**Section 845.700 Required Closure or Retrofit of CCR Surface Impoundments**

a) Required Closure. The owner or operator of the following CCR surface impoundments must stop placing CCR or non-CCR waste streams in the CCR surface impoundment and must initiate closure of the CCR surface impoundment:

1) An existing CCR surface impoundment that has not demonstrated compliance with any of the following location restrictions:

A) Uppermost aquifer location (see Section 845.300);

B) Wetlands (see Section 845.310);

C) Fault areas (see Section 845.320);

D) Seismic impact zones (see Section 845.330); or

E) Unstable areas and floodplains (see Section 845.340).

2) The owner or operator of any CCR surface impoundment that has failed to complete the initial or any subsequent annual safety factor assessment required by Section 845.460 or that has failed to document the calculated factors of safety for the CCR surface impoundment to achieve the minimum safety factors specified in Section 845.460(a).

b) Required Closure or Retrofit. The owner or operator of an existing unlined CCR surface impoundment, as determined under Section 845.400(f), must stop placing CCR and non-CCR waste streams into that CCR surface impoundment and either retrofit or close the CCR surface impoundment in accordance with the requirements of Subpart G. The owner or operator of a CCR surface impoundment electing to retrofit must submit, in accordance with the schedule in subsection (h), the written preliminary retrofit plan under subsection 845.770(a)(3) and a construction permit application to retrofit under Section 845.770;

c) Beginning on April 21, 2021, the owner or operator of the CCR surface impoundment required to close under subsection (a), or electing to close under subsection (b), must immediately take steps to categorize the CCR surface impoundment under subsection (g) and to comply with the closure alternatives analysis requirements in Section 845.710. Within 30 days after April 21, 2021, the owner or operator must send the category designation, including a justification for the category designation, for each CCR surface impoundment to the Agency for review. The owner or operator of the CCR surface impoundment must submit a construction permit application containing a final closure plan under the schedule in subsection (h).

d) Timeframes for Closure

1) Except as provided in subsection (d)(2), the owner or operator must stop placing CCR and non-CCR waste streams in the impoundment and initiate closure within six months after failing to complete any of the demonstrations listed in subsection (a).

2) For CCR surface impoundments required to close under subsection (a)(1) or electing to close under subsection (b):

A) If, on April 21, 2021, the owner or operator of a CCR surface impoundment has not satisfied an alternative closure requirement of 40 CFR 257.103 that allows for the continued receipt of CCR or non-CCR waste streams, the owner or operator must not place CCR or non-CCR waste streams into the CCR surface impoundment after April 21, 2021.

B) If, by November 30, 2020, the owner or operator of a CCR surface impoundment has submitted a complete demonstration to USEPA seeking an alternative deadline to stop receiving waste or complete closure under 40 CFR 257.103(f), the deadline to stop receiving waste will be tolled until USEPA issues a decision. If USEPA determines that a submission is incomplete, an owner or operator must immediately stop receiving waste and comply with all applicable deadlines of Section 845.700(d)(1).

C) If USEPA disapproves the requested alternative deadline to stop receiving waste and complete closure, the owner or operator of the CCR surface impoundment must immediately stop receiving waste and initiate closure within six months after the USEPA denial of the extension and will be subject to Section 845.760(a).

D) If USEPA approves a demonstration that alternative disposal capacity is infeasible under 40 CFR 257.103(f)(1), the owner or operator must stop placing CCR or non-CCR waste streams into the CCR surface impoundment by the end of the initial time extension approved under 40 CFR 257.103 or once alternative capacity becomes available, whichever is sooner. In no case may the owner or operator of the CCR surface impoundment place CCR or non-CCR waste streams into an eligible CCR surface impoundment after October 15, 2024, or into any other CCR surface impoundment subject to closure under Section 845.700(a) or (b) after October 15, 2023.

E) If USEPA approves a demonstration for permanent cessation of coal-fired power boilers by a certain date under 40 CFR 257.103(f)(2), the owner or operator must:

i) For CCR surface impoundments that are 40 acres or smaller, stop operation of the coal-fired boiler and complete closure by October 17, 2023; or

ii) For CCR surface impoundments that are larger than 40 acres, stop operation of the coal-fired boiler and complete closure by October 17, 2028.

F) The USEPA's decision to approve or deny the demonstration requesting an alternative deadline to initiate closure must within 30 days be submitted to the Agency and placed in the facility's operating record as required by Section 845.800(d)(19).

G) Failure to remain in compliance with any of the requirements of this Part will result in the automatic loss of authorization under subsections (d)(2)(D) and (d)(2)(E).

