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January 31, 2020

Peter Wright, Assistant Administrator
U.S. Environmental Protection Agency
Office of Land and Emergency Management
1200 Pennsylvania Avenue, N.W.
MC 5304P
Washington, D.C. 20460

Attention: Docket ID Number EPA-HQ-OLEM-2019-0172; FRL-10003-02-OLEM
Submitted to the Federal eRulemaking Portal (www.regulations.gov)

RE: Hazardous Waste Management System: Disposal of Coal Combustion Residuals (CCRs)
From Electric Utilities; A Holistic Approach to Closure Part A: A Deadline to Initiate
Closure; 84 Fed. Reg., 65,941 (December 02, 2019)

Dear Assistant Administrator Wright:

The American Public Power Association (APPA or Association) appreciates the opportunity to submit these comments in response to the Environmental Protection Agency's (EPA or Agency) proposed rulemaking to revise the 2015 federal national minimum criteria for existing and new coal combustion residual (CCR) units. The Proposed rule, entitled, "*A Holistic Approach to Closure Part A: Deadline to Initiate Closure*" offers a framework to establish a timeframe by which the majority of unlined CCR impoundments can cease the receipt of waste and begin to close in accordance with court decisions or develop alternative disposal capacity. The Associations generally support the proposed framework but offers recommendations to modify the proposed deadlines to ensure public power utilities can close and or develop alternative waste disposal capacity within the timeframes that are technically feasible and in keeping with the Resource Conservation and Recovery Act subtitle D protectiveness standards.

Please contact Carolyn Slaughter, cslaughter@publicpower.org or (202-467-2900) with questions regarding these comments.

Sincerely,

A handwritten signature in black ink that reads "Carolyn Slaughter".

Carolyn Slaughter, Environmental Policy Director

Cc: Steven Cook, Deputy Assistant Administrator, EPA-OLEM
Richard Huggins, Sr. Special Assistant, EPA



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**THE AMERICAN PUBLIC POWER ASSOCIATION'S COMMENTS ON
ENVIRONMENTAL PROTECTION AGENCY'S HAZARDOUS AND SOLID WASTE
MANAGEMENT SYSTEM: DISPOSAL OF COAL COMBUSTION RESIDUALS FROM
ELECTRIC UTILITIES; A HOLISTIC APPROACH TO CLOSURE PART A: A
DEADLINE TO INITIATE CLOSURE**

**Docket No. EPA-HQ-OLEM-2019-0172
84 Fed. Reg., 65,941 (December 02, 2019)**

Submitted on January 31, 2020
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Table of Contents

I. Introduction	3
II. Executive Summary	4
III. APPA Supports Extending the Timeframes to Initiate Closure as Soon as Technically Feasible	6
A. Timeframe to Construct Alternate Capacity	8
B. A New Cease Receipt of Waste Deadline	11
IV. EPA Should Expand its Alternative Closure Provision	13
A. Any Revisions to the Alternative Site-Specific Closure Provision Should Apply to All Impoundments	14
B. Short-Term Alternative to Cease Receipt of Waste	15
C. Site-Specific Alternative to Cease Receipt of Waste Deadline	15
D. Permanent Cessation of Coal-Fired Boiler by a Date Certain	18
V. Procedures for Approval and Implementation	20
A. Regulatory Process for Denial of Extension Requests	21
B. Participating State Directors Can Approve Extension Requests	21

I. Introduction

The American Public Power Association (APPA or Association) appreciates the opportunity to submit these comments in response to the Environmental Protection Agency's (EPA or Agency) proposed rulemaking to revise the 2015 federal national minimum criteria for existing and new coal combustion residual (CCR) units.¹ The Proposed rule, entitled, "*A Holistic Approach to Closure Part A: Deadline to Initiate Closure*" is the long-awaited response to the U.S. Court of Appeals for the District of Columbia Circuit's (D.C. Circuit) decisions in *Utility Solid Waste Activities Group v. Environmental Protection Agency* (D.C. Cir. 2018) (USWAG) and provisions remanded to EPA in the *Waterkeeper Alliance, Inc., et al. v. EPA* (D.C. Cir. 2018) (Waterkeeper) case.² The Proposed Rule seeks to implement the court's vacatur of the provisions that allowed unlined impoundments to continue to receive coal ash unless they leak, and that classified "clay-lined" impoundments as lined.³ EPA proposes to move up the regulatory deadline by which unlined impoundments must cease receiving waste and initiate closure from October 31, 2020 to August 31, 2020. In addition, the Proposed Rule would establish alternative closure provisions to provide additional time to develop alternate capacity to manage CCR and non-CCR wastestreams.

