

TITLE 329 SOLID WASTE MANAGEMENT DIVISION

Rule Information Sheet Coal Combustion Residuals LSA Document #21-458

Overview

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 coal combustion residuals (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 permitted regulated entities to dispose of CCR in landfills known as restricted waste sites. Indiana rules at that time did not regulate CCR surface impoundments during operation, and the state standards applicable to closure of CCR surface impoundments differed from the new federal closure standards in some cases. Consequently, IDEM published a final rule in the Indiana Register on December 7, 2016, that incorporated by reference into 329 IAC 10-9-1 the federal standards for CCR surface impoundments at 40 CFR 257, Subpart D.

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. To operate in lieu of the federal CCR rule, a state CCR permit program must be at least as protective as the federal standards.

The First Notice of Comment Period for the CCR rulemaking was published in the Indiana Register (IR) on October 13, 2021, notifying the public of IDEM's intent to establish a comprehensive state permitting program for CCR. The Second Notice of Comment Period for the CCR rulemaking published in the IR 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 adding 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 in the IR 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. Public Law 249-2023, effective May 4, 2023, required that Indiana create a state permitting program that is no more stringent than the U.S. EPA regulations at 40 CFR 257, Subpart D.

In response to the passage of Public Law 249-2023, the comments received during the first and second Continuations of Second Notice of Comment Period and the preliminary adoption hearing, 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, 2025, version of the CFR, 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 published an Additional Notice of Public Comment Period (Third Notice of Public Comment Period) on November 5, 2025, reflecting these updates. 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).

Suggested Changes since Preliminary Adoption

329 IAC 10

The proposed rule makes the following changes to existing rule language:

Under 329 IAC 10-3-1, “Exclusions; general”:

- Makes technical amendments to existing rule language to account for the creation of Indiana CCR permit program in 329 IAC 14.
- While the surface impoundment closure standard appears to be new, bold-formatted rule language, it is not new or amended language. The approval standard for the closure of solid waste surface impoundments currently exists at 329 IAC 10-3-1(9), and IDEM did not propose to change that standard, which does not apply to CCR surface impoundments, through this rulemaking action. Indeed, changing that standard now would exceed the scope of this rule’s public notices, which deal only with regulating and permitting CCR units.

Under 329 IAC 10-3-4, “Exclusion; disposal of wastes meeting restricted waste site Type IV criteria”:

- Cleans up outdated language in 329 IAC 10-3-4(a) to conform with current LSA standards.
- Removes references to coal ash residues and foundry sands from 329 IAC 10-3-4(a). Coal ash residues and foundry sands are simply examples of wastes that might be, but are not necessarily, “classified by the commissioner to meet the criteria established in 329 IAC 10-9-4 for restricted waste site Type IV waste.” It is unnecessary to provide specific examples of such wastes.
- Adds the reference “in 326 IAC 6-4” to 329 IAC 10-3-4(c)(1).

Under 329 IAC 10-9-1, “Types of facilities”:

- Adds “except coal combustion residuals units subject to 329 IAC 14” to the existing rule languages and changes “must” to “shall”.

329 IAC 14

This rulemaking action proposes to create a new article at 329 IAC 14. All changes noted under Article 14 reflect new rule language. Generally, IC 13-19-3-3 imposes the requirements that Indiana’s CCR program has 1) technical standards consistent with and no more stringent than the

corresponding federal standards; and 2) permitting requirements that will satisfy U.S. EPA's standards for state program approval. Under each relevant section, IDEM notes the corresponding federal regulation being mimicked or incorporated by reference by the draft rule. IDEM also describes changes or additions to the federal regulations; these changes are necessary to implement the permit program and change the self-implementing federal CCR rule to an Indiana-specific rule with state oversight, as required by IC 13-19-3-3(d). The proposed rule adds the following new rule language:

Under 329 IAC 14-1-1, "Applicability":

- States that the new article applies to CCR unit owners and operators and CCR units as described in 40 CFR 257.50(b) through (i).
- Imposed by 40 CFR 257.50.

Under 329 IAC 14-1-2, "Incorporation by reference":

- Clarifies that references to the CFR mean the July 1, 2025, edition.
- Specifies certain federal rule language and appendices that owners and operators of CCR units must comply with, except as amended to account for language substitutions and permitting standards.
- States that references to 329 IAC 10 MSWLFs mean CCR units for the purposes of this article.
- Clarifies the meaning of the term "subpart" as used in the incorporated federal regulations.

