

**Comments of the Attorneys General of Illinois,
Colorado, Delaware, Maryland, Minnesota, and New Mexico**

Via Electronic Transmission on Regulations.Gov

July 29, 2026

Lee Zeldin, Administrator
U.S. Environmental Protection Agency
EPA Docket Center, Office of Land and Emergency Management Docket
Mail Code 28221T
1200 Pennsylvania Ave., NW
Washington, DC 20460

Re: The U.S. Environmental Protection Agency’s Proposed “Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Federal CCR Permit Program,” 85 Fed. Reg. 9940 (Feb. 20, 2020), Docket ID No. EPA-HQ-OLEM-2019-0361

Dear Administrator Zeldin:

The Attorneys General of Illinois, Colorado, Delaware, Maryland, Minnesota, and New Mexico (States) respectfully submit these comments on the Environmental Protection Agency’s (EPA or the Agency) proposal entitled “Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Federal CCR Permit Program,” 85 Fed. Reg. 9940 (Feb. 20, 2020) (the Proposal). EPA recently reopened comment on this proposal. 91 Fed. Reg. 31,684 (May 28, 2026). In the Proposal, EPA proposed to establish a federal [coal combustion residual] permit program in states defined as “nonparticipating” under the Water Infrastructure Improvements for the Nation (WIIN) Act. 42 U.S.C. § 6945(d)(2)(A).

The States oppose the Proposal because the process provided for issuing federal permits for disposal of coal combustion residual (CCR) fails to ensure that each CCR unit achieve compliance with applicable requirements. However, EPA’s lax permit coverage under its Proposal would allow overbroad general permits and permits by rule for many CCR units that would not require individualized scrutiny of the potential for adverse effects on health or the environment from each CCR unit. And even when EPA would require individual permits for CCR units, there is insufficient means to ensure that the permits continue to be protective into the future. Furthermore, the Proposal does not allow for an appropriate level of public participation in the permitting process and allows an overbroad exemption for beneficial use of CCR.

CCR is a form of toxic pollution that has widespread effects to our residents. The States therefore urge EPA to withdraw its Proposal and revise its provisions to properly ensure that each CCR unit that would receive a federal permit achieve compliance with the applicable requirements intended to prevent adverse effects on health or the environment.

I. Background

A. Coal combustion residuals are a widespread form of toxic waste located in many sites across our States that threatens human health and the environment

CCR is a widespread form of toxic waste that threatens the environment and the health of residents of our States. When power plants burn coal, the resulting CCR waste—or coal ash—includes a host of toxic chemicals, such as arsenic, lead, and mercury.¹ See 80 Fed. Reg. 21,449 (April 17, 2015). These chemicals pose numerous dangers to human health, including cancer, cardiovascular effects, and neurological effects. *Id.* at 21,451. EPA has found that living near coal ash storage facilities such as ponds and landfills increases the risk of exposure to toxic metals like cadmium, cobalt, lead, thallium, and other pollutants at concentrations far above levels that are considered safe, which can damage the liver, kidney, lungs, and other organs. *Id.* at 21,311. The risks to infants are particularly acute. *Id.* at 21,466. Coal ash and its constituents are also dangerous to fish, birds, amphibians, and plants. 75 Fed. Reg. 35,171–72 (June 21, 2010).

There are huge volumes of CCR stored across the United States.² CCR has historically been disposed of in surface impoundments near the coal plant, which often reside beside or near lakes and rivers.³ These surface impoundments, especially those that lack a liner separating coal ash from soil, are prone to leak or rupture, endangering soil, groundwater, surface water, and surrounding communities. 80 Fed. Reg. 21,326. For instance, a spill in 2014 at a coal plant in North Carolina caused 39,000 tons of coal ash slurry to escape from a surface impoundment into the nearby Dan River, polluting the environment across the entire region.⁴

Instead of storing CCR in impoundments and landfills, CCR can be used in various products and materials, such as a substitute for cement when making concrete. CCR that is re-used in this “encapsulated” form is bound into a solid material that helps prevent CCR from being released into the environment.⁵ However, many other forms of re-use can present significant risk environmental harm. For example, CCR byproducts are used as a replacement for

¹ EPA, 2024 Risk Assessment of CCR, Docket No. EPA-HQ-OLEM-2020-0107, https://downloads.regulations.gov/EPA-HQ-OLEM-2020-0107-1075/attachment_1.pdf.

