

## CONTINUATION OF SECOND NOTICE OF COMMENT PERIOD

LSA Document #21-458

## COAL COMBUSTION RESIDUALS

## PURPOSE OF NOTICE

A Continuation of Second Notice of Comment Period was published January 18, 2023, on the Indiana Register website (Register) at [20230118-IR-329210458SCA](#), concerning amendments to rules at [329 IAC 10-3-1](#), [329 IAC 10-3-4](#), and [329 IAC 10-9-1](#), and adding a new article at [329 IAC 14](#), to establish a state permitting program for coal combustion residuals (CCR). Due to recently passed legislation under House Enrolled Act 1623-2023 (HEA 1623) amending state law at [IC 13-19-3-3](#), and in response to comments received during the initial Continuation of Second Notice of Comment Period, the Indiana Department of Environmental Management (IDEM) has significantly changed the draft rule and is providing an additional thirty (30) days for submission of comments on the rulemaking. Comments submitted to IDEM from the initial Continuation of Second Notice of Comment Period are considered part of the formal written comment period. With this notice, IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

## HISTORY

First Notice of Comment Period published October 13, 2021: [20211013-IR-329210458FNA](#)

Second Notice of Comment Period published December 21, 2022: [20221221-IR-329210458SNA](#)

Continuation of Second Notice of Comment Period published January 18, 2023:

[20230118-IR-329210458SCA](#)

## ADDITIONAL DOCUMENTS

Notice of Public Hearing: [20240731-IR-329210458PHA](#)

Summary/Response to Comments Coal Combustion Residuals: [20240731-IR-329210458ONA](#)

**CITATIONS AFFECTED:** [329 IAC 10-3-1](#); [329 IAC 10-3-4](#); [329 IAC 10-9-1](#); [329 IAC 14](#)

**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

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.

When the federal CCR rule was first established in 2015, Indiana rules at [329 IAC 10](#) addressed CCR surface impoundments only at the time of closure. The Indiana requirements were created before promulgation of the federal standards at 40 CFR 257, Subpart D, and differed from the federal standards in some cases. On December 7, 2016, IDEM published a final rule on the Register that incorporated by reference the federal standards for CCR surface impoundments at 40 CFR 257, Subpart D into [329 IAC 10-9-1](#).

After promulgation of the U.S. EPA final rule in 2015, the United States Congress passed the Water Infrastructure Improvements 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 Second Notice of Comment Period for the CCR rulemaking, which published on the Register December 21, 2022, proposed amendments to rules at [329 IAC 10-3-1](#), [329 IAC 10-3-4](#), and [329 IAC 10-9-1](#), as well as a new article at [329 IAC 14](#), concerning the establishment of a state permitting program for CCR. Subsequently, a Continuation of Second Notice of Comment Period was published on the Register January 18, 2023, to give interested parties additional time to submit comments on the rulemaking. During this time, the General Assembly passed amendments to [IC 13-19-3-3](#). HEA 1623 became effective July 1, 2023, and requires that Indiana adopt rules concerning CCR that are no more stringent than the U.S. EPA regulations at 40 CFR 257, Subpart D.

In response to the recent passage of HEA 1623, as well as comments received during the initial Continuation of Second Notice of Comment Period, IDEM is proposing to revise the new article added at [329 IAC 14](#) of the draft rule as published at [20221221-IR-329210458SNA](#), to ensure that the state rule is no more stringent than existing federal requirements and does not impose a restriction or requirement that is not imposed by the federal CCR rule, except for new permitting standards. Accordingly, IDEM is also updating amendments at [329 IAC 10-3-](#)

1 and [329 IAC 10-9-1](#), removing amendments at [329 IAC 10-3-4](#), and repealing rule language at [329 IAC 10-9-1\(b\)](#) and [329 IAC 10-9-1\(c\)](#).

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.

#### **IC 13-14-9-4 Identification of Rule Elements that Impose Restrictions and Requirements More Stringent Than Federal Law or That Apply in a Subject Area in which Federal Law does not Impose a Restriction or Requirement**

This rule incorporates by reference the federal requirements at 40 CFR 257, Subpart D, and does not impose any technical requirements more stringent than federal law. However, as mandated by [IC 13-19-3-3](#), this rule proposes to establish a CCR permit program at [329 IAC 14](#), which does not exist in federal law. Moreover, U.S. EPA has proposed a federal CCR permit program, but it is unclear if or when it intends to proceed with a final rule. See 85 FR 9940. Even if the federal permit rule became effective, it may not be appropriate or necessary for IDEM to incorporate the federal language into state rules. At a minimum, IDEM would need to undertake a detailed process of harmonizing the federal language with state rulemaking standards and state environmental law. To avoid potential conflicts with existing solid waste permitting programs, and because the federal CCR permit rule has not been finalized, IDEM is proposing state CCR permitting rules that align with analogous rules in [329 IAC 10](#).

#### **Potential Fiscal Impact**

There is no fiscal impact associated with this rulemaking's incorporation by reference of the federal requirements at 40 CFR 257, Subpart D. Regulated entities will experience administrative costs by the addition of a permitting program, which is required by [IC 13-19-3-3](#). In turn, the agency will receive revenue from the statutory permit fees outlined in [IC 13-19-3-3](#).

#### **SUMMARY/RESPONSE TO COMMENTS FROM FIRST CONTINUATION OF SECOND NOTICE OF COMMENT PERIOD**

IDEM requested public comment from January 18, 2023, through March 19, 2023, on IDEM's draft rule language. A summary of the comments received and IDEM's responses to the comments are summarized at [20240731-IR-329210458ONA](#).

#### **REQUEST FOR PUBLIC COMMENT**

IDEM is soliciting public comment on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. 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 email to [kwalsh@idem.in.gov](mailto:kwalsh@idem.in.gov). To confirm timely delivery of submitted comments, please request a document receipt when sending the email. PLEASE NOTE: Email comments will not be considered part of the official written comment period unless they are sent to the address indicated in this notice.

- (3) Attend scheduled public hearing.

Contact Karla Kindrick at [kkindric@idem.in.gov](mailto: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 August 30, 2024.

