

number); concerning submissions of requests to testify and/or to attend the hearing, the Publications and Regulations Section at (202) 317–6901 (not a toll-free number) or by email at publichearings@irs.gov (preferred).

SUPPLEMENTARY INFORMATION: The subject of the hearing is the notice of proposed rulemaking (REG–119986–25) published in the **Federal Register** on September 4, 2026 (91 FR 56811).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Individuals who wish to testify at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic by November 3, 2026. A period of 10 minutes will be allotted to each testimony.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available via www.regulations.gov under the title of Supporting & Related Material. If no outline of the topics to be discussed is received by November 3, 2026, the hearing will be cancelled and a notice of cancellation of the public hearing will be published in the **Federal Register**.

Individuals who wish to testify at the hearing must send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number (REG–119986–25) and the language “TESTIFY Telephonically.” For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG–119986–25.

Individuals who wish to attend the public hearing without testifying must also send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number (REG–119986–25) and the language “ATTEND Hearing Telephonically.” For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG–119986–25. Requests to attend the hearing must be received by November 30, 2026.

Hearings will be made accessible to people with disabilities. To request special assistance during a hearing please contact the Publications and Regulations Section by sending an email to publichearings@irs.gov (preferred) or by telephone at (202) 317–6901 (not a toll-free number) by November 27, 2026.

Any additional questions regarding speaking at or attending the hearing may

also be emailed to publichearings@irs.gov.

Oluwafunmilayo A. Taylor,

Section Chief, Publications and Regulations Section, Associate Chief Counsel, (Procedure and Administration).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 257

[EPA–HQ–OLEM–2026–4326; FRL–13459–01–OLEM]

Indiana: Approval of State Coal Combustion Residuals Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability; request for comments.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is proposing to approve Indiana’s Coal Combustion Residuals (CCR) partial permit program under the Resource Conservation and Recovery Act (RCRA). After reviewing the CCR permit program application submitted by the Indiana Department of Environmental Management (IDEM), EPA has preliminarily determined that Indiana’s CCR permit program meets the standard for partial approval under RCRA. If approved, Indiana’s CCR permit program will operate in lieu of the Federal CCR program, with the exception of the specific provisions noted below. EPA is seeking comment on this proposal during a 60-day public comment period and will hold a hybrid in-person and online public hearing on EPA’s preliminary approval of Indiana’s partial CCR permit program.

DATES: *Comments due.* Comments must be received on or before November 16, 2026. *Public hearing:* EPA will hold hybrid in-person and online public hearing on November 12, 2026. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OLEM–2026–4326, by any of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.
 - **Email:** Docket_OLEM@epa.gov.
- Include Docket ID No. EPA–HQ–OLEM–2026–4326 in the subject line of the message.

• **Mail:** U.S. Environmental Protection Agency, EPA Docket Center, Office of Land and Emergency Management (OLEM) Docket, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

• **Hand Delivery or Courier** (by scheduled appointment only): EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center’s hours of operations are 8:30 a.m.–4:30 p.m., Monday through Friday (except Federal holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Michelle Lloyd, Office of Resource Conservation and Recovery, Waste Identification Notice and Generators Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 566–0560; email address: lloyd.michelle@epa.gov. For more information on this document please visit <https://www.epa.gov/coal-combustion-residuals>.

List of Acronyms

AO Agreed Order
CBI Confidential Business Information
CCR coal combustion residuals
CFR Code of Federal Regulations
CO Commissioner’s Order
D.C. Cir. United States Court of Appeals for the District of Columbia Circuit
EPA U.S. Environmental Protection Agency
FR Federal Register
IAC Indiana Administrative Code
IC Indiana Code
IDEM Indiana Department of Environmental Management
MCL Maximum Contaminant Level
MSWLF Municipal Solid Waste Landfill
NOV Notice of Violation
NPDES National Pollutant Discharge Elimination System
OALP Office of Administrative Law Proceedings (Indiana)
RCRA Resource Conservation and Recovery Act
RWS Restricted Waste Site
U.S.C. United States Code
USWAG Utility Solid Waste Activities Group
VFC Virtual File Cabinet
VL Violation Letter
WIIN Water Infrastructure Improvements for the Nation

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Written Comments

Submit your comments, identified by Docket ID No. EPA-HQ-OLEM-2026-4326, at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

B. Participation in Hybrid Public Hearing

EPA will begin pre-registering speakers for the hybrid public hearing upon publication of this document in the **Federal Register**. To register to speak at the hearing, please use the online registration form available on EPA's CCR website (<https://www.epa.gov/coal-combustion-residuals/us-state-indiana-coal-combustion-residuals-permit-program>) or contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to register to speak at the hearing. Both in-person and online hearing attendees are requested to pre-register at the link provided above. The last day to pre-register to speak at the hearing will be November 10, 2026.

EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule. Additionally, requests to speak will be taken the day of the hearing at the hearing registration desk. EPA will make every effort to accommodate all speakers who arrive and register, although preferences on speaking times may not be able to be fulfilled.

Each commenter will have five minutes to provide oral testimony. EPA encourages commenters to provide EPA with a copy of their oral testimony electronically by emailing it to the person listed in the **FOR FURTHER INFORMATION CONTACT** section. EPA also recommends submitting the text of your oral comments as written comments to the rulemaking docket. If EPA is anticipating a high attendance, the time allotment per testimony may be shortened to no shorter than three minutes per person to accommodate all those wishing to provide testimony and who have pre-registered. While EPA will make every effort to accommodate all speakers who do not pre-register, opportunities to speak may be limited based upon the number of pre-registered speakers. Therefore, EPA strongly encourages anyone wishing to speak to pre-register. Participation in the public hearing does not preclude any entity or individual from submitting a written comment.

EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing are posted online at EPA's CCR website at <https://www.epa.gov/coal-combustion-residuals/us-state-indiana-coal-combustion-residuals-permit-program>. While EPA expects the hearing to go forward as set forth above, please monitor our website or contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to determine if there are any updates. EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of an interpreter or special accommodations such as audio description, please pre-register for the hearing with the person listed in the **FOR FURTHER INFORMATION CONTACT** section and describe your needs by October 29, 2026. EPA may not be able to arrange accommodations without advance notice.

