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materials generated at facilities that are not part of an electric utility or independent power producer, such as manufacturing facilities, universities, and hospitals. This subpart also does not apply to fly ash, bottom ash, boiler slag, and flue gas desulfurization materials, generated primarily from the combustion of fuels (including other fossil fuels) other than coal, for the purpose of generating electricity unless the fuel burned consists of more than fifty percent (50%) coal on a total heat input or mass input basis, whichever results in the greater mass feed rate of coal.

(g) This subpart does not apply to practices that meet the definition of a beneficial use of CCR.

(h) This subpart does not apply to CCR placement at active or abandoned underground or surface coal mines.

(i) This subpart does not apply to municipal solid waste landfills that receive CCR.

§ 257.51 Effective date of this subpart.

The requirements of this subpart take effect on October 19, 2015.

§ 257.52 Applicability of other regulations.

(a) Compliance with the requirements of this subpart does not affect the need for the owner or operator of a CCR landfill, CCR surface impoundment, or lateral expansion of a CCR unit to comply with all other applicable federal, state, tribal, or local laws or other requirements.

(b) Any CCR landfill, CCR surface impoundment, or lateral expansion of a CCR unit continues to be subject to the requirements in §§ 257.3-1, 257.3-2, and 257.3-3.

§ 257.53 Definitions.

The following definitions apply to this subpart. Terms not defined in this section have the meaning given by RCRA.

Acre foot means the volume of one acre of surface area to a depth of one foot.

Active facility or active electric utilities or independent power producers means any facility subject to the requirements of this subpart that is in operation on October 19, 2015. An electric

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utility or independent power producer is in operation if it is generating electricity that is provided to electric power transmission systems or to electric power distribution systems on or after October 19, 2015. An off-site disposal facility is in operation if it is accepting or managing CCR on or after October 19, 2015.

Active life or in operation means the period of operation beginning with the initial placement of CCR in the CCR unit and ending at completion of closure activities in accordance with § 257.102.

Active portion means that part of the CCR unit that has received or is receiving CCR or non-CCR waste and that has not completed closure in accordance with § 257.102.

Aquifer means a geologic formation, group of formations, or portion of a formation capable of yielding usable quantities of groundwater to wells or springs.

Area-capacity curves means graphic curves which readily show the reservoir water surface area, in acres, at different elevations from the bottom of the reservoir to the maximum water surface, and the capacity or volume, in acre-feet, of the water contained in the reservoir at various elevations.

Areas susceptible to mass movement means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where, because of natural or human-induced events, the movement of earthen material at, beneath, or adjacent to the CCR unit results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluctuation, block sliding, and rock fall.

Beneficial use of CCR means the CCR meet all of the following conditions:

- (1) The CCR must provide a functional benefit;
- (2) The CCR must substitute for the use of a virgin material, conserving natural resources that would otherwise need to be obtained through practices, such as extraction;

(3) The use of the CCR must meet relevant product specifications, regulatory standards or design standards when available, and when such standards are not available, the CCR is not used in excess quantities; and

(4) When unencapsulated use of CCR involving placement on the land of 12,400 tons or more in non-roadway applications, the user must demonstrate and keep records, and provide such documentation upon request, that environmental releases to groundwater, surface water, soil and air are comparable to or lower than those from analogous products made without CCR, or that environmental releases to groundwater, surface water, soil and air will be at or below relevant regulatory and health-based benchmarks for human and ecological receptors during use.

Closed means placement of CCR in a CCR unit has ceased, and the owner or operator has completed closure of the CCR unit in accordance with § 257.102 and has initiated post-closure care in accordance with § 257.104.

Coal combustion residuals (CCR) means fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers.

CCR fugitive dust means solid airborne particulate matter that contains or is derived from CCR, emitted from any source other than a stack or chimney.

CCR landfill or landfill means an area of land or an excavation that receives CCR and which is not a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground or surface coal mine, or a cave. For purposes of this subpart, a CCR landfill also includes sand and gravel pits and quarries that receive CCR, CCR piles, and any practice that does not meet the definition of a beneficial use of CCR.

