6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 22, 124, and 257

EPA–HQ–OLEM–2019–0361; FRL–10003-82-OLEM

RIN 2050-AH07

Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Federal CCR Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In December 2016, Congress passed, and the President signed the Water Infrastructure Improvements for the Nation (WIIN) Act, amending section 4005 of the Resource Conservation and Recovery Act (RCRA). The WIIN Act, among other things, requires the Environmental Protection Agency (EPA or the Agency) to implement a federal coal combustion residuals (CCR) permit program in Indian country and, subject to the availability of appropriations specifically provided to carry out a program, to implement a federal CCR permit program in nonparticipating states. The Fiscal Year 2018 and 2019 Omnibus Appropriations Acts provided appropriations to EPA to develop and implement a federal permit program for the regulation of CCR in nonparticipating states. In this action, the Agency is proposing to establish a federal CCR permit program in accordance with the requirements of the WIIN Act.

DATES: *Comments*. Comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. *Public Hearing:* The EPA will hold a virtual public hearing on April 15, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OLEM-2019-0361. The EPA has previously established a docket for the April 17, 2015, CCR final rule under Docket ID No. EPA-HQ-RCRA-2009-0640. All documents in the docket are listed in the https://www.regulations.gov index. Publicly available docket materials are available either electronically at https://www.regulations.gov or in hard copy at the EPA Docket Center. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742. You may send comments, identified by Docket ID No. EPA-HQ-OLEM-2019-0361, by any of the following methods:

- Federal eRulemaking Portal: *https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- Mail: U.S. Environmental Protection Agency, EPA Docket Center, Office of Land and Emergency Management Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- Hand Delivery / Courier: 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 – 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.

A virtual hearing will be held. The hearing will convene on April 15, 2020, at 9:00 a.m. (Eastern time zone) and will conclude at 6:00 p.m. (Eastern time zone). Please note that any details and updates made to any aspect of the hearing will be posted online at EPA's CCR website (https://www.epa.gov/coalash). While the 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. See Section I.B. below for more details regarding the virtual hearing.

FOR FURTHER INFORMATION CONTACT: If you have questions on the proposed requirements of the federal CCR permit program, contact Stacey Yonce, Office of Resource Conservation and Recovery, Environmental Protection Agency, 5304P, Washington DC 20460; telephone number: (703) 308-8476; email address: yonce.stacey@epa.gov. For more information on this rulemaking please visit *https://www.epa.gov/coalash*.

SUPPLEMENTARY INFORMATION:

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I. Public Participation

A. Written Comments

Submit your comments, identified by Docket ID No. EPA-HQ-OLEM-2019-0361**,** 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. The EPA may publish any comment received to its public docket. Do not submit electronically

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. The 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 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 hearing, please **{**use the online registration form available at EPA's CCR website (https://www.epa.gov/coalash) or contact Michelle Long, Office of Resource Conservation and Recovery, Environmental Protection Agency, 5304P, Washington DC 20460; telephone number: (703) 347-8953; email address: long.michelle@epa.gov to register to speak at the hearing. The last day to pre-register to speak at the hearing will be April 15, 2020. On April 14, 2020, the EPA will post a general agenda for the hearing at EPA's CCR website (https://www.epa.gov/coalash).

EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule. Additionally, requests to speak will be taken the day of the hearing at the hearing registration desk. The EPA 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 5 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) or in hard copy form. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) or in hard copy form. If EPA is anticipating a high attendance, the time allotment per testimony may be shortened to no shorter than 3 minutes to accommodate all those wishing to provide testimony and have pre-registered. All comments and materials received at the public hearing will be placed in the docket for this rule, as well as a transcript from this hearing.

The 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 the rulemaking.

Please note that any updates made to any aspect of the hearing is posted online EPA's CCR website (https://www.epa.gov/coalash). While the 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. The 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 by April 1, 2020. If you require special accommodations such as audio description or closed captioning, please pre-register for the hearing and describe your needs by April 8, 2020. We may not be able to arrange accommodations without advanced notice. Commenters should

notify the person listed in the FOR FURTHER INFORMATION CONTACT section and indicate on the registration form of any such needs when they pre-register to speak.

II. General Information

A. Does this action apply to me?

This rule applies to all facilities in Indian country[1] and in nonparticipating states subject to requirements of 40 CFR part 257 subpart D ("subpart D"). This generally includes electric utilities and independent power producers generating coal combustion residuals (CCR) that fall within the North American Industry Classification System (NAICS) code 221112. The term "nonparticipating state" is defined in the Water Infrastructure Improvements for the Nation (WIIN) Act and excludes states that have approved CCR programs where the approval has not been withdrawn, or who have submitted evidence of a state CCR program to EPA and approval is pending. This discussion is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This discussion lists the types of entities that EPA is now aware could potentially be regulated by this action. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria found in § 257.123 of this proposal, as well as § 257.50 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

[1] Indian Country is defined at 18 U.S.C. 1151: (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

B. What action is the agency taking?

EPA is proposing to establish a federal CCR permit program in Indian country and in nonparticipating states. EPA is proposing to establish requirements and procedures to issue federal permits for disposal and other solid waste management of CCR in 40 CFR part 257 subpart E. The proposed permit requirements in subpart E include definitions, compliance deadlines, application requirements, content and duration, and modification requirements and procedures.

EPA is also proposing to rely on the general administrative procedures applicable to several EPA permit programs. These procedures, which are found in 40 CFR parts 22 and 124, apply to all other RCRA permits, as well as to certain EPA permits issued under the Clean Water Act (CWA), the Safe Drinking Water Act (SDWA), and the Clean Air Act (CAA). EPA is proposing to rely on these general procedures without substantive modification and is proposing only to modify provisions in parts 22 and 124 to the extent necessary to ensure they apply to the federal CCR permit program.

All the substantive and technical requirements currently applicable to CCR units would remain in 40 CFR part 257 subpart D. EPA is not proposing to amend or otherwise reopen any of the provisions in 40 CFR part 257 subpart D through this rulemaking. EPA will not respond to any comments that suggest revisions, or that otherwise raise issues with respect to the technical requirements, and such comments will not be considered as part of the administrative record for this rulemaking. However, this is not intended to prevent commenters from identifying any inconsistencies between the existing regulations and the proposals in this notice.

C. What is the agency's authority for taking this action?

These regulations are established under the authority of sections 1008(a), 2002(a), 4004, and 4005(a) and (d) of the Solid Waste Disposal Act of 1970, as amended, RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) and the WIIN Act of 2016, 42 U.S.C. 6907(a), 6912(a), 6944, and 6945(a) and (d).

D. What are the incremental costs and benefits of this action?

This action is expected to result in annualized net costs amounting to between $0.09 million and $0.85 million per year when discounting at 7%. Further information on the economic effects of this action can be found in Unit VI of this preamble.

III. Background

A. CCR regulatory overview

In 2015, EPA published minimum criteria for CCR disposal and management as solid waste under subtitle D of RCRA titled, "Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities," (80 FR 21302, April 17, 2015). The rule established national minimum criteria for existing and new CCR landfills and existing and new CCR surface impoundments ("CCR units") and all lateral expansions of CCR units, as codified subpart D.[2] The criteria consist of location restrictions, design and operating criteria, groundwater monitoring and corrective action requirements, closure and post-closure care requirements, and recordkeeping, notification and internet posting requirements. Subpart D also requires that CCR units failing to meet certain criteria in the rule stop receiving waste and retrofit or close, in some circumstances.

[2] Unless otherwise specified, all references to parts 2, 22, 71, 122, 124, 144, and 257 in this preamble are to Title 40 of the Code of Federal Regulations (CFR).

Subtitle D of RCRA generally establishes a framework for federal, state, and local government cooperation in controlling the management of non-hazardous solid waste. Within this framework, the federal role has typically been to establish the overall regulatory direction, by providing minimum nationwide standards that will protect human health and the environment, and to provide technical assistance to states for planning and developing their own programs. Implementation or enforcement of federal criteria established under RCRA subtitle D, however, remained primarily a state and local function outside of Indian country. In Indian country, tribes can develop a subtitle D program under their own authorities.

The requirements established in subpart D were designed to be self-implementing, because states were not required to develop their own CCR programs and because EPA, at that time, had no role in direct implementation or enforcement authority. In subpart D, EPA developed regulatory requirements, with which facilities could comply without the need to interact with a regulatory authority. The protectiveness of the technical requirements was strengthened through additional requirements, such as certifications of compliance by a qualified professional engineer, state and public notifications, and required posting of relevant compliance information on a publicly accessible website maintained by the facility. Since subpart D was finalized, litigation and subsequent rulemakings have resulted in changes to its requirements. Some of those changes have been finalized[3] and others are still pending.

B. Water Infrastructure Improvements for the Nation Act

In December 2016, the WIIN Act was passed by Congress and signed by the President. The WIIN Act amended RCRA section 4005, creating a new subsection (d). It provided authority for EPA to review and approve programs submitted by states to permit CCR units, which would

[3] Partial vacatur ordered by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) on June 14, 2016, and August 21, 2018, known as the USWAG decision.

then operate in lieu of the federal requirements. 42 U.S.C. 6945(d)(1)(A). The WIIN Act requires EPA to implement a federal permit program in Indian country and nonparticipating states, that will require each CCR unit to achieve compliance with applicable criteria established in subpart D, or in successor regulations promulgated pursuant to sections 1008(a)(3) and 4004(a). 42 U.S.C. 6945(d)(2)(B), (5). In the case of nonparticipating states, this requirement is subject to the availability of appropriations specifically provided to carry out this requirement. 42 U.S.C. 6945(d)(2)(B). In fiscal years 2018 and 2019, Congress provided appropriations to EPA for the purpose of developing and implementing a federal permit program for the regulation of CCR under section 2301 of the WIIN Act. Pub. L. 115–141 and 116-6.

The WIIN Act defines "nonparticipating state" as a state (1) without an approved CCR program, (2) which has not submitted evidence of a CCR program for approval, (3) which has provided notice of intent to relinquish approval of a CCR program, or (4) for which EPA has withdrawn previously granted approval of a CCR program. 42 U.S.C. 6945(d)(2)(A). The WIIN Act does not provide detailed requirements for a federal CCR permitting program and delegated significant discretion to EPA to craft a federal permitting approach appropriate to implement subpart D. The WIIN Act expressly provides that facilities are to continue to comply with applicable provisions of subpart D until a permit (issued either by an approved state or by EPA) is in effect. 42 U.S.C. 6945(d)(3), (6).

The legislation also authorized EPA to use information gathering and enforcement authorities in RCRA Sections 3007 and 3008 to enforce subpart D or permit provisions, in nonparticipating and in states with approved CCR programs, subject to certain conditions. 42 U.S.C. 6945(d)(4).

States may submit a program to EPA for approval and, once the state program is approved, permits or other prior approvals[4] issued pursuant to the approved state permit program operate in lieu of the federal requirements. 42 U.S.C. 6945(d)(1)(A). To be approved, a state program must require each CCR unit to achieve compliance with subpart D (or successor regulations) or alternative State criteria that EPA determines are "at least as protective as" subpart D (or successor regulations). State permitting programs may be approved in whole or in part. 42 U.S.C. 6945(d)(1)(B).

C. Approach to developing this proposal

The WIIN Act requires the Administrator to "implement a permit program," to require compliance with criteria established by regulation under RCRA sections 1008(a)(3) and 4004(a), but otherwise provides few requirements on the content of the permit program and no direction on the specific procedures to be used to implement the program. This is different than, for example, section 3005 of RCRA and sections 402 and 404 of the CWA, each of which provide greater specificity.

The WIIN Act authorized the use of subtitle C enforcement authorities in sections 3007 and 3008 of RCRA to enforce the established criteria as well as federal CCR permits. However, Congress did not expressly reference the permitting provisions in subtitle C, strongly suggesting that Congress did not preclude EPA from considering regulatory approaches of other permit programs as well.

In the absence of more explicit Congressional direction, EPA has chosen to rely on its collective experience implementing the existing regulations under the various permit programs across the Agency to develop this proposal. As discussed below, EPA has incorporated elements

[4] See 42 U.S.C. 6945(d)(1)(A), "Each State may 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…"

from permit programs established under the CWA, RCRA, SDWA, or CAA, where the elements seemed well-suited to implement the requirements in subpart D or to particular circumstances associated with CCR units. Finally, several elements are common across EPA permit programs; EPA considers that these common elements also fall squarely within the parameters of what Congress considered to be "a permit program."

D. Other EPA permit programs

The Agency has experience implementing and overseeing federal environmental permitting programs.[5] EPA has modeled many of these proposals on provisions in environmental permit programs developed under other statutory authorities. In developing this proposal, EPA considered experience gained in the RCRA Subtitle C hazardous waste permitting program, CAA Title V permitting program, SDWA Underground Injection Control (UIC) permitting for Class VI wells, and CWA National Pollutant Discharge Elimination System (NPDES) permitting. EPA identified a variety of approaches, considering best practices and lessons learned, that have been incorporated into this proposed federal CCR permitting program, which is streamlined, efficient, and effective at requiring each CCR unit to achieve compliance with the requirements of subpart D.

1. RCRA Hazardous Waste Permitting

EPA relied on provisions in the hazardous waste permitting program, codified at part 270, in a number of different ways in developing this proposal. First, in select instances in which

[5] The hazardous waste permitting regulations were initially published in 1980 in the Consolidated Permit Regulations, (45 FR 33290, May 19, 1980) along with regulations for SDWA Underground Injection Control, CWA National Pollutant Discharge Elimination System (NPDES), CWA Section 404 Dredge or Fill Programs, and CAA Prevention of Significant Deterioration permits. On April 1, 1983, EPA published the Environmental Permit Regulations: RCRA Hazardous Waste; SDWA Underground Injection Control; CWA National Pollutant Discharge Elimination System; CWA Section 404 Dredge or Fill Programs, and CAA Prevention of Significant Deterioration in the Federal Register (48 FR 14146, April 1, 1983). These regulations deconsolidated the Consolidated Permit Regulations but did not make any substantive changes to any of the affected sections. The relevant sections to this proposed rule are the creation of parts 124 and 270.

the part 270 requirements were equally relevant or applicable to CCR facilities, EPA is proposing to adopt the provision nearly verbatim. This includes the proposed provisions at § 257.122, which were taken directly from § 270.3. These provisions list federal laws, such as the Endangered Species Act, that may apply to any EPA-issued permit under RCRA. Similarly, many of the standard permit terms and conditions proposed in § 257.140 are found in § 270.30.

More commonly, EPA modeled its proposals on aspects or particular wording of part 270 that seemed well-suited to the current circumstance, with modifications to address differences in statutory authority or in the nature of the CCR units or facilities. Modifications were generally considered appropriate where the part 270 regulations reflect statutory provisions applicable exclusively to permitted hazardous waste facilities; the most significant of these for purposes of part 257 are "facility-wide" corrective action under sections 3004(u) and (v), the land disposal restrictions (LDRs) in sections 3004 (d), (m) and 3005 (j), and the 10-year permit term in section 3005(c)(3). Because there are no analogous requirements in RCRA section 4005(d) or in part 257, EPA is not proposing to include any provisions in part 270 designed to implement those requirements. For example, § 257.125 largely mirrors § 270.4, but omits the exceptions in § 270.4 (a)(i) through (iii) that reflect the LDR requirements, the provision in § 3006 (c)(4), and particular "interim status" requirements. Similarly, EPA relied heavily on § 270.1 in drafting the proposals in §§ 257.120 and 257.122 that would establish the basic parameters of the CCR permit program.

Modifications were also considered appropriate to reflect the more homogenous nature of CCR facilities. In comparison to many hazardous waste management facilities, CCR facilities handle fewer types of waste with a limited range of constituents, and typically involve a more limited range of waste management activities. One example of this is the permit modification

proposals. Reflecting the more limited range of activities, EPA is proposing to establish two categories of permit modifications along with two sets of streamlined procedures that permittees are to use to request modifications, rather than the three classes of permit modifications under part 270. In essence, EPA modeled its proposals for major and minor modifications largely on class I and class III procedures under § 270.42. However, many of the elements of § 270.42 were retained: for example, EPA is proposing that CCR permittees would have a duty to report all relevant changes in the physical facility, and all other changes that may result in noncompliance. EPA is also proposing to establish a non-exclusive list of specific modifications as major or minor.

In yet other cases, EPA simply modeled the general approach in this proposed rule after an approach in part 270. For example, EPA is proposing to use a permit by rule approach for new CCR landfills (including lateral expansions of a CCR landfill) in § 257.128; this is modeled after the permit by rule provisions found in § 270.60. Although all of the requirements differ, the permit by rule is employed in both cases as an approach to meet the requirement to have a permit for a regulated unit or facility that does not require any site-specific operational flexibility and can comply with underlying requirements without site-specific tailoring. Similarly, in § 257.124, EPA is proposing tiered deadlines for the submittal of permit applications by classes of facilities, which is one of the general elements in the comparable provisions in § 270.10(e).

All told, EPA relied on part 270 to some extent in developing the following sections in this proposal: §§ 257.120, 257.122-257.125, 257.128, 257.133, 257.140, 257.141, and 257.150-257.153.

2. CAA Title V Permitting

In the development of this rulemaking, EPA also examined the federal CAA Title V (40 CFR part 71) permitting provisions to identify permitting approaches that may be appropriate for federal CCR permits. Although statutory authorities for enforcement are different in RCRA and the CAA, fundamental enforcement activities, such as information gathering and gaining access for facility inspections, are similar in all environmental programs. Some standard permit conditions EPA is proposing in § 257.140 are reflected in standard conditions required in § 71.6.

EPA also considered the permit modification procedures found in Title V. The part 71 regulations establish three categories of permit modifications: administrative permit amendments, minor modifications, and major modifications. Administrative permit amendments in § 71.7(d) are those needed to accommodate changes that would otherwise violate terms and conditions of the permit. These include typographical errors, change in information of any person identified in the permit, an increase in monitoring or reporting frequency, change in ownership, and a few other administrative changes. Minor permit modifications in § 71.7(e)(1) do not violate any applicable requirement; are not significant changes to monitoring, reporting, or recordkeeping requirements in the permit; do not require a case-by-case determination for the permit, and do not establish or change a permit term or condition for which there is no corresponding underlying applicable requirement. To obtain a minor permit modification, the permittee must submit an application for a permit modification, which describes the change and any applicable requirements that may change, as well as submit forms to notify affected states and certification from a responsible official. Minor modifications do not require public participation under the part 71 regulations. In turn, the permitting authority can either issue the permit modification as proposed, deny the permit modification application, determine the

requested modification does not meet minor permit modification criteria and should be reviewed, or revise the draft permit modification.

All changes that are not minor modifications qualify as major modifications under the part 71 regulations. Major modifications include changes to monitoring permit terms or conditions and relaxation of reporting or recordkeeping permit terms and conditions. Major modifications follow procedures such as: applications, public participation, review by affected states, and review by EPA. The Agency relied on some of these requirements and procedures to develop its proposals for modifications to RCRA CCR permits.

3. SDWA UIC Permitting

In the part 144 regulations for SDWA UIC permits, § 144.36, Class VI wells are issued permits for the operating life of the facility and the post-injection site care period. Similar to this provision, EPA is proposing to issue federal RCRA CCR permits without an expiration date and to require the permit be maintained through the active life of the CCR unit, during the post-closure care period, and until any required corrective action is completed. This approach ensures permit coverage for as long as the permittee is subject to the substantive, underlying requirements.

Other provisions in the part 144 regulations are also reflected in this proposal. Causes for modification in the UIC program include alterations, information, and new regulations, which are all proposed as causes to modify a RCRA CCR permit. If cause exists, in the UIC program, the Director must determine if the change meets the minor modification criteria in § 144.41, or if it is outside the scope of those criteria and is considered major. Another example of similarity between the UIC permit program and this proposal is that minor modifications do not require a draft permit or public review, but major modifications must follow procedures in part 124.

4. CWA NPDES Permitting

Additionally, EPA reviewed the part 122 regulations for CWA NPDES permits, particularly for information and processes for issuing general permits. In the NPDES program, individual or general permits may be issued. An individual permit is written to reflect site-specific conditions of a single discharger based on information submitted by that discharger in a permit application and is unique to that discharger. An NPDES general permit is issued to a category of facilities with similar operations, but no one in particular. Multiple dischargers may obtain coverage under that general permit after it is issued, consistent with the permit eligibility and authorization provisions. This is similar to the approach proposed in § 257.127 for the federal CCR program to establish procedures to issue general permits.

The benefits of CCR general permits are expected to be similar to the benefits of NPDES general permits, resulting in clarity and efficiency. CCR general permit applicants would know their permit requirements before applying for coverage under that permit. Furthermore, obtaining coverage under a general permit is expected to be quicker than for an individual permit, with coverage under a general permit occurring within 45 days. General permits would allow the Agency to provide timely permit coverage for a potentially large number of similar CCR units subject to the same requirements of subpart D.

IV. What Is EPA Proposing?

EPA is proposing to create a new subpart E in part 257, which would establish the general requirements and many of the procedures that EPA would use to issue federal CCR permits. As discussed in more detail throughout this preamble, many of the proposals are similar to EPA's existing regulations in part 270, which establish the general requirements applicable to RCRA hazardous waste permits. EPA has also modeled some of its proposals on regulations in

environmental permit programs developed under other statutory authorities, such as the CWA NPDES, SDWA UIC, and CAA Title V programs.

EPA is also proposing to rely on the general, administrative procedures applicable to EPA environmental permit programs found in parts 22 and 124 without substantive modification. These procedures apply to RCRA hazardous waste permits, as well as to EPA permits issued under other statutory authorities. EPA is proposing only to modify those provisions in parts 22 and 124 to the extent necessary to ensure they apply to the federal CCR permit program.

With the exception identified in Unit IV.C.3.b of this preamble, EPA is not proposing to amend or otherwise reopen any of the requirements applicable to CCR units in subpart D. EPA will not respond to any comments that suggest revisions, or that otherwise raise issues with respect to subpart D requirements, and such comments will not be considered as part of the administrative record for this rulemaking. However, this is not intended to prevent commenters from identifying any inconsistencies between the existing regulations and the proposals in this notice.

A. Part 22 amendments

40 CFR part 22 contains the Consolidated Rules of Practice. These are procedural rules for the administrative assessment of civil penalties, issuance of compliance or corrective action orders, and the revocation, termination or suspension of permits, under most environmental statutes. In this action, EPA is proposing to amend only the provision in part 22 related to termination of a permit.

In § 124.5(d)(2), there is a reference to "...Such termination of NPDES and RCRA permits shall be subject to the procedures of part 22 of this chapter." EPA is proposing a

Termination of a Permit provision in part 257 and is proposing to amend § 22.44 to add a reference to § 257.153 into the regulatory text.

B. Proposal to Use the Part 124 Procedures for Decision-making for Individual CCR Permits

Part 124 establishes the procedural requirements for issuing, modifying, revoking and reissuing, denying, and terminating EPA-issued permits under several federal programs, including under RCRA for hazardous waste management facilities. Part 124 also establishes procedures applicable to certain state-administered permit programs. This Unit of the preamble first describes generally how part 124 works and then presents the Agency's proposal to follow the decision-making procedures in part 124, subpart A, when issuing individual federal CCR permits under part 257, subpart E. This overview is presented solely for the reader's convenience. EPA is proposing only to modify provisions in part 124 to the extent necessary to ensure they apply to the federal CCR permit program. EPA is not proposing to amend or otherwise reopen any of the substantive obligations in these regulations. EPA will not respond to any comments that suggest revisions, or that otherwise raise issues with respect to these requirements, and such comments will not be considered as part of the administrative record for this rulemaking

1. Overview of Part 124, Subpart A

Subpart A of part 124 (Subpart A) is codified in §§ 124.1 through 124.21 and contains general procedural requirements applicable to several EPA permit programs, including RCRA permits issued under the hazardous waste program. Subpart A describes the steps EPA will follow in receiving permit applications, preparing draft permits, issuing public notice, inviting public comment, and holding public hearing on draft permits. Subpart A also includes

requirements for assembling an administrative record, responding to comments, issuing a final permit decision, and allowing for administrative appeal of a final permit decision.

Under the procedures of part 124, a facility must apply for a permit based on the requirements of a federal program (e.g., part 270 for RCRA hazardous waste management facilities). EPA[6] reviews the application and notifies the permit applicant when the application is complete as required under § 124.3. EPA then decides whether to issue a notice of intent to deny the application or to prepare a draft permit as specified under § 124.6. Either of these decisions would be supported by a statement of basis required by § 124.7 or a fact sheet required by § 124.8 that becomes part of the official administrative record for the permit as specified under § 124.9.

Decisions to revoke and reissue, to terminate a permit, and some decisions to modify a permit would also follow the above procedures. See generally § 124.5. EPA may commence any of these actions on its own initiative or may act in response to a request submitted by any interested person that meet the requirements of § 124.5(a). Denials of such requests for modification, revocation and reissuance, or termination, unlike denials of applications, are not subject to public comment or public hearings. § 124.5(b). If EPA decides to deny the request, a notice briefly stating the reasons for the denial is sent to the requester. Such a notice is not accompanied by a statement of basis or a fact sheet. In addition, an administrative record is not assembled pursuant to § 124.9. Denials of requests for modification, revocation and reissuance, or termination cannot be formally appealed to the Administrator under the appeal procedures

[6] This background discussion assumes that the facility is obtaining an EPA-issued permit and therefore it uses the term "Regional Administrator." Alternatively, in instances where the state has an approved program, the State Director would have the authority to issue the permit. As discussed elsewhere in this Unit, the agency is proposing to revise the current definition of "Regional Administrator" in subpart A for RCRA CCR permits.

specified in under § 124.19; however, such an action can be informally appealed under the procedures specified in § 124.5(b).

All draft permits prepared under §§ 124.5 and 124.6 are subject to public notice pursuant to § 124.10, public comment under § 124.11, and, in suitable cases, public hearings pursuant to §124.12. These processes allow any interested person to bring forward comments or questions concerning the draft permit or its supporting materials. After the close of the comment period, including any public hearing, EPA issues a final decision on the permit following the procedures under § 124.15. The final permit decision is accompanied by a response to all significant comments in accordance with § 124.17 which, together with additional supporting material, completes the final administrative record. See, § 124.18.

Whenever commenters on a draft permit ask that changes be made, the final permit will not become effective until 30 days after notice is served under § 124.15(a). This 30-day gap between the date of issuance and the effective date of a final permit allows for time to appeal a decision on a permit. If no such comments are received, the final permit is issued and effective the same day.

2. Proposal to Apply Procedural Requirements of Part 124 When Issuing CCR Permits

The Agency is proposing to apply the existing decision-making procedures in part 124 subpart A without modification, when issuing federal CCR permits. These procedures are common to several EPA permit programs, and EPA considers them to be generally applicable. By contrast, EPA is not proposing to adopt any of the requirements in subparts B, C, D, or G of part 124 as part of the federal CCR permitting program because these subparts contain

procedures specific to individual federal programs, i.e., RCRA hazardous waste management facilities, CAA prevention of significant deterioration (PSD) permits, and SDWA UIC permits.[7]

Some requirements in subpart A as currently written would apply to the federal CCR permit program without modification. For example, § 124.3(e) allows for site visits by the Agency when determined necessary during the processing of a permit application; this provision applies to all federal permitting programs covered by subpart A (i.e., this provision is not limited to certain federal permitting programs). In this proposal, EPA intends for provisions that are not currently limited to another federal permitting program to apply to the federal RCRA CCR permitting program. Put another way, unless the provision is explicitly written to limit applicability only to other federal permitting programs or the provision is proposed to be exempt from applying to federal CCR permits, such part 124 requirements would apply to the federal RCRA CCR permitting program. For other requirements in subpart A, EPA is proposing to revise a provision to make clear whether the requirement would apply to the federal CCR permit program.

EPA is proposing: (1) new and revising several existing definitions to cover the CCR permit program; (2) amendments to particular requirements in subpart A to make clear whether the provision would apply to the federal CCR permitting program (e.g., the addition of references or citations to specific provisions in the proposed CCR permit program regulations). Many of the proposed amendments to subpart A would simply make explicit whether a given requirement would be applicable to RCRA CCR permits. These proposed amendments are discussed in this preamble and are presented in the proposed regulatory text. Furthermore, these proposed revisions do not change substantively the decision-making procedures of part 124, nor

[7] Subparts E and F of part 124 are currently reserved and contain no requirements.

are they intended to. In proposing these minor revisions, EPA is not soliciting comments on and will not respond to comments on the existing regulatory provisions which underlie the revisions as they apply to other federal permitting programs.

a. Definitions.

In addition to amending the introductory text of § 124.2(a), EPA is proposing to add three new definitions and revise five current definitions in this section. When used in §§ 124.1 through 124.21 as proposed, these new and revised definitions would allow for the proper interpretation and understanding of how the existing decision-making procedures of subpart A would apply to the federal RCRA CCR permitting program. The Agency is proposing to amend the introductory text of § 124.2(a) by adding a reference to § 257.121 in the first sentence. Section 257.121 is a new section containing proposed definitions under the regulations for the federal RCRA CCR permit program. Adding this new reference to § 257.121 will allow these key definitions to apply within subpart A without the need to recodify them in subpart A.

The Agency is proposing to add several new definitions to § 124.2(a) of subpart A.

RCRA CCR general permit. EPA is proposing this term to mean a RCRA CCR permit containing terms and conditions to ensure compliance with requirements of subpart D applicable to a specified category of CCR units, which are designated as eligible for coverage under the general permit. General permits in the CCR program would be issued in accordance with the proposed provision under § 257.127. This definition is needed to identify those provisions of subpart A applicable to general permits that may apply to CCR general permits.

RCRA CCR permit. This term would mean a permit issued pursuant to section 4005(d) of RCRA (42 U.S.C. 6945(d)). Section 4005(d) is the new section of RCRA established by the WIIN Act of 2016 that provides EPA with the authority to establish a federal CCR permit

program. EPA is proposing to add this term to subpart A to identify those provisions that would only apply within the federal CCR permitting program. Put another way, the use of this term would help distinguish between types of RCRA permits. For example, this term would not apply to permits for RCRA hazardous waste management facilities because section 4005(d) does not apply to these facilities.

RCRA permit. The Agency is proposing that this term means a permit issued pursuant to any section of RCRA. This term would apply to CCR permits as well permits for hazardous waste management facilities. EPA is proposing to add this term (and *RCRA CCR permit*) to facilitate proper interpretation of the subpart A provisions.

