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U.S. Environmental Protection Agency
EPA Docket Center: Mail Code 28221T
1200 Pennsylvania Ave. N.W.
Washington D.C. 20460

Re: Comments of the American Public Power Association on Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Legacy/CCRMU Amendments, Docket Id. No. EPA-HQ-OLEM-2020-0107; 91 Fed. Reg. at 18,968 (April 13, 2026).

Dear Mr. Steven Cook:

The American Public Power Association (APPA) appreciates the opportunity to submit the attached comments on the Environmental Protection Agency's proposed amendments to the Legacy/CCRMU federal regulations. APPA is the voice of not-for-profit, community-owned utilities that power 2,000 towns and cities nationwide and serve more than 55 million people.

APPA supports EPA's efforts to reduce unnecessary burden and move the federal CCR regulations toward a more practical, site-specific, and risk-based framework. The proposal appropriately recognizes that coal combustion residual units (CCR) unit, management practices, and beneficial uses do not all present the same risk or warrant the same regulatory treatment.

APPA urges EPA to finalize the rule with several important changes. EPA should reaffirm the limits of its Resource Conservation and Recovery Act (RCRA) Subtitle D authority, clarify that legitimate beneficial use of CCR is outside the scope of federal CCR disposal regulation, and recognize that cost may be considered when selecting among equally protective regulatory options. EPA should also finalize its clarification that non-earthen, temporary dewatering structures and similar operational units are not CCR surface impoundments or CCR management units.

In addition, EPA should broaden exemption and deferral pathways for legacy surface impoundments based on whether prior closures were protective and completed under meaningful regulatory oversight, rather than on arbitrary dates or narrow categories of enforceable requirements. APPA also urges EPA to rescind the CCR

management unit (CCRMU) requirements. If EPA does not rescind those provisions, it should substantially narrow them, defer most requirements to permitting, exclude beneficial uses, allow facility-wide groundwater monitoring and corrective action zones, and avoid unsupported numeric thresholds.

EPA should also make permit-based flexibility available and include bridge mechanisms so eligible facilities can preserve access to site-specific pathways before permit programs are fully available. Those flexibilities should include groundwater monitoring, corrective action, closure, beneficial use during closure, and post-closure care. Permitting authorities should also be able to approve risk-based alternative closure performance standards where the site-specific record shows no reasonable probability of adverse effects, including where some CCR remains saturated or in contact with groundwater.

Finally, EPA should finalize beneficial use reforms by removing the fourth beneficial use criterion, replacing the “CCR pile” concept with clearer storage pile and temporary accumulation definitions, recognizing historical beneficial uses conducted under state oversight, and creating a process for future categorical exclusions. These reforms would support RCRA’s goals of resource conservation, recovery, and reuse while maintaining appropriate protection for human health and the environment. APPA appreciates EPA’s continued engagement on these issues and respectfully requests that the Agency consider the attached comments as it develops the final rule.

Sincerely,

Carolyn Slaughter
Senior Director, Environmental Policy
American Public Power Association

Cc: Cecilia De Robertis, Deputy Director, Office of Resource Conservation and Recovery

Comments of the American Public Power Association on the Hazardous and Solid Waste Management Systems: Disposal of Coal Combustion Residuals from Electric Utilities: Legacy /CCRMU Amendments
Docket No. EPA-HQ-OLEM-2020-0107, 91 Fed. Reg. at 18,968 (April 13, 2026)
Comments Submitted on: June 29, 2026

I. Table of Contents

I. Introduction

The American Public Power Association (APPA) appreciates the opportunity to provide comments on the Environmental Protection Agency's (EPA or Agency) proposed revisions to the federal coal combustion residual (CCR) regulations governing the disposal of CCR in landfills and surface impoundments and defining beneficial use of CCR. The proposal rule titled, "*Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Legacy/ CCRMU Amendments,*" responds to information EPA has received since promulgation of the 2024 Legacy CCR Surface Impoundments Rule.[1]

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 100,000 people they employ. APPA advocates and advises on electricity policy, technology, trends, training, and operations. APPA 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 2024 Legacy CCR Rule, particularly for recognizing that the 2015 CCR Rule and the Legacy CCR Rules' one-size-fits-all, self-implementing schemes lack the flexibility and risk-based factors needed when regulating CCR units.[2]

APPA's members have a long-standing interest in the implementation of the 2015 CCR rule and in the types of CCR disposal and management practices subject to federal regulation. 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, the issuance of two technical corrections in 2024 and 2025, and the proposal to extend the compliance deadlines for coal combustion residual management units (CCRMUs).[3]

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[1] 91 Fed. Reg. at 18,968 (April 13, 2026) (Proposed Rule).
[2] 90 Fed. Reg. at 38,950 (May 8, 2024) (Legacy CCR Rule).
[3] Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Extension of an Alternative Closure Requirement Deadline- EPA-HQ-OLEM-2025-2864-1140 ;Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Legacy CCR Surface Impoundments-(ANPRM)-EPA-HQ-OLEM-2020-0107-0066; Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Legacy CCR Surface Impoundments-(NPRM)EPA-HQ-OLEM-2020-0107-0305 and Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Legacy CCR Surface Impoundments-(NODA) EPA-HQ-OLEM-2020-0107-0976.

APPA is a member of the Utility Solid Waste Activities Groups (USWAG) and supports USWAG's technical and legal comments on the Proposal Rule. APPA also supports the individual comments submitted by APPA members, which may provide utility-specific information on the impact of EPA's proposal on their operations.

II. Executive Summary

APPA supports EPA's efforts to reduce unnecessary burden and move the federal CCR regulations toward a more practical, site-specific, and risk-based framework. The proposal appropriately recognizes that CCR units, management practices, and beneficial uses do not all present the same risk or warrant the same regulatory treatment. In the final rule, EPA should preserve regulatory certainty, respect the role of states and permitting authorities, and avoid requirements that impose significant cost without meaningful additional protection for human health or the environment.

APPA urges EPA to finalize the rule with the following changes:

- **Reaffirm the limits of EPA's Subtitle D authority.** EPA should clarify that Subtitle D authorizes regulation of disposal practices that present a reasonable probability of adverse effects, not all solid waste management activities or legitimate beneficial uses of CCR, and that EPA may consider cost when selecting among equally protective regulatory options.
- **Finalize the CCR dewatering structure clarification.** EPA should confirm that non-earthen, temporary dewatering structures and similar operational units are not CCR surface impoundments or CCR management units.
- **Broaden exemption and deferral pathways for legacy surface impoundments.** Eligibility should turn on whether prior closure was protective and conducted under meaningful regulatory oversight, not on arbitrary dates or narrow categories of enforceable requirements.
- **Rescind the CCRMU requirements.** If EPA does not rescind them, it should substantially narrow the provisions, defer most requirements to permitting, exclude beneficial uses, remove "other active facilities" from the regulated universe, allow facility-wide groundwater monitoring and corrective action zones, and avoid unsupported numeric thresholds.
- **Make permit-based flexibilities available and include bridge mechanisms.** EPA should finalize site-specific flexibility for groundwater monitoring, corrective action, closure, beneficial use during closure, and post-closure care, while allowing eligible facilities to preserve access to those pathways before permit programs are fully available.
- **Allow risk-based alternative closure performance standards.** Permitting authorities should be able to approve protective closure approaches based on site-specific conditions, including where some CCR remains saturated or in contact with groundwater, when the record shows no reasonable probability of adverse effects.
- **Finalize beneficial use reforms.** EPA should remove the fourth beneficial use criterion, replace the "CCR pile" concept with clearer storage pile and temporary accumulation

definitions, recognize historical beneficial uses conducted under state oversight, and create a process for future categorical exclusions.

III. EPA Should Confirm in the Final Rule That Its Subtitle D Authority Remains Limited, Consistent with Its Longstanding Interpretation

Since EPA issued the original federal CCR regulations in 2015, the Agency has made statements and taken actions that appear inconsistent with its longstanding interpretation of RCRA Subtitle D. These shifts—particularly regarding the scope of EPA's authority—have created uncertainty for the regulated community. APPA urges EPA to use this rulemaking to reaffirm that Subtitle D authorizes EPA to regulate only disposal practices, that EPA may consider costs when establishing regulatory criteria, and that Congress intended for states to play the primary role in regulating non-hazardous solid waste, including CCR.

EPA's authority under Subtitle D is limited to disposal practices. RCRA draws a clear distinction between "disposal" and broader "solid waste management" activities.[4] RCRA explicitly distinguishes the terms "solid waste management" and "disposal."

"Disposal" is "the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water . . . ."[5] "Solid waste management" is defined more broadly to include "the systematic administration of activities which provide for the collection, source separation, storage, transportation, transfer, processing, treatment, and disposal of solid waste."[6] Thus, while disposal is a solid waste management activity, many other solid waste management activities do not constitute disposal.

EPA has historically recognized this distinction. In the 2010 CCR rule co-proposal, it explained that Subtitle D requirements apply only to disposal and do not authorize it to regulate the generation, transportation, storage, or treatment of solid waste before disposal.[7] EPA's subsequent statements asserting broader authority have caused confusion, even though the 2015 CCR Rule was never intended to regulate short-term or controlled management activities that do not involve disposal.

The text of Subtitle D confirms this limitation. Section 4004(a) authorizes EPA to establish criteria for determining whether facilities are sanitary landfills or open dumps.[8] Both terms are tied to the disposal of solid waste. Section 1008(a)(3) does not expand that authority; it directs EPA to issue suggested guidelines and incorporate the section

[4] 42 U.S.C. § 6903(14); *Id*. 60903(26) *emphasis added*).
[5] *Id*.
[6] § 60903(28).
[7] Hazardous and Solid Waste Management System; Identification and Listing of Special Wastes; Disposal CCR From Electric Utilities, 75 Fed. Reg. 35128, 35136 (proposed June 21, 2010).
[8] § 6907.

