BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	R 2020-019
STANDARDS FOR THE DISPOSAL OF	)	
COAL COMBUSTION RESIDUALS IN	)	(Rulemaking – Water)
SURFACE IMPOUNDMENTS:	)	
PROPOSED NEW 35 ILL. ADM.	)	
CODE 845	)	

NOTICE OF FILING

To: Service List

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Pollution Control Board Midwest Generation, LLC's Response to Post-Hearing Comments, a copy of which is herewith served upon you.

Dated: November 6, 2020

MIDWEST GENERATION, LLC

By: __/s/Kristen L. Gale _____

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that a true copy of the foregoing Notice of Filing, and Midwest Generation, LLC's Response to Post-Hearing Comments was electronically filed on November 6, 2020 with the following:

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and that copies were sent via e-mail on November 6, 2020 to the parties on the service list.

Dated: November 6, 2020 /s/Kristen L. Gale

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	**)**	
	)	
STANDARDS FOR THE DISPOSAL OF	**)**	
COAL COMBUSTION RESIDUALS IN	**)**	**R20-19**
SURFACE IMPOUNDMENTS: PROPOSED	**)**	**(Rulemaking – Water)**
35 ILL.ADM. CODE PART 845	**)**	

MIDWEST GENERATION, LLC'S RESPONSE TO POST-HEARING COMMENTS

I. Introduction

Midwest Generation, LLC ("Midwest Generation" or "MWG") appreciates the opportunity to provide a response to certain post-hearing comments submitted in this rulemaking proceeding for the Illinois Pollution Control Board's ("Board") consideration. MWG generally supports the post-hearing comments filed by Dynegy and the City of Springfield d/b/a City Water, Light, and Power. MWG also supports certain sections of the post-hearing comments filed by the Illinois Environmental Protection Agency ("Illinois EPA" or "Agency"), however, as described herein, MWG disagrees with other sections. Additionally, MWG provides responses to the final comments and suggested modifications by the Sierra Club, Prairie Rivers Network, Environmental Law and Policy Center and Little Village Environmental Justice Organization (collectively the "Environmental Group").

II. The Board Should Not Adopt the Sections of the Proposed CCR Rule That Are Not Supported by the Record.

MWG objects to Illinois EPA's substantial, substantive proposed changes to the closure by removal requirements in Section 847.770. Agency Final Comment, pp. 86-87. These significant changes come at the eleventh hour without any basis or explanation and without any opportunity for stakeholders to present rebuttal evidence or testimony. If significant changes to proposed rules are first presented in a final post-hearing Agency comment, it essentially nullifies the due process rights of stakeholders like Midwest Generation that a rulemaking proceeding is intended to afford and protect. There is no meaningful opportunity now to evaluate and respond to the Agency's proposed changes. The Board should reject the change and implement the language Illinois EPA originally proposed.

Illinois EPA also has failed to provide technical or scientific support for its proposed inclusion of a leachate collection system requirement for coal combustion residual ("CCR")

surface impoundments. Not only does this proposal conflict with the requirements of the Federal Coal Combustion Residual Rule ("Federal CCR Rule"), it is unnecessary, particularly for smaller surface impoundments that close by removal. At most, any leachate collection system requirement should only apply to CCR surface impoundments that are larger than 20 acres. This approach would be consistent with the Agency's underlying rationale that such systems are only needed to assist in dewatering impoundments during closure in place activities and their subsequent post-closure care. The hearing testimony showed not only that small CCR surface impoundments predominantly close by removal, not closure in place, and that dewatering and removing CCR in these impoundments is not difficult and does not require the assistance of a leachate collection system to complete the dewatering process.

The Board should not adopt the Agency's position that a single detection above the groundwater protection standards of one constituent in one quarter is a "confirmed exceedance." As the hearing testimony of Richard Gnat clearly showed, single detection anomalies can and do occur. Owners or operators should not be denied the limited opportunity to determine if the single detection of an exceedance is an anomaly. The rule should instead allow for a second sampling event to confirm that the exceedance is a real value before requiring an owner or operator to expend further resources to address it. The very limited additional time to confirm that an exceedance in fact has occurred will not endanger either human health or the environment. It will, however, prevent investigations of single detection exceedances that really don't exist.

Similarly, a requirement to develop background concentrations in only six months is unreasonable. The hearing testimony shows that the development of accurate background data requires evaluation of the seasonal changes in the groundwater and also samples taken sufficiently spaced apart in time to assure independent data - neither of which can be accomplished in six months' time. Finally, MWG submits that the final rule should allow an owner or operator to reduce the constituents evaluated where the data collected shows that certain constituents do not require further evaluation.

a. The Board Should Reject Illinois EPA's New Language for Closure by Removal

For the first time and without any prior indication or explanation, the Agency presents new requirements for closure by removal in its post-hearing comments. Agency Final Comment, pp.

86-87. The original language for closure by removal in the proposed Disposal of Coal Combustion Residuals ("CCR") in Surface Impoundments Rule (the "Proposed CCR Rule") states that:

> An owner may close 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 the CCR in the surface impoundment and any areas affected by releases from the CCR surface impoundment have been removed.
> Proposed 35 Ill. Adm. Code 845.740(a).

This is the same language that is in the federal CCR Rule. 40 CFR 257.102(c). Ex. 8, 483. Now, the Agency is suddenly and belatedly proposing a wholesale revision of that section. The Agency's new language states that for closure by removal, an owner/operator must also remove "containment system components such as the impoundment liner and contaminated subsoils, and CCR impoundment structures and ancillary equipment." Agency Final Comment, p. 87. The Agency provided no explanation or technical support to show that the containment system components associated with the CCR surface impoundment must be removed.

The Agency has not provided any information on the technical feasibility nor the economic reasonableness of removing the containment equipment associated with a CCR surface impoundment for closure by removal. Section 27(a) of the Act sets out the procedures the Board must follow to enact regulations, including a requirement to take into account the technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution. 415 ILCS 5/27(a). If the Board fails to follow the procedures under Section 27(a), then the rule is invalid. *See Waste Mgmt. of Ill., Inc. v. Pollution Control Bd.,* 231 Ill. App. 3d 278, 288-289, 172 Ill. Dec. 501, 508, (1st Dist. 1992). (Court found Board regulation requiring certain air monitoring of chemicals invalid because the record contained no evidence concerning the technical feasibility and economic reasonableness of measuring the chemicals.)

Here, the Agency has provided no information to show that its proposed change to Section 845.740(a) is technically feasible or economically reasonable. The Agency claims the revision is necessary to be consistent with the Federal Part B Rule, that was proposed on March 3, 2020 and is attached here as Attachment A. But the Agency's proposed language is inconsistent with the proposed Part B regulation. The March 3, 2020 proposed federal CCR rule for closure by removal states:

> "Closure by removal activities include removing ***or*** *decontaminating* all CCR and CCR residues, containment system components such as the unit liner, contaminated subsoils, contaminated groundwater, and CCR unit structures and ancillary equipment."
> Proposed 40 CFR 257.102(c) (emphasis added)

The proposed Part B regulation does not require removal of the containment systems. The Agency does not explain why it significantly deviated from the federal March 3, 2020 proposed language. The Agency's proposed change also diverges from its own admonition that as "frequently reminded" by the U.S.EPA, the Agency's goal was "to keep the language and function of Part 257 as similar as possible." Agency Final Comment, p. 10. By failing to replicate the proposed Part B language, the Agency is failing to follow the U.S.EPA's direct instructions.

The Agency has created – without explanation and for the first time in its final comments – new language requiring removal not only of the CCR, but all of the equipment and liners associated with the CCR surface impoundment regardless of its condition. There is nothing in the record here to demonstrate that the equipment and the liner associated with CCR is so contaminated that it may not be decontaminated. Instead, the testimony demonstrates precisely the opposite. Mr. Nielson testified that a synthetic liner (or "geomembrane liner") is not likely to be contaminated with CCR constituents merely because it was in contact with CCR. Ex. 54, p. 12-13. Geosynthetic liners are nonabsorptive and can be decontaminated so that they are suitable to reuse as part of a CCR surface impoundment retrofit. Ex. 54, p. 12-13; ASTM D4439; 9/30/2020 Tr., p. 199:7-8. The Illinois EPA admits that it is simply assuming that liners become contaminated and cannot be decontaminated without providing any other basis, including any scientific studies or analysis, to support that assumption. 8/25/2020 Tr., pp. 73:20-23, 76:14-17.

Turning to the other components that the Agency now proposes also must be removed, it again fails to explain why it believes that these components cannot be decontaminated. Because the record is closed, MWG and any other affected party, is foreclosed from providing additional evidence and expert opinion explaining why the components associated with a CCR surface impoundment may be decontaminated such that their removal is not required. It is unfair, unreasonable, and arbitrary to substantially change the scope of the requirements for closure by removal at such a late stage in this proceeding when the record is closed, and affected parties do not have an opportunity to present evidence demonstrating that the Agency's proposal is flawed.

It appears the Agency's impetus for recommending this substantial change is a sentence in the preamble to the proposed March 3, 2020 federal rule that refers to removal of all of the equipment regardless of whether it can be decontaminated. Ex. 1, p. 12469-12470. But such reliance is both inconsistent and contrary to the Agency's testimony that it rejects the preamble language, and instead prefers "to utilize regulation as opposed to utilizing the preamble." 8/11/20 Tr. p. 70: 12-14, p. 71:8-10. The Agency explained that it preferred to use the regulation language, because Part 257 has changed over time, thus the preference "is to utilize the regulation." 8/11/20 Tr. p. 71:10-11.

The federal March 3, 2020 proposal regarding closure by removal is only a proposal. It has not been adopted by the U.S.EPA. On October 15, 2020, USEPA finalized a part of the March 2020 proposed regulation. U.S.EPA, Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities: Final Rule (pre-publication, October 15, 2020). The sections that the U.S.EPA adopted related to 40 CFR 257.102(d) and the alternative final cover system design. The U.S.EPA stated that the other provisions from the proposed rule (including closure by removal activities) "will be addressed in a subsequent rulemaking action." *Id.*, p. 7. As the Illinois EPA stated at hearing, the USEPA has changed the rule often, so there is no basis to believe that their proposed rule, and their statements in the preamble, will remain the same.

An isolated and unjustified preamble statement in a *proposed Federal rule* is an insufficient basis for including a requirement to remove every piece of equipment connected to CCR regardless of its condition. The Federal CCR Rule - which the Agency otherwise follows – states only that the equipment must be decontaminated. 40 CFR 257.102. Neither the preamble nor the Agency's post-hearing comments provides any technical basis supporting either equipment removal or the inability to decontaminate it. The record here shows exactly the opposite - - that the liners used for CCR surface impoundments can be decontaminated. Based on the record, the Board should reject the Agency's proposed language, and use the language that the Illinois EPA originally proposed, which is based upon and similar in function to Section 257.102(c) of the current Federal CCR Rule and on which the stakeholders have had an opportunity to comment. Ex. 8, p. 483.

b. The Illinois CCR Rule Should Not Require a Leachate Collection System, Particularly for Small CCR Surface Impoundments.

In an effort to support its opinion that all CCR surface impoundments must have leachate collection systems, the Agency picks apart language in the 2014 U.S.EPA Risk Assessment while ignoring the penultimate and most important fact that based on that risk assessment, the U.S.EPA did not require CCR surface impoundments to install leachate collection systems. Following the extensive U.S.EPA Risk Assessment, the U.S.EPA decided in the final Federal CCR Rule not to require a leachate collection system for CCR surface impoundments. 40 CFR 257.71. Instead, as MWG's expert Mr. Nielson testified, the U.S.EPA concluded that the composite liner provides an "effective hydraulic barrier by combining the complimentary properties of the two liner components." 9/30/2020 Tr., p. 201:15-19.

The Agency also entirely misses the point of Mr. Nielson's testimony on this issue. Based on his review of the entire risk assessment document, Mr. Nielson concluded that the U.S.EPA did *not* model CCR surface impoundments with leachate collection systems. As Mr. Nielson explained, in the U.S.EPA Risk Assessment, the Agency described scenarios in which there was a large hydraulic head in the CCR surface impoundment during operation due to the significant volume of water. Ex. 50, p. 33. The whole purpose of a leachate collection system is to reduce the hydraulic head on a liner. In Mr. Nielson's opinion, if there had been a leachate collection system in the modeled CCR surface impoundments, then the U.S.EPA would not have described a large hydraulic head in the impoundments that was reduced upon closure. *See* USEPA Risk Assessment, pp. 4-6, K-1. 5-28 – 5-29 and p. 2.2.1; 9/30/2020 Tr. p. 200:24-201:3. In any case, as Mr. Nielson stated the "proof is in the pudding." 9/30/20 Tr., p. 201:4-5. The U.S.EPA did not require a leachate collection system for CCR surface impoundments in the final rule.

While MWG contends that there is no basis to include a leachate collection system in any CCR surface impoundment, MWG's post-hearing comments present two alternatives for the Board to consider. MWG Second Comments, pp. 20-23. One of MWG's proposals was to require CCR surface impoundments that are larger than 20 acres to have a leachate collection system. The testimony during hearing demonstrated that small ponds are more likely to close by removal. Ex. 41, p. 15. The testimony also established that removal of CCR from small ponds does not require extra assistance by a leachate collection system. Instead, the real-world testimony by Ms. Shealey showed that removals of CCR and water from small ponds is technically reasonable and feasible. Ex. 50, pp. 16-17. As MWG described in its post-hearing

comment, if there is not an exception allowing small ponds to forego a leachate collection system, it is likely that the costly engineering system will be installed and yet never operate. MWG Second Comments, p. 21. It is not economically reasonable to require an entity to install a system that it would never need to use.

MWG's objection to the leachate collection system for small CCR surface impoundments is supported by the Illinois EPA's proposed additional language to Section 845.420. The Agency proposes that the leachate collection system operate during removal and post-closure care. Agency Final Comment, p. 72. Clearly, the Agency is primarily concerned about reducing the hydraulic head on the liner not during the active life of the CCR surface impoundment, but rather during closure and post-closure care. MWG Second Comments, p. 20. Yet, if a pond is going to be closed by removal, and the removal does not require the extra dewatering assistance provided by a leachate collection system, there is no reason to require a leachate collection system for closure or post-closure care. Moreover, MWG's proposed modification provides specificity and clarity, which will assist in avoiding future disputes with the Agency during implementation of the rule. Accordingly, if there is to be any requirement for a leachate collection system, the Board should adopt MWG's proposed language limiting leachate collection systems to ponds that are greater than 20 acres, because it is consistent with the Agency's stated purpose for and use of a leachate collection system.

c. The Board Should Accept MWG's Reasonable Modifications to the Groundwater Monitoring Program.

In its final comment, the Agency proffers the unsubstantiated conclusion that a single detection in exceedance of the groundwater protection standard of one constituent in one quarterly sampling event constitutes confirmation of a release that requires initiation of corrective action. The Agency has presented no evidence or justification for such an extreme position. It finds no basis in the federal CCR Rule. As the Agency acknowledges, the federal CCR Rule instead provides a two-tier groundwater monitoring program to determine *if* there is an exceedance. Agency Final Comments, p. 40. Nevertheless, the Agency advances the incredible assumption that a single detection in exceedance of the groundwater protection standard of one constituent in one quarterly sampling event under a single tier groundwater program is itself, without more, a "confirmed" exceedance. *Id.*, p. 41. There is no evidence in the record to support the Agency's position. Instead, the record demonstrates that anomalies occur in

sampling results. MWG Second Comment, p. 7. Because anomalies can and do occur, the better, more scientific approach is to sample at least one more quarter to confirm that the exceedance is a real value and not a testing anomaly. *Id.* Otherwise, an owner or operator would be required to initiate costly and useless corrective actions before it can be determined whether there is a confirmed exceedance.

The Agency also rejected the suggestion that the timeline to develop background data for existing CCR surface impoundments be extended to one year without even addressing Mr. Gnat's unrefuted opinion that evaluating groundwater over all four seasons is an important step to ensure that accurate and adequate background data is captured. Ex. 52, p. 11. The Agency also summarily dismisses the requirement that the data must be independent, seemingly arguing that the owner/operator could achieve this simply by increasing the number of samples taken. Agency Final Comment, pp. 39-40. But where is the evidence or technical support that simply by collecting more samples within a much shorter timeframe provides the needed independent data? The Agency provides neither. The Agency's approach fails to satisfy the U.S.EPA Uniform Guidance requirements that the data should be both independent and temporally separated. MWG Second Comment, p. 4-5. Because the evidence in the record demonstrates that the final rule should require a minimum of one year to develop accurate background groundwater data for existing CCR surface impoundments, the Board should modify Section 845.650 as MWG suggested. *See* MWG Second Comments, App. A.

In response to MWG's proposal to reduce the number of constituents sampled throughout the active impoundment and post-closure time periods, the Agency contends that reducing the constituents would not be as protective as Part 257. But the Agency is again ignoring that Part 257 is a two-tiered program. Under the first tier, only seven constituents in Appendix III need to be evaluated (Detection Monitoring). 40 CFR 257.94. If there is a statistically significant increase over the background concentration of the Appendix III constituents, then an owner/operator must conduct additional sampling to evaluate the Appendix IX constituents (Assessment Monitoring). 40 CFR 257.94(e). Following one round of sampling for the Appendix IV constituents, the owner/operator must analyze for both the Appendix III constituents and the Appendix IV constituents that were detected. 40 CFR 257.95(b), (d). By comparison, in Part 845, an owner/operator must monitor all 20 constituents, regardless of whether it they are detected in the CCR within the pond or in the groundwater, for the entire active life of the pond and through

at least 30 years of post-closure. The Illinois CCR Rule can allow an owner/operator to reduce the number of constituents analyzed while still being consistent with the Federal CCR Rule. In consideration of the Illinois EPA's comments, MWG suggests an additional sentence to its proposed 845.650(a)(1):

a) The owner or operator of a CCR surface impoundment must conduct groundwater monitoring consistent with this Section. At a minimum, groundwater monitoring must include groundwater monitoring for all constituents with a groundwater protection standard in Section 845.600 and Calcium. The owner or operator of the CCR surface impoundment must submit a groundwater monitoring plan to the Agency with its operating permit application.

1) After twelve quarters of groundwater monitoring, an owner or operator may petition the Agency to reduce the constituents analyzed based upon the CCR leachate chemistry in a CCR surface impoundment. The leachate characterization may consist of either sampling and analysis of pore space liquid within the CCR or applicable laboratory leach testing of representative CCR sample(s) for the groundwater monitoring constituents listed in Section 845.600 and Calcium. **The owner or operator must analyze for all of the constituents in Section 845.600 annually.**

III. MWG Agrees and Supports the Illinois EPA Conclusions on the Scope and Protectiveness of the Proposed CCR Rule.

Other than as described here and in MWG's second post-hearing comments, MWG agrees with the proposed rule; and, the Illinois EPA's conclusions on its scope, and that the execution of the rule will be protective of human health and the environment. Specifically, MWG supports the Illinois EPA's conclusion that an Illinois EPA-approved corrective action and closure that achieves the groundwater protection standards, including at sites in which groundwater is contacting CCR, "will be protective of human health and the environment." Agency Final Comments, p. 12. The Agency also correctly states that, pursuant to the mandate under Section 22.59 of the Illinois Environmental Protection Act ("Act"), Part 845 is designed to regulate CCR surface impoundments, and limiting it to CCR surface impoundments is "necessary and appropriate." *Id.* at 10. For the same reasons, MWG also agrees that a groundwater monitoring network, including the location of the background wells, must be established at the CCR surface impoundment boundary. *Id.* Similarly, the purpose of an alternative source demonstration is to show that the CCR surface impoundment is not the source of the constituents in the groundwater. Accordingly, the Board should not expand the final rule beyond the requirements set forth in Section 22.59 of the Act. *Id.*

a. Closure-in-Place When CCR is in Contact with Groundwater Can Still Be Protective of Human Health and the Environment

The Agency correctly notes that groundwater may be in contact with CCR and still be protective of human health and the environment. The Agency states that Part 845 requires that any corrective action and closure approved by the Agency must achieve the groundwater protection standards of Section 845.600. Agency Final Comments, p. 12. Because the groundwater protection standards are protective of human health and the environment, any corrective action and closure approved by the Agency, including those instances when the groundwater is in contact with the CCR will be protective of human health and the environment. *Id.*

The Board can also look to its own decisions, as well as decisions and opinions by Illinois EPA, U.S.EPA, and the Environmental Group's witness testimony, to support the conclusion that groundwater may be in contact with CCR and still be protective of human health and the environment. At MWG's Powerton Station, there is a historic coal ash area called the Former Ash Basin that was previously used as an ash impoundment, and through which there is flow from the Illinois River. *Sierra Club et al v. Midwest Generation, LLC,* PCB 13-15, June 20, 1999, p. 39-41. Despite being in contact with the Illinois River, the Board found that no coal ash constituents were found in the groundwater, and concluded that the Former Ash Basin was not a source of contamination. *Id,* at 41. Similarly, the Lincoln Stone Quarry has been regulated and permitted as a Subpart C landfill by the Illinois EPA for forty years. Environmental Group's Ex. 2, p. 43. In 1996, the Board granted an adjusted standard from the generally applicable landfill standards to the former owner of the Lincoln Stone Quarry. *In the Matter of: Petition of Commonwealth Edison Company for an Adjusted Standard from 35 Ill. Adm. Code Parts 811 and 814,* AS96-9, Aug. 15, 1996. In the Board's Adjusted Standard Order, the Board recognized that the groundwater flows through the CCR in the landfill. *Id*. p. 5. Even with that information, the Board granted an adjusted standard from the generally applicable landfill regulations, concluding that the adjusted standard would not result in any environmental or health effects substantially more adverse then those considered by the Board when passing the generally applicable rule. *Id*. p. 6, 14, 18-19. In fact, one of the alternative standards the Board granted was an alternative method of closure in place, in which a soil cap and drain would be installed over the CCR. *Id*. p. 23. There is no requirement to separate the CCR from the groundwater. *Id.*

Moreover, the U.S.EPA evaluated the Lincoln Stone Quarry and determined it was not a "damage case" that needed to be addressed by the requirements of the federal CCR Rule. The U.S.EPA's evaluation was comprehensive. It included reviewing the Lincoln Stone Quarry's permit, the Board approved adjusted standard, the groundwater management zone, and the groundwater monitoring program. Environmental Group Final Comment, Attachment 3, p. 43-49. The U.S.EPA did not identify any damage to human health or the environment from the Lincoln Stone Quarry and concluded that it was not a damage case. *Id* at 49. Finally, the Environmental Group's own witness, Mark Hutson, was the lead author of the Groundwater Impact Assessment ("GIA") conducted at the Lincoln Stone Quarry. Ex. 14, Attachment 3, p. 3-4, Ex. 15, p. 48. Mr. Hutson stated that the GIA was conducted to assist MWG to investigate the nature and extent of a release from the landfill and remedial options to minimize future releases. *Id*. Mr. Hutson stated that the results of the GIA were being implemented by MWG to adequately contain contamination and avoid exposures to the surrounding residents. *Id*. Collectively, the Board's finding that the Former Ash Basin was not a source of contamination, the Board's decision to grant an adjusted standard for the Lincoln Stone Quarry, the Illinois EPA's permitting of the Lincoln Stone Quarry, the U.S.EPA's conclusion that the Lincoln Stone Quarry was not a damage case, and the Environmental Group's own expert's finding that exposures to the surrounding residents from the Lincoln Stone Quarry have been avoided should give the Board assurances that it is possible for CCR to remain in contact with the groundwater and still be protective of human health and the environment.

Based upon these real-life examples, closure in place, even when the groundwater is in contact with the CCR, can be protective of human health and the environment. Accordingly, the Agency is correct to treat each CCR surface impoundment on a case-by-case basis pursuant to the factors in Section 845.710. Ex. 49, p. 5. As Ms. Shealey explained, closure by removal is not necessarily more protective in all instances. *Id.* Depending on the size, location, and operation of the CCR surface impoundment, the short and long-term risks of the closure options varies significantly. *Id.*, p. 6. Ms. Shealey explained that removing CCR from relatively small ponds takes approximately six weeks to six months depending upon the size of the pond and is practicable and reasonable. Ex. 50, p. 16. By comparison, removal of CCR from large CCR surface impoundments would likely take decades potentially causing damage to the neighboring communities due to the vehicle traffic. *Id.*

Throughout the Environmental Group's demand for removal of CCR from the CCR surface impoundments, they fail to describe where they believe the CCR will go. Their witness, Mr. Rehn, stated that he believed the CCR will likely be disposed in landfills, but he did not conduct any evaluation of whether there is sufficient existing landfill capacity to accommodate the CCR in Illinois or in neighboring states, nor was he aware of the permitting process for siting and permitting a new landfill. Ex. 17, pp. 14-15. The Board should not entertain the Environmental Group's suggestion that complete removal is the only safe option because they do not provide persuasive support for that position, and they are unable to identify how to complete all of the resulting removals, including adequate locations for the ultimate destination of the removed CCR. In sum, the evidence in the record demonstrates that closure in place when a CCR in a surface impoundment is in contact with groundwater can still be protective of human health and the environment.[1]

b. The Purpose of Part 845 is to Regulate CCR Surface Impoundments.

As the Agency correctly advocates, Part 845 is designed to regulate CCR surface impoundments and the Board should not expand this rulemaking beyond the regulation of such impoundments. Because Section 22.59 of the Act mandates adoption of the rules within a year, limiting Part 845 to CCR surface impoundments is "necessary and appropriate." Agency Final Comments, p. 10. (See also, Gnat testimony that the purpose of the rule is to specifically regulate CCR surface impoundments. Ex. 52, p. 7.)

Besides the fact that expanding the scope of Part 845 is beyond the legislative mandate, it is unnecessary because existing Illinois law addresses the areas that the Environmental Groups claim need to be regulated. For example, non-impoundment areas at a power station are subject to the Act, including Sections 12 (water pollution) and 21 (open dumping), and the Board regulations promulgated thereunder, including the general groundwater rules in Section 620. 415 ILCS 5/12, 21; 35 Ill. Adm. Code 620. Because power stations are subject to the Act and the Board rules, owners and operators already have a duty and obligation to follow the law to prevent or to address releases to the environment. In addition to being unnecessary, there has been no proposed rule language brought forth by the Environmental Groups to address their concerns about purported CCR landfills, the alleged unconsolidated fill areas, or even the coal

[1] MWG recommends that the Board look to the City of Springfield's post-hearing comments for additional discussion that closure by removal is not necessarily the environmentally preferred closure method. City of Springfield Post-Hearing Comments, pp. 12-15.

piles. The Board cannot on Second Notice propose new language regulating an entirely new subject and areas of power stations without the opportunity for the stakeholders to review and comment. 415 ILCS 5/27. For these reasons, the Board should reject the Environmental Group's suggestion that the Board expand this rulemaking beyond regulation of the CCR surface impoundments. [2]

For the same reasons that Part 845 cannot be expanded beyond CCR surface impoundments, the Agency is also correct that establishing the background wells at the CCR surface impoundment upgradient boundary is the appropriate location. Agency Final Comments, p. 12-13. Mr. Gnat also testified that it is critical to consider the groundwater quality "immediately prior to its passing beneath the impoundment…" to ensure that the groundwater network accurately identifies any potential releases from the CCR surface impoundment. Ex. 52, p. 7. Similarly, the Agency is correct an alternative source demonstration need only demonstrate that the CCR surface impoundment is not the source, and there should not be a requirement to identify the source. Agency Final Comments, pp. 12-13. It is not required by legislative mandate nor necessary to require identification of the other potential source, given there is already authority under Illinois law to investigate potential sources of contamination. Moreover, identifying the specific source may be very difficult in a highly industrialized area. Due to the aggressive schedule set by the Illinois EPA for submitting and approving or disapproving an alternative source demonstration, it would not be feasible to also identify the specific source or sources of a release beyond confirming it is not from a CCR surface impoundment. Similarly, because of the tight deadlines, it would also be infeasible to include the alternative source demonstration as part of the CCR surface impoundment permit. Agency Final Comments, p. 13. Nor should such a requirement, wholly unrelated to an impoundment, be made a part of a permit that is intended to regulate only the impoundment.

