

## INTERIM DECISION

### Proposed Date to Cease Receipt of Waste for Greenidge Generation LLC Based on Interim Ineligibility Determination

#### **SUMMARY:**

Greenidge Generation LLC (Greenidge) submitted a demonstration (referred to as the “Demonstration” in this document) to the Environmental Protection Agency (EPA) seeking an extension pursuant to 40 C.F.R. § 257.103(f)(2) to allow its coal combustion residuals (CCR) surface impoundment, C-Pond, to continue to receive non-CCR wastestreams after April 11, 2021, at Greenidge in Dresden, New York. In the Demonstration, Greenidge requested to continue using the CCR surface impoundment, C-Pond, until spring of 2023 and complete closure on October 17, 2023. EPA has determined that Greenidge is not eligible for the extension at 40 C.F.R. § 257.103(f)(2) because the facility operates natural gas-fired boilers instead of coal-fired boilers. This interim determination is being made after the April 11, 2021 deadline to cease receipt of waste; therefore, EPA is proposing to establish a new deadline for Greenidge to cease receipt of waste into the C-Pond of 135 days after EPA’s final decision.

**DATES:** *Comments.* Comments must be received on or before February 23, 2022.

**ADDRESSES:** The EPA has established a docket for this notice under Docket ID No. EPA-HQ-OLEM-2021-0591. EPA established a docket for the August 28, 2020, CCR Part A final rule under Docket ID No. EPA-HQ-OLEM-2019-0172. All documents in the docket are listed in the <https://www.regulations.gov> index. Publicly available docket materials are available either electronically at <https://www.regulations.gov> or in hard copy at the EPA Docket Center. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the

telephone number for the EPA Docket Center is (202) 566-1742. You may send comments, identified by Docket ID. No. EPA-HQ-OLEM-2021-0591, by any of the following methods:

- Federal e-Rulemaking Portal: <https://www.regulations.gov/> (our preferred method).  
Follow the online instructions for submitting comments.
- Mail: U.S. Environmental Protection Agency, EPA Docket Center, Office of Land and Emergency Management, Docket ID No. EPA-HQ-OLEM-2021-0591, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- Hand Delivery or Courier (by scheduled appointment only): EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m. – 4:30 p.m., Monday – Friday (except Federal Holidays).

*Instructions:* All submissions received must include the Docket ID No. for this action.

Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia

submissions, and general guidance on making effective comments, please visit

<https://www.epa.gov/dockets/commenting-epa-dockets>.

Due to public health concerns related to COVID-19, the EPA Docket Center and Reading Room are open to the public by appointment only. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at <https://www.epa.gov/dockets>.

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID-19.

**FOR FURTHER INFORMATION CONTACT:** For information concerning this decision, contact:

- Kirsten Hillyer, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, MC: 5304T, Washington, DC 20460; telephone number: (202)566-0542; email address: [Hillyer.Kirsten@epa.gov](mailto:Hillyer.Kirsten@epa.gov).
- Frank Behan, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, MC: 5304T, Washington, DC 20460; telephone number: (202) 566-0531; email address: [Behan.Frank@epa.gov](mailto:Behan.Frank@epa.gov).
- For more information on coal ash regulations, please visit <https://www.epa.gov/coalash>.

**SUPPLEMENTARY INFORMATION:**

## **I. General Information**

### *A. What decision is the agency making?*

Greenidge submitted a Demonstration to EPA seeking an extension pursuant to 40 C.F.R. § 257.103(f)(2) to allow the CCR surface impoundment to continue to receive non-CCR wastestreams after April 11, 2021. EPA has concluded that Greenidge is not eligible for the extension under 40 C.F.R. § 257.103(f)(2) because Greenidge is not currently operating a coal-fired boiler and has not operated a coal-fired boiler for several years. Instead Greenidge is operating a natural gas-fired boiler to mine for Bitcoin. Accordingly, the regulations cannot provide the relief requested in the Demonstration. Therefore, EPA is returning the Demonstration and notifying Greenidge that it is ineligible for an extension of the deadline to cease receipt of waste under 40 C.F.R. § 257.103(f). Because EPA reached this conclusion after the April 11, 2021 deadline to cease receipt of waste, EPA is proposing to establish a new date for the CCR surface impoundment, C-Pond, to cease receiving waste. EPA is proposing that Greenidge must cease receipt of waste into its CCR surface impoundment no later than 135 days after EPA's final decision after the close of the comment period. Consistent with 40 C.F.R. § 257.103(f)(3)(ii), at this interim stage EPA will not accept or respond to any comments on whether Greenidge is eligible for an extension under 40 C.F.R. § 257.103(f)(2).

