



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 257

[EPA-HQ-OLEM-2022-0903; FRL-13387-01-OLEM]

Alabama: 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 Alabama partial Coal Combustion Residuals (CCR) permit program under the Resource Conservation and Recovery Act (RCRA). After reviewing the CCR permit program application submitted by the Alabama Department of Environmental Management (ADEM) on May 18, 2026, EPA has preliminarily determined that Alabama's partial CCR permit program meets the standard for approval under RCRA. If approved, Alabama'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 be holding a virtual public hearing on EPA's preliminary approval of Alabama'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 virtual public hearing on September 3, 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-2022-0903, 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. 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-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, Mail Code: 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/coal-combustion-residuals>.

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List of Acronyms

ADEM Alabama Department of Environmental Management

Admin. Administrative

CBI Confidential Business Information

CCR coal combustion residuals

CCRMU coal combustion residuals management units

CFR Code of Federal Regulations

Ch. Chapter

EMC Environmental Management Commission

EPA Environmental Protection Agency

MSWLF Municipal Solid Waste Landfill

FR *Federal Register*

RCRA Resource Conservation and Recovery Act

STAG State and Tribal Assistance Grants

SWRMMA Solid Waste and Recyclable Materials Management Act

TSD Technical Support Document

USWAG Utility Solid Waste Activities Group

WIIN Water Infrastructure Improvements for the Nation

I. Public Participation

A. Written Comments

Submit your comments, identified by Docket ID No. EPA-HQ-OLEM-2022-0903, 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 Virtual Public Hearing

EPA will begin pre-registering speakers for the hearing upon publication of this document in the *Federal Register*. To register to speak at the virtual hearing, please use the online registration form available on EPA's CCR website (<https://www.epa.gov/coal-combustion-residuals/us-state-alabama-coal-combustion-residuals-permit-program>) or contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to register to speak at the hearing. The last day to pre-register to speak at the hearing will be September 1, 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 hearing to run either ahead of schedule or behind schedule. Additionally, requests to speak will be taken the day of the hearing according to the procedures specified on EPA's CCR website (<https://www.epa.gov/coal-combustion-residuals/us-state-alabama-coal-combustion-residuals-permit-program>) for this hearing. The Agency 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 (via email) to the person listed in the **FOR FURTHER INFORMATION CONTACT** section. 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 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 virtual 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. Verbatim transcripts of the hearings and written statements will be included in the docket for this action.

Please note that any updates made to any aspect of the hearing will be posted online on EPA's CCR website at <https://www.epa.gov/coal-combustion-residuals/us-state-alabama-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 August 20, 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 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

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).

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 May 18, 2026, ADEM submitted its State CCR permit program application (Application) to EPA Region 4 requesting approval of the State's partial CCR permit program.² EPA is proposing to approve the majority of the Alabama partial CCR permit program pursuant to RCRA 4005(d)(1)(B). 42 U.S.C. 6945(d)(1)(B). The fact that Alabama is seeking approval of a partial program does not mean it must subsequently apply for full program approval. However, Alabama 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 Alabama CCR permit program would 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.³ However, even 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 Application for CCR Permit Program Approval. Alabama Department of Environmental Management. May 2026.

³ While Alabama's regulations will operate in lieu of the Federal CCR regulations after approval, facilities in the State that were issued CCR permits before EPA approval of the State's CCR permit program will not have a Federal permit shield against direct enforcement of the applicable CCR requirements until after each facility's permit is reissued by Alabama after approval of the State's program. See Unit V.A. below.

EPA has also engaged the Federally recognized Tribe within the State of Alabama in consultation and coordination regarding the program approval for ADEM. EPA sent a letter to the Poarch Band of Creek Indians (PBCI) on May 26, 2026, offering an opportunity for consultation.⁴ The PBCI responded on June 2, 2026, that it would not seek consultation.⁵ If requested, Tribal consultation 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>).

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.

On April 17, 2015, EPA published a final rule, creating the Federal CCR regulations at 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 the Federal CCR regulations 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).

⁴ Coal Combustion Residuals (CCR) Tribal Consultation - Poarch Band of Creek Indians. May 2026.

⁵ Response from Poarch Band of Creek Indians regarding Coal Combustion Residuals (CCR) Tribal Consultation. June 2, 2026.

More information on these rules is provided in the Technical Support Document (TSD) 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).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

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).

the Federal requirements, and facilities remain responsible for compliance with all remaining Federal requirements in 40 CFR part 257, subpart D.

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 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 Alabama Application

In 2018, EPA began working with ADEM on a CCR permit program application. As it has with other States, EPA discussed with ADEM the process for EPA to review and approve a State's CCR permit program, ADEM's anticipated timeline for submitting a CCR permit program application to EPA, and ADEM's regulations for issuing permits and technical criteria for CCR units. Alabama's first CCR regulations were promulgated in 2018 and revised over the next several years in response to public comment, discussions between ADEM and EPA, and changes to the Federal CCR regulations. On December 29, 2021, following EPA comment on the State's initial applications,⁷ ADEM submitted a revision to its CCR permit program application to EPA Region 4, requesting approval of the State's partial CCR permit program.⁸

On August 14, 2023, EPA published notice of its proposal to deny approval of Alabama's December 29, 2021, CCR permit program application (88 FR 55220). In that document, the Agency first presented an analysis of the Alabama CCR permit program application submitted on December 29, 2021, including an analysis of ADEM's statutory authorities for the program and the State's CCR permit program regulations, primarily found at ADEM Administrative Code

⁷ ADEM previously submitted CCR permit program applications on July 12, 2018, and February 26, 2021, before submitting the Application submitted on December 29, 2021, which EPA reviewed at that time.

⁸ Application to USEPA Region IV for CCR Permit Program Approval in Accordance with section 4005 of the Resource Conservation and Recovery Act (RCRA) Alabama Department of Environmental Management Land Division-Solid Waste Branch. December 2021.

Chapter 335-13-15, Standards for the Disposal of Coal Combustion Residuals in Landfills and Impoundments. *Id.* at 88 FR 55228-55229 (“Unit IV.B EPA’s Analysis of the Alabama CCR Regulation”). On June 7, 2024, EPA published notice of final denial of Alabama’s CCR permit program (89 FR 48774). In both the proposed and final denial of ADEM’s December 29, 2021, application, EPA concluded that Alabama established State CCR regulations that largely mirror the language in the Federal CCR regulations in almost all respects, and, to the extent the provisions are different, the differences in the State regulations are at least as protective as the Federal CCR regulations. However, EPA denied approval of ADEM’s December 29, 2021, application based on an evaluation of ADEM’s existing State CCR permitting decisions and ADEM’s implementation of its regulations as documented in those permits. Specifically, EPA identified deficiencies in Alabama’s permits with respect to closure requirements for unlined surface impoundments, groundwater monitoring networks, and corrective action (i.e., investigation and cleanup) requirements. EPA discussed these issues with ADEM; however, the State agency did not revise its permits or supplement its application to demonstrate how such permits were as protective as the Federal requirements.

