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U.S. Environmental Protection Agency  
EPA Docket Center (EPA/DC)  
Office of Land and Emergency Management Docket  
Mail Code 28221T  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

**Attn: Docket ID No. EPA-HQ-OLEM-2020-0107**

Re: Comments of American Municipal Power, Inc. and the Ohio Municipal Electric Association on Proposed Rule: Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Legacy CCR Surface Impoundments – 88 Fed. Reg. 31982 (May 18, 2023)

Dear EPA Administrator Reagan and Agency Staff:

On behalf of American Municipal Power, Inc. (“AMP”), and the Ohio Municipal Electric Association (“OMEA”), we appreciate this opportunity to provide the following comments in response to the above-referenced notice of proposed rulemaking.

## **INTRODUCTION TO AMP AND OMEA**

AMP is the nonprofit wholesale power supplier and services provider for 132 municipal Members in the states of Indiana, Kentucky, Maryland, Michigan, Ohio, Pennsylvania, Virginia, West Virginia; as well as the Delaware Municipal Electric Corporation, a joint action agency with eight Delaware municipal members. Combined, these public utilities serve approximately 650,000 customers. AMP members receive their power supply from a diversified resource mix that includes wholesale power purchases through AMP and the open market and energy produced at AMP and member-owned generating facilities utilizing fossil fuel, hydroelectric, solar, wind and other renewable resources. AMP’s resources include the AMP Fremont Energy Center, a natural gas combined cycle facility in Fremont, Ohio; a majority ownership stake in the coal-fired Prairie State Energy Campus; diesel and natural gas peaking units; and hydroelectric, solar and wind projects

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CYGNET • DESHLER • DOVER • EDGERTON • ELDERADO • ELMORE • GALION • GENOA • GEORGETOWN • GLOUSTER • GRAFTON • GREENWICH • HAMILTON • HASKINS • HOLIDAY CITY  
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MONTPELIER • NAPOLEON • NEW BREMEN • NEW KNOXVILLE • NEWTON FALLS • NILES • OAK HARBOR • OBERLIN • OHIO CITY • ORRVILLE • PAINESVILLE • PEMBERVILLE • PIONEER  
PIQUA • PLYMOUTH • PROSPECT • REPUBLIC • SEVILLE • SHELBY • SHILOH • SOUTH VIENNA • ST. CLAIRSVILLE • ST. MARYS • SYCAMORE • TIPP CITY • TOLEDO • TONTOGANY  
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WAMPUM • WATSONTOWN • WEATHERLY • ZELIENOPLE **VIRGINIA** BEDFORD • DANVILLE • FRONT ROYAL • MARTINSVILLE • RICHLANDS **WEST VIRGINIA** NEW MARTINSVILLE • PHILIPPI

throughout the region. AMP has actively worked over the past two decades to diversify our power supply portfolio to include renewable resources and continues to explore additional opportunities for new renewable energy resources. AMP's mission is to serve members through public power joint action, innovative solutions, robust advocacy, and cost-effective management of power supply and energy services. AMP offers a wide variety of services to help member communities improve the quality of municipal utility services to their customers. AMP provides these services on a cooperative, nonprofit basis for the mutual benefit of member communities.

The OMEA represents the Ohio and federal legislative interests of AMP and its Ohio municipal electric system members. Although closely aligned with AMP, the OMEA is a separate, nonprofit entity guided by a sixteen-member Board of Directors. The comments herein are provided by both AMP and OMEA.

