



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

July 13, 2020

REPLY TO THE ATTENTION OF:
L-17J

Mr. Erik Booth
General Manager
Grand Haven Board of Light & Power
1700 Eaton Drive
Grand Haven, Michigan 49417

Dear Mr. Booth,

Thank you for the presentation that Grand Haven Board of Light & Power (BLP) representatives provided on April 27, 2020, and your May 14, 2020 follow-up questions regarding BLP's Harbor Island coal combustion residuals (CCR) surface impoundments. The U.S. Environmental Protection Agency has been reviewing the questions BLP raised in that presentation regarding the definition and delineation of the units, regulation of historical coal ash, and the timeline for closure. We are pleased that you have approached us with your questions, and will provide assistance as needed to aid in your compliance efforts with the CCR rule. Your May 14, 2020, email summarized those questions as follows:

1. *Is the GHBLP properly applying the definitions in Rule 257 to the Unit 3 impoundments and legacy Units 1 & 2 impoundment?*
2. *Is it correct that Rule 257 does not regulate historical coal ash that was used as fill on the Island prior to 1978?*
3. *Is it correct that rule 257 does not consider ash used as fill to be part of the legacy Units 1 & 2 impoundment even if it is adjacent or contiguous to the impoundment?*
4. *Based on the provided summary of corrective actions taken since 2018, the no alternative disposal capacity report, and the fact that both the Board of Light and Power and the City of Grand Haven have certified that we will cease operations by June 1, 2020 (and has done so) have we adequately demonstrated that we meet the requirements to use the alternate closure provisions of Rule 257.103?*

I. DEFINITIONS

Based on the information provided in slide 11 of BLP's April 27, 2020, PowerPoint presentation, EPA offers the following interpretations of how the definitions at 40 C.F.R. § 257.53 apply to the Unit 3 impoundments and the Unit 1 & 2 impoundment:

- The Units 1 & 2 impoundment, as well as the Unit 3 impoundments, meet the definition of “CCR Unit.” 40 C.F.R. § 257.53 defines a “CCR Unit” to mean any CCR landfill, CCR surface impoundment, or lateral expansion of a CCR unit, or a combination of more than one of these units, based on the context of the paragraph(s) in which it is used. EPA does not read that definition to be limited by the last sentence: “[t]his term includes both new and existing units, unless otherwise specified.”
- EPA agrees that the Units 1 & 2 impoundment, as well as the Unit 3 impoundments, meet the definition of “CCR Surface Impoundment.”
- EPA agrees that the Unit 3 impoundments meet the definition of “Existing CCR Surface Impoundment,” because they received CCR both before and after October 19, 2015.
- The Units 1 & 2 impoundment meets the definition of “Inactive CCR Surface Impoundment,” because it no longer received CCR on or after October 19, 2015 and still contained both CCR and liquids on or after October 19, 2015.

This means all the requirements in 40 C.F.R. Part 257, Subpart D (federal CCR rule) that apply to an Inactive CCR Surface Impoundment, including those that apply to a CCR Unit, apply to the Units 1 & 2 impoundment. Furthermore, 40 C.F.R. § 257.100(a) provides that inactive CCR surface impoundments are also subject to all of the requirements of the federal CCR rule applicable to existing CCR surface impoundments.

II. PART 257 APPLICATION TO PRE-1979 CCR and DELINEATION OF THE UNITS 1 & 2 IMPOUNDMENT

The federal regulations do not exclude pre-1978 CCR from the definition of solid waste. Our response regarding the definition of the Units 1 & 2 impoundment, however, does not mean EPA has reached a position on the size of the Units 1 & 2 impoundment. Older photographs, provided by the Michigan Department of Environment, Great Lakes & Energy (EGLE), of the area surrounding the Units 1 & 2 impoundment suggest various methods of ash disposal beyond the proposed removal boundary for the impoundment. In addition, photos taken after the October 19, 2015 effective date of the federal CCR rule indicate some of these areas beyond the proposed boundary also held water. While we can confirm that the areas within the proposed boundary for the Units 1 & 2 impoundment are subject to the requirements under the federal CCR rule, it is not clear if the proposed boundaries capture all areas where ash was disposed of, and which also held water after October 19, 2015. We encourage you to continue to characterize the extent and manner of ash placement beyond the current proposed boundaries of the Units 1 & 2 impoundment.