4004(a) criteria into those guidelines.[9] Likewise, section 4005(a) prohibits only solid waste management practices that constitute open dumping.[10]

Accordingly, EPA should clarify in the final rule that its authority to issue enforceable regulatory criteria under Subtitle D is limited to disposal practices. This interpretation reflects the best reading of the statute, is consistent with EPA's longstanding position, and would provide needed certainty to public power utilities and other regulated entities.

A. Nothing in RCRA Subtitle D Precludes EPA from Considering Cost.

EPA should clarify that RCRA Subtitle D permits consideration of cost. EPA repeatedly suggests that it cannot consider cost under RCRA Subtitle D.[11] APPA disagrees. Unlike the Subtitle C hazardous waste program, section 4004(a) gives EPA discretion to consider non-risk factors, including cost. This section of the statute use of the term "reasonable" supports a balancing of competing considerations, and the phrase "no reasonable probability" likewise gives EPA flexibility in determining what regulatory requirements are appropriate.[12] As EPA has previously recognized, "probability" implies discretion to adopt requirements that may be less certain to eliminate a perceived health or environmental threat than standards that are strictly "necessary to protect human health and the environment." That discretion allows EPA to consider other relevant factors, including cost, when developing Subtitle D criteria.[13]

Even if EPA concludes that cost cannot override Subtitle D's protectiveness standard, nothing in the statute prevents the Agency from considering cost when two or more options would achieve the same level of environmental protection. Where one approach would impose substantially higher costs without providing a meaningful additional environmental benefit, EPA should select the less burdensome option.

This principle is especially important for public power utilities, including small and rural systems with limited staff and financial resources. Requirements that unnecessarily increase groundwater monitoring, corrective action, closure, or reporting costs ultimately divert resources from other critical utility priorities, including grid reliability, infrastructure investment, environmental compliance, and customer affordability. EPA should make clear in the final rule that neither the Agency nor regulated facilities are required to choose the most expensive compliance option where a lower-cost approach satisfies the CCR rule's performance standards.

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[9] *Id*.

[10] § 6945(a).

[11] Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Legacy CCR Surface Impoundments, 88 Fed. Reg. 31982, 31985, 31986, 32030 (May 18, 2023).

[12] Solid Waste Disposal Facility Criteria, 56 Fed. Reg. 50978, 50983 (Oct. 9, 1991) (citing *American Textile Manufacturers Institute, Inc. v. Donovan*, 452 U.S. 490 (1981); *City of New York v. EPA*, 543 F. Supp. 1084 (S.D.N.Y. 1981)).

[13] 56 Fed. Reg. at 50,983-84.

IV. EPA Should Finalize Its New Definition of CCR Dewatering Structures

APPA supports EPA's proposed clarification that non-earthen structures used to temporarily manage an accumulation of CCR for dewatering are not CCR surface impoundments, but rather CCR dewatering structures as defined in the proposal, and therefore are not subject to regulation under the federal CCR Rule.[14] This clarification is appropriate as a matter of both regulatory design and practical implementation. CCR dewatering structures serve a distinct operational purpose and do not present the same structural or functional characteristics as CCR surface impoundments; accordingly, subjecting them to the same regulatory framework would be overinclusive and inconsistent with the rule's underlying rationale. By expressly recognizing this distinction, EPA would promote greater regulatory certainty, improve implementation, and avoid imposing unnecessary compliance obligations on electric utilities without a corresponding environmental benefit. APPA therefore encourages EPA to adopt this aspect of the proposal as drafted.

EPA's proposal appropriately recognizes that CCR dewatering structures do not meet the definition of "disposal" and therefore fall outside the Agency's authority under RCRA Subtitle D.[15] CCR dewatering structures involve controlled, temporary storage rather than disposal, which should be explicitly excluded from federal CCR rules as beyond EPA's statutory authority.

A. Dewatering Structures Characteristics Are Materially Different from CCR Surface Impoundments.

EPA appropriately recognizes that CCR dewatering structures differ materially from CCR surface impoundments. These structures typically manage smaller volumes of CCR, are constructed of non-earthen materials, are periodically maintained, and are used for short-term handling of CCR prior to final disposal or beneficial use.[16] By contrast, CCR surface impoundments are designed for the long-term storage of CCR and liquids, often with a hydraulic head, and therefore present a greater potential risk of seepage and groundwater impacts.

Given these clear distinctions in design, function, and risk profile, EPA correctly concludes that regulating CCR dewatering structures as surface impoundments is inappropriate. Available information further supports this conclusion, as there is no record evidence demonstrating releases or contamination from these types of structures. Accordingly, there is no basis to regulate them as CCR surface impoundments.

[14] 91 Fed. Reg. at 18,978.
[15] 91 Fed. Reg. at 18,977.
[16] 91 Fed. Reg at 18,968, 18,977-78.

EPA should apply the same reasoning to other non-earthen units used for the temporary management of CCR, such as tanks or basins used in process flows or for water equalization. Although these units may not be used primarily for dewatering, they share similar characteristics—limited storage duration, engineered construction, and low risk—and likewise do not involve the long-term containment of liquids. As such, they should not be subject to regulation as CCR surface impoundments.

APPA notes that EPA states in the preamble that "tanks" would be included within the proposed definition of "CCR dewatering structures."[17] APPA supports EPA's effort to clarify that non-earthen structures temporarily used to manage CCR are not CCR surface impoundments or CCRMUs. That clarification is particularly important because a self-supporting tank is not an "excavation," "diked area," or "topographical depression" and therefore does not meet the existing definition of a CCR surface impoundment.

EPA previously recognized this distinction in 2015, explaining that if a concrete basin is free standing, filled to its design capacity, and its walls or shell alone provide sufficient structural support to maintain the unit's integrity, the unit would likely not be considered a surface impoundment.[18] Accordingly, at least some of the units EPA proposes to define as "CCR dewatering structures" do not meet the current regulatory definition of a surface impoundment in the first place.

Because EPA has more recently taken a conflicting position on self-supporting tanks, APPA agrees that it is appropriate to expressly exclude these structures from the definition of "CCR surface impoundment" to provide clarity and certainty to the regulated community. APPA therefore supports EPA's proposal to state explicitly that non-earthen structures temporarily used to store CCR—including self-supporting concrete tanks—are not CCR surface impoundments or CCRMUs. To improve clarity, EPA should revise the term "CCR dewatering structure" to "temporary CCR storage structure" and define it as "a stationary device, designed to temporarily store, manage, or process CCR and liquids, that is constructed of non-earthen materials, such as concrete, steel, or plastic."

EPA should not, however, add specific operating parameters or requirements for these structures. As discussed above, Subtitle D does not authorize EPA to regulate storage practices, and imposing such requirements would exceed the Agency's authority. In addition, these structures vary significantly by site, design, and operational purpose. The frequency with which CCR is removed can depend on dynamic factors such as fuel mix, boiler operations, and overall plant conditions. By design, however, these structures have limited storage capacity and require routine removal of CCR as part of normal operations. Additional federal parameters are therefore unnecessary and could create operational burdens without providing a meaningful environmental benefit..

[17] 91 Fed. Reg at 18,978.
[18] EPA, "Top 20 Questions on EPA's CCR Final Rule" Presentation to USWAG (April 2015). Attached as Appendix C.

V. APPA Supports the Legacy Surface Impoundment Exemption

APPA supports EPA's proposed exemption pathway for CCR units closed by removal under enforceable requirements where groundwater impacts were evaluated. EPA appropriately recognizes that the existing exemption pathways in the Legacy CCR Rule are overly narrow, given record evidence showing that prior closure-by-removal decisions can be protective. Requiring duplicative closure actions in these cases would impose unnecessary burden, delay, and uncertainty without providing meaningful additional protection for human health or the environment.

The current federal CCR Rule provides two pathways for exempting legacy surface impoundments closed by removal prior to November 8, 2024, both of which require owners and operators to demonstrate, based on specified groundwater monitoring requirements, that the unit did not cause exceedances of groundwater protection standards. EPA now proposes a third pathway that would allow exemption where closure was completed under the oversight of another regulatory authority, if groundwater impacts were considered and any necessary corrective action was addressed. EPA explains that this additional pathway reflects new information showing that some units were closed under state or other programs in a manner that may be comparably protective, making additional closure activities under the federal rule unnecessary.

A. CCR Units That No Longer Contain CCRs Are Not Subject to RCRA.

The *USWAG* court decision explained that RCRA Subtitle D gives EPA the authority to regulate past disposal of CCR based on the continued presence of CCR.[19] Once the CCR is removed, it is no longer subject to disposal, and EPA cannot regulate based on the prior existence of CCRs.

To regulate under RCRA Subtitle D, EPA must show that current disposal practices present a "reasonable probability of adverse effects on health or the environment."[20] The Agency has not made that showing for historical CCR units that were closed by removing the CCR. Neither the 2014 nor the 2024 Risk Assessment supports the regulation of former impoundments that no longer contain CCR. Both assessments were based on operating units that still held CCR, liquids, and a hydraulic head, and therefore do not reflect conditions at units closed by removal. EPA also previously found that units with only *de minimis* amounts of CCR remaining did not present risk warranting regulation. Accordingly, those assessments cannot justify regulation of former impoundments that lack a hydraulic head, much less units from which CCR has been completely removed. A past potential risk is not the same as an existing risk sufficient to support Subtitle D regulation. Without evidence of a current

[19] *USWAG v. EPA*, 901 F.3d 414 (D.C. Cir. 2018) (*USWAG*).
[20] 42 U.S.C § 6944(a).

reasonable probability of adverse effects from these former impoundments, APPA contends EPA lacks statutory authority under 42 U.S.C. § 6944(a) to regulate them.