IV. <u>The Modifications Suggested by the Environmental Group should not be Adopted.</u>

The Environmental Group has provided no technical or evidentiary basis to support most of its recommended changes to the Illinois CCR Rule. This should be reason enough for the Board not to accept them. But there are also substantive reasons why several of their recommended changes should not be accepted. The Environmental Group's discussion of a

[2] MWG also recommends that the Board look to the City of Springfield's post-hearing comments for additional discussion that the Board should not expand the rulemaking areas beyond the Agency stakeholder process and this rulemaking. City of Springfield Post-Hearing Comments, pp. 3-5.

public meeting conducted pursuant to the Federal CCR Rule is inapplicable here because the public participation in the Federal CCR Rule is vastly different than the Illinois CCR Rule. The Environmental Group's suggestion to require fugitive dust monitoring lacks sufficient evidence in the record to demonstrate that such monitoring is required. And, because a professional engineer's work is held to a high statutory standard of reliability, there is no need for the Illinois EPA review and approve every plan and assessment required under the CCR Rule, nor do the plans and assessments need to be included in the permit. The Environmental Group also wrongly attempts to exclude one of the statistical tools, intrawell statistics, used to analyze the groundwater. Intrawell statistics can be a useful tool to examine and evaluate groundwater conditions, and in any event, the Illinois EPA's review and approval of corrective action, closure and groundwater monitoring reports will effectively call out any feared misuse of this tool. Similarly, the Environmental Group has not provided sufficient evidence to demonstrate that the Illinois CCR Rule should also require surface water and sediment sampling.

a. The Federal CCR Rule Public Meeting Requirements Are Not Comparable to the Illinois CCR Rule Requirements.

The Environmental Group's comparison of a meeting under the Federal CCR Rule to the meeting requirements under the Illinois CCR Rule is a false equivalence, because the two rules are vastly different. The public meeting requirements under the Illinois CCR Rule are far greater in breadth and scope than the Federal CCR Rule. Under the Federal CCR Rule, an owner/operator must "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." 40 CFR 257.96(e). By comparison, the Proposed Illinois CCR rule requires the owner or operator to host two meetings at least 30 days before submission of a construction permit application, the owner or operator must post the documentation relied upon in making the tentative construction permit to be available at least 14 days before the meeting, and provide public notice of the meeting in four different manners in English and in the appropriate non-English language where necessary. 35 Ill. Adm. Code 845.240. The Agency has also proposed additional requirements to this section in its final comments. Agency Final Comments, pp. 67-68.

Because the public meeting requirement in the Federal CCR Rule is significantly different from the public meetings requirements in the Illinois CCR Rule, the Environmental Group's comparison of the public meeting held by Midwest Generation pursuant to the Federal

CCR Rule is very misleading and incomplete. The Environmental Group's self-serving citation to their own impression of the meeting does not accurately reflect how the meeting went, nor the impressions held by the neighbors who live near the Lincoln Stone Quarry. In 2019, Midwest Generation conducted a lengthy meeting pursuant to the Federal CCR Rule. The meeting's purpose was to present the results of MWG's corrective measures assessment so that the public could comment upon it and ask questions. The meeting's purpose was not to present what corrective measures would subsequently be selected. Hence, the main purpose of the meeting was to both inform and to collect input from the public. The meeting accomplished both purposes. To inform the public, Midwest Generation presented a plethora of factual information and technical data to the public, including numerous maps and diagrams describing the history of the Lincoln Stone Quarry, the groundwater flow and monitoring network, and the engineered solution for closure. Its employees and consultants were readily available to answer questions and to provide further explanation where necessary. As Ms. Shealey stated, MWG talks to its neighbors both before and when it makes decisions related to its power stations that will have an impact on them. 9/30/2020 Tr. p. 69:7-9, Ex. 50, p. 12. Notably, the letters the Environmental Group cites are from an office building located in Chicago, well over 10 miles from the Lincoln Stone Quarry.

The Illinois EPA has proposed various modifications to the public comment sections in the Illinois CCR Rule. MWG does not object to the Illinois EPA's proposed modifications, but the Board should reject the onerous and unnecessary modifications that the Environmental Group have proposed.

b. The Proposed Fugitive Dust Control Plan Requirements are Protective of Human Health and the Environment.

The required contents of a fugitive dust control plan, as proposed in the Illinois CCR Rule, provides flexibility to owners or operators to use alternative methods to control fugitive dust and also be protective of human health and the environment. However, the Board should reject the Environmental Group's proposal to also require fugitive dust monitoring. The Environmental Group provided no evidence that fugitive dust control plans have been ineffective in preventing fugitive dust. The fugitive dust control plans for Federal CCR surface impoundments are available on the federal CCR websites. And yet, the Environmental Group has not identified any flaw in any of the fugitive dust control plans that warrant the additional monitoring requirements

it proposes. Instead, the Environmental Group offers mere speculation that the fugitive dust control plan may not work to support its push for requiring a monitoring program. Environmental Group Final Comments, p. 63-64.

Also, the evidence in the record demonstrates that implementing a fugitive dust monitoring program is likely infeasible. Ms. Shealey testified that there may not be sufficient time to conduct the baseline fugitive dust monitoring before construction work begins. 9/30/2020 Tr., p. 58:3-9. She also testified that the fugitive dust monitoring she was familiar with were located at large Superfund sites, and that she has never seen similar monitoring conducted at CCR surface impoundments. 9/30/2020 Tr. p. 58:16-59:13. She concluded that such monitoring was not reasonable or feasible. 9/30/2020 Tr. p. 59:14. The evidence in the record demonstrates that the Board should not include fugitive dust monitoring in the final rule.

c. Certification By a Professional Engineer Is Sufficient to Confirm Accuracy of Plans and Assessments.

The Environmental Group claims that certain plans and assessments must be reviewed and approved by the Illinois EPA because the review by a "third party" is insufficient. Yet, the "third party" they are describing is not an unqualified person, but a licensed professional engineer. As MWG stated in its Second Comments, pursuant to Illinois law, a professional engineer's "primary obligation is to protect the life, health, property, and welfare of the public." 68 Ill. Adm. Code 1380.300(a)(1). They are also required to be "completely objective and truthful in all professional reports, statements or testimony," and may only express a professional opinion on technical subjects when "it is founded upon adequate knowledge of the facts and a background of competence on the subject matter." 68 Ill. Adm. Code 1380.300(c)(1), (2). If a professional engineer fails to follow these obligations, serious sanctions may be imposed, including license revocation and fines up to $10,000 per violation. 225 ILCS 325/24. In short, a certification by a professional engineer inherently includes a conclusion that life, health, property, and welfare of the public are protected, that the report is objective and truthful, and is founded upon knowledge of the facts. The Environmental Group's attempts to discredit the certifications of a professional engineer as merely a "third party" certification mischaracterizes and trivializes the weight of a professional engineer certification.

Moreover, despite its assertions that there "could" be errors or flaws, intentional or otherwise, the Environmental Group does not identify any actual flaws or errors in any plans or

assessments. Many of the certifications and plans for federal CCR surface impoundments, including the fugitive dust control plan, the structural stability assessments, and the safety factor assessments, are on the publicly available CCR surface impoundment websites. And yet the Environmental Group does not identify any errors or fraud in any of the plans or assessments. In fact, Mr. Rehn admitted that he had not conducted an analysis to support his conjecture that there were inappropriate assumptions or errors in the assessments. Ex. 17, p. 11. Accordingly, there is no evidence in the record that the conclusions and assessments of a professional engineer are inaccurate or untrustworthy. Because a professional engineer is held to a higher standard and there is no evidence in the record that the professional engineer's judgment or conclusions are unreliable, there is no reason to require the plans and assessments be reviewed and approved by the Agency.

d. The Plans and Assessments Do Not Need to be Permit Conditions.

For the very reason that the plans and assessments are certified by professional engineers, which carries with it a confirmation that the information and conclusions are accurate and trustworthy, the Board should reject the Environmental Group's suggestion that the plans and assessments become enforceable conditions of the permits. Such an approach is not only unnecessary but imposes unwarranted burdens upon the permitting process. The Illinois EPA has already stated that it is "opposed to making the [fugitive dust control plan, emergency action plan and the safety and health plan] all enforceable permit conditions,…" 8/11/2020 Tr. p. 191, p. 20-21. The Agency reaffirmed that opposition in its supplemental answers to questions, stating that permitting is only one piece of Part 845, and the regulations are enforceable on their own outside of the permit. Agency First Comments, Attachment 1, p. 2. It adds nothing to the purpose of the permitting program, other than more conditions reciting the existence of such plans, and may even require unnecessary but burdensome permit modifications whenever any of these plans are updated or modified based on site-specific developments. Therefore, the Board should reject the Environmental Group's suggestion that they should be included in the permit.

e. The Board Should Not Eliminate a Useful Tool for Statistical Analysis.

The Environmental Group also demands that the Board specifically exclude intrawell statistical analysis from the CCR Rule. An intrawell statistical analysis is one of several tools that a hydrogeologist or professional engineer may use to evaluate the groundwater passing the waste boundary of the CCR surface impoundment. The Environmental Group speculates that the

use of an intrawell statistical analysis could be used improperly, but provides no specific example of such alleged misuse. Environmental Group Final Comments, p. 23-24. Even if it were true that intrawell statistical analysis were somehow improperly utilized by an Illinois power station, the Illinois EPA's review would identify it as part of the permit application submittal, or any other report analyzing the groundwater (*e.g.* the alternative source demonstration). Moreover, there is no other example of a generally applicable rule specifically excluding one of the available groundwater statistical analysis, or other tools to evaluate the groundwater. The Board should reject the Environmental Group's unprecedented request to exclude one of the available tools to evaluate groundwater data.

f. There Is No Basis to Conduct Surface Water or Sediment Sampling

The Board should also reject the Environmental Group's suggestion to conduct surface or sediment sampling. The only basis the Environmental Group relies upon is one study from 2010. Ex. 15, Attachment 1. One study from one site in the United States without any further support is merely anecdotal, and insufficient to support adding an additional analysis to a generally applicable rule. Moreover, the study does not support the Environmental Group's request. Ex. 15, Attachment 1. The single study is a natural attenuation of arsenic demonstration that concludes that the arsenic concentrations in the groundwater at the CCR landfill were decreasing, including in the sediment sampling. *Id*, p. 6-1. Accordingly, the study demonstrates that even if it can be accepted that constituents in the groundwater from a CCR surface impoundment concentrate in the sediments, the constituents naturally attenuate. *Id.* Also, the Environmental Group's witness, Mr. Hutson, stated that the U.S.EPA Risk Assessment did not identify an unacceptable risk to surface waters or sediments associated with groundwater contamination from CCR surface impoundments. Ex. 15, pp. 29-30. There is no need or basis for adding sampling of sediment and surface water sampling to the Illinois CCR Rule.

g. The Environmental Group Made Factual Errors in its Final Comments.

The Environmental Group made two incorrect statements in its final comments that must be called out here to correct the record on MWG's power stations. The Environmental Group stated that the U.S.EPA identified the Lincoln Stone Quarry as a "damage" case. Environmental Group Final Comments, p. 50. That is patently not true. U.S.EPA identified the damage cases in Volume I of its Damage Case Compendium. *See* Alexander Livnat, *Damage Case Compendium Vol. I: Proven Damage Cases*, EPA-HQ-RCRA-2009-0640-12188 (Dec. 18, 2014). The Lincoln

Stone Quarry was identified as a potential damage case in Volume IIb, Part One: "Potential Damage Cases." *See* Attachment 3 of the Environmental Group Final Comment, p. 1, 49. Additionally, the Environmental Group incorrectly described a landfill as "Midwest Generation's Powerton Plant Mahoney Landfill in Pekin", citing to their Attachment 1. Environmental Group Comments, p. 50. Environmental Group Final Comment, p. 50. The Attachment 1 attached to their comments does not include any description of a Powerton Plant landfill. In any case, there is no such landfill at the MWG Powerton Plant. A 2009 Illinois EPA Region Three Landfill Capacity Report, attached here as Attachment B, shows that there was a landfill located approximately one mile south of the Powerton Plant that was owned by D.J. Mahoney, and permitted by the City of Pekin. Attachment B, p. 23. The Environmental Group's factual information on both of these points is plainly not accurate.

V. Conclusion

Midwest Generation appreciates the opportunity provided by the Board to submit these responses to the stakeholders post-hearing comments and looks forward to the issuance of a CCR Rule which adequately addresses the issues described herein.

Respectfully submitted,
Midwest Generation, LLC

By: */s/Kristen L. Gale*
Kristen L. Gale

Dated: November 6, 2020

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ATTACHMENT A

methods can be found in the supporting documentation in Docket ID: EPA–HQ–OPP–2011–0666–0025. *Contact:* RD.

5. *PP* 9F8809. (EPA–HQ–OPP–2020–0004). Nichino America, Inc., 4550 Linden Hill Road, Suite 501, Wilmington, DE 19808, requests to establish a tolerance in 40 CFR part 180 for residues of the herbicide, pyraclonil in or on tice at 0.01 ppm. An independently validated analytical method is used to measure and evaluate the chemical pyraclonil. *Contact:* RD

Authority: 21 U.S.C. 346a.

Dated: February 19, 2020.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2020–04265 Filed 3–2–20; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 257

[EPA–HQ–OLEM–2019–0173; FRL–10005–81–OLEM]

RIN 2050–AH11

Hazardous and Solid Waste Management System: Disposal of CCR; A Holistic Approach to Closure Part B: Alternate Demonstration for Unlined Surface Impoundments; Implementation of Closure

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On April 17, 2015, the Environmental Protection Agency (EPA or the Agency) promulgated national minimum criteria for existing and new coal combustion residuals (CCR) landfills and existing and new CCR surface impoundments pursuant to the Resource Conservation and Recovery Act of 1976 (RCRA), as amended. In this action, EPA is proposing procedures to allow facilities to request approval to operate with an alternate liner for existing CCR surface impoundments, two co-proposed options to allow the use of CCR during unit closure, an additional closure option for CCR units being closed by removal of CCR, and requirements for annual closure progress reports. Regarding the options to allow the use of CCR during unit closure, this action serves as a supplemental proposal to a proposed rule issued on March 15, 2018. In that March 2018 proposal, the Agency proposed to allow the continued placement of CCR in units triggered for closure to construct final cover systems provided certain conditions were met.

DATES: *Comments.* Comments must be received on or before April 17, 2020. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before April 2, 2020. *Public Hearing.* EPA will hold a public hearing on April 9, 2020. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing.

ADDRESSES: You may send comments, identified by Docket ID. No. EPA–HQ–OLEM–2019–0173, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov* (our preferred method). Follow the online instructions for submitting comments.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OLEM–2019–0173, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery/Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

EPA will hold a virtual public hearing. EPA will announce further details on the public hearing website (*https://www.epa.gov/coalash*) in advance of the hearing. The hearing will convene at 9:00 a.m. (EST) and conclude at 6:00 p.m. (EST). If necessary, the hearing may go later to accommodate all those wishing to speak. For additional information on the public hearing see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Please note that if this hearing is held at a U.S. government facility, individuals planning to attend the hearing should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. Please note that the REAL ID Act, passed by Congress in 2005, established new requirements for entering federal facilities. For purposes of the REAL ID Act, EPA will accept government-issued IDs, including drivers' licenses, from the District of Columbia and all states and territories except from American Samoa. If your identification is issued by American Samoa, you must present an additional form of identification to enter the federal building where the public hearing will be held. Acceptable alternative forms of identification include: Federal employee badges, passports, enhanced driver's licenses, and military identification cards. For additional information for the status of your state regarding REAL ID, go to: *https://www.dhs.gov/real-id-enforcement-brieffrequently-asked-questions.* Any objects brought into the building need to fit through the security screening system, such as a purse, laptop bag, or small backpack. Demonstrations will not be allowed on federal property for security reasons.

FOR FURTHER INFORMATION CONTACT: For questions concerning this proposed rule, contact Jesse Miller, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, MC: 5304P, Washington, DC 20460; telephone number: (703) 308–1180; email address: *Miller.Jesse@epa.gov.* For more information on this rulemaking please visit *https://www.epa.gov/coalash.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Public Hearing

The EPA will begin pre-registering speakers for the hearing upon publication of this document in the **Federal Register**. To register to speak at the hearing, please use the online registration form available on EPA's CCR website (*https://www.epa.gov/coalash*) or contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to register to speak at the hearing. The last day to pre-register to speak at the hearing will be April 7, 2020. On April 6, 2020, the EPA will post a general agenda for the hearing on EPA's CCR website (*https://www.epa.gov/coalash*).

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule. Additionally, requests to

speak will be taken the day of the hearing according to the procedures specified on EPA's CCR website (*https://www.epa.gov/coalash*) for this hearing. The Agency will make every effort to accommodate all speakers who arrive and register, although preferences on speaking times may not be able to be fulfilled.

Each commenter will have 5 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) to the person listed in the **FOR FURTHER INFORMATION CONTACT** section. If EPA is anticipating a high attendance, the time allotment per testimony may be shortened to no shorter than 3 minutes per person to accommodate all those wishing to provide testimony and have pre-registered. While EPA will make every effort to accommodate all speakers who do not preregister, opportunities to speak may be limited based upon the number of preregistered speakers. Therefore, EPA strongly encourages anyone wishing to speak to preregister. Participation in the virtual public hearing does not preclude any entity or individual from submitting a written comment.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing. Verbatim transcripts of the hearings and written statements will be included in the docket for the rulemaking.

Please note that any updates made to any aspect of the hearing is posted online on EPA's CCR website at *https://www.epa.gov/coalash*. While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact person listed in the **FOR FURTHER INFORMATION CONTACT** section to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the service of a translator, please pre-register for the hearing and describe your needs by March 26, 2020. If you require special accommodations such as audio description or closed captioning, please pre-register for the hearing and describe your needs by April 2, 2020. We may not be able to arrange accommodations without advanced notice. Registrants should notify the person listed in the **FOR FURTHER INFORMATION CONTACT** section and indicate on the registration form of any such needs when they pre-register to speak.

B. Docket

The EPA has established a docket for this action under Docket ID No. EPA–HQ–OLEM–2019–0173. The EPA has previously established a docket for the April 17, 2015, CCR final rule (80 FR 21302) under Docket ID No. EPA–HQ–RCRA–2009–0640, and a docket for proposed amendments to the 2015 CCR rule (also known as the Phase One proposed rule) under Docket ID No. EPA–HQ–OLEM–2017–0286. All documents in the docket are listed in the *https://www.regulations.gov* index. Publicly available docket materials are available either electronically at *https://www.regulations.gov* or in hard copy at the EPA Docket Center. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

C. Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OLEM–2019–0173, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

D. Submitting CBI

Do not submit information that you consider to be CBI electronically through *https://www.regulations.gov* or email. Send or deliver information identified as CBI to only the following address: ORCR Document Control Officer, Mail Code 5305–P, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; Attn: Docket ID No. EPA–HQ–OLEM–2019–0173.

Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. If you submit a CD–ROM or disk that does not contain CBI, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

II. General Information

A. Does this action apply to me?

This rule applies to all CCR generated by electric utilities and independent power producers that fall within the North American Industry Classification System (NAICS) code 221112 and may affect the following entities: electric utility facilities and independent power producers that fall under the NAICS code 221112. This discussion is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This discussion lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not described here could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria found in § 257.50 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What action is the Agency taking?

EPA is proposing to amend the regulations governing the disposal of CCR in landfills and surface impoundments finalized in the April 15, 2015 publication of the CCR rule (2015 CCR rule). Specifically, the Agency is proposing revisions to the 2015 CCR rule, including: procedures to allow facilities to request approval to use an

alternate liner for CCR surface impoundments; two co-proposed options to allow the use of CCR during unit closure; an additional closure option for CCR units being closed by removal of CCR; and requirements for annual closure progress reports.

In this proposal, EPA is not reconsidering, proposing to reopen, or otherwise soliciting comment on any other provisions of the final CCR rule beyond those specifically identified in this proposal. The EPA will not respond to comments submitted on any issues other than those specifically identified in this proposal and they will not be considered part of the rulemaking record.

C. What is the EPA's authority for taking this action?

These regulations are established under the authority of sections 1008(a), 2002(a), 4004, and 4005(a) and (d) of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) and the Water Infrastructure Improvements for the Nation (WIIN) Act of 2016, 42 U.S.C. 6907(a), 6912(a), 6944, and 6945(a) and (d).

D. What are the incremental costs and benefits of this action?

This action is expected to result in net cost savings amounting to between $ 41 million and $ 138 million per year when discounting at 7%. Further information on the economic effects of this action can be found in Unit V of this preamble.

III. Background

On April 17, 2015, EPA finalized national minimum criteria for the disposal of CCR as solid waste under Subtitle D of the Resource Conservation and Recovery Act (RCRA) in a final rule entitled ''Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities'' (80 FR 21302) (2015 CCR rule). The 2015 CCR rule regulates existing and new CCR landfills and existing and new CCR surface impoundments and all lateral expansions of CCR units. It is codified in subpart D of part 257 of Title 40 of the Code of Federal Regulations. The criteria consist of location restrictions, design and operating criteria, groundwater monitoring and corrective action requirements, closure and post-closure care requirements, and record keeping, notification and internet posting requirements. The 2015 CCR rule also required any existing unlined CCR surface impoundment that is contaminating groundwater above a regulated constituent's groundwater protection standard to stop receiving wastes and either close or retrofit, except in certain circumstances. This closure requirement applied only to ''unlined'' CCR surface impoundments, while units with either a composite liner, an alternative composite liner, or a compacted soil liner (typically a clay liner) that met the requirements of § 257.71(a) were allowed to operate indefinitely.

The rule was challenged by several parties, including a coalition of regulated entities and a coalition of environmental organizations (''Environmental Petitioners''). Environmental Petitioners raised one challenge that is relevant to this proposed rule: They challenged the provision that allowed existing, unlined surface impoundments to continue to operate until they exceeded the groundwater protection standard. 40 CFR 257.101(a)(1). They contended that EPA failed to show how continued operation of unlined impoundments met RCRA's baseline requirement that any solid waste disposal site pose ''no reasonable probability of adverse effects on health or the environment.'' 42 U.S.C. 6944(a).

The U.S. Court of Appeals for the D.C. Circuit issued its decision on August 21, 2018. The Court upheld most of the rule but ruled for the environmental petitioners on this claim. The court held that EPA acted ''arbitrarily and capriciously and contrary to RCRA'' in failing to require the closure of unlined surface impoundments and in classifying so-called ''clay-lined'' impoundments as lined. The court ordered that these provisions be vacated and remanded back to the Agency. *Utility Solid Waste Activities Group, et al.* v. *EPA,* 901 F.3d 414, 449 (D.C. Cir. 2018). This decision is referred to as the '*USWAG* decision' in this proposal.

IV. What is EPA proposing to amend?

This action proposes to create a process for EPA or the Participating State Director to approve an alternate liner for CCR surface impoundments, to allow the use of CCR during closure of a CCR unit, to establish an additional closure option for CCR units being closed by removal of CCR, and to establish requirements for annual closure progress reports.

A. Alternate Liner Demonstration

The 2015 CCR rule required that all existing unlined CCR surface impoundments that caused groundwater concentrations to exceed associated groundwater protection standards (GWPS) must stop receiving waste and either retrofit or close. In the 2015 CCR rule, the term ''unlined'' CCR surface impoundment included any unit not constructed with one of the following types of liners: (1) Composite liner; (2) alternative composite liner; or (3) liner consisting of a minimum of two feet of compacted soil with a hydraulic conductivity of no more than $1x10^{-7}$ cm/s.[1] See § 257.71(a). On the other hand, lined CCR surface impoundments (as defined in the CCR regulations) that impact groundwater above the specified GWPS are not required to close and could continue operations while corrective action was performed, and the source of the leak was addressed.

On August 21, 2018, the U.S. Court of Appeals for the District of Columbia Circuit found in the *USWAG* decision that the rulemaking record did not support the conclusion that the 2015 CCR rule would adequately address the adverse effects posed by clay-lined CCR surface impoundments. Therefore, the court vacated the provisions that treated clay-lined surface impoundments differently than unlined impoundments, with the result that such units are now required to either retrofit or close. *USWAG,* 901 F.3d at 449 . In response to this ruling, EPA received reports from industry groups and individual companies claiming that some surface impoundments that would now be required to retrofit or close have an engineered liner or underlying soils that are equivalent or even superior to the performance of the liners required by the 2015 CCR rule.[2] EPA agrees it is possible for individual impoundments that are not lined with either a composite liner or alternative composite liner (as those terms are defined in the CCR regulations) to still be protective of human health and the environment. This is possible if the effective hydraulic conductivity of the liner and underling soil is so low that, even if leachate migrates from the unit, the volume of leachate that can be transmitted to the underlying aquifer over time is so small that it will not adversely affect ground water. Therefore, EPA is proposing procedures at § 257.71(d) to allow facilities to submit an alternate liner demonstration to EPA that would provide a sufficient record to support the continued operation of individual unlined surface impoundments that can be demonstrated to pose no reasonable

[1] The liner terms ''compacted soil'' and ''clay-lined'' are used interchangeably in this preamble discussion.

[2] These reports are available in the docket to this rulemaking.

probability of adverse effects on human health or the environment.

The current self-implementing regulations limit the ability of owners and operators to make a site-specific demonstration that the design of a particular impoundment is equivalent to the composite liner system in §§ 257.71(c) and 257.72(c); consequently, a regulatory revision would be necessary. However, the Agency's current record would not support conclusions on whether any individual impoundment has a low enough effective hydraulic conductivity to be protective of human health and the environment, were the unit allowed to continue operations. This would require site-specific data, such as liner performance and surrounding hydrogeologic characterization information. The data available for the 2014 Risk Assessment consisted of distributions compiled at various geographic scales (*e.g.,* local, regional, national). These data were sufficient for that assessment because the purpose was to identify the potential for risk at a national scale; however, the same data could not be used to draw conclusions about any individual impoundment. While reports submitted to EPA by industry since finalization of the 2015 CCR rule have provided valuable information about the characteristics of impoundments anticipated to perform equivalent to the liner system required by the 2015 CCR Rule, these reports generally did not include the type or specificity of data needed to support conclusions about individual impoundments.

