

September 15, 2025

U.S. Environmental Protection Agency
Office of Land and Emergency Management
EPA Docket Center
Mail Code 28221T
1200 Pennsylvania Avenue N.W.
Washington, D.C. 20460

Submitted electronically via <https://www.regulations.gov>.

RE: Comments of the American Public Power Association on the Proposed Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; CCR Management Unit Deadline Extension Rule; Docket Id. No. EPA-HQ-OLEM-2020-0107, 90 Fed. Reg. at 34,409, (July 22, 2025)

Dear Honorable Lee Zeldin:

The American Public Power Association (APPA) appreciates the opportunity to submit the following comments in response to the U.S. Environmental Protection Agency's (EPA or Agency) proposed "Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; CCR Management Unit Deadline Extension Rule" (Proposed Rule).¹ APPA supports extending the compliance deadlines for CCR management units (CCRMUs), including extending the deadline to complete the Facility Evaluation Report (FER) Part 2 by an additional 12 months and extending all requirements predicated on the completion of the FER process.

APPA is the voice of not-for-profit, community-owned utilities that power 2,000 towns and cities nationwide. APPA represents public power before the federal government to protect the interests of the more than 55 million people that public power utilities serve, and the over

¹ 90 Fed. Reg. at 34,409 (July 22, 2025) (Proposed Rule). The Proposal seeks comments on the deadline extension outlined in a simultaneously issued Direct Final Rule (90 Fed. Reg. 34,358) and incorporates by reference the discussion herein. On September 2, 2025, EPA withdrew the Direct Final Rule and announced the reopening of the public comment period.

100,000 people they employ. APPA advocates and advises on electricity policy, technology, trends, training, and operations. Our members strengthen their communities by providing superior service, engaging citizens, and instilling pride in community-owned power.

APPA appreciates the Agency's efforts to reduce the regulatory burden associated with the Legacy Coal Combustion Residual (CCR) Rule, particularly through adjustments that improve the feasibility of meeting the compliance deadlines set for CCRMUs.² APPA's members have a long-standing interest in the implementation of the 2015 CCR rule and the types of CCR management practices that are subject to federal regulation, as well as any new requirements for inactive surface impoundments at inactive facilities (legacy CCR surface impoundments) and CCRMUs.³ APPA and its members have actively engaged in the Agency's efforts to regulate CCRs, including providing input on the Advanced Notice of Proposed Rulemaking (ANPRM) in 2020, the proposed Legacy CCR Rule in 2023, the Notice of Data Availability (NODA) in 2023, as well as the issuance of two technical corrections in 2024 and 2025.⁴

Throughout these commenting efforts, APPA and our members have consistently emphasized the importance of striking an appropriate balance between ensuring environmental protection and establishing realistic, achievable compliance deadlines. APPA supports the Agency's proposal to extend the compliance deadlines applicable to CCRMUs, including the deadlines for completing the FER Part 1, groundwater monitoring at CCRMUs, and the conforming CCRMU requirements. Additionally, as described in further detail below, APPA supports the option raised by the Agency to extend the deadline for completing FER Part 2 by an additional twelve months. The proposed extensions are justified, given the Agency's ongoing review of the CCRMU provisions. Public power utilities and affected facilities seek to avoid unnecessary spending on regulations that are likely to be revised.

1. APPA Supports Extending the FER Part 1 Deadline

APPA supports the Agency's proposed extension of the FER Part 1 deadline as outlined in the Proposed Rule. Under the Proposed Rule, regulated entities would have the option of submitting FER Parts 1 and 2 concurrently by the current FER Part 2 deadline of February 8, 2027.⁵ In effect, this would serve as a one-year extension for regulated entities to prepare FER Part 1, which APPA views as a necessary and pragmatic adjustment given the considerable research FER Part 1 requires.

FER Part 1 requires a thorough review of available records to confirm whether any CCRMUs containing one ton (or more) exist on site, and if so, to delineate the lateral and

² 89 Fed. Reg. at 38,950 (May 8, 2024) (Legacy CCR Rule).

³ 80 Fed. Reg. at 21,302 (April 17, 2015) (2015 CCR Rule).

⁴ <https://www.regulations.gov/document/EPA-HQ-OLEM-2020-0107-0001> (ANPRM), EPA-HQ-OLEM-2020-0107-0119 (Proposed Legacy CCR Rule), EPA-HQ-OLEM-2020-0107-0781 (NODA), EPA-HQ-OLEM-2020-0107-1079 (First Technical Correction), and EPA-HQ-OLEM-2020-0107-1081 (Second Technical Correction).

