



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 257

[EPA-HQ-OLEM-2025-0221; FRL-12768-01-OLEM]

Wyoming: 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 the Wyoming coal combustion residuals (CCR) permit program under the Resource Conservation and Recovery Act (RCRA). After reviewing the CCR permit program application submitted by the Wyoming Department of Environmental Quality (WDEQ), EPA has preliminarily determined that Wyoming's CCR permit program meets the standard for partial approval under RCRA. If approved, Wyoming'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 Wyoming's partial CCR permit program.

DATES: *Comments due.* Comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. *Public hearing:* EPA will hold a hybrid in-person and online public hearing on October 30, 2025.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OLEM-2025-0221, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov/> (our preferred method).

Follow the online instructions for submitting comments.

- *Mail*: U.S. Environmental Protection Agency, EPA Docket Center, Office of Land and Emergency Management (OLEM) Docket, Mail Code 28221T, 1200 Pennsylvania Ave. N.W., 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-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, Materials Recovery and Waste Management Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, MC: 5304T, Washington, DC 20460; telephone number: (202) 566-0560; e-mail address: lloyd.michelle@epa.gov. For more information on this document please visit <https://www.epa.gov/coalash>.

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List of Acronyms

CBI Confidential Business Information
CCR coal combustion residuals
CFR Code of Federal Regulations
EPA Environmental Protection Agency
MSWLF municipal solid waste landfill
MCL maximum contaminant level
NOV notice of violation
OLEM Office of Land and Emergency Management
RCRA Resource Conservation and Recovery Act
SHWD Solid and Hazardous Waste Division
STAG State and Tribal Assistance Grant
SWR Solid Waste Regulations
USWAG Utility Solid Waste Activities Group
WDEQ Wyoming Department of Environmental Quality
WIIN Water Infrastructure Improvements for the Nation
WS Wyoming Statute

I. Public Participation

A. Written Comments

Submit your comments, identified by Docket ID No. EPA-HQ-OLEM-2025-0221, 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/coalash/us-state-wyoming-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 virtual 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 October 30, 2025.

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 or via the Q&A functionality of the online platform. 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 (5) 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 (3) 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 preregister, opportunities to speak may be limited based upon the number of pre-registered speakers. Therefore, EPA strongly encourages anyone

wishing to speak to preregister. 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/coalash/us-state-wyoming-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 transcription or closed captioning, please pre-register for the hearing and describe your needs on the registration form by October 16, 2025. Alternatively, registrants may notify the person listed in the **FOR FURTHER INFORMATION CONTACT** section of any special needs. 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, which establishes a comprehensive set of minimum Federal requirements for the disposal of CCR in landfills and surface impoundments (80 FR 21302) (“Federal CCR regulations”).¹ Section 2301 of the 2016 Water Infrastructure Improvements for the Nation (WIIN) Act

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

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 February 6, 2023, WDEQ submitted its State CCR permit program application to EPA Region 8 requesting approval of the State's partial CCR permit program.² EPA is proposing to approve the Wyoming partial CCR permit program pursuant to RCRA 4005(d)(1)(B). 42 U.S.C. 6945(d)(1)(B). The fact that Wyoming is seeking approval of a partial program does not mean it must subsequently apply for full program approval. However, Wyoming 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 Wyoming 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 retain its inspection and enforcement authorities under RCRA 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).

² WDEQ 2023. Application For CCR Permit Program Approval. Wyoming Department of Environmental Quality. February.

EPA has also engaged Federally recognized Tribes within the State of Wyoming in consultation and coordination regarding the program determination. EPA established opportunities for an informational session and consultation, beginning with EPA Region 8 sending a letter to the Eastern Shoshone Tribe at Wind River Reservation and the Northern Arapaho Tribe at Wind River Reservation. Tribal consultation has been and will continue to be conducted in accordance with the EPA policy on Consultation and Coordination with Indian Tribes (<https://www.epa.gov/sites/production/files/2013-08/documents/cons-and-coord-with-indian-tribes-policy.pdf>). Neither Tribe sought Tribal consultation.