Therefore, owners and operators who believe individual surface impoundments meet the § 4004(a) standard and should be allowed to continue operation as designed must provide EPA or a Participating State Director with the site-specific data and analysis necessary to demonstrate this fact. EPA is proposing a process for those facilities to notify and submit the required information and technical data to make such a demonstration. Based on the available groundwater monitoring and location restriction data posted on facilities' websites, EPA believes that it is likely only a small fraction of non-composite lined surface impoundments currently in operation will be able to apply successfully for this demonstration.

EPA is proposing to establish a two-step process: Requiring an initial application and then the submission of the alternative liner demonstration. The application step is designed to ensure that a unit meets minimum requirements before embarking on a comprehensive alternate liner demonstration. The owner or operator must first submit a letter to EPA, no later than 30 days after the effective date of a final rule, declaring their intention to submit a demonstration under this provision. Along with the letter, the owner or operator must submit information to EPA documenting that the facility is in compliance with applicable requirements in 40 CFR part 257 subpart D, including the location restrictions. A copy of the letter and all associated documentation must be simultaneously posted to the facility's CCR public website.

Furthermore, the facility must show that the existing network of monitoring wells is sufficient to capture any releases based on direction of flow, well location, screening depth and other relevant factors, including well construction logs and a sufficient number of diagrams to depict depth to groundwater, the potentiometric surface, and the anticipated direction(s) of groundwater flow across the site (multiple diagrams may be necessary if the direction of flow is affected by seasonal, tidal or other influences),[3] and that there is no indication from groundwater monitoring data that the unit has or will adversely affect groundwater (*i.e.,* no statistically significant increases (SSI) of Appendix IV constituents above relevant GWPS), including documentation of the most recent statistical tests conducted and the rationale for the methods used in these comparisons. Facilities that have improperly placed groundwater monitoring wells or conducted improper statistical analysis of groundwater monitoring results would not be eligible to apply or submit a demonstration. Failure to remain in compliance with all provisions of 40 CFR part 257 subpart D (or any subsequent revisions or permits issued) may be cause to deny the facility's demonstration. EPA will evaluate the information submitted and determine whether or not the surface impoundment is eligible to submit an alternate liner demonstration. EPA will notify the facility of its determination as expeditiously as possible. The facility must also post EPA's determination to its CCR public website. If the application is found by EPA to lack necessary information or specificity, the facility may have an opportunity to resubmit with the required information. However, no resubmissions will be accepted after the initial application deadline, which is the date 30 days after the effective date of a final rule.

In order for an unlined surface impoundment to continue to operate, EPA is proposing that the owner or operator demonstrate that continued operation of the unit would pose no reasonable probability of adverse effects to human health or the environment in the future. This would require that, at a minimum, the owner or operator demonstrate that the surface impoundment has not and will not result in groundwater concentrations above relevant GWPS at the unit boundary (health-based or background, whichever is higher). This is the standard used to trigger corrective action for lined surface impoundments and is considered equally appropriate in this context. The function of the liner system beneath a surface impoundment is to contain the impounded liquid and prevent it from migrating through the subsurface and into the groundwater at a rate that would adversely affect groundwater quality. As designed, the geosynthetic liners required by the 2015 CCR rule would prevent any release of leachate to the subsurface. In contrast, soil-based liners and the underlying soil are permeable by nature and so may have greater potential for leachate to migrate from the unit over time. Thus, if these alternate units together with the surrounding subsurface environment cannot be reasonably anticipated to prevent leakage to a degree that prevent adverse effects to groundwater (*i.e.,* trigger corrective action), then the design and environmental setting of these units cannot be considered equivalent to a lined unit.

Required Lines of Evidence

Both the amount of site-specific data and the complexity of the analyses necessary for a demonstration will vary based on the size of the unit, the type of engineered liner present (or lack thereof), heterogeneity of site geology, and other site-specific factors. Yet there are certain lines of evidence that would need to be incorporated into any demonstration. EPA identified these lines of evidence based on the understanding that the low effective hydraulic conductivity of the liner and surrounding soils is the primary mechanism that will limit release and transport of contaminants. These are characterization of site hydrogeology and characterization of potential infiltration through the liner and underlying soils. However, the more site-specific data that can be incorporated into a demonstration and the greater the characterization of the

[3] This diagram should also include all the water table measurements reported from a standard datum, a map scale, and a legend of any important map symbols.

associated uncertainties, the greater the confidence in the ultimate conclusions and the greater likelihood of approval.

Line of Evidence #1: Characterization of Site Hydrogeology

The first line of evidence that EPA is proposing to require as part of any demonstration is a characterization of the site-specific hydrogeology that surrounds the surface impoundment. Some surface impoundments are located on soils that are expected to have extremely low hydraulic conductivity. However, there are concerns that heterogeneity within these soils may result in preferential flow pathways that effectively negate the low conductivity of the remaining soil. For example, many electric utilities are located in close proximity to bodies of water. The flow path of these water bodies are likely to have shifted over geologic time, which could result in complex depositional environments with interconnected lenses of sand. Therefore, the purpose of this line of evidence is to define the variability of the soil around the impoundment and to ensure that this variability is reflected in any analysis of contaminant fate and transport.

Traditional geologic mapping that relies primarily on the Unified Soil Classification System (USCS) has been found to underestimate the interconnectedness of such deposits, as the USCS was developed for engineering or geotechnical purposes with little emphasis on the identification of depositional environments and the resulting distribution of different types of sediments. In 2017, EPA compiled a practical guide on the use of sequence stratigraphy and facies models to better characterize subsurface heterogeneity.[4] The cited guide is intended to help facilities better define groundwater flow paths and preferential contaminant migration pathways, identify data gaps in the site characterization, determine appropriate locations for wells, and determine appropriate well construction design (*e.g.,* screen intervals).

At a minimum, documentation for this line of evidence would need to include measurements of the hydraulic conductivity in the uppermost aquifer measured from existing monitoring wells and discussion of the methods used to obtain these measurements; conceptual site models with cross-sectional depictions of site stratigraphy that include the relative location of the impoundment (with depth of ponded water noted), monitoring wells (with screening depths noted), and all other subsurface samples used in the development of the conceptual models;[5] a narrative description of the site geological history (*e.g.,* the conditions under which nearby soil layers formed; the potential for any features that may result in preferential flow, such as buried stream beds; the potential location and size of such features); and all of the data used in the conceptual site model summarized into easily readable graphs or tables (*e.g.,* grain size logs, gamma logs). The types and amount of data necessary to adequately characterize site stratigraphy will vary based on the size of the impoundment, the complexity of the subsurface environment, and whether the soil underlying the impoundment will be relied upon to limit contaminant release and migration.[6] There are a number of methods available that can provide useful data at the necessary spatial resolution, such as direct-push logging (*e.g.,* cone penetration test) and borehole geophysical logging. Some data may already be available from previous investigations, such as the installation of monitoring wells or other subsurface evaluations, but it is likely that additional data will be necessary to provide adequate coverage of the subsurface. Samples must be located around the perimeter of the impoundment at a spatial resolution sufficient to ensure that any regions of substantially higher conductivity have been identified. EPA recommends that initial samples be collected at distances no greater than 200 ft apart in low-conductivity soils.[7] If there is indication from the site history, collected soil samples, or other sources that high-conductivity deposits may be present at widths narrower than 200 ft, then even finer sample spacing may be warranted. EPA also recommends that samples extend down to the top of the natural water table or at least 20 ft beneath the bottom of the nearest water body (to identify potential for upwelling), whichever is greater, to ensure that any potential preferential flow pathways have been identified. The demonstration must substantiate why the number and types of samples collected are sufficient to capture any heterogeneity in the subsurface and why the data used to estimate contaminant fate and transport through the subsurface are representative of the variability identified. If regions of higher conductivity are present around the site, the potential impacts of preferential flow on groundwater concentrations will need to be considered in the demonstration. Furthermore, if regions of preferential flow are identified in otherwise low-conductivity soils that are not adequately captured by the existing monitoring well network, then re-evaluation of the placement of monitoring wells around the unit boundary would be warranted to address these gaps.

Line of Evidence #2: Potential for Infiltration

The second line of evidence that EPA is proposing to require as part of any demonstration is a characterization of the potential for infiltration through liners and underlying soils that control release and transport of leachate. The purpose of this line of evidence is to provide a reasonable estimate of the rate at which contaminants may be released and transported to groundwater over time. One approach would be to measure actual infiltration from underneath the unit. However, reliable collection of in-situ data may be difficult in low-conductivity soils or may disturb the integrity of the impoundment. Therefore, it may be more practical to rely on analysis conducted in a laboratory setting for soil-based liners and underlying soil, but it is critical that any laboratory tests are designed to reflect the conditions at the specific site in order to provide useful data. For example:

- Tests used to estimate hydraulic conductivity (*e.g.,* ASTM D 5084) need to use a permeant liquid that reflects the composition of the infiltrating impoundment porewater. CCR porewater can have both extreme pH and high salinity.[8] Extreme pH may dissolve key components of the soil structure, while high salinity may result in interlayer shrinkage of clays, both of which can result in higher hydraulic

[4] Best Practices for Environmental Site Management: A Practical Guide for Applying Environmental Sequence Stratigraphy to Improve Conceptual Site Models (EPA/600/R–17/293).

[5] This diagram should also include a scale and a legend of any important symbols, such as different soil types and the top of the water table.

[6] If an engineered liner is the primary mechanism intended to limit contaminant release and migration (*i.e.,* the soil beneath the impoundment has substantially higher hydraulic conductivity), then variability within the underlying soil will not exert as great an influence on long-term transport.

[7] This distance reflects recommendations by the U.S. Department of Transportation for the characterization of unknown subsurface environments in Geotechnical Aspects of Pavements (FHWA NHI–05–037).

[8] The pH of CCR wastes can range from around 3 to 13. Although the total pH range is wide, the majority of wastes are more basic, with a median value somewhere between 10 and 11. CCR wastes managed with coal refuse can be substantially more acidic. U.S. EPA, ''Human and Ecological Risk Assessment of Coal Combustion Residuals,'' December 2014.

conductivity. Use of a non-representative liquid (*e.g.,* deionized water) as the permeant liquid or pre-hydrating the clay may actually decrease the conductivity of clay through swelling and result in a lower measured conductivity than would actually occur in the field.

- Preparation of samples intended to reflect compacted soil liners for testing may result in the soil becoming temporarily less permeable as a result of thixotropic behavior. Thixotropic materials, such as certain clays, become more fluid when agitated and the resulting dispersed structure can make it more difficult for water to infiltrate. However, the material will gradually become more solid and permeable as it is allowed to rest. Failure to allow such samples to rest for sufficient periods prior to testing could result in a lower measured conductivity than would actually occur in the field.
- Preparation for samples intended to reflect soils beneath the impoundment for testing may result in the soil becoming permanently less permeable by disturbing the natural structure of the soil and eliminating voids and other features that may act as conduits for infiltration in the field. Methods have been developed to obtain undisturbed soil samples for testing (*e.g.,* ASTM Method #D1587–74). Failure to preserve the structural integrity of such samples could result in a lower measured conductivity than would actually occur in the field.
- The timeframe over which samples are tested would need to be adequate to capture long-term behavior of the liner. Some tests for hydraulic conductivity stop after the inflow and outflow rates equilibrate or after a specified volume of water has passed through the soil. However, these metrics may not be sufficient to capture the reactions that can occur between the soil and liquid (*e.g.,* exchange of adsorbed cations). Some metrics that more directly address the chemistry of the soil-leachate interactions include equilibration of electrical conductivity and pH. Failure to run the test on a timeframe relevant to the chemical reactions of interest may result in a lower measured conductivity than would actually occurs in the field.

Even when site conditions are reflected in the design of laboratory tests, the resulting data are an approximation of real-world performance. Therefore, the demonstration would need to include a thorough discussion of how the laboratory tests were designed and why the data relied upon in the demonstration are believed to be representative of both long-term leaching conditions and natural variability at the site.

In instances where a non-soil liner is present that does not meet specifications in the 2015 CCR Rule (*e.g.,* 30 mil geomembrane), the liner may not be as sensitive to the chemical composition of the leachate present and performance may depend more on the quality of production and installation. These types of liners are designed to prevent migration of leachate from the unit, but may be more prone to damage during construction and operation. In these instances, laboratory tests of liner samples may not provide representative data. Leakage rates from these types of liners might be better captured through predictive modeling that considers the range of possible construction quality and leakage scenarios based on empirical performance data, similar to the approach outlined by EPRI.[9] However, the demonstration would need to include documentation to support the range of leakage rates used (*e.g.,* a liner construction quality assurance report that demonstrates the liner was installed with good soil contact). Any soil-based components of the liner system would require the same considerations previously described.

Incorporation of Lines of Evidence Into Demonstration

The required lines of evidence will be incorporated into the final demonstration because each one provides different site-specific data that is necessary to conclude whether exceedances of GWPS have occurred or may occur at some point in the future. Depending on the complexity of a particular site, the data may be applied to a probabilistic fate and transport model similar to that used in the *2014 Human and Ecological Risk Assessment of Coal Combustion Residuals*[10] or 2019 EPRI *Model Evaluation of the Relative Performance of Alternative Liners*.[11] If a site is less complex (*e.g.,* homogenous low-conductivity soil), then more deterministic calculations may be sufficient to demonstrate that no adverse effects will occur. Regardless of the approach used, all of the data incorporated into the calculations must be documented and justified.

In some instances, direct infiltration to groundwater may not be the sole mechanism by which unpermitted release of leachate from an impoundment occurs. It is possible that additional, site-specific release pathways may exist for some unlined units. In particular, if an unlined impoundment extends above grade, is adjacent to a water body and is underlain by a low-conductivity soil, there may be lateral transport from the impoundment directly into the water body driven in part by the hydrostatic head within the impoundment. If such conditions are present at a site, then the demonstration would also need to address whether such releases may occur and the potential adverse effects on health or the environment associated with these pathways. The same types of data collected to evaluate releases to groundwater should also support evaluation of such pathways. However, incorporation of other lines of evidence may also be warranted.

Submission of Alternate Liner Demonstration and Approval Process

EPA is proposing that the owner or operator must submit the facility's alternate liner demonstration to EPA no later than one year after the deadline for submission of the initial application (*i.e.,* 13 months after the effective date of a final rule), with all the data, analyses and conclusions certified by a professional engineer. If the demonstration is found by EPA to lack necessary information or specificity, EPA will notify the facility as expeditiously as possible and the facility may have an opportunity to resubmit with the required information. However, no resubmissions will be accepted after the deadline. The owner or operator must post the alternate liner demonstration to the facility's CCR public website one month after submittal to EPA. The proposed timeframe for completion of the demonstrations is considered appropriate because (1) there is currently no evidence that units that can clear the initial application are leaking or have adversely affected surrounding media, (2) it can take some time to collect and analyze samples to provide the types of detailed data required for the demonstration and (3) the data collected in support of these demonstrations will improve the understanding of site hydrogeology and help to identify any gaps that currently exist in the monitoring and remedial framework at these sites (*e.g.,*

[9] Electric Power Research Relative Liner Performance for Coal Combustion Product Management Sites: Conceptual Review and Model Evaluation for Surface Impoundments. EPRI, Palo Alto, CA: 2019. 3002016498.

[10] U.S. EPA, ''Human and Ecological Risk Assessment of Coal Combustion Residuals,'' December 2014.

[11] EPA reviewed the analyses described in this document and provided a summary of additional considerations that may affect model results in a separate memo titled, *Review of Analyses in EPRI White Paper: Model Evaluation of Relative Performance of Alternative Liners,* included in the docket to this proposed rule.

preferential flow pathways). Therefore, it is possible that these demonstrations can identify leaks that might have been missed for some time and result in greater long-term protection at the site. It is possible that analysis of some low conductivity soils may take a considerable amount of time.[12] If it is not feasible to complete the demonstration within the timeframe specified above because of analytical limitations, the facility must submit a request for an extension no later than 90 days before the deadline for submission of the demonstration that includes a summary of the data that has been analyzed to date for the samples responsible for the delay and an alternate timeline for completion that has been certified by the laboratory. EPA will evaluate the information submitted and determine whether or not the duration of the requested extension is acceptable.

EPA will review each submitted demonstration and post a tentative approval or denial for public comment on EPA's website. After reviewing the comments, EPA will then take final action on each submitted demonstration. If a demonstration is denied, the owner or operator must cease receipt of waste and initiate closure within six months of the denial. If a facility needs to build alternate capacity, they may do so in accordance with the provisions in § 257.103, which have been proposed in a separate rulemaking.[13] If at any point in the process, it is clear that all conditions have not been met, EPA can without further notice or process deny the owner or operator's request; this may include any noncompliance with the CCR regulations, such as improper groundwater well placement.

Duration of Alternate Liner Demonstration

The approved demonstration will be effective for the remaining active life of the unit since the demonstration must show that the design of the surface impoundment would not result in exceedances of the GWPS at any point in the future. Groundwater monitoring will continue at the site as required by part 257 to ensure that the unit continues to perform as expected. If groundwater monitoring detects an SSI of any Appendix III constituents, the facility must either complete an alternate source demonstration or initiate assessment monitoring pursuant to § 257.95. To ensure that no exceedances of GWPS will occur in the future, facilities that trigger assessment monitoring must also conduct intra-well analyses on each downgradient well as part of subsequent groundwater monitoring reports to identify any trends of increasing concentrations. If there is evidence that the unit may exceed GWPS before source control measures will be put in place (*e.g.,* dewatering, impermeable cap, clean closure), then the authorization would be reconsidered.

EPA solicits comment on the appropriateness of the requirements included in this proposal. EPA also solicits comment on whether there are any additional lines of evidence or specific types of data that should be included as part of any demonstration.

B. Use of CCR in Units Subject to Closure for Cause

The CCR regulations require certain CCR surface impoundments and CCR landfills to cease placing CCR and non-CCR wastestreams into the unit and initiate closure [14] of the unit under specified time frames. See § 257.101. On March 15, 2018, EPA proposed to revise the current regulations to allow the use of CCR during certain closure situations for CCR units closing for cause pursuant to § 257.101. 83 FR 11584, 11605. The March 2018 proposed approach would have allowed the continued placement of CCR in units triggered for closure to construct final cover systems under four conditions: (1) Only CCR generated on-site may be used in the construction of the cover system; (2) CCR may be used exclusively for the purposes of grading and contouring of the final cover system; (3) CCR must be placed within the vertical plane of the boundary of the unit; and (4) CCR must be placed at either no steeper than a 5 percent grade or at a steeper grade, as determined by the Director of an approved program based on a stability analysis. As stated in the March 2018 proposal, the Agency expected that facilities taking advantage of the proposed revision would complete closure more quickly and accordingly realize reduced risks more quickly. *Id.*

The Agency also explained in March 2018 proposal that the current CCR regulations expressly prohibit ''placing CCR'' in a CCR unit required to close for cause pursuant to § 257.101 after dates established in the CCR regulations.[15] EPA further explained that the CCR regulations do not distinguish between placement that might be considered beneficial use and placement that might be considered disposal. All further placement of CCR into the unit—whether for beneficial use or disposal—is prohibited once the provisions of § 257.101 are triggered. *Id.*

In response to the March 2018 proposal, EPA received comments in three general areas. First, the Agency received comments generally opposing continued placement of CCR in units subject to closure for cause. Several commenters expressed concern regarding the potential risks associated with continued placement of large volumes of CCR in a unit determined to be deficient because the proposal placed no limits on the volumes of CCR that could be used. These commenters also expressed concern that the proposed approach would not prevent contact between the placed CCR and water, which would lead to leaching of contaminants from the unit. In addition, these commenters stated that the proposal placed no limitations on where units using CCR for grading and contouring could be located (*i.e.,* no location restrictions on the CCR unit itself). The second area of comments were from entities that generally supported the proposed approach to allow continued placement of CCR for purposes of grading and contouring, but they recommended modifications to the proposed approach. These commenters stated that the proposed conditions of the exemption were too restrictive and therefore should be removed from any final action because the conditions are unnecessary and actually will impede the rapid closure of CCR units. The final area of comments concerned EPA's statements in the March 2018 proposed rule about further placement of CCR in a unit after the waste placement prohibition deadline in § 257.101 is triggered. These commenters objected to EPA's interpretation that the current CCR regulations prohibit placement of CCR for beneficial use in a unit closing pursuant to § 257.101.

After considering the issues raised by these commenters, the Agency is considering two additional options to

[12] Laboratory analysis of the hydraulic conductivity of some clay have taken nearly 400 days to reach equilibrium, as discussed in *Hydraulic Conductivity of Compacted Soil Liners Permeated with Coal Combustion Product Leachates* (Benson, 2018).

[13] See proposed rule titled ''Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; A Holistic Approach to Closure Part A: Deadline to Initiate Closure''; 84 FR 65941 (December 2, 2019).

[14] The CCR regulations provide the owner or operator the option to retrofit a CCR unit in certain situations in lieu of closing the unit. See § 257.101(a). The retrofit provisions are codified in § 257.102(k). This action would not be applicable to CCR units that are retrofitted.

[15] As EPA stated in the March 2018 proposal, the CCR regulations do not restrict further placement or use of CCR when the unit is not subject to closure for cause pursuant to § 257.101. 83 FR at 11605.

allow use of CCR in surface impoundments and landfills closing for cause and is co-proposing both alternatives. Under the first proposal, the Agency would retain the prohibition on any further addition of CCR in a closing unit after the deadline in § 257.101 except as authorized under the following procedures to allow facilities to place CCR in a closing unit for the purpose of supporting closure of the CCR unit. These procedures would require the owner or operator of the unit to submit the written closure plan to the Administrator or Participating State Director for review and approval demonstrating that such CCR placement would pose no reasonable probability of adverse effects during the period that the unit is being closed and during the post-closure care period. This proposal discusses the information that must be included in the written closure plan and lays out the review and approval process of the closure plan. Under the second proposal, EPA would allow the use of CCR in a unit closing for cause for the purpose of supporting closure of the CCR unit, provided that such use is beneficial use as defined in the CCR regulations. Finally, this Unit of the preamble also solicits comment on a proposed revision to the alternative final cover system provisions to correct a typographical error.

1. Co-Proposed Option One—Use of CCR during closure of a unit subject to closure for cause under an approved closure plan.

The first co-proposed option would allow the addition of CCR to a CCR surface impoundment closing for cause after the waste placement prohibition deadline provided such placement is conducted under an approved closure plan. This proposed alternative would be implemented as an exemption to the waste placement prohibition deadline specified in § 257.101 and the owner or operator of the CCR unit would need to submit the written closure plan required under § 257.102(b) to the Administrator or Participating State Director for review and approval showing that the use of CCR during closure of unit would pose no reasonable probability of adverse effects during the closure and post-closure care periods. Under this co-proposed option, the approved closure plan would need to demonstrate that: (1) The volume of CCR that would be placed during closure would not exceed the volume of soil or borrow material that otherwise would be used to achieve the subgrade elevations necessary to support the final cover system, thus ensuring such CCR use is not a guise for continued operation of the unit; (2) the time needed to complete closure of the unit when using CCR would not exceed the time needed to close the unit with soil or borrow material, thus ensuring that the unit will be closed no slower than if this CCR placement exemption was not available; (3) the placed CCR would only be used in a unit in compliance with the location restriction for unstable areas at § 257.64, thus ensuring any placed CCR will remain in place (*i.e.,* not likely to move, shift, or be released after placement); (4) the placed CCR would be used in a unit that is in compliance with the closure performance standards applicable to units closing with CCR in place, and that would remain in compliance with those standards even after the additional placement of CCR; (5) the placed CCR would be protected by a final cover system designed and constructed to be no more permeable than the CCR placed in the unit as part of closure, thus preventing lateral releases of CCR leachate from the unit during the post-closure care period; and (6) the additional placement of CCR will not adversely affect compliance with the corrective action remedy requirements, thus ensuring the groundwater cleanup goals are not slowed or delayed.

EPA believes there can be benefits associated with closing units under the conditions prescribed in this proposal. For example, a facility could consolidate the CCR from one or more units into a single unit, even though the receiving unit was subject to closure for cause under § 257.101. Consolidating multiple units into a single unit would result in an overall smaller CCR unit footprint. Closing two 10-acre impoundments by removal of CCR and using the removed CCR for the purpose of achieving subgrade elevations necessary to support the closure and final cover system of a third 35-acre CCR unit is an example of consolidation resulting in a smaller CCR disposal footprint. One environmental benefit of this closure scenario would be the elimination of any long-term threat of impact to groundwater and surface water from 20 acres of land (two 10-acre units) as well as concerns about the long-term performance of a final cover system had these units been closed alternatively with CCR in place. In addition, upon closure of the two 10-acre impoundments, a total of 20 acres of land would become available for other uses. Finally, there may be benefits to allowing an owner or operator to focus their long-term monitoring, care and cleanup obligations on a single unit rather than multiple units.

Under this co-proposed Option One, owners and operators of CCR landfills would not be eligible to place CCR in the unit after the waste placement prohibition deadline. Under § 257.101, CCR landfills are subject to closure for cause only in one situation: When the unit is not able to comply with the location criteria for unstable areas under § 257.64(a). Under the unstable area provisions, the owner or operator must demonstrate that recognized and generally accepted good engineering practices have been incorporated into the design of the CCR unit to ensure that the integrity of the structural components of the CCR unit will not be disrupted, or the landfill must close. Given that the owner or operator of the unit is unable to document that the integrity of the structural components (*e.g.,* bottom liners, leachate collection and removal systems, final cover systems) of the unit cannot be ensured due to where it is sited, EPA is proposing that CCR landfills would not be allowed to place additional CCR after the waste placement prohibition date.

a. Contents of the Closure Plan. The Agency is proposing that the owner or operator of the CCR unit would need to submit to the Administrator or Participating State Director a written closure plan for review and approval. The written closure plan would need to demonstrate that the use of CCR during closure (after the waste placement prohibition deadline) would pose no reasonable risk of adverse effects during the closure and post-closure care periods by showing that the placed CCR will remain contained (*i.e.,* isolated) in the unit closed in accordance with the closure performance standards under § 257.102(d) so as to limit contact of the CCR in the unit with water and to prevent releases to the environment, including releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, and catastrophic unit failures. EPA believes that units closed consistent with these proposed requirements, which also include volumetric and temporal limits on CCR placement, under a closure plan approved by the Administrator or Participating State Director would meet the RCRA section 4004(a) protectiveness standard, as explained below.

