

**2Supporting Statement for a Request for OMB Review under
The Paperwork Reduction Act**

1. IDENTIFICATION OF THE INFORMATION COLLECTION

1(a) Title and Numbers of the Information Collection

Title: Identification, Listing and Rulemaking Petitions (Final Rule titled ‘Hazardous and Solid Waste Management System: Disposal of CCR; A Holistic Approach to Closure Part B: Alternate Demonstration for Unlined Surface Impoundments’)

**EPA ICR No.: 2609.02 OMB Control No.: 2050-NEW
Docket ID No.: EPA-HQ-OLEM-2019-0173**

1(b) Short Characterization

This ICR package (EPA ICR Number 2609.02) represents the new information collection requirements imposed by the final rule titled ‘Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; A Holistic Approach to Closure Part B: Alternate Demonstration for Unlined Surface Impoundments’ (referred to herein as the Part B Final Rule).

The EPA published a final rule to regulate the disposal of coal combustion residuals (CCR) from electric utilities as solid waste under RCRA Subtitle D. See 80 Fed. Reg. 21302 (April 17, 2015). EPA established national minimum criteria for existing and new CCR landfills and CCR surface impoundments and all lateral expansions to include location restrictions, design and operating criteria, groundwater monitoring and corrective action, closure requirements and post-closure care, and recordkeeping, notification, and internet posting requirements. Since the final rule, several court decisions have required accelerated closure timelines for many units and forced closures for many units previously categorized as lined.¹ The Part B Final Rule allows for units to receive variances for unlined surface impoundments.

2. NEED FOR AND USE OF THE COLLECTION

2(a) Need/Authority for the Collection

The CCR rule regulates the disposal of CCR generated by electric utilities as solid waste under RCRA Subtitle D and finalizes national minimum criteria for existing and new CCR landfills and existing and new CCR surface impoundments and all lateral expansions. These regulations are established under the authority of sections 1006(b), 1008(a), 2002(a), 3001, 4004, and 4005(a) of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation

¹ See *Utility Solid Waste Activities Group, et al v EPA*, No. 15-1219 (D.C. Circuit) and *Waterkeeper Alliance Inc. et al. v. EPA* No. 18-1289 (D.C. Circuit)

and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. §§ 6906(b), 6907(a), 6912(a), 6944 and 6945(a). At the time the CCR regulations issued on April 17, 2015, under Subtitle D of RCRA EPA had no formal role in rule implementation nor could the agency enforce the requirements in the rule. Therefore, the regulations were “self-implementing,” that is, a facility must comply with them without any action by a regulatory agency.

To address concerns about the absence of adequate regulatory oversight under Subtitle D, EPA also sought to enhance the protectiveness of the regulatory requirements by providing for state and public notifications of the third party certifications, as well as requiring a robust set of other information that documents the decisions made or actions taken to comply with the technical requirements of the rule.

The combined mechanisms of recordkeeping, notifications, and maintaining a publicly accessible internet site under the final rule are needed to provide interested parties with the information necessary to determine whether the owner or operator is operating in accordance with the requirements of the rule. These requirements will minimize the danger of owners or operators abusing the self-implementing system established in this rule, through increased transparency that will facilitate enforcement by states and private citizens. EPA has consolidated the recordkeeping, notification and internet posting requirements into a single section of the regulations in an effort to make the regulations easier to follow. See 40 CFR §§ 257.105, 257.106, and 257.107.

The final Part B Rule requires additional documentation for its principal provision. This provision is optional, and only owner/operators that are anticipated to receive an operational cost savings will avail themselves of this new option, resulting in additional documentation requirements. This ICR describes this change.

2(b) Use/Users of the Data

The final Part B rule adjusts a provision of the 2015 CCR Rule, which requires owners or operators of CCR units to document how the various provisions of the rule have been met by placing information (e.g., demonstrations, plans, records, notifications, and reports) in the operating record and providing notification of these actions to the state and/or appropriate Tribal authority. The owner or operator is also required to establish and maintain a publicly accessible internet site that displays documentation that has, in many instances, also been entered into the operating record. The owner or operator must place files documenting compliance with the location restrictions; design criteria; operating criteria; groundwater monitoring and corrective action; closure and post-closure care, into the operating record, with the specific documentation requirements found in 40 CFR 257.105. Each file must be maintained in the operating record for a period of at least five years following submittal of the file into the operating record. In certain instances, however, files must be maintained until the CCR unit completes closure.

