



441 G St. N.W.  
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B-336345

May 21, 2024

The Honorable Thomas R. Carper  
Chairman  
The Honorable Shelley Moore Capito  
Ranking Member  
Committee on Environment and Public Works  
United States Senate

The Honorable Cathy McMorris Rodgers  
Chair  
The Honorable Frank Pallone, Jr.  
Ranking Member  
Committee on Energy and Commerce  
House of Representatives

Subject: *Environmental Protection Agency: Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Legacy CCR Surface Impoundments*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Environmental Protection Agency (EPA) entitled “Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Legacy CCR Surface Impoundments” (RIN: 2050-AH14). We received the rule on May 8, 2024. It was published in the *Federal Register* as a final rule on May 8, 2024. 89 Fed. Reg. 38950. The effective date of the rule is November 4, 2024.

With this final rule, EPA is amending the regulations governing the disposal of coal combustion residuals (CCRs) in landfills and surface impoundments. Specifically, EPA stated that it is establishing regulatory requirements for inactive CCR surface impoundments at inactive utilities. EPA further stated that this action is being taken in response to the August 21, 2018, opinion by the U.S. Court of Appeals for the District of Columbia Circuit in *Utility Solid Waste Activities Group v. EPA*, 901 F.3d 414 (D.C. 2018) that vacated and remanded a provision exempting legacy impoundments from the CCR regulations. EPA also stated that the rule adds a definition for legacy CCR surface impoundments and other relevant terms.

Enclosed is our assessment of EPA’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to

the subject matter of the rule, please contact Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive style with a large initial 'S' and 'J'.

Shirley A. Jones  
Managing Associate General Counsel

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
ENVIRONMENTAL PROTECTION AGENCY  
ENTITLED  
“HAZARDOUS AND SOLID WASTE MANAGEMENT SYSTEM:  
DISPOSAL OF COAL COMBUSTION RESIDUALS FROM ELECTRIC UTILITIES;  
LEGACY CCR SURFACE IMPOUNDMENTS”  
(RIN: 2050-AH14)

(i) Cost-benefit analysis

The Environmental Protection Agency (EPA) estimated the annualized costs of this final rule will be approximately \$214–\$240 million per year when discounting at 2 percent. Of this, EPA estimated \$123–\$135 million is attributable to the requirements for legacy coal combustion residuals (CCR) surface impoundments, \$79–\$92 million is attributable to the requirements for CCR management units, \$8–\$9 million is attributable to the requirements for other active facilities, and \$4 million is attributable to requirements for landfills. EPA stated that costs of the rule include the costs of unit closure, corrective action, fugitive dust controls, structural integrity, inspections, and recordkeeping and reporting.

EPA estimated that the annualized monetized benefits attributable to the rule will be approximately \$53–\$80 million per year when discounting at 2 percent. Of this, EPA estimated \$43–\$57 million is attributable to the requirements for legacy CCR surface impoundments, \$9–\$21 million is attributable to the requirements for CCR management units, and \$1–\$2 million is attributable to the requirements at other active facilities. EPA stated that monetized benefits of the rule include reduced incidents of cancer from the consumption of arsenic in drinking water, avoided intelligence quotient losses from mercury and lead exposure, non-market benefits of water quality improvements, and the protection of threatened and endangered species.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

EPA certified that this final rule will not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

EPA determined that this final rule contains a federal mandate under the Act that may result in expenditures of \$100 million or more, updated annually for inflation, for state, local and tribal governments, in the aggregate, or the private sector in any one year. EPA stated that it prepared a written statement as required under the Act, which is included in the docket for the rule and briefly summarized in the rule.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO's major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: "the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act's exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act's requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act" in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

EPA did not discuss the Act in this final rule or in its submission to us.

(v) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On May 18, 2023, EPA published a proposed rule. 88 Fed. Reg. 31982. EPA received 33,500 comments, including 600 unique comments. EPA stated that commenters included individual electric utilities and independent power producers, national trade associations, state agencies, public interest and environmental groups, private citizens, and entities involved with the beneficial use of CCR. EPA further stated that its responses to the comments are addressed in the rule or in the docket to the rule. Additionally, EPA held two public hearings on June 28, 2023, and July 12, 2023.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

EPA stated that the information collection activities in this final rule will be submitted for approval to OMB under PRA. Additionally, EPA stated that it submitted the proposed rule information collection request (ICR) to OMB for approval on March 25, 2024, triggering a 30-day public comment period for the proposed information collection. EPA stated the ICR document has been assigned EPA ICR Number 2761.01. EPA further stated that it anticipates the final ICR will be approved by the effective date of the rule. EPA estimated a total annual burden of 172,909 hours associated with the final ICR, and a total estimated cost of \$11.2 million, which includes an estimated \$11.2 million in annualized capital or operation and maintenance costs.

Statutory authorization for the rule

EPA promulgated this final rule pursuant to various sections of title 42 of the United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

EPA stated that this final rule is a significant regulatory action as defined under the Order and submitted it to OMB for review. EPA further stated that it prepared a regulatory impact analysis that is briefly summarized in the rule.

Executive Order No. 13132 (Federalism)

EPA determined that this final rule does not have federalism implications and will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.