs to be implemented in a timely manner, so the Director would need to be prompt in his review of the remedy and report.

The majority of IPSC's comments addressed above pertain to the Division's draft CCR rule requirement(s) that approval from the Director be received by the compliance demonstration dates for the various reports, documents, and certifications. IPSC welcomes submitting the required reports and documents to the Director for his/her review and approval.

However, receiving the Director's approval by the dates that the rule requires to demonstrate compliance with the various items could be very problematic since meeting the compliance demonstration dates will be very challenging in most cases even without the additional step of receiving approval from the Director. The draft rule does attempt to address this concern under R315-319-1(h) which provides that the issuance of a permit by the Director satisfies the requirements for the Director approvals required in the rule. IPSC's concern is that the process of obtaining a permit can often be lengthy and drawn out. If the Division does not issue a permit on a timely basis, the problems with meeting the compliance dates as discussed above still exist. IPSC feels that there ought to be some sort of permit shield in the rule that gives this same protection if the application has been submitted even if the Director has not issued a permit.

IPSC also feels that the portions of the federal rule, which the EPA has filed a motion to remand, should be taken out of the Division's corresponding draft rule. IPSC requests that the Division revise its draft CCR rule to incorporate the terms of EPA's motion to remand certain portions of the CCR rule, especially with the provisions regarding the 6 inch vegetation limits on CCR dike slopes. State law does not allow the State to have environmental rules which are more stringent than the corresponding federal law as discussed above. It seems to IPSC that this would be easily remedied if the Division would simply choose to incorporate the federal rule by reference so that it would mirror it each time it was changed. Several other State agencies do this and IPSC feels that it would be very appropriate for the Division to do so in this case also.

In conclusion, IPSC appreciates the opportunity to review and comment on the Division's draft CCR rule. IPSC is supportive of the Division having oversight of this rule as long as the Division does not add additional requirements or restrictions above and beyond the federal CCR rule which make it difficult if not impossible to comply with, or if it changes the fundamental underlying requirement of the federal rule.

Mr. Scott T. Anderson
May 4, 2016
Page 13

If there are any questions or desire to discuss any issues on this matter with IPSC, please contact Blaine Ipson at (435) 864-6484.

Sincerely,



Jon A. Finlinson
President and Chief Operations Officer

HBI/Blaine



Attachment

cc: Mr. Kevin Murray, Holland and Hart
Mr. Dan Eldridge, IPA

RESPONSE TO COMMENTS
R315-319
Management of Coal Combustions Residuals

The Division of Waste Management and Radiation Control (DWMRC) received comments from HEAL Utah, Intermountain Power Service Corporation (Intermountain Power) and PacifiCorp on proposed changes to Utah Admin. Code (UAC) R315-310 and proposed rule R315-319. The comments received from PacifiCorp were in support of the proposed rules and will not be addressed in this document. This is DWMRC's response to HEAL Utah's and Intermountain Power's comments. Throughout this document the comments are summarized and are followed by the DWMRC response to the comment. Comments from HEAL Utah are addressed in comments 1 through 13 and Intermountain Power's comments are addressed in comments 14 through 20. It should be noted that throughout the comments the commenters referred to the federal rule (40 CFR 257) on which the Utah rule was based.

DWMRC Response to HEAL Utah

Comment 1.

The commenter questioned the difference in the wording of some of the headings between the federal rule and proposed rule R315-319.

Response

Although the Utah rule was based on the federal rule there are some differences in the numbering and in some of the rule text and headings. Differences in the rule text were made to adapt the federal rule to the needs of Utah. Language used in headings is not rule and is not enforceable.

No changes will be made to the proposed rule as a result of the comment.

Comment 2.

The commenter states that in the commenter's view the requirements of proposed rule R315-319 do not impact the citizen enforcement of the federal regulation.

Response

The federal rule in 40 CFR 257 and proposed rule R315-319 both stand alone. However, in the preamble to the final rule EPA stated the following:

Third, once EPA has approved a SWMP that incorporates or goes beyond the minimum federal requirements, EPA expects that facilities will operate in compliance with that plan and the underlying state regulations. In those circumstances, EPA's view is that facilities adhering to the requirements of a state program that is identical to or more stringent than an approved SWMP will meet or exceed the minimum federal criteria. In addition, EPA anticipates that a facility that operates in accord with an approved SWMP will be able to beneficially use that fact in a citizen suit brought to enforce the federal criteria; EPA believes a court will accord substantial weight to the fact that a facility is operating in accord with an EPA-approved SWMP.

No changes will be made to the proposed rule as a result of the comment.

Comment 3.

The commenter questions the language in proposed rule R315-319-2(a) relating to extensions that may be allowed by the Director under the provisions of 40 CFR 256.26.

The commenter also asks for a list of the facilities in Utah that are non-complying open dumps.

Response

In accordance with 40 CFR 256.26 the Director may grant extensions of the deadlines when the facility owner demonstrates that has met the requirements outlined in 40 CFR 256.26 for granting an extension. Once the facility has demonstrated that it meets the requirements, the Director may set a timetable for compliance with specific actions and deadlines that does not exceed 5 years. In order for the Director to grant an extension under 40 CFR 256.26 the state must have a state plan that is approved by EPA under the requirements of 40 CFR 256. The Director intends to seek and expects to receive approval for the coal ash rules in proposed rule R315-319.

Utah has operated an EPA approved solid waste program with partial approval since October 8, 1993, and full approval since June 13, 1996. All solid waste disposal facilities in Utah operate under the requirements of UAC R315-301 through 320 (the non-hazardous solid waste rules). As all facilities are currently operated in accordance with the non-hazardous solid waste rules there are currently no open dumps or compliance schedules to provide.

Any solid waste facility owner, including facilities covered under proposed rule R315-319, when faced with complying with a deadline set in the rules may request an extension that is allowed in the rules or is allowed under 40 CFR 256.26. The Director has no way of knowing if or when or which facility may request an extension. However, if a request is received the Director will evaluate the request using the criteria in the solid waste rules and the criteria found in 40 CFR 256.26. The Director will make a preliminary or draft determination and will seek public comment on the draft determination.

No changes will be made to the proposed rule as a result of the comment.

Comment 4.

The commenter claims that the rules are largely silent on the issue of enforceability.

Response

The changes in UAC R315-310 and proposed new rule proposed rule R315-319 when adopted by the Waste Management and Radiation Control Board will become law in Utah and will have the same enforceability as all other rules adopted by the Board. The rules, when adopted, will be enforced through permits, notices of violation and stipulation and consent orders as all other rules of the Board are enforced.

No changes will be made to the proposed rule as a result of the comment.

Comment 5.

The commenter questions the change of the word "must," used in 40 CFR 257, to the word "shall" in Rule R315-319.

Response

The word "shall" is used throughout rules under the Utah Administrative Code and Title R315. Page 37 of the "Rulewriting Manual for Utah Rulewriters" published by the Utah Division of Administrative Rules makes the following statement: "Shall" is imperative or mandatory and is used when indicating an obligation to act. The rules adopted by the Board have followed Rulewriting Manual suggestions.

No changes will be made to the proposed rule as a result of the comment.

Comment 6.

The commenter suggests that the rule be held until changes to the federal rule resulting from a "Settlement Agreement" between EPA and several parties are completed.