CCR pile or pile means any non-containerized accumulation of solid, non-flowing CCR that is placed on the land. CCR that is beneficially used off-site is not a CCR pile.

CCR surface impoundment or impoundment means a natural topographic de-

pression, man-made excavation, or diked area, which is designed to hold an accumulation of CCR and liquids, and the unit treats, stores, or disposes of CCR.

CCR unit means 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. This term includes both new and existing units, unless otherwise specified.

Dike means an embankment, berm, or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

Displacement means the relative movement of any two sides of a fault measured in any direction.

Disposal means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste as defined in section 1004(27) of the Resource Conservation and Recovery Act into or on any land or water so that such solid waste, or constituent thereof, may enter the environment or be emitted into the air or discharged into any waters, including groundwaters. For purposes of this subpart, disposal does not include the storage or the beneficial use of CCR.

Downstream toe means the junction of the downstream slope or face of the CCR surface impoundment with the ground surface.

Encapsulated beneficial use means a beneficial use of CCR that binds the CCR into a solid matrix that minimizes its mobilization into the surrounding environment.

Existing CCR landfill means a CCR landfill that receives CCR both before and after October 19, 2015, or for which construction commenced prior to October 19, 2015 and receives CCR on or after October 19, 2015. A CCR landfill has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous on-site, physical construction program had begun prior to October 19, 2015.

Existing CCR surface impoundment means a CCR surface impoundment that receives CCR both before and after

October 19, 2015, or for which construction commenced prior to October 19, 2015 and receives CCR on or after October 19, 2015. A CCR surface impoundment has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous on-site, physical construction program had begun prior to October 19, 2015.

Facility means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, disposing, or otherwise conducting solid waste management of CCR. A facility may consist of several treatment, storage, or disposal operational units (*e.g.*, one or more landfills, surface impoundments, or combinations of them).

Factor of safety (Safety factor) means the ratio of the forces tending to resist the failure of a structure to the forces tending to cause such failure as determined by accepted engineering practice.

Fault means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

Flood hydrograph means a graph showing, for a given point on a stream, the discharge, height, or other characteristic of a flood as a function of time.

Freeboard means the vertical distance between the lowest point on the crest of the impoundment dike and the surface of the waste contained therein.

Free liquids means liquids that readily separate from the solid portion of a waste under ambient temperature and pressure.

Groundwater means water below the land surface in a zone of saturation.

Hazard potential classification means the possible adverse incremental consequences that result from the release of water or stored contents due to failure of the diked CCR surface impoundment or mis-operation of the diked CCR surface impoundment or its appurtenances. The hazardous potential classifications include high hazard potential CCR surface impoundment, significant hazard potential CCR surface impoundment, and low hazard potential

CCR surface impoundment, which terms mean:

(1) *High hazard potential CCR surface impoundment* means a diked surface impoundment where failure or mis-operation will probably cause loss of human life.

(2) *Low hazard potential CCR surface impoundment* means a diked surface impoundment where failure or mis-operation results in no probable loss of human life and low economic and/or environmental losses. Losses are principally limited to the surface impoundment owner's property.

(3) *Significant hazard potential CCR surface impoundment* means a diked surface impoundment where failure or mis-operation results in no probable loss of human life, but can cause economic loss, environmental damage, disruption of lifeline facilities, or impact other concerns.

Height means the vertical measurement from the downstream toe of the CCR surface impoundment at its lowest point to the lowest elevation of the crest of the CCR surface impoundment.

Holocene means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch, at 11,700 years before present, to present.

Hydraulic conductivity means the rate at which water can move through a permeable medium (*i.e.*, the coefficient of permeability).

Inactive CCR surface impoundment means a CCR surface impoundment that no longer receives CCR on or after October 19, 2015 and still contains both CCR and liquids on or after October 19, 2015.

Incised CCR surface impoundment means a CCR surface impoundment which is constructed by excavating entirely below the natural ground surface, holds an accumulation of CCR entirely below the adjacent natural ground surface, and does not consist of any constructed diked portion.

