

Report to
Legislative Council Rules Clearinghouse
NR 500 to 520, Wis. Adm. Code
Natural Resources Board Order No. WA-17-18

Wisconsin Statutory Authority

Sections 289.05(1), 289.06(1) and 227.11(2)(a), Wis. Stats.

Federal Authority

On April 17, 2015, the EPA published a final rule to regulate the disposal of coal combustion residuals (CCR) as solid waste under subtitle D of the Resource Conservation and Recovery Act (RCRA), 40 CFR Parts 257 and 261. The final rule was effective on October 14, 2015. The 2016 Water Infrastructure Improvements for the Nation (WIIN) Act, Section 2301 allowed states to develop and submit a CCR permit program to EPA for approval. On July 17, 2018, EPA signed additional rule amendments (Phase One, Part One) with additional action pending to address other proposed rule amendments. These changes have allowed the State of Wisconsin to propose the creation of a CCR permit program.

Comparison of Adjacent States

States have the option to seek approval from the U.S. Environmental Protection Agency (EPA) of a state CCR permit program that contains rules at least as protective as the federal rule. If a state chooses not to create its own permit program or to create a partial program, regulatory authority will continue under the EPA for all or a portion of CCR disposal activity.

- Illinois will be seeking approval for a state permit program for CCR surface impoundments only, not landfills.
- Iowa is undecided if or when it will seek approval for a state permit program.
- Michigan is seeking approval for both surface impoundments and landfills and submitted an application to EPA in April 2020 for permit program approval.
- Minnesota will not be seeking permit program approval.
- Other states in EPA Region 5 are doing the following: Ohio is in the preliminary stages of rulemaking and will be seeking approval for both surface impoundments and landfills. Indiana recently indicated to EPA that it would be seeking approval.

Court Decisions Directly Relevant

None.

Analysis of the Rule - Rule Effect - Reason for the Rule

The proposed rule would amend portions of chs. NR 500 to 520, Wis. Adm. Code, to incorporate new federal rules for the regulation of coal combustion residual (CCR) landfills. CCR, often called coal ash, is created when coal is burned by power plants to produce electricity. Wisconsin currently regulates CCR landfills under its solid waste management rules. The proposed rule would incorporate new federal requirements for CCR landfills, such as: location restrictions, design criteria, operating criteria, groundwater monitoring and corrective action criteria, closure and post-closure care and recordkeeping, notification, and posting of information. CCR landfills in Wisconsin are currently regulated under both federal rules and existing Wisconsin rules. Where rules differ, CCR landfills must meet both federal and state laws. These proposed rules would allow Wisconsin to seek approval for a state CCR permit program from the EPA. EPA approval of a Wisconsin CCR permit program would allow CCR landfill operators to apply a single set of consolidated rules and interact with only one regulatory agency.

Agency Procedures for Promulgation

The department will hold a hearing online on October 28, 2021 at 2:30 p.m. The hearing will be followed by a request for board adoption, expected in January or February 2022, followed by a request for the governor's approval and legislative review.

Description of any Forms (attach copies if available)
None.

Name and Telephone Number of Agency Contacts

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