² Overall, coal plants have generated approximately 5 billion tons of coal ash. Reedy et al., *Coal Ash Resources and Potential for Rare Earth Element Production in the United States*, 11 Int. J. of Coal Science & Tech. 74 (2024), <https://doi.org/10.1007/s40789-024-00710-z>.

³ E.g., Duke University Nicholas School of the Environment, *Evidence of Multiple Unmonitored Coal Ash Spills Found in N.C. Lake* (June 3, 2019), <https://nicholas.duke.edu/news/evidence-multiple-unmonitored-coal-ash-spills-found-nc-lake>.

⁴ National Association of Regulatory Utility Commissions, *A Comprehensive Survey of Coal Ash and Commercialization* (2020), https://acaa-usa.org/wp-content/uploads/2021/05/NARUC_CoalAsh_rev_FINAL_061220_RLD_SRB.pdf.

⁵ EPA, *Methodology for Evaluating Encapsulated Beneficial Uses of Coal Combustion Residuals* (2013) 1–2, <https://www.epa.gov/coal-combustion-residuals/methodology-evaluating-encapsulated-beneficial-uses-coal-combustion>.

gypsum in soil to improve productivity, putting harmful CCR byproducts into contact with soil and surface water, potentially leading to human ingestion through fish, beef, and milk.⁶

B. Statutory background

RCRA requires no reasonable probability of adverse effects on health or the environment

RCRA prohibits the disposal of “nonhazardous” solid waste in open dumps. 42 U.S.C. § 6945(a). A solid waste disposal facility is a “sanitary landfills” (which are allowed), rather than an “open dumps” if there is “no reasonable probability of adverse effects on health or the environment from disposal of solid waste at such facility.” *Id.* at §§ 6907(a)(3), 6944(a). In 2015, EPA regulated coal ash as a “nonhazardous” waste and set standards for active coal ash disposal that the agency argued would meet the “no reasonable probability” standard. 80 Fed. Reg. 21,302 (Apr. 17, 2015) (2015 Rule). Among other things, the 2015 Rule established location restrictions for active coal ash impoundments; requirements relating to impoundments’ lining and structural integrity; compliance deadlines; and procedures for closing noncompliant impoundments. 40 C.F.R. §§ 257.50–257.107.

Environmental groups and industry groups both challenged the 2015 Rule. In *Utility Solid Waste Activities Group v. EPA (USWAG)*, 901 F.3d 414 (D.C. Cir. 2018), the D.C. Circuit concluded that the 2015 Rule was insufficiently protective to meet RCRA’s standard of ensuring “no reasonable probability of adverse effects” on human health or the environment. *USWAG*, 901 F.3d at 449–50. The court repeatedly faulted EPA for understating risk to the environment and public health posed by unlined coal ash impoundments, *id.* at 429, 431–32, and held that requiring closure or retrofitting only after detection of leaks was “arbitrary and contrary to RCRA”. *Id.* at 429. Furthermore, EPA could not exempt inactive impoundments at inactive power plants, called “legacy ponds.” *Id.* at 432–433. In 2024, EPA responded by strengthening its existing regulations and adding new regulations for legacy ponds and other storage areas called CCR management units. 89 Fed. Reg. 38,950, 38,951 (May 8, 2024) (2024 Rule).

In 2026, EPA proposed to rescind many uniform national standards for CCR disposal in favor of a wide range of site-specific flexibilities available to modify applicable standards based on conditions at each individual surface impoundment or landfill. 91 Fed. Reg. 18,968. EPA additionally proposed to withdraw many requirements for CCR legacy ponds and completely exempt CCRMU from regulation. 91 Fed. Reg. 18,968. Many of the undersigned states filed a comment opposing this proposal and urging EPA to retain the existing regulations as amended by the 2024 Rule.⁷ To date, EPA has not taken action to finalize this 2026 proposal.

