January 31, 2020

U.S. Environmental Protection Agency
Office of Water – Office of Science & Technology
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

RE: Disposal of Coal Combustion Residuals from Electric Utilities; A Holistic Approach to Closure Part A: Deadline to Initiate Closure

Docket No. EPA-HQ-OLEM-2019-0172

The National Rural Electric Cooperative Association (NRECA) submits these comments on this proposal by the Environmental Protection Agency (EPA) to revise the federal coal combustion residual (CCR) rule in response to the 2018 D.C. Circuit Court of Appeals decisions in *Utility Solid Waste Activities Group, et al. v. EPA* (*USWAG* decision) which vacated provisions that classified clay-lined units as "lined" and allowed unlined units with no groundwater contamination to continue operating and *Waterkeeper Alliance v EPA* (*Waterkeeper* decision) that remanded the October 31, 2020 date back to EPA for further reconsideration in light of *USWAG*. NRECA members have significant investment in coal-fired generation despite growing investment in other generation (e.g., renewables, natural gas, hydro, nuclear) and thus are affected by EPA and state rules governing the management of coal combustion residuals (CCR). NRECA is a member of the Utility Solid Waste Activities Group (USWAG) and endorses the comments submitted by that organization, incorporating them by reference.

NRECA is the national trade association representing nearly 900 local electric cooperatives (coops) and other rural electric utilities. America's electric cooperatives are owned by the people that they serve and comprise a unique sector of the electric industry. From growing regions to remote farming communities, electric cooperatives power 1 in 8 Americans and serve as engines of economic development for 42 million Americans across 56 percent of the nation's landscape. NRECA's members include 62 generation and transmission (G&T) cooperatives and 831 distribution cooperatives. All but three of these coops are classified as small businesses. Importantly, electric coops serve 92% of the nation's persistent poverty counties.

NRECA is concerned that EPA's proposal to change the deadline for units to cease placement of CCR (e.g. initiate closure) from October 31, 2020, to August 31, 2020, would impose unwarranted risks and burdens on coops that had plans in place to meet the original October date, including eliminating two prime construction months (September and October). Furthermore, NRECA is concerned that the proposed alternative disposal capacity extension options are mutually exclusive, creating a preference for the longer, but more burdensome option, for any coop concerned that delays due to unforeseeable and uncontrollable events such as weather, construction, or contractual matters on top of the loss of two months of prime construction season would prevent them from meeting the very aggressive proposed closure deadline.

NRECA supports the USWAG analysis and recommendation to extend the date to cease placement of CCR into January 2021, but in no case should the agency establish a date earlier than the original October 31,

2020, date. NRECA also urges EPA to provide a means for plants to obtain an additional, limited extension, beyond the 90-days proposed, when a delay is beyond the plant's control. Finally, we urge the agency to finalize the CCR Parts A and B rules concurrently and in coordination with the final ELG rule.

About America's Electric Cooperatives

Not for profit electric cooperatives operate at cost and without a profit incentive. They are owned by the members they serve with no independent stockholders. The G&Ts generate and transmit power to distribution cooperatives that provide it to the end of line coop consumer-members. All but the three largest G&Ts qualify as "small businesses" under the Small Business Administration criteria.

About two-thirds of coops' operating coal units were built under the mandates of the 1978 Powerplant and Industrial Fuel Use Act (before it was repealed in 1987). Under this law, the government pushed coop G&Ts to build significant new baseload generation for self-generation but mandated that it be "coal capable" to preserve natural gas supplies for non-electric and non-industrial purposes. This meant the new units bore significantly higher capital costs.

Many G&Ts operate a single coal-fired power plant, and even those with more than one plant, may only have a couple of units at each plant. These factors make it more challenging for a small coop to stage the steps required to retrofit a coal-fired boiler or close a CCR impoundment while maintaining the reliability of their power generation sufficiently to meet their obligations to serve their members. This includes not only careful scheduling of unit outages, but the step-wise sequencing that may be needed to move away from ponds. It can be done, but only with careful planning and sufficient time.

For over 75 years, electric cooperatives have proudly shouldered the responsibility to provide safe, reliable, and affordable electricity to rural parts of this country. This obligation is not without its challenges. Sparsely populated and primarily residential communities are more expensive to serve and provide less revenue per consumer compared to more industrialized and densely-populated areas served by investor-owned or municipal utilities. Electric coops serve an average of eight consumers per mile of distribution line and collect annual revenue of approximately $19,000 per mile. Other utility sectors combined average 32 customers and $79,000 in annual revenue per mile. Coops also serve 92% of the "persistent poverty" counties in the country; an estimated 4.2 million people in counties with poverty rates ranging from 20% to over 60%.