Indian country or Indian lands means:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running throughout the reservation;

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(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of the State; and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights of way running through the same.

Indian Tribe or Tribe means any Indian tribe, band, nation, or community recognized by the Secretary of the Interior and exercising substantial governmental duties and powers on Indian lands.

Inflow design flood means the flood hydrograph that is used in the design or modification of the CCR surface impoundments and its appurtenant works.

In operation means the same as *active life*.

Karst terrain means an area where karst topography, with its characteristic erosional surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terranes include, but are not limited to, dolines, collapse shafts (sinkholes), sinking streams, caves, seeps, large springs, and blind valleys.

Lateral expansion means a horizontal expansion of the waste boundaries of an existing CCR landfill or existing CCR surface impoundment made after October 19, 2015.

Liquefaction factor of safety means the factor of safety (safety factor) determined using analysis under liquefaction conditions.

Lithified earth material means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

Maximum horizontal acceleration in lithified earth material means the maximum expected horizontal acceleration

at the ground surface as depicted on a seismic hazard map, with a 98% or greater probability that the acceleration will not be exceeded in 50 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

New CCR landfill means a CCR landfill or lateral expansion of a CCR landfill that first receives CCR or commences construction after October 19, 2015. A new CCR landfill has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous on-site, physical construction program had begun after October 19, 2015. Overfills are also considered new CCR landfills.

New CCR surface impoundment means a CCR surface impoundment or lateral expansion of an existing or new CCR surface impoundment that first receives CCR or commences construction after October 19, 2015. A new CCR surface impoundment has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous on-site, physical construction program had begun after October 19, 2015.

Operator means the person(s) responsible for the overall operation of a CCR unit.

Overfill means a new CCR landfill constructed over a closed CCR surface impoundment.

Owner means the person(s) who owns a CCR unit or part of a CCR unit.

Poor foundation conditions mean those areas where features exist which indicate that a natural or human-induced event may result in inadequate foundation support for the structural components of an existing or new CCR unit. For example, failure to maintain static and seismic factors of safety as required in §§ 257.73(e) and 257.74(e) would cause a poor foundation condition.

Probable maximum flood means the flood that may be expected from the most severe combination of critical meteorologic and hydrologic conditions that are reasonably possible in the drainage basin.

Qualified person means a person or persons trained to recognize specific appearances of structural weakness and other conditions which are disrupting or have the potential to disrupt the operation or safety of the CCR unit by visual observation and, if applicable, to monitor instrumentation.

Qualified professional engineer means an individual who is licensed by a state as a Professional Engineer to practice one or more disciplines of engineering and who is qualified by education, technical knowledge and experience to make the specific technical certifications required under this subpart. Professional engineers making these certifications must be currently licensed in the state where the CCR unit(s) is located.

Recognized and generally accepted good engineering practices means engineering maintenance or operation activities based on established codes, widely accepted standards, published technical reports, or a practice widely recommended throughout the industry. Such practices generally detail approved ways to perform specific engineering, inspection, or mechanical integrity activities.

Retrofit means to remove all CCR and contaminated soils and sediments from the CCR surface impoundment, and to ensure the unit complies with the requirements in §257.72

Representative sample means a sample of a universe or whole (e.g., waste pile, lagoon, and groundwater) which can be expected to exhibit the average properties of the universe or whole. See EPA publication SW-846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Chapter 9 (available at EPA website Hazardous Waste Test Methods) for a discussion and examples of representative samples.

Run-off means any rainwater, leachate, or other liquid that drains over land from any part of a CCR landfill or lateral expansion of a CCR landfill.

Run-on means any rainwater, leachate, or other liquid that drains over land onto any part of a CCR landfill or lateral expansion of a CCR landfill.

Sand and gravel pit or quarry means an excavation for the extraction of aggregate, minerals or metals. The term

sand and gravel pit and/or quarry does not include subsurface or surface coal mines.

