INTERIM DECISION

Proposed Date to Cease Receipt of Waste for Erickson Power Station based on Interim Determination of Incompleteness of Demonstration

SUMMARY:

Lansing Board of Water and Light (BWL) submitted a demonstration (referred to as the "Demonstration" in this document) to the Environmental Protection Agency (EPA) seeking an extension pursuant to 40 C.F.R § 257.103(f)(1) to allow the coal combustion residuals (CCR) surface impoundment system consisting of the Forebay, Retention Basin, and Clear Water Pond (CWP) to continue to receive CCR and non-CCR wastestreams after April 11, 2021, at the Erickson Power Station located in Lansing, Michigan. In the Demonstration, BWL requested an alternative closure deadline of ceasing receipt of May 25, 2023. The Demonstration does not meet the standard for completeness in 40 C.F.R. § 257.103(f)(3)(ii) and therefore is incomplete. Because this interim determination is being made after the April 11, 2021 deadline to cease receipt of waste, EPA is proposing that the deadline for the CCR surface impoundment system to cease receiving waste would be 135 days after EPA's final decision in this matter after the close of the comment period.

DATES: *Comments.* Comments must be received on or before February 23, 2022.

ADDRESSES AND PUBLIC PARTICIPATION: The EPA has established a docket for this notice under Docket ID No. EPA-HQ-OLEM-2021-0589. EPA established a docket for the August 28, 2020, CCR Part A final rule under Docket ID No. EPA-HQ-OLEM-2019-0172. All documents in the docket are listed in the https://www.regulations.gov index. Publicly available docket materials are available either electronically at https://www.regulations.gov or in hard

copy at the EPA Docket Center. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742. You may send comments, identified by Docket ID. No. EPA-HQ-OLEM-2021-0589, by any of the following methods:

- Federal e-Rulemaking Portal: https://www.regulations.gov/ (our preferred method). Follow the online instructions for submitting comments.
- Mail: U.S. Environmental Protection Agency, EPA Docket Center, Office of Land and Emergency Management, Docket ID No. EPA-HQ-OLEM-2021-0589, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- Hand Delivery or Courier (by scheduled appointment only): EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m. – 4:30 p.m., Monday – Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this action. Comments received may be posted without change to https://www.regulations.gov/, including any personal information provided. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the

primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit https://www.epa.gov/dockets/commenting-epa-dockets.

Due to public health concerns related to COVID-19, the EPA Docket Center and Reading Room are open to the public by appointment only. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at https://www.epa.gov/dockets.

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID-19.

FOR FURTHER INFORMATION CONTACT: For information concerning this proposed decision, contact:

- Kirsten Hillyer, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, MC: 5304P, Washington, DC 20460; telephone number: (202) 566-0542; email address: Hillyer.Kirsten@epa.gov.
- Frank Behan, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, MC: 5304P, Washington, DC 20460; telephone number: (202) 566-0531; email address: Behan.Frank@epa.gov.
- For more information on coal ash regulations, please visit https://www.epa.gov/coalash.

SUPPLEMENTARY INFORMATION:

I. General Information

A. What decision is the agency making?

BWL submitted the Demonstration to EPA for approval seeking an extension pursuant to 40 C.F.R. § 257.103(f)(1) to allow its impoundments to continue to receive CCR and non-CCR wastestreams after April 11, 2021. EPA has determined the Demonstration submitted by BWL for Erickson Power Station is incomplete. Consistent with 40 C.F.R. § 257.103(f)(3)(ii), EPA does not intend further process on this issue. However, because EPA reached this conclusion after the April 11, 2021 deadline to cease receipt of waste, EPA is proposing a new date for the CCR surface impoundment system consisting of the Forebay, Retention Basin, and CWP to cease receiving waste. EPA is proposing that BWL cease receipt of waste into its CCR surface impoundment system no later than 135 days after EPA's final decision after the close of the comment period. EPA is seeking comment on only the revised deadline. Consistent with 40 C.F.R. § 257.103(f)(3)(ii), at this interim stage EPA will not accept or respond to any comments on whether the Demonstration is complete.

B. What is the agency's authority for making this decision?

This notice is being issued pursuant to the authority in 40 C.F.R. § 257.103(f).