⁶ EPA, *Beneficial Use Evaluation: Flue Gas Gypsum Used as an Agricultural Amendment* (2023) 8-2, <https://www.epa.gov/coal-combustion-residuals/beneficial-use-evaluation-flue-gas-desulfurization-fgd-gypsum-agriculture>.

⁷ See Comments from Illinois, Colorado, Delaware, Maryland, Minnesota, New Mexico et al. to EPA’s proposed amendments to RCRA CCR regulations (June 29, 2026), <https://www.regulations.gov/comment/EPA-HQ-OLEM-2020-0107-1650>.

Federal CCR permits must require that each CCR unit achieve compliance

EPA's 2015 rule established "self-implementing" requirements "that owners or operators of regulated units can implement without any interaction with regulatory officials," including without any permit program. 2015 Rule at 21,330. EPA did not choose this route, rather RCRA's provisions at that time did not "authorize EPA to require that facilities obtain a permit[.]" 2015 Rule at 21,332. Instead of EPA directly enforcing these provisions or directing states to enforce them, the 2015 Rule's requirements were instead enforceable through RCRA citizen suit provisions.

This gap was addressed by the Water Infrastructure Improvements for the Nation Act (WIIN Act), which in 2016 amended RCRA to provide EPA authority to approve state permitting programs for CCR facilities and implement a federal CCR permit program in "nonparticipating states." 42 U.S.C. § 6945(d)(2). For the federal permit program, EPA shall "require each coal combustion residuals unit located in the nonparticipating State to achieve compliance[.]" *Id.* at § 6945(d)(2)(B).

EPA then in 2020 proposed procedures for a federal CCR permit program. 85 Fed. Reg. 9940 (Feb. 20, 2020). The proposal would allow for individual permits for specific CCR units. An individual permit for one or more CCR units at a facility would contain site-specific "controls and procedures to achieve compliance" with the substantive standards. *Id.* at 9949. The procedures also provide for general permits that would apply to entire categories of CCR units,⁸ and self-executing permits by rule for new or expanded landfills. *Id.*

EPA did not finalize or withdraw this proposal, rather it reopened comment later in 2020 (85 Fed. Reg. 46,046 (July 31, 2020)) and then again reopening the current comment period. EPA has also acted on several states' permit programs, for instance by approving Texas' program, 86 Fed. Reg. 33,892 (June 28, 2021), denying Alabama's application for approval, 89 Fed. Reg. 48,774 (June 7, 2024), and proposing to approve several other programs (*e.g.*, 91 Fed. Reg. 34,189). To date, EPA has approved five state programs.

All states have a strong interest in a protective federal permitting program

While no undersigned state has yet applied to EPA for approval of a state CCR permit program, Illinois operates a CCR permit program under state law. In 2019, the Illinois General Assembly adopted the Coal Ash Pollution Prevention Act, directing Illinois environmental agencies to adopt comprehensive rules governing the construction, operation, and closure of CCR surface impoundments. 415 ILCS 5/22.59. In 2021, the Illinois Pollution Control Board adopted such regulations for active CCR surface impoundments and legacy ponds. 35 Ill. Adm. Code. Part 845. Key provisions of Part 845 set design and operation criteria, groundwater

⁸ EPA has published an advance notice of proposed rulemaking for general permit provisions and seeks comment on it by October 13, 2026. 91 Fed. Reg. 43,051 (July 14, 2026). This comment does not address EPA's advance notice.

monitoring standards, corrective action requirements, and retrofitting procedures. *Id.* at Subparts D, E, F. However, Illinois does not currently have state regulations that apply to CCRMUs.⁹

Yet, even states with strong permitting programs that could qualify for federal approval still have significant interests in a robust and protective federal CCR permit program because CCR units in nearby states can, if not properly permitted, lead to pollution via groundwater and surface water that crosses state lines. For example, coal ash in Indiana has significant consequences for water quality in Illinois.¹⁰ For example, Indiana's Gibson Generating Station, located only a few miles east of the Wabash River bordering Wabash County, Illinois, was built over shallow sand and gravel aquifers and stores CCR directly in groundwater below the water table.¹¹ The Wabash River Generating Station, also situated along the Wabash River directly across from Clark and Edgar Counties in Illinois, also has coal ash sitting directly in groundwater year-round.¹² Furthermore, toxic pollution from Indiana's coal ash ponds also harms Lake Michigan.¹³ Should CCR units like these be covered by underprotective federal permits, our states would suffer from the consequent pollution.

