



## **PUBLIC PARTICIPATION RESPONSE TO COMMENTS**

### **Indiana Coal Combustion Residuals Part 256 Solid Waste Management Plan Amendment**

The Indiana Department of Environmental Management (IDEM) requested public comment on IDEM's draft Indiana Coal Combustion Residuals Part 256 Solid Waste Management Plan Amendment (CCR Part 256 Plan or Plan), from April 14, 2016, through June 30, 2016, and held a public hearing on June 16, 2016 at the Indiana Government Center South building, Conference Center Room C.

IDEM received comments from the following parties:

Eliot Smith, Bloomington Resident  
Scott Willis, Petersburg Resident  
Thomas H. Adams, American Coal Ash Association  
Timothy J. Rushenberg, Indiana Energy Association  
Danny L. Gray, Charah, Inc.  
Phil Schonhoff, INTERA, Inc.  
Mike Oles, Hoosier Interfaith Power & Light  
Kerwin Olson, Citizens Action Coalition  
Rosemary Spalding, Earth Charter Indiana  
Jesse Kharbanda, Dr. Indra Frank, Tim Maloney, Hoosier Environmental Council  
Tim Russell, Indiana Division, Izaak Walton League of America  
Denise Abdul Rahman, Indiana NAACP  
Beau Gray, Save the Valley  
Bowden Quinn, Richard Hill, Jodi Perras, Tony Mendoza, Sierra Club  
John Blair, ValleyWatch.

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

#### Support

*Comment:* The commenter shared that as a citizen they strongly support Indiana's adoption of a strong and thorough management plan for coal ash. (E.S.)

*Comment:* The commenter stated IEA supports IDEM's rulemaking efforts to establish a state-based permit program, to avoid a dual or conflicting set of regulations on the same CCR units helping to limit compliance uncertainty for Indiana utilities. (T.J.R.)

*Comment:* The commenter, Charah, supports Indiana's efforts to update the state regulations to incorporate the Federal CCR program requirements, stating that control and oversight, including enforcement of CCR regulations must rest with the state of Indiana and IDEM and not rely upon self-implementation and citizen suits as an enforcement mechanism. (D.G.)

*Response:* IDEM appreciates the commenters' support.

### Financial Assurance

*Comment:* The commenter supports the concept of financial assurance requirements for impoundments in addition to the current rule requirements for landfills, including closure and post-closure, but would like to see that expanded to cover emergency actions that might be required in case of an unexpected release or corrective action. (B.Q.)

*Comment:* The commenter is concerned that their drinking water, rivers, creeks, and streams are at risk from coal ash pollution. They request that IDEM require the utility companies to show that they have enough money set aside to clean up coal ash landfills and ponds. (M.O.)

*Comment:* The commenters urged Indiana to maintain the financial assurance requirements for CCR landfills that exist under current State regulations (329 IAC 10-39-2). (K.O., R.S., J.K., I.F., T.M., T.R., D.A.R., B.G., R.H., J.P., T.M., J.B.)

*Response:* The Plan describes IDEM's intent to revise Indiana's landfill rules, but does not specify the details of those revisions other than to indicate revisions will incorporate the minimum Federal criteria for CCR facilities. There will be opportunities for public comment during the rule writing process. IDEM will consider these comments at that time.

### Beneficial Use

*Comment:* The commenter requests that as IDEM deliberates on the issue of beneficial use of coal combustion products (CCP), the agency consider the emerging interest in recovering CCP from landfills and surface impoundments for beneficial use. (T.A.)

*Comment:* The commenter supports amending IC 13-19-3-3 to allow the Environmental Rules Board to adopt rules that support and promote the beneficial use of CCP. They also support incorporating the EPA CCR regulations that provide for beneficial use to be exempted from further regulations; recommend that Indiana establish a specific list of common CCP beneficial uses which are named by Law and Regulation as specifically approved pre-qualified beneficial uses; and recommend that Indiana provide a regulatory mechanism that streamlines the ability for CCRs that have been placed in landfills or impoundments which are closed to be reclaimed and mined for beneficial use. (D.G.)

*Comment:* The commenter noted Indiana's statutory prohibition on regulating certain beneficial use of coal ash and their concern that Indiana may be unable to fully implement the requirements of 40 CFR 257.53 (defining beneficial use) and that IDEM should have the ability to adopt a precautionary approach to the regulation of beneficial use, and allow only those uses demonstrated to pose minimal environmental risk which encapsulate the ash before its reuse. (K.O., R.S., J.K., I.F., T.M., T.R., D.A.R., B.G., R.H., J.P., T.M., J.B.)