Seismic factor of safety means the factor of safety (safety factor) determined using analysis under earthquake conditions using the peak ground acceleration for a seismic event with a 2% probability of exceedance in 50 years, equivalent to a return period of approximately 2,500 years, based on the U.S. Geological Survey (USGS) seismic hazard maps for seismic events with this return period for the region where the CCR surface impoundment is located.

Seismic impact zone means an area having a 2% or greater probability that the maximum expected horizontal acceleration, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10 g in 50 years.

Slope protection means engineered or non-engineered measures installed on the upstream or downstream slope of the CCR surface impoundment to protect the slope against wave action or erosion, including but not limited to rock riprap, wooden pile, or concrete revetments, vegetated wave berms, concrete facing, gabions, geotextiles, or fascines.

Solid waste management or management means the systematic administration of the activities which provide for the collection, source separation, storage, transportation, processing, treatment, or disposal of solid waste.

State means any of the fifty States in addition to the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

State Director means the chief administrative officer of the lead state agency responsible for implementing the state program regulating disposal in CCR landfills, CCR surface impoundments, and all lateral expansions of a CCR unit.

Static factor of safety means the factor of safety (safety factor) determined using analysis under the long-term, maximum storage pool loading condition, the maximum surcharge pool loading condition, and under the end-of-construction loading condition.

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Structural components mean liners, leachate collection and removal systems, final covers, run-on and run-off systems, inflow design flood control systems, and any other component used in the construction and operation of the CCR unit that is necessary to ensure the integrity of the unit and that the contents of the unit are not released into the environment.

Unstable area means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity, including structural components of some or all of the CCR unit that are responsible for preventing releases from such unit. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terrains.

Uppermost aquifer means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary. Upper limit is measured at a point nearest to the natural ground surface to which the aquifer rises during the wet season.

Waste boundary means a vertical surface located at the hydraulically downgradient limit of the CCR unit. The vertical surface extends down into the uppermost aquifer.

[80 FR 21468, Apr. 17, 2015, as amended at 80 FR 37991, July 2, 2015]

LOCATION RESTRICTIONS

§ 257.60 Placement above the uppermost aquifer.

(a) New CCR landfills, existing and new CCR surface impoundments, and all lateral expansions of CCR units must be constructed with a base that is located no less than 1.52 meters (five feet) above the upper limit of the uppermost aquifer, or must demonstrate that there will not be an intermittent, recurring, or sustained hydraulic connection between any portion of the base of the CCR unit and the uppermost aquifer due to normal fluctuations in groundwater elevations (including the seasonal high water table). The owner or operator must demonstrate by the dates specified in paragraph (c) of this section that the CCR unit meets the minimum requirements

for placement above the uppermost aquifer.

(b) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer stating that the demonstration meets the requirements of paragraph (a) of this section.

(c) The owner or operator of the CCR unit must complete the demonstration required by paragraph (a) of this section by the date specified in either paragraph (c)(1) or (2) of this section.

(1) For an existing CCR surface impoundment, the owner or operator must complete the demonstration no later than October 17, 2018.

(2) For a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit, the owner or operator must complete the demonstration no later than the date of initial receipt of CCR in the CCR unit.

(3) The owner or operator has completed the demonstration required by paragraph (a) of this section when the demonstration is placed in the facility's operating record as required by § 257.105(e).

(4) An owner or operator of an existing CCR surface impoundment who fails to demonstrate compliance with the requirements of paragraph (a) of this section by the date specified in paragraph (c)(1) of this section is subject to the requirements of § 257.101(b)(1).

(5) An owner or operator of a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit who fails to make the demonstration showing compliance with the requirements of paragraph (a) of this section is prohibited from placing CCR in the CCR unit.

(d) The owner or operator of the CCR unit must comply with the record-keeping requirements specified in § 257.105(e), the notification requirements specified in § 257.106(e), and the internet requirements specified in § 257.107(e).

§ 257.61 Wetlands.

(a) New CCR landfills, existing and new CCR surface impoundments, and all lateral expansions of CCR units must not be located in wetlands, as defined in § 232.2 of this chapter, unless