### *B. What is the agency's authority for making this interim decision?*

This interim decision is being issued pursuant to the authority in 40 C.F.R. § 257.103(f).

## **II. Background**

### *A. Part A Final Rule*

In April 2015, EPA issued its first set of regulations establishing requirements for CCR surface impoundments and landfills. (Hazardous and Solid Waste Management System; Disposal

of Coal Combustion Residuals From Electric Utilities, 80 FR 21301) (the “CCR Rule”). In 2020, EPA issued the CCR A Holistic Approach to Closure Part A: Deadline to Initiate Closure rule (85 FR 53516 (Aug. 28, 2020)) (the “Part A Rule”). The Part A Rule established April 11, 2021, as the date that owners and operators must cease placing waste into all unlined CCR surface impoundments. The Part A Rule also revised the alternative closure provisions of the CCR rule (40 C.F.R. § 257.103) by allowing owners or operators to request an extension to continue to receive both CCR and/or non-CCR wastestreams in an unlined CCR surface impoundment after April 11, 2021, provided that certain criteria are met. EPA established two site-specific alternatives to initiate closure of CCR surface impoundments (40 C.F.R. § 257.103(f)), commonly known as extensions to the date to cease receipt of waste: 1) development of alternative capacity by the April 11, 2021 deadline is technically infeasible (40 C.F.R. § 257.103(f)(1)), and 2) permanent cessation of a coal-fired boiler(s) by a date certain (40 C.F.R. § 257.103(f)(2)).

The first site-specific alternative to initiate closure of CCR surface impoundments is *Development of Alternative Capacity is Technically Infeasible* (40 C.F.R. § 257.103(f)(1)). Under this alternative, an owner or operator of a coal-fired boiler that is currently operating may submit a demonstration seeking EPA approval to continue using its unlined surface impoundment for the specific amount of time needed to develop alternative disposal capacity for its CCR and non-CCR wastestreams. The demonstration must meet the requirements at 40 C.F.R. § 257.103(f)(1). To have an alternative deadline approved, the regulation requires the facility to demonstrate that: 1) no alternative disposal capacity is currently available on or off-site of the facility; 2) the CCR and/or non-CCR waste stream must continue to be managed in that CCR surface impoundment because it was technically infeasible to complete the measures

necessary to obtain alternative disposal capacity either on or off-site at the facility by April 11, 2021; and 3) the facility is in compliance with all the requirements of 40 C.F.R. subpart D. 40 C.F.R. § 257.103(f)(1)(i)-(iii). To support the requested alternative deadline, the facility must submit detailed information demonstrating that the amount of time requested is the fastest technically feasible time to complete development of alternative disposal capacity. 40 C.F.R. § 257.103(f)(1)(iv)(A).

The second site-specific alternative to initiate closure of CCR surface impoundments is for the owner or operator to demonstrate that it will permanently cease operation of coal-fired boilers at the facility. *Permanent Cessation of Coal-Fired Boiler(s) by a Date Certain*, (40 C.F.R. § 257.103(f)(2)). Under this alternative an owner or operator may submit a demonstration seeking EPA approval to continue using an unlined CCR surface impoundment in the interim period prior to permanently stopping operation of coal-fired boiler(s) at the facility. The demonstration must meet the requirements at 40 C.F.R. § 257.103(f)(2). The owner or operator must show that 1) the facility will cease operation of coal-fired boiler(s) and complete closure of the CCR surface impoundment(s) by the specified deadlines (no later than October 17, 2023 for impoundments 40 acres or smaller and no later than October 17, 2028 for impoundments larger than 40 acres); and 2) in the interim period prior to the closure of the coal-fired boiler, the facility must continue to use the CCR surface impoundment due to the absence of alternative disposal capacity both on-site or off-site. *Id.* Unlike the requirements for the first alternative, the owner or operator does not need to develop alternative disposal capacity. The regulations require a demonstration that: 1) no alternative disposal capacity is available on or off-site of the facility; 2) the risks from continued use of the impoundment have been adequately mitigated; 3) the facility is in compliance with all other requirements of 40 C.F.R. part 257 subpart D; and 4)

closure of both the impoundment and the coal-fired boiler(s) will be completed in the allowed time. 40 C.F.R. § 257.103(f)(2)(i)-(iv)