The average electric coop household also uses significantly more electricity every month than other utility customers, with mostly single-unit or manufactured housing that endure significant exposure to the elements, compared to closely-confined houses or apartments. Many of these customers live in areas with harsh winters and without access to natural gas or affordable heating alternatives. Further, the median household income for coop consumers is 11% below the national average. Coop costs – including environmental costs – are borne by a defined set of coop members and not spread across large, system-wide customer base or stockholders. These factors make it especially important for coops to keep their electric rates stable and affordable, particularly for those who can ill afford increased electricity costs, while maintaining reliability and improving sustainability.

One option for containing costs is for coops to obtain low interest federal loans through the US Department of Agriculture Rural Utility Service (RUS). RUS-funded projects, however, are not without "strings" – such projects may have restrictions on the materials of construction that can be used, and frequently such projects require analysis under the National Environmental Protection Act (NEPA)

Under the USDA 7 CFR § 1970.8 governs actions financed through RUS requiring environmental review. Any project receiving thirty-three and one-third percent funding from RUS is considered a major federal action requiring and environmental review (projects with more than five-percent, but less than thirty-three and one/third percent, may require environmental reviews depending on stipulated factors). Small-scale projects may require an Environmental Report (ER) rather than full Environmental Assessment (EA) (*See* 7 CFR § 1970.54). RUS will determine whether an EA or ER is required depending on the specific action and the potential for environmental impacts. Borrowers must wait for the conclusion of RUS's environmental review before taking any action on the project to could have an environmental impact or otherwise limit or affect the USDA's final decision. Taking such actions prior to the conclusion of the environmental review process could jeopardize the request for financial assistance. (*See* 7 CFR § 1970.12).

Timelines to Initiate Closure Should be Extended

We agree with EPA that neither the law nor the agency can compel the impossible. We believe that, for many coops, the proposed August 31, 2020 date will be impossible to meet. The agency's 22.5-month timeframe for constriction of alternative capacity underestimated the average time needed to construct alternative capacity and omitted critical components, including permitting, financing, and delays associated with uncontrollable factors such as weather that may affect the construction seasons.

Depending on the specific project, a number of permits or permit modifications could be required including those under the Clean Water Act (CWA) National Pollution Discharge Elimination System (NPDES), Clean Air Act (CAA) Title V operating permit for major sources, and CWA Section 404 (dredge and fill). Depending upon the site- and state-specific circumstances, these permitting programs can add several months, and often years, to project timelines.

As described above, many coops elect to obtain lower-cost financing through RUS, and such financing requires an environmental review under NEPA, and USDA's final review and conclusion before the project being financed (such as a dry ash conversion or impoundment liner retrofit) can begin. While an environmental review (ER) for a small project might be concluded in only a few months, a project as extensive as retrofitting or closing a CCR surface impoundment will require an EA, and possibly even a full Environmental Impact Statement (EIS). Based on information from our membership, NRECA estimates that the RUS environmental review process for an EA will take a year and a half, on average, to obtain a Finding of No Significant Impact (FONSI). Only upon completion of the environmental review process and a determination of no significant environmental impacts will RUS release funds to the cooperative. Only then can the coop begin construction on the CCR conversion or retrofit project. EPA should factor this extra financing step into the final deadline for initiating closure.

In addition, NRECA disagrees that facilities with impoundments that met location restrictions and were not affecting groundwater should have been on notice of closure as of October 2018, the date of the *USWAG* decision mandate. Cooperatives have a singular mission to provide cost-effective electricity for their cost-sensitive customers and end users. It would be problematic to commit to a multi-million-dollar construction project when the CCR and ELG regulatory and judicial contexts have been in flux for years. At this point, we are still unclear what EPA is going to require for facilities that became at risk for closure due solely to the *USWAG* opinion, when those facilities are not affecting human health or the environment. We trust the forthcoming Closure Part B proposal will correct this unreasonable result for facilities that have sufficiently protective liners. In the meantime, EPA should not have the expectation that cost-sensitive not-for-profit

entities, such as cooperatives, should have proceeded with costly modifications without the benefit of a final rule. We urge EPA to adjust its timeline for these *USWAG* units to allow project start date no earlier than publication of the final Part B rule in the *Federal Register,* and certainly no earlier than publication of the proposed rule in the Federal Register. We agree with USWAG that, consistent with the principles of fair notice, it is fundamentally unfair to hold *USWAG* units to the October 15, 2018 start date when it is clear the agency has every intention to provide a mechanism for such units to continue operating if they can demonstrate they are at least as protective as "lined" units under the 2015 rule.