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

#### **DRAFT RULE**

SECTION 1. [329 IAC 10-3-1](#) IS AMENDED TO READ AS FOLLOWS:

**329 IAC 10-3-1 Exclusions; general**

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

**Affected:** [IC 13-14](#); [IC 13-19-3](#); [IC 13-20](#); [IC 36-9-30](#)

Sec. 1. The following solid waste management activities are not subject to the provisions of this article:

- (1) Disposal of only uncontaminated rocks, bricks, concrete, road demolition waste materials, or dirt.
- (2) Land application activities regulated under [327 IAC 6.1](#) and [327 IAC 7.1](#).
- (3) Confined feeding control activities regulated under [327 IAC 19](#).
- (4) Wastewater discharge activities regulated under [327 IAC 5](#).
- (5) Solid waste management activities regulated under [329 IAC 11](#).
- (6) Disposal of uncontaminated and untreated natural growth solid waste, including tree limbs, stumps, leaves, and grass clippings.
- (7) Disposal of saw dust derived from processing untreated natural wood.
- ~~(8) Except as provided in [329 IAC 10-9-1](#), coal combustion residuals impoundments subject to 40 CFR 257, Subpart D, disposal of coal ash, transported by water, into an ash pond which has received a water pollution control facility construction permit under [327 IAC 3](#).~~ **(8) Disposal of coal ash, transported by water, into an ash pond that has received a water pollution control facility permit under [327 IAC 3](#).**
- ~~(9) Except as provided in [329 IAC 10-9-1](#), Coal combustion residuals impoundments (CCR) units subject to 40 CFR 257, Subpart D, the operation of surface impoundments; however, the final disposal of solid waste in surface impoundments at the end of their operation is subject to approval by the commissioner, except as excluded under subdivisions (8) and (10). The commissioner's approval is based on management practices that are protective of human health and the environment. [329 IAC 14](#).~~
- ~~(10) Disposal of coal ash at a site receiving a total of less than one hundred (100) cubic yards per year from generators who each produce less than one hundred (100) cubic yards per year.~~
- (10) Operating non-CCR surface impoundments; however, the final disposal of solid waste in non-CCR surface impoundments at the end of their operation is subject to approval by the commissioner, except as excluded under subdivisions (8) and (11). The commissioner's approval is based on management practices that are protective of human health and the environment.**
- (11) The uses and disposal of coal waste as exempted under [IC 13-19-3-3](#).
- (12) Activities concerning wastes containing polychlorinated biphenyls (PCBs) regulated under [329 IAC 4.1](#), except those regulated as alternative daily cover under [329 IAC 10-20-14.1](#).
- (13) Storage, transportation, and processing of used oil as regulated under [329 IAC 13](#).
- (14) The legitimate use of slag under [IC 13-19-3-8](#).
- (15) The legitimate use of foundry sand under [IC 13-19-3-7](#).
- (16) Any other use of solid waste approved by the commissioner based on the commissioner's determination that the use is a legitimate use that does not pose a threat to public health or the environment.

*(Solid Waste Management Division; [329 IAC 10-3-1](#); filed Mar 14, 1996, 5:00 p.m.: 19 IR 1795; filed Mar 19, 1998, 11:07 a.m.: 21 IR 2749; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3771; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Feb 9, 2004, 4:51 p.m.: 27 IR 1797, eff Apr 1, 2004; filed Nov 10, 2016, 1:37 p.m.: [20161207-IR-329160217FRA](#))*

SECTION 2. [329 IAC 10-3-4](#) IS AMENDED TO READ AS FOLLOWS:

**[329 IAC 10-3-4](#) Exclusion; disposal of wastes meeting restricted waste site Type IV criteria**

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

**Affected:** [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 4. (a) Except as provided in this section, the disposal of **the following is not subject to this article:**

- (1) Coal ash residues, including flue gas desulphurization sludge.**
- (2) Foundry sands. and**
- (3) Other wastes that have been classified by the commissioner to meet the criteria established in [329 IAC 10-9-4](#) for restricted waste site Type IV waste. is not subject to this article**

(b) Restricted waste site Type IV waste must not be disposed of in violation of the prohibitions specified under the following:

- (1) Wetlands in violation of Section 404 of the Clean Water Act.
- (2) The critical habitat of an endangered species as defined by 50 CFR 17.

- (3) Any floodways:
  - (A) with drainage areas greater than one (1) square mile without the approval of the department of natural resources; or
  - (B) without provisions to prevent washout of the waste.
- (4) Within areas of karst topography:
  - (A) without provisions to collect and contain all of the leachate generated; and
  - (B) without a demonstration that the integrity of the area within the solid waste boundary will not be damaged by subsidence.
- (5) Over mines unless it is demonstrated that the integrity of the area within the solid waste boundary will not be damaged by subsidence.
- (6) Within six hundred (600) feet of a potable water well in use as a water supply for a dwelling or dwellings on the date of public notice for zoning approval for the permitted activity or the date of waste classification by the commissioner, whichever occurs first, unless written consent is obtained from the owner of the well.

(c) The disposal of all restricted waste site Type IV waste must meet the disposal control requirements specified under the following:

- (1) If the disposal operation is found to be in violation of fugitive dust regulations ~~of the air pollution control board in 326 IAC 6-4~~ or if the commissioner documents evidence of visible waste deposits carried by wind or surface water beyond the site property boundary, restricted waste site Type IV must:
  - (A) apply daily cover; and
  - (B) submit a plan to control dispersal.
- (2) Application of daily cover must continue until a dispersal control plan is approved by the commissioner.

(d) Restricted waste site Type IV waste must not be disposed into standing water where the standing water reflects the water table.

*(Solid Waste Management Division; 329 IAC 10-3-4; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1796; errata filed Apr 4, 1996, 4:00 p.m.: 19 IR 2045; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3777; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)*

SECTION 3. [329 IAC 10-9-1](#) IS AMENDED TO READ AS FOLLOWS:

### **[329 IAC 10-9-1](#) Types of facilities**

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

**Affected:** [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 1. ~~(a)~~ The following categories ~~will~~ **must** be used for the purpose of defining site requirements and permissible wastes to be received for all solid waste land disposal facilities **except coal combustion residuals (CCR) units subject to 329 IAC 14:**

- (1) Municipal solid waste landfill (MSWLF).
- (2) Construction/demolition site.
- (3) Restricted waste site as follows:
  - (A) Restricted waste site Type I.
  - (B) Restricted waste site Type II.
  - (C) Restricted waste site Type III.
  - (D) Restricted waste site Type IV.
- (4) Nonmunicipal solid waste landfill.

~~(b) The owner and operator of a coal combustion residuals impoundment subject to 40 CFR 257, Subpart D, shall comply with the requirements for surface impoundments in accordance with 40 CFR 257.50\* through 40 CFR 257.107\*, except the phrase "not to exceed a height of 6 inches above the slope of the dike" is deleted from the following sections:~~

- ~~(1) 40 CFR 257.73(a)(4).~~
- ~~(2) 40 CFR 257.73(d)(1)(iv).~~
- ~~(3) 40 CFR 257.74(a)(4).~~
- ~~(4) 40 CFR 257.74(d)(1)(iv).~~

~~(c) For a coal combustion residuals impoundment subject to 40 CFR 257, Subpart D, final disposal of solid~~

waste in the impoundment at the end of the operation of the impoundment is subject to approval by the commissioner, based on the requirements for coal combustion residuals impoundments in 40 CFR 257.50\* through 40 CFR 257.107\* and on other management practices that are protective of human health and the environment.