Response

The "Settlement Agreement" contains the following:

- A. Remand with vacatur of the of the phrase "not to exceed 6 inches above the slope of the dike" within 40 C.F.R. §§ 257.73(a)(4), 257.73(d)(1)(iv), 257.74(a)(4), and 257.74(d)(1)(iv); (UAC R315-319-73(a)(4) and (d)(1)(iv) and R315-319-74(a)(4) and (d)(1)(iv));
- B. Remand with vacatur of 40 C.F.R. § 257.100, *except* for the following clause contained in 40 C.F.R. § 257.100(a): "Inactive CCR surface impoundments are subject to all of the requirements of this subpart applicable to existing CCR surface impoundments;" Such vacatur shall be effective as set forth in the Motion to Remand; (proposed rule R315-319-100);
- C. Remand without vacatur of:
 - 1. The sentence in 40 C.F.R. § 257.90(d) that provides: "The owner or operator of the CCR unit must comply with all applicable requirements in 257.96, 257.97, and 257.98;" (UAC s R315-319-90(d)) and;
 - 2. The phrase in 40 C.F.R. § 257.96(a) that provides "or immediately upon detection of a release from a CCR unit," said remand for the purpose of proposing to clarify the type and magnitude of non-groundwater releases that would require a facility to comply with some or all of the corrective action procedures set forth in 40 C.F.R. §§ 257.96-257.98 in meeting their obligation to clean up the release; (proposed rule R315-319-96(a));
- D. Remand without vacatur of Appendix IV to the Final Rule for the sole purpose of proposing that Boron be added to the list of constituents in Appendix IV that trigger assessment monitoring and corrective action; (Appendix IV in proposed rule R315-319); and
- E. Remand without vacatur of 40 C.F.R. § 257.103(a) and § 257.103(b) for further consideration of whether to expand this provision to situations in which a facility needs to continue to manage waste streams other than CCR in the waste unit (proposed rule R315-319-103(a) and (b)).

Remand "A" is a remand and vacatur which will remove the language describe in the remand when the Settlement Agreement is final. Removing this language from the equivalent sections of the Utah rule will not have any adverse consequences and therefore the language will be removed.

Remand "B" is discussed as part of Comment 12 below related to inactive impoundments.

Remand "C" has two parts that both relate to ground water contamination. One would remove language that requires a facility owner to propose a cleanup strategy when groundwater contamination is found. If this language is removed from the Utah rule without providing substitute language it will create an uncertain situation for a facility owner where the owner may be required to start a groundwater cleanup without sufficient time for the owner to determine the best method to accomplish the cleanup. Under the Settlement Agreement EPA will be proposing new language that will replace the current language but the current language will be in place in Utah rules until the new language is finalized.

Remand "D" will add boron to the list of contaminants for groundwater monitoring. When the Remand Rule is finalized by EPA the changes will be brought to the Board with a request that the WMRC Board proceed with modification of the rule to reflect the changes in federal rule.

Remand "E" will result in language being proposed in the Remand Rule. Until this language is final there is no need to make changes to the Utah rule. When the Remand Rule is finalized by EPA the changes will be brought to the WMRC Board with a request that the Board proceed with modification of the rule to reflect the changes in federal rule.

The exact timing and wording of the changes in the federal rule that will be proposed in the Remand Rule are unknown, thus, holding the adoption of R315-319 is unnecessary and unwise.

The phrase “not to exceed 6 inches above the slope of the dike” will be removed from proposed rule R315-319-73(a)(4) and (d)(1)(iv) and R315-319-74(a)(4) and (d)(1)(iv). No other changes will be made to the proposed rule as a result of the comment.

Comment 7.

The commenter requests that proposed rule R315-319 include a financial assurance component.

Response

The federal rule does not have a financial assurance requirement and Utah Code Ann. (UCA) §19-6-106 of the Solid and Hazardous Waste Act states:

Except as provided in Subsection (2), no rule which the board makes for the purpose of the state administering a program under the federal Resource

Conservation and Recovery Act and, to the extent the board may have jurisdiction, under the federal Comprehensive Environmental Response, Compensation and Liability Act, or the federal Emergency Planning and Community Right to Know Act of 1986, may be more stringent than the corresponding federal regulations which address the same circumstances. In making the rules, the board may incorporate by reference corresponding federal regulations.

Section (2) allows the WMRC Board to make rules more stringent than federal rule only if there is evidence that the federal rule is not adequate to protect public health and the environment. In this case there is no evidence financial assurance is necessary or that the lack of a financial assurance requirement will fail to protect public health and the environment

No changes will be made to the proposed rule as a result of the comment.

Comment 8.

The commenter requests that a provision be added to proposed rule R315-319 that requires a survey of all drinking water wells within 1/2 mile of a coal ash unit and that if contamination should occur that the operator of the ash unit be required to provide drinking water for any affected property.

Response

The federal rule does not have any such requirement (see Comment 7 above concerning rules more stringent than federal rule). UAC R315-301-6 provides general protections for human health the environment for all solid waste management actions. UAC R315-301-6(2) states:

Any contamination of the ground water, surface water, air, or soil that results from the management of solid waste which presents a threat to human health or the environment shall be remediated through appropriate corrective action.

Any contamination resulting from management of coal ash is subject to the requirements of UAC R315-301-6.

No changes will be made to the proposed rule as a result of the comment.

Comment 9.

The commenter requested public notice for any proposed CCR fill project over 12,400 tons.

Response

The applicable rules as proposed require public notice prior to permit issuance and public notice when any major modification of the permit is made. As the size of the facility CCR landfill is part of the permit and any increase in the size of the CCR landfill would be a major permit modification the addition requested is unnecessary.

No changes will be made to the proposed rule as a result of the comment.

Comment 10.

The commenter requests that the provisions of proposed rule R315-319 be made applicable to any municipal waste landfill that accepts coal ash.

Response

Municipal solid waste landfills are regulated under rules that are already, in general, *more stringent* than proposed rule R315-319. Small municipal solid waste landfills (landfills that dispose of under 20 tons per day or 7,300 tons per year) are less stringently regulated than municipal solid waste landfills or proposed rule R315-319. However, if these small landfills were to receive coal ash, the waste volume would, in most cases, cause the landfill to exceed the limit for a small landfill. When the small landfill went over the limit the more stringent rules covering large landfills would apply. Further, applying the coal ash rule to small landfills would bring the rule in conflict with the UCA 19-6-106 (see Comment 7 concerning rules more stringent than federal rules).

No changes will be made to the proposed rule as a result of the comment.

Comment 11.

The commenter requests the rule be changed to exclude soil liners.

Response

The federal rule does not have any such requirement (see Comment 7 concerning rules more stringent than federal rules). UAC R315-301-6 provides general protections for human health the environment for all solid waste management actions. UAC R315-301-6(2)states:

Any contamination of the ground water, surface water, air, or soil that results from the management of solid waste which presents a threat to human health or the environment shall be remediated through appropriate corrective action.

Any contamination resulting from management of coal ash is subject to the requirements of UAC R315-301-6.

No changes will be made to the proposed rule as a result of the comment.

Comment 12.

The commenter requests that the rule be made applicable to inactive impoundments.

Response

The federal rule currently contains provisions that address inactive impoundments (40 CFR 257.100). The Settlement Agreement referred to by the commenter in other comments would vacate all provisions related to inactive impoundments except for the requirement that they are subject to the same requirements as existing impoundments. For a facility to come under the Federal Rule provisions or proposed rule R315-319-100 (the sections of the Utah rule that are equivalent to the federal rule 40 CFR 257-100) the facility would have had to place a notification of its intent to close a surface impoundment on the facilities web site by December 17, 2015. No Utah facility has made this notification; therefore, changing proposed rule R315-319-100 would have no effect.

