

possible. All timely comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. Comments may be viewed on the Federal eRulemaking Portal at <https://www.regulations.gov>. In the search box, enter “RIN 0596–AD66” and click the “Search” button. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available for public viewing. Please note that if your comment includes a standard confidentiality disclaimer—like the automatic notices added to some emails—we will still treat your comment as public and may make it available for anyone to read. A summary of this rule may be found through the Federal eRulemaking Portal at <https://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Joshua White, Acting Director, Ecosystem Management Coordination, at the following phone number: 202–205–0650. Individuals who are deaf, hard of hearing, or have a speech disability may call 711 to reach the Telecommunications Relay Service and provide the phone number of the person named as a point of contact for further information.

**SUPPLEMENTARY INFORMATION:** On August 20, 2026, the Department published in the **Federal Register** a proposed rule titled *Special Areas; Roadless Area Conservation* at 91 FR 53827. The proposed rule would rescind the 2001 Roadless Area Conservation Rule by removing and reserving 36 CFR part 294, subpart B. The notice of proposed rulemaking invited public comment on the proposed rescission, the associated draft environmental impact statement, and cost benefit analysis.

The original comment period is scheduled to close on September 21, 2026. The Department is extending the comment period by 15 days, until October 6, 2026, to provide interested persons additional time to review the proposed rule and supporting materials and submit comments. The Department will consider all timely comments received by October 6, 2026, in

developing any final rule and supporting analyses.

**Stephen Alexander Vaden,**

*Deputy Secretary, U.S. Department of Agriculture.*

[FR Doc. 2026–18648 Filed 9–10–26; 8:45 am]

**BILLING CODE 3411–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 257

**[EPA–HQ–OLEM–2026–4324; FRL–13374–01–OLEM]**

### Wisconsin: Approval of State Coal Combustion Residuals Permit Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Environmental Protection Agency (EPA or the Agency) is proposing to approve the Wisconsin Coal Combustion Residuals (CCR) partial permit program under the Resource Conservation and Recovery Act (RCRA). After reviewing the CCR permit program application submitted by the Wisconsin Department of Natural Resources (WDNR), EPA has preliminarily determined that Wisconsin’s CCR permit program meets the standard for partial approval under RCRA. If approved, Wisconsin’s CCR permit program will operate in lieu of the Federal CCR program, with the exception of the specific provisions noted below. EPA is seeking comment on this proposal during a 60-day public comment period and will hold an online public hearing on EPA’s preliminary approval of Wisconsin’s partial CCR permit program.

**DATES:** *Comments due.* Comments must be received on or before November 10, 2026. *Public hearing:* EPA will hold an online public hearing on November 9, 2026. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA–HQ–OLEM–2026–4324, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>/ (our preferred method). Follow the online instructions for submitting comments.
- *Email:* [Docket\\_OLEM@epa.gov](mailto:Docket_OLEM@epa.gov). Include Docket ID No. EPA–HQ–OLEM–2026–4324 in the subject line of the message.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center,

Office of Land and Emergency Management (OLEM) Docket, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

- *Hand Delivery or Courier* (by scheduled appointment only): EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center’s hours of operations are 8:30 a.m.–4:30 p.m., Monday through Friday (except Federal holidays).

*Instructions:* All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

#### FOR FURTHER INFORMATION CONTACT:

Michelle Lloyd, Office of Resource Conservation and Recovery, Waste Identification Notice and Generators Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 566–0560; email address: [lloyd.michelle@epa.gov](mailto:lloyd.michelle@epa.gov). For more information on this document please visit <https://www.epa.gov/coal-combustion-residuals>.

#### Table of Contents

- I. Public Participation
  - A. Written Comments
  - B. Participation in Online Public Hearing
- II. General Information
  - A. Overview of Proposed Action
  - B. Background
  - C. Statutory Authority
- III. The Wisconsin Application
- IV. EPA Analysis of the Wisconsin Application
  - A. Adequacy of the Wisconsin Permit Program
  - B. Adequacy of Technical Criteria
- V. Wisconsin CCR Permits
  - A. Wisconsin’s Permits Issued Under the State CCR Regulations Are Not Part of the Permit Program Evidence Under Review
  - B. Status of Wisconsin’s Previously-Issued Permits Issued Under the State CCR Regulations
- VI. Proposed Action

#### List of Acronyms

|       |                                 |
|-------|---------------------------------|
| CCR   | coal combustion residuals       |
| CFR   | Code of Federal Regulations     |
| chs   | Chapters                        |
| EPA   | Environmental Protection Agency |
| EM    | Environmental Management        |
| ES    | Enforcement Standard            |
| ISI   | Initial Site Inspection         |
| ISR   | Initial Site Report             |
| MSWLF | Municipal Solid Waste Landfill  |
| NR    | Natural Resources               |

RCRA Resource Conservation and Recovery Act  
 TSD Technical Support Document  
 SLOH State Laboratory of Hygiene  
 USWAG Utility Solid Waste Activities Group  
 WDNR Wisconsin Department of Natural Resources  
 WIIN Water Infrastructure Improvements for the Nation  
 Wis. Adm. Code Wisconsin Administrative Code  
 Wis. Stats. Wisconsin Statutes

## SUPPLEMENTARY INFORMATION:

### I. Public Participation

#### A. Written Comments

Submit your comments, identified by Docket ID No. EPA-HQ-OLEM-2026-4324, at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

#### B. Participation in Online Public Hearing

EPA will begin pre-registering speakers for the hearing upon publication of this document in the **Federal Register**. To register to speak at the virtual hearing, please use the online registration form available on EPA's CCR website (<https://www.epa.gov/coal-combustion-residuals/us-state-wisconsin-coal-combustion-residuals-permit-program>) or contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to register to speak at the hearing. The last day to pre-register to speak at the hearing will be November 5, 2026.

EPA will make every effort to follow the schedule as closely as possible on

the day of the hearing; however, please plan for the hearing to run either ahead of schedule or behind schedule. Additionally, requests to speak will be taken the day of the hearing according to the procedures specified on EPA's CCR website for this hearing (<https://www.epa.gov/coal-combustion-residuals/us-state-wisconsin-coal-combustion-residuals-permit-program>). The Agency will make every effort to accommodate all speakers who arrive and register, although preferences on speaking times may not be able to be fulfilled.

Each commenter will have five minutes to provide oral testimony. EPA encourages commenters to provide EPA with a copy of their oral testimony electronically (via email) to the person listed in the **FOR FURTHER INFORMATION CONTACT** section. If EPA is anticipating a high attendance, the time allotment per testimony may be shortened to no shorter than three minutes per person to accommodate all those wishing to provide testimony and who have pre-registered. While EPA will make every effort to accommodate all speakers who do not pre-register, opportunities to speak may be limited based upon the number of pre-registered speakers. Therefore, EPA strongly encourages anyone wishing to speak to pre-register. Participation in the virtual public hearing does not preclude any entity or individual from submitting a written comment.

EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing. Verbatim transcripts of the hearings and written statements will be included in the docket for this action.

Please note that any updates made to any aspect of the hearing will be posted online on EPA's CCR website (<https://www.epa.gov/coal-combustion-residuals/us-state-wisconsin-coal-combustion-residuals-permit-program>). While EPA expects the hearing to go forward as set forth above, please monitor our website or contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to determine if there are any updates. EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the service of a translator, please pre-register for the hearing and describe your needs on the registration form by October 26, 2026. If

you require special accommodations such as audio description or closed captioning, please pre-register for the hearing and describe your needs on the registration form by October 26, 2026. Alternatively, registrants may notify the person listed in the **FOR FURTHER INFORMATION CONTACT** section of any special needs. EPA may not be able to arrange accommodations without advance notice.

### II. General Information

#### A. Overview of Proposed Action

On April 17, 2015, EPA published a final rule, creating 40 CFR part 257, subpart D,<sup>1</sup> which establishes a comprehensive set of minimum Federal requirements for the disposal of CCR in landfills and surface impoundments (80 FR 21302) (Federal CCR regulations). Section 2301 of the 2016 Water Infrastructure Improvements for the Nation (WIIN) Act amended RCRA section 4005 to create a new subsection (d) that requires EPA to establish a Federal CCR permitting program. See 42 U.S.C. 6945(d).

As amended, RCRA section 4005(d) also allows States to seek approval for a State CCR permit program that will operate in lieu of a Federal CCR permit program in the State. The statute provides that within 180 days after a State submits a complete application to the Administrator for approval, EPA shall approve the State permit program if the 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. See 42 U.S.C. 6945(d)(1)(B).

On February 24, 2026, WDNR submitted its State CCR permit program application to EPA Region 5 requesting approval of the State's partial CCR permit program.<sup>2</sup> EPA is proposing to approve the Wisconsin partial CCR permit program pursuant to RCRA section 4005(d)(1)(B). 42 U.S.C. 6945(d)(1)(B). The fact that Wisconsin is seeking approval of a partial program does not mean it must subsequently apply for full program approval. However, Wisconsin could apply for

<sup>1</sup> Unless otherwise specified, all references to parts 239 and 257 in this document are to title 40 of the Code of Federal Regulations (CFR).