\*These documents are incorporated by reference. Copies may be viewed online from the Government Publishing Office at [www.gpo.gov](http://www.gpo.gov), or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, Thirteenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.

(Solid Waste Management Division; [329 IAC 10-9-1](#); filed Mar 14, 1996, 5:00 p.m.: 19 IR 1805; filed Aug 2, 1999, 11:50 a.m.: 22 IR 3787; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; readopted filed May 14, 2007, 1:53 p.m.: [20070523-IR-329070138BFA](#); readopted filed Jul 29, 2013, 9:20 a.m.: [20130828-IR-329130179BFA](#); filed Nov 10, 2016, 1:37 p.m.: [20161207-IR-329160217FRA](#))

SECTION 4. [329 IAC 14](#) IS ADDED TO READ AS FOLLOWS:

## **ARTICLE 14. COAL COMBUSTION RESIDUALS FROM ELECTRIC UTILITIES AND INDEPENDENT POWER PRODUCERS**

### **Rule 1. General Provisions**

#### **[329 IAC 14-1-1](#) Applicability**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-19](#); [IC 13-20](#); [IC 36-9-30-35](#)

Sec. 1. (a) This rule applies to the owners and operators of new or existing coal combustion residuals (CCR) landfills or surface impoundments, including lateral expansions, that:

- (1) dispose or otherwise engage in solid waste management of CCR generated from the combustion of coal at electric utilities and independent power producers; and
- (2) are subject to 40 CFR 257, Subpart D.

(b) For purposes of this article, any reference to municipal solid waste landfills (MSWLF) or other facilities regulated under [329 IAC 10](#) means a CCR unit. (Solid Waste Management Division; [329 IAC 14-1-1](#))

#### **[329 IAC 14-1-2](#) Incorporation by reference**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-19](#); [IC 13-20](#); [IC 36-9-30-35](#)

Sec. 2. (a) Unless otherwise indicated, any reference to a provision of the Code of Federal Regulations (CFR) in this article means the July 1, 2023, edition.

(b) The owner or operator of a CCR unit shall comply with:

- (1) 40 CFR 257, Subpart D\* as described and amended in this article;
- (2) Appendix III\* to 40 CFR 257, Subpart D;
- (3) Appendix IV\* to 40 CFR 257, Subpart D; and
- (4) this article.

\*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, [www.gpo.gov](http://www.gpo.gov), or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204. (Solid Waste Management Division; [329 IAC 14-1-2](#))

#### **[329 IAC 14-1-3](#) Validity of existing closure approvals**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-19](#); [IC 13-20](#); [IC 36-9-30-35](#)

Sec. 3. Except for legacy generation resources as defined at [IC 13-19-3-3\(b\)\(2\)](#), approvals issued by the department before the effective date of this article for CCR surface impoundment closure plans remain valid and effective. (Solid Waste Management Division; [329 IAC 14-1-3](#))



**329 IAC 14-1-4 Definitions**Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)Affected: [IC 13-19](#); [IC 13-20](#); [IC 36-9-30-35](#)

Sec. 4. (a) To the extent a definition in 40 CFR 257 is different from a definition in [IC 13-11-2](#) or [329 IAC 10-2](#), the definition in 40 CFR 257 controls. Except as identified in subsections (b) and (c), the definitions in the following statutes and rules apply to this article:

- (1) [IC 13-11-2](#)
- (2) [329 IAC 10-2](#)
- (3) 40 CFR 257.02\*
- (4) 40 CFR 257.53\*
- (5) [329 IAC 10-2-2](#) "Access road" defined
- (6) [329 IAC 10-2-5](#) "Adjoining land" defined
- (7) [329 IAC 10-2-7.3](#) "Alternative water supply" defined
- (8) [329 IAC 10-2-10](#) "Applicant" defined
- (9) [329 IAC 10-2-11](#) "Aquiclude" defined
- (10) [329 IAC 10-2-14](#) "Aquitard" defined
- (11) [329 IAC 10-2-17](#) "Assessment ground water monitoring well" defined
- (12) [329 IAC 10-2-18](#) "Background ground water data" defined
- (13) [329 IAC 10-2-19](#) "Background ground water mean" defined
- (14) [329 IAC 10-2-19.1](#) "Background ground water monitoring" defined
- (15) [329 IAC 10-2-20](#) "Background ground water quality" defined
- (16) [329 IAC 10-2-23](#) "Bedrock" defined
- (17) [329 IAC 10-2-23.1](#) "Bedrock aquifer" defined
- (18) [329 IAC 10-2-25](#) "Board" defined
- (19) [329 IAC 10-2-26](#) "Borehole" defined
- (20) [329 IAC 10-2-27](#) "Buried aquifer" defined
- (21) [329 IAC 10-2-28](#) "Certificate of insurance" defined
- (22) [329 IAC 10-2-35](#) "Confined aquifer" defined
- (23) [329 IAC 10-2-37.1](#) "Construction plan" defined
- (24) [329 IAC 10-2-38](#) "Construction quality assurance" or "CQA" defined
- (25) [329 IAC 10-2-39](#) "Construction quality control" or "CQC" defined
- (26) [329 IAC 10-2-41.1](#) "Conterminous" defined
- (27) [329 IAC 10-2-42](#) "Contiguous land" defined
- (28) [329 IAC 10-2-50](#) "Current closure cost estimate" defined
- (29) [329 IAC 10-2-51](#) "Current post-closure cost estimate" defined
- (30) [329 IAC 10-2-54](#) "Design capacity" defined
- (31) [329 IAC 10-2-57](#) "Discontinuous aquifer" defined
- (32) [329 IAC 10-2-61](#) "Disposal capacity" defined
- (33) [329 IAC 10-2-62](#) "Downgradient ground water monitoring well" defined
- (34) [329 IAC 10-2-66.1](#) "Erosion" defined
- (35) [329 IAC 10-2-66.2](#) "Erosion and sediment control measure" defined
- (36) [329 IAC 10-2-66.3](#) "Erosion and sediment control system" defined
- (37) [329 IAC 10-2-68](#) "Face amount" defined
- (38) [329 IAC 10-2-70](#) "Facility boundary" defined
- (39) [329 IAC 10-2-75.1](#) "Floodway fringe" defined
- (40) [329 IAC 10-2-79](#) "Geogrid" defined
- (41) [329 IAC 10-2-80](#) "Geomembrane" defined
- (42) [329 IAC 10-2-81](#) "Geonet" defined
- (43) [329 IAC 10-2-82](#) "Geosynthetics" defined
- (44) [329 IAC 10-2-83](#) "Geotextile" defined
- (45) [329 IAC 10-2-84](#) "Grading" defined
- (46) [329 IAC 10-2-86](#) "Ground water monitoring well" defined
- (47) [329 IAC 10-2-91](#) "Hydraulic gradient" defined
- (48) [329 IAC 10-2-104](#) "Legal description" defined
- (49) [329 IAC 10-2-105](#) "Letter of credit" defined
- (50) [329 IAC 10-2-118](#) "Net worth" defined
- (51) [329 IAC 10-2-120](#) "Nonaquifer material" defined
- (52) [329 IAC 10-2-132](#) "Partial closure" defined
- (53) [329 IAC 10-2-132.1](#) "Partial closure certification" defined

