

# STATEMENT OF SCOPE

## Department of Natural Resources

**Rule No.:** WA-17-18

**Relating to:** Revisions to chs. NR 500 to 520 related to coal combustion residual landfills and surface impoundments

**Rule Type:** Permanent

### **1. Finding/nature of emergency (Emergency Rule only):**

The rule will be proposed as a permanent rule.

### **2. Detailed description of the objective of the proposed rule:**

The proposed rule will amend portions of chs. NR 500 – 520 to address new federal rules for the regulation of coal combustion residual (CCR) landfills and surface impoundments. CCR, often called coal ash, is created when coal is burned by power plants to produce electricity. CCR may be disposed of in landfills or treated, stored or disposed of in impoundments designed to hold an accumulation of CCR and liquids, such as process water.

The proposed rule would allow Wisconsin to seek approval from the U.S. Environmental Protection Agency (EPA) for a state CCR permit program. Specifically, the proposed rule would include federal requirements for CCR landfills, such as: location restrictions, design criteria, operating criteria, groundwater monitoring and corrective action, closure and post-closure care and recordkeeping, notification, and posting of information. Where federal rules and Wisconsin rules differ, Wisconsin rules must be at least as protective as the federal rule. The proposed rule may also include federal requirements for CCR surface impoundments, such as: groundwater monitoring and corrective action; post-closure care; and recordkeeping, notification and posting of information. This would allow Wisconsin to seek approval from EPA for a partial state CCR permit program for CCR surface impoundments. This rule would consider the need for plan review, license and/or inspection fees.

Additional rule changes may be pursued which are reasonably related to those discussed here.

### **3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:**

Currently, CCR landfills are regulated in Wisconsin under ch. 289, Wis. Stats., chs. NR 500 – 520, Wis. Adm. Code, and federal rules. The proposed rule would include federal requirements from 40 CFR 257, Subpart D in order for Wisconsin to seek approval from EPA for a state CCR permit program for CCR landfills. CCR surface impoundments are not currently regulated under ch. 289, Wis. Stats., and chs. NR 500 – 520; they are only regulated under federal rules. Therefore, the proposed rule may include portions of 40 CFR 257, Subpart D in order for Wisconsin to seek approval from EPA for a partial state CCR permit program for CCR surface impoundments. The proposed rule for surface impoundments would focus on ground water monitoring and corrective action; post-closure care; and recordkeeping, notification and posting of information. Feedback provided by industry representatives prior to scope

statement development indicated that all surface impoundments will be closed within the next several years and no new surface impoundments are currently planned for Wisconsin.

The department evaluated an option to not pursue including federal requirements into Wisconsin rules because seeking approval of a state CCR permit program is optional. However, this option would continue to mean that CCR landfills in Wisconsin would be regulated under both federal rule and current Wisconsin rules. Where rules differ, CCR landfills must meet both federal and state laws. The proposed rules for a Wisconsin CCR permit program would allow CCR landfill operators to apply one set of rules and interact with one regulatory agency. The proposed rule would allow existing CCR surface impoundment operators to be regulated under Wisconsin rules instead of federal rules for groundwater monitoring, post closure care and related requirements. The department also evaluated the option of including federal location restrictions, design criteria, operating criteria and closure requirements for CCR surface impoundments. However, the department expects that the majority of all CCR surface impoundments in Wisconsin will be closed over the next several years; therefore, the department does not anticipate including those federal requirements into the proposed rule.

#### **4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

CCR is a “solid waste” within the meaning of s. 289.01(33), Wis. Stats. Section 289.05(1), Wis. Stats., requires the department to promulgate rules establishing minimum standards for solid waste facilities. Sections 289.06(1) and 227.11(2)(a), Wis. Stats., also confer rule making authority to the department to promulgate rules implementing ch. 289, Wis. Stats. These provisions supply the department with explicit authority to regulate disposal facilities handling CCR.

On April 17, 2015, the EPA published a final rule to regulate the disposal of 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 create a CCR permit program.

#### **5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule :**

The department estimates that approximately 600 - 800 hours of staff time will be required to complete the proposed rule.

#### **6. List with description of all entities that may be affected by the proposed rule :**

The proposed rule will impact CCR landfill and surface impoundment owners and operators, which are generally electric utilities. There are approximately 18 existing and new CCR landfill units under federal regulation, which when combined represent 6 solid waste landfill facilities under Wisconsin regulation. There are approximately 12 CCR surface impoundment units under federal regulation, which are located at 4 separate facilities. The federally regulated CCR landfills and surface impoundments are owned by 4 companies that will likely be impacted by the proposed rule.

#### **7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule :**

The proposed rule revisions will be consistent with federal CCR rules in order for Wisconsin to seek approval of state CCR permit programs. Current portions of chs. NR 500 – 520, Wis. Adm. Code, are already consistent with federal rules or may be considered at least as protective as federal rule for CCR landfills. The proposed rule will not address the location restrictions, design criteria, operating criteria and closure requirements for CCR surface impoundments.

**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

Based on our preliminary analysis, we do not anticipate a significant economic impact to individuals or groups. If there were to be any economic cost resulting from this rule, we anticipate that it would be very minimal to moderate (between \$50,000 to \$500,000). Most of the changes in the proposed rule have already been implemented by the federal government and facilities have already complied with the federal rule. The proposed rule is simply modifying Wisconsin regulations to be consistent with portions of the federal rule to allow Wisconsin to apply for a CCR state permit program. Any additional cost as a result of this proposed rule will be related to plan preparation and review.

The rule is not likely to have an impact on small businesses. CCR landfills and surface impoundments are generally operated by electric utilities that do not meet the definition of a small business under s. 227.114 (1), Wis. Stats.

The proposed rule is not expected to significantly impact state funding and expenditures. There may be some additional revenue initially from plan review fees, which is estimated to be less than \$200,000. There will be some additional expenditure of time to modify current CCR landfill plan approvals to address the proposed rule; however, this will be a short term impact because those facilities are already regulated by the department. There may be some additional expenditure of time for CCR landfills initially for permitting and over the long term due to additional reporting and groundwater monitoring requirements. Because surface impoundments are not currently approved by the department, there will be additional expenditure of time to review and approve plans related to long term care and monitoring. There will also be an additional expenditure of time for regulatory oversight over the long term. It is difficult to estimate the additional costs at this time; however, during initial permitting an additional project position may be needed to accomplish the additional work in conjunction with existing staff. The cost of an additional project position is estimated to be less than \$100,000 per year.

**9. Anticipated number, month and locations of public hearings:**

The Department anticipates holding two public hearings in the month of June 2021. Hearing cities will be in Waukesha and Portage Counties.

The Department will hold these hearings in these locations to receive comments regarding the proposed rule.

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