



December 14, 2020

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U. S. EPA Docket Center (EPA/DC)
OLEM Docket
U.S. Environmental Protection Agency
Mail Code: 2821T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Attn: DOCKET ID No.EPA-HQ-OLEM-2020-0107

Re: Advanced Notice of Proposed Rulemaking (“ANPR”): Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals (“CCR”) from Electric Utilities: Legacy CCR Surface Impoundments.

Dear Administrator Wheeler and Staff:

On behalf of our member communities and their more than 650,000 residential, commercial, and industrial customers, thank you for this opportunity to provide feedback on the request for comments by USEPA pertaining to the potential regulation of inactive CCR impoundments at inactive power plant facilities.

American Municipal Power, Inc. (“AMP”) is a non-profit wholesale power supplier and service provider for 135 members, including 134-member municipal electric systems in the states of Ohio, Pennsylvania, Michigan, Virginia, Kentucky, West Virginia, Indiana, and Maryland and the Delaware Municipal Electric Corporation, a joint action agency with nine members headquartered in Smyrna, Delaware. AMP’s members collectively serve more than 650,000 residential, commercial, and industrial customers and have a system peak of more than 3,400 megawatts (“MW”). 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 its members the benefits of scale and expertise in providing and managing energy services.

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Ohio Municipal Electric Association (“OMEA”) represents the Ohio and federal legislative interests of AMP and Ohio municipal electric systems. Subsequent references herein to AMP also represent the interests and comments of OMEA.

In recognition of our unique position as both a wholesale power supplier and services provider, as well as the owner and operator of electric generating assets, AMP offers the following comments on the ANPR: Hazardous and Solid Waste Management Systems Disposal of CCR from Electric Utilities: Legacy CCR Surface Impoundments.

On April 17, 2015, EPA issued the national minimum criteria for existing and new CCR landfills and surface impoundments. Subsequently, in 2018, the U.S. Court of Appeals for the D.C. Circuit issued an opinion that vacated and remanded the provision that exempted inactive impoundments at inactive facilities from the CCR rules.¹ In the October 14, 2020 ANPR, EPA requested comment and data on inactive surface impoundments at inactive facilities to assist in the development of future CCR regulations.

The docket associated with the ANPR included a spreadsheet of facilities that ceased operating, including AMP’s Robert H. Gorsuch Generating Station (“Gorsuch”). The Gorsuch facility was a coal-fired power plant along the Ohio River that had operated since at least the early 1950s. AMP purchased the Gorsuch facility in 1988 and ceased operation in the fall of 2010. The Gorsuch facility was subsequently demolished, and the property is now operated as vacant land. AMP does not own or operate a CCR surface impoundment or inactive CCR surface impoundment as defined in 40 CFR 257.53.

For purposes of the ANPR, it is important to note that while AMP does own a fly ash landfill (“Landfill”) associated with the former Gorsuch facility, it is exempt from the standards for the disposal of CCR in landfills pursuant to 40 CFR 257.50(d) and (e), as it ceased receiving CCR and ceased producing electricity prior to 2015. **(d)** This subpart does not apply to [CCR landfills](#) that have ceased receiving [CCR](#) prior to October 19, 2015. As importantly, the Landfill is routinely inspected and maintained by AMP pursuant to a Final Closure and Post Closure plan approved by Ohio EPA in December of 2011. This plan was developed based on the requirements for residual solid waste landfills in Ohio Administrative Code Rules 3745-30-09 and 10.

Although the remand and the scope of the ANPR do not expressly impact the exemption for inactive CCR landfills at inactive power plants, the ANPR seeks comments on whether other new requirements should apply to legacy CCR surface impoundments. Accordingly, AMP submits these comments to express support for the continued exemption of landfills with exemptions pursuant to 40 CFR 257.50 from any new requirements that may result from this ANPR. The 40 CFR 257.50 exemptions are particularly important for those CCR landfills, such as Gorsuch, that have already complied with extensive state closure and post closure care requirements. AMP expended significant time, effort and costs to ensure compliance with the state closure standards and continues to maintain compliance with post-closure requirements to ensure the landfill is maintained in a manner protective of the environment.

The ANPR requests comment as to how a current owner of a legacy CCR impoundment should be defined, and whether there should be a definition of innocent owner

¹ *Utility Solid Waste Activities Group. et. el. v. EPA*, 901 F. 3d 414 (2018).

that would exclude certain qualifying landowners from regulation. Specifically, the ANPR poses the question as to whether the criteria to exclude certain landowners from being regulated under 40 CFR 257 for legacy impoundments should be based on, or similar to, the criteria for the landowner protections under the Comprehensive Environmental Response and Liability Act (“CERCLA”). Such CERCLA landowner liability protections include those that qualify as *bona-fide* prospective purchasers (“BFPP”), contiguous property owners (“CPOs”), or innocent landowners (“ILOs” or “third parties”). Those meeting the BFPP criteria may knowingly purchase contaminated land without taking on liability if they meet certain criteria.

While the ANPR only requests comment in regard to impoundments, the current definition of “owner” at 40 CFR 257.53 is broad and includes “*the person(s) who owns a CCR unit or part of a CCR unit.*” A “CCR unit” is defined by 40 CFR 257.33 as “*any CCR landfill, surface impoundment or lateral expansion of a CCR unit, or a combination of one or more of these units, based on the context of the paragraph(s) in which it was used. This term includes both new and existing units, unless otherwise specified.*” Given the broad definitions in 40 CFR 257.33 and 257.53, any new requirements that may result from this ANPR should recognize the landfill exemptions, such as AMP’s contained in 40 CFR 257.50, and specifically include provisions similar to the BFPP provisions under CERCLA for future owners of exempt landfills. This treatment would provide consistency in regulatory burdens placed upon future owners of inactive CCR units.

While AMP does not own a CCR impoundment subject to either the existing rules or within the scope of the ANPR, we appreciate the opportunity to submit comments in support of continuing 40 CFR 257.50 exemptions for landfills. To the extent a subsequent rulemaking by EPA excludes certain owners of inactive surface impoundments from regulation utilizing the BFPP criteria under CERCLA, AMP believes it would also be appropriate to extend such treatment to owners of exempt landfills.

Respectfully Submitted

A handwritten signature in black ink, appearing to read "Adam Ward". The signature is fluid and cursive, with the first name "Adam" and last name "Ward" clearly distinguishable.

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