Corrective Measures Evaluation – Strategic Communication Considerations

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Abstract: As industry is aware, the Coal Combustion Residuals Rule contains many provisions that require public posting notifications. Now that most facilities are in the assessment monitoring phase, the specific notification requirements now include notification to adjoining landowners if a potential groundwater protection standard exceedance is identified. Proactively managing stakeholder communications can benefit facilities as they enter the evaluation of corrective measures. This paper will focus on the stakeholder management process and the role of strategic communications.

The importance of a good strategic communication plan is becoming more critical as the rule progresses. Plans for making adjoining landowners aware if a groundwater protection standard has been exceeded should be developed in advance of the requirement with input from internal stakeholder groups. This paper will discusses various approaches to addressing the Rule notification requirements and managing public involvement. As part of developing an effective approach to making the required notifications there are a series of potential questions that we have identified that will facilitate the development of responses to questions that may be posed by adjacent landowners and the public, those questions and responses are discussed.

Additionally, if corrective measures are required, the development of a strategic communications plan is critical to getting concise and appropriate information out to the public as the process proceeds. The paper will identify issues during corrective measures evaluation, which might impact the environment and the community at large, which need to be considered as the facility moves toward an eventual public meeting.

Body:

Background

The Coal Combustion Residuals Rule, first published in 2015 is the first rule promulgated by EPA where enforcement of the rule is by third parties and not a State or Federal regulatory agency. Additionally, the rule also requires public postings of information, specific notifications and meetings depending on a facilities monitoring phase of the rule. In the past, most EPA rules with enforcement by a State or Federal regulatory agency offered clear guidance on compliance requirements with the rule.
However, even though the CCR rule spelled out specific requirements for facilities covered by the rule, compliance with these requirements was open to interpretation. With the passage of the WIIN act in December, 2016 measures were adopted to allow for State regulatory enforcement of the rule if that State had an EPA approved CCR rule. At this time, only a handful of states have submitted for and received approval for the state’s CCR rule. This results in most facilities, depending on their location, having compliance with the requirements open to interpretation – sometimes by parties with potentially limited technical knowledge. Coupled with the required public notifications a facility owner is at risk of incorrect or inadequate interpretation of the data published. While the rule does have specific required elements of notification and engagement, stakeholder and public engagement planning that is aimed at risk identification and mitigation can provide important support should risk be realized.

**Specific Public Notifications and Engagement**

Under the rule, facilities are required to maintain a “publically accessible website” and post various rule required documents and information. Other than the required postings, there is relatively little guidance on what the website must look like. To make these websites easily accessible to interested parties, the EPA maintains a link on the CCR information page. This allows for greater ease of access to required documents and information.

On the site, owners or operators are required to document how the provisions to the rule are being met. The site must include documentation that has, in many cases also been entered into the operating record. The site must be available and maintained for the life of the facility. Once the report is posting into the Operating Report, the state authority needs to be informed, then within 30 days, the website must be updated. It is typical for operators to wait the full 30 days before updating the public website.

Much of the information posted are results of groundwater monitoring sampling or engineering calculations around location restrictions. While many of the posted documents summarize the findings of the information as it relates to the rule, there is often little discussion of the data that is presented in these postings. Further, often there is not an attempt to put the results in a context that a non-technical person can understand, making the results more accessible in plain language. The result – a person reading a groundwater monitoring report may see that there is an exceedance for a certain constituent, for example Arsenic, above a background level, not necessarily a Groundwater Protection Standard (GWPS), for the facility and believe that this means that their water is being contaminated and their health will be affected. In reality, the level of Arsenic detected may actually be below what is found in some common food and beverages. While the sites have traditionally been used as central clearinghouses for reports and summary findings of the technical, scientific work conducted for projects, a more public-friendly or plain language approach is an appropriate method for helping to dispel rumor and miscommunications among the general public. A more strategic approach that provides a meaningful communications strategy for explaining the
information posted on the public website is critical in proactively addressing the requirements of the rule.