B. Closures by Removal Approved Before October 19, 2015, Should Qualify for Certification.

APPA supports closure by removal approved by the state or other authorities. EPA should broaden this exemption pathway to, at a minimum, expand availability for closures by removal conducted pursuant to an enforcement requirement issued *prior to October 19, 2015.*

The proposal includes an exemption pathway for legacy impoundments that have completed closure by removal before November 8, 2024. To qualify, an owner or operator would need to show that: (1) closure was completed before that date under another regulatory authority's oversight, (2) that authority considered groundwater impacts, and (3) it oversaw any needed corrective action. EPA says qualifying oversight could include a state or federal permit, an administrative order, or a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) order, or an EPA-approved Resource Conservation and Recovery Act (RCRA) state program order issued on or after October 19, 2015.[21]

However, APPA believes the relevant question is not when the closure occurred, but whether it was completed under meaningful regulatory oversight. EPA's October 19, 2015, cutoff is arbitrary and would improperly exclude closures that were already protective of human health and the environment. There is no basis to assume that closures completed before that date under CERCLA, RCRA Subtitle C, or comparable state oversight were less protective. If an owner or operator can show that all CCR was removed, groundwater impacts were considered, and any necessary corrective action was completed, the unit should qualify for the exemption regardless of when the order was issued.

Accordingly, APPA strongly urges EPA to revise proposed § 257.100(g)(7) in any final rule so that eligibility is based on the substantive adequacy of the closure and the presence of meaningful regulatory oversight—not on the date of closure or the particular regulatory mechanism under which it was completed. EPA should also amend § 257.100(g)(7) to state that an "enforceable requirement includes, *but is not limited* to, a state or federal permit, an administrative order, or a consent decree order under CERCLA or by an EPA-approved *RCRA state program*." In addition, the term "enforceable requirement" should include closures conducted pursuant to state regulatory programs, including state-approved closure plans, that were in effect at the time of closure. Such state requirements are, by their nature, enforceable and should be recognized as qualifying regulatory oversight.

[21] 91 Fed. Reg. at 18,982.

APPA notes that EPA's proposed regulatory text appears to inadvertently omit the final sentence of § 257.100(g), which provides that "if the owner or operator meets all the requirements of this paragraph (g), no further requirements under this subpart apply." This sentence is necessary to give practical effect to the exemption. Without it, the rule would leave uncertainty about whether satisfying § 257.100(g) fully relieves an owner or operator from additional obligations under the subpart. EPA should restore this language in the final rule to preserve the exemption's intended scope and provide needed clarity to the regulated community.

VI. EPA Should Expand the Closure Deferral Option for Legacy CCR Surface Impoundments.

APPA supports expanding the availability of the closure deferral option in the Legacy CCR Rule under § 257.101(g) for legacy CCR surface impoundments that closed prior to November 8, 2024, and were under the oversight of a regulatory authority.[22] In the Legacy CCR Rule, EPA created a limited closure deferral pathway for legacy surface impoundments. The Agency now proposes to expand that pathway for units that completed closure before November 8, 2024, under state or federal oversight.

APPA supports EPA's proposed approach to expanding the closure deferral pathway. Specifically, EPA should remove unnecessary prerequisites that could prevent otherwise protective, state- or federally overseen closures from qualifying for deferral. These include requirements that:

- the unit have a groundwater monitoring system meeting the detailed technical criteria in the federal CCR rule, rather than allowing the owner or operator to document that groundwater monitoring was installed and conducted;

- the facility demonstrate that the legacy CCR surface impoundment currently satisfies either the location standard in § 257.60 or the free-liquids elimination standard in § 257.102(d)(2)(i); and

- the regulatory authority conducted a site-specific risk assessment.

Removing these conditions would make the deferral pathway more workable while preserving the permitting authority's ability to evaluate site-specific conditions and require additional measures where warranted.

APPA supports that expansion because it appropriately recognizes that prior closures conducted under meaningful regulatory oversight should not be second-guessed simply because they did not satisfy every element of the federal self-implementing rule. By removing unnecessary prerequisites and allowing reliance on prior regulatory decisions unless and until the CCR permitting authority determines that

[22] 91 Fed. Reg. at 18,986.

additional site-specific measures are warranted, EPA takes an important step toward a more reasonable and workable approach. EPA should expand this pathway further to ensure that all closures completed under meaningful regulatory oversight and protective of human health and the environment are eligible for deferral.

Further, requiring a demonstration of compliance with either the aquifer separation location restriction or the free-liquids elimination performance standard is not necessary to establish that a prior closure was adequate and protective. EPA has not shown that fully unsaturated ash is required to achieve a protective post-closure condition. The 2015 CCR Rule risk assessment evaluated operating impoundments with ponded water and hydraulic head; it does not provide a basis for assessing the protectiveness of previously closed units under site-specific conditions. Once a unit has been closed and the hydraulic head has been removed or substantially reduced, the principal risk driver associated with an operating surface impoundment has been mitigated. Accordingly, a previously closed unit should not be presumed to present the same risk as an operating impoundment containing CCR and free liquids, even if it does not satisfy every technical requirement of the federal CCR regulations.

This conclusion is supported by the June 2026 Legacy/CCRMU Technical Report prepared by Gadient on behalf of USWAG.[23] Using the Agency's 2014 modeling approach, Gradient evaluated post-closure groundwater conditions for surface impoundments closed in place, including units that intersect groundwater and those that do not. The results show that groundwater concentrations and associated risks decline substantially after closure. They also show little difference between groundwater-intersecting and non-intersecting units, confirming that groundwater contact alone does not materially increase post-closure risk.

APPA also agrees with EPA that a short deferral while a permitting authority conducts a site-specific review is unlikely to meaningfully change environmental conditions or risks.[24] During that period, qualifying units would remain subject to groundwater monitoring and, where necessary, corrective action to address any residual contamination.

APPA further urges EPA to recognize closures completed under state regulations, state-approved closure plans, orders, or approvals issued *before* October 19, 2015, as "enforceable requirements." The existence of the federal CCR rule does not make prior state or federal closure decisions less protective. EPA should therefore revise § 257.101(g)(1) to clarify that an enforceable requirement "includes, *but is not limited to*," a state or federal permit, administrative order, CERCLA consent order, or requirement issued by an EPA-approved RCRA state program.

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[23] Gradient (June 2026), "Technical Comments on US EPA's 2026 Proposed Rule Titled "Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Legacy/CCRMU Amendments" (Legacy/ CCRMU Technical Report).
[24] 91 Fed. Reg. at 18,985.

In summary, deferral is appropriate for these units because it avoids duplicative closure actions that would impose unnecessary costs on utilities, regulators, and ratepayers without providing a corresponding environmental benefit. Many prior closures were completed under state oversight or other enforceable requirements. EPA's proposal would appropriately preserve those decisions unless and until the CCR permitting authority determines that additional measures are needed.

VII. EPA Should Rescind or Substantially Narrow the CCRMU Requirements

APPA agrees that the existing definition of CCRMUs is overly broad and would include units not involved in "disposal."[25] APPA believes the Legacy CCR Rule's CCRMU provisions exceed EPA's limited authority under RCRA Subtitle D, which extends only to the disposal of non-hazardous solid waste. Activities that do not involve disposal fall outside that authority. Yet the CCRMU provisions reach precisely those non-disposal activities by covering any area of land where non-containerized CCR is received, placed, or otherwise managed, so long as the area is not already a regulated CCR unit.[26] EPA has acknowledged that this broad definition extended to "other solid waste management areas of CCR," not just disposal units.[27]

APPA's prior comments on the 2023 proposed Legacy CCR Rule called for the Agency to withdraw the CCRMU provisions and redo the accompanying 2024 Risk Assessment.[28] The CCRMU provisions of the proposed Legacy CCR Rule raised a host of legal, technical, and practical implications for public power utilities that were still not fully addressed in the Final Legacy CCR Rule. However, EPA's current proposal seeks to respond to letters and requests it has received regarding its national risk assessment, prompting the Agency to reconsider its decision to regulate CCRMUs and to propose rescinding all CCRMU requirements.[29]

A. 2024 Risk Assessment Remains Problematic

EPA relied on the 2024 Risk Assessment to inform its decision to expand the federal CCR regulations to cover CCRMUs.[30] EPA acknowledges that the highest-end risks identified in its analysis may not occur at every site and that risks at individual CCR units may be lower. At the same time, EPA explains that national modeling cannot reliably capture the wide range of site-specific conditions that affect risk. That uncertainty underscores the need for a regulatory approach that allows for site-specific evaluation and oversight, rather than a one-size-fits-all framework.[31]

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[25] 91 Fed. Reg. at 18,988.
[26] 40 CFR § 257.53.
[27] 91 Fed. Reg. at 18,988.
[28] American Public Power Association's Comments on the Proposed Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Legacy CCR Surface Impoundments; EPA Docket Id. No. EPA-HQ-OLEM-2020-0107– 0305 (July 17, 2023).
[29] 91 Fed. Reg. at 18,988.
[30] 91 Fed. Reg. at 18,972.
[31] *Id*.

EPA may only regulate those disposal practices that pose "a reasonable probability of adverse effects on health or the environment."[32] The Agency bears the burden of demonstrating that the disposal practices it seeks to regulate meet this statutory risk threshold.[33]

1. *EPA has not shown that CCRMUs present the level of risk needed to justify national regulation.*

Technical comments on EPA's 2024 Risk Assessment found that EPA materially overstates risks from CCRMU fills and historical disposal units because it departed from its 2014 Risk Assessment methodology in ways that bias the modeled results overstate.[34] The CCRMU Technical report argues that when EPA's own 2024 inputs are re-evaluated using the more realistic 2014 methodology—variable receptor well locations and depths, plus consideration of surface-water interception—modeled arsenic concentrations and risks for CCRMU fills fall below key drinking-water or risk benchmarks.