II. Argument

A. EPA's permit by rule and general permit mechanisms fail to require each CCR unit to achieve compliance with RCRA as amended by the WIIN Act

EPA's proposal would allow for broad categories of CCR units to operate under general permits or permits-by-rule. However, the way that EPA proposes to issue these types of permits risks ignoring the significant risks that CCR presents to our states' environments and the health of our residents. Overall, the general permit and permit by rule approaches articulated by EPA's proposal do not sufficiently ensure that each covered CCR unit would achieve compliance, because many CCR units would become permitted without ever receiving any kind of scrutiny from EPA itself. Furthermore, the CCR units covered under these permits would not be subject to meaningful public participation and would be largely protected from the public eye. As described more fully below, EPA should not adopt its proposed general permit and permit by rule provisions.

⁹ Illinois Pollution Control Board, R20-19(A), Second Notice Proposed Rule at 11 (May 15, 2025), <https://pcb.illinois.gov/documents/dsweb/Get/Document-113832>.

¹⁰ *E.g.*, FEMA Flood Map for Gibson Generating Station in Gibson County, Indiana, <https://msc.fema.gov/portal/search?AddressQuery=1097%20N%20950%20W%2C%20Owensville%2C%20IN%2047665>.

¹¹ Duke Gibson Generating Station, North and South Ash Basin System Modified Closure & Post Closure Plans, (December 16, 2016), <https://www.duke-energy.com/our-company/environment/compliance-and-reporting/ccr-rule-compliance-data>.

¹² Duke Wabash River Generating Station Ash Pond System Closure & Post Closure Plan, (December 16, 2016), <https://www.duke-energy.com/our-company/environment/compliance-and-reporting/ccr-rule-compliance-data>.

¹³ Christiana Freitag, "Environmentalists find EPA's proposed changes worrisome for those living along the Great Lakes," CHI. TRIB. (June 13, 2026), <https://www.chicagotribune.com/2026/06/13/coal-ash-pollution-epa-rollback-illinois-indiana/>.

EPA's lax coverage under general permits fails to ensure compliance for each CCR unit

EPA does not propose sufficient regulatory oversight for CCR units that would be eligible for coverage under general permits or permits by rule. Many procedural functions of the general permits greatly reduce or even eliminate any unit-specific review from EPA. Without such oversight, the federal permit program would not satisfy the statutory requirement that each CCR unit achieve compliance, effectively reviving the circumstances before the WIIN Act, where CCR units were effectively responsible for managing compliance on their own.

EPA can issue a general permit covering an entire “category of CCR units involving the same, or substantially similar, operations” when EPA believes it to be “more appropriate to regulate” under a general permit than under individual permits. 85 Fed. Reg. at 9953. After a CCR unit requests coverage under a general permit, the rule suggests that coverage is “effective 45 days after receipt.” But it is unclear whether EPA will first make two determinations before that coverage could apply: (1) that the owner or operator has submitted *a complete and accurate request*, and (2) that the CCR unit proposed for general permit coverage actually “*meets the eligibility criteria*.” *Id.* at 9954. As a threshold matter, general permit coverage should not be deemed effective until after EPA has made both affirmative determinations. The proposed rule is not clear on this matter. On one hand, the rule states that the coverage is effective 45 days after receipt “in the absence of any objection from the Administrator.” But the rule later states that “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*.” *Id.* (emphasis added).

Indeed, EPA has requested comment on this very issue: “whether EPA should be required to issue a determination that coverage under a general permit is appropriate for a particular CCR unit.” The answer is yes. It is inefficient to presumptively grant coverage to an ineligible unit and then subsequently require an individual permit. The structure of the federal permit program should not create an incentive for a CCR unit owner to prolong a period of automatic coverage through the effective date of a new individual permit. In the interest of CCR units being governed under an appropriate permit from the outset, rather than shifting to an individual permit only after coverage under a general permit becomes unavailable. The major risks to health and the environment from CCR units requires EPA to ensure permitting cannot be manipulated.