Additional documentation requirements under the final Part B Rule will be similarly maintained, and may also be submitted directly to EPA, in the case of applications, demonstrations, or other reports that EPA must affirmatively approve for certain activities to be allowed to take place under the final rule. Users of the additional documentation include EPA (who will determine the completeness of applications for alternative liner demonstrations), states that operate their own CCR program, and other private or public entities that may use the information to inform legal proceedings. For example, community groups currently access CCR

unit information currently available on the CCR compliance websites required under 40 CFR 257.107 to inform the public regarding local CCR management practices; it is likely that these groups will use this information in a similar manner.

3. NON-DUPLICATION, CONSULTATIONS, AND OTHER COLLECTION CRITERIA

3(a) Non-Duplication

None of the information required by the regulations covered in this ICR is available from any source but the respondents. None of the regulations are duplicative of any other EPA regulations. Changes to recordkeeping requirements under the final Part B Rule are not duplicative with any information required by the existing Federal RCRA regulations.

3(b) Public Notice Required Prior to ICR Submission to OMB

In compliance with the Paperwork Reduction Act of 1995, EPA opened a public comment period for the ICR when the Hazardous and Solid Waste Management System: Disposal of CCR; A Holistic Approach to Closure Part B: Alternate Demonstration for Unlined Surface Impoundments; Implementation of Closure proposed rule was published in the *Federal Register* on March 3, 2020 (85 FR 12456, Docket No. EPA-HQ-OLEM-2019-0173); this final rule in part incorporates a number of comments received. However, none of the comments received affected the assumptions of methodologies used to estimate paperwork burden in this ICR.

3(c) Consultations

In compliance with the Paperwork Reduction Act of 1995, EPA opened a public comment period for the ICR when the Hazardous and Solid Waste Management System: Disposal of CCR; A Holistic Approach to Closure Part B: Alternate Demonstration for Unlined Surface Impoundments; Implementation of Closure proposed rule was published in the *Federal Register* on March 3, 2020 (85 FR 12456, Docket No. EPA-HQ-OLEM-2019-0173) At the end of the comment period, EPA reviewed public comments received in response to the notice.

3(d) Effects of Less Frequent Collection

EPA has carefully considered the information collection burden imposed by the 2015 CCR rule, and the adjustments in the final Part B rule. EPA is confident that those activities required of respondents are necessary to provide sufficient information to state and public users to make informed decisions about policies and actions related to implementation of the 2015 CCR rule. To the extent possible, the Agency has attempted to minimize the burden imposed by refining existing information requirements and specifying electronic publication of the information on existing web sites. Furthermore, the activities required of respondents under the final Part B Rule are voluntary in nature and are required only if the respondents wish to avail themselves of the operational cost savings associated with new compliance options under the final rule.

3(e) General Guidelines

This information collection complies with the general guidelines found at 5 CFR 1320.5.

3(f) Confidentiality

None of the information collection requirements of the 2015 CCR Rule or the Part B Final Rule require the disclosure of confidential business information.

3(g) Sensitive Questions

There are no sensitive questions contained in this information collection.

4. THE RESPONDENTS AND THE INFORMATION REQUESTED

4(a) Respondents and NAICS Codes

Respondents affected by this activity are electric power generators who use coal to produce electricity; these plants are categorized mainly under NAICS code 221112 (Fossil Fuel Electric Power Generation).²

4(b) Information Requested

(i) Data Items

Qualifying facilities and units that are currently required to undertake information collection activities may see alterations in the requirements for, and timing of, some of these activities; most of these changes reduce burden. Activities potentially affected include investigations for whether certain requirements apply to activities, demonstration requirements, reporting requirements, and website requirements under 40 CFR 257.

(ii) Respondent Activities

Respondent activities are grouped according to the relevant provision from the final Part

² The 2015 final CCR rule directly affected facilities in NAICS code 221112, "Fossil Fuel Electric Power Generation." However, some owners of coal-fired electric utility plants may use a different primary NAICS codes, e.g., municipal-owned utilities may use a primary NAICS code associated with local governments, and some smaller electricity-generating cooperatives may use NAICS code 221118, "Other Electric Power Generation" in lieu of NAICS code 221112. In addition, the 2015 final CCR rule also noted other industries that may be indirectly affected, including the commercial waste transportation industry (NAICS 484230, "Specialized Freight (except Used Goods), Trucking, Long-Distance"), the commercial waste disposal industry (NAICS 562212, "Solid Waste Landfills," NAICS 562219, "Other Non-Hazardous Waste Treatment and Disposal," and NAICS 562910, "Environmental Cleanup/Remediation Services"), and sand and gravel pits and quarries (NAICS 212, "Mining, except Oil and Gas"). In rare cases, a respondent affected by the final Part B Rule may fall into an industry beyond coal-fired electric utility plants, i.e., an off-site landfill that only receives CCR waste and therefore meets the definition of a CCR management unit under 40 CFR 257.