II. General Information

A. Overview of Proposed Action

On April 17, 2015, EPA published a final rule, creating 40 CFR part 257, subpart D,¹ which establishes a

¹ Unless otherwise specified, all references to parts 257 and 239 in this document are to title 40 of the Code of Federal Regulations (CFR).

comprehensive set of minimum Federal requirements for the disposal of CCR in landfills and surface impoundments (80 FR 21302) (Federal CCR regulations). Section 2301 of the 2016 Water Infrastructure Improvements for the Nation (WIIN) Act amended RCRA section 4005 to create a new subsection (d) that requires EPA to establish a Federal CCR permitting program. See 42 U.S.C. 6945(d).

As amended, RCRA section 4005(d) also allows States to seek approval for a State CCR permit program that will operate in lieu of a Federal CCR permit program in the State. The statute provides that within 180 days after a State submits a complete application to the Administrator for approval, EPA shall approve the State permit program if the Administrator determines that the State program requires each CCR unit located in the State to achieve compliance with either the Federal requirements or other State requirements that EPA determines, after consultation with the State, are at least as protective as those included in the Federal CCR regulations. See 42 U.S.C. 6945(d)(1)(B).

On June 26, 2026, and supplemented on September 9, 2026, IDEM submitted its State CCR permit program application to EPA Region 5 requesting approval of the State's partial CCR permit program.^{2,3} EPA is proposing to approve the Indiana partial CCR permit program pursuant to RCRA section 4005(d)(1)(B). 42 U.S.C. 6945(d)(1)(B). The fact that Indiana is seeking approval of a partial program does not mean it must subsequently apply for full program approval. However, Indiana could apply for revised partial program approval or full program approval at some point in the future if it chooses to do so. If approved, the Indiana CCR permit program will operate in lieu of the Federal CCR program (codified at 40 CFR part 257, subpart D), with the exception of the provisions specifically identified below for which the State is not seeking approval and for which the corresponding provisions of the Federal CCR program would remain in effect. For the approved provisions, EPA would maintain its inspection and enforcement authorities under RCRA

² Letter from Clint Woods, Commissioner of the Indiana Department of Environmental Management to Anne M. Vogel, Region 5 Administrator, US Environmental Protection Agency. State of Indiana Coal Combustion Residuals Permit Program Application. June 26, 2026.

³ Letter from Clint Woods, Commissioner of the Indiana Department of Environmental Management to Anne M. Vogel, Region 5 Administrator, US Environmental Protection Agency. State of Indiana Coal Combustion Residuals Permit Program Application Updates. September 9, 2026.

sections 3007 and 3008, 42 U.S.C. 6927 and 6928, consistent with EPA's ongoing oversight authority under RCRA. See 42 U.S.C. 6945(d)(4)(B).

EPA has also engaged Federally recognized Tribes within the State of Indiana in consultation and coordination regarding the program approval for the determination. EPA has established opportunities for coordination and consultation. Tribal consultation has been and will continue to be conducted in accordance with the EPA policy on Consultation and Coordination with Indian Tribes.⁴

B. Background

CCR are generated from the combustion of coal, including solid fuels classified as anthracite, bituminous coal, subbituminous coal, and lignite, for the purpose of generating steam to power a generator to produce electricity or electricity and other thermal energy by electric utilities and independent power producers. CCR include fly ash, bottom ash, boiler slag, and flue gas desulfurization materials. CCR can be sent offsite for disposal or beneficial use, or disposed of in on-site landfills or surface impoundments. This section summarizes EPA's regulatory actions on CCR to date to provide relevant background on this proposed approval of Indiana's partial CCR permit program.

On April 17, 2015, EPA published a final rule creating 40 CFR part 257, subpart D, which established a comprehensive set of minimum Federal requirements for the disposal of CCR in landfills and surface impoundments (80 FR 21302). The rule created a self-implementing program that regulates the location, design, operating criteria, and groundwater monitoring and corrective action for CCR units, as well as the closure and post-closure care of CCR units. It also requires recordkeeping and notifications for CCR units. EPA has since amended 40 CFR part 257, subpart D on August 5, 2016 (81 FR 51802), July 30, 2018 (83 FR 36435), August 28, 2020 (85 FR 53516), November 12, 2020 (85 FR 72506), May 8, 2024 (89 FR 38950), November 8, 2024 (89 FR 88650), and February 10, 2026 (91 FR 5806). More information on these rules is provided in the Technical Support Document in the docket for this document.⁵

⁴ Letters from Cecilia Alford, USEPA to Tribal Leaders in Indiana regarding the Tribal Consultation on Indiana's Coal Combustion Residuals Permit Program Application. September 2026. The two letters are in the docket for this action.

⁵ USEPA Technical Support Document for the Approval of Indiana's Coal Combustion Residuals

C. Statutory Authority

EPA is issuing this proposed action pursuant to RCRA sections 4005(d) and 7004(b)(1). See 42 U.S.C. 6945(d) and 6974(b)(1). As amended by section 2301 of the 2016 WIIN Act, RCRA section 4005(d) instructs EPA to establish a Federal permit program similar to those under RCRA subtitle C and other environmental statutes and authorizes States to seek approval of their own CCR permit programs that, if approved, operate in lieu of the Federal permit program upon approval by EPA. See 42 U.S.C. 6945(d).

Under RCRA section 4005(d)(1)(A), 42 U.S.C. 6945(d)(1)(A), States seeking approval of a State CCR program must submit to the Administrator "in such form as the Administrator may establish, evidence of a permit program or other system of prior approval and conditions under state law for regulation by the State of coal combustion residuals units that are located in the state." The statute provides that EPA shall approve a State CCR permit program if the Administrator determines that the State program will require each CCR unit located in the State to achieve compliance with either: (1) The Federal CCR requirements at 40 CFR part 257, subpart D; or (2) Other State criteria that the Administrator, after consultation with the State, determines to be "at least as protective as" the Federal requirements. 42 U.S.C. 6945(d)(1)(B). The Administrator must make a final determination, after providing for public notice and an opportunity for public comment, within 180 days of receiving a State's complete submittal of the information specified in RCRA section 4005(d)(1)(A).⁶ 42 U.S.C. 6945(d)(1)(B). EPA may approve a State CCR permit program in whole or in part. Id. Once approved, the State permit program operates in lieu of the Federal requirements. 42 U.S.C. 6945(d)(1)(A). In a State with a partial program, only the State requirements that have been approved by EPA operate in lieu of the Federal requirements, and facilities remain responsible for compliance with all remaining Federal requirements in 40 CFR part 257.

As noted above, the Federal CCR regulations are self-implementing,

Permit Program. U.S. Environmental Protection Agency, Office of Land and Emergency Management, 1200 Pennsylvania Avenue NW, Washington, DC 20460. September 2026.