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, commonly known as coal ash, 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 Wyoming'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), and November

8, 2024 (89 FR 88650). More information on these rules is provided in the Technical Support Document in the docket for this document.

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 develop their own CCR permitting programs that go into effect 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). 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, 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 terms 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).³

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).

³ USEPA 2017. Coal Combustion Residuals State Permit Program Guidance Document; Interim Final. 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).

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 Wyoming Application

EPA began working with WDEQ in September 2019 as the State developed its application for the State's partial CCR permit program.⁴ As it has with other States, EPA discussed with WDEQ the process for EPA to review and approve the State's CCR permit program, WDEQ's anticipated timeline for submitting a CCR permit program application to EPA, and WDEQ's regulations for issuing permits. On February 6, 2023, WDEQ submitted its CCR permit program application to EPA Region 8 requesting approval of the State's partial CCR permit program.

EPA reviewed WDEQ's submission and, on March 27, 2023, sent a letter acknowledging receipt of the application and clarifying the statutory 180-day review period for a final determination of adequacy.⁵ After reviewing the application in more detail, on December 5, 2023, EPA sent a letter stating that the formal review period had not yet begun; discussing further information that would strengthen the application; and discussing the State interpretation of the regulatory performance standards.⁶ On January 29, 2024, WDEQ sent a letter to EPA asserting that EPA's review period had expired, discussing the State's interpretation of the scope

⁴ A summary of the meetings with, and emails shared between, EPA and WDEQ is included in the Technical Support Document. Records of these interactions are included in the docket for this action.

⁵ USEPA 2023a. Letter from Carolyn Hoskinson, Director, EPA Office of Resource Conservation and Recovery, to Mr. Todd Parfitt, Director, Wyoming Department of Environmental Quality. March.

⁶ USEPA 2023b. Letter from Barry Breen, Principal Deputy Assistant Administrator for the EPA Office of Land and Emergency Management to Mr. Todd Parfitt, Director, Wyoming Department of Environmental Quality. December.

of EPA's review of the State CCR permit program application, and responding to EPA's questions from the December 2023 letter.⁷ After further discussions between EPA and WDEQ, on May 16, 2025, EPA sent to WDEQ additional clarification questions to supplement its application. On June 20, 2025, WDEQ responded to EPA's questions.⁸

IV. EPA Analysis of the Wyoming 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

⁷ WDEQ 2024. Letter from Todd Parfitt, Director, Wyoming Department of Environmental Quality to Barry Breen, Principal Deputy Assistant Administrator for the EPA Office of Land and Emergency Management. RE: EPA's Comments on State of Wyoming – Coal Combustion Residuals Permit Program Application EPA. January.

⁸ WDEQ 2025. Letter from Todd Parfitt, Director, Wyoming Department of Environmental Quality to Rick Buhl, Director, Land, Chemicals, And Redevelopment Division, US Environmental Protection Agency - Region 8. RE: EPA's May 16, 2025, Questions on Wyoming's CCR Permit Program Application. June.

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 Wyoming 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 Wyoming'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 Wyoming has not included in its partial CCR permit program. Consequently, EPA is proposing to approve the entirety of Wyoming's partial CCR permit program application. The State'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 Wyoming'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 Wyoming CCR permit program, and how the Wyoming regulations differ from the Federal requirements, can be found in the Technical Support Document. EPA determined that the Wyoming CCR permit program application was complete and notified Wyoming of its determination by letter.⁹

A. Adequacy of the Wyoming 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 permit programs,

⁹ The Wyoming application, EPA's completeness determination letter, and the Technical Support Document are available in the docket supporting this action.

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 Wyoming CCR permit program using the process and statutory and regulatory standards discussed in sections II.C. and IV.A. of this preamble. EPA's findings are summarized below and provided in more detail in the Technical Support Document located in the docket supporting this proposed determination.

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.