<sup>2</sup> State of Wisconsin Coal Combustion Residuals Permit Program Application Packet. Application to USEPA Region V for CCR Permit Program Approval for CCR landfills in accordance with section 4005(d) of the Resource Conservation and Recovery Act. February 2026.

revised partial program approval or full program approval at some point in the future if it chooses to do so. If approved, the Wisconsin CCR permit program will operate in lieu of the Federal CCR program (codified at 40 CFR part 257, subpart D), with the exception of the provisions specifically identified below for which the State is not seeking approval and for which the corresponding provisions of the Federal CCR program would remain in effect. However, even for the approved provisions, EPA would retain its inspection and enforcement authorities under RCRA sections 3007 and 3008, 42 U.S.C. 6927 and 6928, consistent with EPA's ongoing oversight authority under RCRA. See 42 U.S.C. 6945(d)(4)(B).

EPA has also engaged Federally recognized Tribes within the State of Wisconsin in consultation and coordination regarding the program approval for the determination. EPA has established opportunities for coordination and consultation. Tribal consultation has been and will continue to be conducted in accordance with the EPA policy on Consultation and Coordination with Indian Tribes.<sup>3</sup>

#### B. Background

CCR are generated from the combustion of coal, including solid fuels classified as anthracite, bituminous coal, subbituminous coal, and lignite, for the purpose of generating steam to power a generator to produce electricity or electricity and other thermal energy by electric utilities and independent power producers. CCR, commonly known as coal ash, include fly ash, bottom ash, boiler slag, and flue gas desulfurization materials. CCR can be sent offsite for disposal or beneficial use, or disposed of in on-site landfills or surface impoundments. This section summarizes EPA's regulatory actions on CCR to date to provide relevant background on this proposed approval of Wisconsin's partial CCR permit program.

On April 17, 2015, EPA published a final rule creating 40 CFR part 257, subpart D, which established a comprehensive set of minimum Federal requirements for the disposal of CCR in landfills and surface impoundments (80 FR 21302). The rule created a self-implementing program that regulates the location, design, operating criteria, and groundwater monitoring and corrective action for CCR units, as well as the closure and post-closure care of

CCR units. It also requires recordkeeping and notifications for CCR units. EPA has since amended 40 CFR part 257, subpart D on August 5, 2016 (81 FR 51802), July 30, 2018 (83 FR 36435), August 28, 2020 (85 FR 53516), November 12, 2020 (85 FR 72506), May 8, 2024 (89 FR 38950), November 8, 2024 (89 FR 88650), and February 10, 2026 (91 FR 5806). More information on these rules is provided in the Technical Support Document in the docket for this document.<sup>4</sup>

#### C. Statutory Authority

EPA is issuing this proposed action pursuant to RCRA sections 4005(d) and 7004(b)(1). See 42 U.S.C. 6945(d) and 6974(b)(1). As amended by section 2301 of the 2016 WIIN Act, RCRA section 4005(d) instructs EPA to establish a Federal permit program similar to those under RCRA subtitle C and other environmental statutes and authorizes States to develop their own CCR permitting programs that go into effect in lieu of the Federal permit program upon approval by EPA. See 42 U.S.C. 6945(d).

Under RCRA section 4005(d)(1)(A), 42 U.S.C. 6945(d)(1)(A), States seeking approval of a State CCR program must submit to the Administrator "in such form as the Administrator may establish, evidence of a permit program or other system of prior approval and conditions under state law for regulation by the State of coal combustion residuals units that are located in the state." The statute provides that EPA shall approve a State CCR permit program if the Administrator determines that the State program will require each CCR unit located in the State to achieve compliance with either: (1) The Federal CCR requirements at 40 CFR part 257, subpart D; or (2) Other State criteria that the Administrator, after consultation with the State, determines to be "at least as protective as" the Federal requirements. 42 U.S.C. 6945(d)(1)(B). The Administrator must make a final determination, after providing for public notice and an opportunity for public comment, within 180 days of receiving a State's complete submittal of the information specified in RCRA section 4005(d)(1)(A). 42 U.S.C. 6945(d)(1)(B). EPA may approve a State CCR permit program in whole or in part. *Id.* Once approved, the State permit program operates in lieu of the Federal

requirements. 42 U.S.C. 6945(d)(1)(A). In a State with a partial program, only the State requirements that have been approved by EPA operate in lieu of the Federal requirements, and facilities remain responsible for compliance with all remaining Federal requirements in 40 CFR part 257.

As noted above, the Federal CCR regulations are self-implementing, meaning that CCR landfills and surface impoundments must comply with the terms of the regulations prior to obtaining a Federal permit or a permit issued by an approved State. Noncompliance with the Federal CCR regulations can be the subject of an enforcement action brought directly against the facility. Once a final CCR permit is issued by an approved State or pursuant to a Federal CCR permit program, however, the terms of the permit apply in lieu of the terms of the Federal CCR regulations and/or requirements in an approved State program, and RCRA section 4005(d)(3) provides a permit shield against direct enforcement of the applicable Federal or State CCR regulations (meaning the permit's terms become the enforceable requirements for the permittee).

RCRA section 7004(b), which applies to all RCRA programs, directs that "public participation in the development, revision, implementation, and enforcement of any . . . program under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States." 42 U.S.C. 6974(b)(1). Accordingly, EPA considers permitting requirements, requirements for compliance monitoring authority, requirements for enforcement authority, and requirements for intervention in civil enforcement proceedings in evaluating State CCR permit program applications.

Once a State CCR permit program is approved, the Administrator must review the approved program no less frequently than every 12 years, no later than three years after a revision to an applicable section of 40 CFR part 257, subpart D, and no later than one year after any unauthorized significant release from a CCR unit located in the State. EPA also must review an approved State CCR permit program at the request of another State alleging that the soil, groundwater, or surface water of the requesting State is or is likely to be adversely affected by a release from a CCR unit in the approved State. See 42 U.S.C. 6945(d)(1)(D)(i)(I) through (IV).

In a State with an approved State CCR permit program, EPA may commence administrative or judicial enforcement actions under RCRA section 3008, 42

<sup>3</sup> Letters from Cecilia Alford, USEPA to Tribal Leaders in Wisconsin regarding the Tribal Consultation on Wisconsin's Coal Combustion Residuals Permit Program Application. July 2026. The 14 letters are in the docket for this action.

<sup>4</sup> USEPA Technical Support Document for the Approval of Wisconsin's Coal Combustion Residuals Permit Program. U.S. Environmental Protection Agency, Office of Land and Emergency Management (5304T), 1200 Pennsylvania Avenue NW, Washington, DC 20460. August 2026

U.S.C. 6928, if the State requests assistance or if EPA determines that an EPA enforcement action is likely to be necessary to ensure that a CCR unit is operating in accordance with the criteria of the State's permit program. 42 U.S.C. 6945(d)(4). EPA can enforce any Federal requirements that remain in effect (*i.e.*, those for which there is no corresponding approved State provision). EPA may also exercise its inspection and information gathering authorities under RCRA section 3007 in a State with an approved program. 42 U.S.C. 6927.

### III. The Wisconsin Application

EPA began working with Wisconsin in 2020 as the State developed its application for the State's partial CCR permit program. As it has with other States, EPA discussed with Wisconsin the process for EPA to review and approve the State's CCR permit program, Wisconsin's anticipated timeline for submitting a CCR permit program application to EPA, and Wisconsin's regulations for issuing permits. As discussed further below, Wisconsin is only seeking approval to regulate CCR landfills, and the State's CCR regulatory program for CCR landfills is structured differently than the Federal CCR regulations. Specifically, WDNR has regulated CCR landfills the same as other non-hazardous waste landfills since it implemented its solid waste program in 1992 in the Wisconsin Administrative Code (Wis. Adm. Code). To ensure the State CCR landfills are subject to a program that is at least as protective as the Federal CCR regulations, the State revised the applicable sections of the Wis. Admin. Code to incorporate additional CCR specific requirements.

Accordingly, EPA and WDNR held numerous detailed conversations about differences in applicable requirements for liner design, groundwater monitoring parameters, groundwater monitoring well placement, detection monitoring, assessment monitoring, closure, post-closure care, recordkeeping and WDNR's plan of operation, and permitting requirements. WDNR shared drafts of the State rules with EPA for comment. After WDNR finalized its rules, WDNR also sent several drafts of the State CCR permit program application to EPA for review to ensure that the State program would be at least as protective as the Federal CCR regulations.

On February 24, 2026, WDNR submitted its CCR permit program application to EPA Region 5 requesting approval of Wisconsin's partial CCR

permit program.<sup>5</sup> In response to EPA comments, on August 13, 2026, WDNR provided a supplement to its Narrative description.<sup>7</sup>

### IV. EPA Analysis of the Wisconsin Application

RCRA section 4005(d) requires EPA to evaluate two components of a State CCR permitting program to determine whether it meets the standard for approval: the program itself, and the technical criteria that will be included in each permit issued under the State program. This section discusses EPA's review of both requirements under RCRA section 4005(d) and the criteria EPA uses to conduct this review.