Under 329 IAC 14-1-3, "Validity of existing approvals":

- States that approvals issued by the department before the effective date of this article for CCR units remain valid and effective pending transition to permits under this article.

Under 329 IAC 14-1-4, "Definitions":

- Applies definitions from both state and federal rule language to Article 14 and clarifies that to the extent a federal definition conflicts with a state definition, the federal definition controls.
- Specifies additional definitions that apply throughout this article.
- Imposed by 40 CFR 257.2 and 40 CFR 257.53. Cross-references IC 13-11-2 and 329 IAC 10-2 as necessary pursuant to IC 13-19-3-3(d).

Under 329 IAC 14-1-5, "CCR Fees":

- States that "the owner, operator, or permittee of a CCR unit shall submit the applicable fees under the requirements of IC 13-19-3-3".

Under 329 IAC 14-2-1, "CCR unit permitting":

- States requirements for CCR unit owners and operators regarding closure and post-closure certification approval.

- Specifies that owners and operators are to submit permit applications within 180 days of the effective date of this article.
- Details requirements that do not apply to the permitting of CCR units.
- Details the items that owners and operators of CCR units must include with their permit applications, including a good character disclosure statement under 329 IAC 10-11-2.1(b)(5) and IC 13-19-4. Similar, if not more onerous, disclosure statements are required by all states with CCR programs approved by U.S. EPA. *See* Ga. Comp. R. & Regs. r. 391-3-4-.02(7); N.D. Cent. Code § 23.1-08-17; Okla. Admin. Code § 252:517-3-3(g); Tex. Health & Safety Code § 361.084.
- Specifies that overfills, retrofits, and lateral expansions are subject to the permit requirements of this article.
- Cross-references permitting standards at 329 IAC 10-11 through 10-13. Multiple plans and certifications required by the federal rule must be submitted with a permit application. The federal regulations imposing these requirements are noted elsewhere in this Section.

Under 329 IAC 14-2-2, “Permitting of non-CCR waste in a CCR unit”:

- Specifies that non-CCR waste must not be placed in a CCR unit until approval is received from the department through the listed approval mechanisms.
- States that the permit application or modification must include a waste classification under 329 IAC 10-9-4.
- States that non-CCR waste approved for disposal in the CCR unit must maintain a waste classification under 329 IAC 10-9-4.

Under 329 IAC 14-2-3, “Deadlines for acting on applications; insignificant facility modifications”:

- Specifies the number of days the commissioner has to approve or deny an application filed with the department.
- Outlines the determination timelines and process that apply to insignificant facility modifications.

Under 329 IAC 14-3-1, “Location restrictions and setbacks”:

- Requires the owner or operator of a CCR unit to comply with location restrictions in 40 CFR 257.60 through 40 CFR 257.64.
- Imposed by 40 CFR 257.60 through 257.64.

Under 329 IAC 14-3-2, “Design criteria”:

- Specifies that any owner or operator of a new CCR unit or lateral expansion that applies for a permit must comply with the design criteria requirements in 40 CFR 257.70 through 40 CFR 257.75.
- Adds additional clarifying language to sections of 40 CFR 257.70 through 40 CFR 257.75.

- Specifies an alternative compliance option for hydraulic conductivity requirements and geosynthetic clay liner requirements under 40 CFR 257.70(c).
- Imposed by 40 CFR 257.70 through 257.75.

Under 329 IAC 14-3-3, “Operating criteria”:

- Specifies that owners and operators of CCR units must follow the operating criteria requirements in 40 CFR 257.80 through 40 CFR 257.84.
- Lists additions and revisions that apply to 40 CFR 257.80 through 40 CFR 257.84.
- Imposed by 40 CFR 257.80 through 257.84.

Under 329 IAC 14-3-4, “Groundwater monitoring and corrective action”:

- States that owners and operators of CCR units must comply with the groundwater and corrective action requirements in 40 CFR 257.90 through 40 CFR 257.98.
- Lists additions and revisions that apply to 40 CFR 257.90 through 40 CFR 257.98.
- Clarifies that the commissioner may require monitoring of additional constituents beyond those in 40 CFR 257, Appendix III and Appendix IV, based on the constituents in any non-CCR waste permitted to be accepted at the facility, and that such constituents will be added to the permit.
- Imposed by 40 CFR 257.90 through 257.98.