⁵ Proposed Rule, 90 Fed. Reg. at 42,711.

vertical extent of the unit(s).⁶ While this requirement may appear straightforward, the reality of collecting and reviewing historical records is more complex.

To meet the FER Part 1 deadline, facilities may have decades worth of engineering reports, construction drawings, operational records, and other supporting materials requiring review and synthesis for the FER Part 1 process. For example, in comments submitted in response to the Agency's Proposed Legacy CCR Rule, one APPA member stated that this requirement would necessitate the review of documents spanning more than four decades-covering landfills constructed in stages between 1977 and 1989.⁷ The utility would have to review hundreds, if not thousands, of pages of documents, which would be an extremely time-consuming process, likely necessitating the aid of outside contractors to expedite the process.

Affected facilities must also contend with staffing shortages; the pool of contractors available to sort through and review these historical records is limited. As a result, facilities may find themselves competing for such resources, leaving regulated entities having to decide between awaiting contractor availability or proceeding without the benefit of additional support - both of which serve as a detriment to timely compliance.

APPA believes the Agency's decision to extend the FER Part 1 deadline is both reasonable and necessary. The approaching FER Part 1 deadlines are compelling public power utilities to invest significant time and resources in compliance preparations for the February 2026 deadline, even amid uncertainty about the Legacy Rule's future. A delay is essential to avoid unnecessary ongoing resource expenditure.

2. APPA Supports Extending the CCRMU Groundwater Monitoring Deadline and Conforming CCRMU Deadlines.

APPA finds EPA's proposed extension of the groundwater monitoring deadlines for CCRMUs under the Legacy CCR Rule to be appropriate and well-founded. As EPA explains, owners and operators will be engaged in CCRMU delineation well into 2026, which will leave insufficient time to:

“(1) to design and install a groundwater monitoring system capable of meeting the standards at § 257.91 and (2) to collect and analyze the eight independent samples for each background and downgradient well, as required by § 257.94(b).”⁸

Accordingly, APPA supports EPA's proposed extension of the deadline to comply with groundwater monitoring requirements set forth at § 257.90 by 15 months.⁹

⁶ 89 Fed. Reg. at 39,054.

⁷ <https://www.regulations.gov/comment/EPA-HQ-OLEM-2020-0107-0217>.

⁸ Proposed Rule, 90 Fed. Reg. at 42,711.

⁹ *Id.*

APPA also supports the proposed conforming changes to the remaining CCRMU compliance deadlines. EPA's justification for these extensions is reasonable - namely, that the FER deadlines serve as a prerequisite for all other CCRMU deadlines, and that groundwater monitoring precedes closure and post-closure requirements.¹⁰ As such, it is also necessary to extend the remaining CCRMU deadlines.

3. APPA Supports a 12-Month Extension of the FER Part 2 Deadline

The Proposed Rule seeks feedback on extending the FER Part 2 report deadline by 12 months beyond current requirements.¹¹ This extension would allow operators to either: (1) submit FER Part 1 by February 8, 2027, and FER Part 2 by February 8, 2028, or (2) submit both reports by February 8, 2028.

APPA supports the 12-month FER Part 1 extension and welcomes EPA's acknowledgment that the current deadline is impractical. However, APPA urges the Agency to also approve the additional 12-month extension for FER Part 2 as necessary and appropriate. If EPA finalizes this extension as outlined in the Proposed Rule, it must ensure adequate time for all other CCRMU-related deadlines.

a. FER Part 2 is Time-Intensive and Subject to External Limitations.

FER Part 2 involves a physical facility inspection and any necessary field work, such as soil sampling, to fill data gaps from the information obtained from the review of available records.¹² Similar to FER Part 1, FER Part 2 can represent a complex and time-intensive phase of the overall FER process.

This is due in large part to the requirement that regulated entities must conduct a comprehensive, on-site inspection of their entire property. While this process may be relatively straightforward for some facilities, the range of regulated sites is broad, and facilities can differ significantly in terms of property size, site complexity, and the number of regulated units requiring evaluation. These factors can substantially affect the time and resources needed to complete FER Part 2 thoroughly.