First, EPA must evaluate the permit program itself (or other system of prior approval and conditions). See 42 U.S.C. 6945(d)(1)(A) through (B). RCRA section 4005(d)(1)(A) directs the State to provide evidence of a State permit program's compliance with RCRA requirements in such form as determined by the Administrator. In turn, RCRA section 4005(d)(1)(B) directs EPA to approve the State program based upon a determination that the program "requires each coal combustion residuals unit located in the state to achieve compliance with the applicable [Federal or State] criteria." In other words, the statute directs EPA to determine that the State has sufficient authority to require compliance at all CCR units located within the State. See also 42 U.S.C. 6945(d)(1)(D)(ii)(I). To make this determination, EPA evaluates the State's authority to issue permits and impose conditions in those permits, as well as the State's authority to conduct compliance monitoring and enforcement.

During this review of the State permit program, EPA also determines whether the program contains procedures consistent with the public-participation directive in RCRA section 7004(b). RCRA section 7004(b), which applies to all RCRA programs, directs that "public participation in the development,

revision, implementation, and enforcement of any . . . program under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States." 42 U.S.C. 6974(b)(1). To make this determination, EPA evaluates the State's public participation procedures for issuing permits and for intervention in civil enforcement proceedings.

Although 40 CFR part 239 applies to the approval of State Municipal Solid Waste Landfill (MSWLF) programs under RCRA section 4005(c)(1) rather than EPA's evaluation of CCR permit programs under RCRA section 4005(d), the specific criteria outlined in that regulation provide a helpful framework to examine the relevant aspects of a State's CCR permit program. States are familiar with these criteria because all States have MSWLF programs that have been approved pursuant to these regulations, and the regulations are generally regarded as protective and appropriate.

*Consequently, EPA relied on the four categories of criteria outlined in 40 CFR part 239 as guidelines to evaluate the Wisconsin CCR permit program:*

permitting requirements, requirements for compliance monitoring authority, requirements for enforcement authority, and requirements for intervention in civil enforcement proceedings.

Second, EPA must evaluate the technical criteria that will be included in each permit issued under the State CCR permit program to determine whether they 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. See 42 U.S.C. 6945(d)(1)(B). Only if both components meet the statutory requirements may EPA approve the program. See 42 U.S.C. 6945(d)(1). EPA makes this determination by comparing the State's technical criteria to the corresponding Federal criteria and, where necessary, evaluating whether different State criteria are at least as protective as the Federal criteria.

Upon careful review, and as discussed in more detail below, EPA has preliminarily determined that Wisconsin's partial CCR permit program includes all the elements of an adequate State CCR permit program. It also contains all the technical criteria in 40 CFR part 257, subpart D, except for the provisions specifically discussed below that Wisconsin has not included in its partial permit program. Consequently, EPA is proposing to approve the entirety of Wisconsin's partial CCR permit program application. The State's CCR permit program does not encompass the

<sup>5</sup> Letter from Steven Little, for Karen Hyun, Deputy Secretary, Wisconsin Department of Natural Resources to Ane Vogel, Regional Administrator, United States Environmental Protection Agency Region V. State of Wisconsin Coal Combustion Residual Program Application. February 20, 2026.

<sup>6</sup> State of Wisconsin Coal Combustion Residuals Permit Program Application Packet. Application to USEPA Region V for CCR Permit Program Approval for CCR landfills in accordance with section 4005(d) of the Resource Conservation and Recovery Act. February 2026.

<sup>7</sup> State of Wisconsin Coal Combustion Residuals Permit Program Application Supplement. Application to USEPA Region V for CCR Permit Program Approval for CCR landfills in accordance with section 4005(d) of the Resource Conservation and Recovery Act. August 2026.

full scope of Federal CCR requirements as presently constituted, and the provisions of the Federal CCR regulations that are not part of State's approved CCR permit program will remain directly applicable to affected CCR units. 42 U.S.C. 6945(d)(1)(B).

EPA's full analysis of the Wisconsin CCR permit program, and how the Wisconsin regulations differ from the Federal requirements, can be found in the Technical Support Document. EPA determined that the Wisconsin CCR permit program application was complete and notified Wisconsin of its determination by letter.<sup>8</sup>

#### A. Adequacy of the Wisconsin Permit Program

Section 4005(d)(1)(A) of RCRA, 42 U.S.C. 6945(d)(1)(A), requires a State seeking State CCR permit program approval to submit to EPA, "in such form as the Administrator may establish, evidence of a permit program or other system of prior approval and conditions under State law for regulation by the State of coal combustion residuals units that are located in the State." Although the statute directs EPA to establish the form of such evidence, the statute does not require EPA to promulgate regulations governing the process or standard for determining the adequacy of such State programs. EPA, therefore, developed the *Coal Combustion Residuals State Permit Program Guidance Document; Interim Final* (82 FR 38685, August 15, 2017) (the "Guidance Document"). The Guidance Document provides recommendations on a process and standards that States may choose to use to apply for EPA approval of its CCR permit programs, based on the standards in RCRA section 4005(d), existing regulations at 40 CFR part 239, and the Agency's experience in reviewing and approving State programs.

EPA evaluated the Wisconsin CCR permit program using the process and statutory and regulatory standards discussed in Units II.C. and IV.A. of this preamble. EPA's findings are summarized below and provided in more detail in the Technical Support Document located in the docket supporting this proposed determination.

#### 1. Guidelines for Permitting

*In EPA's judgment, an adequate State CCR permit program must ensure that:*

(1) Existing and new facilities are permitted or otherwise approved and in compliance with either 40 CFR part 257 or other State criteria; (2) The State has

the authority to collect all information necessary to issue permits that are adequate to ensure compliance with relevant 40 CFR part 257, subpart D requirements; and (3) The State has the authority to impose requirements for CCR units adequate to ensure compliance with either 40 CFR part 257, subpart D, or such other State criteria that have been determined and approved by the Administrator to be at least as protective as 40 CFR part 257, subpart D.

*In Wisconsin, a State permit is required for all CCR units under section 289.31 Wis. Stats.:* "No person may operate a solid waste facility or hazardous waste facility unless the person obtains an operating license from the department." There is no expiration for an operating license or plan of operation approval; however, the facility is required to follow the proposed development, filling, and closure sequencing in the plan of operation or request a modification to the plan of operation. Section NR 514.07(10), Wis. Adm. Code, has additional requirements for CCR landfill plans of operation, including that the plan of operation be updated every 10 years during the landfill's active life to comply with new regulations put in place since initial issuance of the permit or since the last update.

Procedures for evaluating proposed new and expanded solid waste landfills are defined more specifically in chs. NR 500 to 520, Wis. Adm. Code. As described on pages 21–22 of the TSD, and documented in Wisconsin permitting forms, the State has the authority to collect all information necessary to issue permits that are adequate to ensure compliance with relevant 40 CFR part 257, subpart D requirements as documented in NR 509, NR 512, and 514. The minimum submittal requirements are found in chs. NR 509 for an ISR, NR 512 for a feasibility report, NR 514 for a plan of operation, and NR 520 for financial responsibility. Additionally, section NR 512.06(3), Wis. Adm. Code, allows WDNR to require an applicant to submit any additional information found necessary to establish the feasibility of a proposed solid waste landfill. Other applicable requirements are found in chs. NR 504 for location, performance, design and construction criteria, NR 506 for operational criteria, NR 507 for environmental monitoring, NR 508 for responses when a groundwater standard is attained or exceeded, NR 509 for initial site inspections (ISI), and NR 516 for construction documentation.

Simultaneous with the WDNR technical decision-making process, an

applicant must seek and obtain any applicable local approvals, and municipalities are allowed to negotiate and arbitrate with applicants proposing a landfill by adopting siting resolutions. section 289.22, Wis. Stats. The negotiated/arbitrated awards cannot be less stringent than what is contained in WDNR rules and technical conditions of approval. Chapter 289, Wis. Stats., requires all information submitted to WDNR regarding a feasibility report to also be submitted to all affected municipalities (*i.e.*, any host county, township, village or city as well as any municipalities within 1,500 feet of the proposed landfill) and the main public libraries in those municipalities.

Section 289.31, Wis. Stats., allows WDNR to deny, suspend or revoke the operating license of a solid waste facility for grievous and continuous failure to comply with the approved plan of operation.

Under s. NR 514.04(6), Wis. Adm. Code, an owner, or operator of a landfill may propose changes to the approved plan of operation. The changes are required to be submitted to WDNR for review and may not be implemented until WDNR issuance of a plan of operation approval modification. The review time for a complete plan of operation modification is 65 business days under s. NR 500.07, Wis. Adm. Code. Plan approval modification decisions are reviewable through judicial review under ss. 227.52 and 227.53, Wis. Stats., but are not subject to administrative contested case hearings.

There is no differentiation between major and minor plan modifications; however, WDNR does have an expedited plan modification process under s. NR 514.09, Wis. Adm. Code, which only applies to specific types of modifications or those that are considered to pose low potential risk of adverse impacts on public health or the environment and that would not result in a violation of a statute or administrative rule, and would not require the issuance of an exemption. Some examples of modifications eligible for expedited modifications include, but are not limited to, (1) Use of an alternate borrow source, (2) Soil daily cover, and (3) Access roads within a landfill. Specific limitations apply to the use of expedited plan modifications and the review time is 30 calendar days. In general, WDNR expects that most plan modifications for CCR landfills would be routine plan of operation modifications and not expedited plan modifications because of the regulatory limitations and additional time for

<sup>8</sup> Completeness Letter Wisconsin CCR permit program, signed September 2026.

public participation requirements discussed below.

