

Treated Wood: Regulatory Pressures and Mitigation Activities Update on CCR Regulations

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Treated Wood Issues



USWAG's Treated Wood Goals

- Support members' use of treated wood
- Work to ensure members have range of options for use
- Work to ensure members have range of options for management of used and out-of-service treated wood
- Ensure out-of-service treated wood is not regulated as a hazardous waste
- [USWAG Treated Wood Guidelines](#)

International Issues – Stockholm Convention

- Stockholm Convention on Persistent Organic Pollutants (POPs)
 - Elimination of the production & use of POPs
 - POPs include pesticides and industrial chemicals
 - Most banned or heavily controlled in US
 - Options for listing: Annex A (elimination), Annex B (restriction)
- www.pops.int

International Issues – Stockholm Convention

- June 2015 –Penta listed in Annex A *with exemption*
- Exemption for production and use of penta for utility poles and cross-arms
 - Parties must register for exemption
 - Must take necessary measures to ensure that penta-treated wood identified (e.g., labelling)
 - Penta-treated wood should not be reused for purposes other than those exempted
- US has not ratified Stockholm Convention

Treated Wood Issues - EPA Activities

- Penta, CCA & Creosote RED issued 2008
- Preservative Registration Review
 - Penta – opened December 19, 2014
 - CCA –opened October 2, 2015
- NHSM Rule
 - TWC Petition seeking to allow the use of various types of treated wood as a boiler fuel
 - Few USWAG members send out-of-service treated wood to energy recovery

Treated Wood Issues - Vermont Penta Task Force

- General investigation into use of penta-treated wood
 - Prompted by discovery of penta-contaminated soil at storage yards, utility lines
- Penta Task Force Recommendations
 - Utilities should use BMPs to limit environmental releases
 - Utilities should evaluate alternative pole materials
 - Vermont should monitor and evaluate the use/re-use of penta-treated wood in the state
- Final Draft Report

Appendix 1

Best Management Practices (BMPs) Associated with the Use of Pentachlorophenol-treated Utility Poles in Vermont

Procurement, Delivery & Storage

1. Require Traceable ID brand with plant location and year produced, which can be traced to the batch of treated poles.
2. Require all poles used in VT to be treated to AWWA specifications for deterioration zone 2.
3. Require all poles used in VT to be double vacuum treated or extend vacuum cycle to twice the standard length prior to delivery to VT. In some cases, utilities may require immediate delivery of poles for emergency restoration activities, and that such poles may deviate from normal specifications. However, in all cases, reasonable efforts will be made to install poles in accordance with these BMPs.
4. Inspect poles on delivery – Retain the right to reject any pole that exhibits excessive sweating of preservative solution. This is more readily accomplished during the warmer months.

Permanent Pole Storage Areas *Use for design of new construction or substantial reconstruction of existing pole storage areas*

1. Locate 100 feet from drinking water supplies and as far away as possible from residences.
 - a. Design considerations should include:
 - i. A low permeability surface material (compacted soil or asphalt) with absorbent/organic material; or
 - ii. Other containment/migration prevention measures
2. Poles should be elevated off ground surface
3. Ground surface should consist of a low erosion potential substance
4. Maintain a yard slope of less than 10% throughout the pole storage area
5. Pole storage areas should be sited to limit odor impact to the public
6. Pole storage areas should be visually inspected when work is being done at a pole yard for excessively sweating poles, unusual staining, or other evidence of unusual releases of pentachlorophenol.

Pole Siting & Construction

1. Onsite utility personnel and contractors should inspect all poles prior to installation to ensure no excessive release of preservative solution is occurring
2. Before installing any new pole, determine if there are any shallow drinking water supplies within 50 feet of the pole location. Wherever feasible poles should be located at least 50 feet away from shallow drinking water supplies; if this is not feasible utilities should, in the following order;
 - a. Use an alternative type of treated pole

Treated Wood Issues - Vermont Penta Task Force

- Recommended BMPs
 - Procurement, Delivery & Storage
 - Permanent Pole Storage Areas
 - Pole Siting & Construction
 - Decommissioning, Retirement, and Disposal of Penta Poles
 - Training/Education

Treated Wood Issues - North Hempstead NY

- North Hempstead, NY, L.L. No. 13-2014 (Chapter 64B)
 - Utility poles treated with hazardous chemicals (e.g., penta, creosote, inorganic arsenic) constitute a potential danger to the public & public should be informed
 - Requires warning signs on new and recently installed utility poles treated with hazardous chemicals
 - Hazardous chemicals = “Any chemical compound used as a wood preservative to treat wood utility poles to protect them from fungal decay and wood-destroying pests”