- (54) [329 IAC 10-2-133](#) "Permit" defined
- (55) [329 IAC 10-2-134](#) "Permittee" defined
- (56) [329 IAC 10-2-136](#) "Piezometer" defined
- (57) [329 IAC 10-2-139](#) "Post-closure" defined
- (58) [329 IAC 10-2-140](#) "Post-closure cost estimate" defined
- (59) [329 IAC 10-2-147.5](#) "Quality assurance/quality control" or "QA/QC" defined
- (60) [329 IAC 10-2-148](#) "Real property boundary" defined
- (61) [329 IAC 10-2-151](#) "Registered land surveyor" defined
- (62) [329 IAC 10-2-158](#) "Responsible corporate officer" defined
- (63) [329 IAC 10-2-165.5](#) "Sedimentation" defined
- (64) [329 IAC 10-2-166](#) "Sedimentation basin" defined
- (65) [329 IAC 10-2-167](#) "Seep" defined
- (66) [329 IAC 10-2-168.1](#) "Sensitive environment" defined
- (67) [329 IAC 10-2-171](#) "Site" defined
- (68) [329 IAC 10-2-173](#) "Soil borings" defined
- (69) [329 IAC 10-2-175](#) "Solid waste boundary" defined
- (70) [329 IAC 10-2-181](#) "Storage" defined
- (71) [329 IAC 10-2-181.2](#) "Storm water discharge" defined
- (72) [329 IAC 10-2-183](#) "Structural fill" defined
- (73) [329 IAC 10-2-184](#) "Surety bond" defined
- (74) [329 IAC 10-2-186](#) "Surface water" defined
- (75) [329 IAC 10-2-187](#) "Surficial aquifer" defined
- (76) [329 IAC 10-2-190](#) "Trust fund" defined
- (77) [329 IAC 10-2-195](#) "Upgradient ground water monitoring well" defined
- (78) [329 IAC 10-2-196](#) "Upgradient water quality" defined
- (79) [329 IAC 10-2-197](#) "Uppermost aquifer system" defined
- (80) [329 IAC 10-2-197.1](#) "U.S. Environmental Protection Agency Publication SW-846" or "SW-846" defined
- (81) [329 IAC 10-2-198](#) "Vertical expansion" defined
- (82) [329 IAC 10-2-204](#) "Water table" defined
- (83) [329 IAC 10-2-206](#) "Well cluster" defined

(b) In addition to the definitions in subsection (a), the following definitions apply throughout this article:

- (1) "Insignificant facility modification" means the following:
  - (A) Relocation of a CCR unit waste hauling road.
  - (B) Relocation of office buildings.
  - (C) Changes in sequences of filling in permitted areas.
  - (D) Installation of temporary sediment control measures.
  - (E) Installation of leachate control systems to prevent leachate migration off-site.
  - (F) Installation of weighing scales.
  - (G) Replacement of a ground water monitoring well or piezometer no more than fifteen (15) feet horizontally from the original location and at an equal depth.
  - (H) Use of an alternative daily cover (ADC) under [329 IAC 10-20-14.1\(c\)](#).
  - (I) Approvals granted under [329 IAC 14-3-4](#), unless the commissioner determines the approval to be a minor modification.
  - (J) Alternative storage methods for salvaged or recycled materials under [329 IAC 10-20-6\(b\)](#).
  - (K) Changes in the frequency that collection containers regulated under [329 IAC 10-20-4\(g\)\(1\)](#) and [329 IAC 10-20-4\(g\)\(2\)](#) must be emptied.
  - (L) Improvements to drainage at the facility or modifications to sediment controls.
  - (M) Use of an ADC under [329 IAC 10-20-14.1\(d\)](#).
  - (N) Any modification to the CCR unit that the commissioner determines will improve the operation of the facility without significantly altering the approved CCR unit permit.
- (2) "Major modification of solid waste land disposal facilities", for purposes of this article, means any increase in a CCR unit that would:
  - (A) increase the permitted capacity to process or dispose of solid waste or change the closure plan for the lesser of:
    - (i) more than ten percent (10%) of the area or volume of the unit; or
    - (ii) five hundred thousand (500,000) cubic yards; or
  - (B) increase the area within the permitted solid waste boundary or the closure area by more than one (1) acre.

(3) "Minor modification of solid waste land disposal facilities", for purposes of this article, means any modification in a CCR unit that is not:

- (A) a major modification of solid waste land disposal facilities; or
- (B) an insignificant facility modification.

(c) A minor modification includes the following:

- (1) An ADC for fugitive dust and runoff controls.
- (2) A borrow pit that is:
  - (A) owned by the owner, operator, or permittee;
  - (B) not permitted by the department before April 1, 2004; and
  - (C) located onsite or on property adjoining the facility.

\*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, [www.gpo.gov](http://www.gpo.gov), or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204. (*Solid Waste Management Division; 329 IAC 14-1-4*)

### **329 IAC 14-1-5 CCR fees**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-19-3-3](#); [IC 13-20](#); [IC 36-9-30-35](#)

Sec. 5. The owner, operator, or permittee of a CCR unit shall submit the applicable fees under the requirements of [IC 13-19-3-3](#). (*Solid Waste Management Division; 329 IAC 14-1-5*)

### **Rule 2. CCR Permitting**

### **329 IAC 14-2-1 CCR unit permitting**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-19](#); [IC 13-20](#); [IC 36-9-30-35](#)

Sec. 1. (a) Except as described in subsections (b) and (c), the owner or operator of each CCR unit shall submit a timely and complete permit application as prescribed in [329 IAC 10-11](#) through [329 IAC 10-15](#).

