
TITLE 329 SOLID WASTE MANAGEMENT DIVISION**FIRST NOTICE OF COMMENT PERIOD**

LSA Document #21-458

COAL COMBUSTION RESIDUALS**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on a new rule at [329 IAC 10](#) concerning the establishment of a comprehensive state permitting program for coal combustion residuals (CCR). IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

CITATIONS AFFECTED: [329 IAC 10](#).

AUTHORITY: [IC 13-14-8-7](#); [IC 13-15-2-1](#); [IC 13-19-3-1](#); [IC 13-19-3-3](#).

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**Basic Purpose and Background**

CCR are generated from the combustion of coal by electric utilities and independent power producers for the generation of electricity. CCR include fly ash, bottom ash, boiler slag, and flue gas desulfurization materials and are commonly referred to as coal ash. On April 17, 2015, the United States Environmental Protection Agency (U.S. EPA) published a final rule in the Federal Register (FR) at 80 FR 21302 that established national minimum criteria for the disposal of CCR as a solid waste, and the design, operation, and closure of new and existing CCR landfills and surface impoundments under Subtitle D of the Resource Conservation and Recovery Act of 1976. This final rule became effective on October 19, 2015, and is codified in the Code of Federal Regulations (CFR) at 40 CFR 257, Subpart D.

U.S. EPA has subsequently amended the federal CCR rule several times. In August 2018 (83 FR 36435), U.S. EPA established a final rule adopting two alternative performance standards, revising certain groundwater protection standards, and extending the deadline by which facilities must cease the placement of waste in CCR units closing for cause in certain situations. In September 2020 (85 FR 53516), U.S. EPA finalized regulations addressing the judicial vacatur of certain 2015 provisions, establishing a revised date by which unlined surface impoundments must cease receiving waste and initiate closure, and amending the requirements for the annual groundwater monitoring and corrective action report and the requirements for the publicly accessible CCR Internet sites. In December 2020 (85 FR 72506), U.S. EPA further revised the federal CCR rule with procedures allowing facilities to request approval to operate an existing CCR surface impoundment with an alternate liner.

When the federal CCR rule was first established in 2015, Indiana rules at [329 IAC 10](#) permitted regulated entities to dispose of CCR in restricted waste sites. These requirements were created before promulgation of the federal standards at 40 CFR 257, Subpart D, and differed from the federal standards in some cases. Consequently, IDEM published a final rule in the Indiana Register on December 7, 2016, that incorporated by reference the federal standards for CCR surface impoundments at 40 CFR 257, Subpart D, into Indiana's Solid Waste Land Disposal Facilities rules in Title 329, Article 10 of the Indiana Administrative Code (IAC).

After the promulgation of the U.S. EPA final rule in 2015, the United States Congress passed the Water Infrastructure Improvement for the Nation Act of 2016 (WIIN Act). Section 2301 of the WIIN Act, codified at 42 U.S.C. 6945(d), provides the opportunity for states to seek U.S. EPA approval to operate a state permit program for CCR units that is at least as protective as the federal standards.

The present rulemaking is mandated by portions of Indiana Public Law 100-2021, codified at [IC 13-19-3-1](#) and [IC 13-19-3-3](#). The goal of this rulemaking is to comply with those amended statutes by establishing a state permit program under Section 2301 of the WIIN Act, 42 U.S.C. 6945(d), for the implementation in Indiana of the federal CCR rule. The establishment of a comprehensive state-operated permit program for CCR units will replace the current partial incorporation of the federal rule at [329 IAC 10-9-1](#) and will be at least as protective as the federal standards at 40 CFR 257, Subpart D, for both CCR surface impoundments and CCR landfills. To ensure successful implementation of the federal program, this rulemaking will incorporate by reference sections from U.S. EPA's 2015 final rule and the subsequent amendments to that rule. This rule will also include state-specific standards that offer compliance alternatives and flexibility and closely align with the existing permit program and requirements for surface impoundments and landfills. The state-specific standards being considered include:

- establishing a permitting process and application requirements that follow the solid waste permitting steps outlined in the solid waste regulations at [329 IAC 10-11](#);
- following certain state definitions in the solid waste regulations in lieu of the federal CCR definitions to ensure consistency between the state rules;

- ensuring that location restriction and setbacks are consistent with IDEM's existing state municipal solid waste landfill (MSWLF) requirements;
- updating design criteria to be consistent with IDEM's existing MSWLF requirements;
- including certain operating criteria from existing MSWLF rules, in addition to the federal CCR requirements;
- adding to the existing federal CCR groundwater and corrective action requirements to be consistent with IDEM's recent coal ash closure approvals;
- adding a closure option and financial assurance requirements to the existing federal CCR requirements;
- modifying existing criteria and exclusions in [329 IAC 10](#) to account for this rulemaking; and
- identifying any other requirements or exclusions necessary for consistency between the state rules or to meet state or federal requirements.

After adoption of this rulemaking, IDEM will submit the state permit program to U.S. EPA for approval, in accordance with the provisions of Section 2301 of the WIIN Act.

IDEM seeks comment on the affected citations listed, including suggestions for specific language, any other provisions of Title 329 that may be affected by this rulemaking, and alternative ways to achieve the purpose of the rulemaking.

Alternatives to Be Considered Within the Rulemaking

Alternative 1. Establish a comprehensive state permit program for CCR units that implements the CCR standards at 40 CFR 257, Subpart D, while also maintaining some existing Indiana-specific standards for management of CCR.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Yes. This alternative will also implement state-specific standards that will be at least as protective as federal standards, as required by [IC 13-19-3-1](#), [IC 13-19-3-3](#), and 42 U.S.C. 6945(d).
- Is this alternative imposed by federal law or is there a comparable federal law? This alternative is imposed by federal regulations found at 40 CFR 257, Subpart D, and will also comply with federal law at 42 U.S.C. 6945(d).
- If it is a federal requirement, is it different from federal law? Yes, this alternative may provide some opportunity for compliance flexibility that is not in federal law and may also include requirements that are not in federal law but are consistent with IDEM's historical standards.
- If it is different, describe the differences. This alternative may offer compliance flexibility and maintain some existing Indiana-specific requirements for CCR units that may differ from, but will remain at least as protective as, the federal requirements. These differences include:
 - establishing a permitting process and permitting application requirements that follow the solid waste permitting steps outlined in the solid waste regulations at [329 IAC 10-11](#);
 - following certain state definitions in the solid waste regulations in lieu of the federal CCR definitions to ensure consistency between the state rules;
 - ensuring that location restriction and setbacks are consistent with IDEM's existing state MSWLF requirements;
 - updating design criteria to be consistent with IDEM's existing MSWLF requirements;
 - including certain operating criteria from existing MSWLF rules, in addition to the federal CCR requirements;
 - adding to the existing federal CCR groundwater and corrective action requirements to be consistent with IDEM's recent coal ash closure approvals;
 - adding a closure option and financial assurance requirements to the existing federal CCR requirements;
 - modifying existing criteria and exclusions in [329 IAC 10](#) to account for this rulemaking; and
 - identifying any other requirements or exclusions necessary for consistency between the state rules or to meet state or federal requirements.

Alternative 2. Do not amend the existing requirements for the disposal and impoundment of CCR in Title 329.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No. However, this rulemaking is mandated by portions of Indiana Public Law 100-2021, codified at [IC 13-19-3-1](#) and [IC 13-19-3-3](#). The goal of this rulemaking is to comply with those amended statutes by establishing a state permit program under Section 2301 of the WIIN Act, 42 U.S.C. 6945(d), for the implementation in Indiana of the federal CCR rule.
- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Applicable Federal Law

Section 2301 of the WIIN Act of 2016, passed by the United States Congress and codified at 42 U.S.C. 6945(d), provides a mechanism that allows states to seek U.S. EPA approval to operate a state permit program that is at least as protective as the federal standards for CCR units.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1. Public Law 165-2021 appropriates \$100,000 to the newly established