The Proposed Rule will have profound effects on the electric utility sector, including public power utilities. The Association is the voice of not-for-profit, community-owned utilities that power 2,000 towns and cities nationwide. We represent public power before the federal government to protect the interests of the more than 49 million people that public power utilities serve, and the 93,000 people they employ. Our association advocates and advises on electricity

¹ 80 Fed. Reg. 21,301 (April 17, 2015) (2015 CCR Rule).

² 84 Fed. Reg. 65,941 (December 2, 2019) (Proposed Rule).

³ *Id.*

policy, technology, trends, training, and operations. Our members strengthen their communities by providing superior service, engaging citizens, and instilling pride in community-owned power.

II. Executive Summary

APPA members own and operate CCR impoundments that serve a multitude of wastewater management functions beyond just the management of CCR. Public power utilities must develop alternate disposal capacity, all while continuing to provide safe, reliable, affordable, and sustainable power to our customers and complying with complex federal and state environmental requirements. Therefore, replacement of these units requires considerable planning, coordination, and reasonable timelines. The Proposed Rule's framework is intended to establish a timeframe by which the majority of unlined CCR impoundments can cease the receipt of waste and begin to close in accordance with the *USWAG* decision. EPA and the court importantly recognized that the 2105 CCR rule's alternative closure provisions are critical elements of this regulatory framework, as the provisions provide facilities with time to develop alternate disposal capacity when it is not technically feasible to meet the new deadlines. However, the Association believes the Proposed Rule requires important modifications to more accurately reflect the time public power utilities need to develop alternative disposal capacity. Additionally, the Proposed Rule's site-specific alternative closure provisions need to be modified as some utilities will not be able to meet the October 15, 2023 deadline to initiate closure. We summarize our key comments below.

- APPA supports setting deadlines for closure that are technically feasible. The rulemaking record illustrates that the majority of unlined impoundments are unable to meet the October 31, 2020 deadlines much less an accelerated deadline

of August 31, 2020. EPA must reevaluate its 22.5-month timeframe based on the information in the rulemaking record.

- APPA believes it's critical for the final rule to include the alternate closure deadlines for those facilities that will not be able to develop disposal capacity by the ultimate deadline EPA establishes.
- APPA supports the site-specific closure provisions under §257.103(f)(1) with modifications. The October 15, 2023 deadline is two years shorter than the time limit in the existing rule's alternative closure provision. We believe the site-specific alternative closure deadline should be based on the site-specific data included in a facility's demonstration.
- APPA supports the alternative closure provision for boilers ceasing operations under the proposed §257.103(f)(2) which specifically includes both CCR and non-CCR wastestreams. However, EPA should make clear in a final rule that facilities operating under a site-specific alternative closure timeframe can transition to the alternative closure option involving ceasing boiler operation.
- Given the anticipated timing of issuing a final rule, the proposed dates for submitting either a request under §257.103(f)(1) or §257.103(f)(2) must be delayed providing enough time for facilities to prepare demonstrations under these provisions.
- APPA recommends EPA create a regulatory process for circumstances when a facility submits an alternate closure demonstration and the demonstration is denied by EPA.

- Participating States Directors can approve alternative closure extension requests.
If a state CCR permit program is approved by EPA, then the state program is authorized to operate in lieu of the federal rule in all aspects, including the ability for the Participating State Director to review and approve alternative closure extension request.
- The requirements for unlined, non-leaking impoundments that meet all the location restrictions (including clay-lined units which formerly qualified as lined) is in flux. APPA believes the cease receipt of waste deadline for these units should begin upon promulgation of the pending Liner Demonstration proposal in the *Federal Register*. The final rule, at a minimum, should include a means to stay the deadline for ceasing the receipt of waste for these units that file for a liner equivalency demonstration under to pending proposal.

