



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

April 3, 2020

OFFICE OF
LAND AND EMERGENCY
MANAGEMENT

Ms. Lisa Evans
Senior Counsel
Earthjustice
21 Ocean Avenue
Marblehead, Massachusetts 01945

Dear Ms. Evans:

On March 6, 2020, the U.S. Environmental Protection Agency (EPA) received a letter from you and 66 undersigned public interest groups requesting EPA to hold an in-person public hearing for the two proposed rules: *A Holistic Approach to Closure Part B: Alternate Demonstration for Unlined Surface Impoundments; Implementation of Closure*¹ ("Part B proposal"), and the *Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Federal CCR Permit Program*² ("Federal CCR Permit Program proposal"). You also requested that either the Part B proposal public hearing date change or an additional hearing be offered because the scheduled public hearing occurs during the Jewish holiday of Passover. The public interest groups also requested a minimum of 120 days for public comment on the two proposed rules. EPA also received a letter on March 23, 2020, asking for comment period extensions on each of these proposed rules in light of the Coronavirus Disease 2019 (COVID-19) Pandemic.

Regarding the request for in-person public hearings, the agency believes that virtual public hearings allow for greater public participation via the Internet without the need for stakeholders to travel. EPA has received meaningful comments in previous, virtual public hearings that have been incorporated into the agency's decision-making process to develop final actions. As you may recall, during the January 7, 2020, public hearing for the CCR Part A proposal,³ there was a snow event in the Washington, DC region that prompted the closure of all federal buildings at noon Eastern Time that day, and for all federal employees to leave the building and telework. Because this public hearing was virtual, EPA was able to continue the hearing without disruption of the meaningful comments that were presented. It is also worth noting that EPA encourages speakers at a public hearing to submit their comments in writing as part of the record.

Additionally, in light of the current COVID-19 Pandemic, EPA believes virtual public hearings ensure the best opportunity for public participation without interruption due to any public health measures that may be taken by local, tribal, state or federal government for the safety and protection of human health of all stakeholders and EPA employees. For these reasons, EPA is not granting the request for in-person public hearings on these proposed rules.

¹ 85 FR 12456, March 3, 2020

² 85 FR 9940, February 20, 2020

³ 84 FR 65941, December 2, 2019

Secondly, EPA will hold the Part B proposal virtual public hearing on April 9, 2020, as originally scheduled. In response to your concern about the Passover holiday, EPA will hold a second Part B proposal virtual public hearing opportunity on April 7, 2020, from 9:00 AM to 6:00 PM Eastern Time. The virtual public hearing for the Federal CCR Permit Program rule will continue as originally scheduled on April 15, 2020, from 9:00 AM to 6:00 PM Eastern Time. More information on the virtual public hearings is available on EPA's website.

Finally, EPA believes the current 45-day and 60-day public comment periods (for the Part B and Federal CCR Permit Program proposals, respectively) are adequate for interested parties to provide comments on the widely known issues in the proposed actions. EPA will not extend the comment period beyond the current 45-day period for the Part B proposal because of the critical timeframes presented in the proposed rule and the changes are fairly straightforward issues; thus, a long comment period is not needed for people to analyze and comment on these. However, in response to the concerns raised about concurrent public comment periods, EPA is extending the comment period for the Federal CCR Permit Program proposal by 30 days, to allow for a total of 90 days. EPA believes this will allow commenters the best ability to provide meaningful comments on the establishment of a new Federal CCR Permit Program, while allowing the same commenters to also provide information and comments on the Part B proposal in a timely manner. EPA will publish a *Federal Register* Notice announcing the comment period extension until May 20, 2020, for the Federal CCR Permit Program proposal in the near future.

Additionally, EPA recognizes (as mentioned in your letter) that many people affected by these rules are not native English speakers. Therefore, EPA created fact sheets^{4,5} for both proposed rules that are translated into several languages that are common in the U.S. The fact sheets provide a high-level understanding of what is contained in the proposed rules.

EPA appreciates the significant public interest in the CCR program and looks forward to your comments on the proposals. If you have any questions concerning this response, please contact Richard Huggins of my staff at (703) 308-0017.

Sincerely,

Peter C. Wright
Assistant Administrator

⁴ See, <https://www.epa.gov/coalash/fact-sheet-proposal-holistic-approach-closure-part-b>

⁵ See, <https://www.epa.gov/coalash/fact-sheet-proposed-rule-coal-combustion-residuals-ccr-federal-permitting-program>