

CIBO
Energy and Environmental
Committee Meeting

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EPA Guidance

Coal Combustion Residuals State Permit Program
Guidance Document; Interim Final Rule

August 2017

Office of Land and Emergency Management
U.S. Environmental Protection Agency
Washington, DC 20460

Coal Combustion Residuals State Permit Program Guidance Document; Interim Final Rule -- Documents

- <https://www.gpo.gov/fdsys/pkg/FR-2017-08-15/pdf/2017-17270.pdf>
- Published in Federal Register on August 15, 2017
- Comment period ends Sept. 14, 2017.

- [https://www.epa.gov/sites/production/files/2017-08/documents/eo12866 ccr state permit prog guide 2050-za10 significant guidance 20170809 final omb clean copy 002508.pdf](https://www.epa.gov/sites/production/files/2017-08/documents/eo12866_ccr_state_permit_prog_guide_2050-za10_significant_guidance_20170809_final_omb_clean_copy_002508.pdf)
- The Coal Combustion State Program Document website

Key provisions of the 2016 WIIN Act related to Coal Combustion Residuals (CCRs)

- States may, but are not required to, develop and submit a CCR permit (“or other system of prior approval”) program to EPA for approval.
- The program does not have to be identical to the current CCR rule (40 CFR Part 257 subpart D) but must be “at least as protective as” the CCR rule.
- EPA has 180 days to act on a State submission; EPA must provide public notice and an opportunity for comment prior to EPA approval.
- EPA may approve a program “in whole or in part”.
- Once approved, the State permit program operates “in lieu of” the federal CCR rule.
- The CCR rule applies to a CCR unit until a permit (or other mechanism specifically allowed as an “other system of prior approval and conditions” under an approved State program) is in effect for that unit.
- -In States that do not have an approved permit program (“non-participating States”), EPA must implement a permit program, “subject to the availability of appropriations specifically provided to carry out a program...”
- -EPA must implement a permit program in Indian Country. -EPA may use its information gathering and enforcement authorities under RCRA Sections 3007 and 3008 to enforce the CCR rule or permit provisions.
- EPA must review State permit programs at least once every 12 years and in certain specific situations.

Criteria will a State have to meet to get an EPA approved CCR permit program

- The statute directs EPA to approve any State program that requires each coal combustion residuals unit located in the State to achieve compliance with either: (1) the Federal CCR requirements at 40 CFR part 257; or (2) other State criteria that the Administrator, after consultation with the State, determines to be *at least as protective as* the Federal requirements. Section 4005(d)(1)(B).
- EPA is proposing to use existing regulations, including the provisions in 40 CFR part 239 as potentially useful sources of guidance. EPA would encourage that the elements of the program submission to EPA track those outlined in part 239. On a technical or substantive level, the State submission will have to provide evidence that the State program is at least as protective as the federal part 257 regulations.

An Interesting Question

- **Will EPA require CCR to be a solid waste under the State program as one of the criteria for approval of a State program, or will it be acceptable to develop a CCR permit program meeting the RCRA Subtitle D Part 257 requirements even though CCR is not designated a solid waste in the State?**
- Section 4005(d)(1) provides that a permit program can be approved as long as EPA can determine that the State program will require each CCR unit located in the State to achieve compliance with either: (1) the Federal CCR requirements; or (2) other State criteria that the Administrator, after consultation with the State, determines to be “at least as protective as” the 257 regulations. The statute doesn’t require that the State permit program be a “waste” permit program.

Comparing EPA CCR program to State Program

State CCR Permit Program

- WIIN Section 2301, amends RCRA Section 4005
- EPA enforcement authority for CCR rule under 3007 & 3008
- State may develop & submit CCR permit program to EPA for approval
- Program may be different from, but must be “as protective as” federal rule
- EPA has 180 days to approve/disapprove a permit program
- Public notice and opportunity for comment required.
- Permit operates “in lieu of” federal rule
- Until permit is issued federal CCR rule applies

State SWMP

- RCRA Sections 4002, 4003, & 4005(a), 4006, 4007.
- SWMPs are to encourage and facilitate solid waste management planning
- EPA required to promulgated guidelines for SWMPs
- Minimum requirements for plans (4003)– must prohibit establishment of new open dumps and provide for closing or upgrading of existing open dumps
- EPA has 6 months to approve a SWMP
- Approved SWMP allows State to set a schedule for compliance for an entity that cannot meet regulatory requirements; schedule cannot exceed 5 years from promulgation of regulations
- Federal regulations remain applicable to all units

THE PROBLEM

- In its side by side, EPA ignores Section 257.50 Scope and Purpose
- The Scope and Purpose of the rule does not apply to
 - (e) This subpart does not apply to electric utilities or independent power producers that have ceased producing electricity prior to October 19, 2015.
 - (f) This subpart does not apply to wastes, including fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated at facilities **that are not part of an electric utility or independent power producer**, such as manufacturing facilities, universities, and hospitals. This subpart also does not apply to fly ash, bottom ash, boiler slag, and flue gas desulfurization materials, generated primarily from the combustion of fuels (including other fossil fuels) other than coal, for the purpose of generating electricity unless the fuel burned consists of more than fifty percent (50%) coal on a total heat input or mass input basis, whichever results in the greater mass feed rate of coal.
 - (g) This subpart does not apply to practices that meet the definition of a beneficial use of CCR.
 - (h) **This subpart does not apply to CCR placement at active or abandoned underground or surface coal mines.**
 - (i) This subpart does not apply to municipal solid waste landfills that receive CCR.