In addition, EPA is proposing to revise several existing definitions in § 124.2(a) of subpart A. The Agency is proposing these revisions to incorporate the concept of CCR permits into the existing definitions. EPA is not proposing to revise or reopen the existing definitions as they apply to other federal permitting programs covered by subpart A. Accordingly, the Agency will not respond to any comments on these definitions as they apply to other federal permitting programs.

Director and *Regional Administrator*. EPA is proposing to revise the term *Regional Administrator* to indicate that this term includes the Administrator within the context of the CCR permitting program if the Administrator has not issued a delegation of authority to the Regional Administrator. Because of the proposed change to the definition of *Regional Administrator*, the Agency is proposing to revise the current definition of *Director* by adding the Administrator to the list of persons included in the definition. These proposed changes are necessary to properly interpret the requirements of subpart A that would include the CCR permitting program.

Facility. While this term is already defined in subpart A for other federal permitting programs, the Agency is proposing to revise the definition in subpart A to make clear that, for purposes of only the federal CCR permitting program, the definition of *facility* as codified in § 257.53 applies to CCR permits.

Permit. The Agency is proposing to revise this definition to simply incorporate the concept of RCRA CCR permits into the existing definition. This would be accomplished by adding a reference to part 257 to the first sentence and including citations to § 257.127 for RCRA CCR general permits and § 257.128 for CCR permit by rule to the second sentence. These proposed changes are necessary to properly interpret the requirements of subpart A that would include the CCR permitting program.

RCRA. The Agency is proposing to revise the current definition of *RCRA* in subpart A by adding a reference to Public Law 114-322 to the definition. This public law is the WIIN Act of 2016 that provides EPA with the authority to establish a federal CCR permit program. When used in subpart A as proposed, the term *RCRA* would apply to the CCR permitting program as well as other permitting programs under RCRA (e.g., hazardous waste management facilities). EPA is proposing to revise this term to facilitate proper interpretation of the subpart A provisions that would include a permitting program for CCR units.

b. Other revisions to subpart A.

EPA is proposing several minor revisions to certain provisions of subpart A to harmonize it with the proposed CCR permit program requirements. Many of the proposed revisions to subpart A simply make clear whether a given requirement would be applicable to federal CCR permits issued by EPA. One example of these minor proposed changes includes adding references or regulatory citations to the new proposed federal CCR permitting provisions.

Another example would be those subpart A provisions that are affected by use of the new definitions. Any provision of subpart A that would be amended is presented in the regulatory text accompanying this action. In addition, the Agency has placed a memorandum in the docket that shows each of these amendments in redline and strikeout format.

C. Addition of Part 257 Subpart E

EPA is proposing to create a new subpart E to part 257 to contain federal CCR permit program regulations.

1. General Information.

a. Program overview.

EPA is proposing in § 257.120 to provide a general overview of the federal RCRA CCR permit program. Paragraph (a)(1) specifies that these regulations have been established to implement the mandate pursuant to section 4005(d) of RCRA, and paragraph (a)(2) specifies that subpart E would contain requirements for permit applications, content, modifications, revocation and reissuance, and termination. Consistent with RCRA 4005(d)(2)(B), EPA is proposing at § 257.120(a)(3) that the requirements in subpart D will be the basis of the permit content.

EPA is proposing at § 257.120(b) to require owners and operators of CCR units that are located in nonparticipating states and in Indian country, and that are subject to requirements in subpart D, to obtain a federal CCR permit. EPA intends this to mean that permits are mandatory for all CCR units in these locations. This would also mean that once a permit has been issued or a permit application has been finally adjudicated, a facility could no longer operate the permitted CCR units under the self-implementing program. Further, compliance with the applicable requirements in subpart D alone would no longer mean that a CCR unit (or regulated entity) would be in compliance with the requirements of RCRA subtitle D.

This proposal is based on both legal and practical considerations. First, EPA considers this to flow directly from the requirement in RCRA section 4005(d)(2)(B) for EPA "to implement a permit program *to require each* [CCR] unit…to achieve compliance with applicable criteria established by the Administrator." Second, any other approach would effectively deprive the permit of any real legal or practical effect. An individual CCR permit will be the result of an adjudication that will clarify how the subpart D requirements apply to the specific facility operations and site conditions at issue to ensure that the statutory protectiveness standard in section 4004(a) of RCRA has been met. If the facility could at any time return to alternative compliance approaches it had previously developed under the self-implementing criteria, the permit effectively would become unenforceable. Moreover, if the record created through the permit process showed that particular permit conditions were necessary to meet the statutory standard, EPA would have no basis to allow the facility to operate without those conditions. It is implausible that this is the outcome Congress intended.

EPA is proposing that subpart E would apply jointly and severally to both owners and operators of a CCR unit that dispose of or otherwise engage in solid waste management of CCR. This reflects the joint and several liability established under subpart D for each of these entities. Therefore, this proposed rule would also require owners and operators of CCR units subject to requirements in subpart D, located in nonparticipating states and in Indian country, to obtain a federal CCR permit.

At § 257.120(b)(2), EPA is proposing to codify the statutory requirement that the owner and operator of a CCR unit must continue to comply with all applicable requirements of subpart D until a CCR permit is in effect. Consistent with RCRA section 4005(d)(6), once a permit has become effective for a CCR unit, compliance with the permit terms will constitute compliance

with subpart D for enforcement purposes. This permit shield provision is discussed further in Unit IV.C.1.f of this preamble.

EPA is proposing at § 257.120(b)(3) that, before a permit is issued, submittal of a complete and timely permit application in accordance with the requirements in §§ 257.124, 257.130, and 257.131 serves as compliance with the requirement to obtain a permit, unless and until EPA takes final action on the application (i.e., to issue or deny a permit). This proposal is based on the rationale that once the owner and operator have submitted a timely and complete permit application, the action is out of their hands until the Administrator acts on the application. The owner and operator should not be deemed out of compliance if they have done everything possible to obtain a permit and are awaiting action by EPA. This does not affect the applicant's obligation to continue to comply with all applicable requirements in subpart D.

EPA is proposing at § 257.120(b)(4) that any CCR unit located in a nonparticipating state or in Indian country must have a permit during each stage of operation listed in § 257.123(a). The requirement to obtain and maintain a permit would apply throughout all stages of operation during which solid waste management of CCR occurs at the facility, including the active life of the CCR unit (i.e., during active placement of waste in the unit and until closure activities are completed), the post-closure care period and until completion of all corrective action. This corresponds with the statutory mandate that a permit program require each CCR unit to achieve compliance with the requirements in subpart D. As these requirements apply at all stages of operation, it is likewise necessary to require the CCR unit to have a permit throughout all stages of operation.

After the Administrator has issued a permit, the permittee must continue to have a permit. Any CCR unit without either a permit or a timely, complete permit application in accordance

with proposed §§ 257.124, 257.130 and 257.131 will be considered an "open dump," as defined in 42 U.S.C. 6903(14), irrespective of the unit's compliance with the requirements of subpart D and may no longer receive waste. This flows from the prohibitions on open dumps and "open dumping" in RCRA §§ 4004(a) and 4005(a).

EPA is proposing three permitting approaches at § 257.120(b)(5). These are a general permit (see § 257.127 and Unit IV.C.1.h of this preamble), a permit by rule (see § 257.128 and Unit IV.C.1.i), or an individual permit. In most cases, EPA intends to issue a single individual permit to each regulated facility, which implements all applicable requirements of subpart D for all CCR units at the facility. However, in some cases, a single federal CCR permit for all CCR units at a facility may not be feasible. This could occur, for example, in situations where one CCR unit is eligible for the permit by rule or a general permit, but the other CCR units at the facility require an individual CCR permit. This could also occur in instances where a state program is approved to operate in lieu of the federal program to issue permits for only some of the requirements in subpart D (i.e., a partial state program approval) and other subpart D requirements must be implemented through a federal CCR permit. Thus, a single individual permit would be issued to a facility only when feasible. The default approach for a CCR permit is an individual permit, but if there is a CCR unit that meets the eligibility criteria for a permit by rule or general permit, then those approaches would satisfy the requirement to obtain a permit for those CCR units that meet the respective eligibility criteria.

Additionally, EPA is proposing at § 257.120(b)(6) that the Administrator may issue or deny a permit for one or more CCR units at a facility without simultaneously issuing or denying a permit to all the CCR units at the facility. The status of any CCR unit for which a permit has not been issued or denied would not be affected by the issuance or denial of a permit to any other

CCR unit at the facility, even if multiple units were included in the same permit application. The compliance status of each unit should normally be evaluated individually.

EPA is proposing at § 257.120(b)(7) that CCR permits issued by EPA will not have an expiration date. This provision is discussed in detail in Unit IV.C.1.g of this preamble. Permit terms will remain in effect until modified, revoked and reissued, or terminated. EPA is proposing at § 257.132 that a permittee must review and resubmit each permit application, or each notice of intent to be covered by the permit by rule, no less frequently than every 10 years. This is intended to ensure that EPA will have current information about operations at each permitted facility, which would alternatively be gained through a permit renewal process if permits had an expiration date.

EPA is proposing in § 257.120(b)(8) that a federal CCR permit may be modified, revoked and reissued, or terminated for cause by the Administrator as set forth in §§ 257.150 through 257.153. This provision and the rationale for it are described in Units IV.C.4.a and IV.C.4.d of this preamble.

b. Definitions.

EPA is proposing to establish the following definitions at § 257.121.

i. Applicable requirement

EPA is proposing to create a definition of "applicable requirement" to establish criteria for CCR permit content. For the Administrator to issue federal CCR permits consistent with RCRA section 4005(d), to require each CCR unit to achieve compliance with applicable criteria established in subpart D, the permit must contain those requirements. Therefore, EPA is proposing to define applicable requirement as a requirement in subpart D to which the permittee is subject. A definition of this term provides clarity regarding requirements in this proposal

pertaining to applicability, application requirements, content, modification application requirements, and schedules of compliance, in a manner consistent with the statutory language of RCRA section 4005(d).

ii. Completion of all corrective action

EPA is proposing to define the term "completion of all corrective action" as completion of activities required by § 257.95(g) through (i), § 257.96, § 257.97, and § 257.98(a) and (b) in accordance with the requirements of § 257.98(c) through (f). Because permits must require permittees to achieve compliance with applicable criteria established in subpart D, EPA is proposing that the term "completion of all corrective action" correspond to all required corrective action activities in subpart D. This definition is for use in subpart E only and is not intended to modify any provision in subpart D.

iii. General Permit

For clarity, EPA is proposing to define the term "general permit" in a manner consistent with how the term is used in other federal permitting programs. General permit regulations in other federal permit programs provide for issuance to categories of facilities or processes based on criteria relevant to the specific program (e.g., the definition of general permit in the NPDES program in § 122.2 includes geographic area as a criterion for categorization.) The definition of general permit is necessarily different in this proposal than in other permit programs, in that it contains language unique to the RCRA 4005(d) for a federal CCR permit program and references subpart D. The categorization of CCR units eligible to be covered by a general permit would be based on criteria defined by operating parameters unique to CCR units, such as wet or dry operation (i.e., landfills or surface impoundments) and which determine applicability of requirements of subpart D. General permits would be issued to a category of CCR units, which

would be defined in the general permit itself and would contain all subpart D requirements applicable to that category of units.

iv. Individual Permit

EPA is proposing a definition of the term "individual permit," to distinguish permits issued for CCR units at a single facility from general permits or permit by rule. An individual permit can be tailored to the site-specific conditions at the facility (i.e., by establishing unique terms and conditions to require compliance with the applicable requirements of subpart D, based on site-specific approaches, which may be proposed in the permit application or otherwise developed in the permit writing process).

v. Owner and operator

EPA is proposing to adopt the definition of "owner or operator" that is consistent with part 270. A permitting program, by definition, regulates interaction between applicants and permitting authorities, and legal obligations and procedures governing those interactions. Therefore, EPA is proposing to align this definition more closely with part 270 than with subpart D. Because this proposal utilizes approaches and provisions from existing federal permitting programs, using the definition from the federal RCRA hazardous waste permitting program seems more appropriate.

vi. Permit by rule

EPA is proposing a definition of the term "permit by rule," consistent with how the term is used in other federal permitting programs. The permit by rule is a permitting approach, which is established in § 257.128. Compliance with the permit by rule procedures and requirements satisfies the requirement in § 257.123(a) to have a CCR permit as long as the conditions in § 257.128(a) are met. No subsequent or facility-specific permit is issued.

vii. Responsible official

EPA is proposing to use a definition of "responsible official" that is based on the definition of that term found in § 71.2, which is similar to the definition found in § 270.11, to describe the appropriate signatories to permit applications and reports. This language is standard across environmental programs and defines the level of responsibility, within various organizational structures, from which EPA will accept formal communications and certifications for permitting and compliance purposes. The organizational structures included in the definition are: corporations, partnerships (a partner may be a corporation), sole proprietorship, and municipalities. Because the appropriate level of responsibility at an organization for legal purposes is not dependent upon the details of a particular environmental program, EPA believes there is no basis to define this level of responsibility differently in this proposal.

c. Considerations under Federal law.

When issuing federal permits, EPA may be subject to obligations under other federal laws that may impact the permits. If any of these laws is applicable to issuance of a particular permit, then its procedures must be followed. Furthermore, these laws may require EPA to include certain conditions in the CCR permit or to deny a CCR permit. The five federal laws relevant to the issuance of CCR permits are proposed at § 257.122: *The Wild Scenic Rivers Act, the National Historic Preservation Act of 1966, the Endangered Species Act, the Coastal Zone Management Act and the Fish and Wildlife Coordination Act.* These same federal laws are also included in part 270 and part 144 permitting regulations. These laws are included in this proposed regulation because they impose obligations on EPA's permit issuance process; other federal laws may impose requirements on a permitted facility that are not listed here. The public, the Corps of Engineers, the Fish and Wildlife Service, the National Marine Fisheries Service,

and other interested Federal agencies, all have the opportunity to comment on any draft CCR permit. EPA seeks comment on whether the list of Federal laws is appropriate or whether any should be added or removed.

d. Applicability

RCRA section 4005(d) provides that the Administrator is to administer a permit program to require each CCR unit located in nonparticipating states or in Indian country to achieve compliance with applicable requirements established by the Administrator under part 257 (subpart D). See 42 U.S.C. 6945(d)(2)(B) and (d)(5). Therefore, EPA is proposing that the applicability criteria of the CCR permit program would mirror the applicability criteria found in § 257.50. Owners and operators not subject to the requirements of subpart D would not be subject to requirements of this proposal.

EPA is proposing at § 257.123(a)(1) to require all owners and operators of CCR units (i.e., CCR landfills and CCR surface impoundments, including any lateral expansions of such units) who are subject to the requirements of subpart D to submit a CCR permit application. This requirement would apply whenever the CCR unit is subject to requirements of subpart D, including throughout the active life, post-closure care period, and until completion of all corrective action. Depending on the stage of operation of the CCR unit, only a portion of these requirements may remain applicable, for example if the CCR unit is undergoing closure or is in post-closure care. Any CCR unit subject to any requirements in subpart D would require a permit for any of these stages of operation. These requirements would apply to CCR units and associated solid waste management activities located offsite of an electric utility or independent power producer, as long as the CCR unit is subject to requirements of subpart D. To comply with the requirement to obtain a CCR permit, the owner and operator of a CCR unit must jointly

(when they are separate entities) submit a complete and timely permit application in accordance with §§ 257.124, 257.130, 257.131 and any subsequent *Federal Register* notice or other notification establishing a deadline for a CCR permit application.

EPA is proposing at § 257.123(a)(2) that the owner and operator of a CCR unit and associated solid waste management activities need not apply for a federal CCR permit if it is subject to requirements of a Participating State CCR Permit Program, or a State CCR Program that has been submitted to EPA and approval is pending, as EPA only has the authority to issue permits in nonparticipating states and Indian country. RCRA section 4005(d) provides that states may submit a CCR permit program, or other system of prior approval, to the Administrator for approval to operate in lieu of the federal program. See Unit III.B of this preamble. In addition to state CCR permit program approval in whole, state CCR permit programs may be approved by the Administrator in part. A partial program approval would result in a state CCR permit program that operates in lieu of the federal program for only a subset of subpart D requirements. For example, if a state submits for approval a CCR permit program that only regulates certain types of CCR units (e.g., landfills) or does not require compliance with all elements of the CCR regulations (i.e., does not contain requirements for structural stability), EPA could grant a "partial approval" that would approve the state's permit program to operate in lieu of only certain provisions in the federal CCR program. For any subpart D requirements not covered by the approved state program, the state is considered a nonparticipating state and the owner and operator of such CCR units would be required to apply for and obtain a federal CCR permit.

EPA is proposing at § 257.123(a)(3) that the owner and operator could meet this obligation by submitting an application (or in one case, a notification) for any of the following three kinds of CCR permits. The first is an individual permit. An individual permit would be

issued to one or more CCR units at the same facility and would contain terms and conditions tailored to the site-specific circumstances at the facility, such as controls and procedures to achieve compliance with applicable requirements of subpart D. In the second approach, the owner and operator may apply for coverage under a general permit. EPA is proposing at § 257.127 to establish provisions under which EPA may issue one or more general permits. The Administrator could issue a general permit for a category of similar CCR units, which would contain all requirements of subpart D applicable to that category of CCR units and associated solid waste management operations. See Unit IV.C.1.h of this preamble for more discussion on general permits. The third is compliance with the terms of the permit by rule proposed in § 257.128. See Unit IV.C.1.i for more discussion on the permit by rule. This approach would only be available to new landfills or lateral expansions that meet the eligibility criteria and other requirements proposed in § 257.128. If the owner and operator do not meet the criteria for, or choose not to pursue, a general permit or permit by rule for a CCR unit, they must apply for an individual permit. EPA expects most CCR units subject to this program would be issued an individual CCR permit.

The permit by rule and general permit approaches are proposed to streamline the CCR permit program. EPA believes they would result in more timely permitting actions that meet the statutory mandate to issue permits requiring each CCR unit to comply with applicable requirements in subpart D. The permit by rule or general permit approaches are protective alternatives that will allow the Administrator to focus on issuance of permits to those units whose greater risks, or more complicated operations or site conditions, warrant the level of oversight associated with an individual permit. These streamlined approaches would be available only to certain CCR units with less complex operations or site conditions and more

straightforward requirements in subpart D. Both the permit by rule and the general permits would contain eligibility criteria to ensure that coverage is available only to CCR units appropriately regulated through these alternatives. Consistent with this proposal, states would be able, but not required, to incorporate general permits and permits by rule into their programs submitted for approval to the Administrator. This could be considered as an option for permitting CCR units when developing state programs.

A facility could utilize more than one permitting mechanism. For example, at a facility with multiple CCR units, each unit could operate under a different type of permit. Thus, one unit that is a new landfill and its associated solid waste management activities could operate under a permit by rule, while another CCR unit and its associated solid waste management activities may meet the eligibility criteria for a general permit established in accordance with § 257.127, and an individual permit could be issued for the remaining CCR units and their associated solid waste management activities at the facility.

As discussed in Unit IV.C.2.d of this preamble, if EPA receives a permit application that does not meet the requirements in §§ 257.130 through 257.131, the procedures in § 124.3 would apply without modification. However, EPA is proposing at § 257.123(b) that this would not affect the requirement for the owner and operator of a CCR unit to obtain a permit. If the Administrator determines an application is incomplete, the owner and operator must re-apply for a CCR permit. If the owner and operator fail to re-apply for a CCR permit, the CCR unit will be considered an open dump, subject to an enforcement action, and must cease placing waste in the unit. In such cases, the owner and operator would nevertheless be required to continue to conduct other required activities under subpart D, including, but not limited to fugitive dust control, groundwater monitoring, retrofit, closure, post-closure care, or corrective action. Any owner and

operator that does not continue to conduct these activities under subpart D would also be subject to enforcement action for open dumping under RCRA § 4005 (a).

EPA expects that the deadline to re-apply for a permit will be established in the notification of the final adjudication of the original permit application (denial for incompleteness) and would be based on the scope of the missing information. Alternatively, EPA is considering establishing a single deadline in the regulation for an applicant to re-apply after a permit is denied based on an incomplete application. EPA is taking comment on these approaches and alternative approaches and timeframes for an applicant to remedy a permit denial based on an incomplete application.

EPA is not proposing to require entities who are exclusively engaged in the beneficial use of CCR, consistent with the requirements in § 257.53 to obtain a federal CCR permit. This exemption is proposed at § 257.123(c)(1). The beneficial use of CCR is not regulated under subpart D; therefore, EPA would have no basis to require entities who only engage in beneficial use to apply for and obtain a permit. If owners and operators of a CCR unit are subject to other requirements under subpart D and also engage in beneficial use of CCR, they would be required to apply for a CCR permit for only the regulated activities.

In addition to the exemptions from subpart D, EPA is proposing to adopt at § 257.123(c)(2) a provision similar to § 270.1(c)(3) that owners and operators are not required to obtain or modify CCR permits in order to conduct an immediate response. An immediate response is a response action taken when there is a release, or an imminent and substantial threat of a release, of CCR that poses a reasonable probability of adverse effects on health or the environment. EPA is proposing this exemption to avoid delays, due to permit applications or

processing, in response activities necessary to address a health or public safety concern that is urgent or potentially urgent.

EPA is not proposing a definition of immediate response to give the Administrator and the facility flexibility to assess individual situations on a case-by-case basis and to coordinate with state, and local emergency responders. However, EPA envisions that immediate responses are those that are conducted as quickly as feasible. In evaluating whether an individual situation constitutes an immediate response, the Administrator and the facility should consider any indications of urgency with which the response is conducted to assess eligibility for this exemption. These indications could include, for example, conducting the response activities on a continuous basis (i.e., 24-hour days, 7 days per week), short-term rental of equipment to increase the pace of the response, procurement of response contractors, or other levels of effort above and beyond staffing and resources used during normal operations. Once the immediate response is over, the owner and operator would be required to obtain or modify a permit as needed to conduct any long-term response actions or address any changes to the unit or operations resulting from the release or response.

e. Deadlines for application submissions.

As previously stated, all owners and operators of a CCR unit in nonparticipating states and in Indian country must apply for and obtain a federal CCR permit in accordance with § 257.123(a). In determining when the owner and operator of a CCR unit should be required to submit a permit application to the Administrator, EPA considered many factors. To determine how to prioritize applications in a timely and orderly fashion, EPA analyzed the number of CCR units located in nonparticipating states and in Indian country based on information posted on each facility's publicly accessible CCR Web site in accordance with § 257.107, so that CCR

permits for all regulated units may be issued as expeditiously as possible. EPA also looked at application deadlines established in other permitting programs, described in Unit III.C of this preamble, and how those programs prioritized application submittal.

To prioritize the processing of individual permit applications for existing CCR units, EPA is proposing at § 257.124(a)(1) and (2) to establish tiers of deadlines when permit applications must be sent to the Administrator. Tiering application deadlines for owners and operators of CCR units will help EPA review each permit application thoroughly and act on each permit application in a timely manner. Tiering applications may avoid a situation where EPA would receive a large number of applications at the same time. This could result in poor quality permits or in permit appeals that could have been avoided if EPA had sufficient time to review each application and draft permit content, or it could result in the need for facilities to update pending permit applications if information in them becomes out of date by the time EPA acts on them. In addition, tiering applications will allow EPA to address the highest priority CCR units first.

If a CCR facility has multiple CCR units and one or more of the CCR units at the facility triggers an application deadline, the permit application must include all CCR units at the facility that are not covered by a permit by rule or general permit. The compliance deadlines proposed at § 257.124(a) would require permit applications for either a general permit issued in accordance with § 257.127, the permit by rule proposed at § 257.128, or an individual permit. The compliance deadlines in the proposed rule would not prevent owners and operators from submitting applications early.

EPA is proposing at § 257.124(a)(1) that the first tier of permit applications would be due 18 months after the effective date of the final rule for several reasons. This timeframe would

allow owners and operators sufficient time to prepare applications and document compliance strategies they wish to propose in their permit applications, with supporting documentation to justify these approaches. Eighteen months will also allow EPA sufficient time to develop any necessary implementation materials, such as permit applications and instructions or technical guidance documents, as well as an electronic system for federal CCR permitting. Finally, this time will also provide states with an opportunity to develop and submit for approval CCR State Permit Programs in light of the requirements that will be established in this federal permitting program. EPA considers this approach to be protective and otherwise consistent with RCRA 4005(d). Facilities must continue to comply with the rule during this time, and the statute contemplates that facilities will continue to operate during this period. Section 4005(d)(3) expressly provides that facilities must continue to comply with the federal rule until a state or federal permit is effective; this would be unnecessary if they had to stop operating.

To determine which CCR units should comprise the first tier of applications, EPA decided to prioritize the issuance of permits to CCR units that present higher acute risks. Accordingly, EPA looked to the hazard potential classification system for CCR surface impoundments. The hazard potential ratings refer to the potential for loss of life or damage if there is a dam or embankment failure. The ratings do not refer to the current structural stability of the dam or embankment. Subpart D requires owners and operators of CCR impoundments to conduct periodic hazard potential classification assessments and rate the units as either a high hazard potential CCR surface impoundment, a significant hazard potential CCR surface impoundment, or a low hazard potential CCR surface impoundment. See §§ 257.73(a)(2) and 257.74(a)(2). The high hazard potential CCR surface impoundments are among the highest priority for EPA because the high hazard classification means a diked surface impoundment

where failure or mis-operation of these surface impoundments will probably cause loss of human life. Each hazard potential classification assessment is required to be certified by a qualified professional engineer and contain documentation to provide the basis for the current hazard potential rating. The initial hazard potential assessment was required by October 19, 2016, for existing units and prior to the initial receipt of CCR in the unit for new units or lateral expansions. Several of these units are in states that EPA has been working with to develop a CCR State Permit Program, so EPA assumes that these units would be in Participating states and would consequently not be subject to federal CCR permitting requirements, by the time a final rule is effective. Therefore, the first proposed tier would include any CCR facility with at least one existing CCR surface impoundment, new CCR surface impoundment, or inactive CCR surface impoundment that is classified as high hazard potential under § 257.73(a)(2) or § 257.74(a)(2) and located in a nonparticipating state or in Indian country. Furthermore, all CCR units at such a facility would be required to be included in this initial permit application at this time, or to apply for a general permit or permit by rule. EPA considers this subset of CCR units to be the highest priority to submit a permit application and should therefore constitute the first tier.

EPA is also proposing to require owners and operators of CCR units in Indian country to submit applications in the first tier. RCRA provides no option other than a federal CCR permit for these CCR units, regardless of state program approval status or appropriations. EPA has no reason to delay submittal of applications for these CCR units. EPA is aware of three facilities in Indian country with CCR units that would be subject to this rule; this relatively small number of permits also would not delay issuance of other CCR permits to units with potentially higher risks.

EPA is not proposing to define subsequent tiers of applications at this time. EPA is proposing at § 257.124(a)(2) that the Administrator will notify owners and operators of CCR facilities by a notice in the *Federal Register* at least 180 days before the application submission is required. This timeframe is similar to the requirement established in the RCRA hazardous waste permitting program at § 270.1(b) for part B applications. The proposed CCR permit application requirements, described in Unit IV.C.2 of this preamble, will not include a part A and part B, as was done in part 270, because submission of a separate part A would serve no useful purpose. As noted, Congress has already effectively granted currently operating units the equivalent of interim status in RCRA 4005 (d)(3) by requiring compliance with subpart D until a permit is in effect. The CCR units that would be covered by subsequent tiers must comply with subpart D until they are covered by an effective federal or Participating State CCR permit.

EPA believes that 180 days is sufficient time for the owner and operator to prepare the permit application. As described in Unit IV.C.2, the information required in the permit application will be information about the facility, information about the applicant, technical information about the CCR units at the facility, site conditions, plans, maps, drawings, and other documents. Since the CCR units are already subject to subpart D, most of the information required in the application has already been developed by the owner and operator in accordance with subpart D, and in many cases is posted on the facility's publicly accessible Web site.

EPA is considering several approaches to prioritizing the permit applications in subsequent tiers. Examples are provided here in no particular order:

- CCR units located in states that affirmatively declare to EPA that they do not intend to pursue program approval;
- CCR units located at specific facilities;

- CCR surface impoundments with significant hazard potential for structural stability;
- CCR surface impoundments that are in assessment of corrective measures or corrective action after an exceedance of a groundwater protection standard or after experiencing a release;
- CCR units that are undergoing closure;
- CCR units that are undergoing closure with CCR remaining in the unit;
- CCR units that are in the post-closure care period;
- CCR landfills;
- CCR landfills that are in assessment of corrective measures or corrective action after an exceedance of a groundwater protection standard or after experiencing a release;
- New CCR landfills or lateral expansions that are not covered by a permit by rule under § 257.128;
- CCR units that have not met the location restriction requirement for placement above the uppermost aquifer demonstration under § 257.60; or
- CCR units that have not met the location restriction requirement for wetlands (§ 257.61), fault areas (§ 257.62), seismic impact zones (§ 257.63), or unstable areas (§ 257.64).

EPA requests comment on approaches to prioritizing applications, including how many tiers of permit application deadlines there should be for this permitting program. In the development of this proposed rule, EPA has considered having two, three, or more tiers of permit

application deadlines to space out the applications so that EPA may act on them in a timely manner. The number of tiers will depend on whether owners and operators choose to submit permit applications early, the number of CCR facilities that meet the different criteria, and the time needed for EPA review of permit applications and drafting of permits in this new program. EPA also solicits comment on the method of deciding which units must apply, and the timeframe, as there are many ways that CCR units can be prioritized based on the criteria listed above or using other methods.

EPA is proposing at § 257.124(a)(3) to establish deadlines for the submittal of a permit application for any CCR unit that becomes subject to the requirements of subpart D on or after the promulgation of the federal CCR permit program final rule. For CCR units that become subject to subpart D, and therefore this rule, after this rule is finalized, the deadlines to submit a permit application are phased in. For CCR units that become subject to federal permitting requirements after promulgation of the final permitting rule, but prior to 24 months after the effective date of the rule, permit applications would be due 24 months after the effective date of the final rule. This is six months after the first tier of applications under the prioritization approach discussed above, and this deadline reflects the fact that the first tier of applications would be the highest priority for EPA to act on. For CCR units that become subject to federal permitting requirements after that date, the owner and operator would submit a permit application for such a CCR unit no less than 180 days prior to becoming subject to the requirements of subpart D.

