




## CCR Update

Air & Waste Management Association  
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**Steven Burns**

[sburns@balch.com](mailto:sburns@balch.com)  
(205) 541-3087

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- Timeline Issues
  - Federal Rulemaking
  - Alabama Rule
  - Litigation

# Timeline Issues



## When are CCR deliverables due?

- *Location restrictions:*
  - October 2018
- *Groundwater results:*
  - It's complicated!

# Timeline Issues

## **Detection and assessment monitoring:**

- Determine statistically significant increase (SSI)
- Alternative source demonstration
  - Not mandatory
- Resample (assessment monitoring only)

## **At the conclusion of assessment monitoring:**

- If SSI confirmed, initiate corrective measures
- Cease sending CCR and initiate closure
  - 6 months – July 15, 2019 (depending...)

## **EPA letters to USWAG:**

- Jan. 26, 2018, and Apr. 30, 2018
- Confirming *sequential* (not concurrent) timeline for each element

# Timeline Based on EPA Guidance

## **Jan. 15, 2018:**

- DM – Statistical Analysis

## **Apr. 16, 2018:**

- DM – Alternate Source Demonstration (optional)

## **July 16, 2018:**

- Initiate AM

## **Oct. 15, 2018:**

- Resample / GW Prot. Standard

## **Jan. 14, 2019:**

- AM – Statistical Analysis
  - (Alternate Source Demonstration allowed under the regulations)

## **Apr. 15, 2019:**

- Initiate Corrective Measures

## **July 14, 2019:**

- Cease Receipt & Initiate Closure



# Federal Rulemaking



## “Remand rule”:

- 1) Issues on remand from D.C. Circuit
- 2) Issues associated with WIIN Act
- 3) Use of CCR during closure
  - *Comment period closed April 30, 2018*

## **Issues on remand from the court:**

- 1) Non-GW releases that trigger corrective action
- 2) Boron on Appendix IV
- 3) Vegetation management
- 4) Alternative closure proposal

## **WIIN Act – background:**

- Passed in Dec. 2016
- Mostly a water resources statute
- Authorized EPA to approve state CCR programs

# Federal Rulemaking

## **Why does a state program matter?**

- Before the WIIN Act, EPA and states lacked direct authority under RCRA Subtitle D
- Because of that lack of direct regulatory oversight—
  - EPA’s CCR rule included conservative requirements
  - Did not include certain “flexibilities” (risk-based standards and responses) included in municipal solid waste landfill (MSWLF) regulations for decades

# Federal Rulemaking

## **WIIN Act issues:**

- “Flexibilities” adapted directly from Part 258 MSWLF regulations
  - Alternative GW protection standard if no MCL, modify corrective action requirements, etc.
- EPA also solicited comment on rule deadlines

## **Use of CCR during closure:**

- Whether and how to use CCR to support construction of cover systems
  - Generally cannot place CCR in unit 6 months after closure is triggered

# Alabama Rule





# Alabama Rule

- Alabama Environmental Management Commission recently adopted
  - Adopted: April 20, 2018
  - Effective date: June 5, 2018

# Alabama Rule

## Content:

- Largely consistent with EPA CCR rule
- Included certain “flexibilities” subject to EPA approval
- Other state-only provisions
  - Buffer, operational requirements, etc.
- Also: Boron on Appendix IV (Assessment Monitoring)

## **Significant procedural differences:**

- Permit program
  - Applications due 180 days (Dec. 3, 2018)
- Permits subject to public notice, opportunity to request hearing, etc.
- Variance authority

## **Industry perspective on ADEM's rule:**

- A permitting program improves regulatory certainty
- Better to sort through complex technical issues at agency compared to litigation

# Litigation



## **Clean Water Act cases ongoing:**

- Substance of claims:
  - “Hydrologic connection” theory
- Status:
  - Numerous trial cases and appeals pending

## Hydrologic connection theory:

- CWA regulates “point source” discharges to surface waters (rivers, streams, wetlands, etc.)
  - Discharges to groundwater **not** regulated as such
  - But what if flow continues to surface water and acts as a “conduit” of pollutants?
- EPA statements and cases are mixed

## **Status of cases:**

- Ninth and Fourth Circuits:
  - Established CWA coverage
- Appeals pending:
  - Second, Fourth, Sixth Circuits
- Numerous trial court cases pending



## **RCRA citizen suits:**

- Minor impacts thus far
- Closure plan lawsuits in N.C. dismissed on procedural grounds (ripeness, standing)
- Suits will become more likely as more CCR deliverables are posted

## “Diligent prosecution” argument:

- Federal environmental statutes say:
  - A citizen suit is not available if the state is diligently prosecuting the same claim
- Has been an issue in CWA cases
- Can be an issue for RCRA cases, in a state that adopts CCR rules and pursues enforcement

## Common law claims:

- Trespass, negligence, personal injury, etc.
- Not a huge impact thus far
  - **But** some worker safety cases have proceeded:
    - Jacobs Engineering (TVA Kingston cleanup)
    - AEP Gavin Landfill

# Questions?

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Steven Burns

(205) 226-8736 | [sburns@balch.com](mailto:sburns@balch.com)