

Coal Ash Cleanup Timeline

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Big Picture

Permanent Replacement of Water Supplies

Classification of Coal Ash Sites

Closure Schedule

Extending Deadlines

Re-use mandate

Federal CCR Rule

Future Changes to CAMA & Timelines

House Bill 630

- Requires DEQ to classify some sites as low risk, eliminating previous criteria for classification including public health, environment and natural resources, groundwater contamination, and surface water contamination previously required by the Coal Ash Management Act (CAMA).
 - Ignores the voices of thousands of people who demanded their communities not be rank as a low priority.
- Pushes DEQ's final classification of sites to November 15, 2018, and pushes low and intermediate closure plans to December 31, 2019. This delay gives NC legislature another opportunity to soften rules for cleanup during the 2017 legislative session.
- Includes provision for permanent replacement of water supplies for impacted households

Permanent Replacement of Water Supplies

**December 15,
2016**

- Duke must submit to DEQ info on where and how they plan to replace water supplies.

**January 15,
2017**

- DEQ's final decision to approve or disapprove plan to replace water supplies.

April 15, 2017

- Duke to notify all residents in their approved plans of their eligibility for establishment of a permanent water supply.

**October 15,
2018**

- Duke must provide permanent water supply to households.

Which Households Will Receive Water Supplies?

Households with a well located within one-half mile radius from the established compliance boundary of a CCR impoundment and is not separated from the impoundment by the main stem of a river or another body of water.

Households where the well is located where contamination from CCR impoundments is expected to migrate.

*This includes homes that may be outside of the one-half mile radius.

Classification of Sites

- Within 30 days after October 15, 2018, DEQ shall issue a final classification for each impoundment as low-risk or intermediate-risk.
- *H 630 does not include any opportunity for High-risk classifications.*
 - Effectively, there are now only two possible classifications for coal ash impoundments.

Closure Schedule

- **High-Risk:**
 - Closed no later than December 31, 2019.
- **Intermediate-Risk:**
 - Closed no later than December 31, 2024.
- **Low-Risk:**
 - Closed no later than December 31, 2029.
- Both low and intermediate risk levels must have closure plans to DEQ by December 31, 2019.
- Duke will have one year for plan development.

What will be ranked Low or Intermediate-Risk?

Low-Risk Classification

- When Duke has supplied permanent water to the required households; and
- rectified any deficiencies.

Intermediate-risk

- All other impoundments

What will cleanup look like?

- Intermediate-risk: Dewatered, closed or moved in the same manner as High-risk impoundments. But longer deadline than high risk.
- Low-risk: Must be dewatered AND
 - At the election of DEQ, the utility shall either:
 - Close in the same manner as High-Risk and Intermediate Impoundments;
OR
 - Cap system “cap in place” that is designed to minimize infiltration and erosion.
 - Not required to install and maintain a leachate collection system.
 - Must:
 - install and maintain groundwater monitoring system;
 - establish financial assurance that will ensure that sufficient funds are available for closure, post closure maintenance and monitory, any corrective action that DREQ may require and satisfy any potential liability for sudden and non-sudden accidental occurrences and subsequent costs incurred by DEQ
 - Conduct post closure care for 30 years
 - Comply with the Federal CCR Rule

Extending Deadlines

The Secretary of DEQ has the authority to extend ANY deadline within CAMA if the Secretary OR Duke raises a motion for the extension.

- There is no limit on the variances that can be granted for deadline extensions.
- If Duke requests an extension they must request it no earlier than one year prior to the applicable deadline.

Re-Use of Coal Ash Mandate

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Federal Coal Combustion Residual (CCR) Rule

- “These regulations address the risks from coal ash disposal -- leaking of contaminants into ground water, blowing of contaminants into the air as dust, and the catastrophic failure of coal ash surface impoundments.
- Additionally, the rule sets out recordkeeping and reporting requirements as well as the requirement for each facility to establish and post specific information to a publicly-accessible website.
- This final rule also supports the responsible recycling of CCRs by distinguishing safe, beneficial use from disposal.”

-U.S. EPA

Federal CCR Rule Details

- Closure of a CCR unit (coal ash site) occurs when:
 - The unit fails to meet one or more specific technical criteria:
 - Location restrictions
 - Leaking, unlined CCR surface impoundments
 - Fails to demonstrate or meet factors of safety
 - The known final waste shipment or when the last known volume of CCR for beneficial uses removed.
 - A unit is idle for more than two years.
 - No receipt of CCR or removal of CCR for beneficial use.

Merging Federal CCR Rule and CAMA

- EPA strongly encourages states to “adopt at least the minimum federal criteria into their regulations and to revise the Solid Waste Management Plans (SWMPs) to demonstrate how the new minimum criteria will be implemented in the state and how the state will use the information the facilities must provide.” However, EPA recognizes that some states have stronger requirements that the Federal Rule and full adoption is NOT required.
- NC’s **timeline** for clean up is stronger than the Federal CCR rule. However, including elements of the Federal Rule that provide additional operational, monitoring and post closure standards could be a benefit to NC’s policy.
- If NC adopts the Federal CCR rule in its entirety, DEQ would assume enforcement authority. Currently, citizens must bring their own suits to gain relief under the Federal Rule.
- State implementation of the CCR rule could lead to judicial deference to the state and weaken the effectiveness of citizen suits.

U.S. Civil Rights Commission 2016 Report

“EPA should assist the North Carolina Department of Environmental Quality in proactively preventing low-income and minority communities from being disproportionately affected by coal ash disposal. Congress and relevant federal agencies should commission a study to investigate options for industry to compensate community members for health care expenses and land devaluation that results from coal ash contamination.”

-U.S. Civil Rights Commission

Obstacles to Clean up and Closure

- NC's potential adoption of the federal CCR Rule puts the closure schedule set out in CAMA in jeopardy.
- Potential enforcement discretion in the hands of DEQ weakening the power of a citizen suits.
- Increased variance discretion by DEQ for extending deadlines.
- Arbitrary EJ screening process DEQ has created, creating a potential for further delay of clean up and closure of coal ash sites.
- The elimination of high risk classification for remaining sites.
- 2017 long legislative session.

Thank you!

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