



## Memorandum

Solid Waste Subcommittee

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**Response Requested:** EPA Proposal to Approve North Dakota CCR Permitting Program

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Last week, the U.S. Environmental Protection Agency (EPA) [announced](#) its plan and published a notice in the [Federal Register](#) to approve North Dakota's Department of Environmental Quality (NDDEQ) coal combustion residual (CCR) partial permitting program. EPA, in a preliminary approval, determined that North Dakota's CCR permit program includes all the elements of an adequate state CCR permit program and contains all the technical criteria in the underlying Resource Conservation and Recovery Act (RCRA) regulations. If finalized, North Dakota's CCR permit program will operate in lieu of the Federal CCR program and become the fourth state to have its own state CCR program. The proposed approval received positive recognition from North Dakota Governor Kelly Armstrong and both U.S. Senators from North Dakota, John Hoeven and Kevin Cramer.

EPA will accept comments on this proposal through July 15, 2025 and will hold a [public hearing](#) (in person and virtually) on July 8, 2025 for interested parties to present information and remarks about the proposal. The National Mining Association (NMA) will participate in this meeting virtually. **We are interested in whether the National Mining Association (NMA) should comment on EPA's proposed approval. For our North Dakota coal members, we would appreciate your insight and any state-specific information we can offer in support.** Recall that the NMA has participated in state CCR permitting program applications in the past (e.g., Alabama). See an NMA [memorandum](#) summarizing that participation. We will be reaching out to our utility allies to determine whether they intend to

file comments opposing this proposed denial and opportunities to support such efforts.

## **Background**

Recall that the 2016 Water Infrastructure Improvements for the Nation (WIIN) Act amended section 4005 of RCRA, authorizing EPA to review and approve state CCR permit programs. Specifically, RCRA section 4005(d) allows states to seek EPA approval for a state CCR permit program that will operate in lieu of a federal CCR permit program in the state. If the EPA Administrator determines that the state program requires each CCR unit located in the state to achieve compliance with either the federal requirements or other state requirements that EPA determines, after consultation with the state, are at least as protective as those included in the federal CCR regulations, then EPA must approve the program.

For decades, the NDDEQ has created and enforced its own rules for storing, treating, and disposing of CCR. On Sept. 20, 2020, the NDDEQ applied to the EPA for authority to regulate CCR at the state level. After revisions and making accommodating changes to state laws and rules, NDDEQ submitted a complete application to EPA on March 10, 2023. Since this submission, EPA has delayed its decision on the application. On Jan. 3, 2025, North Dakota's State Attorney General filed an [intent to sue](#) EPA alleging that the agency failed in its nondiscretionary duty to respond within RCRA's statutorily allotted 180-day timeframe and to compel EPA to approve NDDEQ's CCR permit program and let the state continue regulating its CCR activities.

In March 2025, EPA [announced](#) it would prioritize actions on coal ash, including reviewing state CCR permit programs. Demonstrating this commitment, EPA proposed a determination on NDDEQ's CCR permit program within 60 days - a deadline the administration met with last week's announcement. Furthermore, as part of the [Powering the Great American Comeback](#) initiative, EPA committed to working with states to shift more responsibility for coal ash regulation into their hands to empower local expertise managing CCR disposal in ways that protect public health and the environment. See NMA's March 12, 2025, [memorandum](#) for more information on this initiative.

## **Preliminary Approval**

RCRA section 4005(d) requires EPA to evaluate two components of a state CCR permitting program - the program itself, and the technical criteria that will be included in each permit issued under the state program. It must be determined that the state technical criteria are the same as the Federal criteria, or to the extent they differ, whether the modified criteria are "at least as protective as" the Federal requirements.

EPA has preliminarily determined that the North Dakota CCR partial permit program includes all the elements of an adequate State CCR permit program and contains all the technical criteria in 40 CFR part 257, subpart D, except for the provisions that North Dakota has not included in its partial permit program. North Dakota's partial permit program, as presently formed, lacks a total of 24 provisions of a full state CCR permitting program - 17 provisions of the state regulations under the North Dakota Administrative Code and seven provisions from the Federal CCR regulations. See EPA's [Technical Support Document](#) for a full analysis of the state's permitting program and how the North Dakota regulations differ from the Federal requirements.

Interestingly, the current NDDEQ CCR permitting program does not incorporate the Federal Part A Final Rule, the Part B Final Rule, or the Legacy CCR Surface Impoundments Final Rule. Instead, NDDEQ is seeking approval of its partial State CCR permit program, mirroring the Federal regulations promulgated through July 30, 2018, ([83 Fed. Reg. 36,435](#)) and as subsequently modified to comply with the D.C. Circuit's decision in *Utility Solid Waste Activities Group, et al. v. EPA*, No. 15-1219 (D.C. Cir. 2015).

## **Next Steps**

The NMA will continue to monitor state CCR permitting programs and relay that information as it is available and work alongside other industry trade allies on this matter. If you have any questions or wish to discuss this further, please email me at [ljoseph@nma.org](mailto:ljoseph@nma.org).

