



OFFICE OF LAND AND EMERGENCY MANAGEMENT

WASHINGTON, D.C. 20460

July 10, 2025

MEMORANDUM

SUBJECT: Memorandum: Considerations for the Identification and Elimination of Free Liquids in Coal Combustion Residuals (CCR) Surface Impoundments and Landfills (40 CFR Part 257, Subpart D). Docket ID No. EPA-HQ-OLEM-2020-0107-1068

FROM: Steven Cook, Principal Deputy Assistant Administrator **STEVEN COOK**

TO: Regional Land, Chemical, and Redevelopment Division Directors

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Date: 2025.07.10
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The EPA included a document titled, “*Memorandum: Considerations for the Identification and Elimination of Free Liquids in Coal Combustion Residuals (CCR) Surface Impoundments and Landfills (40 CFR Part 257, Subpart D) April 19, 2024*” (“Free Liquids Memorandum”) in the docket for the final Legacy CCR Surface Impoundments and CCR Management Units Final Rule on May 8, 2024. EPA-HQ-OLEM-2020-0107-1068. The Free Liquids Memorandum was drafted in response to public comments received on the proposed rule (88 Fed. Reg. 31982, May 18, 2023), to provide regulated entities with information on available methods for determining whether free liquids are present in CCR units, as required under the regulatory performance standards. *See*, 40 C.F.R. §§ 257.53, 257.102(d).

Since publication of the final rule, the EPA has received information that the Free Liquids Memorandum has caused confusion, including among the regulated community. EPA understands that some have interpreted the Free Liquids Memorandum to create new requirements or modify existing requirements that must be met to comply with the federal CCR regulations in 40 C.F.R. part 257. Others have indicated that they have treated it as setting a performance standard and incorporated it into specifications for work to be performed. To address this confusion, the EPA is issuing the following clarification.

The Free Liquids Memorandum does not impose legally binding requirements on the EPA, states, or the regulated community. It is not a regulation, nor does it augment or modify the existing regulations in 40 C.F.R. part 257. States and regulated entities are not required to adopt any of the methods discussed in the Free Liquids Memorandum or to follow any of the other statements contained therein. States and regulated entities must comply only with applicable regulatory and statutory requirements.

Given the confusion caused by the Free Liquids Memorandum, it should not be relied upon or used by EPA personnel to carry out the Agency's work to implement the regulatory requirements of this program. Additionally, the EPA intends to provide further clarification on these issues at a later time.

cc: Mallory Richardson, Principal Deputy Associate Administrator
Office of Policy

Carolyn Hoskinson, Office Director
Office of Resource Conservation and Recovery

Andrew Baca, Deputy Office Director
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