⁶ USEPA 2017. Coal Combustion Residuals State Permit Program Guidance Document; Interim Final, August 2017, Office of Land and Emergency Management, Washington, DC 20460. August. (providing that the 180-day deadline does not start until EPA determines the application is complete).

meaning that CCR landfills and surface impoundments must comply with the terms of the regulations prior to obtaining a Federal permit or a permit issued by an approved State. Noncompliance with the Federal CCR regulations can be the subject of an enforcement action brought directly against the facility. Once a final CCR permit is issued by an approved State or pursuant to a Federal CCR permit program, however, the terms of the permit apply in lieu of the provisions of the Federal CCR regulations and/or requirements in an approved State program, and RCRA section 4005(d)(3) provides a permit shield against direct enforcement of the applicable Federal or State CCR regulations (meaning the permit's terms become the enforceable requirements for the permittee).

RCRA section 7004(b), which applies to all RCRA programs, directs that "public participation in the development, revision, implementation, and enforcement of any . . . program under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States." 42 U.S.C. 6974(b)(1). Accordingly, EPA considers permitting requirements, requirements for compliance monitoring authority, requirements for enforcement authority, and requirements for intervention in civil enforcement proceedings in evaluating State CCR permit program applications.

Once a State CCR permit program is approved, the Administrator must review the approved program no less frequently than every 12 years, no later than three years after a revision to an applicable section of 40 CFR part 257, subpart D, and no later than one year after any unauthorized significant release from a CCR unit located in the State. EPA also must review an approved State CCR permit program at the request of another State alleging that the soil, groundwater, or surface water of the requesting State is or is likely to be adversely affected by a release from a CCR unit in the approved State. See 42 U.S.C. 6945(d)(1)(D)(i)(I) through (IV).

In a State with an approved State CCR permit program, EPA may commence administrative or judicial enforcement actions under RCRA section 3008, 42 U.S.C. 6928, if the State requests assistance or if EPA determines that an EPA enforcement action is likely to be necessary to ensure that a CCR unit is operating in accordance with the criteria of the State's permit program. 42 U.S.C. 6945(d)(4). EPA can enforce any Federal requirements that remain in effect (*i.e.*, those for which there is no corresponding approved State

provision). EPA may also exercise its inspection and information gathering authorities under RCRA section 3007 in a State with an approved program. 42 U.S.C. 6927.

III. The Indiana Application

EPA began working with Indiana in 2017 as the State developed its application for the State's partial CCR permit program. On February 23, 2017, Indiana submitted to EPA its adopted Indiana CCR part 256 Solid Waste Management Plan Amendment, dated February 23, 2017, which EPA conditionally approved on March 7, 2017. This approval was conditioned on Indiana completing a process to revise their CCR regulations to be consistent with the Federal minimum CCR requirements.

EPA subsequently published the Interim Final Guidance Document which provided recommendations to help States develop and submit a permit program to EPA for approval. As it has with other States, EPA discussed with Indiana the process for EPA to review and approve the State's CCR permit program, Indiana's anticipated timeline for submitting a CCR permit program application to EPA, and Indiana's regulations for issuing permits. EPA also reviewed a draft CCR permit program application. On June 26, 2026, IDEM submitted its CCR permit program Application to EPA Region 5 requesting approval of the State's partial CCR permit program. EPA sent comments to IDEM on August 20, 2026. IDEM submitted a revised Application to EPA Region 5 on September 9, 2026.

IV. EPA Analysis of the Indiana Application

RCRA section 4005(d) requires EPA to evaluate two components of a State CCR permitting program to determine whether it meets the standard for approval: the program itself, and the technical criteria that will be included in each permit issued under the State program. This section discusses EPA's review of both requirements under RCRA section 4005(d) and the criteria EPA uses to conduct this review.

First, EPA must evaluate the permit program itself (or other system of prior approval and conditions). See 42 U.S.C. 6945(d)(1)(A) through (B). RCRA section 4005(d)(1)(A) directs the State to provide evidence of a State permit program's compliance with RCRA requirements in such form as determined by the Administrator. In turn, RCRA section 4005(d)(1)(B) directs EPA to approve the State program based upon a determination that the program "requires each coal combustion

residuals unit located in the state to achieve compliance with the applicable [Federal or State] criteria." In other words, the statute directs EPA to determine that the State has sufficient authority to require compliance at all CCR units located within the State. See also 42 U.S.C. 6945(d)(1)(D)(ii)(I). To make this determination, EPA evaluates the State's authority to issue permits and impose conditions in those permits, as well as the State's authority to conduct compliance monitoring and enforcement.

During this review of the State permit program, EPA also determines whether the program contains procedures consistent with the public-participation directive in RCRA section 7004(b). RCRA section 7004(b), which applies to all RCRA programs, directs that "public participation in the development, revision, implementation, and enforcement of any . . . program under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States." 42 U.S.C. 6974(b)(1). To make this determination, EPA evaluates the State's public participation procedures for issuing permits and for intervention in civil enforcement proceedings.

Although 40 CFR part 239 applies to the approval of State Municipal Solid Waste Landfill (MSWLF) programs under RCRA section 4005(c)(1) rather than EPA's evaluation of CCR permit programs under RCRA section 4005(d), the specific criteria outlined in that regulation provide a helpful framework to examine the relevant aspects of a State's CCR permit program. States are familiar with these criteria because all States have MSWLF programs that have been approved pursuant to these regulations, and the regulations are generally regarded as protective and appropriate.

Consequently, EPA relied on the four categories of criteria outlined in 40 CFR part 239 as guidelines to evaluate the Indiana CCR permit program: permitting requirements, requirements for compliance monitoring authority, requirements for enforcement authority, and requirements for intervention in civil enforcement proceedings.

Second, EPA must evaluate the technical criteria that will be included in each permit issued under the State CCR permit program to determine whether they are the same as the Federal criteria, or to the extent they differ, whether the modified criteria are "at least as protective as" the Federal requirements. See 42 U.S.C. 6945(d)(1)(B). Only if both components meet the statutory requirements may EPA approve the program. See 42 U.S.C.

6945(d)(1). EPA makes this determination by comparing the State's technical criteria to the corresponding Federal criteria and, where necessary, evaluating whether different State criteria are at least as protective as the Federal criteria.

