




CCR Update

Air & Waste Management Association
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Steven Burns

sburns@balch.com
(205) 541-3087

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- Timeline Issues
 - Federal Rulemaking
 - Alabama Rule
 - Litigation

Timeline Issues

When are CCR deliverables due?

- *Location restrictions:*
 - October 2018
- *Groundwater results:*
 - It's complicated!

Timeline Issues

Detection and assessment monitoring:

- Determine statistically significant increase (SSI)
- Alternative source demonstration
 - Not mandatory
- Resample (assessment monitoring only)

At the conclusion of assessment monitoring:

- If SSI confirmed, initiate corrective measures
- Cease sending CCR and initiate closure
 - 6 months – July 15, 2019 (depending...)

EPA letters to USWAG:

- Jan. 26, 2018, and Apr. 30, 2018
- Confirming *sequential* (not concurrent) timeline for each element

Timeline Based on EPA Guidance

Jan. 15, 2018:

- DM – Statistical Analysis

Apr. 16, 2018:

- DM – Alternate Source Demonstration (optional)

July 16, 2018:

- Initiate AM

Oct. 15, 2018:

- Resample / GW Prot. Standard

Jan. 14, 2019:

- AM – Statistical Analysis
 - (Alternate Source Demonstration allowed under the regulations)

Apr. 15, 2019:

- Initiate Corrective Measures

July 14, 2019:

- Cease Receipt & Initiate Closure

Federal Rulemaking

“Remand rule”:

- 1) Issues on remand from D.C. Circuit
- 2) Issues associated with WIIN Act
- 3) Use of CCR during closure
 - *Comment period closed April 30, 2018*

Federal Rulemaking

Issues on remand from the court:

- 1) Non-GW releases that trigger corrective action
- 2) Boron on Appendix IV
- 3) Vegetation management
- 4) Alternative closure proposal

WIIN Act – background:

- Passed in Dec. 2016
- Mostly a water resources statute
- Authorized EPA to approve state CCR programs

Federal Rulemaking

Why does a state program matter?

- Before the WIIN Act, EPA and states lacked direct authority under RCRA Subtitle D
- Because of that lack of direct regulatory oversight—
 - EPA's CCR rule included conservative requirements
 - Did not include certain “flexibilities” (risk-based standards and responses) included in municipal solid waste landfill (MSWLF) regulations for decades

Federal Rulemaking

WIIN Act issues:

- “Flexibilities” adapted directly from Part 258 MSWLF regulations
 - Alternative GW protection standard if no MCL, modify corrective action requirements, etc.
- EPA also solicited comment on rule deadlines

Use of CCR during closure:

- Whether and how to use CCR to support construction of cover systems
 - Generally cannot place CCR in unit 6 months after closure is triggered

Alabama Rule

Alabama Rule

- Alabama Environmental Management Commission recently adopted
 - Adopted: April 20, 2018
 - Effective date: June 8, 2018

Alabama Rule

Content:

- Largely consistent with EPA CCR rule
- Included certain “flexibilities” subject to EPA approval
- Other state-only provisions
 - Buffer, operational requirements, etc.
- Also: Boron on Appendix IV (Assessment Monitoring)

Significant procedural differences:

- Permit program
 - Applications due 180 days (Dec. 3, 2018)
- Permits subject to public notice, opportunity to request hearing, etc.
- Variance authority

Industry perspective on ADEM's rule:

- A permitting program improves regulatory certainty
- Better to sort through complex technical issues at agency compared to litigation

Litigation

Clean Water Act cases ongoing:

- Substance of claims:
 - “Hydrologic connection” theory
- Status:
 - Numerous trial cases and appeals pending

Hydrologic connection theory:

- CWA regulates “point source” discharges to surface waters (rivers, streams, wetlands, etc.)
 - Discharges to groundwater **not** regulated as such
 - But what if flow continues to surface water and acts as a “conduit” of pollutants?
- EPA statements and cases are mixed

Status of cases:

- Ninth and Fourth Circuits:
 - Established CWA coverage
- Appeals pending:
 - Second, Fourth, Sixth Circuits
- Numerous trial court cases pending

RCRA citizen suits:

- Minor impacts thus far
- Closure plan lawsuits in N.C. dismissed on procedural grounds (ripeness, standing)
- Suits will become more likely as more CCR deliverables are posted

“Diligent prosecution” argument:

- Federal environmental statutes say:
 - A citizen suit is not available if the state is diligently prosecuting the same claim
- Has been an issue in CWA cases
- Can be an issue for RCRA cases, in a state that adopts CCR rules and pursues enforcement

Common law claims:

- Trespass, negligence, personal injury, etc.
- Not a huge impact thus far
 - **But** some worker safety cases have proceeded:
 - Jacobs Engineering (TVA Kingston cleanup)
 - AEP Gavin Landfill

Questions?

Steven Burns

(205) 226-8736 | sburns@balch.com