These issues are further discussed in the below comments. The Association is a member of the Utility Solid Waste Activities Group (USWAG) and supports USWAG's detailed technical and legal comments on the Proposal Rule. Several APPA members have provided comments on the Proposed Rule, outlining site-specific information about the technical feasibility of developing alternate capacity.

III. APPA Supports Extending the Timeframes to Initiate Closure as Soon as Technically Feasible

EPA is proposing to require that facilities cease placement of all wastes (both CCR and non-CCR) as soon as technically feasible.⁴ The Agency acknowledges that ceasing operation and

⁴ 84 Fed. Reg. at 65,944.

initiating closure will take varying amounts of time depending on countless differing site-specific factors, many of which are beyond a facility's control.⁵ "EPA cannot impose more protective measures than what can be technically feasibly implemented, as the law cannot compel the impossible."⁶ EPA's position, that facilities must cease placement of all waste as soon as technically feasible, is consistent with the *USWAG* decision and the plain language of the Resource Conservation and Recovery Act (RCRA) subtitle D protectiveness standard to ensure "no reasonable probability of adverse effects on human health or the environment from the disposal of solid waste at the facility."⁷ RCRA specifically contemplates some degree of balancing of competing factors that does not require the elimination of all risk.⁸ However, it is clear from the record that the majority of unlined CCR impoundments will not be able to initiate closure by August 31, 2020.⁹ The Agency explains that "many utilities currently could not immediately cease the placement of wastestreams into their surface impoundments without causing potentially significant disruptions to plant operations and delivery of electricity to their customers, as they lack additional capacity to manage these wastes elsewhere."¹⁰ The Court in *Waterkeepers* recognized this based on industry filings in that case.

In determining what constitutes "as soon as technically feasible," the Agency reasoned that the "first and most important step to cease receipt of wastes" in unlined impoundments is that a facility have alternative disposal capacity to manage both the CCR and non-CCR wastes currently managed in the impoundment.¹¹ Recognizing that some facilities must still develop

⁵ 84 Fed. Reg. at 65,945.

⁶ *USWAG* at 448; *Hughley v JMS Development Corp*, 78 F.3d 1523(11th Cir 1996).

⁷ RCRA §4004(a), 42 U.S.C. §6944 (a).

⁸ *Id.*

⁹ 84 Fed. Reg. at 65,953.

¹⁰ 84 Fed. Reg., at 65,945.

¹¹ 84 Fed. Reg. at 65,945.

alternative disposal capacity, EPA evaluated the various types of alternative disposal capacity and the processes and timeframes necessary to implement these alternatives so that affected facilities are able to cease receipt of wastes in affected impoundments and initiate closure as quickly as possible. APPA supports the implementation of a deadline by which a substantial number of facilities can cease placement of all waste in CCR and non-CCR units as soon as technically feasible. However, we believe facilities will require more than 22.5-months to cease receipt of all waste as proposed.

A. Timeframe to Construct Alternate Capacity

The Agency identified six main approaches facilities may take to develop alternative capacity, after reviewing information submitted by industry stakeholders, the declarations submitted in *Waterkeepers* litigation, and closure plans on publicly accessible websites.¹² Comments submitted by USWAG evaluated the methodology used to calculate the 22.5-month timeframe. USWAG's comments suggest EPA did not calculate a true average, but rather added up all ten data points including both high and low ranges for several alternatives.¹³ Using more than one data point for a single method overestimates that method in the calculated average. For example, the estimated time required to construct and implement a wastewater treatment facility ranges from 16-21 months. The average time is 18.5 months. EPA should have used 18.5 months to calculate the true average, instead of using the high 21 months, and the low 16 months, to calculate the time range to build a wastewater treatment facility. The true average for developing alternative disposal capacity is 27 months. The 27 month average is calculated using a single data point for each of the six methods of alternate technologies identified, (i.e., 36 months for

¹² *Id.*

¹³ USWAG Part A CCR Comments at 16.

conversion to dry handling, 21 months for non-CCR wastewater basin, 18.5 months for a wastewater treatment facility, 27 months for a new CCR surface impoundment, 31.5 months to retrofit an existing CCR surface impoundment, and 28.5 months for a multiple technology system.) Using the approximately 27-month timeframe would establish a revised deadline of January 15, 2021. However, even 27 months is a low estimate, as the timeframe does not include permitting and other project elements that may be outside a facility’s control and should be considered in any revised deadline.