Upon careful review, and as discussed in more detail below, EPA has preliminarily determined that Indiana's partial CCR permit program includes all the elements of an adequate State CCR permit program. It also contains all the technical criteria in 40 CFR part 257, subpart D, except for the provisions specifically discussed below that Indiana has not included in its partial permit program. Consequently, EPA is proposing to approve the majority of Indiana's partial CCR permit program. Indiana's CCR permit program does not encompass the full scope of Federal CCR requirements as presently constituted, and the provisions of the Federal CCR regulations that are not part of Indiana's approved CCR permit program will remain directly applicable to affected CCR units. 42 U.S.C. 6945(d)(1)(B).

EPA's full analysis of the Indiana CCR permit program, and how the Indiana regulations differ from the Federal requirements, can be found in the Technical Support Document. EPA determined that the Indiana CCR permit program application was complete and notified Indiana of its determination by letter.⁷

A. Adequacy of the Indiana Permit Program

Section 4005(d)(1)(A) of RCRA, 42 U.S.C. 6945(d)(1)(A), requires a State seeking State CCR permit program approval to submit to EPA, "in such form as the Administrator may establish, evidence of a permit program or other system of prior approval and conditions under State law for regulation by the State of coal combustion residuals units that are located in the State." Although the statute directs EPA to establish the form of such evidence, the statute does not require EPA to promulgate regulations governing the process or standard for determining the adequacy of such State programs. EPA, therefore, developed the *Coal Combustion Residuals State Permit Program Guidance Document; Interim Final* (82 FR 38685, August 15, 2017) (the "Guidance Document"). The Guidance Document provides recommendations on a process and standards that States may choose to use to apply for EPA approval of its CCR

⁷ Completeness Letter for the Indiana CCR Permit Program. September 2026.

permit programs, based on the standards in RCRA section 4005(d), existing regulations at 40 CFR part 239, and the Agency's experience in reviewing and approving State programs.

EPA evaluated the Indiana CCR permit program using the process and statutory and regulatory standards discussed in Units II.C. and IV.A. of this preamble. EPA's findings are summarized below and provided in more detail in the Technical Support Document.

1. Guidelines for Permitting

In EPA's judgment, an adequate State CCR permit program must ensure that:

(1) Existing and new facilities are permitted or otherwise approved and in compliance with either 40 CFR part 257 or other State criteria; (2) The State has the authority to collect all information necessary to issue permits that are adequate to ensure compliance with relevant 40 CFR part 257, subpart D requirements; and (3) The State has the authority to impose requirements for CCR units adequate to ensure compliance with either 40 CFR part 257, subpart D, or such other State criteria that have been determined and approved by the Administrator to be at least as protective as 40 CFR part 257, subpart D.

IDEM's CCR permit program follows the established solid waste permitting framework in Indiana code (IC) Title 13 and 329 IAC 10, with adjustments for CCR units under 329 Indiana Administrative Code (IAC) 14. Except to the extent that 40 CFR part 257, subpart D establishes later compliance deadlines, 329 IAC 14-2-1 requires the owner, operator, or permittee of a CCR unit that is under construction or otherwise in existence on the effective date of the permit program to submit a permit application to IDEM within 180 days of the effective date of the State program. CCR units that have received both a closure certification approval and post-closure certification approval from IDEM were not required to obtain a permit under the State permit program. IDEM represented in its Application, that all CCR units will be required to submit a permit application under its Federally approved program. As discussed in Unit V. of this preamble, since IDEM has not issued permits under 329 IAC 14, the owner or operator of a CCR unit must continue to comply with the Federal CCR regulations until a permit is issued by the State under its Federally approved program. 42 U.S.C. 6945(d)(3)(A), (d)(6).

Permit applications must be prepared and submitted according to the requirements in 329 IAC 14-2 and 329

IAC 10-11 through 329 IAC 10-13. One permit application may be submitted for multiple CCR units located at the same facility. IC 13-15-3-5 requires that for permits required by IC 13-15-1, which includes permits for CCR disposal in landfills and surface impoundments at IC 13-15-1-3, IDEM may issue a permit after staff have approved the plans and specifications and determined the requirements of the rule are met. IDEM will review applications for compliance with 40 CFR part 257, subpart D and 329 IAC 14. During the review of the applications, IDEM will request additional information or clarifications from the applicant necessary for IDEM to determine if the application meets the criteria. Upon issuance of a permit, the permit will contain enforceable conditions in alignment with 40 CFR part 257, subpart D and 329 IAC 14.

IDEM must approve or deny an application for a new CCR permit within 365 days in accordance with the review and public participation process outlined below. CCR units will submit applications in accordance with 329 IAC 10-11 through 329 IAC 10-13.

A CCR unit permit, including a renewal permit, may be issued for a maximum 5 years in accordance with 329 IAC 10-13-3 and IC 13-15-3-2. Depending on future changes to the State rules, IDEM may issue a permit, including renewal permits, for the statutory maximum of 10 years. Renewal permits must be submitted at least 120 days prior to the permit expiration. A complete renewal application includes information required by 329 IAC 10-11-2.1 and 329 IAC 10-11-5.1. The public process for renewal permits is described below. IDEM may deny a permit application for the reasons listed in the regulations and in the Technical Support Document. IDEM may revoke or modify a permit for the reasons listed in the regulations and in the Technical Support Document.

Following issuance of a permit, changes are made through major, minor or insignificant permit modification applications. A major modification means any increase in a CCR unit that would increase the permitted capacity to process or dispose of solid waste or change the closure plan for the lesser of: more than 10% of the area or volume of the unit; or 500,000 cubic yards; or that would increase the area within the solid waste boundary or the closure area by more than one acre. 329 IAC 14-1-4(b)(2). IDEM requires applications for major modifications to include information sufficient to support the change as required by 329 IAC 10. IDEM must review a major modification application within 365 days and in

accordance with the public process outlined below. Minor modifications are any modifications of a CCR unit that are not major modifications or insignificant modifications. 329 IAC 14-1-4(b)(3). These include but are not limited to (1) An alternative daily cover for fugitive dust and runoff controls, and (2) A borrow pit that is owned by the owner, operator, or permittee and located onsite or on property adjoining the facility. IDEM must review a minor modification application within 180 days and in accordance with the public process outlined below. Insignificant modifications include a narrow set of changes related to the operation and maintenance of a CCR unit as defined under 329 IAC 14-1-4(b)(1)(A) through (J). As established by 329 IAC 14-2-3, the submission and review process depends on the type of insignificant modification. For modifications listed in 329 IAC 14-1-4(b)(1)(A) through (H), the permittee shall provide notice to IDEM no later than 7 days after the modification has been made. The notice shall include a description of the project and date or anticipated date of completion. For modifications described by 329 IAC 14-1-4(b)(1)(I) or (J), the permittee must submit documentation of the proposed change to IDEM prior to making the change.