Excluding the plan of operation for initial permitting that requires at least 60 days notification, the owner or operator of a CCR landfill is required to notify WDNR at least 30 days prior to the submittal of a plan of operation modification affecting the closure plan, liner system, leachate system, or changes that reduce the stringency of groundwater monitoring requirements to WDNR and post the draft plan of operation modification on its publicly accessible internet site. NR 514.04(8), Wis. Adm. Code. WDNR will post the draft plan of operation modification on its internet site and hold a public meeting if, within 30 days after posting the draft plan of operation on the WDNR's internet site, any county, city, village or town, the applicant, or any 6 or more persons file a written request for a public meeting with WDNR.

EPA has preliminarily determined that the Wisconsin approach to CCR permit applications and approvals is adequate, and that this aspect of the Wisconsin CCR permit program meets the standard for program approval.

## 2. Guidelines for Public Participation

*Based on RCRA section 7004, 42 U.S.C. 6974, it is EPA's judgment that an adequate State CCR permit program will ensure that:* (1) Documents for permit determinations are made available for public review and comment; (2) Final determinations on permit applications are made known to the public; and (3) Public comments on permit determinations are considered and significant comments are responded to in the permit record. EPA's review of Wisconsin's CCR permit program indicates that the State has adopted public participation procedures that allow interested parties to talk openly and frankly about permit issues and search for mutually agreeable solutions to differences in views. An overview of Wisconsin's public participation provisions is provided below.

Wisconsin's CCR landfill permitting program provides for public participation by making documents for permit determinations available for public review and comment, making final determinations on permit applications known to the public, and considering public comments on permit determinations. In order that WDNR might receive public comments and allow for the request of a hearing pursuant to section 289.25(3), Wis. Stats., a class 1 public notice is published in the local newspaper when a feasibility report has been deemed to contain the minimum information

required to be submitted and the requirements of the environmental review process have been addressed.

If complete, WDNR will provide written notice of completeness and post a class 1 notice under ch. 985, Wis. Stats., in the official newspaper designated under s. 985.04 or 985.05, Wis. Stats., or, if none exists, in a newspaper near the landfill. A copy of the notice and the plan of operation modification submittal will also be posted on WDNR's internet site and NR 506.17(d) requires posting on the facility's CCR landfill public accessible internet site.

Before certain WDNR decisions, WDNR must provide opportunities for public comment upon the following documents submitted by CCR landfill owners/operators:

- Plan of operation modification report—60-day comment period.
- Draft decision issued by WDNR—60-day comment period.
- Draft plan of operation or plan of operation modifications after initial permitting—30-day comment period.
- Feasibility report for new or expanded facility—30-day comment period.

WDNR must hold public hearings during the comment periods upon submittal of the following documents:

- Plan of operation modification report—WDNR holds a virtual or in-person public meeting during the 60-day comment period to receive oral comments on the complete submittal.
- Draft plan of operation or plan of operation modifications after initial permitting—These plans are required to be posted for public comment for at least 30 days. During this time, any county, city, village or town, the applicant, or any six or more individuals may file a written request for a public meeting with WDNR. If a public meeting is held, WDNR will solicit public comments on the report at the meeting.

Feasibility report for new or expanded facility—During public comment period any county, city, village or town, the applicant, or any 6 or more persons can request an informational hearing or, if certain other requirements are met, a contested case hearing.

WDNR is required to grant an informational or a contested case hearing on a proposed solid waste landfill at the feasibility report stage to anyone who has standing as established in sections 289.26 or 289.27, Wis. Stats. In order that WDNR might receive public comments and allow for the request of a hearing pursuant to section 289.25(3), Wis. Stats., a class 1 public notice is published in the local

newspaper when a feasibility report has been deemed to contain the minimum information required to be submitted and the requirements of the environmental review process have been addressed. All written or verbal comments received from the public are considered by WDNR before making a feasibility determination.

If an informational hearing is held, a hearing officer will preside over the proceeding to give the landfill applicant an opportunity to present information regarding the proposed facility, followed by an opportunity for the public to present comments to WDNR on the proposed facility and content of the feasibility report and environmental analysis. If a contested case hearing is held, it is held before a hearing examiner in much the same way as a court trial. The petitioners of the hearing, the landfill applicant, and WDNR review staff present information during the hearing through exhibits, depositions, affidavits and witness testimony. The information presented at the hearing becomes the official hearing record and is then used by the WDNR Secretary or their designee to make a feasibility decision. A copy of the WDNR final decision is sent to all parties to a contested case hearing and to all citizens present at the informational hearing. ss. 227.47 and 227.48, Wis. Stats.

After the comment period on the complete submittal, DNR is required to issue a draft decision and post a copy of the draft decision on the DNR's internet site for a 30-day public comment period. The draft decision is required to include a written response to previous comments. Following the end of the 30-day public comment period on the draft decision, DNR is required to issue a final decision. The final decision is reviewable through judicial review under ss. 227.52 and 227.53, Wis. Stats.

## Challenges to Permit Decisions

Final permit decisions are reviewable through judicial review under ss. 227.52 and 227.53, Wis. Stats. A party must wait for some final agency decision it is aggrieved by, such as the issuance or denial of a permit, at which point it may raise its challenges in a petition for judicial review of the agency decision.

EPA has preliminarily determined that the Wisconsin approach to public participation requirements provides adequate opportunities for public participation in the permitting process sufficient to meet the standard for program approval. The provisions described above meet the three criteria listed at the beginning of this section by

providing several means by which documents for draft and final permit determinations are made available for public review and comment, as well as ensuring that public comments on permit determinations are considered and significant comments are responded to in the permit record and that judicial review is available.

### 3. Guidelines for Compliance Monitoring Authority

An adequate permit program must provide the State with the authority to gather information about compliance, perform inspections, and ensure that the information it gathers is suitable for enforcement. Wisconsin has enacted formal legal provisions for documented certified inspections by a Professional Engineer (P.E.). Chapter NR 516, Wis. Adm. Code, requires all construction associated with the establishment and closure of any landfill to be documented by a professional engineer (P.E.) registered in the State of Wisconsin. The P.E. must render an opinion in writing, based on testing results and actual inspections, as to whether the facility has been constructed or closed in substantial conformance with the plan of operation or other approved plans. Approval of the construction documentation must be obtained from WDNR prior to initiating disposal operations in the newly established area. Section NR 500.09, Wis. Adm. Code, allows WDNR to require as a condition of any approval that critical construction steps of a facility, as specified in the approval, be inspected by WDNR.

Wisconsin requires facilities to certify their operations and to maintain a public website with operating records. Section NR 506.19, Wis. Adm. Code, requires the owner or operator to submit an annual compliance certification and allows WDNR to conduct audits and require the owner to provide specific records. Under s. NR 506.17, Wis. Adm. Code, an owner or operator of a CCR landfill must maintain a written operating record and publicly accessible internet site and provide documentation to WDNR upon request. Under s. NR 506.20, Wis. Adm. Code, an annual report must be prepared and submitted by the facility for WDNR review.

Section NR 507.16, Wis. Adm. Code, requires the owner or operator of a solid waste facility to submit a sampling plan for all monitoring devices at the facility. Additional requirements for a sampling plan for CCR landfills can be found under s. NR 507.15(3)(f) and (g). The sampling plan must follow WDNR guidelines for groundwater sampling and comply with the requirements in s.

NR 140.16, Wis. Adm. Code, and s. NR 507.17, Wis. Adm. Code.

Sampling results submitted are reviewed by a WDNR hydrogeologist for accuracy, any inconsistencies, and to determine if any groundwater standards have been attained or exceeded. Occasionally and whenever necessary, WDNR employees collect or split samples at a facility and have those samples analyzed by the State Laboratory of Hygiene (SLOH) to confirm or to compare with the results submitted by the owner/operator of a facility.

Wisconsin has legal provisions for inspection by WDNR personnel. Section 289.91, Wis. Stats., gives any officer, employee or authorized representative of WDNR authority to enter and inspect any property, premise or place on or at which a solid waste facility is located or is being constructed or installed, or to inspect any record relating to solid waste management of any person who generates, transports, treats, stores or disposes of solid waste, at any reasonable time for the purpose of ascertaining the state of compliance with chapter 289, Wis. Stats., and rules promulgated under chapter 289, Wis. Stats. Wisconsin law specifies that no person may refuse entry or access to anyone who requests entry for purposes of inspection, and who represents appropriate credentials. WDNR, if requested, will furnish the owner or operator of the premises with a report documenting the facts related to the facility's compliance status. If required, a WDNR employee can also obtain a special inspection warrant, under section 66.0119 (Special Inspection Warrants), Wis. Stats.

The WDNR website provides a link to a form for the public to report complaints to the WDNR relevant to waste or air issues. Complaints are routed to a Complaint Coordinator within the Waste and Materials Management program. Complaints involving a licensed facility are referred to WDNR staff assigned to the facility.

