

Public Hearing for WVDEP Proposed Legislative Rule 33CSR1B

Date: Monday, July 26, 2021

Time: 6:00PM

Location: Zoom

(<https://us02web.zoom.us/j/81549249705?pwd=Y2krVVo3WWVhSG1tTE1PUWU0WE5yUT09>)

Attendees

Name	Organization
Terry Fletcher	WVDEP – Public Information Office
Rylee Adams (Court Reporter)	Sargent's Court Reporting Services
Scott Mandirola	WVDEP
Ed Maguire	WVDEP
Yogesh Patel	WVDEP – Division of Water and Waste Management
Johnsely Cyrus	WVDEP – Division of Water and Waste Management

STATE OF WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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IN RE: PROPOSED LEGISLATIVE RULE 33CSR1B

PUBLIC HEARING

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BEFORE: Terry Fletcher, Chair

Rylee Adams

Scott Mandirola

Ed Maguire

Yogesh Patel

Johnsely Cyrus

HEARING: Monday, July 26, 2021

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PROCEEDINGS

CHAIR: Good evening. My name is Terry Fletcher, and I'm with the West Virginia Department of Environmental Protection's Public Information Office.

Welcome to the virtual public hearing on the West Virginia's proposed Legislative Rule 33C.S.R.1B – Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments.

This Legislative Rule adopts 40 CFR Part 257 Subpart D, Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments, by reference. This subpart applies to owners and operators of new and existing landfills and surface impoundments, including any lateral expansions of such units that dispose or otherwise engage in solid waste management of CCR generated from the combustion of coal at electric utilities and independent power producers. Unless otherwise provided in this subpart, these requirements also apply to disposal units located off-site of the electric utility or independent power producer. This subpart also applies to any practice that does not meet the definition of a beneficial use of CCR.

Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in Subpart D of 40 CFR Part 257, promulgated as of October 4, 2016, wherein they exclusively relate to standards for the disposal of coal combustion residuals in

landfills and surface impoundments, are hereby incorporated as part of the West Virginia Solid Waste Management Regulations

To read the rule in its entirety: <https://apps.sos.wv.gov/adlaw/csr/ruleview.aspx?document=17499>

The purpose for tonight's hearing is take additional comments on this proposed rule, not to engage the WVDEP in open debate or for the agency to answer questions. A decision will not be made this evening. The WVDEP will review all submitted comments and issue a response-to-comments document with the agency's final determination. A court reporter is in attendance and all comments given tonight will be made part of the official record. In order to have an accurate record of attendees, please enter your first and last name, as well as any group you are affiliated with or representing, and your email address into the meeting chat. The email address you include will be how you receive the agency's final determination. The meeting chat will also be part of the official record. The comment period will end at the conclusion of tonight's hearing. Written comments can be submitted via email to johnsely.cyrus@wv.gov.

Each commenter will be given 5 minutes to speak. If time allows, we will circle back to allow for additional comments. If you wish to speak, please use the raise hand function. I will call on speakers as they appear on my screen. If you are joining us by phone, please dial *9 to raise your hand and *6 to mute/unmute. Please clearly state your name and if you represent any groups or organizations. Please stay muted unless you have been called on to give your comments. Please stay on topic and be respectful – foul language, personal attacks, or insults will not be tolerated.

That being said, I invite anyone who wish to comment to please raise your hand and will call upon you to give your comments.

Not seeing anyone who is wishing to speak...

Since there are no commentors, this concludes the WVDEP's virtual public hearing on Proposed changes to Legislative Rule 33 CSR 1B – Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments.

A copy of the proposed rule is available here:

<https://apps.sos.wv.gov/adlaw/csr/ruleview.aspx?document=17499>

Please remember to include your first and last name, affiliation, and email address in the meeting chat so that we have an accurate count of attendees and to receive the agency's final determination.

The comment period is now closed.

Thank you for your interest and for taking the time to attend this hearing. Please stay safe and have a good evening.

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HEARING CONCLUDED AT 6:20 P.M.

* * * * *



Cyrus, Johnsely <johnsely.cyrus@wv.gov>

Legislative Rule 33 CSR 1B

Autumn Crowe <acrowe@wvrivers.org>

Mon, Jul 26, 2021 at 4:11 PM

To: "johnsely.cyrus@wv.gov" <johnsely.cyrus@wv.gov>

Cc: Angie Rosser <arosser@wvrivers.org>, "Maguire, Edward F" <Edward.F.Maguire@wv.gov>

Please find attached comments on Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments submitted on behalf of WV Rivers Coalition. Thank you for the opportunity to comment.

Autumn Crowe

Staff Scientist

West Virginia Rivers Coalition

304-992-6070

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**WV Rivers Comments WVDEP CCR.pdf**

339K



July 26, 2021

West Virginia Department of Environmental Protection
Division of Water and Waste Management
601 57th Street S.E.
Charleston, WV 25304

Re: Legislative Rule 33 CSR 1B: Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments

Submitted via email to: johnsely.cyrus@wv.gov

Dear Johnsely Cyrus:

West Virginia Rivers Coalition (WV Rivers), on behalf of our members, respectfully submit the following comments on the Legislative Rule 33 CSR 1B: Standards for the Disposal of Coal Combustion Residuals (CCR) in Landfills and Surface Impoundments.