NRECA is willing to live with EPA's proposal for a single deadline to cease placement of CCR for units moving away from their CCR surface impoundments and for units only brought under the rule by the *USWAG* decision, but such a deadline must be reasonable. NRECA does not agree that August 31, 2020, is a reasonable or appropriate date. EPA should not shorten the construction timeline from October 31, 2020 but should extend the deadline to January 15, 2021 as recommended and justified by the USWAG analysis and recommendation (incorporated here by reference).

The Proposed Alternative Closure Extension Options Should Be Revised and Expanded

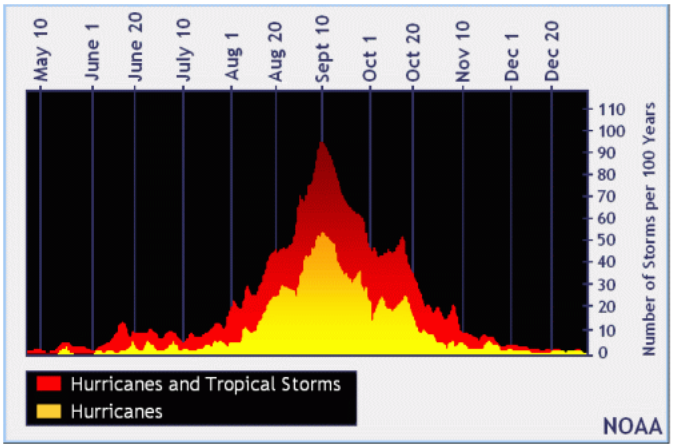
NRECA agrees with EPA that alternative closure provisions will be needed under this rule, especially for *USWAG* units. We also appreciate EPA's recognition that CCR impoundments are used to manage more than just CCR, and that alternative capacity is needed for both CCR and non-CCR wastes before a unit can initiate closure. We urge the agency to be clear that alternative closure provisions will apply *both* to CCR and non-CCR wastes, will apply *both* to *USWAG* and non-*USWAG* units, and will apply *both* under the short-term (e.g. the proposed 90-day) and the longer-term extension.

NRECA supports the short term, 90-day alternative closure extension for plants that were making a good-faith effort to meet the October 31, 2020 deadline but cannot accommodate the earlier deadline and for plants that have a schedule to meet the August date if there are no unforeseen delays caused by circumstances out of their control. We believe that, even if EPA retains the current October deadline (or extends the deadline to January 15, 2021 as NRECA and USWAG recommend), some plants will still need a short-term extension to accommodate factors outside the plant's control such as weather, construction, or contractual matters. We are also concerned that the proposed deadline to submit the demonstration requirement for a long-term extension (two months prior the deadline to cease receiving waste), will nullify the value of the short-term extension since the deadline to apply for a longer-term extension would be before the short-term extension period ends. This would be especially problematic for a plant that experiences an unforeseen and uncontrollable schedule delay during a 90-day extension.

NRECA's members frequently experience significant weather events depending upon the time of year and their geographic location. For those along the Atlantic or Gulf Coast, according to the National Hurricane Center, peak hurricane season hits at the same time as prime construction season and when the key CCR deadlines come into play - from mid-August to late October.[1] For these plants, should they apply for an extension just in case they are in a future storm's path or because models show that future storms may well form in their vicinity?

[1] National Hurricane Center and Central Pacific Hurricane Center, National Oceanic and Atmospheric Administration, Tropical Cyclone Climatology, https://www.nhc.noaa.gov/climo/ (screen shot captured 29 Jan 2020).