CCR Program Fund for Fiscal Year (FY) 2021-2022, and \$450,000 for FY 2022-2023. Additionally, a portion of Public Law 165-2021, codified at [IC 13-19-3-3\(i\)](#), establishes new fees for CCR surface impoundments as follows:

- An initial one (1) time permit fee of twenty thousand five hundred dollars (\$20,500) for each CCR surface impoundment regulated under the state permit program.
- An annual fee of twenty thousand five hundred dollars (\$20,500) for each CCR surface impoundment regulated under the state permit program that has not completed closure in accordance with Section 257.102 of the federal CCR rule. The duty to pay the fee established by this subdivision does not apply on an annual basis until three hundred sixty-five (365) days after the initial one (1) time permit fee established by subdivision (1) has been assessed.
- An annual fee of ten thousand dollars (\$10,000) for each CCR surface impoundment regulated under the state permit program that has been closed and for which post-closure care has been initiated and is still required in accordance with Section 257.104 of the federal CCR rule. The duty to pay the fee established by this subdivision does not apply on an annual basis until three hundred sixty-five (365) days after the initial one (1) time permit fee established by subdivision (1) has been assessed.

In accordance with the portion of Public Law 100-2021 codified at [IC 13-19-3-3\(g\)](#), IDEM cannot collect any of the fees for CCR surface impoundments until the Environmental Rules Board has adopted a final rule for the establishment of the new state CCR permit program and U.S. EPA has approved the permit program pursuant to 42 U.S.C. 6945(d)(1).

Potential Fiscal Impact of Alternative 2. While this alternative does not propose changes to the existing requirements, it will have a fiscal impact because regulated entities will be subject to potentially conflicting sets of state and federal standards. If the existing state standards are overlapping with or duplicative of the recently promulgated federal standards, it may create regulatory uncertainty for regulated entities. Such uncertainty and duplication may lead to additional costs and inconvenience for regulated entities, as they may be required to ensure compliance with two different sets of requirements for the same activity.

Small Business Assistance Information

IDEM established a compliance and technical assistance program (CTAP) under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on CTAP and other resources available can be found at:

www.in.gov/idem/ctap

For purposes of [IC 4-22-2-28.1](#), small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Angela Taylor
IDEM Small Business Regulatory Coordinator/CTAP Small Business Liaison
IGCN 1316
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 233-0572 or (800) 988-7901
ctap@idem.in.gov

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-6](#) is:

Greg Lannan
Small Business Ombudsman
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 601-8892
glannan@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-6](#), specifically [IC 5-28-17-6\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Erin Moorhous
IDEM Small Business Assistance Program Ombudsman/Business, Agricultural, and Legislative Liaison
IGCN 1301
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 232-8921 or (800) 451-6027
emoorhous@idem.in.gov

Public Participation and Work Group Information

At this time, no work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact Keelyn Walsh, Rules Development Branch, Office of Legal Counsel at kwalsh@idem.in.gov, (317) 232-8229 or (800) 451-6027 (in Indiana).

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:

LSA Document #21-458 Coal Combustion Residuals
Keelyn Walsh
Rules Development Branch
Office of Legal Counsel
Indiana Department of Environmental Management
Indiana Government Center North
100 North Senate Avenue
Indianapolis, IN 46204-2251

- (2) By electronic mail to kwalsh@idem.in.gov. To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

Contact Karla Kindrick at kkindric@idem.in.gov or (317) 232-8922 if another method of submitting comments within the comment period is desired. Regardless of the delivery method used, in order to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

COMMENT PERIOD DEADLINE

All comments must be postmarked or time stamped not later than November 12, 2021.

Additional information regarding this action may be obtained from Keelyn Walsh, Rules Development Branch, Office of Legal Counsel, kwalsh@idem.in.gov, (317) 232-8229 or (800) 451-6027 (in Indiana).

Christine Pedersen, Section Chief
Rules Development Branch
Office of Legal Counsel

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An [html](#) version of this document.