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

LSA Document #17-565

COAL COMBUSTION RESIDUALS LANDFILLS AND SURFACE IMPOUNDMENTS**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at [329 IAC 3.1-6-2](#) and [329 IAC 10](#) concerning landfills and surface impoundments 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 3.1-6-2](#); [329 IAC 10](#).

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

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

IDEM is initiating this rulemaking to propose additional standards for coal combustion residuals units that implement the federal standards at 40 CFR 257, Subpart D, and also include Indiana-specific standards that will be at least as protective as the federal standards. This rulemaking is a follow-up to LSA Document #16-217, which incorporated by reference the federal standards for new and existing coal combustion residuals surface impoundments at 40 CFR 257, Subpart D. The federal standards were promulgated in a final rule published in the Federal Register (FR) on April 17, 2015, at 80 FR 21302, and became effective on October 14, 2015. LSA Document #16-217 incorporated by reference the federal standards for coal combustion residuals surface impoundments to meet compliance deadlines, ensure regulatory oversight, and take enforcement action, if necessary.

In addition, the adoption of LSA Document #16-217 allowed for Indiana to implement alternative compliance schedules if the United States Environmental Protection Agency (U.S. EPA) approved changes to Indiana's Solid Waste Management Plan. After the adoption of LSA Document #16-217, IDEM submitted the amended Solid Waste Management Plan to U.S. EPA, and IDEM received approval for the amended plan on March 7, 2017. In the Solid Waste Management Plan, IDEM stated an intent to propose standards that are consistent with and at least as stringent as the federal standards for coal combustion residuals landfills and surface impoundments.

At the time that the federal standards for coal combustion residuals were promulgated, Indiana statute at [IC 13-19-3-3](#) included prohibitions on adopting rules for certain types of disposal and use of coal combustion residuals. Without amendment, these prohibitions would have prevented Indiana from adopting rules that are consistent with the federal standards for coal combustion residuals. To resolve this situation, the Indiana General Assembly passed Indiana Public Law 1-2017, which amended [IC 13-19-3-3](#) to allow the Environmental Rules Board to adopt standards for coal combustion residuals that are consistent with 40 CFR 257, Subpart D.

After the promulgation of the U.S. EPA final rule for coal combustion residuals on April 17, 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 the coal combustion residuals units that is at least as protective as the federal standards. This rulemaking proposes to establish a state-operated permit program for coal combustion residuals units that is consistent with federal standards and also includes state-specific standards. The state permit program will operate in lieu of a permit program implemented by U.S. EPA that strictly adheres to federal standards without offering state-specific flexibilities and alternatives. After adoption of this rulemaking, IDEM can submit the state permit program to U.S. EPA for approval, in accordance with provisions of Section 2301 of the WIIN Act.

As a result of the adoption of LSA Document #16-217, U.S. EPA's approval of the amended Solid Waste Management Plan, the enactment of Public Law 1-2017, and the provisions for a state-operated permit program in the WIIN Act, IDEM is initiating this rulemaking to propose additional changes to the coal combustion residuals standards, offer compliance alternatives and flexibility while still being at least as protective as the federal standards at 40 CFR 257, Subpart D, and establish a permit program for coal combustion residuals units.

Indiana rules at [329 IAC 10](#) currently permit regulated entities to dispose of coal combustion residuals in restricted waste sites. These requirements were created before promulgation of the federal standards for coal combustion residuals units and differ from the federal standards in some cases. IDEM will conform the existing permit program and requirements for restricted waste sites to align with the coal combustion residuals standards at 40 CFR 257, Subpart D. IDEM plans to implement the recently promulgated federal coal combustion residuals landfill standards while also resolving inconsistencies between the current Indiana standards and the federal

standards. The proposed rule amendments will maintain Indiana-specific requirements for the restricted waste sites that are not included in the federal coal combustion residuals landfill standards, but are at least as protective as the federal standards. These Indiana-specific requirements may include permit application requirements, location restrictions, operating criteria, closure and post-closure, financial assurance, record keeping, and notification. In addition, IDEM will supplement some of the federal coal combustion residuals landfill standards with long-established, more specific solid waste landfill design and construction standards that offer clarity and site-specific flexibility. These site-specific flexibilities may include alternative liner, cover, and leachate collection system design, alternative requirements for ground water monitoring and protection, corrective action, and site-specific operational requirements.

While IDEM plans to amend the restricted waste sites requirements to be consistent with the federal coal combustion residuals standards, the restricted waste sites requirements for Type I through Type IV restricted wastes will not be amended in this rulemaking. The amendments proposed for this rulemaking will only apply to solid wastes that are classified as coal combustion residuals. IDEM plans to propose new rules in [329 IAC 10](#) that will only include the standards for coal combustion residuals units. The other existing requirements for Type I through Type IV restricted wastes will remain the same.

For coal combustion residuals surface impoundments, IDEM may consider site-specific compliance alternatives and flexibilities to the standards that were adopted in LSA Document #16-217. Because of the compliance deadlines and requirements in 40 CFR 257, Subpart D, many owners and operators have initiated closure for inactive and existing coal combustion residuals surface impoundments, rather than continue operation of these units. IDEM anticipates that owners and operators will not construct new surface impoundments or expand existing surface impoundments. However, IDEM has received feedback from interested parties about providing the opportunity for site-specific compliance alternatives and flexibilities to some of the federal standards for surface impoundments, while maintaining standards that are at least as protective as the federal standards. In addition, IDEM may need to permit activities at surface impoundments as the facilities phase out coal combustion or the generation of wet coal combustion residuals and move towards closure of surface impoundments.

