



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

JAN 26 2018

NOW THE
OFFICE OF LAND AND
EMERGENCY MANAGEMENT

Mr. James Roewer
c/o Edison Electric Institute
701 Pennsylvania Avenue, NW
Washington, D.C. 20004

Mr. Douglas Green
Ms. Margaret Fawal
Venable LLP
600 Massachusetts Avenue, NW
Washington, D.C. 20001

Re: Coal Combustion Residuals Rule Groundwater Monitoring Requirements

Dear Ms. Fawal, Mr. Green, and Mr. Roewer:

My office has been asked to respond to the letter from the Utility Solid Waste Activities Group (USWAG), dated November 27, 2017, to the U.S. Environmental Protection Agency (EPA), requesting confirmation with regard to your interpretation of the timing for two specific requirements in the Coal Combustion Residuals (CCR) Rule's groundwater monitoring provisions: (1) the timing to establish an assessment monitoring program if an owner/operator is unable to successfully make an alternate source demonstration in detection monitoring under 40 C.F.R. § 257.94(e)(2); and (2) the timing for conducting a statistical evaluation on the data collected under the assessment monitoring program. This responds in part to that November 27 letter.

1. Alternate Source Demonstration in Detection Monitoring

EPA agrees with your interpretation that the 90-day time period for conducting an alternate source demonstration in 40 C.F.R. § 257.94(e)(2) is separate from, and does not run concurrently with, the 90-day time frame in § 257.94(e)(1) or § 257.95(b).

40 C.F.R § 257.94(e)(1) expressly provides that paragraph (e)(2) serves as an exception to the requirement that an owner or operator establish an assessment monitoring program within 90 days of detecting a statistically significant increase over background levels for any Appendix III constituent. ("Except as provided for in paragraph (e)(2) of this section, . . ."). Paragraph (e)(2) in turn provides that instead of initiating an assessment monitoring program within 90 days of such detection, the owner or operator may attempt to "demonstrate that a source other than the CCR unit caused the statistically significant increase over background levels for a constituent or that the statistically significant increase

resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality.” The regulation further provides that, “[i]f a successful demonstration is completed within the 90-day period, the owner or operator of the CCR unit may continue with a detection monitoring program under this section.” If, at the end of that 90-day timeframe, the owner/operator is not able to successfully make this demonstration, the rule requires the owner/operator to “initiate an assessment monitoring program as required under § 257.95.”

Consistent with these provisions, EPA interprets 40 C.F.R. § 257.95(b) such that an assessment monitoring program is “triggered” either: (1) on the date an SSI is detected in a round of sampling taken under § 257.94(b) if an owner/operator elects not to make an alternate source demonstration under § 257.94(e)(2); or (2) at the end of the 90-day period in § 257.94(e)(2) if an owner/operator tries but cannot successfully make an alternate source demonstration under § 257.94(e)(2).

Note that this interpretation of the regulations mirrors the discussion of these provisions in the preamble to the final rule. As EPA explained,

The owner or operator has the opportunity to demonstrate that a source other than the CCR unit caused the statistically significant increase or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation or a natural variation in groundwater quality. Within 90 days, the owner or operator must prepare a report documenting this demonstration which must then be certified by a qualified professional engineer verifying the accuracy of the information in the report. If a successful demonstration is made within 90 days, the owner or operator may continue detection monitoring. If a successful demonstration is not made within 90 days, the owner or operator must initiate assessment monitoring.

Commenters raised concern that 90 days would not be sufficient to complete all of the activities necessary to determine whether the detection of an SSI was from another source than the CCR unit or was based on inaccurate results. The Agency recognizes that in some circumstances it could take more than 90 days to resample and have laboratories conduct new analyses, or to conduct field investigations to determine that another source is causing the contamination. As a result, § 257.94(e)(3) does not place an ultimate time limit for owners and operators to complete the demonstration. However, if after 90 days the owner or operator has not made a successful demonstration, (s)he must begin an assessment monitoring program.

80 Fed. Reg. 21,302, 21,404 (Apr. 17, 2015). *See also id.* at 21406 (contrasting the 90-day time period for making an alternate source demonstration pursuant to § 257.95(g)(3)(ii)).

2. Statistical Evaluation of Assessment Monitoring Data

USWAG also requested that EPA confirm your interpretation of the time frame for completing a statistical evaluation of the groundwater data collected during assessment monitoring in order to determine whether there is an exceedance of the groundwater protection standard. In your view, the regulations do not specify a specific timeframe for completing the statistical evaluation of these data. In support of this interpretation, you note that under § 257.95(b), the owner/operator must sample and analyze the groundwater for all appendix IV constituents within 90 days of triggering an assessment monitoring program; and that under § 257.95(d)(1), within 90 days of obtaining the results under § 257.95(b), the owner/operator must resample and analyze the groundwater for all appendix III constituents and those appendix IV constituents detected in § 257.95(b). The regulations then require the owner/operator to initiate an assessment of corrective measures within 90 days of detecting an appendix IV constituent at a

statistically significant level above the groundwater protection standard (40 C.F.R. § 257.95(g)(3)). On this basis, USWAG interprets the regulation to provide, at a minimum, that owners/operators have 90 days to conduct the statistical evaluation following completion of the sampling and analysis in § 257.95(d)(1).

EPA is still considering the issues you have raised regarding these provisions of the CCR Rule, and is therefore not in a position to provide a response at this time. I understand the need to provide timely guidance to facilities and will communicate EPA's views as soon as is feasible.

In the interim, if you have questions regarding this letter, please contact me at (703) 308-8895 or Frank Behan at (703) 308-8476.

Sincerely,



Barnes Johnson, Director
Office of Resource Conservation and Recovery