Within the Assessment Monitoring phase of the rule, if a facility has had an exceedance of a constituent above GWPS and the release has migrated off of the site, the facility must notify in writing the adjacent landowners. This represents a large public relations risk for the facility and having an already established, good stakeholder communications plan prior to reaching this point can help to facilitate the process and reduce misconceptions about how the facility is complying with the CCR rule. The communications plan acts as the playbook for how to respond.

Another significant component of public engagement in the rule is the required public meeting. The public meeting must be held to review results of the corrective measures investigation. This meeting is not limited to adjoining landowners, but is open to all interested parties. This exposes the facility owner to a much broader audience. Again, with a good stakeholder communications plan in place, this meeting can be well planned and executed.

**Stakeholder Communications Plan**

A stakeholder communications plan is a proactive plan that integrates the organizations CCR compliance with a plan on how to engage adjoining landowners and a broader stakeholder audience in the process. The plan helps identify who specific and potential stakeholders are and what their interest are in the process. It will also help identify how to communicate with each stakeholder group and how often. While it may seem obvious who is included in the stakeholders audiences, developing a plan allows for specific identification of stakeholders who may have influence on the compliance process, particularly the corrective measures process. A good stakeholder communications plan answers the questions *Who, What, When, Where and How* when evaluating stakeholders. It will help a facility to develop the level of detail of information to be communicated and what is required to put it into context for some stakeholders. In essence a well-thought through communications plan established rules and expectations for engagement, both as required by the rule and as potential risk mitigation.

**Options for Notification of Adjoining Landowners**

If your facility has had an exceedance of an Appendix IV GWPS, the facility is required to notify the adjoining landowners in writing. While this may seem simple on the surface, many questions need to be considered prior to making this notification. Some of the questions that need to be considered include:

- Should we meet with adjoining landowners before we send the notification?
- What are the potential questions we should answer in the notification to the landowner?
Will we be willing to supply bottled water if adjoining landowners have potable wells?

Will we be willing to consider paying for connections to local water system if it is available?

Do we want to consider regularly scheduled meetings with adjoining landowners as we progress through the process?

Do we already have a relationship with adjoining landowners that could be used to affectively engage them? (For example, neighborhood civic league)

Not engaging stakeholders can result in, at a minimum misinformation, and at the extreme, a stakeholder who makes overt public statements with inadequate or incorrect information, to the media. By carefully planning for potential risk, determining appropriate response early, and mindfully managing the situation’s narrative with the public, avoidance of misinformation and public distrust can be better managed.

Development and implementation of a communications plan is an opportunity for the facility owner to engage stakeholders in the process and provide direct communication of correct information.

Corrective Measures Evaluation Public Meeting

While the rule provides relatively little guidance regarding the requirements of the Corrective Measures Evaluation Public Meeting, effective public communications and engagement should include thoughtful planning and execution of the meeting. During the selection of a remedy for the corrective measure assessment, the public meeting must be held at least 30 days prior to the remedy selection. During this meeting, the corrective measures must be presented, discussed with interested, and recorded for public record. To provide opportunity for authentic engagement with stakeholders, public-friendly presentation of corrective measures should be presented, opportunities for the public to comment both through formal testimony, and if possible, through dialogic exchanges in an open house format. Recommended noticing of the meeting should occur through multiple channels including traditional and social media, and stakeholder networks. Direct mailings to adjoining landowners should occur. Every attempt to invite and engage stakeholders in meaningful dialogue will help reduce community fears, dispel rumors, and manage misinformation. By managing to the requirements of the rule, you will address what is statutorily required, but likely will not fully satisfy stakeholders.

Conclusion

The requirements for compliance with the Coal Combustion Residuals Rule include public notification and engagement. Proactive communication and a good stakeholder management plan can aid a facility in ensuring that stakeholders have correct information and are engaged in the process. This will result in a better understanding
with stakeholders of what the real issues may be and how the facility owner will address
the issues to ensure adequate protection of health and environmental concerns.