After EPA denied Alabama’s application, the Agency revised its interpretation of RCRA section 4005(d) to allow existing State CCR permits to be excluded from the State CCR permit program application for purposes of program review at a State’s request. See North Dakota Final CCR Permit Program Approval (90 FR 51168, November 17, 2025). If permits are excluded from the CCR permit program approval, all CCR units in a State remain directly subject to the applicable Federal or State CCR regulations and the facilities do not have a Federal permit shield until the State opens the entire permit for public notice and review after the State program is approved by EPA.

On May 18, 2026, ADEM submitted its current Application to EPA Region 4, again requesting approval of the State’s partial CCR permit program. In a letter provided as appendix E to the Application, ADEM indicated that it is no longer requesting EPA approval of the existing

CCR permits issued under the State's CCR permit program. ADEM also committed to evaluating and amending the State's existing CCR permits at the time of permit renewal to ensure compliance with the Federally approved State CCR permit program. This approach is discussed further in Unit V. of this document.

IV. EPA Analysis of the Alabama Application

RCRA section 4005(d) requires EPA to evaluate two components of a State CCR permit 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 Alabama 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.

For purposes of this proposed action, EPA reviewed Alabama’s most recent CCR permit program application, which is the Application submitted on May 18, 2026. Upon careful review of the Application, and as discussed in more detail below, EPA has preliminarily determined that the State’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 Alabama has not included in its partial CCR permit program. Consequently, EPA is proposing to approve the majority of Alabama’s partial CCR permit program. 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 Alabama’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 Alabama CCR permit program, and how the Alabama regulations differ from the Federal requirements, can be found in the Technical Support Document. EPA determined that the Alabama Application was complete and notified Alabama of its determination by letter.⁹

A. Adequacy of the Alabama 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, 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 Alabama CCR permit program using the process, statutory and

⁹ Completeness Letter for the Alabama CCR Permit Program. July 2026.

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 located in the docket supporting this proposed determination.

1. Guidelines for Permitting

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.

a. Permit Applications

Permit applications for new and existing CCR units, including lateral expansions of such units, in Alabama are subject to the authority of ADEM given in section 22-27-12 of the Code of Alabama 1975, which includes issuing and specifying terms and conditions of permits. ADEM Admin. Code r. 335-13-5-.02(1)(c) requires that all solid waste management of CCR generated from the combustion of coal at electrical utilities and independent power producers shall take place in a CCR unit permitted by ADEM. This provision also outlines the required contents of a permit application by an owner or operator of a CCR unit.¹⁰ ADEM Admin. Code r. 335-13-5-.02(1)(c)1.(xiii) allows ADEM to request additional information to ensure compliance with all State and Federal requirements.

¹⁰ Application for CCR Permit Program Approval. Alabama Department of Environmental Management. May 2026. Pages 22-23. ADEM staff "review CCR permit applications to ensure that sufficient information, maps, or reports have been submitted to: characterize the geology and hydrogeology at the facility; demonstrate compliance with location restrictions; demonstrate compliance with design criteria; demonstrate compliance with applicable groundwater monitoring requirements (and corrective action, if applicable); and demonstrate compliance with applicable closure and post-closure requirements."

b. Draft Permit

Once ADEM staff determine that an application meets all applicable requirements, a draft permit is prepared and undergoes public notice and comment in accordance with the procedures discussed in Unit IV.A.2. of this preamble.

c. Final Permit Determination

In accordance with ADEM Admin. Code r. 335-13-5-.03(2), at the conclusion of the public participation process, ADEM will either: (1) Deny or not issue the permit, stating in writing the reasons for denial and informing the person requesting the permitting action of appeal procedures; (2) Issue the permit, if the application complies with applicable requirements; or (3) Request additional information or additional elements of design for the CCR unit. All final permit determinations are made known to the public, as described more fully in Unit IV.A.2.e of this document. Under ADEM Admin. Code r. 335-13-5-.02(3), a CCR facility permit is valid for the design life of the CCR facility, but for a period of no longer than ten years.

d. Permit Revocation, Denial, Suspension, Renewal or Transfer

Permits to operate a CCR unit are subject to revocation, denial, or suspension under ADEM Admin. Code r. 335-13-5-.05, if the permittee is found to be in violation of any permit conditions, fails to follow approved operational parameters for the permitted activity, fails to seek a permit modification required by ADEM Admin. Code r. 335-13-5-.06, creates a nuisance, or stops receiving waste as specified by ADEM Admin. Code r. 335-13-15-.07(3)(e).

In accordance with ADEM Admin. Code r. 335-13-5-.02(4), requests for permit renewals are required to be submitted to ADEM at least 180 days prior to the expiration date of the existing permit. The same permit application elements are required for renewal permit applications as are required for initial CCR permits. ADEM Admin. Code r. 335-13-5-.07 prohibits the transfer of a permit from one person to another without complying with provisions of ADEM Admin. Code r. 335-13-5-.07(1) relating to the transfer of permits. Under ADEM

Admin. Code r. 335-13-5-.07(1)(a), a notification must be submitted to ADEM at least 30 days prior to the proposed transfer or name change and must be approved by ADEM.

e. Permit Modifications

Following the initial issuance of a CCR permit, ADEM may modify a permit after receiving a satisfactory application from the permittee at least 120 days prior to the anticipated change. ADEM Admin. Code r. 335-13-5-.06(3)(a). The application for modification must identify the proposed changes to the permit or plans and include revised plans and narratives for ADEM to review. ADEM Admin. Code r. 335-13-5-.06(1) and (2) describe permit modifications, including modifications of CCR permits, as major or minor. In accordance with ADEM Admin Code r. 335-13-5-.06(1), a permittee must request a major modification for the addition of, or a change in the design of, a liner and/or leachate collection system, as well as for the addition of acreage to the facility boundary, and the addition of disposal acreage where design plans were not previously submitted. Major modifications require a public notice and public comment period under the same procedures as for issuance of initial permits.