The rule will be changed according the changes found in the Settlement Agreement.

Comment 13.

The commenter requests that the rules contain a date certain for closure of all unlined impoundments.

Response

Proposed rule R315-319 contains the dates that are contained in the federal rule. Any change in the dates would make the rule more stringent than the federal rule (see Comment 7 concerning rules more stringent than federal rules).

No changes will be made to the proposed rule as a result of the comment.

DWMRC Response to Intermountain Power

Comment 14

The commenter suggests that the federal rule be incorporated by reference and, if not incorporated by reference, that the rule contains language that will require a periodic review of the rule to make sure that it is consistent with federal rules.

Response

Incorporation by reference will not accomplish the intended purpose for which proposed rule R315-319 is being enacted. The purpose of proposed rule R315-319 is to create a permit program for coal ash disposal sites. This permit program will operate in concert with but completely separate from the federal rule and will be useful for the regulated facilities when questions of compliance with the federal rule are raised (see comment 2).

The commenter's concern that the Utah rule may become more stringent than the federal rules if the federal rule is changed is unfounded. As the commenter noted, the Solid and Hazardous Waste Act in UCA §19-6-106, states that the Board cannot make any rule that is more stringent than the corresponding federal rule without meeting the requirements of §19-6-106. When the EPA modifies the federal rule the Utah rule will be modified to match the federal rule or, if necessary, a more stringent rule will be implemented in accordance with the requirements of §19-6-106.

No changes will be made to the proposed rule as a result of the comment.

Comment 15

The commenter requests that proposed rule R315-319 be modified in accordance with the proposed settlement agreement that EPA is preparing to settle some of the current litigation related to the federal coal ash rule.

Response

See responses to comments 6 and 12.

Comment 16

Commenter requests that the word "reach" in proposed rule R315-319-1(c)(1) be changed to "reached."

Response

Commenter is correct.

The word "reach" in proposed rule R315-319-1(c)(1) will be changed to "reached."

Comment 17

The commenter requests that the statement in the rule that reads "Director approval required in proposed rule R315-319-60 through 102 are satisfied by the issuance of a permit by the Director" be changed to read "Director approval required in proposed rule R315-319-60 through 102 are satisfied by submission of a completed permit application."

Response

The Director cannot determine if a document is complete or is "approved" until the document has been reviewed. Simple submittal of a document does not mean that the document contains all of the information required prior to approval. Additionally, what constitutes a "completed permit application" is subjective. It is up to the Director to determine when an application is complete.

The commenter appears to be concerned about the time lag that may occur between submittal of a document and the Director's approval of that document. The commenter states that: "if the Director does not issue permits on a timely basis, it could be very problematic in IPSC's ability to meet the tight deadlines required by the rule. IPSC is fine with the Director reviewing and approving the various CCR reports, but is concerned with meeting the tight deadlines and adding the requirement of obtaining the Director's approval could make meeting the tight deadlines much more difficult if not impossible to meet."

The commenter should understand that the federal rule and the proposed Utah rule each stand alone (see R315-319-2). The facility owner is required by federal rule to post documents on a web site. The proposed Utah rule requires that the posted document be submitted to the Director and that the Director use the submitted information to determine if the requirements of proposed rule UAC R315-319 have been met and if a permit can be issued. It is the expectation of the Director that once the document has been approved by the Director, the facility owner would replace the corresponding document on the facility's coal ash web site with the document approved by the Director. Thus, the commenter should not be concerned about timeliness.

No changes will be made to the proposed rule as a result of the comment.

Comment 18

This is a summary of the comments concerning sections: UAC R 315-319-60(c)(3), -61(c)(3), -62(c)(3), -63(c)(3), -64(d)(3), -73(a)(3)(ii)(A), -73(a)(3)(ii)(B), 73(a)(3)(iii)(A), and -73(a)(3)(iii)(B). These sections state that the facility owner has not completed the action required by the section until the required documentation has been submitted to and approved by the Director and the demonstration has been placed in the facility operating record. In each case the commenter proposes that the language be changed to say that the demonstration or document, as required by the particular section,

is complete when the owner has submitted the demonstration or document to the Director and posted it in the facility operation record.

Response

This comment is very similar to and expresses many of the same concerns expressed in Comment 17.

The Director cannot know if the demonstration or requirements of a particular section have been met until the document that addresses the demonstration or requirements has been reviewed by the DWMRC. The commenter's concern about meeting timeframes for the federal and Utah rules is not valid. The Owner can post documents on the facility's coal ash web page whenever the owner determines that the document is ready to be posted. The proposed Utah rule requires that documents be submitted by specific dates but does not set any timeframe for approval.

No changes will be made to the proposed rule as a result of the comment.

Comment 19

These comments concern UAC R315-319-74(a)(4) and -74(d)(1)(iv).

Response

See response to comment 6A.

Comment 20

This is a summary of comments on UAC R315-319-93(f)(3), -94(d), -95(e), -97(a), and -96(e) of the proposed rule.

Commentator requests that the rules be changed in order that all requirements for Director approval are removed and that submittal to the Director will be sufficient to satisfy the requirements.

Response

It is the Director's responsibility to determine if an alternative statistical test method meets the requirements of the proposed rule. Removing the Director's approval requirement would be delegating the responsibility to another party and not in compliance with the role of the Director in the permit process.

No changes will be made to the proposed rule as a result of the comment.

NOTICE OF CHANGE IN PROPOSED RULE

- The agency identified below in box 1 provides notice of proposed rule change pursuant to Utah Code Section 63G-3-301.
- Please address questions regarding information on this notice to the agency.
- The full text of all rule filings is published in the Utah State Bulletin unless excluded because of space constraints.
- The full text of all rule filings may also be inspected at the Division of Administrative Rules.

Rule Information

DAR file no: 40266 Date filed:
 State Admin Rule Filing Key: 157626
 Utah Admin. Code ref. (R no.): R315-319

Agency Information

1. Agency: ENVIRONMENTAL QUALITY - Waste Management and Radiation Control, Waste ...

Room no.: Second Floor
 Building:
 Street address 1: 195 N 1950 W
 Street address 2:
 City, state, zip: SALT LAKE CITY UT 84116-3097
 Mailing address 1: PO BOX 144880
 Mailing address 2:
 City, state, zip: SALT LAKE CITY UT 84114-4880

Contact person(s):

Name:	Phone:	Fax:	E-mail:	Remove:
Ralph Bohn	801-536-0212	801-536-0222	rbohn@utah.gov	

(Interested persons may inspect this filing at the above address or at DAR during business hours)

Rule Title

2. Title of rule or section (catchline):
 Coal Combustion Residuals Requirements

Notice Type

3. Type of notice: Change in Proposed Rule
 Changes DAR No.: 40266
 (If you do not know the DAR no., call 801-538-3218.)

Rule Purpose

4. Purpose of the rule or reason for the change:
 The rule is being changed in response to comments received.

Response Information

5. This change is a response to comments by the Administrative Rules Review Committee.
 No Yes

Rule Summary

6. Summary of the rule or change:
 The phrase "not to exceed a height of six inches above the slope of the dike," is removed from Sections R315-319-73 and 74. The term "reach" is changed to "reached" in Section R315-319-1. All of Sections R315-319-100 is removed except for "Inactive CCR surface impoundments are subject to all of the requirements of Sections R315-319-50 through 107 applicable to existing CCR surface impoundments." In addition to these changes, some numbering is corrected in Sections R315-319-73 and 74.