EPA's 2024 CCRMU-fill modeling departs from the Agency's 2014 probabilistic methodology in ways that inflate risk. EPA fixed receptor wells along the plume centerline, limited well depth to the top five feet of the aquifer, and excluded surface-water interception—each of which the report says biases results toward higher concentrations.[35] The CCRMU Technical Report re-runs CCRMU fills using receptor-well locations from the Agency's 2014 landfill modeling and finds CCRMU-fill risks below EPA's 1 × 10^-5 regulatory risk threshold and far below unlined landfill risks.[36]

2. *EPA risk assessment is overly conservative*

EPA's risk assessment overstates the potential risks from CCRMUs by ignoring characteristics that make these units materially less risky than regulated landfills or surface impoundments. Unlike surface impoundments, CCRMUs generally do not contain pooled water and therefore lack the hydraulic head EPA previously identified as the primary driver of groundwater risk. Many CCRMUs are also smaller and have site-specific features—such as caps, vegetation, shallow placement, or deep groundwater—that further reduce any potential for releases. Because EPA did not evaluate CCRMUs based on these distinguishing characteristics, it has not shown that they present the level of risk necessary to justify national regulation under Subtitle D. The CCRMU Technical Report further argues that historical surface impoundments should be

[32] See 42 U.S.C. § 6944(a).
[33] *Indus. Union Dep't, AFL-CIO v. Am. Petroleum Inst.*, 448 U.S. 607, 653 (1980) ("it is the proponent of a rule or order who has the burden of proof").
[34] Gadient Technical Evaluation of US EPA's 2024 Risk Assessment of Coal Combustion Residual Management Units (CCRMUs), November 2025. (CCRMU Technical Report).
[35] CCRMU Technical Report at page 2.
[36] CCRMU Technical Report at pp. 13–17; Table 4.1.

evaluated more like landfills than active surface impoundments because they no longer contain standing water or hydraulic head.

B. APPA Supports the Repeal of the CCRMU Provisions.

EPA is reconsidering its decision to regulate CCRMUs and proposes rescinding all related requirements. In the alternative, EPA is requesting comments on several possible revisions to the existing CCRMU regulations, discussed further below.[37] APPA believes the Agency should rescind the CCRMU provisions in the Legacy CCR Rule due to legal and technical flaws. The definition of CCRMUs is overly broad and has resulted in the regulation of activities that exceed EPA authority under RCRA. As discussed above the Agency's 2024 Risk Assessment did not demonstrate that CCRMUs and legacy impoundments meet the risk threshold and thus warrant national regulations.

Historically, the types of units and activities EPA classified as CCRMUs were not subject to federal regulation. The Legacy CCR Rule regulates a broad range of units, including some that have already been closed, remediated, or overseen under EPA-approved state solid waste programs, and others that remain in operation today, such as landfills that stopped receiving CCR before 2015. EPA's change, as articulated in the Legacy CCR Rule, from a longstanding policy did not consider whether regulated parties reasonably relied on the prior approach and whether those reliance interests are significant. EPA still does not adequately consider the reliance interests of owners and operators who structured their compliance, closure, and remediation decisions based on the prior regulatory framework.

Further, the broad definition of CCRMU reaches beyond EPA statutory authority to regulate solid waste disposal under subtitle D; "not all disposal activities are regulated by the Agency under subtitle D; rather, EPA only regulates those that present risks that exceed the Agency's acceptable risk levels."[38] All of the undefined CCR practices that have been captured by the CCRMU definition do not contain the requisite risks necessary to constitute a disposal practice warranting regulations under subtitle D.

The CCRMUs provision in the Legacy CCR Rule would require substantial expenditures for investigation, reporting, monitoring, and engineering evaluations for legacy management units that may present minimal or no demonstrable risk. These costs divert limited utility and public resources away from infrastructure modernization, grid reliability, environmental upgrades, and customer affordability. Furthermore, EPA and authorized states already possess sufficient authority under existing environmental statutes and regulations to address releases, require corrective action, protect groundwater, and respond to site-specific concerns where warranted.

[37] 91 Fed. Reg. at 18,988.
[38] 80 Fed. Reg. at 21,348.

A major legal problem with the CCRMU definition is that it covers all on-site beneficial uses of CCR. Even *if* EPA has authority to regulate "solid waste management practices" -which it does not- in addition to disposal, beneficial use does not fit either category. The Agency itself said in 2015 that RCRA distinguishes between "disposal," "solid waste management," and "use," and that beneficial use is not regulated under Subtitle D. That means EPA cannot regulate CCR that has been legitimately beneficially used, whether on-site or off-site.

EPA's current approach also represents a major and unexplained shift from its longstanding position. For more than 20 years, the Agency consistently found that beneficial use of CCR did not warrant regulation under RCRA, without distinguishing between on-site and off-site uses. The Legacy CCR Rule effectively changed that position by treating some on-site beneficial uses as regulated CCRMU activity, even when those uses occurred before EPA adopted its 2015 definitions. The Agency has never clearly explained this reversal, identified the legal basis for it, or justified applying it retroactively to past practices that were previously treated as exempt.

The rule is also flawed because RCRA Subtitle D allows EPA to regulate disposal practices only where there is a reasonable probability of harm to health or the environment. EPA's decision to regulate CCRMUs relied on its 2024 Risk Assessment that used overly conservative assumptions and overstated risk. As prior technical comments explain, EPA's 2024 Risk Assessment methodology was inconsistent with the more realistic approach it used in 2014 for landfills and surface impoundments. When the 2014 Risk Assessment approach is applied, predicted risks from CCRMU fills fall below the level that would justify regulation.

EPA tries to sidestep these problems by saying both risk assessments were designed to capture a range of possible conditions and that its regulations are based on high-end risks. But the Agency also admits those high-end risks may not occur at every site. If the 2024 Risk Assessment overstates even those high-end risks, then EPA's decision about whether and how to regulate CCRMUs is defective. The Agency should correct those errors before relying on the assessment.

For all these reasons, EPA is well justified in its proposal to repeal the CCRMU provisions. However, if it ultimately decides to regulate CCRMUs, we offer the following input on the Agency's "a la carte" options. These á la carte options would limit the scope of CCRMUs. As discussed below, some of these alternatives would address some of APPA's major concerns with regulating CCR disposal under the current self-implementing rule.

If EPA does not rescind the CCRMU requirements, any final rule must be significantly narrowed. At a minimum, the Agency should ensure the rule remains within its Subtitle D authority, is based on a realistic risk assessment, and gives proper weight to prior closures completed under state or federal oversight.

Once these issues are addressed, APPA believes any remaining regulation should be limited to historical CCR disposal units that have not already been closed under regulatory oversight. APPA also recommends that EPA use a more accurate term for this narrowed category, such as "historical CCR disposal unit," rather than CCRMU.

C. Alternatives to Narrow the Scope of the CCRMU Provisions.

1. *APPA supports expanding deferral for CCRMU closures to the permitting authority.*

EPA is seeking comments on two approaches to defer certain CCRMU requirements. First, it is considering postponing all CCRMU requirements, except the Facilities Evaluation Report (FER), until permitting, so that the permitting authority can review each unit's site-specific conditions and decide which requirements, if any, are appropriate. Second, EPA is considering maintaining the current deferral for certain CCRMUs that completed closure before November 8, 2024, while expanding eligibility to align more closely with the proposed deferral criteria for legacy impoundments.[39]

APPA supports deferring all CCRMU requirements other than the FER until permitting. Historic disposal units vary widely in their condition, design, and site characteristics, so a case-by-case review is the best way to determine whether additional regulation is needed. If existing groundwater monitoring shows that a CCRMU is causing contamination, the Agency could still require corrective action while that review is underway.

Deferring closure requirements to permitting would not create an unreasonable risk to health or the environment. EPA has already concluded that historical landfills and surface impoundments generally have a risk profile similar to active landfills, and in 2015, EPA found that active unlined landfills did not present a level of risk that justified mandatory closure.[40] For that reason, historical units also should not automatically be subject to new closure requirements without a site-specific determination by the permitting authority. These deferrals should apply to all CCRMUs, not just those closed under an "enforceable order".

APPA believes deferral provides a more practical transition to a permit-based system. If EPA wants permitting authorities to make individualized judgments, the rule should not force utilities to take costly, irreversible actions before those permitting programs are in place. Deferral preserves flexibility, avoids premature compliance decisions, and ensures that any final requirements are tied to actual site conditions and protectiveness rather than assumptions built into a national model.

Finally, the Agency should extend the FER deadlines, so utilities have enough time to account for any final changes to the scope of CCRMUs. At a minimum, EPA

[39] 91 Fed. Reg. at 18,989.
[40] 90 Fed. Reg. at 38,958.

should extend the first FER deadline beyond February 9, 2027, or combine the first FER report with the second report due February 8, 2028.

2. *Beneficial use should be clearly exempt from the scope of CCRMUs.*

Congress directed EPA, under the "Bevell Amendment," to study CCRs and the various CCR management practices and to determine whether CCRs warranted regulation as a hazardous waste under RCRA Subtitle C. EPA's findings were documented in a Report to Congress (RTC).[41] The Agency's May 2000 Regulatory Determination found that beneficially used CCRs did not warrant federal regulations under subtitle D of RCRA.

> "[N]ational regulations of [CCRs] under Subtitle C or Subtitle D is not warranted for any of the other beneficial use of coal combustion waste. We have reached this decision because: (a) We have not identified any other beneficial uses that are likely to present significant risks to human health or the environment; and (b) no documented cases of damage to human health or the environment have been identified. Additionally, we do not want to place any unnecessary barriers on the beneficial uses of coal combustion wastes so they can be used in applications that conserve natural resources and reduce disposal costs."[42]

The 2015 CCR Rule reaffirmed the beneficial use exclusion. It explains, "[t]he final rule retains the Bevill exclusion for CCR that is beneficially used and provides a definition of beneficial use to distinguish between beneficial use and disposal."[43]

If EPA moves forward with any of the alternative approaches, it is critical that the Agency, at a minimum, exempt past on-site CCR uses that meet the beneficial use definition from future regulation as CCRMUs. As EPA recognizes, once the fourth criterion is removed, unencapsulated CCR uses that satisfy the remaining three beneficial use criteria would qualify as exempt beneficial use and would not be regulated as CCRMUs going forward, whether on-site or off-site.

But unless the Agency addresses prior uses, the same activity could be treated differently based solely on when it occurred. Past on-site uses that satisfy the first three criteria would remain subject to CCRMU regulation, whereas identical future uses would not. That result would be arbitrary and unjustified.