B rule. The following provision includes paperwork or reporting requirements:

This provision allows the owner/operator of a CCR surface impoundment to demonstrate that the impoundment's clay liner meets the § 4004(a) standard for sanitary landfill classification, and therefore that the unit should be classified as "lined" under the CCR Rule. For each unit, owners/operators must submit an application to EPA expressing their interest to pursue a liner demonstration. If the demonstration for a given unit is approved by EPA, the owner/operator may proceed to complete the demonstration. This provision is voluntary; owners/operators of CCR impoundments are not required to submit the application, or to submit the demonstration if their application is approved.

5. THE INFORMATION COLLECTED - AGENCY ACTIVITIES, COLLECTION METHODOLOGY, AND INFORMATION MANAGEMENT

5(a) Agency Activities

Under the final Part B Rule, EPA will need to review the new documentation submitted to the Agency. However, EPA does not anticipate an increase in burden associated with these review activities.

5(b) Collection Methodology and Management

Most information can be maintained in the facility operating record or on a publicly accessible internet website rather than in submittals to EPA. For the information that is submitted (e.g., liner demonstrations), EPA ensures the accuracy and completeness of the collected information by reviewing each submittal.

5(c) Small Entity Flexibility

All owner/operators regardless of company size will be treated in the same manner. EPA determined that the final Part B Rule is a cost-saving rule that will not have a significant economic impact on a substantial number of small entities in the corresponding Regulatory Impact Analysis.³

5(d) Collection Schedule

The information provided varies based on the provisions of the 2015 CCR Rule and on the timing of the cessation of coal-fired boilers. The requirements outlined in this ICR contain some one-time submissions and some regularly-recurring reporting activities, including annual progress reports. The requirements are new (but voluntary) one-time submissions.

6. ESTIMATING THE BURDEN AND COST OF THE COLLECTION

³ *Regulatory Impact Analysis: Hazardous and Solid Waste Management System: Disposal of CCR; A Holistic Approach to Closure Part B: Alternate Demonstration for Unlined Surface Impoundments August 2020.*

6(a) Estimating Respondent Burden

EPA relies on estimates of the universe of respondents affected from the corresponding Regulatory Impact Analysis and estimates of the relative burden of specific requirements from the prior approved ICR for the CCR program.⁴ Currently, there are 300 total coal-fired power plants potentially subject to the requirements in the final Part B Rule, which includes a maximum of 407 CCR units for which an owner/operator would be subject to one of the reporting requirements. The regulatory impact analysis (RIA) for this final rule presents a range of possible responses under this optional provision; this document presents the upper-bound values from that range to provide a ceiling for the total potential burden imposed based on the numbers modeled in the RIA.

The per-respondent burdens and the number of total respondent activities are given in **Table 6.1** and the total annual respondent burden is shown in **Table 6.2**. The specific burden estimates for applications and demonstrations are assumed to be equivalent to similar requirements from the prior CCR program ICR.⁵ The total annual burden for all firms is estimated to be 2,179 hours.

Table 6.1: RESPONDENT BURDEN ESTIMATES

| Collection Activities | Annual Responses | Hours per Response | | | |
|---|------------------|--------------------|-------|--------|-------|
| | | Leg. | Mgr. | Tech. | Cler. |
| Alternate liner demonstration application | 7 | 0.00 | 1.10 | 27.00 | 1.62 |
| Alternate liner demonstration | 7 | 0.00 | 11.00 | 270.00 | 16.20 |