Aggregate Cost Information

7. Aggregate anticipated cost or savings to:
 A) State budget:
 Affected: No Yes
 There will not be any cost or savings to the state budget as the changes will not change the coal ash permit program within the Division of Waste Management and Radiation Control.

B) Local government:

Affected: No Yes

No local government is affected by this rule or the changes proposed.

C) Small businesses:

Affected: No Yes

("small business" means a business employing fewer than 50 persons)

No small business is affected by this rule or the changes proposed.

D) Persons other than small businesses, businesses, or local government entities:

Affected: No Yes

("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency)

The five coal powered electricity generating plants in Utah that are affected by this rule will not see any increase or decreases in costs. The changes in Sections R315-319-73 and 74 will not change how the five electricity generating plants will conduct their dike maintenance operations, therefore, the facilities will not incur any costs or savings. The requirements that are removed from Section R315-319-100 did not apply to any facility in Utah.

Compliance Cost Information

8. Compliance costs for affected persons:

The five coal powered electricity generating plants in Utah that are affected by this rule will not see any increase in costs. The changes in Sections R315-319-73 and 74 will not change how the five electricity generating plants will conduct their dike maintenance operations, therefore, the facilities will not incur any costs. The requirements that are removed from Section R315-319-100 did not apply to any facility in Utah.

Department Head Comments

9. A) Comments by the department head on the fiscal impact the rule may have on businesses:

The proposed changes to Rule R315-319 will have no fiscal impact on the five facilities in Utah that are covered by the rule. The changes in Sections R315-319-73 and 74 will not change how the five electricity generating plants will conduct their dike maintenance operations, therefore, the facilities will not incur any fiscal impacts. The requirements that are removed from Section R315-319-100 did not apply to any facility in Utah, therefore, no facility will incur a fiscal impact.

B) Name and title of department head commenting on the fiscal impacts:

Alan Matheson

Citation Information

10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.

State code or constitution citations (required) (e.g., Section 63G-3-402; Subsection 63G-3-601(3); Article IV) :
19-6-108

Incorporated Materials

11. This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to DAR; if none, leave blank) :

Official Title of Materials Incorporated (from title page)
Publisher
Date Issued (mm/dd/yyyy)
Issue, or version (including partial dates)
ISBN Number
ISSN Number
Cost of Incorporated Reference
Adds, updates, removes-- SELECT ONE --

Comments

12. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy) : 08/31/2016

B) A public hearing (optional) will be held:

On (mm/dd/yyyy): At (hh:mm AM/PM): At (place):

Proposed Effective Date

13. This rule change may become effective on (mm/dd/yyyy): 09/01/2016

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After a minimum of seven days following the date designated in Box 12(A) above, the agency must submit a Notice of Effective Date to the Division of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Indexing Information

14. Indexing information - keywords (maximum of four, one term per field, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid")):
permit, coal ash, solid waste

File Information

15. Attach an RTF document containing the text of this rule change (filename):

There is a document associated with this rule filing.

To the Agency

Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the Utah State Bulletin, and delaying the first possible effective date.

Agency Authorization

Agency head or designee, and title:

Scott Anderson
Director

Date(mm/dd/yyyy):06/13/2016

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-319. Coal Combustion Residuals Requirements.

R315-319-1. Permit Required.

(a) All landfills disposing of coal combustion residuals and surface impoundments containing coal combustion residuals shall have a permit for a Class I, II, or V landfill in accordance with Rules R315-302 through 307 or a coal combustion residuals permit issued under Rule R315-319.

(b) An application for a permit for a coal combustion residual landfill or surface impoundment *or multiple landfills and impoundments at a facility covered by one permit* shall be made to the Director.

(c)(1) An application for a permit a Coal Combustion Residue (CCR) unit shall contain the information required in Sections R315-319-60 through 107. No information need be submitted for which the effective date in Sections R315-319-60 through 107 has not been [~~reach~~]reached at the time of application submittal.

(2) All information required in Sections R315-319-60 through 107 with an effective date that falls later than the application submittal required in Subsection R315-319-1(c)(1) shall be submitted within six months of the effective date of the requirement found in Sections R315-319-60 through 107.

(d) Permit application procedures shall follow the requirements of Sections R315-310-1 and 2.

(e) Permit transfers shall follow the procedures of Section R315-310-11.

(f) Permit applicants shall follow the notification requirements of Subsection R315-310-3(2).

(g) Permit approvals shall follow the requirements of Rule R315-311.

(h) The Director approvals required in Sections R315-319-60 through 107 are satisfied by the issuance of a permit by the Director.

R315-319-73. Structural Integrity Criteria for Existing CCR Surface Impoundments.

(a) The requirements of Subsections R315-319-73(a)(1) through (4) apply to all existing CCR surface impoundments, except for those existing CCR surface impoundments that are incised CCR units. If an incised CCR surface impoundment is subsequently modified, e.g., a dike is constructed, such that the CCR unit no longer meets the definition of an incised CCR unit, the CCR unit is subject to the requirements of Subsections R315-319-73(a)(1) through (4).

(1) No later than, December 17, 2015, the owner or operator of the CCR unit shall place on or immediately adjacent to the CCR unit a permanent identification marker, at least six feet high showing the identification number of the CCR unit, if one has been assigned by the state, the name associated with the CCR unit and the name of the owner or operator of the CCR unit.

(2) Periodic hazard potential classification assessments.

(i) The owner or operator of the CCR unit shall conduct initial and periodic hazard potential classification assessments of the CCR unit according to the timeframes specified in Subsection R315-319-73(f). The owner or operator shall document the hazard potential classification of each CCR unit as either a high hazard potential CCR surface impoundment, a significant hazard potential CCR surface impoundment, or a low hazard potential CCR surface impoundment. The owner or operator shall also document the basis for each hazard potential classification.

(ii) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the initial hazard potential classification and each

subsequent periodic classification specified in Subsection R315-319-73(a)(2)(i) was conducted in accordance with the requirements of Section R315-319-73.

(3) Emergency Action Plan (EAP)

(i) Development of the plan. No later than April 17, 2017, the owner or operator of a CCR unit determined to be either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment under Subsection R315-319-73(a)(2) shall prepare and maintain a written EAP. At a minimum, the EAP shall:

(A) Define the events or circumstances involving the CCR unit that represent a safety emergency, along with a description of the procedures that will be followed to detect a safety emergency in a timely manner;

(B) Define responsible persons, their respective responsibilities, and notification procedures in the event of a safety emergency involving the CCR unit;

(C) Provide contact information of emergency responders;

(D) Include a map which delineates the downstream area which would be affected in the event of a CCR unit failure and a physical description of the CCR unit; and

(E) Include provisions for an annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders.

(ii) Amendment of the plan.

(A) The owner or operator of a CCR unit subject to the requirements of Subsection R315-319-73(a)(3)(i) may amend the written EAP at any time provided the revised plan is has been submitted to and has received approval from the Director and placed in the facility's operating record as required by Subsection R315-319-105(f)(6). The owner or operator shall amend the written EAP whenever there is a change in conditions that would substantially affect the EAP in effect.