Accordingly, EPA has preliminarily determined that these compliance monitoring authorities are adequate, and that this aspect of the Wisconsin CCR permit program meets the standard for program approval. The State has authorities and guidelines for inspections, analysis and monitoring, which allow the State to: (1) Verify the accuracy of information submitted by owners or operators of the CCR unit; (2) Verify the adequacy of methods (including sampling) used by owners or operators in developing that information; (3) Produce evidence admissible in an enforcement

proceeding; and (4) Receive and ensure proper consideration of information submitted by the public.

### 4. Guidelines for Enforcement Authority

*An adequate State CCR permit program must provide the State with adequate enforcement authority to administer its State CCR permit program, including the authority to:* (1) Restrain any person from engaging in activity which may damage human health or the environment, (2) Sue to enjoin prohibited activity, and (3) Sue to recover civil penalties for prohibited activity.

*Section 289.94(2), Wis. Stats., authorizes WDNR to do one or more of the following:* (a) issue any special order necessary to protect public health or the environment, (b) take any other action necessary to protect public health or the environment, or (c) request that the Wisconsin Department of Justice commence legal proceedings to restrain or enjoin any person from handling, storage, treatment, transportation or disposal which presents or may present an imminent and substantial danger to health or the environment or require any other action as may be necessary to protect public health and the environment.

Wisconsin has provided WDNR with both statutory and regulatory authorities to provide enforcement actions for the Wisconsin environmental statutes, regulations, and permit conditions that are applicable to the CCR permit program. Section 289.93, Wis. Stats., allows WDNR to issue orders to effectuate the purposes of chapter 289, Wis. Stats., and enforce the same by all available and appropriate administrative and judicial proceedings. Section NR 500.11, Wis. Adm. Code, allows the department to take enforcement action as authorized under sections 289.91 to 289.97, Wis. Stats., or as authorized in applicable enforcement provisions for landfill and solid waste disposal program requirements in chapters NR 500 to 538, Wis. Adm. Code.

Wisconsin has statutory authority to sue to enjoin prohibited activities. Pursuant to section 289.97, Wisc. Stats., when WDNR has evidence that a violation of chapter 289, Wis. Stats., or a violation of any promulgated rule, special order, plan approval, or any term or condition of a license issued under chapter 289, has occurred, WDNR may serve written notice upon the alleged violator. This written notice must specify the alleged law or rule violation and contain the findings of fact on which the charge of violation is based. Except as provided in section 289.95, WDNR may also include in the

written notice an order that necessary corrective action be taken within a reasonable time. This order becomes effective unless, no later than 30 days after the date the notice and order are served, the person named in the notice and order requests in writing a hearing before the department.

Upon such request, WDNR, after due notice, is required to hold a hearing. Instead of an order, and except as provided in section 289.95, the department may require that the alleged violator appear before the department for a hearing at a time and place specified in the notice and answer the charges complained of; or the department may initiate action under section 299.95 by referring the matter to the Wisconsin Department of Justice for enforcement. If after such hearing WDNR still finds that a violation(s) has occurred, WDNR is required to affirm or modify its previously issued order, or issue an appropriate order for the prevention, abatement or control of the problems involved or for the taking of other corrective action as may be appropriate.

Wisconsin has enacted authorities to restrain any person from engaging in an activity which may damage human health or the environment. If WDNR receives evidence that the past or present handling, storage, treatment, transportation, or disposal of any solid waste may present an imminent and substantial danger to health or the environment, section 289.94, Wis. Stats., requires WDNR to provide immediate notice of the danger to each affected municipality and promptly post notice of the danger at the site at which the danger exists, or order a person responsible for the danger to post such a notice. Per section 289.94(2), Wis. Stats., the department may request that the Wisconsin Department of Justice commence legal proceedings to restrain or enjoin any person from handling, storage, treatment, transportation or disposal which presents or may present an imminent and substantial danger to health or the environment or require any other action as may be necessary to protect public health and the environment.

Wisconsin has authority to sue to recover civil penalties for prohibited activity. Any person who violates chapter 289, Wis. Stats., or any promulgated rule, or any plan approval, license or special order issued under this chapter shall forfeit not less than \$10 nor more than \$25,000 for each violation per section 289.96(3), Wis. Stats. Per section 289.96(3)(a), for environmental violations, each day of

continued violation is a separate offense.

Based on the foregoing, EPA has preliminarily determined that this aspect of the Wisconsin CCR permit program meets the standard for program approval.

#### 5. Intervention in Civil Enforcement Proceedings

Based on RCRA section 7004, an adequate CCR State permit program must provide an opportunity for citizen intervention in civil enforcement proceedings. Specifically, the State must either: (1) Provide for citizen intervention as a matter of right; or (2) Have in place a process to: (a) Provide notice and opportunity for public involvement in civil enforcement actions, (b) Investigate and provide responses to citizen complaints about violations, and (c) Not oppose citizen intervention when permissive intervention is allowed by statute, rule, or regulation.

Wisconsin's statutes allow for intervention in a judicial action. Under section 803.09(1), Wis. Stats., upon timely motion anyone shall be permitted to intervene in a judicial action when the movant claims an interest relating to the property or transaction which is the subject of the action and the movant is so situated that the disposition of the action may, as a practical matter, impair or impede the movant's ability to protect that interest, unless the movant's interest is adequately represented by existing parties. Under section 803.09(2), Wis. Stats., timely intervention in an action is also permitted when the movant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Additionally, section 289.92, Wis. Stats., allows any six or more citizens or any municipality to petition for an administrative review of an alleged violation of the chapter or any rule promulgated or special order, plan approval, license or any term or condition of a license issued under ch. 289, Wis. Stats. More details are provided in the section III.2.f. "Civil Intervention" of the TSD.

Wisconsin has procedures to investigate and provide responses to citizen complaints about violations. The WDNR website provides a link to a form for the public to report complaints on waste or air issues. Wisconsin maintains a hotline that is in operation 24 hours a day, 7 days a week. These complaints

are routed to a Complaint Coordinator within the Waste and Materials Management program of WDNR. Complaints that involve a licensed facility are referred to the WDNR staff assigned to the facility. The Complaint Coordinator may follow up directly on waste-related complaints that are not associated with a facility. The Waste and Materials Management staff can involve other programs if the complaint or possible violations involve other program areas (e.g., wetlands, storm water, air management).

EPA has preliminarily determined that these authorities provide for an adequate level of citizen involvement in the enforcement process, and that this aspect of the Wisconsin CCR permit program meets the standard for program approval.

#### B. Adequacy of Technical Criteria

EPA conducted an analysis of the Wisconsin CCR Permit Program Application, including a thorough analysis of Wisconsin statutory authorities at ch. 289, Wis. Stats. for the CCR program, as well as its regulations NR 500, 504–508, 512–516 and 520, Wis. Adm. Code.<sup>9</sup> Additional groundwater monitoring requirements are found in NR 140 and 141.<sup>10 11</sup> As noted above, Wisconsin has requested approval of a partial CCR permit program regulating CCR landfills.

#### 1. Wisconsin CCR Units and Resources

WDNR has identified 9 CCR units (6 landfills and 3 surface impoundments) at 6 facilities in Wisconsin.<sup>12</sup> The three CCR surface impoundments will continue to be regulated by EPA. WDNR demonstrated that it has the personnel to administer a permit program that is at least as protective as the Federal requirements.<sup>13</sup> WDNR indicates that the State program is funded by State general funds appropriated to WDNR. WDNR indicates that the State Program is also funded from landfill tipping fees, annual license fees, and plan review fees. In addition, WDNR applied for EPA State and Tribal Assistance Grants

<sup>9</sup> Wisconsin Administrative Code Chapters NR 500, 504–508, 512–516. Published under s. 35.93, Wis. Stats., by the Legislative Reference Bureau.

<sup>10</sup> Wisconsin Administrative Code Chapter NR 140 Groundwater Quality.

<sup>11</sup> Wisconsin Administrative Code Chapter NR 141 Groundwater Monitoring Well Requirements.

<sup>12</sup> For more information on the specific facilities covered by the Wisconsin CCR Permit Program, see page 129 (PDF page 130) and page 4 (PDF page 5) of the Narrative, which is included in the docket for this action.

<sup>13</sup> The discussion on State personnel is included on page 124 (PDF page 125) of the Narrative, which is included in the docket for this action, and is described further in the Technical Support Document.

(STAG) funding for Fiscal Years 2021 through 2025. In total, WDNR has received \$1,303,485 in funding from EPA to develop its CCR permit program. If EPA receives future appropriations, if approved, WDNR can continue to receive funds for implementation of its CCR permit program. EPA has preliminarily determined that the WDNR staffing and funding are adequate for WDNR to administer the CCR permit program.