Treated Wood Issues - North Hempstead NY

- LIPA & PSEG challenging requirement on “free speech” and other bases
- Utility switching from penta to CCA
- Residents want the poles removed, lines place underground

Treated Wood Issues - Ecological Rights Foundation (ERF) Lawsuit

- Leaching of penta from poles is violation of NPDES & imminent and substantial endangerment under RCRA
- Ninth Circuit dismissed case
 - Poles are not “point sources”
 - Penta leaching from poles is not “discarded,” cannot be considered a solid waste
- EPA disagreed with Court’s ruling and is looking to challenge in other cases
- ERF Appealed “anti-duplication” ruling; EPA filed amicus

CCR Issues



CCR Rule - Schedule

- Proposed June 22, 2010
- Signed December 19, 2014
- Publication Date: April 17, 2015 (80 Fed. Reg. 21302)
- Effective Date: October 19, 2015

CCR Rule - Structure

- Subtitle D Non-Hazardous Waste Rule (40 C.F.R. Part 257)
- Self-Implementing Rule
- Enforced Through Citizen Suits
- EPA Intends to Revisit & May Issue New “Final” Regulatory Determination in Future

CCR Rule - Overview

- Reducing Risk of Catastrophic Failure
 - Structural Integrity Requirements
- Protecting Groundwater
 - Groundwater Monitoring and Corrective Action
 - Location Restrictions
- Operating Criteria for Active Units
- Extends Regulation to Inactive Units

Impacts of CCR Rule

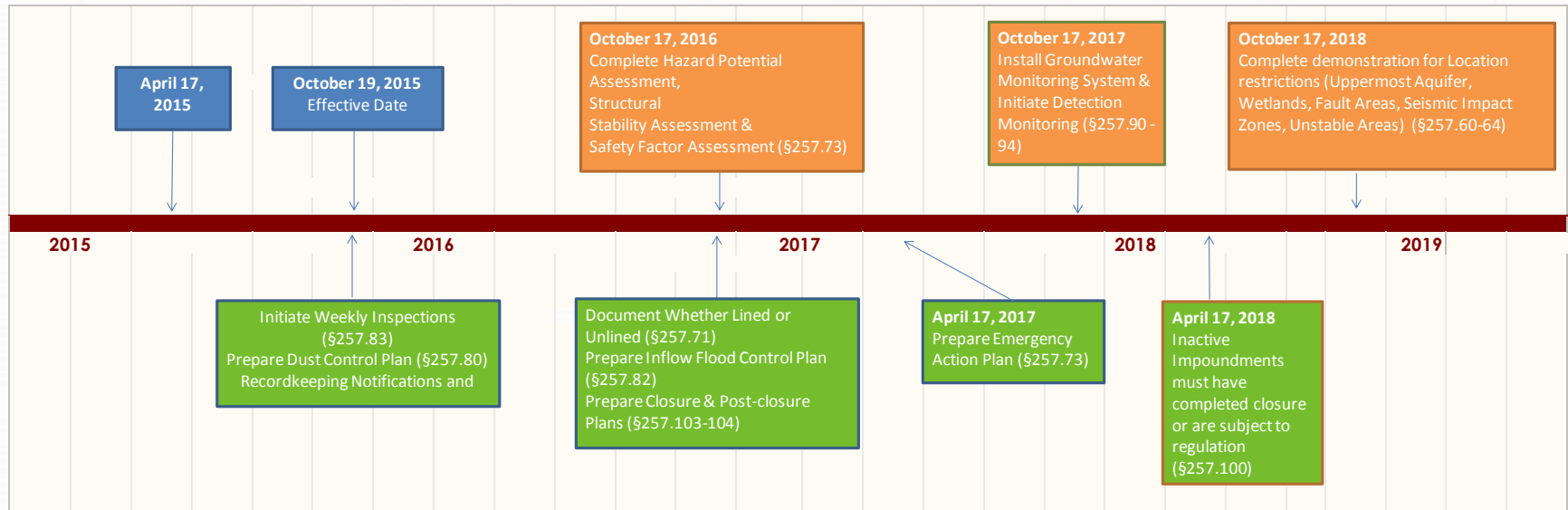
- Many/Most Impoundments will Close
 - Safety/Structural Standards
 - Location Restrictions
 - Corrective Action
 - ELGs
- Dual State/Federal Regulations
- Citizen Suits —————> Patchwork Interpretations
- Some Continued Regulatory Uncertainty