The main entities that will be affected by this rulemaking are the owners and operators of units for coal combustion residuals generated from the combustion of coal at electric utilities and independent power producers. Also affected are owners and operators of units for coal combustion residuals generated at active electric utilities and independent power producers, but are located off-site from the generating facility.

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 state permit program for the coal combustion residuals units that implements the coal combustion residuals standards at 40 CFR 257, Subpart D, while also maintaining some existing Indiana-specific standards for management of coal combustion residuals and providing site-specific compliance flexibility.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No, but the alternative will implement state-specific standards that will be consistent with federal standards.
- 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 also proposes to 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.
- If it is different, describe the differences. The alternative may offer site-specific compliance flexibility and maintain some existing Indiana-specific requirements for coal combustion residuals units, which may differ from the federal requirements while still being at least as protective. These differences may include permit application requirements, location restrictions, operating criteria, closure and post-closure, financial assurance, record keeping and notification, alternative liner, cover, leachate collection system design, alternative requirements for ground water monitoring and protection, corrective action, and site-specific operational requirements.

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

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- 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

The requirements for landfills and surface impoundments for coal combustion residuals were promulgated by the U.S. EPA in a final rule published in the Federal Register on April 17, 2015, at 80 FR 21302, and are codified at 40 CFR 257, Subpart D. The U.S. EPA final rule established minimum standards for the disposal of coal combustion residuals and the design, operation, and closure of new and existing coal combustion residuals

landfills and surface impoundments. While the coal combustion residuals standards are designed to be self-implemented by the affected entities, additional flexibilities can be made available to the affected entities if a state regulatory agency, such as IDEM, adopts and implements standards that are consistent with 40 CFR 257, Subpart D.

In addition, Section 2301 of the Water Infrastructure Improvement for the Nation 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 coal combustion residuals units. IDEM intends to establish a permit program for coal combustion residuals units and submit an application to U.S. EPA to gain approval to administer the permit program.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1. This alternative will not have a significant fiscal impact beyond compliance with existing federal coal combustion residuals standards and existing state-specific standards. The fiscal impact will derive from already existing requirements, rather than from additional requirements that may significantly increase the cost of compliance. Most likely, the rulemaking will provide regulated entities with opportunities for reduced compliance costs in comparison with a strict, full adoption of the federal coal combustion residuals standards. The compliance flexibility and alternatives for coal combustion residuals units proposed in this rulemaking will provide opportunities for cost savings, although regulated entities will have the option to pursue these opportunities rather than be required to do so. The exact amount of the cost savings is difficult to quantify because IDEM cannot determine the exact nature of the alternatives at this stage of the rulemaking, how many facilities will pursue these alternatives, and how many alternatives each unit will attempt to implement.

Aligning the existing state standards for the disposal of coal combustion residuals at restricted waste sites with the federal coal combustion residuals standards also may lead to cost savings for regulated entities. Before the promulgation of the federal coal combustion residuals standards, Indiana had long-standing requirements for the disposal of coal combustion residuals in permitted restricted waste sites. For some aspects of the management of coal combustion residuals, the existing Indiana standards are duplicative of the recently promulgated federal coal combustion residuals standards. Rather than proposing full adoption of the federal coal combustion residuals standards, maintaining a portion of the existing state standards that provide equivalent protection while also adopting state standards that are consistent with the federal standards may lower compliance costs for existing and new coal combustion residuals units. This situation can prevent overlapping and duplicative standards that lead to unnecessary compliance costs.

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. IDEM intends to prevent this type of situation by going forward with the stated goals in Alternative 1.

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:

Katelyn Colclazier
Small Business Ombudsman
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 431-1560
kcolclazier@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:

Matthew Guell

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

mguell@idem.in.gov

Public Participation and Work Group Information

An external work group will be established to discuss issues involved in this rulemaking. The work group will consist of IDEM staff, a cross-section of stakeholders and affected parties, and other parties that express interest in participating in the work group. IDEM plans to convene the work group after the First Notice of Comment Period is complete and IDEM has created an initial version of a draft rule with the proposed amendments described in this notice.

If you wish to provide comments to the work group on the rulemaking, attend meetings, or have suggestions related to the work group process, please contact Dan Watts, Rules Development Branch, Office of Legal Counsel at (317) 234-5345 or (800) 451-6027 (in Indiana). Please provide your name, phone number, and e-mail address, if applicable, where you can be contacted. The public is also encouraged to submit comments and questions to members of the work group who represent their particular interests in the rulemaking.

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 #17-565 Coal Combustion Residuals Landfills and Surface Impoundments

Dan Watts

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 facsimile to (317) 233-5970. Please confirm the timely receipt of faxed comments by calling the Rules Development Branch at (317) 232-8922.

- (3) By electronic mail to dwatts1@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.**

- (4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

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, faxed, or time stamped not later than January 5, 2018. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Dan Watts, Rules Development Branch, Office of Legal Counsel (317) 234-5345 or (800) 451-6027 (in Indiana).

Christine Pedersen, Section Chief

Rules Development Branch

Office of Legal Counsel