The permitting process in Wyoming involves three entities: (1) WDEQ; (2) The Solid and Hazardous Waste Division (SHWD) within WDEQ; and (3) The Environmental Quality Council (Council), an independent body whose members are appointed by the Governor. For a more detailed description, see section 5.0 of the Narrative Statement.

a. Permit Required

All owners and operators of existing and new CCR facilities in Wyoming are required to comply with State CCR rules found at Wyoming Administrative Rules, Environmental Quality, Solid Waste Rules (SWR) chapter 18, and to obtain a permit in accordance with Wyoming Statutes (WS) section 35-11-502 and SWR chapters 1 and 18. Wyoming law requires every person who treats or transports solid waste or operates a solid waste management unit or facility, including CCR units, to have a valid permit issued by WDEQ. WS section 35-11-502(a); SWR

chapter 1, section 1(c), chapter 18, section 4(a). Permit application requirements can be found in SWR chapter 1, section 2, and chapter 18, section 4(d).

b. Permitting Authority

WDEQ has the authority to collect all information necessary to issue permits that are adequate to ensure compliance with SWR chapter 18, WS section 35-11-109. In addition, SWR chapter 18, section 4(d) specifies the information that applicants for a solid waste permit, including a CCR unit permit, are required to submit to show compliance with the SWR.

c. Permit Requirements and Permitting Process

Existing CCR landfills must submit a permit renewal application no later than 12 months prior to the expiration date of the facility's existing solid waste permit. SWR chapter 18, section 4(d). Existing CCR surface impoundments must submit a new permit application within 12 months of the effective date of the State rule. Owners and operators of existing CCR landfills and surface impoundments that intend to cease disposal of all waste before obtaining a permit through the post-closure care period shall submit a closure permit application within 12 months prior to the expiration date of the facility's existing permit or the date the facility anticipates to cease disposal of CCR, whichever comes first. An alternate schedule to submit a new application, renewal application or closure permit application may be approved by the SHWD for good cause. SWR chapter 18, section 4(b).

Applications for renewal permits and closure permits are subject to the application procedures set forth in WS section 35-11-502 and SWR chapter 1, section 2(a), (b), and (c) and must follow the procedures and provisions of SWR chapter 1, section 2(d) and (e) respectively. CCR permits may be transferred from one operator to a new operator with written approval from WDEQ SHWD's Solid Waste Permitting and Corrective Action (SWPCA) Program Director (Director) in accordance with SWR chapter 1, section 3(d).

The permit duration for new or existing CCR surface impoundments and CCR landfills renewal permits will be for the operating life of the facility through post-closure, and closure

permits will be issued for a period that includes the time required to complete closure activities and a minimum 30-year post-closure term. SWR chapter 18, section 4(c).

Within sixty days after a permit application has been submitted, WDEQ must notify the applicant whether or not the application is complete. WS section 35-11-502(e). Once WDEQ determines that an application is complete, WDEQ issues a letter of completeness and initiates a technical review of the permit application. At that time, the applicant must conduct a public notice and initiate a 30-day public comment period for the complete application, as described below. WS section 35-11-502(g), (h); SWR chapter 18, section 4. WDEQ must complete the technical review of the application within 90 days. During technical review of the application, WDEQ considers public comments submitted during the public comment period for the complete application. SWR chapter 18, section 2(c)(i)(C). Within WDEQ, the SHWD manages and implements the Wyoming CCR permit program. The SHWD may opt to conduct a public hearing on the application. SWR chapter 18 section 2(c)(i)(D).

Once the SHWD completes technical review of the application, it may make one of three determinations: (1) The permit application is technically inadequate; (2) The permit application is technically adequate, and a proposed permit is suitable for publication; or (3) The permit application is denied. WDEQ may modify, suspend, revoke, or deny a permit if: (1) Permit issuance would not meet the provisions of the Wyoming Environmental Quality Act, WS section 35-11-101 *et seq.* (the Act) or regulations; (2) The applicant fails to submit the required information; (3) The facility has a history of noncompliance; (4) The applicant indicates the facility would not comply with provisions of the regulations or misrepresents actual site conditions; (5) The applicant fails to employ a qualified solid waste manager; or (6) The applicant, or any partners, executive officers, or corporate directors has been found liable of violating environmental quality laws or criminal racketeering laws or regulations which constitute evidence that the applicant cannot be relied upon to conduct the operations described in the permit application in compliance with the Act or regulations. SWR chapter 1, section 4.