Under 329 IAC 14-3-5, “Closure and post-closure”:

- States that the owner or operator of a CCR unit must follow the closure and post-closure requirements in 40 CFR 257.100 through 40 CFR 257.104 as revised by subsections (b) through (f).
- Replaces phrases in 40 CFR 257.100 through 40 CFR 257.104 with “and approval from the commissioner”.
- Details changes made to 40 CFR 257.102.
- Adds the sentence “the progress report must be approved by the commissioner and be placed in the facility’s operating record” to the listed provisions.
- Makes the listed changes to 40 CFR 257.104.
- Details requirements that apply to closure and post-closure of a CCR unit, in addition to subsections (a) through (e).
- Imposed by 40 CFR 257.100 through 257.104, IC 13-19-3-3(d), and 329 IAC 10-16-2, 10-22-2(c), 10-22-3, 10-30-4, 10-30-7, 10-31-2(a), 10-31-3(a), 10-31-4 through 10-31-7, and 10-39-2.

Under 329 IAC 14-3-6, “Record keeping, notification, and posting information”:

- States that the owner or operator of a CCR unit must comply with the record keeping, notification, and internet posting requirements under 40 CFR 257.105 through 40 CFR 257.107, as amended by subsection (b).

- Imposed by 40 CFR 257.105 through 257.107.

Under 329 IAC 14-4-1, “Financial assurance”:

- States that the owner or operator of a CCR unit must comply with the financial assurance requirements of 329 IAC 10-39.
- Imposed by IC 13-19-3-3(d) and 329 IAC 10-39. Financial assurance requirements do not exceed the federal CCR rule and therefore are consistent with IC 13-19-3-3(c). As noted above, IC 13-19-3-3(d) explicitly requires the creation of a state CCR permit program. If financial assurance requirements exceed IC 13-19-3-3 because they do not exist in the federal rule, then IDEM also cannot adopt any permitting requirements whatsoever because those requirements would be considered beyond the minimum federal requirements. Financial assurance, which has no bearing on the technical design or operation of a CCR unit, is properly considered a permit requirement. U.S. EPA agrees. See 83 FR 30360 (Jun. 28, 2018) (Regarding financial assurance and other state-specific requirements in Oklahoma’s approved program, “EPA considers these revisions to be administrative ones, that they do not substantively modify the Federal technical criteria.”).
- All states with approved CCR permit programs require financial assurance. *See* 85 FR 1271 (Jan. 10, 2020) (Georgia: Approval of State CCR Permit Program); 83 FR 30360 (Jun. 28, 2018) (Oklahoma: Approval of State CCR Permit Program); 86 FR 33898 (Jun. 28, 2021) (Texas: Approval of State CCR Permit Program).

Affected Persons

This rulemaking incorporates by reference the latest version of the CFR for CCR surface impoundments, landfills, and management units. Any facility in Indiana with CCR units that are regulated under the federal rule at 40 CFR 257, Subpart D, will be required to obtain a state permit.

Reasons for the Rule

This rulemaking is mandated by portions of Indiana Public Laws 100-2021 and 249-2023, codified at IC 13-19-3-1 and IC 13-19-3-3. It is intended to comply with those provisions and Section 2301 of the 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.

Economic Impact of the Rule

This rulemaking action eventually will result in two fiscal impacts to the State: 1) the State will begin to receive permit fees required by IC 13-19-3-3(i); and 2) the State will experience administrative costs to implement a CCR program that will operate in lieu of federal law. Aside from any administrative costs borne by the agency in preparation for the rule’s effectiveness, these impacts will not arise until the proposed rule becomes effective, which cannot occur until after U.S. EPA approves Indiana’s program. U.S. EPA’s evaluation process has averaged one to

two years for the states that have applied for approval. See the Federal Register notices approving states' CCR programs at U.S. EPA, Permit Programs for Coal Combustion Residuals, <https://www.epa.gov/coalash/permit-programs-coal-combustion-residual-disposal-units>. The statutory permit fees are intended to offset the agency's administrative costs in operating the permit program; ideally, the net fiscal impact of this rulemaking action on state government will be less than or equal to zero.

This rulemaking action will not have a fiscal impact on local government.

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.

Second Public Hearing: December 18, 2025, at 1:30 p.m., at the Indiana Government Center South, 10 North Senate Avenue, Conference Center Room A, Indianapolis, IN 46204.

Board Action: Preliminary adoption on December 11, 2025, at 1:30 p.m., at the Indiana Government Center South, 10 North Senate Avenue, Conference Center Room A, Indianapolis, IN 46204.

Final adoption on December 18, 2025, 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 kwash@idem.in.gov, (317) 232-8229, (800) 451-6027 (in Indiana), or kwash@idem.in.gov.