(B) The written EAP shall be evaluated, at a minimum, every five years to ensure the information required in Subsection R315-319-73(a)(3)(i) is accurate. As necessary, the EAP shall be updated and a revised EAP has been submitted to and has received approval from the Director and placed in the facility's operating record as required by Subsection R315-319-105(f)(6).

(iii) Changes in hazard potential classification.

(A) If the owner or operator of a CCR unit determines during a periodic hazard potential assessment that the CCR unit is no longer classified as either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment, then the owner or operator of the CCR unit is no longer subject to the requirement to prepare and maintain a written EAP beginning on the date the periodic hazard potential assessment documentation is has been submitted to and has received approval from the Director and placed in the facility's operating record as required by Subsection R315-319-105(f)(5).

(B) If the owner or operator of a CCR unit classified as a low hazard potential CCR surface impoundment subsequently determines that the CCR unit is properly re-classified as either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment, then the owner or operator of the CCR unit shall prepare a written EAP for the CCR unit as required by Subsection R315-319-73(a)(3)(i) within six months of completing such periodic hazard potential assessment and submit the EAP to the Director for approval.

(iv) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the written EAP, and any subsequent amendment of the EAP, meets the requirements of Subsection R315-319-73(a)(3) and submit the certification to the Director.

(v) Activation of the EAP. The EAP shall be implemented once events or circumstances involving the CCR unit that represent a safety emergency are detected,

including conditions identified during periodic structural stability assessments, annual inspections, and inspections by a qualified person.

(4) The CCR unit and surrounding areas shall be designed, constructed, operated, and maintained with vegetated slopes of dikes ~~[not to exceed a height of 6 inches above the slope of the dike,]~~ except for slopes which are protected with an alternate form(s) of slope protection.

(b) The requirements of Subsections R315-319-73(c) through (e) apply to an owner or operator of an existing CCR surface impoundment that either:

- (1) Has a height of five feet or more and a storage volume of 20 acre-feet or more; or
- (2) Has a height of 20 feet or more.

(c)(1) No later than October 17, 2016, the owner or operator of the CCR unit shall compile and submit to the Director a history of construction, which shall contain, to the extent feasible, the information specified in Subsections R315-319-73(c)(1)(i) through (xi).

(i) The name and address of the person(s) owning or operating the CCR unit; the name associated with the CCR unit; and the identification number of the CCR unit if one has been assigned by the state.

(ii) The location of the CCR unit identified on the most recent U.S. Geological Survey (USGS) 7 1/2 minute or 15 minute topographic quadrangle map, or a topographic map of equivalent scale if a USGS map is not available.

(iii) A statement of the purpose for which the CCR unit is being used.

(iv) The name and size in acres of the watershed within which the CCR unit is located.

(v) A description of the physical and engineering properties of the foundation and abutment materials on which the CCR unit is constructed.

(vi) A statement of the type, size, range, and physical and engineering properties of the materials used in constructing each zone or stage of the CCR unit; the method of site preparation and construction of each zone of the CCR unit; and the approximate dates of construction of each successive stage of construction of the CCR unit.

(vii) At a scale that details engineering structures and appurtenances relevant to the design, construction, operation, and maintenance of the CCR unit, detailed dimensional drawings of the CCR unit, including a plan view and cross sections of the length and width of the CCR unit, showing all zones, foundation improvements, drainage provisions, spillways, diversion ditches, outlets, instrument locations, and slope protection, in addition to the normal operating pool surface elevation and the maximum pool surface elevation following peak discharge from the inflow design flood, the expected maximum depth of CCR within the CCR surface impoundment, and any identifiable natural or manmade features that could adversely affect operation of the CCR unit due to malfunction or mis-operation.

(viii) A description of the type, purpose, and location of existing instrumentation.

(ix) Area-capacity curves for the CCR unit.

(x) A description of each spillway and diversion design features and capacities and calculations used in their determination.

(xi) The construction specifications and provisions for surveillance, maintenance, and repair of the CCR unit.

(xii) Any record or knowledge of structural instability of the CCR unit.

(2) Changes to the history of construction. If there is a significant change to any information compiled under Subsection R315-319-73(c)(1), the owner or operator of the CCR unit shall update the relevant information, submit it to the Director, and place it in the facility's operating record as required by Subsection R315-319-105(f)(9).

(d) Periodic structural stability assessments.

(1) The owner or operator of the CCR unit shall conduct initial and periodic structural stability assessments and document whether the design, construction, operation,

and maintenance of the CCR unit is consistent with recognized and generally accepted good engineering practices for the maximum volume of CCR and CCR wastewater which can be impounded therein. The assessment shall, at a minimum, document whether the CCR unit has been designed, constructed, operated, and maintained with:

- (i) Stable foundations and abutments;
- (ii) Adequate slope protection to protect against surface erosion, wave action, and adverse effects of sudden drawdown;
- (iii) Dikes mechanically compacted to a density sufficient to withstand the range of loading conditions in the CCR unit;
- (iv) Vegetated slopes of dikes and surrounding areas [~~not to exceed a height of six inches above the slope of the dike,~~] except for slopes which have an alternate form or forms of slope protection;

(v) A single spillway or a combination of spillways configured as specified in Subsection R315-319-73(d)(1)(v)(A). The combined capacity of all spillways shall be designed, constructed, operated, and maintained to adequately manage flow during and following the peak discharge from the event specified in Subsection R315-319-73(d)(1)(v)(B).

(A) All spillways shall be either:

~~[(1)]~~ (I) Of non-erodible construction and designed to carry sustained flows; or

~~[(2)]~~ (II) Earth- or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

(B) The combined capacity of all spillways shall adequately manage flow during and following the peak discharge from a:

~~[(1)]~~ (I) Probable maximum flood (PMF) for a high hazard potential CCR surface impoundment; or

~~[(2)]~~ (II) 1000-year flood for a significant hazard potential CCR surface impoundment; or

~~[(3)]~~ (III) 100-year flood for a low hazard potential CCR surface impoundment.

(vi) Hydraulic structures underlying the base of the CCR unit or passing through the dike of the CCR unit that maintain structural integrity and are free of significant deterioration, deformation, distortion, bedding deficiencies, sedimentation, and debris which may negatively affect the operation of the hydraulic structure; and

(vii) For CCR units with downstream slopes which can be inundated by the pool of an adjacent water body, such as a river, stream or lake, downstream slopes that maintain structural stability during low pool of the adjacent water body or sudden drawdown of the adjacent water body.

(2) The periodic assessment described in Subsection R315-319-73(d)(1) shall identify any structural stability deficiencies associated with the CCR unit in addition to recommending corrective measures. If a deficiency or a release is identified during the periodic assessment, the owner or operator unit shall remedy the deficiency or release as soon as feasible and prepare documentation detailing the corrective measures taken and submit the documentation to the Director.

(3) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the initial assessment and each subsequent periodic assessment was conducted in accordance with the requirements of Section R315-319-73 and submit the certification to the Director.

(e) Periodic safety factor assessments.

(1) The owner or operator shall conduct and submit to the Director an initial and periodic safety factor assessments for each CCR unit and document whether the calculated factors of safety for each CCR unit achieve the minimum safety factors specified in Subsections R315-319-73(e)(1)(i) through (iv) for the critical cross section of the

embankment. The critical cross section is the cross section anticipated to be the most susceptible of all cross sections to structural failure based on appropriate engineering considerations, including loading conditions. The safety factor assessments shall be supported by appropriate engineering calculations.

(i) The calculated static factor of safety under the long-term, maximum storage pool loading condition shall equal or exceed 1.50.