II. Background

A. Part A Final Rule

In April 2015, EPA issued its first set of regulations establishing requirements for CCR surface impoundments and landfills. (Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals From Electric Utilities, 80 FR 21301) (the "CCR Rule"). In 2020, EPA issued the CCR A Holistic Approach to Closure Part A: Deadline to Initiate Closure

rule (85 FR 53516 (Aug. 28, 2020)) (the "Part A Rule"). The Part A Rule established April 11, 2021, as the date that electric utilities must cease placing waste into all unlined CCR surface impoundments. The Part A Rule also revised the alternative closure provisions of the CCR rule (40 C.F.R. § 257.103) by allowing owners or operators to request an extension to continue to receive both CCR and non-CCR wastestreams in an unlined CCR surface impoundment after April 11, 2021 provided that certain criteria are met. EPA established two site-specific alternatives to initiate closure of CCR surface impoundments (40 C.F.R. § 257.103(f)), commonly known as extensions to the date to cease receipt of waste: 1) development of alternative capacity by the April 11, 2021 deadline is technically infeasible (40 C.F.R. § 257.103(f)(1)), and 2) permanent cessation of a coal-fired boiler(s) by a date certain (40 C.F.R. § 257.103(f)(2)).

The first site-specific alternative to initiate closure of CCR surface impoundments is *Development of Alternative Capacity is Technically Infeasible* (40 C.F.R. § 257.103(f)(1)). Under this alternative, an owner or operator may submit a demonstration seeking EPA approval to continue using its unlined surface impoundment for the specific amount of time needed to develop alternative disposal capacity for its CCR and non-CCR wastestreams. The demonstration must meet the requirements at 40 C.F.R. § 257.103(f)(1). To have an alternative deadline approved, the regulation requires the facility to demonstrate that: 1) no alternative disposal capacity is currently available on- or off-site of the facility; 2) the CCR and/or non-CCR waste stream must continue to be managed in that CCR surface impoundment because it was technically infeasible to complete the measures necessary to obtain alternative disposal capacity either on or off-site at the facility by April 11, 2021; and 3) the facility is in compliance with all the requirements of 40 C.F.R. subpart D. 40 C.F.R. § 257.103(f)(1)(i)-(iii). To support the

requested alternative deadline, the facility must submit detailed information demonstrating that the amount of time requested is the fastest technically feasible time to complete development of alternative disposal capacity. 40 C.F.R. § 257.103(f)(1)(iv)(A).

The second site-specific alternative to initiate closure of CCR surface impoundments is for the owner or operator to demonstrate that it will permanently cease operation of coal-fired boilers at the facility. *Permanent Cessation of Coal-Fired Boiler(s) by a Date Certain*, (40 C.F.R. § 257.103(f)(2)). Under this alternative an owner or operator may submit a demonstration seeking EPA approval to continue using an unlined CCR surface impoundment in the interim period prior to permanently stopping operation of coal-fired boiler(s) at the facility. The demonstration must meet the requirements at 40 C.F.R. § 257.103(f)(2). The owner or operator must show that 1) the facility will cease operation of coal-fired boiler(s) and complete closure of the CCR surface impoundment(s) by the specified deadlines (no later than October 17, 2023 for impoundments 40 acres or smaller and no later than October 17, 2028 for impoundments larger than 40 acres); and 2) in the interim period prior to the closure of the coal-fired boiler, the facility must continue to use the CCR surface impoundment due to the absence of alternative disposal capacity both on-site or off-site. *Id*. Unlike the requirements for the first alternative, the owner or operator does not need to develop alternative disposal capacity. The regulations require a demonstration that: 1) no alternative disposal capacity is available on or off-site of the facility; 2) the risks from continued use of the impoundment have been adequately mitigated; 3) the facility is in compliance with all other requirements of 40 C.F.R. part 257 subpart D; and 4) closure of both the impoundment and the coal-fired boiler(s) will be completed in the allowed time. 40 C.F.R. § 257.103(f)(2)(i)-(iv).

III. EPA Analysis of Demonstration

BWL submitted the Demonstration electronically to the EPA Administrator on November 27, 2020. This Demonstration requested authorization to continue using the CCR surface impoundment system consisting of the Forebay, Retention Basin, and CWP until May 25, 2023, pursuant to the alternative closure provision at 40 C.F.R. § 257.103(f)(1). EPA conducted a completeness review of the Demonstration and has determined that it fails to contain all the information required by 40 C.F.R. § 257.103(f)(1). EPA therefore considers this Demonstration to be incomplete. Since this notice is being provided it is after April 11, 2021, EPA is setting a new date for BWL to cease receipt of waste into the Forebay, Retention Basin, and CWP. EPA is proposing for BWL to cease placement of all CCR and non-CCR wastestreams into the Forebay, Retention Basin, and CWP no later than 135 days after EPA's final decision.