Provisions for amending permits for solid waste handling facilities are in SWR chapter 18, section 4(f). SWR chapter 18, section 3(c) specifies those changes to a permit that qualify as major amendments and which are minor amendments. Major amendments to permits may be requested by the Permittee and are reviewed and processed by the SHWD in accordance with the procedures for new or renewal permits described above. Minor amendments to permits may be completed through written notice and approval by the SHWD within 60 days. SWR chapter 18, section 3(c). A written notice of a minor amendment to a permit can be determined to be deficient, approved, or denied. Permittees can provide additional information to the SHWD in response to any deficiency notice.

EPA has preliminarily determined that the Wyoming approach to CCR permit applications and approvals is adequate, and that this aspect of the Wyoming 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 Wyoming'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 Wyoming's public participation provisions is provided below.

a. Public Notice

The State program provides public notice in several ways and at several different stages of the permitting process, which taken together ensure that documents for permit determinations are subject to public review and comment. WDEQ requires State CCR permit applicants to

provide notice to the public. Once WDEQ determines that an application is complete, WDEQ issues a letter of completeness and initiates a technical review of the permit application. At this time, the applicant must conduct a public notice and initiate a 30-day public comment period for the complete application. WS section 35-11-502(g), (h); SWR chapter 18, section 4. The public notice must provide specific information about the facility, including its proposed size and location; the types of waste to be managed; methods that will be used to manage the waste; and the operating life of the unit. WDEQ must complete technical review of the application within 90 days. During technical review of the application, WDEQ considers public comments submitted during the public comment period for the complete application. SWR chapter 18, section 2(c)(i)(C). The SHWD may opt to conduct a public hearing on the application. SWR chapter 18 section 2(c)(i)(D). Permit renewals are subject to the same public notice and comment requirements as new permit applications and are therefore subject to two, 30-day public comment periods with options to hold a public hearing for each.

b. Public Comment Period

All applicants for solid waste permits that submit a new, renewal, closure or major amendment permit application are required to complete two public comment periods during the permitting process. The first public comment period occurs after the SHWD deems the permit application complete, and the second occurs when the SHWD deems the permit application technically adequate and issues a proposed permit in accordance with WS section 35-11-502, SWR chapter 1, section 2(c), and SWR chapter 18 section 4(f). Public notice for the complete application and for the proposed permit must contain information about the permit application including the applicant; the proposed facility location and size; the waste types intended for management; the method of waste management; and the operating life of the unit. Public notices must also contain information on how to obtain special assistance or alternate formats of a notice for individuals with disabilities and inform the reader to visit WDEQ's website for a Spanish translation.

The applicant is required to publish each written notice once a week for two consecutive weeks in a newspaper of general circulation within the county where the applicant plans to locate the facility or where an existing facility is currently located, for each public comment period. WS section 35-11-502 (g through k) and SWR chapter 18 section 2. Each public comment period begins on the first day of the notice publication and continues until 30 days after the second publication. The applicant is required to give written notice of the permit application to landowners with property located within one-half mile of the site, the mayor of each city or town within 50 miles of the site, the Local County Commission, any solid waste district located in the county, and the Solid Waste Permitting and Corrective Action Program Interested Parties Mailing List (hard copy). The written notice is also posted to WDEQ's Public Notice website.