Minor modifications are divided into two categories; those that require public notice and a public comment period and those that do not. ADEM Admin. Code r. 335-13-5-.06(2)(a) lists certain categories of minor modifications that do not require a public notice or comment: corrections of typographical errors and informational changes, certain changes to remove permit conditions, changes by the permittee that increase the frequency, duration or stringency of the actions required by an applicable plan, addition of new groundwater monitoring wells or replacement of existing wells (of similar design and depth), changes in statistical analysis methods, changes in a stormwater conveyance system, and changes in fill sequence. In accordance with ADEM Admin. Code r. 335-13-5-.06(2)(b), minor modifications that require public notice and may require a public hearing include, but are not limited to, the addition of a waste stream, an increase in the average daily volume specified by a permit, addition of an alternative cover material, incorporation of or change to final remedies for facilities (including

CCR facilities) undergoing corrective action, changes to permitted final fill elevations, any change to the approved final closure method detailed in an approved closure plan, and the addition of or a design change in an on-site leachate treatment system, unless a permittee demonstrates in accordance with ADEM Admin. Code r. 335-13-5-.06(2)(c) that any of those proposed changes do not substantially alter permit conditions and merely keep a permit current with routine changes to the facility or its operations, similar to other modifications not requiring public notice under ADEM Admin. Code r. 335-13-5-.06(2)(a).

Additionally, ADEM Admin. Code r. 335-13-5-.06(4) allows ADEM to initiate CCR permit modifications in three instances: (1) When ADEM has determined that a permit contains typographical or informational errors that need to be corrected; (2) When ADEM receives supplemental information regarding a previously approved permitting action that was not available at the time of permit issuance (other than revised regulations, guidance or test methods); and (3) When the standards or rules on which a permit was based have changed by statute, through promulgation of new or amended standards or rules, or by judicial decision after a permit was issued. ADEM-initiated permit modifications require public notice and a public comment period only if the permit modifications are initiated because of changes in State standards or rules.

EPA has preliminarily determined that the Alabama approach to CCR permit issuance and oversight is adequate, and that this aspect of the Alabama 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. Alabama has adopted public participation opportunities for its CCR permit program that can

provide an inclusive dialogue, allowing interested parties to talk openly and frankly about issues within the CCR program and search for mutually agreeable solutions to differences. An overview of the Alabama public participation provisions is provided below.

a. Public Notice

ADEM Admin. Code r. 335-13-5-.03 requires public notice when issuing an initial CCR permit, renewing a CCR permit, or making any permit modification requiring public notice. ADEM notifies the public by publishing the permit or modification application and preliminary permit determination, draft permit, information on how to obtain a copy of the application, and draft permit on ADEM's website, no less than 35 days prior to the proposed issuance date of the permit action (or hearing date, if a hearing is to be held). Landowners adjacent to the CCR unit, whose information is provided by the facility in the permit or modification application, are sent a copy of the public notice by certified mail. ADEM also maintains a list of interested parties that receive a copy of the notice. The public notice includes detailed information on how the public may submit written comments on the draft permitting action and when the comment period closes. The notice also specifies that written comments received prior to the close of the public comment period will be considered and entered into the public record. The notice provides information on how to find the response to comments and final permit determination, as well as how to be included on ADEM's mailing list of interested individuals who are emailed legal notices regarding proposed permitting actions.

b. Option for a Public Hearing

In accordance with ADEM Admin. Code r. 335-13-5-.04, ADEM may authorize a public hearing upon receipt of a significant number of technical requests.¹¹ Additionally, for initial permit applications, ADEM stated that its practice is to hold a public hearing prior to making a

¹¹ Application for CCR Permit Program Approval. Alabama Department of Environmental Management. May 2026. Page 89: "Technical requests are those that address the conditions of the proposed permit action; the Department's adherence to the applicable environmental laws, rules, and regulations in development of the proposed permit action; or issues that have an impact on the applicant's ability to meet applicable environmental laws, rules, and regulations."

permitting decision regardless of the volume or nature of comments received during the public notice period. If a public hearing is to be held, Alabama asserts that the public notice will be issued not less than 35 days in advance and will include information on the date, time and location of the hearing and who to contact if special accommodations are necessary for an individual to participate in the public hearing. Oral comments received during any public hearing held are given the same consideration as written comments received during the public comment period.

c. Public Comment Period

Per ADEM Admin. Code r. 335-13-5-.03(1)(b)3., a 35-day public comment period is provided for ADEM to receive comments related to the proposed permitting action. The comment period will be extended to include comments submitted at a public hearing, if one is held on a proposed permitting action, if the hearing is scheduled after the end of the original 35-day comment period. In addition, the public comment period may be extended for good cause to ensure that the public receives adequate notice and has a reasonable opportunity to submit comments on a proposed permitting action. Examples for extension of the comment period may include governmental closures due to disasters or other emergencies, problems or errors in the public notice provided, extreme weather events, or deadlines that fall on State or Federal holidays.

d. Consideration of All Public Comments

All comments that are received during the comment period are compiled and evaluated by ADEM's Solid Waste Engineering Section staff. If comments are received, comments relating to the technical and regulatory conditions of the draft permit, whether written or presented orally at a public hearing, are responded to and the responses are provided to commenters and become part of the public record.

e. Final Permit Determination

After consideration of all comments, review of the public hearing record (if a public hearing was held), and applicable regulations, ADEM will make a final determination on the proposed permit action. ADEM will also develop a response to comments, which will become part of the public record. The final permit determination, the permit, and the response to comments will be available to persons electronically via ADEM's eFile service which can be found at <https://www.adem.alabama.gov> or by contacting the ADEM Records Manager at records@adem.alabama.gov. Notification of the final permit determination and response to comments will be mailed to all commenters that did not provide an email address. Commenters who provided ADEM with an email address will be emailed a link to the final determination, the permit, and the response to comments document on ADEM's eFile service.

f. Challenges to Permit Decisions

ADEM Admin. Code ch. 335-2-1 includes procedures for any person aggrieved by any administrative action of ADEM, including permitting actions, to challenge those actions. The procedures include an opportunity to file a request for a hearing before the Alabama Environmental Management Commission (EMC) within 30 days of the relevant permitting action. Within 30 days after the conclusion of such hearing, the EMC must issue an order modifying, approving, or disapproving ADEM's action. The EMC is the governor-appointed State board that sets environmental policy for Alabama. It adopts State environmental regulations and serves as the appellate body that hears administrative appeals for permits issued by ADEM.

EPA has preliminarily determined that the Alabama approach to public participation requirements provides adequate opportunities for public participation in the CCR permitting process sufficient to meet the standard for program approval.

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 information it gathers is suitable for enforcement.

In accordance with Code of Alabama 1975, section 22-27-12(6) and ADEM Admin. Code r. 335-13-1-.11(2), ADEM is authorized to enter, during reasonable hours, to inspect, investigate, obtain samples, monitor, or observe the transfer, treatment, storage, or disposal of solid waste or examine or copy records (both during and after an inspection has concluded) to determine compliance with applicable rules and regulations. Furthermore, ADEM Admin Code r. 335-13-6-.01 provides for the unannounced periodic inspection of all solid waste facilities, including CCR units, as well as the right of entry.

