



National Conference of State Legislatures Office of State-Federal Relations

EPA Released Final Guidance on State Coal Ash Management Permit Programs

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On Aug. 9, the Environmental Protection Agency (EPA) released an interim [final guidance document](#) to aid states in the development and submission of their permit programs for the management of coal combustion residuals (CCR), more commonly known as coal ash, which is generated from burning coal for the purpose of generating electricity. The guidance document describes EPA's statutory interpretations of criteria for EPA approval of a state permit program, how the agency intends to review state permit programs, and provides a checklist to aid states as they are considering and developing their permit program submittals.

In 2015, EPA published a [final rule](#) regulating the management and disposal of coal ash as nonhazardous waste from certain coal-fired power plants following several high-profile spills. The rule was drafted under the [Resource Conservation and Recovery Act](#) (RCRA), which established a national framework for the management of hazardous and non-hazardous solid waste. Unlike other environmental regulations, RCRA does not typically provide for the regulation of nonhazardous wastes, such as coal ash, through state permit programs. Therefore, the requirements of the 2015 rule only apply directly to regulated facilities and are solely enforceable through citizen suits, as states lack the enforcement mechanisms.

To change that, in December 2016, the [Water Infrastructure Improvements for the Nation \(WIIN\) Act](#) was signed into law and included provisions granting states the authority to act as the primary regulatory enforcers of coal ash through the establishment of EPA-approved state permit programs. Although WIIN requires state permit programs to be as stringent as federal coal ash regulations, states have the ability under the law to provide facilities some flexibility to manage coal ash. If a state does not have an approved permit program, however, WIIN requires EPA to implement a permit program "subject to the availability of appropriations specifically provided to carry out a program."

The guidance document is divided into four chapters:

- An overview of the provisions in the WIIN Act.

- The processes and procedures EPA is planning to use to review and make determinations on state coal ash permit programs, as well as the documentation states will need to provide as they seek approval.
- A checklist of all the requirements of the current coal ash rule.
- A checklist of items states must submit when seeking permit program approval.

Comments on the guidance are due on Sept. 14, 2017, 30 days from publication in the [Federal Register](#). If there are any questions or further concerns on EPA's actions, please contact NCSL staff [Kristen Hildreth](#) (202-624-3597), or [Ben Husch](#) (202-624-7779).