If EPA chooses to include general permits in its final rule, the process should not provide permits to CCR units by default barring Agency objection. Instead, the Agency must clarify in the final that it will first decide that a complete and accurate request has been submitted and that a CCR unit meets the general permit’s eligibility criteria before general permit coverage is effective. Rather than a 45-day objection period, EPA must make these affirmative decisions before any general permit coverage applies. However, if EPA does retain a 45-day objection period, then that period should only begin to run on the date that EPA provides its affirmative confirmation that the permit coverage request is complete and accurate. The final rule should

also expressly allow EPA to extend the 45-day period to allow additional time to complete the eligibility review. As proposed, EPA's general permitting process does not contain appropriate provisions to allow EPA to render a final decision on eligibility, violating the statutory requirement that the Agency's permitting process ensures each CCR unit achieves compliance.

Permits by rule proposal requires little to no oversight of CCR units

Similarly, EPA proposes to afford a permit by rule for new CCR landfills or lateral expansions. *Id.* at 9956. Like the general permit proposal, the proposed permits by rule lack oversight necessary to satisfy the statutory requirement that each CCR unit achieve compliance. Indeed, the permit by rule process contains even less substantive review: EPA's regulatory requirements on new or expanded landfills would themselves serve as the permit requirements. *Id.* Units do not need to apply for coverage under the permit by rule, rather they would be deemed immediately covered "as long as certain conditions are met" and must simply file a notification of intent to be covered for EPA recordkeeping. *Id.*

Like the lack of clarity discussed above, this proposed process is vague on who will decide that "certain conditions [have been] met" and what process will be used to confirm this compliance, either EPA confirmation or self-certification. EPA must clarify this point and the States urge EPA to require affirmative EPA confirmation that all conditions have been met before a facility may be deemed covered by the permit by rule. At a minimum, if EPA does not first require affirmative confirmation, then it must require the owner or operator of a new landfill or lateral expansion of a landfill to submit a sworn certification that the facility meets all conditions. EPA should also consider qualification requirements for the individual submitting such a certification or having the owner or operator submit the certification to a qualified independent third-party, as determined by EPA, to verify the facility's compliance and provide a verification report to EPA. Because EPA's plays little to no role in ensuring compliance before construction or during operation of a CCR unit that is covered under a permit by rule, EPA's proposal also does not establish baseline requirements to ensure ongoing compliance with groundwater monitoring or other essential regulatory aspects.

These approaches to permitting which involve little to no actual oversight of individual CCR units by EPA fail to satisfy the WIIN Act's provisions that "require each coal combustion residuals unit . . . achieve compliance[.]" *Id.* at § 6945(d)(2)(B).

Illinois' regulatory program demonstrates the need for individualized scrutiny of CCR units

Illinois' state regulatory program for permitting CCR units is built on an individual, site-specific permitting approach. This example demonstrates that EPA's proposed "hands-off" permitting through general permits and permits by rule cannot effectively require each CCR unit achieves compliance with the federal substantive standards.

Illinois' Coal Ash Prevention Act has established a comprehensive state permitting program to govern all aspects of CCR surface impoundments. 415 ILCS 5/22.59. It includes a

comprehensive regulatory scheme that provides, among other things, both construction and operating permit requirements for all CCR units, *id.* at 5/22.59(g), and bars any open dumping without a permit. *Id.* at 5/21(d)(1). Each permit must be supported by site-specific demonstrations of compliance with location standards, groundwater monitoring standards, and corrective action requirements. 35 Ill. Adm. Code 845.300 *et seq.*

Furthermore, in specific instances where CCR unit owners believe different standards should apply to a particular unit, Illinois' program requires full adjudication of any adjusted standard in a public proceeding with thorough administrative review. *See, e.g., Midwest Generation, LLC, v. Illinois Pollution Control Board and Illinois Environmental Protection Agency*, 2026 IL App (2d) 250166-U No. 2-25-0166 (affirming the Board's adjudication of an adjusted standard request from a CCR unit owner).