For example, it is not uncommon for a regulated entity to oversee a property spanning several hundred acres. Many such sites include large portions of undeveloped land within their boundaries. Natural features such as wetlands, steep slopes, densely vegetated areas, and other terrain challenges often render portions of a site inaccessible by vehicle and, in some cases, impractical to traverse on foot. As such, the FER Part 2 process can be logistically demanding, requiring additional time to ensure safe access and accurate data collection.

¹⁰ 89 Fed. Reg. at 39,060.

¹¹ Proposed Rule, 90 Fed. Reg. at 42,711.

¹² 89 Fed. Reg. at 39,054.

Stakeholders have previously raised concerns about the complexity and scope of the site inspection process in response to the Proposed Legacy CCR Rule. For example, one member in its comments outlined a detailed series of steps along with associated timeframes required to complete site inspections:

- Conduct initial site inspection- 1 week;
- Conduct interviews- 3 weeks;
- Work plan: Draft work plan for exploratory drilling to establish location and extent of CCRMUs- 2 weeks;
- Work plan: Internal Technical Review- 1 week;
- Procure Drilling Services- 12 weeks;
- Work plan: Owner review of draft document- 2 weeks;
- Work plan: Address owner's comments and submit to State Regulator- 2 weeks;
- Work plan: State Regulator review- 4 weeks
- NEPA Compliance- 24 weeks;
- Utility Clearance- 2 weeks;
- Plant Approval of Excavation Permit and Health and Safety Plan- 2 weeks;
- Site reconnaissance, vegetative clearing, workplan modification for field conditions- 2 weeks;
- Exploratory drilling- 8 weeks;
- Lab testing- 4 weeks; and
- Data analysis (geotechnical and polarized light microscopy (PLM))- 4 weeks.¹³

Another member provided insight into the site inspection process in their comments, presenting the following steps and timeframes:

- Develop exploratory field investigation workplan- 4-6 weeks;
- Schedule previously procured field contractor(s)- 6-10 weeks;
- Conduct field work - 2 weeks; and
- Buffer to adjust for delays in the field and/or multiple concurrent facility investigations - 12 weeks.¹⁴

In addition to the scope of the physical evaluation serving as a time-consuming factor, regulated entities face broader external constraints - chief among them being the limited availability of qualified technical expertise. As noted during the FER Part 1 phase, the industry continues to contend with a finite pool of contractors. The same constraints are seen when talking about contracting drillers, laboratories, and environmental professionals to conduct physical evaluations and address identified data gaps, slowing the FER Part 2 process.

¹³ https://www.regulations.gov/comment/EPA-HQ-OLEM-2020-0107-0342_attachment_4.pdf.

¹⁴ <https://www.regulations.gov/comment/EPA-HQ-OLEM-2020-0107-0271>.

For example, in comments on the Proposed Legacy CCR Rule, a member cited lead times for well drillers ranging from 6 to 10 weeks, attributing delays to limited availability.¹⁵ The member also found that laboratory turnaround times have been significantly extended due to shortages in lab resources, understaffing, and heightened demand, resulting in turnaround times of 10 to 14 weeks, compared to the typical 4-week timeframe.¹⁶

Notably, this issue will be especially pronounced for small public power utilities, which often operate with more limited resource availability than larger industry counterparts - placing them at a disadvantage when competing for the same technical expertise and support.

Finally, the FER Part 2 process is further constrained by seasonal factors. In many regions of the U.S., winter weather conditions preclude the ability of regulated entities to perform essential field activities such as site inspections, drilling, and subsurface exploration, further narrowing the window for compliance. This must also be considered when setting forth a deadline for FER Part 2 for regulated entities.

Taken together, these factors underscore the need for a more realistic timeline for FER Part 2 completion - one that accounts for both the potentially wide-reaching scope of the site evaluation process and the practical constraints faced by regulated entities.

As such, APPA supports the Agency's proposal to extend the deadline for FER Part 2 by 12 months.

b. FER Part 1 and FER Part 2 are Sequential Steps.

An extension of the FER Part 2 phase is also needed because FER Part 1 and Part 2 are inherently sequential components of the broader FER process and, by design, cannot be conducted concurrently.

Specifically, the field investigation activities required for FER Part 2 are contingent upon the completion of the information review in FER Part 1. This sequencing is reflected in the Legacy CCR Rule, in which EPA allocated 12 months for FER Part 2 following the conclusion of FER Part 1.¹⁷

Due to the sequential nature of FER Part 1 and FER Part 2, while facilities may benefit from an extension to the FER Part 1 deadline, that relief is inherently limited. This is because any delay in the first phase compresses the timeline for the second if there is not a corresponding extension of the second part of the process.