CCR units that become subject to federal permitting requirements after this rule is finalized would include units that are constructed before promulgation of the final federal CCR permit program rule but that initially receive waste after that date. It would also include new

CCR units that begin construction after the final federal CCR permit program promulgation date. EPA believes that 180 days is a sufficient, but not excessive, amount of time before receipt of waste is expected to begin for an owner and operator to submit a permit application. If the new CCR unit is a CCR surface impoundment, or if for any reason the owner and operator choose not to apply for a permit by rule for a new CCR landfill or lateral expansion in accordance with § 257.128, they will need to apply for an individual permit following the requirements of §§ 257.130 and 257.131. If the owner and operator submitted a permit application to the Administrator at least 180 days before becoming subject to the requirements of subpart D, this would fulfill the requirement to obtain a permit, and after 180 days they may begin to operate the unit in compliance with applicable requirements of subpart D, even if a permit has not been issued by the Administrator. EPA considers this approach to be protective as facilities must comply with the rule until a permit is in effect, which will be sufficient in the interim. Consistent with EPA's interest in prioritizing the issuance of permits based on risk, EPA intends to initially focus on issuing permits for existing units, which generally pose higher risks than newly-constructed units.

CCR units that become subject to federal permitting after this rule is finalized would also include CCR units (located in nonparticipating states or in Indian country) that ceased receipt of CCR before the effective date of subpart D, October 19, 2015, but begin receiving waste in the CCR unit again. For example, consider a CCR landfill ("Landfill A") that contained CCR before 2015 and then ceased receipt of waste. If Landfill A becomes subject to the requirements of subpart D because it begins receipt of CCR again, the proposed provisions in § 257.124(a)(3) would require the owner and operator of Landfill A to apply for a CCR permit no less than 180 days before becoming subject to the requirements of subpart D. This requirement would ensure

that all CCR units meeting the applicability criteria proposed at § 257.123(a) would be required to obtain a federal CCR permit.

EPA is also proposing at § 257.124(a)(4) that requests for coverage under a general permit or Notification of Intent (NOI) to be covered by the permit by rule are due at the same time applications for individual permits. If the new CCR unit is a CCR landfill and it meets the criteria for a permit by rule under § 257.128, the obligation to apply for a CCR permit may be met by submitting an NOI to be covered by the permit by rule. Submittal of the NOI would be required on or before the deadline for other CCR units at a facility to apply for an individual permit or submit a request for coverage under a general permit, as specified in § 257.124(a)(1) through (3). This proposal would give the owner and operator of a new landfill sufficient time to obtain coverage under a permit by rule by the date a permit application for other CCR units at the facility would be required, or to obtain coverage under a general permit.

In the course of developing this proposed rulemaking, EPA also considered requiring all permit applications to be submitted with the same deadline. EPA decided not to propose that all applications be submitted at the same time due to concerns about the potential for a backlog of permit applications, as discussed previously in this Unit. If, after receiving comments, the Agency decides that all applications should be required by the same date (e.g., 24 months after the promulgation of the final CCR permitting regulation), EPA would prioritize issuance of the permits using one or a combination of the approaches discussed above.

f. Effect of a permit

EPA is proposing at § 257.125(a) that compliance with the terms and conditions of an issued and effective CCR permit would constitute compliance with the requirements of subpart D for the CCR units and operations covered by the permit. This provision, known as a "permit

shield," would implement sections 4005(d)(3) and 4005(d)(6) of RCRA. Section 4005(d)(3) provides that the applicable criteria in subpart D apply to each CCR unit unless a permit issued under an approved state program or a federal CCR permit is in effect for the unit. Section 4005(d)(6) provides that a CCR unit shall be considered a sanitary landfill for purposes of RCRA only if it is operating in accordance with the requirements of a CCR permit, issued by a state with an approved program or by EPA, or in accordance with the applicable criteria in subpart D.

The wording of proposed § 257.125(a) is generally similar to permit shield provisions in other federal permit programs, such as §§ 270.4(a)(1) and 71.6(f). Consistent with those provisions, the proposed permit shield provision expressly provides that compliance wth a permit shields the permittee from any claim in an enforcement proceeding (including a citizen suit proceeding brought pursuant to RCRA section 7002) that the permittee was or is not in compliance with any subpart D requirement not specified in the permit.

The proposed permit shield provision does not prevent EPA from modifying the permit to make changes or incorporate additional requirements on its own initiative. EPA is also proposing in § 257.150(a)(5) that it may initiate a modification to correct any error in a permit. EPA is proposing to include an express statement to this effect in § 257.125(a) to avoid any confusion about the relationship between these two regulatory provisions and about the effect of the provisions in RCRA sections 4005(d)(5) and (6).

Establishing these regulatory provisions to implement the statutory permit shield provision would generally provide certainty regarding a permittee's legal obligations under subpart D and reaffirms that the permit will provide a clear determination of the actions that the permittee must take to be in compliance with those requirements. A permit shield would not apply prior to the effective date of a permit or any permit modification, even for those

modifications that do not require prior approval. Under the express wording of RCRA 4005(d)(6) a permit shield is only available through compliance with requirements in an effective permit.

In § 257.125(b) and (c), language is proposed to clarify that issuance of a CCR permit does not convey any property rights of any sort, nor any exclusive privilege, and that a CCR permit does not authorize injury, invasion of private rights, or violations of local or state law. EPA is also proposing to specify that a CCR permit does not authorize violations of federal laws not explicitly considered and addressed in the permitting action. These provisions are consistent with other EPA permit programs under RCRA, the CWA, and the CAA, which provide neither property rights, nor any other special privilege under State or Federal law. Further, there is no indication on the face of RCRA 4005(d) that Congress intended to grant CCR permittees any greater rights or privileges than were provided to permittees under these other federal permit programs. The language that EPA has proposed here is generally consistent with the comparable regulatory provisions in other federal permitting programs (see §§ 270.4(b), 270.4(c), 71.6(a)(6)(iv)).

g. Duration of a Permit.

EPA considered durations of permits in other federal permitting programs when evaluating whether to establish a specific term or limited duration for federal CCR permits (e.g., to require that all permits expire after a specific time). For example, CAA Title V permits expire five years after the date of issuance, in accordance with § 71.6(a)(11). Under RCRA § 3005(c)(3) hazardous waste permits are effective for a fixed term not to exceed ten years. By contrast, permits issued in the UIC program for Class VI carbon dioxide geologic sequestration wells do not expire and are issued for the operating life of the facility and the post-injection site care period. See § 144.36(a). Federal permitting programs have various and unique statutory

mandates, which may determine the effective permit term in any given program. Congress did not direct EPA to issue CCR permits for a particular term.

EPA is proposing at § 257.126 that RCRA CCR permits would be issued without expiration and would remain in effect throughout the active life of the CCR unit, the post-closure care period, until completion of all corrective action, and until the permit is terminated. A permittee could request termination of the permit in accordance with the requirements proposed in § 257.153 when all applicable requirements of subpart D have been satisfied. EPA is proposing to adopt this approach because it best ensures sustained regulatory oversight of the facility throughout the full cycle of solid waste management activities regulated under subpart D, as well as until completion of all corrective action and post-closure care. EPA is proposing other mechanisms to ensure the permit is periodically updated as necessary to accurately reflect current operations and regulatory requirements.

To require a CCR unit to achieve compliance with subpart D, a CCR permit must be effective and enforceable. Permitting programs that issue permits with expiration dates often face challenges issuing timely permit renewals. While there are mechanisms to allow for enforcement of an expired permit, such as administrative continuance, these mechanisms can frequently result in a very similar outcome to the proposed approach of issuing CCR permits with no expiration date. The benefit of the proposed approach is that permitting actions will occur only when needed, to address changes at a facility or in applicable requirements,

Based on EPA's experience issuing permits under part 270, permit expiration can also result in situations in which the permit has expired before the cleanup or other post-closure activities have been completed. In practice, it can be difficult to ensure permittees submit timely and complete applications before the expiration date, once active waste management has ceased

and only corrective action or post-closure activities remain. Although EPA has authority to issue an order to compel compliance, these situations highlight potential challenges of expired permits.

In general, permit expiration serves several important functions. It provides a mechanism for regular review of the existing permit and its terms and conditions, and for incorporation of any new information and, if necessary, new conditions into the permit through a public process. It also helps to ensure sufficient opportunities for public participation during the life of the CCR unit. The Agency believes the proposal to issue federal CCR permits without an expiration will also provide these same functions, albeit through other mechanisms, as discussed below.

If a permit is issued with an expiration date, renewal must occur at that time, even if no changes have occurred at a facility or if a permit had been recently modified and was up-to-date. EPA could not identify one timeframe for the expiration of all CCR permits that would anticipate a single time for a permitting action that would capture all changes in operations or underlying requirements at a particular CCR unit or facility. Re-issuance of a CCR permit at a specified frequency in addition to the proposed modification requirements would not reasonably be expected to improve the permit or provide valuable opportunity for oversight or public participation. Renewing CCR permits without changes could divert facility resources or Agency resources away from higher priority permitting actions, such as applying for and issuing major modifications or ensuring that minor modification procedures are being implemented properly.

EPA believes that the goal of ensuring that permits continue to require compliance with all applicable requirements of subpart D and accurately reflect current operations is best accomplished through appropriate modification requirements and periodic permit application reviews. The proposed modification requirements in §§ 257.150 through 257.152 are intended to address all situations where changes to a permit are needed. Additionally, if a permit remains

unmodified for ten years, the Agency is proposing to require permittees to review and resubmit CCR permit applications by that date to ensure that the Administrator has current information about the CCR units. See proposed § 257.132 and Unit IV.C.2.c of this preamble. These requirements provide mechanisms for timely incorporation of any new information or requirements into the permit, or corrections to errors or omissions that might render the permit at odds with regulatory or statutory requirements. Combined with the ability of citizens to petition EPA to modify a permit (see Unit IV.C.4.a of this preamble and the existing procedures in § 124.6), these mechanisms provide sufficient opportunities for public participation throughout the life of the CCR unit.

In sum, the Agency believes the proposed approach to issue federal CCR permits without expiration will result in permits that are effective and enforceable and provide appropriate mechanisms to require permits be kept up-to-date, while ensuring adequate transparency and public engagement.

h. General Permit provisions.

EPA is proposing at § 257.127 to establish procedures for issuance of one or more general permits, as an alternative to individual permits. The EPA is proposing that the Administrator could issue a general CCR permit to an identified category of CCR units involving the same, or substantially similar, operations, which are all subject to the same applicable requirements of subpart D and would require the same permit terms and conditions to achieve compliance with subpart D. See proposed § 257.127(a). A general permit would be issued when, in the opinion of the Administrator, it would be more appropriate to regulate those units under a general CCR permit than under individual CCR permits. A general CCR permit would be proposed in the *Federal Register* and finalized in accordance with the applicable requirements of

part 124. Once a general permit is final, it would be available for eligible CCR units to seek coverage to satisfy the requirement to obtain a federal CCR permit.

Each general permit would be written for a defined category of CCR units (e.g., a surface impoundment closing with waste in place, undergoing corrective action implementing a pump and treat system.) EPA is proposing at § 257.127(b) that each general permit would identify criteria indicating which CCR units are eligible for coverage. The general permit would contain all requirements necessary to achieve compliance with the requirements of subpart D applicable to those CCR units, and it would contain eligibility criteria limiting its availability only to those CCR units, as well as procedures to obtain coverage under the general CCR permit.

Requirements in a general permit would also include liner design criteria, unit design criteria, structural stability requirements, location restrictions, inspections, groundwater monitoring, and posting information to a publicly accessible CCR Web site. A general permit could contain limitations not specifically found in subpart D, but which would be necessary for the general permit to require compliance with subpart D for each CCR unit covered by it. These terms and conditions could include operating limitations necessary to ensure the completeness and appropriateness of the terms and conditions in the general CCR permit. For example, if a general permit was issued for a category of CCR units that includes existing surface impoundments but excludes CCR units subject to the requirements § 257.73(c) through (e), the general CCR permit would not contain terms and conditions requiring compliance with § 257.73(c) through (e) (i.e., a compiled history of construction, periodic structural stability assessments, or periodic safety factor assessments). Such a general permit would instead contain limitations, derived from the applicability criteria in § 257.73(b), on the height (20 feet) or storage area and height (20 acre-feet and 5 feet) of CCR units covered by it. By including

eligibility criteria in the general permit, which would limit its availability to CCR units operating at a height no greater than 20 feet, or a storage area no greater than 20 acre-feet and a height no greater than 5 feet, the general permit in this example would satisfy the statutory mandate to require compliance with subpart D, even though it would not include terms incorporating requirements in § 257.73(c) through (e).

In addition to requirements in subpart D and operational limitations inherent to ensuring appropriateness of the terms and conditions, general permits would also include requirements regarding: criteria for eligibility to be covered by the general permit, procedures to apply for coverage under the general permit, monitoring, reporting and notifications, and posting information to a publicly accessible CCR Web site. EPA intends that a general permit will proscribe clearly what types of CCR units are eligible for coverage and will require compliance with those criteria. A general permit would contain clear procedures, with deadlines, for an owner and operator of a CCR unit to follow if, after obtaining coverage under the general permit, the CCR unit becomes ineligible for the general permit and must satisfy the requirement to have a CCR permit through another mechanism.

EPA is proposing that coverage under a general permit would be optional. Even if a CCR unit is eligible for coverage under a general permit, the owner and operator could elect to apply for an individual permit instead. To obtain coverage under a general permit, an owner and operator must submit a request to be covered, in accordance with procedures provided in the general permit, and coverage would be effective 45 days after receipt of a complete and accurate request, in the absence of any objection from the Administrator. EPA intends that a request for coverage under a general permit will require more detailed information than an NOI for coverage under the permit by rule, but less than what would be required in an application for an individual

CCR permit. Once a request for coverage has been submitted in accordance with the requirements in § 257.127(c) and the general permit, the permittee need take no further action to obtain a permit, provided the CCR unit meets the eligibility criteria.

If the Administrator determines the CCR unit does not meet the eligibility criteria established in the general permit, the Administrator would notify the owner or operator in writing that an NOI or individual permit application is required, and will include a brief statement of the reasons for this decision and a deadline for the owner and operator to submit an NOI or individual permit application, and a statement that on the effective date of the individual CCR permit the general permit as it applies to the individual permittee shall automatically terminate. The determination that a permittee must apply for an individual permit would not be subject to judicial review as it is not a final permitting action. If an owner and operator requests coverage under a general permit for which a CCR unit is not eligible, they would be potentially subject to enforcement action for failure to apply for and obtain a CCR permit. The owner and operator would be required to comply with all applicable requirements of subpart D until an effective federal or Participating state CCR permit has been issued.

EPA believes general permits may be an appropriate permitting mechanism in this program because the permitting universe has a limited number of types of CCR units, the waste management practices are relatively common among CCR units, and compliance monitoring and notification provisions are already generally established in subpart D. It is also possible that, as the corrective action portion of the program matures, there could be certain commonly used cleanup approaches, due to the limited number of regulated constituents, which are primarily the same chemical class (metals). The relative uniformity of CCR units and the focused regulatory requirements may make general permits an efficient and effective permitting approach for CCR

units. If there are categories of CCR units with similar permitting needs, issuance of general permits could result in improved clarity about applicable regulatory requirements through quicker permitting of CCR units with enforceable and effective CCR permits.

In exchange, a general permit would not be tailored to site-specific conditions and would not provide the specificity an individual permit could provide. Instead, it would be somewhat tailored to a category of CCR units (e.g., a general permit only available to certain types of surface impoundments would not contain subpart D requirements that are only applicable to landfills). A general permit would be issued without site-specific considerations and could not be modified for an individual permittee.

EPA is proposing that only the following procedures in part 124 would apply to the issuance of a general permit: §§ 124.6-124.14. By contrast, requests for coverage under a general permit would not be subject to any of the part 124 procedures for applications because they are not applications for permits. The part 124 procedures applicable to the denial, termination, and modification of permits would not apply either to the issuance of a general permit or to the process of requesting coverage under a general permit; instead EPA is proposing routes for revocation or termination of coverage.

EPA is requesting comment on the appropriate use of general permits, including categories of CCR units for which general permits may be appropriate, requirements for content in the streamlined application, whether public comment on individual applications for a general permit is appropriate, and whether EPA should be required to issue a determination that coverage under a general permit is appropriate for a particular CCR unit.

i. Permit by rule.

A permit by rule is proposed in § 257.128, which would deem the owner and operator of a new landfill or lateral expansion of a landfill to have a CCR permit as long as certain conditions are met. No subsequent or facility-specific permit would be issued and the owner and operator of a CCR unit eligible for the permit by rule would not be required to submit an application for EPA to review in order to qualify. However, a notification requirement is included in the proposed permit by rule, to allow EPA to track the universe of CCR units regulated under the federal CCR permitting program for purposes of program oversight and enforcement.

The proposed permit by rule would only be available to new CCR landfills (which includes lateral expansions of CCR landfills) that meet the criteria in § 257.128 (e.g., the CCR unit must be in compliance with the applicable technical requirements of subpart D). The proposed permit by rule would only be available to new CCR landfills that meet the design criteria at § 257.70(a) or (b). A new CCR landfill constructed with an alternate composite liner, as provided at § 257.70(c), would not be eligible for the permit by rule. See proposed § 257.128(a)(1)(vi). In addition, groundwater monitoring of the uppermost aquifer must show no detections of constituents in Appendix IV at a statistically significant level above a groundwater protection standard, which would trigger corrective action requirements. See proposed § 257.128(a)(1)(vi). There must also be no non-groundwater releases from the CCR unit; the proposal would require the owner and operator to apply for a general permit or individual CCR permit if a leak or release is detected. See proposed § 257.128(a)(10) and § 257.128(b). Similarly, EPA is proposing that, no less than 180 days prior to initiating closure of any unit covered by the permit by rule, the owner and operator must apply for either a general or

individual permit. See proposed § 257.128(a)(4) and § 257.128(b). If a CCR unit is designed or operated in any way that deviates from the criteria in § 257.128(a), it would no longer be eligible for the permit by rule and the owner and operator would be required to apply for an individual or general CCR permit within 60 days of becoming ineligible; e.g., if an owner or operator completes a statistical analysis and identifies a statistically significant increase in the monitoring data above a groundwater protection standard for any constituent in Appendix IV. These restrictions on eligibility for the permit by rule are necessary to ensure that compliance with the requirements of the permit by rule will result in compliance with applicable requirements in subpart D. Additionally, EPA believes that the subpart D requirements which would be applicable when any of these conditions are not met are more appropriately addressed by a general or individual CCR permit.

EPA is proposing the permit by rule for new CCR landfills based on the risks these types of units present and the nature of the technical requirements. EPA's 2014/2015 risk assessment[8] shows that CCR landfills meeting the liner requirements in subpart D present significantly lower risks than the other types of units regulated under subpart D, generally by an order of magnitude. Furthermore, the proposed criteria in § 257.128 are designed to ensure that these units continue to operate safely. This provision is limited to units constructed with a composite liner and a leachate collection and removal system that meet the requirements in § 257.70(a), (b) and (d). The unit must also comply with all location restrictions standards.

The design and operating standards applicable to the new CCR landfills eligible for the permit by rule at § 257.70(a), (b), and (d) through (g) are generally both less extensive and more prescriptive than for other CCR units. Consequently, these units have few options for compliance

[8] US EPA, "Human and Ecological Risk Assessment of Coal Combustion Residuals", December 2014. This document is available at www.regulations.gov as docket item EPA-HQ-RCRA-2009-0640-11993.

and operational practices are not expected to vary widely to account for site specific conditions; the requirements should therefore be relatively uniform. To ensure this remains the case, EPA is proposing to restrict eligibility for permit by rule in § 257.128 to units that have not initiated corrective action or closure. The compliance options for closure can vary substantially in response to site conditions, and EPA therefore considers that these activities warrant the oversight and ability to more precisely tailor the requirements that comes from an individual permit. Newly constructed landfills are expected to operate for a significant time before either closure of the unit or corrective action becomes necessary. If the owner and operator is operating a CCR unit in accordance with the permit by rule and a change occurs that makes the unit ineligible for the permit by rule, EPA is proposing at § 257.128(b) a requirement to apply for an individual or general permit within 60 days of the change, e.g., within 60 days of completing statistical analysis that identifies a statistically significant increase above a groundwater protection standard for any Appendix IV constituent. An application for an individual or general permit would also be required no less than 180 days prior to initiating closure.

Because the requirements in subpart D applicable to the CCR units meeting the proposed criteria in § 257.128(a) are fairly straightforward, EPA does not believe issuance of an individual CCR permit would add significant value as far as clarifying applicable requirements, Agency review of an application, or public comment. The permit by rule would require compliance with applicable requirements of subpart D until a more complex determination of applicable requirements and appropriate compliance strategies is needed, such as when the unit begins closure.

The permit by rule would allow the Agency to focus on issuing individual CCR permits to other facilities and CCR units facing complex applicability issues and compliance strategies.

Individual CCR permits remain appropriate in these circumstances, where the permit issuance process may provide more value in terms of clarification to the permittee, the Agency, and the public regarding applicable requirements and acceptable compliance approaches. EPA is requesting comments on this approach, and whether there are other categories of units that could be appropriately permitted by rule.

j. Transfer of permit program administration.

EPA anticipates that after federal CCR permit applications have been submitted, or possibly after federal CCR permits have been issued, one or more states may obtain CCR State Permit Program approval and begin permitting CCR units in lieu of the federal program. Alternatively, after a state has been operating an approved CCR State Permit Program, the state could relinquish the program or EPA could withdraw the approval, and the CCR units in that state would need to be permitted by EPA under the federal program. These situations would require close coordination between the state and EPA to clarify permittee compliance obligations, as well as each agency's responsibilities, during such a transition.

RCRA § 4005(d)(2)(B) provides authority to implement a federal CCR permit program only in Indian country and in nonparticipating states. EPA is proposing at § 257.129 procedures to transition between federal and state CCR permit programs when approvals of state CCR permit programs are issued or withdrawn. Because each state has its own regulatory procedures (usually established by statute and/or regulation) EPA anticipates that the procedures necessary to transfer administration of a permit program between a state and EPA will necessarily vary. Based on its specific circumstances, a state might prefer, for example, to revoke and reissue all permits immediately, or the state might prefer to have EPA continue to administer a small subset of permits for some period of time (e.g., where the facility is in the final stages of corrective

action). To allow for this, EPA is not proposing to establish uniform procedures for transferring documents and responsibilities associated with CCR permit program administration. Instead, the procedure to be used would be specified in the proposed and final notices announcing the change in CCR State Permit Program approval status. Further details could be specified in a Memorandum of Agreement (MOA), a letter, or a *Federal Register* notice.

If a program is being transferred to EPA from a state and the application deadlines established in § 257.124 and subsequent *Federal Register* notices have passed, alternative deadlines will need to be established for CCR units previously regulated by the state to apply for a federal permit. EPA is proposing language that would require these alternative compliance deadlines to be proposed and finalized in a *Federal Register* notice.

EPA envisions that during a transition period when administration of a CCR permitting program is being transferred between EPA and a state, any CCR permits that have been issued by one agency would remain in effect until a new CCR permit issued by the agency receiving the program is effective. Details about this and other issues would be clarified in a notice provided by EPA, or in a MOA between EPA and the state agency.

2. Permit Applications

EPA is proposing at § 257.130 to require the owner and operator of one or more CCR units subject to subpart D meeting the applicability criteria in § 257.123(a) to submit a timely and complete application for a federal CCR permit. The deadlines for the submission of applications would be established as proposed in § 257.124, and requirements for content of an application are proposed in § 257.131. An application would be considered timely and complete when it meets the requirements proposed in § 257.124, § 257.130, and § 257.131 and when the applicant(s) submit any supplemental information requested by the Administrator that is

necessary to establish permit conditions to require compliance with subpart D, including to assess the applicability of subpart D.

a. Permit application requirements

EPA is proposing at § 257.130(a)(1) that a CCR permit application must contain information about each CCR unit at the facility, as well as operations beyond the CCR units related to the solid waste management of CCR. All portions of the CCR permit application relevant to the CCR units must be completed, except as discussed in the next two paragraphs. While subpart D primarily regulates CCR units, solid waste management activities which occur beyond the unit boundary may be subject to requirements in subpart D (e.g., fugitive dust control along roadways that are used to transport CCR beyond the unit). Information about solid waste management activities could also be necessary for the Administrator to establish permit conditions to ensure compliance with the requirements, or determine applicability, of subpart D. One example of this is where non-CCR waste streams are managed in CCR units. A CCR permit application could require information about those waste streams, such as volumes or water content.

There may be cases where there are multiple CCR units at a facility subject to federal CCR permit requirements, and one or more has already met this requirement through the permit by rule provision in § 257.128, or through coverage obtained in a general permit issued in accordance with § 257.127. In these cases, EPA is proposing at § 257.130(a)(2) that detailed information about the CCR unit(s) that have already satisfied the federal permitting requirements would not be required in a permit application for the remaining CCR units at the facility in order for that permit application to be complete. However, EPA may request some limited information

on these units, for identification purposes or as needed to assess applicability and draft permit terms for other CCR units at the facility, in the application.

There may also be cases where one or more CCR units at a facility are subject to federal CCR permitting requirements and one or more other CCR units at the facility are not. This could happen if the state is partially nonparticipating (i.e., a partially-approved state program). In these cases, only detailed information about CCR units or related solid waste management activities subject to regulation under the federal CCR permit program would need to be included in the federal CCR permit application. EPA may request identification of state-regulated CCR units or related solid waste management activities at the facility in the permit application, but the content requirements in § 257.131 would not apply to these CCR units, which are excluded from the federal CCR permitting requirements by RCRA section 4005(d)(2)(B).

As discussed in Unit IV.B.2 of this preamble, EPA is proposing to rely on the existing procedural requirements in part 124 for CCR permits. This would include the provisions at § 124.3 requiring EPA to determine that the applicant(s) has fully complied with the CCR permit application requirements before beginning to process an application. Consistent with § 124.3(c) EPA would review the application for completeness, and if the application is found to be incomplete, EPA will notify the applicant(s) in writing and will list the information necessary to make the application complete. In practice, EPA has frequently informally requested additional information from the applicant or provided an opportunity to supplement their application prior to triggering a formal notification that an application is incomplete. EPA generally expects to adopt a similar practice for CCR permit applications.

The requirement at § 257.130(a) for both the owner and the operator to submit the permit application, and to be joint permittees, reflects the joint and several liability established under

subpart D for the owner and operator. In addition, based on EPA's experience implementing the part 270 regulations, it is important that both the owner and operator be permittees. When the facility or unit owner is not the operator, he or she may be removed from daily activities. A requirement to certify the permit application ensures that the owner has at least some familiarity with the facility operations for which he or she will be liable. It also ensures that the owner is aware of and acknowledges this potential liability.

EPA recognizes some owners may believe this transparency is unnecessary and may be willing to accept joint and several liability for submittals and permit applications signed and certified solely by the operator. EPA is proposing an option in § 257.130(a)(2) to allow the owner to defer to the operator's signature and certification of posted documents, submittals and applications, while remaining a permittee and accepting joint and several liability for those submittals and compliance with the federal CCR permit, as modified. EPA believes this acknowledgment of liability, and the issuance of all federal CCR permits to both owners and operators, would result in permits which are as effective and enforceable as they would be if an owner signed and certified each posted document, submittal, or application individually. After a permit is issued, the owner would remain a permittee, subject to civil or criminal enforcement, as appropriate, for any violations of the permit conditions or these regulations. With respect to transparency about the requirements, each permit or permit modification would be issued to both permittees, and the owners would be aware of requirements in the permits. Owners would have the right to comment on any draft permit or appeal any final permit if he or she did not believe the permit conditions were in accordance with regulatory or statutory requirements. EPA is requesting comment on this approach.

EPA is proposing at § 257.130(b) that an application is complete when the Administrator receives the information required by §§ 257.130 and 257.131, including any supplemental information requested during review of the application, about all CCR units and related solid waste management operations at the facility, and the application is completed to the Administrator's satisfaction. For example, the Administrator could determine an application to be incomplete under these provisions where portions of the permit application are not sufficiently detailed to allow the Administrator to determine the specific requirements in subpart D that apply to the facility or to draft the terms and conditions necessary to require compliance with the regulatory requirements or the statutory standard. The breadth of this requirement corresponds to the statutory mandate that federal CCR permits must require each CCR unit to achieve compliance with the requirements of subpart D; EPA must be able to require sufficient information to issue permits that meet those standards.

The proposed standard for completeness would include any supplemental information requested by the Administrator during the review of the application (i.e., before the application is determined to be complete). After the application is determined to be complete, consistent with § 124.3(c), EPA may request additional information from the applicant(s) but only when necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render an application incomplete.

Any notice of incompleteness or request for supplemental information issued pursuant to this process would clearly state the information that is missing and provide a deadline for submittal, to avoid delays in permit issuance. If the applicants fail to respond to a notice of incompleteness or to correct the identified application deficiencies, EPA may deny the permit and initiate enforcement action under RCRA section 3008. See § 124.3(d).

EPA is proposing at § 257.130(c) to require the applicant(s) to submit any information determined to be missing from or inaccurate in the permit application to the Administrator as soon as the applicant becomes aware of the missing, new or corrected information. This requirement would apply even without a request from the Administrator. As operations continue after the application is submitted, changes to the facility or operations may occur or new information may become available through monitoring that would result in a different CCR permit application than the application previously submitted. Proposed § 257.130(c) would also require submittal of inadvertently omitted information and revisions to incorrect information, as soon as the applicant becomes aware of it. EPA believes this requirement comports with RCRA section 4005(d). In order to correctly determine applicability and appropriate permit terms EPA must have correct, up-to-date information about the CCR units and facility operation. Consistent with the requirements of subpart D (which apply to both owners and operators), and with the proposal to require both operators and owners to obtain a permit, EPA is proposing that this requirement would apply independently to the owner and operator where they are not the same person, and that either would be required to submit corrected or updated information when it becomes available.

EPA is proposing in § 257.130(d) to allow CBI claims in a federal CCR permit application for any information that is not required to be made publicly available under part 257. An applicant would be required to claim information in the permit application as CBI at the time of submittal. The applicant would be required to provide supporting documentation of the validity of the claim. If EPA determined the information to be CBI, it would be treated in accordance with requirements in part 2, which would limit public availability of the information. This proposed provision would ensure compliance with requirements in part 2 regarding proper

treatment of CBI. EPA is not aware of any information that would be required in the permit application which would qualify as CBI and is requesting comments on this provision and on inclusion of CBI procedures in the proposal. The Agency specifically requests comments providing examples of information to be required in a CCR permit application that might be claimed as CBI.