Permit applications and review documents are available for public review at any WDEQ office and can be sent digitally upon request. Specific information on how to request access to permit documents is found in Wyoming's CCR permit program narrative Section 7.0 Public Participation (Page 14), Appendix G Public Notice Templates, SWR chapter 1 section 2(c), and WS section 35-11-502. Additionally, the public can contact the WDEQ and request to be added to a listserv or mailing list (Interested Parties Mailing List). Written comments on permit applications are accepted by mail, fax, and through WDEQ's digital comment portal. If a commenter has technical difficulties with the digital comment portal, the portal website has instructions for obtaining assistance.

Public comments received by WDEQ during the first public comment period for the complete application are considered by WDEQ in drafting a proposed permit. If substantial written comments, including objections to a proposed permit, are filed during the public comment period for the proposed permit, a public hearing shall be held by the Council within twenty days after the end of the public comment period. WS section 35-11-502(k). The Director shall render a decision on the proposed permit within 30 days after completion of the public comment period if no hearing is requested. If a hearing is held, the Director will issue or deny the

permit no later than 15 days from receipt of any findings of fact and decision of the Council. WS section 35-11-502(k) and (m).

All comments received are considered and WDEQ provides a response to each commenter prior to making a final permit determination. In addition to providing responses to individual commenters, all files in WDEQ are available for the public to review unless they are found to be confidential under WS section 35-11-1101 or otherwise protected under the Wyoming Public Records Act. The public can submit a record request using the WDEQ website. The public can also request to view documents at any of WDEQ's offices.

Final permit determinations are required to be added to the owner or operator's CCR website within five days of the owner or operator's receipt of the determination. SWR chapter 18, section 11(c)(i). Documents produced and distributed as part of the permitting process are maintained by WDEQ as a public record in accordance with Wyoming Public Records Act and must be made available to the public accordingly. Public comments are subject to the Wyoming Public Records Act and maintained by WDEQ.

c. Challenges to Permit Decisions

In accordance with WS section 35-11-502(k), any interested person has the right to file written objections to the proposed permit with the Director within 30 days after the last publication of the written notice given for the proposed permit. If substantial written objections are filed, the Wyoming Environmental Council (Council) holds a public hearing. WS section 35-11-502(k). To notify the public of a pending hearing, the Council must publish written notice of the time, date, and location of the public hearing in a newspaper of general circulation in the county where the facility would be located once a week for two consecutive weeks immediately prior to the hearing. The public hearing is to be conducted as a contested case under the Wyoming Administrative Procedure Act (WY APA). WS 16-3-107 through 16-3-112. Judicial review can be obtained pursuant to the WY APA. WS 16-3-114.

If a public hearing is held, the Council shall issue findings of fact and a decision on the proposed permit within 30 days afterward. WDEQ shall issue or deny the permit within 15 days after receiving findings of fact and decision of the Council. WS section 35-11-502(m)

WS section 35-11-1001 provides that any aggrieved party under the Act may obtain judicial review by filing a petition for review within 30 days after entry of the order or other final action complained of pursuant to the provisions of the WY APA. Any interested person has the right to file written objections to a proposed permit with the Director within 30 days after the last publication of the public notice for the public comment period for the permit. If substantial written objections are filed, a public hearing shall be held by the Council. WS section 35-11-112 charges the Council to act as the hearing examiner for WDEQ in any case contesting the grant, denial, suspension, revocation or renewal of any permit required by the Act. The hearing shall be conducted as a contested case in accordance with WY APA, WS sections 16-3-101 *et seq.*

The WY APA provides that any person aggrieved or adversely affected in fact by a final decision of an agency in a contested case, or by any other agency action or inaction, is entitled to judicial review. WS section 16-3-114.

EPA has preliminarily determined that the Wyoming 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. WDEQ has authority under WS section 35-11-109 to obtain any

necessary documents and to conduct monitoring and testing to determine if an owner or operator of a CCR unit is in compliance with the permit and applicable regulations.

