

Bold = new language

~~Strikeout~~ = existing language deleted in this rulemaking

Bold and single underline = new language added since preliminary adoption

~~Strikeout and single underline~~ = existing language deleted since preliminary adoption

Bold, strikeout, and single underline = new language at preliminary adoption that is being deleted

Single underline = change at preliminary adoption that is being changed back to preexisting language

TITLE 329 SOLID WASTE MANAGEMENT DIVISION

PROPOSED RULE AS PRELIMINARILY ADOPTED WITH IDEM'S SUGGESTED CHANGES INCORPORATED

LSA Document #21-458

DIGEST

Amends 329 IAC 10-3-1, 329 IAC 10-3-4, and 329 IAC 10-9-1, and adds a new article at 329 IAC 14 concerning the establishment of a state permitting program for coal combustion residuals (CCR). Pursuant to IC 13-19-3-3(d) and (g), this rule is effective upon the effective date of final approval of the Indiana state permit program by the United States Environmental Protection Agency under 42 U.S.C. § 6945(d)(1).

HISTORY

First Notice of Comment Period: October 13, 2021, Indiana Register (DIN: 20211013-IR-329210458FNA).

Second Notice of Comment Period: December 21, 2022, Indiana Register (DIN: 20221221-IR-329210458SNA).

Continuation of Second Notice of Comment Period: January 18, 2023, Indiana Register (DIN: 20230118-IR-329210458SCA).

Second Continuation of Second Notice of Comment Period: July 31, 2024, Indiana Register (DIN: 20240731-IR-329210458SCA).

Date of First Hearing: December 11, 2024.

Additional Notice of Public Comment Period: November 5, 2025, Indiana Register (DIN: 20251105-IR-329210458APA)

ADDITIONAL DOCUMENTS

Regulatory Analysis: November 5, 2025, Indiana Register (DIN: 20251105-IR-329210458RAA)

Notice of Public Hearing: December 21, 2022, Indiana Register (DIN: 20221221-IR-329210458PHA).

Change in Notice of Public Hearing: February 1, 2023, Indiana Register (DIN: 20230201-IR-329210458CHA).

Notice of Public Hearing: July 31, 2024, Indiana Register (DIN: 20240731-IR-329210458PHA).

Summary/Response to Comments: July 31, 2024, Indiana Register (DIN: 20240731-IR-329210458ONA).

329 IAC 10-3-1

329 IAC 10-3-4

329 IAC 10-9-1

329 IAC 14-1

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~~ **IC 13-19-3-**

3.1.

(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. this article does not apply to the disposal of wastes that have been classified by the commissioner to meet the criteria established in 329 10-9-4 for restricted waste site Type IV waste.

(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~~ ~~shall~~ 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 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).

(e) ~~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, 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 article applies to CCR unit owners and operators and CCR units as described in 40 CFR 257.50(b) through (i)*. (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, 2024 2025, edition. ~~as amended by 89 FR 39099 through 89 FR 39122, May 8, 2024.~~

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

- (1) 40 CFR 257, Subpart D*, except as 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.

(c) For purposes of this article, any reference in 329 IAC 10 to municipal solid waste landfills (MSWLF) or other facilities regulated under 329 IAC 10 means a CCR unit.

(d) When used in 40 CFR, as incorporated by this article, the term "subpart" means this "article" or "329 IAC 14".

*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, 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 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. Approvals issued by the department before the effective date of this article for CCR units (including landfills formerly known as restricted waste sites) remain valid and effective pending transition to permits under this article. (*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 13-11; IC 13-19; IC 13-20; IC 36-9-30-35

Sec. 4. (a) Except as identified in subsections subsection (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*

The definitions at IC 13-11-2 and 329 IAC 10-2 only apply to the interpretation of Indiana statutes or regulations. 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.

(b) In addition to the definitions referred to 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(e).~~

~~(I) (H) 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) (I) 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) (J) 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:

(A) means any modification in a CCR unit that is not:

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

~~(e) (4) A "Minor modification of solid waste land disposal facilities", for purposes of this article, (B) includes the following:~~

~~(1) (A) (i) An alternative daily cover (ADC) for fugitive dust and runoff run-off controls.~~

~~(2) (B) (ii) A borrow pit that is:~~

~~(A) (i) (AA) owned by the owner, operator, or permittee; and~~

~~(B) not permitted by the department before April 1, 2004; and~~

~~(C) (ii) (BB) 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, 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)

329 IAC 14-1-6 Variances

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-14-8; IC 13-19-3-3; IC 13-20; IC 36-9-30-35

Sec. 6. (a) The commissioner may grant a variance from compliance with this article in accordance with IC 13-14-8.

(b) No term, condition, or requirement granted under this section may be less protective than applicable requirements of 40 CFR 257*.

***These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, 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 14-1-6)**

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) The owner, operator, or permittee of a CCR unit that has not received a closure certification approval from the commissioner and, if applicable, post-closure certification approval, is required to obtain a permit under this article, One permit application may be submitted for multiple CCR units located at the same facility. Expiration of the time for the commissioner to respond to the closure certification or post-closure certification, as established via 329 IAC 14-3-5(f), is considered approval if such expiration occurs after the effective date of this article and before the commissioner issues a notice of deficiency, 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 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.

(b) Except as described in subsections (c), (d) and (e), permit applications for CCR units are subject to 329 IAC 10-11 through 329 IAC 10-13.

(c) Except as provided in to the extent 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 certain closure and post-closure plans, the owner, operator, or permittee of a CCR unit that is under construction or otherwise in existence on the effective date of this article shall submit a permit application to the commissioner within one hundred eighty (180) days of the effective date of this article.