The Agency has long viewed the placement of liners beneath the waste as a key element in its liquids management strategy.[16] This is because a liner is a barrier technology that prevents or greatly restricts migration of liquids into the ground and groundwater, thereby

[16] For example, under the RCRA subtitle C program for hazardous waste landfills and surface impoundments: 47 FR 32274, 32283 (July 26, 1982).

providing greater assurance of long-term protection during the active life [17] of the unit. After closure of a unit is completed, EPA's stated view is that a properly designed and constructed final cover system becomes the most important feature of the liquids management strategy. This is because the closure requirements require that the final cover system be designed and constructed to provide long-term minimization of the movement of water (*e.g.,* resulting from precipitation) through the final cover system and into the closed unit. The Agency has previously found in the RCRA hazardous waste program for landfills and surface impoundments that where the waste mass lies entirely above the zone of groundwater saturation, a properly designed and maintained final cover system can prevent, for all practical purposes, the entry of water into the closed unit, and thus minimize the formation and migration of leachate from the unit.[18]

In the case of CCR surface impoundments, the Agency recognizes that many of the units that would likely make use of this proposal will be unlined CCR surface impoundments and still in operation, thus raising protectiveness concerns about the continued operation of units not using a barrier technology capable of preventing or greatly restricting the migration of liquids into the ground and groundwater. Some operating unlined CCR surface impoundments may also be in contact with the groundwater table. First, this proposal (discussed in Unit IV.B.1 of the preamble) would not change or impact the current requirement that all unlined CCR surface impoundments initiate closure of the surface impoundment by a date certain.[19] Thus, these unlined CCR surface impoundments are on a set path to initiating closure. Second, this proposal would not prolong or extend the time provided in the CCR regulations to complete closure of the unit (*i.e.,* the amount of time the facility is provided to install the final cover system). This is because the proposal would require the owner or operator of the unit to demonstrate in its written closure plan (submitted to EPA or Participating State Director for approval) that the time needed to complete closure of the unit when using CCR as part of closure would not exceed the time needed to close the unit without the proposed exemption (*e.g.,* if the unit was closed alternatively with borrow material). Finally, CCR used to support closure will serve to achieve the subgrade elevations needed to support the final cover system (while also meeting all prescribed closure performance standards specified in § 257.102(d)) and such CCR will not be managed with water or under a hydraulic head, which can promote rapid leaching of contaminants into the ground and groundwater from an unlined unit.

The CCR regulations currently include protective design requirements for final cover systems and closure performance standards when closing a unit with waste in place. As stated in the 2015 CCR final rule, EPA modeled the closure and post-closure care requirements for CCR unit on current requirements that apply to interim status hazardous waste surface impoundments, which are codified in part 265, and on current regulations that apply to municipal solid waste landfills, which are codified in part 258. See 80 FR 21409 (April 17, 2015). Similar to other RCRA waste program requirements, the CCR regulations currently include detailed technical standards for final cover systems in § 257.102(d)(3) that would apply to units closing under this proposal. In addition, the CCR regulations include several performance standards that are relevant here, including a general performance standard that a facility must meet—*i.e.,* that it has ''controlled, minimized or eliminated, 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; . . .'' § 257.102(d)(1)(i). A CCR surface impoundment that extends into the groundwater table will need to include measures to comply with this and other closure performance standards. How any particular unit or facility will meet the performance standards is a site-specific determination that will depend on a number of factual and engineering considerations, such as the hydrogeology of the site, then engineering of the unit, and the kinds of engineering measures available that could be implemented to achieve the closure performance standards. Given the concerns about unlined CCR surface impoundments that may be currently in contact with the groundwater table, the Agency is specifically proposing to require facilities document in the closure plan how the unit will achieve the closure performance standards specified in § 257.102(d). This is discussed in Unit IV.B.1.a.(3) of this preamble.

At a minimum the submittal would need to include the following additional analyses and documentation in the written closure plan required under § 257.102(b).

(1) *Volumetric and temporal limits on CCR placement.* The Agency is proposing limits on the amount of CCR (as volume) that could be placed in the CCR unit after the waste placement prohibition deadline and a limit on the maximum duration over which this volume of CCR can be placed into the unit. The proposed approach would require the owner or operator first to estimate the amount of soil or borrow material that would be needed to close the unit under the current regulatory provisions (*i.e.,* no exemption from the waste placement prohibition for the use of CCR is available). This volume should represent the minimum volume of soil or borrow material needed to properly achieve the subgrade elevations needed to support the final cover system while also meeting all prescribed performance standards specified in § 257.102. The owner or operator must also document the time required to close the unit with this volume of material. Upon review and approval, the use of CCR after the waste placement prohibition deadline would be limited to these volumetric and temporal amounts. By limiting the volume of CCR that could be placed in the unit and the length of time to place the CCR to amounts that would otherwise be needed to complete closure of the unit, this approach would be consistent with the timely closure of the unit.

Under this approach, the owner or operator would need to include the volumetric and temporal analysis in the written closure plan that is submitted to the Administrator or Participating State Director for review and approval. The analysis would need to document the basis of the volumetric and temporal estimates, including an explanation of all assumptions used in the analysis. The analysis should also be supported by additional technical information, such as maps, drawings, figures, plans, schedules, engineering calculations, or

[17] The ''active life'' (or ''in operation'') of a CCR unit is defined in § 253.53 as the period of operation beginning with the initial placement of CCR in the CCR unit and ending at completion of closure activities in accordance with § 257.102.

[18] U.S. EPA, ''Technical Guidance Document: Final Covers on Hazardous Waste Landfills and Surface Impoundments'', EPA 530–SW–89–047, July 1989.

[19] In a separate action, EPA is proposing to establish a revised date by which unlined CCR surface impoundments must cease placing CCR and non-CCR wastestreams into the unit and either retrofit or close the unit. This separate proposal was taken following its reconsideration of certain deadlines in the CCR regulations in light of the *USWAG* decision in 2018. See 84 FR 65941 (December 2, 2019).

other visual information. The analysis would need to be sufficiently detailed and presented in a manner that is organized and clearly labeled so that it can be understood by the reviewing authority.

(2) *Unstable areas.* The Agency is proposing that if the closing unit is located in an unstable area, the owner or operator must document in the written closure plan that the unit receiving the CCR is in compliance with the location restriction requirements under § 257.64 for unstable areas. The Agency is proposing this requirement because environmental releases may result from the shifting of additional CCR (*e.g.,* slumping and sliding of CCR if slope stability is not maintained) or potential structural failure of the unit's engineering controls (*e.g.,* bottom liners, final cover systems). Therefore, continued CCR placement in units where the integrity of the structural components of the CCR unit cannot be demonstrated would not be protective of human health and the environment.

The unstable area provision requires the owner or operator to demonstrate that recognized and generally accepted good engineering practices have been incorporated into the design of the CCR unit to ensure that the integrity of the structural components of the CCR unit will not be disrupted. The current CCR regulations define an ''unstable area'' as a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity, including structural components of some or all of the CCR unit that are responsible for preventing releases at the unit. The regulations also provide examples of unstable areas that include poor foundation conditions, areas susceptible to mass movements, and karst terrains. The regulations further provide that CCR units that cannot make the demonstration required by § 257.64(a) must cease further placement of CCR by a specified date; however, these units are allowed to close by leaving CCR in place provided that the requisite performance standards are met (*i.e.,* these units are not required to close by removal of CCR). While the current federal regulations allow a unit in an unstable area to be closed with CCR in place, EPA is proposing that CCR units that cannot make the unstable area demonstration would not be eligible for the proposed exemption to allow the use of CCR during closure. This is because the integrity of the structural components of the unit can be ensured in the future and thus additional CCR placement under this exemption may not be protective of human health and the environment. The Agency specifically solicits comment on whether CCR units in unstable areas should be eligible for this proposed exemption. EPA also requests comment on whether it would be appropriate to consider CCR units located in seismic impact zones and fault areas similarly to unstable areas under this proposed exemption (*i.e.,* units that failed the location restrictions for seismic impact zones or fault areas would not be eligible for the proposed exemption).

The Agency is also proposing that the owner or operator may use the demonstration for unstable areas completed under the requirements of § 257.64 in lieu of conducting the demonstration a second time. EPA believes this is a reasonable approach given that the demonstrations under § 257.64 were conducted recently and therefore represent current conditions of the unit.[20] However, the Agency is proposing that the owner or operator would need to incorporate (or otherwise include) the unstable area demonstration into the closure plan submitted to the approving authority.

The Agency is aware that some owners and operators of existing units did not conduct the unstable areas demonstration under § 257.64 by the deadlines specified in the CCR regulations because closure of the unit had already been initiated. Because the regulatory consequence of not demonstrating compliance with any applicable location restriction requirement, including for unstable areas, is for the owner or operator to close the unit, an action already being taken, these owners and operators reasoned it made no sense to conduct the demonstrations. For purposes of this proposal, an owner or operator who has not prepared the demonstration previously would need to complete the required demonstration and incorporate it into the closure plan in order to be eligible to place CCR after the waste placement prohibition deadline.

(3) *Closure performance standards and requirements.* To ensure that units receiving CCR under this exemption would be in compliance with the closure requirements, EPA is proposing to require owners and operators to document in the closure plan how the unit will achieve the closure performance standards specified in § 257.102(d). Units for which the demonstration cannot be made would not be eligible for the proposed exemption to the waste placement prohibition.

The closure performance standard under § 257.102(d)(1) requires that the CCR unit be 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 during the closure and post-closure care period; (iv) Minimize the need for further maintenance of the CCR unit; and (v) Be completed in the shortest amount of time consistent with recognized and generally accepted good engineering practices.

The provisions under § 257.102(d)(2) establish requirements for the drainage and stabilization of CCR surface impoundments. Prior to installing a final cover system, free liquids must be eliminated by removing liquid wastes or solidifying the remaining waste and waste residues and remaining wastes must be stabilized sufficient to support the final cover system.

(4) *Design of the final cover system.* The Agency is proposing that owners and operators of closing units demonstrate in the closure plan that the design and construction of the final cover system will not be more permeable than the CCR placed during closure. This would be an additional final cover system design requirement. Under the current CCR regulations, final cover systems must include an infiltration (or barrier) layer no more permeable than $1x10^{-5}$ cm/sec or no more permeable than the bottom liner, whichever is less (*i.e.,* more impermeable).[21] See § 257.102(d)(3)(i). However, the current regulations impose no requirement that the final cover system be more impermeable than the CCR in the unit. By design, the infiltration layer functions to limit percolation of water (*e.g.,* precipitation) through the final cover system. The rule requirement that the final cover system be more impermeable than the bottom liner (or natural subsoils present) is to prevent the ''bathtub effect'' from

[20] Most existing CCR units were required to complete these demonstrations by October 17, 2018. For eligible inactive CCR surface impoundments, the deadline to prepare these demonstrations is April 16, 2020. For more information on eligible inactive CCR surface impoundments, see the preamble to the direct final rule published on August 5, 2016 (81 FR 51802).

[21] For example, if a CCR unit had a bottom liner system with a hydraulic conductivity of $4x10^{-4}$ cm/s, then it would be acceptable if the final cover system was designed and constructed to be no more permeable than $1x10^{-5}$ cm/s, because $1x10^{-5}$ cm/s is less than $4x10^{-4}$ cm/s.

occurring within the unit, whereby liquids that infiltrate through the overlying final cover system are contained by a less permeable underlying liner system in the unit.[22]

EPA is proposing to require this demonstration to prevent the ''bathtub'' effect from occurring above a compacted CCR layer in the unit. This can occur when the compacted CCR layer is more impermeable than the final cover system because a well-compacted CCR can be more impermeable than $1x10^{-5}$ cm/s (the maximum permeability of a final cover system under § 257.102(d)(3)(i)).[23] Said another way, there is a possibility of a situation where the final cover system is more permeable than a compacted CCR layer within the unit resulting in the potential forr the bathtub effect above the CCR layer. An example situation would be one where the final cover is designed with a permeability of $1x10^{-5}$ cm/s, a compacted CCR layer in the unit at $1x10^{-6}$ cm/s, and the liner at $1x10^{-4}$ cm/s. In this situation, accumulation of leachate on top of a compacted CCR layer could result in the lateral release of leachate from the unit. Under this proposal, the owner or operator would demonstrate that the design and construction of the final cover system will not be more permeable than the CCR placed during closure.

EPA believes this demonstration is needed due to new information learned since the promulgation of the 2015 CCR rule. Information posted to CCR websites by electric utilities with impoundments shows that approximately 70 percent of all surface impoundments are known not to be lined with a composite liner or alternative composite liner (see § 257.70(b) and (c) for a description of these liner types).[24] In addition, over 70 percent of surface impoundments have detected impacts to the groundwater whereby the unit is operating pursuant to the assessment monitoring program requirements and nearly 50 percent of all surface impoundments are now operating under the corrective action program provisions of the CCR regulations. Based on this new information, many surface impoundments appear to have been designed and constructed without an effective bottom liner system. To prevent the potential lateral release of leachate from the unit from occurring, the Agency is proposing that the owner or operator not only demonstrate that the design and construction of the final cover system will not be more permeable than any bottom liner, but also than the placed CCR within the unit. This proposed requirement would be in addition to the current requirements specified in § 257.102(d)(3) for final cover systems and alternative final cover systems.

(5) *Corrective action requirements.* For units that have triggered the corrective action requirements of the CCR regulations, the Agency is proposing that the owner or operator demonstrate in the closure plan that the additional placement of CCR will not adversely affect compliance with the corrective action remedy requirements. For CCR units, the corrective action program is triggered when it is determined that any constituent listed in appendix IV to part 257 has been detected at a statistically significant level exceeding a groundwater protection standard defined under § 257.95(h), Once the exceedance of a groundwater protection standard is determined, the owner or operator must conduct an assessment of corrective measures followed by the selection of a remedy, which is specified in § 257.97(b). One of the requirements of a remedy is that it must ''Control the source(s) of releases so as to reduce or eliminate, to the maximum extent feasible, further releases of constituents in appendix IV to this part into the environment.'' Source control refers to a range of actions (*e.g.,* removal, containment) designed to protect human health and the environment by eliminating or minimizing migration of, or exposure to, significant contamination. To ensure the groundwater cleanup goals are not slowed or delayed, this proposal requires the owner or operator to demonstrate in the closure plan that the additional placement of CCR (*i.e.,* source material) will not adversely affect compliance with the corrective action remedy requirements.

b. Review and approval of closure plan under co-proposed Option One. EPA is proposing that the owner or operator of the unit submit the written closure plan to the Administrator or Participating State Director for review and approval. The written closure plan required by § 257.102(b) would also need to contain the information listed in proposed § 257.102(d)(4) and also discussed above in Unit V.B.1.a of the preamble. The Agency is proposing that the closure plan must be submitted to the Administrator or Participating State Director for review and approval in advance of the anticipated date that the CCR would be needed for closure activities to provide EPA or the Participating State Director adequate time to review and approve the plan.

EPA or the Participating State Director should notify the owner or operator of approval or intent to disapprove the submitted closure plan within 3 months after receipt of the original closure plan, and within 2 months after receipt of any supplemental information submitted. A notice of intent to disapprove the written closure plan will identify incomplete or inaccurate information or noncompliance with prescribed procedures and specify how much time the owner or operator will have to submit additional information. If EPA or the Participating State Director has not approved the closure plan by the date CCR would be needed for closure activities, the owner or operator would not be allowed to use CCR to support closure of the unit.

Finally, as discussed in greater detail in the next section, EPA received comments objecting to EPA's interpretation that the prohibition on ''placing CCR'' in any units subject to closure for cause pursuant to § 257.101 prohibited both placement that might be considered beneficial use and placement that might be considered disposal. These commenters criticized the Agency's reading of the word ''placement'' is at odds with RCRA's text and EPA's historical use of that term, as well as the existing provision in § 257.50(g), which provides that the CCR regulations do not apply to practices that meet the definition of a beneficial use of CCR. To avoid any future confusion under this option, EPA requests comment on whether substituting the word ''receipt'' or ''addition'' for the term ''placing'' or ''placement'' would better communicate EPA's intent to prohibit both disposal and beneficial use. EPA also requests comment on whether conforming amendments to § 257.50(g) would also be helpful.

2. Co-Proposed Option Two—Beneficially using CCR during closure of a unit subject to closure for cause.

The CCR regulations include a ''beneficial use of CCR'' definition to distinguish between legitimate beneficial uses of CCR and the disposal of CCR. The beneficial use definition is comprised of four criteria: (1) The CCR must provide a functional benefit; (2) the CCR must substitute for the use of a virgin material, conserving natural

[22] For example, see 57 FR at 28627 (June 26, 1992).

[23] U.S. Department of Transportation, ''Federal Highway Administration Research and Technology: Coordinating, Developing, and Delivering Highway Transportation Innovations.'' Publication Number: FHWA–RD–97–148.

[24] In addition, approximately 20 percent of surface impoundments did not post a liner demonstration to their CCR website indicating the type of liner system used, if any. Thus, how these impoundments are lined is unknown.

resources that would otherwise need to be obtained through practices such as extraction; (3) the use of the CCR must meet relevant product specifications, regulatory standards, or design standards, when available, and where such specifications or standards have not been established, CCR may not be used in excess quantities; and (4) when unencapsulated use of CCR involves placement on the land of 12,400 tons or more in non-roadway applications, the user must demonstrate and keep records, and provide such documentation upon request, that environmental releases to groundwater, surface water, soil, and air are comparable to or lower than those from analogous products made without CCR, or that environmental releases to groundwater, surface water, soil, and air will be at or below relevant regulatory and health-based benchmarks for human and ecological receptors during use. See, § 257.53 and 80 FR 21349–54 (April 15, 2015).

EPA's current regulations at § 257.53 require that to be considered a ''beneficial use,'' when unencapsulated CCR is placed on the land in amounts greater than 12,400 tons, in non-roadway applications, the user must demonstrate that releases to environmental media (*i.e.,* groundwater, surface water, soil, air) are comparable to or lower than those from analogous products made without CCR or that releases to environmental media will be at or below relevant regulatory and health-based benchmarks for human and ecological receptors during use. The Agency established this environmental criterion to ensure that unencapsulated uses of CCR would be conducted in an environmentally protective manner. This fourth criterion was designed to address both the concern that large-scale fills were effectively operating as landfills and the potential effects associated with the placement of unencapsulated CCR in or near water sources. See, 80 FR 21351–52 (April 15, 2015).

The Agency recently issued a proposed rule in which EPA proposed to revise criterion four of the ''beneficial use of CCR'' definition. In that proposed rule, EPA proposed to eliminate the mass-based numerical threshold of 12,400 tons and replace it with specific location-based criteria, which were largely derived from the current location criteria for CCR units, to trigger an environmental demonstration. See 84 FR 40353 (August 14, 2019). Thus, under the August 2019 proposal, before the placement of any amount of unencapsulated CCR could occur in areas not meeting the location-based criteria, the owner or operator of the unit would need to make an affirmative demonstration that releases to environmental media (*i.e.,* groundwater, surface water, soil, and air) would be comparable to or lower than those from analogous products made without CCR, or releases to environmental media would be at or below relevant regulatory and health-based benchmarks for human health and ecological receptors during use. The Agency also did not propose in the August 2019 action any revisions to criteria one through three of the definition of beneficial use of CCR. When preparing comments on co-proposed Option Two, commenters should take into account the potential revisions to the beneficial use definition's fourth criterion put forth in the August 2019 proposed rule. The Agency is not reopening for comment any aspects of the August 2019 proposal or underlying support documents and will not consider comments pertaining to the proposals included in the August 2019 action.

As discussed earlier in this section, EPA received comments concerning statements made in a 2018 proposal regarding further placement of CCR into a unit triggered into closure. See 83 FR at 11605 (March 15, 2018). As part of that proposal, EPA explained that the current regulation expressly prohibits ''placing CCR'' in any unit subject to closure for cause pursuant to § 257.101. EPA further explained in the proposal that the CCR regulations do not distinguish between placement that might be considered beneficial use and placement that might be considered disposal. All further placement of CCR into the unit is prohibited once the provisions of § 257.101 are triggered. *Id.*

In response to this March 2018 proposal, EPA received comments objecting to this interpretation of the regulations. For example, several commenters state that the Agency's broad reading of the word ''placement'' is at odds with RCRA statutory text and EPA's historical use of that term. These commenters point out that the definition of the RCRA term ''disposal'' encompasses the term ''placing'' meaning that placement is disposal. Put another way, these commenters state while disposal can be (and is) broader than just placement of waste, placement can never be broader than the term disposal. Commenters also state that EPA's interpretation of the CCR regulations is not contrary to the plain language of the regulations. These commenters point to the existing provision in § 257.50(g) which provides that the CCR regulations do not apply to practices that meet the definition of a beneficial use of CCR. Thus, the commenters state the current rule exempts all beneficial uses from all provisions of the CCR rule, irrespective of whether such uses can be viewed as placement. As a result, if the use of CCR meets all applicable conditions in the definition of beneficial use of CCR, the prohibition on further placement under § 257.101 would not apply.

After considering these comments, the Agency is soliciting comment on a second approach to allow the use of CCR in a unit subject to closure for cause under § 257.101. Under co-proposed Option Two, an owner or operator would be allowed to use CCR to support closure of the unit provided such use meets the rule's definition of beneficial use of CCR. A potential example of CCR beneficially used is CCR fill placed beneath the final cover system to achieve the needed subgrade elevations to ensure that precipitation will drain off the closed unit. This option is based on the regulatory reading put forward by commenters that the CCR regulations are clear in that the CCR minimum national criteria do not apply ''to practices that meet the definition of a beneficial use of CCR.'' See § 257.50(g). Under this co-proposed option, CCR used beneficially would not be subject to the waste placement prohibition date provided in § 257.101. However, the prohibition on waste placement would continue to apply to any CCR that does not meet the definition of ''beneficial use of CCR,'' as well as any other non-CCR waste. This is because the definition of ''beneficial use of CCR'' only applies to CCR, and not to other non-CCR wastes.

Under this co-proposed option, the CCR minimum national criteria codified in subpart D of part 257 would not apply to the practice of using CCR to support closure of the CCR unit provided its use meets the conditions prescribed in the definition of a ''beneficial use of CCR.'' However, beneficially using CCR in a unit subject to closure for cause would not change the regulatory status of or the requirements that apply to the CCR unit itself. Thus, a CCR unit in which CCR is used beneficially remains subject to all applicable CCR rule requirements, such as the closure performance standards. For example, the CCR regulations require that a CCR unit must be closed in a manner that will ''preclude the probability of future impoundment of water, sediment, or slurry.'' See § 257.102(d)(1)(ii). While CCR could be beneficially used (provided such use meets the definition of beneficial use of CCR) as subgrade fill beneath the final cover system, such use

would not relieve the owner or operator from designing the final cover system in a manner that would promote positive drainage of precipitation as required by the CCR regulations to preclude such future impoundment.

In addition, owners and operators of the CCR unit would need to revise the written closure plan and document how the CCR would be used to support closure of the unit. The beneficial use of CCR in a unit does not affect the requirement that the owner or operator prepare a written closure plan describing how the closure performance standards and requirements will be achieved. Under the current definition of beneficial use of CCR, owners or operators beneficially using CCR when unencapsulated use of CCR involves placement on the land of 12,400 tons or more in non-roadway applications are required to provide the environmental demonstration to anybody upon request. Given that the CCR unit is a regulated unit, EPA is proposing under this option to add a new provision to § 257.102(b)(1) requiring the owner or operator to document in the written closure plan how the use of CCR in the closing unit achieves the conditions specified in the beneficial use definition. Specifically, the Agency is proposing to add a new paragraph (b)(1)(vii) to § 257.102: ''If CCR is placed for beneficial use in the unit after the applicable waste placement prohibition deadline specified under § 257.101, the owner or operator must document in the written closure plan how the conditions specified in the definition of ''Beneficial use of CCR'' under § 257.53 will be achieved.'' [25] EPA is proposing this requirement to provide appropriate transparency to the closure process.

The Agency also recognizes that the environmental demonstration under the fourth criterion of the definition of ''beneficial use of CCR'' may not be required in all situations, *e.g.,* current regulations only require that the environmental demonstration be done when unencapsulated use of CCR involves placement on the land of 12,400 tons or more in non-roadway applications. EPA solicits comment on whether the rule under Option Two should require the owner or operator to conduct the environmental demonstration in all circumstances (*e.g.,* regardless of the mass of CCR to be used) where CCR is placed in the closing unit after the waste placement prohibition date given that such placement would be occurring in a CCR unit subject to closure for cause (*e.g.,* the unit is unlined and groundwater monitoring may show an exceedance of a groundwater protection standard).

3. Proposed correction to § 257.102(d)(3)(ii) for alternative final cover systems.

EPA is proposing to revise the alternative final cover system requirements under § 257.102(d)(3)(ii) to correct a typographical error. In the introductory text to § 257.102(d)(3)(ii), the regulation currently states that 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 paragraphs (f)(3)(ii)(A) through (D) . . .'' This is an incorrect cross-reference that was recently brought to our attention by a State interested in permit program approval. The correct cross-reference should be to the criteria in paragraphs (d)(3)(ii)(A) through (C) and the Agency is proposing to revise the introductory text in § 257.102(d)(3)(ii) to correct this error.

C. Closure of CCR Units by Removal of CCR

Closure by removal of CCR is one of two options provided in the CCR regulations to close a CCR surface impoundment or landfill.[26] The closure by removal approach consists of two performance standards. First, the owner or operator must remove all CCR from the unit and decontaminate all areas affected by releases from the CCR unit. Second, the regulations specify that closure is complete when all CCR in the unit and any areas affected by releases from the CCR unit have been removed and groundwater monitoring demonstrates that there are no exceedances of any groundwater protection standard. See § 257.102(c). Importantly, the second performance standard requires groundwater corrective action of a unit to be completed before the owner or operator can assert that closure of the unit has been completed.

The CCR regulations also establish deadlines to initiate and complete closure activities.[27] For example, the regulations generally require owners and operators of CCR surface impoundments to complete closure activities within five years of commencing closure activities, while closure of CCR landfills must be completed within six months. See § 257.102(f)(1). Notwithstanding these deadlines to complete closure, the CCR regulations also allow for additional time to be obtained provided the owner or operator can make the prescribed demonstrations that are based on site-specific circumstances beyond the facility's control. For CCR surface impoundments, the amount of additional time beyond the five years varies based on the demonstrated need and the surface area acreage of the impoundment. For impoundments 40 acres or smaller, the maximum time extension that can be obtained is two years. For impoundments greater than 40 acres, the maximum time extension is five two-year extensions (for a total extension of ten years). For CCR landfills, the amount of additional time beyond the six months does not vary according to the size of the landfill, rather the maximum time extension is two one-year extensions (for a total extension of two years). To obtain additional time, owners or operators of CCR units must substantiate the factual circumstances demonstrating the need for the extension. See § 257.102(f)(2). In all instances the number of time extensions is capped to a certain number of years.

The CCR regulations also require the owner or operator of the CCR unit to obtain a certification from a qualified professional engineer or approval from the Participating State Director (or EPA where EPA is the permitting authority) verifying that closure has been completed in accordance with the written closure plan and all applicable closure requirements of § 257.102. See § 257.102(f)(3). In addition, the owner or operator must prepare a notification stating that closure of the unit has been completed. This notification must be completed within 30 days of completion of unit closure and must include the certification required by § 257.102(f)(3). See § 257.102(h). As the CCR regulations are currently structured for units closing by removal of CCR, the closure certification and notification cannot be completed until all CCR removal and decontamination activities, including groundwater corrective action,[28] are completed. Finally, owners and

[25] For purposes of limiting potential confusion regarding the proposed regulatory changes to § 257.102 under the two co-proposed options, the Agency is presenting the proposed regulatory language supporting co-proposed Option Two only in the preamble to this action, Therefore, the reader will not find the proposed language in the ''regulatory text'' portion of this action.