EPA has reviewed the Application and determined that 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. Overall statutory authority for the State solid waste program is set forth in Code of Alabama 1975, sections 22-27-7, 22-27-9, 22-27-12, 22-22A-5, and 22-22A-8. These statutory provisions, as well as ADEM Admin. Code r. 335-13-1-.11(2) and 335-13-6-.01(2), give ADEM authority during an inspection to obtain all information necessary, including the authority to conduct monitoring and testing, to determine whether the owner/operator is in compliance with CCR requirements. To help ensure compliance inspection consistency, all field inspections for CCR facilities are carried out by State personnel who receive extensive and periodic training. Furthermore, all recommendations for enforcement consideration are submitted for managerial review. State personnel are required to perform complete and comprehensive surveys of the regulated activities and document the results in an inspection report. EPA believes that field inspections, combined with the review of

facility files, will allow ADEM to ensure that compliance monitoring is adequate in determining any noncompliance with CCR program requirements. The results of the field inspections are stored in Alabama's publicly accessible eFile system. In addition, the State ensures that it receives and properly considers information submitted by the public as Alabama places a high priority on addressing public comments and investigating and tracking complaints in ADEM's Complaint Tracking Database.

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

EPA has reviewed the Application and determined that ADEM has adequate enforcement authority under the State's statutes to immediately address activities which may endanger or cause damage to human health and the environment. Code of Alabama 1975, section 22-22A-5(10) authorizes ADEM to issue, modify, suspend or revoke orders, citations, notices of violation, licenses, certifications or permits. Furthermore, in accordance with Code of Alabama 1975, section 22-27-11(d), the Attorney General (or any district attorney) may bring an action in a court of competent jurisdiction for an injunction to restrain any and all violations of sections 22-27-1 *et seq* of the Code of Alabama 1975, or any public nuisance or detriment to public health.

ADEM can sue in superior court for permanent and temporary injunctions, restraining orders, and other relief for activities that violate the State CCR permit program, and the State

also may prosecute, defend, or settle actions brought by or against ADEM. See Code of Alabama 1975, section 22-22A-5(12). Code of Alabama 1975, section 22-22A-5(18)c. authorizes ADEM to issue an administrative order assessing civil penalties (up to \$25,000.00 per violation), and section 22-22A-5(18)b. authorizes ADEM to commence a civil action in the circuit court to recover a civil penalty for the violation of any provision of law, any rule, regulation or standard promulgated by ADEM and any provision of any order, or any condition of any permit, license, certification or variance issued by ADEM.

Based on the foregoing, EPA has preliminarily determined that the enforcement authority aspect of the Alabama 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.

Alabama has specific authorities under Code of Alabama 1975, section 22-22A-5(18)b. for persons adversely affected by a violation to intervene as a matter of right in any civil action brought by ADEM to recover civil penalties. In addition, Alabama Code 1975, section 22-22A-5(19), which authorizes ADEM to commence a civil action to enjoin a violation, allows any person having an interest which is or may be adversely affected to intervene as a matter of right. Furthermore, the Code of Alabama, 1975, section 22-22A-7(c) entitles any person aggrieved by an administrative action (i.e., the issuance, denial, modification, or revocation of a Notice of Violation, order, permit citation, license, certification or variance) to an administrative hearing before the Alabama EMC. Lastly, Rule 24(a) of the Alabama Rules of Civil Procedure is virtually identical to rule 24(a) of the Federal Rules of Civil Procedure and allows intervention in

an issue: “(1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is subject of the action.”

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 Alabama CCR permit program meets the standard for program approval.

A. Adequacy of Technical Criteria

EPA conducted an analysis of the Alabama CCR permit program Application, including a thorough analysis of Alabama statutory authorities for the CCR program, as well as regulations at ADEM Admin. Code ch. 335-13-15, Standards for the Disposal of Coal Combustion Residuals in Landfills and Impoundments. As noted, Alabama has requested approval of its partial CCR permit program.

1. Alabama CCR Units and Resources

ADEM has identified 16 CCR units (3 landfills and 13 surface impoundments) in Alabama.¹² ADEM demonstrated that it has the personnel and funding to administer a permit program that is at least as protective as the Federal requirements.¹³ The State also indicates that the State program is funded from three sources: tipping fees collected for the disposal of solid waste, permitting fees, and civil penalties from enforcement orders. In addition, ADEM has been awarded a total of \$1,069,479 from EPA's CCR State and Tribal Assistance Grants (STAG) funding. to develop and implement its CCR permit program. EPA anticipates ADEM will be awarded an additional \$203,390 in the upcoming round of funding, for a total of \$1,272,869. If EPA receives future appropriations, ADEM may be eligible to receive additional STAG funds for implementation of its CCR permit program. EPA has preliminarily determined that ADEM

¹² For more information on the specific facilities covered by the Alabama CCR Permit Program, see page 16-20 of the Program Description, which is in the State's May 2026 Application.

¹³ The discussion on State personnel and funding is included on pages 18-19 of the Program Description, which is in the State's May 2026 Application.

staffing and funding are adequate for ADEM to administer the CCR permit program, with or without additional Federal grant funds.

1. Alabama CCR Regulations

As stated above, EPA has preliminarily determined that the portions of the Alabama CCR permit program that were submitted for approval in the Application 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 Alabama CCR regulations at ADEM Admin. Code ch. 335-13-15 to the Federal CCR regulations at 40 CFR part 257, subpart D to determine whether the State's regulations differ 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).

ADEM derives its authority to operate the Solid Waste Program in Alabama from the following statutory provisions of the Code of Alabama, 1975: (1) sections 22-22A-5 and 22-22A-8, which provide ADEM with the authority to administer and enforce the Solid Wastes and Recyclable Materials Management Act (SWRMMA), to adopt and promulgate rules, regulations, and standards through the EMC, and to develop environmental policy for the State; and to serve as the State Agency responsible for administering Federally approved or Federally delegated environmental programs; (2) sections 22-27-7 and 22-27-9, which provide ADEM with authority over the management of solid waste in the State and the permitting and operation of solid waste management facilities; and (3) section 22-27-12, which provides ADEM with the authority to promulgate and adopt rules establishing requirements for the management of solid waste and to issue permits with conditions regarding the management of such solid waste.

ADEM Admin. Code ch. 335-13-15 largely replicates the requirements of 40 CFR part 257, subpart D. In addition to the technical criteria in ADEM Admin. Code ch. 335-13-15, Alabama has adopted State-specific permitting procedures, including public participation

requirements, at ADEM Admin. Code ch. 335-13-05. Alabama also has additional reporting and approval requirements for CCR units described more in the Technical Support Document.