To qualify for the alternative closure provision 40 C.F.R. § 257.103(f)(1), which provides for site-specific alternative deadlines to initiate closure of CCR surface impoundments, a facility must demonstrate that "the facility is in compliance with all of the requirements of this subpart." 40 C.F.R. § 257.103(f)(1)(iii). To make this demonstration, the regulation requires the Demonstration to include, inter alia, "constituent concentrations, summarized in table form, at each groundwater monitoring well monitored during each sampling event." 40 C.F.R. § 257.103(f)(1)(iii)(B)(3). Consistent with the purpose of the requirement (i.e., to document that the facility is in fact in compliance with regulations), this provision requires the submission of groundwater monitoring results from all sampling events required under the regulations. As explained in the preamble to the final rule, the certification of compliance with the regulations "provides critical support for a decision to allow continued operation of the online impoundment. This means that EPA must be able to affirmatively conclude that the facility meets this criterion

prior to authorizing any continued operation of the unlined impoundment." 85 Fed. Reg. 53,543. The Demonstration contained only constituent concentrations collected during the October 19, 2020 and November 6, 2020, sampling events. The Demonstration included no concentrations from sampling between October 17, 2017, when the regulations require sampling to have been initiated, and October 19, 2020. See 40 C.F.R. § 257.90(b)(1). The Demonstration is missing data from at least six sampling events (six is the minimum number of sampling events required under the regulations, presuming the facility had never detected a statistically significant increase above background for any Appendix III constituents, thereby triggering assessment monitoring). The actual amount of data required under the regulations for this facility could potentially be greater, depending on whether and when assessment monitoring was triggered. See 40 C.F.R. §§ 257.94(b) and 257.95(b), (d).

Due to this deficiency, EPA concludes that the submitted Demonstration is incomplete. As specified in 40 C.F.R. § 257.103(f)(3)(ii), the Agency intends no further process on this issue. Because EPA reached this interim decision after April 11, 2021, and for the reasons set out further below, EPA is seeking comment on the date by which the Forebay, Retention Basin, and CWP must cease receipt of waste.

EPA is proposing that the Forebay, Retention Basin, and CWP cease receipt of waste no later than 135 days after EPA's final decision after the close of the comment period.

IV. Proposed Date to Cease Receipt of Waste

EPA is proposing that BWL must cease receipt of waste 135 days after the Agency's final decision establishing the revised deadline. EPA is further proposing that, under certain circumstances described below, EPA could authorize additional time for BWL to continue to use

the impoundment to the extent necessary to address demonstrated grid reliability issues, if any, provided that BWL submits a planned outage or suspension request to Midcontinent Independent System Operator (MISO) within 15 days of the date of EPA's final decision and BWL provides the MISO request to reschedule the planned outage or suspension and the formal reliability assessment upon which it is based to EPA within 10 days of receiving them.

The regulations state that, when EPA denies an application for an extension, the final decision will include the facility's deadline to cease receipt of waste, but they do not provide direction on what the new deadline should be. 40 C.F.R. § 257.103(f)(3). EPA is proposing to set a new deadline for BWL to cease receipt of waste that would be 135 days after the final decision on BWL's new deadline. This would provide BWL the same amount of time that would have been available to the facility had EPA determined the application to be incomplete immediately upon the regulatory deadline for receipt of the Demonstration (i.e., from November 30, 2020, to April 11, 2021, the regulatory deadline to cease receipt of waste). This amount of time thus puts the facility in the same place it would have been had EPA immediately acted on the Demonstration and therefore adequately accounts for any equitable reliance interest BWL may have had after submitting its Demonstration. Moreover, as discussed further below, this date should provide BWL with adequate time to coordinate with MISO for any outage or suspension of the coal-fired boilers that may be necessary.

Given that this proposed deadline (135 days after EPA's final decision) is sooner than the deadline requested by BWL, if this deadline is finalized it is likely that the coal-fired boiler associated with the CCR units will temporarily need to stop producing waste (and therefore power) until either construction of an alternative disposal option is completed and commercially

operational or some other arrangements are made to manage its CCR and/or non-CCR wastestreams.