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

- (1) Any requirements related to methane gas or explosive gas plans in 329 IAC 10.**
- (2) Any requirements related to stormwater pollution prevention plans in 329 IAC 10.**
- (3) Any requirements related to baled waste management in 329 IAC 10.**
- (4) The requirements related to an aquifer of significance in 329 IAC 10.**

(e) 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 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 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) 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*.**
- (12) For a new or lateral expansion of a CCR surface impoundment, methods of**

disposal or sluicing of CCR in the operational plan.

(13) Procedures for CCR unit inspections as specified in Documentation of compliance with 40 CFR 257.83* and 40 CFR 257.84*, including any required inspection reports.

(f) ~~For purposes of this section, "CCR unit" also applies to overfills, retrofits, and lateral expansions. Overfills, retrofits, and lateral expansions are subject to the permit requirements of this article.~~

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

*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, 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 Deadlines for acting on applications; insignificant facility modifications

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 commissioner shall approve or deny an application filed with department within the following number of days:

(a) (1) Three hundred sixty-five (365) days for a new CCR unit or a major modification.

(b) (2) One hundred eighty (180) days for a minor modification.

(c) Sixty (60) days for an insignificant facility modification.

(b) Insignificant facility modifications are subject to the following:

(1) If a permittee proposes or is required to make an insignificant facility

modification described in 329 IAC 14-1-4(b)(1)(A), 329 IAC 14-1-4(b)(1)(B), 329 IAC 14-1-4(b)(1)(C), 329 IAC 14-1-4(b)(1)(D), 329 IAC 14-1-4(b)(1)(E), 329 IAC 14-1-4(b)(1)(F), 329 IAC 14-1-4(b)(1)(G), or 329 IAC 14-1-4(b)(1)(H), the permittee shall provide notice to the commissioner no later than seven (7) calendar days after the modification has been made. The notice shall include a detailed description of the project and the date the project was or is expected to be completed.

(2) If the permittee proposes to make an insignificant facility modification described in 329 IAC 14-1-4(b)(1)(I), or 329 IAC 14-1-4(b)(1)(J), the permittee shall submit documentation of the proposed insignificant facility modifications to the commissioner. The documentation must include a detailed description of the proposed project.

(3) If the commissioner determines that insufficient documentation has been provided to determine whether or not the proposed modification under subdivision (2) is an insignificant facility modification, the permittee will be notified in writing by the commissioner within thirty (30) days after receipt of the proposal that the permittee must submit a new proposal for the insignificant modification.

(4) If the commissioner determines that the modification under subdivision (2) is a major or minor modification, the permittee will be notified in writing within thirty (30) days after receipt of the information to the commissioner that the permittee must submit an application for a minor or major modification to the current permit.

(5) If the permittee does not receive notification from the commissioner within thirty (30) days after receipt of the proposed modifications to the commissioner, the permittee may initiate the insignificant facility modifications in accordance with documentation provided to the commissioner.

(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, 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 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 75*.

(b) The following are additions to 40 CFR 257.70 through 40 CFR 257.74 75*:

(1) In 40 CFR 257.70(e)(2), and through 40 CFR 257.71(b), 40 CFR 257.72, 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 through 40 CFR 257.74 257.75, replace the phrase "certification from a qualified professional engineer" with "certification from a qualified professional engineer and approval by the commissioner". "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."

(3) Add to 40 CFR 257.73(d)(3), "Subsequent periodic assessment must be submitted to the commissioner for review and approval.".

(4) In 40 CFR 257.73(f)(3), 40 CFR 257.75(e)(1), and 40 CFR 257.75(d)(1), 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) One (1) foot of clay with a hydraulic conductivity no greater than 1×10^{-7} cm/sec and, in combination with a geosynthetic clay liner that complies with 329 IAC 10-17-10, is an acceptable as the lower component of an alternative composite liner under 40 CFR 257.70(c)(2)*, if certified by a qualified professional engineer and approved by the commissioner.

*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, 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 14-3-2*)

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 owner or operator must submit the annual CCR fugitive dust control report to the commissioner upon placing the report in the facility's operating record as required by 40 CFR 257.105(g)(2).".
- (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 to 40 CFR 257.84(b), "The owner or operator must submit the annual inspection report to the department upon placement of the inspection report in the facility's operating record as required by 40 CFR 257.105(g)(9).".

*These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, 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 14-3-3*)

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) 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).

- (2) In 40 CFR 257.97(a), the final report must be submitted to the commissioner.
- (3) In 40 CFR 257.97(d), the schedule must be submitted to the commissioner.
- (4) In 40 CFR 257.98(b), a proposal of alternative methods must be submitted to and approved by the commissioner.
- (5) 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, 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 to In 40 CFR 257.102(f)(3), replace the phrase "or approval from the Participating State Director or approval from U.S. EPA where U.S. EPA is the permitting authority" with "and approval by the commissioner". "The owner or operator must meet the performance standards, and submit a clean closure certification report described under 40 CFR 257.102(e).".

(4) 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.".

(5) 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.".

(6) 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.".

(7) 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.".

(8) 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)(Xx)*.

(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)(iv), "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) (iv), "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 may not be less than the following:
 - (A) Thirty-nine Forty-three thousand four hundred dollars (\$39,400)
(\$43,000) per acre to close CCR units constructed with only a soil liner.
 - (B) One hundred eight eighteen thousand dollars (\$108,000) (\$118,000) 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, 30, 2022, 2025, 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 For partial closure, 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 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, 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 257.107*:

(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, 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)