[26] The other alternative provided to close a CCR unit is to leave CCR in place. For a discussion of both closure alternatives, see 80 FR 21411–14 (April 17, 2015) and § 257.102(c) and (d).

[27] The closure deadlines are the same whether closing by removal of CCR or by closing by leaving CCR in place.

[28] For purposes of this preamble discussion, the term ''groundwater corrective action'' includes those actions taken to implement the selected remedy specified in § 257.98(c) to attain the groundwater protection standards in § 257.95(h).

operators that complete closure of a unit by removal of CCR are exempt from any other post-closure care requirements for the unit (see § 257.104(a)(2)) and are also exempt from the deed notation requirements upon certification that closure by removal of CCR has been completed (see § 257.102(i)(4)).

Through EPA's recent work with States on permit programs,[29] State representatives expressed concern that the requirement to complete groundwater corrective action of a CCR unit may not be feasible in the timeframes provided by the CCR regulations. These State representatives conveyed that groundwater corrective action can take years or decades to complete and that the actual cleanup time will depend on several factors, which would vary from site to site.

After evaluating this issue and recognizing that groundwater corrective action can take longer to complete than the closure timeframes provided in the CCR regulations, EPA is proposing an additional closure option for CCR units being closed by removal of CCR. Under this new closure option, an owner or operator that cannot complete groundwater corrective action by the time all other closure by removal activities have been completed (*i.e.,* during the active life [30] of the CCR unit) may complete groundwater corrective action during a post-closure care period. Under this option, the owner or operator must first complete all other removal and decontamination activities within the timeframes provided for completing closure. In addition, the owner or operator must have implemented the remedy selected under § 257.97 such that all components of the remedy are in place and operating as intended. Upon completion of all removal and decontamination activities (except for completion of groundwater corrective action) and implementation of the selected remedy, the owner or operator would be allowed to certify that the CCR unit has been closed. Thereafter, the CCR unit would be subject to the existing post-closure care requirements in § 257.104 until completion of groundwater corrective action. EPA is not proposing any substantive revisions to the current closure standard when closing by removal of CCR under § 257.102(c) and is not reopening those requirements to comment in this action. EPA is, however, proposing to present the current closure standard in a slightly revised format to accommodate the proposed action. See proposed § 257.102(c)(1).

EPA is proposing this additional option of closing by removal of CCR because the Agency has new information indicating that the closure of CCR units will likely be more complex than EPA envisioned at the time the 2015 CCR rule was published. The Agency generally believed that most CCR units would be closed with CCR in place, not by removal of CCR due to the ''expense and difficulty of such an operation.'' 80 FR at 21412 (April 17, 2015). However, information reported on publicly accessible CCR Rule Compliance Data and Information websites (CCR websites) by facilities with CCR units since the 2015 CCR rule was published indicates that greater than 40 percent of existing CCR surface impoundments subject to the CCR regulations are planned to be closed by removal of CCR. In addition, EPA has new information on how existing CCR surface impoundments are lined. Information posted to CCR websites by facilities shows that the majority of surface impoundments are not lined with a composite liner or alternative composite liner (as defined in § 257.70(b) and (c)). Available information indicates that more than 70 percent of all CCR surface impoundments subject to the CCR regulations currently have neither type of composite liner system. Given the number of unlined CCR units, many of which have already reported exceedances of groundwater protection standards, it is now evident that many CCR units have released CCR constituents into the surrounding soils and groundwater. This means that the closure activity is simply not a matter of removing CCR from the unit, but instead will likely require a significant undertaking to remediate impacted soil and groundwater in order to achieve the current CCR removal and decontamination standards. With this new information, the Agency believes that the existing timelines to complete closure by removal of CCR were not designed to also provide sufficient time to complete groundwater corrective action. Furthermore, the Agency is concerned that the current CCR regulations may create a disincentive to close a unit by removal of CCR and as discussed in Unit IV.B.1 of this preamble, there can be environmental benefits to closing a unit by CCR removal.

As discussed, this proposal would establish a second alternative when closing a CCR unit by removal of CCR. Under this new option, the owner or operator would be able to able to close the CCR unit by completing all removal and decontamination activities, except for groundwater corrective action, during the active life of the CCR unit and completing groundwater corrective action during post-closure care. Thus, groundwater corrective action would begin during the active life of the CCR unit and finish during the post-closure care period. The owner or operator would need to meet the following requirements when closing a CCR unit under this option. First, the owner or operator must complete all removal and decontamination activities, except groundwater corrective action, within the current timeframes for closure. Second, the owner or operator must have begun implementation of the selected remedy to achieve compliance with the groundwater protection standards. Third, groundwater corrective action must be completed as a post-closure care requirement. Fourth, the owner or operator must amend the written closure and post-closure plans to reflect this approach to close the unit. Fifth, the owner or operator must obtain the certification or approval of closure completion within the current timeframes for closure. Finally, the owner or operator must record the notation on the deed to the property that the land has been used as a CCR unit prior to the start of the post-closure care period. Each of these proposed requirements is discussed further below and the proposed regulatory text is presented in § 257.102(c)(2).

Removal and decontamination activities. These activities include removing or decontaminating all CCR and CCR residues, containment system components, contaminated subsoils, contaminated groundwater, and CCR unit structures and ancillary equipment. To qualify for the new closure by CCR removal option, EPA is proposing that owners and operators would need to complete all removal and decontamination activities, except for groundwater corrective action, which would be completed under the post-closure care provisions at § 257.104. To demonstrate that all CCR has been removed from the unit, the owner or operator would need to remove the entire contents of the CCR unit, including all CCR and any CCR residues. This would include, for example, the removal of any fugitive dust (CCR) discovered outside the waste

[29] In December 2016, Congress amended RCRA to establish a federal permitting program similar to other environmental statutes. Under these new provisions, States may now apply to EPA for approval to operate a permit program to implement the CCR regulations codified under part 257, subpart D.

[30] The ''active life'' of a CCR unit is defined in § 253.53 as the period of operation beginning with the initial placement of CCR in the CCR unit and ending at completion of closure activities in accordance with § 257.102.

unit boundary. In addition, any containment system components such as a bottom liner, contaminated subsoils, and unit structures and equipment (*e.g.,* concrete outlet structures and ancillary piping) would have to be removed prior to closure of the unit. Finally, any areas affected by releases from the CCR unit must have been removed (*e.g.,* impacted soils beneath the bottom liner system). The intent of this requirement is for the owner or operator to complete all CCR removal activities during closure prior to transitioning to the post-closure care period which will largely be a groundwater cleanup activity.

Implementation of selected remedy. Under the current regulations, if one or more constituents in appendix IV to part 257 are detected at statistically significant levels above the groundwater protection standard in any sampling event, the owner or operator must, among other requirements, initiate a corrective action program. See § 257.95(g). The corrective action program includes initiating an assessment of corrective measures to prevent further releases, to remediate any releases, and to restore affected areas to original conditions, as specified in § 257.96(a). After the assessment of corrective measures has been completed, the owner or operator must select a remedy that meets prescribed standards, including a requirement that the remedy attain the groundwater protection standards. See § 257.97(a) and (b). Finally, the corrective action program requires the owner or operator of the CCR unit to initiate remedial activities within 90 days of selecting a remedy. See § 257.98(a). The Agency is proposing that the owner or operator must have begun implementation of the selected remedy as required by § 257.98(a) in order to be eligible for this proposed closure alternative. This requirement would help ensure that impacted groundwater is returned to original conditions as soon as is practicable.

Groundwater corrective action. For owners and operators that close a unit under this new alternative, EPA is proposing that the CCR unit would remain subject to the post-closure care requirements under § 257.104 until groundwater corrective action has been completed. Specifically, EPA is proposing that these units would not be subject to the requirement to conduct post-closure care for 30 years; rather, these units would remain in post-closure care until all groundwater monitoring and corrective action requirements are achieved. See proposed revisions to § 257.104(c). Groundwater corrective action is complete when the groundwater monitoring concentrations do not exceed the groundwater protection standards for constituents listed in Appendix IV to part 257. This corrective action requirement is the same standard as currently specified in the closure by CCR removal provisions under § 257.102(c). This proposal does not change any requirements of the groundwater monitoring and corrective action program. Under this proposal, the owner or operator would need to conduct groundwater monitoring and corrective action in accordance with the requirements of §§ 257.90 through 257.98.

Closure and post-closure care plans. EPA is proposing that owners and operators closing a CCR unit under this new closure alternative would need to revise their written closure plan. The closure plan describes the closure of the unit and provides a schedule for implementation of the plan. Under this proposal, the owner or operator would need to revise the current plan and describe how the CCR unit would be closed in accordance with the proposed requirements. The current CCR regulations already include procedures to amend written plans under certain circumstances, including when there is a change in the operation of a CCR unit that would substantially affect the current written plan or when unanticipated events necessitate a revision of the plan. See §§ 257.102(b)(3)(ii). EPA expects that owners and operators would revise the current closure plan according to these existing procedures.

The Agency is also proposing that owners or operators would need to prepare an initial post-closure care plan within 6 months of the effective date of this provision. The post-closure care plan describes how the CCR unit would be maintained after closure of the unit is completed. Currently, CCR units closed by removal of CCR are exempt from any post-closure care requirements (see § 257.104(a)(2)), so the preparation of a post-closure care plan would be a new requirement for owners and operators. EPA believes that 6 months from the effective date of the provision, or one year from publication of a final action, would be a reasonable amount of time to prepare the post-closure care plan because the owner or operator has already prepared the closure plan for the unit and begun implementation of the corrective measures remedy. EPA is aware that some facilities that planned to close a unit by removal of CCR nonetheless completed a post-closure care plan. In this situation, the current CCR regulations already include requirements to amend written plans under certain circumstances, including when there is a change in the operation of a CCR unit that would substantially affect the current written plan or when unanticipated events necessitate a revision of the plan. See §§ 257.104(d)(3). EPA expects that these owners or operators would revise the existing post-closure care plan according to these existing procedures.

Notation on the deed to the property. Under the current regulations, following the closure of a CCR unit that will be subject to post-closure care, the owner or operator must record a notation on the deed to the property, or some other instrument that is normally examined during title search, notifying any potential purchaser of the property in perpetuity that the land has been used as a CCR unit, and its use is restricted under the post-closure care requirements. See § 257.102(i). The rationale for this requirement is to ensure that prospective and subsequent owners are aware of the presence of a closed unit on the property and of the need for continued maintenance of the cover or of any on-going corrective actions. Following that same logic, units that have closed by removal in accordance with § 257.102(c) are exempt from the deed notation requirement, both because all waste and associated contamination have been removed, and because there is no continuing post closure care that needs to be maintained. See § 257.102(i)(4).

Under these existing regulations, units that fall within the current proposal would be required to record a deed notation because they would not have closed by removal in accordance with § 257.102(c) (as corrective action would not have been completed) and because post-closure care would be required. See § 257.102(i)(4). But these units are not wholly analogous to the other units subject to a deed notation—*i.e.,* those closing with waste in place. Units falling within the current proposal will have already had all waste removed in its entirety and so would require no continued maintenance. However, groundwater remediation actions would be continuing, raising concern about potential exposures.

EPA is therefore proposing to retain a modified requirement that the owner or operator record a notation on the deed to the property (or some other instrument normally examined during a title search) until all groundwater corrective action has been completed—*i.e.,* when groundwater monitoring concentrations do not exceed the groundwater protection standard

established pursuant to § 257.95(h) for constituents listed in appendix IV to part 257. EPA is proposing to retain a deed notation because all removal and decontamination actions have not been completed. Given that groundwater corrective action will be ongoing and may continue for years or decades, the deed restrictions are a practical way of limiting human exposure during a period when contamination is still present, and thereby ensuring that the statutory standard under § 4004(a) of RCRA continues to be met.

But because no waste will remain in place, the Agency is also proposing as part of the post-closure care provisions under § 257.104 to allow removal of the deed notation, or the addition of a second notation reflecting the inapplicability of the first notation, as may be applicable under existing state or local law, when groundwater corrective action is completed for the CCR unit. Here, completion of groundwater corrective action would indicate that all removal and decontamination actions have been completed. To remove the deed notation (or add a second notation), the owner or operator would need to complete two actions. First, the owner or operator would need to demonstrate that groundwater monitoring concentrations no longer exceed any groundwater protection standard established pursuant to § 257.95(h) for constituents listed in Appendix IV to part 257. Second, the owner or operator would need to complete the notification stating the post-closure care requirements have been met as required in § 257.104(e). Removing the deed notation upon completion of all removal and decontamination activities would be consistent with the current procedures for CCR units that close by removing CCR under § 257.102(i)(4). See proposed § 257.104(h).

The use of deed restrictions is one type of institutional control that can be used when CCR is left onsite. Institutional controls are non-engineered instruments such as administrative and legal controls that help minimize the potential for human exposure to contamination and/or protect the integrity of the closed unit (*e.g.,* prevent disturbance of the final cover system). Another example of an institutional control that could be used is property use restrictions based on private property law, such as environmental (or restrictive) covenants. Currently, the CCR regulations require a specific type of control (*i.e.,* deed notices) to communicate use limitations to present and future users of the land with the closed CCR unit. The Agency solicits comments on whether the use of deed restriction controls is too narrow and whether the CCR regulations should allow for the use of different legal mechanisms and controls to communicate limits to the activities that can safely take place at the site.

Closure certification or approval. EPA is proposing that the owner or operator be subject to the same certification or approval requirement that is currently applicable to all CCR units as specified in § 257.102(f)(3). Under this requirement, the owner or operator must obtain a certification from a qualified professional engineer or approval from the Participating State Director (or EPA where EPA is the permitting authority) verifying that closure has been completed in accordance with the written closure plan and all applicable closure requirements of § 257.102. Under this proposal, the certification or approval would reflect that all removal and decontamination activities, except for groundwater corrective action, have been completed. The certification or approval would not address the remediation of the impacted groundwater because groundwater corrective action will be completed during the post-closure care period, including applicable post-closure care certification and approval requirements.

D. Annual Closure Progress Reports and Notice of Intent To Close

EPA reviewed the data posted on the facilities' CCR websites to gain a better understanding of the current operating and compliance status of each unit covered by the CCR rule. During this review the Agency identified the potential for a significant time gap in reported information between when the facilities post the notice of intent to close a unit (§ 257.102(g)) and the notification certifying that closure of the unit has been completed (§ 257.102(h)). Therefore, EPA is proposing to amend the notification of intent to close requirements and proposing to require annual closure progress reports. The proposed notification revisions and progress report requirements would provide necessary information to the public, states and EPA and increase transparency of the CCR unit closure process.

Notification of intent to close a CCR unit. EPA is proposing to require owners and operators to include the actual date the facility commenced closure of the unit in the notification of intent to close required under § 257.102(g). This notification's purpose is to inform EPA, participating states, and the public that the facility will begin or has started the closure process. Under the current CCR regulations, owners and operators are required to prepare this notification ''no later than the date the owner or operator initiates closure'' of the unit and are not explicitly required to document when unit closure was or will be initiated. In addition, the CCR regulations do not limit how far in advance of closure commencement this notification can be prepared, thus injecting further uncertainty into determining whether closure has initiated. EPA's review of CCR websites confirms that facilities often post a notice of intent to close a CCR unit, as required by § 257.102(g), but provide no indication of when the unit will actually begin closure activities. This was found to be particularly common with respect for posted notifications for inactive surface impoundments. Therefore, EPA is proposing to require that the notification of intent to close include the actual date on which the facility commenced closure activities. This date is important to know so the public can determine when CCR units must complete closure of the unit.

The Agency is proposing tailored requirements based on whether a notification of intent to close was previously completed for the CCR unit. EPA is proposing that if an owner or operator has prepared a notification of intent to close in accordance with § 257.102(g) prior to the effective date of a rule finalizing this proposal that does not contain the date on which the owner or operator commenced closure, then no later than two months following the effective date of a rule finalizing this proposal, the owner or operator would need to prepare and place in the facility's operating record an updated notification of intent to close that includes the of date on which the owner or operator commenced closure of the unit. However, notifications of intent to close posted to a CCR website prior to the effective date of a rule finalizing this proposal, that meet the proposed requirements (*e.g.,* the notification includes the date of closure initiation) would not be required to be updated. Nor would notifications for CCR units that have completed closure, provided the owner or operator prepared the completion of closure notification in accordance with § 257.102(h).

For owners and operators that have not previously prepared a notification of intent to close prior to the effective date of a rule finalizing this proposal, the Agency is proposing to require an owner or operator to complete the notification of intent to close a unit no later than two weeks after the date closure of the CCR unit has been initiated. In addition

to the current requirements codified under § 257.102(g), the notification would need to include the date that closure of the CCR unit was initiated. To ensure that these notifications document the actual date that closure was initiated, the Agency is proposing to revise the regulatory language in § 257.102(g) to allow owners and operators to complete the notification soon after closure is initiated (*i.e.,* within two weeks) instead of prior to the initiation of closure. See proposed regulatory language in § 257.102(g).

Annual closure progress reports. EPA is proposing new requirements for annual closure progress reports, which would be codified in § 257.102(l). In this report, the owner or operator would be required to provide an update on the progress the facility has made in closing the CCR unit. Under this proposal, the annual closure progress report would be required to contain: (1) Discussion on which stage of closure the unit is currently undergoing, (2) Discussion of the closure schedule, and (3) Discussion of any problems that were experienced. See example closure progress reports in the docket.

The first section of the closure progress report would discuss the current stage of closure the CCR unit is undergoing. For example, if the unit is a CCR surface impoundment and is closing by removal of CCR, the various stages of closure could include: Dewatering of the unit, CCR removal, testing soil and sediments for complete removal of the CCR, groundwater monitoring and clean up, filling the excavated surface impoundment, etc. This section of the report would also discuss the major milestones achieved in the past year since the previous report. If it is the first report, then it would include the major milestones achieved since the initiation of closure.

The second section of the closure progress report would discuss the closure schedule. In this section of the report the owner or operator would discuss the overall schedule for closing the CCR unit. This discussion would include dates for any major milestones expected for the next year. Some major milestones may include: Date on which dewatering was complete, date on which CCR removal is complete, etc. This section of the report should also discuss any changes to the closure schedule and describe the basis for the change and impact to the overall schedule. If the facility anticipates requesting an extension to the closure deadline, that should be discussed in this section.

The last section of the closure progress report discusses any problems that occurred in the past year that affected the closure of the CCR unit and the actions taken to resolve the problems. This section could potentially tie in to the previous discussion of whether closure is progressing on schedule. Problems that arose and caused a delay in schedule should be discussed in this section. Such problems could be a delay of equipment, severe weather, delay of a permit, etc. There should be a discussion of what caused the problem, the effects of the problem, and the plan to resolve the problem.

EPA is proposing owners and operators prepare the annual progress report by placing it into the facility's operating record no later than January 31 of each year. The first annual progress report would be due the first January 31 following the effective date of a rule finalizing this proposal or the first January 31 following the year that closure activities for the unit were commenced, whichever date is later. EPA selected January 31 as the deadline to prepare the annual progress report because a winter deadline allows all closure-related activities during a construction season to be captured into a single annual report. The progress reports are required to be completed annually no later than January 31 until closure is completed, as required by § 257.102(f) and (h). See proposed § 257.102(l)(1) and (2).

As a result of the new annual progress report requirements, EPA is also proposing to update the respective recordkeeping requirements, notification requirements, and publicly accessible internet site requirements under §§ 257.105–257.107, respectively. Upon evaluating where to place the proposed requirements in these sections, EPA discovered certain recordkeeping requirements under § 257.105(i) were not updated in 2016 with the direct final rule that extended certain compliance deadlines for eligible inactive CCR surface impoundments.[31] Therefore, EPA is proposing to update those requirements as well to properly reflect current requirements in the CCR rule. Prior to the 2016 direct final rule, the 2015 CCR rule required annual closure progress reports and a notification for inactive units and those requirements were codified under § 257.105(i)(2) and (3). Since those requirements no longer exist for inactive CCR surface impoundments, EPA is proposing to remove and reserve those paragraphs. The Agency is proposing to place the new proposed annual closure progress report requirements in §§ 257.105(i)(14), 257.106(i)(14), and 257.107(i)(14). Finally, EPA is proposing to revise the citation in § 257.105(i)(1) to reference § 257.100(e)(1)(i) rather than the vacated § 257.100(c)(1).

[31] For more information on eligible inactive CCR surface impoundments, see the preamble to the direct final rule published on August 5, 2016 (81 FR 51802).

V. The Projected Economic Impacts of This Action

A. Introduction

The EPA estimated the costs and benefits of this action in a Regulatory Impact Analysis (RIA) which is available in the docket for this action. The RIA estimates that the net annualized impact of this proposed regulatory action over a 100-year period of analysis will be annual cost savings of between $41 million and $138 million when discounting at 7%. This action is considered an economically significant action under Executive Order 12866.

B. Affected Universe

The proposed rule potentially affects coal fired electric utility plants (assigned to the utility sector North American Industry Classification System (NAICS) code 221112) that dispose of their waste onsite in surface impoundments or landfills. The universe consists of approximately 768 units at 300 facilities.

C. Baseline Costs

The RIA estimates the incremental costs and costs savings attributable to the provisions of this rule against the baseline costs and practices in place as a result of the 2015 CCR final rule (80 FR 21302 (April 17, 2015)) and the 2018 CCR Phase 1, Part One final rule (83 FR 36435 (July 30, 2018)). Baseline costs against which the effects of the proposed rule can be compared are available for Provisions One, Three, and Four in the RIA. Robust baseline costs are not available for key elements of Provision Two, therefor incremental costs and cost savings are estimated instead. For a comprehensive discussion of the baseline for this proposed rulemaking action see Chapter 2, Section 3 of the RIA. In a supplemental analysis the RIA also estimates the incremental costs and costs savings of this rule assuming the provisions of the companion Part A proposed rule [32] are in place.

[32] ''Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; A Holistic Approach to Closure Part A: Deadline to Initiate Closure''; 84 FR 65941 (December 2, 2019).

D. Costs and Benefits of the Proposed Rule

The RIA estimates costs and cost savings of the proposed provisions in this action. The RIA discusses the incremental effects on benefits as well. The remainder of this section will briefly summarize the first four provisions of the rule and describe their effect on the regulated universe. A comprehensive discussion of the cost or cost savings impact of each provision, and of the rule overall, can be found in the RIA which is available in the docket for this action.

The Alternative Liner Demonstration, called Provision One in the RIA, results in paperwork costs associated with submitting an application for demonstration and, if approved, the required demonstration. Provision One also results in cost savings associated with delays in closure of units (*i.e.,* time value of money savings). Overall the RIA estimates that the time value of money cost savings will be greater than the paperwork costs, making this a net cost savings provision of approximately $4 million to $9 million per year when annualizing at 7%.

The Use of CCR in Closure provision, called Provision Two in the RIA, consists of two co-proposed options. Option One requires paperwork which result in costs; but it also results in cost savings from avoided disposal costs of CCRs that are used as fill and subsequently do not need to be disposed of elsewhere; and from the avoided cost of fill materials (*e.g.,* soil) that have been replaced with CCRs. Option Two consists of broadly similar components. Paperwork, which results in costs, and the avoided costs of disposal of CCR and the avoided costs of virgin fill material, which cause cost savings. Overall both Provision Two, Option One and Provision Two, Option Two result in net cost savings of approximately $41 million to $65 million per year for Option One and $85 million to $140 million per year for Option Two when annualizing at 7%.

The Closure of CCR units by Removal of CCR provision, called Provision Three in the RIA consists of paperwork costs associated with amending closure and post-closure plans; and avoided paperwork costs that result from units closing earlier and therefor avoiding certain documentations under this provision. Overall this provision results in net costs of approximately $0.2 million per year when annualizing at 7%.

The Annual Closure Progress Reports and Novice of Intent to Close provision, called Provision Four in the RIA causes paperwork costs associated with new documentation of approximately $0.1 million per year when annualizing at 7%.

The RIA also qualitatively describes the potential effects of the proposed rule's provisions on two categories of benefits from the 2015 CCR final rule. Benefits from the beneficial use of CCRs may be impacted by the diversion of eligible CCRs from higher valued beneficial use, such as in concrete, to lower valued use as fill under Provision Two, Option 2 of the proposed rule. Provision One and Provision Two of the proposed rule may impact human health and environmental benefits from the 2015 CCR final rule. Under Provision One, facilities that successfully apply for an alternative liner demonstration, but whose demonstrations are ultimately rejected by EPA will be able to continue operating their impoundments for the duration of the demonstration process. This period is expected to be brief, and the resulting impacts expected to be minimal.

In the case of Provision Two, under both options, existing units may be closed with greater volumes of CCR than they would have been otherwise. However these additional volumes of CCR are expected to come from the consolidation of multiple units into a single unit at a facility, which may provide benefits by decreasing the footprint of the remaining CCR disposal units. Additionally, CCRs will be added during the closure of the receiving unit and after the unit has been dewatered and thus will more closely resemble dry placement in a landfill than a surface impoundment still containing water.

Units closing under Co-Proposed Option 1 of Provision Two must demonstrate in a closure plan submitted to EPA (or a Participating State Director) that the unit will be closed in accordance with the closure performance standards under § 257.102(d) and must limit CCR in the unit coming into contact with water and prevent releases to the environment, including releases through surface transport by precipitation runoff, releases to soil and groundwater, and wind-blown dust.

Units closing under Co-Proposed Option 2 of Provision Two would also need to be closed in accordance with the closure performance standards and consistent with the conditions specified in the definition of ''beneficial use of CCR.'' The fourth criterion of this definition requires that at the volumes of CCR anticipated to be used in closure, users must demonstrate that environmental releases to groundwater, surface water, soil, and air are comparable to or lower than those from analogous products made without CCR.

A comprehensive discussion of the qualitative impacts to benefits is available in Chapter 4 of the RIA, which is available in the docket for this rulemaking.

The net effect of these four provisions is an annualized cost savings of between $41 million and $138 million when discounting at 7%.

Finally, EPA requests comment on the assumptions, methodology, data used, and estimates presented in the RIA.

VI. Statutory and Executive Order (E.O.) Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is an economically significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. The EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis, ''Regulatory Impact Analysis: Hazardous and Solid Waste Management System: Disposal of CCR; A Holistic Approach to Closure Part B: Alternate Demonstration for Unlined Surface Impoundments; Implementation of Closure'', is available in the docket and is summarized in Section V of this preamble.

B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This action is expected to be an Executive Order 13771 deregulatory action. Details on the estimated costs of this proposed rule can be found in EPA's analysis of the potential costs and benefits associated with this action.

C. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2609.01. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

The information collection includes mandatory reporting by facilities with respect to the closure of their units. It also includes documentation that must be submitted to EPA to take advantage of the alternate liner demonstration

provision and the use of CCR in closure provision.