In addition, ADEM's regulations contain provisions, not found in the Federal CCR regulations, allowing variances to be granted from specific provisions of the State's CCR program that are in addition to or more stringent than the Federal CCR regulations. These provisions are found in ADEM Admin. Code r. 335-13-15-.15, which provides that variances may be granted based on the procedures set out in ADEM Admin. Code ch. 335-13-8. In addition to specifying that variances may be granted only from requirements that are in addition to or more stringent than an analogous Federal regulation, ADEM Admin. Code r. 335-13-8-.01 provides that variance requests will not be granted for provisions of the State CCR regulations that are identical to the Federal CCR regulations. A facility must file a petition for variance with ADEM with adequate proof that the variance will not threaten public health or unreasonably create environmental pollution at least 120 days prior to the anticipated change that necessitates a variance. A public notice with the possibility of a public hearing is required for a variance. See ADEM Admin. Code r. 335-13-15-.15, 335-13-8-.12 and 335-13-8-.13. Written approval from ADEM must be received prior to the implementation of the proposed change that necessitates a variance. If at any time ADEM determines that a previously approved variance threatens public health or unreasonably creates environmental pollution, ADEM may revoke the variance.

Upon approval of the Alabama CCR permit program, ADEM indicated in the Application that it will limit consideration of variances to the following provisions of ADEM Admin. Code ch. 335-13-15 because they are not found in the Federal CCR regulations:

- ADEM Admin. Code r. 335-13-15-.03(6) which requires a 100-foot buffer from the perimeter of the facility boundary, around wetlands, beaches, or dunes. Disposal or storage practices of solid waste are prohibited within the buffer area.

- ADEM Admin. Code r. 335-13-15-.05(6)(b) which requires that the disposal area be identified with sufficient boundary markers which are at least visible from one marker to the next.
- ADEM Admin. Code r. 335-13-15-.05(7)(b) which requires that a minimum of six inches of compacted earth or alternative cover material, as approved by ADEM, be added at the conclusion of each week's operation.
- ADEM Admin. Code r. 335-13-15-.05(7)(d) which requires that waste be placed onto an appropriate slope not to exceed 4:1 (25 percent).
- ADEM Admin. Code r. 335-13-15-.07(3)(d)3.(i)(III) which requires that the final grade of the final cover system shall not be less than five percent.
- ADEM Admin. Code r. 335-13-15-.07(3)(d)3.(i)(IV) which requires that the final grade of the final cover system shall not exceed 25 percent.
- ADEM Admin. Code r. 335-13-15-.07(3)(d)3.(i)(V) which requires that for slopes longer than 25 feet, horizontal terraces be installed for every 20 feet of rise in elevation or the facility may utilize other erosion control measures approved by ADEM.

EPA has preliminarily determined that the ADEM variance provisions, which are only applicable to the identified State-only requirements, are at least as protective as the Federal CCR regulations. Alabama identified the State-only provisions for which the variance provisions may apply, and EPA is proposing to limit its approval of ADEM's use of the variance provisions to only those State-only provisions identified above. To clarify the scope of the variance provisions prospectively, EPA expects the State to revise the variance provisions in ADEM Admin. Code r. 335-13-15-.15 to expressly limit such provisions to only the list of eligible, State-only provisions the next time the State revises its CCR regulations.

1. Alabama Partial Program

ADEM is seeking approval of its partial CCR permit program pursuant to RCRA section 4005(d). ADEM's rules mirror 40 CFR part 257, subpart D, as amended through August 28,

2020 (85 FR 53516), with additional amendments made to 40 CFR 257.102(d)(3)(ii) and 257.103(f)(1)(vi) on November 12, 2020 (85 FR 72506), but excluding certain provisions of the July 30, 2018 Final Rule (83 FR 36435); however, the Federal CCR regulations have changed since then as a result of litigation and the Legacy CCR surface impoundments and CCR management units final rule (89 FR 38985, May 8, 2024) (the 2024 Legacy Rule), and the CCR Management Unit Deadline Extension Rule (91 FR 5806, February 10, 2026). ADEM has not adopted regulations reflecting certain 2018, 2024, or February 2026 changes. Therefore, ADEM has not sought approval of any State regulations that would operate in lieu of these amendments. EPA is proposing approval of only those aspects of Alabama's CCR program that were submitted for approval.

In the 2024 Legacy Rule, EPA amended certain terms and provisions that apply to all CCR units. It is EPA's understanding that ADEM interprets the provisions in ADEM Admin. Code ch. 335-13-15 the same as EPA interprets these in 40 CFR part 257, subpart D. Therefore, EPA is approving the State's version of these requirements:

1. Throughout 40 CFR part 257, subpart D, the regulations were amended by removing the phrase "Web site" and adding in its place the word "website" wherever it appears.
2. 40 CFR 257.50(c); this amendment revises the scope of applicability to specify that it includes inactive CCR surface impoundments at utilities or power producers regardless of how electricity is currently being produced at the facility.
3. 40 CFR 257.51; this section was reserved, as the effective date of 40 CFR part 257, subpart D, October 19, 2015, has passed.
4. 40 CFR 257.52; this amendment clarifies that all CCR units are subject to the requirement to comply with all other Federal, State, Tribal, or local laws or other requirements. In addition, all CCR units continue to be subject to §§ 257.3-1, 257.3-2, and 257.3-3.

5. “Active facility or active electric utilities or independent power producers”; this amendment to 40 CFR 257.53 clarifies that the relevant operational date for any active facility or active electric utilities or independent power producers is on or after October 19, 2015.

6. “CCR landfill or landfill”; this amendment to 40 CFR 257.53 clarifies that a CCR landfill means an area of land or an excavation that “contains,” rather than “receives,” CCR, and meets the other criteria of the definition.

7. “CCR surface impoundment or impoundment”; this amendment to 40 CFR 257.53 deleted the words “which is.”

8. “CCR unit”; this amendment to 40 CFR 257.53 clarifies that this term includes legacy CCR surface impoundments and CCRMU.

9. “Inactive CCR surface impoundment”, this amendment to 40 CFR 257.53 clarifies that this term is applicable to inactive CCR surface impoundments “located at an active facility.”

10. “State director”; this amendment to 40 CFR 257.53 clarifies that the State director is the chief administrative officer of the lead State agency responsible for implementing the State program regulating disposal in all CCR units.

11. “Technically feasible or feasible”; this amendment to 40 CFR 257.53 clarifies that certain requirements of 40 CFR part 257, subpart D refer only to feasible rather than technically feasible. The amendment ensures that these terms are interpreted in the same way.

12. “Technically infeasible or infeasible”; this amendment to 40 CFR 257.53 clarifies that certain requirements of 40 CFR part 257, subpart D refer only to infeasible rather than technically infeasible. The amendment ensures that these terms are interpreted in the same way.

13. 40 CFR 257.61(a); this amendment updates a reference to 40 CFR 230.41(a), as the previously referenced provision has since been amended.

14. 40 CFR 257.80(a); this amendment clarifies that all CCR units are subject to the fugitive dust requirements.

15. 40 CFR 257.90(a); this amendment clarifies that all CCR units are subject to the groundwater monitoring and corrective action requirements. In addition, it corrects a typographical error.