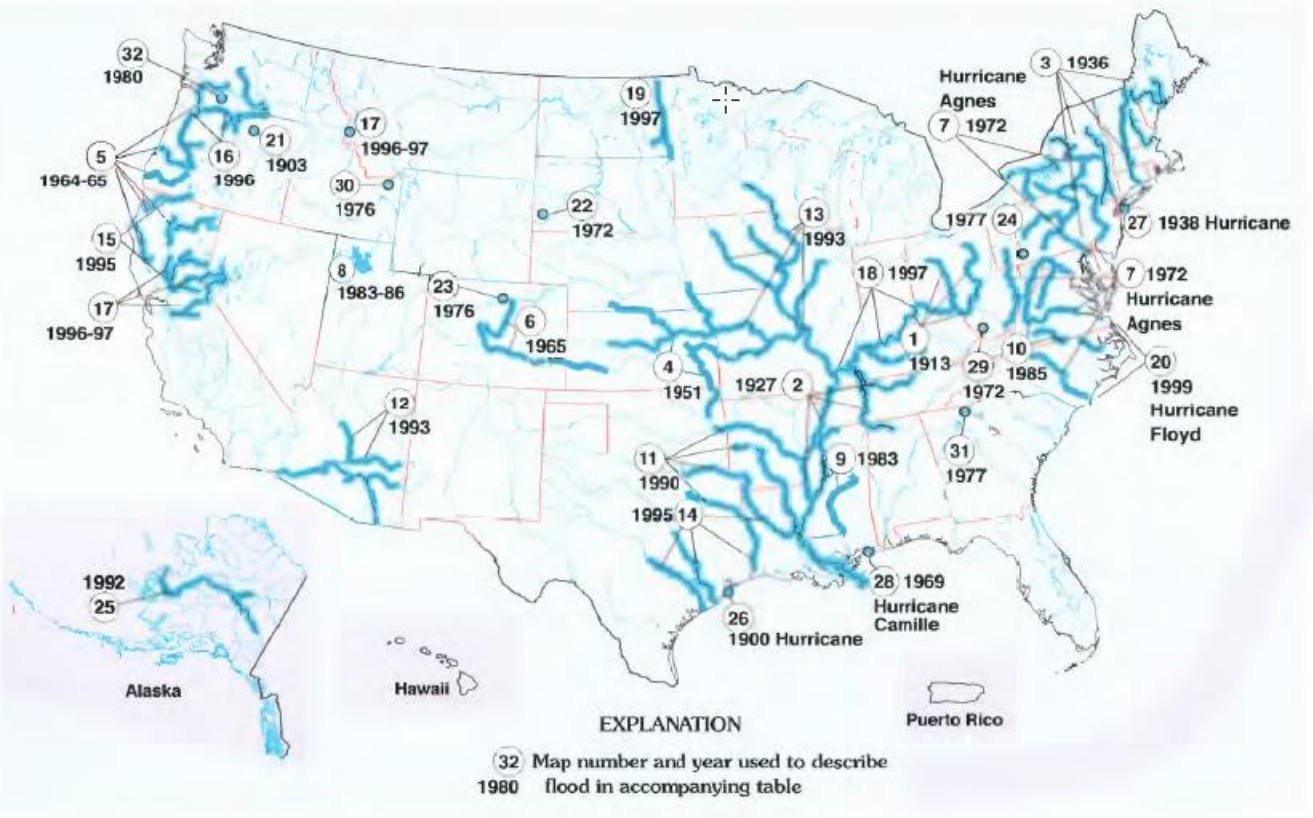
Number of Tropical Cyclones per 100 Years



The official hurricane season for the Atlantic Basin (the Atlantic Ocean, the Caribbean Sea, and the Gulf of Mexico) is from 1 June to 30 November. As seen in the graph above, the peak of the season is from mid-August to late October. However, deadly hurricanes can occur anytime in the hurricane season.

Other weather events including floods can affect plant operations. While floods can occur at any time of year, regional flooding is generally associated with winter or spring rains coupled with melting snow. Not surprisingly, most regional flooding occurs in the spring and early summer. Of the 20 significant 20th century regional floods, 14 occurred between March and June.[2] Construction at power plants may be delayed both because of flooding at or near the flood itself and, for plants located adjacent to flood control levees, and waterways at or above flood stage (note: a waterway may be considered at or above flood stage without overtopping the levee). A plant may be on track to meet the August deadline until inundated by spring flooding which, depending on the extent and duration, may delay construction for weeks if not months. Like hurricanes, flooding at a specific location cannot be predicted. Would plants located on significant waterways need to apply for an extension to be prepared for the possibility of seasonal flooding, and if so, for which extension?

[2] USGS Publication, Significant Floods in the United States During the 20th Century – USGS Measures a Century of Floods, March 2000. https://pubs.usgs.gov/fs/2000/0024/report.pdf (screenshot recovered 30 Jan 2020).