All CCR permit applications would require certification for truth, completeness and accuracy, based on reasonable inquiry, by a responsible official in accordance with proposed § 257.130(e). The language proposed to be required in the certification is similar to certification language required by other federal environmental permit programs in parts 71, 122 and 270. The level of responsibility held by a responsible official within various organizational structures is provided in the proposed definition of responsible official in § 257.121. EPA believes the proposed requirement for certification of the application is appropriate to fully implement the WIIN Act and issue CCR permits which require compliance with subpart D, in light of the permit shield provision. Certification by a responsible official of the truth, accuracy and completeness of the application, upon which the permit will be based, would ensure a level of care in preparation of the application. This certification demonstrating that a responsible official has taken adequate care in the preparation of the application can help to prevent any failure on the part of CCR unit owner and operator to meet the requirements of RCRA through error or omission, or by carelessness or deliberate act. The certification language also would provide the responsible official with clear notice of enforcement liability for any such lack of due care. See also proposed § 257.130(e)(1).

EPA is proposing in § 257.130(f) to require that records of data and information supporting the application for the federal CCR permit be maintained for the life of the permit.

Because EPA is proposing that CCR permits be issued without an expiration date, the application for a CCR permit would also be a lifetime application, through the active life of the unit, post-closure care, and until completion of all corrective action. However, EPA anticipates the permit application will be revised as operations or regulations change, when inadvertently omitted, new or corrected information becomes available or when the applicant applies for a modification. EPA is proposing that the permittee must maintain these records until the contents of the application change such that the records no longer support the application, or until the permittee no longer has compliance obligations in subpart D and the CCR permit is terminated. If the applicant revises or modifies the application, old records which no longer support the revised or modified application would no longer need to be maintained, unless they were subject to other recordkeeping requirements in this rule (e.g., a groundwater well construction diagram). Because the application will be a living document and CCR permits will be issued with no expiration date, it is important that the applicant maintain all records and supporting documentation used to support the application for the permit.

b. Permit application contents

The proposed application requirements in § 257.131 envision the application would contain sufficient site-specific information that permit terms could be drafted to include all applicable requirements of subpart D and incorporate site-specific approaches to compliance, considering factors such as local geology, hydrogeology and ecology as well as the design, construction, operation, maintenance, and monitoring of the CCR unit. Applications would be required to contain information about the facility, the owner and operator, CCR unit(s), features surrounding the unit(s), and operating conditions at the unit(s). The proposed regulatory text describes types of information that would be required in each of these categories, with examples

that are intended to be clarifying but not limiting. EPA is proposing specific language to require an applicant to provide site-specific plans and non-narrative information, such as maps, drawing, figures, or other visual information, as appropriate in any of the categories listed above. EPA intends to provide an electronic permit application form, as discussed in Unit V of this preamble.

EPA is proposing in § 257.131(a)(1) to require information about the facility in the CCR permit application. While subpart D primarily regulates CCR units, some requirements apply to property or operations beyond the boundaries for the CCR unit, such as fugitive dust control criteria or corrective action requirements; EPA may therefore request information directly related to those requirements. Information about the operating history of the facility may be necessary to determine applicability of requirements in subpart D to certain units (e.g., the date when a CCR unit began receiving waste). In § 257.131(a)(1) the proposal describes types of information about the facility which would be required in the CCR permit application, including the facility's physical location and a description of the facility and its operations. This could include a description of the number of CCR disposal units at the facility, production rates, how CCR are handled at the facility (e.g., dry handling, sluicing), and how the CCR are transported to the unit after generation. Information about what the facility produces in addition to electricity, if anything, and how long the facility has operated would also be required, in addition to identification of the publicly accessible CCR Web site the applicants intend to use to comply with information posting requirements. The application would also require an indication of whether an initial, revised, or modified permit is requested. EPA believes all this information is necessary to draft permit terms and conditions to require compliance with subpart D, including to assess applicability. To the extent the Administrator needs the information to issue a CCR

permit that meets the requirements in RCRA section 4005(d), additional information about the facility not specifically listed may be requested in the CCR permit application.

EPA is proposing to require sufficient information about the applicant(s) to contact them during and after the process of issuing the permit in § 257.131(b). Information about the ownership status would be needed to issue the permit to the correct person(s) and to review the required certification by an appropriate responsible official. Information in other environmental permits held by the owner and operator is potentially relevant to the issuance of the CCR permit, such as state-issued permits for construction of the CCR unit, air permit requirements for fugitive dust control, or environmental permits related to other federal considerations (e.g., scenic rivers). Additional information about the applicant(s) not specifically listed in § 257.131(b) may be requested by the Administrator, insofar as the Administrator needs the information to issue a CCR permit that meets the requirements in RCRA section 4005(d).

EPA is proposing at § 257.131(c) to require information about CCR unit(s) in a permit application. The CCR permit application would require sufficient information about each CCR unit at the facility to allow the Administrator to issue a permit to require compliance with, including to assess the applicability of, subpart D. EPA is proposing to require information in the application about the location, design, construction, operation, maintenance, closure and retrofit of each CCR unit to be permitted (e.g., design of liner, description of run-on/runoff controls, design of structural stability controls and monitoring procedures, construction and placement of groundwater monitoring wells, statistical methods used to evaluate groundwater data, procedures and methods used to take samples and ensure data quality, any remedial measures in place, any closure activities conducted, and type of monitoring conducted such as detection, assessment, or corrective action). The application must describe site-specific compliance approaches the

applicants are proposing to use to meet applicable requirements. Some of this information may be provided in plans, maps, drawings or diagrams attached to the permit application.

EPA intends to use this information to assess applicability of requirements of subpart D, and to draft terms and conditions to require compliance with those applicable requirements. For example, information about the design of the liner in a CCR unit would allow the Administrator to draft a permit requiring compliance with a particular liner design requirement, where the applicant has selected one design alternative from multiple options. In another example, information about run-on and run-off controls used at a CCR landfill would allow the Administrator to draft permit terms and conditions requiring the permittee implement those controls, and monitoring their effectiveness, to meet these requirements in subpart D.

A substantial amount of the information that would be required by § 257.131(c) for each CCR unit in a permit application would already have been developed and posted on a publicly accessible CCR Web site in accordance with subpart D, which requires site-specific plans for compliance on issues like run-on and runoff control, fugitive dust control, groundwater monitoring, etc. These plans must contain maps, drawings, and other documents that would satisfy many of the proposed application requirements. EPA is requiring submittal of this information in the permit applications, rather than allowing applicants to refer the Administrator to download documents from the public websites, for several reasons. The nature of web posting allows potentially frequent changes or amendments to posted documents, and submittal of these documents ensures that EPA is reviewing the version the applicant intends EPA to use in the permitting action. Additionally, the proposed requirement for the CCR permit application to be certified for truth, completeness and accuracy, consistent with other federal permitting programs, requires submittal of all supporting information in the application. EPA believes that electronic

submittal of CCR permit applications will minimize any burden associated with submittal of materials that may be available on publicly accessible CCR Web sites, and that the minimal effort associated with electronic submittal of those documents is warranted by the benefits of receiving a certified application directly from the applicants.

EPA is proposing in § 257.131(d) and (e) that the CCR permit applications would be required to contain information about the natural conditions and features surrounding each CCR unit to be permitted. The applicants would be required to provide technical and other information about the geologic, hydrogeologic and ecologic characteristics and features of the area surrounding the CCR unit, including assessment of subsurface characteristics. At a minimum, this would include information about the locations of any floodplains, wetlands, endangered species, fault lines or unstable areas, measured and modeled groundwater elevations, subsurface lithology including any confining units, surface water features, soil and subsoil characteristics, groundwater well locations and uses and adjacent land uses. This information would be provided for the areas underlying and in proximity to the CCR unit. These features have the potential to impact every aspect of the CCR unit and the effectiveness of the compliance approaches to be incorporated in the CCR permit. These include impacts to the effectiveness of the liner, stability of the unit, operation of the unit and its control structures, the effectiveness of proposed monitoring approaches and well locations, determination of background concentration of regulated contaminants, the appropriateness of proposed closure procedures, considerations of other applicable federal requirements listed in proposed § 257.122, and the appropriateness or effectiveness of any corrective action remedy, including monitoring to assess the effectiveness of that remedy. The owner and operator must provide this information for all past, present, and planned CCR units to be included in the permit.

The information required in a CCR permit application in § 257.131(f) would include attachments, such as site-specific compliance plans required by subpart D, and visual representation of information, such as maps and drawings. This information is necessary to allow the permit writer to understand site conditions and evaluate applicability of requirements and compliance strategies proposed by the owner and operator and to draft terms and conditions that will ensure compliance with the requirements of subpart D. For example, potentiometric maps indicating groundwater flow direction are necessary for the permit writer to establish requirements in the permit pertaining to groundwater monitoring and site-specific background concentrations. The attachments required will depend upon the type of CCR unit – not all items listed would be required for all units. Similarly, additional documents not specifically listed may be needed in a permit application for certain units. For example, if a CCR unit is operating under the terms of a compliance order which requires an operating plan for a corrective action remedy, that plan should be included in the CCR permit application.

The listed examples of plans include those required by subpart D (e.g., emergency action plan required by § 257.73, fugitive dust control plan required by § 257.80, run-on and run-off control system plan required by § 257.81(c), inflow design flood control system plan required by § 257.82(c), assessment of corrective measures required by § 257.96, closure plan or retrofit plan required by § 257.102, and post-closure care plan required by § 257.104). The examples of maps required in a CCR permit application include a site map; a topographic map; and a sufficient number of potentiometric maps, illustrating the direction of groundwater flow, to capture temporal and seasonal changes in flow direction. These examples are provided for clarity and are not intended to be limiting. Other maps may be required in the CCR permit application, depending on site-specific circumstances at the CCR unit. The standard for completeness

regarding plans, maps, drawing, and other documents is the same as the standard proposed for all other application elements; the information must be sufficiently complete for the Administrator to issue a permit to require compliance with subpart D, including to assess the applicability of subpart D.

The proposal requires minimum elements to be included in each type of map so that multiple pieces of information may be viewed on the same page. Elements to be required in maps, drawings, and diagrams include minimum elements necessary for someone reading them to understand information in the permit application holistically, in the context of the requirements of subpart D. For example, when reviewing monitoring well data, it is helpful to have a map that indicates all the following: the location of the CCR units, the location of each groundwater monitoring well with its identification noted and the direction of groundwater flow. When evaluating a proposed schedule for conducting corrective action activities, for example, it would be helpful to have a map with the location of the CCR unit, the direction of groundwater flow, the location(s) of groundwater monitoring wells where detections above background or groundwater protection standards have occurred and the detections, and the location of any downgradient potable wells. These are simply examples of situations where a well-designed map or drawing will depict multiple pieces of information together to facilitate understanding of the situation at, around, and below the CCR unit. It may be appropriate to provide additional elements on these maps for some CCR units, depending on site-specific conditions. EPA believes that, generally, permit applicants have developed maps, drawings, and diagrams required by subpart D in a manner consistent with the requirements proposed here. To the extent that owners and operators of CCR units have not done so, EPA is proposing to require such appropriate representation of data in the CCR permit applications.

All information in the application must be presented in a manner that is organized and clearly labeled, so it can be understood by another person. EPA is proposing this requirement explicitly based on experience reviewing information posted on the publicly accessible CCR Web sites. In some instances, information posted on these Web sites has been disorganized and not labeled, making it difficult for a reader to identify, for example, the date and sampling location of posted groundwater sampling results, or the type of groundwater monitoring wells (i.e., background or downgradient) depicted on a groundwater monitoring system map. To avoid delays in permit issuance associated with potentially lengthy review of unclear permit application materials and incompleteness determinations, and to minimize the potential for erroneous permitting actions, EPA is proposing to establish this requirement for clarity and organization. EPA may implement this standard through incompleteness letters, incompleteness determinations, or ultimately permit denials, if a permit application contains such lack of clarity or disorganization that the Administrator cannot draft a permit and the applicants do not correct the application.

EPA is proposing to require information necessary to evaluate the appropriateness of compliance strategies proposed in the application. Such strategies may include, but are not limited to, establishing the minimum number of downgradient wells needed to characterize groundwater quality, design of a run-on control system, establishing background concentration of constituents in groundwater upgradient of the CCR unit, establishing buffer zones to protect wetlands or sensitive ecosystems, or delineating of the nature and extent of releases when assessing corrective action measures. One example of this would be sampling data used to calculate hydraulic conductivity of a liner designed to comply with § 257.70(c). The examples included in the proposed regulatory text are intended to be clarifying but not limiting, and EPA is

proposing at § 257.131(a) that the standard of completeness for the application with respect to these materials be what is sufficient to support decisions by the Administrator to draft permit conditions to require compliance with, including to assess the applicability of, the requirements of subpart D.

One type of document required by subpart D that is not included in the application requirements listed in § 257.131(f) is third-party, or Professional Engineer (P.E.), certifications required by subpart D. An applicant may include these in the CCR permit application, but EPA is not proposing to require them. The P.E. certifications are based on information required in the permit application, which EPA will review in the process of writing the permit. Also, based on cursory review of some of the P.E. certifications posted on publicly accessible CCR Web sites, they may not contain any substantive information that would be helpful in drafting a permit. Finally, a review of a P.E. certification to determine whether it meets the requirements of subpart D would be a compliance assurance function, rather than a permitting function. For these reasons, P.E. certifications are not included in the proposed requirements for a CCR permit application.

EPA envisions that all applications for CCR permits would be submitted electronically (e-permitting). Discussion on e-permitting approaches is found below in Unit V of this preamble. EPA intends to provide an electronic CCR permit application form to owners and operators. EPA envisions that some of the information required in the application would be submitted by responding to questions on the electronic form in various formats (e.g., typing in narrative responses, selection from a multiple-choice list, selecting true or false). Other information would need to be attached to the application electronically (e.g., maps, drawings, diagrams, or site-specific plans describing compliance strategies). EPA intends to make the application a living

document, to be updated and amended, and submitted and certified for truth and accuracy, throughout the life of the permit. EPA believes this approach may improve the accuracy of the permit application and the quality of federal CCR permits, while minimizing the regulatory burden to applicants by eliminating the need to re-submit information the Agency has already received in an application.

c. Periodic review of permit applications.

EPA is proposing that CCR permits would be issued without an expiration date, as discussed in Unit IV.C.1.g, and it is hypothetically possible that a CCR permit could be based on a permit application that is many years old. EPA does not believe this situation will occur frequently, based on EPA's proposal at § 257.151 to require owners and operators to seek to modify their permit whenever any of their solid waste management operations involving CCR no longer reflect the operations described in their permit or permit application and to require that the owner and operator update the entire application whenever any permit modification is sought. Consequently, EPA expects that most CCR permits would be modified throughout the life of the permit (i.e., evergreen permits) and the CCR permit application would be modified by the permittee(s) at those times, providing EPA with current information about permitted activities.

To address potential situations where many years could pass with no changes to the permit or the application, and to ensure that CCR permits remain up-to-date, EPA is proposing at § 257.132 to require that each permit application be reviewed by the permittee no less frequently than every ten years after the date of permit issuance or the last modification. At the ten-year review, the permittee(s) would be required to review the permit application and either submit necessary revisions to the application to ensure that it continues to meet the CCR application requirements of §§ 257.130 and 257.131 or submit a statement that the application continues to

meet those requirements and remains accurate and complete. Responsible officials for the owner and operator would be required to certify for truth, completeness, and accuracy either a statement that the permit application remains current or an amended permit application.

If the permittee determines during a periodic review that the permit application is no longer accurate or no longer meets the proposed application requirements under §§ 257.130 and 257.131, the Agency is proposing at § 257.132(c) that the permittee must take certain actions. First, the permittee would be required to revise the permit application to meet the proposed requirements in §§ 257.130 and 257.131 and accurately reflect current operations and changes that may have occurred since the previous application was submitted. If changes to the application warrant a modification to the CCR permit, the permittee would be required to apply for a permit modification according to the proposed procedures in § 257.152. The permit application would need to be certified for truth, accuracy and completeness by a responsible official in accordance with proposed requirements in § 257.130(e) and submitted to the Administrator.

A major modification would invoke the public participation requirements in part 124. For example, draft permits are subject to public notice, public comment, and in some cases, a public hearing. These procedures would allow the public to bring forward comments concerning any draft permit or its supporting materials prior to permit issuance.

EPA is proposing at § 257.132(d) that permittees complete periodic reviews of their most recent CCR permit application no later than ten years after the date of permit issuance or after any reissuance or modification of such permit, whichever date is later. For all subsequent permit application reviews, the review would need to be completed no later than ten years after the date of the submittal resulting from the previous permit application review or after the date such

permit is reissued or modified, whichever date is later. If the permit is modified or otherwise issued with a new date, the ten-year review period would begin on that new date in the permit. For example, if the initial CCR permit was issued on October 20, 2022, the permittee would be required to complete the permit application review no later than October 20, 2032. Alternatively, if the initial CCR permit was issued on October 20, 2022, and the permit was modified on February 21, 2025, the permittee would be required to complete the periodic permit application review no later than February 21, 2035. In the second example, the permit modification during the third year after permit issuance would have the effect of resetting the ten-year period during which the application review must be conducted.

EPA anticipates that facilities with operating CCR units or that are in the midst of corrective action will seek to modify their permits at least once in any ten-year period; based on the proposal to reset the clock with every modification, it is therefore likely that the ten-year periodic review will never be triggered for most facilities. Instead, for these facilities, the equivalent of this review will occur in the context of each modification, based on EPA's proposal at § 257.151(b)(1) and (d)(1) to require a facility to update the entire application whenever any permit modification is sought. By contrast, the proposed ten-year review is intended to address those situations in which the permit has not been modified in the last decade—which are expected to be the exception and are most likely to be facilities with CCR units exclusively in post-closure, with no corrective action requirements.

For the CCR permitting program, EPA believes that an application review that occurs no less frequently than once every ten years will provide an appropriate level of review and attention to maintaining an updated CCR permit application. A ten-year timeframe is consistent with the effective term of a RCRA hazardous waste permit. See RCRA 3005 (c)(3). The ten-year

application review requirement is a complement to, and does not replace, the requirements for permit modifications proposed in §§ 257.150 through 257.152 and the requirement to submit new or changed information in § 257.130(c). If the ten-year application review identifies a modification that has occurred at the CCR unit without a required permit modification, the permittee may be subject to enforcement for failure to comply with modification procedures in §§ 257.150 through 257.152.

As discussed in Unit IV.C.1.i of this preamble, EPA is proposing a permit by rule for certain CCR units. The Notification of Intent required by § 257.128 does not contain detailed information about the CCR unit, but a periodic review of the Notice of Intent would provide EPA with current information from the owner and operator about the eligibility of the CCR unit for the permit by rule. EPA believes that CCR units operating in accordance with the permit by rule may update the Notice of Intent infrequently if at all, and it is expected that a new landfill or lateral expansion of a landfill may operate for many years without detecting a groundwater contaminant in part 257 Appendix IV above a groundwater protection standard. A CCR unit operating in accordance with the permit by rule could reasonably be expected to do so for longer than 10 years. To ensure that all CCR permits are kept up-to-date, the Agency is proposing that CCR units operating under a permit by rule would be subject to the periodic permit application review requirements for the Notice of Intent.

EPA is proposing in § 257.127 procedures to issue one or more general permits applicable to categories of similar CCR units subject to the same requirements in subpart D. Because a general permit would be drafted to accommodate a narrow set of circumstances, the application for a general permit would be streamlined and less detailed than an application for an individual CCR permit. Until a general permit is established with its own eligibility criteria, the

potential frequency with which a CCR unit might either meet those criteria and apply for the general permit or might cease to meet the eligibility criteria and submit an application for a different type of CCR permit is unknown. However, periodic review and recertification of the application submitted would provide the same value for a general permit application as it would for an individual permit application. EPA has identified no reason to exclude CCR units operating under a general permit from a requirement to review and resubmit an application no less frequently than every ten years. Consequently, EPA is proposing that CCR units operating under a general permit would be subject to the periodic application review requirements proposed at § 257.132.

d. Permit denial.

The proposed language in § 257.133 would establish the grounds for which EPA may deny an application for an individual CCR permit. Denial of a permit could have significant consequences, including the requirement that the facility cease receipt of waste into the CCR unit. Based on experience under other federal permitting programs, EPA expects that denial of a CCR permit would occur rarely; however, it is important to establish the circumstances under which EPA would exercise this authority, to ensure that permit applicants are fully apprised of the legal standards that will apply to their applications.

The grounds for denial of a permit application, which are set forth at proposed § 257.133(a), largely mirror those EPA is proposing to establish for termination of a permit in § 257.153. Specifically, EPA is proposing that any of the following would be grounds for denial: (1) Failure by the permittee in the application or during the permit issuance process to disclose fully all relevant facts; (2) Misrepresentation by the permittee of any relevant facts at any time; (3) A determination by the Administrator that the reasonable probability of adverse effects

arising from disposal or other solid waste management of CCR can only be regulated to acceptable levels by permit denial; (4) The Administrator has received notification of an applicant's intent to be covered by a general permit issued in accordance with § 257.127 or the permit by rule in § 257.128; and (5) EPA has transferred administration of the permit program to a state in accordance with § 257.129, and the state permit is in effect for each CCR unit at the facility. The latter two situations may be cases where a facility would prefer to withdraw its application. EPA considers that withdrawal of the application may be an equally appropriate mechanism to close out the federal action, but requests comment on whether there are competing considerations.

One ground that is unique to this section specifies that denial may be appropriate when an applicant fails to respond to an incompleteness determination with submittal of a complete permit application. This ground corresponds to the procedures under § 124.3 that are discussed in Unit IV.B.1 of this preamble.

The provisions proposed at § 257.133 would also specify that EPA may deny an application in whole or in part. As previously discussed, EPA is proposing to require a permit not only for disposal, but also to conduct all activities subject to requirements in subpart D (e.g., monitoring, retrofit, closure, post-closure care and corrective action). The proposal at § 257.133(a) specifies that EPA may deny a CCR permit for certain activities (e.g., to dispose of waste in a CCR unit), but issue a permit to conduct other activities at that unit (e.g., closure, post-closure care, or corrective action). Or, as a further example, EPA may deny a permit for waste disposal at one CCR unit at a facility but may permit disposal at a different CCR unit at the same facility. For the same reasons, EPA seeks public comment on its proposal that the Administrator may partially deny a permit for any of the enumerated grounds even if the

application is incomplete; for example, EPA may deny a permit to operate one unit if information is lacking for that unit but grant the remainder of the application if the information is otherwise complete. See proposed § 257.133(b).

As noted earlier, EPA is proposing to rely on the existing procedures in part 124, which include procedures to deny a permit application (e.g., procedures applicable to issuing a notice of intent to deny at § 124.6(b)). Under those procedures, the applicant may correct the deficiencies identified in a notice of intent to deny at any time by submitting a new (corrected) permit application. If the deficiencies are not corrected and a final decision to deny a permit is issued and becomes effective (see § 124.15(b)), the applicant would be subject to enforcement. Moreover, after a CCR permit is denied, the CCR unit(s) would be an open dump, and the owner and operator would be required to cease placing waste in the unit. See RCRA § 4005(a). The applicant would also remain subject to the applicable requirements of subpart D. Note that even after a denial has been issued, a revised application correcting the deficiency can be submitted.

If a permit application is denied, which is expected to occur rarely, the owner and operator would still be required to obtain a CCR permit for activities that remain subject to requirements in subpart D, such as closure. Additionally, an enforcement action may be taken to bring the facility into compliance with subpart D.

EPA believes a procedure to deny a permit is one of the necessary components of the authority delegated to EPA as part of the directive to implement a federal permit program. Without it, EPA would have no option other than to issue a CCR permit after an application is received, even in situations where that would be contrary to Congressional intent. For example, EPA lacks the authority to issue a permit that does not meet the statutory standard in RCRA sections 4005(d)(2)(B) and (d)(5). Furthermore, such a provision is consistent with other federal

environmental permit programs implemented by EPA, which have the authority to deny an application for a permit on comparable grounds. See, e.g., §§ 71.11 and 270.29.

3. Permit Content

a. Standard conditions in all permits.

Proposed language at § 257.140 would establish standard terms and conditions, which would be included in each CCR permit. Many of these standard terms and conditions contain legal requirements inherent to permits and are consistent with standard terms utilized in other federal permitting programs. EPA is proposing standard terms and conditions to improve the efficiency and enforceability of CCR permits. These conditions could be either written expressly into a CCR permit or incorporated by specific references to paragraphs in § 257.140.

i. *Duty to Comply* – This standard permit term would require compliance with the permit terms and clarify that failure to comply may result in enforcement, revocation and reissuance, termination, or denial of a permit. While it is unlikely that EPA would terminate or deny a permit to remedy noncompliance without issuing a new CCR permit, EPA is proposing to preserve these options to maintain flexibility to resolve case-by-case situations as they arise, in the most appropriate manner. This term is standard in other federal permitting programs, including part 270.

ii. Duty to submit periodic review of application – This standard permit term would implement the requirement proposed in § 257.132 for the permittee to review the application submitted for the permit no less frequently than every ten years from the date of issuance. If no information in the application has changed, the permittee must submit a statement to that effect with a certification by a responsible official of truth, completeness and accuracy. If information in the application has changed, the permittee must modify the application and resubmit it. If a

modification to the permit is needed, the permittee would be required to submit the updated information as part of an application for such a modification in accordance with § 257.152.

EPA is striving to develop an electronic CCR permit application system, which would allow the permittee to review the previous application and amend only the portions that require revision electronically. EPA intends to implement such a system to facilitate implementation of this proposed provision, by allowing the permittee to focus efforts only on information that must be updated.

Once a CCR permit is modified or reissued, it will have a new issuance date and the ten-year review period would begin anew. If a CCR permit is modified more frequently than every ten years, then the permittee would not have to conduct any periodic application reviews. However, the permittee would always be obligated to evaluate changes at the facility and changes in the regulatory requirements, and to apply for permit modifications as needed.

iii. Need to Halt or Reduce Activity Not a Defense – This standard term would clarify that the permittee may not use as a defense in an enforcement action that the only way to maintain compliance with the permit was to halt or reduce the permitted activity. This term is standard in other federal permitting programs, including part 270. It is also consistent with the underlying regulations in subpart D, as well as the prohibition against open dumps in RCRA section 4005.

iv. Requirement to mitigate impacts of noncompliance – This standard term would require a permittee to take steps to mitigate the impacts of noncompliance, should any occur, where the noncompliance results in a reasonable probability of adverse impacts to human health and the environment. This provision is similar to requirements in other federal permitting programs, including part 270. EPA believes it is consistent with RCRA § 4004(a) to require the facility to take appropriate actions after noncompliance to minimize impacts, particularly actions that may

be most effective immediately after a catastrophic event such as a natural disaster. These actions could range in scope and complexity from providing immediate notification to a public water system about a release before it reaches a public water system intake, to cleaning up CCR released due to a dam failure.

v. New statutory requirements or regulations – This standard term would implement requirements proposed at § 257.151 that, if the underlying statutory or regulatory requirements become more stringent than the corresponding CCR permit conditions, the permittees must apply for a permit modification to reflect the updated requirements. This term is intended to ensure that the federal CCR permitting program will satisfy the statutory requirement for CCR permits to require CCR units to achieve compliance with applicable criteria established in subpart D.

This term would apply to changes in underlying requirements that result from a change in the statute, a change to subpart D, or a judicial order. This term only requires action by the permittee if the permit is less protective than the underlying requirement after the change. If the permit is more stringent than the underlying requirement, then the permittees would not be required by this standard condition to apply for a modification to the permit to incorporate the change and could continue to comply with the more stringent permit conditions.

vi. Proper operation and maintenance – This proposed standard term would require that the permittee must at all times properly operate and maintain all CCR units, ancillary equipment and systems of treatment or control to achieve compliance with the conditions of the permit. The proposed language includes a variety of activities considered part of proper operation and maintenance: performance, funding, staffing, training, and quality assurance. This proposal does not intend to create an independent technical requirement separate from subpart D, but rather to clarify that failure to properly operate or maintain equipment would not excuse failure to comply

with requirements or standards in the permit. This would be required throughout the active life of the unit, the post-closure care period and until all corrective action is complete. Proper operation and maintenance would require the operation of back-up or auxiliary systems when needed to comply with the permit.

EPA believes this standard term is necessary to require the permittee to take reasonable actions to ensure that all controls, monitoring, and other requirements of the CCR permit are implemented as intended. While many permittees may already properly operate and maintain the CCR units, ancillary equipment, and treatment or control systems, failure to do so can result in malfunctions or catastrophic releases. This could also result in noncompliance with requirements in subpart D, or a reasonable probability of harm to health and the environment. EPA believes an independently enforceable requirement to properly operate and maintain this equipment is consistent with RCRA 4005(a) and may serve to prevent accidents or noncompliance before they happen. This term is required in other federal permitting programs, including part 270.

The Agency proposes to apply this requirement to both owners and operators of CCR units, consistent with their respective joint and several liability and responsibility for compliance. Where there are concerns that operators would have primary control over compliance with this proposed provision, owners may undertake efforts to ensure that operators comply with the proposed standard through private agreements that protect landowners when CCR units are operated by another entity.

vii. Permit actions – This proposed standard term clarifies that a permit may be modified, revoked and reissued, or terminated for cause. It also stipulates that applying for a permit modification or termination, or notifying the Administrator of planned changes or anticipated noncompliance, does not stay any permit condition. This standard term would implement the

modification procedures in §§ 257.150 through 257.152. This proposed standard term is consistent with other federal permitting programs, including part 270.

EPA does not believe this standard term would conflict with the proposed minor modification provisions in § 257.151. Specifically, § 257.151(b)(7) would provide that if a permittee applies to modify the permit and the modification qualifies as minor, and if EPA does not respond to the request to modify the permit within 45 days, the permittee can proceed with the modification. While the permittee may go ahead with the minor modification, all permit terms would remain effective until EPA issues a modified permit. EPA does not anticipate conflict between these provisions, because the criteria for minor modifications generally include changes which increase the stringency of the CCR permit.

viii. Property Rights – EPA is proposing that each CCR permit include a term that clarifies the permit does not convey any property rights. This standard term would implement provisions proposed at § 257.125(c). EPA does not have the authority to convey property rights in a CCR permit. This proposed standard term is consistent with permit terms used in other federal permitting programs, including part 270.

ix. Duty to Provide Information - EPA is proposing that each CCR permit include a term that establishes the permittee's duty to provide information requested by the Administrator to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The term would also require the permittee to furnish to the Administrator, upon request, copies of records required to be kept by this permit. This standard term would implement provisions in the WIIN Act that provided EPA information gathering authority under RCRA section 3007. This proposed standard term is consistent with other federal permitting programs, including part 270.

x. Inspection and Entry - EPA is proposing that each CCR permit include a term that clarifies the permittee's duty to allow EPA access to inspect, collect samples, and access records at the permitted facility. These activities are necessary elements of any permitting program and are common in federal permitting programs. The authority for EPA to conduct these activities under section 3007 of RCRA was provided in the WIIN Act.