EPA's justifications for its lax approach are unavailing

EPA argues that these categories of permits are suitable for types of CCR units that present less risk than others, asserting that the CCR units covered by individual permits are "those units whose greater risks, or more complicated operations or site conditions, warrant the level of oversight associated with an individual permit." 85 Fed. Reg. at 9949. Therefore, according to EPA, these "streamlined approaches would be available only to certain CCR units with less complex operations or site conditions and more straightforward requirements[.]" *Id.*

However, even accepting EPA's argument that the CCR units covered under general permits and permits by rule present less risk, that does not obviate the need for individualized scrutiny, including at minimum ensuring that eligibility criteria and applicable conditions are continually being met in order to ensure that these CCR units meet RCRA's standard of "no reasonable probability." Indeed, the WIIN Act's core provision directs EPA to "require each" CCR unit achieve compliance. 42 U.S.C. § 6945(d)(2)(B). Prospectively granting permits to a general batch of CCR units or granting permits by rule to prospective CCR units that may be constructed some time in the future does not satisfy this directive.

B. EPA's proposed provisions for individual permits are flawed

EPA asserts that "most CCR units subject to this program" would be covered by individual permits, rather than general permits or permits by rule. 85 Fed. Reg. at 9949. An individual permit would cover one or more CCR units at a single facility and entail "greater risks, or more complicated operations or sight conditions" as to warrant additional oversight. *Id.* Various CCR units at one facility could be covered under individual, general, or by rule permits respectively. *Id.*

Yet, despite the agency's acknowledgement of the significant risks to health and the environment involved with the CCR units that would receive individual permits, many functions of the individual permit program proposed by EPA does not adequately address these risks or

complexities, failing to satisfy the statutory requirement that the permits ensure each CCR unit achieves compliance.

EPA does not require sufficiently detailed information in permit applications

First, EPA proposes to set a permit application deadline for only those CCR units classified as “high hazard potential,” requiring the “first tier of permit applications . . . 18 months after the effective date of the final rule[.]” *Id.* at 9950. For other CCR units outside of this first tier category,¹⁴ EPA does not set a proposed permit application deadline. Instead, EPA would announce permit deadlines for other tiers of CCR units at some indefinite point in the future. This leaves many types of potentially harmful CCR units without any time-certain individualized scrutiny, including, as EPA acknowledges CCR units “with significant hazard potential for structural stability,” in “corrective action after an exceedance of a groundwater protection standard,” and that “have not met the location restriction requirement for placement above the uppermost aquifer demonstration[.]” *Id.* at 9951. Leaving many CCR units without a deadline to submit a permit application fails to “require each” CCR unit in a nonparticipating state to “achieve compliance,” violating the WIIN Act.

EPA also fails to provide meaningful standards on what a permit application must contain when it is submitted. The proposed regulatory text, for example, would require “sufficient technical information about each CCR unit . . . necessary . . . to establish permit conditions” to require compliance. *Id.* at 9982. The proposed text then lists general categories of such information, such as location and design of the CCR unit, but lacks detailed requirements on the exact information that applicants must provide. By contrast, Illinois state regulations require various kinds of technical demonstrations, certifications from qualified engineers, and plans for potential emergencies. 35 Ill. Adm. Code 845.230. EPA would also not require that the federal permit application make any demonstration that the CCR unit is in compliance with the substantive regulations. This contrasts with Illinois’ regulations, which require that a permit application proves a CCR unit is in compliance, *id.* at 845.200(b)(1), prohibit a CCR unit in violation from receiving a permit, *id.* at 845.200(b)(2), and rely on past compliance history when considering a permit application, *id.* at 845.200(b)(3), (4). The proposed federal permit regulations must include these important details in a permit application.

EPA proposes to offer permits for life without sufficient mechanisms to modify

The proposal also would implement insufficient requirements for reevaluating a permit after it is issued. Most notably, EPA would issue CCR units permits for life—the 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.” 85 Fed. Reg. at 9953. EPA considered but rejected a periodic permit renewal

¹⁴ EPA would also set a deadline of 24 months for permit applications from any CCR unit that becomes subject to the substantive regulations on or after finalization of the federal permit procedures. 85 Fed. Reg. at 9951-52.

because the agency “could not identify one timeframe” that would be suitable for all CCR units. *Id.* However, the answer to this impediment cannot be to simply allow permanent permits. The Agency argues that any downsides to permits-for-life are ameliorated by the requirement that permittees “review and resubmit CCR permit applications” once every ten years. *Id.* Yet, this self-review from permittees does not require any action on the part of EPA. In its proposal, EPA allows a CCR unit to operate indefinitely without any required scrutiny from the regulator. This approach does not meet the statutory requirement for EPA to ensure compliance from each CCR unit—a requirement that is ongoing in time and does not expire after a permit is issued.