Significant Floods of the 20th Century

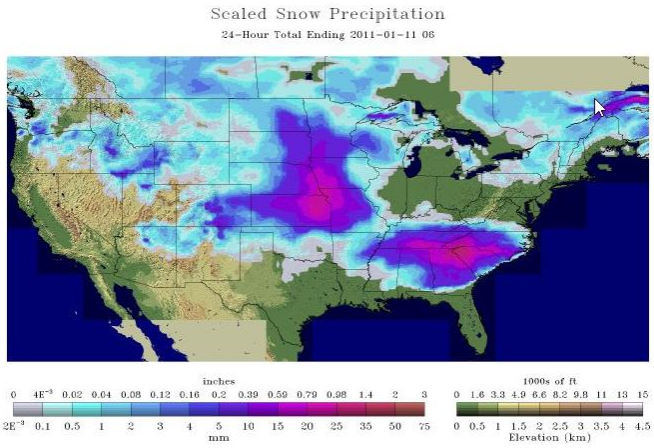
[M, million; B, billion]

Flood type	Map no.	Date	Area or stream with flooding	Reported deaths	Approximate cost (uninflated)	Comments
Regional flood	1	Mar.–Apr. 1913	Ohio, statewide	467	$143M	Excessive regional rain.
	2	Apr.–May 1927	Mississippi River from Missouri to Louisiana	unknown	$230M	Record discharge downstream from Cairo, Illinois.
	3	Mar. 1936	New England	150+	$300M	Excessive rainfall on snow.
	4	July 1951	Kansas and Neosho River Basins in Kansas	15	$800M	Excessive regional rain.
	5	Dec. 1964–Jan. 1965	Pacific Northwest	47	$430M	Excessive rainfall on snow.
	6	June 1965	South Platte and Arkansas Rivers in Colorado	24	$570M	14 inches of rain in a few hours in eastern Colorado.
	7	June 1972	Northeastern United States	117	$3.2B	Extratropical remnants of Hurricane Agnes.
	8	Apr.–June 1983 June 1983–1986	Shoreline of Great Salt Lake, Utah	unknown	$621M	In June 1986, the Great Salt Lake reached its highest elevation and caused $268M more in property damage.
	9	May 1983	Central and northeast Mississippi	1	$500M	Excessive regional rain.
	10	Nov. 1985	Shenandoah, James, and Roanoke Rivers in Virginia and West Virginia	69	$1.25B	Excessive regional rain.
	11	Apr. 1990	Trinity, Arkansas, and Red Rivers in Texas, Arkansas, and Oklahoma	17	$1B	Recurring intense thunderstorms.
	12	Jan. 1993	Gila, Salt, and Santa Cruz Rivers in Arizona	unknown	$400M	Persistent winter precipitation.
	13	May–Sept. 1993	Mississippi River Basin in central United States	48	$20B	Long period of excessive rainfall.
	14	May 1995	South-central United States	32	$5-6B	Rain from recurring thunderstorms.
	15	Jan.–Mar. 1995	California	27	$3B	Frequent winter storms.
	16	Feb. 1996	Pacific Northwest and western Montana	9	$1B	Torrential rains and snowmelt.
	17	Dec. 1996–Jan. 1997	Pacific Northwest and Montana	36	$2-3B	Torrential rains and snowmelt.
	18	Mar. 1997	Ohio River and tributaries	50+	$500M	Slow-moving frontal system.
	19	Apr.–May 1997	Red River of the North in North Dakota and Minnesota	8	$2B	Very rapid snowmelt.
	20	Sept. 1999	Eastern North Carolina	42	$6B	Slow-moving Hurricane Floyd.

Sever winter storms can also affect a plant's construction schedule. Plants located in predictably cold areas may account for the expected loss of winter construction time in their schedules, but unexpected and severe winter weather is not confined to northern areas. The NOAA National Centers for Environmental Information list of Historic Storms describes 24 of the most serious storms from 1922 – 2011 that affected

large swarths of the country that took days if not weeks to recover. For example, the "Southeastern Snowstorm of 2011" (January 9-13, 2011):

> … "brought significant snow to parts of Alabama, Mississippi, Georgia and South Carolina before it turned up the coast and began impacting the Northeast. … Cities in the south were ill prepared for the snow due to the rarity of the event. This caused the widespread closure of roads, schools, and businesses."[3]



Because, by definition, no one can predict the time or extent of unforeseeable and uncontrollable events, NRECA recommends that a plant that has extended its deadline through a 90-day extension not be precluded from obtaining a longer extension in accordance with § 257.102(f) for circumstances beyond the plant's control (e.g. weather, construction, or contractual matters). EPA has proposed that the § 257.102(f) extension require the review and approval of the permitting authority (the state or EPA in a state without authority for the CCR program). Since the permitting authority will be considering site-specific factors, a final decision can and should be based on site-specific factors justifying a new deadline and should be able to accommodate a demonstrated need for additional extensions of different lengths. It is also important that the final rule recognize and reflect that, should a request for an alternative closure demonstration ultimately be rejected, the plant will still need a reasonable amount of time before it can cease placement of CCR in the units.