(b) The following requirements do not apply to the permitting of CCR units:

- (1) The methane gas requirements in [329 IAC 10-15-6](#) and [329 IAC 10-18-1](#) and any other requirements related to methane gas or explosive gas plans in [329 IAC 10](#).
- (2) The stormwater pollution prevention plan in [329 IAC 10-15-12](#) and any other requirements related to stormwater pollution prevention plans in [329 IAC 10](#).
- (3) The baled waste management plan in [329 IAC 10-15-9](#) and any other requirements related to baled waste management in [329 IAC 10](#).
- (4) The requirements related to an aquifer of significance in [329 IAC 10](#).
- (5) The element of the operational plan related to procedures for the disposal of bulky solid waste, such as refrigerators, stoves, fence wire, and other similar items identified in [329 IAC 10-15-6\(17\)](#).

(c) In addition to the requirements of subsection (a), the owner or operator of the CCR unit shall provide the following items with the permit application. Each item must be certified by a qualified professional engineer:

- (1) Documentation of compliance with location restrictions in 40 CFR 257.60 through 40 CFR 257.64\*.
- (2) Documentation of compliance with 40 CFR 257.70 through 40 CFR 257.72\*.
- (3) Documentation of compliance with design and structural integrity criteria for all new surface impoundments as required by [329 IAC 10-15-8](#), 40 CFR 257.73\*, and 40 CFR 257.74\*.
- (4) Documentation of compliance with hydrologic and hydraulic capacity requirements for CCR surface impoundments as required by [329 IAC 10-15-4](#) and 40 CFR 257.82\*.
- (5) Periodic hazard potential classification assessments as required by 40 CFR 257.73(a)(2)\* and 40 CFR 257.74(a)(2)\*.
- (6) Fugitive dust control plans as required by 40 CFR 257.80\*.
- (7) An emergency action plan as required by 40 CFR 257.73(a)(3)\* or 40 CFR 257.74(a)(3)\*.
- (8) A quality assurance project plan as specified under 40 CFR 257.93\*.
- (9) A sampling and analysis plan as specified under 40 CFR 257.93\*.
- (10) A general description for developing the statistical evaluation plan following the statistical



procedures and methods specified in 40 CFR 257.93\*.

(11) In addition to the requirements of [329 IAC 10-15-3\(b\)\(7\)](#), the owner or operator shall depict the following on the cross-sectional drawing:

(A) Subsurface drain system, including:

- (i) subgrade elevation;
- (ii) piping;
- (iii) cleanout location;
- (iv) drainage features and structures;
- (v) sump, risers, and manholes; and
- (vi) lift station elevations, if applicable.

(B) Screened interval of all monitoring wells and piezometers along the transect used to prepare the cross-section.

(12) In addition to the requirements of [329 IAC 10-15-5\(a\)\(4\)](#), the owner or operator shall determine the hydrogeologic conditions and the relationship to the proposed CCR unit to predict pollutant movement in the event of releases from the proposed CCR unit or facility activities that may contribute constituents listed in Appendix III\* or Appendix IV\* of 40 CFR 257 against which background comparisons occur.

(13) Documentation of compliance with surface water run-on and run-off controls for CCR landfills, lateral expansion of the landfill, or overfills as required under 40 CFR 257.81\*.

(14) In addition to requirements in [329 IAC 10-15-4](#) and [329 IAC 10-15-5](#), facilities must also comply with [312 IAC 13-8-3](#) for installation of monitoring wells and piezometers.

(15) For a new or lateral expansion of a CCR surface impoundment, methods of disposal or sluicing of CCR in the operational plan.

(16) Procedures for CCR unit inspections as specified in 40 CFR 257.83\* and 40 CFR 257.84\*, including any required inspection reports.

(d) For purposes of this section, "CCR unit" also applies to overfills, retrofits, and lateral expansions.

\*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, [www.gpo.gov](http://www.gpo.gov), or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204. (*Solid Waste Management Division; [329 IAC 14-2-1](#)*)

#### **[329 IAC 14-2-2](#) Permitting of non-CCR waste in a CCR unit**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-19](#); [IC 13-20](#); [IC 36-9-30-35](#)

Sec. 2. (a) Non-CCR waste may not be placed in a CCR unit until the permittee receives approval from the department through the following:

- (1) The original permit of the facility.
- (2) A renewal permit.
- (3) A major modification.
- (4) A minor modification.

(b) The permit application or modification must include a waste classification under [329 IAC 10-9-4](#).

(c) Non-CCR waste approved for disposal in the CCR unit must maintain a waste classification under [329 IAC 10-9-4](#). (*Solid Waste Management Division; [329 IAC 14-2-2](#)*)

#### **[329 IAC 14-2-3](#) Transition requirements for existing CCR units**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-19](#); [IC 13-20](#); [IC 36-9-30-35](#)

Sec. 3. (a) The owner, operator, or permittee of an existing CCR unit that has not received the closure certification approval from the commissioner and, if applicable, post-closure certification, is required to obtain a permit under this article.

(b) The owner, operator, or permittee of an existing CCR unit shall submit a permit application to the commissioner under [329 IAC 10-11](#) within the following time frames:

- (1) For a CCR unit that is not approved to close or not permitted under [329 IAC 10](#), the owner, operator, or permittee shall submit an application for the appropriate permit within thirty (30) days

after the effective date of this article.

(2) For a CCR unit that is approved to close or is permitted under [329 IAC 10](#), the owner, operator, or permittee shall submit an application for the appropriate permit within one hundred eighty (180) days after the effective date of this article.

(Solid Waste Management Division; [329 IAC 14-2-3](#))

### Rule 3. Incorporation of Federal CCR Requirements and State Requirements

#### [329 IAC 14-3-1](#) Location restrictions and setbacks

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-19](#); [IC 13-20](#); [IC 36-9-30-35](#)

Sec. 1. The owner or operator of a CCR unit shall comply with the location restrictions in 40 CFR 257.60 through 40 CFR 257.64\*. Each required demonstration must be certified by a qualified professional engineer and submitted to the commissioner for approval.

\*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, [www.gpo.gov](http://www.gpo.gov), or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.

(Solid Waste Management Division; [329 IAC 14-3-1](#))

#### [329 IAC 14-3-2](#) Design criteria

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-19](#); [IC 13-20](#); [IC 36-9-30-35](#)

Sec. 2. (a) Beginning on the effective date of this article, the owner or operator of a new or an existing CCR unit or lateral expansion applying for a permit shall comply with the applicable design criteria requirements in 40 CFR 257.70 through 40 CFR 257.74\*, except for:

- (1) 40 CFR 257.72(c) and 40 CFR 257.72(d); and
- (2) the design, construction, and CQA/CQC requirements described in subsection (c).