The proposed language includes provisions that inspection, sample collection, and access to records must be conducted at reasonable times, which would generally be during normal business hours. It also specifies that presentation of credentials would be required to gain access for these purposes.

xi. Monitoring and Records - EPA is proposing that each CCR permit include a term that establishes the permittee's duty to maintain certain types of records related to monitoring. This standard term would require that records of monitoring information, including all supporting data and quality assurance records, be maintained for a period of at least ten years, or longer if requested by the Administrator. Records used to support the permit application would be required to be maintained for the lifetime of the permit. The standard term would require that all groundwater monitoring records be maintained throughout the active life of the unit, the post-closure care period and until completion of all corrective action.

These recordkeeping provisions are consistent with the underlying CCR rule. Most of the information included in the proposed standard terms is required to be posted to a facility publicly accessible CCR Web site. The posting requirements do not allow for removing information from the publicly accessible CCR Web sites, and so information posted there is maintained throughout the life of the unit. Because CCR permits are proposed to be issued without expiration, EPA

believes the records used to develop the permit application would remain relevant throughout the lifetime of the permit and should be maintained.

xii. Signatory requirements - EPA is proposing that each CCR permit include a term that requires applications, reports, or information required to be submitted to the Administrator by the permit be signed and certified in accordance with the procedures of proposed § 257.130(e). A CCR permit is not likely to require many submittals of information. The primary mechanism for reporting information in the CCR program is by posting on a publicly accessible CCR Web site. Reporting requirements in the CCR permit are most likely to pertain to permit modifications or reports of noncompliance. For both types of submittals, EPA is proposing to require the permittees to include the same certification as to the truth, completeness and accuracy of the contents as is required for the original permit application. Applications for major permit modification would require certification according to other proposed requirements in § 257.152(b).

xiii. Reporting requirements – These standard terms would be placed in each CCR permit, and they require reporting of certain information within specified timeframes. These provisions are commonly found in other federal permitting programs, including parts 270 and 71.

(A) Anticipated noncompliance – This proposed standard term would require reporting to the Administrator in advance of anticipated noncompliance. If, for any reason, the permittee will be unable to comply with any terms or conditions, the permittee would be required to provide notice to the Administrator as soon as possible and at least 60 days prior to any planned changes in the permitted facility that may result in permit noncompliance. If the permittee applies for a modification to the permit to accommodate these changes, and the anticipated noncompliance is

explained in the application, that application could serve as compliance with this notification requirement.

(B) Twenty-four-hour reporting - This proposed standard term would require reporting as soon as possible, but no later than 24 hours after any noncompliance that could impact health or the environment. EPA anticipates this reporting requirement will be used infrequently, such as after sudden releases of CCR to the environment beyond the facility property boundary or to a waterway. A requirement to report such incidents within 24 hours is appropriate, so that EPA can respond, if needed, to oversee cleanup or take other action to ensure any impacts to health or the environment are mitigated.

(C) Other information - This proposed standard term would require the permittee to supplement or correct previously submitted information if the permittee realizes later that it was incorrect or incomplete. This would help EPA to ensure that CCR permits continue to meet the requirements of RCRA § 4005(d)(2)(B) by providing the Agency the opportunity to evaluate the submitted information and determine whether any changes to the permit are needed.

xiv. *Severability* – EPA is proposing a standard term to establish severability of the CCR permit. This would mean that if a term in the permit was invalidated through an appeal process or other mechanism, the rest of the permit would remain in effect. Severability is a common element in federal permitting programs. It would allow a permittee or other affected party to pursue appeal of a permit term without risking loss of other portions of the permit. It would also avoid the administrative burden of having to re-issue an entire permit to accommodate changes to address invalidation of only a part of the permit.

b. Establishment of permit conditions.

EPA is proposing to establish three provisions to guide a permit writer's discretion in developing individual permit conditions. Each of these provisions borrow heavily from § 270.30.

First, EPA is proposing in § 257.141(a) to include the direction that in addition to the standard conditions in § 257.140, the Administrator is to establish terms and conditions in a CCR permit, on a case-by-case basis, in accordance with the requirements and procedures of this subpart and with the mandate in section 4005(d)(2)(B) of RCRA. EPA is also proposing to codify the statutory mandate by specifying that the permit must include all permit terms and conditions necessary to ensure that each CCR unit will achieve compliance with subpart D of this part.

Second, EPA is proposing in § 257.141(b) to clarify that a permit writer may either incorporate the applicable requirements of subpart D by re-writing them into the permit or incorporating them by reference. Any incorporation by reference must include a citation to the specific provision or requirement. Allowing incorporation by reference could streamline the permit writing process or reduce the length of a permit, while maintaining clarity about which CCR rule requirements apply to the CCR unit and what the permittee must do to comply with them. Incorporation by reference could also reduce the need for permit modifications, if the permit references portions of subpart D that are subsequently amended through rulemaking. If the reference to the amended subpart D requirement in the permit continues to require compliance with the applicable requirements in subpart D, then no permit modification would be needed. EPA expects that incorporation by reference may be most effective when the reference is specific and the requirements of subpart D are straightforward, and do not require site-specific tailoring in a permit.

Third, EPA is proposing in § 257.141(c) to provide that the permit is to include such terms and conditions as the Administrator determines necessary to ensure there is no reasonable probability of adverse effects on health or the environment from the solid waste management of CCR at the permitted facility. This proposal is modeled on the RCRA "omnibus" provision at § 270.30(b)(2). It would authorize the permit writer to establish terms and conditions not expressly found in subpart D, but which the Administrator determines, after review of the CCR permit application materials and operations at the facility, to be necessary to meet the protectiveness standard in section 4004(a) of RCRA. Based on its experience implementing the subtitle C permit program, EPA considers this authority to be a key component of an effective permit program

A permit reflects the result of an adjudication in which the permit authority determines how the technical criteria in subpart D apply to the facility's specific operations and site conditions. During this process questions can arise as to how particular requirements apply to unique or anomalous situations that are not explicitly resolved by the text of the regulation (and likely could not be given the nature of these regulations, which establish generally applicable national requirements). "Omnibus" provides a kind of bridging or supplemental authority that allows permit writers to clarify how the technical criteria apply in a specific context, and to draft terms and conditions approving site-specific approaches, that are appropriate for the on-the-ground conditions at the facility, to achieve compliance with applicable requirements in subpart D. To be clear, this provision would not allow the Administrator to waive, amend, or alter any requirement in subpart D in a CCR permit, as that can only be accomplished through rulemaking.

Evaluating compliance approaches proposed by the applicant in site-specific plans or reports and incorporating them into the permit, either directly or by reference, is expected to be a

large and critical part of the CCR permit writing process. A permit writer would review these documents in the application and draft permit conditions, which may be based on proposed compliance approaches found in the site-specific plans or reports that elaborate on the technical criteria in subpart D. For example, an applicant who has triggered corrective action requirements for a CCR unit would develop a site-specific corrective measures assessment to comply with the requirements of § 257.96. The applicant would also select a corrective action remedy based on the findings of that assessment, in accordance with requirements in § 257.97. The corrective measures assessment would be submitted as part of the CCR permit application, and the applicant would provide documentation to support selection of the remedy. The permit writer would review these application materials and develop enforceable permit terms and conditions to require compliance with subpart D, reflecting specific approaches proposed in the application. These terms could include requirements to sample specific wells according to specific procedures, methods and schedules. They could also include requirements to design and implement specified remedial technologies in accordance with milestone deadlines. For example, "The permittee shall complete design of an in-situ treatment system to contain and control releases of chromium from the CCR unit to a concentration no greater than 1 mg/l. The design shall be completed no later than December 1, 2019, and construction of the remedy shall begin within six months of completing the design."

This adjudication of subpart D requirements would result in permit conditions interpreting those requirements, but which, consistent with the direction in RCRA § 4005(d)(2)(B), would be necessary to issue an enforceable CCR permit. The proposed language in § 257.141(a) and (c) is intended to provide the permit writer the authority and flexibility to develop such terms and conditions. It would also provide the permit writer, in the event that

proposed approaches in the permit application are not sufficient to achieve compliance with the requirements of subpart D, with the authority to develop terms and conditions that will require the permittee to achieve such compliance.

Just as under the omnibus clause, EPA would bear the burden of demonstrating that the factual prerequisites to exercise the authority under § 257.141(c) have been met. EPA would present these findings in the Statement of Basis and Purpose accompanying both the draft and final permit.

Finally, because § 257.141(c) is both a procedural and substantive provision, EPA is proposing it pursuant to RCRA §§ 1008(a)(3) and 4004(a) as well as RCRA § 4005(d). As such, EPA considers it to be, at least in part, a technical criterion. EPA requests comment on whether it would therefore be appropriate to include a corresponding provision with the other technical criteria in subpart D.

c. Schedule of compliance.

EPA is proposing at § 257.142(a) that if a CCR unit is not in compliance with one or more applicable requirements of subpart D and will still be out of compliance at the time of permit issuance, a permit may be issued which includes a schedule of compliance. The schedule of compliance would consist of a series of enforceable actions, each with a deadline, which will result in compliance with subpart D as soon as is feasible. In cases where the applicant is subject to a judicial consent decree or administrative order, the compliance schedule would not deviate from the specific requirements in the consent decree or administrative order and would be no less stringent but may be more detailed (e.g. may include interim milestones).

If the final compliance deadline in the compliance schedule is more than one year after the CCR permit becomes effective, then EPA is proposing that interim milestones with

compliance deadlines would be established, each lasting no longer than one year. EPA is proposing a one-year timeframe to maintain effective oversight of compliance efforts, while recognizing that some work required to achieve compliance may take months or more, and that seasonal or inclement weather may impact the feasibility of accomplishing major construction or earth-moving activities more quickly.

In addition, EPA is proposing at § 257.142(a)(3) to require that no later than 30 days after each interim milestone deadline or the final deadline for compliance, the permittee must post a notification on the public CCR website of its compliance or noncompliance with the interim milestone or final requirements. EPA believes 30 days is sufficient time to prepare and post this notification, which is essentially a statement of actions taken or not taken. If the permittee fails to comply with deadlines in a schedule of compliance in a CCR permit, the permittee would be subject to enforcement, modification of the permit to incorporate additional requirements or restrictions, or potentially termination of the CCR permit.

An example of a situation where a compliance schedule may be appropriate would be where a CCR unit does not meet an applicable location standard but has not yet ceased receiving waste, even though the deadline to do so has passed. The facility may have failed to comply with the requirement to cease receiving waste due to delays in making the operational changes needed to cease sending non-CCR waste streams to the CCR unit. EPA could issue a CCR permit to require compliance with closure requirements in subpart D by establishing enforceable deadlines for project milestones in the CCR permit, as well as any applicable corrective action requirements. If the CCR unit is being operated under an enforcement order (i.e., a federal consent decree or an administrative order) the Administrator could establish a schedule of compliance to incorporate the enforcement order in the CCR permit. If the CCR unit is not

operating under an enforcement order, the Administrator could develop a schedule of compliance to ensure the fastest closure feasible and require the permittee to come into compliance with subpart D using a site-specific compliance approach, with milestones, in an enforceable permit. These milestones could include, for example: completion of process change drawings no later than three months after permit issuance, ordering necessary equipment no later than one month after drawings are complete, and installing new equipment at the first scheduled shutdown of the unit or no later than 120 days after the new equipment is received.

4. Changes to a Permit

During the active life of a CCR unit, through post-closure care and until completion of all corrective action, changes to a permit are inevitable to keep pace with evolving business practices, technology, cleanup decisions, and changes in applicable regulatory requirements. It is likely that all CCR permits will need to be changed multiple times throughout the operation and closure of the unit, and EPA is proposing to establish procedures at §§ 257.150 through 257.152 to accomplish this.

EPA is proposing two basic categories of modifications: (1) those which are initiated by EPA, including in response to a citizen petition submitted in accordance with § 124.5, and (2) those which are initiated by the permittee. The procedures EPA is proposing at §§ 257.150 through 257.152 would establish the factual findings and criteria applicable to all modifications. These procedures would distinguish between two types of permittee-initiated changes, categorizing them as either major or minor, along with a streamlined process for a facility to request minor modifications. EPA is also proposing to rely on the existing procedures in part 124 or part 22 whenever EPA modifies or revokes and reissues a permit at its own initiative, terminates a permit, or acts on a permittee's request for a major modification.

a. Modification or revocation and reissuance of an individual permit at EPA's initiative.

EPA is proposing that the Administrator may modify or revoke and reissue an individual permit if one or more of the causes listed in § 257.150(a) exist. EPA is proposing explicitly that the Administrator may make this determination based on information from any source, such as through a facility inspection, information submitted or posted by the permittee, a petition under § 124.5 of this chapter, or whenever EPA reviews the permit file. When a permit is modified, only the conditions subject to modification would be reopened. By contrast, if a permit is revoked and reissued, the entire permit would be reopened and subject to revision. Revocation and reissuance would generally be appropriate when the changes are too extensive to be addressed through a permit modification. For example, revocation and reissuance may be appropriate when permitting authority is partially transferred to a state that has received a partial program approval. In this example, if a federal permit includes multiple CCR units, and some of them become subject to permit requirements under an approved state program, the federal permit may be revoked and reissued to include only the CCR units which remain subject to federal permitting requirements. This structure is consistent with procedures in other federal permitting programs and with the standard terms for severability proposed in § 257.140. See, e.g., §§ 122.62, 144.39, and 270.41.

EPA is proposing to limit the Agency's authority to initiate a modification only to situations in which EPA determines that one or more of the causes listed in § 257.150(a) exist. These are generally similar to those found in several EPA programs including NPDES, UIC, and RCRA. See, §§ 122.62, 144.39, and 270.41.

The first cause listed in § 257.150(a)(1) would be if there are alterations or additions to the facility that would be materially and substantially different from those specified in the

existing permit conditions or permit application, or that could otherwise impact the ability of the permit to require compliance with any of the requirements in subpart D. This type of modification could include changes to operations beyond the CCR unit but that could affect the measures the facility has adopted to comply with subpart D, such as a change to a process or operation that affects fugitive dust control or run-on runoff control. The EPA authority to initiate a permit modification to address this situation is necessary to ensure that CCR permits continue to require the permittee to achieve compliance with subpart D.

The second cause listed in § 257.150(a)(2) would be where EPA has received information since the time of permit issuance that demonstrates the need for modified permit conditions. EPA is proposing that it could modify a permit on this basis in two situations. The first situation is where the information was not available to EPA at the time of permit issuance, and the information would have justified the inclusion of different permit conditions at the time of issuance to require compliance with subpart D. The second situation would not hinge on whether the information was available at the time of permit issuance but would authorize modification whenever any information shows that modification is necessary to include requirements in the permit which ensure there will continue to be no reasonable probability of adverse effects on health or the environment from permitted operations.

EPA recognizes that this latter provision is broader than the comparable provisions under other EPA regulations (e.g., § 270.42) but this was intentional. In contrast to other programs, EPA is proposing that CCR permits be issued without an expiration date, which means that there will be no routine opportunity to reexamine the permit as a whole or to rectify mistakes. Thus, for example, if an inspection reveals deterioration of a cap over a closed CCR landfill, the Administrator should be able to extend the post-closure care period in the CCR permit to ensure

continued compliance with the performance standards in § 257.102, without regard to whether those conditions existed at the time of permit issuance, and therefore such information might have been available to EPA. The Agency considers such a provision to be an essential component of the program to ensure that any permit continues to meet the standard in RCRA section 4005(d)(2)(B) throughout the entire life of the permit. This authority is particularly critical in light of the permit shield provided by RCRA 4005(d)(6) and the corresponding provision proposed in § 257.125(a).

In accordance with proposed § 257.150(a)(3), if the Administrator has cause to terminate a permit under § 257.153 but determines that modification or revocation and reissuance is more appropriate, the Administrator may change the permit to incorporate updated permit terms to require compliance with subpart D. For example, if a CCR unit is out of compliance, rather than terminate the permit in accordance with § 257.153(a), the Administrator may initiate a modification to incorporate a schedule of compliance into the permit in accordance with § 257.142. This approach could minimize any interruption in the effectiveness of an enforceable CCR permit and may be appropriate if a permit modification could result in quicker compliance with subpart D requirements than other alternatives, such as an enforcement action. For example, in the context of a permittee that is not in compliance with the requirements for an ongoing, complex corrective action, EPA may decide to modify the permit to establish more prescriptive interim milestones, rather than terminating the permit and relying on a RCRA section 3008(a) compliance order to govern the cleanup.

The fourth cause listed in § 257.150(a)(4) for EPA to initiate a permit modification is if EPA becomes aware of transfer of ownership or operation of a permitted CCR unit. If the new owner and operator have not submitted a timely permit application to update the name(s) of the

permittee(s), EPA may initiate modification of the permit. EPA views this as a necessary provision, given that a permit issued in the name of an entity which no longer has control of the CCR unit would be less effective and enforceable than a permit issued to the owner and operator currently in control of the CCR unit. Failure of the new owner and operator to apply in a timely manner for a permit modification to reflect the transfer of control should not preclude EPA from transferring the permit, where EPA has information verifying that the transfer has occurred.

An additional basis for EPA to initiate a permit modification under § 257.150(a)(5) is where modification is appropriate to correct any error, mistake or omission, so as to conform a permit's requirements to the applicable requirements of subpart D. EPA believes this requirement is necessary to meet the standard in RCRA section 4005(d), particularly in light of the proposed permit shield. To ensure the inclusion of all appropriate permit terms and conditions, EPA is proposing the Administrator may initiate modification of a permit to correct errors, mistakes or omissions in order to conform CCR permits to subpart D.

EPA is proposing to include a reference in § 257.150(a) to the existing provision in § 124.5(a) that lays out the procedure by which any interested person may petition the Administrator to modify or revoke and reissue a permit. A corresponding reference to petitions to terminate a permit is proposed in § 257.153. As specified in § 124.5, such a petition can only be granted if EPA determines that one or more of the grounds in paragraph (a) of this section have been established. Also, as specified § 124.5, the petition must be in writing and contain reasons or factual information or evidence.

An interested party might obtain such information through personal observation (e.g., observation of unpermitted or non-compliant CCR management activities at a facility subject to a permit issued under these proposed requirements; observation of excessive releases from a

facility, such as fugitive dust, uncontrolled runoff, or seepage of CCR). An interested party could also obtain information by reviewing compliance information submitted to EPA or posted on a publicly accessible CCR Web site. If any member of the public believes that a CCR permit should be modified based on such information, EPA is proposing to provide the same opportunity to request that the Administrator modify, revoke and reissue, or terminate a CCR permit that is available for NPDES, UIC, and RCRA hazardous waste permits. EPA requests comment on whether this provision is appropriate in the context of a RCRA subtitle D permit program.

EPA is proposing at § 257.150(b) a provision modeled after § 270.41(c), which would provide that the suitability of the siting of a previously permitted unit will not be considered at the time of permit modification or revocation and reissuance unless new information or regulations indicate there is a reasonable probability of adverse effects to health or the environment that was unknown at the time of permit issuance. This provision is intended to confirm that the Administrator will not routinely require the owner and operator to evaluate whether an existing CCR facility or existing CCR unit continues to be properly sited during routine permit modifications. Such an action is not within the current scope of subpart D, which requires a single demonstration of compliance with the location criteria. However, if information becomes available demonstrating that the CCR unit presents a reasonable probability of adverse effects to health or the environment, the permit would fail to meet the protectiveness standard in RCRA section 4004(a). As an example, this provision might be triggered if the elevation of the aquifer beneath the unit had significantly and permanently increased over time, e.g., as a result of intersecting surface water or aquifer deformation, such that the CCR unit located above the aquifer would no longer meet the requirements of § 257.60 The proposed provision at §

257.150(b) would clarify that in such a case EPA could modify or revoke and reissue the CCR permit with updated permit terms, under the omnibus provision proposed at § 257.141, to address the risks. This provision is similar to § 270.41(c), which is limited to situations in which the risk was unknown at the time of permit issuance. EPA is proposing to retain this limitation, even though, as discussed above, EPA is otherwise proposing to adopt more expansive bases for Agency-initiated modifications in this program. EPA believes that there should be a higher bar to impose further conditions on the siting of a unit, given that it may be technically difficult to address issues once the unit has been built and is operating. EPA is proposing to adopt language in § 257.150(b) that reflects the RCRA section 4004(a) standard and to clarify that the risk was unknown to the Administrator, rather than merely "unknown."

In fact, EPA expects that the likelihood that a unit's compliance with the location criteria would change over time is low, and because this will be a rare occurrence, would be properly addressed under omnibus authority. However, EPA requests comment on whether this could occur with sufficient frequency that it would be best addressed by amending the criteria at §§ 257.60 through 257.64 to reflect these circumstances rather than the approach proposed in this action. Note that the language under § 257.150(b) would not preclude routine application of the subpart D location criteria to lateral expansions. In subpart D, lateral expansions are considered new CCR units that must be permitted and must comply with all the requirements applicable to new units, including the location criteria.

To ensure adequate public notice and transparency, EPA is proposing at § 257.150(c) that the Administrator will post all EPA permitting actions on a publicly available website. This would include: draft permits, permit modifications, revocations, terminations, and reissued permits. This is discussed further in Unit V of this preamble.

b. Permit modifications at the request of the permittee

After an individual CCR permit is issued, the permittees are obligated to evaluate changes at the facility and changes in the regulatory requirements, and to apply for permit modifications as needed to maintain a permit which accurately reflects operations at the facility and requires compliance with the applicable requirements of subpart D and the protectiveness standard in RCRA section 4004(a). An individual CCR permit modification could be requested by the permittee at any time during the life of the permit, which is how EPA expects most modifications will be initiated.

To obtain a modification, EPA is proposing that the permittee would submit an application for a permit modification to EPA, in accordance with § 257.152, which would describe the type of permit modification requested and would specify the requested changes to permit provisions. In all applications for permit modifications, the permittees would submit information to EPA that describes the exact change requested to the permit conditions, proposes whether the change is a major or minor modification, and provides a permit application that contains the information required in the relevant provisions in §§ 257.130 and 257.131. All applications must also include the certification required under § 257.130(e), attesting to completeness, truth and accuracy of the application.

In addition, as part of seeking a modification to a permit, the owner and operator must review the previously submitted permit application in its entirety to determine whether it continues to accurately reflects solid waste management of CCR at the facility. If the permit application no longer completely and accurately describes these operations, the facility must submit an amended application that reflects its current operations, even if the facility believes that no modification of existing permit conditions is necessary in light of these changes.

EPA is proposing two types of modifications, major and minor, for many reasons. EPA examined several other environmental permitting programs to inform this proposed rule, as discussed in Unit III.C of this preamble. Some of these programs have more than two types of modifications, including the RCRA hazardous waste permitting program. However, based on the nature and complexity of the scope of CCR disposal and waste management EPA is proposing that only two categories of modifications are necessary to capture all reasonably anticipated modification scenarios. CCR are generally managed in only two types of units: a landfill or a surface impoundment; in contrast, there are many more types of hazardous wastes which are typically managed in a wide variety of ways (e.g. treated, stored, or disposed of) in a variety of units (i.e., landfills, surface impoundments, tanks, incinerators). Further, the modifications necessary for CCR units are anticipated to generally be similar for landfills and surface impoundments.

i. Minor modifications at the request of the permittee.

Minor modifications would be minor or administrative changes that keep the permit current with respect to common changes to the facility or its operations. These changes would not substantially alter the permit conditions or reduce the ability of the facility to operate in a manner that is protective of health and the environment. These criteria for minor modifications, which are proposed in § 257.151(a), were modeled on the criteria for class I modifications under § 270.42 and minor modifications in § 71.7(e)(1). The proposed criteria are intended to exclude any change that could decrease the effectiveness of the permit at either requiring compliance with subpart D, or otherwise ensuring that the facility continues to meet the protectiveness standard in RCRA section 4004(a). Because of their administrative nature, simplicity, routine nature, and lack of impact on the operation or protectiveness of the CCR unit and related waste

management practices, such modifications should be implemented quickly and do not warrant public comment.

A list of examples of minor modifications is provided in § 257.151(a)(1) through (a)(10), but any modification that meets the criteria proposed in § 257.151(a) would be processed as a minor modification. EPA included the examples on the list largely because they are expected to be routine changes that can be quickly reviewed, and that should have little potential to impact human health or the environment, and consequently do not necessitate an opportunity for public comment.

Among the listed examples of minor modifications are any administrative or informational changes in the permit application, such as changes to the name or contact information of coordinators or other persons or agencies identified in the permit or compliance plans. Another example is any correction of typographical error in the permit, as long as these revisions do not substantively or materially impact any of the permit terms.

An example of a minor permit modification that EPA is proposing to include at § 257.151(a)(3) is the transfer of ownership or operational control of a CCR unit or facility. EPA understands that a change in ownership or operational control of a CCR unit or facility can sometimes happen quickly or may be uncertain until the transfer occurs. In that case, it may not be feasible for the permittee to apply for a permit modification 45 days prior to the transfer. Therefore, the proposal would require the new owner or operator to submit a revised permit application as soon as practicable, but no later than 30 days after the transfer of ownership or operational control occurs. The new permittee would also provide contact information to the Administrator.

In addition, EPA is proposing at § 257.151(a)(4) to consider any changes necessary to comply with new or amended regulations as minor modifications, when these changes can be incorporated directly into the permit without requiring a significant exercise of technical judgement or discretion and without substantially changing design or operational restrictions or compliance approaches required by the existing permit. EPA is proposing that public input is not needed for the kind of ministerial modification that merely implements the change in the regulation. This is also the case for any changes in statutory requirements. Since a change in the regulation underlying the permit condition would go through public notice and a public comment, further opportunity for public comment on effectuating that change is not needed. Similarly, when the statute changes, EPA has no discretion to revise Congress's mandate, and updating the permit to reflect that mandate is merely a ministerial exercise that does not warrant public comment.

In these circumstances, permittees will be expected to initially determine the changes that are applicable to their CCR units and the changes to the permit conditions that are needed. The permittees would to submit an application for a minor modification if those changes can be incorporated directly, without requiring discretion regarding applicability or any changes to site-specific compliance approaches. If the change in regulatory or statutory requirements requires a permit modification that is complex or requires changes to compliance approaches or other decisions in the permit that relied on any significant judgment or discretion, then the modifications would be considered major. See proposed § 257.151(c)(9).

EPA is proposing in § 257.151(a)(6) that minor modifications can include any changes that increase the stringency of permit requirements, such an increase in the frequency or duration of the procedures for inspection, monitoring, recordkeeping, web posting, sampling, analytical

methods, or maintenance activities. If the permittee wants to inspect the CCR unit more often than required by the existing permit, conduct more groundwater samples or increase the frequency of sample collection, or use any equivalent analytical methods, this provision allows the permittee to make these changes using the minor modification procedures. Also, if there are changes to monitoring, sampling, or analysis methods or procedures that are appropriate to conform permit conditions to updated agency guidance or regulations, these would be considered minor modifications. EPA will review the proposed modifications to make sure the changes are equivalent to or more stringent than the permit terms, but EPA believes that, on balance, an opportunity for public comment would unnecessarily delay implementation of clearly desirable changes.

Another minor modification at § 257.151(a)(8) would be if an existing groundwater monitoring well needs to be replaced because it has been damaged or rendered inoperable. As long as the well replacement does not significantly change the location, design, or depth of the sampling interval of the well, this can be considered a minor modification, but if it does change any of those criteria, it would be considered a major modification. The last example of a minor modification in the proposed rule would be a change to the closure plan to adjust the estimates of the maximum extent of operations or the maximum inventory of waste onsite at any time during the active life of the facility. This is proposed at § 257.151(a)(9). These would be considered minor modifications as long as all of the other monitoring and reporting requirements are conducted in accordance with the permit and as long as these changes continue to ensure there is no reasonable probability of adverse effects to health and the environment.

The procedures to obtain a modification are proposed at § 257.151(b) and would differ for minor modifications and major modifications. In either case, the owner and operator would

submit a permit modification application to EPA in accordance with § 257.152 and indicate whether the permittee considers the proposed change to be a major or minor modification. All minor permit modification applications must contain sufficient information to justify treating the modification as minor. The Administrator would review the application and determine if that characterization is accurate. This is an important step, because the major and minor procedures differ significantly in several respects. For example, the minor modification procedures proposed at § 257.151(b) would not require a public comment period or public meeting as they are changes that do not substantially alter the permit conditions. Any modifications that meet the criteria at § 257.151(a) would be considered as minor; if multiple modifications are requested in a single application, the permittee would be required to demonstrate that all of them meet the criteria. Any that do not would be considered major modifications and processed according to the procedures proposed at § 257.151(d).

EPA is proposing two provisions that specify the timing for requesting a minor modification; first at § 257.151(b)(1), which would apply to most requests, EPA is proposing to require the permittee to submit an application no less than 45 days before making a change to the CCR unit. This deadline would be excepted for minor modifications requested due to the transfer of ownership or operational control of a CCR unit or facility, where it is often not feasible to apply 45 days in advance, as provided in § 257.151(a)(3).

Second, EPA is proposing at § 257.151(b)(2) that if there are revisions to subpart D, such as a final rule promulgation or court order, which makes the underlying requirements less stringent than the existing permit conditions, the owner and operator may continue to operate in accordance with the permit or may apply for a minor permit modification in accordance with § 257.152. All regulatory revisions will be posted in the *Federal Register*, and it will be the

permittee's responsibility to be aware of any new or more stringent applicable requirements. Whenever the underlying requirements in subpart D change to be more restrictive, such that compliance with the permit no longer results in compliance with subpart D, the permittee would be required to apply for a permit modification. EPA believes that the permittee should initiate these modifications because an owner and operator is best able to identify the impact of any regulatory changes on operations at a facility. Moreover, these modifications will be put into effect faster if the permittee initiates the modification than if EPA initiated the modification.