16. 40 CFR 257.100(a)(1); this amendment clarifies that inactive CCR surface impoundments, regardless of how the facility produces electricity through non-fuels, are subject to the same compliance deadlines applicable to existing CCR surface impoundments, subject to certain requirements.

17. 40 CFR 257.104(a); this amendment clarifies that all owners or operators of CCR units that are subject to § 257.102 are subject to the post-closure care requirements, except for those owners and operators of a CCR unit that elect to close the CCR unit by removing CCR.

First, in the Application, ADEM stated that it is not seeking approval of the following provisions of the State regulations into the Federally approved program:

1. ADEM Admin. Code r. 335-13-15-.06(6)(h)2.: The State has adopted the groundwater protection standards for cobalt, lead, lithium, and molybdenum found at 40 CFR 257.95(h)(2) but is not seeking approval because the Federal provision has been challenged and is under reconsideration.

2. ADEM Admin. Code r. 335-13-15-.07(4)(f): This State provision is the analog to the Federal requirement for alternative closure deadlines, found at 40 CFR 257.103(f).

ADEM amended ADEM Admin. Code ch. 335-13-15 to reflect EPA's August 28, 2020, Part A rule revisions to 40 CFR 257.103. However, ADEM is not seeking approval for

the State analog to 40 CFR 257.103(f) as no Alabama CCR units applied for an alternative closure extension and the deadline for submittals has passed.

3. Certain general solid waste definitions not applicable to CCR units: Pursuant to ADEM Admin. Code r. 335-13-15-.02, terms not defined in the State's CCR permit program regulations have the meaning given to them in the State's solid waste general provisions at ADEM Admin. Code r. 335-13-1-.03. EPA interprets the State's Application as requesting approval of only those general solid waste definitions from ADEM Admin. Code r. 335-13-1-.03 that are incorporated into the State's CCR permit program regulations pursuant to ADEM Admin. Code r. 335-13-15-.02. All other general solid waste definitions are not within the scope of the Application.

4. ADEM solid waste regulations unrelated to CCR: While Alabama provided EPA with the State's entire solid waste program regulations for reference, the State did not request EPA approval of State regulations unrelated to the State's CCR partial permit program, such as ADEM Admin. Code ch. 335-13-2 through 335-13-4, ch. 335-13-9 through 335-13-14, and ch. 335-13-16.

Second, the following list identifies amendments to the requirements in 40 CFR part 257, subpart D that were not included in Alabama's Application and, therefore, these Federal provisions will continue to apply directly to, and remain Federally enforceable for, each CCR unit in Alabama. Meaning, the requirements in ADEM Admin. Code ch. 335-13-15 that do not meet the standard for approval or are not included in the State CCR regulations as of the date of the Proposed Approval, as enumerated below, are not being approved:

1. "Contains both CCR and liquids"; this additional definition in 40 CFR 257.53 is consistent with the term's plain meaning and dictionary definitions as this term is used in the closure performance standard in § 257.102(d)(2)(i) for CCR surface impoundments.
2. "Infiltration"; this additional definition in 40 CFR 257.53 is consistent with the term's

plain meaning and dictionary definitions to assist in the application of closure performance standards for CCR units.

3. “Liquids”; this additional definition in 40 CFR 257.53 is consistent with the term’s plain meaning and dictionary definitions to assist in the applicability for CCR surface impoundments and the application of closure performance standards for CCR units.

4. 40 CFR 257.71(d) for alternate liner demonstrations; and

5. 40 CFR 257.90(g) for suspension of groundwater monitoring requirements based on a no migration demonstration.

Third, EPA amended certain provisions of the Federal CCR regulations in the 2024 Legacy Rule that apply to all CCR units and are more prescriptive than the requirements in the 2015 CCR Rule. ADEM did not adopt these amendments and did not seek approval of these provisions. Thus, the following Federal provisions will be directly applicable to CCR units in Alabama:

1. “Operator”; this amendment to 40 CFR 257.53 specifies the definition of operator to include certain other person(s) including those responsible for disposal or otherwise actively engaged in the solid waste management of CCR and person(s) responsible for directing or overseeing groundwater monitoring, closure or post-closure activities at a CCR unit.

2. “Owner”; this amendment to 40 CFR 257.53 broadened the definition of owner to include person(s) who own a facility, whether in full or in part.

3. 40 CFR 257.80(b)(6); this amendment specifies that the owner or operator must amend the written fugitive dust control plan no later than 30 days whenever there are certain changes in condition.

4. 40 CFR 257.102(c)(2); this amendment specifies the criteria for complete removal and decontamination activities during the active life and post-closure care period of a CCR unit.

5. 40 CFR 257.102(d)(2); this amendment specifies that the closure performance standards for drainage and stabilization of a unit when leaving CCR in place apply to all CCR units, including CCR management units (CCRMU) and CCR landfills, where free liquids remain in the unit.

6. 40 CFR 257.102(f)(2)(ii)(C) and (D); these amendments specify that CCR landfills that intersect with groundwater are eligible for the closure time extensions available to CCR surface impoundments, subject to certain requirements.

7. 40 CFR 257.104(a)(2), (c)(1) and (3); these amendments specify that an owner or operator closing a CCR unit pursuant to the closure by removal and decontamination standards during the active life and post-closure care period, 40 CFR 257.102(c)(2), must complete groundwater corrective action.

8. 40 CFR 257.104(g); this amendment specifies that a deed notation, required pursuant to 40 CFR 257.102(i), may be removed after the owner or operator demonstrates that groundwater monitoring concentrations no longer exceed any protection standard (i.e., the unit must be in detection monitoring) and certain notifications of completion of post-closure care are completed.

9. 40 CFR 257.105(a); this amendment specifies that each file in the operating record must indicate the date the file was placed in the record.

10. 40 CFR 257.105(e); (f)(1) through (14); (f)(19); (g); (h)(1) through (4); (h)(10) through (11); (h)(13) through (14); (i)(4) through (20); these amendments extend the retention times for certain documents maintained in the operating record.

11. 40 CFR 257.107(b); this amendment specifies that owners and operators using one website to meet the requirements of multiple environmental rules must delineate the postings for each regulatory program under a separate heading on the combined website.

12. 40 CFR 257.107(e); (f)(1) through (4); (f)(6) through (13); (f)(18); (g); (h)(1) through (3); (h)(8); (h)(10) through (11); (i)(4) through (20); these amendments extend the retention times for certain documents maintained on the facility's CCR website.