Respondents/affected entities: Coal-fired electric utility plants that will be affected by the rule.

Respondent's obligation to respond: The recordkeeping, notification, and posting are mandatory as part of the minimum national criteria being promulgated under Sections 1008, 4004, and 4005(a) of RCRA.

Estimated number of respondents: 300.

Frequency of response: The frequency of response varies.

Total estimated burden: 17,301 hours (per year with Co-Proposed Option 1 of Provision Two) and 20,170 hours (per year with Co-Proposed Option 2 of Provision Two). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $5.06 million (per year with Co-Proposed Option 1 of Provision Two), includes $4.01 million annualized operation & maintenance costs. $5.86 million (per year with Co-Proposed Option 2 of Provision Two), includes annualized 4.64 million operation and maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *OIRA_submission@omb.eop.gov,* Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than April 2, 2020. The EPA will respond to any ICR-related comments in the final rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This action is expected impact 6 affected small entities' annual revenue by more than 1%; and just 1 entity by more than 3%. This results in a total of 7 of 81 (8.64%) of affected small entities to be significantly affected. We have determined that 8.4% of affected small entities is not a substantial number small entities, and have therefore concluded that this action will not have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. The costs involved in this action are imposed only by participation in a voluntary federal program. UMRA generally excludes from the definition of ''federal intergovernmental mandate'' duties that arise from participation in a voluntary federal program.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action has tribal implications because it would impose requirements on facilities located in Indian country. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law.

The EPA will engage with tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes concurrent with the public comment process for this regulation to permit them to have meaningful and timely input into its development.

EPA has identified that three of the 414 coal-fired electric utility plants (in operation as of 2012) are located on tribal lands. The three facilities are: (1) The Navajo Generating Station in Coconino County, Arizona, which is operated by the Arizona Salt River Project and owned by the Navajo Nation; (2) the Bonanza Power Plant in Uintah County, Utah, which is operated by the Deseret Generation and Transmission Cooperative and owned by the Ute Indian Tribe; and (3) the Four Corners Power Plant in San Juan County, New Mexico, which is operated by the Arizona Public Service Company and owned by the Navajo Nation. The Navajo Generating Station and the Four Corners Power Plant are on tribal trust lands belonging to the Navajo Nation, while the Bonanza Power Plant is located on tribal trust lands within the Uintah and Ouray Reservation of the Ute Indian Tribe. Because CCR units are land-based units, the fact that these CCR facilities are located on tribal trust land means that the facility owners within the meaning of the CCR Rule are the tribal trust beneficial landowner tribes. The Agency continues to believe that the facility operators will bear all direct compliance costs associated with the above-mentioned rules and proposed rules. However, to the extent that an operator fails to comply with a federal CCR requirement, CCR facility owners may also be held liable.

H. Executive Order 13045: Protection of Children From Environmental Health Risk and Safety Risks

This action is not subject to Executive Order 13045 because the EPA does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in the document titled ''Human and Ecological Risk Assessment of Coal Combustion Residuals'' which is available in the docket for the final rule as docket item EPA–HQ–RCRA–2009–0640–11993.

As ordered by E.O. 13045 Section 1–101(a), for the ''Final Rule: Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities'' published on April 17, 2015 (80 FR 21302), EPA identified and assessed environmental health risks and safety risks that may disproportionately affect children in the revised risk assessment. The results of the screening assessment found that risks fell below the criteria when wetting and run-on/runoff controls required by the rule are considered. Under the full probabilistic analysis, composite liners required by the rule for new waste management units showed the ability to reduce the 90th percentile child cancer and non-cancer risks for the groundwater to drinking water pathway to well below EPA's criteria. Additionally, the groundwater monitoring and corrective action required by the rule reduced risks from current waste management units.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. For the 2015 CCR rule, EPA analyzed the potential impact on electricity prices relative to the ''in excess of one percent'' threshold. Using the Integrated Planning Model (IPM), EPA concluded that the 2015 CCR Rule may increase the weighted average nationwide wholesale price of electricity between 0.18 percent and 0.19 percent in the years 2020 and 2030, respectively. As the final rule represents a cost savings rule relative to the 2015 CCR rule, this analysis concludes that any potential impact on wholesale electricity prices will be lower than the potential impact estimated of the 2015 CCR rule; therefore, this final rule is not expected to meet the criteria of a ''significant adverse effect'' on the electricity markets as defined by Executive Order 13211.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

The documentation for this decision is contained in EPA's Regulatory Impact Analysis (RIA) for the CCR rule which is available in the docket for the 2015 CCR rule as docket item EPA–HQ–RCRA–2009–0640–12034.

EPA's risk assessment did not separately evaluate either minority or low-income populations. However, to evaluate the demographic characteristics of communities that may be affected by the CCR rule, the RIA compares the demographic characteristics of populations surrounding coal-fired electric utility plants with broader population data for two geographic areas: (1) One-mile radius from CCR management units (*i.e.,* landfills and impoundments) likely to be affected by groundwater releases from both landfills and impoundments; and (2) watershed catchment areas downstream of surface impoundments that receive surface water run-off and releases from CCR impoundments and are at risk of being contaminated from CCR impoundment discharges (*e.g.,* unintentional overflows, structural failures, and intentional periodic discharges).

For the population as a whole 24.8 percent belong to a minority group and 11.3 percent falls below the Federal Poverty Level. For the population living within one mile of plants with surface impoundments 16.1 percent belong to a minority group and 13.2 percent live below the Federal Poverty Level. These minority and low-income populations are not disproportionately high compared to the general population. However, the percentage of minority residents of the entire population living within the catchment areas downstream of surface impoundments is disproportionately high relative to the general population, *i.e.,* 28.7 percent, versus 24.8 percent for the national population. Also, the percentage of the population within the catchment areas of surface impoundments that is below the Federal Poverty Level is disproportionately high compared with the general population, *i.e.,* 18.6 percent versus 11.3 percent nationally.

Comparing the population percentages of minority and low income residents within one mile of landfills to those percentages in the general population, EPA found that minority and low-income residents make up a smaller percentage of the populations near landfills than they do in the general population, *i.e.,* minorities comprised 16.6 percent of the population near landfills versus 24.8 percent nationwide and low-income residents comprised 8.6 percent of the population near landfills versus 11.3 percent nationwide. In summary, although populations within the catchment areas of plants with surface impoundments appear to have disproportionately high percentages of minority and low-income residents relative to the nationwide average, populations surrounding plants with landfills do not. Because landfills are less likely than impoundments to experience surface water run-off and releases, catchment areas were not considered for landfills.

The CCR rule is risk-reducing with reductions in risk occurring largely within the surface water catchment zones around, and groundwater beneath, coal-fired electric utility plants. Since the CCR rule is risk-reducing and this action does not add to risks, this action will not result in new disproportionate risks to minority or low-income populations.

List of Subjects in 40 CFR Part 257

Environmental protection, Beneficial use, Coal combustion products, Coal combustion residuals, Coal combustion waste, Disposal, Hazardous waste, Landfill, Surface impoundment.

Dated: February 19, 2020.

Andrew R. Wheeler,

Administrator.

For the reasons set out in the preamble, EPA proposes to amend 40 CFR part 257 as follows:

PART 257—CRITERIA FOR CLASSIFICATION OF SOLID WASTE DISPOSAL FACILITIES AND PRACTICES

■ 1. The authority citation for part 257 continues to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6912(a)(1), 6944(a), 6945(d); 33 U.S.C. 1345(d) and (e).

■ 2. Amend § 257.53 by adding the definition of ''Borrow material'' to read as follows:

§ 257.53 Definitions.

* * * * *

Borrow material means materials that are dug from a pit or area for use as fill and include such materials as soil, sand, silt, clay, and gravel.

* * * * *

■ 3. Amend § 257.71 by adding paragraph (d) to read as follows:

§ 257.71 Liner design criteria for existing CCR surface impoundments.

* * * * *

(d) *Alternate Liner Demonstration.* An owner or operator of a CCR surface impoundment constructed without a composite liner or alternate composite liner as defined in § 257.70(b) or (c), may submit an Alternate Liner Demonstration to the Administrator or the Participating State Director to demonstrate that the design of the current liner system or the naturally occurring media present performs equivalent to a composite liner as defined in § 257.70(b). To be granted, the owner or operator must demonstrate, with a reasonable degree of certainty, that based on the construction of the unit and surrounding site conditions, operation of the surface impoundment will not result in groundwater concentrations above the relevant groundwater protection standard at the unit boundary. Prior to the submission of the alternate liner demonstration, the facility must submit an alternate liner demonstration application documenting

the unit's eligibility to submit a demonstration. The application and demonstration must be submitted to the Administrator or the Participating State Director no later than the relevant deadline in paragraph (d)(2) of this section. The Administrator or the Participating State Director will act on the submissions in accordance with the procedures in paragraph (d)(2) of this section.

(1) To obtain approval under this paragraph, the owner or operator of the CCR surface impoundment must submit the following:

(i) *Application.* The owner or operator of the CCR surface impoundment must submit a letter to the Administrator or the Participating State Director, announcing their intention to submit a demonstration under this paragraph. The application must include the location of the facility and identify the specific CCR surface impoundment for which the demonstration will be made. The written demonstration must include information proving all of the following:

(A) The unit is in full compliance with this subpart except for § 257.71 (a)(1)(ii) and (iii),

(B) That the existing network of monitoring wells is sufficient to capture any releases, based on direction of flow, well location, screening depth and other relevant factors, including well construction logs and a sufficient number of diagrams to depict depth to groundwater, the potentiometric surface, and the anticipated direction(s) of groundwater flow across the site (multiple diagrams may be necessary if the direction of flow is affected by seasonal, tidal or other influences);

(C) That there is no indication from groundwater monitoring data that the unit has or will adversely affect groundwater (*i.e.,* no statistically significant increases (SSI) of Appendix IV to this part constituents above relevant GWPS), including documentation of the most recent statistical tests conducted and the rationale for the methods used in these comparisons, and

(D) That the unit meets the location restrictions under §§ 257.60 through 257.64.

(ii) *Alternate Liner Demonstration Package.* The completed alternate liner demonstration package must be certified by a professional engineer. The package must present evidence to demonstrate, with a reasonable degree of certainty, that based on the construction of the unit and surrounding site conditions, operation of the surface impoundment will not result in groundwater concentrations above the relevant groundwater protection standard at the unit boundary. For each line of evidence, as well as any other data and assumptions incorporated into the determination, the facility must include documentation on how the data were collected and why these data and assumptions are believed to adequately reflect potential contaminant transport at and around that specific impoundment. The alternate liner demonstration at a minimum must contain all of the following lines of evidence:

(A) *Characterization of site hydrogeology.* A characterization of the site-specific hydrogeology that surrounds the surface impoundment that defines the variability of the soil around the impoundment. The characterization must include all of the following:

(*1*) Measurements of the hydraulic conductivity in the uppermost aquifer measured from existing monitoring wells and discussion of the methods used to obtain these measurements.

(*2*) Subsurface samples collected to characterize site hydrogeology must be located around the perimeter of the impoundment at a spatial resolution sufficient to ensure that any regions of substantially higher conductivity have been identified;

(*3*) Conceptual site models with cross-sectional depictions of site stratigraphy that include the relative location of the impoundment (with depth of ponded water noted), monitoring wells (with screening depths noted), and all other subsurface samples used in the development of the models;

(*4*) A narrative description of site geological history; and

(*5*) All of the data used in the conceptual site model summarized into easily readable graphs or tables.

(B) *Potential for infiltration.* This report must evaluate the potential for infiltration through any liners and underlying soils that control release and transport of leachate by either in-situ sampling, or by conducting an analysis of the soil-based liner and underlying soil of the unit through laboratory testing.

(2) *Procedures for Adjudicating Requests.* (i) *Deadlines for Submission.* The owner or operator must submit the application under paragraph (d)(1)(A) of this section to EPA or the Participating State Director for approval no later than April 2, 2020. The owner or operator must submit the demonstration required under paragraph (d)(1)(B) of this section to EPA for approval no later than one year after the deadline for the initial application. If the owner or operator cannot meet this second deadline due to analytical limitations, the owner or operator must submit a request for an extension no later than 90 days prior to the deadline for submission of the demonstration that includes a summary of the data that have been analyzed for the samples responsible for the delay and an alternate timeline for completion that has been certified by the laboratory.

(ii) *Application Review.* EPA or the Participating State Director will evaluate the application and may request additional information as necessary to complete its review. Submission of a complete application will toll the facility's deadline to cease receipt of waste into that unit until issuance of a final decision on the unit's eligibility. Incomplete submissions will not toll the facility's deadline. Within sixty days of receiving a complete application, EPA or the Participating State Director will notify the owner or operator of its determination on the eligibility of their surface impoundment.

(iii) *Demonstration Review.* EPA or the Participating State Director will evaluate the demonstration package and may request additional information as necessary to complete its review. Submission of a complete demonstration package will toll the facility's deadline to cease receipt of waste into that unit until issuance of a final decision under paragraph (d)(2)(v) of this section. Incomplete submissions will not toll the facility's deadline.

(iv) EPA or the Participating State Director will publish a proposed decision on the alternate liner demonstration package on EPA's or the Participating State Director's website for a 30-day comment period.

(v) After consideration of the comments, EPA or the Participating State Director will issue its decision on the alternate liner demonstration package within 4 months of receiving a complete alternate liner demonstration package. If no substantive comments are received, the proposed decision will become effective 5 days from the close of the comment period.

(vi) *Effect of Denial.* If EPA or the Participating State Director determines that the unit is not eligible under paragraph (d)(1)(i) of this section, the owner or operator must cease receipt of waste and initiate closure within six months of the denial or by the deadline in § 257.101(a), whichever is later. If EPA or the Participating State Director determines that the unit's alternate liner does not meet the standard for approval in paragraph (d) of this section, the owner or operator must cease receipt of waste and initiate closure within six months of the denial. If a facility needs to obtain alternate capacity, they may do

so in accordance with the procedures in § 257.103.

(vii) *Loss of authorization.* (A) If at any time assessment monitoring pursuant to § 257.95 is triggered for the unit, the facility must conduct intra-well analyses on each well as part of subsequent groundwater monitoring reports to identify any trends of increasing concentrations. If there is evidence that the unit may exceed the groundwater protection standard for any constituent within the operational life of the unit, EPA or the Participating State Director will reevaluate the authorization, and may revoke it if source control measures cannot be put in place while the unit continues to operate.

(B) The onus remains on the facility at all times to demonstrate that the unit meets the conditions for authorization under this section. If at any point, any condition for qualification under this section has not been met, EPA or the Participating State Director can without further notice or process deny or revoke the owner or operator's authorization under paragraph (d)(2)(vii).

■ 4. Amend § 257.102 by:

■ a. Revising paragraphs (c) and introductory text (d)(3)(ii);

■ b. Adding paragraph (d)(4);

■ c. Revising paragraphs (g) and (i)(4);

■ d. Adding paragraph (l).

The additions and revisions read as follows:

§ 257.102 Criteria for conducting the closure or retrofit of CCR units.

* * * * *

(c) *Closure by removal of CCR.* An owner or operator closing a CCR unit by removal of CCR must follow the procedures specified in either paragraph (c)(1) or (c)(2) of this section. Closure by removal activities include removing or decontaminating all CCR and CCR residues, containment system components such as the unit liner, contaminated subsoils, contaminated groundwater, and CCR unit structures and ancillary equipment.

(1) *Complete all removal and decontamination activities during the active life of the CCR unit.* Within the timeframes specified in paragraph (f) of this section the owner or operator must do all of the following:

(i) Complete removal and decontamination of all areas affected by releases from the CCR unit;

(ii) Document that constituent concentrations throughout the CCR unit and any areas affected by releases from the CCR unit have been removed and groundwater monitoring concentrations do not exceed the groundwater protection standards established pursuant to § 257.95(h) for constituents listed in appendix IV to this part; and

(iii) Obtain the completion of closure certification or approval required by paragraph (f)(3) of this section.

(2) *Complete removal and decontamination activities during the active life and post-closure care period of the CCR unit.* The owner or operator may close the CCR unit by completing all removal and decontamination activities, except for groundwater corrective action, during the active life of the CCR unit and by completing groundwater corrective action during the post-closure care period pursuant to the following procedures:

(i) Within the timeframes specified in paragraph (f) of this section, complete all removal and decontamination activities except for groundwater corrective action;

(ii) Within the timeframes specified in paragraph (f) of this section, begin implementation of the remedy selected under § 257.97 such that all components of the remedy are in place and operating as intended;

(iii) Complete groundwater corrective action as a post-closure care requirement as specified in § 257.104(g);

(iv) Amend the written closure plan required by paragraph (b) of this section and the written post-closure care plan required by § 257.104(d), if necessary;

(v) Within the timeframes specified in paragraph (f) of this section, obtain the completion of closure certification or approval required by paragraph (f)(3) of this section; and

(vi) Within the timeframes specified in paragraph (f) of this section, record the notation on the deed to the property required by paragraph (i) of this section.

(d) * * *

(3) * * *

(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 paragraphs (d)(3)(ii)(A) through (C) of this section. The design of the final cover system must be included in the written closure plan required by paragraph (b) of this section.

* * * * *

(4) *Exemption for the use of CCR in a CCR surface impoundment closing for cause.* (i) This paragraph specifies the conditions under which CCR may be used in the closure of CCR surface impoundments closing pursuant to § 257.101. Notwithstanding the prohibition on further placement in § 257.101, CCR may be used in a CCR unit provided the written closure plan is approved by the Administrator or a Participating State Director. The approved closure plan must demonstrate that the use of CCR during closure would pose no reasonable risk of adverse effects during the closure and post-closure care periods by showing that the placed CCR will remain contained (*i.e.,* isolated) in the unit closed in accordance with the closure performance standards under § 257.102(d) so as to limit contact of the CCR in the unit with water and to prevent releases to the environment, including releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, and catastrophic unit failures. The following analyses and documentation must be included in the written closure plan:

(A) The volume of CCR that would be placed during closure would not exceed the volume of borrow material that otherwise would be used to achieve the subgrade elevations necessary to support the final cover system;

(B) The time needed to complete closure of the unit when using CCR would not exceed the time needed to close with soil or borrow material;

(C) The CCR unit meets the requirements of § 257.64;

(D) The CCR unit is and will remain in compliance with the closure performance standards and requirements specified in § 257.102, even after the further placement of CCR;

(E) In addition to the requirements specified in § 257.102(d)(3), the design and construction of the final cover system must ensure the final cover system is no more permeable than the CCR placed in the unit as part of closure; and

(F) If the owner or operator of the unit has determined that any constituent listed in appendix IV to this part has been detected at a statistically significant level exceeding a groundwater detection standard defined under § 257.95(h), the additional placement of CCR will not adversely affect compliance with the corrective action remedy requirements under § 257.97(b).

(ii) *Review and approval.* (A) The owner or operator must submit the closure plan for the unit that includes the demonstrations specified in paragraph (d)(4)(i) of this section to the Administrator or Participating State Director for review and approval in advance of the anticipated date of CCR use. The owner or operator must not make use of the exemption under this paragraph (d) until EPA or the Participating State Director has approved the closure plan.

(B) The approving authority should notify the owner or operator of approval or intent to disapprove the use of CCR in closure within 3 months after receipt of the initial closure plan or within 2 months after receipt of any supplemental information submitted.

* * * * *

(g)(1) Except as provided by paragraph (g)(2) of this section, no later than two weeks from the date the owner or operator initiates closure of a CCR unit, the owner or operator must prepare a notification of intent to close a CCR unit. The notification must include the date that closure of the CCR unit was initiated. The notification must also include the certification by a qualified professional engineer or the approval from the Participating State Director or the approval from EPA where EPA is the permitting authority for the design of the final cover system as required by § 257.102(d)(3)(iii), if applicable. The owner or operator has completed the notification when it has been placed in the facility's operating record as required by § 257.105(i)(7).

(2) If the owner or operator previously completed a notification of intent to close a CCR unit prior to the effective date of a rule finalizing this proposal that does not contain the date that closure of the unit was initiated, and if the owner or operator has not yet completed closure of the CCR unit by completing the completion of closure notification in accordance with paragraph (h) of this section, then no later than two months following the effective date of a rule finalizing this proposal, the owner or operator must prepare and place in the facility's operating record an updated notification of intent to close that includes the of date on which the owner or operator commenced closure of the unit.

* * * * *

(i) * * *

(4) An owner or operator that closes a CCR unit in accordance with paragraph (c)(1) of this section is not subject to the requirements of paragraphs (i)(1) through (3) of this section.

* * * * *

(l) *Annual Closure Progress Reports.* Owners and operators of any CCR landfill, CCR surface impoundment, or any lateral expansion of a CCR unit that is closed in accordance with paragraph (c) or (d) of this section must complete the notices and progress reports specified in paragraphs (l)(1) and (2) of this section.

(1) The owner or operator must prepare annual closure progress reports summarizing the progress of closure implementation. The report must include the following information:

(i) Discussion on which stage of closure the unit is currently undergoing;

(ii) Discussion of the closure schedule; and

(iii) Discussion of any problems that were experienced.

(2) The owner or operator of a CCR unit must prepare the initial closure progress report no later than the first January 31 following the effective date of a rule finalizing this proposal or the first January 31 following the year that closure activities for the unit were commenced, whichever date is later. An annual closure progress report must be completed for the unit until closure of the unit is completed in accordance with paragraphs (f) and (h) of this section.

■ 5. Amend § 257.104 by:

■ a. Revising paragraphs (a)(2) and (c)(1); and

■ b. Adding paragraphs (c)(3), (g) and (h).

The additions and revisions read as follows:

§ 257.104 Post-closure care requirements.

(a) * * *

(2) An owner or operator of a CCR unit that elects to close a CCR unit by removing CCR as provided by § 257.102(c)(1) is not subject to the post-closure care criteria under this section.

* * * * *

(c) * * * (1) Except as provided by paragraph (c)(2) and (c)(3) of this section, the owner or operator of the CCR unit must conduct post-closure care for 30 years.

* * * * *

(3) An owner or operator closing a unit pursuant to § 257.102(c)(2) must conduct post-closure care pursuant to paragraph (g) of this section.

* * * * *

(g) *Completion of removal and decontamination activities.* For a CCR unit closing pursuant to § 257.102(c)(2), the owner or operator must complete groundwater corrective action by demonstrating that any areas affected by releases from the CCR unit do not exceed the groundwater protection standards established pursuant to § 257.95(h) for constituents listed in appendix IV to this part.

(h) *Removal of a deed notation.* The owner or operator of a CCR unit closed pursuant to §§ 257.102(c)(2) and 257.104 may remove the notation from the deed specified in § 257.102(i) upon:

(1) Completion of groundwater corrective action demonstrating that any areas affected by releases from the CCR unit do not exceed the groundwater protection standards established pursuant to § 257.95(h) for constituents listed in appendix IV to this part; and

(2) Completion of the notification of completion of post-closure care period required by paragraph (e) of this section.

■ 6. Amend § 257.105 by:

■ a. Revising paragraph (i)(1);

■ b. Removing and reserving paragraphs (i)(2) and (i)(3); and

■ c. Adding paragraph (i)(14).

The additions and revisions read as follows:

§ 257.105 Recordkeeping requirements.

* * * * *

(i) * * *

(1) The notification of intent to initiate closure of the CCR unit as required by § 257.100(e)(1)(i).

* * * * *

(14) The annual progress reports of closure implementation as required by § 257.102(l)(2) and (3).

* * * * *

■ 7. Amend § 257.106 by:

■ a. Removing and reserving paragraphs (i)(2) and (i)(3); and

■ b. Adding paragraph (i)(14).

The additions and revisions read as follows:

§ 257.106 Notification requirements.

* * * * *

(i) * * *

(14) The annual progress reports of closure implementation as required by § 257.105(i)(14).

* * * * *

■ 8. Amend § 257.107 by:

■ a. Removing and reserving paragraphs (i)(2) and (i)(3); and

■ b. Adding paragraph (i)(14).

The additions and revisions read as follows:

§ 257.107 Publicly accessible internet site requirements.

* * * * *

(i) * * *

(14) The annual progress reports of closure implementation as required by § 257.105(i)(14).

* * * * *

[FR Doc. 2020–04033 Filed 3–2–20; 8:45 am]

BILLING CODE 6560–50–P

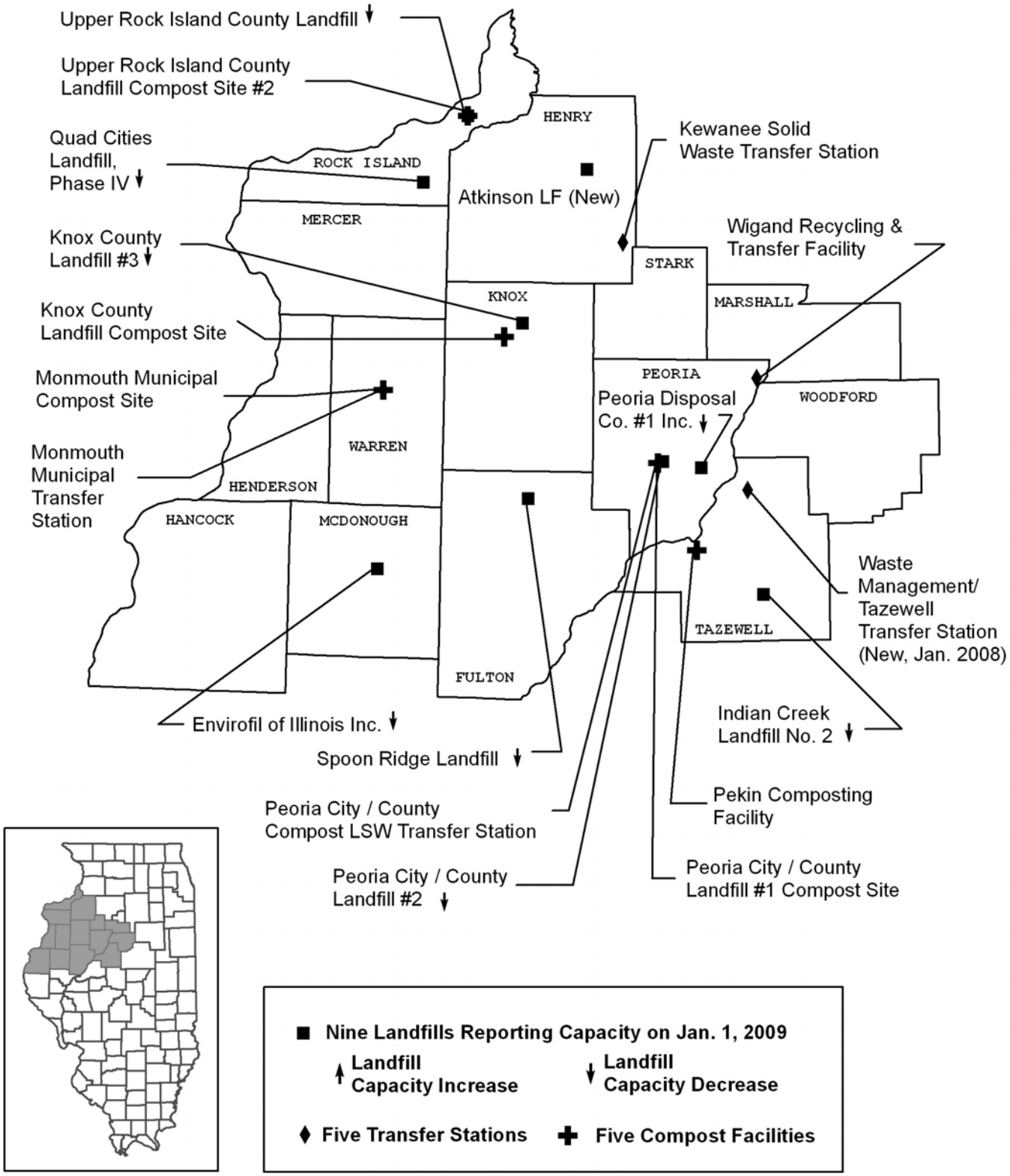
ATTACHMENT B

Region Three: Peoria/Quad Cities

Landfills
Transfer Stations
Compost Facilities

Map "This is Our Land – Don't Spoil Our Soil!" was drawn by Dailea Powell, Student, Edison School, Macomb. This was one of the winning posters for the Illinois EPA's 2007 Poster, Poetry and Prose Contest for 5th and 6th graders.