In recognition of AMP's unique position as both a wholesale power supplier and services provider, as well as the owner and operator of electric generating assets, we offer the following comments on the Proposed Rule: Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Legacy CCR Surface Impoundments ("Proposed Rule").<sup>1</sup>

## **BACKGROUND**

On April 17, 2015, the U.S. Environmental Protection Agency ("EPA") issued the national minimum criteria for existing and new Coal Combustion Residuals ("CCR") landfills and surface impoundments ("CCR Rule").<sup>2</sup> Subsequently, the U.S. Court of Appeals for the D.C. Circuit vacated and remanded the CCR Rule provision exempting inactive impoundments at inactive facilities.<sup>3</sup> In response, EPA proposes regulatory requirements that will govern inactive surface impoundments at inactive facilities ("legacy CCR surface impoundments"). Additionally, EPA also proposes requirements applicable to CCR surface impoundments and landfills that closed prior to the effective date of the 2015 CCR Rule, inactive CCR landfills, and other areas where CCR was placed directly on the land. The Proposed Rule would apply to all existing CCR facilities and all inactive facilities with legacy CCR surface impoundments that are subject to the Proposed Rule.

In 1988, AMP purchased the Richard H. Gorsuch Generating Station ("Gorsuch facility"), a coal-fired power plant along the Ohio River that began operating in the early 1950s. AMP closed the facility in 2010. The Gorsuch facility was subsequently demolished, and the property is now vacant land. AMP does not own or operate any CCR landfill, CCR surface impoundment, or inactive CCR surface impoundment that is subject to the current 2015 CCR Rule. However, AMP owns a fly ash landfill ("Landfill") associated with, but not located at, the former Gorsuch facility. The Landfill ceased receiving CCR prior to the effective date of the 2015 CCR Rule. Moreover, the Landfill was closed pursuant to a Final Closure and Post Closure plan approved by Ohio EPA in 2011 under the

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<sup>1</sup> 88 Fed. Reg. 31982 (May 18, 2023).

<sup>2</sup> 80 Fed. Reg. 21301 (April 17, 2015).

<sup>3</sup> *Utility Solid Waste Activities Group, v. EPA*, 901 F.3d 414 (2018).

State's industrial solid waste landfill requirements.<sup>4</sup> The Landfill is routinely inspected and maintained by AMP pursuant to Ohio's requirements. Additionally, based on the Proposed Rule language, the Landfill will not be subject to the proposed requirements for CCR landfills that closed prior to 2015 because it is not located at a facility with a CCR unit.

While no AMP assets will be regulated by the Proposed Rule, the proposed expansion of the CCR Rule requirements is far reaching and has the potential to substantially affect the regulated community, including AMP. Thus, we provide comments below on several of the most relevant and consequential changes proposed by EPA.

## COMMENTS

### I. **The Proposed Rule should not include regulation of surface impoundments and landfills that properly closed under state program requirements.**

EPA is proposing to extend a subset of existing requirements in 40 CFR Part 257, Subpart D to surface impoundments and landfills that closed prior to the effective date of the 2015 CCR Rule, inactive CCR landfills, and any area at a facility where CCR were placed directly on the land (referred to as "CCR Management Units" or "CCRMUs"). The Proposed Rule contains definitions specifying that the CCRMU requirements will only apply to:

- Facilities with an existing CCR unit; or
- Inactive facilities that also contain a legacy CCR surface impoundment.

While AMP supports the Proposed Rule's exclusion of CCRMUs that are not located at a facility with an existing CCR unit or an inactive facility unless it contains a legacy CCR surface impoundment, EPA should include additional exclusions for surface impoundments and landfills that properly closed under state requirements. Facility owners, as well as states, invested substantial resources to properly close sites under state requirements—the governing (and only) legal requirements applicable at that time—to ensure protection of human health and the environment. In most cases, the state requirements for closure of such sites contained comparable groundwater monitoring, corrective action, closure, and post-closure care requirements as those proposed by the CCR Rule. Indeed, many of the current CCR Rule requirements were rooted in the requirements first applied to solid waste landfills.

