

TITLE 329 SOLID WASTE MANAGEMENT DIVISION

LSA Document #21-458

SUMMARY/RESPONSE TO COMMENTS FROM THE THIRD COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from November 5, 2025, through November 26, 2025, on IDEM's draft rule language. IDEM received comments from the following parties:

Gabriel S. Coriell, Ohio Valley Electric Corporation (OVEC)
Jessica Reiss, Hoosier Energy Rural Electric Cooperative, Inc (HE)
Indra Frank, Hoosier Environmental Council (HEC)
Danielle McGrath, Indiana Energy Association (IEA)

Following is a summary of the comments received and IDEM's responses thereto.

Comment: IDEM should seek certification from a PE, and not a QPE. (OVEC)

Response: To comply with IC 13-19-3-3(c)(1), IDEM seeks to be as consistent as possible with the federal CCR rule while still establishing a state CCR permit program as directed by IC 13-19-3-3(d). As the federal CCR rule specifically calls for QPE certifications, IDEM's proposed rule does the same. IDEM is not proposing to amend any rule language in response to this comment.

Comment: IDEM should not evaluate determinations, plans, certifications, and processes that have already been approved by a facility's QPE and implemented onsite. (OVEC)

Response: IDEM will evaluate applications and other submissions to its CCR permit program, including all supporting documents and materials, at the time of submission. IDEM is not proposing to amend any rule language in response to this comment.

Comment: IDEM should establish a burden of proof for disagreements between IDEM permitting staff and QPEs. (OVEC)

Response: IDEM does not intend or have authority to modify the existing statutory dispute resolution process for administrative determinations. IC 4-21.5-3 speaks for itself. IDEM is not proposing to amend any rule language in response to this comment.

Comment: CCR Management Units (CCRMUs) should not be required to obtain permits. (OVEC; HE)

Response: To comply with IC 13-19-3-3(c)(1), IDEM seeks to be consistent with the federal CCR rule as currently written. IDEM will address any changes to the federal CCR rule as appropriate. Furthermore, when IDEM incorporates by reference a law, the referenced law needs a date certain; IDEM, therefore, cannot include the requested provision that automatically changes state law when U.S. EPA publishes rules related to deadline extensions. IDEM is not proposing to amend any rule language in response to this comment.

Comment: Several potential changes to the federal CCR rule have been announced. IDEM should refrain adopting federal regulations applicable to CCRMUs in light of these potential changes. (IEA)

Response: To comply with IC 13-19-3-3(c)(1), IDEM seeks to be consistent with the federal CCR rule as currently written. IDEM will address any changes to the federal CCR rule as appropriate. The federal CCR rule applies to CCRMUs; therefore, the proposed rule applies to CCRMUs. IDEM is not proposing to amend any rule language in response to this comment.

Comment: The Legacy Rule should not be included until it is reconsidered. (OVEC; HE)

Response: To comply with IC 13-19-3-3(c)(1), IDEM seeks to be consistent with the federal CCR rule as currently written. IDEM will address any changes to the federal CCR rule as appropriate. IDEM is not proposing to amend any rule language in response to this comment.

Comment: IDEM must demonstrate that they met Indiana requirements to create a more stringent, technical groundwater monitoring program for CCR units. (OVEC)

Response: Monitoring of non-CCR constituents at facilities accepting waste other than CCR is not more stringent than a restriction or requirement imposed under federal law. The federal CCR rule assumes that CCR units are used for CCR disposal and simply does not address acceptance of waste other than CCR. Further, monitoring of non-CCR constituents pursuant to 329 IAC 14 does not implicate IC 13-14-9-4 because 329 IAC 14 will not impose new restrictions or requirements. Groundwater monitoring associated with land disposal of non-CCR waste is already governed by 329 IAC 10. For the sake of convenience and efficiency, IDEM is allowing CCR units that accept non-CCR waste to obtain a single permit under 329 IAC 14 instead of requiring an additional permit under 329 IAC 10. IDEM is not proposing to amend any rule language in response to this comment.

Comment: Commenter requests confirmation that IDEM will not use 329 IAC 14-3-4(c) to add Total Boron to all permits issued under Article 14. (OVEC)

Response: 329 IAC 14-3-4(c) speaks for itself. IDEM is not proposing to amend any rule language in response to this comment.

Comment: The Proposed Rule should clarify that a tank is not a CCR Surface Impoundment. (OVEC)

Response: The current rule language does not require a CCR unit to use daily cover or alternative daily cover (ADC). It simply states that if ADC is to be used for fugitive dust control or run-off control, then a minor modification of the permit would be required. The federal CCR rule requires changes to fugitive dust plans and run-off controls if they are not functioning to mitigate fugitive dust and run-off issues. The only amended rule language IDEM is proposing in response to this comment is to clarify that ADC stands for alternative daily cover.