Fourth, in the 2024 Legacy Rule, EPA added requirements for legacy CCR surface impoundments. ADEM did not adopt these amendments. Thus, any legacy CCR surface impoundments in Alabama will remain directly subject to the following Federal CCR regulations:

1. 40 CFR 257.50(e); this amended provision specifies that 40 CFR part 257, subpart D applies to electric utilities or independent power producers that ceased producing electricity prior to October 19, 2015, and have a legacy CCR surface impoundment onsite.
2. "Inactive facility or inactive electric utility or independent power producer"; this added definition to 40 CFR 257.53 specifies the facility where legacy CCR surface impoundments are located.
3. "Legacy CCR surface impoundment"; this added definition to 40 CFR 257.53 specifies a new type of CCR unit that meets certain criteria.
4. 40 CFR 257.100(a)(2); EPA amended 40 CFR 257.100(a) to add paragraph (2), which specifies that legacy CCR surface impoundments are subject to all of the requirements applicable to existing CCR surface impoundments, except for the requirements in 40 CFR 257.60 through 257.64 and 257.71.
5. 40 CFR 257.100(f) through (j); these additional provisions include reporting and technical requirements for legacy CCR surface impoundments.
6. 40 CFR 257.101(e); this added provision specifies the deadlines when owners or operators of legacy CCR surface impoundments must initiate closure.
7. 40 CFR 257.101(g); this added provision specifies requirements for deferral to permitting for closures conducted under substantially equivalent regulatory authority.

8. 40 CFR 257.105(k), 257.106(k), and 257.107(k); these added provisions specify recordkeeping, notification, and CCR website posting requirements for legacy CCR surface impoundments.

Fifth, in the 2024 Legacy Rule, EPA also added requirements for CCR management units. ADEM did not adopt these provisions. Thus, any CCR management units in Alabama will remain directly subject to the following Federal CCR regulations:

1. 40 CFR 257.50(d); this amended provision specifies the scope of CCRMU requirements.
2. “CCR management unit”; this additional definition in 40 CFR 257.53 is for a new type of CCR unit.
3. “Closed prior to October 19, 2015”; this additional definition in 40 CFR 257.53 specifies the applicability of CCR landfills or surface impoundments that completed closure of the unit in accordance with State law prior to October 19, 2015.
4. “Critical infrastructure”; this additional definition in 40 CFR 257.53 specifies infrastructure, large buildings, or other structures vital to the success or continuation of current site operations or activities for the public welfare. Under the Federal CCR regulations, CCRMU located under critical infrastructure have the option to defer certain requirements to permitting.
5. “Inactive CCR landfill”; this additional definition in 40 CFR 257.53 is for a new type of CCR unit related to CCRMU.
6. “Regulated CCR unit”; this additional definition in 40 CFR 257.53 is a conforming change, which means any new CCR landfill, existing CCR landfill, new CCR surface impoundment, existing CCR surface impoundment, inactive CCR surface impoundment, or legacy CCR surface impoundment. This term specifies that CCRMU are not considered regulated CCR units.
7. 40 CFR 257.75; this additional section includes requirements for identifying CCRMU.

8. 40 CFR 257.90(b)(3); this additional provision specifies a deadline for the owners and operators of CCRMU to comply with certain groundwater monitoring requirements.

9. 40 CFR 257.90(e); EPA amended one sentence in this provision to add an annual groundwater monitoring and corrective action report deadline for CCRMU. ADEM has not adopted this amendment, *see* 335-13-15-.06(1)(e). Therefore, the majority of this provision, as adopted by ADEM based on the August 28, 2020, version of 40 CFR 257.90(e), is approved for ADEM to administer, but the added deadline for CCRMU will remain the applicable criteria for CCRMU in the State and any CCRMU in the State will remain directly subject to the Federal CCR regulations.

10. 40 CFR 257.95(b); this amended provision adds a deadline for CCRMU to sample and analyze the groundwater for all constituents in 40 CFR part 257, appendix IV.

11. 40 CFR 257.101(f); this additional provision specifies the deadlines when CCRMU must initiate closure.

12. 40 CFR 257.101(g) and (h); these include additional requirements for deferral to permitting for closures conducted under substantially equivalent regulatory authority and under critical infrastructure.

13. 40 CFR 257.102(b)(2)(iii) and (v); these amended provisions renumber paragraph (b)(2)(iii) to (iv) and add new paragraphs (b)(2)(iii) and (v). The added provisions are only applicable to CCRMU.

14. 40 CFR 257.102(f)(1)(iii); this additional provision specifies when CCR management units must complete closure activities.

15. 40 CFR 257.102(f)(2)(ii)(E) and (F); these additional provisions specify when CCR management units may extend the completion of closure activities.

16. 40 CFR 257.104(d)(2)(iii); these amended provisions renumber paragraph (d)(2)(iii) to (iv) and add a new paragraph (d)(2)(iii). This added provision is only applicable to CCRMU.

17. 40 CFR 257.105(f)(25) and (26), 40 CFR 257.106(f)(24) and (25), 40 CFR 257.107(f)(24) and (25); these include additional recordkeeping, notification, and CCR website posting provisions for CCRMU.

EPA has preliminarily determined that the Alabama 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 Alabama 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 sections III.1. and 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 Alabama 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; therefore, facilities in Alabama must comply with both the Federal requirements and the State requirements, to the extent applicable based on the CCR units located at a specific facility. RCRA section 4005(d)(3).

V. Alabama’s Permits Issued Under the State CCR Regulations

Pursuant to Alabama’s CCR regulations, requests for initial permits for all existing CCR units in Alabama were required to be filed with ADEM within 180 days after the original effective date of ADEM Admin. Code ch. 335-13-15, which was June 8, 2018. ADEM Admin. Code r. 335-13-5-.02(1)(c). All owners and operators of CCR units within the State applied for a permit. Subsequently, ADEM issued permits for the following CCR facilities: (1) The James H. Miller Electric Generating Plant (Permit #37-51, issued December 18, 2020); (2) Greene County

Electric Generating Plant (Permit #32-03, issued December 18, 2020); (3) Gadsden Steam Plant (Permit #28-09, issued December 18, 2020); (4) James M. Barry Electric Generating Plant (Permit #49-35, issued July 1, 2021); (5) E.C. Gaston Electric Generating Plant (Permit #59-16, issued May 25, 2021); (6) Charles R. Lowman Power Plant (Permit #65-06, issued August 30, 2021); (7) Plant Gorgas (Permit #64-12, issued February 28, 2022); and (8) TVA Colbert Plant (Permit #17-11, issued October 25, 2022).