EPA should therefore make clear that unencapsulated CCR uses meeting the revised beneficial use definition are excluded from the CCRMU definition, regardless of when or where they occurred. This would properly cover engineered structural fill and other legitimate beneficial uses, both past and present, and would correct the current rule's improper treatment of activities that should have remained exempt from federal

[41] RCRA§ 8002(n); 42 U.S.C §6982(n).
[42] 65 Fed. Reg. 32,221 (2000 Regulatory Determination).
[43] 80 Fed. Reg. at 20,309.

regulation. APPA also urges EPA to clarify that historical beneficial uses conducted under state regulation, approval, or oversight remain beneficial uses.

EPA should allow for the creation of groundwater monitoring and corrective action zones for all regulated units.

The Agency is seeking comment on an option to allow multiple CCRMUs to be covered by a single groundwater monitoring and corrective action zone, supported by one consolidated groundwater monitoring system.[44] This approach is intended for sites where CCR placement is widespread, overlapping, or difficult to define by individual unit boundaries, making separate monitoring systems impractical. EPA's goal is to provide a more workable monitoring framework while still ensuring timely detection of releases.

The Agency is also seeking site-specific examples showing when multiple CCRMUs should be combined into a single groundwater monitoring and corrective action zone—similar to an "area of concern" or "solid waste management area"—for groundwater monitoring purposes. In particular, EPA requests examples where facility conditions would justify combining CCRMUs across an entire site into one facility-wide groundwater monitoring and corrective action zone supported by a single monitoring network.[45] The Navajo Generating Station (NGS) illustrates why a facility-wide groundwater monitoring approach may be more appropriate than unit-specific monitoring for certain CCRMUs.[46] At NGS, CCR was historically used across the site in a variety of low-risk beneficial applications, including closure of former ponds, daily cover at a solid waste landfill, structural fill in berms, and road base or gravel in high-traffic areas. These uses are dispersed across the facility, often small or linear in footprint, and in some cases involve materials that are encapsulated or effectively immobilized.

Site conditions further support an area-wide approach. NGS is located in an arid region receiving less than seven inches of rainfall annually, with groundwater located approximately 800 feet below ground surface. Existing monitoring at the solid waste landfill has shown no evidence of groundwater contamination, despite decades of historical CCR use. Requiring separate groundwater monitoring networks for each of these dispersed CCR management areas would impose substantial cost and complexity without a corresponding environmental benefit.

The NGS examples show that a single, plant-wide groundwater monitoring and corrective action zone would provide a more practical and scientifically appropriate approach to monitoring potential groundwater impacts.

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[44] 91 Fed. Reg. at 18,991-92.

[45] *Id.*

[46] Salt River Project Comments on EPA's Proposed Rule: Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Legacy CCR Surface Impoundments, 88 Fed. Reg. 9940 (May 18, 2023); EPA Docket ID No. EPA-HQ-OLEM-2020-0107-0251.

APPA supports allowing facilities to use a plant-wide groundwater monitoring network rather than separate monitoring systems for each individual CCRMU. The same site-specific considerations that support a zoned approach for CCRMUs apply to all regulated CCR units. Requiring separate groundwater monitoring and corrective action systems for each unit may be duplicative and less effective than a coordinated, site-wide approach. EPA should therefore allow facilities to use groundwater monitoring and corrective action zones for all regulated units. A consolidated, facility-wide network would reduce unnecessary costs while still identifying whether groundwater impacts exist. If that broader monitoring indicates an adverse impact, the facility could then conduct a more targeted investigation to identify the source and implement any needed corrective action.

3. EPA should remove the "other active facilities" from the universe of regulated units.

In the preamble to the Legacy CCR Rule, EPA described "other active facilities" as those that: (1) on or after October 19, 2015, were producing electricity for the grid; (2) had ceased placement of CCR in their onsite CCR units before the effective date of the 2015 CCR Rule (October 19, 2015); and (3) had no inactive CCR surface impoundments. The Agency's intent here was to extend regulation to certain other facilities currently generating power for the electrical grid that only have CCRMU on-site.[47]

APPA supports removing "other active facility" to eliminate confusion regarding the scope of active facilities subject to the CCRMU requirements. The preamble to the Legacy Rule plainly shows that the Agency did not intend to capture all sites providing power to the grid after October 19, 2015, without regard to whether the site had in fact generated CCR onsite at some point in its history. Requiring facilities that have never engaged in coal-fired generation to conduct a CCRMU evaluation is not supported by the record and would serve no legitimate purpose.

4. EPA should not establish a CCRMU threshold.

EPA is seeking comment on whether to establish an alternative threshold for CCRMUs and, if so, what that threshold should be.[48] In the Legacy CCR Rule, EPA left management of CCRMUs between one and 1,000 tons to permit authorities' discretion and excluded placements of less than one ton. Although the Agency acknowledges in the preamble that the highest-end risks identified in the 2024 Risk Assessment may not occur at every site—and that risks from individual CCRMU fills may be lower—it states that it has not identified a less burdensome threshold that would still be reliably protective.

The Legacy CCR Rule's thresholds for CCRMUs rest on EPA's risk assessment for so-called "CCRMU fills," which EPA defined as CCR placed on land outside a landfill

[47] 89 Fed. Reg. at 39,053.
[48] 91 fed. Reg. at 18,996.

or surface impoundment for a purpose other than disposal. That premise is legally and factually indefensible. EPA has no authority under Subtitle D to regulate activities that do not constitute disposal, and the 2024 Risk Assessment for CCRMU fills is fundamentally flawed. The CCRMU Technical report found that CCRMU-fill risks scale with size, but modeled concentrations remain below the arsenic MCL across all fill-size intervals evaluated. The report states that arsenic concentrations increase with CCRMU fill size but remain below 10 µg/L across all modeled fill sizes from 0 to 74,800 tons. [49]

Therefore, there is no statutory basis and no support in the administrative record for regulating CCRMU fills.

Once "CCRMU fills" are properly excluded, the remaining universe of CCRMUs consists only of historical CCR landfills and surface impoundments. Those categories are already expressly defined in the rule. EPA therefore has no need—and no justification—to create a separate numeric threshold for regulation. However, if the Agency retains a threshold, it must be grounded in a defensible risk assessment.

VIII. APPA's Supports Site Specific Flexibilities During Permitting

EPA's proposed permit-based compliance pathways are an important step toward replacing the 2015 CCR Rule's rigid, one-size-fits-all framework with a more practical system that allows site-specific decision-making. APPA strongly supports including these flexibilities in the final rule and urges the Agency to work quickly with states to establish CCR permit programs so utilities can utilize them.

These flexibilities will provide little real benefit if they are available only after a permit is issued. Until then, public power utilities would remain subject to the existing self-implementing requirements and could be forced to make costly, irreversible compliance decisions before any permitting authority has the opportunity to consider site-specific conditions. That outcome would undermine the very purpose of the proposal, perpetuate regulatory uncertainty, and impose unnecessary burdens without improving environmental protection. Therefore, APPA urges EPA to permit facilities to defer compliance with certain self-implementing requirements until a permitting authority can evaluate the facility's site-specific circumstances.

A. EPA's Authority under the Water Infrastructure Improvements for the Nation (WIIN) Act Supports Site Specific Performance Standards.

The 2015 CCR Rule did not allow implementation through state or federal permit programs; it was "self-implementing." EPA declined to finalize many site-specific, risk-based provisions included in other state and federal solid waste programs because there would be no enforceable permit program. The lack of site-specific considerations

[49] CCRMU Technical Report at *11.*

has resulted in an overly conservative rule that imposes operational costs on the electric utility industry and causes the premature closure of CCR disposal units.

The passage of the WIIN Act fundamentally changed enforcement under the CCR Rule. The WIIN Act grants the Agency new authority to directly initiate enforcement actions against facilities it finds noncompliant with the CCR Rule. Therefore, EPA's original rationale for not including site-specific, risk-based performance standards is no longer appropriate.

Under the WIIN Act, states may now administer the rule through permit programs in lieu of the federal CCR Rule and, subject to appropriations, direct EPA to do so in states that choose not to participate (non-participating states).

Due to the passage of the WIIN Act, the Agency now has direct oversight of inspections, information requests, and enforcements, thus ensuring the RCRA Subtitle D protectiveness standards, of ensuring no reasonable probability of adverse effects to health or the environment from the disposal of CCR, are met. EPA's proposal Hazardous and Solid Waste Management Systems: Disposal of Coal Combustion Residuals from Electric Utilities; Amendments to the National Minimum Criteria (Phase One) recognized that the amendments to RCRA in the WIIN Act now support the incorporation of risk-based performance standards similar to those in the municipal solid waste landfill (MSWLF) program, under 40 C.F.R Part 258.[50]

Accordingly, EPA should move expeditiously to finalize the proposed changes, including site-specific alternative performance standards based on site-specific factors.

B. Site- Specific Data Further Supports a Risk-Based Permitting Assessment.

APPA recognizes that the self-implementing CCR rule criteria were conservatively designed to address high-end risks from CCR disposal. EPA now acknowledges, however, that those risks may not occur at every site and that risks at individual CCR units may be lower. The wide variation in CCR unit design, location, and site conditions therefore supports a regulatory framework that allows for site-specific evaluation.

Real-world data further confirms that EPA's high-end modeling overstates risk for many CCR units. Most units are not expected to present the level of risk used to justify the CCR rule's one-size-fits-all standards. This underscores the need for EPA to provide meaningful site-specific flexibility and avoid imposing unnecessary burdens on regulated entities where the record does not support additional requirements.

The Legacy/ CCRMU Technical Report compared EPA's 2014 modeled groundwater concentrations with measured CCR Rule monitoring data from 118 unlined

[50] 83 Fed. Reg. 11,584, (March 15, 2018) (Phase One Rule).

surface impoundments across 65 sites, 17 states, 1,373 wells, and approximately 20,500 samples. It found that the Agency's model generally overpredicts concentrations for key risk-driving constituents—by about five times for arsenic and nearly nine times for molybdenum at the 90th percentile.[51]

These findings show that national-scale modeling alone can overstate risk and should not be the sole basis for regulatory decisions. Because groundwater concentrations directly drive risk estimates, overprediction can lead to overly conservative conclusions about regulatory thresholds, corrective action, or other compliance obligations.[52] APPA therefore urges EPA to ensure that permitting authorities may rely on measured, site-specific groundwater data and site-specific risk evaluations when making regulatory decisions for individual facilities. Authorized states with existing risk-based programs for municipal solid waste and RCRA sites should be approved to apply those same programs to CCR units.

