



## EPA Publishes Guidance for State CCR Permitting Programs

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In April, 2015, EPA published in the Federal Register a final rule regulating the management and disposal of coal combustion residuals (CCR), commonly known as coal ash, from coal-fired power plants. Among other things, the rule established national performance standards for CCR landfills and surface impoundments. In its preamble to the rule, EPA explained that it had limited authority under Subtitle D of the Resource Conservation and Recovery Act (RCRA) and therefore could not give states the ability to seek authorization from EPA to implement the rule. Congress fixed that in 2016 when it passed the Water Infrastructure Improvements for the Nation Act (Act). Section 2301 of that Act amended RCRA to authorize State permit programs for the management and disposal of CCR.

EPA recently issued guidance for States that are developing permitting programs. The guidance sets forth a framework by which EPA will review and approve these programs. It is divided into four chapters. Chapter 1 contains an overview of that portion of the Act addressing CCR permit programs. The overview is in a Question and Answer format and addresses questions about the statute, the review process to be used by EPA, and statutory criteria for EPA approval of State permit programs. Chapter 2 contains procedures EPA plans to use to review and make determinations on State CCR permit programs as well as a description of the documentation States will need to submit to EPA for approval of a program. Chapter 3 contains a checklist of requirements of the CCR rule at 40 CFR 257 subpart D. The checklist is intended to be used by States when developing and submitting their applications for CCR program approval. Finally, Chapter 4 provides a checklist of the materials a State must submit to constitute a "complete" CCR permit program application.

The guidance recognizes certain areas where EPA may be justified in approving State programs that differ from, but are "at least as protective as," the 2014 CCR rule. These include allowing State officials to authorize certification forms for coal ash facilities, rather than a professional engineer; allowing suspension of groundwater monitoring when the potential for migration of hazardous constituents is low; allowing certain alternative groundwater protection standards; and allowing States to decide whether remediation of certain releases is necessary and how long remedial actions must be pursued.

Although EPA has only released a pre-publication version of the guidance, it will accept public comments on the interim guidance until 30 days after the guidance is published in the Federal Register.

EPA welcomes public input [on the interim guidance] at any time and calls the guidance a "living document," which may be revised periodically.

*CCR State Permit Program Guidance Document; Interim Final August 2017*

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