April 30, 2018

Submitted Electronically to Docket No: **EPA-HQ-OLEM-2017-0286**

Comments of the National Rural Electric Cooperative Association (NRECA)

RE: Hazardous and Solid Waste Management system: Disposal of Coal Combustion Residuals from Electric Utilities; Amendments to the National Minimum Criteria (Phase One); Proposed Rule

The National Rural Electric Cooperative Association (NRECA) submits these comments in response to the U.S. Environmental Protection Agency (EPA) proposal to amend the Disposal of Coal Combustion Residuals from Electric Utilities rule (CCR Rule). NRECA is a member of the Utility Solid Waste Activities Group (USWAG), and these comments hereby incorporate by reference the comments submitted by that organization.

Regulation of coal combustion residuals is important to the utility sector, and especially rural electric cooperatives which own power plants that generated 220 million megawatt hours of electricity in 2016, 61 percent of which was generated from coal.

NRECA is the national service organization for America's more than 900 rural electric cooperatives which are responsible for keeping the lights on for more than 42 million people across 47 states. The nation's member-owned, not-for-profit electric co-ops constitute a unique sector of the electric utility industry – and face a unique set of challenges.

Electric cooperatives are private, independent electric utilities, owned by the members they serve. Most are small businesses (as defined by the Small Business Administration) and don't have investors or access to large cash surpluses to help defray the costs of regulations. The costs are borne directly by the farmers, ranchers, small businesses and other residents of the nation's rural communities who write a check each month to their co-op to pay for their electric service – including those in 93 percent of the nation's persistent poverty counties.

Our members serve large, sometimes sparsely populated areas meaning we have fewer connections – and significantly lower revenue per mile of line than our investor-owned and municipal brethren. Cooperatives serve an average of 7.4 consumers per mile of line and collect an annual revenue of approximately $16,000 per mile of line, as compared to the industry average of 34 customers and annual revenue of between $75,500 per mile of line for investor-owned and (48 consumers) $113,000 per mile of line for publicly owned utilities or municipals. All share an obligation to serve their members by providing safe, reliable, and affordable electric service.

NRECA endorses the risk-based criteria proposed for inclusion in the CCR rule which are based in large measure on the existing and successful federal Subtitle D criteria for municipal solid waste landfills. We agree with EPA that provisions in the Water Infrastructure Improvements for the Nation Act (WIIN Act) gives the agency new authority over non-hazardous coal combustion residuals that it previously lacked.

EPA explained as it promulgated the 2015 CCR Rule that the rule did not include the site-specific, risk based criteria included in the proposed rule because, in the absence of oversight and enforcement authority, the agency was concerned that such site-specific tailoring could be abused under a self-implementing program. The WIIN Act, signed by President Obama in 2016, amended RCRA and removed identified barriers to a site-specific, risk-based CCR program: it authorized the implementation of the rule through state or federal CCR permit programs; it directed EPA to establish a federal permitting program (appropriations have been provided) in states that did not assume the program; it provided EPA with direct oversight and enforcement authority.

It would appear that barriers to a site-specific, risk-based CCR management program fell with the WIIN Act and that EPA is moving to realize Congressional intent and the agency's own preference for managing CCR by proposing these risk-based amendments. However, none of these reforms will mean anything if cooperatives subject to the current CCR rule are not given sufficient time to implement them.

We support revisions to the CCR rule to reflect new authority provided by the WIIN Act. We support incorporation of risk-based criteria, based on site-specific factors – especially risk-based groundwater protection standards, location standards, and corrective action. We support changes in the rule that are meaningful and sustainable, and we want this rulemaking to be done right.

To that end, NRECA encourages EPA to take the following steps *immediately*, without waiting to issue a final rule:

1. *Extend the existing compliance deadlines so that cooperative and other coal-fired generation can actually benefit from the proposed changes made to the CCR rule*. An extension is especially imperative for the upcoming assessment monitoring and location restriction deadlines. The current timeframe for assessment monitoring and demonstrating compliance with "bright line" location restrictions do not allow for implementation of any new, risk-based standards. EPA should establish new assessment monitoring and location restriction deadlines at least 120 day from the date the CCR Remand Rule is effective. Again, no substantive changes to the current rule will make any difference if existing facilities are held to the current implementation schedule.