C. EPA Should Allow Eligible Facilities to Use Alternative Pathways Before Permitting Is Available

APPA supports EPA's proposed permit-based compliance pathways because they would introduce needed site-specific flexibility into an otherwise rigid regulatory framework. The WIIN Act provides a strong legal basis for this approach by authorizing permit programs that allow for site-specific implementation and oversight. However, if these pathways are available only through permitting, many utilities will be unable to benefit from them for years.

Nearly a decade after enactment of the WIIN Act, only five partial state CCR permit programs have been approved, and EPA has yet to finalize the federal permit program first proposed in 2020. Although APPA appreciates the Agency's recent efforts to accelerate state approvals and move the federal program forward, substantial delays will remain. States will need time to adopt any new provisions, obtain EPA approval, and issue permits. An APPA member estimate they will need at least two years to adopt any new provisions. In some states, that process may also require legislation or rulemaking.

In the meantime, public power utilities will remain subject to the current self-implementing rule, which undermines the practical value of the proposed flexibilities. For example, many surface impoundments already subject to mandatory closure schedules cannot delay compliance long enough to await permitting, even where site-specific flexibility would be appropriate. As a result, units that would otherwise qualify for alternative compliance pathways may be unable to use them.

APPA urges EPA to include a bridge mechanism in the self-implementing rule so eligible units can preserve access to alternative compliance pathways while permitting

[51] Legacy/CCRMU Technical Report at 13-14.
[52] Id.

programs are being developed. Without such a mechanism, units already in closure may be forced to continue under existing closure standards and to forgo more site-specific, protective alternatives once permitting becomes available.

The Agency should allow owners or operators of units currently undergoing closure to use an interim alternative closure standard, notwithstanding § 257.102(d)(1) and (d)(2), if they meet protective conditions during the interim period. Once a federal or state CCR permit program is in place, the owner or operator would submit documentation to the permitting authority demonstrating that the closure poses no reasonable probability of adverse effects on human health or the environment.

Those interim conditions can be implemented in a self-implementing program. At a minimum, they should require the owner or operator to demonstrate that the closure will minimize the need for future maintenance and controls and, to the extent feasible and necessary, minimize or eliminate post-closure releases of CCR, leachate, or contaminated runoff. EPA should also allow saturated ash to remain in place where the owner or operator demonstrates, based on site-specific conditions, that hydraulic conditions will not: (1) compromise the stability of the final cover system; (2) interfere with corrective action under 40 C.F.R. § 257.98; or (3) pose a risk to off-site drinking water receptors.

EPA has ample authority to include this bridge mechanism and to ensure it is implemented protectively. The Agency can establish clear eligibility criteria and allow a qualified professional engineer or technical expert to certify that those criteria are met. EPA has previously recognized that licensed professional engineers provide objective and reliable technical review, and the Legacy CCR Rule itself includes deferrals based on site-specific demonstrations where EPA determined such an approach was appropriate and protective.

D. APPA's Comments on the Groundwater Monitoring Corrective Action Requirements.

EPA is proposing to give permitting authorities discretion to make site-specific decisions on groundwater monitoring points of compliance and to establish cleanup levels for constituents that lack federally established maximum contaminant levels (MCLs).[53]

1. Alternative point of compliance

APPA supports EPA's proposal to allow permitting authorities to establish an alternative point of compliance where the waste boundary is not the most appropriate location. A fixed point of compliance at the waste boundary will not be suitable in all

[53] 91 Fed. Reg. at 18,997.

cases, and allowing an alternative boundary within 150 meters is consistent with other federal solid waste programs, including the municipal solid waste landfill regulations. APPA notes that, in some site-specific circumstances, an alternative point of compliance located more than 150 meters from the waste boundary—up to the facility property boundary—may be appropriate. EPA should allow permitting authorities this additional flexibility where site conditions support a more effective and protective monitoring location.

APPA generally agrees that Agency's proposed criteria for establishing an alternative compliance boundary are appropriate and largely consistent with the approach used in the Part 258 municipal solid waste landfill rules. However, EPA should not require compliance with location restrictions or corrective action procedures as conditions for setting an alternative boundary. Those requirements will already apply through the permit and can be addressed separately by the permitting authority as part of its broader site-specific review.

APPA also urges EPA not to limit alternative points of compliance to existing CCR units. Site constraints can affect both existing and new units, and structures or physical obstacles are only one of several factors that may make the waste boundary an inappropriate compliance point. As the Agency recognizes, the waste boundary may not always be the most effective point of compliance for groundwater monitoring. That is true for new and existing units alike.

2. Alternative groundwater protection standards (no federal MCL)

EPA proposes to add two new provisions in § 257.111 that would allow permitting authorities to establish site-specific groundwater protection standards for Appendix IV constituents without federal MCLs, provided those standards are based on appropriate health-based levels and satisfy specified criteria.[54]

APPA supports allowing the use of alternative, risk-based groundwater protection standards (GWPS). There are well-established, protective approaches to groundwater monitoring for other solid waste programs, such as the MSWLF regulations. EPA has a long history of establishing safe exposure levels for chemicals in air, water, soil, and food. EPA has developed risk-based clean-up goals for groundwater to protect public health for decades under its Superfund Program. It is important to note that the majority of (if not all) site clean-ups/corrective actions under RCRA involve clean-up to risk-based values, not background. There is no material reason to treat the CCR program otherwise.

[54] The four Appendix IV criteria that do not have an established MCL are cobalt, lead, molybdenum, and lithium. When promulgated in 2015, the groundwater protection standard for these four constituents was set at background. In 2018, EPA amended the regulations to establish new groundwater protection standards for these four constituents. Under the existing regulations, the groundwater protection standards for cobalt is 6 ug/l; lead is 15 ug/l; lithium is 40 ug/l; and molybdenum is 100 ug/l. 40 C.F.R. § 257.95(h).

Groundwater protection standards should be based on a consistent, science-based process and should reflect levels that are protective of human health and the environment. The current rule does not allow risk-based GWPS and instead requires overly stringent standards that often do not reflect site-specific risk. In many cases, those standards are more stringent than the cleanup levels that would apply under state programs or other federal remediation programs, which commonly use risk-based approaches. As a result, a facility may be forced into burdensome corrective action even where groundwater conditions do not present an unacceptable risk. The rule may also require cleanup to levels that are far more costly than necessary or, in some cases, not technically achievable.

This same reasoning applies to all Appendix IV constituents, including those with established MCLs. MCLs are drinking water standards, but many facilities do not have drinking water receptors or exposure pathways that would justify using those standards as the cleanup benchmark. Remediation of Appendix IV constituents without an MCL to background levels is costly and resource-intensive and does not provide any incremental health benefit. The current rule requires the use of stringent standards that are not based on the actual risk posed. The groundwater levels for these constituents are below established EPA health-based standards. Meaning the utility may be forced into onerous corrective action, even if contamination at a facility does not exceed an acceptable risk-based level.

EPA, therefore, should allow risk-based GWPS for all Appendix IV constituents based on site-specific conditions, rather than limiting that flexibility to constituents without MCLs.

APPA generally supports the Agency's proposed criteria for developing alternative risk-based GWPS and agrees that they are broadly consistent with the approach used in the Part 258 municipal solid waste landfill program. However, EPA should clarify in the final rule that these factors are optional considerations, not mandatory criteria, so that permitting authorities retain appropriate discretion to establish protective, site-specific risk-based GWPS without unnecessary procedural constraints.

3. Corrective Action

In the current rule if one or more Appendix IV constituents are detected at a statistically significant level above an applicable groundwater protection standard, the owner/operator must characterize sufficiently the nature and extent of the release to accurately assess the corrective measures necessary to effectively cleanup the releases from the unit, including, among other things, installing additional monitoring wells necessary to define the contaminant plume(s).[55] This regulatory framework was intended to be protective; however, in practice, it is compelling clean up where there is

[55] 40 C.F.R.§ 257.95(g)(1).

no meaningful reduction in harm to human health and the environment. APPA supports providing permitting authorities the flexibility to deviate from § 257.97(b) and approve alternative corrective action remedies.

As with the proposed alternative closure pathway, EPA should allow alternative corrective action approaches where a site-specific, risk-based demonstration shows no reasonable probability of adverse effects on human health or the environment. For example, a permitting authority may determine that a different cleanup standard is appropriate based on site-specific conditions, such as where contaminants are not migrating off-site above applicable groundwater protection standards. If site-specific conditions show that additional remedial measures are not necessary to protect human health and the environment, a facility should not be required to undertake them. The WIIN Act's permitting and oversight framework provides adequate safeguards against misuse of this flexibility.

E. Alternative Closure Performance Pathways

EPA is proposing to allow a federal or participating-state CCR permitting authority to permit closure under alternative performance standards that vary from the existing performance criteria in § 257.102(c) (closure by removal) or § 257.102(d) (closure in place), provided the permit authority determines there to be no reasonable probability of adverse effects on health or the environment.[56] Alternative closure performance standards must be based on a site-specific conceptual site model and risk assessment that considers key site conditions, including field data, hydrogeology, waste and leachate characteristics, engineered controls, exposure pathways, and downgradient receptors.

APPA strongly supports EPA's proposal to allow an alternative closure compliance pathway through permitting. The Agency's existing closure standards were designed around high-end risks identified in a nationwide assessment, but the record shows that alternative closure approaches can also be protective and satisfy Subtitle D's standard of no reasonable probability of adverse effects on human health or the environment. Permitting authorities should have the flexibility to evaluate site-specific conditions and approve the closure method that is most appropriate for a particular unit, including closures that leave some saturated ash in place where protective conditions are met.

