

Outline of Key Issues, Talking Points for Coal Combustion Residuals Rules

Comment Deadline October 15

We were pleased to read that DEQ did extensive reviews of its proposed and existing CCR requirements to ensure that NC requirements would be at least as protective as federal requirements. One example that was discussed is the possibility of creating citizen suit provisions for these regulations, something that we heartily support, but I understand that is a proposal, not anything included in these draft rules.

Coal Ash Landfill Construction, Management, Closure Comments

Where to send comments:

Email: publiccomments@ncdenr.gov - please put "CCR Rule" in the subject line

U.S. Mail: Ellen Lorscheider, Deputy Director DWM, 1646 Mail Service Center, Raleigh, NC 27699-1646

Definitions that are problematic for these rules:

100 year flood—this is an inadequate level of protection for all aspects of landfill design and construction, given climate changes already happening. Until the 100 year flood can be credibly re-defined, under current climate conditions, it is simply not reasonable to assume that previously defined 100 year storm events these will only have a 1% chance of occurrence in any given year!

All of the “factors of safety” listed in these regulations, in regard to construction standards, dam safety and resistance to leaching must be re-evaluated to be more protective of human health, safety and the environment.

The term “structural fill” has been misused by the agency to imply a beneficial use for coal ash landfills which actually consists of filling significant newly excavated areas which did NOT need to be remediated or filled. DEQ must remove this definition or revise it to exclude disingenuous statements about benefits of these coal ash landfills.

A separation of only 5 feet between the seasonal high groundwater level and bottom of settled ash is far from adequate to protect groundwater from leaching of coal ash constituents. No matter how impervious the liner system in place, unexpected rainfall and flooding events could result in shifting of this “seasonal high groundwater” level and resulting groundwater contamination.

Preventing siting a coal ash landfill within 200 feet of a known fault zone is insufficient to protect such landfills from instabilities, and must include substantially greater distance to assure that seismic events do not cause damage to impervious liner, caps or shifting of ash.

Compliance boundaries for all coal ash storage sites must be set within 100 feet of the permitted boundary of deposited coal ash, rather than much larger distances--even the boundary of the landfill

owner's property as in the past-- in order to protect the public's resources, and hold the landfill owner and operator accountable.

"Coal combustion residuals surface impoundment" means a topographic depression, excavation, or diked area that is: primarily formed from earthen materials; without a base liner. Such impoundments must not be allowed. All residuals must be stored above ground surface, in dry landfills away from 500 year flood plain and separated by at least 10 feet from highest recorded groundwater level.

Public notice allowing 45 days for public comment is very good. However, allowing notice of a permit hearing as little as 15 days before the hearing is inadequate, must be increased to 30 days. Allowing for any member of public to request a public hearing at any time during the public comment period is very good. However, when the decision to hold a hearing comes within 30 days of the end of the comment period, the comment period must be extended to allow comments at least 15 days after the hearing.

Application Requirements

Requirements must include a bond sufficient to cover liability/cost of clean up associated with any damage to the environment, including groundwater, surface water and land, or any offsite property damage due to inadequate management of the landfill construction, operation, maintenance and compliance requirements, including closure and post-closure monitoring.

Site Study Requirements

No landfill shall be sited in a 500 year floodplain, regardless of whether it restricts the flow of the flood. No CCR landfill shall be sited in an area including an identified wetland, whether or not a "feasible alternative" has been identified.

Fault areas. 200 feet is an inadequate distance from an identified fault zone to site any landfill, much less one containing coal combustion residuals. Set back distance must be at least ½ mile.

Seismic impact areas—CCR landfills and any potential lateral extensions shall not be sited within seismic impact areas or unstable location, no matter how confident the site engineers are of the stability of the landfill structure.

Cultural resources survey, To aid in making a determination as to whether the property is of archeological or historical significance, the State's Historic Preservation Office in the Department of Natural and Cultural Resources must require the owner and operator to perform a site-specific survey in consultation with any community or tribe within 2 miles, which shall be included in the Site Study.

Critical watersheds: No CCR waste storage shall be permitted within 2,000 feet of a critical water supply watershed.

Duty to assure no adverse impacts to Title VI communities. In order to evaluate whether a population within a census block neighboring a proposed facility is disproportionately impacted, that population must be compared to the statewide average for BOTH income and minority status. Currently that determination for minority communities only compares the percentage of a minority group/people of color to the demographics of the county in which the facility would be located. For high minority counties, this results in a significant under assessment of disproportionate impact!

Horizontal separation requirements: 300 feet is an inadequate buffer between permitted boundary for deposited residuals and neighboring property or body of water. This distance must be increased to at least 1,000 feet to minimize risks of blowing ash, runoff carrying ash in extreme weather, or spread of contaminated groundwater.

Vertical separation requirements: The bottom of any coal combustion residual storage must be above the pre-construction grade of the site, and at least 10 feet above the highest known groundwater level.

Closure and Post Closure Requirements

While we know that some improved conditions for siting and depth to groundwater are included in these rules for new coal ash storage sites, none of those requirements were in place at the time our state's current coal ash basins were sited and constructed. Each of the existing sites must be considered an ongoing regulatory failure, needing near-term remediation, with removal of all ash to above ground, dry storage away from bodies of water and at least 10 feet above the highest groundwater level in the past 100 years at that location, as well as remediation of impacted soils and groundwater

"Cap in place" for current badly sited, poorly dammed and managed and contaminant-leaching landfills, must never be considered a permanent or acceptable solution. Furthermore, DEQ's acceptance of such an outcome will perpetuate the injustice to communities around facilities such as Belews Creek and Roxboro Steam Station, predominantly African American and of modest means, and continuing to allow dispersal of coal ash contaminants into cooling ponds and public waters, as occurred in recent flooding from tropical storm Florence, as well as leading into groundwater.

The public must be notified of all closure plans at least 60 days before intended start of closure activities, and a public comment period and hearing announced.

Post closure monitoring must continue indefinitely unless complete removal of coal ash and decontamination have occurred. The landfill owner must maintain complete liability for the site, to be reflected in a bond posted guaranteeing the lack of movement of ash or any of its characteristic toxic contaminants from an area beyond 100 feet of the permitted boundary of deposited ash.