Table 6.2: TOTAL ANNUAL RESPONDENT BURDEN ESTIMATES

| Collection Activities | Burden Hours (per year) | | | | Total Hours |
|---|-------------------------|--------------|-----------------|--------------|-----------------|
| | Leg. | Mgr. | Tech. | Cler. | |
| Alternate liner demonstration application | 0.00 | 7.33 | 180.00 | 10.80 | 198.13 |
| Alternate liner demonstrations | 0.00 | 73.33 | 1,800.00 | 108.00 | 1,981.33 |
| Total: | 0 | 80.67 | 1,980.00 | 118.8 | 2,179.46 |

6(b) Estimating Respondent Costs

Respondent hourly costs in this ICR have been calculated using several data sources from the Bureau of Labor Statistics, following the most recent ICR related to CCR regulations.⁶ Total hourly cost estimates include wages, fringe benefits, and overhead. Unadjusted hourly rates are

⁴ See EPA ICR #1189.29.

⁵ See EPA ICR #1189.29. Specifically, this ICR uses the estimated burden for the activity: “Prepare semi-annual report describing the progress in selecting and designing the remedy” under 40 CFR 257.97 as an estimate for items 4 and 6 in Table 6.1. The estimate for items 3 and 5 is calculated as the sum of the semi-annual reporting and the requirement to “Document that there is no alternative CCR disposal capacity” under 40 CFR 257.103. The burden estimate for item 2 is estimated as the requirement to obtain certification that there is no alternative CCR disposal capacity under 40 CFR 257.103.

⁶ See EPA ICR #1189.29.

from the BLS, for each specific labor category.⁷ This ICR assumed a fringe benefits rate of 33.3% and an overhead rate of 12%, resulting in a total fringe/overhead multiplier of 1.78.^{8,9,10} Finally, hourly rates were adjusted to 2019 levels using the Employment Cost Index, from BLS.¹¹

Table 6.3: RESPONDENT LABOR RATES

| Labor Category | Occupation code | May 2017 Mean Hourly Rate^a [A] | Fringe/Overhead Multiplier [B] | Employment Cost Index Adjustment to 2019 Levels^d [C] | 2019 Loaded Rate [D] = [A]×[B]×[C] |
|-----------------------|------------------------|--|---------------------------------------|--|---|
| Legal | 23-1011 | \$68.22 | 1.78 | 1.050 | \$127.82 |
| Managerial | 11-0000 | \$57.65 | 1.78 | 1.050 | \$108.01 |
| Technical | 17-3026 | \$27.79 | 1.78 | 1.050 | \$52.07 |
| Clerical | 43-9061 | \$16.30 | 1.78 | 1.050 | \$30.54 |

Estimated total annual labor costs to the respondents are equal to \$115,440, and are presented in **Table 6.4**.

⁷ Mean hourly rates from U.S. Bureau of Labor Statistics (BLS)’s May 2017 National Industry-Specific Occupational Employment and Wage Estimates cross all industry sectors, at: http://www.bls.gov/oes/current/oes_nat.htm.

⁸ Applied “All goods-producing” industry group fringe benefits percentage of 33.3% from “Table 6. Private industry, by major industry group” of the US Bureau of Labor Statistics (BLS) “Employer Costs for Employee Compensation” (ECEC), June 2018 at <https://www.bls.gov/news.release/ecec.t06.htm>.

⁹ In absence of data specific to industry, applied 12% Federal civilian overhead cost factor from Figure C1 of the REVISED February 2008 OMB Circular A-76 at http://www.whitehouse.gov/omb/circulars_a076_a76_incl_tech_correction/.

¹⁰ = [1+ (Fringe Benefits %)] ÷ [(100% - Fringe Benefits %) × (1+ Overhead %)]

¹¹ Bureau of Labor Statistics, "Table 4. Employment Cost Index for total compensation, for civilian workers, by occupational and industry," Employment Cost Index Historical Listing - Volume V, Continuous Occupational and Industry Series, September 1975 – March 2019; April 2019. Available online at: <https://www.bls.gov/web/eci/ecicois.pdf>, last accessed on May 15, 2019. Civilian Workers, All Workers, June 2017=129.7 and March 2019=136.2.

Table 6.4: ANNUAL RESPONDENT (OWNER/OPERATOR) LABOR COST ESTIMATES

| Labor category | Hourly cost | Net Number of respondent activities | Labor hours | Labor Cost Total |
|----------------|---------------|-------------------------------------|-------------|------------------|
| Legal | \$127.82 | 0 | 0 | \$0 |
| Managerial | \$108.01 | 13 | 81 | \$8,713 |
| Technical | \$52.07 | 13 | 1,980 | \$103,099 |
| Clerical | \$30.54 | 13 | 119 | \$3,628 |
| Total | Varies | Varies | 2,179 | \$115,440 |

Estimated total annual O&M costs to the respondents are equal to \$785,323.63, and are presented in **Table 6.5**.

