

Update on the Federal CCR Rule Southern States Energy Board Associate Members Meeting September 24, 2017

PRESENTED BY

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Agenda

- **Background**
- **Update on the Federal CCR Rule**
- **What's next?**

Background

Subtitle D Non-Hazardous Waste Rule (40 C.F.R. Part 257, Subpart D)

April 17, 2015: Rule published in the Federal Register

October 19, 2016: Effective date

- Key Components
- Applicability
- Self-Implementing
- Internet Posting
- Groundwater Monitoring & Corrective Action
- Closure requirements and timing
- Liner requirements
- Structural stability and integrity requirements
- Location restrictions
- Beneficial use
- Air Criteria

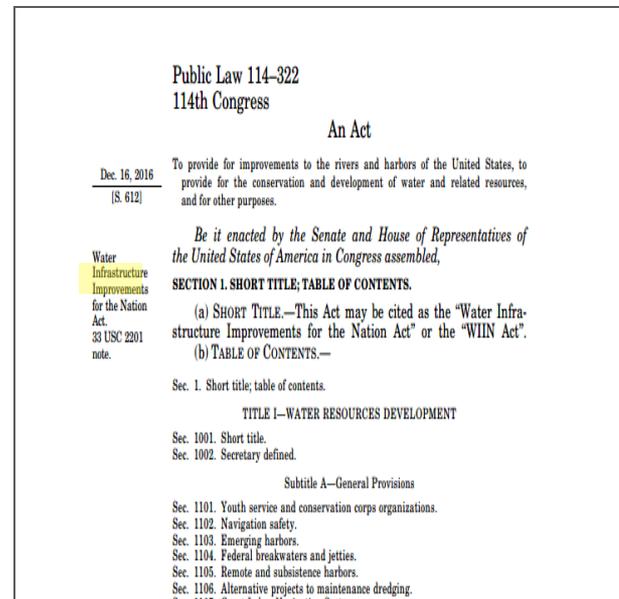
Enforced by RCRA citizen suits filed in federal district court

- **Water Infrastructure for Improvements to the Nation (WIIN) Act**
- **State CCR Programs**
- **Petitions for Reconsideration**
- **Federal CCR Rule Appeal**

Water Infrastructure for Improvements to the Nation (WIIN) Act

1. States may develop a CCR permit program and submit it to EPA for approval
2. Program must meet federal CCR requirements OR be “at least as protective as” the federal CCR Rule
3. EPA has 180 days to act on a state’s submission
4. EPA must provide public notice and comment prior to EPA approval
5. Once approved, a state permit program will operate “in lieu of” the federal CCR rule
6. EPA must review state permit programs at least every 12 years

EPA Published Guidance:
August 15, 2017



State CCR Regulations

- **Georgia**
- **Indiana**
- **Kansas**
- **Kentucky**
- **Maryland**
- **North Carolina**
- **Oklahoma**
- **South Carolina**
- **Virginia**
- **West Virginia**

Petitions for Reconsideration

Filed by USWAG on May 12, 2017

- **Extend compliance dates of remaining CCR rule requirements**
- **Allow alternative risk-based standards**
 - **Appendix IV (no MCL)**
- **Modify corrective action remedy**
- **Allow alternative points of compliance and site-specific groundwater monitoring constituents**
- **Relief sought: Initiate rulemaking to enact substantive changes and hold the case in abeyance so EPA can reconsider its position in the litigation**

EPA Granted on September 13, 2017

- **EPA has not addressed the merits of any issue raised in the petition**
- **EPA states that the agency will inform the court of the portions of the final rule that it will reconsider**



Federal CCR Rule Litigation and Settlement

Utility Solid Waste Activities, et. al v. EPA, D.C. Circuit 15-1219

Active Arguments

Industry

1. Oppose Regulating Inactive Impoundments -- Retroactivity Issue
2. No Notice for Dam Safety Factor
3. Alternative Closure Option – No Cost Consideration Allowed, and
4. No Use of Risk-Based Groundwater Considerations

Environmental Groups

1. Unlined Impoundments are “Open Dumps”
2. Inactive Impoundments at Closed Plants
3. Lack of Notice for Facility Expansion
4. Two Feet of Compacted Soil ≠ Liner

Settled Arguments

Industry

1. Maintaining 6” Vegetative Cover
2. Exclusion of Non-CCR Wastestreams
3. Responding to non-groundwater “Release”

Environmental Groups

1. 3-Year Impoundment Closure Exemption
2. Inclusion of Boron in Groundwater Sampling (App. IV)

Arguments Pending Dismissal

1. Failure to provide notice of dam safety factors
2. Operating deadline for impoundments that do not meet EPA’s minimum safety factors

Oral Arguments

- **Oral arguments scheduled for October 17, 2017**
- **EPA asked the court to continue oral argument and hold the case in abeyance while it reconsiders the rule**
- **EPA states that it will inform court of the portions of the rule it will reconsider – removing them from the case**



- **Upcoming EPA rules**
 - Remand rule per settlement agreement
 - Reconsideration rule (could know the portions under review by February 2018)
 - Proposed rules subject to notice/comment; final rules will likely be appealed
- **CCR Rule litigation**
 - Awaiting D.C. Circuit's response to EPA's abeyance motion
 - Scope of issues litigated will likely depend on EPA's reconsideration
- **State CCR Permit programs**
 - EPA's guidance pending finalization; comment period ended Sept. 15
 - State approvals will be subject to notice/comment; final approvals can be appealed

Questions?

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