Impacts of ELG Rule

- Final Rule Signed September 30, 2015
- No Discharge (Closed Loop/Dry Handling)
 - Fly Ash Transport
 - Bottom Ash Transport
 - Flue Gas Hg Control Wastes
- Standards Applied 2018 – 2023 NPDES Permitting

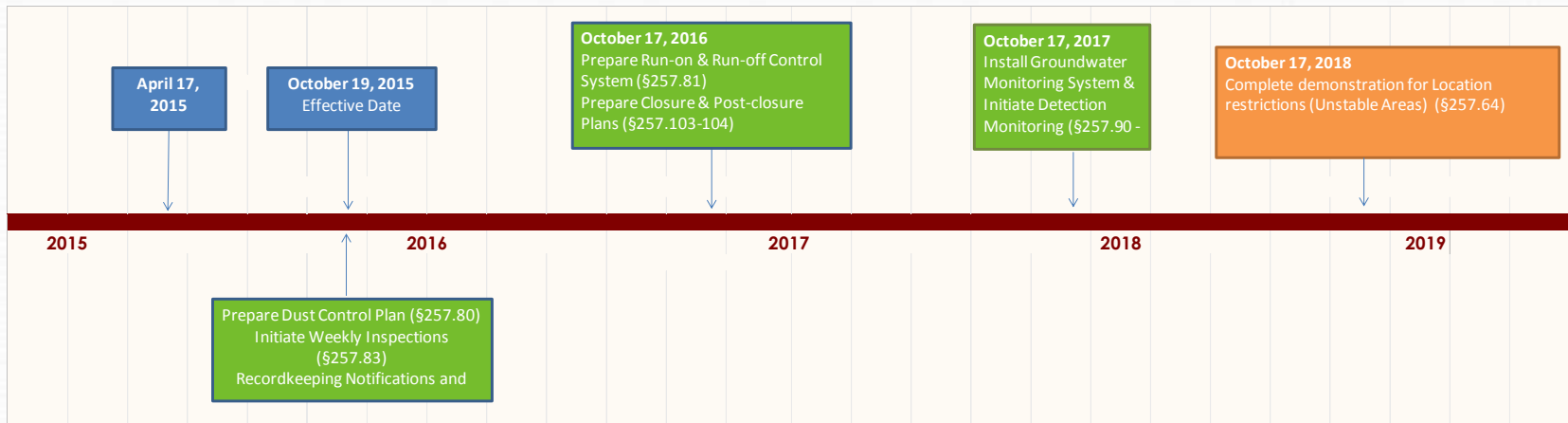
Compliance Deadlines – Surface Impoundments

Implementation Timeline for Existing CCR Surface Impoundments



Compliance Deadlines – Landfills

Implementation Timeline for Existing CCR Landfills



Litigation

- Industry & Enviro Challenges
 - USWAG, AES Puerto Rico, Associated Electric Coop, Beneficial Reuse Management, City of Springfield, Lafarge
 - Clean Water Action et al

Litigation

- Potential Issues (Industry Petitioners)
 - Regulation of Inactive Impoundments
 - Safety Factor Assessment Deadlines
 - Regulation of Piles
 - Beneficial Use Criteria(12,400 ton threshold)
 - Alternative Closure Provisions under 257.103
 - 6" Vegetation Limit Requirement

Litigation

- Potential Issues (Environmental Petitioners)
 - Defining Existing Impoundment Liner as 2' Compacted Soil
 - Regulation of All Inactive Impoundments
 - Inclusion of Boron on Appendix IV (Assessment Monitoring)
 - Lack of Mandatory Retrofit Requirement
 - Exempting Inactive Impoundments that Close from Regulation

Litigation

- Schedule
 - Challenges Filed July 15
 - Intervention Motions Filed August 15
 - Briefing Schedule – December 2015
 - Oral Argument – Mid 2016
 - Decision – Late 2016
- Vacatur v Remand

Preparing for Citizen Suits

- Citizen Suit Resource Page
- Citizen Suit Workshop



Legislation

- H.R. 1734
- Mechanism for Implementation of EPA's Rule by States
- Passed House July 22 2015
- S. 1803
- Working on Path in Senate

What next?

- Citizen Suit Enforcement
 - Dust Control Plans
 - Inspection Reports
- Follow-on Rulemakings
- Review of Regulations per RCRA 2002(b)
- Reassessment of Bevill Regulatory Determination

Questions?

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