EPA has preliminarily determined that the Indiana approach to CCR permit applications and approvals is adequate, and that this aspect of the Indiana CCR permit program meets the standard for program approval.

2. Guidelines for Public Participation

Based on RCRA section 7004, 42 U.S.C. 6974, it is EPA's judgment that an adequate State CCR permit program will ensure that: (1) Documents for permit determinations are made available for public review and comment; (2) Final determinations on permit applications are made known to the public; and (3) Public comments on permit determinations are considered and significant comments are responded to in the permit record. EPA's review of Indiana's CCR permit program indicates that the State has adopted public participation procedures that allow interested parties to talk openly and frankly about permit issues and search for mutually agreeable solutions to differences in views. An overview of Indiana's public participation provisions is provided below.

a. Public Notice and Public Participation Process

Indiana's CCR Permit Program incorporates the permitting and public participation requirements established

under IC 13, 329 IAC 10, and 329 IAC 14. State public participation requirements depend on the type of permit application. New permit applications and major permit modifications are subject to the same public participation requirements and public notice procedures during the entirety of the permit review and issuance process. As part of the technical review of the application for new permit applications and major modifications of permits, IDEM will consider public comments received during the comment period. In addition, for new permit applications and major modifications, the commissioner shall issue or deny the permit and notify the applicant, each person who submitted a written comment, and each person who requested notice of the permit determination. Minor modifications require public notice only upon issuance of the final decision. Insignificant modifications do not require public notice unless elevated by IDEM. More details about the public participation process for new permit applications, major modifications, minor modifications, insignificant modifications, and permit renewals are included in the Technical Support Document.

EPA has preliminarily determined that Indiana's public participation for permit determinations is adequate. For new permits and major modifications, Indiana provides public notice and opportunity to comment, considers comments, and responds to significant comments in the permit record. This is consistent with the public participation directive in RCRA section 7004(b).

All documents related to permit application and permit decisions are public record and are posted to the IDEM Virtual File Cabinet (VFC) on IDEM's website at: <https://www.in.gov/idem/legal/public-records/virtual-file-cabinet/>. Documents can be found using a variety of search options including using the assigned permit identification number and keyword searches. The public may contact IDEM for assistance and additionally may request public records by submitting an Access to Public Records Act request (IC 5-14-3) through the online portal at the same link above.

b. Challenges to Permit Decisions

All final permit decisions include information on appeal rights. The applicant and any aggrieved party may seek administrative review under IC 13-15-6. 7. As specified in IC 13-15-6-1, no later than 15 days after being served notice of a permit decision, the permit applicant or any other aggrieved person

may appeal the permit to the Office of Administrative Law Proceedings. A guidance document with information on the right to appeal is attached as a handout with the final permit decision. Appeals must be submitted as specified in IC 13-15-6-2. If appealed, the hearing/judicial review must be conducted as specified in IC 13-15-6.

EPA has preliminarily determined that the Indiana approach to public participation requirements provides adequate opportunities for public participation in the permitting process sufficient to meet the standard for program approval. The provisions described above meet the three criteria listed at the beginning of this section by providing several means by which documents for draft and final permit determinations are made available for public review and comment, as well as, ensuring that public comments on permit determinations are considered and significant comments are responded to in the permit record.

3. Guidelines for Compliance Monitoring Authority

An adequate permit program must provide the State with the authority to gather information about compliance, perform inspections, and ensure that the information it gathers is suitable for enforcement. The State has authorities and guidelines for inspections, analysis and monitoring, which allow the State to: (1) Verify the accuracy of information submitted by owners or operators of the CCR unit; (2) Verify the adequacy of methods (including sampling) used by owners or operators in developing that information; (3) Produce evidence admissible in an enforcement proceeding; and (4) Receive and ensure proper consideration of information submitted by the public.

In accordance with IC 13-14-2-2, IDEM may have a designated agent (upon presentation of credentials) enter public or private property to inspect for and investigate possible violations of any rule adopted by the board including CCR regulations found at 329 IAC 14. IDEM's inspections include gathering supporting information, records and samples as needed to determine compliance with statutes, and rules. 329 IAC 14-3-6 requires the owner/operator of a CCR unit to comply with all recordkeeping, notification, and posting requirements in 40 CFR 257.105 through 257.107. The commissioner shall establish and administer monitoring and reporting requirements as necessary to require compliance with environmental management laws. IC 13-14-1-13. IDEM has the ability to require an

affidavit from the CCR unit owner or operator to accompany any reports. IC 13-14-1-13(b).

IDEM's facility inspections typically include touring the site and reviewing any records required to be kept by law. Copies of records and photographs of the site are taken as needed to demonstrate either compliance with the rules or violation of the rules. IDEM inspectors review records required to be maintained by law and/or by permit to ensure that the records are accurate and include all required information. An inspection report is generated after the inspection and is sent to the facility and uploaded into IDEM's VFC. If needed, IC 13-14-1-2 and IC 13-14-2-2 allow IDEM staff to conduct monitoring or testing to ensure owners are in compliance and to take samples to evaluate compliance with the rules.

IC 13-14-5 specifies requirements for oral and written inspection reports to the facility. Every inspection is documented in a report including written findings and any documents, photos, and samples taken by the inspector to determine compliance with the statutes and rules adopted by the board. Reports of all inspections are placed in IDEM's VFC and are available to the public for review. Any information submitted by the facility after an inspection report is issued will also be placed in IDEM's VFC.

IDEM also conducts complaint inspections based upon complaints received from the public. Complaint inspections typically occur within 30 days of receipt of the complaint and have the same format as the other types of inspections listed above. The inspection report is also placed into VFC for public viewing. IDEM provides the complainant acknowledgement of receipt within 24 hours of receiving the complaint, unless the complainant is anonymous. IDEM notifies the complainant of the inspection findings, unless the complainant is an anonymous complaint.

Accordingly, EPA has preliminarily determined that these compliance monitoring authorities are adequate, and that this aspect of the Indiana CCR permit program meets the standard for program approval.

4. Guidelines for Enforcement Authority

An adequate State CCR permit program must provide the State with adequate enforcement authority to administer its State CCR permit program, including the authority to: (1) Restrain any person from engaging in activity which may damage human health or the environment, (2) Sue to enjoin prohibited activity, and (3) Sue to

recover civil penalties for prohibited activity.