NRECA's specific recommendations for revised regulatory language and our explanation and justification for the recommended changes are attached as Appendix A to these comments.

NRECA supports EPA's proposal for alternative closure provisions for units that will cease burning coal and either initiate closure or repower to burn natural gas. The U.S. electric power generation fleet is changing and will continue to change with the availability of natural gas and improvements in renewal generation and energy storage. Coops, like our investor-owned and municipal brethren are constantly re-evaluating options. A plant that receives a § 257.102(f) extension may well make the decision to cease burning coal, and the rule should accommodate such a change.

<u>This Part A Rule Should Be Finalized Concurrent with a Final Part B Rule</u>

EPA will issue a proposal – now pending at the Office of Management and Budget (OMB) – that would allow facilities to demonstrate that clay-lined or other liner systems are at least as protective as the liner criteria in the 2015 CCR rule that the *USWAG* court found met RCRA's protectiveness standard. Plants that believe their alternative design systems are at least as protective as the 2015 criteria and, as such, will meet the requirements that will be proposed in the "Part B" rulemaking, are concerned that the Part A rule could

[3] NOAA National Centers for Environmental Information, Regional Snowfall Index, Historic Storms. https://www.ncdc.noaa.gov/snow-and-ice/rsi/historic-storms (access date: January 30, 2020). Map from National Weather Service National Operational Hydrologic Remote Sensing Center, National Snow Analysis, January 11, 2011 https://www.nohrsc.noaa.gov/nsa/index.html?region=National&year=2011&month=1&day=10&units=e&incr=+%2B+ (screen capture January 30, 2020).

become effective before the Part B rule, thus leaving the plant no reasonable opportunity to make an alternative design demonstration. NRECA strongly urges EPA to propose the Part B rule expeditiously and then move to finalize the Part A and Part B rules either concurrently or as a single final rule.

In addition to the CCR rules, some coops are also subject to the steam electric effluent limitation guidelines rule and recent proposals. Just as plants must know what will be required for an alternative liner demonstration before they can make final decisions regarding their impoundments, plants subject to both the CCR and ELG rules must also know what will be required for management of their wastewaters before they can make a final decision about their ponds. Both the Office of Land and Emergency Management and the Office of Water have acknowledged that the two rules both affect CCR impoundments and must be written to work together. For this reason, we also urge the agency to finalize all three of the rules – CCR Part A, CCR Part B, and ELG concurrently, and adjust all applicable compliance deadlines accordingly.

Conclusion

NRECA appreciates EPA's efforts to provide the opportunity for extensions to the deadline due to the lack of alternative disposal capacity for both CCR and non-CCR wastes. While urging the agency to move expeditiously to finalize this and the upcoming Part B proposal, we also offer three recommendations to improve this proposed rule:

1. Do *not* shorten the construction timeline from October 31, 2020 but extend the deadline to January 15, 2021 as recommended and justified by the USWAG analysis and recommendation;
2. Revise the proposed extensions to better accommodate events beyond a plant's control (e.g. weather) and remove the proposed language (and related notifications) making the extensions mutually exclusive per Appendix A; and
3. Finalize the CCR Part A and Part B rules concurrently and in coordination with the final ELG rule.

Respectfully submitted,

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Regulatory Director
Water and Waste Issues

Appendix A: Recommended Revisions to Proposed Language Regarding Deadline Extension

Proposed Section: 40 CFR Section 257.103(e)(1)

Discussion of Need for Refinement/Clarification:

The proposal establishes a new deadline of August 31, 2020 for facilities to stop accepting CCR or non-CCR wastewaters into surface impoundments, and either retrofit them or initiate closure. EPA proposes a series of amendments for extension of the August 31, 2020 deadline. A new proposed extension path is a short-term, and self-implementing extension in section 257.103(e)(1). Under this path, an owner/operator may be eligible for an extension of up to 90 days—until November 30, 2020 or when alternative capacity is available, whichever is sooner. Under this path, CCR and non-CCR wastestreams may continue to be managed in surface impoundments if the owner/operator certifies that the CCR or non-CCR wastestream must continue to be managed in that surface impoundment "to allow the facility to complete the measures necessary to provide alternative disposal capacity, either on-site or off-site of the facility." To qualify under this short-term extension, however, there must also be documentation that "no alternative disposal is available on-site or off-site." The proposed rule, as currently drafted, mirrors the demonstration requirements in Section 257.103(a). Although the subsection requirements in Section 257.1o3(a)(1) are not similarly delineated in 257.103(e)(1). As a result, those who are engaged in retrofitting or building a new unit to provide alternative capacity but might need the short-term extension provided in Section 257.103(e)(1) are nonetheless required to make the same type of "no alternative" showing as that required under 257.103(a)(1), which they heretofore planned on making unnecessary through the construction of the needed capacity.