Coal Ash ponds continue to pollute groundwater with cancer causing toxins in a state with the third highest cancer deaths rates in the country. This rule affects 7 facilities in WV, Mount Storm, Fort Martin, Harrison Power Station, Mitchell Plant, Pleasants Power Station, Mountaineer Plant and the John E. Amos Plant. With a combined total of 169 million cubic yards of coal ash waste, all seven facilities have found statistically significant increases in groundwater contaminants or previous impacts to surface water. Five of the facilities have unlined coal ash disposal ponds and three of the facilities have detected groundwater pollutants that are above state and/or federal standards including contaminants such as arsenic, barium, fluoride, molybdenum, lithium, and radium 226 and 228 that puts public health at risk.

These facilities are a threat to West Virginian's access to clean drinking water. The Mitchell Plant in Marshall County which has already been found to harm aquatic life, contains an unlined bottom ash pond that is located within the drinking water protection area for Sistersville Municipal water. The Mountaineer Plant which has an unlined bottom ash pond that is contributing to elevated levels of lithium in the groundwater is within the New Haven

Water department wellhead protection area. Additionally, the Pleasants Power Plant in Pleasants county contains an unlined coal ash disposal impoundment that is contaminating the groundwater with arsenic barium, fluoride lithium and Radium 226 and 228 and is located within the drinking water protection area for the City of Parkersburg. These facilities have known contamination issues that are posing unnecessary risks to drinking water supplies. DEP must provide adequate oversight of the CCR Rule to protect drinking water. It is inexcusable to allow these facilities to continue polluting water resources.

Additionally, we question whether WVDEP DWWM has adequate resources to manage the CCR program. WVDEP resources are already stretched thin; taking on oversight of the CCR program should come with additional funds to staff it. We appreciate your thorough consideration of these comments.

Signed,
Angie Rosser
West Virginia Rivers Coalition



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Telephone (304) 926-0495
Fax: (304) 926-0463

Harold D. Ward, Cabinet Secretary
dep.wv.gov

July 27, 2021

Angie Rosser
West Virginia Rivers Coalition
3501 MacCorkle Ave. SE #129
Charleston WV 25304

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Re: Legislative Rule 33CSR1B
Standards for the disposal of coal combustion residuals
in landfills and surface impoundments

Dear Ms. Rosser,

This correspondence is in response to your comment regarding the Legislative Rule 33CSR1B on behalf of WV Rivers Coalition, sent by Email dated July 26, 2021.

Comment:

West Virginia Rivers Coalition (WV Rivers), on behalf of our members, respectfully submit the following comments on the Legislative Rule 33 CSR 1B: Standards for the Disposal of Coal Combustion Residuals (CCR) in Landfills and Surface Impoundments.

Coal Ash ponds continue to pollute groundwater with cancer causing toxins in a state with the third highest cancer deaths rates in the country. This rule affects 7 facilities in WV, Mount Storm, Fort Martin, Harrison Power Station, Mitchell Plant, Pleasants Power Station, Mountaineer Plant and the John E. Amos Plant. With a combined total of 169 million cubic yards of coal ash waste, all seven facilities have found statistically significant increases in groundwater contaminants or previous impacts to surface water. Five of the facilities have unlined coal ash disposal ponds and three of the facilities have detected groundwater pollutants that are above state and/or federal standards including contaminants such as arsenic, barium, fluoride, molybdenum, lithium, and radium 226 and 228 that puts public health at risk.

These facilities are a threat to West Virginian's access to clean drinking water. The Mitchell Plant in Marshall County which has already been found to harm aquatic life, contains an unlined bottom ash pond that is located within the drinking water protection area for Sistersville Municipal water. The Mountaineer Plant which has an unlined bottom ash pond that is contributing to elevated levels of lithium in the groundwater is within the New Haven Water department wellhead protection area. Additionally, the Pleasants Power Plant in Pleasants county contains an unlined coal ash disposal impoundment that is contaminating the groundwater with arsenic barium, fluoride lithium and Radium 226 and 228 and is located within the drinking water protection area for the City of Parkersburg. These facilities have known contamination issues that are posing unnecessary risks to drinking water supplies. DEP must provide adequate oversight of the CCR Rule to protect drinking water. It is inexcusable to allow these facilities to continue polluting water resources.

Additionally, we question whether WVDEP DWWM has adequate resources to manage the CCR program. WVDEP resources are already stretched thin; taking on oversight of the CCR program should come with additional funds to staff it. We appreciate your thorough consideration of these comments.

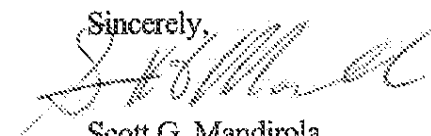
Response:

The facilities mentioned in the comment are currently permitted under WV Regulation 33CSR1. This Legislative Rule (33 -1B) adopts the federally mandated 40 CFR Part 257 Subpart D, which is required to obtain closure and permitting primacy for the Coal Combustion Residual (CCR) program. With this primacy, the Agency is not intending to issue any additional permits for already permitted facilities. However, the Agency will modify/reissue the current permits and will incorporate appropriate new CCR requirements. At this moment, the Agency is not looking for new resource to implement the CCR program. In the future if it is determined that additional resources are necessary, the Agency will take appropriate steps to obtain the resources.

Thank you for your comments on this legislative rule.

If you have any further questions or concerns, please do not hesitate to contact Johnseely Cyrus of my staff at (304) 926-0499 ext. 43778 or by email at johnseely.cyrus@wv.gov.

Sincerely,



Scott G. Mandirola
Deputy Cabinet Secretary