The permit-for-life provision is exacerbated by EPA’s proposed “permit shield,” which provides that “compliance with the terms and conditions of an issued and effective CCR permit would constitute compliance” with all substantive requirements. *Id.* at 9952. In this way, even under a permit that is protective when it is granted, if conditions change at a CCR unit leading to environmental harm, the permit shield would insulate the owner from an enforcement proceeding, including under citizen suits. *Id.* Although EPA notes that such permit shield provisions exist in other environmental permits, its presence in this federal CCR permitting program reinforces the other flaws and informational limitations discussed in this comment.

C. Beneficial use exemption is overbroad

EPA’s proposal would not “require entities who are exclusively engaged in the beneficial use of CCR . . . to obtain a federal CCR permit.” 85 Fed. Reg. at 9950. For owners of regulated CCR units that also reuse CCR at the same time, a permit would be required “only for the regulated activities.” *Id.* EPA justifies this exemption on the basis that beneficial use of CCR is not regulated under the substantive standards. *Id.* However, exemption would be significantly expanded in scope given the changes to the definition of beneficial use in EPA’s recently proposed revisions to the underlying substantive standards. *See* 91 Fed. Reg. at 19,010. Under the new proposed standards, existing protections to ensure that beneficial reuse of CCR does not harm the environment would be rescinded.¹⁵ In light of this expanded scope of the proposed new definition of “beneficial reuse,” EPA’s blanket exemption on all beneficial reuse of CCR is no longer justified. At minimum, EPA should consider whether some forms of beneficial reuse should require a level of administrative process under its permit program to ensure that all CCR units reach compliance.

D. Public participation requirements for permitting decisions are insufficient

EPA’s proposal also falls well short of ensuring proper public participation in federal CCR permits. Such opportunity to be informed about and potentially participate in permitting decisions concerning CCR units with the potential to pollute across state lines is of central interest to the undersigned states.

¹⁵ *See* Comments from Illinois, Delaware, et al. to EPA’s proposed amendments to RCRA CCR regulations (June 29, 2026), <https://www.regulations.gov/comment/EPA-HQ-OLEM-2020-0107-1650>.

For EPA's individual permits, for instance, there is no public notice or comment taken on minor modifications of permits or for the periodic 10-year permittee self-review. 85 Fed. Reg. at 9944, 9947. Should a member of the public seek modification or revocation of a federal CCR permit and be denied by EPA, there is no formal appeal. *Id.* at 9945. And these public participation requirements are even less robust for general permits or permits by rule. There is no requirement that a request to be covered under a general permit be made public and no means of participating in EPA's non-objection process. *Id.* at 9954. Under permits by rule, EPA does not clearly identify its decisional roles, and provides no opportunity for public participation after the general permit by rule regulations are adopted.

The scant requirements on permit application content further undermine our states' ability to know about the CCR units being permitted. Rather than requiring specific information necessary to ensure compliance with the substantive regulations, the proposal generically requires that a permit application "contain sufficient site-specific information" to support permit terms. 85 Fed. Reg. at 9958. EPA must strengthen these requirements to be linked directly to evidence showing compliance of each CCR unit with the substantive standards and EPA must affirmatively determine that the applications meet applicable conditions and eligibility requirements.

III. Conclusion

The EPA's proposal to adopt a flawed and under-protective set of federal permitting procedures for CCR units regulated under RCRA would, if finalized, have major effects not only for those states where federally permitted CCR units are located, but also, of course, for states whose environment and water quality could be affected by contaminated groundwater from those CCR units. To protect our States from the major environmental and health harms presented by poorly regulated CCR units, we urge EPA to rescind its proposal and propose new, more protective provisions.

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