



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**MEMORANDUM**

**SUBJECT:** Application of the RCRA Civil Penalty Policy to RCRA Coal Combustion Residuals Program Enforcement Actions

**FROM:** Gregory Sullivan, Director  
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**TO:** Directors, Enforcement and Compliance Assurance Divisions  
Regional Counsels, Regions 1-10

The purpose of this memorandum is to confirm that the RCRA Civil Penalty Policy (RCPP or “the Policy”) applies to enforcement actions developed under the Coal Combustion Residuals (CCR) program, 40 C.F.R. Part 257 Subpart D.<sup>1</sup> The RCPP applies in the same manner and to the same extent to alleged violations under the CCR program as it does to alleged violations under the RCRA hazardous waste program as set forth in the Policy.<sup>2</sup>

It is appropriate to apply the RCPP to CCR program enforcement actions for two reasons. First, when Congress authorized EPA enforcement of CCR program requirements,<sup>3</sup> it authorized EPA to utilize all provisions of RCRA Section 3008, 42 U.S.C. § 6928, which includes the penalty assessment provisions found in Section 3008(a)(3).<sup>4</sup> These penalty assessment provisions provide that penalties assessed under Section 3008 must be based on “the seriousness of the violation and any good faith efforts to comply with applicable requirements.” The RCPP is based on these statutory penalty factors and sets forth guidance on how these factors (among

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<sup>1</sup> The RCRA Civil Penalty Policy can be found at <https://www.epa.gov/enforcement/resource-conservation-and-recovery-act-rcra-civil-penalty-policy>.

<sup>2</sup> This is consistent with the Agency’s previous decision that the RCPP applies to any penalties assessed under the Subtitle D Municipal Solid Waste program pursuant to RCRA Section 4005(c), 42 U.S.C. § 6945(c). See RCPP at fn. 5.

<sup>3</sup> Water Infrastructure Improvements for the Nation Act (WIIN Act), Public Law No: 114-322, Section 2301 (12/16/2016); 42 U.S.C. § 6945(d).

<sup>4</sup> Penalties can also be assessed under Sections 3008(c) and 3008(g), 42 U.S.C. §§ 6928(c), 6928(g).

others) should be considered to assess penalties. Because penalties calculated for CCR program violations must also be based on these statutory factors, there is no basis for the Agency to create a separate approach to penalty calculation based on the same statutory factors. Furthermore, Congress is aware of the Agency's process for calculating RCRA civil penalties under Section 3008 and affirmatively chose, in the WIIN Act, to authorize use of the same penalty statutory factors for CCR enforcement.

Second, the RCPP was developed to account for the entire spectrum of circumstances that could surround potential violations, and therefore allows consideration of all levels of potential for harm and extent of deviation.<sup>5</sup> Likewise, the Policy provides an approach for considering and assessing multiple days of penalty, economic benefits of noncompliance, and numerous additional considerations such as willfulness, good faith efforts towards compliance, and repeat violations. None of these considerations or potential sets of circumstances are exclusive to the hazardous waste program.<sup>6</sup> In short, the Policy sets forth an appropriate approach to fully consider the circumstances and factors surrounding potential CCR program violations just as it does for hazardous waste violations. So, in addition to the lack of need for development of a separate approach to penalties assessed for CCR violations, any such approach would not be substantively different than that already set out in the RCPP.

For these reasons, RCRA enforcement case development personnel should continue to use the RCPP in developing penalties for violations of the CCR program. If you have any questions about this memorandum or civil penalty assessments for CCR violations, please contact Pete Raack at [raack.pete@epa.gov](mailto:raack.pete@epa.gov).

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<sup>5</sup> Not only does the RCPP allow consideration all types of potential for harm posed from noncompliance, there is no basis to assume that violations of the CCR program categorically pose less harm than violations of the hazardous waste program. In fact, during the CCR Rule development, EPA presented substantial information regarding the harm from CCR releases. 75 Fed. Reg. 35128, 35149 (June 21, 2010) (“The results of [] risk analyses show that certain management practices—the disposal of both wet and dry CCRs in unlined waste management units, but particularly in unlined surface impoundments, and the prevalence of wet handling, can pose significant risks to human health and the environment from releases of CCR toxic constituents to ground water and surface water.”)

<sup>6</sup> Although the RCPP refers to “hazardous waste” in various places, this reflects only that to date the primary use of the Policy has been in the hazardous waste program and does not denote a jurisdictional limitation of the Policy. And as noted above in footnote 2, EPA has previously extended application of the Policy beyond the hazardous waste program.