IDEM is statutorily required to seek compliance with standards and rules adopted by the board (IC 13-14-14). IDEM has several methods to achieve compliance and enforcement of Indiana statutes and rules. When noncompliance with statutes and rules including 329 IAC 14 is detected and determined, the department has a variety of enforcement options including:

- *Violation Letter (VL)*: An informal action taken by the Department indicating that the facility/operation is in violation of a statute, rule, or permit. The VL will include a time frame to return to compliance and actions to be taken to return to compliance. This letter is typically sent by the site inspector.

- *Notice of Violation (NOV)*: A formal action taken by the Department indicating the facility is in violation of a statute, rule, or permit. The Department attempts to resolve NOV's without further enforcement action by negotiating Agreed Orders involving payment of a penalty and order requirements designed to achieve compliance.

- *Agreed Order (AO)*: An NOV is typically accompanied by a proposed AO. During the negotiation process the proposed AO may be modified. The AO typically includes a civil penalty, stipulated penalties for failing to meet order requirements, and order requirements designed to return the facility to compliance.

- *Commissioner's Order (CO)*: If the facility/operator and IDEM are unable to come to an agreement on an AO, the department may issue a CO. The CO typically includes a civil penalty and order requirements designed to achieve compliance. The CO is appealable, and a hearing before the Office of Administrative Law Proceedings (OALP) will be held. The order does not go into effect until OALP's final determinations either affirm, modify, or rescind the Order.

- *Civil Action*: The department also has the option to forgo the stipulated settlement process and refer violations to the Indiana Attorney General's Office to pursue penalties and potential injunctive relief in a court.

The statutes that specify IDEM's enforcement authority are outlined below:

IDEM has authority to restrain immediately and effectively any person by administrative or court order or by suit in a court of competent jurisdiction from engaging in any activity which may endanger or cause damage to

human health or the environment.

Regarding administrative orders, see IC 13-14-2-7, IC 13-30-3, and IC 4-21.5-4. Regarding suits and court orders, see IC 13-14-2-6 and IC 13-30-4-1(b)(2).

IDEM has authority to sue in a court of competent jurisdiction to enjoin any threatened or continuing activity which violates any statute, regulation, order, or permit which is part of or issued pursuant to the State program. See IC 13-14-2-6 and IC 13-30-4-1(b)(2).

IDEM has authority to sue in a court of competent jurisdiction to recover civil penalties for violations of a statute or regulation which is part of the State program or of an order or permit which is issued pursuant to the State program. See IC 13-14-2-6(2), IC 13-14-2-7(2), and IC 13-30-4-1.

Based on the foregoing, EPA has preliminarily determined that this aspect of the Indiana CCR permit program meets the standard for program approval.

5. Intervention in Civil Enforcement Proceedings

Based on RCRA section 7004, an adequate CCR State permit program must provide an opportunity for citizen intervention in civil enforcement proceedings. Specifically, the State must either: (1) Provide for citizen intervention as a matter of right; or (2) Have in place a process to: (a) Provide notice and opportunity for public involvement in civil enforcement actions, (b) Investigate and provide responses to citizen complaints about violations, and (c) Not oppose citizen intervention when permissive intervention is allowed by statute, rule, or regulation.

Intervention is allowed in any civil action to obtain remedies by any citizen having an interest that is or may be adversely affected. Citizens of Indiana and other enumerated entities may intervene as a party in an administrative proceeding or an action for judicial review upon the filing of a verified pleading that the proceeding or action involves conduct, programs, or products that may have the effect of significantly impairing, polluting, or destroying the environment of Indiana. IC 13-30-1-5. The following parties have the right of intervention via IC 13-30-1-5: (1) The attorney general; (2) A State, city, town, county, or local agency or officer vested with the authority to seek judicial relief; (3) A citizen of Indiana; or (4) A corporation, a limited liability company, a partnership, or an association maintaining an office in Indiana.

Potential intervenors can learn of administrative enforcement proceedings through IDEM's online enforcement

database at <https://www.oe.idem.in.gov>, and they can learn of actions for judicial review of IDEM matters through the Indiana Office of Judicial Administration's MyCase website at <https://www.mycase.in.gov>. IDEM has represented to EPA that it has no objection to a citizen intervening in an administrative proceeding or an action for judicial review. IC 13-30-1-1 allows citizens of Indiana and other enumerated entities to bring an action for declaratory and equitable relief in the name of the State of Indiana for the protection of the environment of Indiana from significant pollution, impairment, or destruction. This includes filing an action for declaratory and equitable relief against a State agency.

In addition, IDEM conducts inspections based upon complaints received from the public. Inspections based on complaints typically occur within 30 days of receipt of the complaint. A complaint inspection has the same format as the other types of inspections listed above with a particular focus on the issues specified in the complaint. The inspection report is also placed into VFC for public viewing.

EPA has preliminarily determined that these authorities provide for an adequate level of citizen involvement in the enforcement process, and that this aspect of the Indiana CCR permit program meets the standard for program approval.

B. Adequacy of Technical Criteria

EPA conducted an analysis of the Indiana CCR Permit Program Application, including a thorough analysis of Indiana statutory authorities at IC 13-19-3-3(d) for the CCR program, as well as its regulations at 329 IAC 14. As noted above, Indiana has requested approval of a partial CCR permit program.

1. Indiana CCR Units and Resources

IDEM has identified 101 CCR units (14 CCR landfills, 44 CCR surface impoundments, 19 legacy CCR surface impoundments, and 24 potential CCR management units) in Indiana.⁸ IDEM demonstrated that it has the personnel to administer a permit program that is at least as protective as the Federal requirements.⁹ IDEM indicates that the

⁸ For more information on the specific facilities covered by the Indiana CCR Permit Program, see page 10 (PDF page 10) of the Narrative and appendix D, which are included in the docket for this action.

⁹ The discussion on State personnel is included on page 15 (PDF page 15) of the Narrative, which is included in the docket for this action, and is

State program is funded by a CCR Program Fund for the purpose of paying costs of operating the CCR Permit Program. IC 13–19–3–3.2. This fund receives the fees established at IC 13–19–3–3. All CCR surface impoundments will be billed an initial fee of \$20,500, and then will be billed an annual fee based on closure status starting the following year. CCR Impoundments that are operating or that have not yet been issued a final closure certification approval will be billed \$20,500 annually. The CCR surface impoundments that have received a final closure certification approval or that have submitted the final closure certification and did not receive IDEM notice within the required response timeframes are billed \$10,000. Fees collected for the former RWS Landfills to be permitted as CCR Landfills will be deposited into the CCR Program Fund. In addition, IDEM applied for EPA State and Tribal Assistance Grants (STAG) funding for Fiscal Years 2022 through 2024. In total, IDEM has received \$1,069,479 in funding to develop its CCR permit program. If EPA receives future appropriations, if approved, IDEM can continue to apply and receive funds for implementation of its CCR permit program. EPA has preliminarily determined that the IDEM staffing and funding are adequate for IDEM to administer the CCR permit program.