As an example of a relevant construction project, one of APPA’s members is planning to develop new CCR and non-CCR surface impoundments to meet requirements of the Steam Electric Effluent Limitations Guidelines Reconsideration rule.¹⁴ The utility plans to build two new, 2-acre CCR-compliant surface impoundments. As can be expected, the duration of the schedule is varied. From project award to initial operation it is expected to take 30 months. Six months for permitting, two months to cover shakedown issues (mechanical rotating equipment and operation and process control tuning), three months for tie-in and start up, plus the actual design and construction time (15 months). It will take a total of 30 months to design, construct, permit, and begin operations of a new 2- acre impoundment. Table 1 outlines the various steps to plan, construct, and initiate operation of a 55-acre and 2-acre surface impoundment.

Table 1 : Timeline to Construct New CCR Disposal Capacity

Activity Description	Time Frame (months)	
	55 Acres	2 Acres
Award Design Build Contract		
Detailed Design Ponds	9	9
Detailed Design Balance of Plant		

¹⁴ 84 Fed. Reg., at 64,620 (November 22, 2019) (ELG Reconsideration Rule).

Permitting Ponds	6	6
Procurement- Engineered Equipment	10	
Construction- CCR Ponds (55 Acres)	12	
Construction- CCR Ponds (2 Acres)		10
Construction Balance of Plant		
Tie-in and Start Up	3	3
Initial Operation Period	2	2
Total Duration	42	30

For existing unlined CCR surface impoundments, EPA’s estimate that it will require 31.5- months to retrofit.¹⁵ Based in information provided by an APPA member, it would take them 42 months to build a 55-acre impoundment. Various early design activities such as: geotechnical investigations, baseline groundwater monitoring, and topographic, environmental, and archeological surveys may be required for detailed engineering projects. Further, some states require a complete, sealed design package for review and approval prior to commencing construction. During construction the contractor may experience delays such as hard digging or inclement weather. Plant tie-ins must be coordinated with operations and may require a unit outage. Further, EPA cites information from one stakeholder that it takes approximately 65.4 months to retrofit four impoundments sequentially, with the largest impoundment being 50 acres.¹⁶ EPA concludes 31.5 months is reasonable with no further explanation or consideration of the fact that building the impoundments in a sequential manner is to ensure continued power generation during the retrofit work. The sequential nature of some of these projects also needs to be factored when establishing any revised deadline to initial closure.

¹⁵ 84 Fed. Reg. at 65,950.

¹⁶ 84 Fed. Reg. at 65,950.

B. A New Cease Receipt of Waste Deadline

EPA has chosen to rely on a single average construction timeframe to establish a new deadline for facilities to initiate closure. APPA supports setting a single deadline for ceasing placement of waste. While setting a single deadline is reasonable, the administrative record demonstrates facilities will need beyond August 31, 2020 to cease placement of waste. The Agency's own analysis indicates that nearly half of the surface impoundments covered by the Proposed Rule will request extensions due to a lack of alternate disposal capacity or will close at the same time the boilers cease operation.¹⁷ Further individual utilities have provided information in the rulemaking docket to illustrate that facilities will need additional time beyond August 31, 2020 to cease receipt of waste. According to the Tennessee Valley Authority, it will take approximately 41 months to construct and implement non-CCR wastewater basins and 4 years to complete construction of a new CCR surface impoundment.¹⁸ The timeframes to develop alternate capacity are driven by factors beyond a utility's control, such as permitting and state approvals which can direct the timing of various phases of projects. Several submissions in the docket discuss the need for facilities to obtain numerous permits and licenses. In addition to permits, the shortage of skilled labor and lead times required to manufacture equipment were also cited as issues that impact the timeframe for facilities to obtain alternate capacity and cease placement of waste. While proposing August 31, 2020 as the deadline for unlined impoundments to initiate closure, EPA readily acknowledges that some facilities will be unable to cease the receipt of wastes by this date due to, in some cases, circumstances beyond a facility's control,

¹⁷ EPA-HQ-OLEM-2019-0172-0019 at 6.