Snapshot of a Comparison Document of EPA to State CCR Program

						Existing and New CCR Landfills and All Lateral Expansions of CCR Landfills			
Row #	Para-graph	Ref.	Ref.	Ref.	Ref.	Federal Requirement	State Requirement	CCR Landfills	
								Existing	New & Lateral Expansions
1						§ 257.53 Definitions			
2						<i>The owner of operator of the CCR unit must include all definitions</i>			
3	all					Specify each definition that differs from those listed in section 257.53.			
4						§ 257.60 Placement Above the Uppermost Aquifer			
5						<i>The owner of operator of the CCR unit must meet all the requirements (a) through (d).</i>			
6	(a)					The base of CCR unit should be at least 1.52 meters (5 ft.) above the upper limit of the uppermost aquifer, or, the owner must demonstrate that there will not be an intermittent, recurring, or sustained hydraulic connection with uppermost aquifer during normal and seasonal water table fluctuations. The owner or operator must demonstrate by the dates specified in paragraph (c) of this section that the CCR unit meets the minimum requirements for placement above the uppermost aquifer.			
7	(b)					Obtain a certificate from professional engineer, stating that the requirements meet comply with the recordkeeping requirements specified in § 257.105(e).			
8	(c)	(1)				For an existing surface impoundment, the owner or operator of the CCR unit must complete the demonstration required by paragraph (a) no later than October 17, 2018 for an existing CCR surface impoundment.			

The Questions

- Should CIBO provide comments on what is truly a State exercise?
- Should CIBO at a minimum in its comments raised the issue of Scope and Purpose limits what 40 CFR Part 257 covers and raised the point that anything beyond the scope of 40 CFR Part 257 is not subject for EPA approval and enforcement

WATER

Notes/Discussions

WOTUS

- EPA is proposing to withdraw definition of WOTUS and reinstating the prior rule and definition
- Recommended that we support EPA's effort in light of arguing against the rule prior to its being adopted by the prior Administration

Federal judge sides with environmental groups, against TVA in coal ash suit

- Judge Waverly Crenshaw Jr. of the U.S. District Court for the Middle District of Tennessee on Aug. 4 ordered the TVA to excavate the coal ash waste impounded at Gallatin and move it to an "appropriate lined site that does not pose a substantial risk of discharges into the waters of the United States."
- "It is important to note, again, that there has been no environmental harm or adverse human health impacts shown to be connected with coal ash storage at Gallatin," Fiedler said in an email. "TVA remains committed to protecting the environment as we work to eliminate wet storage of coal combustion residuals at fossil plants and convert our current CCR operations to dry storage at Gallatin and across our system."

TVA Reports

- It will take 24 years
- It will cost \$550 Million to complete the remediation

The Concern

- The Environmental Groups are not only arguing the CCR rule, but have added to it the Clean Water Act (which will lead to the Safe Drinking Water Act in the future.)

Failure to process NPDES Permits in a timely Manner

- Sierra Club and Lower Susquehanna Riverkeeper Association, Petitioners, v. Department of Environmental Protection of the Commonwealth of Pennsylvania and : Patrick McDonnell, Secretary, Department of Environmental Protection, in his official capacity
- The Action is directed at 11 Commonwealth Coal Fired Power Plants where DEP has failed to processed their NPDES Renewals in a timely manner.

11 Plants named

- Brunner Island Steam Electric Station near York Haven;
- Bruce Mansfield Coal power plant in Beaver;
- Cheswick Power Station in Springdale;
- Conemaugh Generating Station in New Florence;
- Homer City Station in Homer City;
- Keystone Generating Station in Shelocta;
- Montour Steam Electric Station in Washingtonville;
- Seward Coal power plant in New Florence;
- Cambria Cogeneration Facility in Ebensburg;
- Colver Power Project in Colver; and
- Ebensburg Power Company in Ebensburg.

In the PA Case

- Issues now that are being raised and need to be addressed are:
 - A. ELG for Steam Electric Generating Units
 - The rule established discharge limits for various aspects of plant operations.
 - The rule discourages comingling of waste waters
 - Pushed for Zero Discharge
 - B. Water Quality Standards
 - C. 316(b) implementation
 - D. Impact of TMDL on permit renewals

Issues of Concern

- On going attacks on Coal via ELG, Water Quality Standards, 316(b), TMDL implementation and other related issues.
- Develop case for EPA to inject themselves into the permit review process for a State's failure to complete reviews in a timely manner (which was the subject of a rule making that was not finalized on the NPDES Program)

Questions