After a permit application for a minor modification is submitted, EPA is proposing in § 257.151(d)(4) and (d)(5) that the Administrator would determine whether the modification is appropriate and protective. The Administrator may take a number of actions in response; first EPA may determine that the proposed modification does not meet the criteria for a minor modification and therefore must follow the procedures for a major modification in § 257.151(d). The Administrator could also determine that additional information is needed to evaluate the modification; for example, if the application does not contain enough supporting information to demonstrate that the change is necessary or that it meets the conditions for a minor modification. The Administrator may also deny the request if it does not contain enough supporting information or if the requested modification would result in a permit that does not require compliance with subpart D or otherwise fails to meet the statutory protectiveness standard. If the Administrator takes any of these actions, the permittee may update the application and submit it again to the Administrator. In this case, the permittee must continue to comply with the original permit conditions.

Finally, the Administrator may approve the minor modification and update the permit accordingly, including a new permit issuance date. EPA is proposing at § 257.151(b)(7) that if

EPA has not responded within 45 days after the permittee submits the application for the modification, the application will be considered to be approved and the permittee may make the change as described in the permit modification application. Since minor modifications do not substantially alter the permit conditions, EPA believes that 45 days provides sufficient notice of the proposed change. This ensures that minor, unsubstantial changes are made in a timely manner and keeps the permit application up to date. Note that minor modifications would not be subject to the requirements in § 124.5, which is consistent with the approach under the NPDES, UIC, 404 programs, as well as the RCRA hazardous waste program, which excludes both Class 1 and 2 modifications. See § 124.5(c)(3).

ii. Major modifications at the request of the permittee.

In contrast to minor modifications, major modifications are those changes that materially alter the facility, its operation, or compliance approaches required in the existing permit, or changes to address regulatory revisions that will require a significant exercise of technical judgement or discretion to implement. EPA is proposing at § 257.151(c) that any modification that does not meet the criteria proposed at § 257.151(a) to be a minor modification would be a major modification. Major modifications would include physical or operational changes, changes to compliance approaches, or any other changes that could impact the protection of health and the environment. If a CCR unit transitions into a new operating phase and becomes subject to requirements in subpart D not included in the permit, a major modification application must be submitted to the Agency to update the permit. However, if a CCR unit transitions into a new operating phase and all requirements in subpart D applicable to the unit in the new operating phase are already included in the permit, no permit modification would be required. Examples of major modifications that meet the above criteria are proposed in § 257.151(c)(1) through (9).

EPA requests comment on whether the criteria proposed in § 257.151(c) is sufficiently comprehensive to include all potential modifications that should be treated as major, and on the appropriateness of the listed examples of major modifications.

The first example of a major modification that EPA is proposing at § 257.151(c)(1) is any change that reduces the frequency or stringency of requirements for inspection, monitoring, sampling, analysis, recordkeeping, reporting, web posting, or maintenance activities by the permittee. These would be considered major modifications because there is a possibility that the change would make the newly revised permit conditions less stringent than the existing requirements in the permit, which warrants careful review and, because it could impact the public, an opportunity for public comment. The Administrator will not approve changes that make the permit conditions less protective than the underlying requirements in subpart D. For example, a facility might be required to conduct daily inspections following a structural stability failure at the CCR surface impoundment to monitor the progress of remediating the issue. After the structural stability issue is resolved, a major modification could be requested to allow the facility to instead comply with the weekly inspection requirements in § 257.83(a)(i). This modification would be less stringent than the original permit term, but not than the technical criteria in subpart D, and could be approved because the permit would continue to meet the statutory standard that each permit requires compliance with subpart D.

Removing a permit condition because the underlying regulatory requirement is no longer applicable would be considered to be a major modification, if the change in the applicable requirement was not merely incorporating a regulatory revision, a statutory change, or a court order (e.g., vacatur of a requirement). See § 257.151(c)(2). For example, this could include a change based on completion of an operating phase (e.g., completion of closure activities).

Another example could be a change in the applicability of emergency action plan (EAP) requirements for existing and new CCR surface impoundments, in response to a change in the unit's hazard potential classification. See §§ 257.73(a)(3) and 257.74(a)(3), respectively. The EAP is a document that identifies potential emergency conditions at a CCR surface impoundment and specifies actions to be followed to minimize loss of life and property damage. The requirement for an owner and operator of a CCR surface impoundment to prepare an EAP applies to non-incised[9] surface impoundments classified as either high- or significant hazard potential.[10] A hazard potential classification provides an indication of the potential for danger to human life, economic loss, environmental damage, disruption of lifeline facilities, or other impacts in the event of a release of CCR from a surface impoundment due to failure or mis-operation. If subject to the requirement, owners and operators must conduct periodic (i.e., every five years) hazard potential re-assessments. The CCR regulations address situations where the hazard potential classification of a CCR unit changes over time (e.g., the circumstances presenting the potential for loss of life no longer exist). In the situation relevant to this example, if the CCR unit is determined to be no longer classified as either a high hazard potential unit or significant hazard potential unit, then the CCR unit is no longer subject to the EAP requirements. See § 257.73(a)(3)(iii). Once this determination is made, it would be appropriate to modify the permit to remove the EAP requirements from the permit because the EAP provisions are no

[9] The CCR regulations define an "incised" surface impoundment as a CCR surface impoundment which is constructed by excavating entirely below the natural ground surface, holds an accumulation of CCR entirely below the adjacent natural ground surface, and does not consist of any constructed diked portion.

[10] A "high hazard potential" impoundment is a diked surface impoundment where failure or mis-operation will probably cause loss of human life. A "significant hazard potential" impoundment is a diked surface impoundment where failure or mis-operation results in no probable loss of human life, but can cause economic loss, environmental damage, disruption of lifeline facilities, or impact other concerns.

longer applicable to the CCR surface impoundment. EPA is proposing this would be a major modification to a CCR permit.

EPA is also proposing at § 257.151(c)(3) that any reduction in the number, or substantial changes in location, depth, or design of groundwater monitoring wells required by the permit would be considered a major modification. This is considered a major modification because there is a possibility that the change would make the requested permit conditions less stringent than the existing permit, which warrants careful review and, because it could impact the public, an opportunity for public comment.

EPA is also proposing at § 257.151(c)(4) that the addition of a new CCR unit, including a lateral expansion, would be considered a major modification, provided the new unit did not qualify for and opt for coverage by either a general permit or the permit by rule (proposed at § 257.128). Such an addition would be a significant change to the CCR facility; it may allow a higher volume of CCR to be managed at the facility, and the new CCR unit may be subject to different requirements than the other unit(s) at the facility, which may have predated the 2015 rule. This would mean that new permit terms would be required, and, because these changes could significantly impact the public, EPA would consider public notice and an opportunity for comment not only appropriate, but necessary.

EPA is also proposing at § 257.151(c)(5) that any modification of a CCR unit, including physical changes or changes in management practices which are not minor modifications under § 257.151(a) will be considered a major modification. This would include any change to the CCR unit or CCR management operations that would require a material revision to the permit terms as written.

EPA is also proposing at § 257.151(c)(6) that initiation of a corrective action program, in accordance with § 257.96, or any substantive revision to the corrective action requirements in the permit would be considered a major modification. A site-specific compliance approach to corrective action is required when there is a statistically significant increase (SSI) above a groundwater protection standard for any constituent listed on Appendix IV of part 257, which indicates that there is a reasonable probability of adverse effects on health and the environment. Since corrective action will require discretion and professional judgment to determine an appropriate compliance approach and could impact the public, this would be considered a major modification.

EPA is proposing in § 257.151(c)(7) that changes to an approved plan required by subpart D, such as a closure plan required by § 257.102(b) or post-closure care plan required by § 257.104(d), and any reduction in the post-closure care period for any reason would also be examples of major modifications. The closure and post-closure requirements are found in §§ 257.100 through 257.104. Development of a site-specific plan for a CCR unit involves many decision points. For example, when developing a closure plan, the permittee must decide whether to close by removal or close by leaving CCR in place and how to design a final cover system. Moreover, the performance standards in the regulations allow for a variety of engineering approaches and can involve complex technical issues. These decisions also involve a certain degree of long-term risk, all of which warrants the greater degree of oversight and public involvement that comes with a major modification. These same considerations would apply equally to any other plans, such as a groundwater monitoring plan, a run-on run-off control plan, or a post-closure care plan These plans serve to establish maintenance and monitoring procedures to ensure the continued effectiveness of controls to prevent releases, monitoring to

evaluate effectiveness of controls or corrective measures, or of closure requirements. Therefore, EPA is proposing that these also be considered major modifications.

EPA is also proposing at § 257.151(c)(8) that an extension of the final date in a schedule of compliance established in accordance with § 257.142 would be an example of a major modification. A compliance schedule would be included in a CCR permit if the permittee is out of compliance with one or more provisions of subpart D. A modification to extend a compliance schedule would extend its period of noncompliance. Because this could increase the probability of adverse effects on health or the environment, default approval of the proposed modification is inappropriate and public input is warranted.

EPA is proposing at § 257.151(c)(9) that if there is a change in underlying regulatory requirements, which requires substantial changes to the design, operation, or compliance strategies established in the permit, or that requires the application of significant technical judgement or discretion, this type of change would be considered a major modification. This would include, for example, the establishment or revision of a performance standard or applicability determination that is complex or relies on significant judgment or discretion to account for site-specific considerations. Public input on EPA's determinations regarding the requirements of that revised standard in the site-specific context at the particular CCR unit or facility would be warranted.

EPA is proposing to rely on the existing decision-making procedures in part 124 when issuing RCRA CCR permits, consistent with procedures followed in other federal permitting programs. The procedures for approving a major modification are the same as those that must be followed to issue the initial permit. Specifically, EPA must issue a draft permit (or tentative denial) in accordance with § 124.6 accompanied by a statement of basis or fact sheet, as

appropriate. See §§ 124.7 and 124.8. The draft must be publicly noticed and made available for public comment. See §§ 124.9 through 124.11. EPA would provide notice of an opportunity for a public hearing and would hold one if EPA determines there is significant public interest and a public hearing is warranted. See § 124.12. EPA's final decision will include a response to comments and may be appealed under § 124.19. See also, §§ 124.15, 124.17. Unlike minor modifications, for major modifications, EPA is not proposing to establish a default approval if EPA does not take action within a certain number of days after the application for the modification is received.

c. Application to modify a permit.

Whenever a permittee needs to make a change to a CCR permit, EPA is proposing that the permittee will update the permit application and submit it to the Administrator for review. EPA is anticipating that the permit application will be the same for initial permit issuance, as proposed at §§ 257.130 and 257.131 and in Unit IV.C.2, as it would be for a modification, through an electronic permitting process (see Unit V of this preamble). When the permittees need to make a change to the permit application, they would be able to access the permit application from the electronic permitting system and make any necessary changes throughout the entire permit application. Then, the permittees will be required to certify the amended permit application for truth, completeness and accuracy. The timelines for applications that EPA is proposing would be no less than 180 days in advance of the proposed change for a major modification, and for minor modification no less than 45 days in advance of the proposed change. See proposed § 257.152(c) and (b)(2), respectively. EPA anticipates more time would be needed to process major modifications to CCR permits, because the operational or regulatory changes would be more complex, and to follow the required public participation procedures.

EPA is proposing at § 257.152(a) that for either type of modification, major or minor, a complete permit application must contain sufficient information about the specific change anticipated, the modification type that is requested, and the reason why the permit modification is necessary. EPA is proposing that the permittee must give a detailed description of the exact modification or modifications requested for the facility or operations as well as any supporting documentation referenced by the permit. Since some requirements in subpart D pertain to the entire facility, such as the Fugitive Dust Control Plan required in § 257.80, any proposed changes to the facility-wide requirements must address any impacts that the modification could have around the facility. The permittee must also identify which permit condition(s) it is requesting to modify. The application must also identify whether the change meets the criteria for either a major or a minor permit modification, with sufficient information to support that classification. In addition, the permit modification application must contain an explanation of why the modification is necessary to ensure that the permit accurately reflects the current facility conditions and operations. In many cases, this explanation will include a written description of exactly why the change must be made, any technical justifications, along with supporting data, and any other applicable information required by §§ 257.130, 257.131, or 257.152. EPA believes that all of this information is necessary to completely understand and evaluate the requested modification, as well as how to draft modified permit terms that will require compliance with subpart D.

Consistent with the procedures for initial permit applications and § 124.3(c) EPA would review the application for a permit modification for completeness. If it is found to be incomplete, EPA will notify the applicant(s) in writing and will list the information necessary to make the application complete. In practice, EPA has frequently informally requested additional

information from the applicant or provided an opportunity to supplement their application prior to triggering a formal notification that an application for a permit modification is incomplete. EPA generally expects to adopt a similar practice for CCR permit modification applications.

Prior to submitting the permit modification application, the owner and operator must review and update the previously submitted permit application in its entirety. The owner and operator would need to certify, as proposed at § 257.130(e), that both the updated sections to support the requested modification, and all other sections of the previously submitted permit application, truthfully, accurately, and completely describe all CCR units and solid waste management operations regulated by this program. If, the applicant, during this review, determines that any information in the prior application is no longer accurate, complete, or true, then that information must be updated in the modification application. This requirement is proposed because a modified permit would be issued with a new effective date, which would begin anew the periodic application review period proposed in § 257.132. In order to avoid a situation where a portion of a permit application could remain unreviewed for many years, this application review should occur each time an application for a modification is submitted.

EPA requests comment on whether these application procedures are sufficient and if the time periods identified for minor and major modifications are feasible for making these changes to a permit.

d. Termination of an individual permit

Establishing the circumstances under which a permit is no longer necessary or can be revoked is a key component of any permit program. The grounds for permit termination are specified in EPA regulations in several permit programs, including CWA, SDWA and RCRA hazardous waste permitting. See §§ 122.64, 144.40, 233.36, 270.43. These regulations share

several common elements; generally, permits can be terminated under these regulations to address a significant risk, or in response to a permittee's malfeasance. See, Id. Some of these programs include additional grounds that would be relevant in this context; allowing for termination when the permitted activity ceases, or to transition to some other regulatory mechanism, See §§ 122.64(b), 233.36(a)(3) and (4).

Accordingly, EPA is proposing at § 257.153(a) that an individual CCR permit could be terminated for limited, specified reasons. Consistent with the programs discussed above, a permit could be terminated by: significant noncompliance; failure to fully disclose all relevant facts in an application or during the permit issuance process; misrepresentation of relevant facts at any time; or a determination that there is reasonable probability of adverse effects on human health or the environment from the permitted activity, which can only be addressed by permit termination. EPA is also proposing to adopt provisions that would authorize permit termination to allow transition to coverage by a general permit under § 257.127; permit by rule at § 257.128; to a permit issued under an approved State CCR Permit Program; or in response to cessation of the permitted activity with no remaining compliance obligations in subpart D.

EPA does not anticipate that CCR permit termination to address permittee malfeasance or a significant risk will occur often. While there is a future date where a CCR unit may no longer be subject to requirements in subpart D, and may not need a permit, these units typically operate for decades. After a CCR unit is closed, post-closure care is conducted over 30 years, and corrective action measures can take decades to achieve all cleanup goals. Closure, post-closure care and any required corrective action would be conducted under the terms of a CCR permit. Even if serious noncompliance leads EPA to deny a CCR permit for disposal, a new or modified CCR permit would be issued to require other activities to be conducted in compliance with the

requirements of subpart D. Thus, in the overall scheme of the CCR permit program, permit termination should happen infrequently as the result of a unit no longer having compliance obligations, or if transitioning to a different CCR permitting mechanism, such as a general CCR permit.

EPA is proposing at § 257.153(b) that any termination of a CCR permit would follow the procedures in part 124 or part 22. Part 22 contains the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits and EPA proposes to amend it by adding § 257.153 to the list of provisions by which EPA may terminate a permit for cause in § 124.5. This would make the requirements of § 22.44 applicable to termination of a CCR permit, including requirements for public notice and comment.

V. Electronic Permitting

The Agency is proposing to use electronic permitting (e-permitting) for as much of the permitting process as possible. E-permitting would improve the effectiveness and efficiency by streamlining the permitting process for both the permitting authority and the permittee, reducing time between application and permit issuance as well as improving the permit modification process. For each applicable CCR unit or facility, e-permitting could include the:

- Submittal of the initial permit application,
- Public notice of draft permitting actions,
- Issuance of final permitting actions,
- Submittal of an application for a permit modification,
- Public notice on draft permits and draft major modifications,

- Permittee access to the permit application for the periodic application review,
- Correspondence between EPA and the permittee or interested parties, and
- Termination of a permit.

To accomplish electronic permitting, EPA proposes to develop a CCR module in the RCRAInfo system using the Central Data Exchange (CDX) for owners and operators of CCR units to create a profile and submit information in this system. RCRAInfo allows for the creation of an EPA Identifier number if the facility does not already have one through the system. EPA envisions the system to include fillable forms with different options based on CCR unit type. For example, existing CCR surface impoundments would have different requirements to enter in the system than existing CCR landfills, and both would have different requirements in the permit application than new CCR units (i.e., landfills, lateral expansions, and surface impoundments). Since EPA is proposing to ideally issue one individual CCR permit per facility, the basic information about the facility, owner, operator, and operations would be entered once in the permit application; separate information about each CCR unit at the facility would be entered based on the number and type of CCR units. The electronic system would also include the ability for the permit applicant to submit plans, drawings, and other documents into the system for review as part of the permit application.

Another option that EPA is considering for e-permitting is the use of a secure e-mail box or another electronic method to reduce the use of paper but follow a streamlined permitting process. EPA requests comment on the use of electronic permitting. Are there other electronic information collection methods that should be considered, what would those entail and why should the Agency consider them? In addition, what type of information collection would be the most effective for this industry?

Regardless of the permit submission method that is developed for the CCR permit program, all the information submitted by the permit applicant must be certified for truth and accuracy, and then must be reviewed by a permit writer for compliance with both the technical requirements in subpart D and the permitting requirements in this proposed rule.

VI. The Projected Economic Impacts of this Action

A. Costs of the Proposed Rule

EPA estimated the costs associated with this action in an Economic Analysis (EA) which is available in the docket for this action. The EA considers two general categories of costs: costs to regulated entities to prepare, submit, and revise initial permit applications, and to prepare, submit, and revise anticipated major and minor permit modifications; and costs to EPA to review and assess permit applications and permit modifications. The proposed permit application contents align with information already required by Subpart D to be developed and posted on publicly accessible CCR Web sites. Therefore, the EA estimates the incremental costs attributable to the provisions of this action against the baseline costs and practices in place as a result of the 2015 CCR final rule. The EA estimates that the net annualized impact of this proposed rule over a 20-year period of analysis will be annual costs of between $0.09 million and $0.85 million. This action is not considered an economically significant action under Executive Order 12866.

B. Affected Universe

This proposed rule affects facilities subject to EPA's 2015 CCR final rule, which generally includes electric utilities and independent power producers who fall within the North American Industry Classification System (NAICS) code 221112, and who generate CCR. The EA estimates that between 86 and 271 facilities will be affected by the proposed rule.

VII. Statutory and Executive Orders Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders*.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. While this is not an economically significant action, it is expected to raise novel legal or policy issues. Any changes made in response to OMB recommendations have been documented in the docket. The EPA prepared an analysis of the potential costs and benefits associated with this action. This Economic Assessment (EA), entitled *Economic Assessment; Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Federal CCR Permit Program; Proposed Rule* is summarized in Unit VI of this preamble and is available in the docket.

B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This action is expected to be an Executive Order 13771 regulatory action. Details on the estimated costs of this proposed rule can be found in EPA's analysis of the potential costs and benefits associated with this action.

C. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2610.01, OMB control number 2050-NEW. The ICR for this proposed rule will serve is an amendment to the ICR approved by OMB for the Final Rule: Hazardous and Solid Waste

Management System; Disposal of Coal Combustion Residuals from Electric Utilities published in the *Federal Register* at 80 FR 21302, April 17, 2015. You can find a copy of the ICR in the docket for this action, and it is briefly summarized here.

Respondents/affected entities: Coal-fired electric utility plants that will be affected by the rule.

Respondent's obligation to respond: The recordkeeping, notification, and posting are mandatory as part of the minimum national criteria being promulgated under Sections 1008, 4004, and 4005(a) of RCRA.

Estimated number of respondents: 62.

Frequency of response: The frequency of response varies.

Total estimated burden: EPA estimates the total annual burden to respondents to be *an increase in burden of* approximately 2,288 hours from the currently approved burden. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The total estimated annual cost of this rule is a *cost increase* of approximately $136,312. This cost increase is composed of approximately $135,690 in annualized labor costs and $622 in capital or operation and maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to

OIRA_submission@omb.eop.gov, Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than **[insert date 30 days after publication in the *Federal Register*]**. The EPA will respond to any ICR-related comments in the final rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities subject to the requirements of this action are generally electric utilities and independent power producers who fall within the NAICS code 221112, and who generate CCR. The Agency has determined that no small entities are affected at or above one percent of annual revenues, thus, determining that there is not a significant economic impact on any small entities. Estimated costs to regulated entities rely on information in prior Information Collection Requests (ICRs) prepared for similar permitting programs, including costs to prepare, submit, and revise initial permit applications, and to prepare, submit, and revise anticipated major and minor permit modifications. Estimates of annual revenues are calculated using reported generation figures and average annual power costs. Details of this analysis are presented in Unit VI of this preamble and in the Economic Assessment, which is available in the docket for this action. This action does not change the existing regulatory requirements associated with the 2015 CCR rule, which EPA previously determined would not have a SISNOSE.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private

sector. The costs involved in this action are imposed only by participation in a voluntary federal program. UMRA generally excludes from the definition of "federal intergovernmental mandate" duties that arise from participation in a voluntary federal program.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action has tribal implications because it would impose requirements on facilities located in Indian country. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law.

The EPA will engage with tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes concurrent with the public comment process for this regulation to permit them to have meaningful and timely input into its development.

For the "Final Rule: Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities" published April 17, 2015, in the Federal Register at 80 FR 21302 (the 2015 CCR Rule), EPA identified three of the 414 coal-fired electric utility plants (in operation as of 2012) which are located on tribal lands. That rulemaking and the CCR rules and proposed rules that followed all concluded however, that these facilities are not owned by tribal governments. The Agency is correcting that analysis today for the following three facilities: (1) the Navajo Generating Station in Coconino County, Arizona, which is operated by the Arizona Salt River Project and owned by the Navajo Nation; (2) the Bonanza Power Plant in

Uintah County, Utah, which is operated by the Deseret Generation and Transmission Cooperative and owned by the Ute Indian Tribe; and (3) the Four Corners Power Plant in San Juan County, New Mexico, which is operated by the Arizona Public Service Company and owned by the Navajo Nation. The Navajo Generating Station and the Four Corners Power Plant are on tribal trust lands belonging to the Navajo Nation, while the Bonanza Power Plant is located on tribal trust lands within the Uintah and Ouray Reservation of the Ute Indian Tribe. Because CCR units are land-based units, the fact that these CCR facilities are located on tribal trust land means that the facility owners within the meaning of the CCR Rule are the tribal trust beneficial landowner tribes. The Agency continues to believe that the facility operators will bear all direct compliance costs associated with the above-mentioned rules and this proposal. However, to the extent that an operator fails to comply with a federal CCR requirement, CCR facility owners may also be held liable.

H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in the document titled "Human and Ecological Risk Assessment of Coal Combustion Residuals" which is available in the docket for the final rule as docket item EPA-HQ-RCRA-2009-0640-11993.

As ordered by EO 13045 Section 1-101(a), for the "Final Rule: Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities" published April 17, 2015 in the Federal Register at 80 FR 21302, EPA identified and assessed

environmental health risks and safety risks that may disproportionately affect children in the revised risk assessment. The results of the screening assessment found that risks fell below the criteria when wetting and run-on/runoff controls required by the rule are considered. Under the full probabilistic analysis, composite liners required by the rule for new waste management units showed the ability to reduce the 90th percentile child cancer and non-cancer risks for the groundwater to drinking water pathway to well below EPA's criteria. Thus, EPA believes that this rule will be protective of children's health.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This rule is not economically significant and is not expected to have a significant effect on the production, use or supply of energy commodities. Additionally, it is narrowly tailored such that no novel legal or policy issues adversely affecting the supply, distribution or use of energy arising out of legal mandates, the President's priorities or the principles set forth in Executive Orders 12866 and 13211 will occur.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

The documentation for this decision is contained in EPA's Regulatory Impact Analysis (RIA) for the CCR rule which is available in the docket for the 2015 CCR final rule as docket item EPA-HQ-RCRA-2009-0640-12034.

EPA's risk assessment did not separately evaluate either minority or low-income populations. However, this rule creates a permitting framework that implements the CCR rule, which is risk-reducing with reductions in risk occurring largely within the surface water catchment zones around, and groundwater beneath, coal-fired electric utility plants. Since the CCR rule is risk-reducing and this action does not add to risks, this action will not result in new disproportionate risks to minority or low-income populations.

Additionally, EPA evaluated the demographic characteristics of communities that may be affected by the CCR rule. In the analysis contained in the RIA the demographic characteristics of populations surrounding coal-fired electric utility plants are compared with broader population data for two geographic areas: (1) one-mile radius from CCR management units (i.e., landfills and impoundments) likely to be affected by groundwater releases from both landfills and impoundments; and (2) watershed catchment areas downstream of surface impoundments that receive surface water run-off and releases from CCR impoundments and are at risk of being contaminated from CCR impoundment discharges (e.g., unintentional overflows, structural failures, and intentional periodic discharges).

For the population as a whole 24.8 percent belong to a minority group and 11.3 percent falls below the Federal Poverty Level. For the population living within one mile of plants with surface impoundments 16.1 percent belong to a minority group and 13.2 percent live below the Federal Poverty Level. These minority and low-income populations are not disproportionately high compared to the general population. The percentage of minority residents of the entire

population living within the catchment areas downstream of surface impoundments is disproportionately high relative to the general population, i.e., 28.7 percent, versus 24.8 percent for the national population. Also, the percentage of the population within the catchment areas of surface impoundments that is below the Federal Poverty Level is disproportionately high compared with the general population, i.e., 18.6 percent versus 11.3 percent nationally.

Comparing the population percentages of minority and low-income residents within one mile of landfills to those percentages in the general population, EPA found that minority and low-income residents make up a smaller percentage of the populations near landfills than they do in the general population, i.e., minorities comprised 16.6 percent of the population near landfills versus 24.8 percent nationwide and low-income residents comprised 8.6 percent of the population near landfills versus 11.3 percent nationwide. In summary, although populations within the catchment areas of plants with surface impoundments appear to have disproportionately high percentages of minority and low-income residents relative to the nationwide average, populations surrounding plants with landfills do not. Because landfills are less likely than impoundments to experience surface water run-off and releases, catchment areas were not considered for landfills.

List of Subjects

40 CFR Part 22

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Hazardous waste, Penalties, Pesticides and pests, Poison prevention, Water pollution control.

40 CFR Part 124

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous waste, Indians—lands, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 257

Environmental protection, Beneficial use, Coal combustion products, Coal combustion residuals, Coal combustion waste, Disposal, Hazardous waste, Landfill, Surface impoundment.

Dated: December 19, 2019.

Andrew R. Wheeler,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

1. The authority citation for part 22 continues to read as follows:

Authority: 7 U.S.C. 1361; 15 U.S.C. 2615; 33 U.S.C. 1319, 1342, 1361, 1415 and 1418; 42 U.S.C. 300g-3(g), 6912, 6925, 6928, 6991e and 6992d; 42 U.S.C. 7413(d), 7524(c), 7545(d), 7547, 7601 and 7607(a), 9609, and 11045.

2. Amend § 22.44 by revising paragraph (b) introductory text to read as follows:

§ 22.44 Supplemental rules of practice governing the termination of permits under section 402(a) of the Clean Water Act or under section 3008(a)(3) of the Resource Conservation and Recovery Act.

* * * * *

(b) In any proceeding to terminate a permit for cause under § 122.64, § 257.153, or § 270.43 of this chapter during the term of the permit:

* * * * *

PART 124—PROCEDURES FOR DECISIONMAKING

3. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.;* Safe Drinking Water Act, 42 U.S.C. 300f *et seq.;* Clean Water Act, 33 U.S.C. 1251 *et seq.;* Clean Air Act, 42 U.S.C. 7401 *et seq.*

4. Amend § 124.1 by revising paragraphs (a) and (d) to read as follows:

§ 124.1 Purpose and scope.

(a) This part contains EPA procedures for issuing, modifying, revoking and reissuing, or terminating all RCRA, UIC, PSD and NPDES "permits" (including "sludge-only" permits issued pursuant to § 122.1(b)(2) of this chapter). The latter kinds of permits are governed by part 270. RCRA interim status and UIC authorization by rule are not "permits" and are covered by specific provisions in parts 144, subpart C, and 270. This part also does not apply to permits issued, modified, revoked and reissued or terminated by the Corps of Engineers. Those procedures are specified in 33 CFR parts 320-327. The procedures of this part also apply to denial of a permit for a RCRA CCR unit under § 257.133 or for the active life of a RCRA hazardous waste management facility or unit under § 270.29.

* * * * *

(d) This part is designed to allow permits for a given facility under two or more of the listed programs to be processed separately or together at the choice of the Regional Administrator or the Administrator, in the case of RCRA CCR permits. This allows EPA to combine the processing of permits only when appropriate, and not necessarily in all cases. The Regional Administrator may consolidate permit processing when the permit applications are submitted, when draft permits are prepared, or when final permit decisions are issued. This part also allows consolidated permits to be subject to a single public hearing under § 124.12. Permit applicants may recommend whether or not their applications should be consolidated in any given case.

* * * * *

5. Amend § 124.2 by:

a. Revising paragraph (a) introductory text;

b. Adding in alphabetical order the definitions of “RCRA CCR General Permit”, “RCRA CCR Permit”, “RCRA Permit”; and

c. Revising the definitions of “Director”, “Facility or activity”, “Permit”, “Regional administrator”, and .

The additions and revisions read as follows:

§ 124.2 Definitions.

(a) In addition to the definitions given in §§ 122.2 and 123.2 (NPDES), 501.2 (sludge management), 144.3 and 145.2 (UIC), 233.3 (404), and 257.121, 270.2 and 271.2 (RCRA), the definitions below apply to this part, except for PSD permits which are governed by the definitions in § 124.41. Terms not defined in this section have the meaning given by the appropriate Act.

