

Coal Combustion Residuals/Approval of Oklahoma Program: Federal Appellate Court Addresses Motions to Intervene in Judicial Challenge



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The United States District Court for the District of Columbia (“Court”) issued a January 29th Memorandum Opinion addressing three motions to intervene as defendants in a pending challenge to the United States Environmental Protection Agency (“EPA”) approval of Oklahoma’s program regulating the disposal of coal combustion residuals (“CCR”).

Waterkeeper Alliance, Inc., and two other environmental organizations previously filed a challenge to EPA’s approval of the Oklahoma program raising two claims.

1. A citizen suit alleging that EPA failed to perform a nondiscretionary duty to develop and publish minimum guidelines for public participation in the program’s approval
2. Administrative Procedure Act claims alleging that EPA’s approval of the program was arbitrary and capricious

Motions to Intervene as defendants were filed by:

- Oklahoma Gas and Electric
- State of Oklahoma and Oklahoma Department of Environmental Quality
- The Public Service Company of Oklahoma
- Utility Solid Waste Activities Group

The Utility Solid Waste Activities Group is an electric utility association.

The Motions to Intervene were filed pursuant to Federal Rule of Civil Procedure 24(a).

EPA approved on June 18, 2018, Oklahoma’s application to operate a permit program for disposal of CCR in landfills and surface impoundments. Such approval made Oklahoma the first state to operate a federally approved CCR permit program. CCR constitutes coal ash, fly ash, or bottom ash and is typically created when coal is combusted by power plants to produce electricity.

The Memorandum Opinion applies the elements necessary for intervention as of right (timeliness, impairment of legally cognizable interest, adequacy of representation) and grants their Motions to Intervene.

A copy of the Memorandum Opinion can be found [here](#).

