

## **Advocacy Provides Public Comments on EPA's Proposed Regulation for Legacy CCR Surface Impoundments and CCR Management Units**

On May 18, 2023, the Environmental Protection Agency (EPA) proposed to establish regulatory requirements for legacy coal combustion residuals (CCR) surface impoundments, which include many of the same requirements as the 2015 national minimum criteria. EPA proposes to define legacy CCR surface impoundments to be those located at coal-fired power plants that ceased operations before October 19, 2015, and were not subject to the requirements of the 2015 CCR rule governing CCR impoundments at active power plants. In addition, unrelated to the court's order, EPA is also proposing similar requirements for a new category the agency refers to as CCR Management Units (CCRMUs). EPA defines CCRMUs as surface impoundments and landfills that closed prior to the effective date of the 2015 CCR Rule, inactive CCR landfills, and other areas where CCR is managed directly on the land, regardless of method and date. Rather than conducting an RFA analysis for each proposed action separately, EPA combined the small entity impacts from both proposed actions to provide a factual basis to support its certification that the rule will not have a significant economic impact on a substantial number of small entities under the RFA.

The Office of Advocacy (Advocacy) has filed public comments on this proposed rule. EPA has improperly certified two unrelated regulations as one proposed rulemaking under the RFA. Advocacy is also concerned that the proposed compliance timeframes do not provide flexibility for small entities based on their ability to comply with the proposed requirements. In addition, Advocacy is concerned that EPA's 2014 Risk Assessment does not support the proposed requirements for inactive sites in this proposal.

Advocacy recommends that the agency pursue its regulation of legacy CCR surface impoundments and CCRMUs in separate rulemakings each with its own RFA analysis, including either a certification supported with a factual basis or an IRFA (followed by a SBREFA panel), if necessary. Advocacy also urges the agency to consider flexibilities for small entities to provide reasonable timelines for compliance. Finally, Advocacy recommends that the agency provide an appropriate risk assessment that supports the regulation of inactive CCR units to support its proposed actions. EPA should consider feedback from small businesses on these issues.

A complete copy of [Advocacy's letter to EPA](#) is available.

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