*Response:* In consideration of EPA's preliminary feedback on the Plan and public comments on this topic, including support for a statutory amendment from electric utilities and environmental groups, IDEM partnered with stakeholders in support of legislation enabling the Environmental Rules Board to adopt rules regulating uses of CCR consistent with 40 CFR 257.53. As of February 13, 2017, House Enrolled Act 1230 has passed both houses of the Indiana General Assembly and is awaiting signature by the Governor of the State of Indiana. House Enrolled Act 1230 would amend IC 13-19-3-3 to allow the IERB to adopt rules consistent with the CCR Rule. In other words, the amendment would clear the way for rules that are equivalent to the CCR Rule in all respects, including rules regarding beneficial use of CCR. The Plan has been updated accordingly.

### Utility Website

*Comment:* The commenter urges IDEM to make the requirement for utilities to post coal ash data on a website they maintain part of the enforceable state plan. (S.W.)

*Comment:* The commenter disagrees with the contention that Indiana should not incorporate the section of the Federal rule on CCR websites, 40 CFR 257.107. They note that the CCR websites will still be required for compliance with the Federal rule, and thus all owners and operators of CCR units in Indiana will have to continue to maintain their CCR websites regardless of state action. They also note that state plans must meet minimum Federal criteria for approval by EPA. They also comment on the difficulty of utilizing IDEM's Virtual File Cabinet (public information repository). (K.O., R.S., J.K., I.F., T.M., T.R., D.A.R., B.G., R.H., J.P., T.M., J.B.)

*Response:* In consideration of the public comments on this topic and EPA's feedback, the Plan has been revised to indicate IDEM's commitment to establish rules incorporating the provisions in 40 CFR 257.107 - including the requirement for an electric utility to post certain documents and monitoring data to a website maintained by the utility.

On August 10, 2016, the Environmental Rules Board adopted amendments to 329 IAC 10 to permanently incorporate the requirements for CCR surface impoundments in 40 CFR 257.50 through 40 CFR 257.107. The 40 CFR 257.107 requirements are now in effect for CCR surface impoundments under 329 IAC 10. Section 1 of the Plan has been updated accordingly.

Section 3 of the Plan has been revised to add 40 CFR 257.105 through 257.107 to the list of CCR Rule provisions IDEM will address in future updates to Indiana's landfill rules.

### Compacted Soil Liner

*Comment:* The commenter states that since the existing requirement in 329 IAC 10 for Restricted Waste Site landfills such as those used for disposal of CCR is based on a compacted soil liner design, coal mines could provide superior conditions for CCR waste isolation, as the Illinois Basin coal seam underclays are highly impervious and are most suitable as a natural bottom soil liner. (P.S.)

*Response:* 40 CFR 257.50(h) provides that the CCR rule does not apply to CCR placement at active or abandoned underground or surface coal mines. Similarly, IC 13-19-3-3(1) prohibits the Environmental Rules Board from adopting rules regulating the disposal of certain coal combustion products in a facility (coal mine) regulated under IC 14-34. Therefore, the CCR Part 256 Plan does not address the disposal of CCR in coal mines.

New CCR landfills and lateral expansions of CCR landfills proposed in locations that are subject to the CCR Rule must be designed and constructed with a composite liner system to satisfy the minimum design criteria in 40 CFR 257.70, regardless of what naturally impervious soils may exist at the site of the landfill. The CCR Part 256 Plan reflects IDEM's intention to revise 329 IAC 10 accordingly.

### Alternative Compliance Schedules

*Comment:* The commenter expressed concerns with the CCR Part 256 Plan's statement implying that IDEM already has the authority to grant compliance schedules and stated that is not correct. Per the commenter, since the draft plan states that the Federal CCR rules on surface impoundments were incorporated by reference into an emergency rule adopted by the Environmental Rules Board on February 12, 2016, IDEM is not able to approve alternate compliance schedules until a facility has been listed in EPA's published inventory of open

dumps, and EPA has approved the state's revised Solid Waste Management Plan (SWMP). They suggest that the draft plan state that coal ash facilities will only be eligible for extended compliance dates if they are listed by the EPA as open dumps and IDEM's SWMP has been approved. They also request that all extensions be a matter of public information and open to public comment. (K.O., R.S., J.K., I.F., T.M., T.R., D.A.R., B.G., R.H., J.P., T.M., J.B.)

*Response:* IDEM has the ability to use state authorities under IC 13-14-8-8 and IC 13-30 to grant and enforce a variance from a state rule and a schedule for coming into compliance. Indiana does not need EPA's approval to grant a variance or compliance schedule relative to enforcement of the state's regulations.

Since the Plan incorporates the criteria for granting compliance schedules under 42 USC 6945 and 40 CFR 256.26, IDEM also considers a compliance schedule approved based on these criteria to be an approved and enforceable "schedule for compliance" for purposes of those Federal-law provisions.