Landfills, Transfer Stations and Compost Facilities Active in 2009



NINE LANDFILLS IN THE PEORIA/QUAD CITIES AREA REPORTED almost 255.7 million gate cubic yards of capacity remaining at the beginning of 2010. Total capacity was 31.1 million gate cubic yards more than the amount that was reported the previous year. Total capacity in the region increased 13.9 percent from the previous year.

These landfills in Region Three accounted for 23.2 percent of the more than one billion gate cubic yards of disposal capacity remaining statewide on Jan. 1, 2010.

Sixty years of landfill life remaining

The most years of waste disposal remaining was 60 years in the Peoria/Quad Cities region. The Southern Illinois Region had the second most landfill life remaining of 47 years and Chicago Metropolitan Region had the least, 11 years.

Expansion approved in February 2009

At Indian Creek Landfill No. 2, Hopedale, a lateral (86.11 ac.) and vertical expansion that increased capacity by more than 16.1 million in-place cubic yards was approved by Illinois EPA on Feb. 26, 2009, and was included in the latest capacity figures available.

Waste disposal amounts decreased by 13 percent

The Region's eight landfills active in 2009 reported accepting more than 4.2 million gate cubic yards of waste for disposal. However, in Region Three, 637,353 fewer gate cubic yards of waste was received than during 2008, down 13.0 percent.

Twenty percent of waste receipts came from nine other states

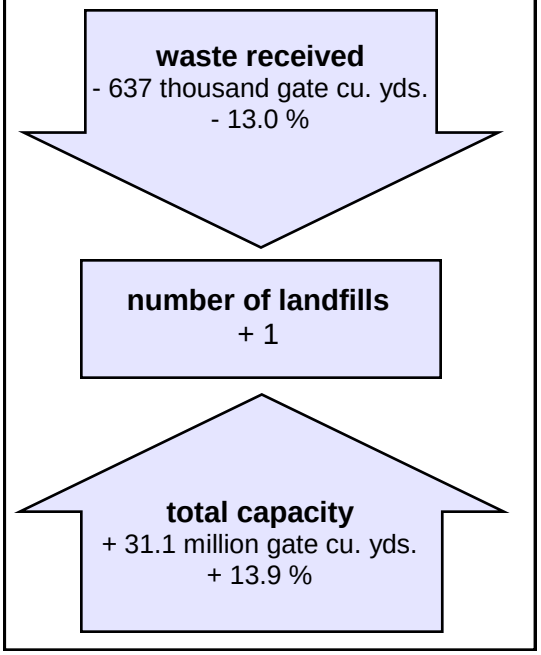
Of the 45 million gate cubic yards of solid waste landfilled in Illinois in 2009, 12 percent was imported from thirteen other states. For Region 3, 20 percent of its waste receipts originated from nine of these 13 states. More than 859,000 cubic yards of out-of-state waste was disposed at six of the Peoria/Quad Cities area landfills.

Fifty-two (52) percent of the out-of-state waste accepted at Quad Cities Landfill, Phase IV was from Iowa and Wisconsin. Seventeen (17) percent of the waste accepted at Upper Rock Island County Landfill came from Iowa.

All landfills remain open

All active landfills in the region expect to remain open into 2009, plus one more in Atkinson that opened in August 2009. However, the PDC #1 Landfill, Peoria is close to closure.

Region Three Data Analysis 2009 vs. 2008



Region Three Solid Waste Statistics

Counties	**14**
Area (square miles)	**8,170**
Population (est.)	**759,761**
Landfill life expectancy	
Years remaining	**60 ***
Landfills	
Active in 2008	**8**
Certified Closed in 2007	**1**
New in 2009	**1**
Transfer Stations	
Active in 2008	**5**
New in 2008	**1**
Compost facilities	
Active in 2008	**5**

***Total remaining capacity (from table below) divided by total waste accepted. Tells how long the region may be served by local landfills at current disposal rates, barring capacity adjustments, until capacity is depleted.**

Questions and Complaints

Illinois EPA Region Three personnel investigate reports of suspected illegal waste disposal, and inspect the Region's landfills, transfer stations and compost facilities, except in **Tazewell County**, where responsibility is shared with a local authority.

Questions or complaints concerning pollution control facilities, open dumping or other incidents should be directed to the office having jurisdiction over the site:

Illinois EPA, Bureau of Land
7620 N. University, Suite 201
Peoria, IL 61614
Phone: 309-693-5462
Fax: 309-693-5324
http://www.epa.state.il.us/land/regions/region-3.html

Tazewell County Health Department
21306 Illinois Route 9
Tremont, IL 61568-9252
Phone: 309-925-5511
Fax: 309-925-4381 or 309-925-4100
http://www.tazewellhealth.org

Site certified closed in Tazewell County

Tazewell RDF had ceased accepting waste as of June 21, 2007, after accepting waste for nearly 30 years. The 30 year post-closure care period began on Sept. 28, 2007. The site was certified closed on Dec. 13, 2007.

New landfill opened in Henry County in August 2009

Atkinson Landfill, Atkinson, received a significant modification permit on Jan. 16, 2004; including a new liner for new areas, waste excavation, a 45.7 acre vertical and a lateral expansion (78.2 ac.). It actually opened for business in August 2009.

New waste disposal areas open at six landfills

Several new areas or cells that were permitted to open at four landfills during 2007, 2008 and 2009, will help provide adequate landfill space into the future for the region.

New cells opened at Indian Creek Landfill No. 2, Hopedale; Knox County Landfill #3, Oneida; Peoria City/County Landfill #2; and Quad Cities Landfill, Phase IV, Milan during this three year period. For more details, please read the landfill specification pages following this regional overview.

A new cell opened in 2009 at the Quad Cities Landfill in January.

Proposed expansion under Agency review

Quad Cities Landfill, Phase IV, Milan, still has a permit application under review for a vertical and horizontal expansion totaling 16 million cubic yards, as of June 2010.

Landfills: Waste Accepted 2009; Remaining Capacities Jan. 1, 2010

			Waste Rec'd.		Capacity		Disp. Area	Close
	Municipality	County	Cu. Yds.	Rank[1]	Cu. Yds.	Rank[2]	Acres	Year
Atkinson Landfill [3]	Atkinson	Henry	49,248	42	23,151,000	13	125.8	2030
Envirofil of Illinois Inc. ♦	Macomb	McDonough	185,935	36	17,454,000	20	66.7	2103
Indian Creek Landfill No. 2 ♦ [4]	Hopedale	Tazewell	913,315	14	39,487,000	11	123*	2053
Knox County Landfill #3 ♦	Oneida	Knox	307,815	29	3,246,000	34	42*	2020
Peoria City/County Landfill #2	Brimfield	Peoria	616,704	20	6,295,000	30	60*	2020
Peoria Disposal Co. #1 Inc. ♦	Peoria	Peoria	1,927	44	8,000	47	74	2010
Quad Cities Landfill, Phase IV ♦ [5]	Milan	Rock Island	1,292,001	12	13,946,000	23	67.76*	2020
Spoon Ridge Landfill	Fairview	Fulton	0	NA	133,317,000	1	372	2055
Upper Rock Island County Landfill ♦	East Moline	Rock Island	899,069	15	18,863,000	18	106.56	2030
Total			**4,266,014**		**255,767,000**			

♦Six landfills accepted out-of-state waste during 2009 from Arkansas, Indiana, Iowa, Kansas, Kentucky, Minnesota, Missouri, Nebraska and Wisconsin totaling 859,934 gate cubic yards, or 20% of the region's total, from nine other states.

[1]Standing among 44 landfills that accepted waste during 2009.

[2]Standing among 47 landfills that reported capacity as of 1-1-10.

[3]Opened 8-20-09, under Mod. #4 which approved the operation of Cell A (9.9 ac.).

[4]A lateral (86.11 ac.) and vertical expansion that will increase capacity by 16.1 million in-place cu. yds. was approved on 2-26-09.

[5]Proposed vertical and horizontal expansions are still under Agency review.

Spoon Ridge Landfill has ranked first in capacity for 12 years

The State's largest landfill, Spoon Ridge Landfill, Fairview, has 52.1 percent of the landfill capacity in the region, translating to 12 percent of the State's capacity. The facility has been the state's largest landfill since Jan. 1, 1998, but was inactive throughout 2009.

Spoon Ridge Landfill was granted an Agency permit in December, 1997, that allowed the facility's owner and operator to expand the disposal area from 80 to 372 acres. The total landfill area increased from 995 to 1,038 acres, and its peak elevation rose from 813.5 to 915 feet. Its design capacity consists of 84.6 million airspace cubic yards.

Transfer station opened at Tazewell RDF site in 2008

The landfill operator at Tazewell RDF developed a transfer station at its closed landfill. Waste Management/Tazewell Transfer Station, East Peoria, was under development throughout 2007. After receiving its operating permit on Dec. 17, 2007, it opened just after the new year began in January 2008.

East Peoria's transfer station leads region

All five transfer facilities in the region reported accepting 119,391 tons of waste for transfer.

East Peoria's privately owned and operated transfer station mentioned above handled 75,705 tons of municipal waste, which was 63.4 percent of that reported for the region.

Concrete push walls and sturdy construction are needed at solid waste transfer stations. High ceilings allow for the opening of compactor trucks and dump beds within the containment of the building. This new construction was at the Tazewell Transfer Station, that opened in January 2008.

Transfer Stations: Waste Handled 2009

	Municipality	County	Tons
Waste Management/Tazewell	East Peoria	Tazewell	75,705
Wigand Rec. & Trans. Facility	Chillicothe	Peoria	20,000
Peoria City/Co. Comp. LSW TS	Brimfield	Peoria	11,386
Kewanee Solid Waste TS	Kewanee	Henry	9,800
Monmouth Municipal Trans. Stn.	Monmouth	Warren	2,500
Total			**119,391**

The area's leading compost site is located at Peoria City/County #1 Landfill, a closed landfill.

Organic compost site available

LHF Compost Inc., Peoria is one of eight sites in Illinois permitted by the Agency to accept organic waste for composting. Data from these sites is not required to be reported each year to Illinois EPA.

Almost forty-six (46) percent of landscape waste receipts were handled at Peoria City/County Landfill #1's compost site

The Peoria/Quad Cities region's five compost facilities processed 24,990 gate tons of landscape wastes during 2009, down less than one percent from the previous year. More than 45.8 percent of the landscape waste in the region handled in 2009 was managed at the compost facility located at Peoria City/County Landfill #1, ranked first in the region in terms of leaves, grass and brush managed.

LSW Compost Facilities: Waste Accepted 2009

	Municipality	County	Tons
Peoria City/Co. LF #1	Brimfield	Peoria	11,457
Pekin Composting Facility	Pekin	Tazewell	3,983
Knox County Landfill Compost	Oneida	Knox	3,641
Monmouth Municipal CS	Monmouth	Warren	3,397
Upper Rock Island Co.	East Moline	Rock Island	2,512
Total			**24,990**

County recycling rates average 30.1 percent

The Agency surveys recycling coordinators statewide each year. Six of the 14 counties in Region 3 (42.8 percent) voluntarily reported new recycling data. The regional recycling rate of 30.1 percent is considered to be the average rate for 2009, since data for the other eight counties comes from either 2003, 2006, 2007 or 2008. ◆

Municipal Waste Recycled

County	Estimated Population	Waste Generated Tons	Waste Generated PCD	Waste Recycled Tons	Waste Recycled Percent
Fulton	38,250	21,642	3.1	2,033	9.4
Hancock	20,085	14,662	4.0	419	2.9
Henderson [1 & 2]	8,213	7,494	5.0	2,101	28.0
Henry [1 & 2]	51,120	32,653	3.5	4,898	15.0
Knox [1 & 2]	56,100	48,120	4.7	13,475	28.0
Marshall [1]	13,180	4,089	1.7	386	9.4
McDonough [1]	32,913	12,280	2.0	2,017	16.4
Mercer [1]	16,957	5,951	1.9	620	10.4
Peoria [2]	183,000	318,512	9.5	123,422	38.7
Rock Island	149,388	216,408	7.9	62,408	28.8
Stark [1]	6,332	3,467	3.0	347	10.0
Tazewell	128,521	148,936	6.3	46,247	31.1
Warren [1]	18,735	10,556	3.1	4,976	47.1
Woodford	36,967	41,153	6.1	2,927	7.1
Totals	**759,761**	**885,923**	**6.4**	**266,276**	**30.1%[3]**

[1] Has residential recycling ordinance

[2] Has commercial recycling ordinance

[3] Regional average

Atkinson Landfill (New)

County	Henry
Municipality	Atkinson
Location	137 Commercial Dr.
Location ☎	309-936-7468
Hours of operation	Mon.-Fri: 6 a.m. - 6 p.m.; Sat.: 6 a.m. - noon
Waste accepted	Municipal and nonhazardous special
Tipping fee for customers	N/A
Owner	Atkinson Landfill Co.
Operator	Atkinson Landfill Co.

*Formerly named Henry County Landfill #2.

Facility Facts

Identification number	0730200003
Design capacity, cu.yds.	11,600,000
Total permitted landfill area, acres	249.8
Permitted disposal area, acres	125.8
Highest permitted elevation, feet (msl)	790
Leachate monitoring stations	3
Groundwater monitoring wells	7
Methane collection system	None
Years remaining, estimated by landfill	20
Date/year to open -- Date/year to close	1980 - 2030

*Opened 8-20-09 under Mod. #4 which approved the operation of Cell A (9.9 ac.).

Waste Received: 2007, 2008, 2009

	TOTAL WASTE ACCEPTED			OUT-OF-STATE WASTE ACCEPTED		
	gate cu. yds	**tons**	**tons/day**	**gate cu/yds.**	**tons**	**% of total**
2007	0	0	0	0	0	0
2008	0	0	0	0	0	0
2009	49,248	14,924	57	0	0	0

2007 State of Origin: N/A 2008 State of Origin: N/A 2009 State of Origin: Illinois only

Remaining Capacities: Jan. 1, 2009 and Jan. 1, 2010

2009 certified gate cu. yds. (tons)	23,200,000	(7,030,000)
2010 certified gate cu. yds. (tons)	23,151,000	(7,015,000)

Audits and Inspections

Solid Waste Mgt. Fees paid in 2009	$2,420
Facility inspected by	Illinois EPA, Peoria Regional Office

Contacts

Owner

Atkinson Landfill Co.
221 N. Washtenaw Ave.
Chicago, IL 60612
Contact: Branko Vardijan
☎ 773-761-7706

Operator

Atkinson Landfill Co.
221 N. Washtenaw Ave.
Chicago, IL 60612
Contact: Branko Vardijan
☎ 773-761-7706

Envirofil of Illinois Inc.

County	McDonough
Municipality	Macomb
Location	13998 E. 1400th St.
Location ☎	309-836-2728
Hours of operation	Mon.-Fri.: 7 a.m. - 4 p.m.
Waste accepted	Municipal, nonhazardous special, liquids
Tipping fee for customers	$39 per ton
Owner	Waste Management of Illinois Inc.**
Operator	Waste Management of Illinois Inc.**

Facility Facts

Identification number	1098100003
Design capacity, cu.yds.	1,751,040
Total permitted landfill area, acres	156.1
Permitted disposal area, acres	66.7
Highest permitted elevation, feet (msl)	744
Leachate monitoring stations	11
Groundwater monitoring wells	33
Methane collection system	Flare
Years remaining, estimated by landfill	93
Date/year to open -- Date/year to close	1974 - 2103***

Mod. #75 approved on 3-15-10, the construction acceptance report for a portion of the landfill gas collection system. ***Years remaining and year to close are based upon current waste acceptance rates.

Waste Received: 2007, 2008, 2009

	TOTAL WASTE ACCEPTED			OUT-OF-STATE WASTE ACCEPTED		
	gate cu. yds	**tons**	**tons/day**	**gate cu/yds.**	**tons**	**% of total**
2007	259,022	78,492	302	42,242	12,801	16
2008	215,588	65,330	251	2,286	693	1
2009	185,935	56,344	217	436	132	0

2007 State of Origin: Illinois, Iowa 2008 State of Origin: Illinois, Iowa 2009 State of Origin: Illinois, Iowa

Remaining Capacities: Jan. 1, 2009 and Jan. 1, 2010

2009 certified gate cu. yds. (tons)	17,779,000	(5,388,000)
2010 certified gate cu. yds. (tons)	17,454,000	(5,289,000)

Audits and Inspections

Solid Waste Mgt. Fees paid in 2009	$117,470
Facility inspected by	Illinois EPA, Peoria Regional Office

Contacts

Owner

Waste Management of Illinois Inc.**
13998 E. 1400th St., P.O. Box 375
Macomb, IL 61455
Contact: Daniel C. Erni
☎ 217-824-3942 Ext. 103

Operator

Waste Management of Illinois Inc.**
13998 E. 1400th St., P.O. Box 375
Macomb, IL 61455
Contact: Daniel C. Erni
☎ 217-824-3942 Ext. 103

**A subsidiary of Waste Management Inc. Midwest, 1001 Fannin, Suite 4000, Houston, TX 77002, 713-512-6200. Regional Office: Waste Management of Illinois Inc., 720 E. Butterfield, Lombard, IL 60148, 630-724-8400.

Indian Creek Landfill No. 2

County	Tazewell
Municipality	Hopedale
Location	24501 McMullen Rd.
Location ☎	309-449-6864
Hours of operation	Mon.-Sat.: 6 a.m. - 6 p.m.
Waste accepted	Municipal and nonhazardous special waste
Tipping fee for customers	$45 per ton
Owner	Tazewell County Landfill Inc.**
Operator	Tazewell County Landfill Inc.**

Facility Facts

Identification number	1790305011
Design capacity, cu.yds.	18,811,920
Total permitted landfill area, acres	216
Permitted disposal area, acres	123*
Highest permitted elevation, feet (msl)	770
Leachate monitoring stations	3
Groundwater monitoring wells	17
Methane collection system	Open flare
Years remaining, estimated by landfill	43
Date/year to open -- Date/year to close	7-1-04 - 2053

*Mod. #10 approved waste disposal operations in Phase B2 and C2 (4.3 ac.) on 3-2-07. Mod. #13 approves extension of Phase 1A Stage 1 and Phase C Layer 1 recirculation lines on 12-5-07. Mod. #15 approves waste disposal operations in a 2.67 ac. area called Phase D1 on 4-2-08. Mod. #19 approved on 2-26-09, a lateral (86.11 ac.) and vertical expansion to increase capacity by 16,150,784 airspace (in-place) cu. yds. Mod. #23 approves on 11-18-09, the construction and operation of a customer convenience facility.

Waste Received: 2007, 2008, 2009

	TOTAL WASTE ACCEPTED			OUT-OF-STATE WASTE ACCEPTED		
	gate cu. yds	**tons**	**tons/day**	**gate cu/yds.**	**tons**	**% of total**
2007	895,881	271,479	1,044	52	16	0
2008	1,018,384	308,601	1,187	0	0	0
2009	913,315	276,762	1,064	1	0	0

2007 State of Origin: Illinois, Iowa 2008 State of Origin: Illinois only 2009 State of Origin: Illinois, Iowa

Remaining Capacities: Jan. 1, 2009 and Jan. 1, 2010

2009 certified gate cu. yds. (tons)	2,514,000	(762,000)
2010 certified gate cu. yds. (tons)	39,487,000	(11,966,000)

Audits and Inspections

Solid Waste Mgt. Fees paid in 2009	$537,024
Facility inspected by	Illinois EPA, Peoria Regional Office & Tazewell County Health Department

Contacts

Owner

Tazewell County Landfill Inc.**
4700 N. Sterling Ave., P.O. Box 9071
Peoria, IL 61615
Contact: Ron L. Edwards
☎ 309-676-4893 Ext. 1554

Operator

Tazewell County Landfill Inc.**
4700 N. Sterling Ave., P.O. Box 9071
Peoria, IL 61615
Contact: Ron L. Edwards
☎ 309-676-4893 Ext. 1554

**A separately incorporated affiliate of Peoria Disposal Company, 4700 N. Sterling Ave., P.O. Box 9071, Peoria, IL 61614, 309-676-4893.

Knox County Landfill #3

County	Knox
Municipality	Oneida
Location	996 Knox Road 2150 North
Location ☎	309-375-6795
Hours of operation	Mon.-Sat.: 5 a.m. - 6 p.m.
Waste accepted	Municipal, nonhazardous special, C & D debris
Tipping fee for customers	$22.50 per ton
Owner	Knox County Landfill Committee
Operator	Knox County Landfill #3

Facility Facts

Identification number	0958160003
Design capacity, cu.yds.	1,800,000
Total permitted landfill area, acres	139.7
Permitted disposal area, acres	42*
Highest permitted elevation, feet (msl)	845
Leachate monitoring stations	1
Groundwater monitoring wells	8
Methane collection system	Under development
Years remaining, estimated by landfill	10
Date/year to open -- Date/year to close	1982 - 2020

*Mod. #25 approved waste disposal operations in Cell 11 (2.6 acres) on 1-26-07. Mod. #29 approved waste disposal operations of Cell 13 (3.5 million cu. yds.) on 12-10-08.

Waste Received: 2007, 2008, 2009

	TOTAL WASTE ACCEPTED			OUT-OF-STATE WASTE ACCEPTED		
	gate cu. yds	**tons**	**tons/day**	**gate cu/yds.**	**tons**	**% of total**
2007	477,396	144,665	556	83	25	0
2008	410,982	124,540	479	29	9	0
2009	307,815	93,277	359	38	12	0
2007 State of Origin: Illinois, Iowa		2008 State of Origin: Illinois, Iowa		2009 State of Origin: Illinois, Iowa		

Remaining Capacities: Jan. 1, 2009 and Jan. 1, 2010

2009 certified gate cu. yds. (tons)	4,469,000	(1,354,000)
2010 certified gate cu. yds. (tons)	3,246,000	(984,000)

Audits and Inspections

Solid Waste Mgt. Fees paid in 2009	$177,518
Facility inspected by	Illinois EPA, Peoria Regional Office

Contacts

Owner

Knox County Landfill Committee
Knox County Courthouse
Galesburg, IL 61401
Contact: Jerry Reynolds
☎ 309-375-6045

Operator

Knox County Landfill #3
P.O. Box 407
Wataga, IL 61488
Contact: Greg Ingle
☎ 309-375-6045

Peoria City/County Landfill #2

County	Peoria
Municipality	Brimfield
Location	11501 W. Cottonwood Road
Location ☎	309-565-4281
Hours of operation	Mon.-Sat.: 5 a.m. - 6 p.m.; Mon.-Sat.: 5 a.m. - 9 a.m. on Holidays
Waste accepted	
Tipping fee for customers	$45 per ton
Owner	Joint City and County of Peoria, Solid Waste Disposal Board
Operator	Waste Management of Illinois Inc.**

Facility Facts

Identification number	1438165003
Design capacity, cu.yds.	7,477,800
Total permitted landfill area, acres	99.6
Permitted disposal area, acres	60*
Highest permitted elevation, feet (msl)	782
Leachate monitoring stations	3
Groundwater monitoring wells	15
Methane collection system	Expansion approved to operate, flare
Years remaining, estimated by landfill	10
Date/year to open -- Date/year to close	3-9-98 - 2020

*The second installment of the middle loop and western expansion of the lower loop of the leachate recirculation system has been approved for operation as of 11-14-08 and 3-20-09. Mod. #71 approves construction of and waste disposal operations in Cell 5 on 1-13-09. Mod. #77 approves a western expansion of the lower loop of the leachate recirculation system in Cells 5 and 8 on 1-14-10.

Waste Received: 2007, 2008, 2009

	TOTAL WASTE ACCEPTED			OUT-OF-STATE WASTE ACCEPTED		
	gate cu. yds	**tons**	**tons/day**	**gate cu/yds.**	**tons**	**% of total**
2007	621,720	188,400	725	0	0	0
2008	726,331	220,100	847	0	0	0
2009	616,704	186,880	719	0	0	0
2007 State of Origin: Illinois only		2008 State of Origin: Illinois only		2009 State of Origin: Illinois only		

Remaining Capacities: Jan. 1, 2009 and Jan. 1, 2010

2009 certified gate cu. yds. (tons)	7,194,000	(2,180,000)
2010 certified gate cu. yds. (tons)	6,295,000	(1,908,000)

Audits and Inspections

Solid Waste Mgt. Fees paid in 2009	$443,294
Facility inspected by	Illinois EPA, Peoria Regional Office

Contacts

Owner

Joint City and County of Peoria, Solid Waste Disposal Board
419 Fulton St., Room 307
Peoria, IL 61602
Contact: David Barber
☎ 309-494-8800

Operator

Waste Management of Illinois Inc.**
11501 W. Cottonwood Road
Brimfield, IL 61517
Contact: Daniel C. Erni
☎ 217-824-3942 Ext. 103

**A subsidiary of Waste Management Inc. Midwest, 1001 Fannin, Suite 4000, Houston, TX 77002, 713-512-6200. Regional Office: Waste Management of Illinois Inc., 720 E. Butterfield, Lombard, IL 60148, 630-724-8400.

Peoria Disposal Co. #1 Inc.

County	Peoria
Municipality	Peoria
Location	4349 W. Southport Road
Location ☎	309-676-4893 Ext. 204
Hours of operation	Mon.-Fri.: 7 a.m. - 3:30 p.m.
Waste accepted	Certified non-special process and remediation waste, special, hazardous*
Tipping fee for customers	$100 per ton
Owner	Peoria Disposal Co. Inc.
Operator	Peoria Disposal Co. Inc.

*One of two landfills in Illinois to hold a permit to accept hazardous waste

Facility Facts

Identification number	1438120003
Design capacity, cu.yds.	1,847,000
Total permitted landfill area, acres	90
Permitted disposal area, acres	74
Highest permitted elevation, feet (msl)	670
Leachate monitoring stations	9
Groundwater monitoring wells	29
Methane collection system	None
Years remaining, estimated by landfill	< 1
Date/year to open -- Date/year to close	1979 - 2010*

*Nearing closure. Still open as of June 2010.