(ii) The calculated static factor of safety under the maximum surcharge pool loading condition shall equal or exceed 1.40.

(iii) The calculated seismic factor of safety shall equal or exceed 1.00.

(iv) For dikes constructed of soils that have susceptibility to liquefaction, the calculated liquefaction factor of safety shall equal or exceed 1.20.

(2) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the initial assessment and each subsequent periodic assessment specified in Subsection R315-319-73(e)(1) meets the requirements of Section R315-319-73.

(f) Timeframes for periodic assessments

(1) Initial assessments. Except as provided by Subsection R315-319-73(f)(2), the owner or operator of the CCR unit shall complete the initial assessments required by Subsections R315-319-73(a)(2), (d), and (e) no later than October 17, 2016. The owner or operator has completed an initial assessment when the owner or operator has and submit to the Director and placed the assessment required by Subsections R315-319-73(a)(2), (d), and (e) in the facility's operating record as required by Subsections R315-319-105(f)(5), (10), and (12).

(2) Use of a previously completed assessment(s) in lieu of the initial assessment(s). The owner or operator of the CCR unit may elect to use a previously completed assessment to serve as the initial assessment required by Subsections R315-319-73(a)(2), (d), and (e) provided that the previously completed assessment(s):

(i) Was completed no earlier than 42 months prior to October 17, 2016; and

(ii) Meets the applicable requirements of Subsections R315-319-73 (a)(2), (d), and (e).

(3) Frequency for conducting periodic assessments. The owner or operator of the CCR unit shall conduct and complete and submit to the Director the assessments required by Subsections R315-319-73 (a)(2), (d), and (e) every five years. The date of completing the initial assessment is the basis for establishing the deadline to complete the first subsequent assessment. If the owner or operator elects to use a previously completed assessment(s) in lieu of the initial assessment as provided by Subsection R315-319-73 (f)(2), the date of the report for the previously completed assessment is the basis for establishing the deadline to complete the first subsequent assessment. The owner or operator may complete any required assessment prior to the required deadline provided the owner or operator submits the assessment to the Director and places the completed assessment(s) into the facility's operating record within a reasonable amount of time. In all cases, the deadline for completing subsequent assessments is based on the date of completing the previous assessment. For purposes of Subsection R315-319-73(f)(3), the owner or operator has completed an assessment when the relevant assessment(s) required by Subsections R315-319-73 (a)(2), (d), and (e) has been submitted and approved by the Director and has been placed in the facility's operating record as required by Subsections R315-319-105(f)(5), (10), and (12).

(4) Closure of the CCR unit. An owner or operator of a CCR unit who either fails to complete a timely safety factor assessment or fails to demonstrate minimum safety factors as required by Subsection R315-319-73 (e) is subject to the requirements of Subsection R315-319-101(b)(2).

(g) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(f), the notification requirements specified in Subsection R315-319-106(f), and the internet requirements specified in Subsection R315-319-107(f).

R315-319-74. Structural Integrity Criteria for New CCR Surface Impoundments and Any Lateral Expansion of a CCR Surface Impoundment.

(a) The requirements of Subsections R315-319-74(a)(1) through (4) apply to all new CCR surface impoundments and any lateral expansion of a CCR surface impoundment, except for those new CCR surface impoundments that are incised CCR units. If an incised CCR surface impoundment is subsequently modified, e.g., a dike is constructed, such that the CCR unit no longer meets the definition of an incised CCR unit, the CCR unit is subject to the requirements of Subsections R315-319-74(a)(1) through (4).

(1) No later than the initial receipt of CCR, the owner or operator of the CCR unit shall place on or immediately adjacent to the CCR unit a permanent identification marker, at least six feet high showing the identification number of the CCR unit, if one has been assigned by the state, the name associated with the CCR unit and the name of the owner or operator of the CCR unit.

(2) Periodic hazard potential classification assessments.

(i) The owner or operator of the CCR unit shall conduct initial and periodic hazard potential classification assessments of the CCR unit according to the timeframes specified in Subsection R315-319-74(f). The owner or operator shall document the hazard potential classification of each CCR unit as either a high hazard potential CCR surface impoundment, a significant hazard potential CCR surface impoundment, or a low hazard potential CCR surface impoundment. The owner or operator shall also document the basis for each hazard potential classification.

(ii) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the initial hazard potential classification and each subsequent periodic classification specified in Subsection R315-319-74(a)(2)(i) was conducted in accordance with the requirements of Section R315-319-74.

(3) Emergency Action Plan (EAP)

(i) Development of the plan. Prior to the initial receipt of CCR in the CCR unit, the owner or operator of a CCR unit determined to be either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment under Subsection R315-319-74 (a)(2) shall prepare, and maintain a written EAP. At a minimum, the EAP shall:

(A) Define the events or circumstances involving the CCR unit that represent a safety emergency, along with a description of the procedures that will be followed to detect a safety emergency in a timely manner;

(B) Define responsible persons, their respective responsibilities, and notification procedures in the event of a safety emergency involving the CCR unit;

(C) Provide contact information of emergency responders;

(D) Include a map which delineates the downstream area which would be affected in the event of a CCR unit failure and a physical description of the CCR unit; and

(E) Include provisions for an annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders.

(ii) Amendment of the plan.

(A) The owner or operator of a CCR unit subject to the requirements of Subsection R315-319-74(a)(3)(i) may amend the written EAP at any time provided the revised plan is placed in the facility's operating record as required by Subsection R315-319-105(f)(6). The owner or operator shall amend the written EAP whenever there is a change in conditions that would substantially affect the EAP in effect.

(B) The written EAP shall be evaluated, at a minimum, every five years to ensure the information required in Subsection R315-319-74(a)(3)(i) is accurate. As necessary, the EAP shall be updated and a revised EAP placed in the facility's operating record as required by Subsection R315-319-105(f)(6).

(iii) Changes in hazard potential classification.

(A) If the owner or operator of a CCR unit determines during a periodic hazard potential assessment that the CCR unit is no longer classified as either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment, then the owner or operator of the CCR unit is no longer subject to the requirement to prepare and maintain a written EAP beginning on the date the periodic hazard potential assessment documentation has been submitted to and has received approval from the Director and placed in the facility's operating record as required by Subsection R315-319-105(f)(5).

(B) If the owner or operator of a CCR unit classified as a low hazard potential CCR surface impoundment subsequently determines that the CCR unit is properly re-classified as either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment, then the owner or operator of the CCR unit shall prepare and submit to the Director a written EAP for the CCR unit as required by Subsection R315-319-74(a)(3)(i) within six months of completing such periodic hazard potential assessment.

(iv) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the written EAP, and any subsequent amendment of the EAP, meets the requirements of Subsection R315-319-74(a)(3).

(v) Activation of the EAP. The EAP shall be implemented once events or circumstances involving the CCR unit that represent a safety emergency are detected, including conditions identified during periodic structural stability assessments, annual inspections, and inspections by a qualified person.

(4) The CCR unit and surrounding areas shall be designed, constructed, operated, and maintained with vegetated slopes of dikes [~~not to exceed a height of six inches above the slope of the dike,~~] except for slopes which are protected with an alternate form(s) of slope protection.

(b) The requirements of Subsections R315-319-74(c) through (e) apply to an owner or operator of a new CCR surface impoundment and any lateral expansion of a CCR surface impoundment that either:

- (1) Has a height of five feet or more and a storage volume of 20 acre-feet or more; or
- (2) Has a height of 20 feet or more.