Given that the closures were pursuant to comparable state requirements, EPA should not apply the existing Part 257 requirements to closed CCR surface impoundments and landfills that were closed properly under then-applicable state law. Similarly, EPA should not apply existing Part 257 to closed CCR surface impoundments and landfills where there are no known environmental impacts at these sites. Regulation of these sites is not warranted unless site-specific evidence demonstrates that closure under state requirements was not as protective as the closure required

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<sup>4</sup> Ohio Adm. Code Ch. 3745-30 online at [3745-30\\_current.pdf \(ohio.gov\)](https://www.ohio.gov/publications/3745-30_current.pdf). Last viewed Jul. 17, 2023.

by the Proposed Rule. Instead, the final rule should contain a rebuttable presumption that CCR impoundments or landfills closed under state program requirements meet the requirements of closure under the CCR Rule, and further regulation of such impoundments or landfills is only required if they are demonstrated as presenting an unacceptable risk to human health or the environment. Otherwise, the Proposed Rule risks unneeded, burdensome, and costly expenditures, with little or no benefit.

## **II. The Proposed Rule should be revised to provide additional clarity.**

The Proposed Rule would benefit from more consistent, streamlined definitions that determine the scope of the rule. For example, the Proposed Rule does not clearly identify the legacy CCR landfills that will be subject to the Proposed Rule. The preamble provides little explanation, instead relying on several circular definitions that reference other defined terms. For example, understanding the interplay between a CCR landfill, a CCR unit and a CCRMU is difficult, with the Proposed Rule defining a “CCR landfill” to exclude a “surface impoundment” or a “CCRMU,” while the definition of a “CCRMU” excludes “CCR units” but includes “inactive CCR landfills” and “CCR units that closed prior to October 17, 2015.” Moreover, a “CCR unit” is defined to exclude “CCRMUs” but includes “CCR landfills” and “CCR surface impoundments.” Therefore, the Proposed Rule should be revised to streamline the definitions and provide clarity as to the scope of its application.

The rule should retain existing exclusions from the definition of CCRMU, including ponds that are not designed to hold an accumulation of CCR, as well as containerized CCR. Any CCR used in roadbed and associated embankments should be outside the scope of the rule in the absence of case-specific evidence of contribution to ongoing groundwater contamination. Further, additional exclusions in the Final Rule should clarify the meaning of “truly *de minimis* quantities of CCR.”<sup>5</sup>

## **III. The Proposed Rule does not provide adequate time to comply with its requirements.**

The Proposed Rule will subject many sources to aggressive, if not impossible, compliance timelines. The Proposed Rule requires affected facilities to complete facility evaluations to identify CCRMUs within three months of the effective date of the final rule (nine months after publication of the final rule). At a minimum, the evaluation requires facilities to perform an in-depth review of records and physical inspections—including field investigations and sampling, when necessary. The scope of facilities subject to the Proposed Rule is enormous, particularly because CCRMUs are defined to include all noncategorized CCR placement on the land. There is finite technical expertise available for such assessments. Coupled with the magnitude of the requirements contained in the Proposed Rule, these factors make the proposed compliance timelines unreasonable.

Facility owners will be forced to expend resources prior to issuance of the final rule and in the absence of the additional clarification of applicability and obligations the final rule should provide. The requirement to install a groundwater monitoring system at CCRMUs within six months

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<sup>5</sup> 88 Fed. Reg. 32019 (May 18, 2023).

of the rule's effective date is one example. The amount of time allocated is insufficient to secure the needed technical assistance, conduct the appropriate assessments, and complete the work. For these reasons, the compliance timeframes included within the Proposed Rule should be expanded to include ample time for facility owners to reasonably plan compliance measures under the final rule.

**IV. Support for Comments Submitted by the American Public Power Association and Large Public Power Council.**

AMP is a member of the American Public Power Association ("APPA") and supports the comments provided by that organization. To the extent, if any, that the positions and recommendations in AMP's comments differ from those expressed in the comments of APPA the positions expressed herein should be viewed as controlling.

AMP and its members appreciate the opportunity to submit comments on this important proposed rulemaking. If EPA has any questions, please do not hesitate to contact the undersigned.

Respectfully Submitted,



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