## 2. Wisconsin CCR Regulations

EPA has preliminarily determined that the portions of the Wisconsin CCR permit program applicable to CCR landfills that were submitted for approval meet the standard for approval under RCRA section 4005(d)(1)(B)(ii), 42 U.S.C. 6945(d)(1)(B)(ii). To make this preliminary determination, EPA compared the technical requirements in the Wisconsin CCR regulations at NR 500, 504–508, 512–516 and 520, Wis. Adm. Code. to the Federal CCR regulations at 40 CFR part 257 to determine whether the State's requirements are at least as protective as required in RCRA sections 4005(d)(1)(B)(ii) and (C), 42 U.S.C. 6945(d)(1)(B)(ii) and (C). EPA's review in this case was more involved than in most other States, by necessity, because Wisconsin did not adopt by reference the Federal CCR regulations like many other States and, instead, the State applies its solid waste landfill requirements, supplemented to address the Federal CCR regulations not included in the State's landfill regulations, to regulate CCR landfills.

Wisconsin regulates solid waste disposal facilities, which includes CCR landfills, and the beneficial use of CCR under its solid waste management regulations, chs NR 500–538, Wis. Adm. Code, and statutory authority, ch. 289, Wis. Stats. Wisconsin has regulated CCR landfills for 50 years, the last 30 of which have been under its existing solid waste rules. These regulations were updated on August 1, 2022, to incorporate Federal CCR landfill requirements into its existing solid waste code to ensure Wisconsin's regulations are at least as protective as the Federal CCR regulations. Affected chapters include NR 500, 504–508, 512–516 and 520, Wis. Adm. Code. Table 2 of the Technical Support Document provides a cross-reference between the Federal and State CCR regulations. A technical discussion on differences between the State and Federal programs, that has an analysis of program equivalency, is in section V. Technical Review of the State Submittal, of the TSD.

## 3. Wisconsin Partial Program

WDNR is seeking approval of its partial CCR permit program pursuant to RCRA section 4005(d). Wisconsin's CCR regulations reflect 40 CFR part 257, subpart D, as amended through August 28, 2020, for CCR landfills; however, the Federal CCR regulations have changed since then as a result of litigation and the Legacy CCR surface impoundments and CCR management units final rule (89 FR 38985, May 8, 2024) (the 2024 Legacy Rule) and the CCR Management Unit Deadline Extension Rule (91 FR 5806, February 10, 2026). WDNR has not adopted regulations reflecting the 2024 and February 2026 changes. Any subsequent amendments to the Federal CCR regulations, including those effective before a final decision is made on the State CCR permit program, will not be automatically included in the State's CCR program and would require further State adoption and approval by EPA. WDNR did not adopt regulations for CCR surface impoundments. Therefore, WDNR has not sought approval of any State regulations that would operate in lieu of these amendments. EPA is approving only those aspects of Wisconsin's CCR program that were submitted for approval.

In the 2024 Legacy Rule, EPA amended certain terms and provisions that apply to all CCR units. It is EPA's understanding that WDNR interprets the provisions in NR 140, 141, 500, 504–508, 512–516 and 520, Wis. Adm. Code. the same as EPA interprets these in 40 CFR part 257, subpart D. Therefore, EPA is approving the State's version of these requirements:

1. Throughout 40 CFR part 257, subpart D, the regulations were amended by removing the phrase “Website” and adding in its place the word “website” wherever it appears.

2. 40 CFR 257.52; this amendment clarifies that all CCR units are subject to the requirement to comply with all other Federal, State, Tribal, or local laws or other requirements. In addition, all CCR units continue to be subject to §§ 257.3–1, 257.3–2, and 257.3–3.

3. “Active facility or active electric utilities or independent power producers”; this amendment to 40 CFR 257.53 clarifies that the relevant operational date for any active facility or active electric utilities or independent power producers is on or after October 19, 2015.

4. “CCR landfill or landfill”; this amendment to 40 CFR 257.53 clarifies that a CCR landfill means an area of land or an excavation that “contains”,

rather than “receives”, CCR, and meets the other criteria of the definition.

5. “Infiltration”; this additional definition in 40 CFR 257.53 is consistent with the term's plain meaning and dictionary definitions to assist in the application of closure performance standards for CCR units.

6. “Liquids”; this additional definition in 40 CFR 257.53 is consistent with the term's plain meaning and dictionary definitions to assist in the applicability for CCR surface impoundments and the application of closure performance standards for CCR units.

7. “State director”; this amendment to 40 CFR 257.53 clarifies that the State director is the chief administrative officer of the lead State agency responsible for implementing the State program regulating disposal in all CCR units.

8. 40 CFR 257.61(a); this amendment updates a reference to 40 CFR 230.41(a), as the previously referenced provision has since been amended.

9. 40 CFR 257.80(a); this amendment clarifies that all CCR units are subject to the fugitive dust requirements.

10. 40 CFR 257.90(a); this amendment clarifies that all CCR units are subject to the groundwater monitoring and corrective action requirements. In addition, it corrects a typographical error.

11. 40 CFR 257.104(a); this amendment clarifies that all owners or operators of CCR units that are subject to § 257.102 are subject to the post-closure care requirements, except for those owners and operators of a CCR unit that elect to close the CCR unit by removing CCR.

The State is not seeking approval of certain provisions in the State regulations and the Federal CCR regulations, or EPA cannot approve certain provisions. First, EPA is not proposing to approve the following provisions of the State regulations and, therefore, the identified provisions will not be included in the Federally approved program:

1. NR 504.04(2), Wis. Adm. Code, contains several exemptions that, if used, cannot be guaranteed to be at least as protective as the Federal CCR regulations. NR 504 contains landfill location, performance, design and construction criteria. Section NR 504.04 contains the landfill locational criteria and performance standards, and section NR 504.04(2) contains exemptions from the location restrictions that EPA is proposing to not approve. However, the exemption provisions that cannot be approved as part of the Federally

approved program are intertwined with exemption provisions that apply to State only requirements that are in addition to the Federal CCR requirements, and exemptions from State only requirements can be issued without causing the State CCR permits to be less protective than the Federal requirements. For this reason, the Agency is identifying the specific provisions of section NR 504.04 that will not be included in the approved program. The provisions that EPA is proposing to not approve are:

a. NR 504.04(2)(a) with respect to the exemptions from NR 504.04(3)(g) as it applies to new CCR landfills. Consistent with the Federal CCR regulations, NR 504.04(3)(g) prohibits the citing of new landfills within 200 feet of a fault that had a displacement event in Holocene time. NR 504.04(3)(g) is different from the Federal CCR regulations because the State rule applies to both new and existing CCR landfills and lateral expansions of CCR landfills, whereas 40 CFR 257.62 only applies to new CCR landfills and lateral expansions of CCR landfills. EPA cannot ensure that an exemption from this requirement for new CCR landfills and lateral expansions of CCR landfills would be as protective as the Federal CCR regulations, so EPA is not proposing to approve this authority for exemptions into Wisconsin's CCR permit program. However, EPA is proposing to approve the use of this exemption for existing CCR landfills because the Federal CCR program does not apply this requirement to existing CCR landfills.

b. NR 504.04(2)(a) with respect to exemptions from 504.04(3)(h) as it applies to new CCR landfills. Consistent with the Federal CCR regulations, NR 504.04(3)(h) prohibits the siting of new landfills in a seismic impact zone. NR 504.04(3)(h) is different from the Federal CCR regulations because it applies to both new and existing CCR landfills and lateral expansions of CCR landfills, whereas 40 CFR 257.63 only applies to new CCR landfills and lateral expansions of CCR landfills. EPA cannot ensure that an exemption from this requirement for new CCR landfills or lateral expansions would be as protective as the Federal CCR regulations, so EPA is not proposing to approve this authority into Wisconsin's CCR permit program. However, EPA is proposing to approve the use of this exemption for existing CCR landfills because the Federal CCR program does not apply this requirement to existing CCR landfills.

c. NR 504.04(2)(a) with respect to exemptions from 504.04(3)(i) for new units. Consistent with the Federal CCR

regulations, NR 504.04(3)(i) prohibits the citing of new landfills within unstable areas. EPA cannot ensure that an exemption from this requirement for new CCR landfills and lateral expansions of CCR landfills would be as protective as the Federal CCR regulations, so EPA is not proposing to approve this authority for exemptions into Wisconsin's CCR permit program.

d. NR 504.04(2)(d) authorizing exemptions from compliance with section NR 504.04(4)(d), which prohibits a regulated unit from having a detrimental effect on groundwater quality or otherwise causing a violation of an applicable standard. EPA cannot ensure that an exemption from NR 504.04(4)(d) would be as protective as the Federal CCR regulations, so EPA is not proposing to approve this authority into Wisconsin's CCR permit program.

e. NR 504.04(2)(a) with respect to exemptions from NR 504.04(4)(b), which prohibits the taking of an endangered or threatened species; EPA cannot ensure that an exemption from this requirement for CCR landfills would be as protective as the Federal CCR regulations and there is no analogous exemption in the Federal CCR regulations. As such EPA is not proposing to approve this authority into Wisconsin's CCR permit program.