* * * * *

Director means the Administrator, Regional Administrator, the State director or the Tribal director as the context requires, or an authorized representative. When there is no approved State or Tribal program, and there is an EPA administered program, *Director* means the Regional Administrator, except for RCRA CCR permits where *Director* means the Administrator. When there is an approved State or Tribal program, “Director” normally means the State or Tribal director. In some circumstances, however, EPA retains the authority to take certain actions even when there is an approved State or Tribal program. (For example, when EPA has issued an NPDES permit prior to the approval of a State program, EPA may retain jurisdiction over that permit after program approval; see § 123.1) In such cases, the term “Director” means the Regional Administrator and not the State or Tribal director.

* * * * *

Facility or activity means any "HWM facility," UIC "injection well," NPDES "point source" or "treatment works treating domestic sewage" or State 404 dredge or fill activity, or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the RCRA, UIC, NPDES, or 404 programs. For RCRA CCR permits, *facility* means *facility* as that term is defined in § 257.53 of this chapter.

* * * * *

Permit means an authorization, license or equivalent control document issued by EPA or an "approved State" to implement the requirements of this part and parts 122, 123, 144, 145, 233, 257, 270, and 271 of this chapter. "Permit" includes RCRA "permit by rule" (§ 270.60), RCRA standardized permit (§ 270.67), UIC area permit (§ 144.33), NPDES or 404 "general permit" (§§ 270.61, 144.34, and 233.38), RCRA CCR general permit (§ 257.127), and RCRA CCR permit by rule (§ 257.128). Permit does not include RCRA interim status (§ 270.70), UIC authorization by rule (§ 144.21), or any permit which has not yet been the subject of final agency action, such as a "draft permit" or a "proposed permit."

* * * * *

Regional Administrator means the Regional Administrator of the appropriate Regional Office of the Environmental Protection Agency or the authorized representative of the Regional Administrator. For RCRA CCR permits, this term shall mean Administrator if the Administrator has not issued a delegation of authority to the Regional Administrator.

* * * * *

RCRA means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94-580, as amended by Pub. L. 95-609, and Pub. L. 114-322, 42 U.S.C. 6901 *et seq*).

RCRA CCR general permit means a RCRA CCR permit containing terms and conditions to require compliance with requirements of part 257, subpart D of this chapter applicable to a specified category of CCR units, which are designated as eligible for coverage under the general permit. General permits in the CCR program are issued in accordance with § 257.127 of this chapter.

RCRA CCR permit means a federal permit issued pursuant section 4005(d) of RCRA, 42 U.S.C. 6945(d).

RCRA permit means a permit issued pursuant to any section of RCRA, 42 U.S.C. 6901 *et seq*.

* * * * *

6. Amend §124.3 by revising paragraph (a) to read as follows:

§ 124.3 Application for a permit.

(a) (*Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA))*. (1) Any person who requires a permit under the RCRA, UIC, NPDES, or PSD programs shall complete, sign, and submit to the Director an application for each permit required under §§ 257.130 or 270.1 (RCRA), 144.1 (UIC), 40 CFR 52.21 (PSD), and 122.1 (NPDES). Applications are not required for RCRA permits by rule (§ 257.128 or § 270.60), RCRA CCR general permits (§ 257.127), underground injections authorized by rules (§§ 144.21 through 144.26), NPDES general permits (§ 122.28) and 404 general permits (§ 233.37).

(2) The Director shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit. See §§ 257.130, 257.131, 270.10, 270.13 (RCRA), 144.31 (UIC), 40 CFR 52.21 (PSD), and 122.21 (NPDES).

(3) Permit applications (except for PSD permits) must comply with the signature and certification requirements of §§ 122.22 (NPDES), 144.32 (UIC), 233.6 (404), 257.130 and 270.11 (RCRA).

* * * * *

7. Amend § 124.5 by revising paragraphs (a), (c)(1), (3), (d)(1), and (3) to read as follows:

§ 124.5 Modification, revocation and reissuance, or termination of permits.

(a) *(Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)* Permits (other than PSD permits) may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Director's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in § 122.62 or § 122.64 (NPDES), 144.39 or 144.40 (UIC), 233.14 or 233.15 (404), and 257.150, 257.151, 257.153, 270.41 or 270.43 (RCRA). All requests shall be in writing and shall contain facts or reasons supporting the request.

* * * * *

(c) * * * (1) If the Director tentatively decides to modify or revoke and reissue a permit under 40 CFR 122.62 (NPDES), 144.39 (UIC), 233.14 (404), or 257.150, 257.151, 257.152, 270.41 (other than § 270.41(b)(3)), or § 270.42(c) (RCRA), he or she shall prepare a draft permit under § 124.6 incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, other than under 40 CFR 270.41(b)(3), the Director shall require the submission of a new application. In the case of revoked and reissued permits under 40 CFR 270.41(b)(3), the Director and the permittee shall

comply with the appropriate requirements in 40 CFR part 124, subpart G for RCRA standardized permits.

* * * * *

(3) "Minor modifications" as defined in §§ 122.63 (NPDES), 144.41 (UIC), 233.16 (404), 257.151 and "Classes 1 and 2 modifications" as defined in § 270.42 (a) and (b) (RCRA) are not subject to the requirements of this section.

(d) * * * (1) If the Director tentatively decides to terminate: A permit under § 144.40 (UIC) of this chapter, a permit under § 122.64(a) (NPDES) of this chapter, a permit under § 257.153 or 270.43 (RCRA) of this chapter (for EPA-issued NPDES permits, only at the request of the permittee), or a permit under § 122.64(b) (NPDES) of this chapter where the permittee objects, he or she shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under § 124.6 of this chapter.

* * * * *

(3) In the case of EPA-issued permits, a notice of intent to terminate or a complaint shall not be issued if the Regional Administrator and the permittee agree to termination in the course of transferring permit responsibility to an approved State under § 123.24(b)(1) (NPDES) of this chapter, 145.25(b)(1) (UIC) of this chapter, 257.129 or 271.8(b)(6) (RCRA) of this chapter, or 501.14(b)(1) (sludge) of this chapter. In addition, termination of an NPDES permit for cause pursuant to § 122.64 of this chapter may be accomplished by providing written notice to the permittee, unless the permittee objects.

* * * * *

8. Amend § 124.6 by revising paragraphs (c), (d)(1), (2), (3), and (4)(i) to read as follows:

§ 124.6 Draft permits.

* * * * *

(c) *(Applicable to State programs, see §§123.25 (NPDES) and 233.26 (404).)* If the Director tentatively decides to issue an NPDES, 404, or RCRA CCR general permit, he or she shall prepare a draft general permit under paragraph (d) of this section.

(d) * * *

(1) All conditions under §§ 122.41 and 122.43 (NPDES), 144.51 and 144.42 (UIC), 233.7 and 233.8 (404), 257.140 and 257.141 (RCRA CCR), or 270.30 and 270.32 (RCRA) (except for PSD permits);

(2) All compliance schedules under §§ 122.47 (NPDES), 144.53 (UIC), 233.10 (404), 257.142 or 270.33 (RCRA) (except for PSD permits);

(3) All monitoring requirements under §§122.48 (NPDES), 144.54 (UIC), 233.11 (404), 257.140(k) or 270.31 (RCRA) (except for PSD permits); and

(4) * * *

(i) RCRA permits, standards for treatment, storage, and/or disposal and other permit conditions under § 257.140 or 270.30;

* * * * *

9. Amend § 124.10 by revising paragraphs (c)(1)(i), (2)(i), (2)(ii), (d)(1)(ii), and (1)(iii) to read as follows:

§ 124.10 Public notice of permit actions and public comment period.

* * * * *

(c) * * *

(1) * * *

(i) The applicant (except for NPDES, 404, and RCRA CCR general permits when there is no applicant);

* * * * *

(2) * * *

(i) For major permits, NPDES and 404 general permits, and permits that include sewage sludge land application plans under 40 CFR 501.15(a)(2)(ix), publication of a notice in a daily or weekly newspaper within the area affected by the facility or activity; and for EPA-issued NPDES and RCRA CCR general permits, in the *Federal Register*;

Note: The Director is encouraged to provide as much notice as possible of the NPDES, Section 404, or RCRA CCR draft general permit to the facilities or activities to be covered by the general permit.

(ii) For all RCRA permits, other than RCRA CCR permits, publication of a notice in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations. For RCRA CCR permits, publication of a notice on a publicly accessible Internet web site and by any other method the Director determines will effectively provide timely notice to interested persons.

* * * * *

(d) * * *

(1) * * *

(ii) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of NPDES, 404, and RCRA CCR draft general permits under §§ 122.28, 233.37, and 257.127;

(iii) A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for NPDES, 404 or RCRA CCR general permits when there is no application.

* * * * *

10. Amend § 124.12 by revising the introductory text of paragraph (a)(3) to read as follows:

§ 124.12 Public hearings.

(a) * * *

(3) For RCRA permits only, other than RCRA CCR permits:

* * * * *

11. Amend §124.15 by revising introductory text paragraph (a) and paragraph (b) to read as follows:

§ 124.15 Issuance and effective date of permit.

(a) After the close of the public comment period under § 124.10 on a draft permit, the Regional Administrator shall issue a final permit decision (or a decision to deny a RCRA CCR permit under § 257.133 or a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29). The Regional Administrator shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a RCRA, UIC, PSD, or NPDES permit under § 124.19 of this part. For the purposes of this section, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

(b) A final permit decision (or decision to deny a RCRA CCR permit under § 257.133 or a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29) shall become effective 30 days after the service of notice of the decision unless:

* * * * *

12. Amend § 124.19 by revising paragraphs (a)(1) and (3) to read as follows:

§ 124.19 Appeal of RCRA, UIC, NPDES, and PSD Permits.

(a) * * * (1) *Initiating an appeal*. Appeal from a RCRA, UIC, NPDES, or PSD final permit decision issued under § 124.15 of this part, or a decision to deny a RCRA CCR permit under § 257.133 or a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29 of this chapter, is commenced by filing a petition for review with the Clerk of the Environmental Appeals Board within the time prescribed in paragraph (a)(3) of this section.

* * * * *

(3) *Filing deadline*. A petition for review must be filed with the Clerk of the Environmental Appeals Board within 30 days after the Regional Administrator serves notice of the issuance of a RCRA, UIC, NPDES, or PSD final permit decision under § 124.15 or a decision to deny a RCRA CCR permit under § 257.133 or a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29 of this chapter. A petition is filed when it is received by the Clerk of the Environmental Appeals Board at the address specified for the appropriate method of delivery as provided in paragraph (i)(2) of this section.

* * * * *

PART 257—CRITERIA FOR CLASSIFICATION OF SOLID WASTE DISPOSAL FACILITIES AND PRACTICES

13. The authority citation for part 257 continues to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6912(a)(1), 6944(a), 6945(d); 33 U.S.C. 1345(d) and (e).

14. Part 257 is amended by adding subpart E to read as follows:

Subpart E—Federal Coal Combustion Residuals Permit Program

GENERAL INFORMATION
Sec

PERMIT APPLICATION

PERMIT CONTENT

CHANGES TO A PERMIT

Subpart E—Federal Coal Combustion Residuals Permit Program

GENERAL INFORMATION

§ 257.120 Program overview.

(a) *Coverage.* (1) These regulations establish provisions for the federal coal combustion residuals (CCR) permit program for the disposal and other solid waste management of CCR pursuant to section 4005(d) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA), (Pub. L. 94-580, as amended by Pub. L. 95-609, Pub. L. 96-482, and Pub. L. 114-322; 42 U.S.C. 6901 *et seq.*).

(2) The regulations in this subpart contain federal CCR permit program requirements, such as applications, content, modifications, revocation and reissuance, permit termination. Procedural requirements are found in part 124, subpart A of this chapter.

(3) *Technical regulations*. There are separate regulations in subpart D of this part that contain technical and substantive requirements that will be the basis of the permit requirements.

(b) *Scope of the CCR permit requirement.* (1) RCRA section 4005(d) requires the Administrator to implement a permit program to require each CCR unit, located in a nonparticipating state and in Indian country, to achieve compliance with the applicable criteria in subpart D of this part. This subpart applies to owners and operators of any CCR unit located in a nonparticipating state and in Indian country, including new and existing landfills and surface impoundments and lateral expansions of such units, that dispose or otherwise engage in solid waste management of CCR, regulated under subpart D of this part.

(2) Owners and operators of CCR units must continue to comply with all applicable requirements of subpart D of this part until a RCRA CCR permit is in effect.

(3) Prior to issuance of a RCRA CCR permit, submittal of a complete and timely permit application serves as compliance with the requirement to obtain a permit, until final disposition of the permit application. A timely permit application includes an individual permit application submitted in accordance with the requirements in §§ 257.124, 257.130, and 257.131, or an application submitted in accordance with procedures established in a general permit issued in accordance with §§ 257.124 and 257.127, or submittal of a Notice of Intent to be covered by the Permit by Rule in accordance with §§ 257.124 and 257.128.

(4) Once a permit has been issued, any CCR unit located in a nonparticipating state or in Indian country must continue to have a permit during any stage of operation covered by § 257.123(a). Any such CCR unit without a permit will be considered an "open dump," as defined in RCRA 4005(d) irrespective of the unit's compliance with the requirements of subpart D of this part and may no longer receive waste.

(5) The owner and operator of a CCR unit must satisfy the requirement to have a RCRA CCR permit through one of three mechanisms: obtaining coverage under an individual permit, under a general permit issued in accordance with § 257.127, or under the permit by rule in accordance with § 257.128.

(6) EPA may issue or deny a permit for one or more CCR units at a facility without simultaneously issuing or denying a permit for all the CCR units at the facility. The status of any CCR unit for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other CCR unit at the facility.

(7) CCR permits issued by EPA will not have an expiration date. Permit terms will remain in effect until modified, or until the permit is revoked and reissued or terminated.

(8) A permit may be modified, revoked and reissued, or terminated for cause as set forth in §§ 257.150 through 257.153.

§ 257.121 Definitions.

The following definitions apply to this subpart. Terms not defined in this section have the meaning defined in part 124 of this chapter, subparts A and D of this part, or in RCRA.

Applicable requirement means a requirement of subpart D of this part to which a permittee is subject based on applicability criteria in subpart D of this part.

Completion of all corrective action means that all activities required by § 257.95(g) through (i), § 257.96, § 257.97, and § 257.98(a) and (b) have been completed in accordance with the requirements of §§ 257.98(c) through (f).

General permit means a permit containing terms and conditions to require compliance with requirements of subpart D of this part applicable to a specified category of CCR units, which are designated as eligible for coverage under the general permit. General permits are issued in accordance with § 257.127.

Individual permit means a permit containing terms and conditions to require compliance with requirements of subpart D of this part issued for one or more specifically identified CCR units owned and operated by the same entities and located at the same facility.

Owner and operator means the owner and operator of any CCR unit or property used for solid waste management of CCR, which is subject to regulation under RCRA.

Permit by rule means a provision of these regulations stating that a facility or activity is deemed to have a RCRA CCR permit if it meets the requirements of § 257.128.

Responsible official means one of the following:

(1) *For a corporation:* (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or

(ii) The manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) *For a partnership or sole proprietorship:* a general partner or the proprietor, respectively; or

(3) *For a municipality, State, Federal, or other public agency:* either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes:

(i) The chief executive officer of the agency; or

(ii) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

§ 257.122 Considerations under Federal law.

The following is a list of Federal laws that may apply to the issuance of RCRA CCR permits. When any of these laws is applicable, its procedures must be followed. When the applicable law requires consideration or adoption of particular permit conditions or requires the denial of a permit, those requirements must also be followed.

(a) *The Wild and Scenic Rivers Act.* 16 U.S.C. 1273 *et seq.* Section 7 of the Act prohibits EPA from assisting by license or otherwise the construction of any water resources project that

would have a direct, adverse effect on the values for which a national wild and scenic river was established.

(b) *The National Historic Preservation Act of 1966.* 54 U.S.C. 300101 *et seq.* Section 106 of the Act and implementing regulations (36 CFR part 800) require EPA, before issuing a license, to adopt measures when feasible to mitigate potential adverse effects of the licensed activity on properties listed or eligible for listing in the National Register of Historic Places. The Act's requirements are to be implemented in cooperation with State and Tribal Historic Preservation Officers and upon notice to, and when appropriate, in consultation with the Advisory Council on Historic Preservation.

(c) *The Endangered Species Act.* 16 U.S.C. 1531 *et seq.* Section 7 of the Act and implementing regulations (50 CFR part 402) require EPA to ensure, in consultation with the Secretary of the Interior or Commerce, that any action authorized by EPA is not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat.

(d) *The Coastal Zone Management Act.* 16 U.S.C. 1451 *et seq.* Section 307(c) of the Act and implementing regulations (15 CFR part 930) prohibit EPA from issuing a permit for an activity affecting land or water use in the coastal zone until the applicant certifies that the proposed activity complies with the State Coastal Zone Management Program, and the State or its designated agency concurs with the certification (or the Secretary of Commerce overrides the State's nonconcurrence).

(e) *The Fish and Wildlife Coordination Act.* 16 U.S.C. 661 *et seq.* requires that EPA, before issuing a permit proposing or authorizing the impoundment (with certain exemptions),

diversion, or other control or modification of any body of water, consult with the appropriate State agency exercising jurisdiction over wildlife resources to conserve those resources.

§ 257.123 Applicability.

(a) *Requirement to obtain a permit.* (1) Owners and operators of a CCR unit located in a nonparticipating state or in Indian country, and subject to requirements of subpart D of this part, must obtain and maintain a RCRA CCR permit under this subpart. An owner and operator must apply for a RCRA CCR permit for all CCR units and associated solid waste management operations subject to requirements in subpart D of this part. The requirement to obtain and maintain a RCRA CCR permit applies throughout the following stages of operation: active life of the CCR unit, the post-closure care period, and until completion of all corrective action.

(2) This requirement does not apply to CCR units and associated solid waste management operations, if any, that are subject to permitting under a state permit program approved by EPA pursuant to section 4005(d) of RCRA. In a state with partial approval, the requirement in § 257.123(a)(1) applies only to those CCR units and associated solid waste management operations that are subject to requirements of subpart D of this part for which the state has not been approved (i.e., is a nonparticipating state).

(3) The requirements to apply for and obtain a RCRA CCR permit may initially be satisfied by submitting one of the following:

(i) A complete and timely permit application in accordance with the requirements in §§ 257.124, 257.130 and 257.131 for an individual permit,

(ii) If the CCR unit meets the criteria for a general permit, a complete and timely application in accordance with § 257.127 and procedures established in the general permit, or

(iii) A Notification of Intent of eligibility for coverage under a permit by rule in accordance with § 257.128.

(4) Submittal of any of these documents constitutes compliance with these obligations only until the final administrative disposition of the permit application.

(b) *Denial of a permit application.* The denial of a permit application to dispose or otherwise manage waste in a CCR unit does not affect the requirement to obtain a federal CCR permit in paragraph (a) of this section to conduct other activities under subpart D of this part (e.g., monitoring, retrofit, closure, post-closure care or corrective action).

(c) *Exclusions and exemptions.* (1) Entities exclusively engaged in the beneficial use of CCR that meets the requirements detailed in § 257.53 are not required to obtain a RCRA CCR permit for those activities.

(2) (i) A permit or permit modification is not required for a person engaged in CCR disposal or solid waste management to conduct an immediate response to any of the following situations:

(A) A sudden release of CCR; or

(B) An imminent and substantial threat of a release of CCR.

(ii) Any person who continues or initiates CCR disposal or solid waste management activities after the immediate response is over is subject to all applicable requirements of this part for those activities.

§ 257.124 Deadlines for application submission.

Owners and operators of CCR units located in a nonparticipating state or in Indian country that meet the applicability requirements to obtain a RCRA CCR permit under §

257.123(a) must submit a permit application as described in this section and §§ 257.130 and 257.131 to the Administrator by the following deadlines:

(a) *First tier deadline.* For a facility with CCR units meeting the criteria in (1) or (2) where such unit was subject to the requirements under subpart D of this part prior to [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER], the permit application must be submitted for all CCR units at the facility subject to this subpart no later than [DATE 18 MONTHS AFTER EFFECTIVE DATE OF THE FINAL RULE].

(1) Located in Indian country,

(2) An existing CCR surface impoundment, new CCR surface impoundment or inactive CCR surface impoundment that is classified as a high hazard potential unit under the assessment procedures in § 257.73(a)(2) or § 257.74(a)(2).

(b) *Future tier deadlines.* For a CCR unit that is not required to submit a permit application under paragraph (a) of this section, and where such unit was subject to the requirements under subpart D of this part prior to [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER], the permit application must be submitted for such CCR unit no later than a date set by the Administrator, whereby such date provides notice of at least 180 days to the owner and operator.

(c) *Deadlines for newly subject CCR units.* For any CCR unit that becomes subject to the requirements under subpart D of this part on or after [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER], the permit application must be submitted for such CCR unit in accordance with the following deadlines:

(1) For any CCR unit that becomes subject to the requirements under subpart D of this part on or after [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL

REGISTER], but before [DATE 24 MONTHS AFTER EFFECTIVE DATE OF THE FINAL RULE], the permit application must be submitted for such CCR unit prior to [DATE 24 MONTHS AFTER EFFECTIVE DATE OF THE FINAL RULE].

(2) For any CCR unit that becomes subject to the requirements under subpart D of this part on or after [DATE 24 MONTHS AFTER EFFECTIVE DATE OF THE FINAL RULE], the permit application must be submitted for such CCR unit 180 days prior to placement of waste or other action that renders the unit subject to requirements of subpart D.

(d) *Deadlines for permit by rule or general permits.* For a CCR unit that would otherwise be subject to an application deadline specified in paragraphs (a) through (c) of this section, the owner and operator of the CCR unit are not required to submit a permit application by the deadlines specified in paragraphs (a) through (c) of this section, provided the owner and operator submit a Notice of Intent required by § 257.128(a)(11) or for a general permit issued in accordance with § 257.127 by such deadline.

§ 257.125 Effect of a permit.

(a) *Permit shield.* (1) Compliance with a CCR permit constitutes compliance, for purposes of enforcement, with the requirements of subpart D of this part.

(2) A permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in §§ 257.150 and 257.153, or the permit may be modified upon the request of the permittee as set forth in § 257.151.

(b) *No property rights.* The issuance of a CCR permit does not convey any property rights of any sort, or any exclusive privilege.

(c) *No additional authorization.* The issuance of a CCR permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or

local laws or regulations, or any infringement of federal laws or regulations not explicitly considered in this action.

§ 257.126 Duration of a permit.

Any federal CCR permit issued pursuant to this subpart shall be issued without an expiration date and remain in effect until the permit is revoked and reissued or terminated.

§ 257.127 General permits.

(a) *General permits.* The Administrator may issue general permits in accordance with all of the following:

(1) A general permit shall be written to cover one or more clearly identified categories of CCR units or solid waste management practices that are subject to the same requirements of subpart D of this part.

(2) Any general permit must clearly identify what types of CCR units are eligible for coverage under the general permit and clearly identify the applicable conditions for each category or subcategory of CCR units or solid waste management practices covered by the permit. A general permit may contain terms and conditions, such as limiting operations, which would ensure continued eligibility for coverage under the general permit, even if those terms and conditions are not requirements of subpart D of this part.

(3) The general permit may exclude specified types or categories of CCR units or solid waste management practices from coverage.

(b) *Administration*. (1) Any general permit will be issued, modified, or revoked in accordance with the requirements and procedures of this subpart and the following procedures in part 124 of this chapter: 40 CFR §§ 124.6, 124.7, 124.8, 124.9. 124.10. 124.11, 124.12, 124.13, and 124.14.

(2) To obtain coverage under a general permit, an owner or operator of a CCR unit must submit request for coverage under the general permit to the Administrator. All such requests must include all information necessary to demonstrate qualification for coverage under the general permit and must be certified as required in § 257.130(e).

(3) If the Administrator makes no objection within 45 days of receiving a request for coverage under a general permit, the owner and operator shall be covered by the general permit, provided the unit remains eligible for coverage. Such an authorization will not be considered a final permit action for purposes of judicial review.

(4) The Administrator may, in a general permit, provide further procedures by which an owner and operator of a CCR unit may obtain coverage by the general permit, as well as requirements for information that must be included in a request for such coverage. These procedures may deviate from the requirements of §§ 257.130 and 257.131.

(5) Requiring an individual permit.

(i) EPA may require any owner or operator covered under a general permit to apply for and obtain an individual CCR permit. Any interested person may petition the Administrator to take action under this paragraph. Cases where an individual CCR permit may be required include the following:

(A) The owner and operator are not in compliance with the conditions of the general permit;

(B) Circumstances have changed since the time of the request for coverage so that the CCR unit is no longer appropriately controlled under the general permit; or

(C) Revised standards for the solid waste management of CCR have been promulgated for the solid waste management or practice covered by the general permit

(D) The Administrator has received information after the general permit has been issued. The Administrator may require an application for an individual permit on this basis if:

(*1*) The information was not available to EPA at the time of the request for coverage and would have justified requiring an individual permit to ensure compliance with subpart D of this part, or

(*2*) The information otherwise shows that requiring an individual permit is necessary to ensure there is no reasonable probability of adverse effects on health or the environment from permitted operations

(ii) EPA may require any permittee(s) to apply for an individual permit by providing a written notification that a permit application is required. This notice shall include a brief statement of the reasons for this decision, a deadline for the owner and operator to submit the application, and a statement that on the effective date of the individual CCR permit any coverage under the general permit for which the permittee has been eligible shall automatically terminate.

(iii) Such an action will not be considered a final permit action for purposes of judicial review.

§ 257.128 Permit by rule.

(a) *Requirements.* Notwithstanding any other provision of this part or of part 124, subpart A of this chapter, a new CCR landfill or lateral expansion of a CCR landfill shall be deemed to have a CCR permit if the following criteria are met:

(1) The owner and operator of the new CCR landfill or lateral expansion of a CCR landfill maintain compliance with the following provisions:

(i) Section 257.60, Placement above the uppermost aquifer

(ii) Section 257.61, Wetlands

(iii) Section 257.62, Fault areas

(iv) Section 257.63, Seismic impact zones

(v) Section 257.64, Unstable areas

(vi) Section 257.70(a), (b), and (d) through (g), Design criteria for new CCR landfills and any lateral expansion of a CCR landfill

(vii) Section 257.80, Air criteria

(viii) Section 257.81, Run-on and run-off controls for CCR landfills

(ix) Section 257.84, Inspection requirements for CCR landfills

(x) Section 257.90, Applicability

(xi) Section 257.91, Groundwater monitoring systems

(xii) Section 257.93, Groundwater sampling and analysis requirements

(xiii) Section 257.94, Detection monitoring program

(xiv) Section 257.95(a), (b), and (d) through (h), Assessment monitoring program

(xv) Section 257.105, Recordkeeping requirements

(xvi) Section 257.106, Notification requirements

(xvii) Section 257.107, Publicly accessible Internet site requirements

(2) The owner and operator have not detected a statistically significant increase above a groundwater protection standard for any constituent in appendix IV to this part.

(3) The owner and operator have not detected a release from the new CCR landfill or lateral expansion of a CCR landfill.

(4) The owner had operator have not commenced closure of the new CCR landfill or lateral expansion of a CCR landfill.

(5) The new CCR landfill or lateral expansion of a CCR landfill does not have a direct, adverse effect on the values for which a national wild and scenic river was established.

(6) The new CCR landfill or lateral expansion of a CCR landfill does not have potential adverse effects on properties listed or eligible for listing in the National Register of Historic Places.

(7) The new CCR landfill or lateral expansion of a CCR landfill is not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat.

(8) The new CCR landfill or lateral expansion of a CCR landfill does not affect land or water use in the coastal zone. The owner and operator must certify that the new CCR landfill or lateral expansion of a CCR landfill complies with the State Coastal Zone Management program and that the State or its designated agency concurs with the certification (or the Secretary of Commerce overrides the State's nonconcurrence). The certification must be included in the Notice of Intent submitted in accordance with paragraph (a)(11) of this section.

(9) If located in a floodplain, the new CCR landfill or lateral expansion of a CCR landfill does not restrict the flow of the base flood, reduce the temporary water storage capacity of the floodplain, or result in washout of CCR, so as to pose a hazard to human health, wildlife, or land or water resources.

(10) The new CCR landfill or lateral expansion of a CCR landfill has not:

(i) Caused a discharge of pollutants into waters of the United States in violation of the requirements of the National Pollutant Discharge Elimination System under section 402 of the Clean Water Act, as amended;

(ii) Caused a discharge of dredged material or fill materials to waters of the United States in violation of the requirements of the requirements under section 404 of the Clean Water Act, as amended; or

(iii) Cause non-point source pollution of waters of the United States in violation of applicable legal requirements implementing an areawide or Statewide water quality management plan that has been approved by the Administrator under section 208 of the Clean Water Act, as amended;

(11) The owner and operator of the new CCR landfill, or lateral expansion of a CCR landfill, submit a timely and complete Notice of Intent to the Administrator in accordance with §§ 257.124 and 257.130 and posts the Notice of Intent to the facility's publicly accessible CCR Web site.

(b) *Transition to another permit approach.* If a CCR unit operating under this permit by rule becomes ineligible for its coverage, or the owner and operator wish to obtain a general or individual federal CCR permit, an application must be submitted in accordance with §§ 257.130 and 257.131 or established in the general permit. The owner and operator will remain in compliance with the requirement to have a federal CCR permit if a complete application is submitted to the Administrator no later than 60 days after failing to meet one of the conditions listed in paragraphs (a)(1) through (a)(11) of this section, and no later than 180 days prior to initiating closure.

§ 257.129 Transfer of permit program administration.

(a) *Transfer from EPA to a state.* If a state CCR Permit Program is approved to operate in lieu of the federal CCR program, in part or in whole, after any compliance deadline in § 257.124, EPA will describe provisions for the prompt transfer to the state of pending permit applications

and any other relevant information not already in the possession of the State Director (e.g., applications, supporting documentation for issued permits, etc.) in the notice of program approval. Where permits have been issued by EPA, the program approval should contain procedures for transferring the administration of these permits to the state, or for terminating the federal permits once equivalent state permits are issued.

(b) *Transfer from a state to EPA.* If a state CCR permit program has operated in lieu of the federal CCR program after the compliance deadlines in § 257.124, and approval of that state program is withdrawn, in whole or in part, or if the state relinquishes its program approval, EPA will issue a notice regarding transfer of permit program administration from the state to EPA. The notice will contain deadlines for units located in the state to comply with the federal CCR permitting requirements. The notice will also describe procedures for the state to transfer to EPA permit applications and any other information relevant to permit program administration not already in the possession of EPA (e.g., pending applications, supporting documentation for issued permits, etc.). Where CCR permits have been issued by the state, the notice of program withdrawal should contain procedures for transferring the administration of these permits to EPA, or for terminating them once RCRA CCR permits are issued.