### **III. EPA Analysis of Demonstration**

Greenidge submitted the Demonstration electronically to the EPA Administrator on November 30, 2020. This Demonstration requested authorization to continue using the CCR surface impoundment C-Pond to receive non-CCR wastestreams until “Spring of 2023” and complete closure on October 17, 2023, pursuant to the alternative closure provision at 40 C.F.R. § 257.103(f)(2). EPA reviewed the Demonstration and has determined that because Greenidge is no longer operating a coal-fired boiler, the regulations cannot provide the relief requested in the Demonstration. Accordingly, EPA is returning the Demonstration and notifying Greenidge that it is ineligible for an extension of the deadline to cease receipt of waste under 40 C.F.R. § 257.103(f). Since this notice is being provided after April 11, 2021, EPA is proposing to set a new date for Greenidge to cease receipt of waste into the C-Pond of no later than 135 days after EPA’s final decision.

To qualify for the alternative closure provision in 40 C.F.R. § 257.103(f), a facility must demonstrate that “the facility will cease operation of the coal-fired boiler(s) and complete closure of the impoundment within the timeframes specified in paragraph (f)(2)(iv) of this section, but in the interim period (prior to closure of the coal-fired boiler), the facility must continue to use the CCR surface impoundment due to the absence of alternative disposal capacity both on and off-site of the facility.” 40 C.F.R. § 257.103(f)(2). Greenidge is not currently operating a coal-fired boiler and has not operated a coal-fired boiler for several years. Greenidge is instead operating a natural gas-fired boiler. The submission failed to provide any evidence that the facility must continue to use the CCR surface impoundment in the interim period prior to the closure of the

coal-fired boiler, or that Greenidge otherwise qualifies under this provision. The submission, likewise, failed to demonstrate that Greenidge has any need to continue to use C-Pond is related in any way to operation of a coal-fired boiler. The need to use the unlined CCR surface impoundment prior to ceasing the current operation of a coal-fired boiler is a prerequisite to obtain an extension of the deadline to cease the receipt of waste and is the fundamental purpose of the alternative closure provision in 40 C.F.R. § 257.103(f)(2). Accordingly, EPA has concluded that Greenidge is ineligible for the requested extension; therefore, EPA is returning the Demonstration and notifying Greenidge that it is ineligible for an extension of the deadline to cease receipt of waste under 40 C.F.R. § 257.103(f).<sup>1</sup>

#### **IV. Proposed Date to Cease Receipt of Waste**

Because EPA reached this conclusion after April 11, 2021, EPA is proposing to establish a new deadline of no later than 135 days after EPA's final decision for the C- Pond to cease receipt of waste. The regulations grant EPA limited discretion to extend the deadline beyond April 11, 2021. Because EPA has reached this conclusion after the relevant regulatory deadline has passed, the agency considers it appropriate to exercise the limited discretion it has to grant Greenidge a limited amount of time in which to cease receipt of waste. One hundred and thirty-five days is the amount of time that would have been available to the facility had EPA determined that Greenidge was ineligible for an extension immediately upon receipt of the Demonstration and therefore adequately accounts for any equitable reliance interest the facility may have had after submitting a demonstration. According to the information currently available to EPA, Greenidge is not operating a coal-fired generating unit to sell electricity to the grid, but

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<sup>1</sup> The Agency could also have rejected the submission on the grounds that it was incomplete because it failed to demonstrate that Greenidge met the eligibility criteria in 40 C.F.R. 257.103(f)(2). As specified in 40 C.F.R. 257.103(f)(3)(ii), incomplete submissions will be rejected without further process.

rather operating a natural gas-fired generating unit exclusively to mine for Bitcoin.

Consequently, the regulations do not provide Greenidge with the ability to obtain additional time (i.e., beyond the proposed 135 days) to continue to use the unlined CCR surface impoundment.

For other facilities that have submitted a Part A Demonstration, EPA is proposing to establish a process that will allow them to seek additional time where necessary to address demonstrated grid reliability issues. However, in this case, where the facility provides no electricity for the grid, EPA considers there to be no potential for grid reliability issues to arise. Nevertheless, EPA solicits comments on whether this conclusion is correct. In the event EPA receives information demonstrating the potential for a temporary outage at this facility to cause grid reliability issues, EPA is proposing that it would provide Greenidge with the opportunity to obtain additional time to operate the impoundment in the event the New York Independent System Operator determines that the temporary outage of the boiler during the period needed to complete construction of alternative disposal capacity would have an adverse impact on reliability.

January 11, 2022

Date



Barry N. Breen  
Acting Assistant Administrator