It is unnecessarily burdensome to require owners/operators in the process of retrofitting/constructing a unit to provide the needed capacity to make the same type of "no alternative capacity" demonstration as those relying upon the longer-term extension provisions of 257.103(a). Based on EPA's description of its proposed rule, this extension is intended to provide a short-term extension to address events that are not within a facility's direct control, such as weather delays or contractor matters. By definition, this proposed extension is designed to provide relief to those entities that have taken measures to comply with the applicable deadlines but need additional time due to issues outside of the direct control of the facility. Given the limited duration of the 257.013(e)(1)extension and the clear intention for this to apply to situations where a project is in process, but may be slightly delayed due to weather or contractor issues, it would seem that EPA should not expect the self-implementing demonstration for the 257.103(e)(1) short-term extension to include the same kind of "no alternative" demonstration as that required for the longer-term extension in 257.103(a)(1). In fact, the nature of this demonstration would seem to be fundamentally different and much more limited because the facility will have already committed to a project to build a new impoundment (or retrofit an existing one) to forego the alternative capacity demonstration necessary for a long-term extension. Therefore, EPA should revise the demonstration requirements of the proposed rule to replace unnecessary "no alternative capacity" demonstration requirements with a requirement that the owners/operators seeking the short-term extension demonstrate that they initiated work to either eliminate the need for or provide additional capacity and that the work was to be completed by the then-applicable deadline, but failed to do so due to EPA's movement of the deadline and/or circumstances outside of its direct and reasonable control, such as weather- or contractor-related issues.

Proposed Solution:

The language below is NRECA's suggested method for accomplishing the goal of aligning the demonstration requirements of 257.103(e)(1) with the logic and intent of that short-term extension. NRECA believes that the

change recommended below will provide an appropriate distinction between the "no alternative capacity" demonstration requirement in 257.103(e)(1) and that of 257.103(a)(1) consistent with the comment above.

257.103 Alternative closure requirements

* * * * *

(e)(1) Short-Term Alternate to Initiation of Closure. Notwithstanding the provisions of § 257.101(a), or (b)(1), a CCR surface impoundment may continue to receive CCR and/or non- CCR wastestreams if the owner or operator of the CCR surface impoundment certifies that the CCR and/or non-CCR wastestreams must continue to be managed in that CCR surface impoundment to allow the facility to complete the measures necessary to provide alternative disposal capacity, either on-site or off- site of the facility. Qualification under this paragraph lasts only until alternative capacity is available or until November 30, 2020, whichever is sooner. To qualify under this paragraph, the owner or operator of the CCR surface impoundment must document that all of the following conditions have been met:

(i) ~~*No alternative disposal capacity is available on-site or off site. An increase in costs or the inconvenience of existing capacity is not sufficient to support qualification under this section;*~~ *The owner or operator has initiated construction activities to eliminate the need for or provide for new capacity and can demonstrate that it intended to have completed the work by October 31, 2020.*

(ii) ~~*The owner or operator has made, and continues to make, efforts to obtain additional capacity. Qualification under this subsection lasts only as long as no alternative capacity is available.*~~ *Once alternative capacity is identified, the owner or operator must arrange to use such capacity as soon as feasible;*

(iii) The owner or operator must remain in compliance with all other requirements of this subpart, including the requirement to conduct any necessary corrective action; and

(iv) The owner or operator must prepare ~~*an annual*~~ *monthly progress reports documenting the* ~~*continued lack of alternative capacity and the*~~ *progress towards the development of alternative CCR disposal capacity.*

* * * * *

Proposed Section: 40 CFR Section 257.103(e)(1)

Discussion of Need for Refinement/Clarification:

