

ANNOUNCEMENT ON JUNE 18

Accomplishment

On June 18, 2018, EPA is scheduled to approve Oklahoma's first-in-the-nation application to operate a state permit program regulating the disposal of coal combustion residuals (CCR or coal ash) from electric utilities. This will mark the **first time** EPA has approved a state permit program for CCR using the new authority that Congress provided EPA in 2016. **First in the nation.**

CCR Background at EPA

In April 2015, EPA published a final rule under the Resource Conservation and Recovery Act (RCRA) that designated CCR as nonhazardous waste and established national requirements governing the disposal of CCR in landfills and surface impoundments. Unlike the Clean Air Act and the Clean Water Act, which are generally implemented by states through permit programs that are approved by EPA, RCRA originally did not authorize EPA to regulate CCR as nonhazardous waste through state permit programs. Instead, utilities were responsible for directly implementing the requirements of EPA's 2015 CCR rule, which were enforceable only through citizen suits.

JMI's Work in Congress

(Below is entire legislative history, dates, hearings, and votes)

As chairman of the Senate Environment and Public Works Committee, Senator Inhofe led **two hearings** examining the challenges of the 2015 CCR rule and the need for legislation to allow Oklahoma and other states to regulate CCR through EPA-approved state permit programs rather than through the self-implementing requirements of the CCR rule. Representatives of electric utilities and states testified in favor of amending RCRA to allow state permit programs because they would be able to tailor the requirements for disposing of CCR to address the specific risks and concerns posed by an individual utility, rather than through the one-size-fits-all national standards in the 2015 CCR rule.

Chairman Inhofe worked on a bipartisan basis with then-ranking member Barbara Boxer, other members of the Senate, and colleagues in the House of Representatives, along with states, the utility sector, and environmental groups, to craft compromise legislation giving states authority to regulate CCR through permit programs. This legislation was included as part of the Water Infrastructure Improvements for the Nation Act, which passed the Senate by a vote of 78 to 21 and was enacted into law in December 2016.

Under the WIIN Act authority, EPA is required to approve within 180 days of receipt a state's application to operate a permit program in lieu of the 2015 CCR rule if the Administrator determines the state's program will require electric utilities to comply with the requirements of the 2015 CCR rule or successor regulations. However, an approved state program may allow individual permits to include technical requirements that vary from the requirements of the 2015 CCR rule or successor regulations so long those site-specific requirements are at least as protective of the federal requirements.

EPA's Work Implementing the New Law

On April 28, 2017, EPA Administrator Scott Pruitt wrote to the nation's governors informing them about the WIIN Act and encouraging them to submit applications to operate state permit programs. EPA issued interim final guidance on August 10, 2017 to assist states in developing their program applications and providing a framework for how EPA would process the applications.

Oklahoma initially submitted its draft application on July 31, 2017. On December 21, 2017, EPA informed Oklahoma that its application was complete, triggering the 180-day review deadline. EPA hosted a public hearing in Oklahoma City on February 13, 2018, about Oklahoma's application. Separately, EPA is considering changes to the 2015 CCR rule to facilitate the transition to permit programs and to allow use of alternative-risk based standards. EPA published a proposed rule on March 15, 2018, containing more than a dozen potential changes. EPA plans to propose additional changes later this year.

Legislative History in 114th Congress

June 17, 2015 -- Chairman Inhofe led an oversight hearing of the Environment and Public Works Committee examining EPA's 2015 final rule to regulate the disposal of coal combustion residuals from electric utilities. Chairman Inhofe made the following statement at the hearing:

"This is an important issue that cuts across the Committee's areas of jurisdiction—from the regulation of waste, to the impact of EPA's other rules on electric utilities, and to the importance of coal ash to highways and infrastructure projects. EPA has extensively studied the safety of coal ash. For decades, coal ash has been regulated as nonhazardous waste by states. It is also worth noting that coal ash is an important ingredient in concrete and helps extend the lifespan of and control costs for the concrete used in roads and bridges. In fact, many State Departments of Transportation require the use of coal ash in their road projects."

March 2, 2016 -- Chairman Inhofe led a hearing of the Environment and Public Works Committee to consider the bipartisan Improving Coal Combustion Residuals Regulation Act (S. 2446), focusing on how to development state permit programs to regulate CCR. Chairman Inhofe made the following statement at the hearing:

"I agree with the EPA's decision that coal ash is a non-hazardous waste, and I can assure you, in case you are wondering, that there are not 60 votes in the United States Senate that would change that ruling, so Congress should amend RCRA to authorize the State permitting programs for coal ash. The President supports it.

"As Ranking Member Boxer noted at last year's hearing on EPA's coal ash regulation, authorizing State permitting programs 'is really not that different from so many other laws. If you want to talk about permitting, I would be happy to work with you to make that fix, if necessary.' Now, I agree. I see no reason why coal ash should not be regulated through the EPA's approved State permitting programs, just like air, water, and hazardous waste.

"I have served in different capacities I have served as mayor of a major city; I have served in the State legislature; I have served in Congress; and I have served in the Senate. It has been my experience

that the closer you get to the people, the more local, the more responsible the decisions are, because they can find you. You can hide up here; you can't hide when you're in a city council. So I reject the idea that you can't count on ... States to protect us. I don't agree with that at all."