To the extent that there is CCR or other solid waste remaining at the facility beyond what can or will be delineated as part of the units to be addressed under the CCR rules, other avenues for addressing that material and the related contamination and impacts may be needed.

III. CLOSURE DEADLINES

EPA also looked at BLP’s question on whether it has adequately demonstrated that it meets the requirements to use the alternate closure provisions of 40 C.F.R. § 257.103.

EPA reviewed information on BLP's *CCR Rule Compliance Data & Information* publicly accessible Internet site (BLP's CCR website), which refers to 40 C.F.R. § 257.103(b), as no other documentation was provided. That information suggests BLP does not meet the conditions in 40 C.F.R. § 257.103(b).

Among other things, those provisions require documentation that no alternative disposal capacity is available on-site or off-site and that an owner or operator remains in compliance with all other requirements of the federal CCR rule.

With respect to documenting no alternative CCR disposal capacity under 40 C.F.R. § 257.103(b)(1)(i), the July 8, 2019 *No Alternate Disposal Capacity Documentation Report* on BLP's CCR website does not explain why it was "impractical" to separate the CCR wastewater stream from the blowdown water. A demonstration that it would have been costly or inconvenient does not suffice under the federal CCR rule.

BLP has also not demonstrated that it meets the compliance conditions in 40 C.F.R. § 257.103(b)(1)(ii). The information EPA reviewed raised questions about BLP's compliance with the requirements in the federal CCR rule. The regulation on groundwater monitoring systems at 40 C.F.R. § 257.91 requires a sufficient number of wells correctly placed that yield groundwater samples from the uppermost aquifer that accurately represent background groundwater and the quality of groundwater passing through the waste boundary of the unit. Based on the information on BLP's CCR website, it is not clear that BLP's groundwater monitoring system meets these requirements. Moreover, groundwater monitoring results indicate assessment of corrective measures has been initiated pursuant to 40 C.F.R. §§ 257.96 through 257.98. However, the information on BLP's CCR website does not indicate BLP has posted an assessment of corrective measures, as required by 40 C.F.R. § 257.96, after posting an initiation of corrective measures in February 2019, under 40 C.F.R. § 257.95(g). The assessment of corrective measures report is required to be posted within 90 days of finding that any constituent listed in Appendix IV to part 257 has been detected at a statistically significant level exceeding a groundwater protection standard defined under 40 C.F.R. § 257.95(h). In both of these ways, BLP has not adequately demonstrated compliance.

The requirements to be eligible to close pursuant to 40 C.F.R. § 257.103(b) also require that closure is completed for the CCR surface impoundment by October 17, 2023 for surface impoundments 40 acres and smaller and by October 17, 2028 for surface impoundments larger than 40 acres. The current closure plan on BLP's CCR website shows that closure will not be completed until 2026, which is inconsistent with the requirements for 40 C.F.R. § 257.103(b) based on the size of the units provided in the closure plan.

We hope our clarifications will assist BLP in moving forward. Please let us know if there are additional questions about the application of the federal CCR Rule to the J.B. Sims site. We would be happy to have a conference call to discuss our response, as well as the topics in your June 11, 2020 email.

If you have additional questions, please contact Christopher Newman, of my staff, at (312) 353-8402 or newman.christopher@epa.gov. For legal questions, please have your counsel contact Maria Gonzalez, Associate Regional Counsel, at (312) 886-6630 or gonzalez.maria@epa.gov.

Sincerely,



Edward Nam
Director
Land Chemicals and Redevelopment Division

cc: Michigan Department of Environment, Great Lakes, and Energy:
Margie Ring, Solid Waste Engineering Coordinator, Materials Management Division
Elizabeth Browne, Acting Director, Materials Management Division
Rhonda Oyer, Solid Waste Section Manager, Materials Management Division
Fred Sellers, EGLE, Grand Rapid District Supervisor, Materials Management
Michigan Attorney General's Office:
Megen Miller
Congressman Bill Huizenga's Office:
Heather Sandberg
Jaffe Raitt Heuer & Weiss:
Arthur H. Siegal
(All via email)