¹⁸ EPA-HQ-OLEM-2019-0172-0020, TVA docket submission.

such as extreme weather or permitting delays. EPA also recognizes that this date may not be achievable for many of the impoundments that became subject to forced closure due solely to the *USWAG* decision—specifically, clay-lined impoundments and unlined impoundments that were not leaking and passed location restrictions—as owners/operators of these impoundments did not anticipate having to cease using their surface impoundments so rapidly. Indeed, EPA notes that, even if a facility began to implement measures to convert to dry handling the day after the *USWAG* decision, it is possible that, despite best efforts, the conversion would not be complete by August 31, 2020.

In the Phase One, Part One Rule, the Agency determined that facilities would need until October 31, 2020 to initiate closure.¹⁹ Nothing in the rulemaking record suggests that facilities would need less time to develop alternative disposal capacity. Further, EPA acknowledges that facilities should not have to make premature decisions considering compliance measures when they are likely to change. Based on the information posted on the Office of Information and Regulatory Affairs in the Office of Management and Budget website, EPA sent its proposed rule, “*Hazardous and Solid Waste Management System: Disposal of CCR; A Holistic Approach to Closure Part B: Alternate Demonstration for Unlined Surface Impoundments; Implementation of Closure; Legacy Units*” (Part B Rule) to OMB for interagency review.²⁰ This rule would address a provision in the [*USWAG*] court decision and provide a mechanism in which unlined surface impoundments meeting strict criteria would be allowed to continue to operate.²¹ Therefore, EPA has not yet decided whether units that are not leaking and meet all the 2015 CCR Rule’s location restrictions (including clay lined impoundments that formerly qualified as lined impoundments

¹⁹ 83 Fed. Reg. at 36,441 (July 30, 2018) (Phase One, Part One Rule).

²⁰ <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=2050-AH11> (last visited January 29, 2020).

²¹ *Id.*

prior to the *USWAG* decision) have to close. EPA's soon to be proposed Part B Rule contemplates allowing these units to demonstrate that liner system for these units perform as well as the liner systems in the CCR Rule which meets the RCRA subtitle D protectiveness standard. This subset of unlined impoundments, essentially, is in a state of flux and unsure whether they are required to develop alternative disposal capacity and close or if they will be able to qualify for the liner equivalency demonstration and allowed to continue to operate. Therefore, APPA believes the start date for units to initiate closure should be tied to the promulgation of the Part B Rule in the *Federal Register* and not to the issuance of the *USWAG* mandate (i.e., October 15, 2018).²² The final rule, at a minimum, should include an opportunity to stay the deadline to stop receiving waste for units that file for a liner equivalency demonstration under the Part B proposal.

IV. EPA Should Expand its Alternative Closure Provision

The Agency proposes to amend the CCR rule's existing alternative closure provisions at 40 C.F.R. § 257.103 to include three different mechanisms to obtain extensions beyond August 31, 2020, if the facilities are unable to develop alternative disposal capacity for CCR and non-CCR wastestreams by that date (EPA adheres to its position that the existing alternative closure provisions apply only to CCR; thus, the explicit proposal to include non-CCR in the proposed amendments).²³ The first mechanism that EPA proposes, to provide facilities with an extension beyond August 31, 2020, is a short-term, self-implementing alternative. The proposed provision would allow for no more than a three-month extension, which means that the latest a facility could continue to operate a CCR surface impoundment under this provision would be November

²² 84 Fed. Reg. at 65,951.

²³ 84 Fed. Reg. at 65,952.

30, 2020. The second mechanism is a site-specific alternative closure extension to no later than October 15, 2023, which would require the approval of EPA or a Participating State Director. The third mechanism would amend the existing alternative closure provision involving the permanent cessation of the coal-fired boiler but also requires explicit approval by EPA or a Participating State Director demonstrating how the facility will mitigate risks from the impoundment during the period of extended operation.²⁴ APPA supports the site-specific alternative closure provision under 40 C.F.R§ 257.103(f)(1) with certain modifications.