(b) The following are additions to 40 CFR 257.70 through 40 CFR 257.74\*:

- (1) In 40 CFR 257.70(c)(2) and 40 CFR 257.71(b), replace the phrase "or approval from the Participating State Director or approval from EPA where EPA is the permitting authority" with "and approval by the commissioner".
- (2) In 40 CFR 257.73 and 40 CFR 257.74, replace the phrase "certification from a qualified professional engineer" with "certification from a qualified engineer and approval by the commissioner".
- (3) Add to 40 CFR 257.73(d)(3), "The initial structural integrity assessment and subsequent periodic assessment must be submitted to the commissioner for review and approval."
- (4) In 40 CFR 257.73(f)(1), replace "The owner or operator has completed an initial assessment when the owner or operator has placed the assessment required by paragraphs (a)(2), (d), and (e) of this section in the facility's operating record as required by 40 CFR 257.105(f)(5), (10), and (12)." with "The owner or operator has completed an initial assessment when the owner or operator has received an approval from the commissioner and has placed the assessment required by paragraphs (a)(2), (d), and (e) of this section in the facility's operating record as required by 40 CFR 257.105(f)(5), (10), and (12)."
- (5) In 40 CFR 257.73(f)(3), replace "has been placed in the facility's operating record" with "has been approved by the commissioner and has been placed in the facility's operating record".

(c) In addition to the requirements in subsection (a), the owner or operator of a new or an existing CCR unit shall comply with the following requirements of [329 IAC 10-17](#):

- (1) The construction and quality assurance/quality control requirements for the soil component of the liner in [329 IAC 10-17-5](#), except replace [329 IAC 10-17-5\(d\)\(2\)](#) with "Thin-walled tube samples using Shelby tube. Shelby tube samples must be collected from each compacted lift, with a minimum of six (6) tests required."
- (2) The construction and quality assurance/quality control requirements for the geomembrane component of the liner in [329 IAC 10-17-7](#).
- (3) The construction and quality assurance/quality control requirements for the soil component of the liner in [329 IAC 10-17-8](#), with the addition of the following leachate conveyance and storage design criteria:

(A) Leachate conveyance and storage structures located outside the solid waste boundary must be designed and constructed to prevent and contain leachate spills.

(B) Leachate conveyance lines outside the solid waste boundary must be double cased.

(C) Leachate storage must meet the following minimum criteria, unless leachate is directly discharged to a sewage treatment plant or the facility's NPDES permitted structure:

(i) A capacity for seven (7) to ten (10) days of collecting leachate and other liquids combined in the leachate collection and storage system.

(ii) Above ground tanks used for leachate must be:

(AA) compatible with the leachate expected to be generated;

(BB) resistant to temperature extremes; and

(CC) provided with a spill containment capacity of not less than one hundred ten percent (110%) of the largest storage tank system.

(iii) Surface impoundments or lagoons used for leachate must meet the following criteria:

(AA) Constructed with a bottom liner system consisting of the following, starting from the subgrade and extending upward:

(aa) One (1) foot of  $1 \times 10^{-7}$  centimeters per second of compacted clay liner.

(bb) Leak detection in the bottom of the basin.

(cc) Two (2) feet of  $1 \times 10^{-7}$  centimeters per second of compacted clay liner.

(dd) Geomembrane.

(BB) Constructed with a side slopes liner system consisting of the following, starting from the subgrade and extending upward:

(aa) Two (2) feet of  $1 \times 10^{-7}$  centimeters per second of compacted clay liner.

(bb) Geomembrane.

(CC) The leachate storage structure must be provided with two (2) feet of freeboard, unless provided with a secondary containment.

(4) The construction quality assurance and construction quality control requirements (CQA/CQC) for the drainage layer component of the liner in [329 IAC 10-17-9](#).

(5) The CQA/CQC requirements for the geosynthetic clay component of the liner in [329 IAC 10-17-10](#).

(6) The construction and quality assurance/quality control requirements for the optional drainage layer filter in [329 IAC 10-17-14](#).

(7) The construction technologies and CQA/CQC plans for alternative liner designs in [329 IAC 10-17-15](#).

(8) The post construction care requirements for a liner system in [329 IAC 10-17-16](#).

(9) The test standards for a liner system in [329 IAC 10-17-17](#), except the ASTM standard in [329 IAC 10-17-17\(1\)](#) is replaced with the American Society for Testing and Materials (ASTM), 2021 Annual Book of ASTM Standards, Section 4 Construction, Volume 04.08 Soil and Rock (I): D 421-D 5876\*\*.

(10) The CQA/CQC preconstruction meeting requirements in [329 IAC 10-17-18](#).

(d) One (1) foot of clay and a geosynthetic clay liner that complies with [329 IAC 10-17-10](#) is an acceptable alternative under 40 CFR 257.70(c)\*.

(e) The owner or operator of a CCR unit shall comply with the preoperational requirements and operational approval requirements under [329 IAC 10-19-1](#), except for the following:

(1) For the construction certification report, the items identified in [329 IAC 10-19-1\(a\)\(3\)\(C\)](#) are replaced with the requirements of 40 CFR 257, Appendix III\*.

(2) The construction certification report must include the safety factors for surface impoundments in 40 CFR 257.74\*.

\*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, [www.gpo.gov](http://www.gpo.gov), or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.

\*\*This document is incorporated by reference. Copies are available from the American Society for Testing and Materials, 100 Barr Harbor Drive, Conshohocken, PA 19429, or for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, Thirteenth Floor, 100 North Senate Avenue, Indianapolis, IN 46204. (*Solid Waste Management Division*; [329 IAC 14-3-2](#))

### [329 IAC 14-3-3](#) Operating criteria

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-19](#); [IC 13-20](#); [IC 36-9-30-35](#)

Sec. 3. (a) Except as provided in this section, the owner or operator of a CCR unit shall follow the operating criteria requirements in 40 CFR 257.80 through 40 CFR 257.84\*.

