

# Coal Combustion Residuals: U.S. Environmental Protection Agency Issues Interim Guidance on State Permit Programs



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The United States Environmental Protection Agency (“EPA”) released on August 10th an Interim Final Guidance (“Guidance”) that the agency describes as helping “states develop and submit permit programs for safe management of Coal Combustion Residuals (“CCR”) to EPA for review and approval.”

CCR (also referred to as coal ash, fly ash, or bottom ash) is typically created when coal is combusted by power plants to produce electricity.

The Water Resource Development Act of 2016 provided authority for states to operate permit programs addressing CCR that EPA determines are at least as protective as the federal baseline requirements.

EPA notes that while the 2016 legislation requires that approved state permit programs be as protective as the federal CCR regulations, state programs may provide flexibilities for facilities managing this material in their states. The agency has further noted that unlike other environmental laws that are implemented through EPA-approved state programs, the Resource Conservation and Recovery Act generally does not provide for regulation of non-hazardous waste such as CCR through permit programs. As a result, the CCR rule promulgated by EPA in April 2015 regulating this material applies directly to such facilities and is enforceable through citizen suits.

The Guidance contains four chapters which include:

- Chapter 1 provides an overview of the provisions of the Water Infrastructure Improvements for the Nation Act (WIIN Act).
- Chapter 2 contains the process and procedures EPA is planning to use to review and make determinations on state CCR permit programs as well as the documentation EPA will ask states seeking approval of a program to submit.
- Chapter 3 contains a checklist of all the requirements of the current CCR rule at 40 CFR Part 257 subpart D.
- Chapter 4 provides a checklist of those items a state would submit when seeking approval of its CCR permit program.

EPA is seeking comments on the Guidance and indicates a likelihood of it being updated based on the response.

[A copy of the Guidance can be downloaded here.](#)