Comment: The remaining reference to alternative daily cover should be deleted. (OVEC)

Response: The current rule language does not require a CCR unit to use daily cover or alternative daily cover (ADC). It simply states that if ADC is to be used for fugitive dust control or run-off control, then a minor modification of the permit would be required. The federal CCR rule requires changes to fugitive dust plans and run-off controls if they are not functioning to

mitigate fugitive dust and run-off issues. The only amended rule language IDEM is proposing in response to this comment is to clarify that ADC stands for alternative daily cover.

Comment: The requirements for insignificant modifications are internally inconsistent. (OVEC)

Response: 329 IAC 14-2-3(b)(1) and (b)(5) are not inconsistent. 329 IAC 14-2-3(b)(1) applies to specific, enumerated modifications, whereas 329 IAC 14-2-3(b)(5) applies to other insignificant modifications not enumerated in 329 IAC 14-2-3(b)(1). IDEM is not proposing to amend any rule language in response to this comment.

Comment: IDEM's proposed revisions to the draft language at 329 IAC 14-2-1(a) are unclear. IDEM's suggested change refers to "closure certification or post-closure certification, as established via 329 IAC 14-3-5(f)," but 329 IAC 14 is not effective under which any certifications could be "established." IDEM should refer directly to specified provisions of 329 IAC 10 or delete "as established via 329 IAC 14-3-5(f)". (HE)

Response: IDEM agrees the proposed language at 329 IAC 14-2-1(a) is unclear and intends to propose the following language for final adoption, which better captures the agency's intent:

- a. The owner, operator, or permittee of a CCR unit is required to obtain a permit under this article, unless:
 - 1. The CCR unit received a closure certification approval from the commissioner or the CCR unit's closure certification was deemed adequate due to expiration of the time during which the commissioner was required to respond; and
 - 2. If applicable, the CCR unit received a post-closure certification approval from the commissioner post-closure certification or the CCR unit's post-closure certification was deemed adequate due to expiration of the time during which the commissioner was required to respond.

One permit application may be submitted for multiple CCR units located at the same facility.

Comment: The proposed language at 329 IAC 14-2-1(c), as published in IDEM's OLG Rulemaking Docket webpage, requires clarification to indicate when applications for legacy surface impoundments and CCRMUs are due. (IEA)

Response: The intent of 329 IAC 14-2-1(c) is consistent with its language. The owner, operator, or permittee of a CCR unit that is under construction or otherwise in existence on the effective date of 329 IAC 14 shall submit a permit application to the commissioner within one hundred eighty (180) days of the effective date of 329 IAC 14. This includes CCR units for which 40 CFR 257.100(f)(5)(i) and (ii), 40 CFR 257.102(b)(2)(iii), and 40 CFR 257.104(d)(2)(iii) establish later deadlines for closure and post-closure plans. The owner, operator, or permittee of such a CCR unit shall submit all other required elements of a permit application to the commissioner within one hundred eighty (180) days of the effective date of 329 IAC 14, and shall then submit the closure and post-closure plans in accordance with the later deadlines established in 40 CFR 257.100(f)(5)(i) and (ii), 40 CFR 257.102(b)(2)(iii), and 40 CFR 257.104(d)(2)(iii). IDEM is not proposing to amend any rule language in response to this comment.

Comment: IDEM should clarify that the alternative liner option in the draft language at 329 IAC 14-3-2(c) is one, but not the only, liner alternative under 40 CFR 257.70(c). (IEA)

Response: IDEM intends to propose the following revised language for final adoption:

“(c) One (1) foot of clay with a hydraulic conductivity no greater than 1×10^{-7} cm/sec, in combination with a geosynthetic clay liner that complies with 329 IAC 10-17-10, is acceptable as the lower component of an alternative composite liner under 40 CFR 257.70(c)*, if certified by a qualified professional engineer and approved by the commissioner.”

The proposed language, which does not limit the possibility of other alternatives, sufficiently addresses the commenter’s concern and responds to earlier comments regarding clarifying the technical specifications of this compliance alternative. IDEM is not proposing to amend any rule language in response to this comment.

Comment: HEC supports the suggested change at 14-3-2(c) to include a requirement for hydraulic conductivity for the clay component in an alternate composite liner. This change is consistent with the federal CCR Rule at 257.70(c), keeping Indiana’s rule at least as protective as the federal rule. (HEC)

Response: IDEM appreciates the commenter’s support and seeks to be as consistent as possible with the federal CCR rule while still establishing a state CCR permit program.

Comment: As financial assurance requirements are permitting requirements for solid waste facilities in Indiana, including coal ash, and have been for more than two decades, we support the inclusion of the financial assurance requirement in 329 IAC 14-4-1. (HEC)

Response: IDEM agrees that financial assurance requirements should be maintained in the state’s CCR permit program to ensure continuity within its solid waste permitting rules, as well as consistency with the federal CCR rule.