(c)(1) No later than the initial receipt of CCR in the CCR unit, the owner or operator unit shall compile the design and construction plans for the CCR unit, which shall include, to the extent feasible, the information specified in Subsection R315-319-74 (c)(1)(i) through (xi).

(i) The name and address of the person(s) owning or operating the CCR unit; the name associated with the CCR unit; and the identification number of the CCR unit if one has been assigned by the state.

(ii) The location of the CCR unit identified on the most recent U.S. Geological Survey (USGS) 7 1/2 minute or 15 minute topographic quadrangle map, or a topographic map of equivalent scale if a USGS map is not available.

(iii) A statement of the purpose for which the CCR unit is being used.

(iv) The name and size in acres of the watershed within which the CCR unit is located.

(v) A description of the physical and engineering properties of the foundation and abutment materials on which the CCR unit is constructed.

(vi) A statement of the type, size, range, and physical and engineering properties of the materials used in constructing each zone or stage of the CCR unit; the method of site

preparation and construction of each zone of the CCR unit; and the dates of construction of each successive stage of construction of the CCR unit.

(vii) At a scale that details engineering structures and appurtenances relevant to the design, construction, operation, and maintenance of the CCR unit, detailed dimensional drawings of the CCR unit, including a plan view and cross sections of the length and width of the CCR unit, showing all zones, foundation improvements, drainage provisions, spillways, diversion ditches, outlets, instrument locations, and slope protection, in addition to the normal operating pool surface elevation and the maximum pool surface elevation following peak discharge from the inflow design flood, the expected maximum depth of CCR within the CCR surface impoundment, and any identifiable natural or manmade features that could adversely affect operation of the CCR unit due to malfunction or mis-operation.

(viii) A description of the type, purpose, and location of existing instrumentation.

(ix) Area-capacity curves for the CCR unit.

(x) A description of each spillway and diversion design features and capacities and calculations used in their determination.

(xi) The construction specifications and provisions for surveillance, maintenance, and repair of the CCR unit.

(xii) Any record or knowledge of structural instability of the CCR unit.

(2) Changes in the design and construction. If there is a significant change to any information compiled under Subsection R315-319-74 (c)(1), the owner or operator of the CCR unit shall update the relevant information and place it in the facility's operating record as required by Subsection R315-319-105(f)(13).

(d) Periodic structural stability assessments.

(1) The owner or operator of the CCR unit shall conduct initial and periodic structural stability assessments and document whether the design, construction, operation, and maintenance of the CCR unit is consistent with recognized and generally accepted good engineering practices for the maximum volume of CCR and CCR wastewater which can be impounded therein. The assessment shall, at a minimum, document whether the CCR unit has been designed, constructed, operated, and maintained with:

(i) Stable foundations and abutments;

(ii) Adequate slope protection to protect against surface erosion, wave action, and adverse effects of sudden drawdown;

(iii) Dikes mechanically compacted to a density sufficient to withstand the range of loading conditions in the CCR unit;

(iv) Vegetated slopes of dikes and surrounding areas [~~not to exceed a height of six inches above the slope of the dike,~~] except for slopes which have an alternate form or forms of slope protection;

(v) A single spillway or a combination of spillways configured as specified in Subsection R315-319-74(d)(1)(v)(A). The combined capacity of all spillways shall be designed, constructed, operated, and maintained to adequately manage flow during and following the peak discharge from the event specified in Subsection R315-319-74 (d)(1)(v)(B).

(A) All spillways shall be either:

~~(1)~~ (I) Of non-erodible construction and designed to carry sustained flows; or

~~(2)~~ (II) Earth- or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

(B) The combined capacity of all spillways shall adequately manage flow during and following the peak discharge from a:

~~(1)~~ (I) Probable maximum flood (PMF) for a high hazard potential CCR surface impoundment; or

~~[(2)](II)~~ 1000-year flood for a significant hazard potential CCR surface impoundment; or

~~[(3)](III)~~ 100-year flood for a low hazard potential CCR surface impoundment.

(vi) Hydraulic structures underlying the base of the CCR unit or passing through the dike of the CCR unit that maintain structural integrity and are free of significant deterioration, deformation, distortion, bedding deficiencies, sedimentation, and debris which may negatively affect the operation of the hydraulic structure; and

(vii) For CCR units with downstream slopes which can be inundated by the pool of an adjacent water body, such as a river, stream or lake, downstream slopes that maintain structural stability during low pool of the adjacent water body or sudden drawdown of the adjacent water body.

(2) The periodic assessment described in Subsection R315-319-74(d)(1) shall identify any structural stability deficiencies associated with the CCR unit in addition to recommending corrective measures. If a deficiency or a release is identified during the periodic assessment, the owner or operator unit shall remedy the deficiency or release as soon as feasible and prepare documentation detailing the corrective measures taken.

(3) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the initial assessment and each subsequent periodic assessment was conducted in accordance with the requirements of Section R315-319-74.

(e) Periodic safety factor assessments.

(1) The owner or operator shall conduct an initial and periodic safety factor assessments for each CCR unit and document whether the calculated factors of safety for each CCR unit achieve the minimum safety factors specified in Subsections R315-319-74(e)(1)(i) through (v) for the critical cross section of the embankment. The critical cross section is the cross section anticipated to be the most susceptible of all cross sections to structural failure based on appropriate engineering considerations, including loading conditions. The safety factor assessments shall be supported by appropriate engineering calculations.

(i) The calculated static factor of safety under the end-of-construction loading condition shall equal or exceed 1.30. The assessment of this loading condition is only required for the initial safety factor assessment and is not required for subsequent assessments.

(ii) The calculated static factor of safety under the long-term, maximum storage pool loading condition shall equal or exceed 1.50.

(iii) The calculated static factor of safety under the maximum surcharge pool loading condition shall equal or exceed 1.40.

(iv) The calculated seismic factor of safety shall equal or exceed 1.00.

(v) For dikes constructed of soils that have susceptibility to liquefaction, the calculated liquefaction factor of safety shall equal or exceed 1.20.

(2) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the initial assessment and each subsequent periodic assessment specified in Subsection R315-319-74(e)(1) meets the requirements of Section R315-319-74.

(f) Timeframes for periodic assessments

(1) Initial assessments. Except as provided by Subsection R315-319-74 (f)(2), the owner or operator of the CCR unit shall complete the initial assessments required by Subsections R315-319-74(a)(2), (d), and (e) prior to the initial receipt of CCR in the unit. The owner or operator has completed an initial assessment when the owner or operator has placed the assessment required by Subsections R315-319-74 (a)(2), (d), and (e) in the facility's operating record as required by Subsection R315-319-105(f)(5), (10), and (12).

(2) Frequency for conducting periodic assessments. The owner or operator of the CCR unit shall conduct, complete the assessments required by Subsections R315-319-74 (a)(2), (d), and (e) every five years. The date of completing the initial assessment is the basis for establishing the deadline to complete the first subsequent assessment. The owner or operator may complete any required assessment prior to the required deadline provided the owner or operator places the completed assessment(s) into the facility's operating record within a reasonable amount of time. In all cases, the deadline for completing subsequent assessments is based on the date of completing the previous assessment. For purposes of Subsection R315-319-74 (f)(2), the owner or operator has completed an assessment when the relevant assessment(s) required by Subsections R315-319-74 (a)(2), (d), and (e) has been placed in the facility's operating record as required by Subsection R315-319-105(f)(5), (10), and (12).