In BWL's Demonstration it noted that the coal-fired boiler is required to operate to reliably meet the electric service needs of its customers. EPA does not have independent evidence showing that the temporary outage of the coal-fired boiler at this facility would affect the reliability of the grid.

This facility operates as part of the MISO system. MISO is a regional transmission organization (RTO) that is part of the Eastern Interconnection grid. MISO currently has excess generating capacity, and consequently, an adequate reserve margin. A reserve margin is a measure of the system's generating capability above the amount required to meet the system's peak load.[1] MISO's target reserve margin[2] for the region for 2021 is 18.3%.[3] The anticipated reserve margin for 2021 is projected to be 21.6%.

The exceedance of MISO's existing target reserve margin, combined with scheduled new capacity coming online into the market and the ability to purchase electricity from facilities outside MISO, suggests that the temporary outage at Erickson would not adversely affect resource adequacy requirements. EPA has not seen any information to indicate that an extended planned outage or suspension at Erickson would trigger local reliability violations.[4] Additionally,

[1] Reserve margin is defined as the difference between total dependable capacity and annual system peak load (net internal demand) divided by annual system peak load.
[2] The target reserve margin, also known as the Installed Reserve Margin or the Reference Reserve Margin, is the "metric…used by system planners to quantify the amount of reserve capacity in the system above the forecasted peak demand that is needed to ensure sufficient supply to meet peak loads." The term used to describe this metric varies by assessment area. North American Electric Reliability Corporation, Summer 2021 Reliability Assessment, page 41, https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC%20SRA%202021.pdf.
[3] North American Electric Reliability Corporation, Summer 2021 Reliability Assessment, page 42 (where "Reference" Reserve Margin Level refers to MISO's Installed Reserve Margin).
[4] A local reliability violation might occur, for example, if transmission line constraints limit the amount of power that can get to an area from plants outside that area.

especially with the advance notice, there are a wide array of tools available to utilities, system operators, and State and Federal regulators to address situations where the outage or suspension of a generating unit might otherwise affect local electric reliability conditions.

Nonetheless, EPA is sensitive to the importance of maintaining enough electricity generating capacity to meet the region's energy needs, including meeting specific, localized issues. EPA understands that it is possible that in some instances temporarily taking any large generating units (including coal-fired units) offline could have an adverse, localized impact on electric reliability (e.g., voltage support, local resource adequacy), although BWL has presented no evidence that such is the case with this facility.

If a generating asset were needed for local reliability requirements, the grid operator (e.g., MISO) might request the generator to reschedule the planned outage or suspension and offer a suggested alternative schedule. In such instances, the owners/operators of the generating unit could find themselves in the position of either operating in noncompliance with RCRA or halting operations and thereby potentially causing adverse reliability conditions.

EPA is obligated to ensure compliance with RCRA to protect human health and the environment. Where there is a conflict between timely compliance and electric reliability, EPA intends to carefully exercise its authorities to ensure compliance with RCRA while taking into account any genuine, demonstrated risks to grid reliability identified through the process established by MISO that governs owner/operator requests for planned outages and/or suspension requests.[5]

[5] *See, e.g.*, MISO Tariff, Module C, Energy and Operating Reserve Markets, Effective On: November 19, 2013 (Sections 38.2.5 and 38.2.7), available for download at https://www.misoenergy.org/legal/tariff/.

Accordingly, EPA is proposing to rely on established processes and authorities used by MISO to determine whether a planned outage or suspension necessary to meet the new deadline would cause a demonstrated reliability issue.

MISO is responsible for coordinating and approving requests for planned outages of generation and transmission facilities, as necessary, for the reliable operation of the MISO RTO.[6] In MISO, power plants are normally to submit a request at least 120 days in advance of a planned outage or 26 weeks in advance of a planned suspension to allow MISO to evaluate whether the resource is needed to maintain grid reliability, among other scheduling considerations. MISO will request the event be rescheduled if it determines that the planned outage or suspension would adversely affect reliability. If MISO approves a planned outage or suspension request, the outage may proceed and there would be no reason to expect that the outage would affect reliability. However, if a request would cause reliability issues, MISO will work with BWL to implement appropriate solutions. The MISO member may also request MISO's assistance in scheduling a planned outage.