Variance applications and IDEM's decisions on those applications are matters of public information made available through IDEM's Virtual File Cabinet. IDEM also publishes a public notice of the variance decision on the agency's public notices website.

According to IC 13-14-8-8(c), IDEM may hold a public hearing regarding a variance application. The statute does not provide for a designated public comment period for a variance application, but IDEM would typically evaluate any comments received while the agency is reviewing the application.

#### Interim Regulations

*Comment:* The commenter questions the Plan's statement that "IDEM will impose permit conditions as necessary to achieve the minimum criteria in the CCR rule when granting, modifying or renewing a permit for a CCR landfill," which they understand to mean that CCR landfills will only need to meet the CCR rule standards if they need a new, modified or renewed permit during the interim period. They state that IDEM should instead require the CCR rule standard of all CCR landfills. (K.O., R.S., J.K., I.F., T.M., T.R., D.A.R., B.G., R.H., J.P., T.M., J.B.)

*Response:* In consideration of this public comment and similar comments from EPA, the Plan has been revised to indicate IDEM will review all CCR landfill permits and issue a permit modification or renewal as necessary to bring each permit up to the minimum criteria in the CCR Rule. The revised Plan proposes to complete this by the end of 2017.

#### EPA Changes to Federal Rule

*Comment:* The commenter requests that IDEM incorporate any EPA changes to the CCR rule once they are court approved (i.e., addition of boron to Appendix IV, requirements for inactive coal ash ponds). They further suggest that State regulation should require the owner/operators of inactive ponds to inspect the units and monitor equipment according to the schedule set forth at 40 CFR 257.83, including weekly, monthly and annual inspections until final closure.

*Response:* IDEM is monitoring court settlements and decisions and will make adjustments where necessary when changes to the CCR Rule are court approved or otherwise become final through EPA rule making.

### Impoundment and Landfill Inspection Requirements

*Comment:* The commenter recommends that IDEM immediately begin coordinating inspections (40 CFR 257.83) with other Indiana agencies, including DNR, to review and follow up on the utility inspection reports to ensure that CCR impoundments have been inspected and that issues identified have been addressed properly. (K.O., R.S., J.K., I.F., T.M., T.R., D.A.R., B.G., R.H., J.P., T.M., J.B.)

*Response:* IDEM and DNR have a long history of coordinating the agencies' respective roles in regulating CCR facilities and plan to continue doing so going forward.

### Recommendations for Indiana CCR Rule Development

*Comment:* The commenter makes several recommendations for future CCR rule development, such as: Indiana's rule should not allow capping coal ash in place without a liner; liners should be composite, not just compacted soil; all drinking water wells within a half mile of unlined coal ash ponds and landfills should be tested for coal ash pollutants, and if contamination is detected, the responsibility is that of the utility to supply an alternative water supply; coal ash should not be permitted in the 100-year floodplains; new coal ash landfill sites should be inspected for potential environmental or health risks and additional inspections should be required in the case of earthquakes, floods, or suspected sabotage. (K.O., R.S., J.K., I.F., T.M., T.R., D.A.R., B.G., R.H., J.P., T.M., J.B.)

*Comment:* The commenter noted that utility customers will benefit from science-based closure approaches because they allow utility companies to pursue a range of closure options that have been proven to be protective of the environment, safe and cost effective, including dewatering and capping the CCR material on site with long-term monitoring, also known as closure in place. When compared to off-site landfill disposal, which does not provide additional protection to human health or the environment, closure in place is less cost intensive and will significantly reduce the cost implications to customers while still limiting environmental impact. The companies look at environmental management over the short- and long-term to make the best technology investment decisions on behalf of customers. Protecting the environment, minimizing impacts to communities, and managing costs are examples of ways utility companies support the economy and the people of Indiana. The adoption of the Federal CCR Rule as outlined in the CCR Part 256 Plan will help balance these goals by not making state rules more restrictive than the Federal rules. (T.J.R.)

*Response:* The Plan describes IDEM's intent to revise Indiana's landfill rules, but does not specify the details of those revisions. There will be opportunities for public comment during the rule writing process. IDEM will consider these comments at that time.

### Evaluation of the Effectiveness of the Public Participation Program

In evaluating the effectiveness of public participation in development of the Plan, IDEM notes that comments received during the public hearing and public comment period provided helpful feedback and resulted in several substantive changes and improvements to the Plan, as noted in this Response to Comments. IDEM invites stakeholders to send comments and suggestions regarding how future public participation opportunities offered during the implementation of the Plan may be improved. Please submit such comments and suggestions to the attention of Jeff Sewell at [jsewell@idem.in.gov](mailto:jsewell@idem.in.gov).