(3) Failure to document minimum safety factors during the initial assessment. Until the date an owner or operator of a CCR unit documents that the calculated factors of safety achieve the minimum safety factors specified in Subsections R315-319-74 (e)(1)(i) through (v), the owner or operator is prohibited from placing CCR in such unit.

(4) Closure of the CCR unit. An owner or operator of a CCR unit who either fails to complete a timely periodic safety factor assessment or fails to demonstrate minimum safety factors as required by Subsection R315-319-74 (e) is subject to the requirements of Subsection R315-319-101(c).

(g) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(f), the notification requirements specified in Subsection R315-319-106(f), and the internet requirements specified in Subsection R315-319-107(f).

R315-319-100. Closure and Post-Closure Care Inactive CCR Surface Impoundments.

(a) ~~[Except as provided by Subsection R315-319-100(b), inactive]~~Inactive CCR surface impoundments are subject to all of the requirements of Sections R315-319-50 through 107 applicable to existing CCR surface impoundments.

~~— (b) An owner or operator of an inactive CCR surface impoundment that completes closure of such CCR unit, and meets all of the requirements of either Subsections R315-319-100(b)(1) through (4) or Subsection R315-319-100(b)(5) no later than April 17, 2018, is exempt from all other requirements of Sections R315-319-50 through 107.~~

~~— (1) Closure by leaving CCR in place. If the owner or operator of the inactive CCR surface impoundment elects to close the CCR surface impoundment by leaving CCR in place, the owner or operator shall ensure that, at a minimum, the CCR unit is closed in a manner that will:~~

~~— (i) Control, minimize or eliminate, to the maximum extent feasible, post-closure infiltration of liquids into the waste and releases of CCR, leachate, or contaminated run-off to the ground or surface waters or to the atmosphere;~~

~~— (ii) Preclude the probability of future impoundment of water, sediment, or slurry;~~

~~— (iii) Include measures that provide for major slope stability to prevent the sloughing or movement of the final cover system; and~~

~~— (iv) Minimize the need for further maintenance of the CCR unit.~~

~~— (2) The owner or operator of the inactive CCR surface impoundment shall meet the requirements of Subsections R315-319-100(b)(2)(i) and (ii) prior to installing the final cover system required under Subsection R315-319-100(b)(3).~~

~~— (i) Free liquids shall be eliminated by removing liquid wastes or solidifying the remaining wastes and waste residues.~~

~~— (ii) Remaining wastes shall be stabilized sufficient to support the final cover system.~~

~~———— (3) The owner or operator shall install a final cover system that is designed to minimize infiltration and erosion, and at a minimum, meets the requirements of Subsection R315-319-100(b)(3)(i), or the requirements of an alternative final cover system specified in Subsection R315-319-100(b)(3)(ii).~~

~~———— (i) The final cover system shall be designed and constructed to meet the criteria specified in Subsections R315-319-100(b)(3)(i)(A) through (D).~~

~~———— (A) The permeability of the final cover system shall be less than or equal to the permeability of any bottom liner system or natural subsoils present, or a permeability no greater than 1×10^{-5} centimeters/second, whichever is less.~~

~~———— (B) The infiltration of liquids through the CCR unit shall be minimized by the use of an infiltration layer that contains a minimum of 18 inches of earthen material.~~

~~———— (C) The erosion of the final cover system shall be minimized by the use of an erosion layer that contains a minimum of six inches of earthen material that is capable of sustaining native plant growth.~~

~~———— (D) The disruption of the integrity of the final cover system shall be minimized through a design that accommodates settling and subsidence.~~

~~———— (ii) The owner or operator may select an alternative final cover system design, provided the alternative final cover system is designed and constructed to meet the criteria in Subsections R315-319-100(b)(3)(ii)(A) through (C).~~

~~———— (A) The design of the final cover system shall include an infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in Subsections R315-319-100(b)(3)(i)(A) and (B).~~

~~———— (B) The design of the final cover system shall include an erosion layer that provides equivalent protection from wind or water erosion as the erosion layer specified in Subsection R315-319-100(b)(3)(i)(C).~~

~~———— (C) The disruption of the integrity of the final cover system shall be minimized through a design that accommodates settling and subsidence.~~

~~———— (4) The owner or operator of the CCR surface impoundment shall obtain a written certification from a qualified professional engineer stating that the design of the final cover system meets either the requirements of Subsection R315-319-100(b)(3)(i) or (ii).~~

~~———— (5) Closure through removal of CCR. The owner or operator may alternatively elect to close an inactive CCR surface impoundment by removing and decontaminating all areas affected by releases from the CCR surface impoundment. CCR removal and decontamination of the CCR surface impoundment are complete when all CCR in the inactive CCR surface impoundment is removed, including the bottom liner of the CCR unit.~~

~~———— (6) The owner or operator of the CCR surface impoundment shall obtain a written certification from a qualified professional engineer that closure of the CCR surface impoundment under either Subsections R315-319-100(b)(1) through (4) or (b)(5) is technically feasible within the timeframe in Subsection R315-319-100(b).~~

~~———— (7) If the owner or operator of the CCR surface impoundment fails to complete closure of the inactive CCR surface impoundment within the timeframe in Subsection R315-319-100(b), the CCR unit shall comply with all of the requirements applicable to existing CCR surface impoundments under Sections R315-319-50 through 107.~~

~~———— (c) Required notices and progress reports. An owner or operator of an inactive CCR surface impoundment that closes in accordance with Subsection R315-319-100(b) shall complete the notices and progress reports specified in Subsections R315-319-100(c)(1) through (3).~~

~~———— (1) No later than December 17, 2015, the owner or operator shall prepare and place in the facility's operating record a notification of intent to initiate closure of the CCR surface impoundment. The notification shall state that the CCR surface impoundment is an inactive CCR surface impoundment closing under the requirements of Subsection R315-319-100(b).~~

The notification shall also include a narrative description of how the CCR surface impoundment will be closed, a schedule for completing closure activities, and the required certifications under Subsections R315-319-100(b)(4) and (6), if applicable.

~~———— (2) The owner or operator shall prepare periodic progress reports summarizing the progress of closure implementation, including a description of the actions completed to date, any problems encountered and a description of the actions taken to resolve the problems, and projected closure activities for the upcoming year. The annual progress reports shall be completed according to the following schedule:~~

~~———— (i) The first annual progress report shall be prepared no later than 13 months after completing the notification of intent to initiate closure required by Subsection R315-319-100(e)(1).~~

~~———— (ii) The second annual progress report shall be prepared no later than 12 months after completing the first progress report required by Subsection R315-319-100(e)(2)(i).~~

~~———— (iii) The owner or operator has completed the progress reports specified in Subsection R315-319-100 (e)(2) when the reports are placed in the facility's operating record as required by Subsection R315-319-105(i)(2).~~

~~———— (3) The owner or operator shall prepare and place in the facility's operating record a notification of completion of closure of the CCR surface impoundment. The notification shall be submitted within 60 days of completing closure of the CCR surface impoundment and shall include a written certification from a qualified professional engineer stating that the CCR surface impoundment was closed in accordance with the requirements of either Subsections R315-319-100 (b)(1) through (4) or (b)(5).~~

~~———— (d) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(i), the notification requirements specified in Subsection R315-319-106(i), and the internet requirements specified in Subsection R315-319-107(i).~~

]