PERMIT APPLICATION

§ 257.130 Permit application requirements.

(a) *Duty to apply*. The owner and operator meeting the applicability criteria in § 257.123(a) must submit to the Administrator a complete application for a CCR permit as described in this section and § 257.131, in accordance with the applicable deadlines in § 257.124. When a facility or activity is owned by one person but is operated by another person, the owner may comply with this requirement through one of the following approaches:

(1) A single application may be submitted, but both entities must certify the permit application as specified in subsection (e) (e.g., the operator may compile and submit the permit application, which the owner must also sign).

(2) In an application submitted by both entities, the owner may provide the following statement:

> Through this submitted application and the signature on this application, I acknowledge that [*name of company/corporation/owner*] is the owner of the facility/units that will be included in the permit this application seeks and is responsible for compliance with the permit requirements, including the requirement to obtain and maintain a permit for this facility/unit(s). I hereby authorize the facility/unit operator, *[enter name of facility operator here]*, to submit compliance or any other required reports and future permit applications for this facility, including applications for future permit modifications, on my behalf, without my signature. I understand that I am jointly and severally liable for any noncompliance with the terms of any permit issued in response to this application or as modified in the future, and any submitted documents required by the permit and I accept responsibility for any enforcement action resulting from the actions of the operator in submitting compliance or any other required reports or permit applications on my behalf in relation to this facility/unit.

Once an owner submits this statement in a permit application, all future permit applications, including modification applications, will not require signature by the owner and may be signed by the operator(s) of the unit(s) and operations to be included in the permit. This does not change the requirement in § 257.123(a) for both the owner and operator to obtain a permit. All RCRA CCR permits will designate both owners and operators as permittees, even where the owner does not sign the application in accordance with this paragraph.

(b) *Completeness*. An application for a permit is complete when the Administrator receives an application form containing the information required by this section and § 257.131, about all CCR units and related solid waste management operations at the facility, which is

completed to his or her satisfaction. The Administrator may deny a permit for disposal in a CCR unit without receiving a complete application for a permit. A complete permit application does not require the following information:

(1) Information about a CCR unit eligible for the permit by rule in § 257.128, for which a Notice of Intent has been submitted to EPA and posted on its publicly accessible CCR Web site in accordance with § 257.107.

(2) Information about a CCR unit eligible for a general permit issued in accordance with § 257.127, for which the owner and operator have complied with the procedures for obtaining coverage contained in the general permit. If EPA subsequently determines coverage under the general permit is not appropriate, the owner and operator must submit a CCR permit application for that CCR unit or must amend an existing CCR permit application to include that CCR unit, no later than 60 days after EPA makes this determination.

(3) Information about a CCR unit that is regulated in accordance with a state CCR permit program which has been submitted to the Administrator for partial approval to operate in lieu of the requirements of subpart D of this part. If the Administrator subsequently denies partial approval of the program, or the state withdraws its program, the owner and operator must submit a CCR permit application for that CCR unit or amend an existing permit application to include that CCR unit no later than 60 days after the denial or withdrawal becomes effective.

(c) *Duty to supplement or correct application.* Any owner or operator who fails to submit any relevant facts or who has submitted incorrect information in a permit application must, upon becoming aware of such failure or incorrect submittal, submit to the Administrator such supplementary facts or corrected information along with any necessary updated certification.

(d) *Confidential business information*. In accordance with 40 CFR part 2, subpart B of this chapter, any information submitted to EPA pursuant to this subpart that is not required to be made publicly available under part 257 may be claimed as confidential by the applicant. Any such claim must be asserted at the time of submittal. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR part 2, subpart B. Claims of confidentiality for the name and address of any permit applicant or permittee will be denied.

(e) *Certification of application*. Applications for CCR permits, including applications for modifications to CCR permits, must contain the following certification by a responsible official:

> I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attached documents, and that, based on my inquiry of the person or persons directly responsible for gathering the information, I believe the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(1) Where the owner and operator are different entities, a responsible official from each entity must provide this certification, and the certification must include the following statement: "I understand that I am jointly and severally liable for the accuracy and completeness of all information provided in this application."

(2) This certification must also be provided where a permittee submits a statement that no changes to a CCR permit application are required after a periodic application review is conducted in accordance with § 257.132.

(f) *Application recordkeeping.* The applicant must keep records of all data used to support the permit application and any supplemental information submitted to the Administrator during the application review and permit issuance process for the life of the permit. This information shall be available at the request of the Administrator.

§ 257.131 Application contents.

The owner and operator must provide in the application all of the information necessary for the Administrator to determine the applicability of the technical criteria in subpart D of this part to each CCR unit at the facility, to establish the permit conditions necessary to achieve compliance with these technical criteria, and to ensure there is no reasonable probability of adverse effects on health or the environment from the solid waste management of CCR at such facility. Such information includes, at a minimum:

(a) *Information about the facility.* The owner and operator must provide sufficient information about the facility for the Administrator to establish permit conditions to ensure compliance with, including to assess the applicability of, applicable provisions in subpart D of this part. Such information includes but is not limited to physical location; description; operations; operating history; products; an indication of whether the application is requesting an initial, revised, or modified permit; and publicly accessible CCR Web site address.

(b) *Information about the applicant*. The owner and operator must provide sufficient information in the application for the Administrator to identify, contact, and communicate with them. Such information includes, but is not limited to contact information, other environmental permits held for the facility, and ownership status (e.g., private, governmental) of each CCR unit and related solid waste management operations at the facility.

(c) *Information about the CCR unit(s).* The owner and operator must provide sufficient technical information about each CCR unit in the application necessary for the Administrator to establish permit conditions to require compliance with, including to assess the applicability of, applicable provisions in subpart D of this part. Such information includes, but is not limited to the location, design, construction, operation, maintenance, closure and retrofit of each CCR unit,

as well as liners, controls, monitoring approaches, the groundwater monitoring system, corrective action or remedial measures, and other practices to comply with subpart D of this part and to prevent or clean up releases from the CCR unit.

(d) *Technical information about subsurface and surrounding features.* (1) The owner and operator must provide technical and other information about the geologic and hydrogeologic characteristics and features of the area surrounding the CCR unit, including subsurface characteristics. The owner and operator must provide this information sufficiently to support decisions by the Administrator to establish permit conditions to require compliance with, including to assess the applicability of, applicable provisions in subpart D of this part, and to evaluate the compliance approaches proposed in the permit application. The owner and operator must provide, at a minimum, information about the following in proximity to the CCR unit(s): floodplains and wetlands, fault lines or unstable areas, groundwater and surface water, soil and subsoil characteristics, groundwater well locations and uses, adjacent land uses, and other similar information. The owner and operator must provide this information for past, present, and planned CCR units, and must provide all information in a manner that can be clearly understood, with appropriate labels.

(e) *Technical information gathered that characterizes conditions surrounding each CCR unit.* The owner and operator must provide sufficient technical and other information about conditions at the CCR unit for the Administrator to establish permit conditions to require compliance with, including to assess the applicability of, applicable provisions in subpart D of this part. This includes but is not limited to groundwater, aquifers, soil, or other sampling data; date and procedures used to characterize background concentrations; well construction diagrams and drill logs; hydrogeologic cross-sections; information about the activities that yielded the

sampling data, including quality assurance data; delineation of contaminant plumes; and other relevant information required to make technical assessments to characterize the presence or absence of leakage or releases from the CCR unit.

(f) *Plans, maps, drawings, diagrams and other documents.* The technical information submitted in the CCR permit application must include plans, maps, drawings, diagrams, and other visual information, in addition to narrative information. The applicant must provide the following materials, at a minimum:

(1) A site map, depicting the location of the CCR unit(s) and surrounding features representing site conditions, monitoring wells, and other pertinent information.

(2) A topographic map, depicting each CCR unit, surrounding geologic and hydrogeologic features, surface water features, access and haul roads, and other pertinent information. Information in these maps must be provided to allow the permit writer to understand site conditions and evaluate compliance strategies proposed by the owner and operator, to draft terms and conditions that will achieve compliance with the requirements of subpart D of this part.

(3) Potentiometric maps depicting groundwater flow direction, all CCR units at the facility, any delineated plumes of contamination from releases from CCR units, all groundwater monitoring wells or other monitoring points where water level data were gathered, potable wells on the facility property or nearby property, and other pertinent information. A sufficient number and quality of maps are required to represent seasonal or temporal changes in groundwater flow direction.

(4) Other documents, including: hydrogeologic cross-sections depicting subsurface conditions, drill logs, CCR unit construction diagram(s), and groundwater monitoring well construction diagrams.

(5) All site-specific compliance plans and assessments required by subpart D of this part (e.g., fugitive emissions control plan required by § 257.80, emergency action plan required by § 257.73, run-on and run-off control system plan required by § 257.81(c), inflow design flood control system plan required by § 257.82(c), assessment of corrective measures required by § 257.96, closure plan or retrofit plan required by § 257.102, and post-closure care plan required by § 257.104).

§ 257.132 Periodic review of permit applications.

(a) *Requirement for periodic review.* Once a RCRA CCR permit is issued, the permittee must conduct periodic reviews to determine whether the permit application remains accurate and continues to meet the requirements under § 257.131. The timeframes for conducting periodic permit application reviews are provided in paragraph (d) of this section.

(b) *Procedures if no changes are needed.* If the permittee determines that the permit application remains accurate and meets the requirements under § 257.131, the permittee must submit a certified statement that the application continues to be complete and accurate. The certified statement must be completed by a responsible official in accordance with § 257.130(e).

(c) *Procedures if changes are needed.* If the permittee determines that the permit application is no longer accurate or no longer meets the requirements under § 257.131, the permittee must:

(1) Prepare a revised permit application in accordance with the requirements of §§ 257.130 and 257.131, which accurately reflects current operations and any changes since the previous application was submitted;

(2) Determine whether the permit must be modified based on any changes to the permit application, and, if so, apply for a permit modification according to the procedures under § 257.152.

(d) *Review frequency.* (1) The permittee must complete the initial permit application review required by paragraphs (a) through (c) of this section no later than ten years after the date of initial permit issuance or after any reissuance or modification of such permit, whichever date is later.

(2) The permittee must complete periodic permit application reviews required by paragraphs (a) through (c) of this section no later than ten years after the date of completing the previous permit application review or after any reissuance or modification of the permit, whichever date is later.

§ 257.133 Permit application denial.

(a) *Denial for Cause.* The Administrator may, pursuant to the procedures in part 124 of this chapter, deny an individual CCR permit application in its entirety, or in part (e.g., for a specific activity or for an individual CCR unit), upon a determination that any of the following causes exist:

(1) Any permittee has failed or refuses to correct deficiencies in the application identified in a notice of deficiency issued in accordance with § 124.3(c);

(2) Failure by any permittee in the application or during the permit issuance process to disclose fully all relevant facts;

(3) Misrepresentation by any permittee of any relevant facts at any time;

(4) A determination by the Administrator that the risks arising from disposal or other solid waste management of CCR can only be regulated to acceptable levels by permit denial.

(5) The Administrator has received notification under § 124.3 of this chapter of an applicant's intent to be covered by a general permit issued in accordance with § 257.127 or the permit by rule in § 257.128.

(6) EPA has transferred administration of the permit program to a state in accordance with § 257.129, and the state permit is in effect for each CCR unit at the facility.

(b) *Denial process.* The Administrator may deny a permit in accordance with paragraphs (a)(2) through (6) of this section even in the absence of a complete application.

PERMIT CONTENT

§ 257.140 Standard permit conditions.

The following conditions shall be incorporated into all CCR permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations must be provided in the permit.

(a) *Duty to comply.* The permittee must comply with all conditions of this CCR permit, except to the extent and for the duration any noncompliance is authorized by the Administrator. Any unauthorized permit noncompliance constitutes a violation of RCRA and is subject to enforcement action, permit termination, revocation and reissuance, or denial of a permit application.

(b) *Duty to submit periodic review certification.* The permittee must review the application materials submitted for this permit no less frequently than every ten years after the issuance date of this permit.

(1) Any information in the original application that is no longer accurate at the time of review, as well as any recent or new information not include in the original application, must be submitted in a revised application in accordance with §§ 257.130 and 257.131. If the changes reflected in the revised application meet the criteria for a permit modification in §§ 257.150 through 257.151, the revised application must specify the type of modification requested and include information required for a modification in accordance with § 257.152.

(2) If all information in the original application is still accurate at the time of review and there is no new or additional information relevant to the application, the permittee shall submit a statement that no information in the application has changed, certified in accordance with the requirements in § 257.130(e).

(c) *Need to halt or reduce activity not a defense.* It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(d) *Requirement to mitigate impacts of noncompliance.* In the event of noncompliance with this permit, the permittee must take all reasonable steps to minimize releases to the environment and must carry out such measures as necessary to reduce reasonable probability of adverse impacts on health and the environment.

(e) *New statutory requirements or regulations.* If the standards or regulations on which this permit is based change through changes to statute, promulgation of new or amended regulations, or by judicial decision, and this results in failure of the permit terms and conditions to ensure compliance with the revised standard or regulation, the permittee must apply for a permit modification. The permittee shall submit an application to modify this permit to include the revised requirements within 180 days after the change becomes effective.

(f) *Proper operation and maintenance.* The permittee shall ensure the proper operation and maintenance of all units, ancillary equipment and systems of treatment and control, which are installed or used to achieve compliance with the conditions of this permit. Failure to properly operate and maintain such equipment does not excuse failure to comply with requirements in this permit. The term "Proper operation and maintenance" includes effective performance, adequate funding, adequate staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. Operation of back-up or auxiliary equipment or similar systems is required only when necessary to achieve compliance with the conditions of this permit.

(g) *Permit actions.* This permit may be modified, revoked and reissued, or terminated for cause. The application by the permittee for a permit modification, or termination, or anticipated noncompliance, does not stay any permit condition.

(h) *Property rights.* The permit does not convey any property rights of any sort, nor any exclusive privilege.

(i) *Duty to provide information.* The permittee must furnish to the Administrator, within a reasonable time, any relevant information which the Administrator may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee must also furnish to the Administrator, upon request, copies of records required to be kept by this permit.

(j) *Inspection and entry.* The permittee shall allow the Administrator or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(1) Enter at reasonable times upon the permitted premises where a regulated unit or activity is located or conducted, or where records that must be kept under the conditions of this permit are located;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(3) Inspect at reasonable times any units, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by RCRA, any substances or parameters at any location.

(k) *Monitoring and records.* (1) Samples and measurements taken for the purpose of monitoring must be representative of the monitored activity.

(2) The permittee must retain records of all monitoring information, including all calibration, maintenance, and quality assurance records; all original monitoring data; copies of all reports and certifications required by this permit; and records of all data for a period of at least ten years from the date of the sample, measurement, report, certification, or application. This period may be extended by request of the Administrator at any time. The permittee must maintain records and data used to support a permit application for the lifetime of the permit. The permittee shall maintain records of all groundwater monitoring, including records of groundwater well construction and groundwater elevation measurements, throughout the active life of the unit, the post-closure care period and until completion of all corrective action.

(l) *Signatory requirements.* All applications, reports, or information required to be submitted to the Administrator by this permit must be signed and certified by the owner and operator of a CCR unit in accordance with the procedures of § 257.130(e).

(m) *Reporting requirements*. (1) *Anticipated noncompliance.* The permittee shall provide written or electronic notice to the Administrator as soon as possible, but no later than 60 days in advance of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(2) The permittee shall report by phone or electronically any noncompliance or release which has a reasonable probability of adverse effects on health or the environment as soon as possible, and no later than 24 hours after the time the permittee first becomes aware of the circumstances. The notification shall include the following:

(i) Information concerning release of any CCR that may endanger public drinking water supplies.

(ii) Any information about a release of CCR that could have a reasonable probability of adverse effects on health or the environment outside the facility.

(iii) The description of the release and its cause shall include:

(A) Name, business address, business email address, and business telephone number of the owner and operator;

(B) Name, address, email address, and telephone number of the facility;

(C) Date, time, and type of release;

(D) Name and quantity of material(s) involved;

(E) The extent of injuries, if any;

(F) An assessment of actual or potential hazards to the environment and human health outside the facility, where applicable;

(G) Estimated quantity and disposition of recovered material that resulted from the release; and

(H) Action taken to mitigate the risk, including any preparation in advance of a severe weather event

(iv) A narrative shall also be posted on the public CCR website no later than five days after the time the permittee becomes aware of the circumstances. The narrative shall contain a description of the noncompliance and its cause; the period of noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The Administrator may waive the five-day notice requirement in favor of posting a written report within fifteen days.

(3) Where the permittee becomes aware that they failed to submit any relevant facts in a permit application or submitted incorrect information in a permit application or in any report to the Administrator, the permittee must promptly submit such facts or corrected information to the Administrator.

(n) *Severability.* Invalidation of a portion of this permit does not necessarily render the whole permit invalid. EPA's intent is that this permit is to remain in effect to the extent possible. In the event that any part of this permit is invalidated, the Administrator will advise the permittee as to the effect of such invalidation.

§ 257.141 Establishment of permit conditions.

(a) *Case-by-case.* In addition to the standard conditions in § 257.140, the Administrator shall establish permit terms and conditions in a CCR permit, on a case-by-case basis, in accordance with the requirements and procedures of this subpart. At a minimum, each CCR permit must include all permit terms and conditions necessary to ensure compliance with subpart D of this part.

(b) *Incorporation by reference.* Each CCR permit must incorporate, either expressly or by reference, all requirements of subpart D of this part that are applicable to the permitted CCR units and associated solid waste management activities. In satisfying this provision, the Administrator may incorporate applicable requirements of subpart D of this part directly into terms and conditions in the permit or incorporate them by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements shall be provided in the permit.

(c) *Protectiveness.* Each CCR permit shall contain such terms and conditions as the Administrator determines are necessary to ensure there is no reasonable probability of adverse effects on health or the environment from the solid waste management of CCR at such facility.

§ 257.142 Schedules of compliance.

When an applicant will not be in compliance with one or more applicable requirement in subpart D of this part at the time of permit issuance, the Administrator may include in the CCR permit a schedule of compliance. The schedule of compliance shall include an enforceable sequence of actions leading to compliance with subpart D of this part. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the permittee is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the requirements in subpart D of this part on which it is based.

(a) *Time for compliance.* Any schedule of compliance established in a CCR permit must require compliance as soon as feasible.

(b) *Interim dates.* If a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(1) The time between interim dates shall not exceed one year.

(2) The permit must require posting on the public CCR website of reports of progress toward completion of the interim requirements and indicate a projected completion date. The time between progress reports shall not exceed six months.

(c) *Reporting.* The permit must require that, no later than 30 days following each interim milestone deadline and the final deadline of the compliance schedule, the permittee must post a notification on the facility's publicly accessible CCR website of its compliance or noncompliance with the interim or final requirements.

CHANGES TO A PERMIT

§ 257.150 Modification or revocation and reissuance of an individual permit at EPA's initiative.

When the Administrator receives any information (e.g., inspects the facility, receives information submitted or posted by the permittee, receives a request under § 124.5 of this chapter, or conducts a review of the permit file) and determines one or more causes listed in paragraph (a) of this section exist, the Administrator may modify or may revoke and reissue the permit accordingly, subject to the limitations of paragraph (b) of this section, and may request an updated application, if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision. Revocation and reissuance are generally appropriate when the changes are too extensive to be addressed through a permit modification.

(a) *Causes for modification or revocation and reissuance.* The following are causes for modification or for revocation and reissuance of a permit by the Administrator:

(1) There are material and substantial alterations, additions, or changes in operation of the permitted facility which occurred after permit issuance and require permit conditions that are different or absent from those in the existing permit or if the permit application becomes inaccurate for the CCR unit and/or associated operations.

(2) The Administrator has received information after the permit has been issued. The Administrator may modify or revoke RCRA CCR permits on this basis if:

(i) the information was not available to EPA at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the inclusion of different permit conditions at the time of issuance to ensure compliance with subpart D of this part, or

(ii) the information otherwise shows that modification is necessary to ensure there is no reasonable probability of adverse effects on health or the environment from permitted operations.

(3) Cause exists for termination under § 257.153, but the Administrator determines that modification or revocation and reissuance is appropriate.

(4) The Administrator has received notification (as required, see § 257.151(a)(3)) of a transfer of ownership or control of the CCR unit or facility to a new owner or operator.

(5) An error or omission is discovered, regardless of whether it was susceptible to correction prior to the permit's issuance, and the Administrator determines modification is appropriate to conform a permit's requirements to the applicable regulatory or statutory requirements.

(b) *Facility siting.* Suitability of the existing facility location will not be considered at the time of permit modification or revocation and reissuance unless new information, standards, or regulations indicate that a there is a reasonable probability of adverse effects to health or the environment exists which was unknown to the Administrator at the time of permit issuance.

(c) *Permitting action list.* The Administrator will post all permitting actions, including: draft and final permits, modifications, revocations, terminations, and reissued permits, on a publicly available website.

§ 257.151 Permit modifications at the request of the permittee.

This section lays out the procedures for a permittee to request a modification to an individual CCR permit. A permittee must apply for a modification to a permit at any time during the life of the permit when there is a change to either a CCR unit or related solid waste management operations, or to subpart D of this part, which would impact either the procedures used to comply with the permit conditions, or the applicability of requirements of subpart D of this part. There are two types of such modifications: minor and major. Minor modifications require prior notification to EPA but do not require public comment. Major modifications require prior EPA approval and an opportunity for public participation. When a permit is modified, only the conditions subject to modification are reopened.

(a) *Minor modifications.* Minor modifications are those that involve only minor or administrative changes that keep the permit current with respect to common changes to the facility or its operations. Minor modifications are changes that do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment. These include changes necessary to comply with new regulations, where these changes can be implemented without substantially changing design specifications or management practices in the permit or where the revised regulation does not require the application of significant technical judgement or discretion. The following are examples of minor modifications:

(1) Administrative and informational changes, including changes to the name or contact information of permittees or other persons or agencies identified as points of contact in the permit or compliance plans.

(2) Correction of typographical errors.

(3) Transfer of ownership or operational control of a facility. The new owner and operator must submit a revised permit application 30 days prior to the transfer of ownership or operational control or as soon as practicable. If prior notice is impracticable, the revised permit application must be submitted no later than 30 days after the transfer of ownership or operational control.

(4) Changes to a permit condition to incorporate a change to a maximum contaminant level (MCL) under §§ 141.62 and 141.66, which serve as the underlying basis for the permit condition.

(5) Changes that increase the frequency, duration, or stringency of the requirements or procedures for inspection, monitoring, recordkeeping, reporting, web posting, sampling, analytical methods, or maintenance activities by the permittee.

(7) Changes to monitoring, sampling or analysis methods or procedures to conform with EPA guidance or regulations.

(8) Replacement of an existing groundwater monitoring well that has been damaged or rendered inoperable, as close as possible to the original location, and of similar design and depth.

(9) In the closure plan, increases to estimates of the maximum extent of operations or the maximum inventory of waste.

(b) *Procedures applicable to minor modifications*. (1) Except as provided in § 257.151(a)(3), the permittee must submit an application for a minor modification in accordance

with § 257.152 no later than 45 days before making the proposed change, unless otherwise specified. If multiple modifications are requested, only those that meet the definition of a minor modification are eligible to use these procedures.

(2) When revisions to subpart D of this part are promulgated that change requirements applicable to a permitted CCR unit to become less stringent than the existing permit conditions, the owner and operator may either continue to operate in accordance with the permit or may apply for a permit modification in accordance with § 257.152.

(3) The permittee may apply for either a major modification or a minor modification to the Administrator. Any application for a minor modification must provide the necessary information to support the requested classification for each modification requested in the application.

(4) In determining the appropriate modification type, the Administrator shall consider the criteria in paragraph (a) of this section and in § 257.151(c) and the similarity of the modification to examples of modifications listed in those paragraphs.

(5) The Administrator may take the following actions in response to an application for a minor modification to a CCR permit:

(i) Determine that a proposed minor modification is a major modification that must follow the procedures for approval in § 257.151(d);

(ii) Deny for cause the proposed minor modification;

(iii) Determine that additional information is needed to evaluate the modification; or

(iv) Approve the minor modification.

(6) The Administrator will inform the permittee of any of these determinations and provide the reasons for the decision. If a minor modification has been denied, the permittee must comply with the original permit conditions.

(7) If the Administrator has not notified the permittee within the 45-day period of any of the determinations listed in paragraph (5) of this section, the permittee may proceed with the minor modification in accordance with the application.

(c) *Major modifications*. Major modifications are all changes to a permit that are not considered a minor modification listed at § 257.151(a). These include changes that materially alter the CCR unit or its operations, changes that impact the applicability of subpart D requirements, changes that could impact the protection of human health and the environment, and changes necessary to comply with new regulations, where these changes can only be implemented by substantially changing design, operational requirements, or compliance approaches in the permit, or where the revised regulation requires the application of significant technical judgement or discretion. The following are examples of major modifications:

(1) Changes that reduce the frequency or stringency of requirements for inspection, groundwater monitoring, sampling, analysis, recordkeeping, reporting, web posting, or maintenance activities by the permittee.

(2) Changes to remove or relax a permit condition that is based on an underlying requirement that is no longer applicable, but where this change in applicability is not due to a regulatory change that was subject to public notice and a public comment period, a statutory change, or an order from a court.

(3) Reduction in the number, or substantial changes in location, depth, or design of groundwater monitoring wells required by the permit.

(4) Addition of a new CCR unit including a new landfill unit, a lateral expansion, or a new surface impoundment unit not already authorized by a RCRA CCR permit and not covered by a permit by rule in accordance with § 257.128.

(5) Modification of a CCR unit, including physical changes or changes in management practices which are not minor modifications under § 257.151(a).

(6) Addition of a corrective action program or changes to the corrective action requirements in the permit.

(7) Changes to a plan approved in a permit, including reduction in the post-closure care period for any reason. This does not include administrative changes, a change that is a direct incorporation of a change to subpart D, or changes to a closure plan specified in § 257.151(a)(9),

(8) Extension of the final compliance date in a schedule of compliance established in accordance with § 257.142.

(9) A change to a permit condition that is based on a change in an underlying regulatory or statutory requirement, which requires substantial changes to the design, operation, or compliance strategies established in the permit or which requires the application of significant technical judgement or discretion.

(d) *Procedures applicable to major modifications*. (1) The permittee must submit a revised permit application for a major modification in accordance with § 257.152. In addition to the information required by § 257.152, the application must include the applicable information required by §§ 257.130 and 257.131.

(2) When revisions to subpart D of this part are promulgated and requirements applicable to a permitted CCR unit become more stringent than the permit conditions, the owner and operator must apply for a permit modification to incorporate the new requirements, in

accordance with §§ 257.151 and 257.152 and no later than 180 days after the effective date of the revisions to subpart D of this part.

(3) The permittee must place a copy of the permit modification application and supporting documents on the permitted facility's publicly available CCR website or other publicly available electronic document storage medium.

(4) The Administrator may take the following actions in response to an application for a major modification to a CCR permit:

(i) Determine that additional information is needed to evaluate the application;

(ii) Approve the proposed modification(s); or

(iii) Partially approve or deny the requested modification for any of the following reasons:

(A) The modification application is incomplete;

(B) The requested modification would result in a permit that would not require compliance with the requirements of subpart D of this part or other applicable requirements; or

(C) The requested modification would result in a permit that would fail to ensure there will be no reasonable probability of adverse effects on health or the environment.

(5) The Administrator shall grant or deny the major modification request according to the permit modification procedures of § 124.5 of this chapter.

§ 257.152 Application to modify an individual permit

(a) *Application requirements for all modifications.* The permittee must provide all information and supporting documents necessary for the Administrator to evaluate the proposed modification(s) to the permit. Any application for a modification to a CCR permit must include the following:

(1) A description of the exact modification(s) requested to the facility or operations and/or supporting documents referenced by the permit application;

(2) A description of the exact modification(s) requested to the permit conditions;

(3) Identification of the requested modification(s) as minor, in accordance with § 257.151(a), or major, in accordance with § 257.151(c), along with a justification for the classification; and

(4) An explanation of why the modification is necessary to ensure that the permit accurately reflects facility conditions or operations.

(5) A statement that the facility continues to comply with the currently applicable requirements in subpart D of this part.

(6) Corrections or updates to any information in the application that has changed since the most recent submittal of the application.

(b) *Application for a minor modification*. (1) If multiple modifications are requested, only those that meet the definition of a minor modification are eligible to use these procedures. Along with the application, the permittee must provide the applicable information required by §§ 257.130, 257.131 and 257.151, as well as any corrections or updates to any information that has changed since the most recent submittal of the application.

(2) The permittee must submit an application for a minor modification to the Administrator no later than 45 calendar days before the permittee wishes to implement the requested change(s). For transfer of ownership or operation, the permittee must submit an application for a minor modification as soon as practicable and no later than 30 days after the transfer occurs.

(3) For a minor permit modification, the permittee may instead elect to follow the procedures in paragraph (c) of this section for major modifications.

(c) *Application for a major modification*. The permittee must submit an application for a major modification to the Administrator no later than 180 calendar days before the permittee wishes to implement the requested modification(s). Along with the notice, the permittee must provide the applicable information required by §§ 257.130, 257.131 and 257.151.

§ 257.153 Termination of an individual CCR permit.

(a) *Causes*. The Administrator may terminate an individual CCR permit for any of the following causes:

(1) Significant noncompliance by any permittee with the permit;

(2) Failure by any permittee in the application or during the permit issuance process to fully disclose all relevant facts,

(3) Misrepresentation by any permittee of any relevant facts at any time;

(4) A determination by the Administrator that the permit fails to ensure there is no reasonable probability of adverse effects to health or the environment and the permitted activity can only be regulated to acceptable levels by permit termination.

(5) The Administrator has received notification of a permittee's intent to be covered by a general permit issued in accordance with § 257.127 or the permit by rule in § 257.128.

(6) The Administrator has determined that all permitted activities have ceased and the permittee has completed closure, the required post-closure care and any required corrective action.

(b) *Procedure.* The procedures for RCRA CCR permit termination in § 124.5 of this chapter and § 22.44(b) of this chapter will be followed when terminating an individual CCR permit.

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