After the legislative hearing, Chairman Inhofe pursued new compromise legislation, referred to as the Coal Combustion Residuals Regulatory Improvement Act, with ranking member Boxer and the original sponsors of S. 2446. This compromise legislation was included as part of S. 2848, the Water Resources Development Act of 2016, which was passed by a vote of 95 to 3 in the Senate on September 15, 2016. Chairman Inhofe applauded the inclusion of the bipartisan Coal Combustion Residuals Regulatory Improvement Act in WRDA 2016. Chairman Inhofe issued the following statement:

"This bipartisan legislation that is in WRDA 2016 gives states the needed flexibility and authority to regulate coal ash to best support their state economies while also protecting the health of families and communities," Inhofe said. "This provision provides utilities the regulatory certainty they have been seeking and corrects the implementation problems with EPA's recent coal ash rule. I thank Sens. Hoeven and Manchin for keeping this issue alive in recent years and Ranking Member Boxer, Sen. Capito and the other EPW Committee members for coming together to craft this compromise language. I look forward to working with my colleagues in the House of Representatives to getting this compromise coal ash legislation enacted into law."

The Environmental Council of the States issued a statement supporting the Senate's passage of the CCR legislation as part of the Water Resources Development Act:

"The Environmental Council of the States commends the Senate on its passage yesterday of the Coal Combustion Regulatory Improvement Act (Act), authorizing states to develop and carry out programs to control coal combustion residual (CCR) units. Included as Section 8001 in S. 2848 of the Water Resources Development Act (WRDA) 2016, the Act amends the Resource Recovery and Conservation Act to allow states to directly oversee and enforce CCR unit compliance, in a manner consistent with the U.S. Environmental Protection Agency's April 2015 final CCR rule (80 Fed. Reg. 21,302). ECOS long has supported states having such authority, and ECOS representatives have testified in both the Senate and House several times over the years on the importance of legislative action on the CCR issue. ECOS extends its deep appreciation to the Senators who led the effort to advance the Act. ECOS also thanks the state experts who offered their expertise and experience with CCR facilities to inform the process, and in particular our colleagues at the Association of State and Territorial Solid Waste Management Officials who were steadfastly dedicated to the issue."

December 5, 2017 – Senator Inhofe worked on a bipartisan basis with colleagues in the Senate and House to ensure the final deal on the Water Infrastructure Improvements for the Nation Act (WIIN Act) included compromise legislation negotiated by Senator Inhofe to authorize state permit programs for regulating coal combustion residuals from electric utilities. Senator Inhofe released the following statement:

"We're pleased that the final WIIN package builds off the Senate passed provision and provides the authority that states have been seeking to regulate coal ash through authorized state permit programs," the senators said. "This new permitting authority fixes the main problems with the recent coal ash regulation issued by the Environmental Protection Agency, by removing citizen suits as the sole means of enforcement and allowing states to tailor permit requirements on a case-by-case basis. We're happy

that we were able to work with our colleagues in the House and Senate on a bipartisan basis to get this important legislation across the finish line.”

December 9, 2016 – By a vote of 78 to 21, the Senate passed the Water Infrastructure Improvements for the Nation Act (WIIN Act), which included compromise legislation negotiated by Senator Inhofe to authorize state permit programs to regulate coal combustion residuals. Senator Inhofe released the following statement:

“I am pleased that the WIIN Act has crossed the finish line with strong, bipartisan support,” Inhofe said. “This bill – soon to be law – fulfills many important Oklahoma priorities. It helps Oklahoma rural electric cooperatives and the families they serve by returning the regulation of coal combustion residuals to states.”

The inclusion of the coal ash legislation in the WIIN Act garnered broad support from the utility sector:

“Public Service Company of Oklahoma and American Electric Power strongly support the water resources bill, and appreciate Senator Inhofe’s strong leadership in its passage. In particular, we applaud the Senator’s efforts on a provision in the WIIN bill that solves the major shortcomings of current federal regulation of coal combustion residuals (CCRs), by giving states the primary authority over CCRs through state permit programs,” said Stuart Solomon, president and COO of the Public Service Company of Oklahoma.

“EEI thanks Senator Inhofe for his leadership in completing the water resources bill, which contains critically important provisions for the safe management of coal ash. As the EPA’s coal ash regulation goes into effect and our industry begins to close coal ash basins, these legislative provisions will enable states to be more involved in the permitting process for the closure of basins. Permanently closing basins in a manner that puts safety first, protects the environment, and minimizes impacts to communities and customers is vitally important to our industry,” said Tom Kuhn, president of the Edison Electric Institute.

“America’s electric co-ops are extremely grateful to Chairman Inhofe for championing the WIIN Act, which will bolster co-ops’ efforts to provide affordable and reliable electricity to rural America. Because of his hard work, this bill promotes critical infrastructure projects pertaining to hydropower, flood control, water supply and emergency management. This bill is a win for America’s rural electric consumers, and we appreciate the chairman’s unwavering support for provisions that inject greatly needed certainty into the regulation of coal ash by giving states clear permitting authority and reducing litigation,” said Jim Matheson, CEO of NRECA.

“OG&E greatly appreciates Senator Inhofe’s leadership in including his coal ash provision in the ‘Water Infrastructure Improvements for the Nation Act’ conference report. His provision resolves a legislative stalemate to the satisfaction of both the electric industry and environmentalist community. The Inhofe provision brings legal certainty and predictability to the generation of electricity that will benefit Oklahoma electric customers, beneficial users of coal ash and the environment,” said Paul Renfrow, vice president of public affairs for OG&E Energy Corp.

December 16, 2016 -- The WIIN Act was signed into law (PL-114-322). Senator Inhofe’s Coal Ash provision is Section 2301.