2. Indiana CCR Regulations

EPA has preliminarily determined that the majority of the portions of the Indiana CCR permit program that were submitted for approval meet the standard for approval under RCRA section 4005(d)(1)(B)(i), 42 U.S.C. 6945(d)(1)(B)(i). To make this preliminary determination, EPA compared the technical requirements in the Indiana CCR regulations at 329 IAC 14 to the Federal CCR regulations at 40 CFR part 257 to determine whether they differed from the Federal requirements, and if so, whether those differences met the standard in RCRA sections 4005(d)(1)(B)(ii) and (C), 42 U.S.C. 6945(d)(1)(B)(ii) and (C).

Indiana's solid waste program was established in 1971 with the Indiana Refuse Disposal Act. In 1974 the Stream Pollution Control Board Regulation SPC–18 established guidelines for sanitary landfills that included daily cover and leachate management. In 1980, Indiana published its first solid waste management plan as required by RCRA. The plan was later amended in 1991.

IDEM was created by the 1985 Indiana General Assembly. See IC 13–13–1–1. The agency began operating on July 1, 1986. Solid waste management was then regulated under 329 IAC 2 in 1988. In 1996, the Solid Waste Management Board promulgated 329 IAC 10 to replace 329 IAC 2. Article 10 incorporates RCRA Subtitle D standards along with other solid waste requirements for Indiana.

CCR in Indiana have traditionally been regulated under the Restricted Waste Site (RWS) regulations in 329 IAC 10. An RWS is essentially an industrial waste monofill. Many utilities sought to get a permitted RWS for the disposal of their CCR and other waste generated by their facility. Some utilities disposed of all or at least a portion of their CCR as a solid waste in a MSWLF. In addition, many utilities managed all or a portion of their CCR waste in surface impoundments subject to closure requirements at the end of their useful life or upon the impoundment's removal from NPDES permits. The landfills and surface impoundments must meet the requirements of Indiana's current rules.

On February 23, 2017, IDEM submitted the “Indiana Coal Combustion Residuals Part 256 Solid Waste Management Plan Amendment” to EPA for approval. The plan was limited solely to CCR and did not amend or address other parts of Indiana's previously approved solid waste management plans (dated 1980 and 1991). The plan set forth IDEM's plans to modify and expand the scope of Indiana's solid waste regulations to address the requirements of the Federal CCR regulations. The plan also described IDEM's intent to seek authorization to implement a permit program in lieu of federal regulations or a permit program implemented by EPA. An emergency rulemaking was implemented in 2016 to incorporate by reference federal CCR surface impoundment standards as an interim step in regulating CCR facilities until a full update of the regulations could be completed. EPA approved the plan on March 7, 2017.

IDEM began the rulemaking process updating 329 IAC 10 to include CCR after getting approval of its plan in 2017. During the initial stages of rule development it was determined that a new article would be needed, and work on 329 IAC 14 “Coal Combustion Residuals from Electric Utilities and Independent Power Producers” commenced. The rulemaking process continued from 2021 to 2025. All public comments received during the public comment periods of the rulemaking process were reviewed and responded

to. The final rule was adopted on December 18, 2025. Pursuant to IC 13–19–3–3(d) and (g), the rule will be effective upon the effective date of the final approval of the Indiana CCR permit program by EPA under 42 U.S.C. 6945(d)(1).

3. Indiana Partial Program

IDEM is seeking approval of its partial CCR permit program pursuant to RCRA section 4005(d). IDEM's CCR regulations at 329 IAC 14 incorporate by reference 40 CFR part 257, subpart D, as amended through July 1, 2025; however, the Federal CCR regulations have changed since then as a result of the CCR Management Unit Deadline Extension Rule (91 FR 5806, February 10, 2026), and there are certain provisions that were remanded back to the Agency as a result of litigation. Therefore, IDEM is seeking approval of a partial CCR permit program.

The following list identifies amendments to the requirements in 40 CFR part 257, subpart D that were not included in Indiana's application. These provisions will continue to apply directly to, and remain federally enforceable for, each CCR unit in Indiana:

1. Requirements for vegetative cover for slope stability, which were vacated in 2016 and remanded back to EPA in *USWAG et al. v. EPA*, Order granting motion for remand No. 15–1219 (D.C. Cir. 2016). IDEM must wait for the EPA to act on the vacated regulations at 40 CFR 257.73(a)(4), 40 CFR 257.73(d)(1)(iv), 40 CFR 257.74(a)(4), and 40 CFR 257.74(d)(1)(iv);

2. Requirements for suspending groundwater monitoring, which were remanded back to the agency for reconsideration in *Waterkeeper Alliance Inc. et al. v. EPA* No. 18–1289 (D.C. Circuit). IDEM must wait for EPA to act on the remanded regulations 40 CFR 257.90(g);

3. Requirements for groundwater protection standards for constituents in appendix IV having no MCLs (Maximum Contaminant Level), which were remanded back to the agency for reconsideration in *Waterkeeper Alliance Inc. et al. v. EPA* No. 18–1289 (D.C. Cir.). IDEM must wait for the EPA to act on the remanded regulations at 40 CFR 257.95(h)(2); and

4. Revisions from the CCR Management Unit Deadline Extension Rule (91 FR 5806, February 10, 2026), which amended certain deadlines related to legacy CCR surface impoundments and CCR management units and made a few technical corrections. This rule amended the

following provisions, which IDEM has not adopted:

- a. 40 CFR 257.75(c)(1), (c)(4), (d)(1), (d)(1)(xii),
- b. 40 CFR 257.90(b)(3), (e),
- c. 40 CFR 257.95(b)(1)(ii),
- d. 40 CFR 257.100(f)(1)(iii)(A), (f)(1)(iii)(A)(3), (f)(4)(iv), (g), (g)(6)(vii), (h),
- e. 40 CFR 257.101(f)(1),
- f. 40 CFR 257.102(b)(2)(iii), (e)(4)(iv), (e)(4)(v), (e)(4)(vi), (e)(4)(vii), (f)(1)(ii), and
- g. 40 CFR 257.104(d)(2)(iii).