A. Any Revisions to the Alternative Site-Specific Closure Provision Should Apply to All Impoundments

EPA is seeking comment on whether the revised alternative closure provision “should only apply on to the universe of CCR units affect by [the] *USWAG* decision.”²⁵ The *USWAG* decision subjected an additional number of unlined impoundments to closure under the CCR rule. However, unlined impoundments were already forced to close for failing to meet a groundwater protection standard or location restrictions, and had to close by October 31, 2020.²⁶ It is clear from the rulemaking record that all facilities, not just the new impoundments subject to forced closure because of the *USWAG* decision, should benefit from the alternative closure provisions. The 2015 CCR rule’s alternative closure provision plays a critical role in allowing unlined impoundments to continue to operate for a short period of time beyond the October 31, 2020 deadline to initiate closure due to the lack of alternative disposal capacity on-site and off-site of the facility.²⁷ EPA and the court recognized “[they] did not want to force facilities to close

²⁴ *Id.*

²⁵ 84 Fed. Reg. at 65,953, (i.e., clay lined and other unlined units that were not otherwise required to close, but for the *USWAG* decision).

²⁶ 83 Fed. Reg., at 36,454.

²⁷ 40 CFR 257.103(a)(1).

and create power shortages ‘because there is no place in which to dispose of the resulting waste,’” and because the “law cannot compel actions that are physically impossible.”²⁸ These facts apply to the *USWAG* units as well as the unlined impoundments that exceeded a groundwater protection standard, or failed a location restriction. If a facility is technically unable to cease receipt of wastes in the impoundment before alternative disposal capacity is available, it should be able to request an extension under the proposed site-specific alternative closure provisions.

B. Short-Term Alternative to Cease Receipt of Waste

APPA supports EPA’s proposal to allow facilities a three-month extension if they cannot demonstrate “no alternative disposal capacity is available on-site or off-site.”²⁹ This short-term extension would be self-implementing and the facility would place a certification in its operating record and post it to their website. However, we believe the short-term alternative provision should apply to both CCR and non-CCR wastestreams. If EPA failed to extend this option to CCR wastestreams it would subject certain facilities to a deadline they are unable to meet.

C. Site-Specific Alternative to Cease Receipt of Waste Deadline

EPA acknowledges some facilities may need more time and are unable to meet the August 31, 2020 timeframe. To accommodate those units that need longer than the three-month extension to November 30, 2020, EPA proposes to allow facilities to request a site-specific alternative “cease receipt of waste deadline.”³⁰ APPA supports this proposed provision with modifications.

²⁸ 80 Fed. Reg., at 21,423.

²⁹ Proposed § 257.103(e).

³⁰ 84 Fed. Reg., at 65,964, Proposed §257.103(f)(1).

APPA believes the extension granted under the proposed § 257.103(f)(1) should be based on site-specific data included in the facilities' alternative closure demonstrations and not limited to October 15, 2023 (no later than date). The maximum timeframe for alternative closure in 40 CFR §257.103(a)(3) (which would remain in place for landfills) is nearly two year longer than what EPA is proposing. Further, the rulemaking record makes clear that some facilities will require additional time to develop alternative disposal capacity.

Considering the *USWAG* decision, EPA must reevaluate the timeframes for unlined impoundments to initiate closure, and we understand this is a difficult balance. However, the new site-specific provisions would require the development of workplans detailing that it is not technically feasible to complete the development/installation of alternative capacity by November 30, 2020. In addition, the facility would need to present the specifics of the process they are undertaking to develop alternate capacity for the necessary CCR and/or non-CCR wastestreams to support a claim that additional time is necessary.³¹ A work plan would include: (1) a narrative discussion of the steps and process that remain necessary to complete development of alternate capacity for wastestreams; (2) a visual timeline depicting the remaining steps needed to obtain alternate capacity; (3) a discussion of the timelines and the processes that occurred during each step; and (4) a discussion of the step already taken to achieve the alternate capacity, including what steps have been completed and what steps remain.³² EPA should set alternative closure deadlines based on the information outlined in the extension request. Thereby, not compelling actions that are not physically possible.³³ Once a completed demonstration has been submitted to EPA, or the Participating State Director, the public will have an opportunity to

³¹ 84 Fed. Reg., at 65,954.