EPA has stated that the closure performance standard requires elimination of all free liquids, including groundwater, and therefore does not allow closure in place where groundwater remains in the unit. Although EPA has suggested that such conditions would not satisfy Subtitle D, the Agency has not modeled this scenario. The Legacy/ CCRMU Technical Report, modeled post-closure groundwater conditions at surface

[56] 91 Fed Reg. at 19,002-03.

impoundments closed in place using US EPA inputs and parameters. The key findings for closure in place include:

- **Closure-in-place substantially reduces groundwater concentrations and associated risk.**
  The Legacy/CCRMU Technical Report post-closure modeling indicates that peak downgradient arsenic concentrations from unlined surface impoundments closed by closure-in-place are far lower than concentrations modeled for operating impoundments. At the 90th percentile, the modeled post-closure arsenic concentration is **3.6 µg/L**, compared with **69.3 µg/L** for US EPA's 2014 operating impoundment scenario—nearly a **20-fold reduction** and below the federal arsenic MCL of **10 µg/L**.
- **Closure-in-place is protective of human health and the environment.**
  The post-closure modeling indicates that the 90th-percentile peak arsenic concentration remains below the federal MCL for units closed by closure-in-place. The analysis concludes that closure-in-place can be protective when implemented properly, consistent with EPA's 2015 CCR Rule statement that both clean closure and closure with waste in place can be equally protective if properly conducted.
- **The primary risk-reduction mechanism is the removal of the operating hydraulic head.**
  The analysis explains that operating impoundments create hydraulic head from impounded water, which drives leachate into subsurface soils and groundwater. After closure and dewatering, the head is removed, shifting the system from one dominated by hydraulic head-driven seepage to one in which flux is limited. This reduction in driving force is the main reason modeled downgradient concentrations decline significantly after closure.
- **Intersecting groundwater does not materially increase high-end post-closure risk compared with non-intersecting groundwater.**
  The modeled 90th percentile post-closure arsenic concentration is the same—**3.6 µg/L**—for both intersecting and non-intersecting groundwater scenarios. Although intersecting groundwater can create an additional lateral mass-flux pathway, high-conductivity settings also increase dilution, dispersion, and attenuation, while low-conductivity settings generally limit lateral flux. As a result, high-end modeled concentrations are comparable for both scenarios.
- **Free liquids or residual pore water are not equivalent to risk-driving hydraulic head.**
  The analysis distinguishes between residual saturation/pore water and an active hydraulic head. It concludes that the presence of retained pore water alone does not imply a sustained advective driving force sufficient to produce the risks assumed in EPA's operational modeling framework. Therefore, requirements that focus solely on eliminating free liquids or mandate closure-by-removal when free liquids are present may not meaningfully reduce post-closure risk.

The modeling conducted in the Legacy/CCRMU Technical Report supports site-specific, risk-based closure decisions by permitting authorities. Post-closure risks are substantially lower than operating-condition risks and comparable across intersecting and non-intersecting groundwater scenarios. The findings support permitting authorities' evaluation of closure and corrective action alternatives using site-specific conceptual site models, groundwater data, and risk assessments.

When EPA issued the CCR rule in 2015, it deliberately gave facilities flexibility to choose how to close CCR units—either by leaving the CCR in place or by removing it. EPA explained in both its 2010 proposed rule and the 2015 CCR Rule that most ash ponds would likely close in place because full removal is expensive and difficult. EPA also made clear that both closure methods can be protective if done properly, and that the owner or operator should decide which approach is appropriate for a particular unit.

These consistent statements over several years show that the EPA intended to allow closure-in-place for any unit, so long as the rule's requirements were met. The rule's post-closure care, groundwater monitoring, and corrective action requirements were intended to ensure that the closure in place would continue to protect human health and the environment.

However, EPA's later statements about the closure-in-place standard, along with changes made in the 2024 Legacy CCR rule, have created confusion about what the standard actually requires. That confusion has made compliance harder, increased liability concerns, and added cost and burden for operators—often without providing any additional environmental benefit.

EPA's proposal would create an alternative compliance pathway through permitting, but it is reasonable to expect that not every unit will qualify for that option. The existing closure-in-place standard, therefore, must remain both clear and technically achievable.

Requiring owners and operators to eliminate *all liquids*—including groundwater and porewater—before installing a final cover system is not technically feasible. Open units may continue to receive precipitation during closure, and the rule's strict closure deadlines further limit the ability to achieve complete dewatering, nor is such a requirement necessary to satisfy Subtitle D's protectiveness standard. The existing closure-in-place performance standard in § 257.102(d)(1), together with the rule's groundwater monitoring, corrective action, and post-closure care requirements, already provides a framework to address any remaining risk to groundwater from a closed unit.

APPA urges EPA to initiate a new rulemaking to, at a minimum, clarify the language in 257.102(d)(2)(i) that the removal of free liquids is intended to ensure a stabilized base prior to the installation of the cover system. "*To the extent necessary to create a stable base sufficient to support a final conversion system, eliminate free liquid by removing liquid waste or solidifying the remaining wastes and water residuals*."

This approach is fully consistent with the Agency's original intent in the 2015 CCR Rule and should be reaffirmed in the final rule. EPA should not impose a more rigid interpretation now that effectively narrows the closure-in-place option the Agency deliberately preserved. Any remaining risk to groundwater can and should be addressed through the general closure-in-place performance standard in § 257.102(d)(1), together with the rule's groundwater monitoring, corrective action, and post-closure care

requirements. Those provisions already provide the necessary safeguards to ensure protectiveness without imposing technically unworkable and unnecessarily costly requirements.

At a minimum, if EPA declines to clarify the existing standard, it should revise the regulatory text to adopt an infiltration- and release-based approach that is both protective and achievable in practice: "*Control, minimize, or eliminate free liquids by, to the maximum extent feasible, removing liquid wastes or solidifying the remaining wastes and waste residues*."

F. Use of CCR During Closure.

EPA is requesting comments on whether to finalize a provision first proposed in 2020 that would allow CCR to be used during closure of a unit closing for cause, if the placement occurs under an approved closure plan.[57] The Agency proposed implementing this approach as an exemption from the "waste placement prohibition" in § 257.101.[58] EPA describes this allowance as an exemption from the waste placement prohibition and suggests it may be unnecessary if the proposed alternative closure pathway is finalized because permitting authorities could approve CCR use during closure on a site-specific basis. APPA agrees that permitting authorities should be permitted to approve an alternative closure method to the standards in § 257.102 (c) and (d) as part of the permitting process. However, EPA should ensure that the final regulatory text clearly permits a variance from the waste placement prohibition, as this provision is not part of the closure performance standard.

It is worth noting that there is no prohibition on using CCR to close impoundments or landfills subject to forced closure, provided such use is in accordance with the rule's beneficial use criteria. One of the primary goals of RCRA is to conserve natural resources through the beneficial reuse of material. The use of CCR materials for closure avoids the consumption of virgin materials and the energy required to produce, refine, and transport those materials to CCR units. Additionally, some sites are resource-limited and lack reasonable access to virgin materials that could be used to close units. Further, the use of beneficial material facilitates a CCR unit's ability to close expeditiously.[59] Therefore, the Agency should encourage the beneficial use of CCRs to close CCR units for cause.

If the Agency plans to finalize option one in its proposed 2020 rule, APPA reiterates its comments regarding the imposition of conditions on CCR used for closure.

- EPA should not limit the time for placing CCR to no longer than the time needed to close the unit using soil or borrow material. The purpose of this condition is unclear. Facilities are already subject to closure deadlines regardless of the material used, and extensions

[57] 85 Fed. Reg. at 12,456 (March 3, 2020) Proposed § 257.102(d)(4).
[58] 91 Fed. Reg. at 19,006.
[59] 85 Fed. Reg. at 12,462.

are based on closure progress and site-specific circumstances—not on whether the facility uses CCR, soil, or borrow material. It is also unclear how EPA or a permitting authority would evaluate compliance, because many factors affect closure schedules, and the type of closure material is rarely the controlling factor.

- EPA should not limit the volume of CCR that may be used during closure based on the amount of soil or borrow material that otherwise would have been used for the cover system. This limit appears arbitrary and could prevent facilities from fully consolidating CCR during closure. EPA should instead allow true consolidation where it is protective, because consolidation can reduce long-term risk, limit the number of CCR management areas, and help complete closure more efficiently.
- EPA should remove the proposed condition requiring owners or operators to show how CCR use will satisfy the closure performance standards in 40 C.F.R. § 257.102(d), as it appears duplicative. CCR would be used during closure only where a unit is closing with CCR in place, and § 257.102(d) already establishes the applicable performance standards and cover requirements. The existing closure plan requirements also already require owners and operators to explain how the unit will be closed in accordance with the rule. EPA should avoid adding duplicative conditions that create additional paperwork without improving protectiveness.[60]

G. Closure Schedule for CCR Units Recovering CCR for Beneficial Use During Closure.

EPA is proposing to allow permitting authorities to extend closure deadlines for CCR units when CCR is being removed for beneficial use during closure, provided the owner or operator demonstrates no reasonable likelihood of harm to human health or the environment.[61]

APPA supports compliance flexibility that allows permitting authorities to make site-specific decisions on the timeframes for CCR units extracting CCR for beneficial use during closure. EPA should revise § 257.102(f) to allow site-specific extensions of closure deadlines when CCR is being removed for beneficial use pursuant to binding contractual arrangements and a documented removal plan.

EPA correctly recognizes that the current closure deadlines can block beneficial use of CCR, an important resource used in concrete, wallboard, agricultural applications, structural fill, roofing granules, and other products. Coal ash recovered from disposal units is an important source of material for these uses and will only become more valuable as the generation fleet continues to change. EPA should encourage CCR harvesting—not limit it with rigid closure deadlines. Allowing a targeted extension for beneficial use would reduce the amount of CCR sent to landfills and avoid the life-cycle impacts of using virgin materials.

