

TCEQ's New Rules Implementing Compliance and Registration Requirements for Coal Combustion Residuals (CCR) Management

Federal Regulation of CCR: On April 17, 2015, the United States Environmental Protection Agency (EPA) promulgated standards to regulate coal combustion residuals (CCR) under the Resource Conservation Recovery Act (RCRA), Subtitle D at 40 Code of Federal Regulations (CFR) Part 257, Subpart D, which became effective October 19, 2015.

Texas' CCR Regulatory Program: On May 28, 2020, the Texas Commission on Environmental Quality (TCEQ) issued final rules (30 TAC, Chapter 352) establishing a state CCR management program that "...would be at least as protective as the requirements of the self-implementing federal CCR rules." The new Chapter 352 includes requirements for owners and operators to obtain a registration, to establish compliance monitoring, and to maintain compliance with the standards listed under Chapter 352 for landfills and surface impoundments used to dispose of or manage CCR. The TCEQ's rules and draft guidelines provide an important distinction regarding which rules apply to existing units vs. new units or lateral expansions. At this time, TCEQ is in the process of seeking approval from the EPA for TCEQ's regulatory program. Following EPA approval, TCEQ will operate its CCR regulatory program in lieu of federal regulation of Texas CCR facilities, as provided in the Water Infrastructure for Improvements to the Nation Act of 2016.

Due Date for Submittal of Registration Applications for CCR Sites: As noted in 30 TAC §352.101, owners and operators of CCR landfills and surface impoundments will be required to file a registration application within 365 days of the effective date of Chapter 352 (May 28, 2020) or 180 days of EPA's approval of TCEQ's CCR program, whichever is later. The TCEQ has developed application forms and related guidance for this registration process. Though no guarantees can be granted for the duration of the EPA review process, EPA's approval may be within a timeframe that will not cause an extension of the May 27, 2021 due date for submittal of registration applications for CCR sites.

EPA Requirements vs. TCEQ Requirements: As noted above, in implementing the EPA's federal requirements for CCR sites, TCEQ's CCR program needs to be at least as protective as the requirements of the self-implementing federal CCR rules. However, the TCEQ also is charged with making the Texas CCR program consistent with other TCEQ regulatory programs. As such, the TCEQ incorporated various provisions of state permitting programs and procedures into Chapter 352. Whereas many of the EPA's federal requirements are adopted directly by reference to the federal CCR rules (40 Code of Federal Regulations, as amended through the April 17, 2015, issue of the *Federal Register* (80 FR 21301)), other requirements were tailored and/or expanded to be consistent with TCEQ programs. Following are select examples correlating the EPA and TCEQ requirements:

TCEQ is in the process of implementing the Federal rules governing CCR.

While TCEQ's CCR program needs to be at least as protective as the federal CCR rules, there are important distinctions in Chapter 352.

CCR facilities will be required to obtain a TCEQ registration. The earliest due date for the registration filing will be May 27, 2021.

About SCS Engineers

SCS Engineers is a full-service environmental engineering, construction, and operations and maintenance firm with extensive experience in working with clients in addressing CCR issues.

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- For location restrictions, as reflected in TCEQ's rules (i.e., §352.601, .611, .621, .631, and .641), the TCEQ has adopted by reference to the EPA's rules (i.e., §257.60, .61, .62, .63, and .64).
- For operating criteria (air, run-on and run-off controls for landfills, hydrologic and hydraulic capacity requirements for surface impoundments, and inspections), as reflected in TCEQ's rules (i.e., §352.801, .811, .821, .831, and .841), the TCEQ has adopted by reference the appropriate EPA rules (i.e., §257.80, .81, .82, .83, and .84).
- For design criteria for CCR landfill liners, as reflected in TCEQ's rules (i.e., §352.701), the TCEQ has adopted by reference to 40 Code of Federal Regulations §257.70 (Design criteria for new CCR landfills and any lateral expansion of a CCR landfill).
- For design criteria for CCR surface impoundments, the TCEQ has published state criteria, which must be "...at least as protective as the requirements of the self-implementing federal CCR rules."
- Regarding groundwater monitoring and corrective action, the TCEQ has adopted some of the EPA's rules by reference and tailored others to be consistent with TCEQ's current rules for waste disposal sites.
- Financial Assurance. TCEQ's new rule, 352.1101 requires "...a written cost estimate in current dollars of the total cost of the 30-year post-closure care period to perform post-closure care requirements as prescribed in §352.1241 of this title. The cost estimate shall be based on the costs of hiring a third-party to conduct post-closure care maintenance...Financial assurance shall be established and maintained for the duration of the post-closure care period as prescribed in §352.1241 of this title..."