³² *Id.*

³³ 80 Fed. Reg. at 21,423.

review and provide comments. Based on the public input, EPA will be able to evaluate and establish realistic and site-specific timeframes for what is technically feasible.

An overall workplan would document the efforts of the owner or operator to obtain alternate capacity, the various methods researched for alternate capacity, and the planning for the alternate capacity wastestreams. EPA is seeking comment on additional elements the workplan should include.³⁴ APPA believes the information provided in a workplan provides EPA with all the information that is needed to grant or deny an extension request. To the extent EPA has questions about any aspect of a workplan, there is ample time during the review process to obtain additional information from the facility. In addition to workplans, EPA is proposing that facilities applying for the site-specific alternate compliance deadline produce and post on their websites, a semi-annual progress report.³⁵

The semi-annual report would detail the progress a facility has made towards developing alternate disposal capacity. APPA believes this additional reporting obligation should be streamlined. Ninety percent of APPA's members are small entities of state and local government as defined by the Regulatory Flexibility Act (RFA).³⁶ As such, resources devoted to preparing semi-annual reports could be better diverted to developing alternate disposal capacity, as opposed to additional paperwork. APPA agrees with EPA's proposal to reduce the reporting obligation for facilities that are on or fully ahead of schedule where no significant problems have arisen or changes in operational status has occurred.³⁷ APPA recommends EPA limit the semi-

³⁴ 84 Fed. Reg., at 65,955.

³⁵ 84 Fed. Reg., at 65,957.

³⁶ Under the RFA, "small entity" includes small businesses, small governments, and small organizations. The RFA defines "small governmental jurisdiction" as the government of a city, county, town, school district or special district with a population of less than 50,000. " 5 U.S.C. §§ 601 et seq.

³⁷ 84 Fed. Reg., at 65,957.

annual reporting requirements for facilities who have requested two-year, site-specific extensions. We realize the time extensions contemplated will vary from site-to-site, however, the rule's existing annual reporting would be enough for facilities with longer extension.

D. Permanent Cessation of Coal-Fired Boiler by a Date Certain

EPA is proposing to amend the alternative closure provision involving the permanent cessation of the coal-fired boiler and completion of closure of the subject impoundment(s) by a date certain to expressly include non-CCR wastestreams.³⁸ APPA supports making it clear that the provisions on permanent cessation of coal-fired boilers specifically include non-CCR wastestreams. APPA agrees that facilities that select to rely on this alternative must complete closure of their disposal units in an expedited timeframe; thus, the risks from these units will be addressed sooner (by 2023 for less than 40-acre surface impoundments and by 2028 for over 40-acre impoundments).

Facilities would have to submit a demonstration to EPA, or the Participating State Director, establishing that the facility meets the necessary conditions, as opposed to the current rule's self-implementing process to obtain this extension.³⁹ A facility would submit a demonstration containing the following: "(1) documentation that no alternative disposal capacity is available on-site or off-site; (2) a plan to mitigate potential risks to human health and the environment from the CCR surface impoundment; (3) certification that the owner or operator remains in compliance with all other requirements of this subpart, including the requirement to conduct any necessary corrective action; and (4) documentation that the coal-fired boilers and

³⁸ Proposed 40 C.F.R § 257.103(f)(2).

³⁹ *Id.*

closure of the impoundment will be completed within the [specified] timeframes.”⁴⁰ The submittal of mitigation plans is a new requirement. APPA does not believe preparing mitigation plans for facilities that have already certified compliance with “cessation of coal-fired boiler” alternative closure provision under 40 C.F.R § 257.103(b) is warranted. EPA explains that the current provision §257.103(b) does not authorize the continued use of impoundments for non-CCR wastewaters and the record does not account for these risks. However, to the extent a facility is already certifying compliance and management of CCR wastewaters, there is no need for this additional obligation.

