

TITLE 329 SOLID WASTE MANAGEMENT DIVISION

Rule Information Sheet

Coal Combustion Residuals
LSA Document #21-458

Overview

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 Section 2301 of the Water Infrastructure Improvements for the Nation Act (WIIN Act), 42 U.S.C. 6945(d), for the implementation in Indiana of the federal coal combustion residuals (CCR) rule, and to incorporate by reference 40 CFR 257, Subpart D, concerning minimum criteria and requirements for CCR units. This comprehensive state-operated permit program for CCR units replaces the current partial incorporation of the federal rule at 329 IAC 10-9-1 and is no more stringent than the federal standards at 40 CFR 257, Subpart D, for CCR surface impoundments, CCR landfills, and CCR management units.

The Second Notice of Comment Period for the CCR rulemaking, which published on the Indiana Register (IR) website on 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 IR website on 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.

Additionally, U.S. EPA published a final rule on the Federal Register (FR) website on May 8, 2024, that established regulatory requirements for legacy CCR surface impoundments and management units under the Resource Conservation and Recovery Act (89 FR 39099 through 89 FR 39122). U.S. EPA also plans to publish a subsequent final rule to correct several technical errors in the May 8, 2024, final rule, but these corrections will not become effective until 90 days after they are published in the FR. There is no estimated timeframe for the publication of the corrections as yet.

In response to the recent passage of HEA 1623, the comments received during the first and second Continuations of Second Notice of Comment Period, and publication of the May 8, 2024, federal final rule establishing regulatory requirements for legacy impoundments and management units, IDEM is proposing to revise the new article added at 329 IAC 14 of the draft rule to incorporate by reference the July 1, 2024, version of the CFR as amended by 89 FR 39099 through 89 FR 39122, and 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 will also update the incorporation by reference of 40 CFR 257, Subpart D, to the July 1, 2025, version of the CFR before this rule is promulgated, or through a separate rulemaking, to include the upcoming federal rule amendments.

Affected Persons

Owners and operators of CCR units in the state of Indiana.

Reasons for the Rule

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. It is intended to comply with Section 2301 of the Water Infrastructure Improvements for the Nation Act (WIIN Act), 42 U.S.C. 6945(d), for the implementation in Indiana of the federal CCR rule. It ensures that state rules are consistent with, and no more stringent than, federal regulations through incorporation by reference of 40 CFR 257, Subpart D, as amended by 89 FR 39099 through 39122.

Economic Impact of the Rule

There is no economic 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 continue to receive revenue from the statutory permit fees outlined in IC 13-19-3-3.

Scheduled Board Action and Hearings

First Public Hearing: December 11, 2024, at 1:30 p.m., at the Indiana Government Center South, 10 North Senate Avenue, Conference Center Room A, Indianapolis, IN 46204.

IDEM Contact

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