H) The owner or operator of the CCR surface impoundment with a USEPA-approved extension will not be given extensions of the timeframes for completion of closure under Section 845.760(c).

e) Semi-Annual Reports. The owner or operator of a CCR surface impoundment closing under the time frames in subsections (d)(2)(B) and (d)(2)(C) must prepare semi-annual reports consistent with the requirements in 40 CFR 257.103(f)(1)(x), incorporated by reference in Section 845.150, until the owner or operator has initiated closure.

f) An owner or operator of a CCR surface impoundment required to close under this Section must prepare the notification required under Section 845.730(d) that the CCR surface impoundment is closing under this Section.

g) Closure Prioritization

1) The owner or operator of a CCR surface impoundment required to close under this Section must assign the CCR surface impoundment to one of the following categories. Category 1 has the highest priority for closure. Category 7 has the lowest priority for closure.

A) Category 1 includes CCR surface impoundments that have impacted an existing potable water supply well or that have impacted groundwater quality within the setback of an existing potable water supply well.

B) Category 2 includes CCR surface impoundments that are an imminent threat to human health or the environment or have been designated by the Agency under subsection (g)(5).

C) Category 3 includes CCR surface impoundments located in areas of environmental justice concern, as determined by the Agency under subsection (g)(6).

D) Category 4 includes inactive CCR surface impoundments that have an exceedance of the groundwater protection standards in Section 845.600.

E) Category 5 includes existing CCR surface impoundments that have exceedances of the groundwater protection standards in Section 845.600.

F) Category 6 includes inactive CCR surface impoundments that are in compliance with the groundwater protection standards in Section 845.600.

G) Category 7 includes existing CCR surface impoundments that are in compliance with the groundwater protection standards in Section 845.600.

2) If a CCR surface impoundment can be categorized in more than one category, the owner or operator of the CCR surface impoundment must assign the CCR surface impoundment the highest priority category.

3) Whenever an owner or operator of a CCR surface impoundment has more than one CCR surface impoundment that must close under this Section, the owner or operator must close the CCR surface impoundments in order of priority.

4) If the CCR surface impoundment meets the criteria for Category 1, the owner or operator must take immediate steps to mitigate the impact to any existing potable water supply. The owner or operator of the CCR surface impoundment must act to replace the water supply with a supply of equal or better quality and quantity within 30 days after notice that the impact has occurred.

5) The Agency may designate a CCR surface impoundment as a Category 2 surface impoundment when:

A) The CCR surface impoundment has failed to document that the calculated factors of safety for the CCR surface impoundment achieve the minimum safety factors specified in Section 845.460(a);

B) The CCR surface impoundment has not demonstrated compliance with the location restrictions in Subpart C;

C) The owner or operator has been enjoined under Section 43 of the Act;

D) An exceedance of the groundwater protection standards in Section 845.600 has migrated off-site; or

E) The Agency finds that an emergency condition exists creating an immediate danger to public health or welfare, or the environment.

6) For purposes of, and only for, this Part, areas of environmental justice concern are identified as any area that meets either of the following:

A) Any area within one mile of a census block group where the number of low-income persons is twice the statewide average, where low income means the number or percent of a census block group's population in households where the household income is less than or equal to twice the federal poverty level; or

B) Any area within one mile of a census block group where the number of minority persons is twice the statewide average, where minority means the number or percent of individuals in a census block group who list their racial status as a race other than white alone or list their ethnicity as Hispanic or Latino.

7) For purposes of subsection (g)(6), if any part of a facility falls within one mile of the census block group, the entire facility, including all its CCR surface impoundments, must be considered an area of environmental justice concern.

8) The Agency may designate a CCR surface impoundment as another Category when site-specific conditions contradict the designations provided by the owner or operator in subsection (c) and the categories in subsection (g)(1).

h) Application Schedule

1) Category 1, Category 2, Category 3, and Category 4 CCR surface impoundment owners or operators must submit either a construction permit application containing a final closure plan or a construction permit application to retrofit the CCR surface impoundment in accordance with the requirements of this Part by February 1, 2022.

2) Category 5 CCR surface impoundment owners or operators must submit either a construction permit application containing a final closure plan or a construction permit application to retrofit the CCR surface impoundment in accordance with the requirements of this Part by August 1, 2022.

3) Category 6 and Category 7 CCR surface impoundment owners or operators must submit either a construction permit application containing a final closure plan or a construction permit application to retrofit the CCR surface impoundment in accordance with the requirements of this Part by August 1, 2023.

4) Owners or operators consolidating one or more CCR surface impoundments for closure must meet the application schedule of the highest priority CCR surface impoundment.

5) If the Agency denies a construction permit application submitted under this Section, the owner and operator must submit a revised construction permit application addressing all deficiencies identified by the Agency. The revised construction permit application for closure must be submitted to the Agency within 90 days after the Agency's denial if the Agency's denial is not appealed under Section 845.270. If the Agency's denial is appealed and upheld, the owner or operator must submit a revised construction permit application for closure within 90 days after a final decision by the Board is rendered. The owner or operator of the CCR surface impoundment must discuss the owner's or operator's proposed response to all deficiencies identified by the Agency in a public meeting with interested and affected parties held under Section 845.240.