The Director or designated officers, employees, or representatives of WDEQ are also granted the authority under WS section 35-11-109 to conduct inspections of facilities, to inspect and copy any records, and to inspect any monitoring equipment or method of operation required to be maintained pursuant to the Act. Further, the application for a CCR unit includes an access agreement authorizing WDEQ to enter an operator's premises where a regulated facility or activity is located or conducted, or where records are kept, to perform inspections and to collect data for the purposes of ensuring compliance or as otherwise authorized by the appropriate rules and regulations of WDEQ. No permit shall be issued unless the owner of the facility provides the written authorization. SWR chapter 1, section 1(g).

In addition, the information that WDEQ collects or obtains during inspections, compliance monitoring, and enforcement, allows the State to verify the accuracy of information submitted by owners or operators of CCR units; verify the adequacy of methods (including sampling) used by owners or operators in developing that information; and produce evidence admissible in an enforcement proceeding. WS section 35-11-109.

Accordingly, EPA has preliminarily determined that these compliance monitoring authorities are adequate, and that this aspect of the Wyoming 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.

WS section 35-11-701 authorizes the Director to issue an order requiring the cessation and desistance of violations of the Act, rules, regulations, standards, permits, licenses or variances under the Act. In addition, if the Director has evidence that any pollution source presents an immediate and substantial danger to human or environmental health or safety, the Director may institute, through the Wyoming Attorney General, a civil action for immediate injunctive relief to halt any activity causing the danger. WS section 35-11-115(a). Further, WS section 35-11-109(a)(i) grants WDEQ wide-ranging authority to perform acts necessary to enforce the provisions of the Act and any rules, regulations, orders, or permits established or issued thereunder, and WS section 35-11-109(a)(vii) grants the Director wide latitude to prepare and present enforcement cases before the Council for violations of the Act or regulations promulgated under the Act. When compliance with the Act or the regulations applicable to CCR units, SWR chapter 18, is not achieved, WDEQ is authorized under the Act to engage in voluntary stipulated settlement or to initiate a civil enforcement action in Wyoming District Court.

Finally, under WS section 35-11-901(a), the Director can bring an administrative action for the assessment of civil penalties in Wyoming District Court against any person who violates, or any director, officer or agent of a corporate permittee who willfully and knowingly authorizes, orders or carries out the violation of any provision of the Act, or any rule, regulation, standard, or permit adopted thereunder or who violates any determination or order of the Council pursuant to the Act or any rule, regulation, standard, permit, license, or variance. Such violations are subject to a penalty not to exceed \$10,000.00 for each violation for each day during which a violation continues; a temporary or permanent injunction; or both a penalty and an injunction. WS section 35-11-901(a).

Based on the foregoing, EPA has preliminarily determined that this aspect of the Wyoming 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.

WS section 35-11-904(c)(ii) provides that any person may intervene as a matter of right when WDEQ, through the attorney general, has commenced a civil action to require compliance with the provisions of the Act, or any rule, regulation, order or permit issued pursuant to the Act. Additionally, WDEQ has the authority under WS 35-11-701(a) to investigate citizen complaints concerning violations.

Inasmuch as the State explicitly provides for citizen intervention in civil enforcement proceedings as a matter of right, 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 Wyoming CCR permit program meets the standard for program approval.

B. Adequacy of Technical Criteria

EPA conducted an analysis of the Wyoming CCR permit program application, including a thorough analysis of Wyoming statutory authorities for the CCR program, as well as its regulations at Solid Waste Rules chapter 18: Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments. As noted above, Wyoming has requested approval of a partial CCR permit program.

1. Wyoming CCR Units and Resources

WDEQ has identified 19 disposal units that are currently or have been used for disposal of CCR wastes (3 landfills and 16 surface impoundments) at 4 facilities in Wyoming.¹⁰ WDEQ

¹⁰ For more information on the specific facilities covered by the Wyoming CCR Permit Program, see page 7 (PDF page 10) of the Narrative, which is included in the docket for this action.

has demonstrated that it has the personnel to administer a permit program that is at least as protective as the Federal requirements.¹¹ The WDEQ SHWD is the lead program for permitting, compliance, and enforcement of CCR units. The WDEQ CCR Program is funded through the State budget process. The WDEQ budget is approved by the Wyoming State Legislature as identified in the Wyoming State Budget. In addition, WDEQ applied for EPA State and Tribal Assistance Grants (STAG) funding for Fiscal Years 2021 through 2023. In total, WDEQ has received \$571,396 in funding to develop its CCR permit program. If EPA receives future appropriations, WDEQ can continue to apply for funds for implementation of its CCR permit program. EPA has preliminarily determined that the WDEQ staffing and funding are adequate for WDEQ to administer the CCR permit program.