2. Section 289.43(7), Wis. Stats., contains a general exemption from solid waste licensing for the recycling of high-volume industrial waste and section 538.05 contains an exemption for the beneficial use of CCR. Both Chapters 289 and 538 contain regulations applicable to high-volume industrial waste or byproducts and provide alternatives to the default regulatory scheme. Under both Chapters 289 and 538, CCR are considered a high-volume industrial waste or byproduct. The exemption in section 289.43(7) is insufficiently limited and does not reference section 538.05. Thus, if the exemption were granted, EPA could not be sure that the management of CCR for recycling would be as protective as the Federal CCR requirements or beneficial use criteria. As such, EPA is not proposing the approval of the exemption in section 289.43(7) into the federally approved CCR program. In contrast, section NR 538.05 also contains an exemption from solid waste licensing when CCR is beneficially used consistent with Chapter 538 requirements, which describe various obligations for beneficial use. EPA finds that the provisions of Chapter 538 will ensure that the beneficial use of CCR will be as protective as the Federal CCR regulations and therefore proposes to approve section 538.05 as applied to

CCR beneficial use. This beneficial use exemption will apply to activities that fully meet the applicable requirements of Chapter 538 and the exemption will not otherwise exclude the licensing requirements for any facility involved with the disposal of CCR.

3. NR 500.03(26p)(a) and (b): The State definition of "CCR pile" is not being approved as EPA determined it is not at least as protective as the Federal definition at 40 CFR 257.53, because it allows onsite accumulation of CCR for beneficial use without including limitation that such accumulation must be for offsite use. Therefore, the Federal definition of "CCR pile" will remain in effect.

Second, WDNR is not seeking approval for the Federal CCR regulations that apply to CCR surface impoundments and, accordingly, the scope, definitions, and applicable requirements in 40 CFR part 257 will remain directly applicable to CCR surface impoundments within the State of Wisconsin. While various provisions of the CCR regulations apply to the different types of CCR units (*i.e.*, CCR surface impoundments, CCR landfills, legacy CCR surface impoundments, and CCRMU), the following list only describes the applicability of these sections to CCR surface impoundments over which the Federal CCR regulations will continue to apply. EPA will continue to implement CCR surface impoundments provisions under the Federal CCR program and retain enforcement authority over these provisions (EPA also maintains enforcement authority over units operating under a State program). The following list identifies key provisions applicable to CCR surface impoundments that EPA will implement under the Federal CCR program. This list is non-exhaustive.

1. 40 CFR 257.50, scope and purpose, specifically 40 CFR 257.50(c);

2. 40 CFR 257.52, applicability of other regulations;

3. Definitions in 40 CFR 257.53; many definitions apply to all CCR units. However, the following definitions are specific to CCR surface impoundments that are not applicable to CCR landfills:

- a. Acre foot;
- b. Area-capacity curves;
- c. Dike;
- d. Downstream toe;
- e. Eligible unlined CCR surface impoundment;
- f. Existing CCR surface impoundment;
- g. Factor of safety (Safety factor);
- h. Flood hydrograph;
- i. Freeboard;
- j. Hazard potential classification;

k. Incised CCR surface impoundment;  
 l. Inflow design flood;  
 m. Liquefaction factor of safety;  
 n. New CCR surface impoundment;  
 o. Overfill  
 p. Probable maximum flood;  
 q. Retrofit;  
 r. Seismic factor of safety;  
 s. Slope protection;  
 t. Static factor of safety;  
 u. Technically feasible; and  
 v. Technically infeasible;  
 4. 40 CFR 257.60, location restrictions for placement above the uppermost aquifer for CCR surface impoundments;  
 5. 40 CFR 257.61, location restrictions for wetlands for CCR surface impoundments;  
 6. 40 CFR 257.62, location restrictions for fault areas for CCR surface impoundments;  
 7. 40 CFR 257.63, location restrictions for seismic impact zones for CCR surface impoundments;  
 8. 40 CFR 257.64; location restrictions for unstable areas for CCR surface impoundments;  
 9. 40 CFR 257.71 Liner design criteria for existing CCR surface impoundments;  
 10. 40 CFR 257.72 Design criteria for new CCR surface impoundments and any lateral expansion of a CCR surface impoundment;  
 11. 40 CFR 257.73 Structural integrity criteria for existing CCR surface impoundments;  
 12. 40 CFR 257.74 Structural integrity criteria for new CCR surface impoundments and any lateral expansion of a CCR surface impoundment;  
 13. 40 CFR 257.80 Air criteria;  
 14. 40 CFR 257.82 Hydrologic and hydraulic capacity requirements for CCR surface impoundments;  
 15. 40 CFR 257.83 Inspection requirements for CCR surface impoundments;  
 16. 40 CFR 257.90, groundwater monitoring applicability;  
 17. 40 CFR 257.91, groundwater monitoring systems;  
 18. 40 CFR 257.93, groundwater sampling and analysis requirements;  
 19. 40 CFR 257.94, detection monitoring program;  
 20. 40 CFR 257.95, assessment monitoring program;  
 21. 40 CFR 257.96, assessment of corrective measures;  
 22. 40 CFR 257.97, selection of remedy;  
 23. 40 CFR 257.98, implementation of corrective action program;  
 24. 40 CFR 257.101, closure or retrofit of CCR units;  
 25. 40 CFR 257.102, criteria for conducting the closure or retrofit of CCR units;

26. 40 CFR 257.103, alternative closure requirements;  
 27. 40 CFR 257.104, post-closure care requirements;  
 28. 40 CFR 257.105, recordkeeping requirements;  
 29. 40 CFR 257.106, notification requirements; and  
 30. 40 CFR 257.107, CCR website requirements.

The following list identifies amendments to the requirements in 40 CFR part 257, subpart D that were not included in Wisconsin's application. These Federal provisions will continue to apply directly to, and remain Federally enforceable for, each CCR unit in Wisconsin. Meaning, the requirements in NR 140, 141, 500, 504–508, 512–516 and 520, Wis. Adm. Code., as enumerated below, are not being proposed for approval:

1. 40 CFR 257.73(a)(4), 257.73(d)(1)(iv), 257.74(a)(4), and 257.74(d)(1)(iv) for vegetative cover for slope stability;  
 2. 40 CFR 257.90(g) for suspension of groundwater monitoring;  
 3. 40 CFR 257.95(h)(2) for groundwater protection standards for constituents in appendix IV having no Maximum Contaminant Levels;  
 4. EPA amended certain provisions of the Federal CCR regulations in the 2024 Legacy Rule that apply to all CCR units and are more prescriptive than the requirements in the 2015 CCR Rule. WDNR did not adopt these amendments and did not seek approval of these provisions. Thus, the following Federal provisions will be applicable to CCR units in Wisconsin:

a. “Operator”; this amendment to 40 CFR 257.53 specifies the definition of operator to include certain other person(s) including those responsible for disposal or otherwise actively engaged in the solid waste management of CCR and person(s) responsible for directing or overseeing groundwater monitoring, closure or post-closure activities at a CCR unit.

b. “Owner”; this amendment to 40 CFR 257.53 broadened the definition of owner to include person(s) who own a facility, whether in full or in part.

c. 40 CFR 257.80(b)(6); this amendment specifies that the owner or operator must amend the written fugitive dust control plan no later than 30 days whenever there are certain changes in condition.

d. 40 CFR 257.102(c)(2); this amendment specifies the criteria for complete removal and decontamination activities during the active life and post-closure care period of a CCR unit.

e. 40 CFR 257.102(d)(2); this amendment specifies that the closure

performance standards for drainage and stabilization of a unit when leaving CCR in place apply to all CCR units, including CCR management units (CCRMU) and CCR landfills, where free liquids remain in the unit.

f. 40 CFR 257.102(f)(2)(ii)(C) and (D); these amendments specify that CCR landfills that intersect with groundwater are eligible for the closure time extensions available to CCR surface impoundments, subject to certain requirements.

g. 40 CFR 257.104(a)(2), (c)(1) and (3); these amendments specify that an owner or operator closing a CCR unit pursuant to the closure by removal and decontamination standards during the active life and post-closure care period, 40 CFR 257.102(c)(2), must complete groundwater corrective action.

h. 40 CFR 257.104(g); this amendment specifies that a deed notation, required pursuant to 40 CFR 257.102(i), may be removed after the owner or operator demonstrates that groundwater monitoring concentrations no longer exceed any protection standard (*i.e.*, the unit must be in detection monitoring) and certain notifications of completion of post-closure care are completed.

i. 40 CFR 257.105(a); this amendment specifies that each file in the operating record must indicate the date the file was placed in the record.

j. 40 CFR 257.105(e); (f)(1) through (14); (f)(19); (g); (h)(1) through (4); (h)(10) through (11); (h)(13) through (14); (i)(4) through (20); these amendments extend the retention times for certain documents maintained in the operating record.

k. 40 CFR 257.107(b); this amendment specifies that owners and operators using one website to meet the requirements of multiple environmental rules must delineate the postings for each regulatory program under a separate heading on the combined website.

l. 40 CFR 257.107(e); (f)(1) through (4); (f)(6) through (13); (f)(18); (g); (h)(1) through (3); (h)(8); (h)(10) through (11); (i)(4) through (20); these amendments extend the retention times for certain documents maintained on the facility's CCR website.