A. Alabama's Permits Issued Under the State CCR Regulations are Not Part of the Permit Program Evidence Under Review

As stated above, EPA denied approval of Alabama's 2021 CCR permit program application based on EPA's interpretation at the time that RCRA section 4005(d)(1)(B) requires EPA to review State CCR permits issued prior to a State applying for program approval as part of a State CCR permit program review. EPA interpreted the statute in this manner because the Agency maintained that State CCR permit program review included consideration of permits and implementation of the State program when such information is available prior to approval of the State program. EPA reached the conclusion to deny approval because the Agency determined that Alabama's CCR permits were not as protective as the Federal CCR regulations and recognized that, after approval of the State's CCR permit program, those permits would provide the facilities with a Federal permit shield. Since that time, EPA has revised its interpretation of the statute to only require review of existing State CCR permits as part of the Agency's program review when the State includes currently existing State permits in the application for approval of the State's program. See Proposed Approval of North Dakota CCR Permit Program, 94 FR 20985, 20995 (May 16, 2025) (concluding that EPA did not need to review North Dakota's State CCR permits because the State did not include the existing permits in the application). Where the existing permits are outside the scope of EPA's approval action, the facilities in the State do not obtain a Federal permit shield as a result of EPA's approval of the State program and remain directly subject to the applicable CCR regulations until the State amends and reissues each

facility's entire CCR permit with public notice and comment after State program approval. Any deficiencies with a CCR permit issued subsequently under the now-approved program can be identified and addressed at that time, thereby ensuring that each CCR unit in the State is subject to standards at least as protective as the Federal CCR regulations. Therefore, in the circumstance where the State does not seek approval of preexisting permits as part of its permit program approval submission, EPA has concluded that review of those existing permits in making its State program approval decision is unnecessary.

The statute provides EPA with considerable discretion to define the scope of an approvable State CCR permit program. First, RCRA section 4005(d)(1)(A) directs States seeking approval of a permit program to 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 [S]tate law for regulation by the State of coal combustion residuals units that are located in the State...after approval by the Administrator, [such State program] will operate in lieu of regulation of coal combustion residuals units in the State

Next, RCRA section 4005(d)(1)(B) states that:

[n]ot later than 180 days after the date on which a State submits the evidence described in subparagraph (A), the Administrator, after public notice and an opportunity for public comment, shall approve, in whole or in part, a [State CCR] permit program . . . if the Administrator determines that the program or other system requires each coal combustion residuals unit located in the State to achieve compliance with –

- (i) [the Federal CCR regulations]; or
(ii) such other State criteria that the Administrator, after consultation with the state, determines to be at least as protective as the criteria in clause (i) [i.e. the Federal CCR regulations].

Taken together, RCRA sections 4005(d)(1)(A) and 4005(d)(1)(B) address both the substantive standard that EPA must use when deciding whether to approve a State CCR permit program application and the procedural steps that trigger EPA's duty to approve such a program. Substantively, the State program must either directly implement the Federal standards for CCR units or be "at least as protective" as those Federal standards. RCRA section 4005(d)(1)(B)(ii). Procedurally, the State must present "evidence of a [CCR] permit program" in "such form as the Administrator may establish." RCRA section 4005(d)(1)(A). This statutory language expressly

affords EPA the discretion to define the contours of a complete State CCR permit program application. EPA's discretion is further reinforced by the fact that RCRA section 4005(d) does not contain an express textual directive requiring the review of individual facility-level permits. RCRA sections 4005(d)(1)(A) and (B) thus provide EPA with the authority to define the process and substance required for an approvable CCR permit program application, including authority to exclude existing permits from review where the State is not requesting review, and EPA is not proposing, to make those permits part of the approved program.

RCRA provides other mechanisms to ensure that State CCR permits issued after State program approval are at least as protective as the Federal CCR regulations without requiring review of State CCR permits during the program approval process. The State CCR program review provisions in RCRA section 4005(d)(1)(D) require EPA to review State CCR permit programs: from time to time, as necessary, but not less frequently than once every 12 years; not later than three years after EPA revises the Federal CCR regulations; not later than one year after the date of an unauthorized significant release (as defined by EPA) from a CCR unit; and, on request of any State that asserts that it is or is likely to be adversely affected by a release or potential release from a CCR unit located in another State. These review provisions provide EPA with sufficient authority to ensure permits issued after approval of Alabama's CCR permit program are as protective as required.

As discussed in Unit III. of this document, Alabama's current CCR permit program Application does not seek EPA approval of the State's existing CCR permits. ADEM has committed to evaluating the permits after State program approval and modifying them during the permit renewal process as needed to ensure consistency with the Federally approved program. Therefore, EPA's review of the current Application differs from the Agency's consideration of permits in the denial of Alabama's December 29, 2021 CCR permit program application. See 89 FR 48776. This means that all CCR units in Alabama will not obtain a Federal permit shield as a result of EPA's approval of Alabama's permit program and will remain directly subject to the

applicable CCR regulations until Alabama amends and reissues those permits after EPA's final approval of the State's CCR permit program, because: (1) Alabama did not have an approved permit program at the time of issuance of those permits, as required by RCRA section 4005(d)(3)(A), and (2) The State did not include the permits in the Application for program approval. Alabama must propose for public notice and comment all existing CCR permits in their entireties and take final action on such permits before those permitted facilities in Alabama will be eligible for the Federal permit shield.

After approval of the State's CCR permit program, Alabama will have the authority to issue permits that are as protective as the Federal regulations. The State has committed to review and amend its existing permits, as needed, after program approval through the permit renewal process set out in the State CCR permit program regulations, which requires public notice and an opportunity for public comment on proposed CCR permit renewals. Both EPA and citizens will be able to comment on all aspects of such renewal permits if there are concerns that aspects of the permits are not sufficient. Alabama will be required to respond to such comments, and the permits will be subject to the normal administrative and judicial review processes.

B. Status of Alabama's Previously-Issued Permits Issued Under the State CCR Regulations

Because Alabama has chosen to exclude its previously-issued permits from the scope of its Application for CCR permit program approval, those permits will not become effective under RCRA as a consequence of an EPA final approval action. Thus, any permits issued prior to EPA's approval of the State's partial program would not provide facilities with the Federal permit shield in RCRA sections 4005(d)(3) and (d)(6). 42 U.S.C. 6945(d)(3) and (d)(6). Instead, these permits only become a part of the State's approved program and give rise to the Federal permit shield once renewed or modified "in accordance with" the approved program. 42 U.S.C. 6945(d)(6)(A). Similarly, RCRA section 4005(d)(3)(A) makes clear that in the absence of a permit "under" an approved State program, facilities would still need to directly comply with the applicable regulations, despite having permits issued by Alabama prior to EPA approval of the

State permit program. EPA intends to review the amended or renewed permits in conjunction with the program review required by RCRA section 4005(d)(1)(D)(i) and 4005(d)(1)(D)(ii), and the Agency also has the authority to review facility compliance with the applicable CCR regulations at any time prior to issuance of a CCR permit by Alabama after program approval. 42 U.S.C. 6945(d)(1)(D)(i), (ii).

VI. Proposed Action

EPA has preliminarily determined that the Alabama 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 Alabama partial CCR permit program.

Lee Zeldin,
Administrator.