

# State of Texas Coal Combustion Residuals (CCR) Permit Program Approval

On December 3, 2020, the EPA Administrator signed a Federal Register notice proposing to approve the third state permit program in the United States for the management of coal combustion residuals (CCR) in the state of Texas. If approved, the Texas partial permit program would operate in lieu of the federal CCR program, except for five provisions.

EPA is proposing to approve the Texas partial CCR state permit program, pursuant to the Resource Conservation and Recovery Act (RCRA) section 4005(d)(1)(B). The Texas partial program would allow the Texas Commission on Environmental Protection (TCEQ) to enforce rules promulgated under its solid waste statute related to CCR activities in non-Indian country, as well as to issue permits and to enforce permit violations.

## About the Proposed Approval

EPA conducted an analysis of the TCEQ permit program application, including at 30 TAC Chapter 352; TCEQ largely adopted by reference the federal CCR regulations title 40 of the Code of Federal Regulations (CFR) part 257, subpart D. The regulations also implement procedural requirements for a registration (permit) and compliance monitoring program to authorize CCR units subject to the federal CCR regulations. Based on this analysis, EPA determined that the proposed TCEQ partial CCR permit program meets the standard for approval in section RCRA section 4005(d)(1)(A) and (B) and that Texas's program contains all the elements of the federal rule, including requirements for location restrictions, design and operating criteria, groundwater monitoring and corrective action, closure requirements and post-closure care, recordkeeping, notification and internet posting

requirements. It also contains state-specific language, references and state-specific requirements that differ from the federal rule, which EPA has determined to be at least as protective as the federal criteria.

Texas did not apply for five provisions of the federal CCR regulations for its permit program:

1. 30 TAC 352.1(b)(2); this State provision is the analog to the Federal exclusion of inactive impoundments at inactive facilities, found at 40 CFR 257.50(e), that was vacated in *USWAG*;
2. 30 TAC 352.911(a); this State provision is the analog to the Federal requirement that multiunit groundwater monitoring systems with unlined CCR surface impoundments must retrofit or close, found at 40 CFR 257.91(d)(2), which is no longer relevant, as all unlined CCR surface impoundments must close;
3. 30 TAC 352.951(a); this State provision is the analog to the Federal requirement that unlined CCR surface impoundments must retrofit or close after an assessment of corrective measures is required, found at 40 CFR 257.95(g)(5), which references a provision that was vacated in *USWAG*;
4. 30 TAC 352.711(a)(4) and 352.1211(b); these State provisions relate to the date for unlined surface impoundments to cease receipt of waste. EPA has since revised the Federal regulation and the State has not adopted the Federal revision, found at 40 CFR 257.101(a)(1) or 257.101(b)(1)(i);
5. 30 TAC 352.1231; this State provision is the analog to the Federal alternative closure requirements of CCR units, found at 40 CFR

257.103. EPA has since revised the Federal regulation and the State has not adopted the Federal revision.

Approval of TCEQ's partial CCR permit program would allow the TCEQ regulations to apply to existing CCR units, as well as any future CCR units not located in Indian Country, in lieu of the federal requirements. EPA has also engaged federally-recognized tribes within the State of Texas in consultation and coordination regarding the program authorizations for TCEQ. EPA has established opportunities for formal as well as informal discussion throughout the consultation period, beginning with an initial conference call on October 19, 2020. Tribal consultation has and will continue to be conducted in accordance with the EPA policy on Consultation and Coordination with Indian Tribes

<https://www.epa.gov/sites/production/files/2013-08/documents/cons-and-coord-with-indian-tribes-policy.pdf>).

## Background

In preparation to submit its application, Texas promulgated regulations for CCR disposal units at [Title 30 of the Texas Administrative Code Chapter 352](#), which adopted by reference nearly all of the technical criteria contained in federal CCR regulations. In addition to the technical criteria in 30 TAC Chapter 352, Texas has adopted state-specific registration for CCR units and public participation requirements in 30 TAC 352.101 through 352.481; state financial assurance requirements in 30 TAC 352.1101 and 352.1111; and for certain activities, Texas has additional requirements for state notifications by owners and operators of CCR units, and state approvals by the executive director employed by the commission.

On September 11, 2020, TCEQ submitted its CCR state permit program application to EPA Region 6

requesting approval of its partial CCR permit program.

EPA preliminarily determined that Texas's CCR state permit program met the standard for approval under the Resource Conservation and Recovery Act on December 3, 2020. EPA proposed to approve the application submitted by TCEQ to allow its permit program to operate in lieu of the federal CCR program. However, there are specific provisions of the federal CCR program that the state is not seeking approval for, which are outlined in the Federal Register notice.

The public comment period will be 60 days. Furthermore, on February 2, 2021, EPA will hold a virtual public hearing about this proposed approval. The hearing will provide interested persons the opportunity to present information, comments and views concerning EPA's proposed approval.

## More Information

For more about this approval notice, please visit <https://www.epa.gov/coalash/us-state-Texas-coal-combustion-residuals-permit-program>.