MISO may rely on different bases in determining whether to request the generating facility to reschedule a planned outage. For example, a reschedule request may be issued because of timing considerations taking into account previously approved planned outage requests, in which case EPA would expect the plant owner to work with MISO to plan an outage schedule that can be approved by MISO and also satisfies the plant owner's RCRA obligations, without regard to any cost implications (e.g., in meeting any contractual obligations with third parties) that may result for the plant owner under a revised proposed outage schedule.

[6] *See*, MISO Outage Operations Business Practices Manual, BPM-008-r19, Effective Date: September 21, 2021, page 14, available for download at https://www.misoenergy.org/legal/business-practice-manuals/.

Alternatively, however, in some cases, MISO might determine that the planned outage or suspension could not occur without triggering operational reliability violations. In such cases, the system operator might determine that the generating unit would need to remain in operation until remedies are implemented. BWL has presented no evidence that such is the case with this facility.

For Erickson, EPA is proposing to rely on MISO's procedures for reviewing planned maintenance outage and similar requests. Accordingly, EPA is proposing that, if MISO approves BWL's request, EPA would not grant any further extension of the deadline to cease receipt of waste (i.e., the deadline would be 135 days after EPA's final decision). If, however, MISO requests that BWL move its planned outage or requires alternative solutions to be implemented prior to an outage or suspension that exceeds the compliance timeline allowable under RCRA based on a technical demonstration of operational reliability issues, EPA is proposing that, based on its review of that decision and its bases, EPA could grant a further extension (i.e., beyond 135 days after EPA's final decision).

EPA is further proposing that such a request could only be granted if it were supported by the results of the formal reliability assessment(s) conducted by MISO that established that the temporary outage of the boiler during the period needed to complete construction of alternative disposal capacity would have an adverse impact on reliability. In such a case EPA is proposing that, without additional notice and comment, it could authorize continued use of the impoundment for either the amount of time provided in an alternative schedule proposed by MISO or the amount of time EPA determines is needed to complete construction of alternative disposal capacity based on its review of the Demonstration, whichever is shorter. EPA is further proposing that a request from MISO to move a requested outage or delay a suspension until other

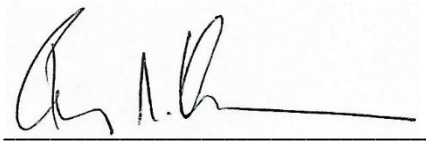
solutions are in place without a finding of technical infeasibility for demonstrated reliability concerns would not support EPA's approval of an extension of the date to cease receipt of waste because any concern about outage schedules and their implications for plant economics could be resolved without an extension of RCRA compliance deadlines (e.g., through provision of replacement power and/or capacity; rearranging plant maintenance schedules; reconfiguration of equipment).

To obtain an extension, EPA is proposing that BWL must submit a request for an outage or suspension to MISO within 15 days of the date of EPA's final decision. To avoid the need for serial requests and submissions to MISO, EPA is proposing to require BWL to contact MISO and request assistance in scheduling the planned outage so that BWL and MISO can determine the shortest period of time during an overall planned outage or suspension period in which the generating unit must be online to avoid a reliability violation. EPA expects that the plant owner and MISO would plan the outage(s) and return-to-service periods – and any other needed accommodations – in ways that minimize the period of actual plant operations.

Finally, to obtain an extension from EPA, BWL must submit a copy of the request to MISO and the MISO determination (including the formal reliability assessment) to EPA within 10 days of receiving the response from MISO. EPA would review the request and, without further notice and comment, issue a decision.

One hundred and thirty-five days should normally provide adequate time to schedule a planned outage of a generating unit in coordination with MISO. According to the MISO Tariff, section 38.2.5 (at PDF page 628), the normal process for obtaining approval for a planned outage

occurs within three months.[7] If a suspension is necessary, EPA expects the facility to work with MISO during the 135 days to try to obtain a decision. If the facility is unable to obtain a decision before the end of this period, upon a showing that the facility submitted a timely request to MISO, EPA would grant the additional time necessary for MISO to reach a decision. However, EPA solicits comment on whether 135 days after the final decision provides sufficient time to accommodate the normal process of obtaining approval for a planned outage.



January 11, 2022
Date

Barry N. Breen
Acting Assistant Administrator

[7] MISO Tariff, Effective On: November 19, 2013, available for download at https://www.misoenergy.org/legal/tariff/.