A mitigation plan is not necessary for facilities that are subject to forced closure due solely to the *USWAG* decision (i.e., impoundments that meet all the groundwater protection standards and location restriction). If the impoundment in question is in detection monitoring (40 C.F.R §257.94) and meets all location restrictions, a mitigation plan is not needed, as the risks do not exist.

EPA is seeking comment on whether the owner or operator should be required to submit a more in-depth, site-specific risk assessment of the CCR surface impoundment.⁴¹ A site-specific risk assessment is not warranted as the current regulatory requirements already meet this objective. A facility’s annual groundwater monitoring and corrective action report provides details of a facility’s groundwater status; further, this report is posted on the facility’s public website. Moreover, facilities are required to notify residents who own or live on the land that “directly overlies any part of the plume of contamination if contaminants have migrated off site.”⁴² The existing information collected under the CCR rule includes a significant amount of

⁴⁰ 84 Fed. Reg., at 65,956.

⁴¹ *Id.*

⁴² 80 Fed. Reg. at 21,487.

information to develop a plan outlining the steps taken to mitigate risk from continued operation of the unit.

V. Procedures for Approval and Implementation

Requests for an “alternative cease receipt deadline” under proposed § 257.103(f)(1) (i.e., more time is needed to develop alternative disposal capacity) would have to be submitted no later than 2 months prior to the unit’s deadline to cease receiving waste. Meaning requests must be submitted no later than June 30, 2020. Requests for an “alternative cease receipt deadline” under proposed §257.103(f)(2) (cessation of the coal-fired boiler and closure of the impoundment by a date certain) would have to be submitted by May 15, 2020. Given the anticipated timing of issuing a final rule, the proposed dates for submitting either a request under 103(f)(1) or 103(f)(2) must be delayed to provide enough time for facilities to prepare demonstrations under these provisions. Further, whatever the final submission date is under §257.103(f)(2), facilities will not always know whether they will subsequently determine to cease coal-fired generation. Therefore, there must be an option for submitting extension requests at a later point in time. EPA should provide facilities with a two-month time period to submit a 257.103(f)(2) extension request after the facility, operating with an approved timeframe under 257.103(f)(1), determines to cease coal-fired operations. These extension requests would be submitted with the understanding that facilities would meet the timeframes for alternative closure under 257.103(f)(2) (i.e., cease boiler operation and closure of surface impoundments by October 17, 2023 for less than 40-acre impoundments and by October 17, 2028 for impoundments 40 acres or larger).

A. Regulatory Process for Denial of Extension Requests

APPA recommends EPA create a regulatory process for circumstances when a facility submits an alternate closure demonstration and the demonstration is denied by EPA. Given that facilities that have completed demonstrations have some reasonable expectation their request will be approved, it is therefore unreasonable to expect these facilities will cease using the impoundments immediately on the day EPA denies the request. In the final rule EPA should consider allowing these units no less than six months to initiate closure.

B. Participating State Directors Can Approve Extension Requests

EPA is seeking comment on whether a Participating State Director (i.e., a state director with an approved State CCR permit program) should also have the authority to grant approvals.⁴³ RCRA could not be clearer “upon approval by the Administrator, [state CCR permit program] will operate in lieu of the” federal CCR permit regulations codified at 40 C.F.R § 257 or the federal CCR permit program.⁴⁴ If a state adopts a final rule administering a state CCR permit program and has the resources to enforce the rule, then EPA should approve the application. State CCR permit programs are designed to operate in lieu of the federal rules in all respects, including the ability of the Participating State Director to review and approve alternative closure extensions once they have an approved state program.

⁴³ 84 Fed. Reg., at 65,958.

⁴⁴ RCRA§ 4005(d)(1)(A), 42 U.S.C § 6945(d)(1)(A).

APPA appreciates the opportunity to submit these comments and looks forward to working with the Agency as it finalizes the Proposed Rule. Public power utilities continue to transition to low and non-emitting generation resources. Therefore, establishing a well-planned and reasonable timeframe for these impoundments to close or seek alternative disposal capacity is critical to ensuring public power utilities continue to provide safe, affordable, and reliable power. Please contact Carolyn Slaughter, cslaughter@publicpower.org or (202-467-2900) with questions regarding these comments.