5. In the 2024 Legacy Rule, EPA added requirements for legacy CCR surface impoundments. WDNR did not adopt these amendments. Thus, any legacy CCR surface impoundments in Wisconsin will remain subject to the following Federal CCR regulations:

a. 40 CFR 257.50(e); this amended provision specifies that 40 CFR part 257, subpart D applies to electric utilities or independent power producers that ceased producing electricity prior to

October 19, 2015 and have a legacy CCR surface impoundment onsite.

b. “Inactive facility or inactive electric utility or independent power producer”; this added definition to 40 CFR 257.53 specifies the facility where legacy CCR surface impoundments are located.

c. “Legacy CCR surface impoundment”; this added definition to 40 CFR 257.53 specifies a new type of CCR unit that meets certain criteria.

d. 40 CFR 257.100(a)(2); EPA amended 40 CFR 257.100(a) to add paragraph (2), which specifies that legacy CCR surface impoundments are subject to all of the requirements applicable to existing CCR surface impoundments, except for the requirements in 40 CFR 257.60 through 257.64 and 257.71.

e. 40 CFR 257.100(f) through (j); these additional provisions include reporting and technical requirements for legacy CCR surface impoundments.

f. 40 CFR 257.101(e); this added provision specifies the deadlines when owners or operators of legacy CCR surface impoundments must initiate closure.

g. 40 CFR 257.101(g); this added provision specifies requirements for deferral to permitting for closures conducted under substantially equivalent regulatory authority.

h. 40 CFR 257.105(k), 257.106(k), and 257.107(k); these added provisions specify recordkeeping, notification, and CCR website posting requirements for legacy CCR surface impoundments.

6. In the 2024 Legacy Rule, EPA also added requirements for CCR management units. WDNR did not adopt these provisions. Thus, any CCR management units in Wisconsin will remain subject to the following Federal CCR regulations:

a. 40 CFR 257.50(d); this amended provision specifies the scope of CCRMU requirements.

b. “CCR management unit”; this additional definition in 40 CFR 257.53 is for a new type of CCR unit.

c. “Closed prior to October 19, 2015”; this additional definition in 40 CFR 257.53 specifies the applicability of CCR landfills or surface impoundments that completed closure of the unit in accordance with State law prior to October 19, 2015.

d. “Critical infrastructure”; this additional definition in 40 CFR 257.53 specifies infrastructure, large buildings, or other structures vital to the success or continuation of current site operations or activities for the public welfare. Under the Federal CCR regulations, CCRMU located under critical infrastructure have the option to defer certain requirements to permitting.

e. “Inactive CCR landfill”; this additional definition in 40 CFR 257.53 is for a new type of CCR unit related to CCRMU.

f. “Regulated CCR unit”; this additional definition in 40 CFR 257.53 is a conforming change, which means any new CCR landfill, existing CCR landfill, new CCR surface impoundment, existing CCR surface impoundment, inactive CCR surface impoundment, or legacy CCR surface impoundment. This term specifies that CCRMU are not considered regulated CCR units.

g. 40 CFR 257.75; this additional section includes requirements for identifying CCRMU.

h. 40 CFR 257.90(b)(3); this additional provision specifies a deadline for the owners and operators of CCRMU to comply with certain groundwater monitoring requirements.

i. 40 CFR 257.90(e); EPA amended one sentence in this provision to add an annual groundwater monitoring and corrective action report deadline for CCRMU. WDNR has not adopted this amendment, *see ss. NR 507.15(3)(m)*, Wis. Adm. Code. However, WDNR adopted a prior (August 28, 2020), version of 40 CFR 257.90(e). EPA is approving the August 28, 2020, version of the provision, but the added deadline for CCRMU contained in the 2024 Legacy Rule will remain directly applicable to CCRMU in Wisconsin.

j. 40 CFR 257.95(b); this amended provision adds a deadline for CCRMU to sample and analyze the groundwater for all constituents in 40 CFR part 257, appendix IV.

k. 40 CFR 257.101(f); this additional provision specifies the deadlines when CCRMU must initiate closure.

l. 40 CFR 257.101(g) and (h); these include additional requirements for deferral to permitting for closures conducted under substantially equivalent regulatory authority and under critical infrastructure.

m. 40 CFR 257.102(b)(2)(iii) and (v); these amended provisions renumber paragraph (b)(2)(iii) to (iv) and add new paragraphs (b)(2)(iii) and (v). The added provisions are only applicable to CCRMU.

n. 40 CFR 257.102(f)(1)(iii); this additional provision specifies when CCR management units must complete closure activities.

o. 40 CFR 257.102(f)(2)(ii)(E) and (F); these additional provisions specify when CCR management units may extend the complete closure activities.

p. 40 CFR 257.104(d)(2)(iii); these amended provisions renumber paragraph (d)(2)(iii) to (iv) and add a

new paragraph (d)(2)(iii). This added provision is only applicable to CCRMU.

q. 40 CFR 257.105(f)(25) and (26), 40 CFR 257.106(f)(24) and (25), 40 CFR 257.107(f)(24) and (25); these include additional recordkeeping, notification, and CCR website posting provisions for CCRMU.

EPA has preliminarily determined that the Wisconsin CCR regulations contain all of the technical elements of the Federal CCR regulations, including requirements for location restrictions, design and operating criteria, groundwater monitoring and corrective action, closure requirements and post-closure care, recordkeeping, notification, and CCR website posting requirements. The Wisconsin partial CCR permit program also contains State-specific language, references, definitions, and requirements that differ from the Federal CCR regulations, but which EPA has preliminarily determined to be “at least as protective as” the Federal criteria. These State-specific requirements are also discussed further in sections III.1. and V. of the Technical Support Document.

The effect of approving a partial State CCR permit program is that, except for the provisions for which EPA has not granted approval, the Wisconsin partial CCR permit program will operate in lieu of the Federal CCR regulations. For the State provisions that are not approved upon finalization, the corresponding Federal requirements will continue to apply directly to facilities, and therefore facilities must comply with both the Federal requirements and the State requirements. RCRA section 4005(d)(3).

## V. Wisconsin CCR Permits

Pursuant to Wisconsin’s CCR regulations, the owner or operator of existing CCR landfills and impoundments will comply with 40 CFR part 257, subpart D. ch. 289 Wis. Stats. To demonstrate compliance with Wisconsin’s revised regulations for CCR landfills, effective August 1, 2022, the six CCR landfills were required to submit a plan of operation modification for initial permitting by February 1, 2023. Subsequently, WDNR issued permits to the owners and/or operators of all CCR six CCR landfills in the State. All six CCR landfills met this date for the initial plan of operation modification submittal. As of February 2026, three CCR landfills had received approval of their plan of operation modification for initial permitting, two CCR landfill submittals were posted for public comment, and one CCR landfill was gathering additional information for a complete submittal.

*A. Wisconsin's Permits Issued Under the State CCR Regulations Are Not Part of the Permit Program Evidence Under Review*

On February 24, 2026, WDNR submitted its application and requested approval of Wisconsin's partial CCR permit program for CCR landfills. The application states that WDNR does not seek to have its existing permits approved as part of its partial program. On page 115 of the Narrative Description, WDNR states that: "Wisconsin is not seeking approval from EPA at this time of the already issued plans of operation. If Wisconsin receives approval of its CCR permit program, the DNR will review the issued plans of operation within one year of the approval to ensure that all elements of state regulations and EPA's approval are documented in the plans of operation. If any modifications are needed, public notice of the modifications will be conducted prior to final approval."

WDNR has committed to reviewing and modifying these permits to ensure compliance with the Federally approved program after EPA issues its final determination of adequacy. Therefore,

EPA has treated these existing permits as outside the program evidence submitted for EPA review and thus not relevant to the decision on the permit program. See 42 U.S.C. 6945(d)(1)(A), and (d)(1)(B). EPA is basing its proposed decision on information in the program application package, as outlined in EPA's 2017 Guidance Document,<sup>14</sup> submitted by WDNR on February 24, 2026.

*B. Status of Wisconsin's Previously-Issued Permits Issued Under the State CCR Regulations*

Because Wisconsin has chosen to exclude its previously-issued permits from the scope of its CCR permit program application, those permits also would not become effective under RCRA as a consequence of an EPA final approval action. Thus, permits issued prior to EPA's approval of Wisconsin's partial program will not provide facilities with the Federal permit shield in RCRA sections 4005(d)(3) and (d)(6). 42 U.S.C. 6945(d)(3) and (d)(6). Instead, these permits only become a part of Wisconsin's approved program and

obtain the Federal permit shield after a modification is completed "in accordance with" the approved program, including providing a public notice and comment period on the entirety of each CCR permit. 42 U.S.C. 6945(d)(6)(A). Similarly, RCRA section 4005(d)(3)(A) makes clear that, in the absence of a permit under an "approved" State program, facilities must still comply with the Federal CCR regulations. EPA intends to review the State's permits in conjunction with the program review required by RCRA section 4005(d)(1)(D)(i) and 4005(d)(1)(D)(ii). 42 U.S.C. 6945(d)(1)(D)(i), (ii).

**VI. Proposed Action**

EPA has preliminarily determined that the Wisconsin partial CCR permit program for CCR landfills meets the statutory standard for approval. Therefore, in accordance with 42 U.S.C. 6945(d), EPA is proposing to approve the Wisconsin partial CCR permit program.

**Lee Zeldin,**

*Administrator.*

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<sup>14</sup> See Chapter 4—Permit Program Application Checklist.