In addition, IDEM's regulations contain a variance provision not found in the Federal CCR regulations, allowing hardship variances to be granted from compliance with the State's CCR provisions. These provisions are found in 329 IAC 14–1–6, which provides that the commissioner may grant variances from compliance with any requirement of the State's CCR program requirements. See 329 IAC 14–1–6(a) (stating in relevant part, "The commissioner may grant a variance from compliance with [Title 329 Article 14—CCR From Electric Utilities and Independent Power Producers] in accordance with [the State's variance procedures in 13–14–8]"). The provision also states "[n]o term, condition, or requirement granted under this section may be less protective than applicable requirements of 40 CFR 257". See 329 IAC 14–1–6(b) (stating in relevant part, "no term, condition, or requirement granted under this section may be less protective than [the Federal CCR regulations]").

Although RCRA section 4005(d) allows EPA to approve a State program that imposes different requirements than the Federal CCR regulations, the statute expressly requires EPA to determine "that the technical standards established pursuant to a State permit program or other system are at least as protective as" the Federal regulations. Therefore, EPA is required to make such a determination for any variance provision the State seeks to include as part of its Federally approved program. IDEM represented that it intends to limit consideration of variances to State-only provisions not found in the Federal regulations. But the provision does not contain any such limitation. The text says it allows hardship variances "from compliance with this article", referring to the entirety of Title 329 Article 14, CCR Residuals From Electric Utilities and Independent Power Producers. This is incongruous with the Federal CCR program, which does not provide for hardship variances from the Federal CCR requirements. The language in 329 IAC 14–1–6(b)—"No term, condition, or

requirement granted . . . may be less protective than applicable requirements of 40 CFR 257" relates to the impact of a granted variance (*i.e.*, it cannot be less stringent), but does not limit the applicability to State-only requirements. Had the variance provision been expressly limited to State only requirements—that is, requirements that are in addition to or more stringent than an analogous Federal CCR requirement—and identified the State-only provisions to which the variance provision apply, the provision would meet the standard in 42 U.S.C. 6945(d)(1)(B). But this provision does neither. EPA has preliminarily determined that application of the variance provision could result in criteria which would not be at least as protective as the Federal CCR regulations. Although the text of the provision says no hardship variance may be less protective than the criteria in 40 CFR part 257, the provision could result in such an outcome if applied to the Federal criteria which the State has incorporated by reference throughout Title 329 Article 14 (*i.e.*, these provisions establish the floor for the Federal requirements and any variance from them would necessarily be less protective). Furthermore, EPA is required to make the protectiveness determination. EPA therefore is proposing not to include the Indiana variance provisions in the partial Indiana CCR permit program EPA is proposing to approve.

In the absence of EPA approval, no modifications under 329 IAC 14–1–6 would be available for any criteria that EPA has approved as part of the State's Federally approved program. This includes modifications to EPA-approved State provisions that are in addition to or more stringent than the Federal CCR regulations. For example, 329 IAC 14–3–3(b)(7) sets the frequency by which certain design plans must be submitted. This is a State-only requirement that is in addition to the Federal CCR regulations which do not set submission frequency. If the State were to modify the submittal frequency for a CCR unit, under the variance provision in 329 IAC 14–1–6, the owner or operator of the CCR unit must still submit the relevant design flood control plan every five years, because this is what is required by the version of 329 IAC 14–3–3(b)(7) approved by EPA as part of the State's approved program. And as with other approved criteria, this requirement remains applicable and Federally enforceable pursuant to RCRA section 4005(d)(4)(B).

If the State would like to seek approval for a variance process

applicable to those provisions that are in addition to or more stringent than an analogue Federal CCR requirement, the State should revise the variance provisions (1) To be expressly applicable only to State-only provisions that are in addition to or more stringent than an analogue Federal CCR requirement, (2) Identify the list of eligible provisions, and (3) Submit this revised information to EPA for review.

EPA has preliminarily determined that the Indiana CCR regulations contain all of the technical elements of the Federal CCR regulations, including requirements for location restrictions, design and operating criteria, groundwater monitoring and corrective action, closure requirements and post-closure care, recordkeeping, notification, and CCR website posting requirements. The Indiana partial CCR permit program also contains State-specific language, references, definitions, and requirements that differ from the Federal CCR regulations, but which EPA has preliminarily determined to be "at least as protective as" the Federal criteria. These State-specific requirements are also discussed further in section V. of the Technical Support Document.

The effect of approving a partial State CCR permit program is that, except for the provisions for which EPA has not granted approval, the Indiana partial CCR permit program will operate in lieu of the Federal CCR regulations. For the State provisions that are not approved upon finalization, the corresponding Federal requirements will continue to apply directly to facilities, and therefore facilities must comply with both the Federal requirements and the State requirements.¹⁰ RCRA section 4005(d)(3).

V. Indiana CCR Permits

The owner, operator, or permittee of a CCR unit that is under construction or otherwise in existence on the effective date of the permit program is required to submit a permit application to IDEM within 180 days of the effective date of the State CCR permit program. 329 IAC 14–2–1. Prior to an effective Indiana CCR Permit Program, IDEM has reviewed and issued closure and post-closure plan approvals for CCR units in accordance with existing State regulations at 329 IAC 10–3–1(9) and 329 IAC 10–9–1(c). The CCR units regulated by the new State Permit Program will be required to apply to the new State permit program and obtain a

¹⁰ USEPA 2026. Appendix: *Indiana CCR Permit Program State vs. Federal Regulatory Text Applicability*. September.

permit. 329 IAC 14–2–1(c). During the review of the applications for sites that have previously been issued a closure and post-closure plans, IDEM will re-evaluate the documentation for adequacy with the current requirements.

Since IDEM has not issued permits under 329 IAC 14, no Indiana permits are part of the permit program record under review. In accordance with RCRA sections 4005(d)(3)(A) and 4005(d)(6), in the absence of a permit issued under an approved State program, the owner or

operator of a CCR unit must continue to comply with the Federal CCR regulations until a permit is issued by the State under its Federally approved program. 42 U.S.C. 6945(d)(3)(A), (d)(6). Any permits issued after approval will be subject to program review provisions required by RCRA sections 4005(d)(1)(D)(i) and 4005(d)(1)(D)(ii). 42 U.S.C. 6945(d)(1)(D)(i), (ii).

VI. Proposed Action

EPA has preliminarily determined that the Indiana partial CCR permit program meets the statutory standard for approval. Therefore, in accordance with 42 U.S.C. 6945(d), EPA is proposing to approve the Indiana partial CCR permit program.

Lee Zeldin,

Administrator.

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