2. Wyoming CCR Regulations

EPA has preliminarily determined that the portions of the Wyoming 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 Wyoming CCR regulations at SWR chapter 18 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).

WDEQ previously regulated CCR in landfills under the SWR starting in 1990. Under the Wyoming Water Quality Rules promulgated in 1975, Wyoming began regulating CCR surface impoundments. WDEQ incorporated by reference the Federal CCR regulations, promulgated through December 14, 2020, with the addition of those portions of the Act (appendix A of the application) and SWR (appendix B of the application) that were more stringent. This includes additional definitions, general facility information, design and operating criteria, groundwater

¹¹ The discussion on State personnel is included on page 8 (PDF page 11) of the Narrative, which is included in the docket for this action, and is described further in the Technical Support Document.

monitoring, and requirements for co-disposing of other waste streams, which are described further in section V. of the TSD. WDEQ amended the regulations to adopt EPA amendments through December 14, 2020, and chapter 18 became effective on August 19, 2022.

3. Wyoming Partial Program

WDEQ is seeking approval of its partial State CCR permit program pursuant to RCRA section 4005(d). The WDEQ's rules adopt the Federal CCR regulations promulgated through December 14, 2020. Wyoming is not seeking approval for the following four requirements of the Federal CCR regulations and, therefore, those requirements in the Federal CCR regulations will continue to apply directly to each regulated CCR unit in Wyoming:

1. Amendments made in the Legacy CCR Surface Impoundments and CCR Management Units Final Rule.¹² This includes 40 CFR 257.50(e), which WDEQ has not yet adopted.
2. 40 CFR 257.73(a)(4), 257.73(d)(1)(iv), 257.74(a)(4), and 257.74(d)(1)(iv) for vegetative cover for slope stability;
3. 40 CFR 257.90(g) for suspension of groundwater monitoring; and
4. 40 CFR 257.95(h)(2) for groundwater protection standards for constituents in appendix IV having no Maximum Contaminant Levels.

With the exception of these four items, EPA has preliminarily determined that the Wyoming 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 Wyoming CCR permit program also contains State-specific language, references, definitions, and State-specific requirements that differ from the Federal CCR regulations, but which EPA has determined to be “at least as

¹² The provisions that changed in 40 CFR part 257, subpart D that WDEQ did not adopt are specified in *Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Legacy CCR Surface Impoundments* rule (89 FR 38985, May 8, 2024) and the technical corrections direct final rule (89 FR 88650, November 8, 2024).

protective as” the Federal criteria. These State-specific requirements are also discussed further in sections III.1. and V. of the Technical Support Document.

The effect of approving a State CCR permit program is that, except for the provisions for which EPA has not granted approval, the Wyoming CCR permit program will apply in lieu of the Federal CCR regulations. For the State provisions that will not be 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.

V. Wyoming CCR Permits

In accordance with the Wyoming SWR, chapter 18, section 4(a), all CCR units must be permitted in accordance with chapter 18. WDEQ has not issued any SWR chapter 18 CCR permits in the State. In accordance with the SWR, chapter 18, section 4(b), existing CCR landfills and surface impoundments must submit an operating or closure permit application under chapter 18 under certain timeframes unless an alternate schedule is approved by the SHWD for good cause. New CCR units must obtain a permit under chapter 18 prior to construction.

Since WDEQ has not issued permits under the chapter 18 regulations, no Wyoming 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 from an approved State is issued. 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 Wyoming 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 Wyoming partial CCR permit program.

Lee Zeldin,
Administrator.

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