In addition to the above-referenced adjustments to the demonstration requirements associated with the short-term deadline extension in 257.103(e)(1), refinement to the proposed rule language is also necessary to ensure that an operator can avail themselves of a longer-term extension if the three months afforded by the short-term extension turn out to be an insufficient amount of time. The language of section 257.103, as proposed, would preclude the use of the longer extension provisions of 257.103(a)(1) if an owner/operator first pursues/relies

upon the short-term extension under 257.103(e)(1). This provision penalizes an entity that sought to finish construction by November 30, 2020 (the maximum deadline under the short-term extension) but, due to circumstances outside of its control (a significant weather delay, for example), was unable to complete work within that 3-month period. Because of this "either/or" aspect of the current proposal, the value of the short-term extension is greatly diminished since owners/operators will likely not want to "bet the farm" that everything will go perfectly during the 3-month short-term extension period and, as a result, opt for the long-term extension option in 257.103(a)(1) rather than risk that the short-term extension under 257.103(e)(1) will end up not providing sufficient time to complete the pending project. Indeed, it would be an absurd result for an entity that committed significant resources to constructing a project that eliminated the need for a longer-term extension to all-of-the-sudden become subject to a closure requirement because circumstances out of its control came about during the 3-month extension such that work could not be completed by November 30, 2020. Another untenable aspect of the proposed rule is the fact that the "no alternative capacity" demonstration must be issued two weeks before the deadline to cease receiving waste in order to qualify for the longer-term extension. As a result, the value of short-term extension is greatly diminished, even if the "either/or" problem discussed above is resolved, because it would effectively shorten the extension period to a single month before having to shift to the longer-term extension option.

Proposed Solution:

The change to the proposed rule suggested below seeks to remedy this "either/or" dilemma and thereby will reinstate the value of the short-term extension provision in 257.103(e)(1). To accomplish the desired result, this suggested refinement deletes the language stating that authorization under the site-specific extension is not available for those who pursued the short-term extension. In addition, the demonstration submittal deadline problem is resolved by modifying the timeline for submittal of the demonstration to the EPA Administrator (or Participating State Director) (to accommodate those who initially seek the short-term extension, but are unable to meet the deadline and, as a result, must convert to the longer term, site-specific extension).

257.103 Alternative closure requirements

* * * * *

(e). . .

(3) If no alternative capacity is identified by November 30, 2020, the CCR surface impoundment must cease receiving CCR and non-CCR wastestreams and either close in accordance with the timeframes in § 257.102(e) and (f) or obtain an extension in accordance with the timeframes in § 257.102(f).

(4) An owner or operator of a CCR surface impoundment that closes in accordance with paragraphs (e) of this section must complete the notices as specified in paragraphs (d) and (e)(4)(i) through (ii) of this section.

(i) No later than August 31, 2020 the owner or operator must prepare and place in the facility's operating record a notification of intent to comply with alternative closure requirements of this section. The notification must describe the factual basis to support the facility's conclusion that the CCR unit qualifies for the alternative closure provisions under this paragraph, in addition to providing the documentation and certifications required by this paragraph.

(ii) An owner or operator of a CCR surface impoundment must also prepare the notification of intent to close a CCR unit as required by § 257.102(g).

(f) Site Specific Alternate to Initiation of Closure Deadline. Notwithstanding the provisions of § 257.101(a), and (b)(1), a CCR surface impoundment may continue to receive CCR and/or non- CCR wastestreams if the owner or operator of the CCR surface impoundment demonstrates to the Administrator or the Participating State Director that the CCR and/or non-CCR wastestreams must continue to be managed in that CCR surface impoundment either: Because it was infeasible to complete the measures necessary to provide alternative disposal capacity on-site or off-site of the facility by November 30, 2020; the owner or operator intended to meet the November 30, 2020 deadline but delays due to weather, construction or contractual matters prevented it from meeting the November 30, 2020 deadline; or because the owner or operator certifies that the facility will permanently cease operation of the coal-fired boilers within the timeframes specified in paragraph (f)(2)(ii) of this section. ~~Authorization under this paragraph is not available for units that have continued operation pursuant to § 257.103(c).~~ The demonstration must be submitted to the Administrator or the Participating State Director no later than the relevant deadline in paragraph (f)(3) of this section and will act on the submission in accordance with the procedures in paragraph (f)(3) of this section.

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(f)(3) Process to Obtain Authorization

(i) Deadlines for Submission

(A) The owner or operator must submit the demonstration required under paragraph (f)(1)(i) of this section, for an alternative cease receipt of waste deadline for a CCR surface impoundment pursuant to paragraph (f)(1) of this section, to EPA for approval no later than 2 months prior to the unit's deadline to cease receiving waste, or no later than January 29, 2021 if the owner or operator can demonstrate that it intended to meet the November 30, 2020 deadline but was unable to do so due to delays related to weather, construction or contractual matters.