Table 6.5: ANNUAL RESPONDENT (OWNER/OPERATOR) O&M COST ESTIMATES

| Collection Activities | O&M Cost | Number of Respondent Activities | Total O&M Cost |
|---|--------------|---------------------------------|----------------|
| Alternate liner demonstration application | \$10,708.96 | 7 | \$71,393.06 |
| Alternate liner demonstration | \$107,089.58 | 7 | \$713,930.57 |
| Total: | \$117,798.54 | 13 | \$785,323.63 |

Estimated total costs to the respondents are equal to the sum of labor costs and O&M costs, for a total cost of \$900,763, as presented in **Table 6.6**. There are no capital costs associated with this collection.

Table 6.6: TOTAL ANNUAL RESPONDENT (OWNER/OPERATOR) COST ESTIMATES

| Cost Category | Costs |
|---------------|-----------|
| Labor Costs | \$115,440 |
| O&M Costs | \$785,324 |
| TOTAL | \$900,763 |

6(c) Estimating Agency Burden and Cost

EPA does not anticipate any additional burden under the final Part B Rule. EPA assumes that all requirements by EPA to review applications will be met by the existing capacity at EPA to manage CCR-related tasks.

6(d) Total Burden Estimates

Table 6.7 displays the annual burdens and costs borne by respondents associated with preparing, filing and reviewing a reporting form resulting from this information collection.

Table 6.7. TOTAL COST AND BURDEN SUMMARY

| | Annual Burden Hours | Annual Labor Cost | Annual Capital/ Startup Cost | Annual O&M Cost | Total Annual Cost |
|----------|----------------------------|--------------------------|-------------------------------------|----------------------------|--------------------------|
| Industry | 2,179 | 900,763 | \$0 | \$785,324 | \$900,763 |

6(e) Reasons for Change in Burden

The estimated annual respondent burden has increased by 2,179 hours in total estimated respondent burden compared with that identified in the information collection most recently approved respondent burden by OMB associated with the CCR program (175,319 hours).¹² This reflects an increase in the requirements for respondents associated with the final Part B rule. Also, the costs to the industry respondents increased by \$900,763, again reflecting the additional requirements associated with the final Part B Rule. While there is an increase in ICR burden associated with the additional reporting related to the final Part B Rule, most of the burden is voluntary and is expected to be much smaller in magnitude to the operational cost savings related to closure extensions or the ability to use CCR in closure, as shown in the corresponding Regulatory Impact Analysis for this final rule.¹³

6(f) Burden Statement

The annual public burden for this collection of information is estimated to average 54.5 hours per response. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection appears on page 1 of this document. The OMB control numbers for EPA’s regulations in title 40 of the CFR, after appearing in the Federal Register, are listed in 40 CFR part 9 and included on the related collection instrument or form, if applicable.

The Agency has established a public docket for this ICR under Docket ID No. EPA-HQ-OLEM-2019-0173, which is available for online viewing at www.regulations.gov, or in-person viewing at the Pollution Prevention and Toxics Docket in the EPA Docket Center (EPA/DC). The EPA/DC Public Reading Room is located in the WJC West Building, Room 3334, 1301 Constitution Ave., N.W., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the Pollution Prevention and Toxics Docket is (202) 566-0280.

You may submit comments regarding the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden, including the use of automated collection techniques. Submit your comments, referencing Docket ID No. EPA-HQ-OLEM-2019-0173 and OMB Control No. 2070-0075, to (1) EPA online using www.regulations.gov (our preferred method), or by mail to:

¹² This ICR burden is compared to EPA ICR #1189.29, OMB Control # 2050-0053, specifically the sections covering 40 CFR Part 257 (CCR regulations).

¹³ *Regulatory Impact Analysis: Hazardous and Solid Waste Management System: Disposal of CCR; A Holistic Approach to Closure Part B: Alternate Demonstration for Unlined Surface Impoundments August 2020.*

Pollution Prevention and Toxics Docket, Environmental Protection Agency Docket Center (EPA/DC), Mailcode: 28221T, 1200 Pennsylvania Ave., N.W., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, N.W., Washington, DC 20503.