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[60] Comments of the American Public Power Association on the Environmental Protection Agency's Proposed Rule on the Hazardous and Solid Waste Management System: Disposal of CCR: A Holistic Approach to Closure Part B: Alternative Demonstration for Unlined Surface Impoundments; Implementation of Closure (85 Fed. Reg. 12,456 (March 3, 2020), EPA-HQ-OLEM-2019-0173- 0099.
[61] 91 Fed. Reg. at 19,007.

EPA should also allow closure deadline extensions under the self-implementing rule, not just through permitting. Many units already in closure will have to keep moving forward under the existing rule and may not be able to wait for a permit-based option. That means usable CCR could be lost rather than put to productive use. EPA can address any legitimate environmental concerns during an extended closure period by requiring protective conditions, including the removal of hydraulic head, the primary risk driver for unlined surface impoundments.

H. Post-Closure Care Flexibilities for CCR Extraction and Modifications to Post-Closure Care Period.

APPA supports permitting authorities' flexibility to approve the extraction of CCR from a closed CCR unit during the post-closure care period under appropriate conditions. EPA should make clear that "unzipping may occur where the owner or operator demonstrates that the activity will result in no reasonable probability of adverse effects on human health or the environment."

EPA explains that it is proposing this change because, since the 2015 CCR Rule was issued, states and regulated entities have raised concerns that the current regulations could be read to prevent CCR extraction for beneficial use during post-closure care. In particular, it questioned whether the requirement to maintain a cap over the unit would block access to CCR beneath the cap for beneficial use projects, sometimes referred to as "unzipping." Although EPA believes the current rules already allow an owner or operator to show that disturbing the cap would not increase risks to human health or the environment, the Agency is proposing this explicit permit-based flexibility to remove uncertainty.

1. Modification to Post-Closure Care Period

Under the current regulations, § 257.104(c)(1) owners and operators of closed CCR units are required to conduct post-closure care for 30 years unless, at the end of that period, the unit remains in assessment monitoring. EPA previously recognized that allowing variances in the post-closure care period would provide needed flexibility to account for differences in geology, climate, topography, resources, and other site-specific factors. This approach would not alter the rule's existing requirement that post-closure care continue where a unit remains in assessment monitoring.

APPA supports incorporating similar flexibility into the post-closure care period based on site-specific circumstances. Comparable flexibility already exists under both the municipal solid waste landfill regulations and the Subtitle C hazardous waste regulations. Considering the WIIN Act's changes to the implementation of the CCR rule, there is no reasonable basis to prevent states—or EPA—from modifying the post-closure care period where site-specific conditions show that a different timeframe remains protective of human health and the environment.

IX. APPA's Comments on Beneficial Use and Definitions (Storage Piles, Categorical Exclusions)

EPA proposes several revisions to its CCR beneficial use provisions, including revising the definition of beneficial use to eliminate the environmental demonstration requirement for the non-roadway land application of more than 12,400 tons of unencapsulated CCR. EPA also proposes to add definitions for "CCR storage pile" and "temporary accumulation" and to clarify that CCR destined for certain beneficial uses is excluded from regulation.[62] Finalizing these changes is necessary to remove unnecessary barriers to legitimate beneficial use, provide greater regulatory certainty, and better align the CCR program with RCRA's goal of promoting reuse and reducing overall environmental impacts. Beneficial use of CCR materials—including fly ash, bottom ash, FGD gypsum, and boiler slag—provides significant environmental, economic, and infrastructure benefits while reducing unnecessary disposal burdens on utilities and consumers.

A. APPA Supports the Removal of the 4th Criterion From the Beneficial Use Definition.

EPA proposes deleting the fourth criterion from the definition of "beneficial use" of CCR. EPA proposes to treat the first three criteria in the beneficial use definition at § 257.53 as sufficient to determine when placement of CCR on land—whether encapsulated or unencapsulated, roadway or non-roadway—constitutes beneficial use rather than disposal under RCRA. EPA notes that these first three criteria already apply to all CCR uses and would remain unchanged.[63]

The first three beneficial use criteria already provide a clear and sufficient framework for distinguishing legitimate beneficial use from disposal. They require that CCR serve a real functional purpose, replace virgin materials, and meet applicable product, regulatory, or design standards. Where no such standards exist, CCR may not be used in excess quantities. As EPA recognizes, these criteria address both the legitimacy of the use and any concern that excess CCR placement could pose risks to human health or the environment.

The Agency should finalize its proposal to remove the fourth criterion. That requirement was added in 2015 to address concerns about large-scale fills, but EPA now acknowledges that the 12,400-ton threshold was based on a calculation error and lacks support in the record. It also correctly recognizes that this threshold has become an unnecessary barrier to legitimate beneficial use, frustrating RCRA's core objective of promoting resource conservation and recovery.

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[62] 91 Fed. Reg. at 19,009.
[63] 91 Fed. Reg. at 19,010-12.

The record also does not support retaining the fourth criterion. EPA correctly concludes that there is insufficient evidence showing that uses meeting the first three criteria present a reasonable probability of adverse effects on health or the environment. The damage cases cited by EPA largely involved disposal units, sand and gravel pits, quarries, or mixed disposal/fill activities—not legitimate beneficial uses that satisfied the first three criteria. Those examples do not justify continuing to subject lawful beneficial use to a separate and unsupported federal hurdle.

Removing the fourth criterion would also restore states' proper role in making beneficial use determinations. States have long administered beneficial use programs for industrial non-hazardous secondary materials and are far better positioned to evaluate site-specific conditions, including local geology, hydrology, climate, and end use. That approach is fully consistent with RCRA Subtitle D, which relies on state implementation and site-specific judgment rather than rigid federal mandates untethered from actual risk.

For these reasons, APPA strongly supports EPA’s proposal to delete the fourth beneficial use criterion and urges the Agency to finalize that change without modification. EPA should make clear in the final rule that CCR uses satisfying the first three criteria are properly treated as beneficial use under the federal CCR regulations and should not be subject to additional federal barriers that discourage reuse.

With respect to the third criterion, CCR use must meet applicable standards-EPA appropriately recognizes the important role that consensus-based American Society for Testing and Materials **(**ASTM) standards play in supporting the proper beneficial use of CCR as structural fill. As EPA notes, these standards help ensure that unencapsulated CCR is used in a manner that is protective of human health and the environment and does not amount to disposal.

At the same time, EPA should not incorporate ASTM E2277—or any other specific standard—directly into the regulations. Whether and how these standards apply depends on site-specific conditions, and a rigid regulatory reference would reduce flexibility and create unnecessary implementation challenges. Under the 2015 rule, it is more appropriate for beneficial users to rely, where relevant, on applicable consensus standards to demonstrate that a use satisfies the beneficial use criteria.

EPA likewise should not require documentation of state approval as part of the federal definition of beneficial use. Entities engaged in CCR beneficial use must comply with applicable state and federal requirements, but there is no need to fold state approval requirements into the federal rule. Doing so would add confusion without improving protectiveness.

B. EPA Should Finalize the Removal of "CCR pile" Definition and New "CCR storage pile" Definition.

APPA supports EPA's proposal to remove the term "CCR pile" and replace it with clearer definitions of "CCR storage pile" and "temporary accumulation." These changes would reduce confusion and create a more practical framework for the temporary storage of CCR on land.

The Agency correctly recognizes that its recent interpretation of "CCR pile" created unnecessary confusion by sweeping in on-site beneficial uses that should not be regulated. That interpretation conflicted with EPA's longstanding position that beneficial use—whether on-site or off-site—is exempt from regulation under the federal CCR rule. Eliminating the term "CCR pile" is therefore a sensible and necessary correction.

APPA also supports EPA's proposed definition of "CCR storage pile" as a temporary accumulation of solid, non-flowing CCR that is designed and managed to control releases to the environment. Likewise, the proposed definition of "temporary accumulation" appropriately makes clear that the CCR must be removed from the pile on a defined timeline and allows ordinary business records to demonstrate that the storage is temporary.

This approach better aligns with EPA's authority under RCRA Subtitle D and with the Agency's original intent in the 2015 CCR Rule. Temporary, controlled storage is not disposal and should not be regulated as such. At the same time, CCR placed on the land without controls to prevent releases would remain subject to regulation as a landfill. EPA should finalize these definitions to ensure that properly managed temporary storage and beneficial use remain clearly outside the scope of federal CCR disposal rules.

C. The Rulemaking Record Supports Categorical Beneficial Use Exclusions.

APPA urges EPA to make clear that all CCR uses satisfying the beneficial use criteria are exempt from federal CCR regulation, regardless of where they occur. EPA lacks authority under RCRA Subtitle D to regulate CCR once it is legitimately beneficially used, and limiting the exemption to a short list of specified off-site uses could create confusion and discourage lawful reuse.

APPA supports EPA's proposed categorical exclusions for CCR used in cement manufacturing, FGD gypsum used in agriculture, and FGD gypsum used in wallboard. These exclusions appropriately recognize that CCR is managed as a valuable commodity before beneficial use and provide needed certainty for established applications. However, EPA should clarify that the listed exclusions do not elevate those uses above other legitimate beneficial uses or suggest that unlisted uses—such as CCR used by concrete batch plants—are excluded from the beneficial use exemption.

Beneficial use conserves natural resources, saves energy, and supports industries such as concrete, gypsum wallboard, blasting grit, roofing granules, and geotechnical and agricultural applications. EPA should therefore confirm that any CCR use satisfying the beneficial use criteria remains exempt from federal CCR regulation.

EPA should also create a process for adding future categorical exclusions as additional beneficial uses are identified and supported by the record. For example, CCR has long been used in transportation-related infrastructure projects to conserve natural resources and reduce project costs. EPA should consider adding a categorical exclusion for transportation-related infrastructure, including use in bridge abutments, railbeds, roadbeds, roadways, and road embankments.

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APPA appreciates the opportunity to submit these comments and supports EPA's efforts to provide additional flexibility, and regulatory clarity under the Proposal. APPA also appreciates EPA's continued engagement on these issues of importance to public power utilities. If you have any questions regarding these comments, please contact Carolyn Slaughter, Senior Director, Environmental Policy, at CSlaughter@publicpower.org or 202-493-2900.