¹⁵ <https://www.regulations.gov/comment/EPA-HQ-OLEM-2020-0107-0271>.

¹⁶ *Id.*

¹⁷ 40 C.F.R. §§ 257.75(c)(1) and 257.75(d)(1).

Consequently, APPA supports the Agency's proposed extension of the FER Part 2 deadline to ensure that the flexibility granted by extending the deadline for FER Part 1 translates into meaningful relief for regulated entities.

c. If EPA Grants a 12-Month Extension for FER Part 2, It Must Proportionally Extend All Other CCRMU-Related Deadlines.

As noted previously, EPA's Proposed Rule seeks input on extending the FER Part 2 deadline by 12 months, with corresponding extensions for all CCRMU deadlines based on the FER timeline. While APPA supports this extension, the proposed deadlines for groundwater monitoring, closure, and post-closure care remain inadequate.

EPA indicated in the preamble that the 12-month deadline extension would supplement the alternative single-deadline option described in the withdrawn Direct Final Rule; the Agency's actual implementation in the Proposal contradicts this statement. Rather than building upon the withdrawn rule's framework, EPA added twelve months to the Legacy Rule's existing deadlines for groundwater monitoring, closure, and post-closure care requirements. This mechanical approach provides insufficient time for compliance and creates an internal inconsistency within EPA's regulatory framework.

The Proposal's methodology produces deadlines that are more restrictive than those established in the Direct Final Rule that EPA simultaneously withdrew. Under the Direct Final Rule's approach, facilities would have had until August 8, 2029, to complete groundwater monitoring system installation, groundwater sampling and analysis program development, and initiation of detection and assessment monitoring—representing a 15-month extension from the Legacy Rule deadlines. The current Proposal, however, establishes a deadline of May 8, 2029, for these exact requirements, providing only a 12-month extension from the Legacy Rule and creating a deadline that occurs three months earlier than the withdrawn rule's timeline. This same compressed timeline affects closure and post-closure care deadlines as well.

The Proposal fails to provide a rationale for limiting the extension to twelve months from existing deadlines. This approach directly conflicts with EPA's own recognition that groundwater monitoring deadline calculations must accommodate the time required for facility owners and operators to locate CCRMUs as part of the FER process. EPA previously determined that facilities require 30 months to complete this work following FER Part 2 completion.¹⁸ Yet, the Proposal allocates only 15 months from FER Part 2 completion—the identical timeframe that EPA acknowledged as inadequate in the Direct Final Rule.

Given that the FER Part 2 completion deadline extends to February 8, 2028, consistency with EPA's stated timing requirements would necessitate extending the groundwater monitoring deadline to August 8, 2030, to provide the requisite 30-month period for compliance activities.

¹⁸ Direct Final Rule at 34,363.

The groundwater monitoring deadlines should not precede those in the Direct Final Rule, since that extension was based on inadequate existing deadlines, not FER process delays. Closure and post-closure deadlines should receive similar extensions because groundwater monitoring is a prerequisite for these requirements.

4. Conclusion

APPA appreciates the opportunity to provide this input and engage in this important dialogue. As outlined above, APPA agrees with the Agency's proposal to extend the compliance deadlines for FER Part 1, CCRMU groundwater monitoring, as well as the conforming CCRMU deadlines. These extensions represent a more pragmatic and balanced approach to implementing the Legacy CCR Rule - one that upholds environmental protection goals while avoiding undue burdens on the regulated community. In addition, APPA urges the Agency to finalize the proposed extension of the FER Part 2 deadline. Without such a corresponding adjustment, the flexibility intended by the FER Part 1 extension would be significantly undermined. Lastly, if EPA moves forward with a 12-month extension for FER Part 2, the Agency should also proportionally adjust all other CCRMU-related deadlines to maintain consistency and ensure equitable compliance timelines.

Please contact Ms. Carolyn Slaughter at 202-467-2900 or email CSlaughter@publicpower.org should you have any questions regarding the enclosed comments.

Sincerely,

A handwritten signature in black ink that reads "Carolyn Slaughter". The script is cursive and fluid, with the first name and last name clearly legible.

Carolyn Slaughter

Sr. Director, Environmental Policy

American Public Power Association