

Coal Combustion Residuals: U.S. Environmental Protection Agency Announces First Approval of a State Program (Oklahoma)



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

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The United States Environmental Protection Agency (“EPA”) announced on June 18th that it was approving the State of Oklahoma’s application to operate a permit program for disposal of coal combustion residuals (“CCRs”) in landfills and surface impoundments.

EPA states that such approval makes Oklahoma the first state to operate a federally approved CCR permit program.

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.

EPA issued a final rule in 2015 regulating CCR as a nonhazardous waste under the Resource Conservation and Recovery Act (“RCRA”). The rule established minimum national standards governing the disposal of CCR from electric utilities in landfill and surface impoundments.

Congress subsequently amended RCRA as part of the Water Infrastructure Improvements for the Nation (WIIN) Act to provide the authority for EPA to approve state CCR permitting programs.

The WIIN Act has two key requirements for state approval. State applications are required to:

1. provide evidence of a permit program or other system of prior approval; and
2. be as protective as federal regulations currently in place.

The state CCR program then operates in lieu of the federal management standards for the disposal of CCR.

EPA states that in assessing Oklahoma’s CCR permit application it reviewed Title 252 of the Oklahoma Administrative Code, including Chapter 517, Disposal of Combustion Residuals from Electric Utilities and the state’s adoption of 40 C.F.R. Part 257, Subpart D.

The agency states that the program met the standard for approval in RCRA section 4005(d)(1)(A) and (B) and contains all the elements of the federal rule. An assessment of state-specific language, references and state-specific requirements from the federal rule are stated to have been determined to be at least protective as the federal criteria.

The national environmental organization Earthjustice announced in a June 19th news release that it planned to file a lawsuit to prevent EPA from transferring oversight of CCR to Oklahoma.

A copy of [EPA's proposed rule](#) can be downloaded here.