Waste Received: 2007, 2008, 2009

	TOTAL WASTE ACCEPTED			OUT-OF-STATE WASTE ACCEPTED		
	gate cu. yds	**tons**	**tons/day**	**gate cu/yds.**	**tons**	**% of total**
2007	129,583	39,268	151	78,309	23,730	60
2008	71,783	21,752	84	60,200	18,242	84
2009	1,927	584	2	32,017	9,702	1,661

2007 State of Origin: Arkansas, Illinois, Indiana, Iowa, Kentucky, Minnesota, Missouri, Nebraska, Tennessee, Wisconsin
2008 State of Origin: Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Minnesota, Missouri, Nebraska, Wisconsin 2009 State of Origin: Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Minnesota, Missouri, Nebraska, Wisconsin Data reported to Agency by the landfill itself.

Remaining Capacities: Jan. 1, 2009 and Jan. 1, 2010

2009 certified gate cu. yds. (tons)	10,000	(3,000)
2010 certified gate cu. yds. (tons)	8,000	(2,000)

Audits and Inspections

Solid Waste Mgt. Fees paid in 2009	$1,050
Facility inspected by	Illinois EPA, Peoria Regional Office

Contacts

Owner

Peoria Disposal Co. Inc.
4700 N. Sterling Ave., P.O. Box 9071
Peoria, IL 61615
Contact: Ron L. Edwards
☎ 309-676-4893 Ext. 1554

Operator

Peoria Disposal Co. Inc.
4700 N. Sterling Ave., P.O. Box 9071
Peoria, IL 61615
Contact: Ron L. Edwards
☎ 309-676-4893 Ext. 1554

Quad Cities Landfill, Phase IV

County	Rock Island
Municipality	Milan
Location	13606 Knoxville Road
Location ☎	309-787-2303
Hours of operation	Mon.-Sat.: 5 a.m. - 6 p.m.
Waste accepted	Municipal, nonhazardous special, asbestos
Tipping fee for customers	$12.75 per cubic yard
Owner	Millennium Waste Inc.
Operator	Millennium Waste Inc.

Facility Facts

Identification number	1610400018
Design capacity, cu.yds.	7,852,200
Total permitted landfill area, acres	142.21
Permitted disposal area, acres	67.76*
Highest permitted elevation, feet (msl)	825
Leachate monitoring stations	3
Groundwater monitoring wells	20
Methane collection system	Gas-to-Energy (approved), flares
Years remaining, estimated by landfill	10
Date/year to open -- Date/year to close	1983 - 2020

*Waste disposal operations for Module 6 intermediate (3.68 acres) was approved by Mod. #28 on 3-2-07. Permit Log No. 2008-376 requesting approval of a vertical and horizontal 16 million cu. yd. expansion is still pending as of 6-30-10. Waste disposal operations for Module 4/5 east (5.92 acres) was approved by Mod. #33 on 2-26-09.

Waste Received: 2007, 2008, 2009

	TOTAL WASTE ACCEPTED			OUT-OF-STATE WASTE ACCEPTED		
	gate cu. yds	**tons**	**tons/day**	**gate cu/yds.**	**tons**	**% of total**
2007	1,477,038	447,587	1,721	982,495	297,726	67
2008	1,309,298	396,757	1,526	727,955	220,592	56
2009	1,292,001	391,515	1,506	677,099	205,182	52

2007 State of Origin: Illinois, Iowa, Wisconsin 2008 State of Origin: Illinois, Iowa 2009 State of Origin: Illinios, Iowa, Wisconsin

Remaining Capacities: Jan. 1, 2009 and Jan. 1, 2010

2009 certified gate cu. yds. (tons)	15,544,000	(4,710,000)
2010 certified gate cu. yds. (tons)	13,946,000	(4,226,000)

Audits and Inspections

Solid Waste Mgt. Fees paid in 2009	$519,473
Facility inspected by	Illinois EPA, Peoria Regional Office

Contacts

Owner
Millennium Waste Inc.
13606 Knoxville Road
Milan, IL 61264
Contact: Dominic J. Remmes
☎ 309-787-2303

Operator
Millennium Waste Inc.
13606 Knoxville Road
Milan, IL 61264
Contact: Dominic J. Remmes
☎ 309-787-2303

**A subsidiary of Waste Connections Inc., 2295 Iron Point Road, Suite 200, Folsom, CA 95630-8767, 916-608-8200.

Spoon Ridge Landfill (Inactive)

County	Fulton
Municipality	Fairview
Location	Route 1, Highway 97 North
Location ☎	708-824-3060
Hours of operation	Mon.-Sun.: Limited hours
Waste accepted	Municipal, nonhazardous special
Tipping fee for customers	Unknown
Owner	BFI Waste Systems of North America LLC
Operator	BFI Waste Systems of North America LLC

The site is operating in a diminished capacity, in response to unfavorable market conditions. Under fully operating conditions, the waste volume could be three million cu. yds. per year. In 2007 and 2008, the only days on which waste was accepted was on 5-7-07 and on one day in June 2008. In 2009, the site was not open at all.

Facility Facts

Identification number	0578080002
Design capacity, cu.yds.	84,600,000
Total permitted landfill area, acres	1,038
Permitted disposal area, acres	372
Highest permitted elevation, feet (msl)	915
Leachate monitoring stations	19
Groundwater monitoring wells	32
Methane collection system	None
Years remaining, estimated by landfill	45*
Date/year to open -- Date/year to close	5-31-93 - 2055

*Years remaining and year to close is based upon current waste acceptance rates.

Waste Received: 2007, 2008, 2009

	TOTAL WASTE ACCEPTED			OUT-OF-STATE WASTE ACCEPTED		
	gate cu. yds	**tons**	**tons/day**	**gate cu/yds.**	**tons**	**% of total**
2007	13	4	0	0	0	0
2008	7	2	0	0	0	0
2009	0	0	0	0	0	0

2007 State of Origin: Illinois only 2008 State of Origin: Illinois only 2009 State of Origin: N/A

Remaining Capacities: Jan. 1, 2009 and Jan. 1, 2010

2009 certified gate cu. yds. (tons)	133,317,000	(40,399,000)
2010 certified gate cu. yds. (tons)	133,317,000	(40,399,000)

Audits and Inspections

Solid Waste Mgt. Fees paid in 2009	$1,050
Facility inspected by	Illinois EPA, Peoria Regional Office

Contacts

Owner

BFI Waste Systems of North America LLC
13832 S. Kostner Ave.
Crestwood, IL 60432
Contact: Steven C. Smith
☎ 708-824-3060

Operator

BFI Waste Systems of North America LLC
13832 S. Kostner Ave.
Crestwood, IL 60432
Contact: Steven C. Smith
☎ 708-824-3060

**A subsidiary of Allied Waste Industries Inc., 18500 N. Allied Way, Phoenix, AZ 85054, 480-627-2700. The overall parent company as of 12-5-08, is Republic Industries Inc.

Tazewell Recycling and Disposal Facility (Closed)

County	Tazewell
Municipality	East Peoria
Location	3550 E. Washington St.
Location ☎	309-649-5811
Hours of operation	N/A
Waste accepted	Municipal, nonhazardous special, liquids for solidification
Tipping fee for customers	N/A
Owner	Waste Management of Illinois Inc.**
Operator	Waste Management of Illinois Inc.**

Facility Facts

Identification number	1798060004
Design capacity, cu.yds.	4,806,709
Total permitted landfill area, acres	154
Permitted disposal area, acres	42
Highest permitted elevation, feet (msl)	619.9 - 764.8
Leachate monitoring stations	1
Groundwater monitoring wells	18
Methane collection system	Gas-to-Energy, flare
Years remaining, estimated by landfill	0
Date/year to open -- Date/year to close	1975 - 2007*

*The landfill ceased accepting waste on 6-21-07. Mod. #91 approved the landfill's closure certification on 12-13-07. The 30 year post-closure care period began on 9-28-07.

Waste Received: 2007, 2008, 2009

	TOTAL WASTE ACCEPTED			OUT-OF-STATE WASTE ACCEPTED		
	gate cu. yds	**tons**	**tons/day**	**gate cu/yds.**	**tons**	**% of total**
2007	3,940	1,194	5	0	0	0
2008	0	0	0	0	0	0
2009	0	0	0	0	0	0

2007 State of Origin: Illinois only 2008 State of Origin: N/A 2009 State of Origin: N/A

Remaining Capacities: Jan. 1, 2009 and Jan. 1, 2010

2009 certified gate cu. yds. (tons)	0	(0)
2010 certified gate cu. yds. (tons)	0	(0)

Audits and Inspections

Solid Waste Mgt. Fees paid in 2009	$0
Facility inspected by	Illinois EPA, Peoria Regional Office & Tazewell County Health Department

Contacts

Owner

Waste Management of Illinois Inc.**
West 124 North, 9355 Boundary Road
Menomonee Falls, WI 53051
Contact: Michael Peterson
☎ 262-532-4024

Operator

Waste Management of Illinois Inc.**
West 124 North, 9355 Boundary Road
Menomonee Falls, WI 53051
Contact: Michael Peterson
☎ 262-532-4024

**A subsidiary of Waste Management Inc. Midwest, 1001 Fannin, Suite 4000, Houston, TX 77002, 713-512-6200. Regional Office: Waste Management of Illinois Inc., 720 E. Butterfield, Lombard, IL 60148, 630-724-8400.

Upper Rock Island County Landfill

County	Rock Island
Municipality	East Moline
Location	17201 20th Ave. North
Location ☎	309-496-2396
Hours of operation	Mon.-Sat.: 6 a.m. - 6 p.m.
Waste accepted	Municipal, nonhazardous special
Tipping fee for customers	$34 per ton
Owner	Upper Rock Island County Landfill Inc.**
Operator	Upper Rock Island County Landfill Inc.**

Facility Facts

Identification number	1618100014
Design capacity, cu.yds.	11,079,400
Total permitted landfill area, acres	195
Permitted disposal area, acres	106.56
Highest permitted elevation, feet (msl)	742
Leachate monitoring stations	10
Groundwater monitoring wells	15
Methane collection system	Gas-to-Energy
Years remaining, estimated by landfill	20
Date/year to open -- Date/year to close	12-31-81 - 2030

Waste Received: 2007, 2008, 2009

	TOTAL WASTE ACCEPTED			OUT-OF-STATE WASTE ACCEPTED		
	gate cu. yds	**tons**	**tons/day**	**gate cu/yds.**	**tons**	**% of total**
2007	1,246,051	377,591	1,452	279,475	84,689	22
2008	1,150,994	348,786	1,341	173,765	52,656	15
2009	899,069	272,445	1,048	150,343	45,558	17

2007 State of Origin: Illinois, Iowa 2008 State of Origin: Illinois, Iowa 2009 State of Origin: Illinois, Iowa

Remaining Capacities: Jan. 1, 2009 and Jan. 1, 2010

2009 certified gate cu. yds. (tons)	20,568,000	(6,233,000)
2010 certified gate cu. yds. (tons)	18,863,000	(5,716,000)

Audits and Inspections

Solid Waste Mgt. Fees paid in 2009	$315,607
Facility inspected by	Illinois EPA, Peoria Regional Office

Contacts

Owner

Upper Rock Island County Landfill Inc.**
26 W. 580 Schick Road
Hanover Park, IL 60133
Contact: Eric Dippon
☎ 630-894-0001

Operator

Upper Rock Island County Landfill Inc.**
17201 20th Ave. North
East Moline, IL 61244
Contact: Eric Dippon
☎ 309-338-2507

**A subsidiary of Allied Waste Industries Inc., 18500 N. Allied Way, Phoenix, AZ 85054, 480-627-2700. Regional Office: 13832 S. Kostner Ave., Crestwood, IL 60445, 708-824-3060. The overall parent company as of 12-5-08, is Republic Industries Inc.

Kewanee Solid Waste Transfer Station (Active)

County	Henry
Municipality	Kewanee
Location	210 Fisher Avenue
Location ☎	309-852-5286
Hours of operation	Mon.-Fri.: 7 a.m. - 3 p.m.
Waste accepted	Municipal, C & D debris
Tipping fee for customers	$44.62/ton
Owner	City of Kewanee
Operator	City of Kewanee

Facility Facts

Identification number	0730650023
Opened, year	1993
Facility acreage	2.1

Waste Received: 2007, 2008, 2009

	Tons per year	Tons per day (average)
2007	8,580	35
2008	8,980	36
2009	9,800	40

Inspections

Facility inspected by	Illinois EPA, Peoria Regional Office

Contacts

Owner

City of Kewanee
Kip Spear
401 E. Third St.
Kewanee, IL 61443
☎ 309-852-2611 Ext. 232

Operator

City of Kewanee
Kip Spear
401 E. Third St.
Kewanee, IL 61443
☎ 309-852-2611 Ext. 232

Monmouth Municipal Transfer Station (Active)

County	Warren
Municipality	Monmouth
Location	836 186th Ave.
Location ☎	309-734-2515
Hours of operation	Mon.-Fri.: 8 a.m. - 4 p.m.; Sat.: 8 a.m. - noon
Waste accepted	Municipal
Tipping fee for customers	$17.50/yd. compacted; $8.50/yd. loose
Owner	City of Monmouth, Mayor's Office
Operator	City of Monmouth, Public Works

Facility Facts

Identification number	1878080001
Opened, year	1983
Facility acreage	3.5

Waste Received: 2007, 2008, 2009

	Tons per year	Tons per day (average)
2007	1,880	0
2008	2,597	0
2009	2,500	0

Inspections

Facility inspected by	Illinois EPA, Peoria Regional Office

Contacts

Owner

City of Monmouth, Mayor's Office
Rod Davies
100 E. Broadway
Monmouth, IL 61462-1778
☎ 309-734-2141

Operator

City of Monmouth, Public Works
Andrew Jackson
100 E. Broadway
Monmouth, IL 61462
☎ 309-734-4026

Peoria City/County Compost LSW Transfer Station (Active)

County	Peoria
Municipality	Brimfield
Location	11501 W. Cottonwood Road
Location ☎	309-565-4281
Hours of operation	Mon.-Sat.: 6 a.m. - 7 p.m. (March - December)
Waste accepted	Landscape waste only
Tipping fee for customers	N/A
Owner	Joint City and County of Peoria, Solid Waste Disposal Board
Operator	Waste Management of Illinois Inc.**

Facility Facts

Identification number	1438165005
Opened, year	2002
Facility acreage	1.4

Waste Received: 2007, 2008, 2009

	Tons per year	Tons per day (average)
2007	6,670	23
2008	0	0
2009	11,386	73

Inspections

Facility inspected by	Illinois EPA, Peoria Regional Office

Contacts

Owner

Joint City and County of Peoria, Solid Waste Disposal Board
David Barber
419 Fulton St., Room 307
Peoria, IL 61602
☎ 309-494-8800

Operator

Waste Management of Illinois Inc.**
Mike Wiersema
11501 W. Cottonwood Road
Brimfield, IL 61517
☎ 309-565-4281

**A subsidiary of Waste Management Inc. Midwest, 1001 Fannin, Suite 4000, Houston, TX 77002, 713-512-6200. Regional Office: Waste Management of Illinois Inc., 720 E. Butterfield, Lombard, IL 60148, 630-724-8400.

Waste Management/Tazewell Transfer Station (Active)

County	Tazewell
Municipality	East Peoria
Location	3550 E. Washington St.
Location ☎	309-694-0295
Hours of operation	Mon.-Sat.: 6 a.m. - 6 p.m.
Waste accepted	Commercial, light industrial, C & D debris, landscape waste and recyclables*
Tipping fee for customers	$49/ton
Owner	Waste Management of Illinois Inc.**
Operator	Waste Management of Illinois Inc.**

*Maximum: 1,200 tpd of municipal solid waste

Facility Facts

Identification number	1798060004
Opened, year	2008*
Facility acreage	10.6

*Open, 1-2-08.

Waste Received: 2007, 2008, 2009

	Tons per year	Tons per day (average)
2007	0	0
2008	82,402	317
2009	75,705	291

Inspections

Facility inspected by	Illinois EPA, Peoria Regional Office and Tazewell County Health Department

Contacts

Owner

Waste Management of Illinois Inc.**
Daniel C. Erni
3550 E. Washington St.
East Peoria, IL 61611
☎ 309-694-0295

Operator

Waste Management of Illinois Inc.**
Daniel C. Erni
3550 E. Washington St.
East Peoria, IL 61611
☎ 309-694-0295

**A subsidiary of Waste Management Inc. Midwest, 1001 Fannin, Suite 4000, Houston, TX 77002, 713-512-6200.

Wigand Recycling & Transfer Facility (Active)

County	Peoria
Municipality	Chillicothe
Location	19908 N. Route 29
Location ☎	309-274-4589
Hours of operation	Mon.-Fri.: 7 a.m.- 6 p.m.; Sat. 7a.m.- 2p.m.
Waste accepted	Municipal, recyclables, landscape waste
Tipping fee for customers	$12.50/cu. yd.
Owner	Wigand Disposal Co.**
Operator	Wigand Disposal Co.**

Facility Facts

Identification number	1430205031
Opened, year	1998
Facility acreage	2.1

Waste Received: 2007, 2008, 2009

	Tons per year	Tons per day (average)
2007	0	0
2008	0	0
2009	20,000	80

Inspections

Facility inspected by	Illinois EPA, Peoria Regional Office

Contacts

Owner

Wigand Disposal Co.**
Ron L. Edwards
4700 N. Sterling Ave., P.O. Box 9071
Peoria, IL 61615
☎ 309-676-4893 Ext. 1554

Operator

Wigand Disposal Co.**
Ron L. Edwards
4700 N. Sterling Ave., P.O. Box 9071
Peoria, IL 61615
☎ 309-676-4893 Ext. 1554

**A subsidiary of Coulter Companies, P.O. Box 9071, Peoria, IL 61612-9071, 309-676-4893.

Knox County Landfill Compost Site (Active)

County	Knox
Municipality	Oneida
Location	996 Knox Road 2150N
Location ☎	309-375-6795
Hours of operation	Mon.-Fri.: 8 a.m. - 4 p.m.; Sat.: 8 a.m. - noon
Waste Accepted	Landscape waste*
Owner	Knox County Landfill Committee
Operator	Knox County Landfill #3

*Maximum volume: 50,000 cu. yds. per year

Facility Facts

Identification number	0950600001
Date/Year Open - Date/Year Closed	4-10-90 -
Permit Expires	10-1-13
Facility Inspected By	Illinois EPA, Peoria Regional Office

Landscape Waste Received (cu. yds): 2007, 2008, 2009

	Grass cu. yds.	Leaves cu. yds.	Brush cu. yds.
2007	0	0	0
2008	0	0	0
2009	0	0	0

Landscape waste components were not itemized.

Total Landscape Waste Received (tons): 2007, 2008, 2009

2007 tons per year	3,765
2008 tons per year	2,762
2009 tons per year	3,641

2009 Amounts Used/Sold (cubic yards)

	Composted	Chipped/Shredded
Land Reclamation	0	0
Daily Landfill Cover	250	900
Final Landfill Cover	0	0
Landscaping	0	0
Land Application at Agronomic Rates	0	0
Other	0	0
TOTAL	250	900

Contacts

Owner

Knox County Landfill Committee
Jerry Reynolds
Knox County Courthouse
Galesburg, IL 61401
☎ 309-375-6045

Operator

Knox County Landfill #3
Greg Ingle
P.O. Box 407
Wataga, IL 61488
☎ 309-375-6045

Monmouth Municipal Compost Site (Active)

County	Warren
Municipality	Monmouth
Location	836 186th Ave.
Location ☎	309-734-4026
Hours of operation	Mon.-Fri.: 7:30 a.m. - 3:30 p.m.; Sat.: 7:30 a.m. - 11:30 p.m.
Waste Accepted	Grass, leaves, brush*
Owner	City of Monmouth, Mayor's Office
Operator	City of Monmouth, Public Works

*Maximum volume: 20,000 cu. yds. per year

Facility Facts

Identification number	1878080001
Date/Year Open - Date/Year Closed	6-15-90 -
Permit Expires	1-1-14
Facility Inspected By	Illinois EPA, Peoria Regional Office

Landscape Waste Received (cu. yds): 2007, 2008, 2009

	Grass cu. yds.	Leaves cu. yds.	Brush cu. yds.
2007	4,072	2,987	19,453
2008	4,519	5,072	2,798
2009	5,236	2,641	5,163

Total Landscape Waste Received (tons): 2007, 2008, 2009

2007 tons per year	5,144
2008 tons per year	3,242
2009 tons per year	3,397

2009 Amounts Used/Sold (cubic yards)

	Composted	Chipped/Shredded
Land Reclamation	0	0
Daily Landfill Cover	0	0
Final Landfill Cover	0	0
Landscaping	172	129
Land Application at Agronomic Rates	0	0
Other	0	0
TOTAL	172	129

Contacts

Owner

City of Monmouth, Mayor's Office
Rod Davies
100 E. Broadway
Monmouth, IL 61462-1778
☎ 309-734-2141

Operator

City of Monmouth, Public Works
Andrew Jackson
100 E. Broadway
Monmouth, IL 61462
☎ 309-734-4026

Pekin Composting Facility (Active)

County	Tazewell
Municipality	Pekin
Location	14379 Illinois Route 29S
Location ☎	309-347-7166
Hours of operation	Mon.-Fri.: 7:30 a.m. - 4 p.m.
Waste Accepted	Grass, leaves, brush*
Owner	D. J. Mahoney Inc.
Operator	City of Pekin**

*Maximum volume: 31,300 cu. yds. or 9,400 tons per year

Facility Facts

Identification number	1790600019
Date/Year Open - Date/Year Closed	9-20-90 -
Permit Expires	3-31-14
Facility Inspected By	Illinois EPA, Peoria Regional Office & Tazewell County Health Department

Landscape Waste Received (cu. yds): 2007, 2008, 2009

	Grass cu. yds.	Leaves cu. yds.	Brush cu. yds.
2007	0	0	0
2008	0	0	0
2009	0	0	0

Landscape waste components were not itemized

Total Landscape Waste Received (tons): 2007, 2008, 2009

2007 tons per year	3,733
2008 tons per year	3,530
2009 tons per year	3,983

2009 Amounts Used/Sold (cubic yards)

	Composted	Chipped/Shredded
Land Reclamation	0	0
Daily Landfill Cover	0	0
Final Landfill Cover	0	0
Landscaping	0	0
Land Application at Agronomic Rates	0	0
Other	0	0
TOTAL	0	0

Contacts

Owner
D. J. Mahoney Inc.
Jerry Mahoney
14379 Illinois Route 29S
Pekin, IL 61554
☎ 309-353-3333

Operator
City of Pekin**
Bob Shaw
1130 Koch St.
Pekin, IL 61554
☎ 309-478-5444

**City of Pekin holds operator permit, but D. J. Mahoney Inc. actually owns and operates the compost facility.

Peoria City/County Landfill #1 Compost Site (Active)

County	Peoria
Municipality	Brimfield
Location	11501 W. Cottonwood Road
Location ☎	309-565-4281
Hours of operation	Mon.-Sat.: 6 a.m. - 7 p.m.
Waste Accepted	Grass, leaves, brush*
Owner	Joint City and County of Peoria, Solid Waste Disposal Board
Operator	Waste Management of Illinois Inc.**

*Maximum volume: 60,000 cu. yds. per year

Facility Facts

Identification number	1438165005
Date/Year Open - Date/Year Closed	6-1-90 -
Permit Expires	10-1-13
Facility Inspected By	Illinois EPA, Peoria Regional Office

Landscape Waste Received (cu. yds): 2007, 2008, 2009

	Grass cu. yds.	Leaves cu. yds.	Brush cu. yds.
2007	3,198	17,180	21,840
2008	4,078	21,920	27,867
2009	4,583	24,633	31,316

16% grass; 43% leaves; 41% brush

Total Landscape Waste Received (tons): 2007, 2008, 2009

2007 tons per year	7,991
2008 tons per year	10,195
2009 tons per year	11,457

2009 Amounts Used/Sold (cubic yards)

	Composted	Chipped/Shredded
Land Reclamation	0	0
Daily Landfill Cover	0	33,400
Final Landfill Cover	0	0
Landscaping	4,200	0
Land Application at Agronomic Rates	0	0
Other	0	0
TOTAL	4,200	33,400

Contacts

Owner

Joint City and County of Peoria, Solid Waste Disposal Board
David Barber
419 Fulton St., Room 307
Peoria, IL 61602
☎ 309-494-8800

Operator

Waste Management of Illinois Inc.**
Mike Wiersema
11501 W. Cottonwood Road
Brimfield, IL 61517
☎ 309-565-4281

**A subsidiary of Waste Management Inc. Midwest, 1001 Fannin, Suite 4000, Houston, TX 77002, 713-512-6200. Regional Office: Waste Management of Illinois Inc., 1411 Opus Place, Suite 400, Downers Grove, IL 60515, 630-724-8400.

Upper Rock Island County Landfill Compost Site #2 (Active)

County	Rock Island
Municipality	East Moline
Location	17201 20th Ave. North
Location ☎	309-496-2396
Hours of operation	Mon.-Sat.: 6 a.m. - 6 p.m.
Waste Accepted	Grass, leaves, brush*
Owner	Upper Rock Island County Landfill Inc.**
Operator	Upper Rock Island County Landfill Inc.**

*Maximum volume: 10,000 cu. yds. per year

Facility Facts

Identification number	1618100014
Date/Year Open - Date/Year Closed	12-13-01 - Site 1 - 2006
Permit Expires	Site 2 - 8-1-12
Facility Inspected By	Illinois EPA, Peoria Regional Office

Landscape Waste Received (cu. yds): 2007, 2008, 2009

	Grass cu. yds.	Leaves cu. yds.	Brush cu. yds.
2007	4,861	2,355	2,784
2008	10,110	2,455	2,590
2009	13,446	43	629

Total Landscape Waste Received (tons): 2007, 2008, 2009

2007 tons per year	2,154
2008 tons per year	3,003
2009 tons per year	2,512

2009 Amounts Used/Sold (cubic yards)

	Composted	Chipped/Shredded
Land Reclamation	0	0
Daily Landfill Cover	7,550	2,152
Final Landfill Cover	0	0
Landscaping	0	0
Land Application at Agronomic Rates	0	0
Other	0	0
TOTAL	7,550	2,152

Contacts

Owner

Upper Rock Island County Landfill Inc.**
James Hitzeroth
26 W. 580 Schick Road
Hanover Park, IL 60133
☎ 630-894-5001

Operator

Upper Rock Island County Landfill Inc.**
Bruce Thomas
17201 20th Ave. North
East Moline, IL 61244
☎ 309-496-2396

**A subsidiary of Allied Waste Industries Inc., 18500 N. Allied Way, Phoenix, AZ 85054, 480-627-2700. Regional Office: 13701 S. Kostner Ave., Crestwood, IL 60445, 708-824-3060.