Report From Agency

REPORT TO LEGISLATURE

NR 500 to 520, Wis. Adm. Code

Board Order No. WA-17-18
Clearinghouse Rule No. 21-076

Basis and Purpose of the Proposed Rule

The proposed rule will amend portions of chs. NR 500 to 520, Wis. Adm. Code, to incorporate new federal rules for the regulation of coal combustion residual (CCR) landfills. CCR, often called coal ash, is created when coal is burned by power plants to produce electricity. Specifically, the proposed rule would incorporate federal requirements for CCR landfills, such as: location restrictions, design criteria, operating criteria, groundwater monitoring and corrective action criteria, closure and post-closure care and recordkeeping, notification, and posting of information. The proposed rule would allow Wisconsin to seek approval of a state CCR permit program from the U.S. Environmental Protection Agency (EPA). This would allow CCR landfills to comply with a single consolidated rule rather than both state and federal rules. Where federal rules and Wisconsin rules differ, Wisconsin rules are required by EPA to be at least as protective as the federal rules.

Summary of Public Comments

See attached Comments and DNR Responses Natural Resources Board Order WA-17-18.

Modifications Made

Changes were made to the proposed rule to address recommendations made by the Legislative Council Rules Clearinghouse, to address comments from EPA, and as a result of public comment or testimony received during the public hearing. The changes include:

- Additional definitions and amendments to definitions in s. NR 500.03 for active portion, beneficial use of CCR, CCR landfill, CCR pile, groundwater, and recognized and generally accepted good engineering practices.
- Incorporation of federal requirements into s. NR 500.035 related to the definition of an electric utility or independent power producer and to make clear that compliance with CCR landfill requirements does not affect the need for compliance with other laws or requirements.
- Modifications to the liner design requirement language in s. NR 504.12(3) for additional clarity.
- Relocation of the closure performance standards when leaving CCR in place from s. NR 514.07(10)(c)3. to s. NR 506.083(6) for additional clarity.
- Modification of the timeframe under s. NR 506.20(1)(a)2. for an inspection to assess fugitive dust control measures from at least weekly to intervals not exceeding 7 days.
- Modifications to chs. NR 507 and 508 regarding groundwater monitoring and contaminant response for additional clarity and in response to comments.
- Modifications to the public participation requirements for a pre-plan of operation submittal and plan modifications under s. NR 514.04 in response to comments received and to be consistent with other statutory requirements for public hearings.
- Modifications to the applicability language in s. NR 520.02 for additional clarity.
- Other minor corrections throughout.

Appearances at the Public Hearing

A public hearing for the proposed rule was held on October 28, 2021. Ten individuals participated in the public hearing in addition to department staff. Three individuals registered in support, of which two provided testimony during the hearing. No individuals registered in opposition of the rule and seven registered for information only or no position, of which two provided testimony during the hearing.

The indivduals who provided testimony during the hearing or registed in support include:

- Joseph Dubaniewicz (provided testimony on behalf of self)
- Bennett Artman (provided testimony on behalf of self and registered in support of proposed rule)
- Bill Skewes, Director of Wisconsin Utilties Association (provided testimony and registered in support of proposed rule)
- Patrick Wilson (provided testimony on behalf of self)
- Jeff Maxted, Alliant Energy (registered in support of proposed rule)

Changes to Rule Analysis and Fiscal Estimate

Minor changes were made to the plain language rule analysis for additional clarity. Language was added stating that the proposed rule would also include requirements for initial permitting, public participation in plan review and review fees. In response to public comments received, changes were made to the timeframes and procedures under ch. NR 508, Wis. Adm. Code, of the proposed rule.

As a result of comments and further review, the following changes were made to the economic impact analysis:

- Implementation costs include annual review fees for the annual report (6 landfills at $2,000 = $12,000)
- Clarification that CCR landfill owners would continue to incur compliance costs of approximately $100,000 annually for groundwater monitoring for each of the 6 landfills.

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted comments on form, style and placement; and clarity, grammar, punctuation and the use of plain language. Changes to the proposed rule were made to address all recommendations by the Legislative Council Rules Clearinghouse.

Final Regulatory Flexibility Analysis

The rule is not likely to have an impact on small businesses. CCR landfills are operated by electric utilities that do not meet the definition of a small business under s. 227.114(1), Wis. Stats. The proposed rule would modify Wisconsin regulations to incorporate requirements of the federal rule into Wisconsin's existing rules to allow Wisconsin to apply for a CCR state permit program. Most of the changes in the proposed rule have already been implemented by the federal government and facilities have already complied with the federal rule. Any additional requirements as a result of the proposed rule are procedural requirements for initial permitting or related to the consolidation of state and federal requirements. Any additional cost as a result of this proposed rule will be related to a facility's plan preparation for initial permitting and department review of plans or annual reports.

Response to Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not prepare a report on this rule proposal.