(b) The following additions and revisions apply to 40 CFR 257.80 through 40 CFR 257.84\*:

- (1) Add to 40 CFR 257.80(b)(5), "Additionally, the owner or operator must submit the initial CCR fugitive dust plan to the commissioner for review and approval."
- (2) Add to 40 CFR 257.80(b)(6), "Additionally, the owner or operator must submit any amendments to the CCR fugitive dust plan to the commissioner within sixty (60) days of amendment for review and approval."
- (3) Add to 40 CFR 257.80(c), "The annual CCR fugitive dust control report must be submitted to the commissioner within sixty (60) days of completion."
- (4) Add to 40 CFR 257.81(b), "and [327 IAC 2-1-6\(a\)](#)".
- (5) In 40 CFR 257.81(c)(5), replace the phrase "or approval from the Participating State Director or approval from EPA where EPA is the permitting authority" with "and approval by the commissioner".
- (6) Add to 40 CFR 257.82(a), "The owner or operator must submit the hydrologic and hydraulic capacity calculations and the inflow flood control system plan to the commissioner for review and approval at the time of initial application."
- (7) Add to 40 CFR 257.82(c)(4), "The owner or operator shall submit an inflow design flood control system plan to the department for approval every five (5) years. If an inflow design flood control system plan is revised, the owner or operator shall submit the revised plan to the department for approval within sixty (60) days after the date of a revision."
- (8) Add the following to 40 CFR 257.83:
  - (A) "The owner or operator shall inspect for malfunctions, deteriorations, operator errors, discharges, and seepage outcropping that may cause a release of pollutants to the environment or a threat to human health. Inspections must include erosion and sedimentation control measures."
  - (B) "Where a hazard is imminent or has already occurred, remedial action must be taken immediately to correct or repair the hazard."
- (9) Add the following to 40 CFR 257.84:
  - (A) "The owner or operator shall inspect for malfunctions, deteriorations, operator errors, discharges, leachate collection system, leachate storage, and leachate outcroppings that may cause a release of pollutants to the environment or a threat to human health. Inspections must include erosion and sedimentation control measures."
  - (B) "A qualified person shall inspect the CCR units monthly for cover, run-off control structures, erosion control structures, drainage ditches, monitoring wells, and sumps. The inspection report must include the following:
    - (i) The date and time of the inspection.
    - (ii) The name of the inspector.
    - (iii) A description of the inspection, including an identification of the specific equipment and structures inspected.
    - (iv) The observations recorded.
    - (v) The date and nature of any remedial actions implemented, or repairs made as a result of the inspection.Where a hazard is imminent or has already occurred, remedial action must be taken immediately to correct or repair the hazard."
- (10) Add to 40 CFR 257.84(b), "The owner or operator must submit the annual inspection report to the department within sixty (60) days after the date of the inspection."

(c) In addition to subsections (a) and (b), the owner or operator of a new or an existing CCR unit shall comply with the following:

- (1) The waste deposit and compaction requirements in [329 IAC 10-20-10](#).
- (2) The cover storage sites and borrow pits requirements in [329 IAC 10-20-15](#).
- (3) The leachate collection, removal, and disposal requirements in [329 IAC 10-20-20](#).
- (4) The survey requirements in [329 IAC 10-20-24](#).
- (5) The record keeping and reporting requirements in [329 IAC 10-28](#).
- (6) The grading and soil stabilization requirements in [329 IAC 10-28-14](#).
- (7) The surface leachate control requirements in [329 IAC 10-28-15](#).

\*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, [www.gpo.gov](http://www.gpo.gov), or are available for review at the Indiana Department of Environmental

**[329 IAC 14-3-4](#) Groundwater monitoring and corrective action**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-19](#); [IC 13-20](#); [IC 36-9-30-35](#)

Sec. 4. (a) The owner or operator of a CCR unit shall comply with the groundwater monitoring and corrective action requirements in 40 CFR 257.90 through 40 CFR 257.98\*.

(b) The following are additions and revisions to 40 CFR 257.90 through 40 CFR 257.98\*:

(1) Add to 40 CFR 257.91(c)(1), "There must be a maximum five hundred (500) feet of horizontal spacing for downgradient wells."

(2) Add to 40 CFR 257.91(e), "The design and installation of the monitoring wells must be completed in accordance with [329 IAC 10-21-4](#) and [312 IAC 13-8-3](#)."

(3) All the demonstrations or documents in the following federal provisions must be submitted to the commissioner for approval and must be certified by a qualified professional engineer:

(A) 40 CFR 257.91(e)(1).

(B) 40 CFR 257.91(f).

(C) 40 CFR 257.93(f)(6).

(D) 40 CFR 257.94(d)(3).

(E) 40 CFR 257.94(e)(2).

(F) 40 CFR 257.95(c)(3).

(G) 40 CFR 257.95(g)(3)(ii).

(H) 40 CFR 257.96(a), except the assessment of corrective measures does not need to be submitted to the commissioner for approval.

(I) 40 CFR 257.97(a).

(J) 40 CFR 257.98(e).

(4) In 40 CFR 257.97(a), the final report must be submitted to the commissioner.

(5) In 40 CFR 257.97(d), the schedule must be submitted to the commissioner.

(6) In 40 CFR 257.98(b), a proposal of alternative methods must be submitted to and approved by the commissioner.

(7) In 40 CFR 257.98(e), a certified notification must be submitted to the commissioner.

(c) In addition to the constituents identified in 40 CFR 257, Appendix III\* and Appendix IV\*, the commissioner may require monitoring of additional constituents based on the constituents in any non-CCR waste permitted to be accepted at the facility, and the additional constituents will be added to the permit.

\*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, [www.gpo.gov](http://www.gpo.gov), or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204. (Solid Waste Management Division; [329 IAC 14-3-4](#))

**[329 IAC 14-3-5](#) Closure and post-closure**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-19](#); [IC 13-20](#); [IC 36-9-30-35](#)

Sec. 5. (a) The owner or operator of a CCR unit shall follow the closure and post-closure requirements in 40 CFR 257.100 through 40 CFR 257.104\*, as revised by subsections (b) through (f).

(b) In 40 CFR 257.100 through 40 CFR 257.104\*, the following phrases are replaced with "and approval from the commissioner.":

(1) "Or approval from the Participating State Director or approval from EPA where EPA is the permitting authority."

(2) "Or an approval from the Participating State Director or an approval from EPA where EPA is the permitting authority."

(c) The following changes are made to 40 CFR 257.102\*:

(1) Add the following language to 40 CFR 257.102(b)(1):

(A) "An estimate of the cost per acre for dewatering, excavation, stabilization, transportation,



disposal of excavated CCR and non-CCR materials, including labor, materials, and testing necessary to accomplish the closure."

(B) "The closure cost estimate must include a ten percent (10%) contingency cost on the total estimated closure cost."

(2) Add to 40 CFR 257.102(b)(2)(ii), "The owner or operator must prepare an initial written closure plan consistent with the requirements specified in paragraph (b)(1) of this section and submit it with the permit application."

(3) Add the following language to 40 CFR 257.102(d), "Provide an evaluation of soil sampling results; photographic evidence of removal of all CCR and visually stained soils; and documentation of the chosen disposal method of CCR, soil, and any other contaminated media in a clean closure certification report. A qualified professional engineer must certify in the report that all CCR and any underlying stained soil have been removed."