2. *Correct the preamble's erroneous characterization of the existing alternative closure provision with respect to non-CCR wastestreams.* In the preamble to this proposal, EPA incorrectly states that units qualifying for alternative closure because they have no alternative disposal capacity for CCR "may continue to place CCR, and only CCR" in the designated unit. This contradicts the current rule which states that "the *timeframe* does not apply if the owner or operator complies with the alternative closure procedures in § 257.103 (emphasis added)." The "timeframe" is the six-month timeframe for ceasing placement of CCR *and* non-CCR wastewater in the unit. If a unit qualifies for the existing alternative closure provisions, the six-month timeframe never begins, so the prohibition on the placement of CCR and non-CCR wastestreams into the CCR unit does not apply, and both CCR and non-CCR wastes are subject to alternative closure. So long as a unit qualifies for alternative disposal for the CCR, non-CCR can also continue to be managed in the unit. Failure to correct this misstatement of the current rule has caused significant confusion for cooperatives that manage both CCR and non-CCR wastewater in the same unit. It threatens to derail long-term plans for compliance with *both* the CCR and ELG[1] rules which relied on an expectation that a unit would qualify for alternative closure and would continue to be available for both wastestreams.

NRECA encourages EPA to incorporate the following into the final CCR Remand Rule.

1. *Adopt site-specific, risk-based alternative performance standards into the CCR rule.* The WIIN Act amendments to RCRA justify incorporation of risk-based alternative performance standards into the CCR rule

[1] Steam Electric Effluent Limitation Guideline Rule

and the municipal solid waste landfill regulations provide ample legal justification for similar CCR risk-based criteria based on site-specific factors. Specifically, EPA should:

a. Allow for the use of alternative risk-based groundwater protection standards;
b. Allow for risk-based modified corrective action remedies;
c. Allow owners and operators to suspend the rule's groundwater monitoring requirements where there is no potential for migration of contaminants;
d. Allow for alternative points of compliance;
e. Allow for an alternative period of time to demonstrate compliance with corrective action;
f. Allow for modified post-closure care periods based on site-specific circumstances;
g. Allow for state certifications in lieu of certifications by qualified professional engineers.

2. *Incorporate those site-specific, risk-based alternative performance standards into the existing, self-implementing CCR rule as well as any subsequent federal and state permitting programs.* The WIIN Act gave EPA the enforcement authority to assure that reliance on risk-based elements of a self-implementing program can be monitored and will not be abused. As EPA has not yet approved any state CCR permitting programs that reflect the risk-based flexibility provided by the WIIN act, and EPA has not developed a federal CCR permitting program to operate in states that do not assume the federal program, it will do no good to promulgate risk-based performance standards that are only available through non-existing permitting programs.

3. *Replace the current one-size-fits-all height limitation on vegetative slope cover with a more flexible standard* that (a) allows woody vegetation to remain in place when necessary to maintain the structural integrity of the CCR unit; (b) revises the ½-inch threshold for overseeing removal of woody vegetation; (c) does not specify a length of time for removal of woody vegetation; and (d) clarifies that weeds are not prohibited from growing on an impoundment.

4. *Allow limited corrective action procedures for non-groundwater releases that do not pose a risk to the structural stability of the unit and are not migrating offsite.* Such non-groundwater releases should include minor releases, such as certain types of seeps that do not pose a risk warranting full CCR corrective action, even if remediation may take more than 180 days. Similarly, non-groundwater releases that will be addressed by other CCR requirements or other regulatory programs should be exempt, but not subject to a remediation deadline.

5. *Establish a new alternative closure provision that allows consideration of non-CCR wastestreams managed in CCR units otherwise subject to forced closure.* As discussed in great detail in the USWAG comments, such a new alternative closure provision should be available in all six NERC regions with the same five-year time frame as provided for CCR waste. However, the establishment of this new provision would not create any requirement on non-CCR being managed in a unit subject to alternative closure based on the lack of alternative capacity for CCR.

6. *Allow the use of CCR during the closure of CCR units undergoing forced closure.* The current CCR rule allows for the beneficial use of CCR for the purpose of closing units. EPA should confirm that CCR can be used for grading and contouring based on site-specific characteristics, even in the existing self-implementing programs. EPA should allow the use of CCR for purposes of structural fill and waste stabilization. The agency should also not prohibit the movement of CCR between CCR units that are part of a multi-unit treatment system.

Finally, *NRECA urges EPA <u>not</u> to add boron to Appendix IV of the rule's groundwater monitoring program*. As argued in more detail in the USWAG comments, the rulemaking record does not support addition of boron to Appendix IV and neither does the presence of fluoride on Appendix IV. Neither the 2014 risk assessment nor damage cases justify the action.

Rural cooperative members – like all Americans – value and deserve a clean, healthy environment, but we can't afford – our members can't afford – to spend scarce resources in manners that do not provide a significant environmental bang for the regulatory compliance buck. This is why EPA must extend the current compliance deadlines as it revises the CCR management program, and incorporate those changes into the self-implementing CCR program.

If you have any questions regarding these comments, please contact me at Dorothy.kellogg@nreca.coop .

Respectfully submitted,

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