(4) The following applies to all final cover systems:

(A) Any final cover required by this rule must be constructed and tested according to all the applicable construction quality control and construction quality assurance (CQC/CQA) requirements in [329 IAC 10-15-7](#) and [329 IAC 10-17](#).

(5) Add to 40 CFR 257.102(f), "The owner or operator must meet the performance standards, and submit a clean closure certification report described under 40 CFR 257.102(c)."

(6) Add to 40 CFR 257.102(f)(2)(i), "The owner or operator of the CCR must submit the demonstration for extension of closure timeframes to the commissioner for approval."

(7) Add to 40 CFR 257.102(k)(2)(ii)(B), "The plan must be certified by a qualified professional engineer and approved by the commissioner."

(8) Add to 40 CFR 257.102(k)(2)(iii), "Any amendment to the retrofit plan must be certified by a qualified professional engineer and approved by the commissioner."

(9) Add to 40 CFR 257.102(k)(2)(iii)(C), "If an approved retrofit plan is revised after retrofit activities have commenced for a CCR unit, then the amended plan must be approved by the commissioner prior to implementing the revisions."

(10) Add to 40 CFR 257.102(k)(5), "The retrofit plan must be approved by the commissioner and placed in the facility's operating record."

(d) The sentence that reads "The progress report must be approved by the commissioner and be placed in the facility's operating record." is added to the following provisions:

(1) 40 CFR 257.103(c)(2)(iii)\*.

(2) 40 CFR 257.103(f)(1)(xi)(C)\*.

(3) 40 CFR 257.103(f)(2)(X)\*.

(e) The following changes are made to 40 CFR 257.104\*:

(1) Add to 40 CFR 257.104(d)(1)(iii), "The demonstration must be approved by the commissioner prior to any disturbance of the cover system."

(2) Add to 40 CFR 257.104(d)(2)(ii), "The owner or operator must prepare an initial written post-closure plan consistent with the requirements specified in paragraph (d)(1) of this section and submit it with the permit application."

(3) Add to 40 CFR 257.104(d)(2)(iii), "The post-closure plan approved by the commissioner must be placed in the facility's operating record."

(4) Add to 40 CFR 257.104(d)(3)(iii), "An amendment to the written post-closure plan must be certified by a qualified professional engineer and submitted to the commissioner for approval."

(f) In addition to subsections (a) through (e), the following requirements apply to closure and post-closure of a CCR unit:

(1) The requirements in [329 IAC 10-22-2\(c\)\(2\)](#), [329 IAC 10-22-2\(c\)\(10\)](#), and [329 IAC 10-22-2\(c\)\(11\)](#).

(2) Dike maintenance of surface impoundments as required by [329 IAC 10-22-2\(c\)\(8\)](#).

(3) The closure plan must include an estimate of the cost per acre of providing final cover and vegetation. The cost estimate must reflect the cost necessary to close the CCR unit by the third party as required by the approved plan, but must not be less than the following:

(A) Thirty-nine thousand four hundred dollars (\$39,400) per acre to close CCR units constructed with only a soil liner.

(B) One hundred eight thousand dollars (\$108,000) per acre for CCR units constructed with a composite bottom liner system.

For an application for a new CCR unit or major modification submitted after June 14, 2022, the owner, operator, or permittee shall adjust the minimum closure costs provided in clauses (A) and (B) for inflation, as described in [329 IAC 10-39-2\(c\)\(2\)](#).

- (4) The requirements of [329 IAC 10-22-3](#).
- (5) The requirements of [329 IAC 10-23-3](#)(c)(4), with the following changes:
  - (A) The leachate table in [329 IAC 10-23-3](#)(c)(4)(B) is replaced with leachate generation rate estimates obtained from the Hydrologic Evaluation of Landfill Performance (HELP) model or other similar tools as approved by the commissioner. The HELP model is available through the U.S. EPA at <https://www.epa.gov/land-research/hydrologic-evaluation-landfill-performance-help-model>.
  - (B) The following are added to [329 IAC 10-23-3](#)(c)(4)(C):
    - (i) Groundwater monitoring well replacement, maintenance of the access roads to the groundwater monitoring wells, and leachate pump replacement, if applicable.
    - (ii) Maintenance of dikes to comply with [329 IAC 10-16-2](#), 40 CFR 257.73\*, and 40 CFR 257.74\*, as applicable.
    - (iii) The post-closure cost estimate must include a fifteen percent (15%) contingency cost based on the total post-closure cost for units with a leachate collection system.
    - (iv) The post-closure cost estimate must include a ten percent (10%) contingency cost based on the total post-closure cost for units without a leachate collection system.
- (6) The requirements of [329 IAC 10-30-4](#)(b)(8).
- (7) The requirements of [329 IAC 10-30-7](#).
- (8) The requirements of [329 IAC 10-31-2](#)(a)(1), [329 IAC 10-31-2](#)(a)(2), and [329 IAC 10-31-2](#)(a)(4) through [329 IAC 10-31-2](#)(a)(7) with the following additions:
  - (A) Maintenance and monitoring of the dike or dikes required under [329 IAC 10-16-2](#).
  - (B) Erosion and sediment control measures must be instituted to comply with [329 IAC 10-20-12](#) and this rule.
- (9) The requirements of [329 IAC 10-31-3](#)(a), with the addition of a requirement that the post-closure plan remains effective and enforceable during the post-closure period if the permit expires or is revoked.
- (10) The requirements of [329 IAC 10-31-4](#) through [329 IAC 10-31-7](#).

\*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, [www.gpo.gov](http://www.gpo.gov), or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.

(Solid Waste Management Division; [329 IAC 14-3-5](#))

#### **[329 IAC 14-3-6](#) Record keeping, notification, and posting information**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-19](#); [IC 13-20](#); [IC 36-9-30-35](#)

Sec. 1. (a) The owner or operator of a CCR unit shall comply with the requirements for record keeping, notification, and posting of information to the Internet under 40 CFR 257.105 through 40 CFR 257.107\*, as amended in subsection (b).

(b) The following are revisions to 40 CFR 257.105 through 40 CFR 257.10\*:

- (1) In 40 CFR 257.105, all plans must be approved by the department.
- (2) Delete 40 CFR 257.106(b).

\*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, [www.gpo.gov](http://www.gpo.gov), or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204. (Solid Waste Management Division; [329 IAC 14-3-6](#))

#### **Rule 4. Financial Assurance**

##### **[329 IAC 14-4-1](#) Financial assurance for CCR units**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-19](#); [IC 13-20](#); [IC 36-9-30-35](#)

Sec. 1. The owner or operator of a CCR unit shall comply with the financial assurance requirements of [329 IAC 10-39](#). (Solid Waste Management Division; [329 IAC 14-4-1](#))

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